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TEMPLARS ThoughtLab

Additional Corporate Governance Considerations for Capital Market Operators and Public Companies

On 19 June 2025, the Nigerian Securities and Exchange Commission (the “**Nigerian SEC**”) issued a circular to public companies (“**PLCs**”) and capital market operators (“**CMOs**”) on the transmutation of independent non-executive directors and tenure of directors (the “**Anti-Transmutation Circular**”). Subsequently on 01 July 2025, the Nigerian SEC issued a Guidance Note to PLCs and CMOs (together the “**Specified Stakeholders**”) on the governance and tenure of directors (the “**Governance Guidance Note**”). The Anti-Transmutation Circular and the Governance Guidance Note (together the “**Additional Board Requirements**”) have significant corporate governance implications for the board of the Specified Stakeholders. To guide the Specified Stakeholders in their preparations to comply with the Additional Board Requirements, we have compiled likely frequently asked questions along with our responses.

1. Which of the Additional Board Requirements should the Specified Stakeholders comply with?

According to the Nigerian SEC, the Governance Guidance Note “offers interpretative support” to the Anti-Transmutation Circular. Therefore, the Anti-Transmutation Circular should be read alongside the Governance Guidance Note. Consequently, the Specified Stakeholders should comply with both Additional Board Requirements. The Additional Board Requirements do not, however, detract from the Specified Stakeholders’ obligations to continue to comply with extant corporate governance rules. Thus, PLCs must continue to comply, for example, with the extant corporate governance requirements in the Nigerian Code of Corporate Governance, 2018 and the SEC Corporate Governance Guidelines, 2020.

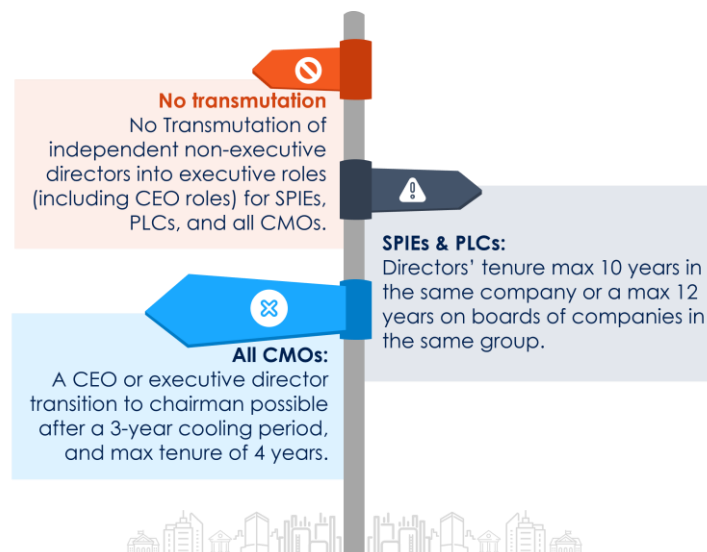
2. Do the Additional Board Requirements apply to all CMOs or PLCs. Can certain CMOs or PLCs enjoy exemptions or waivers?

All the provisions of the Additional Board Requirements do not apply to PLCs and CMOs across board. Some provisions of the Additional Board Requirements are specifically for CMOs that operate financial market infrastructures (FMs) and have been designated by the SEC as Significant Public Interest Entities (SPIEs), while the others are specifically for PLCs. A couple of the provisions apply to all CMOs. Private companies that are not SPIEs need not comply with the Additional Board Requirements.

3. How can a CMO, ascertain if it is a SPIE?

A SPIE is a CMO "whose operations are of systemic importance, [who has] significant investor exposure, or serve[s] a critical infrastructure function within the capital market, as determined by the Commission [Nigerian SEC]". The Governance Guidance Note refers to CMOs that operate FMs and have been determined by the Commission to be SPIEs. According to the Governance Guidance Note, FMs include all exchanges, central securities depositories, clearing houses and trade repositories and such other entities that facilitate clearing, settlement, trading or data functions in the capital market. Thus, CMOs who operate FMs should determine from their operations if they have significant investor exposure or serve critical infrastructure function or are of systemic importance. Where in doubt of the category that they fall into or are unable to make a determination of whether any of the categories apply to them, FMs should engage the Nigerian SEC further.

Key Prohibitions & Tenure Limits



4. What provisions of the Additional Board Requirements apply specifically to the SPIES?

The following rules apply to SPIES:

- 4.1** SPIES should no longer appoint independent non-executive directors as executive directors (including CEO roles) within the same company or group structure. This also applies to PLCs;

- 4.2 directors may serve a maximum of 10 years within the same company or a combined total of 12 years within the same group; and
- 4.3 once the tenure of a chief executive officer or executive director has expired (as in 4.2 above), they cannot be appointed as chairman of a SPIE until after a 3-year cooling period. Upon such an appointment, that chairman's tenure is limited to a maximum of 4 years.

5. What provisions of the Additional Board Requirements apply specifically to PLCs?

PLCs, like SPIES, should no longer appoint independent non-executive directors as executive directors (including CEO roles) within the same company or group structure.

6. What provisions of the Additional Board Requirements apply to all CMOs?

All CMOs are prohibited from appointing independent non-executive directors as executive directors (including CEO roles), that is, the transmutation of independent non-executive directors into executive roles is no longer permissible in a CMO (even if it is not a SPIE).

7. How do the Additional Board Requirements affect current directors/current board circulars of PLCs and CMOs?

To determine whether a current director's tenure has expired, all the years already served prior to the issuance of the Additional Board Requirements will be counted. Additionally, all SPIEs have been directed, as part of their preparation towards compliance with the Additional Board requirements, to:

- 7.1 review existing board structures;
- 7.2 update board succession plans to reflect the new tenure limits and cooling period; and
- 7.3 maintain records and notify the Nigerian SEC where significant governance changes will be effected.

All CMOs and PLCs can, however, adopt 7.1 and 7.2 to aid compliance with the provisions of the Additional Board Requirements that apply to them. Additionally, the Nigerian SEC advises that all CMOs who seek to align with international best practices, improve their market standing or who may likely evolve into SPIEs in the future should consider adopting the provisions of the Additional Board Requirements in their entirety.

Progress Towards Alignment with International Best Practices?

There is no uniform approach to the tenure of directors globally. In some jurisdictions (like the United States), the tenure is irrelevant, to the extent that the director's performance is not impacted. In some jurisdictions (like Malaysia, Ghana and India), a time limit is prescribed. In others (like Singapore and Hong Kong), the rules permit the extension of tenures beyond the time limit where certain additional requirements are met – for example, obtaining shareholders' approval. In jurisdictions where tenure is prescribed, nine years seem to be the more common tenure (like Nigeria, Malaysia, Singapore and the United Kingdom).

Additionally, there seems to be no express provisions on re-classifying independent non-executive directors as executive directors in a number of these jurisdictions. In Malaysia and Ghana for

example, an independent director can continue to sit on the board after the nine-year period only as a non-independent director. In India, an independent director may be re-appointed as an independent director after the prescribed tenure, after a cooling-period of three years, if he/she was not directly or indirectly appointed by or associated with the company in any other capacity during that cooling period.

Conclusion

In conclusion, while there are no express penalties for breach of the Additional Board Requirements, the general powers of the Nigerian SEC to impose penalties for breach of the Investment Securities Act, 2025 and any related rules and regulations subsist. Nonetheless, Specified Stakeholders should approach compliance with the Additional Board Requirements as a way to strengthen corporate governance to build investors' confidence, rather than the avoidance of penalties or fines from the Nigerian SEC.

If you require any further clarification, do not hesitate to contact us.