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EDITORIAL NOTE

This edition of the Technical Bulletin features two different articles - transition from the London Interbank Offered Rate (LIBOR) and the 2018 Nigerian Code of Corporate Governance. This is to guide members on the steps to take and the knowledge to be acquired in preparation for the LIBOR transition and in the application of the Code.

The transition from LIBOR, a measure of the average rate at which banks are willing to borrow wholesale unsecured funds, to other alternative rates would have significant impact on financial products, businesses, systems and processes. Also, entities shall report on the application of the Code of Corporate Governance in their annual reports for the years ending after 1 January 2020 in the form and manner prescribed by the Financial Reporting Council of Nigeria (FRC).

INTRODUCTION

It is common knowledge that a significant volume of foreign-denominated contracts issued by both banks and corporate bodies in Nigeria are normally referenced to the London Interbank Offer Rate (LIBOR). Unfortunately, in a couple of months from now, the use of interbank offer rate will no longer serve as a benchmark for lending and borrowing when it comes to foreign denominated transactions. The LIBOR will now be replaced by alternative reference rates that are compliant to the International Organization Security Commission (IOSCO) standards. Examples of such reference rates are Sterling Overnight Index Average Rate, Secured Overnight Funding Rates, Swiss Average Rate Overnight and Tokyo Overnight Average Rate. Accordingly, it is expected that businesses in Nigeria that price their contracts using LIBOR will need to take immediate steps to transition from LIBOR to alternative reference rates on or before 2021, otherwise they may face financial consequences in the near future.

Why the Change?

The replacement of LIBOR was requested by the Global Financial Stability Board as a consequence of the 2008 financial crisis. This is largely because Inter Bank Offer Rates (IBOR) were found to have been manipulated by some global banks. In addition, the volume of transactions that form the basis of fixing IBOR (especially LIBOR) has reduced significantly.

What is the Impact of the Change?

TThe envisaged replacement of LIBOR will affect IBOR linked financial and non-financial contracts. Due to the growth in Foreign Direct Investments (FDI) and globalization, IBOR (especially LIBOR) are largely referred to in contracts with foreign companies, including Intercompany transactions.

When is the Change?

In September 2019, the IASB issued Phase 1 amendments to IAS 39, IFRS 9 and IFRS 7. The amendments provide temporary reliefs to certain aspects of Hedge accounting prior to the eventual replacement of IBOR. Primarily, the reliefs provide guidance on the application of these standards where hedge cashflows, hedge effectiveness (IAS 39) or hedge economic relationships (IFRS 9) are affected by the uncertainty of referenced IBOR. The amendments also require additional disclosures including key judgements made where this relief is applied, how IBOR reform is likely to affect the entity and how the entity is managing the expected change in IBOR. The Board expects to commence discussion about specific replacements issues in fourth quarter of 2019 as regards phase 2 of the IBOR reform project.

What should firms be doing?

1. You should be reviewing your contracts and investment portfolios to identify if they are referenced to LIBOR
2. For those referenced to LIBOR, you should be assessing the impact of any alternative (to LIBOR) clauses embedded within the contracts and where these are unfavourable, determine if to renegotiate.
3. You should be considering the wider impacts on financial reporting, funding, legal, tax and business risks.
4. You should keep watching this space.

The 2018 National Code of Corporate Governance: A Pocket Guide

Introduction

The commencement date of the National Code of Corporate Governance 2018 (the National Code) was 15 January 2019. The following entities fall under the scope of the National Code and are required to comply with its requirements:

- All public companies (whether listed or not)
- All private companies that are holding companies of public companies or other regulated entities;
- All concessioned or privatised companies; and
- All regulated private companies being private companies that file returns to any regulatory authority other than the Federal Inland Revenue Service (FIRS) and the Corporate Affairs Commission (CAC)

Effective date of the National Code

The entities shall report on the application of the National Code in their annual reports for the years ending after 1 January 2020 in the form and manner prescribed by the Financial Reporting Council of Nigeria (FRC).

Based on the requirements of the National Code, the FRC is required to provide an illustrative report as a guide to entities required to publish a Corporate Governance report in their 2020 annual report.

Monitoring of the National Code

FRC will monitor implementation through sectoral regulators and registered exchanges, who are empowered to impose sanctions on non-compliance with the requirements of the National Code.

FRC can conduct reviews at its discretion where there are cases of recurring deficiencies and determine the level of implementation in Nigeria.

National Code Structure

The National Code is broadly divided into seven parts and contains twenty-eight (28) principles that provide recommended practices for entities on how to apply the principles. The seven parts are listed below:

- **Part A:** Board of Directors and Officers of the Board
- **Part B:** Assurance
- **Part C:** Relationship with Shareholders
- **Part D:** Business Conduct with Ethics
- **Part E:** Sustainability
- **Part F:** Transparency
- **Part G:** Definitions

Disclosure Requirements of the National Code

Based on the timeline set by the National Code, entities are required to prepare a corporate governance report as part of the information that will be included in their annual reports for the years ending after **1 January 2020.** At a minimum, entities are required to disclose the following in the Corporate Governance report:

- Companies' governance structures, policies and practices as well as environmental and social risks and opportunities
- Evaluation process for the Board, its Committees and individual Directors
- Gender diversity plans and milestones
- Composition of Board committees
- Number of meetings held by the Board and its committees
- Cumulative years of service of each Director, the external auditor and the external consultant
- Human resource policies and internal management structure
- National Code of Business Conduct and Ethics for Directors
- Sustainability policies and programmes covering social issues such as corruption, community service, including environmental protection, serious diseases and matters of general Environmental, Social and Governance (ESG) initiatives
- Nature of any related party relationships and transactions
- Director's interest in contracts either directly or indirectly with the Company or its subsidiaries and holding companies
- List of all fines and penalties imposed on the Company by regulators
- Name of the consultant and a summary of the report (provided by the consultant) on the outcome of their evaluation of the extent of application of the Code by the Company.
- Material matters (even though not specifically required by this National Code) are required to be disclosed if in the opinion of the Board such matters are capable of affecting the present or anticipated financial condition of the Company or its status as a going concern.

Conclusion

The National Code requires significant level of effort and it could require an overhaul of how the board of the affected entities performs its functions. Hence, entities will need to:

- deploy systems and processes to track and monitor the implementation of the National Code;
- provide awareness and capacity building to their employees on the requirements of the National Code; and
- develop a communication plan that provides relevant and timely information to investors and stakeholders on the impact of the National Code.

Therefore, companies must prioritise the implementation of the National Code to achieve seamless transition and prepare high quality Corporate Governance report that complies with the 'Apply and Explain' philosophy of the Code.