

EXPOSURE DRAFT OF THE NATIONAL INSURANCE COMMISSION REVISED CODE OF CORPORATE GOVERNANCE: A REVIEW

Corporate governance is enhanced and supported by proper structures, practices, and processes put in place by the Board and the competence and integrity of Management. Further to the Circular issued on the 25th August 2016 highlighting the grey areas in the provisions of the extant NAICOM Code of Corporate Governance 2009, the National Insurance Commission (NAICOM) recently, exposed a draft of the revised Code which is aimed at ensuring that Insurance companies in Nigeria have robust structures and practices that would guarantee sustainability and global competitiveness. The largely prescriptive Code was exposed with a view to incorporating comments from stakeholders in the Nigerian Insurance Sector before the issuance of the final Code.

The exposure draft of the revised NAICOM Code is made up of 11 Articles dealing with the composition and operation of the Board of Directors, rights of shareholders, the relationship between the Board and shareholders and other stakeholders, audit and compliance, risk management, conflict of interest, ethics and professionalism, accounting principles, reporting requirements, whistle blowing, and sanctions for violation of the Code's provisions. The Code is applicable to all Reinsurance, Insurance, Brokerage and Loss Adjusting companies.

BOARD COMPOSITION

The draft Code provides that the forty percent (40%) maximum stipulated for Executive Management in the Board structure in the existing Code must include the Managing Director/Chief Executive Officer and, at least, one Executive Director (ED), who would be responsible for Technical/Operational matters.

The Executive Director, Technical is also expected to have the qualifications and experience required of the CEO. A company may, however, have other Executive Directors, but the total number must not exceed forty percent of the entire Board. It also requires the Board to ensure that a substantive CEO is approved by the Commission before the exit of an incumbent.

All nominated members of the Board are required to complete and file with the Commission, a Personal History Statement (PHS) Form not later than fourteen (14) days after nomination as opposed to the four (4) weeks required by the existing Code.

A Director who is serving on the Board of an Insurance institution is not eligible to serve on the Board of another Insurance company. The exposure Code requires that two (2) Independent Directors be appointed to a Board with more than 7 members (1 in the case of a Board with less than 7 Directors) and that the Independent Director(s) must not be related by birth or business affinity to the company or its associate. The Code now requires the Board of Directors to include provisions in the Articles that a minimum of 60% shall form a quorum for a valid Board Meeting.

TENURE

The draft Code limits the tenure of a Managing Director (MD)-both currently serving MD and any to be appointed, to a maximum of 10 years (two terms of 5 years each). Where the MD had served as an Executive Director (ED) before his appointment, he is still entitled to the 10-year tenure provided that his stay on the Board as ED is not more than 17 years in total. An ED has maximum of 12 years (3 terms of 4 years each) on the Board if he does not transit to the MD.

A Non-Executive Director (NED) could only serve for a maximum of 9 years at a stretch. He could still be re-appointed after cooling period of 3 years.

Quote

"Nobody has a more sacred obligation to obey the law than those who make the law."

-Sophocles

The exposure Code does not permit appointment of a MD as Chairman of the same company until after 3 years of exiting his position as MD. The maximum 9-year rule applies upon appointment as Chairman. Likewise, a Board Chairman could be appointed as a Managing Director after 3 years of ceasing his chairmanship and is subject to maximum of 2 terms of office of 5 years each in the new position-MD.

BOARD COMMITTEES

The exposure Code compresses the number of Board Committees to three (3) as follows:

- I. Finance, Investment and General Purposes
- II. Audit and Compliance (To be headed by an Independent Director).
- III. Enterprise Risk Management and Governance (Independent Director should be a member).

However, a Board may establish other Committees depending on its size. The Board Chairman shall not be a member of any of the aforementioned Committees.

Membership of the Audit Committee shall now include all Independent Directors and exclude Executive Directors. Two Non-Executive Directors with requisite knowledge of Insurance, Accounting, Financial analysis, and Financial reporting shall be on the Committee, and, at least, one member must have a good understanding of the Insurance business.

EXTERNAL AUDITORS

The tenure of an appointed External Auditor shall be for a maximum period of five (5) years. External Auditors disengaged after five (5) years can be reappointed after a three (3) year cooling off period. To guarantee independence, companies should require external audit firms to rotate the audit partners assigned to undertake their external audit every two (2) years while audit personnel should be changed without compromising on the continuity of the external audit process.

INTERNAL AUDIT FUNCTION

The internal Audit Unit is required to be headed by a professionally qualified Accountant not below Senior Management cadre as opposed to the rank of an Assistant General Manager or its equivalent. In line with best practice, the Code provides that the Head of Internal Audit shall

EQUITY OWNERSHIP

An equity holding of 5% and above in any company quoted or otherwise by any investor shall be subject to the Commission's prior approval.

RISK MANAGEMENT

The exposure draft of the Code includes elaborate provisions on the duties of the Board regarding risk management. It requires that an Insurance institution's Risk Management policies shall clearly describe the roles and accountabilities of the Board, Board Risk Management Committee, Management and the Internal Audit function. The Board should establish an Enterprise Risk Management and Governance Committee to assist in its oversight of the risk profile, risk management framework and the risk-reward strategy as determined by the Board.

CONFLICT OF INTEREST

Apart from the requirement of disclosure by Directors and Employees in conflict of interest situations, the draft Code mandates Insurance institutions to adopt a policy to guide the Board and Directors when the need arises. The policy should preclude the concerned Director from discussions and voting on any matter that the Director may have an interest in. The Director is also required to seek clarification from the Chairman of the Board or seek advice from the Company Secretary when he/she is in doubt as to whether or not a conflict has arisen. When the question arises before the Board as to the existence or otherwise of a conflict of interest it should be determined by a simple majority of the Board members and recorded in the minutes of the meeting. The draft Code imposes a reporting obligation on Directors other than the concerned Director when they are aware of a real, potential or a perceived conflict of interest on the part of a fellow Director.

CODE OF ETHICS AND PROFESSIONALISM

To ensure that companies are resolute in their commitment to perform at the highest ethical level, the Code provides that Boards should develop a Code of Business Conduct and Ethics applicable to all Directors, officers and employees of the company. The Code of Ethics must be made available to all staff and submitted to the Commission not later than 3 months after it is issued.

ACCOUNTING PRINCIPLES, DISCLOSURES AND REPORTING REQUIREMENTS

The draft Code imposes on the CEO and CFO of every Insurance institution, the responsibility of certifying that the Financial Statements present a true and fair view of the affairs of the Company. The Board should also ensure that financial reports disclose any deviation from standards, while the CEO and CFO are expected to confirm annually to the Commission that they are not aware of any other violation of the Code. Companies are required to clearly emboss an authorization confirmation footer in their letterheads, emails, brochures, pamphlets, and leaflets a clause which reads "authorized and regulated by the National Insurance Commission". The names of all the Directors with their respective positions should also be stated at the foot of the letterhead.

Quote

"A law is valuable not because it is law, but because there is right in it."

– Henry Ward Beecher

WHISTLEBLOWING

Companies are expected to a Whistle-Blowing Policy to the Commission within six months of the issuance of the Code. The Code also requires Companies to render annual reports on their compliance with the provisions of the Whistleblowing Policy along with their Corporate Governance Compliance status return. The head of Internal Audit should review reported cases and recommend appropriate action to redress the situation within a reasonable time.

NON-COMPLIANCE

The Code provides that violation of the provisions will attract appropriate sanctions from the Commission. The Code is, however, silent on the nature of sanctions to be imposed.

The revised Code, when issued, is expected to further enthrone corporate governance principles relating to risk management, conflict of interest, ethics and professionalism, accounting principles, procedures and reporting requirements and whistle blowing within the Nigerian Insurance sector. It is expected that the implementation of the revised Code will ensure transparency, accountability and enhance shareholder value in the sector. It is recommended that penalties for violation of the Code's provisions be explicitly stated in the final version to eliminate a subjective penal regime, a likely outcome should the Code be issued in its exposed form.



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Witty Corner

A lawyer phoned the governor's mansion shortly after midnight. "I need to talk to the governor, it's an emergency!" exclaimed the lawyer. After some cajoling, the governor's aide eventually agreed to wake him up. "So, what is it that's so important that it can't wait until morning?" grumbled the governor. "Judge Brown just died, and I want to take his place," pleaded the attorney. "Well, its Ok with me if its Ok with the mortuary," came the reply.



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