**CENTRAL BANK OF NIGERIA**

# CODE OF CORPORATE GOVERNANCE

## FOR BANKS AND OTHER FINANCIAL INSTITUTIONS IN NIGERIA

***(A Document of the Bankers' Committee)***

**AUGUST 26, 2003**

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## MEMBERS OF THE BANKERS' SUB-COMMITTEE ON CORPORATE GOVERNANCE

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| PLATINUM BANK LIMITED | MEMBER |
| NATIONAL BANK OF NIGERIA LIMITED | MEMBER |
| FORTUNE BANK PLC | MEMBER |
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| UTO UKPANAH (MRS.) | SECRETARY |

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# INTRODUCTION

The issue of corporate governance has recently been given a great deal of attention in various national and international fora. This is in recognition of the critical role of corporate governance in the success or failure of companies. Corporate governance refers to the processes and structures by which the business and affairs of an institution are directed and managed, in order to improve long term shareholder value by enhancing corporate performance and accountability, while taking into account the interest of other stakeholders.

Corporate governance is therefore about building credibility, ensuring transparency and accountability as well as maintaining an effective channel of information disclosure that would foster good corporate performance.

The strategy for addressing the challenges of corporate governance has taken various forms at both the national and international levels and have culminated in initiatives such as: the OECD Code; the Cadbury Report; the Basel Committee Guidelines on Corporate Governance; the King's Report of South Africa etc.

In Nigeria, the Securities and Exchange Commission (SEC) set up the Peterside Committee on Corporate Governance in Public Companies, which has since submitted its Report, incorporating a Code of Best Practices.

## **CORPORATE GOVERNANCE IN THE FINANCIAL SECTOR IN NIGERIA**

Financial Institutions constitute a critical sector of any economy. Since the aftermath of the financial crisis in the early 90's, the stability of the financial system has assumed a greater focus as a key objective of economic policy in Nigeria.

Poor corporate governance has been identified as one of the major factors in virtually all known instances of financial sector distress. It is therefore crucial that financial institutions observe a strong corporate governance ethos.

In addressing the issue of corporate governance in the financial sector, the Bankers' Committee set up the Sub-Committee on Corporate Governance to make recommendations and propose a draft code for adoption by financial institutions. This was in realisation of the need to amplify the Report of the Peterside Committee on Corporate Governance to address the peculiarities of the financial sector.

## THE CODE OF CORPORATE GOVERNANCE FOR BANKS AND OTHER FINANCIAL INSTITUTIONS

The Code of Corporate Governance for Banks and Other Financial Institutions in Nigeria is explicit in its recommendations on best practice, including constituting an effective board and identifying the principal responsibilities of the Board, remuneration of directors, Board performance assessment and the Audit Committee. The Code also considers factors relevant to depositor and investor confidence given the importance of these stakeholders to the stability of the financial sector.

The Code should not be regarded as a threat to entrepreneurial drive and spirit. A system that combines enterprise with integrity will promote good corporate governance without stifling initiative and creativity.

It should be emphasised that good corporate governance rests ultimately with the Board of Directors. In identifying that good corporate governance hinges on Board competence and integrity, it should be realised that standards of probity and fiduciary responsibility in the wider business environment are equally critical. All these help to promote sound corporate governance.

In conclusion, the proposed Code of Corporate Governance for Banks and Other Financial Institutions is voluntary. Banks and other financial institutions are however encouraged to adopt the proposed Code by ensuring that their internal corporate governance codes are consistent with its provisions and are in line with existing laws and regulations.

## BOARD OF DIRECTORS

### 1. Responsibilities Of The Board of Directors

**Principle: The Board should exercise responsibility, leadership, enterprise, integrity and judgement in directing the institution so as to achieve continuing prosperity for the institution and act in its best interest, in a manner based on transparency, accountability and equity. Every institution should be headed by an effective Board that can lead and control the institution.**

1. Without prejudice to the statutory duties of directors, the functions of the Boards of financial institutions should include but not be limited to the following:

i. Approving and reviewing corporate strategy, major plans of action, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and approving major capital expenditures, acquisitions and divestments.

ii. Ensuring that the institution has adequate systems of internal controls both operational and financial.

iii. The selection, performance appraisal and compensation of senior executives.

iv. Reviewing key executive and board remuneration and ensuring a formal and transparent board nomination process.

v. Ensuring the integrity of the institution's accounting and financial reporting system.

vi. Ensuring that ethical standards are maintained and that the institution complies with applicable laws and regulations.

vii. Ensuring adequate disclosure and communications.

viii. Succession planning.

ix. Setting out an acceptable risk management guideline.

1.2. The non-executive directors on the Board should not be involved in the day to day operations of the institution, which should be the primary responsibility of the Chief Executive Officer and the Management team.

## 2. <u>Structure of the Board of Directors</u>

**<u>Principle:</u> The Board should include a balance of executive and non-executive directors (including independent non-executives) such that no individual or group of individuals can dominate the Board's decision-making process.**

2.1 The Board should include non-executive directors of sufficient calibre and number for their views to carry significant weight in the Board's decisions. Non-executive directors should comprise a majority of the members of the Board.

2.2 Not less than twenty percent (20%) or at least two (2) Board members, should be independent directors. A director will be deemed to be independent if such a director has no significant financial or personal ties to Management, is free from any business or other relationship with Management which could materially interfere with the exercise of his/her independent judgement, and receives no compensation from the institution other than director's remuneration or shareholder dividends. Non-Executive directors considered by the Board to be independent in this sense should be identified in the Annual Report.

2.3 The Board should have a diversity of background, knowledge and experience.

2.4 The Board should not be so small as to be ineffective and not so large as to be unwieldy.

## The Chairman and the Chief Executive Officer

**Principle: There should be a clear division of responsibilities at the head of the institution- the running of the Board and the management of the institution's business - which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision making.**

3.1. The roles of the Chairman and Chief Executive Officer should be separate and independent to ensure an appropriate balance of power, increased accountability and greater capacity of the Board for independent decisions.

3.2. The roles of the Chairman and the Chief Executive should be clearly defined and set out in an internal document.

## 4. Appointments to the Board

**Principle: There should be a formal and transparent procedure for the appointment of new directors to the Board.**

4.1 A Nomination Committee should be established to make recommendations to the Board on all new Board appointments. A majority of the members of this Committee should be non-executive directors, and the Committee Chairman should be a non-executive director.

4.2 Newly appointed directors should undergo appropriate orientation to ensure that they have a good understanding of their role and legal responsibilities and liabilities as directors. Where necessary, directors may undergo formal training at the institution's expense aimed at making them effective in the discharge of their duties.

4.3 All directors should be subject to election by shareholders at the first opportunity after their appointment, and to re-election thereafter at intervals as prescribed by the Companies and Allied Matters Act 1990. The names of the directors submitted for election or re-election should be accompanied by sufficient biographical details to enable shareholders to take an informed decision on their election. The composition of the Board should regularly be refreshed.

4.4 The decision to recommend the re-election of a director should not be automatic. Rather, it should be a conscious decision by the Board after evaluation of the candidate.

4.5 Every director should be able and prepared to devote sufficient time and effort to his/her duties as a director.

## 5. **<u>Proceedings of the Board of Directors</u>**

**<u>Principle:</u> The Board should meet regularly and Board members should attend meetings regularly.**

5.1 The Board should meet at least once every quarter in order for the directors to discharge their responsibilities properly.

5.2 The Board should have a formal schedule of matters specifically reserved to it for decision.

5.3 All directors should bring independent judgement to bear on issues of strategy, performance, resources, key appointments and standards of conduct.

5.4 All directors should have access to the advice and services of the Company Secretary, who is responsible to the board for ensuring that board procedures are followed and that applicable rules and regulations are complied with.

5.5 There should be a procedure agreed by the Board for directors in the furtherance of their duties to take independent professional advice if necessary, at the institution's expense.

5.6 Management has an obligation to provide the Board with information in a timely manner and in an appropriate form and quality to enable it discharge its duties.

5.7 In circumstances where information provided by management is insufficient, directors should make further enquiries where necessary.

5.8 The Chairman of the Board should ensure that all directors are properly briefed on issues arising at Board meetings.

## 6. **Directors' Remuneration**

**Principle: Institutions should establish a formal and transparent procedure for developing policies on executive remuneration and for fixing the remuneration packages of individual directors. No director should be involved in approving his or her own remuneration.**

6.1.1 Boards of directors should set up Remuneration Committees made up wholly or mainly of non-executive directors to:

(i) Make recommendations to the Board on the institution's policy framework of executive remuneration and its cost;

(ii) To determine, on behalf of the Board, specific remuneration packages for each of the Executive Directors, including pension rights and any compensation payments. *

(iii) To determine the compensation of senior executives.

6.1.2 The Board should recommend to the General Meeting the remuneration of non-executive directors, including members of the Remuneration Committee.

6.1.3 The Remuneration Committee should be chaired by a non-executive director, who is independent of management and free from any business or other relationship, which could materially interfere with the exercise of the director's independent judgement.

6.1.4 The Remuneration Committee should consult the Chairman and/or Chief Executive Officer about their proposals and have access to professional advice inside and outside the institution.

* Institutions may choose to have the specific packages of Executive Directors approved by the Board on the recommendation of the Remuneration Committee. In such instances, the director whose package is being discussed should not participate.

6.2 **Level of Remuneration**

**Principle: Levels of remuneration should be sufficient to attract and retain the directors needed to run the company successfully, but institutions should avoid paying more than is necessary for this purpose. A proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance.**

6.2.1 The Remuneration Committee should determine the packages needed to attract, retain and motivate executive directors of the quality required but should avoid offering more than is necessary for this purpose.

6.2.2 Remuneration Committees should judge where to position their company relative to other institutions. They should be aware of what comparable companies are paying and should take account of relative performance. But they should use such comparisons with caution, in view of the risk that they can result in an upward ratchet of remuneration levels with no corresponding improvement in performance.

6.2.3 Remuneration Committees should be sensitive to the wider scene, including pay and employment conditions elsewhere in the sector, especially when determining annual salary increases.

6.2.4 The remuneration of non-executive directors should be appropriate to the level of contribution, taking into account the factors such as the time and effort spent, and the responsibilities of the directors and the performance of the institution.

6.2.5 The total remuneration package of executive directors should be designed to align their interests with those of shareholders and link rewards to individual and corporate performance. There should be meaningful and appropriate measures for assessing the performance of executive directors.

6.2.6 Service contracts should not be excessively long or contain onerous removal clauses. The Remuneration Committee should consider what compensation commitments the directors' contracts of service, if any, would entail in the event of early termination. The Committee should, in particular, consider the advantages of providing explicitly in the initial contract for such compensation commitments except in the case of removal for misconduct.

6.2.7 Where the initial contract does not explicitly provide for compensation commitments, remuneration committees should, within legal constraints, tailor their approach in individual early termination cases to the wide variety of circumstances. The broad aim should be to avoid rewarding poor performance, while dealing fairly with cases where departure is not due to poor performance.

6.3 **<u>Disclosure of Directors' Remuneration</u>**

**<u>Principle:</u> The institution's Annual Report should contain a statement on the remuneration policy.**

6.3.1 The Board should report to the shareholders each year on the remuneration policy of the institution.

6.3.2 Shareholdings of directors and interest in contracts by the directors should continue to be disclosed in the Annual Report as required under the provisions of the Companies and Allied Matters Act 1990.

7. **<u>Board Performance Assessment</u>**

**<u>Principle:</u> There should be a formal assessment of the effectiveness of the Board as a whole and the contribution by each individual director (including the Chairman) to the effectiveness of the Board.**

7.1 The Nomination Committee should recommend an evaluation procedure for the Board and propose objective performance criteria which should be approved by the Board.

7.2 In order to maximise the efficiency and effectiveness of the Board’s work, each individual director's performance, including that of the Chief Executive Officer and the Chairman, should be monitored and appraised on an annual basis.

7.3 Issues to be evaluated should include:

(i) Attendance at meetings

(ii) Contributions to discussions at Board meetings/Board Committee meetings

(iii) Business referrals or support of the institution

(iv) The public standing of the Director and the beneficial effect of this on the business of the institution.

7.4 The Board should evaluate its overall effectiveness taking cognisance of performance indicators including:

(i) The compliance status of the institution

(ii) The overall performance of the institution

(iii) Regularity of Board meetings

(iv) The overall contribution of the Board to the performance of the institution.

7.5. Each director should keep abreast of both the current practices and developments in the institution's business to ensure that his or her expertise is constantly relevant to the institution.

## 8. **<u>RISK MANAGEMENT</u>**

**<u>Principle:</u> The Board must identify key risk areas and key performance indicators of the business enterprise and monitor these factors.**

8.1 The Board should understand and fully appreciate the business risk issues and key performance indicators affecting the ability of the institution to achieve its purpose.

8.2 The business risks and key performance indicators should be benchmarked against industry norms and practice, so that the institution's performance can be evaluated.

8.3 A Risk Management Committee should be established to provide oversight of Management's activities in managing credit, market, liquidity, operational, legal and other risks of the institution.

8.4 Directors and senior management should be trained to enable them understand the institutions business, nature of the risks, the consequences of risks being inadequately managed and an appreciation of the techniques of managing the risks effectively.

8.5 The institution's risk management systems should be subject to periodic review and the results should be reported to the Board.

8.6 The Board should satisfy itself that the institution's material business risks are being effectively identified, quantified, monitored and controlled and that the systems in place to achieve this are operating effectively at all times. The corporate governance framework of the institution should include systems for ensuring that all statutory and regulatory requirements are being complied with and to identify potential or actual breaches if and when they occur.

## 9. FINANCIAL DISCLOSURE

**Principle: There should be a degree of accountability of directors to shareholders and other stakeholders of the institution and of the Management to the directors.**

9.1 The Board should regularly provide the shareholders with a balanced and clear report of the institution's performance, position and prospects.

9.2 The Management of the institution should provide all members of the Board with a balanced and clear report of the institution's performance, position and prospects on a regular basis.

9.3 The Board should ensure that an objective and professional relationship is maintained with the external auditors.

9.4 The Board should include a statement in the Annual Report confirming that the institution is a going concern with supporting assumptions and qualifications as necessary.

9.5 The Directors should explain their responsibility for preparing the accounts, and there should be a statement by the auditors about their reporting responsibilities as required under the provisions of the Companies and Allied Matters Act 1990.

9.6 The Board’s responsibility to present a balanced and understandable report of the institution's performance extends to interim and other price-sensitive public reports.

## 10. **RELATIONS WITH SHAREHOLDERS**

**Principle: The Board should serve the genuine interests of the shareholders of the institution and account to them fully.**

10.1 The Board should ensure that the statutory and general rights of shareholders are protected at all times.

10.2 The Board should ensure that all shareholders are treated fairly and are provided with appropriate information on an equal basis, irrespective of the significance or otherwise of their shareholding in the institution.

10.3 The Board should encourage greater shareholder participation at general meetings and allow shareholders the opportunity to communicate their views on various matters affecting the institution.

10.4 The Board should ensure that decisions reached at general meetings are implemented.

10.5 The Board should ensure that separate resolutions are proposed at Annual General Meetings (AGMs) on each substantial issue and in such a manner that they can be voted for in an organised manner.

10.6 The Board should ensure that notice of general meetings and related papers are sent to shareholders within the statutory timeframes.

## AUDIT COMMITTEE

**Principle: The Board should establish formal and transparent arrangements for considering how they should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the institution's auditors.**

11.1 Public companies should establish Audit Committees in accordance with the requirements of the provisions of the Companies and Allied Matters Act 1990.

11.2 Boards of financial institutions that are private limited liability companies should establish Audit Committees consisting of directors and shareholders. The majority of such director members should be non-executive, with written terms of reference that deal clearly with its authority and duties.

11.3 Members of the Audit Committee should be named in the Annual Report and Accounts.

11.4 The duties of the Audit Committee should include keeping under review the scope and results of the audit and its cost effectiveness and the independence and objectivity of the auditors. Where the auditors also supply a substantial volume of non-audit services to the institution, the Committee should keep the nature and extent of such services under review, seeking to balance the maintenance of objectivity and value for money.

11.5 Members of the Audit Committee should receive appropriate training to ensure that they attain an adequate level of financial literacy.

11.6 The Audit Committee should provide regular reports to the Board.

11.7 Audit Committee members should have significant, recent and relevant financial experience.