

NERC Code of Corporate Governance for the Nigerian Electricity Supply Industry

OALP Power Newsletter

INTRODUCTION

The Nigerian Electricity Supply Industry (**NESI**) continues to undergo significant regulatory, structural and institutional reforms aimed at enhancing the efficiency, transparency, and sustainability of operations across the industry. In a bid to address concerns around governance failures and operational inefficiencies, the Nigerian Electricity Regulatory Commission (**NERC** or the **Commission**) has sought to reaffirm the importance of sound corporate governance in the NESI as a cornerstone of regulatory reform and sectoral resilience.

As admitted by NERC, the critical challenges crippling the NESI are all too well known and well documented – from inadequate infrastructure to operational inefficiencies and underinvestment. These persistent challenges are partly due to, and further exacerbated by, systemic governance failures apparent in the entities that constitute the NESI. Governance shortcomings such as weak internal controls, lack of transparency and financial mismanagement, to name a few, have long been recognised as a primary driver of the underperformance of the NESI and consequently a critical impediment to its development.

Accordingly, NERC, acting pursuant to its powers under sections 226(1)¹ and 34(2)² of the Electricity Act 2023 (the **EA**), issued the Code of Corporate Governance for the Nigerian Electricity Supply Industry (the **NESI Code**) on 30 May 2025. The NESI Code introduces comprehensive and enforceable sector-specific governance standards representative of a novel expansion in the sphere of power regulation. Prior to the issuance of the NESI Code, licensees

in the NESI were subject only to generic governance obligations, with no sector-specific framework in place.

CORPORATE GOVERNANCE IN CONTEXT

Corporate governance, in its simplest conceptualisation, refers to the broad range of policies and practices that executive managers and board of directors employ in the management of operations of corporate organisations towards fulfilling their responsibilities to the shareholders and other stakeholders.

In Nigeria, the primary sources of corporate governance regulation are the Companies and Allied Matters Act 2020 (as amended) (**CAMA**) and the Nigerian Code of Corporate Governance 2018 (**NCCG 2018**). These instruments, applicable to companies operating in Nigeria generally, are further supplemented by industry specific frameworks such as the Securities and Exchange Commission Corporate Governance Guidelines (the **SEC Guidelines**), and the Corporate Governance Guidelines for Commercial, Merchant, Non-Interest and Payment Services Banks in Nigeria issued by the Central Bank of Nigeria, amongst others.

The passage of the NESI Code now requires licensees to comply with corporate governance standards as prescribed under the NESI Code, the NCCG 2018, and the SEC Guidelines (in the case of licensees which are also public companies).

1. Section 226(1) provides that the Commission may make regulations prescribing all matters which by the EA are required or permitted to be prescribed or which, in the opinion of the Commission, are necessary or convenient to be prescribed for carrying out or giving effect to the EA.
2. Section 34(2) empowers NERC to establish or, as the case may be, approve appropriate operating codes and safety, security, reliability, and quality standards.

The utility of good corporate governance practices in any industry and particularly in industries the performance of which have profound socio-economic effects, cannot be understated. Illustratively, the first introduction of a corporate governance code specific to the banking and financial services industry issued in August 2003 was inspired by the financial crises witnessed by the country in the early 1990s.

Similarly, the introduction of a dedicated code for the NESI is a commendable effort to combat the challenges marring the power sector – a critical component of the nation’s socio-economic development – and mirrors the approach adopted in other key industries, where sector-specific governance frameworks are deployed to manage systemic risks.

THE OBJECTIVES OF THE NESI CODE

The NESI Code is designed to serve as a transformative framework inspired by the recognition that good corporate governance practices are essential not just for internal efficiency, but for broader system stability. Its key objectives may be summarised as follows:

- institutionalising governance principles of accountability, transparency, and fairness;
- promoting ethical leadership and the independence of governance structures;
- enhancing investor trust and sector-wide credibility; and
- strengthening stakeholder engagement.

To this end, the NESI Code introduces a principles-based governance framework rooted in nine core principles detailed in Appendix 1, which are as follows:

- accountability and responsibility;
- fiduciary responsibility and stakeholder interests;
- accountability and justifiability;
- ethical conduct and integrity;
- reputation and reputational risk;
- fairness and equitable treatment;
- relationship with stakeholders;
- independence of character and judgement; and
- transparency and clear disclosure.

KEY HIGHLIGHTS

The NESI Code introduces numerous considerations, obligations and restrictions centred around the aforementioned principles and objectives. Notably, its provisions amount to mandatory obligations, non-compliance with which are sanctionable by the Commission.³

Scope of Application & Consequences of Non-Adherence

The NESI Code applies to all persons licensed under section 63 of the EA to engage in generation, distribution, transmission, system operations, supply, or trading within the NESI.⁴ Importantly, the scope as expressed would not extend to entities licensed by state regulators pursuant to state electricity laws. In the wake of the EA, as more states begin to establish their respective electricity markets, the corporate governance of entities operating in the state electricity markets will be regulated by existing corporate governance standards such as those obtainable under CAMA, the NCCG 2018, the SEC Guidelines (in the case of public companies) or other power sector-specific standards as may be introduced by the relevant state electricity regulator over time.

Where an entity to whom the NESI Code applies fails to abide by the aforementioned principles set out under the NESI Code, such an entity shall be liable to sanctions in accordance with the terms of the EA⁵ or such other subsidiary instrument as may be issued by NERC.



Reporting Obligations of Licensees

The NESI Code also mandates that every licensee must submit an Annual Compliance Report signed by the Chairman of the Board and the Company Secretary, affirming either full compliance or disclosing areas of deviation with justifications.⁶ The form for this Annual Compliance Report is prescribed under Appendix 4 of the NESI Code. This establishes a form of regulatory self-attestation that mirrors global best practices, while also creating an audit trail for enforcement by NERC which is mandated to oversee compliance and enforce adherence.⁷

3. Section 1.3 of the NESI Code

4. Section 1.2 of the NESI Code.

5. Such as under section 215 of the EA.

6. Sections 1.3(b) and 14 of the NESI Code.

7. Section 1.3 of the NESI Code.



Fitness & Eligibility of Executives

The NESI Code introduces a mandatory “fit and proper” assessment framework further to which individuals must undergo comprehensive assessment in order to (x) engage in regulated electricity activities; (y) serve as directors or hold executive management positions in licensed entities; and (z) hold over 5% equity in any licensee.⁹

Further, appointment to executive management roles in licensee entities is contingent upon the fulfilment of the following specified eligibility criteria:

- a) submission of character and suitability references from the applicant’s three (3) most recent employers;
- b) successful completion of comprehensive security vetting by relevant security agencies; and
- c) disclosure of all interests and of conflict-of-interest clearance.

In addition, Schedule 1 of the NESI Code sets out position-specific fitness requirements for executive management roles within licensee entities. It provides a detailed framework prescribing the minimum standards of education, professional qualifications, managerial experience, and additional attributes required of individuals nominated to positions such as Chief Executive Officer (CEO), Company Secretary, General Counsel, and other senior roles.

For instance, in the case of a Managing Director (MD)/Chief Executive Officer, the following requirements are prescribed:

- a) Education: minimum of a bachelor’s degree in any discipline
- b) Key management experience: minimum of ten (10) years of management experience
- c) Other considerations:
 - i. holds advanced degree(s) or other relevant

training

- ii. completed national youth service or has an exemption certificate
- iii. proven track record of visionary leadership
- iv. demonstrated experience in strategic management skills
- v. excellent financial literacy
- vi. very good communication skills
- vii. high ethical standards and integrity.

Specific prescriptions are also imposed for other positions such as the chief finance officer, the chief administration/human resources officer, and chief procurement officer, to mention a few.

It is instructive to note that variations of the above considered stipulations were previously imposed under the Guidelines and Assessment Criteria for Fit and Proper Persons for Corporate and Individual Participation in Regulated Electricity Entities 2012 (the **Fit and Proper Guidelines**) issued by NERC pursuant to its powers under the repealed Electric Power Sector Reform Act 2005 (**EPSRA**).

The Fit and Proper Guidelines generally prescribe criteria for the assessment of corporate bodies and individuals as ‘fit and proper’ to: (x) undertake any regulated electricity activities; (y) hold directorship or other executive positions in licenced entities; or (z) acquire more than 5% equity in a licensee.¹⁰ Notably the Fit and Proper Guidelines also:

- a) require individuals seeking to hold key management positions to submit two (2) reference letters, undergo comprehensive security checks and disclose any potential conflicts between their private interests and official duties¹¹;
- b) prescribe position-specific requirements in a tabular format, setting out minimum standards of education, professional qualifications and managerial experience, similar to that provided under Schedule 1 of the NESI Code. Distinctively, the guidelines distinguish between requirements applicable to entities involved in generation, transmission and distribution activities. The prescribed criteria also differ in certain respects from those under the NESI Code. For instance, while the guidelines require that a MD/CEO possess a minimum of fifteen (15) years of management experience, the NESI Code prescribes a minimum of ten (10) years.¹²

8. Section 1.1 of the NESI Code.

9. Section 1.2.1 of the NESI Code.

10. Section 1 of the Fit and Proper Guidelines

11. Section 3.2 of the Fit and Proper Guidelines

12. Schedule 1 of the Fit and Proper Guidelines

KEY PROVISIONS ON DIRECTORS, BOARD COMPOSITION AND INDEPENDENCE

The NESI Code also speaks to the roles and functions of the Board which are generally consistent with the provisions of section 87(3) of CAMA which recognises that the day-to-day business of a company shall be managed by the Board. In addition to its general functions, the Board is also mandated to oversee the implementation of the NESI Code by the relevant licensee, including via the development of an internal code of conduct for the licensee.¹³

Some of the key highlights of the NESI Code as it pertains to the Board are examined below:

Board Size and Tenure

Whilst the NCCG 2018 does not prescribe a specific minimum board size and simply requires companies to ensure that the Board is of a sufficient size to effectively undertake and fulfil its business,¹⁴ the NESI Code expressly stipulates that the board of a large licensee entity must be constituted by a minimum of seven (7) directors, while for smaller entities board composition shall be in accordance with the provisions of CAMA, which requires all companies other than small companies to have at least two (2) directors.¹⁵ The classification of large and small entities under the NESI Code, including the applicable thresholds and interpretive concerns, is further examined subsequently in this newsletter.

The prescription of minimum board composition under the NESI Code goes further than the requirement of the SEC Guidelines which requires public companies to have no less than five (5) directors on the Board.¹⁶ Hence, all licensees in the NESI are required to comply with the minimum board size requirements under the NESI Code or be liable to penalties as may be imposed by NERC.

It is also now required that directors shall serve a maximum of three (3) terms of four (4) years each and no director shall exceed a cumulative tenure of twelve (12) years.¹⁷ With respect to the CEO of a licensee, the tenure is now subject to a maximum period of ten (10) years.¹⁸ This stipulation goes beyond what obtains under the NCCG 2018 which requires that the tenure for the MD/CEO and the executive directors should be determined by the Board.

Further, it is worthy of note that the Fit and Proper Guidelines stipulates that the board of a licensee comprise a minimum of five (5) members, with executive board members subject to a minimum tenure of five (5) years, renewable for an additional term of five (5) years only, while no tenure restrictions applied to non-executive directors.¹⁹

Executive and Non-Executive Balance

The NESI Code provides that while the majority of the board should comprise non-executive directors (**NEDs**), and there must be a minimum of two (2) executive directors (**EDs**), inclusive of the CEO. Moreover, the Board Chairman must be a NED.²⁰

Independent Directors

Large entities are required to appoint a minimum of two (2) independent directors, while smaller entities must appoint at least one (1). To further safeguard board independence, the NESI Code also disqualifies any former employee or individual with an interest in a company from serving as an independent director, unless a minimum period of five (5) years has elapsed since their exit from the company prior to nomination.²¹ Similarly, without distinguishing between large and small entities, the Fit and Proper Guidelines required all licensees to appoint one (1) independent director.²²

Limitation on Multiple Directorships

Notably, to minimise conflicts of interest and ensure effective oversight, an individual director is prohibited from holding a board position in more than two NESI licensee boards concurrently.²³ This express prohibition suggests that persons who currently serve concurrently as directors in more than two licensees in the NESI will be required to resign some of their appointments to comply with this requirement, failing which the licensees on whose boards they sit may be sanctioned by NERC in accordance with the NESI Code.

This limitation is at variance with the stipulations of the SEC Guidelines which provide that while cross-membership on the board of two or more companies is generally discouraged in order to safeguard board objectivity and independence, it is only prohibited where it would give rise to a conflict of interest, such as in the case of competing companies.²⁴

13. Section 2.3.1 of the NESI Code.

14. Section 2.1 of the NCCG 2018.

15. Section 3.2(c) of the NESI Code

16. Guideline 1, SEC Guidelines.

17. Section 3.2 and 11.10 of the NESI Code

18. Section 7.8 of the NESI Code

19. Section 3.1(iii) of the Fit and Proper Guidelines

20. Section 7.1 of the NESI Code

21. Section 7.5(b) of the NESI Code

22. Section 3.1(iii) of the Fit and Proper Guidelines

23. Section 7.9 of the NESI Code

24. Guideline 2 of the SEC Guidelines.

Similarly, the NCCG 2018 whilst recognising that directors may hold concurrent directorships and allowing the board to determine the appropriateness of concurrent directorships also prescribes that directors should not be members of Boards of competing companies to avoid conflict of interest, breach of confidentiality, diversion of corporate opportunity and divulgence of corporate information.²⁵ It thus appears that the NESI Code builds on this principle by limiting directors from membership of more than two boards in entities operating in the NESI.

Mandatory Board Committees

The NESI Code mandates the constitution of three (3) core board committees: the Audit Committee;²⁶ the Regulatory Compliance and Risk Management Committee; and the Governance, Remuneration and Nomination Committee.²⁷ Notably, the Board Chairman and the CEO are disqualified from membership on any of the board committees.²⁸ Each committee is to be constituted and operated in accordance with detailed provisions outlined in the NESI Code, some of which are as follows-

- i. **Audit Committee:** This committee is to be established in accordance with the provisions of CAMA which mandates the compulsory establishment of an Audit Committee by a public company.²⁹ By the provisions of the NESI Code, even licensees who are private entities are now required to mandatorily establish an Audit Committee. The functions of the Audit Committee broadly include overseeing financial reporting and managing the appointment and removal of external auditors. At least one-third of the committee's membership must consist of NEDs and the Board Chairman and CEO are prohibited from being members but may attend meetings.³⁰ In addition to the foregoing, it should be noted that the NCCG 2018 requires, with respect to licensees who are private companies, that members of the committee responsible for audit should be NEDs, and a majority of them should be Independent NEDs where possible.³¹
- ii. **Regulatory Compliance and Risk Management Committee:** This committee is tasked with reviewing the licensee's regulatory compliance frameworks and evaluating its risk management systems across financial, operational, and strategic domains. While it may be established either as a standalone committee or combined with another board committee, in the case of larger entities, the NESI Code expects the

establishment of a dedicated committee.³² When constituted independently the committee should comprise both EDs and NEDs, however, where merged with the Audit Committee, EDs are to be excluded from its membership.

- iii. **Governance, Remuneration and Nomination Committee:** This committee is charged with identifying suitable candidates for appointment as directors and executive directors as well as assisting the board in developing policies and procedures for determining executive remuneration. The committee must also be composed exclusively of NEDs to avoid conflict of interest.³³



Related Party Transactions

The NESI Code prescribes that all transactions involving related parties be promptly disclosed to the Audit Committee which will subsequently review the transactions and submit appropriate recommendations or reports to the board for official action.³⁴ This is largely consistent with the provisions of the NCCG 2018 which require the Audit Committee to consider any related party transaction that may arise within the company.³⁵

For the purposes of the NESI Code, a 'related party' is broadly defined to include entities or individuals that exercise control over the company, are under the common control of a parent company, or maintain significant influence through shareholding or managerial positions. This definition extends to shareholders, members of senior management, as well as their immediate family members and close personal associates.

25. Section 2.8 of the NCCG 2018.

26. It should be noted that CAMA already mandates the establishment of a statutory Audit Committee by public companies.

27. Section 3.3 of the NESI Code

28. Section 3.3(b) of the NESI Code

29. Section 404 of CAMA.

30. Section 11.6 of the NESI Code.

31. Section 11.4.3 of the NCCG 2018.

32. Section 11.2.1 of the NESI Code.

33. Section 4.4(c) of the NESI Code.

34. Section 13 of the NESI Code.

35. Section 11.4.7 of the NCCG 2018.

Whistle Blowing

The NESI Code suggests that the board of each licensee establish effective mechanisms to facilitate the reporting of unethical, illegal or otherwise improper practices within the organisation, potentially including the adoption of a whistle-blowing policy.³⁶

The Board is further required to ensure that no whistle-blower suffers harm or adverse treatment directly or indirectly as a result of making a disclosure. In instances where a whistle-blower suffers adverse treatment as a result of such disclosure, they are entitled to lodge a formal complaint with the board and/or the relevant regulatory authority. Where a complaint is substantiated, the whistle-blower may be entitled to appropriate remedies, including compensation and/or reinstatement. The requirements of the NESI Code are consistent with the already existent principles under the NCCG 2018.³⁷

OUR FURTHER THOUGHTS AND COMMENTARY

The Bindingness of the NESI Code

The NESI Code indicates a shift from a persuasive/suggestive framework to prescriptive governance in the NESI. This is significant as the previous attempt at introducing corporate governance standards in the NESI – in the form of the Fit and Proper Guidelines and the 2014 Draft Code of Corporate Governance for Directors of Market Participants in the Nigerian Electricity Supply Industry³⁸ – and even other generally applicable codes which are of voluntary application (such as the NCCG 2018) lacked sufficient regulatory force or failed to impose consequences for non-compliance, therefore presenting as mere best-practice guides.

The NESI Code, on the other hand, positions itself squarely within the ambit of NERC’s quasi-legislative authority under the EA. The elevation of the corporate governance standards from soft-law recommendations to a binding framework comprising reporting obligations, audit triggers, and sanctions indicates a deliberate move by the regulator to embed governance integrity into the heart of operations in the NESI.

Drafting Clarity: Definition of ‘Large Companies’

In defining what companies qualify as large entities and small entities for the purpose of the provisions of section 3.2 on Board composition and other compliance obligations imposed on the respective entities under the NESI Code, the NESI Code refers to the definition of “Large Companies” and

“Small Companies” under CAMA.

Under CAMA, for the purpose of classification of companies by size, a small company is defined as one that: (a) is a private company; (b) has a turnover of not more than N120,000,000 or such amount as may be fixed by the Corporate Affairs Commission from time to time; (c) whose total net assets value is not more than N60,000,000 or such amount as may be fixed by the Corporate Affairs Commission from time to time; (d) has no member who is an alien, the government, or a government corporation or agency or its nominee; and (e) the directors between themselves hold at least 51% of its equity share capital.³⁹ For the purposes of CAMA, there is no reference to a “Large Company” as any company that does not qualify as a small company simply does not enjoy the benefits provided for small companies, and there is no separate treatment accorded to “Large Companies” for the purpose of CAMA.

While it can be presumed that the term ‘Large Companies’ would effectively refer to companies other than ‘Small Companies’, this is not clearly prescribed. In the absence of a definition for “Large Companies” under CAMA it would be useful for NERC to clarify the criteria for classification of an entity as a Large Company to avoid ambiguity, uncertainty and mischief.

Ambiguity in Key Provisions

Although the NESI Code repeatedly uses prescriptive language such as “shall” and “must” to indicate the mandatory nature of the obligations under the NESI Code, it also employs more suggestive terms such as “should” in other provisions.⁴⁰ Given that the NESI Code demands mandatory compliance, the use of suggestive language which implies that compliance with certain provisions may be discretionary, appears inconsistent with its binding nature and may occasion misinterpretation in its application.

Further, certain prescribed criteria are inherently subjective, raising questions concerning consistency in their application and compliance monitoring. For instance, the table setting out the role-specific fitness requirements for executive management positions contained in Schedule 1, under the ‘other considerations’ heading includes criteria such as ‘high ethical standards’ and ‘excellent financial literacy’. Such requirements are inherently subjective and not easily quantifiable.

36. Section 11.4 of the NESI Code

37. Section 19 of the NCCG 2018.

38. The 2014 Guidelines were never duly signed and never came into effect.

39. Section 394(3) of CAMA.

40. Such as in section 4.4, 5.1, of the NESI Code.

Without clear guidance on how these vague or subjective criteria are to be assessed or weighted, the framework could give rise to arbitrary decision-making or further, allow for manipulation to exclude otherwise qualified candidates on non-meritocratic grounds. Relatedly, the absence of measurable parameters to guide the application of these requirements may hinder NERC's ability to effectively monitor and enforce compliance. It would therefore be beneficial for the regulator to prescribe clear, quantifiable benchmarks to promote consistent interpretation and application.

National Uniformity and Regulatory Coherence

Further to the enabling provisions of the EA, states across Nigeria have been empowered to legislate on electricity matters, establish local electricity markets, issue licences, create regulatory bodies and assume regulatory functions within their respective jurisdictions. As such, the NESI is evolving into a dual regulatory system, comprising federal licensees under NERC and state licensees under newly formed state regulatory agencies (e.g., Lagos State Electricity Regulatory Commission).

The NESI Code, by default, applies only to NERC licensees, however, this also creates an outcome where state regulators may, over time, prescribe governance standards for state licensed entities. Whilst this is consistent with the existing legal framework, it creates the possibility of having different corporate governance standards within the same sector, thus resulting in a fragmented governance landscape. By way of illustration, a distribution company (DisCo) operating across multiple States may have a sub-DisCo under NERC's jurisdiction and others under the oversight of one or more state electricity regulatory commissions, all regulated by varying corporate governance frameworks, thus creating significant regulatory complexity and operational uncertainty for such DisCo groups. As such, the hope is that where governance standards are subsequently introduced by state regulators, such standards will reflect as much as possible the principles of the NESI Code, the SEC Guidelines, and the NCCG 2018 to ensure a decent level of minimum uniform standards in the electricity sector across the country.

Term Limits

Concerns also arise with respect to the imposition of term limits under the NESI Code. As noted above, directors shall now be limited to serving a maximum of three (3) terms of four (4) years each⁴¹ and the CEOs of licensees now have their tenures subject to a maximum period of ten (10) years.⁴²

Whilst it is understood that the aim is to allow for succession and the infusion of new ideas in the administration of the licensees, in highly technical and regulated sectors like the electricity sector, long-serving directors often accumulate deep and invaluable institutional and sector-specific knowledge and insights that may be difficult to replace or imprudent to displace. The term limits may result in the potential erosion of institutional knowledge and industry-specific expertise that long-serving directors bring to the governance table. Further, this could result also disrupt strategic continuity in the execution and delivery of projects. These stability and continuity concerns are not purely academic as lenders typically price for internal governance predictability, and time-bound rotation can elevate perceived risk and the cost of capital.

From an investment perspective, mandatory tenure caps of this nature could have the unintended effect of disincentivising investment in the sector. Investors in capital-intensive industries such as electricity typically place a value on governance continuity, especially given the highly technical, and specialized nature of the industry. The rationale behind such restriction is particularly intriguing in the context of privately held licensees established by entrepreneurs deploying their own capital. In the absence of a clear, evidence-based public-interest justification, the measure reads as a striking example of regulatory overreach.

It is also worth noting that many of the more successful businesses in the world have been effectively led by the same individual for extended periods indicating that compulsory term limits and periodic changes may not necessarily be the most practical way. It should be noted that the NCCG 2018 refrained from imposing such definitive limits, leaving it to the determination of the Board.

Rather than impose inflexible tenure limits, a more effective strategy may be to strengthen board evaluation mechanisms, enforce director independence standards, and empower shareholders to act decisively on board performance.

Comparative Perspectives

In examining the NESI Code, it is beneficial to briefly consider how other jurisdictions approach corporate governance in the power sector.

41. Section 3.2 and 11.10 of the NESI Code

42. Section 7.8 of the NESI Code

43. [Financial Reporting Council, The UK Corporate Governance Code \(ECGI edn, FRC July 2018\) accessed 30 July 2025](#)

44. Section 32 of the CCG 2018

United Kingdom

The UK operates under a unitary governance structure, and while there is no power sector-specific corporate governance framework, listed companies are subject to the UK Code of Corporate Governance 2018 (the **CCG 2018**)⁴³ issued by the Financial Reporting Council. The CCG 2018, similarly to the NESI Code, is principles-based, promoting standards such as board independence, separation of powers, regular performance evaluation, transparent reporting and stakeholder engagement. Notable parallels include the prescribed separation of the roles of board chairman and chief executive officer,⁴⁴ and the insistence that the remuneration committee be composed entirely of non-executive directors.⁴⁵ Importantly, the CCG 2018 does not mandate strict compliance but instead follows a “comply or explain” approach, commonly adopted in corporate governance frameworks, whereby companies are expected to either comply with the provisions or provide a detailed explanation justifying non-compliance.

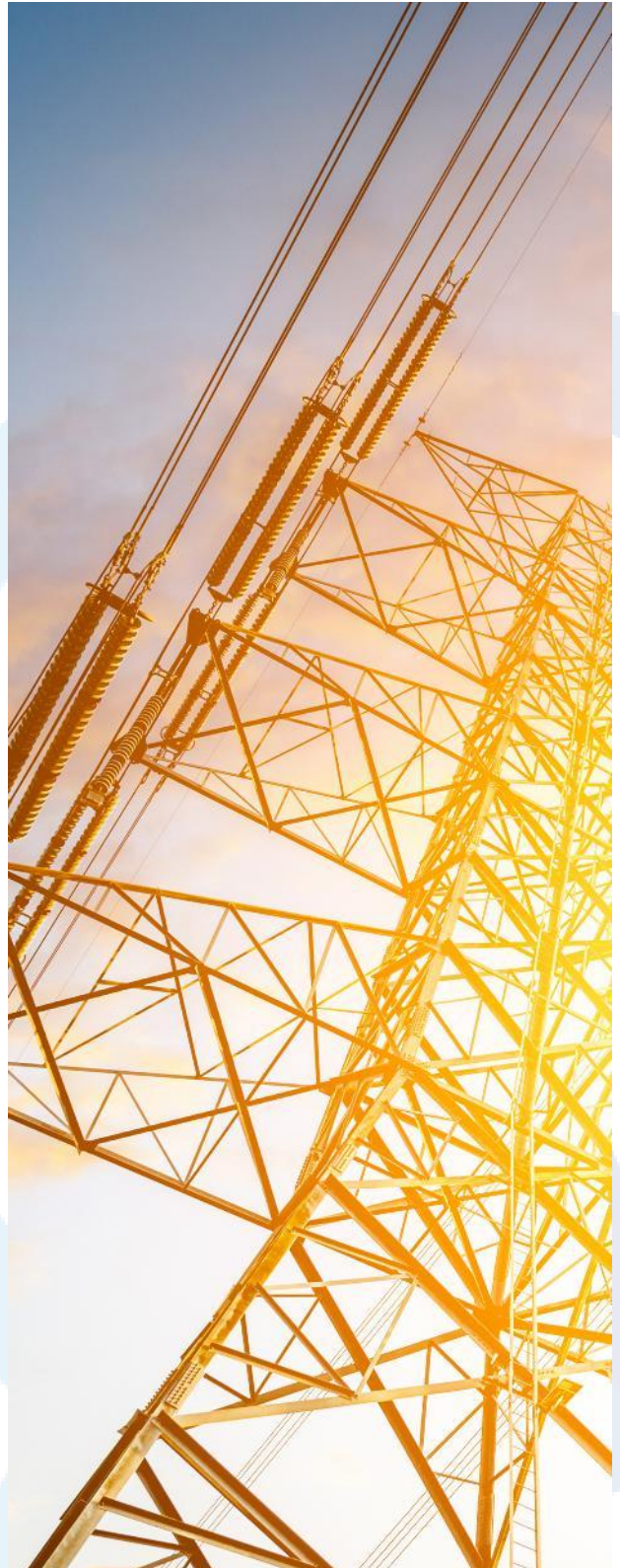
Under the CCG 2018, it is considered that in reporting, a company may justify a choice not to comply with a provision based on a range of factors, including the size, complexity, history and ownership structure of the company.

India

India’s power sector operates under a federal structure, comprising the Central Electricity Regulatory Commission (**CERC**) at the national level and state electricity regulatory commissions, each with defined functions, similar to Nigeria’s model. There is no sector-specific corporate governance code issued by CERC or state regulators, instead, governance obligations arise from general company and securities law. Principally, the Companies Act 2013 and, for listed entities, the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015. Similarly, these instruments promote many of the same governance principles seen in the NESI Code, such as board independence, ethical conduct, clear delineation of responsibilities, equitable remuneration practices and structured risk management.

While power sector-specific governance codes are uncommon globally, the NESI Code broadly aligns with international best practices, embodying core principles. Although the mandatory compliance approach diverges from the more flexible models commonly adopted (i.e. England, Germany and Singapore), it may be justified in light of the historical performance of the NESI and widespread corporate

governance issues in the nation at large. The NESI Code’s binding nature arguably reflects a deliberate regulatory choice to instil minimum standards and restore confidence in the governance of the electricity industry.



CONCLUSION

Principled corporate governance remains a cornerstone of sustainable development, investor confidence, and institutional integrity within any sector, particularly one as critical as the NESI. The issuance of the NESI Code marks notable progress towards addressing persistent gaps in governance across licensee entities in the NESI.

Through its binding obligations, the Code seeks to standardise governance practices, enhance board accountability, safeguard stakeholder interests, and restore public and investor confidence in NESI entities. It introduces rigorous provisions on board composition, director independence, internal controls, ethics, whistleblower protections, risk management, ESG reporting, and stakeholder engagement.

However, it may be contended that certain provisions of the NESI Code go beyond fostering sound governance and instead stray into regulating business decisions and encroaching upon corporate autonomy without clear public interest justifications, raising legitimate concerns of regulatory overreach. For instance, the restrictions on directors' tenure which, as considered above, risks deterring

much-needed investment in the NESI without any evident nexus to market stability, consumer protection, or other demonstrable public interest objectives. While the decision to frame the NESI Code as a mandatory compliance instrument reflects a well-intended policy direction, its effectiveness could be enhanced by incorporating some degree of flexibility in its application, akin to the "comply or explain" model adopted in the UK.

Furthermore, some of the more intrusive provisions of the NESI Code may be vulnerable to judicial review on established administrative-law grounds such as unreasonableness, arbitrariness, irrationality and ultra vires action, particularly where prescriptive governance obligations are imposed on privately held licensees without a clear statutory basis or demonstrable evidence-based public interest justification.

On a whole, the success of the NESI Code will hinge on consistent enforcement, adequate support for licensees, and thoughtful integration with emerging state-level frameworks. If refined and effectively implemented, the NESI Code has the potential to accelerate NESI's reform trajectory.

FOR MORE INFORMATION, PLEASE CONTACT :



Wolemi Esan, SAN
Managing Deputy Partner
wesan@olaniwunajayi.net



Ibi Ogunbiyi
Partner
iogunbiyi@olaniwunajayi.net



Abisola Odeinde
Partner
aodeinde@olaniwunajayi.net



Chineye Ajayi
Managing Associate
cajayi@olaniwunajayi.net



Temilola Adetona
Associate
tadetona@olaniwunajayi.net



Medinat Biobaku
Associate
mbiobaku@olaniwunajayi.net