ESG FOR **NIGERIAN CORPORATES:** **KEY OBLIGATIONS OF BOARDS OF DIRECTORS**

The existence and operations of businesses globally have evolved in recent times due to social unrest manifested in different forms ranging from terrorism, mass killings, bomb blasts etc., natural disasters occasioned by climate change and man-made disasters such as flooding, earthquake, deforestation etc., changes in economic policies, increase in inflation rates and so on. More recently, the COVID-19 pandemic has aggravated certain factors in the business climate for corporates and this has led to the development of more drastic and innovative approaches to ensure these businesses continue to thrive in the face of global economic and social headwinds.

The foregoing has prompted the inclusion of ESG in the discourse for many corporates. ESG is the acronym for **Environmental, Social, and Governance**. ESG represents the three broad categories or areas of interest for a novel category of investors called "socially responsible investors". These are investors who consider it important to incorporate their values and concerns into their selection of investments instead of solely considering the potential profitability and/or risk presented by an investment opportunity.

Within the three elements of ESG highlighted above are specific concerns which may or may not arise, depending on the type of investment being considered. For instance, under the "Environmental" category, concerns such as air or water pollution, waste generation & recycling, climate change, carbon emission, gas flaring, deforestation, energy efficiency etc. would be examined. While under the "Social" category, issues of community relations, employee engagement & labour standards, data protection & privacy, customer satisfaction, Gender and diversity inclusion, mental health and human rights would be considered. The "Governance" element, covers matters relating to Board composition, executive compensation, Whistleblowing schemes, Gender and diversity inclusion, political contributions, lobbying, hiring and onboarding practices, Bribery & Corruption etc. Cumulatively, these concerns are currently being incorporated into the investment process by socially responsible investors to gain fuller understanding of the companies they wish to invest in as the occasion demands, or by companies aiming to adopt a more ESG-friendly operational stance.

The Board of Directors is the highest governing body comprising individuals typically elected by the shareholders to represent their interests, set strategy, and oversee management. The Nigerian legal framework imposes general ESG obligations on Directors of corporates incorporated in Nigeria. Depending on the sector the business operates in, obligations may vary. The principal legislation which articulates the corporate entities and sets out the duties and responsibilities of Directors in this regard, is the **Companies and Allied Matters Act 2020 ("CAMA")**. The CAMA places fiduciary obligations on company Directors, and mandates them to, always act in the best interest of the company, further its business, promote the purposes for which it was formed and in doing so, should have regard to the impact of the company's operations on the environment in the community where it carries on business operations.[1]

The **Nigerian Code of Corporate Governance 2018 ("NCCG" or the "Code")** also described the Board as the link between stakeholders and a Company. The NCCG amongst other obligations also enjoins the Board of Directors to pay adequate attention to sustainability issues including environment, social, occupational and community health and safety concerns through the establishment of policies and practices addressing same including corruption matters.[2]

The NCCG further requires Board of Directors to adopt and implement a stakeholder management and communication policy to keep them conversant with the activities of the company and assist informed decision-making.[3] In the same vein, the Code also prescribes full and comprehensive disclosure of all material matters by the Board, to investors and stakeholders to engender good corporate governance practice.[4] Asides CAMA and the NCCG, other responsibilities of Directors, as prescribed by Nigerian law extend to host community relations for energy corporates, data privacy, staff welfare, whistleblowing.[5]

With the advent of the NCCG which replaced all existing sectoral Codes of Corporate Governance in Nigeria, the S**ecurities and Exchange Commission ("SEC" or the "Commission")** developed the **SEC Corporate Governance Guidelines ("SCGG" or the "Guidelines")** mandatorily applicable to listed companies[6]. The SCGG guides listed companies and their Boards on ESG-related matters. It prescribes that Boards whose shares are publicly traded are required to commit to transparent dealings and to the establishment of a culture of integrity and zero tolerance for corruption and corrupt practices. It also admonishes Directors not to engage in conduct likely to bring discredit upon the company, nor take advantage of company property or use such property for personal gain. In addition, directors are to keep confidential, information received during the exercise of their duties as such information remains the property of the Company and would be improper to disclose save where such information is required by law. It is imperative that corporates abide by these guidelines as the Commission maintains zero tolerance for non-compliance with these Guidelines as disclosed by the penalties for default or non-compliance.[7]

While it has been observed that Nigerian organisations are increasingly adopting ESG strategies as they set out to create value beyond capitalist perspectives, in practice, ESG principles could be difficult to self-monitor or implement. Nevertheless, being increasingly acceptable principles in boardrooms, globally, it becomes imperative for Nigerian Boards to fully understand their nature, scope and metrics, to ensure efficient and effective implementation.

In September 2020, the **World Economic Forum ("WEF")** in conjunction with the Big 4 – Deloitte, EY, KPMG and PwC developed a White Paper titled "**Measuring Stakeholder Capitalism Towards Common Metrics and Consistent Reporting of Sustainable Value Creation" (the "White Paper")**[8] to serve as the universal document defining common metrics for sustainable value creation, with the aim of assisting companies to improve the ways they measure and demonstrate their contributions towards creating more prosperous, and sustainable relationship with the planet. It also recognises that companies which hold themselves accountable to their stakeholders and increase transparency would be more viable and valuable in the long term. The metrics set out by the White Paper are summed under the principles of Governance, Planet, People and Prosperity which are aligned with the Sustainable Development Goals (SDG) and the principal ESG Domains. They are recommended for adoption to aid benchmarking of ESG compliance.

[1] Section 305(3) CAMA

[2] Principle 26 NCCG

[3] Principle 27 NCCG

[4] Principle 28 NCCG

[5] Labour Act, Nigerian Data Privacy Regulations, Environmental Impact Assessment Act, Petroleum Industry Act.

[6] Listed Companies are companies (usually public) whose shares are publicly traded on a securities exchange.

[7] https://sec.gov.ng/sec-corporate-governance-guideline-and-revised-form-01/

[8] https://www3.weforum.org/docs/WEF_IBC_Measuring_Stakeholder_Capitalism_Report_2020.pdf

Thus, how do Boards of Directors implement these ESG principles in their various Companies?

Firstly, it is critical to ensure that Boards are **EDUCATED** on ESG Principles. To exercise effective leadership and successfully discharge their ESG-related obligations, it is essential that Board members are adequately and accurately educated about these principles. The education required would include undertaking a comprehensive onboarding process which would involve a study of the Company's governance documents, Policies, Corporate Governance Manual, Code of Business Ethics, and other relevant documents. In addition, undergoing trainings and attendance of seminars setup for the knowledge of ESG should be encouraged. These will ensure that the Directors are fully equipped as far as ESG is concerned and can apply these principles to strategic decisions affecting the company. It is however prescribed that this education should be on a continuing basis to ensure that Directors are abreast of current realities within the business and ESG climes.

Secondly, Boards of Directors ought to **PREPARE** for the implementation of ESG, having been thoroughly educated on its principles. Boards as a matter of practice delegate some of their functions and responsibilities to committees to ensure efficiency and effectiveness. As a result, most Boards would have a Nomination and Governance committee (the "**Committee**") or any other committee which carries out the aforementioned functions. It is this Committee that has oversight on matters of Board appointments; formal induction and training of directors; development, review and approval of corporate policies and all governance documents of the company, executive management selection and performance appraisal, Board evaluation etc. It is at the meetings of the Committee that conversations on operationalisation of ESG core principles at all dimensions would commence and would be fully formed at the Board after all recommendations are presented for ratification or approval.

The next step required of Boards of Directors after preparation is to **MONITOR**. The Board, through the management of the company is enjoined to track attributes and requirements of ESG principles to ensure accountability and make sure risk and regulatory requirements are closely observed by the company. It is recommended that this function is outsourced to ESG consultants who are able to assess the company's performance from an objective standpoint.

Lastly, the Board is required to **ACT**. This would involve the Board matching the ESG principles to the company's long-term strategy, with same translated into smaller achievable strategic objectives, further broken down into KPIs and then cascaded down the business chain for implementation.

On a final note, while the steps articulated above, have been highlighted and recommended as the key obligations of the Board of Directors of corporates in ESG implementation, importantly, the Board of Directors itself, as a major player in ESG, particularly under the Governance element, should lead by example. The Board must ensure that it precisely practices the tenets of ESG such as ensuring diversity in gender outlook, experience and skill set, ensure its appointments are transparent and executed according to prescribed guidelines/codes, and amongst other matters, formal training for new members, while and all existing members undergo continuing education. Without execution of ESG obligations, Nigerian Boards of Directors and their companies are likely to attract regulatory backlash, reduced profitability, poor public perception, and dwindling investments.

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