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PwC's comment letter on the Financial Reporting Council (FRC) of Nigeria Exposure draft of National Code of Corporate Governance 2015 - Private sector

pwc

22 April 2015
Executive Secretay/Chief Executive Officer
The Financial Reporting Council of Nigeria
Elephant Cement House (3rd Floor)
Alausa, Ikeja, Lagos

Dear Sir

Exposure Draft: Unified Code of Corporate Governance

We are responding to the invitation from the Financial Reporting Council of Nigeria (FRCN) to comment on the Draft National Code of Corporate Governance which was exposed for comments on 15 April 2015.
We recognise the significant efforts made by the members of the Code of Cooperate Governance committee in developing this draft document. Corporate Governance is an extremely important topic given the significance to business across multiple industries and we agree that harmonised code may create recognisable basic standard of business conduct for public entities in Nigeria. We however note that the progressive convergence of codes, if taken too far, may create a one-size-fits all mentality. As an example, the current code of Code of Corporate Governance for Banks effective October 2014 addresses many matters peculiar to Banks which are not covered in this code proposed by the FRCN. There is a need to establish the right balance between matters addressed by sector specific codes and those addressed by this proposed code which seeks to cover all corporates. Also, there should be robust engagement with other regulators to ensure that sector codes are in alignment with the proposed umbrella code.

Comments period should be extended from one month to at least 6 months

We find the exposure draft period of one month extremely short. Given that stakeholders under existing codes need to be consulted and Board / committee meetings are typically held quarterly, the FRCN should extend the comment period from the current one month to a minimum of 6 months to allow adequate time for stakeholder engagement and to generate the right level of discourse that is required for such a document.
Furthermore, it is surprising that there are no transitional arrangements even though this code seeks to unify codes already being applied in diverse sectors. One would expect that such a code would have clear transitional provisions and a long deferred future application to enable stakeholders apply needed provisions as may be required in the final version

Compliance with codes should not be mandatory

The approach of the UK FRC which plays a regulatory role similar to the FRCN is based as far as possible on facilitation rather than dictation and on principles rather than rules. The Stewardship Code sets out the principles of effective stewardship by investors which help build confidence in the system and give force to the 'comply or explain' system on which the Corporate Governance Code is based as well as increasing accountability to clients and beneficiaries. The approach is codified in a public document and builds on the fact that;

- market participants and their professional advisers, encouraged by the investor community, have the primary responsibility for achieving high standards of governance and reporting

- no system of regulation can ever eliminate the possibility of corporate reporting or governance failures
- it is impossible to achieve zero failure and any attempt to do so would stifle rather than facilitate growth.

The method employed by PCAOB is very similar to the UK. The Board publishes its 5 year strategic plan. The PCAOB's Strategic Plan aligns Board programs, operations, and activities with its overall mission, goals, and objectives. In addition to serving as a roadmap for the organization, the Strategic Plan is used in developing the PCAOB's budget each year. It's objective of effective oversight is achieved through research, risk analysis, and standard setting, effectively and efficiently respond to emerging audit risks and trends. Strategies deployed amongst others are those that use knowledge from oversight, enhance economic analysis engage effectively with other standard setters and regulators and contribute to the debate on issues relevant to auditor oversight by participating in and, where appropriate, taking a lead in regional, national and international meetings and conferences to share knowledge focusing, as may be appropriate, on roles of the regulator, auditor, audit committee, and the audit market in maximizing enhancements to audit quality

The code is more a compendium of rules than a code

The current code suffers from "Regulation Creep" in that it adds too much detail in many ways, yet also lacks clarity in several other ways that it is almost a compendium of rules. But rules assume an unrealistic "one size fits all" stance that generally don't work and hence are often ignored and disobeyed. On the other hand, evidence suggests that codes work simply because they are not rules, are more flexible than laws and regulations while still signaling to investors that corporate governance and accountability are being taken seriously. Inability to retain flexibility which is a fundamental virtue of codes tends to erode the benefits as assessors are unable to resist the urge to judge corporate governance by ticking off boxes rather than deeper analysis and adoption of desired principles.

In this respect, the current codes being so glaringly different from those in other markets would set us apart from the rest of the world at a time Nigeria is seeking to be a top Foreign Direct Investment destination country.

The proposed board composition is onerous and does not consider the local environment

The board composition of a minimum of eight (8) with executives, non-executives and independent non-executives will be overly onerous on many smaller companies and unreflective of the business environment of Nigeria. In many emerging markets such as Nigeria, it is common for business to be family owned with a single majority owner. In such environments, requirements such as prevention of family members from serving on the same board is impractical, specifications of minimum board sizes and appointment of senior independent directors should not be prioritized. Codes in emerging markets should concentrate on more basic things such as full and timely disclosure of information and efforts to ensure that controlling shareholders do not expropriate minority ones. The requirements suggested in this draft code should only be applied to public interest and listed companies or companies over a certain size or significance etc.

Proposals should be evidenced based and the logical outcome of wide consultations. There is no consensus the benefits of mandatory joint audit

The FRC has publicly stated that it will issue a regulation on the framework for joint audit arrangements and now seeks to mandate joint audit through this draft code. Such proposals should be the outcome of extensive discussions with stakeholders and not an arbitrary pronouncement. We are aware that the Institute of Chartered Accountants of Nigeria initially pushed for mandatory joint audit but jettisoned the idea after due consultations at its forum of firms where it was unanimously agreed that there is no consensus on the benefits of mandatory joint audit arrangements and ICAN members rather resolved at that meeting to;

- concentrate on training and carrying out review regularly of members to improve quality and consider other ways that would really improve audit quality;
- explore ways to enlarge the audit market and improve the revenues of members firms by for example, improving knowledge of IPSAS in order to tap into the opportunities of auditing Government institutions.

In contrast, the FRC has not consulted on this matter but seeks to incorporate this belatedly in the code by executive fiat.

As the world becomes a global village and businesses expand the frontiers of their operations and strive to meet international best practices, it is expected that firms and businesses would to bring in expertise from wherever possible. The quality introduced by these alliances enhances quality and the reliability of the financial information to global investors. In event that a company chooses to appoint a joint auditor, the requirement that at least one of the auditors must be a ‘national’ firm and the definition of a “national” firm as a firm that has no “alien” in the partnership is inappropriate and unfortunate. The use of the word “alien” could easily be misinterpreted. Furthermore, all auditing firms in Nigeria big or small are national firms and all audit partners in such firms are licensed to practice in Nigeria as members of Nigerian Accounting Professional Institutes, including those that are originally from other countries.
Any requirement that compels corporates to appoint auditors based on size or the presence of one audit partner that is not a Nigerian citizen will amount to a severe restriction of choice. It would be viewed with concern by the investor community, and as being clearly driven by motives other than audit quality enhancement.

The “four eyes” principle, which is frequently highlighted by those promoting joint audits as being the key to adding greater security to the audit, is in fact limited in a joint audit arrangement to a review and exchange of conclusions. Each audit firm is expected to have risk management policies and procedures,
some of which cover client confidentiality and access to audit working papers. The quality of an audit is thus entirely dependent upon the quality of the audit firm(s) and audit teams involved.

Perspectives on mandatory firm rotation

The code seeks to mandate audit firm rotation after only five years and also prescribes that the audit firm should not retake the audit even after five years. PwC believes that changes to auditors’ responsibilities should focus on improving the overall quality of the audit and the quality of financial reporting for investors. Mandatory audit firm rotation does not achieve these objectives. Mandatory audit firm rotation would diminish audit quality, make financial reporting less reliable, and add costs for investors arising from the loss at fixed intervals of the auditors cumulative knowledge of the companies they audit.

Mandatory audit firm rotation will also reduce the audit committee's ability to determine and choose which audit firm best meets the company's audit needs. Our view is shared by findings of research by major regulators around the world.

After the global financial meltdown, the European Commission (EC) took the lead on the debate as to whether the role of the auditor can be improved to reinforce financial stability and as a consequence issued the Green Paper 'Audit Policy: Lessons from the Crisis' (EC, 2010), hereinafter referred to as the Green Paper, that suggested various institutional mechanisms, which included mandatory firm rotation and joint audit.

Similarly, the Chartered Professional Accountants of Canada (CPA Canada) and the Canadian Public Accountability Board (CPAB) launched the Enhancing Audit Quality (EAQ) initiative to gain stakeholder input on developments taking place in jurisdictions hardest hit by the financial crisis, such as Europe and the United States.
Most of these global efforts have been largely concluded and conclusions are as detailed below:

PCAOB's Auditor rotation project is essentially dead. The U.S. government's auditor watchdog finally stated in February 2014 that it is no longer pursuing a project to impose auditor term limits on public companies, nearly three years after proposing the idea. PCAOB had also refused to discuss joint audit stating it was "not on the PCAOB's agenda". Some of the concerns expressed by the SEC include are:

- "how many auditors is enough? If two is better than one, is three better than two and are four better than three?
- What are the risks to audit quality?
- What are the cost-benefit considerations?

The draft report by the European Parliament did not support the EC propositions encouraging joint audits but rather suggested an extended audit firm rotation period. The EU now requires that listed entities, banks and insurance companies change auditors after 10 years. This can however be extended to 20 years if the audit is put out for bid after the first 10 years, or 24 years in the case of a joint audit.

Canada's EAQ report concluded that mandatory audit firm rotation or mandatory retendering are not the best approaches, rejected the proposal to restrict auditing to "audit-only" Firms, rejected the possibility that joint audits might enhance audit quality based on its review of the Canadian experience with joint audits but called for specific steps that audit committees and audit firms should take to enhance audit quality including;

- performing a comprehensive review of the external audit firm at least once every five years;
- conducting annual assessments of the external audit firm; and
- providing increased transparency to audit committees on the Canadian Public Accountability Board's inspections.
- proposals to improve auditor reporting model

Conclusion

The current draft code does not conform to International Best Practice. There are several comments that we have raised for FRC Board attention where we believe the fundamental Corporate Governance Concepts have not been applied, where the concepts in the exposure draft could be more clearly articulated, where current proposals are not practicable or would be practically challenging to apply and where guidance does not appear to produce benefits that compensate for their expected costs. In the attached appendix, we highlight these comments referencing the exposure draft document.

Yours faithfully
PricewaterhouseCoopers

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Appendix

S/N	Reference			Comments
	Section reference	**Section title**	**Section extract**	
1	1.1 (c)	**Terms of reference**	The Terms of Reference given to the Steering Committee by the Honourable Minister on 17th January 2013, include the development of a National Code of Corporate Governance that will enable the Financial Reporting Council of Nigeria, among other things, to: amongst others …..(c) Act as the national coordinating body responsible for all matters pertaining to corporate governance in both private and public sectors of the Nigerian economy….	In many countries, governance codes are voluntary and applied only to listed companies. Investors then become the ultimate enforcers of good governance. Statutory compliance is mostly seen as a tick box requirement and does not lead to adoption of desired principles. The FRC should be the coordinating body for preparing the code and other well placed regulators can monitor as required – e.g. SEC, CBN, PENCOM
2	1.6	**Termss of reference**	Some of the provisions of this Code are therefore directed towards further strengthening of all the superseded corporate governance Codes. This is to usher in a unified corporate governance code with governance safeguards that are more country-specific, contextual and environmentally congruent, while at the same time conforming to international best practices	The current draft does not conform to International Best Practice. Typically where an overarching code is produced it is principle driven rather than requiring specific compliance/ adoption. Sector regulators can then apply the broad principle through their own regulation and determine which rules require separate legislation. The code is far too prescriptive to be able to be universally applied as one size never fits all.
3	2.1	**application of the code**	The National Code of Corporate Governance for the private sector in Nigeria 2014 shall be applicable to the following;…. (c) ..the term returns as used in Section 77 of the FRCN Act 2011 for the purpose of this code includes financial, operational, etc returns filed with regulatory authority	There is a need to clarify whether this code will be the "code of corporate governance" issued by the Directorate of Corporate Governance in FRCN Act 2011. This appears to be an attempt to clarify the definition of PIE which was described in the FRCN act. However, it seems to suggest that every corporate in Nigeria is a PIE which will not be appropriate.
4	2.2		Compliance with the provisions of this code is mandatory.	Mandatory compliance cannot be realistically achieved by all entities the code seeks to govern. There should be robust engagement with sector regulators to ensure alignment and determine which rules shouldbe subject of separate legislation. Inability to retain flexibility which is a fundamental virtue of codes tends to erode the benefits

S/N	Reference			Comments
	Section reference	**Section title**	**Section extract**	
5	**4**	**Responsibilities of the board**		Section 36 sets out the code of business conduct and refers to all the fiduciary and statutory responsibilities etc. Section 4 is the better place for establishing these requirements in the code. Certainly worth more emphasis here than the Internal Auditor appointment which could be handled in the section on internal audit (section 17).
6	**5**	**Board structure and composition**		The board composition of a minimum of 8 with executives, non-executives and independent non-executives will be overly onerous on many smaller companies and just not practical. These requirements should only be applied to public interest and listed companies or companies over a certain size or significance etc.
7	**5.9 and 5.10.2**		(5.9)The board should discourage cross-memberships on the boards of two or more companies and disallow it where this will lead to a conflict of interest situation among competing companies. (5.10.2) The directorial status of every director should be indicated against the name of the director in the annual report of the company, corporate publications and investors' portal	There is a need to clarify the terms used for example "cross-memberships" and "directorial"
8	**5.10.5 and see 6.1.2**		(5.10.5) Directors should not be members of boards of companies in the same industry to avoid conflict of interest, breach of confidentiality and diversion of corporate opportunity. (6.1.2) The positions of the chairman of the board and chief executive officer shall be separate and held by different individuals.	The requirement for directors not to sit on boards of more than one company in the same industry is impractical where a group has more than one operating company in the same industry.
9	**5.11**		No two members of the same extended family shall sit on the board of the same company at the same time.	The prevention of family members serving on the same board is impractical in many Nigerian entities where the companies are primarily family owned. At most the code could state it as a recommended practice that members of the same family do not sit on the same board.

S/N	Reference			Comments
	Section reference	Section title	Section extract	
10	6.1.2		The positions of the chairman of the board and chief executive officer shall be separate and held by different individuals.	This is a repeat of 5.8
11	6.1.4		The MD/CEO should not go on to be the chairman of the same company. If in very exceptional circumstances the board decides that a former MD/CEO should become chairman, the board should consult both majority and minority shareholders in advance and also inform the regulator of the appointment, setting out its reasons for such appointment. This should also be stated in the next annual report.	There should be a cooling off period after which a former CEO can be considered for the chairman of the board position or even a director.
12	6.3.3		The MD/CEO should not be the only executive director on the board of directors of the company.	A minimum number of executive directors should be stated
13	6.5.5		Executive directors' remuneration should be structured to link rewards to corporate and individual performances	Corporates should have sufficient flexibility to determine compensation structures in line with the business objectives and requirements.
14	6.5.7		The details of the remuneration of executive directors should be disclosed in the company's annual reports.	The details required should be clarified.
15	6.5.8		Executive directors should not receive any sitting allowances or director's fees.	The section could be expanded to include sitting allowance for any board to which the director is appointed by the company – for example a subsidiary.
16	6.6.6		Non-executive directors should have unfettered access to the Company Secretary and the Internal Auditor, while access to other senior management (other than executive directors) should be through the MD/CEO.	The principles are that the directors should have the right of access to all books and records and to management. How they obtain such access is a matter of procedure and not governance.
17	6.6.7		Non-executive directors should declare any conflicts of interest on appointment. In the event that they become aware of any potential conflicts of interests after appointment to the board, they should disclose these to the board.	Non-executive directors should declare any conflicts of interest on appointment. In the event that they become aware of any potential conflicts of interests after appointment to the board, they should disclose these

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	Section reference	**Section title**	**Section extract**	
18	**6.7.6**		At least once every year, there should be a meeting of only the independent non-executive directors of the company, at which no other director or member of management of the company is present.	The meetings should not be mandated. Non-executive directors should determine when to meet separately from the executives e.g. over the deliberation of remuneration.
18	**6.7.10**		Independent non-executive directors may seek and obtain external professional advice, at the company's expense, in the discharge of their responsibilities.	This could be covered under a section on directors' rights and duties.
20	**7.3**	**Meetings of the board**	Where a majority of independent non-executive directors dissent on an issue decided by the board, such decision can only be valid where at least 75% of the full board (without reference to quorum) vote in favour of such decision.	In addition to this requirement, the code could include a broader dispute resolution section handling all anticipated disputes/ dissents.
21	**8**	**Board committees**		The code should make provision for combining committees where expedient or practical. For example the risk and audit committees are often combined and mandating separation may be too restrictive.
22	**8.6**		In the case of small companies, where one committee performs audit and risk management functions, the officer overseeing risk in the company should be in attendance at the meeting of the committee when deliberating on risk matters only. The officer shall not be present when the committee is deliberating on audit matters.	There is no logical reason for the risk officer not to attend meetings where audit matters are discussed. This should be discretionary for companies to apply.
23	**8.8**		The chairman of the board should not sit on any board committee, and no director should serve on more than two of these three committees: nomination and governance, remuneration and audit	The principle of the chairman not participating in committee affairs is not universal. The only restriction that sometimes applies is that he should not be chair of the audit committee. In law directors can attend any committee meeting even though they may not vote at such meetings.

S/N	Reference			Comments
	Section reference	**Section title**	**Section extract**	
24	**8.8**		No one other than the Committee Chairman and members of the committee is entitled to be present at a meeting of the nomination and governance, audit or remuneration committee, but others may attend only at the specific invitation of the committee. Such persons should take their leave immediately after satisfying the purpose of their invitation.	The external and internal auditors should have an open invitation to attend all audit committee meetings. Some jurisdictions extend this invitation to the internal auditor for executive meetings.
25	**8.11**		Minutes are a record of what happened at a meeting. Minutes should therefore not be written for meetings not actually held.	There is no compelling need to specifically mention this in the code.
26	**8.12.4 (f)**		The nomination and governance committee shall have the duty to: Justify to the board and members of the company the re-classification of an existing non-executive director as an independent non-executive director	This contradicts the 6.7.9 requirement of a members vote on reclassification of directors. The voting requirement on classifications is overly onerous. Where independent directors are brought into codes the company need only explain why certain directors are so considered.
27	**8.14.4**		A majority of the directors and a majority of the shareholders in the statutory audit committee must be independent as defined for directors in section 6.7.3(a)-(i).	It is not clear how a shareholder can be determined to be independent to serve on the statutory audit committee. This should be addressed by statute.
28	**8.14.9**		At least once in a year, the board audit committee shall meet the head of internal audit and other members of the internal audit function without the chief financial officer and the external auditors being present.	The committee should meet with the internal auditor without management present (not just the CFO). The Internal auditor covers so many more areas than financial.
29	**8.14.10 (b)**		The board audit committee should have the following additional responsibilities: (b)Establish an internal audit function and ensure there are other means of obtaining sufficient assurance of regular review or appraisal of the system of internal controls in the company;	The code could introduce the principles of combined assurance for the purpose.

S/N	Reference			Comments
	Section reference	**Section title**	**Section extract**	
30	**8.14.10 (c)**		(c)Ensure the development of a comprehensive internal control framework for the company, obtain assurance and report annually in the financial report, on the operating effectiveness of the company's internal control framework;	Recent codes usually require a consideration of the adequacy of risk management and internal control. This embraces both concepts rather than forcing an internal controls framework point of view. If internal control frameworks are to be included there should be a statement that such framework is based on some generally accepted framework.
31	**8.14.10 (l)**		(l) Preserve auditor independence, by setting clear hiring policies for employees or former employees of independent auditors	This level of detail should not be prescribed. It may be better to provide guidance on independence risks that may arise in this area and how to ensure that such risks are adequately addressed.
32	**8.14.10**			The section does not cover the recommendation for appointment and dismissal of the internal auditor and assessing the performance of the internal audit function.
33	**8.15.4 (b)**		The risk management committee shall have the duty to: Review the adequacy and effectiveness of risk management and controls in the company.	Evidence of the overlap with control frameworks and risk management where the committee is required to assess the adequacy and effectiveness of risk management and controls. This could be duplicated effort if not properly considered.
34	**8.15.4 (d)&(e)**		(d) Undertake the review of the company's compliance level with applicable laws and regulatory requirements which may impact the company's risk profile. (e) Undertake periodic review of changes in the economic and business environment, including emerging trends and other factors relevant to the company's risk profile and make recommendations to the board as appropriate.	The risk committee should not be mandated to undertake reviews. Rather they should ensure such reviews are completed and satisfy themselves that they were effectively performed.
35	**8.15.5**		A member of senior management of the company shall be charged with the responsibility of performing the risk function and shall be entitled to attend the meetings of the risk management committee.	The role of the chief risk officer (CRO) is very blurred and should be better articulated. The CRO is not responsible for managing the risks but for ensuring that the risk management process is rigorous and that the risk ownership is properly understood.

S/N	Reference			Comments
	Section reference	**Section title**	**Section extract**	
36	**9.4**	**Appointment to tne board**	The nomination committee shall recommend names of prospective candidates for consideration for directorship positions. The board shall appoint directors subject to ratification by the relevant industry regulator(s), where this is applicable	This section suggests that the board appoints directors instead of shareholders.
37	**9.5 (a)**		Shareholders should be provided with biographical information of proposed directors including: (a) Name, age, qualification and country of primary residence. If not resident in Nigeria, the ownership interest represented;	The special requirement to disclose ownership interest represented for only non-resident directors should be clarified.
38	**14.4**	**Tenure and re-election od directors**	The tenure of executive directors other than the Managing Director/ Chief Executive Officer shall not exceed three terms of four years.	This should be clarified. Three terms of four years "each" which is a maximum of 12 years.
39	**15.7**		The result of the performance evaluation of each director should be disclosed in the annual report on a named basis.	Disclose the performance evaluation of each director in the annual report will not result in a fair reflection of real performance.
40	**17**	**Internal audit function**		This section should be expanded to include the requirement that the internal audit function should adopt the standards of the IIA as the standards by which the work is performed. The internal auditors should be required to annually assess the effectiveness of risk management and internal control for the company as a whole. This assessment supports the board's assessment of the same that is required to be disclosed in the annual report. The code could introduce the principles of combined assurance for the purpose.

S/N	Reference			Comments
	Section reference	**Section title**	**Section extract**	
41	**17.11**		The internal audit plan should be based on the result of the assessment of the risks faced by the company in line with the risk management framework and should be approved by the board. The plan should identify audit priority areas and determine the frequency of audits as well as the required resources and skills. The risk assessment process should be of a continuous nature so as to identify emerging, as well as residual or existing risks and should be conducted at least annually, but more often in companies with complex operations.	The last sentence of the paragraph should be moved to the risk management section.
42	**17.15**		The head of the internal audit function should be a member of senior management and can only be removed by the board on the recommendation of the statutory audit committee (and board audit committee, in the case of companies with two audit committees).	The head of internal audit should be a member of the IIA. This will subject him/ her to the Code of Ethics of the IIA as the professional body that “regulates” internal auditors. Like ICAN for accountants
43	**18**	**Whistle-blowing**		
44	**18.6**		function should review reported cases and bring them to the notice of the statutory audit committee (and board audit committee, in the case of companies with two audit committees).	The code should not mandate the head of internal audit to be the reviewer of the reported cases. This should be left to the discretion of the company with internal audit reviewing the adequacy of the process and reasonableness of the actions taken from the reported cases.
45	**18.8**		A whistle-blower is obliged to disclose any information connected with the activities of companies which indicate any of the following: (a) that an offence has been committed; (b) that a person has failed to comply with any laws, internal policies and procedures, etc; or (c) that someone has concealed any matter falling within (a) or (b) above.	The code cannot “oblige” a whistle blower to do anything.

S/N	Reference			Comments
	Section reference	**Section title**	**Section extract**	
46	**18.13**		An employee who has suffered any detriment by reason of disclosure made pursuant to the provisions of this Code shall be entitled to compensation and/or reinstatement provided that in the case of compensation, the employee's entitlement shall be computed as if he had attained the maximum age of retirement or had completed the maximum period of service, in accordance with his condition of service. For other stakeholders, the whistle-blower shall be adequately compensated.	This should be subject to legislation.
47	**19**	**External auditors**		
48	**19.2.1**		Listed and Significant Public Interest Entities shall engage Joint External Auditors for their Statutory Audit. These entities are those whose market capitalization is not less than N1 billion and/or whose annual turnover is not less than N10 billion	Joint audit should not be mandated. The choice of the number of auditors is the responsibility of shareholders and the audit committee who may appoint joint auditors if they believe that it would add value to the company.
49	**19..2.2**		Where the existing or first statutory auditor is an international firm (that is to say, a firm that has at least a Non –Nigerian partner in the firm whether incidental or otherwise), the second auditor who must be appointed by show of hands (in an Annual General Meeting) rather than by poll, should be a national firm (that is to say, a firm that has no alien in the partnership in the firm whether incidental or otherwise)	This is inappropriate and should be expunged. Where companies decide to appoint joint auditors the choice of auditor should not be restricted by the presence of a Non Nigerian partner or otherwise. This clearly has motivations that have nothing to do with audit quality or corporate governance best practice.
50	**19.3**		External audit firms should be retained for no longer than five years continuously. External audit firms disengaged after continuous service to a company for five years may be considered for reappointment five years after their disengagement.	This requirement is onerous, disruptive and does not help to enhance audit quality In fact it may erode audit quality as the reality would be that just as the auditors begin to run the audits efficiently they're due to rotate out.

S/N	Reference			Comments
	Section reference	**Section title**	**Section extract**	
51	**19.4 (b)**		An external auditor shall provide to the company only such other services as are approved by the board of directors on the recommendation the audit committee, but which shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company), namely: (b) internal audit services;	There should not be a broad prohibition of all internal audit services and "management services". Services should be prohibited only where they create independence conflicts. The external auditor should not be appointed as the internal auditor but may provide internal audit quality reviews, advice on application of techniques, use of software.
52	**19.4 (h)**		(h) management services;	Management services are too all encompassing to be effective. Consulting in areas that do not create an audit conflict could be seen as a management service for example.
53	**19.4 (i)**		(i) performance evaluation of the board and its committees; and	Board evaluations should not be an excluded service. The auditor independence is assured for the conduct of the review. In addition, the auditor will have a thorough knowledge of the governance processes. Companies should be allowed to make the choice.
54	**19.5**		Companies should require external audit firms to rotate the audit partners assigned to undertake the external audit of the company every three years.	The requirement that external audit firms should rotate audit partners assigned to undertake the external audit of the company every three years would result in a loss of audit experience. Most firms already have rotation policies anyway but those are typically for 7-10years in accordance with IEBSA requirements.
55	**19.6**		In order to ensure independence; (a) No retired partner of an audit firm should be appointed as a director of any company that had been or is still being audited or investigated by that firm, until five years after disengagement of the firm from such audit or investigation and/or the disengagement of the partner from the firm. (b) No partner or employee of an audit firm should be employed by the company which the audit firms has audited until after a period of three years has elapsed since the person ceased to be a partner or staff of the firm.	It may be better to provide guidance on independence risks that may arise in this area and how to ensure that such risks are adequately addressed.

S/N	Reference			Comments
	Section reference	Section title	Section extract	
56	19.9		There should be no direct reciprocal change of the same firms of auditors taking the form of two audit firms succeeding each other as opposites in audits from which they have just mandatorily retired.	This contradicts 19.3 which states that an auditor can come back 5 year after having resigned as auditor.
57	19.10		Where the board Audit Committee or the Statutory Audit Committee has made a recommendation for the appointment, re-appointment or removal of an external auditor, such recommendation can only be overridden by a 75% vote of the board's full membership.	There should be a robust and transparent process that provides shareholders with relevant information before they take the decision on auditor appointments, including the views of the audit committee members.
58	19.11		Where External Auditors discover or acquire information during an audit that leads them to believe that the company or anyone associated with it has committed an indictable offence under the Companies Act or any other Statute, they must report this to the Regulator, whether or not such matter is or will be included in the Management Letter.	There is a need to provide more clarity on the nature of offences that should be reported. These should relate to material irregularities to make it a value adding process.
59	20.4	**Dialogue with shareholders**	The senior independent non-executive director should attend sufficient meetings with a range of shareholders to listen to their views in order to help develop a balanced understanding of the issues and concerns of all shareholders.	The requirement for the senior independent director to meet with shareholders should not be mandated.
60	25.1		The board should ensure that unrelated issues for consideration are not lumped together at general meetings. Statutory business should be clearly and separately set out. Separate resolutions should be proposed and voted on for each substantial issue	There is a need to clarify what constitutes a substantial issue.
61	28 and 29	**Insider trading and minority interest expropriation**		These are matters for legislation rather than a code of corporate governance.
62	31	**Conflict of interest**		Conflicts can be stated in the rights and duties of a director section as recommended above. The mechanisms for dealing with conflicts should be covered by statute.

S/N	Reference			Comments
	Section reference	**Section title**	**Section extract**	
63	**31 (g)**		No member of the Executive management (director level and above) leaving the services of a relevant regulatory institution, for any reason should be appointed as a Director or top management staff of an institution that has been directly supervised or regulated by the said regulatory Institution until after three years of the disengagement of such executive directors or senior management staff from that regulatory institution	It may be better to provide guidance on independence risks that may arise in this area and how to ensure that such risks are adequately addressed.
64	**33**	**Disclosres**		
65	**33.1**		Companies should strive to achieve full disclosure	It is not very clear what full disclosure means.
66	**33.4 (c) and (g), 33.8**	**Directorial classification**	(c) The directorial classification of each director set out against his name wherever his name appears in the report. This information should also be on the company's website or other publications of the company. (g) Composition of board committees including names of chairmen and members of each committee and their directorial classification; 33.8 Every company should disclose details of any director's interest in contracts either directly or indirectly with the company or its subsidiaries and holding companies. The details should include the name of the director, his directorial classification, the nature and details of the contract and the director's interest therein: provided that the disclosures required do not include the directors' service contracts.	The classification needs to be clarified.
67	**33.4 (j)**		Tenure of the Governance Consultant	There is a need for clarity. Who is the Governance Consultant? Would this be the consultant engaged to evaluate Board performance as against perhaps a sustainability consultant?

S/N	Reference			Comments
	Section reference	**Section title**	**Section extract**	
68	33.4 (n) and (o)		(n)Human resource policies, internal management structure, relations with employees, employee share-ownership schemes and other workplace development initiatives; (o) Company's sustainability policies and programmes covering social issues such as corruption, community service, including environmental protection, HIV/AIDS and matters of general corporate social responsibility;	The contents should be specific to enable uniformity and ease of evaluation of adequacy by the regulators.
69	33.4 (q)		A detailed list of all the fines and penalties (including date, amount, and subject matters) paid to regulators in the financial year for infractions of this Code or other regulations.	This should be subject to relevance and materiality.
70	33.5 (c)		Where the accounting policies applied are not in conformance with standard practices, the external auditor should express an opinion on whether they agreed with the departure and the reasons for such departure.	The auditor's responsibilities and reporting strictures in this regard are well defined by the standards on auditing.
71	33.5 (e)		In addition to the foregoing, the board should ensure that the company's annual report make sufficient disclosure on accounting and risk management issues. In particular, the following matters shall be disclosed: (e) Executive directors' remuneration, share options, compensation for loss of office, and terminal benefits.	These are typically addressed by the relevant accounting and financial reporting standards.
72	33.7		The annual report should contain a statement by the board with regards to the company's degree of compliance with the provisions of this Code. In particular it should provide:	There is a need to establish an appropriate framework for the board to report on compliance with the code and for the auditor to carry out a review and report separately on compliance. This should be subject to further discussions with the stakeholders to agree how this will add value and the cost of the additional reporting.

S/N	Reference			Comments
	Section reference	Section title	Section extract	
73	**33.13**		In evaluating and reporting on the extent of compliance with this Code, the board may engage independent experts. Where such is done, the name of the consultant should be disclosed. A summary of the report and conclusions of the consultant shall be included in the company's annual report.	This provision contradicts Section 44(3) of the FRCN act which places this responsibility on the professional accountant that audits the company's financial statements. See also 34.1
74	**33.1.4**		Concerned members of the board of directors, particularly independent non-executive directors, should ensure that the following disclosures are promptly made to the regulator:…	This requires further review and clarification. Broad requirements for directors to report matters to the "regulator" may result in a breach of fiduciary confidentiality.
75	**34.1**	**Corporate governance audit**	Every company should carry out annual corporate governance audit which should be facilitated by an independent external consultant who must be registered by the regulator for this purpose.	This requirement will be unique to Nigeria as will the registration of such auditors with FRC. Auditor registration should be handled through auditor enabling legislation and not a code of conduct. The requirement to audit is likely to be too onerous. There are already safeguards in place over corporate governance in the roles of internal and external auditors, director disclosures, whistle blowing, etc. It is not clear how this is distinct from the reporting responsibility placed on the Financial Statements auditors in FRCN Act para 44(3) which requires auditors to comment on whether disclosures on the extent of compliance with the code is consistent with the requirements of the code.
76	**37.1**	**Sanctions**		This code should not be mandatory and compliance should not be enforced. It is because Codes have generally proved effective that has led to its success and now threatens its failure. Inability to retain flexibility which is a fundamental virtue of codes will erode the benefits as assessors are unable to resist the urge to judge corporate governance by ticking off boxes rather than deeper analysis and adoption of desired principles.

S/N	Reference			Comments
	Section reference	**Section title**	**Section extract**	
77	**39**	Transitional arrangements		It is surprising that there are no transitional arrangements even though this code seeks to unify codes already being applied in diverse sectors. One would expect that such a code would have clear transitional provisions and a long deferred future application to enable stakeholders apply needed provisions as may be required in the final version.
78	**40**	Definitions		
79	**40.1.7 (iii)**		"insider" means the following: (iii) an employer of the company or a related company;	Should read "employee" not "employer"
80	**40.1.15 and 33.3 (d)**		"substantial shareholder" means a shareholder whose shareholding, directly or indirectly, exceeds 0.1% of the company's paid up capital;	A substantial shareholder is described as one who holds more than 0.1% of the paid up capital. This threshold is too low to provide any meaningful inference of the requirement.
81	**40.1.8 and 40.1.11**		"International firm" means audit firm that has at least a non-Nigerian partner in the firm whether incidental or otherwise; "national firm" means audit firm that has no alien in the partnership in the firm whether incidental or otherwise.;	This is inappropriate. This is not consistent with any relevant existing act including the Nigerian Oil and Gas Industry Content Development Act.
82	**40.1.10**		"Listed and Significant Public Interest Entities" means entities whose market capitalisation is not less than =N=1 billion and/or whose annual turnover is not less than =N=10 billion.;	The classification of Significant Public Entities should not be based on financial thresholds. It should be based on a much broader context relating to public impact.