

A COMMENTARY ON THE NIGERIAN PUBLIC SECTOR GOVERNANCE DRAFT CODE 2024



In addition to the enabling legislations establishing various PSEs, the draft Code applies to all PSEs.

Compliance Obligation of PSEs and Enforceability of the draft Code

The draft Code adopts an "apply and explain" methodology. This requires the implementation of all principles contained within the draft Code and a detailed explanation of their application. Should there be a departure from the established Code, PSEs are required to substantiate whether the principles of sound governance are attainable through alternative methods and to provide a rationale behind such departure in their governance statement. This statement should be an annexure to the PSEs' annual financial reports.

Furthermore, in instances where there is non-adherence to specific mandates of the draft Code, PSEs are mandated to outline remedial measures and establish timelines to attain full compliance. These measures and schedules must be articulated within the governance statement of the PSE.

Governance Framework of PSEs *Governing Bodies of PSEs*

PSEs are required to have a governing body responsible for developing a written policy document or charter. The policy document or charter is to be reviewed and updated annually. Amongst other things, the policy document or charter must set out the unique mandate of each PSE, and roles and responsibilities of its governing body. The draft Code prohibits PSEs from operating for a period exceeding 6 (six) months without an established Governing Body, unless otherwise provided by extant law.

The draft Code sets out the composition of the Governing Bodies of ministries, departments and other arms of government in the federation to include the Honourable Minister(s), Heads of Extra-ministerial Office, or Head of the Government Arm, Permanent Secretary or his equivalent in the other arms and levels of Government,

Introduction

Public sector governance is aimed at ensuring that Public Sector Entities (PSEs) not only fulfill their mandates and achieve their intended outcomes but also operate within the bounds of ethical integrity, transparency, efficiency, and effectiveness. The Nigeria Public Sector Code of Corporate Governance 2023(referred to as "the draft Code") encompasses a comprehensive definition of PSEs. This includes all ministries, extra-ministerial offices, departments, agencies of government across all tiers, state-owned corporations, companies, entities, and all branches of government. The draft Code's objective is to bolster and refine the governance frameworks governing PSEs.

Embracing an integrated perspective, the draft Code regards the public sector as a fundamental component of society, built on the tenets of inclusivity and the pursuit of sustainable development. The structure of the draft Code is tripartite, consisting of Principles, which articulate the foundational philosophy of each segment; Intended Outcomes, which delineate the goals to be achieved; and Recommended Practices, which are a compendium of actions, procedures, and processes that PSEs are encouraged to implement in order to realize these outcomes.

This commentary delineates the key elements of the draft Code.

Scope of Application of the draft Code

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Heads of Department, two (2) Retired Civil Servants and three members from the non-public sector. The Governing Body must also appoint a secretary who must be a legal practitioner, professional accountant or chartered secretary. The draft Code also sets out the qualification for membership of Governing Bodies of PSEs and provides that appointment or removal of members should be in accordance with the provisions of the charter of the Governing Body and subject to extant laws and regulations.

The draft Code provides that the Governing Bodies of parastatals and agencies must be composed of persons who are nominated on the basis of qualifications, knowledge and skills possessed. All appointments must be based on merit. Furthermore, the draft Code provides that appointments of members of the Governing Body and senior management should be based on objective criteria, merit and with due regard to diversity in skills, experience, age, cultural background and gender within the framework of relevant government policies.

The draft Code stipulates that the Governing Body of parastatals and agencies must be made up of a minimum of two (2) executive members and non-executive members (which must exceed the number of executive members) subject to the requirements of any extant laws. The draft Code clearly spells out the duties of executive and non-executive members as well as independent non-executive members.

Committees of Governing Bodies of PSEs

The draft Code stipulates that every PSE is required to have a minimum of three committees: Audit and Risk Management Committee; Finance and General Purposes Committee and Governance Committee. Also, a charter that provides for the terms of reference of these committees must be established. The draft Code further elaborates on the composition and responsibilities of these committees.

It is noteworthy that the draft Code emphasises diversity beyond gender and states that diversity policies of PSEs should ensure that each PSE is getting a mix of experiences and perspectives. The draft Code further requires every PSE to have an induction policy document

that will provide for adequate induction programmes for new and existing members of the Governing Body. Also, PSEs are required to conduct training of members of the Governing Body at least once a year. Governing Bodies are also required to ensure that the continuing education programmes assist members in developing their skills and capabilities in such a way that they are up-to-date on emerging trends within the PSE's business and operating environment.

Performance Management and Evaluation

The draft Code recommends that a formal and productive procedure to assess the efficiency and effectiveness of the governing body, senior management and all office cadres in line with the mandate of each PSE should be established. The Performance Management and Evaluation ("PME") process is aimed at improving performance, fairness and equity, effective talent management, and alignment of rewards and recognition as it relates to the governing bodies, senior management and all office cadres of PSEs.

The rationale of the PME is to enhance a productive and responsive public service and strong governance. The draft Code further recommends that this formal procedure for the Governing Body should be overseen by its Governance Committee and sets out the goals and subjects of the evaluation policy of the Governing Body, the committees of the Governing Body and members of senior management.

Remuneration Governance

Under the draft Code, the Governing Body is to ensure that the PSE remunerates fairly, responsibly and transparently to promote the achievement of the strategic objectives of the PSE. A fair remuneration is aimed at attracting, motivating and retaining the right talents in the Governing Body and Senior Management for increased productivity and sustainability. The draft Code further sets out recommended practices for the PSEs to achieve a fair, responsible and transparent remuneration.

Financial Management and Reporting

In recognition of the importance of a sound framework for financial management and reporting, the draft Code establishes a set of recommended practices for financial management and reporting for PSEs. These recommended

practices include keeping proper financial accounts and records, compliance with financial reporting process and rules as issued by the FRCN, monitoring the implementation of approved budgets, and auditing the financial statement of PSEs.

The draft Code further states that the intended outcome of these recommended practices is to establish a systematic and transparent procedure for efficient management of public financial resources, an appropriate reporting framework and a fair and understandable assessment of the PSE's financial management and reporting.

Transparency and Disclosure

The draft Code recommends certain practices aimed at fostering Transparency and disclosure in the public sector, strengthen accountability and build trust in the PSE. These practices include amongst others; sharing timely, relevant and accurate information with stakeholders and making full and comprehensive disclosure of matters relevant to stakeholders and matters set out in the draft Code.

Code of Conduct and Ethics

The draft Code mandates the Governing Body of every PSE to develop and adopt a comprehensive code of conduct and ethics for the PSE. The draft Code of Conduct and Ethics should set out the ethical standards and behaviors of individuals associated with the PSE, amongst other things. The Governing Bodies of PSEs are also required to establish policies, procedures and processes for the regulation of conflict of interest and related party transactions, whistleblowing, and anti-corruption matters.

Sustainability

The draft Code mandates every PSE to pay adequate attention to sustainability issues such as environmental, social, occupational and community health and safety.

The draft Code urges PSEs to develop frameworks that ensure the adoption of processes and practices aimed at achieving sustainability.

Conclusion

This Code supersedes all previous codes and guidelines, applicable to the public sector. Furthermore, all PSEs within the State Government and the Area Councils of the FCT are expected to comply with the draft Code before

1st January 2026 while PSEs within the Local Governments are expected to comply before 1st January 2027.

While the draft Code adopts an “Apply and Explain”, and does not prescribe penalty for non-compliance, adherence to the provisions of the draft Code would enhance the fulfillment of the mandates of various public sectors, for the benefit of the citizens and service users.

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