Alsec Nominees Limited

Public Interest Entities and Corporate Governance Compliance in Nigeria:

Understanding Obligations Under the FRCN Act and the Nigerian Code of Corporate Governance 2018

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Corporate governance regulation in Nigeria has evolved significantly over the last decade, particularly with the strengthening of the regulatory mandate of the Financial Reporting Council of Nigeria ("FRCN") and the issuance of the Nigerian Code of Corporate Governance 2018 ("NCCG 2018" or the "Code"). These instruments impose enhanced governance obligations on entities classified as Public Interest Entities ("PIEs"), reflecting the heightened accountability expected from organisations whose activities have substantial economic, financial, or social impact.

Although the Code adopts an "Apply and Explain" approach, the obligations imposed on PIEs are not merely aspirational. Rather, they form part of a binding regulatory regime established under the Financial Reporting Council of Nigeria Act, 2011 (as amended) (the "FRCN Act"), and are intended to promote transparency, accountability, and disciplined Board supervision in entities whose operations affect a broad range of stakeholders.

A significant number of organisations underestimate the breadth of the PIE framework and the governance obligations that accompany it. In practice, governance compliance issues often arise not because an entity deliberately disregards its obligations, but because it has not fully appreciated that it falls within the scope of the framework. As regulatory scrutiny continues to increase, organisations are expected not only to comply with governance requirements but also to demonstrate that such compliance is embedded within their governance culture and decision-making processes.

This article examines the meaning of a PIE under the current regulatory regime and highlights the principal duties imposed on such entities under the FRCN Act and the NCCG 2018.

Definition of Public Interest Entity Under the FRCN

The classification of an entity as a PIE is central to determining the applicability of the NCCG 2018. Following the amendments to the FRCN Act and subsequent regulatory guidance issued by the FRCN in 2023, a PIE is broadly defined as any organisation whose operations are considered to have significant public relevance due to the nature, size, or scale of its activities.

PIEs typically include publicly listed companies, entities regulated by statutory regulators, and organisations that hold assets in a fiduciary capacity for a broad group of stakeholders. In addition, large private companies that meet the prescribed turnover threshold of ₦30 billion or more, or whose activities are subject to oversight by sector regulators, such as the financial, telecommunications, energy, insurance, or pension regulators, are treated as PIEs for governance purposes.

The effect of this classification is that such entities are required to comply with the corporate governance standards issued by the FRCN, including the NCCG 2018.

Determining whether an organisation qualifies as a PIE is not always straightforward. While certain entities clearly fall within the category by virtue of their listing status or regulatory oversight, the position can be less obvious for large private companies, group structures, and entities operating across multiple regulated sectors. Accordingly, organisations should periodically assess their status against the evolving regulatory framework to ensure that governance obligations are properly identified and addressed.

The Legal Status of the Nigerian Code of Corporate Governance 2018

The NCCG 2018 was issued pursuant to the powers conferred on the FRCN under the FRCN Act to develop and enforce corporate governance principles for PIEs. Although the Code is not drafted as primary legislation, it derives its authority from statute and is therefore binding on entities within its scope.

Unlike earlier governance codes that operated on a voluntary or sector-specific basis, the NCCG 2018 introduced a unified framework applicable across industries, subject to the “Apply and Explain” principle. This principle requires entities to apply the governance standards set out in the Code and to provide clear explanations of how those standards have been implemented in practice.

It is important to emphasise that “Apply and Explain” does not permit an entity to disregard the Code. Rather, it allows flexibility in how the principles are implemented, provided that the entity can demonstrate that the objectives of good governance have been achieved.

For PIEs, the emphasis is not merely on compliance with governance requirements, but on demonstrating how governance arrangements contribute to effective oversight, accountability, and sustainable organisational performance.

Why Directors Should Care

The governance obligations applicable to PIEs are not merely regulatory requirements; they are increasingly viewed as indicators of organisational effectiveness, accountability, and long-term sustainability. Governance arrangements are routinely scrutinised during regulatory inspections, financing transactions, mergers and acquisitions, and investor due diligence exercises. Consequently, weak governance practices may expose an organisation to regulatory sanctions, reputational damage, reduced stakeholder confidence, and increased operational and strategic risk.

For directors, governance compliance should therefore be viewed not simply as a regulatory obligation, but as a critical mechanism for promoting sound decision-making, strengthening organisational resilience, and safeguarding the long-term interests of the organisation and its stakeholders.

Board Composition and the Role of Independence

A fundamental requirement under the NCCG 2018 is that the Board of a PIE must be properly constituted to ensure effective oversight of management. The Code emphasises the need for a balanced Board comprising Executive Directors (“ED”), Non-Executive Directors (“NEDs”), and Independent Non-Executive Directors (“INEDs”).

INEDs play a critical role in promoting objectivity, protecting minority interests, and ensuring that Board decisions are taken in the best interests of the company as a whole. The Code sets out criteria for determining independence, including restrictions relating to tenure, prior employment, financial relationships, and material interests in the company.

For PIEs, the inclusion of INEDs is considered an essential element of good governance and forms part of the minimum expectations under the Code.

The Code also requires a clear separation between the oversight function of the Board and the executive management of the company. In particular, the roles of Chairman and Chief Executive Officer (“CEO”) must not be combined in the same individual. This separation is intended to prevent undue concentration of power and to strengthen the ability of the Board to exercise independent judgment.

In practice, many Nigerian companies use the combined designation of Managing Director (“MD”) and CEO for the head of management. The Code does not prohibit the designation of one individual as MD/CEO, provided that the position of Chairman remains separate and non-executive. Companies may, however, choose to separate executive roles further where their internal governance structure or operational complexity makes such separation desirable.

Board Committees and Governance Structures

Effective corporate governance requires that the Board be supported by committees responsible for key oversight functions. The NCCG 2018 provides that PIEs should establish committees for audit oversight, risk management, nomination and governance, and remuneration matters.

These committees are not intended to create unnecessary bureaucracy, but rather to ensure that specialised issues receive adequate attention and independent review. The Code recognises that companies differ in size, ownership structure, and operational complexity. Accordingly, it allows some flexibility in the way committees are structured. In appropriate circumstances, certain committees, such as the audit and risk committees or the nomination and remuneration committees, may be combined, provided that all core oversight responsibilities are properly discharged.

What is required is not strict uniformity, but a Board architecture capable of supporting financial reporting oversight, risk review, board appointments, and executive compensation decisions.

The Code also encourages committees with significant oversight responsibilities, particularly those dealing with audit, governance, and remuneration, to be composed primarily of INEDs, and requires the remuneration committee to be chaired by an INED to enhance credibility and objectivity.

The Role of the Company Secretary

An often overlooked but critical component of sound corporate governance is the role of the Company Secretary. Under the NCCG 2018, the Company Secretary serves as the principal governance adviser to the Board and plays an important role in supporting Board effectiveness and regulatory compliance. In practice, the Company Secretary assists with Board and committee administration, statutory reporting, director induction and training, maintenance of statutory records, and the implementation of policies and procedures. For many PIEs, the Company Secretary acts as the central point of coordination for Board-related activities and serves as a key liaison between the Board, management, regulators, and other stakeholders.

Governance Reporting and Disclosure Obligations

One of the most significant features of the NCCG 2018 is the emphasis placed on transparency. PIEs are expected to provide detailed disclosure of their governance practices in their annual reports and other public filings.

These disclosures typically cover Board composition, independence status, committee structure, attendance records, remuneration governance, risk management systems, whistleblowing arrangements, and the results of Board evaluations. The purpose of these disclosures is to allow shareholders, regulators,

and the public to assess whether the company is being managed in a responsible and accountable manner.

Under the “Apply and Explain” framework, the quality of disclosure is as important as the governance structure itself. Entities are expected to explain how the governance practices adopted by the organisation have been applied in a manner that delivers the intended outcomes of the relevant principles of the Code. The emphasis is therefore not merely on the existence of governance structures, but on demonstrating how those structures support effective oversight, accountability, transparency and sustainable corporate performance.

Additional Governance Expectations for Public Interest Entities

Beyond Board structure and reporting, PIEs should maintain governance arrangements that support accountability at all levels of the organisation. This includes regular evaluation of the Board and its committees, defined tenure limits for INEDs, formal risk management and internal control systems, whistleblowing mechanisms, succession planning, and documented policies governing the conduct of directors and senior management.

These expectations reflect the fact that PIEs operate in environments where governance failures can have consequences that extend beyond the company itself, affecting investors, employees, creditors, and the wider economy.

For this reason, regulators increasingly expect PIEs to demonstrate not only formal compliance but also a genuine commitment to sound governance practices.

Additional Compliance Obligations Applicable to Public Interest Entities

In addition to the structural requirements prescribed under the NCCG 2018, entities classified as PIEs are subject to a number of continuing duties arising from the FRCN Act and the NCCG 2018. These requirements go beyond Board composition and committee structure, and call for formal internal processes, periodic reporting to the regulator, and continuous monitoring of internal control and risk management practices.

One of the key duties imposed on PIEs is the requirement to maintain documented policies consistent with the principles of the Code. In practice, this includes policies relating to Board charter, committee charters, remuneration, risk management, internal control, whistleblowing, code of business conduct, succession planning, and engagement with relevant stakeholders. The existence of these policies is not merely

a matter of best practice, but forms part of the control environment expected in entities whose activities have a significant public impact.

PIEs are also expected to implement a robust system of internal control over financial reporting. In recent years, the FRCN has placed increased emphasis on the need for entities within its regulatory scope to demonstrate the effectiveness of their internal control environment. Consistent with this objective, the FRCN has issued guidance on the assessment, reporting, and assurance of Internal Control over Financial Reporting ("ICFR"). The purpose of this framework is to promote reliable financial reporting and to ensure that financial statements are supported by appropriate processes, adequate documentation, effective risk management practices, and robust oversight mechanisms.

Another important compliance obligation is the filing of the Corporate Governance Compliance Report. PIEs are required to prepare and submit this report to the FRCN within three months after the end of the financial year. Failure to comply with this requirement attracts a penalty of ₦2,000,000 for each outstanding reporting year and ₦5,000 for each day of default in respect of the current year. Given these obligations, governance reporting is increasingly viewed as an ongoing governance function rather than an annual filing exercise.

In addition, PIEs are required to pay annual dues to the FRCN as part of the regulatory framework established under the FRCN Act. The payment of these dues is linked to the entity's status as a regulated or public interest organisation and forms part of the Council's statutory oversight function. Failure to comply with this requirement may expose the entity to regulatory sanctions.

The Code also places emphasis on the continuous development of directors and senior management. PIEs should ensure that members of the Board receive periodic training to enable them to discharge their responsibilities effectively. This includes training on corporate governance, regulatory developments, risk management, financial reporting, and industry-specific issues. The objective is to ensure that the Board remains competent, informed, and capable of providing independent and informed supervision in a constantly evolving regulatory environment.

Another area of growing importance is stakeholder engagement. The NCCG 2018 recognises that PIEs operate within a wider ecosystem that includes shareholders, employees, regulators, host communities, creditors, and the public. Companies should therefore maintain structured communication channels and take relevant interests into account in their decision-making processes. This expectation is particularly relevant for entities operating in sectors where business activities may have significant economic, environmental, or social consequences.

The FRCN also retains powers to monitor compliance with the Code and the Act. Under the regulatory framework issued pursuant to the FRCN Act, the Council may request information, review governance reports, and assess whether a PIE has properly applied the principles of the Code. Where deficiencies are identified, the Council may require corrective action, issue directives, or impose administrative sanctions in accordance with its enabling law and applicable rules. These monitoring powers reinforce the position that compliance with the NCCG 2018 is not merely declaratory, but subject to regulatory scrutiny.

Taken together, these requirements demonstrate that classification as a PIE entails a continuing responsibility to maintain a formal, well-documented compliance structure supported by sound internal controls, transparent reporting, and regular engagement with the regulator.

Conclusion

The governance obligations applicable to Public Interest Entities are no longer limited to the formal adoption of policies or the existence of Board structures. Under the FRCN Act and the NCCG 2018, PIEs are expected to demonstrate that governance principles are actively embedded in their decision-making processes, reporting systems, internal controls, and stakeholder engagement practices.

As regulatory scrutiny and stakeholder expectations continue to increase, PIEs should treat compliance with the Code as a continuing responsibility rather than an annual filing exercise. This requires periodic assessment of PIE status, timely regulatory reporting, active Board supervision, director development, documented policies, and reliable internal control and risk management processes.

Ultimately, the most prudent approach for any organisation that falls within the PIE regime is to move beyond technical compliance and cultivate a Board culture that supports transparency, accountability, resilience, and sustainable performance. Doing so not only reduces regulatory risks but also strengthens confidence among shareholders, regulators, investors, employees, creditors, and the wider public.