

FINANCIAL REPORTING
COUNCIL (FRC) OF
NIGERIA.

EXPOSURE DRAFT OF
THE NATIONAL CODE
OF CORPORATE
GOVERNANCE 2015

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Part A: Preliminary Matters

1. Introduction

1.1. This Code, referred to as the Public Sector Governance Code in Nigeria 2015, is the outcome of the directive given by the Honourable Minister of Trade and Investments to the Steering Committee on Corporate Governance on 17th January 2013 to extend Corporate Governance to the Public Sector. This is a commendable attempt by the Federal Government to correct the perceived defect in the “bottom-up” strategy used in introducing the concept of corporate governance into Nigeria in 2003, which limited the concept to listed and unlisted public companies and the Anglo-Saxon variant of board structure

1.2. 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:

- (a) Promote the highest standards of corporate governance;
- (b) Promote public awareness about corporate governance principles and practices;
- (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;
- (d) Encourage sound systems of internal control and information systems control to safeguard stakeholders’ investment and assets of public interest entities;
- (e) Promote sound financial reporting and accountability based on true and fair financial statements duly audited by competent independent Auditors; and
- (f) Ensure that audit committees of public interest entities keep under review the scope of audit and its cost effectiveness, the independence and objectivity of the auditors.

1.3. The ‘bottom-up’ approach involves the introduction of corporate governance into an environment as a private sector initiative without the government necessarily taking a very active or front-line position in it, but with great expectation, that the government would later on appreciate

the beneficial effect of corporate governance and adopt it officially and generally. This unfortunately never happened but based on hindsight, the strategy does not appear to have successfully entrenched the concept and values of corporate governance in Nigeria.

- 1.4. A probable explanation for this is that this “bottom-up” approach, with its defined limitation in terms of applicability, technically exempted all state owned entities, parastatals and government commercial agencies which are now referred to by this code as Public Sector Entities (PSEs).
- 1.5. Such exemption encouraged some privatized government companies to carry their inappropriate governance practices into the private sector domain, hence the cursory observation that some companies that have been privatized do not appear to have fared significantly better than they were under government ownership.
- 1.6. The bottom-up strategy ignored ownership concentration as a defining Nigerian business phenomenon and the leverage of political governance, particularly the unwillingness of successive governments to embrace corporate governance and its applicability to State entities and parastatals. Corporate governance in Nigeria has therefore remained an effort limited to the private sector, hence the perceived tussle between the entrenched Nigerian societal and business practices on one hand, and on the other, the profound ethical values which corporate governance as a concept champions.
- 1.7. The Nigerian private sector, based on the Steering Committee’s qualitative data, does not seem to have fully accepted nor seen any justification for exempting not only Government Ministries and Departments (M&Ds), but also the Public Sector Entities (PSEs), from corporate governance practices. This probably explains the perceived lukewarm compliance and conformance evidenced by both published and unpublished egregious violations. Public sector exemption has therefore constituted not only a moral handicap but also a very significant challenge to the orderly development and acceptability of corporate governance in Nigeria.
- 1.8. This Code extends corporate governance to public sector entities as well as Government Ministries and Departments thus reverting to a ‘top-down’ strategy which probably the nation should have used *ab initio*. This ‘top-down’ strategy is based on the corporate governance mantra “tone at the top”, meaning corporate governance and its key underlying values ought to start from the very top, that is from the government, its agencies and the myriad of state-owned entities. This is in complete consonance with the water phenomenon, corroborated by science, that water unaided cannot climb, but it can permeate or move downwards unaided, when poured freely. It is this downward free movement of corporate governance practices and values from public sector to the private sector that this new corporate governance “top-down” strategy is designed to achieve. This

will further strengthen the ability of citizens to evaluate the role of government, and in the process transform dramatically the way government relates with and does business through its agencies.

2. Overview of Corporate Governance

- 2.1. The positive and negative consequences of the separation of ownership and control in the modern corporation have rendered the concept of corporate governance very critical. This is due to the implications of these consequences for the efficient control of the assets of such corporations in the interests of shareholders and other stakeholders. There are many literature definitions of corporate governance. The commonest being the one given by Lord Cadbury as ‘the system by which companies are directed and controlled’. Many scholars have however criticized this concise definition as being a very narrow agency perception of corporate governance, preferring the OECD definition instead.
- 2.2. The OECD defines corporate governance as “a set of relationships between a company’s management, its board, its shareholders and other stakeholders; it provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.”
- 2.3. Our Steering Committee after a very extensive literature review aligned more with the OECD definition because of its regard for stakeholderism rather than an absolute or exclusive focus on shareholderism which appears inappropriate for the Nigerian concentrated ownership environment. Our Committee therefore adopted the broader definition of corporate governance that embraces ‘the rights and responsibilities among all parties who have a stake in the firm, inclusive of the environment in which the firm operates and the relevant government’. This corporate governance definition is in absolute consonance with our remit for both private and public sector corporate governance codes.
- 2.4. Governance literature asserts that boards of directors are responsible for the governance of their companies. The owners’ role in governance is to appoint the directors and the external auditors, and thereafter satisfy themselves that an appropriate governance structure is in place. The responsibilities of the board include setting the company’s strategic aims, based on the vision of its owners, providing the leadership to put them into effect, supervising the management of the business and reporting to the owners on their stewardship. The board’s actions are therefore purely related to governance directed towards the enhancement of shareholder value, but in the case of the public sector, public value.
- 2.5. The relevance of this scenario to the Nigerian public sector entities is the subject of the next paragraph. Some countries refer to this variant of

corporate governance as ‘Government Governance’ which emphasizes the complex situation in which the government acts as the “owner” of PSEs - but in reality merely an Agent of the State - on the basis of the electoral mandate given to it by the citizens. The government at the same time also acts as the Manager operating through boards made up of civil and public servants and political nominees who together constitute the majority on most of Nigerian Public Boards that are again supervised by non-independent public servant regulators. This is the theoretical dilemma of corporate governance applicability to the Nigerian Public Sector.

3. Public Sector Governance in Nigeria

- 3.1. The purpose of public sector governance is to ensure that a Public Sector Entity – by whatever name called – fulfils its overall mandate, achieves its intended outcomes for citizens and service users, and operates in a very effective, efficient, transparent and ethical manner. Every public organization has its own specific purpose and is usually set out in its enabling or creative instrument and the organization is expected, like any corporate body, to be fully accountable to its ultimate owners, in the case of the public sector, the citizens, who are represented by elected legislatures. The citizens’ oversight is exercised in Nigeria by the National and State Assemblies relying significantly on the corporate governance internal and external mechanisms in the PSEs which unfortunately do not appear to be very effective because of inappropriate board size, composition and nomination processes.

- 3.2. The State, acting as an owner, is represented by the Government whose relationship with PSEs should be comparable to the relationship between a holding company and its subsidiaries in the private sector corporate governance. The discernible features of this government relationship ought to include:
 - (a) A very strong interest in the compliance, conformance and performance obligations of PSEs.
 - (b) Transparent reporting and accountability arrangements that enable adequate oversight by the Government.
 - (c) Arrangements for quick remedial action by the Government where PSEs’ strategic direction deviates from that laid down in the PSEs’ enabling instrument or that preferred by the Government.
 - (d) The exercise of strategic control over PSEs in a manner consistent with Government accountability for stewardship to the National or State Assembly.

- (e) The setting by Government of very clear documented objectives and communication channels that would avoid anomalous situations where an informal position taken by a public servant amounts virtually to an undocumented directive emanating from the Supervising Authority.
 - (f) The identification by Government of PSEs' social service obligations, and any other matters over which government maintains 'reserve powers', and over which the Boards of PSEs need to consult with Government.
- 3.3. The Supervisory Authority of PSEs is usually the Ministry whose political mandate encompasses the service or product provided by the PSEs. The Supervisory Ministry is invariably mentioned in the law establishing the PSE together with details of the board or governing structure. The effectiveness of a Board in corporate governance depends very much not only on the calibre and composition of its membership but also on the degree of its operational independence. The pervading influence of Ministers and the preponderance of Government officials on PSE Boards tended to erode completely the autonomy of these Boards in a manner suggestive of their being merely Ministerial Departments.
- 3.4. It is on record that the Federal Government had made very clear policy guidelines concerning the expected relationship between a Minister and the PSEs supervised by his Ministry. Such policy has not been consistently implemented and in some cases ignored. Now that the Federal Government has decided that Corporate Governance should be entrenched in the public sector, government has a duty to insist on strict compliance with not only its policy directives in this regard, but also with the spirit of good public sector governance. There is therefore a very critical and urgent need for the Government to revisit and restructure this ministerial and supervisory relationship and leave an "*adequate administrative gap*" for the sustenance of board independence that should be predicated on external independent board oversight (that is professional citizens acting as independent non-executive directors) rather than insider board dominance (resulting from the preponderance of civil servants and public servants on boards).

4. The Premise of the Code

The Steering Committee obtained significant inspiration from the work already undertaken in various jurisdictions, particularly the OECD

Guidelines on Corporate Governance of State-Owned Entities 2005, the Good Governance Standard for Public Services 2004 of the United Kingdom and Corporate Governance in Central Government 2011, all of which materially related to the Committee’s remit. These commendable approaches guided the work of the Committee appreciably by placing appropriate emphasis on the following: adequacy and effectiveness of legal and regulatory frameworks for public sector entities; the State acting as owner (with public servants dominantly acting as managers and regulators); equitable treatment of owners (shareholders and citizens); relationship with stakeholders, the need for transparency and adequate disclosure; and the role and function of the Board. The Committee also considered good governance as a means of focusing on organisational purpose and outcomes for citizens and service users; definition of functions and roles; promotion of values through ethical behaviour; taking informed and transparent decisions; developing the capacity and capability of the governing body for effectiveness, and engaging stakeholders to ensure proper accountability for stewardship.

- 4.2. This Nigerian public sector code therefore emanates from these various perspectives. The purpose is to entrench corporate governance across all sectors of the Nigerian economy, particularly Public Sector Entities, so as to engender healthier, transparent and very competitive entities.

5. Application of the Code

5.1 This Code shall be applicable to the following:

- (a) All Ministries, Departments and Agencies of government;
- (b) All State-Owned Entities;
- (c) All parastatals; and
- (d) All government commercial agencies.

5.2 All the entities mentioned in section 5.1 above shall be collectively referred to in this Code as “Public Sector Entities” and abbreviated as “PSEs”.

6. Legal and Regulatory Framework for Public Sector Entities

- 6.1. There should be a clear separation between the State's ownership function and other State management and regulatory involvement that may influence the conditions for PSEs, particularly with regard to market regulation and discipline.
- 6.1 Government should simplify and streamline the operational practices and the legal form under which PSEs operate. Their legal form should allow creditors to press their claims and to initiate insolvency procedures so as to avoid systemic threats and failures.
- 6.2 Any obligations and responsibilities that a PSE is required to undertake in terms of public services beyond the generally accepted norm should be clearly mandated by laws or regulations. Such obligations and responsibilities should also be disclosed to the general public and related costs and benefits should be covered in a transparent manner.
- 6.3 PSEs should not be exempt from the application of general laws and regulations. Stakeholders, including competitors, should have access to efficient redress and an even-handed ruling when they consider that their rights have been violated. Government should examine the enabling instruments of all PSEs in order to establish a level playing field.
- 6.4 The legal and regulatory framework should allow sufficient flexibility for adjustments in the capital structure of PSEs when this is necessary for achieving the organisation's objectives.
- 6.5 PSEs, where empowered, should be made to face competitive conditions regarding access to finance. Their financial relationship with state-owned banks, state-owned financial institutions and other state-owned companies should be based on purely commercial grounds so as to ensure operational competitiveness across all sectors.

7 The Obligations of the State Acting as Owner of Public Sector Entities (PSEs)

- 7.1 The government should develop and issue a very clear ownership policy that defines the overall objectives of state ownership, the state's role in the corporate governance and how it intends to implement its ownership policy, otherwise referred to as Government Governance.
- 7.2 The government should not be involved in the day-to-day management of PSEs and should allow them full operational

autonomy to achieve their objectives which should be clearly defined by government acting as owner.

- 7.3 The State should let PSEs boards discharge their responsibilities, exercise their authorities and assert their independence.
- 7.4 The exercise of ownership rights should be clearly identified within the State administration. This should be facilitated by setting up Ministerial Supervisory and Monitoring strategies exemplified by Ministerial Management Committees, and the strengthening of individual boards in terms of independence, size, composition and calibre.
- 7.5 PSE boards and Supervisory and Monitoring Authorities should all be held collectively and individually accountable to representative bodies such as National or State Assembly and have clearly defined relationships with relevant public bodies, including the offices of the Federal or State Auditor General.
- 7.6 The State, as an active owner, should exercise its ownership rights according to the legal structure of each PSE. The State should appoint competent boards of directors to implement policies and achieve the stated objectives of the PSEs.

Part B: The Board of Directors

8 Board Governance Mandate

- 8.1 The main purpose of the Board of a PSE is to provide conceptual, strategic and ethical leadership to the PSE and ensure that the PSE fulfils its overall purpose and achieves its intended outcomes for citizens and service users within the framework of sustainable public trust.
- 8.2 The Government acting as owner on behalf of the State shall set out with vivid clarity the role and responsibilities of the board as a whole and of individual directors. The Government should specifically consider areas of potential conflict of interest between the Government's regulatory responsibilities as government on the one hand, and its ownership responsibilities on the other. The mandate should include any requirements to meet explicitly any stated Government policies and socio-economic objectives.
- 8.3 The board should ensure that it has a clear understanding of its mandate and the implications of its implementation. In case of doubt, the board should seek clarity from the Government. If confusion arises out of the implications of implementation, which cannot be objectively resolved internally, then the board should

consider seeking relevant external professional advice with a view to making further representations to government.

- 8.4** The board should execute its mandate in such a manner as to ensure transparent increase in public value as well as the maximization of socio-political benefits in terms of the broader principles and policies of government.
- 8.5** The board of each PSE should ensure that the entity works towards a financial target and a dividend policy, where applicable, agreed in advance with the Government, with the financial target being set on the basis that each PSE is required to earn commercial returns, at least sufficient to justify the long term retention of assets in the business and to pay the set commercial dividends from those returns.
- 8.6** In addition to setting a commercial rate of return target, the Government may set other financial and non-financial targets for particular PSEs on a case-by-case basis based on Government's political and socio-economic agenda.
- 8.7** PSEs should operate in the industry sector and provide the goods and/or services as specifically approved in terms of its mandate. However, the Government may, at its discretion, impose certain service quality standards on PSE's providing goods and services in a monopolistic market.
- 8.8** The Board's mandate should be reviewed by the Government annually or more frequently, where appropriate.
- 8.9** In performing its duties and responsibilities, the board should act with diligence, skill, care and loyalty in the best interests of the PSE, the State and the general public.
- 8.10** The State acting as owner through the Government and the Board should set very clear vision and mission and relate these to the enabling instrument of each PSE.
- 8.11** Government should on an annual basis make corporate objective statement either reinforcing already stated policy or revising such policy within its authority as owner acting on behalf of the State.
- 8.12** The Government shall set out in the Board Governance Mandate details of two Reserve Powers: Government and Board. Government Reserve powers relate to those matters on which the Board must relate with and obtain the concurrence of Government, while Board Reserve powers are matters over which the Board has exclusive authority.

9 Role of the Board

- 9.1** The board of the PSE has absolute responsibility for the performance of the PSE and is fully accountable to government for such performance. As a result, the board should give strategic direction to the PSE, and in concurrence with the Government, where applicable, appoint the chief executive officer and ensure that an effective succession plan for all directors and key executives is in place and adhered to.
- 9.2** The board must retain full and effective control over the PSE and monitor management closely in implementing board plans and strategies.
- 9.3** The board should ensure that the PSE is fully aware of and complies with applicable laws, regulations, government policies and codes of business practice and communicate with government and relevant stakeholders openly and promptly with substance prevailing over form.
- 9.4** The board should have an agreed procedure for director's solicitation of independent professional advice at the expense of the PSE.
- 9.5** All board members should have unrestricted access to accurate, relevant and timely information of the PSE and act on a fully informed basis, in good faith, with diligence, skill, and care and in the best interest of the PSE, whilst taking account of the interests of the State and other stakeholders, including employees, creditors, customers, suppliers and local communities. To this end, the board must monitor closely the process of disclosure and communication and exercise objective judgment on the affairs of the PSE, independent of management. In so doing, each individual member of the board must keep confidential all matters of the PSE.
- 9.6** The board should formulate, monitor and review corporate strategy, major plans of action, risk policy, annual budgets and business plans of the PSE and regularly identify key risk areas and key performance indicators, based on both financial and non-financial aspects such as the socio-political expectations of Government
- 9.7** Without derogating from its fiduciary duties, the board should ensure that stakeholders' performance objectives are achieved and can be measured in terms of the performance of the PSE. In addition, the board should ensure that the PSE prepares annual budgets against which, *inter alia*, its performance can be monitored.
- 9.8** The board should monitor and manage potential conflicts of interest of management, board members and the Government. The board as a whole and each individual director must not accept any payment of commission, any form of bribery, gift or profit.

- 9.9** The board should develop a clear definition of the levels of materiality or sensitivity in order to determine the scope of delegation of authority and ensure that it reserves specific powers and authority to itself. Delegated authority must be in writing and evaluated on a regular basis.
- 9.10** Board members should attend annual general meetings and ensure that each item of business included in the notice of annual general meeting is accompanied by a full explanation of the effects of any proposed resolutions; the aim being to ensure that stakeholder value is increased.
- 9.11** The board should ensure that financial statements are prepared for each financial year, which presents a true and fair view of the affairs of the PSE. The financial statements should be forwarded to the relevant supervising authority. In addition, they must maintain adequate accounting records, ensure that suitable accounting policies, consistently applied and supported by reasonable and prudent judgments and estimates, have been used in the preparation of the financial statements, and they must also ensure that relevant accounting standards have been applied.
- 9.12** The board should appraise the performance of the chairman on an annual basis. The board should also, on an annual basis, review and evaluate its required mix of skills and experience and other qualities in order to assess the effectiveness of the entire board, its committees and the contribution of each individual director during the entire term of office. The board should ensure that a confidential board and director appraisal is conducted on an annual basis and establish an appropriate mechanism for reporting the results of the board assessment to Government.
- 9.13** The board should ensure that there are appropriate and effective induction and continuing education programmes for new and existing board members.
- 9.14** The board should always maintain the highest standard of integrity, responsibility and accountability and ensure that it conforms to corporate governance principles while optimising the performance of the PSE.
- 9.15** The board should be responsible for Information Technology governance.

10 Board Structure and Composition

- 10.1** Boards constitute a fundamental base of corporate governance in PSEs.
- 10.2** The board of directors of PSEs should be made up of a combination of executive directors and non-executive directors (that is, government institutional directors, independent non-executive directors and nominee directors) such that no individual or small group of individuals can dominate the board's decision-taking.
- 10.3** The number of executive directors on the board of a PSE should not be less than two of which one should be the CEO.
- 10.4** Executive Directors should not be more than one-third of the entire board of a PSE.
- 10.5** The number of non-executive directors on the board of PSEs should not be less than two-thirds of the entire board.
- 10.6** The number of independent non-executive directors on the board of a PSE should not be less than half of the number of non-executive directors.
- 10.7** The positions of the Chairman of the board and the Chief Executive Officer (CEO) of a PSE shall be separate such that one person shall not combine the two positions in a PSE.

Part C: Officers of the Board

11 Chairman

- 11.1** Government should appoint one of the board members, who should preferably be an independent non-executive director as the chairman of the board. The chairman's responsibilities should, be separate from those of the chief executive officer. Where this proves to be impracticable, then the government must appoint an independent non-executive director as a deputy chairman to ensure that no one individual has unfettered decision making powers in the PSE.
- 11.1.1** The chairman is the head of the board and his responsibilities include:
- (a)** ensuring that all the board members are fully involved and informed of any business issue on which a decision has to be taken;

- (b) ensuring that executive directors play an effective management role and participate fully in the operation and governance of the PSE;
- (c) ensuring that the non-executive directors monitor the business and contribute to the business decisions of the PSE;
- (d) exercising independent judgment, acting objectively and ensuring that all relevant matters are placed on the agenda and prioritized properly;
- (e) working closely with the PSE Secretary in ensuring that at all times all the board members fully understand the nature and extent of their responsibilities as directors in order to ensure the effective governance of the PSE; and
- (f) ensuring that the performance of the chief executive officer is appraised on an annual or other more frequent basis as the PSE's circumstances may demand, either by the Ministerial Management Committee or a Committee appointed by the board for this purpose depending on PSE Government Governance Charter.

12 Chief Executive Officer

12.1 Government should appoint the chief executive officer of a PSE whose role should be separate from that of the chairman.

12.2 The chief executive officer's role should focus mainly on the management of the PSE, ensuring that the PSE is run efficiently and effectively and in accordance with the strategic decisions of the board.

12.3 The chief executive officer is accountable to the board.

13 PSE Secretary

13.1 Every PSE should have a secretary or a designated officer who performs such a function.

13.2 The secretary of the PSE should be a person possessing the relevant qualifications and competence necessary to effectively discharge the duties of that office. Only persons who meet the companies and

Allied Matters Act (CAMA) requirements for appointment as secretary of a public company should be appointed to the office of a PSE secretary, or as provided in the PSE's enabling law.

13.3 The PSE secretary's role includes:

- (a) assisting the chairman to ensure that the board functions effectively. This entails providing the entire board and individual directors with detailed guidance as to the nature and extent of their duties and responsibilities and, more importantly, how such duties and responsibilities should be properly discharged in the best interests of the PSE and the State.
- (b) facilitating the induction of new directors of the PSE and, assisting the appropriate committee of the board in developing mechanisms for providing continuing education and training for all board members in order to improve and maintain the effectiveness of the entire board;
- (c) assisting the chairman and the chief executive officer in determining the annual board plan and other strategic issues of an administrative nature; and
- (d) providing a central source of guidance and advice to the board and within the PSE as a whole on matters of business ethics and good governance..

13.4 The PSE secretary's performance should also be appraised in the same manner as the directors of the PSE.

14 Executive Directors

14.1 Executive directors are those directors who, in addition to their board duties, also perform management functions for the PSE in respect of which functions they are remunerated.

14.2 They are full-time operational directors.

14.3 The employment contracts of executive directors should be approved by the Government.

14.4 The day-to-day management of the PSE should be delegated by the board to the executive directors who should, in turn, ensure that the strategic decisions of the board are implemented effectively and timely.

15 Non-Executive Directors

15.1 Non-executive directors do not participate in the day-to-day management of PSEs, but should attend all board and relevant committee meetings.

15.2 Non-executive directors rely mainly on the executive directors and other management for reports, which are presented to them for board meetings.

15.3 Non-executive directors play very significant roles in corporate governance and their purpose is to provide wider perspectives, independent and objective strategic horizons and a personal sense of responsibility and accountability. This includes, without limitation:

- (a) being individuals of calibre and credibility with the necessary competence, skill, expertise and knowledge who bring their judgment to bear - independent of management - on issues of strategy, performance, evaluation, resources and standards of conduct;
- (b) bringing more objective and independent monitoring and supervision of the performance of the executive management in relation to the board decisions;
- (c) assisting in resolving conflicts arising out of, for example, the remuneration of executive directors and succession;
- (d) participating in the operation of various committees of the board; and
- (e) acting as a check and balance against the executive directors.

15.4 Non-Executive Directors in PSEs are usually made up of Government Institutional Directors, Independent Non-Executive Directors and Nominee Directors. There are however situations where nominee directors are also executive directors.

15.4.1 Government Institutional Directors

These are directors on the board of PSEs who are representing specific Ministry or Agencies on the board of the PSE concerned. They are usually appointed by the Supervising Ministry of the PSE and are generally the officers dealing with the concerned PSE.

15.4.2 Independent Non-Executive Directors

15.4.2.1 An independent non-executive director is a non-executive director who:

- (i) is not a substantial shareholder of the PSE (that is, one whose shareholding, directly or indirectly, does not exceed 0.1% of the PSE's paid up capital) or a nominee of a substantial shareholder of the PSE or otherwise related to such a substantial shareholder of the PSE;
- (ii) is not a representative of a shareholder that has the ability to control or significantly influence Management;
- (iii) has not been an employee of the PSE or group within the last five years;
- (iv) does not have close family ties with any of the PSE's advisers, directors, senior employees, consultants or substantial shareholder;
- (v) does not have, or has not had within the last five years, a material business relationship with the PSE either directly, or as a partner, shareholder, director or senior employee of a body that has, or has had, such a relationship with the PSE;
- (vi) does not render any professional, consultancy, or other advisory services to the PSE or the group, within the last five years.
- (vii) does not receive, or has not received additional remuneration from the PSE apart from a director's fee and allowances, and does not participate in the PSE's share option or a performance-related pay scheme, nor is he a member of the PSE's pension scheme;
- (viii) has not served on the board for more than nine years from the date of his first election ; and
- (ix) does not hold cross-directorships nor have significant links with other directors through involvement in other companies or bodies.

15.4.2.2 The above mentioned criteria for establishing the independent status of an independent non-executive director are not intended to be exhaustive, but should be considered as examples of some of those

relationships or circumstances which may impair, or appear to impair, an independent non-executive director's independent judgment.

16 Nominee Directors

- 16.1** These are directors who are nominated by key stakeholders (such as, Government or core investors) to the boards of PSEs. They may be executive directors or non-executive directors.
- 16.2** Nominee directors serve to render the boards of PSEs more professional. Accordingly, they should be drawn from the members of the public, technocrats, management experts and consultants, and professional managers in industry and trade, and members of the academia with high degree of proven ability, integrity, and credibility.

17 Appointment and Removal of Directors

- 17.1** The performance of a PSE depends on the capabilities and performance of its board. It is therefore imperative that when appointing directors, Government should ensure that the board is properly constituted. In this regard, the board should, at all times, comprise of individuals with ability, integrity, credibility, accountability, competence, relevant and complementary skills, experience and expertise. This is aimed at avoiding possible dominance by any one director or groups of directors and, above all, ensuring commitment to the success of the PSE.
- 17.2** Each director's appointment should be in writing and for a definite term. The Government may, however, at its discretion remove a director prior to the completion of his term of office.
- 17.3** In the event of a PSE not performing satisfactorily, the Government may initiate prompt remedial action, including dismissal of the directors of the PSE. Provided that nothing herein shall be deemed to warrant a wholesale dissolution of the board of directors of any PSE by the Government.
- 17.4** For the avoidance of doubt, wholesale dissolution of the boards of PSEs before the end of their term of office is hereby specifically discouraged and/or disallowed because it denies the boards the stability, continuity and experience which staggered board retirements provide.

17.5 Board continuity is fundamental to the success of PSEs, and this requires that continuous skills identification process is undertaken by the chairman of the board and the governance committee.

17.6 A former CEO or executive director of a PSE should not be subsequently appointed its chairman or non-executive director until after five years after his exit, during which period he should not be known nor seen to have continued to exercise surreptitious influence or dominance over the PSE board or executive management. Such continued influence or dominance may vitiate any disengagement cool-off period provided by this Code.

18 Directors' Induction and Development

18.1 The Board should ensure the establishment of adequate induction and training programmes for new and existing directors respectively.

18.2 The chairman, assisted by the PSE secretary, should ensure that induction programmes expose new directors to the PSE's operational activities, the industry in which the PSE operates, all relevant issues prevalent in the environment, and the roles and responsibilities of the directors of the PSE.

18.3 Continuing education programme for directors should assist the directors in developing their skills and capabilities while ensuring that they are up-to-date on emerging issues within the PSE's business and operating environment.

19 Performance Evaluation

19.1 The board should on an annual basis and as the circumstances of the PSE may determine, review its size, mix of skills, expertise and experience and other qualities in order to measure its performance levels in relation to the requirements of the Government or its owners. In this regard, the performance of the entire board, its committees, the chairman, the chief executive officer and each individual director should be evaluated.

19.2 The performance evaluation should seek to measure the extent of achievement by the board as whole and individual board members, of the set performance objectives and targets of the PSE, which include Government objectives, using key performance indicators developed for this purpose.

19.3 The performance evaluation should be overseen by the governance committee of the PSE.

19.4 At least once every three years, the performance evaluation should be conducted by an independent external consultant, not being the external auditors of the PSE concerned.

19.5 Results of the performance evaluation should be communicated and discussed by the board. Results of individual director's evaluation should be discussed with the director separately by the Chairman. The evaluation should also be utilised in determining the re-appointment of directors and instrumental in developing appropriate induction programme for new directors and training programmes for existing directors.

20 Remuneration of Directors

20.1 The Board should establish formal and transparent policies and procedures for the determination and approval of the remuneration of executive and non-executive directors.

20.2 In determining remuneration packages, the governance committee should ensure that:

- (a)** executive directors including the CEO should not be involved in the determination of their remuneration;
- (b)** the CEO and executive directors should not receive sitting allowances, directors' fees or other benefits paid or extended to non-executive directors in relation to board and committee meetings of the PSE in which they are employed; and
- (c)** the remuneration of non-executive directors should comprise directors' fees, sitting allowances, travel, hotel and reimbursable expenses as well as other related benefits.

21 Board Committees

21.1 The board should determine the extent to which its duties and responsibilities should be undertaken through committees. It should determine the number and composition of such committees, ensuring that each comprises of directors with relevant skills and competencies and that its members are able to devote sufficient time to the committee's work.

21.2 The board should delegate certain of its functions to well-structured committees, but without abdicating its own responsibilities. The

membership of board committees should be reviewed and reconstituted at most every three years.

21.3 Every PSE should have at least the following board committees:

- (a) Audit and Risk Management Committee;
- (b) Finance and General Purpose Committee; and
- (c) Governance Committee.

21.4 A Charter should be established and approved for each committee of the board. The board shall spell out therein the terms of reference of such committees.

21.5 The chairman of the board should not sit on any board committee.

21.6 The PSE secretary, or any other officer in the office of the PSE secretary, shall be the secretary of all board committees.

21.7 Minutes of meetings of board committees should be prepared and sent to members of such committees on a timely basis, and thereafter to members of the full board also on a timely basis.

21.8 Minutes are a record of what transpired at a meeting. Minutes should therefore not be written for meetings not actually held.

22 Audit and Risk Management Committee

22.1 The Audit and Risks Management (ARM) Committee should comprise of non-executive directors, including independent non-executive directors, and should be independent of executive management of the PSE.

22.2 The chairman of the ARM committee should be an independent non-executive director. Executive Management can only attend ARM committee meeting on special invitation when the committee is considering purely audit matters as opposed to other risks.

22.3 The ARM Committee should comprise of individuals who collectively possess a good understanding of internal controls, finance and financial reporting. At least one of the members of the committee must have sound and current knowledge of accounting and financial management.

22.4 Members of the ARM Committee should receive appropriate information; advice and training to enable it carry out its role effectively.

- 22.5 The ARM Committee should be responsible for audit, internal control and risk management of the PSE.
- 22.6 Ensure that Information Technology assets are managed effectively.
- 22.7 Review the PSE's Information Technology governance framework at least annually

23 Finance and General Purpose Committee

- 23.1 The Finance and General Purpose (F&GP) Committee should comprise of non-executive directors, including independent non-executive directors, and the executive director in charge of finance and administration in the PSE.
- 23.2 The chairman of the F&GP committee should be an independent non-executive director.
- 23.3 The F&GP Committee should be responsible for strategy and planning, financial management, monitoring performance, procurement and other administrative matters.

24 Governance Committee

- 24.1 The Governance Committee should comprise of only non-executive directors, a majority of whom should be independent non-executive director.
- 24.2 The chairman of the committee should be an independent non-executive director.
- 24.3 The Governance Committee should be responsible for nomination and appointments, succession planning, remuneration, board evaluation, governance and human resources.

25 Meetings

- 25.1 The Board of a PSE and its committees should have a formal annual calendar and meet at least once every quarter, subject to a maximum of eight meetings respectively in a year.
- 25.2 All the directors should be issued with the formal annual calendar and receive notice of board or committee meetings, including the agenda and other board papers, at least seven days prior to the date of the meeting.

- 25.3.** The Chairman in consultation with other members of the board should develop and agree the Agenda for board meetings.
- 25.4.** Board members should receive relevant, accurate, and timely information in a form and of a quality that enables the board to discharge its duties effectively.
- 25.5.** Every director should endeavour to attend all board and committee meetings. Attendance should be an important consideration for re-nomination or reappointment.
- 25.6.** Where the quorum for a board meeting is not specified in the enabling instrument establishing the PSE, a quorum should be set by the board taking into account the need to have a majority of non-executive directors in attendance at meetings. In the case of committee meetings, the quorum for such meetings shall be set by the board when such committees are being established.
- 25.7.** Non-executive directors may have separate meetings, at no cost to the PSE, without the executive directors in attendance to discuss crucial matters in the best interest of the PSE, which are of serious concern to the non-executive directors.
- 25.8.** Accurate minutes of meetings of the Board and its committees should be maintained by the secretary of the PSE or the designated officer performing that function.
- 25.9.** The board should ensure that it receives adequate and timely feedback on the work of its committees and is able to consider their decisions formally. A written summary of each committee's deliberations should be provided by the respective chairmen at the board meeting following the committee meeting. The minutes of committee proceedings should be circulated to all board members as soon as they have been approved by the respective committees or the board.
- 25.10.** Minutes are a record of what transpired at a meeting. Minutes should therefore not be written for meetings not actually held.

26. Board and Government Relationship

- 26.1.** The relationship between the Government and PSEs' boards should be governed by the board mandate. The Government should monitor closely the extent to which the board as a whole and individual director achieve the objectives and any specific performance targets set, and when necessary, effect any remedial action.

- 26.2.** The Government is responsible for the appointment and removal of directors from the board. The board is responsible for the PSE and accountable to the Government. Accordingly, the board and each individual director should act in the best interests of the PSE and the Government.
- 26.3.** The board should keep the Government sufficiently informed on the PSE on a timely and regular basis. The board should ensure that the Government is furnished with sufficient and timely information concerning the date, location and agenda of general meetings as well as full and timely information regarding the issues to be decided at such meetings to enable any Government input, if necessary.
- 26.4.** The board should, when reporting to the Government, present a balanced and understandable assessment of the PSE's position. This requires that the quality of information be based on guidelines of openness and with substance taking precedence over form, while addressing material matters of significant interest and concern to the Government and other stakeholders.
- 26.5.** In view of the complex nature of the relationship between Government as shareholder and the PSE boards on the one hand, and the need for an effective, independent and competent board, on the other, it is imperative that the Government's ability to issue directives regarding the board's day-to-day activities should be in writing and subject to clearly defined limits.

27. Board and Stakeholder Relationship

- 27.1.** Government should fully recognise the PSEs' responsibilities towards stakeholders and request that they report on their relations with stakeholders.
- 27.2.** PSEs should acknowledge the importance of stakeholder relations for building sustainable and financially sound Entities. Stakeholder relations are particularly important for PSEs as they may be critical for the fulfilment of entity obligations whenever these exist.
- 27.3.** Governments and PSEs should recognise and respect stakeholders' rights established by law or through mutual agreements.
- 27.4.** PSEs pursuing important public policy objectives, should report on stakeholder reaction and involvement.
- 27.5.** The board of PSEs should be required to develop, implement and communicate compliance programmes for internal codes of ethics. These codes of ethics should be based on acceptable norms, in

conformity with international commitments and apply to the PSE and its subsidiaries.

28. Directors' Report

28.1. In addition to its financial statements, every PSE should prepare a directors' report which should contain the following:

- (a) an outline of the PSE's structure, and comparison with the prior period if any significant changes have been made;
- (b) a review of the financial performance over the past year;
- (c) information related to internal and external factors influencing PSE performance, stressing risks and opportunities and strategies to manage them;
- (d) significant events notified to the Government during the year;
- (e) any judicial proceedings involving the entity during the year, or likely to be filed during the coming year;
- (f) any significant post-balance sheet events that will have a material effect on the PSE performance in the coming year;
- (g) discussion of relations with stakeholders, with specific reference to any significant changes;
- (h) financial and other effects of directives from the Government.
- (i) description of social service obligations, with an assessment of their cost and likely impact on the PSE and beneficiaries.

Part D: Financial Matters

29. Internal Control Framework

29.1. The Board should ensure that an effective internal control framework is established in the PSE.

29.2. The effectiveness of internal control should be reviewed and tested regularly. The review should cover key control activities, including those related to financial, operational, budgetary, compliance and risk management.

30. Internal Audit Unit

- 30.1.** Internal audit is an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organization to accomplish its objectives by bringing systematic and disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.
- 30.2.** The Internal Audit Unit should be headed by a suitably qualified professional who can be registered by the regulator.
- 30.3.** The system of internal audit should be under the control and direction of the ARM committee. Accordingly, the Head of the Internal Audit Unit should report to the audit and risk management committee and have unrestricted access to both the chairman of the PSE and the chairman of the ARM committee.
- 30.4.** The internal audit unit should have a Charter written by and coordinated by the board.
- 30.5.** Internal audit should be provided with facilities that allow it to accomplish its responsibilities fully.
- 30.6.** The internal audit unit should comprise mainly of employees of the PSE, and should act independently of the external auditors at all times. Employees who work in the Internal Audit Unit should be fit and proper individuals and perform their internal audit work in accordance with the standards set by the Institute of Internal Auditors.
- 30.7.** The appointment and termination of the employment of the Head of the Internal Audit Unit of a PSE should be a matter for the audit and risk management committee and the board and notified to the Public Entities (Oversight) Committee of the Supervisory Authority.

31.0 External Audit Function

- 31.1** Auditing is the systematic process of obtaining, evaluating and reporting evidence on how well procedures or tested information satisfy previously established criteria. It is management, not the external auditors, who prepare the company's financial statements. The external auditors examine the underlying accounting assumptions, principles and procedures management has adopted, with board approval. To make the comparisons required by an audit, the auditor must examine not only the financial statements themselves but also the records on which they have been based and the PSE's system of internal controls, including internal audits.

- 31.2 The financial statements of a PSE must be audited annually by an external auditor appointed by the board of a PSE from a list of audit firms given to it by the Auditor General for the Federation.
- 31.3 The external auditor must observe the highest level of professional ethics, independence, and professional scepticism. The Auditor General must obtain documented confirmation of the Auditor that his professional independence was unfettered before, during and after the Audit.
- 31.4 Consultation between external and internal auditors should be encouraged to the extent that periodic meetings should be held to discuss matters of mutual interest and to understand respective methods and procedures. This is within the framework of mutual respect and professional independence.
- 31.5 The external auditor of a PSE may not provide consulting or any other non-audit services to that PSE that might impair, or appear to impair, auditor independence.
- 31.6 An external auditor or audit firm should not audit a PSE for more than five consecutive years.
- 31.7 The payment of audit fees should not be used by any PSE board to constrain or impair external auditor independence.
- 31.8 The Auditor General for the Federation must ensure that the audit fees payable to the external auditor by the PSE is paid by the board of the PSE without any hindrance after the completion of the audit.
- 31.9 In order to ensure independence:
- a) No retired partner of an audit firm should be appointed as a director of any PSE that had been, or still being audited by that firm, until five years after the disengagement of the firm from such audit and/or the disengagement of the partner from the firm.
 - b) No partner or employee of an audit firm should be employed by the PSE which the audit firm has audited until after a period of three years since the person ceased to be a partner or staff of the audit firm.

Part E: Stakeholder Issues

32. Code of Conduct and Ethics

- 32.1 The board of every PSE should develop and adopt a formal Code of Conduct and Ethics defining the standards of behaviour to which directors, management, employees and third parties doing business with the PSE are required to subscribe.
- 32.2 The Code of Conduct and Ethics should commit the board, management and employees of the PSE to the highest standards of behaviour and compliance with all relevant legislations and policies. It must be sufficiently detailed to give a clear guide on the expected behaviour.
- 32.3 Directors and management should be objective at all times, put the interest of the PSE above personal gains and avoid conflict of interest.
- 32.4 Directors should disclose any real or potential conflict of interest and be excused, by taking his leave, from discussions and voting on any matter in which they may have an interest.
- 32.5 Disclosure by a director of a real, potential or perceived conflict of interest, or a decision by the Board as to whether a conflict of interest exists, should be recorded in the minutes of that meeting.
- 32.6 A register containing director-related interests should be maintained by the PSE secretary.
- 32.7 Where it may conflict, or appear to conflict, with the director's role in the PSE, significant interest in political activity including office holding, elected positions, public appearances and candidature for election, undertaken in the last five years, should be disclosed and included in the register maintained by the PSE secretary.
- 32.8 Directors should not offer or accept any payment, bribe, favour, gift or inducement which might influence (or appear to influence) their official action or position.
- 32.9 All board members and employees of a PSE should attest to the Code of Conduct and Ethics on an annual basis to reinforce the expectation to act with integrity, the highest moral, ethical and professional standards in the conduct of the activities of the PSE.
- 32.10 Directors and management of PSEs should maintain very high standards of conduct with a commitment to the International Standards of probity and accountability. They should be guided by the general principles of conduct which underpin public life such

as selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

- 32.11 Nothing in this Code should be deemed to have precluded the board, management and staff of a PSE from complying with the provisions of Code of Conduct for Public Officers contained in the Fifth Schedule of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

33. Whistle-blowing

- 33.1** The objective of whistle-blowing is to encourage stakeholders to bring unethical conduct and illegal violations to the attention of an internal and/or external authority so that action can be taken to verify the ethical violation, apply appropriate sanctions and avoid a re-occurrence. This will minimize an organisation's exposure to the damage that can occur when internal or external mechanisms are abused or circumvented. It will also demonstrate to stakeholders the criticality of adherence to codes of conduct and ethics.
- 33.2** A whistle-blower is any person(s) including the employee, management, directors, customers, service providers, creditors and other stakeholder(s) of an organisation who reports any form of unethical behaviour or dishonesty to the appropriate internal authority or external regulators.
- 33.3** PSEs should have a whistle-blowing policy which should be known to employees, stakeholders such as contractors, customers, service providers, creditors, shareholders, job applicants and the general public. It is the responsibility of the board to implement such a policy and to establish a whistle-blowing mechanism for reporting any illegal or unethical behaviour, with or without the knowledge or involvement of the company's external auditors.
- 33.4** The whistle-blowing mechanism should be accorded priority and the board should also reaffirm continually its support for and commitment to the PSE's whistle-blower protection mechanism.
- 33.5** The whistle-blowing mechanism should include a dedicated telephone "hot-line", e-mail address and other electronic communication methods that could be used anonymously to report illegal or unethical practices.
- 33.6** The head of the internal audit unit should review reported cases and bring them to the notice of the ARM Committee.
- 33.7** The head of the internal audit unit should provide the ARM Committee with a summary of reported cases, cases investigated

the process of investigation and the results of the investigations to enable the ARM Committee notify the Public Entities (Oversight) Committee of the outcomes.

- 33.8** A whistle-blower is obliged to disclose any information connected with the activities of PSEs 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.
- 33.9** A disclosure is deemed to have been made in accordance with this section if the whistle-blower discloses to the appropriate internal authority of the PSE or external regulator provided that such disclosure, even if made anonymously, is:
- (a) in respect of matters which he believes to be true;
 - (b) reasonable;
 - (c) made in good faith; and
 - (d) can be investigated.
- 33.10** PSEs shall treat all disclosures resulting from whistle-blowing in a confidential manner. The identity of the whistle-blower, if disclosed, though it need not be disclosed, shall be kept confidential.
- 33.11** No PSE to which this Code applies shall subject a whistle-blower to any detriment whatsoever on the grounds that he has made a disclosure in accordance with the provisions of this Code.
- 33.12** Where a whistle-blower has been subjected to any detriment in contravention of the above provision, he may present a complaint to the regulator. This is without prejudice to the right of the whistle-blower to take other appropriate legal actions.
- 33.13** 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.

33.14 Any PSE which contravenes the provision of this section of the Code will be sanctioned appropriately.

33.15 For the purpose of this Code, the word “detriment” includes dismissal, termination, demotion, retirement, redundancy, undue influence, duress, withholding of benefits and/or entitlements and any other act that has a negative impact on the whistle-blower.

Part F: Transparency and Disclosure

34. Annual Reporting

Every PSE should publish an annual report within the time frame specified in its enabling instrument or, where there is no such provision in its enabling instrument, not later than six months from the end of the financial year covered by the annual report.

35 Objective Reporting

The report should provide an objective, balanced and understandable account and assessment of the PSE’s business and operations, achievements, financial statements, operating performance and performance prospects.

36 Accuracy of Records

36.1 The boards of every PSE should ensure that it maintains complete and accurate financial and operational records at all times.

36.2. Where it is deemed appropriate, the Regulator may appoint an accountant or a firm of accountants to undertake a technical investigation of the affairs of any PSE whose financial statements – whether audited or not – the regulator has official responsibility to approve.

37 Effective Communication Policy

The board of every PSE should commit to openness and transparency in all of its business operations. Accordingly, every PSE should develop a standard policy of openness, and take steps to ensure that the public is aware of its provisions. PSE’s communication to stakeholders should be balanced, understandable, transparent and timely.

38 Disclosures

The annual report should contain disclosures on the following issues:

38.1 Governance and Board Oversight

- (a) A statement on the organisational structure of the PSE and its key objectives.
- (b) Chairman's statement on the PSE's performance for the period under review; information relating to internal and external factors influencing its performance, including risks and opportunities; strategies to manage the identified risks and opportunities.
- (c) Chairman's categorical Statement in the Annual Report as to whether the Board's expectation has been met, and the prospects for the future.
- (d) The roles and responsibilities of the board including matters which are reserved for the board and those delegated to management.
- (e) Composition of the Board of directors stating individual names, biographies, directorial classification, and the tenure of each director at the date of the annual report.
- (f) The names of the directors considered by the board to be independent non-executive directors who should also annually declare themselves as such, the existence of any relationships contrary to the qualifications of an independent director and why the board considers such a director to be independent, notwithstanding the existence of these relationships.
- (g) The number and composition of board committees including a description of the roles and responsibilities of the committees.
- (h) The number of board and board committee meetings held, attendance at those meetings and the manner in which the board and its committees have discharged their duties.
- (i) Board appointment process including the reasons for the removal, resignation or retirement of directors.
- (j) Remuneration policy as well as the remuneration of board members and senior management as may be required by International Public Sector Accounting Standards (IPSAS) or International Financial Reporting Standards (IFRS).
- (k) Performance evaluation process for the board as whole, its committees and each individual director; as well as confirmation that performance evaluation for the year has been carried out.

- (l) Disclosure of the existence of the Codes of Conduct and Ethics, for directors and employees, including policies on whistle blowing, corruption, anti-bribery and facilitation payments.
- (m) Disclosures in the annual report of the number, the nature and sources (disclosing names wherever possible but, for example, from ‘distributors’ ‘employees’, etc) of reported cases of illegalities, improprieties or malpractices and how they were dealt with. Where there is none, this fact should also be stated.

38.2 Accounting

- (a) A statement of the director’s responsibilities in connection with the preparation of the financial statements.
- (b) Details of accounting policies adopted and reasons for changes in accounting policies.
- (c) Where the accounting policies applied do not conform to standard practice, the external auditor should express an opinion on whether they agreed with the departure and the reasons for such departure.
- (d) A statement from the directors that the business is a going concern, with supporting assumptions or qualifications where necessary.
- (e) Any significant post-balance sheet events that will have a material effect on the performance in the coming year.
- (f) Significant accounting policies must be disclosed in the notes to the financial statements.
- (g) Disclosures should be in line with IPSAS or IFRS as applicable.

38.3 External Audit

- (a) A statement from ARM committee on how it monitors the activities and independence of the external auditor.
- (b) Explanation from the audit committee on how, auditor objectivity and independence are safeguarded when they perform non-audit services.
- (c) Explanations should be provided for each significant non-audit service, or category of non-audit services, what the services are, why the ARM committee concluded that it was in the interests of the PSE to obtain such services from the external auditor (rather than another audit firm) and how auditor objectivity and independence have been safeguarded.

- (d) Justification where the Board does not accept the ARM committee's recommendation on the appointment, reappointment or removal of an external auditor; explaining the recommendation and the reasons for the Board decision.
- (e) Confirmation that both the Auditor General (Federation or State) and the relevant Public Entities (Oversight) Committee have been notified of the board's rejection of the Audit Committee's recommendation, with an explanation of the alternative proposal adopted.
- (f) Disclosures of the aggregate fees billed by the external auditor.
- (g) Disclosure of the aggregate tenure of the external auditor (years and months) at the end of the reporting period.

38.4 Risk Management and Control

- (a) An acknowledgement by the board that it is responsible for the PSE's system of internal financial control and for reviewing its effectiveness.
- (b) A statement on the effectiveness of the PSE's internal financial control systems.
- (c) In reporting on the effectiveness of internal control, PSEs should include in the annual report a statement to the effect that the framework of internal control they have established is both appropriate to the nature of the PSE and effective. The statement should outline the criteria against which the system is measured as well as the date on which the conclusion is made.
- (d) Assurances that effective internal audit function exists in the PSE and where there is none, sufficient reasons must be disclosed in the annual report with an explanation as to how assurance of effective internal processes and systems such as risk management, internal control etc will be obtained.
- (e) A statement that risk management, control and compliance system are operating efficiently and effectively in all respects, and how this was ascertained.
- (f) Disclosures on the PSE's risk management policies and practices including any undue, unexpected or unusual risks it has taken in the pursuit of reward as well as any material losses and the causes of the losses.

- (g) Disclosures of any current, imminent or envisaged risk that may threaten the long term sustainability of the PSE.
- (h) Disclosures of material - or immaterial but often repeated - regulatory penalties, sanctions and fines for contraventions or non-compliance with statutory or regulatory obligations that were imposed on the PSE or any of its directors or officers by any regulatory authority.

38.5 Conflict of Interest and Related Party Transactions

- (a) The Board should ensure that related party transactions are disclosed in the annual report. The disclosures should include the nature of the related party relationships and transactions as well as information about the transaction's financial magnitudes necessary to understand the potential effect of the relationship on the financial statements.
- (b) Related party disclosures should also include details of director's interest in contracts either directly or indirectly with the PSE or its affiliates. The details should include the name of the director, the nature, value and other details of the contract and the director's interest therein.
- (c) No member of 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 or senior management staff from that regulatory institution.

38.6 Sustainability

- (a) Acknowledgement of the PSE's wider social responsibility including such matters as environmental protection, issues related to climate change, etc.
- (b) Disclosures of the PSE's business principles and codes of practice and efforts towards implementation of same.
- (c) Description of the PSE's human resource policies, internal management structure and workplace development initiatives.
- (d) Description of the PSE's internal health and safety policies as well as disclosures of workplace accidents, fatalities and occupational and safety incidents against objectives and targets and a suitable explanation where appropriate.

- (e) Disclose the PSEs policies, plans and strategy of addressing and managing the impact of HIV/AIDS, malaria and other serious diseases on PSE's employees and their families.
- (f) Application, in the PSE's operations, of options with the greatest benefit or least damage to the environment, particularly for PSEs operating in disadvantaged regions or in regions with delicate ecology in order to minimize environmental impact of the PSE's operations.
- (g) The nature and extent of employment equity and gender policies and practices.
- (h) Disclosure of the conditions and opportunities created for physically challenged persons or disadvantaged individuals.
- (i) Disclosure of the PSE's contribution to the community.
- (j) Disclosure of the PSE's policies on corruption and related issues and the extent of compliance with such policies and the PSE's Code of Conduct and Ethics.

Part G: Corporate Governance in Ministries and Departments

39. Justification and Rationale

- 39.1. The global financial crisis directed special attention to PSEs as various governments were forced to re-examine their impact on national budgets and financial sector stability. This special focus gave prominence to government governance in which not only the reform and the restructuring of PSE boards were seen in many countries as a top priority, but also Government Ministries and Departments (M&Ds) that supervise them. Ministries and Departments are not-for-profit corporations but they appear to face similar challenges in terms of governance and management. In corporate governance, the private sector usually sets best practice standards. Governments all over the world sought to improve not only public sector entities performance, but also that of ministries and departments by emulating private sector practices with the expectation that by so doing, both M&Ds and PSEs will achieve similar outcomes and create impressive public value.
- 39.2. M&Ds in order to have effective controls over PSEs, must be business-like. They can only do this if they themselves conduct their business with the competence, knowledge and expertise associated with successful leaders in private business and commerce at home and across the world.
- 39.3. Good corporate governance is fundamental to any effective organization; hence it is an acceptable index of well-governed and managed entities.

- 39.4. The need to institute corporate governance in the public sector has become very critical, particularly in countries with serious corruption challenges, or are in the midstream of privatization processes: either way, corporate governance practices may constitute not only a deterrent to corruption, but also ensure that public assets are properly accounted for.
- 39.5. Good public sector governance should be entrenched in Nigeria by the development of governance systems in ministries and departments with emphasis on internal independent oversight that would result in enhanced quality of public services. This will enable citizens' appreciation of government ability to discharge its responsibilities and create commendable public value.

40. Derivable Benefits

40.1. Benefits Derivable by Ministries, Departments and Agencies

- 40.1.1. This public sector code seeks to promote corporate governance practices within Ministries and Departments and their stewardship over PSEs with emphasis on external contribution and oversight over strategy and implementation, the sort provided by independent non-executive directors in private governance. It also sets out both the remit and the composition of a recommended *Public Entities (Oversight) Committee (PEC)* to assist the ministry in its oversight over PSEs in a manner that a Group Board oversees the affairs of any of its subsidiaries.
- 40.1.2. The governance focus is on Ministerial Departments and the leadership role an overarching *Ministerial Management Committee (MMC)* should play in the activities of departments, and also in the activities of the Public Entities (Oversight) Committee (PEC). This Code recommends that each ministry supervising any PSE should establish a Public Entities (oversight) Committee (PEC).
- 40.1.3. The idea is to harmonize the role and functions of these Departments and make them business-like through drawing on the expertise and experience of the nation's business leaders and technocrats who should serve on these two committees as non-executive committee members to undertake robust ministerial engagement over critical government policies in the same manner non-executive directors do in the private sector governance.
- 40.1.4. The critical benefit of a balanced and diversified Ministerial Management Committee is to have non-executives from outside Government meeting with Ministers, Advisers, Senior Civil Servants and Senior Public Servants in purely advisory capacity with the objective of giving advice to Ministry and multiplying the options of government.

- 40.1.5. Ministries and Departments should be able to tap into the available expertise of accomplished citizens who would provide appropriate challenge and quality support to departments through their part-time membership of MMC, and in the process enhance the strategic and operational capacity of the departments.
- 40.1.6. This is the critical element in the differences between private sector and public sector governance – the ability of the Private Sector to have external robust input into strategy and policy implementation for the enhancement of shareholder and stakeholder value.
- 40.1.7. Policy formulation will still fall within the remit of the Honourable Ministers based on advice from both the Political Party and the Legislature. The MMC is *merely* to provide advice on strategy, operational methodology and effectiveness of policy proposals towards desirable outcomes. The Committee should also evaluate, as a ministerial support, departmental performance and challenge the departments on how well they have achieved their objectives, created public value, and engendered public trust.
- 40.1.8. The Ministerial Management Committee (*MMC*) would also have the responsibility to monitor and supervise the activities of its sub-committee, the Public Entities (Oversight) Committee (*PEC*), and its stewardship over reserve powers (not day-to-day routine matters) on which the PSEs supervised by the ministry need to consult with government.

40.2. **Benefits Derivable by the State**

- 40.2.1. Allowing knowledgeable, capable and qualified citizens and also competent non-governmental technocrats to join and assist Ministerial Management Committee - whose endowments may be limited to the expertise within it - should engender improved public value, openness, objectivity and greater public trust.
- 40.2.2. The general public would be able to follow the functioning of government machinery and its focus on policy making in which improved governance processes are central. Transparency of these processes has become globally essential towards proper accountability, responsibility, integrity, commitment and leadership.
- 40.2.3. High standards of corporate governance in M&Ds and PSEs, whether in the commercial or non-commercial sectors, are critical to ensuring positive contributions to the country's overall economic growth, efficiency and competitiveness. There are many initiatives to improve

Public governance towards performance-oriented management, external supervision and evaluation. *These are all deliverable by a Ministerial Management Committee (MMC), and its proposed sub-committee, Public Entities (Oversight) Committee.*

41. Composition and Remit of Ministerial Management Committee (MMC)

41.1 Composition

- 41.1.1 The MMC should be made up of the Honourable Minister(s), Permanent Secretary, Senior and Special Advisers, Departmental Directors and Heads of Units, Independent non-civil servants, the equivalent of independent non-executive directors in private sector corporate governance.
- 41.1.2. The Chairman of the MMC should be the Honourable Minister or another Committee member designated for this purpose by the Honourable Minister.
- 41.1.3. The MMC should determine its own size based on the needs of each Ministry.
- 41.1.4. Each Ministry should have a lead independent management committee member (a non-civil servant) who will meet regularly with other independent committee members to exchange views and ensure that the Honourable Minister is made aware of their concerns regarding the performance of each department or any person.

41.2. Remit

- 41.2.1 The MMC should operate according to recognized global principles of good corporate governance with the focal remit being performance, delivery, and strategic leadership.
- 41.2.2 Members of the MMC should be guided by the general principles of conduct which underpin public life such as leadership, selflessness, integrity, objectivity, accountability, openness and honesty.
- 41.2.3 The MMC is to advise on the strategic implementation of policy and ensure decisions are based on a collective understanding of issues, allowing outside perspectives to rigorously challenge Departments on expected outcomes.

- 41.2.4 The MMC should agree operative budget plans, including strategic aims and objectives, the monitoring of performance against plan, and the setting of Departmental standards and values.
- 41.2.5 The MMC should ensure the commercial viability of government projects and programmes, with sound financial management. It should also ensure the setting of Departments' risk appetite, and that controls are adequate to manage identified and potential risks.
- 41.2.6 The MMC has the responsibility to ensure Departments have the capacity to deliver expected outcomes.
- 41.2.7 The MMC should carry out the evaluation of its members and plan for succession, with Ministerial concurrence and directives.
- 41.2.8 The MMC should ensure periodic, clear, consistent, comparable, genuine performance information reconcilable with the Departmental Annual Report.
- 41.2.9 The MMC should ensure, as part of public service transformation, that M&Ds are made to provide an Integrated Annual Report (like the Annual Report in the Private Sector) to cover both expenditure and service delivery with clear emphasis on verifiable achievements.
- 41.2.10 The MMC is to ensure that Departments have high regard for environmental, social and governance issues and that these are reflected in the Integrated Annual Report.
- 41.2.11 The MMC should establish a sub-committee to be known as *Public Entities (Oversight) Committee (PEC)* with the responsibility for ministerial oversight of PSEs supervised by the Ministry. This is not for the purposes of day-to-day administration - which should be left for the PSE's management- but for supervisory matters over which government has reserve powers.
- 41.2.12 The MMC should ensure good governance in its Ministry in a manner that will enable Nigeria to be perceived as a good investment destination, and a well-regulated and reliable economy in which to do business.
- 41.2.13 The MMC should avoid and not recommend to government wholesale dissolution of boards of PSEs except in circumstances where the committee is of the view that the entire board has not conducted its affairs with the general principles of good governance, and it is tainted with incompetence, fraud and negative public trust.

42. Composition and Remit of Public Entities (Oversight) Committee (PEC)

42.1 Composition

42.1.1 The Public Entities (Oversight) Committee (PEC) should have a balance of skills and experience necessary to fulfil its supervisory responsibilities over the PSEs supervised by the Ministry. This means that civil servants conversant with the intricacies of the policy issues related to the PSEs must be members of the Committee. The roles and responsibilities of all committee members should be clearly defined by the Ministry's sub-committee operating framework. This committee should be resident in, and operative from, the Ministry.

42.1.2. The PEC should comprise:

- The Honourable Minister or Minister of State (as Chairman)
- The Permanent Secretary (delegated as Chairman in the absence of any of the Ministers mentioned above)
- Ministerial Advisers (may be delegated as chairman by the Minister)
- Departmental Directors/Heads of Units
- Managing Director & Chief Executive Officer of the PSE concerned
- At least one independent non-executive director of the PSE concerned
- Any other person(s) from the commercial private sector, with competence and experience of organisational complexity appointed on merit by the Minister.

42.2. Remit

42.2.1 PEC does not decide policy or exercise the powers of the Minister. The Ministry's Policy or reserve powers are matters for the Minister on advice by officials.

- 42.2.2 Where the Honourable Minister or the Minister of State is unavoidably absent, the decisions or recommendations of PEC on any reserved policy matters (not day-to-day) should be communicated to the Honourable Minister by the Permanent Secretary for approval.
- 42.2.3 It is the responsibility of the Permanent Secretary to obtain such approval or disapproval of the Minister within a reasonable time in a manner that the time frame of obtaining response would not defeat, frustrate or negate successful outcomes at the PSE, thus tantamount to a dereliction of duty.
- 42.2.4 It is the responsibility of independent non-executive directors of the PSE, with no career overhang, to bring any such dereliction of duty directly to the notice of the Honourable Minister or to the Presidency – to whom they are ultimately responsible – where the Honourable Minister appears unable to deal with it.
- 42.2.5. The Public Entities (*Oversight*) Committee should ensure that arrangements are in place to enable PSE Boards discharge their responsibilities effectively, including the establishment of an *Oversight Charter* that will modulate the relationship between the Ministry and the boards of the PSEs supervised by it.
- 42.2.6 The Oversight Charter should set out with vivid clarity:
- 42.2.6.1 formal procedures for the appointment of new board members, tenure and succession planning for both board members and senior officials;
 - 42.2.6.2 time-frame for responding to PSE Board's requests for clarification and directions over government reserve powers
 - 42.2.6.3 procedures for induction on joining the board and the medium for regular updates to keep board members' skills and knowledge up-to-date;
 - 42.2.6.4 timely provision of government information in a form and of a quality that enables the board to discharge its duties quickly and effectively; and
 - 42.2.6.5 procedures for formal and rigorous annual evaluation of the board's performance and that

of its committees, and of individual board members;

43. Ministerial Responsibilities and Accountabilities

Nothing in this Code is intended to disturb or change the principal responsibilities and accountabilities of Ministers. Ministers, even though not accounting officers of their ministries, nevertheless lead their Ministries and are responsible for the actions and policies of such Ministries. The provisions of this Code are therefore only intended to support and assist Ministers, their Advisers, Ministries, Departments and Agencies (MDAs) conduct the affairs of government on behalf of the citizens.

Part H: Miscellaneous Matters

44. Commencement

- 44.1.** This Code shall come into force on 1st, 2015 and every PSE to which it applies is expected to comply with it in respect of the financial year **ending** after that date.
- 44.2.** From the date of commencement of this Code, it supersedes any public governance code in force in Nigeria before that date

45. Transitional Arrangements

46. Definitions

46.1 In this Code, unless the context otherwise requires:

- 46.1.1** “chief executive officer” means an officer of a company, who has been designated as such by it;
- 46.1.2** “close family member” means those persons who may be expected to influence, or be influenced by, that person in his dealing with a company;
- 46.1.3** “director” means a director appointed to the board of a PSE or Ministry or Department;
- 46.1.4** “regulator” means the Financial Reporting Council of Nigeria, or any other sectoral regulator officially recognised by the Financial Reporting Council for the purposes of this Code.

46.1.5 “related party” means a person or entity that is related to any company subject to this Code; and

46.1.6 “substantial shareholder” means a shareholder whose shareholding, directly or indirectly, exceeds 0.1% of the company’s paid up capital.

46.1.7 ”supervising authority” means any government ministry, establishment or office that has oversight function over the PSE.

46.2 In this Code:

46.2.1 words importing the masculine gender include females; and

46.2.2 words in the singular include the plural and words in the plural include the singular.

46.3 In construing any fraction resulting from any provisions of this Code:

46.3.1 where the fraction results from the use of the expression “less than”, the figure should be rounded-up; that is to say, the fraction should be rounded off as one; and

46.3.2 where the fraction results from the use of the expression “more than”, the figure should be rounded-down; that is to say, the fraction should be disregarded.