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THE NATIONAL INSURANCE COMMISSION CORPORATE GOVERNANCE GUIDELINES FOR INSURANCE AND REINSURANCE COMPANIES IN NIGERIA, 2021.

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INTRODUCTION

Corporate Governance is the system of rules, practices and processes by which a firm is directed and controlled. It essentially involves balancing the interest of a company's stakeholders i.e. shareholders, senior management executives, customers, suppliers, financiers, the government, and the community, alongside the need to provide for a framework for attaining a company's objectives. It basically involves every sphere of management ranging from action plans and internal controls to performance measurement and corporate disclosure amongst others[1].

In 2018, the Financial Reporting Council of Nigeria relying on its powers under Section 11c and 51c of the Financial Reporting Council (FRC) Act[2] to ensure good corporate governance practice in both the public and private sectors of the Nigerian economy and to further issue the code of corporate governance and guidelines, issued the Nigerian Code of Corporate Governance (NCCG) 2018[3] and commended same to the Minister of Industry, Trade and Investment for issuance in accordance with Section 73 of the FRC.[4]

Prior to the Issuance of the 2018 Code of Corporate Governance by the FRCN, there were in existence, various codes issued by the Industry/Sector specific Regulatory Agencies to ensure good corporate governance practice in their respective playing fields. The Codes in existence were:

- Code of Corporate Governance for the Telecommunication Industry 2016, issued by the Nigerian Communications Commission (replaced 2014 NCC Code);
- Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014 issued by the Central Bank of Nigeria (replaced 2006 CBN Code);
- Code of Corporate Governance for Public Companies in Nigeria 2011 issued by the Securities and Exchange Commission (replaced 2003 SEC Code);

PRIOR TO THE ISSUANCE OF THE 2018 CODE OF CORPORATE GOVERNANCE BY THE FRCN, THERE WERE IN EXISTENCE, VARIOUS CODES ISSUED BY THE INDUSTRY/SECTOR SPECIFIC REGULATORY AGENCIES TO ENSURE GOOD CORPORATE GOVERNANCE PRACTICE IN THEIR RESPECTIVE PLAYING FIELDS

- Code of Good Corporate Governance for Insurance Industry in Nigeria 2009 issued by the National Insurance Commission; and
- Code of Corporate Governance for Licensed Pension Fund Operators 2008 issued by the National Pension Commission. It is noteworthy that the NCCG 2018 did not expressly repeal all other Sectoral Codes in existence before it but the intention for a unified Code of Corporate Governance in Nigeria can be gleaned from the aims and objectives contained in the NCCG 2018.

This is believed to be so because the various Sectoral Code of Corporate Governance in existence are subsidiary legislations made by the various Regulatory Agencies pursuant to powers donated to them under their respective establishing Act. Likewise, the NCCG 2018 is also a subsidiary legislation made by the Financial Reporting Council of Nigeria pursuant to powers donated to it under the FRC Act.

It will therefore be inappropriate, notwithstanding the good intentions of the NCCG 2018 for it to expressly repeal the existing Sectoral Codes. That power rest solely in the bosom of the relevant Regulatory Agencies.

The Financial Reporting Council of Nigeria in order to ensure unity in the practice of good corporate governance and total compliance with the Code began engaging with all Sectoral Regulators for the purpose of developing Sectoral Guidelines of Corporate Governance on specific requirements relevant to each sector which are not covered under the NCCG 2018.

This engagement was necessary because all existing sectoral codes as highlighted above needed to be withdrawn so that the NCCG 2018 can stand as the only National Code of Corporate Governance in Nigeria while there will be in existence Sectoral Guidelines of Corporate Governance to address specific matters or requirement not covered or adequately covered under the NCCG 2018.

To this end, the National Insurance Commission had on the 17th of March, 2021, issued its own Corporate Governance Guidelines for Insurance and Reinsurance Companies in Nigeria (NCGGIRCN) with effective date of 1st of June, 2021. This paper seeks to review the provisions of the Code for proper understanding of readers.

The NCGGIRCN is divided into thirteen (13) segments which contains guidelines on: Introduction, Board of Directors and Management, Meetings of the Board, Committees of the Board, Induction and Continuing Education for Board Members, Board Evaluation, Internal Audit, External Auditors, Conflict of Interest, Rights of the Shareholders, Business Conduct and Ethics, Disclosure Requirements, Whistle Blowing, Enforcement and Sanctions and Scope and Effective date of the Guideline.

AIM OF THE NCGGIRCN

The major aim of this Guideline is to assist the implementation of the NCCG 2018 and its provisions shall be read and interpreted in conjunction with the NCCG 2018. By this Guidelines, NAICOM in giving life to the aims and objectives of the NCCG 2018, expressly repealed the 2009 Code of Good Corporate Governance for the Insurance Industry in Nigeria and went ahead to demand compliance with this Guidelines and the NCCG 2018, from all Insurance and Reinsurance Companies in Nigeria.

TWENTY (20) SALIENT PROVISIONS OF THE NCGGIRCN 2021

In addition to the general provisions of the NCCG 2018, the NCGGIRCN has specific provisions on Remunerations of the Board, Board Meetings, Board Committees, Continuing Education of the Board Members, Remuneration and Evaluation of the Board, Structure and Composition of the Board, Audit, Disclosure of Interest, Protection of Whistle Blowers, Enforcement and Sanctions thus:

- The Insurance/Reinsurance Company shall have not less than seven (7) members and not more than fifteen (15) members on its board;
- 40% of the members of the board shall be executive directors.
- No one person shall occupy the position of Chairman and Managing Director/CEO in related insurance companies at the same time. By this, the Guideline went a step further in extending the provision to capture different but related entities. Principle 2.7 of the NCCG 2018 contemplated just one company in its own provision.
- The Guideline ensured that no two members of the same family (nuclear or extended) shall occupy the position of the Chairman and Managing Director/CEO of any insurance company. This mandate a call for due diligence on the part of the members of the Board.
- A ceiling of 3 terms of 3 years each on the tenure of a Non-Executive Director.
- Established the position of an Executive Director (Technical) which all Insurance and Reinsurance Company must have for the purpose of succession and the minimum qualification and experience such a person should possess must be equivalent to that of the CEO.
- The minority shareholders must be represented on the Board.
- The Guideline incorporated the armslength principle in dealings between related companies by requesting all insurance institutions irrespective of any relationship with other companies or group to operate independently.
- The remuneration of the members of the Board shall be determined by the Board of Directors and approval sought at the Annual General Meeting.
- Each Member of the Board shall attend at least 75% of the Board Meeting Annually. This is more exact unlike Principle 10.2 of the NCCG 2018 which implores the Directors to use their best endeavour in attending all meetings.
- In addition to the four (4) recommended committees under Principle 11 of the NCCG 2018, the NCGGIRCN created the: Finance, Investment and General-Purpose Committee and Compliance Committee
- The Insurance/Reinsurance Companies are mandated to organize at least once in a year, training on insurance principles and update on insurance market to which, attendance by members of the Board is mandatory.
- An annual Board Performance Evaluation shall be carried out by an Independent consultant to be appointed at the AGM and the Evaluation Report shall be forwarded to the Commission before the end of first quarter of the succeeding year.
- All Insurance/Reinsurance company shall have an internal audit unit headed by a professionally qualified accountant not below the rank of Assistant General Manager or its equivalent. The internal audit report shall be filed with the commission every quarter.
- In addition to this, approval of the Commission shall be sought to engage external auditor whose tenure shall be for four (4) years in the first instance and an additional four (4) years if reappointed. The report of the external auditor shall be submitted to the commission not later than 2nd quarter of the succeeding year and all audit teams shall be rotated at least once every two years.
- Each director and employee of an insurance/reinsurance company must disclose to the Board or shareholders his/her interest in any other: Reinsurance Company; Insurance Company; Takaful Insurance Company; Micro Insurance Company; Insurance Broking Firm; Loss Adjusting Firm; Actuarial Firm; Accounting/Taxation/Audit Firm; and Legal and Secretariat Firm. Any payment to any of the above firms wherein a Director or Employee has interest shall be fully documented and the interest thereof fully disclosed to the Board/Shareholders.
- All shareholders of insurance/reinsurance companies have participatory rights, fair-hearing rights, rights to consult with each other on issues concerning their basic shareholders rights (but in so doing, abuse of such rights can be prevented) [5] and right to receive dividends when declared.

- Annual Report shall sufficiently disclose the following information: The manner of compliance with, or explain any deviation from NCCG 2018 and/or this Guidelines; The Board Meeting's attendance record of members; Deviation from applicable corporate governance standards and; contraventions on which penalties have been imposed by the Commission and/or any other regulatory/supervisory body during the accounting year.
- All whistle blowers are protected and shall be given the opportunity to present a complaint to the Commission for any detriment suffered.
- Non-compliance with the NCCG 2018 and this Guideline amounts to a violation under Section 49(1)(b) [6] of the National Insurance Commission Act[7] and attracts penalty under section 49(5) [8] of the Act.

CONCLUSION

The National Insurance Commission Corporate Governance Guidelines for Insurance and Reinsurance Companies in Nigeria 2021, contains specific provisions that completely seek to implement the General Provisions in the 2018 Financial Reporting Council Nigerian Code of Corporate Governance (NCCG). This Guideline by replacing the 2009 NAICOM Code of Good Corporate Governance for Insurance Industry, further actualizes the aims and objectives of the NCCG 2018 as a National Code which seeks to institutionalize and ensure unity in the practice of good corporate governance in all companies in Nigeria. The specific provisions contained in the Guideline can be easily misconstrued to be conflicting with some of the provisions of the NCCG. However, this is not the case as the Guideline is to be read and interpreted in conjunction with the provisions of the NCCG [9] and the law is clear on the prevailing power of a specific provision over a general provision of an enactment.[10] This is a step in the right direction and all other sector specific Regulatory Agencies who are yet to issue Guidelines in this regard are encouraged to do so and expressly repeal their respective Corporate Governance Code to bring conformity with the spirit and intentions of the drafters of the NCCG 2018.

REFERENCE

1 https://www.investopedia.com/terms/c/corporategovernance.asp.
2 2011.
3 The Nigerian Code of Corporate Governance 2018 seeks to institutionalize corporate governance best practices in Nigerian companies, promote public awareness of essential corporate values and ethical practices that will enhance the integrity of the business environment through institutionalizing high corporate governance standards in order to rebuild public trust and confidence in the Nigerian economy, thus facilitating increased trade and investment.
4 The Minister may, on the advice of the Council, make such regulations as in his opinion are necessary or expedient for giving full effect to the provisions of this Act and for the due administration of its provisions.
5 Guideline 8.0(iii) of the NCGGIRCN.
6 Empowers the commission to issue guidelines to insurance companies.
7 1997.
8 A person or insurance institution which fails to comply with any guideline issued under paragraph (b) of section (1) of this section, is guilty of an offence under this Decree and liable on conviction to a fine not less than 250,000 or more than 500,000 or imprisonment for a term not exceeding 3 years or to both such fine and imprisonment.
9 Guideline 1.0(v) of the NCGGIRCN 2021.
10 Inakoju & Ors V. Adeleke & Ors (2007)LPELR-1510(SC).

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