

KEY HIGHLIGHTS OF THE CODE OF GOVERNANCE FOR NOT-FOR-PROFIT ORGANISATIONS 2023



periodically review the list of organisations designated as NFPOs under the NFPGC.

What you need to know

- i. The primary purpose of the NFPGC will be to enhance public trust and confidence in the sector, particularly among citizens, beneficiaries, donors, volunteers, and other stakeholders.
- ii. The NFPGC aims to promote greater mission fulfillment, donor value, beneficiary satisfaction, and trust. This is especially important in light of concerns over economic mismanagement and the need to ensure that donations are effectively utilized to achieve their intended purposes.²
- iii. The NFPGC adopts a principle-based approach and prescribes that organisation should adopt the “Apply or Explain” approach.³ What this means is that NFPOs that elect to adopt the NFPGC are not only required to comply with the NFPGC but must also be able to explain and demonstrate the steps taken to achieve compliance.
- iv. NFPOs that elect to adopt the Code should publish an Annual Governance Statement in the form of a short narrative in their Financial Statements or Annual Report explaining their use of the Code and confirming their commitment and undertaking to continue to adhere to the Principles and Guidelines of the Code relevant to their size and type.

Key Principles of the NFPGC and Recommended Guidelines

The NFPGC contains twelve (12) principles aimed at guiding organisations within the sector toward effective governance practices. The NFPGC also contains recommended guidelines to practicalise the principles based on the size of the organisation. In terms of the scope,

Introduction

The Not-For-Profit Governance Code (“NFPGC” or the “Code”) 2023, is an initiative of the Technical Working Group (TWG), constituted by the Nigerian Ministry of Industry, Trade, and Investment, which aims to provide a comprehensive framework for governance in Nigeria in not-for-profit organisations (“NFPOs”).¹ The NFPGC defines NFPOs as organisations that provide services to the community or a defined group of constituents or members and do not operate to make a profit for its members (or shareholders, if applicable).

The NFPGC provides that the entities listed therein must adopt and comply with the NFPGC. The affected entities include but are not limited to the following:

1. Charities
2. Educational Institutions
3. Professional and Scientific Organisation
4. Religious Groups
5. Literary/Artistic Organisation
6. Political/Administrative such as political parties, Trade groups, etc.
7. Social and Recreational Clubs and Associations
8. Trade Unions

The Minister of the Nigerian Ministry of Industry, Trade, and Investment, in consultation with stakeholders, may

¹ See Part A Para. 1 of the NFPG Code 2023

² Ibid.

www.sskohn.com

³ See Part A, Para. 1.3 of the NFPG Code 2023

the principles of the NFPGC will apply to all organisations, irrespective of their size, type, or nature. However, the extent to which recommended guidelines apply varies based on factors such as the organisation's size. The guidelines are tailored to four classifications: Micro, Small, Medium, and Large, based on their average annual gross receipts or total expenditure over the last two years.

The principles and salient recommended guidelines are highlighted below:

Vision, Mission and Objectives

- The purpose of the organisation should be clearly stated in its founding instrument or charter and communicated to its stakeholders.
- The Board should periodically carry out strategic reviews of all aspects of the Organisation's work and use the results to inform positive change and innovation.

Adherence to law

- This principle emphasises the need for organisations to be well-versed in all relevant laws and regulations that pertain to their operations.
- It stresses the responsibility of the board to periodically review these laws and regulations to ensure ongoing compliance in the organisation, seeking professional advice where necessary.

Effective Governing Bodies

- This principle provides for the need for NFPOs to have an effective Board with strategic leadership structure in line with the organisation's aims and values. Under this principle, the Board will be responsible for the day-to-day management of the organisation.
- The principle further provides that every member of the Board is to receive a letter of appointment or contract of employment, specifying the terms and conditions of the appointment or employment.
- Also, the Chief Executive Officer and other Executive members of the Board should not be members of the committee responsible for remuneration, audit or nomination and governance.

- Non-Executive Directors (NEDs) should be chosen based on their wide experience, knowledge and personal qualities. However, NEDs should not be involved in the day-to-day operations of the organisation, which should be the primary responsibility of the Managing Director/Chief Executive Officer and the management team.
- Every Board Member should endeavour to attend all Board meetings. The attendance record of Board Members should be among the criteria for the re-appointment of a Board Member.
- To facilitate adequate oversight, the Board should establish the Committees responsible for: i. Finance and General Purpose; ii. Nomination and Governance; and iii. Audit and Risk Management.
- The Board should implement a biennial evaluation system to assess its own performance, that of its Chairman, Members, and Committees. This evaluation should be externally and independently facilitated every four years, with the results taken into consideration in the re-election process for members.

Diversity, Equality and Non-Discrimination

- The principle recognises that experience and gender are societal factors that every company must bear in mind when selecting their boards, but they must ensure that they do not compromise competence and integrity. Organisations should consider an appropriate mix of knowledge, skills and experience in making appointments to their boards of directors ("the Board")

Disclosure and Transparency

- The Board should annually produce a comprehensive activity report, ensuring accuracy and accessibility for stakeholders like members, funders, and regulators.
- Stakeholders are to be engaged through established processes like question and answer sessions, fostering transparency and accountability.
- The Board should also diligently meet reporting requirements set by regulatory bodies such as the Corporate Affairs Commission (CAC) and Federal Inland Revenue Services (FIRS), etc, reviewing compliance reports from the CEO to ensure alignment with organisational goals and legal mandates.

Stakeholder Engagement

- The Board should encourage and enable the engagement of relevant and key stakeholders, such as funders, beneficiaries, target groups, affected communities among others, in the organisation's planning and decision-making, based on the principles of inclusiveness, transparency, responsiveness, accountability and respect for rights.
- The Board should set a clear organisational approach to integrating gender, disability policy and promoting equity and diversity in all its programmes and activities, in line with its aims, strategy, culture and values.

Ethics, Integrity and Conflict of Interest

- The Principle highlights the importance of maintaining professional business and ethical standards. The Board should model a top-down commitment to keeping these standards by formulating a Code of Business Conduct and Ethics that will be reviewed periodically.
- NFPOs should establish policies for monitoring insider trading, related party transactions, conflicts of interest and other corrupt practices to promote ethical conduct and to mitigate the adverse effects of non-compliance with ethical standards.

Sustainability

- The Board may establish an investment policy statement that reflects its mission, values, and objectives. This policy statement should guide how sustainable factors are incorporated into the organisation's investment decisions.
- In a bid to ensure successful long-term business performance and also to project the NFPOs as a responsible body contributing to economic development, this principle requires NFPOs to pay adequate attention to sustainability issues, including environmental, social, and environmental (ESG) issues. The Board is required to establish policies on these issues.

Fundraising and Reserve Management

- NFPOs should ensure that its fundraising activities are performed in a way that preserves the integrity and transparency of the organisation.

- NFPOs should maintain some level of reserves to ensure their long-term financial sustainability and also develop a reserve policy, disclosing same in their annual report. Where an NFPO invests its reserves, it should obtain the Board's approval for such investment. It should also obtain advice from qualified professional advisors if deemed necessary.

Financial Management

- The Board will ensure the annual financial statement of the NFPO is prepared in accordance with approved framework of accounting and financial reporting issued by the Financial Reporting Council of Nigeria
- NFPOs should ensure that assets (land, buildings, vehicles and other assets the NFPO may deem fit) are adequately insured. All potential risks should be identified and assessed to determine the appropriate level of insurance coverage.
- The NFPO, upon winding up or dissolution will distribute the entire net value of the organisation to NFPOs having similar objectives and registered with the CAC. No past or present member or director is entitled to any part of the net value of the organisation after its obligations and liabilities have been satisfied.

Assurances

- The Board should ensure the establishment of a risk management framework to manage the organisation's exposure to significant risks.
- The Board should obtain and review relevant reports periodically to ensure the ongoing effectiveness of the Company's risk management framework.
- In terms of internal audit, the Board should ensure a periodic audit of the NFPOs processes and systems are performed to provide assurance on the effectiveness and efficiency of its internal control systems and make recommendations for enhancement or improvement.
- Also, the Board of every NFPO should establish a whistle-blowing policy that encourages individuals to report credible information on illegal or unethical practices, breaches to laws and regulations and violations of policies of the organisation. The policy should guarantee the anonymity of the whistleblower while also safeguarding the whistleblower from negative consequences as a result of making disclosures.

- The financial statements of the NFPO should be audited by an independent auditor annually.
- External audit firms may not be retained for longer than ten (10) years. Thereafter, they may only be considered for reappointment after a period' of seven (7) years.
- No ex-employee of an audit firm should be employed by the NFPO which the audit firm has audited until a period of three years has elapsed since the person ceased to be a partner or staff of the audit firm.
- This principle further provides that where an audit is conducted and information comes to light that suggests that an indictable offence may have been committed under CAMA or any other statute, this must be reported to the Regulator, whether or not such matter is or will be included in the Management Letter.

Leading People

- This principle provides that NFPOs should be responsible for providing leadership to volunteers, employees and contractors as their most essential resource and ensure that this resource feel valued having clarity around their own roles and the roles of others.
- The principle further provides for the application of agreed operational policies where necessary, to guide the actions of everyone involved in the NFPO.

Conclusion

The introduction of the NFPGC is commendable and reflects a positive step towards elevating governance standards in Nigeria. It is anticipated that the NFPGC's implementation will bolster public trust and fortify confidence in the not-for-profit sector, benefiting a broad spectrum of stakeholders including citizens, beneficiaries, donors, volunteers, and other key stakeholders. Nevertheless, it is pertinent to acknowledge that the Code is presently in a provisional draft stage and may undergo subsequent revisions or modifications.

Disclaimer

SSKÖHN NOTES is a resource of the law firm STREAMSOWERS & KÖHN deployed for general information and does not constitute legal advice neither is it a substitute for obtaining legal advice from a legal practitioner.

Contact persons for this Article



Akinola Oladimeji
Associate
akinola@sskohn.com



David Ekanem
Associate
davidekanem@sskohn.com

STREAMSOWERS & KÖHN is a leading commercial law firm providing data audit and compliance services, legal advisory, and advocacy services from its offices in Lagos, Abuja, and Port Harcourt. The firm has extensive experience in acting for Nigerian and international companies, government, and industry regulators in the firm's various areas of practice.

Contact us at:

16D Akin Olugbade Street
(Off Adeola Odeku Street) Victoria Island, Lagos
Tel: +234 1 271 2276; **Fax:** +234 1 271 2277
Email: info@sskohn.com; **Website:** www.sskohn.com