



**NCC SET TO WIELD THE BIG STICK
OVER FILING OF COMPLIANCE
REPORTS** BY LICENSEES IN THE
NIGERIAN TELECOMS INDUSTRY

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On Thursday, February 8, 2018 the Nigerian Communications Commission (“the Commission”) issued a public notice, in response to requests from several concerned licensees, extending the deadline for filing of Compliance Reports as prescribed by Principle 14.0 of the Code of Corporate Governance in the Telecommunications Industry 2016 (the “Code”). By this extension, licensees operating in Nigeria have until February 28, 2018 to comply with the mandatory requirement of Principle 14.0 and file their Compliance Reports. The public notice indicated that the Commission is ready to reward licensees as a way of promoting compliance with the Code, and the Commission is poised to sanction erring licensees who fail to comply.

The fact that the NCC is bending over backward to grant a one month extension suggests two things. First, that the level of compliance by licensees is probably not high and the Commission wants to give the licensees ample time and opportunity to comply. Second, after the expiration of the deadline, the NCC will strictly enforce compliance and impose heavy penalties on non-compliant licensees. Those familiar with the methods of the NCC will testify that the Commission does not impose light penalties and that the fear of the NCC is surely the beginning of wisdom.

Why is compliance with the Code ‘perceived’ to be low notwithstanding NCC’s pitch that it is best practice and will attract foreign investments in the sector? The primary reason is that licensees would prefer to have a voluntary code of corporate governance rather than a mandatory code. Prior to this time, when the Code was introduced in 2014, licensees were allowed to self-regulate. The 2014 Code contained a voluntary set of rules targeted at raising the standards of leadership and management in the telecoms industry in accordance with global best practices, and for the sustenance of the industry’s current role as one of the primary drivers of economic advancement in Nigeria. However, a survey conducted by the NCC found that there were significant deviation by licensees from the key principles of the Code and this necessitated the change to mandatory regime in the 2016 Code.

The second reason for poor compliance with the Code is that the licensees perceive its provisions to be intrusive. A review of the salient provisions of the Code will show that the Code essentially requires licensees to change the way they set up and operate their business. Notwithstanding the above, since the introduction of the Code, the Commission, has consistently highlighted the urgent need for all operators to fully align with the recommendations and principles of the Code in order to ensure the industry’s movement on a balanced and well sustained trajectory. Thus, it goes without saying that in the wake of recent corporate scandals in the telecoms industry where several corporate governance failures have been unearthed and heavy sanctions imposed, operators in the industry are now more than ever, faced with the uphill task of either ensuring strict compliance with the provisions of the Code or facing the consequences of their actions or inactions as the case may be.

SALIENT PROVISIONS OF THE CODE

Supremacy of the stricter provision

The Code adopts the standards, principles and guidelines laid down in extant Nigerian laws such as the Companies and Allied Matters Act (“CAMA”), the Nigerian Communications Act (“NCA”), the Investment and Securities Act (“ISA”) amongst others. However, in the event of a conflict between the provisions of the Code and the provisions of other laws, the stricter provision will be applied.

The Board and its Responsibilities

The Board has the responsibility of developing and implementing a code of conduct which mirrors the provisions of the Code as a minimum standard of ethics within the company. Under the Code, each Director has the individual responsibility of acting in the best interest of the Company at all times.

Board Composition

The Board of a Licensee is required to be comprised of a mixture of skills, diversity of experience and gender. For large telecoms companies, membership of the Board must not be less than 5 while for smaller companies, the Board should have not less than 2 members. The Board is required to have a majority of Non-executive Directors and a minimum of 2 executive Directors, one of whom must be the CEO and the second holding another strategic position. Every Board is required to have at least 1 independent Director with not more than 0.1% shareholding directly or indirectly in the company. To ensure continuity and injection of fresh ideas, the Code specifies that a Director may serve on a Board for a period of three (3) terms of five (5) years each. One third of the Non-Executive Directors are required to retire periodically at the licensee’s AGM but may be presented for re-election at the same meeting provided that for large companies, a Non-Executive Director cannot hold the same position for more than 15 years.

The Board is also required to set up an Audit & Risk Management, Nomination & Remunerations as well as a Governance Committee to help improve efficiency of its work as deemed appropriate. However, the Board’s Chairman shall neither chair nor be a member of these Committees and no member of the Board can sit in more than two Committees at a time. The Board and each of its Committee is expected to have a Charter which should specify all of the above.

Performance Evaluation

Every Board is required to establish a system for the periodic evaluation of its own performance, that of its Committees, Chairman, Chairmen of its Committees, as well as individual Directors. Such periodic evaluation is to form the basis of Board performance improvement plans and determining additional skills required for future appointments of the Board. Confirmation of the required periodic evaluation is also expected to form part of the annual report of the licensee to the Commission.

Officers of the Board

The Chairman has the primary duty of ensuring the effective operation of the Board. The Code specifies that the Chairman must be a NED and should not be involved in the day to day operations of the licensee. In order to institute and maintain independence and proper checks and balances, and prevent incidences of overbearing influence, the Code mandates that the positions of Chairman of the Board of Directors and that of Chief Executive Officer (CEO) should be occupied by two separate persons.

The CEO or the Managing Director (MD) on the other hand is head of the management team and is answerable to the Board. His functions shall include the day-to-day running of the licensee and acting as the licensee's leading representative in its dealings with its stakeholders. The Code specifies that the authority of the CEO/MD and the relationship between the office and the Board should be clearly and adequately described in a letter of appointment. The Director's letter of appointment should cover the duration or term of appointment, remuneration package and method of remuneration, explanation of the duties of care, skill and diligence and other responsibilities of the Director, requirement to disclose any material interests in the licensee and other entities related to the licensee, the Directors responsibility to observe the provisions of the Code and director evaluation programme.

Company Secretary

In addition to statutory obligations, the Code specifies that the company secretary is responsible for bringing the licensee's corporate governance responsibilities, especially those imposed by this Code, to the attention of the Board for implementation. The Company Secretary is responsible for drawing the attention of the Board to the non-implementation by the licensee of its obligations and/or responsibilities under the Code. The Secretary is also required to report to the Board through the Chairman on Board matters and report to the CEO on all administrative matters.

Risk Management and Internal Control

The Board is required to put in place risk management systems that include the identification, assessment, evaluation, mitigation and monitoring of risks in the organization. Additionally, the Board is also required to establish an Internal Control System that incorporates a transparent system for financial reporting and compliance. The burden of identifying the effectiveness of the risk management and internal control system is placed on the Board. Thus, the Board is required to establish a Committee to assist with the review of the risk management process and the significant risks facing the licensee. Membership of the Risk Management Committee should include Executive Directors and None Executive Directors.

Whistleblowing

The Code also recommends the set-up of a mechanism to aid easy reporting of unethical or illegal practices within the organization. By this, the Board is encouraged to establish a code of ethics and whistleblowing policy which would aid the building of ethical culture in the organization and encourage a confidential reporting process covering fraud and other risks to the organization.

Disclosures

The Code specifies that the Board is required to develop a corporate reporting model comprised of a financial reporting model as well as non-financial reporting component that is tailored to the needs of shareholders and other stakeholders. Annual reports are required to be prepared in line with the provisions of CAMA and prescribed accounting principles and standards for the sector (currently IFRS). To ensure transparency in the financial reporting of the licensee, the Audit Committee is required to maintain and recommend to the Board a policy of non-audit services provided by the external auditor and must approve the contracts for non-audit services. Furthermore, every licensee shall maintain the records of related party transactions, in each financial year, along with all relevant documents and explanations.

Sanctions and Rewards

Pursuant to the Code, a licensee is required to indicate its level of compliance with the Code in its Annual Compliance Report. It is useful to note that non-compliance with the Code attracts appropriate sanctions in accordance with the Enforcement Processes Regulations made pursuant to the NCA. The Enforcement Regulations gives the Commission the authority to impose administrative fines of up to N10, 000,000 and above for failure to comply with any direction, decision, determination or order of the Commission. In pursuit of the same objective and to encourage sector compliance, the Commission also instituted an annual reward scheme which is an Award of Good Corporate Governance to the most compliant licensee.

CONCLUSION

Without a doubt, the Commission's renewed campaign on the enforcement of the Code in the telecoms industry is in our view, driven by very worthy objectives ranging from the delivery of regulatory excellence and operational efficiency amongst Licensee companies, to making the sector attractive enough to drive the level of investment and capital inflow so critically needed in the Industry and by extension the Country, as well as eliminating poor governance issues which ultimately affects the health of industry operators negatively. The fact that the Code ensures the existence of a robust regime of sanctions and rewards for erring and compliant operators respectively is also highly commendable. In conclusion, in view of the 28 February 2018 deadline for submission of compliance reports by Licensees, it is obvious that telecom operators can no longer afford to waste any time in putting their houses in order by ensuring their businesses are operated in accordance with the fine provisions of the Code bearing in mind that the NCC is one regulator which has the reputation of backing its words with action.

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