Governance

Newsletter Issue 005/2014

A REVIEW OF THE CODE OF CORPORATE GOVERNANCE FOR THE TELECOMMUNICATIONS INDUSTRY

Overview

The introduction of the Code of Corporate Governance for the Telecommunications Industry ("the NCC Code") is a welcome development for the industry. Given its peculiarity as a sector dominated by private companies, other CG Codes are not as relevant to the sector. The need for a sector specific Code cannot be over emphasized, particularly in a sector like telecommunications, with its significant contribution to national GDP and the number of stakeholders involved.

As is to be expected, the NCC Code shares some common provisions with existing Codes, although it however contains some peculiar provisions. It takes cognizance of the fact that the telecommunications sector, although dominated by private companies is of great importance to the economy and therefore requires some regulation. Whilst a periodic review of any Code is best practice, the annual review as contemplated by the NCC Code is not in the best interest of either the regulator or the regulated entities and would result in a dissipation of resources. It would have been sufficient to provide for a review as the need arises like the SEC, PENCOM and NAICOM codes.

The Code does is not a rigid set of rules and is intended to act as a guide taking cognizance of the peculiarities of the industry. Compliance with the Coode is voluntary and the provisions are espoused as "Principles".

The Board

The Code does not restrict the size of the Board as it does not provide for either a minimum nor maximum number of Directors as with other Codes. This allows companies the latitude to determine what size is suitable taking due cognizance of "the size, scale, complexity and reach of the business of the Company" (Principle 2.2.b).

Similar to the SEC Code, the NCC Code requires a mix of experience and diversity on the Board, as well as a minimum of one independent director. It also provides for a maximum continuous tenure of fifteen years for non-executive Directors. Compared to the other Codes, tenure under the NCC Code is the longest. The SEC Code provides that Non-Executive Directors shall serve for "reasonable terms". It is speculated that the Code has taken cognizance of the fact that many of the Directors sitting on the Boards of telecom companies are also shareholders. It can be argued nonetheless that that a fifteen year tenure is excessive.

While the Board's role and responsibility in corporate governance is collective, the NCC Code provides that liabilities and obligations of directors in respect of corporate governance matters are personal. This is expected to make them more responsible and devoted to the Company.

The Code allows the Board the latitude to establish committees as appropriate and suggests the following – Nominations Committee, Executive Management Committee, Board Remuneration Committee and the Risk Management Committee.

The Code also expressly stipulates that the Board should state the matters which are exclusively under its control and those matters that may be delegated to Management – it is hoped that this would eliminate ambiguity.

As with the SEC Code, the NCC Code provides for an annual evaluation of the Board, which should be an objective and independent process. It is recommended that the evaluation be carried out by external consultants, in order for the exercise to be truly objective; this is because self-evaluation would becloud the objectivity and independence required to ensure an effective appraisal. The requirement that the company's Annual Reports should state whether an evaluation was carried out in the year under review is a commendable

provision as it ensures the accountability of the Board to shareholders.

Emphasis as necessary is placed on the separation of the role of the Chairman and the Chief Executive Officer. The separation between these two offices is a major requirement of good corporate governance and allows the opportunity to put checks and balances in place and helps to maintain the independence of the Board from management.

Company Secretary

As with other Codes, the NCC Code provides that the Company Secretary should be qualified and competent, with the duty to uphold corporate governance. The NCC Code provides that the Company Secretary should report to the Board of Directors, while the SEC Code provides that the Company Secretary should report to the CEO/MD and have direct access to the Chairman of the Board.

The provision of the NCC Code appears to be more in line with best practice, as the Company Secretary is generally regarded as the custodian of corporate governance and interfaces directly with the Board. In view of the fact that the Board is responsible for the appointment and removal of the Company Secretary, there should be no fear of dismissal by Management in the event that the Company Secretary reports to the CEO/MD.

Applicability and Effect

The NCC Code lays emphasis on transparency in financial reporting which is good corporate governance practice, and also encourages the application of a Code of Business Conduct as well as a Whistle Blowing Policy. Unlike the SEC Code, the NCC Code does not make provisions for the implementation methods and administration of these policies neither does it provide details of the requirements for each policy.

A notable difference between this Code and the SEC and CBN Codes is that while adherence to the SEC and CBN Codes is compulsory, this Code is voluntary. The Code also suffers a significant defect as the effective date is omitted. It is recommended that the commencement date of the Code be specified and the Code republished. It is also suggested that a pronouncement be made with respect to timeline for compliance by operators. Compliance with the "Principles" has been stated to be voluntary and it is noted that since the Code came into effect no action has been taken by the regulator to enforce compliance.

Recognizing that unwholesome practices that impact negatively on shareholder value and stakeholder interest occur even where compliance is made mandatory, it is recommended that compliance with some minimum standards be made compulsory to achieve the objective of codifying a sector specific Code. Operators are however encouraged to adopt and comply more with the spirit rather than the letter of the Code.

Who We Are

DCSL Corporate Services Limited (DCSL) provides corporate, company secretarial, immigration, training and governance services to corporate bodies, individuals, government agencies and business organizations. We operate from our Head Office in Lagos, with operational branches in Abuja and Port- Harcourt.

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