

Government suspends the new Codes of Corporate Governance issued by the Financial Reporting Council of Nigeria



The Federal Government through the Minister for Trade, Investment and Industry has suspended the Code of Corporate Governance pending when some queries raised are answered.

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The Financial Reporting Council of Nigeria (FRCN), issued the Code of Corporate Governance for Private Sector in October 2016. Two other Codes were released to cover not for profit organisations and the public sector.

The Codes have now been suspended by the Federal Government through the Minister for Industry, Trade and Investment. Some of the queries raised by the Minister (as reported by Business Day on 7 November 2016) are analysed below-

Was the Code in line with the Act?: The combined reading of Section 2(1) and 10(d) of the FRCN Act suggests that the Board will be responsible for the overall control of the Council and the Directorates. The Executive Secretary of the FRCN has been asked to explain how the Code passes the test of compliance with the Act given that the FRCN Board is yet to be constituted.

Does the Code supersede any legislation or any other Code?: A subsidiary legislation cannot supersede a principal enactment. The Minister has requested that the Executive Secretary explains the clear conflict(s) between the Code and various legislation inclusive of the FRCN Act as well as any other legislation.

The Code also appeared to regulate some regulators by requiring that sectoral regulators address non-compliance with the Code or be sanctioned.

Most regulators are governed by their establishment Acts and the

Code sought to make such regulators answerable to the FRCN. For example, it implied that the Central Bank of Nigeria will have to take on the burden of implementing the Code in the financial sector and the Code will also take precedence over the CBN's Code.

Impact on *Eko Hotel v. FRCN*:

The Code was meant to, among others, apply to 'private companies that are holding companies or subsidiaries of public companies'.

The existing precedent in the *Eko Hotel* judgment specifically states that it is not within the scope of the FRCN to regulate private companies. Although the FRCN has appealed the judgment, the position subsists pending the decision of the Court of Appeal and the FRCN cannot by virtue of the Code override same.

Takeaway

The Code continues to be controversial with different stakeholders expressing concerns about certain aspects of the Code.

With this suspension, we hope that the FRCN and all key stakeholders will work together to address the issues raised.

Ultimately, the key objective should be to improve the quality of financial reporting and corporate governance. Some stakeholders have argued that the FRCN should focus solely on matters relating to financial reporting while other bodies such as the SEC should handle Corporate Governance Codes.

