



Regulatory Alert



An Overview of the Financial Reporting Council of Nigeria (Amendment) Act, 2023

Background

The Financial Reporting Council of Nigeria (Amendment) Act, 2023 (“**FRCN Act (as amended)**” or “**FRCN 2023 Act**”) amends some of the provisions of the FRCN 2011 Act by expanding or introducing new provisions. The bulk of the FRCN 2021 Act remains unchanged and should therefore be read in conjunction with the FRCN 2023 Act.

The FRCN Act (as amended) became effective on 3 May 2023. The Financial Reporting Council of Nigeria (the “**Council**”) is responsible for implementing the Act.

This article highlights the key provisions of the Act.



1 Public Interest Entities (“PIEs”)

The FRCN Act (as amended) expands the definition of PIEs to include:

- private companies that are holding companies of public or regulated entities;
- concession entities;
- privatised entities in which government retains an interest;
- entities engaged by any tier of government in public works with annual contract sum of NGN 1 billion and above, and settled from public funds;
- licensees of government; and
- entities that have an annual turnover of NGN 30 billion and above.

The above is in addition to the PIEs existing under the 2011 Act i.e. governments, government organisations, quoted and unquoted companies and all other organisations which are required to file returns with regulatory authorities (excluding private companies that routinely file returns only with the Corporate Affairs Commission and the Federal Inland Revenue Service).

2 Registration of Professional

Based on the 2011 Act, a person could not hold any appointment or offer professional services to PIEs for remuneration without registering with the FRCN. Registration is renewable annually.

Failure to register attracts a penalty of N5 Million or any other amount or terms of imprisonment for a term not exceeding six months on conviction.

3 Material Irregularity

The FRCN Act (as amended) introduced a definition for material irregularities to include fraud, deliberate misstatements of financial statements, falsification and defalcations.

There is an existing obligation (under the FRCN 2011 Act) on a professional accountant to:

- notify the CEO and members of the Board of the PIE,
- request everyone involved to take steps to address the irregularity; and
- notify the Council within 30 days of discovering the irregularity.

4 Annual Levies

The Act has revised the annual levies payable by PIEs and registered professionals.

For publicly quoted companies, the annual levy is calculated based on a percentage of the market capitalisation annually, differentiated into several bands. For other non-listed PIEs, the fee is calculated as a percentage of the annual turnover.

PIEs and other entities are required to make payments within 120 days of the financial year.

Registered professionals and firms are required to pay an annual levy of not less than N10,000 within 60 days from 1 January.

An entity or person who defaults in paying the prescribed fees within the stipulated time is liable to penalty, sanctions or prosecution by the Council.

5 Penalties & sanctions in the Act

Penalties for breach can be classified as follows:

- **Failure to pay annual fees:-** If payment is not made, a penalty equivalent to 10% of the amount due will be applied for each month of default until payment is made. The Council may also sanction the defaulting entity, officers and agent.
- **Failure to register as a professional:-** a professional who provides services to a PIE without registering with the FRCN is liable on conviction to a fine of N5 Million or any other amount as may be prescribed by the Council, or imprisonment for six months.
- **Obstructing Officers of the FRCN:-** obstructing an inspector appointed by the Council (to investigate malpractice or breach of professional codes and ethics) attracts a fine not exceeding N 5 Million, or imprisonment for a term not exceeding six months.
- **Failure to comply with Accounting Standards:-** attracts a fine or penalty of N10 Million or any amount as may be prescribed by the Council or on conviction, imprisonment not exceeding a term of two years.
- **Failure to restate and resubmit Financial Statement (FS):-** failure to restate and resubmit an FS within 60 days of receiving a notification from the Council attracts a penalty of N 25 Million or any other amount as may be prescribed by the Council. The PIE still has an obligation to restate the FS within 30 days.
- **Failure to comply with the final decision of the Council:-** Where the Council reaches a final decision on a PIE’s failure to comply with the set Accounting Standards, penalty is N50 Million or any other amount as may be prescribed by the Council. The PIE still has an obligation to restate the FS within 30 days.
- **Suspension of Professional:-** In addition to the power to deregister a professional (which existed under the 2011 Act), the Council can now suspend a registered professional where the professional:
 - has obtained its registration by fraud or misrepresentation
 - loses his/her licence to practise;
 - has acted in breach of any Rule or Regulation made by the Council.

Takeaway

A recurring issue regarding the implementation of the FRCN Act 2011 is FRCN’s attempt to extend the scope of its regulatory powers/oversight to companies that do not qualify as PIE. In *Eko Hotels v FRCN*, Eko Hotels received a notice from the FRCN requesting registration and payment of annual dues. The Federal High Court held that the FRCN lacked the statutory powers to regulate the activities of private firms [that do not meet the PIE criteria in the Act] in Nigeria. Subsequently, the Council via Rule 1 of the FRCN Rules issued in 2016, directed Chief Executive Officers and Chief Financial Officers and professionals providing assurance or certifying any part of an annual report, financial statements, accounts, financial report, returns and other documents of a financial nature to PIEs, to register with the Council and obtain an FRCN registration number.

Another attempt was made through the Business Facilitation (Miscellaneous Provisions) Act, (“**BFA**”) 2022, where the FRCN Act was amended to the effect that general purpose financial statements prepared by companies, government organisations and corporations in Nigeria are required to be prepared in accordance with standards and regulations, issued and adopted by the FRCN. It is important to note that this amendment under the BFA does not expand FRCN’s regulatory powers to non PIEs, therefore, it should not be used as the basis of enforcing FRCN’s directives on non PIEs (i.e. private companies that file routine returns at the CAC and Federal Inland Revenue Service).

A rationale for limiting the scope of legislation to specific regulated persons is the cost of monitoring and enforcement. Government should focus its scarce resources on key risk areas- in this case, key stakeholders in the financial ecosystem (i.e. PIEs) as they potentially impact investor confidence. Compliance on the registration requirement in the FRCN 2011 Act is in two folds. First, is the registration of a company’s CEO/CFO; and secondly, the registration of professional advisors. If a company qualifies as a PIE, registration will be mandatory for the company and its professional advisors. Following the expanded definition of PIE, it is important for companies to reassess their status under the Act.

On the revised annual levies payable by PIEs, the FRCN Act (as amended) was enacted mid year with no transition provisions especially on the rates of levies. It is not clear if the Council will apply the new annual fees to all PIEs that pay their levies after 3 May 2023. This is significant for PIEs whose financial year ended shortly before or after the Act was enacted as they may be unprepared to pay the new annual levies. It is important that transition provisions or deferred commencement dates are included in amendments to allow the businesses to acquaint themselves with the changes to the law and plan accordingly.

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