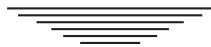


**Code of Corporate
Governance in
Nigeria**



OCTOBER, 2003

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PREFACE

Long before the highly publicized corporate scandals and failures worldwide, the global community has shown increasing concern on the issues of corporate governance. The reason for this trend is not far to seek. There is growing consensus that corporate governance, which has been defined as the way and manner in which the affairs of companies are conducted by those charged with the responsibility, has a positive link to national growth and development.

Little wonder therefore that several studies and initiatives have been undertaken by countries and International Institutions on the subject "Corporate Governance". As a result of the foregoing, several Codes of Corporate Practices and Conduct have been fashioned out and are in use in various jurisdictions.

Realizing the need to align with the International Best Practices, the Securities and Exchange Commission (SEC) in collaboration with the Corporate Affairs Commission inaugurated a seventeen (17) member Committee on June 15, 2000 in Nigeria. The Committee headed by Atedo Peterside (OON) was mandated to identify weaknesses in the current corporate governance practice in Nigeria and fashion out necessary changes that will improve our corporate governance practices. Membership of the Committee was carefully selected to cut across all sectors of the economy including members of professional organizations, organized private sector and regulatory agencies.

The Committee submitted a draft Code, which was published in several newspapers and was further reviewed at three (3) locations across the Country, namely: Lagos, Abuja and Port Harcourt. This extensive exposure was designed to elicit stakeholders input before the Code was finalized. Subsequently, the final report was approved by the Boards of the Securities and Exchange Commission being the regulatory authority of the Capital Market and the Corporate Affairs Commission being the regulatory authority of Companies in Nigeria as the Code of Best Practices for Corporate Governance.

The two (2) regulatory institutions are convinced that the adoption of this Code will no doubt enhance corporate discipline, transparency and accountability.

Although the main target of the Code is the Board of Directors as leaders of corporate organizations, the responsibilities of other stakeholders including shareholders and professional bodies were equally given due attention. We believe that one of the ways to improve the standard of corporate governance is to ensure that all stakeholders have a clear understanding of their roles. This is aptly provided for by this Code.

Experience from other jurisdictions has shown that answers to enforcement or compliance with a Code of this nature are not easily found. While voluntary compliance is generally encouraged, appropriate sanctions are applied when it becomes necessary and applicable. We therefore like to encourage all companies to comply with the Code.

The Securities and Exchange Commission and Corporate Affairs Commission will give due consideration to the compliance or otherwise of the provisions of this Code in the treatment of issues brought before them. It is our hope that all other Regulators and Self-Regulatory Organizations should do the same by ensuring that their Rules and Regulations incorporate relevant aspects of the Code.

Finally, we urge all Companies, Directors, Shareholders, Auditors, Audit Committees and other Board Committees to be alive to their responsibilities and discharge their duties diligently and honestly and in accordance with this Code. The press equally has a role in ensuring that this Code serves the purpose for which it is designed by promoting and projecting the recommended practices and to bring to public notice the Companies that fail to comply.

MALLAM SULEYMAN A. NDANUSA
DIRECTOR GENERAL
Securities & Exchange Commission

AHMED AL MUSTAPHA
REGISTRAR GENERAL
Corporate Affairs Commission

FORWARD

The importance of effective corporate governance to corporate and economic performance cannot be over-emphasised in today's global market place. Companies perceived as adopting international best corporate governance practices are more likely to attract international investors than those whose practices are perceived to be below international standards.

This realisation prompted the Securities and Exchange Commission ("SEC" or "the Commission"), the apex regulatory body in the Nigerian capital market, to inaugurate the Committee on Corporate Governance of Public Companies in Nigeria ("the Committee") on 15 June 2000. The Committee was carefully constituted to include major participants in the Nigerian capital market, representatives of public companies and other stakeholders. The Committee had the following terms of reference:

- * To identify weaknesses in the current corporate governance practices in Nigeria with respect to public companies.
- * To examine practices in other jurisdictions with a view to the adoption of international best practices in corporate governance in Nigeria.
- * To make recommendations on necessary changes to current practices.
- * To examine any other issue relating to corporate governance in Nigeria.

The Committee set about its task by establishing the corporate governance practices already prevalent in Nigeria. This we did by preparing a detailed questionnaire on company operations, and these were circulated to various publicly quoted companies throughout the length and breadth of the country. Thereafter we proceeded to make a comparative analysis of Corporate Governance practices around other jurisdictions and markets with particular emphasis on emerging markets and countries like the U. K. which had similar statutes. With the results of our findings we set about crafting a Nigerian Code of Best Practices for Public Companies and Private companies with multiple stakeholders.

A draft copy of our report was presented to the Director-General of the SEC on 12 July 2001 for consideration. This report was subsequently published in a number of national newspapers for review by members of the business community and other stakeholders, and was also discussed at various workshops in Lagos, Abuja and Port Harcourt wherein a number of comments and contributions were made and suggestions proffered by many eminent personalities and organisations. These comments and suggestions were summarised by the SEC in a document and sent to the Committee for its consideration.

The Committee had its final meeting in February 2003 for the dual purpose of reviewing the comments and contributions of the various stakeholders and deciding which comments to incorporate into its final report. After extensive deliberations by the Committee members, a good number of the comments and contributions were considered appropriate and therefore accepted and subsequently incorporated into the Committee's final report, which is contained herein.

We would like to express our gratitude to everyone who has contributed to our work by making contributions both written and verbal, and to the press who provided a virile platform for debates on Corporate Governance issues. All these contributions were valuable in aiding the Committee's work.

The acceptance and adoption of our report and findings should mark a significant advance in the process of establishing Corporate Governance standards in Nigeria. Our recommendations will however need to be reviewed as circumstances change and as the broader debate on Corporate Governance issues develop over time.

Atedo N. A. Peterside O O N
Chairman
01 April 2003

THE CODE OF BEST PRACTICES

A code to make provisions for the best practices to be followed by public quoted companies and for all other companies with multiple stakeholders registered in Nigeria in the exercise at power over the direction of the enterprise, the supervision of executive actions, the transparency and accountability in governance of these companies within the regulatory framework and market; and for other purposes connected therewith.

This Code may be cited as the **Code of Best Practices on Corporate Governance in Nigeria**.

PART A - THE BOARD OF DIRECTORS

1. RESPONSIBILITIES OF THE BOARD OF DIRECTORS

- (b) The Board of Directors should be responsible for the affairs of the company in a lawful and efficient manner in such a way as to ensure that the company is constantly improving its value creation as much as possible.
- (c) The Board should ensure that the value being created is shared among the shareholders and employees with due regard to the interest of the other stakeholders of the company. The Board's functions should include but not be limited to the following: -
 - i. Strategic planning
 - ii. Selection, performance appraisal and compensation of senior executives
 - iii. Succession planning
 - iv. Communication with shareholders
 - v. Ensuring the integrity of financial controls and reports
 - vi. Ensuring that ethical standards are maintained and that the company complies with the laws of Nigeria.

1. COMPOSITION OF THE BOARD OF DIRECTORS

As much as possible, the Board should be composed in such a way as to ensure diversity of experience without compromising compatibility, integrity, availability, and independence.

- (a) The Board should comprise of a mix of Executive and Non-Executive Directors headed by a Chairman of the Board, so however as not to exceed 15 persons or be less than 5 persons in total.
- (b) The members of the Board should be individuals with upright personal characteristics and relevant core competences, preferably with a record of tangible achievement, knowledge on board matters, a sense of accountability, integrity, commitment to the task of corporate governance and institution building, while also having an entrepreneurial bias.
- (c) Executive directors' remuneration should be set by a Remuneration Committee made up wholly or mainly of non-executive directors.

2. CHAIRMAN & CHIEF EXECUTIVE OFFICER POSITIONS

- (a) A Board should not be dominated by an individual. Responsibilities at the top of a company should be well defined.
- (b) The position of the Chairman and Chief Executive Officer should ideally be separated and held by different persons. A combination of the two positions in an individual represents an undue concentration of power.
- (c) In exceptional circumstances where the position of the Chairman and Chief Executive Officer are combined in one individual, there should be a strong non-executive independent director as Vice Chairman of the Board.

- (d) The Chairman's primary responsibility is to ensure effective operation of the Board and should as far as possible maintain a distance from the day-to-day operations of the company, which should be the primary responsibility of the Chief Executive Officer and the management team.

3. PROCEEDINGS & FREQUENCY OF MEETINGS

- (a) To maintain effective control over the company and monitor the executive and management, the board should meet regularly, and not less than once in a quarter with sufficient notices, and have a formal schedule of matters specifically reserved for its decision.
- (b) Company meetings should be conducted in such a manner as to allow free flowing discussions. There should be enough time allocated to shareholders to speak and to enable them contribute effectively at the Annual General Meeting.

4. BOARD OF DIRECTORS

- (a) The Board should have a formal schedule of matters specifically reserved for it to ensure that the direction and control of the company is firmly in its hands.
- (b) There should be an agreed procedure for directors in the furtherance of their duties to take independent professional advice if necessary, and the company should bear the expense.
- (c) All directors should have access to the advice and services of the company secretary, who is appointed by the board and who is responsible to the board for ensuring that board procedures are followed and that applicable rules and regulations are complied with. The removal of the company secretary should be a matter for the Board.

- (d) All directors should have access to the advice and services of other professionals in areas where such advice will improve the quality of contribution of the directors to the overall decision-making process.

5. NON-EXECUTIVE DIRECTORS

Non-executive directors should be of such calibre as to make constructive contributions and for their views to carry significant weight in the board's deliberations.

- (i) Non-executive directors should bring independent judgement to bear on issues of strategy, performance, resources, including key appointments, and standards of conduct.
- (ii) Directors' service contracts should not exceed three years without shareholders' approval.
- (iii) Non-Executive directors should not be dependent on the company for their income other than their director's fees and allowances. The non-executive directors should ideally be independent and not be involved in business relationships with the company that could fetter or encumber their independent judgment.
- (iv) Non-executive directors should neither participate in share option schemes with the company nor be pensionable by the company.
- (v) Non-executive directors should be appointed for a specified period. Re-appointments should be dependent on performance.
- (vi) The appointment of non-executive directors should be a matter for the entire board and a defined formal selection process should be utilized.

(vii) The newly appointed Directors should undergo proper company & board orientation and where necessary be given formal training at the company's cost, aimed at making them effective in the discharge of their duties.

(viii) Skills mix of non-executive directors should reflect the range of the competency needs of the company.

6. EXECUTIVE DIRECTORS

(a) There should be full and clear disclosure of directors' total emoluments and those of the chairman and highest-paid director, including pension contributions and stock options where the earnings are in excess of N500,000.

(b) Executive directors should not play an active role in the determination of their remuneration.

7. COMPENSATION OF BOARD MEMBERS

(a) The remuneration of Executive Directors should be fixed by the Board and not in shareholders' meetings.

(b) There should be remuneration committees, wholly or mainly composed of non-executive/independent directors and chaired by a non-executive director, to recommend the remuneration of executive directors.

(c) The following disclosures should be made for directors' remuneration:

(i) Directors' emoluments and that of the Chairman and highest paid director.

(ii) Relevant information about stock options and any pension contributions.

(iii) Future service contracts.

8. REPORTING & CONTROL

- (a) There is an overriding need to promote transparency in financial and non-financial reporting.
- (b) It is the Board's duty to present a balanced, reasonable and transparent assessment of the Company's position.
- (c) The prime responsibility for good internal controls lies with the Board.
- (d) The Board should ensure that an objective and professional relationship is maintained with the auditors. External Auditors should not be involved in business relationships with the company.
- (e) The Board should establish an audit committee of at least three non-executive directors with written terms of reference, which deal clearly with its authority and duties.
- (f) The directors should report on the effectiveness of the Company's system of internal control in the Annual report.
- (g) The directors should report that the business is a going concern, with supporting assumptions or qualifications as necessary in compliance with the Companies and Allied Matters Act.

PART B - THE SHAREHOLDERS**9. SHAREHOLDERS' RIGHTS & PRIVILEGES**

- (a) The company acting through the Directors should ensure that shareholders' statutory and general rights are protected at all times.
- (b) Shareholders should remain responsible for electing Directors and approving the terms and conditions of their directorships.
- (c) The venue of a general meeting of shareholders should be carefully chosen in such a way as to make it possible and affordable (in terms of distance and cost) for the majority of shareholders to attend and vote, and not to disenfranchise shareholders on account of choice of venue, which is unreasonable or impracticable to reach.
- (d) Notices of meeting should be sent at least 21 working days before the meeting with such details (including annual reports and audited financial statements) and other information as will enable them vote properly on any issue.
- (e) The Board should propose a separate resolution at the general meeting on each substantial issue in such a way that they can be voted for in an organized manner.
- (f) The Board should ensure that decisions reached at the general meetings are implemented.
- (g) The Board should ensure that all shareholders are treated equally; and that no shareholder (*however large institutional or otherwise, vocal or passive*) should be given preferential treatment or superior access to information or other materials.

- (h) Boards should use general meetings to communicate with the shareholders and encourage their participation.
- (i) Shareholders holding more than 20% of the total issued capital of a company should as far as possible have a representative on the Board unless they are in a competing business or have conflicts of interest that warrant their exclusion from the Board.
- (j) As far as possible, there should be at least one Director on the Board representing minority shareholders.

10. INSTITUTIONAL SHAREHOLDERS

- (a) The company or the board should not discourage shareholder activism whether by institutional shareholders or by organized shareholders' groups. Shareholders with larger holdings (institutional and non-institutional) should act and influence the standard of corporate governance positively and thereby optimize stakeholder value.
- (b) Information made available to institutional shareholders should also be made available to other shareholders at the same time in such a manner as to ensure that neither group enjoys preferential treatment.

PART C - AUDIT COMMITTEE**11. THE AUDIT COMMITTEE**

- (a) Companies should establish Audit Committees, with the key objective of raising standards of corporate governance.
- (b) The Audit Committees should not act as a barrier between the auditors and the executive directors on the main board, or encourage the main board to abdicate its responsibilities in reviewing and approving the financial statements.
- (c) The Audit Committee should not be under the influence of any dominant personality on the main board, neither should they get in the way and obstruct executive management.
- (d) Audit committees should be comprised of strong, independent persons.

12. COMPOSITION OF THE AUDIT COMMITTEE

- (a) Audit Committees should be established in accordance with CAMA Section 359 (3 & 4), with not more than one executive on them.
- (b) A majority of the non-executives serving on the committee should be independent of the company (i.e. independent of management and free from any business or other relationship, which could materially interfere with the exercise of their independent judgment as committee members).
- (c) The Chairman of the Audit Committee should be a Non Executive Director, to be nominated by the members of the Audit Committee.
- (d) Membership of the audit committee should be for a fixed tenure. However, any member of the committee should be eligible for re-election after his tenure.

- (e) The Secretary of the Audit Committee should be the Company Secretary, Auditor or such other person nominated by the Committee.

13. QUALIFICATION AND EXPERIENCE OF AUDIT COMMITTEE

- (a) Members of the Committee should be **able to read and** understand basic financial statements, and should be capable of making valuable contributions to the Committee.
- (b) Audit committee should review not only external Auditors' reports but also most importantly the Report of the Internal Auditor.
- (c) Members of the Committee should possess the following qualities:
 - (i) Integrity
 - (ii) Dedication
 - (iii) A thorough understanding of the business, its products and services
 - (iv) A reasonable knowledge of the risks facing the company and the essential controls the company has in place.
 - (v) Inquisitiveness and dependable judgment
 - (vi) Ability to offer new or different perspectives and constructive suggestions.

14. TERMS OF REFERENCE FOR AUDIT COMMITTEE

The Committee should be given written terms of reference in line with Section 359 (6) a-e of the Companies And Allied Matters Act, 1990.

- (a) The performance of the Committee and its members should be evaluated periodically. The form of such evaluation will be for the company to decide.
- (b) The Committee should maintain a constructive dialogue between the external auditors and the board and enhance the credibility of financial disclosures and the interest of shareholders.

15. MEETINGS

- (a) The quorum for the meetings of the audit committee would depend on the number of members of the Committee and should be specified in the terms of reference of the Committee.
- (b) The Committee should meet at least three (3) times in a year.
- (c) The audit committee should have a meeting with the external auditors at least once a year, without the executive board members present.
- (d) Specimen Terms of Reference for an audit committee, compiled from the many examples that are available, are shown in the Schedule on Page 20 of this Report.
 - (i) The Terms of Reference are intended simply as a guide for companies who wish to adapt and build on them to suit their own peculiar circumstances.
 - (ii) The audit committee will assist the board in fulfilling its oversight responsibilities.
 - (iii) The audit committee will review the financial reporting process, the system of internal control and management of financial risks, the audit process, and the Company's process for monitoring compliance with laws and regulations.

- (iv) In performing its duties, the committee will maintain effective working relationships with the board of directors, management and both the internal and external auditors.
- (v) To perform his or her role effectively, each committee member should seek to obtain an understanding of the detailed responsibilities of committee membership. They should also seek to obtain a thorough understanding of the company's business, operations and the industry specific risks.

PART D - INTERPRETATION**17. INTERPRETATION**

In this Code, unless the context otherwise requires:-

- “Company” means a public company limited by shares registered in Nigeria.
- “Law” means the applicable Laws of the Federation of Nigeria.
- “Regulation” means the applicable regulation made under the Laws of the Federation of Nigeria.
- “Director” means a person duly appointed by a company to direct and manage the affairs of the Company, and includes alternate directors.
- “Shareholder” means a person who lawfully acquires shares in the capital of a company.
- “Stakeholder” means but shall not be limited to directors, employees, creditors, customers, depositors, distributors, regulatory authorities, and the host community(s).

PART E - SCHEDULES**SCHEDULE 1 - SPECIMEN TERMS OF REFERENCE FOR AN
AUDIT COMMITTEE (FOR GUIDANCE ONLY)**

The duties of the Audit Committee shall be: -

- i. To consider the appointment of the external auditor, set the audit fee, and handle any questions of resignation or dismissal;
- ii. To discuss with the external auditor (before the audit commences) the nature and scope of the audit, and ensure co-ordination where more than one audit firm is involved;
- iii. To review the half-year and annual financial statements before submission to the Board, focusing particularly on: -
 - a) Any change in accounting policies and practices
 - b) Major judgmental areas
 - c) Significant adjustments resulting from the audit
 - d) The going concern assumption
 - e) Compliance with accounting standards
 - f) Compliance with stock exchange and legal requirements.
- iv. To discuss problems and reservations arising from the interim and final audits, and any matters the auditor may wish to discuss (in the absence of management where necessary);
- v. To review the external auditor's management letter and management's response;
- vi. To review the Company's statement on internal control system prior to endorsement by the Board;

- vii. Where an internal audit function exists, to review the internal audit programme, ensure co-ordination between the internal and external auditors, and ensure that the internal audit function is adequately resourced and has appropriate standing within the Company;
- viii. To consider the major findings of internal investigations and management's response;
- ix. To consider other topics, as defined by the board.

SCHEDULE 2 - MEMBERSHIP OF THE COMMITTEE

Mr. Atedo N. A. Peterside O O N Investment Banking & Trust Company Limited	-	Chairman
Princess Adenike Adeniran Dominion Trust Limited	-	Member
Brigadier E. E. Ikwue Zonal Shareholders Association	-	Member
Sir Kingsley Ikpe Thomas Kingsley Securities Limited	-	Member
Mr. Victor Olusegun Adeniji Denham Management Limited		Member
Mr. Bolaji Balogun FCMB Capital Markets	-	Member
Mr. Ocholi Danjuma NAL Merchant Bank Plc	-	Member
Chief (Mrs.) E. O. Adegite Institute of Chartered Accountants of Nigeria	-	Member
Chief I. Olusola Dada Institute of Directors		Member
Mr. Chris O. Okereke Securities & Exchange Commission	-	Member
Prince Aghatise Erediauwa The Nigerian Stock Exchange	-	Member
Mrs. Habiba Sani Kalgo Abuja Stock Exchange Plc	-	Member

Mr. Femi Adewunmi Cadbury Nigeria Plc	-	Member
Mr. Emmanuel Ukaegbu Texaco Nigeria Plc	-	Member
Mr. Udo Jimmy Udoh Central Bank of Nigeria	-	Member
Hajiya J. K. Ahmadu-Suka Corporate Affairs Commission	-	Member
Mr. Funso Akere Investment Banking & Trust Company Limited	-	Secretary

CONSULTANTS:**AJOGWU & OGBONNA (CONSULTANTS)**

Fabian Ajogwu
Kenna & Associates
Lagos Business School

Ogbonna Ike
BP&C Associates
Lagos Business School

Daniel Gboghwe
Damilola Oyerinde
Olusola Adun
Kenna & Associates (Solicitors & Advocates)

**SCHEDULE 3- LIST OF PERSONS AND ORGANISATIONS WHO
MADE WRITTEN CONTRIBUTIONS TO THE FINAL
DRAFT OF THE CODE**

1. Price Water House Coopers
2. Akintola Williams Deloitte & Touche
3. Strategic Management Centre
4. Dangote Group of Companies
5. The Institute of Chartered Secretaries & Administration of Nigeria
6. Strategic Management Centre
7. United Bank for Africa Plc
8. Chris Ogunbanjo & Co
9. National Co-ordinating Committee of Shareholders Association
10. INMB Bank Limited
11. M. I. Iro
12. Godwin Opurum
13. Bola Ajibola & Co.
14. Oladapo B. Ayorinde
15. Kadiri Ihesiulo (Ihesiulo & Partners)
16. Cadbury Nigeria Plc
17. Risk Management, Wema Bank Plc (Toyin Y. Lasisi)
18. Alhaji B. A. Asafa
19. Financial Institutions Training Centre