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The Unveiled Nigerian Code of Corporate Governance (NCCG) 2018: Progress or Setback for Corporate Governance, Corporate Nigeria and Sectoral Regulators? – Part Three

Key Issues Addressed in the NCCG 2018: Positives

Charan (2005) declares, "Make no mistake about it, corporate governance is on the move" (p. ix). Virtually all countries now use their corporate governance codes as an advertorial to woo foreign investors to channel foreign investments (direct and portfolio) to their respective countries. To this end, conscious efforts are being made by serious minded countries to ensure that intellectual rigour is applied to developing sound corporate governance codes that can act as a source of competitive advantage. Whenever an intellectually rigorous code is drafted, it is expected to contain a set of mechanisms that enables the country to not only compete favourably for foreign investment with its peers, but also allows the country to manage the relationships amongst companies' stakeholders and to establish and maintain harmony between parties whose interest may conflict. For example, it will be in Nigeria's interest to develop a code of corporate governance that will compete favourably with those of South Africa, Mauritius and Kenya, being countries that compete for foreign capital inflows in sub-Saharan Africa and each pride itself as the number one investment destination in sub-Saharan Africa.

There are quite a number of corporate governance issues addressed in the NCCG 2018. Some of these issues are already well-established in existing sectoral corporate governance codes in Nigeria. The NGGC 2018 adopts a principle-based approach with 28 broadly defined principles grouped into six parts (A to F). In addition, the Code has the following key positive features/requirements:

- adopts the "apply and explain approach, which provides opportunity for companies to explain the practices they implemented (recommended and alternatives) that demonstrate application of the relevant principle(s). The "apply and explain" approach also requires companies to demonstrate how the specific activities they have undertaken or practices they have adopted best achieve the outcomes intended by the corporate governance principles specific in the Code. The "apply and explain" principle assumes the application of all principles specified in the Code;

- is aimed at companies of varying sizes and complexities, thereby encouraging proportional application of recommended practices. In this regard, recommended practices could be scaled and made flexible in accordance with proportionality considerations. While flexibility and scalability are necessary for effective implementation of principles-based codes, the question regarding the NCCG 2018 would be, were the recommended practices positioned at the level of leading practice? This would be answered in the next section;
- aligned specific recommended practices to each principle;
- the provision requiring companies to have a board charter setting out the board's responsibilities (Para. 1);
- the provision for board's oversight over Information Technology governance. However, proper guidelines would have to be developed by the FRCN for its effective implementation (Para. 1.10);
- the provision that a person (or group of persons) who is not a serving director of a company should not exercise any influence or dominance over the board and/or management. However, the Code is silent about the disciplinary measures and mechanisms for any infraction on this provision (Para. 2.10);
- the introduction of clawback and clawback policy into the Code. Clawback will allow companies to retrieve or recover excess or underserved reward, such as incentives, bonuses, share of profits, share options or any performance-based reward, from directors and senior management staff. However, the practical application and benefits of this requirement would only be known when it is tested (Para. 16.9 and Para. 16.10);
- the provision that MD/CEO and Executive Directors (EDs) should not receive sitting allowance for attending meetings of the board or its committee and director's fees from the company, its holding company or subsidiaries (Para. 16.11);
- the provision that the board should establish policies and mechanisms for monitory insider trading, related party and conflicts of interests and other corrupt activities (Prin. 25 and Para. 25.1.1);
- the cool-off period of 3 years for regulatory officers at the director level or above before they could be appointed by institutions they directly supervised (Para. 25.2.8);
- full and detailed disclosure requirements specified under Paragraph 28;
- the requirement for companies to disclose all fines and penalties imposed by regulators on their respective corporate governance reports (Para. 28.2n); and
- The requirement for all related party relationships and transactions to be disclosed on the corporate governance report (Para. 28.3).

References

Charan, R. (2005). Boards that deliver: Advancing corporate governance from compliance to competitive advantage. San Francisco, CA: Jossey-Bass.

To be continued tomorrow

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