



KEY HIGHLIGHTS OF
CBN'S CODE
OF CORPORATE GOVERNANCE
GUIDELINES.

On the 13th of July 2023, the Central Bank of Nigeria (CBN) issued a circular with respect to the Corporate Governance Guidelines for Commercial, Merchant, Non-Interest and Payment Service Banks, as well as Financial Holding Companies in Nigeria (new Guidelines) with an effective date of 1st August 2023.

The new Guidelines seeks to provide additional guidance to the Nigerian Code of Corporate Governance 2018, define the expected corporate governance standards for banks and enthrone ethical practices amongst operators whilst enhancing public confidence.

The CBN had taken into consideration the provisions of the Nigerian Code of Corporate Governance 2018 (NCCG 2018), global best practices and previously issued codes, circulars, and directives of the CBN in drafting the guidelines. The new Guidelines supersedes all previous codes, circulars and related directives on corporate governance issued by the CBN.

In this edition of our publication, we have highlighted the key variations from the Code of Corporate Governance for Banks & Discount Houses (which the new Guidelines now supersedes) and innovations introduced by the guidelines.

1. Board Structure and Composition¹

- Under the new Guidelines, Commercial, Merchant and Non-Interest Banks (CMNIBs) are required to maintain a minimum of seven (7) Directors and maximum of fifteen (15) Directors, while Payment Service Banks (PSB) must have a minimum of seven (7) Directors and a maximum of thirteen (13) Directors. This is a complete departure from the stipulation of the previous code which provided for a minimum of five (5) Directors and a maximum of twenty (20) Directors.
- The requirement for Independent Non-Executive Directors (INED) on the Board of Commercial Banks with international and national authorization, Merchant Banks and Non-interest Banks with national authorization has been increased from the minimum of two (2) to three (3) while Payment Service Banks, Commercial Banks with regional authorization and Non Interest Banks (NIBs) with regional authorization are required to have at least two Independent Non-Executive Directors (INED).
- At least, two (2) Non-Executive Directors, one being an Independent Non-Executive Director, must have requisite knowledge in Innovative Financial Technology, Information Communication Technology (ICT) and/or Cyber Security.
- In achieving gender diversity and promoting gender inclusion on the Board, Banks are mandated to take practical approach to women empowerment in line with Principle 4 of the Nigerian Sustainable Banking Principles.
- Directors resigning from the Board must submit a written notice of resignation to the Board Chairman at least ninety (90) days before the effective date of resignation. In the event that the resigning Director is an INED, and such resignation will result in non-compliance with the requirement on minimum number of INEDs on the Board, the Board shall ensure

¹ Principle 1

that a replacement is appointed within the ninety (90) days' notice period. Also, where the resignation of a NED would result in majority of the Board being Executive Directors, the Board shall ensure a replacement is appointed within the ninety (90) days' notice period.

- In the case of the Board Chairman's resignation, a written notice must be submitted to the Chairman, Board Nomination and Governance Committee (BNGC), who shall circulate the notice to the Board members and the CBN within seven days of receipt of the notice.
- A Director resigning from the Board due to unresolved concerns pertaining to the operations of the Bank is expected to submit a written statement to the Board Chairman for circulation to the Directors of the Bank and a copy of the written statement must be forwarded to the CBN within seven days of the notice of resignation.
- For NIBs, the new Guidelines provides that a member of the Advisory Committee of Experts (ACE) and the Financial Regulation Advisory Council of Experts (FRACE) shall not be a member of the Board, Senior Management, or Staff of any Non-Interest Financial Institutions (NIFIs) under the regulatory purview of the CBN.
- A Bank can appoint a maximum of two members of an extended family on its Board.

2. Board Roles and Responsibilities²

- The Board and Board Committees are mandated to draft Charter/Terms of Reference, and such document must be submitted to CBN for approval. These

Charters are to be reviewed at least once every 3 (three) years, following which the Board-approved copies must be submitted to the CBN for its "No Objection" within 30 (thirty) days of the Board's approval of same and prior to its implementation.

- It is important to note that the new Guidelines specify that each Board must designate one of its Executive Directors as the Executive Compliance Officer (ECO) and CBN must be notified of such appointment.
- NIBs are required to institutionalise a robust Shariah Governance Mechanism that is commensurate with its size and complexity.
- NIBs are also required to appoint an Advisory Committee of Experts (ACE), whose appointment shall be subject to the approval of the CBN.

3. Company Secretary³

The new Guidelines prohibit outsourcing of the Company Secretarial. It further makes it mandatory for CMNIBs to obtain CBN's approval where the role of the Company Secretary is to be combined with that of the Head Legal/Legal Adviser. However, for PSBs, the role of Company Secretary can be combined with Head Legal/Legal Adviser.

4. Tenure of Directors⁴

- The Managing Director/Chief Executive Officer and Deputy Managing Director/Executive Director's tenure shall be governed by the terms of engagement with the bank; however, their tenure shall be subject to a maximum period of 12 (twelve) years.

² Principle 2

³ Principle 3; section 3.6

⁴ Principle 3; section 3.2-3.5

- NEDs shall serve for a maximum period of 12 (twelve) years, comprising 3 (three) terms of 4 (four) years each.
- The tenure of INEDs shall be a maximum of 2 (two) terms of 4 (four) years each. It is important to note that the previous code was silent on the tenure for INEDs.
- The new Guidelines provides for a cumulative tenure of 12 (twelve) for ED's and prohibits the extension of such tenure where an ED becomes a DMD. However, where a DMD/ED becomes an MD/CEO of the same bank, the new Guidelines permit a cumulative period of 24 (twenty-four) years.

5. Access to Independent Professional Advice⁵: The new Guidelines introduced access of Directors to relevant independent professional advice and the obligation of the Board to keep detailed records of the professional advice provided to the concerned Director where the request is granted.

6. Board Meetings⁶

- As provided in the previous code, the Board and its Committees are mandated to meet at least once every quarter. However, where the Remuneration Committee is a stand-alone committee, meetings should be on a need basis, but at least once a year.
- The Board of NIBs are mandated to meet with the ACE at least once every quarter, while the Board of Commercial Banks with NIB window are mandated to meet with the ACE at least twice a year.
- The new Guidelines introduced the option to convene virtual Board & Committee meetings and quorum for meetings shall

be two-thirds of members, majority of whom shall be NEDS.

- The minutes of meetings must be properly written, adopted by members, and signed by the Board/Committee Chairman and Company Secretary, pasted in the minutes book, and domiciled at the bank's head office.

7. Board Committees⁷

- The new Guidelines provides that the Board Audit Committee (BAC), Board Nomination & Governance Committee (BNGC) and the Board Remuneration Committee (BRC) must be chaired by Independent Non-Executive Directors.
- Commercial, Merchant and Non-Interest Banks are prohibited from combining the functions of the Board Risk Management Committee (BRMC) and the Board Audit Committee (BAC)
- The Membership of Board committees are to be reviewed and refreshed at least once every three years.
- The Chairman of the Board Nomination & Governance Committee in NIBS must be knowledgeable and experienced in Islamic Finance or Islamic Commercial Jurisprudence.
- It is mandatory for the Board of any CMNIB to establish a Board Credit Committee (BCC) to oversee its credit matters. For the PSBs, it is mandatory for its Board to establish a Board Committee responsible for Information & Communication Technology (ICT) and Cybersecurity.
- The new Guidelines prohibit the establishment of sub-committees of Board Committees.

⁵ Principle 4

⁶ Principle 5

⁷ Principle 6

8. Cool-Off Period⁸

- A cooling period of 2 (two) years is required in the following circumstances:
 - Where an ED/DMD or MD/CEO exits from the Board of a Bank either upon or prior to the expiration of the maximum tenure before being eligible for appointment as a NED in the same Bank;
 - Where an ED/DMD or MD/CEO of a Bank is appointed to the Board of its Financial Holding Company (FHC) in any role;
 - Before a Non-Executive-Director is eligible for appointment in any Executive role in the same Bank;
 - Where a director from a Bank transitions to a sister subsidiary, and it results in a change of role.
- No cooling off period is required where a Director in a Bank is appointed to the Board of another Bank or an FHC outside the Bank's group.
- A cooling period of 3 (three) years is required in the following circumstances:
 - where a member of FRACE is to take up appointment as a Director or a Member of an ACE of any NIFI under the supervisory purview of the CBN;
 - where a retired Partner of an Audit firm currently auditing a Bank is to be appointed to the Board of the same Bank;
 - where a Bank intends to employ a Member of an Audit team who participated in auditing the Bank;
 - where a Staff of a Bank is engaged by an Audit firm to join the team to audit the same bank.

9. Induction and Continuing Education⁹: It is now mandatory for a formal induction programme to be conducted for new

Directors within 3 (three) months of their appointment. Also, Boards of Banks are required to approve annual training and continuing education for Directors and ensure its proper implementation.

10. Board Evaluation¹⁰

- There shall be an annual appraisal of the Board, its Committees, Chairman and individual Directors as prescribed by CBN. NIBs are required to have an annual appraisal of the ACE covering all aspects of its responsibilities, processes, meetings, and overall functions. The appraisal shall be conducted by an Independent External Consultant who is knowledgeable and experienced in Islamic Finance or Islamic Commercial Jurisprudence.
- Banks are mandated to forward the report of the annual evaluation of the Board or ACE (in case of a NIB) latest by May 31st following the end of every financial year or before the AGM at which the report for the period/year is to be considered, whichever comes first.

11. Remuneration¹¹: The defunct code provided that the remuneration of ED's shall be determined by a committee of NEDs, however the new Guidelines provides that the Board shall approve the remuneration of the MD/CEO, DMD, EDs, Senior Management and other employees, while the fees and allowances for NEDs shall be fixed by the Board and approved by the shareholders at a General Meeting.

12. Risk Management Function¹²: The Board is mandated to ensure that the Risk Management function is headed by an ED.

⁸ Principle 7

⁹ Principle 9

¹⁰ Principle 10

¹¹ Principle 11

¹² Principle 12

For NIBs with regional authorization and PSBs, the Risk Management Function can be headed by a Senior Management Officer with relevant qualification, competence, and experience. The Board is expected to review the effectiveness of the implementation of risk management policies and procedures at least annually.

13. Internal Audit Function¹³: No bank is allowed to outsource its internal audit/compliance functions. The Board is responsible for the appointment and removal of the Head, Internal Audit, subject to CBN's approval. The Head, Internal Audit, shall not be below the rank of an Assistant General Manager with direct reporting line to the BAC.

14. Internal Shariah Audit¹⁴: The Internal Sharia Audit Function of NIBs shall be led by an Internal Shariah Auditor (ISA) whose ranking shall not be below the office of an Assistant General Manager. For commercial banks with NIB window, the Head of the Internal Shariah Audit function shall not be below the rank of a Manager.

15. Compliance Function¹⁵: The Executive Compliance Officer (ECO) is prohibited from combining his/her responsibility with income generating activities, rather the officer shall be focused on communicating regulatory requirements to the appropriate parties and reporting regulatory infractions to the Board. It is mandatory for all Banks to have a Chief Compliance Officer who shall not be below the office of General Manager (for Commercial and Non-Interest Banks with

National and International Authorization) or Assistant General Manager (for Merchant Banks, Commercial and Non-Interest Banks with Regional Authorization). The CCO is responsible for monitoring and coordinating the implementation of regulatory requirements and shall report to the Board through the ECO. The appointment and removal of the CCO shall be by the Board subject to CBN's approval.

16. Shariah Compliance Function¹⁶: NIBs are mandated to establish a Shariah Review/Compliance ("SRC") function whose responsibility shall include regular compliance assessment of NIB's operations and activities with shariah requirements. The Internal Shariah Compliance Officer ("ISCO") is responsible for identifying, measuring, monitoring, and reporting on Shariah Non-Compliance Risks (SNCR) in the NIBs operations on a daily basis. The ISCO who must not be below the rank of a manager or a lower rank in the case of a Commercial Bank with an NIB window must review all financing requests before disbursement to avoid SNCR and shall report directly to the CCO and indirectly to ACE. The Board, in consultation with the ACE, is responsible for appointing and removing the ISCO subject to CBN's ratification.

17. Whistleblowing¹⁷: Banks are to comply with Principle 19 of the NCCG and CBN Guidelines for Whistleblowing for Banks and Other Financial Institutions in Nigeria.

¹³ Principle 13

¹⁴ Principle 14

¹⁵ Principle 15

¹⁶ Principle 16

¹⁷ Principle 17

18. External Auditors¹⁸

- The Board has the power to appoint and remove the external auditor subject to CBN's approval.
- The External Auditor is required to include a report on the bank's compliance with the provisions of NCCG 2018 and the CBN Guidelines in the Annual Financial Statements
- For NIBs, the report must include an assessment of the process for identification and disposal of Non-Permissible Income (NPI), Profit-Sharing Investment Account Holders (PSIAH) treatment and income smoothing. The External Auditor of an NIB must also review implementation and recommendations of ACE, FRACE, ISA and ISCO.
- The Report and Management Letter on the Bank's Audited Financial Statements must be sent to the Director of Banking Supervision Department by March 31st following the end of every accounting year.
- The CBN can request for the removal of an External Auditor who is noted to be engaged in unethical practice or illegal activity or impose sanction on the Bank.

19. General Meetings¹⁹: The new Guidelines allow for Banks to hold general meetings virtually where physical meetings are not feasible.

20. Treatment of Shareholders²⁰:

- The Board of a Bank with institutional investors shall ensure that investors adhere to Principle 22.3 of NCCG 2018, which provides that Institutional investors are to positively influence the standard of

corporate governance, promote value creation in the companies in which they invest, monitor conformance with the provisions of the Code and raise concerns as appropriate.

- Without seeking and obtaining prior approval from the CBN, it is prohibited for any individual, group of individuals, their proxies, or corporate entities to own controlling interest in more than one bank.
- Banks are obligated to secure prior approval and No Objection from the CBN when an investor's share acquisition would lead to an equity holding of 5% or more of the Bank's shares. If there is an objection by CBN, the bank must notify the investor(s) within forty-eight (48) hours of receiving the objection.

21. Business Conduct and Ethics²¹: Banks are expected to establish a Code of Business Conduct and Ethics to maintain integrity. The Code shall include legal obligations, reasonable stakeholders' expectations and individuals' responsibility and accountability. The Code shall be reviewed at least once every three years.

22. Related Party Transactions²²:

- Banks are to establish a policy on Insider Trading and Related Party Transactions and publish the policy or a summary on their website. The policy shall contain appropriate standards and procedures to ensure it is effectively implemented.
- Any director with a non-performing facility for more than a year shall be removed from the Bank's Board and blacklisted from sitting on the Board of other financial

¹⁸ Principle 18

¹⁹ Principle 19

²⁰ Principle 20

²¹ Principle 21

²² Principle 22

institutions under the purview of the CBN. The CBN's prior approval is required for any write-off of director-related loans or interest.

- The new Guidelines also stipulate the conditions for which business conduct between PSBs, their parent companies and other related companies would be guided.

23. Sustainability²³: Banks are required to comply with Principle 26 of NCCG 2018 on sustainability as well as the requirements of the Nigerian Sustainable Banking Principles.

24. Stakeholder Communication²⁴: Banks are expected to communicate with stakeholders via its website and ensure that its Stakeholder Communication Policy is uploaded on the website. The Board shall ensure that stakeholders have the freedom to communicate their concerns on illegal or unethical practices to the Board and where the concerns relate to the activities of the Board, such individual may present a complaint to the CBN.

25. Returns²⁵: Banks are to submit periodic returns as specified in the new Guidelines

for Licensing and Regulation of Financial Holding Companies in Nigeria. Banks may be required to render electronic submission of regulatory returns to a dedicated web portal as may be prescribed by the FRC.

26. Sanctions²⁶

- Non-compliance with the new Guidelines and NCCG 2018 constitutes a regulatory breach and shall attract penalty as prescribed by CBN.
- Rendition of false, misleading, or incomplete information to the CBN and breach of any of the provisions of the new Guidelines by a Director, Manager or Officer shall attract appropriate sanctions including monetary penalties and administrative sanctions on the individual and the bank.
- A Director, Manager or Officer shall be suspended for 6 (six) months in the first instance and possible removal from the Board of the Bank in the event of continued reoccurrence of the breach.

CONCLUSION

The new Guidelines is designed to complement the NCCG 2018 and incorporates the provisions of some extant CBN Guidelines to cater for the different banking sub-sectors in Nigeria. The provisions of the new Guidelines is more specific in terms of Corporate Governance requirements and is instrumental in achieving transparency, sustainability, accountability, and effective governance in the Nigerian Banking Sector.

²³ Principle 24
²⁴ Principle 25

²⁵ Principle 27
²⁶ Principle 28

It is important for Banks to review their current governance architecture vis-à-vis the new Guidelines and ensure compliance.

Please contact us for advisory on the above key provisions of the new Guidelines.

CONTRIBUTORS



Yeye Nwidaa

Partner, Head, Regulatory,
Compliance & Governance
Department
E: yeye.nwidaa@jee.africa



Mariam Akinyemi

Senior Associate, Regulatory,
Compliance & Governance Department
E: mariam.akinyemi@jee.africa



Toluwalase Oliver-Jude

Associate, Regulatory, Compliance &
& Governance Department
E: t.oliver-jude@jee.africa



Oluwadara Durodola

Associate, Regulatory, Compliance
& Governance Department
E: dara.durodola@jee.africa

ACRONYMS	DEFINITION
ACE	ADVISORY COMMITTEE OF EXPERTS
AGM	ANNUAL GENERAL MEETING
BAC	BOARD AUDIT COMMITTEE
BANK(S)	COMMERCIAL BANKS, MERCHANT BANKS, NON-INTEREST BANKS AND PAYMENT SERVICE BANKS
BCC	BOARD CREDIT COMMITTEE
BNGC	BOARD NOMINATION AND GOVERNANCE COMMITTEE
BRMC	BOARD RISK MANAGEMENT COMMITTEE
CBN	CENTRAL BANK OF NIGERIA
CCO	CHIEF COMPLIANCE OFFICER
CMNIB	COMMERCIAL, MERCHANT, OR NON- INTEREST BANK
CSR	CORPORATE SOCIAL RESPONSIBILITY
DMD	DEPUTY MANAGING DIRECTOR
ECO	EXECUTIVE COMPLIANCE OFFICE
ED	EXECUTIVE DIRECTOR
ERM	ENTERPRISE RISK MANAGEMENT
FHC	FINANCIAL HOLDING COMPANY
FRACE	FINANCIAL REGULATION ADVISORY COUNCIL OF EXPERTS
FRC	FINANCIAL REPORTING COUNCIL OF NIGERIA
INED	INDEPENDENT NON-EXECUTIVE DIRECTOR
ISA	INTERNAL SHARIAH AUDITOR
ISCO	INTERNAL SHARIAH COMPLIANCE OFFICER
ICT	INFORMATION AND COMMUNICATIONS TECHNOLOGY
MD/CEO	MANAGING DIRECTOR/CHIEF EXECUTIVE OFFICER
NCCG	NIGERIA CODE OF CORPORATE GOVERNANCE
NED	NON-EXECUTIVE DIRECTOR
NIB	NON-INTEREST BANK
NIFI	NON-INTEREST FINANCIAL INSTITUTIONS
NPI	NON-PERMISSIBLE INCOME
PSB	PAYMENT SERVICE BANK
PSIAH	PROFIT-SHARING INVESTMENT ACCOUNT HOLDERS
SRC	SHARIAH REVIEW AND COMPLIANCE

Key Contact

For further information, kindly reach the key contact below:



YEYE NWIDAA

Partner, Head of Regulatory,
Compliance & Governance
Department.

(234) 1 4626841/3

E: yeye.nwidaa@jee.africa

Victoria Island

RCO Court,
3-5 Sinari Daranijo Street,
Victoria Island,
Lagos, Nigeria
island.

Tel

+234-1-4626841/3,
+234-1-2806989

Email

jee@jee.africa

Abuja

42, Moses Majekodunmi Crescent,
Utako, FCT, Abuja

Ikeja

1st floor, ereke house,
Plot 15, CIPM Avenue
CBD Alausa Ikeja
Lagos Nigeria

Accra

3 Emmause, 2nd Close
Akosombo House
Labone, Accra, Ghana
P.O. Box 14951
Accra, Ghana

Yaoundé

3rd Floor, Viccui Building
Apt. 15-16, Carr Street
New Town, Yaoundé
Cameroon

Harare

38 Clairwood Road,
Alexandra Park,
Harare,
Zimbabwe.