

THE “NEW” WHISTLE BLOWER AND FLEXIBLE ADAPTATION POLICIES IN THE NIGERIAN CODE OF CORPORATE GOVERNANCE

The Nigerian Code of Corporate Governance 2018 (“Code”) is the most recent regulation passed by the Federal Reporting Council of Nigeria (“FRC”) under the powers granted them in Section 11c and 51 of the Federal Reporting Council of Nigeria Act. This Code as well as previous Codes enacted by the FRC is targeted towards maintaining sustainable and transparent corporate structures/policies in Nigeria.

In this recent Code, there are two important policies that have been predicted to change the landscape of implementation of the Code. This will affect the structure or framework of operations for different companies across Nigeria. They are:

- a. Apply and Explain Principle
- b. Whistle-blower Policy

(The Code contains other very important principles, but the focus of this legal update is restricted to the two policies listed above).

By and large, both policies seek to address the perspective of regulatory agencies towards companies and vice versa. In addition, it is aimed at improving the relationship between companies and sector/industry regulatory agencies. It also offers a roundtable platform where companies have a say in regulatory performance and transparency.

Furthermore, the Code introduces a more flexible approach to regulation than previous or existing Codes of Corporate Governance. Analyses of the two policies vis-à-vis their impact and incorporation are found below.

Apply and Explain Principle:

The new principle is a departure from the approach under the 2016 Code which employed a “Comply or Else” stance. The objective of this new principle is to offer inclusion to all types of companies irrespective of their size or structure and give them the opportunity to develop their own practices or solutions to achieve the principles set in the Code.

The Apply and Explain Principle assumes that companies have applied all the principles stipulated under the Code and then requires each company to explain or demonstrate how these principles were applied.

The philosophy behind this approach is to give companies the flexibility to adapt the principles of the Code to the terrain of its industry and other demands placed by regulatory bodies of such industry e.g., banks, insurance companies. To sum it up in few words, what will be expected of companies will be to demonstrate how they have applied the principles under the Code and not the practices suggested. This will minimise a box-ticking mentality for companies but inspire a “best industry practice” approach.

The flexible approach adopted by the Code and the mode of implementation by the FRC appears to be a welcome development amidst stakeholders and commentators. It is expected that the Code will usher in a more inclusive stance towards sustainability, transparency and best practices by companies in Nigeria irrespective of type, size or objective.

The Whistle-Blower Policy:

One of the strong keynotes in the Code besides from principles regulating the Board of Directors (“Board”) is the policy companies are to adopt to encourage whistleblowing.

Following the high-profile cases of company failures in Nigeria due to issues ranging from mismanagement of funds to falsifying asset values and other myriad of fraudulent practices plaguing corporate structures within the Nigeria industries, companies are directed by the Code to set up a whistle-blowing policy that offers anonymity and protection to whistle-blowers as well as opening up several channels of investigatory committees or bodies. The goal is to minimise the risk and exposure faced by companies due to illegal or unethical practices of its officers.

The practices suggested by the Code include:

- The Board to set up procedures or mechanism for whistle blowing
- The procedures must be known to the employees
- There should be dedicated lines and channels for people/employees to report unethical practices while remaining anonymous

- There should be a team to review complaints and a committee chosen by the Board to receive reports from this team and review.

From the foregoing, it appears that the FRC although, giving a more liberal approach to the achievement of corporate governance standards has been able to bring a standard that will apply to all companies in Nigeria. It is hoped that the implementation of the Code will give rise to stronger and more transparent public and private companies in their respective industries.

Disclaimer: This article is only intended to provide general information on the subject matter and does not by itself create a client/attorney relationship between readers and **Twelve Legal** nor does it serve as legal advice. However, readers may contact us for industry-specific legal advice.

**Mofesomo
Tayo-Oyetibo**