DEMYSTIFYING THE 2025 CODE OF CORPORATE GOVERNANCE BY THE NIGERIAN ELECTRICITY REGULATORY COMMISSION (NERC) FOR THE NATIONAL ELECTRICITY SUPPLY INDUSTRY (NESI)

AUTHORS

Miriam Anyanwu
Associate,
Transadvisory Legal.

Ibrahim Zubair
Associate Trainee,
Transadvisory Legal.

transadvisorylegal
trans_advisory
Transadvisory Legal
Savannah Suites, No
8 Faskari Street, Area
III, Garki, F.C.T. Abuja.

TRANSADVISORY
L E G A L

1.0 Introduction

Corporate governance has become a central pillar for regulated sectors worldwide, particularly those critical to national infrastructure such as electricity. In response to persistent governance and operational challenges in the power sector of Nigeria, the Nigerian Electricity Regulatory Commission (NERC) released the Code of Corporate Governance for the National Electricity Supply Industry (NESI) in 2025. The Code introduces mandatory standards to ensure ethical leadership, accountability and sustainable management of licensees. This article provides a comprehensive analysis of the legal underpinnings of the Code, its operational scope, key features, and strategic implications for the future of electricity governance and supply in Nigeria. It further explores the pivotal role of the Nigerian Electricity Regulatory Commission (NERC) in implementing and enforcing the Code and considers its interaction with other sector-specific corporate governance instruments such as the Electricity Act 2023, Companies and Allied Matters Act 2020 and the Nigerian Code of Corporate Governance (2018).

2.0 Background of the Code of Corporate Governace 2025

Despite having the largest economy in Africa and vast energy resources[1], Nigeria has retained the paradoxical status of 'resource rich, production poor' as she continues to face persistent electricity supply deficits, with the national grid capacity oscillating between 3,000 to 5,000 MW for a population exceeding 200 million[2]. The Nigerian power sector has long been plagued by deep-rooted challenges including infrastructural decay, technical inefficiency, market instability and governance failures[3]. Since time immemorial, end-users routinely rely on self-generation via diesel and petrol generators, at a heavy economic and environmental cost.

[1] International Energy Agency, Africa Energy Outlook 2022 (IEA, Paris) https://www.iea.org/reports/africa-energy-outlook-2022 (accessed 7 July 2025)
[2] Taiwo Adebulu, "FG Launches $200m Renewable Energy Project 'to Light Up 500,000 Households'" The Cable (Abuja, 11 March 2020) available at https://www.thecable.ng/fg-launches-200m-renewable-energy-project-to-light-up-500000-households (accessed 7 July 2025)
[3] Davidson Iriekpen, "For the Umpteenth Time, National Grid Collapses Again," ThisDay Newspaper (Lagos, 22 October 2023) 1

At the heart of these challenges lies tangled webs of institutional dysfunction evidenced by unclear regulatory mandates, poor service delivery, tariff shortfalls and most crucially, weak corporate governance across entities responsible for generation, transmission and distribution. The privatization of the sector in 2013, which unbundled the Power Holding Company of Nigeria (PHCN) into successor companies, was intended to catalyze efficiency and investment . However, it quickly became evident that privatization without governance reform merely shifted inefficiencies from the public to the private sector.

The governance landscape of the electricity sector before 2025 was characterized by minimal regulatory requirements and an almost casual approach to corporate oversight. Unlike other sectors that had evolved sophisticated governance frameworks, electricity companies operated with basic compliance structures that fell far short of international standards. Board compositions were often influenced more by political considerations than professional competence, executive compensation lacked transparency and risk management frameworks were rudimentary at best.

This governance deficit was particularly stark when viewed against the backdrop of the critical importance of the sector to national economic development. Companies managing billions of naira in assets and serving millions of customers operated with governance structures that would have been deemed inadequate in far smaller organizations in other sectors and the contrast with other regulated sectors was striking.

The banking sector for instance, following the consolidation reforms of the early 2000s and subsequent regulatory enhancements as recent as 2025, had developed sophisticated governance frameworks that included stringent board composition requirements, comprehensive risk management protocols, and detailed disclosure obligations. The Central Bank of Nigeria's (CBN) corporate governance guidelines for banks, first introduced in 2006 and subsequently updated in 2023, created a template for effective sector-specific governance that the electricity sector conspicuously lacked.

[4] Dr. Sam Amadi, Regulating the Power Sector in Nigeria: Opportunities, Challenges and Prospects (Text of a Lecture delivered at the Annual Public Lecture of the Institute of Chartered Secretaries and Administrators of Nigeria (ICSAN), Agip Recital Hall, MUSON Centre, Lagos, 27 March 2014) p.1-2

Similarly, the oil and gas sector, while not without its challenges, had evolved governance structures that recognized the strategic importance of these industries to national development. The governance reforms by the Nigerian National Petroleum Corporation (NNPC), though gradual, demonstrated an understanding that effective governance was essential for operational efficiency and stakeholder confidence.

These comparative frameworks highlighted the electricity sector's governance deficit and provided valuable lessons for what effective sector-specific governance could achieve. The banking sector's experience, in particular, demonstrated how robust governance requirements could enhance operational efficiency, improve risk management, and attract both domestic and international investment.

The Federal Government of Nigeria (FGN) and the Nigerian Electricity Regulatory Commission (the "Commission") have, over the past decade, undertaken a series of reforms aimed at reshaping the sector into a viable and investment-friendly electricity market. Some of these efforts include the Power Sector Recovery Programme (PSRP) in collaboration with the World Bank to restore financial sustainability[5], The Electricity Act 2023 which repealed the Electric Power Sector Reform Act of 2005 and provided a consolidated legal framework for a decentralized electricity market[6], an emphasis on cost-reflective tariffs[7] etc.

However, as these structural and financial reforms progressed, it became increasingly clear that governance gaps remained a core bottleneck manifesting in overlapping board memberships, lack of independent oversight, politically influenced appointments, little to no expertise of board members and inadequate accountability mechanisms within licensee companies.

[5] World Bank Nigeria – Power Sector Recovery Operation, Project Appraisal Document, Report No. 149330, Washington D.C.: World Bank Group, 1 June 2020, available at http://documents.worldbank.org/curated/en/991581593223433078 (accessed 7 July 2025).
[6] Section 1 (a-s) of the Electricity Act, 2023
[7] Nigerian Electricity Regulatory Commission, Multi-Year Tariff Order (MYTO) 2025 April Supplementary Order (April 2025)

It is against this backdrop that the Nigerian Electricity Regulatory Commission, drawing powers from the Electricity Act[8] and its regulatory mandate, released the Code of Corporate Governance for the Nigerian Electricity Supply Industry (NESI) on May 30th, 2025.

3.0 Scope of the Code

Unlike the Nigerian Code of Corporate Governance (2018) implemented by corporate entities at their discretion, the Code of Corporate Governance for the Nigerian Electricity Supply Industry (NESI), 2025 (the "Code") is not a mere best-practice document. It is a mandatory regulatory instrument designed to standardize governance practices across the sector. It aligns with fundamental sections of the Electricity Act and incorporates best practices from the Companies and Allied Matters Act 2020 and the National Codes[9].

The Code applies comprehensively to licensees operating within the Nigerian electricity sector[10]. A licensee refers to an incorporated entity holding an individual license or undertaking activities subject to a licence granted under the Electricity Act 2023[11]. It defines the governance Sections and sets out minimum standards of corporate governance that entities are expected to comply with in areas such as board structure and composition, audit committees, risk management practices, financial disclosure, stakeholder engagement, and ethical conduct. It also explicitly sets out the criteria for assessing individuals as 'fit and proper' to engage in electricity regulated activities, hold director or executive positions in licensees and hold over 5% equity in any licensee[12].

By so doing, the Code seeks to introduce board professionalism, reduce conflicts of interest, ensure executive accountability, and build stakeholder confidence, particularly among investors, regulators, consumers, and multilateral development institutions.

[8] Section 33(3), 34(2)(b)(g), 226(1) of the Electricity Act, 2023
[9] Section 1.1 of the Code
[10] Section 64(1) of the Electricity Act 2023, Section 1.3 of the Code
[11] Appendix 2 of the Code
[12] Section 1.1 of the Code

4.0 Key Provisions of the Code and their Commercial Implications

4.1 Board Composition and Independence [13]

The Code imposes detailed prescriptions regarding board constitution and functioning. A core pillar of the Code is the recalibration of board structures to guarantee independence, objectivity, and professional competence[14].

The composition of the Board must reflect a balanced blend of skills, diverse experience and gender representation. In determining the skills and number of directors necessary, due recourse must be paid to the business and operations of the licensee. For large entities, the minimum number of directors required by the Code is seven (7) whereas Small entities are required to be in accordance with the Companies and Allied Matters Act 2020 (CAMA 2020)[15]. Although the Code does not clarify the meaning of Small and Large entities, it makes reference to CAMA 2020[16]. CAMA 2020 does not provide any definition or description of Large entities but it clearly provides the eligibility criteria for a company to identify as a Small Company[17].

The provisions require boards to be constituted predominantly by non-executive directors, with at least one (1) director qualifying as independent for small entities, and two (2) for large entities. The chairman of the board must be a Non-Executive Director[18] to preclude concentration of decision-making authority and to foster balanced oversight of executive management. Subject to the provisions of CAMA 2020, one-third of the directors should retire periodically by rotation at the licensee's annual general meeting but are free to re-present themselves for a reappointment. However, it must be noted that the maximum tenure a Director can serve is a period of three (3) terms of four (4) years each.

[13] Section 3.2 of the Code
[14] Section 2.1 of the Code
[15] Section 271 of CAMA 2020 which allows Small Companies to have only one (1) Director
[16] Appendix 2 of the Code
[17] Section 394 of CAMA 2020
[18] Section 7.1 of the Code

The implication of these requirements is that companies must reevaluate and where necessary, restructure their boards to align with the specified composition thresholds. This ensures that strategic decision-making is subject to rigorous independent scrutiny. Furthermore, enhanced independence reduces the potential for conflicts of interest, thereby improving the transparency and credibility of board actions in the eyes of regulators, investors, and consumers alike.

4.2 Board Committees and Delegated Oversight [19]

To enhance specialized oversight and to institutionalize robust governance processes, the Code requires the constitution of key board committees. These include the Audit Committee, the Regulatory Compliance and Risk Management Committee, and the Governance, Remuneration and Nomination Committee. Each committee is to be chaired by a Non-Executive or Independent Director[20] who must neither be the Chairman nor CEO of the licensee, and their membership must reflect a balance of skills and perspectives. A board member shall not be a member of more than two (2) committees.

These committees serve defined statutory and operational functions. The Audit Committee oversees the integrity of financial reporting and internal controls; the Nomination Committee is responsible for board appointments, succession planning, and performance evaluation; while the Risk and Compliance Committee monitors the effectiveness of the licensee's risk management frameworks. This architecture is intended to strengthen internal checks and balances, and to ensure that governance processes are systematic rather than ad hoc.

The requirement to establish these committees compels licensees to allocate dedicated resources and to formalize policies and charters outlining each committee's mandate. The heightened scrutiny of committee functions also exposes licensees to regulatory action where failures in oversight are identified.

[19] Section 3.3 of the Code
[20] Section 9.2 of the Code

4.3 Audit Committee [21]

It is mandatory in the Code, that all licensees, whether public or private, establish an Audit Committee, exceeding the requirements of CAMA 2020 for only public companies. At least one-third of the members of such a committee must be Non-Executive Directors and licensees must disclose the criteria for member selection. The responsibilities of the committee include oversight of financial reporting, internal controls and both internal and external audit functions. Licensees are encouraged to maintain an independent internal audit function, reporting directly to the CEO and the Chairman of the Audit Committee[22], to ensure continuous monitoring and evaluation of the effectiveness of internal controls, governance processes, and risk management systems.

Externally, licensees must appoint an independent auditor to certify the fairness and reliability of financial statements. External audit firms may serve for a maximum of ten (10) consecutive years, after which a seven (7) year cooling-off period applies before possible reappointment. Under the Code, external auditors are also required to report to the Commission, any indication that the licensee or its officers may have committed an indictable offence. If a licensee chooses to engage an external firm as its internal auditor, the same firm cannot serve as its external auditor. Similar to the CAMA 2020, the removal of an auditor under the Code is subject to the decisions of the board upon recommendation by the committee, which must thereafter be reported to the Commission[23].

4.4 Appointment[24] and Remuneration[25] of Directors

The Code prescribes specific requirements for the appointment and remuneration of individual directors to ensure the integrity of leadership within NESI licensees and promote sound governance practices. These provisions extend beyond the collective board structure and impose obligations on licensees to scrutinize each director's fitness, compensation, and alignment with regulatory expectations.

[21] Section 11.6 of the Code
[22] Section 11.7 of the Code
[23] Section 11.7, 11.8 of the Code
[24] Section 3.4 of the Code
[25] Section 4.0 of the Code

The Code mandates that the appointment of directors be conducted through a formal, transparent, and merit-based process led by the Governance, Remuneration and Nomination Committee. The process must evaluate candidates against clearly defined criteria as contained in CAMA 2020[26], including professional competence, integrity, financial propriety, and ethical standing. Licensees are expressly prohibited from appointing individuals who have been convicted of financial crimes, declared bankrupt, or sanctioned for professional misconduct. Moreover, there shall be a periodic Performance Evaluation of the Board, its Committees, Officers of the Company and individual Directors and a formal report of this evaluation is to be filed annually with the Commission[27].

In parallel, the Code addresses directors' remuneration with equal rigor. It requires that compensation be structured to attract qualified individuals while aligning their interests with the sustainable growth and stability of the licensee. The remuneration framework must differentiate between Executive and Non-Executive Directors[28], explicitly stating that the remuneration levels for the non-executive directors should be in consideration of their roles. The Governance, Remuneration and Nomination Committee is tasked with designing and recommending remuneration policies, ensuring they are competitive yet prudent, and that they discourage excessive risk-taking[29].

The Code also imposes disclosure obligations, requiring licensees to publish their directors' remuneration policies and the total compensation paid to each director in their Annual Reports. Directors with multiple directorships on the board of more than two (2) are also required to disclose same to the board before appointment as a Director[30]. This transparency is intended to foster stakeholder confidence and deter practices that could undermine market trust or financial sustainability. For conglomerates with multiple electricity sector investments, this provision forces immediate structural decisions. Companies that rely on common directors to coordinate strategy across portfolio companies must now redesign their governance architecture. The provision effectively prevents the informal coordination that has characterized some sector participants and forces a more "arms-length" approach to inter-company relationships.

[26] Section 283 of CAMA 2020
[27] Section 5.0 of the Code
[28] Section 4.3 of the Code
[29] Section 4.4 of the Code
[30] Section 7.9 of the Code

The obligation to conduct rigorous due diligence on director appointments and to implement robust remuneration policies places significant compliance demands on licensees. These measures reflect the commitment of the Commission to ensuring that leadership within the NESI embodies the Sections of competence, accountability, and ethical stewardship essential for the long-term viability of the sector.

4.5 Officers of the Licensee

4.5.1 The Chairman[31]

The Code establishes a clear governance framework concerning the office of the Chairman, underscoring the critical role this position plays in ensuring effective corporate oversight and strategic leadership within NESI licensees.

Firstly, the Chairman is designated as the leader of the board[32], charged with providing overall direction, facilitating effective functioning of the board, and ensuring that it operates in an atmosphere of openness and constructive debate. The Chairman's responsibilities explicitly include ensuring that directors receive accurate, timely, and clear information, enabling the board to function effectively and to make informed decisions. The Chairman is appointed by the Directors and is subject to an annual performance evaluation by the Board[33].

The Code prohibits the consolidation of the roles of Chairman and Chief Executive Officer (CEO) in a single individual[34]. This separation is a core governance Section designed to avoid undue concentration of power, mitigate conflicts of interest, and maintain a robust system of checks and balances. The Chairman, therefore, must be separate and independent from the executive management, and shall not be involved in day-to-day operational decision-making of the licensee.

[31] Section 7.1 of the Code
[32] Appendix 4 of the Code
[33] Section 7.7 of the Code
[34] Section 7.6 of the Code

Further, the Code emphasizes the importance of independence and objectivity in the office of the Chairman. The Chairman must be a Non-Executive Director (NED)[35] given the importance of maintaining impartial oversight over management activities.

Perhaps most significantly, the Code introduces CEO tenure limits of 10 years[36], which can be divided into two terms. This provision breaks from the indefinite tenure arrangements that characterized many electricity companies and introduces a forced succession planning discipline that can have profound implications for strategic continuity and corporate culture.

In addition, the Chairman must not serve as chair of the Audit Committee but may attend meetings only by invitation[37]. This provision seeks to prevent undue influence over committee proceedings and preserves the objectivity of critical oversight functions.

4.5.2 The Managing Director/Chief Executive Officer (MD/CEO)[38]

Under the Code, the role of the MD/CEO is precisely delineated to safeguard the integrity of governance and prevent concentration of authority. The Code emphasizes that the MD/CEO, as the highest-ranking executive officer of a licensee, is charged with the day-to-day management of the company's operations, implementation of board-approved strategies, and leadership of the management team.

The MD/CEO is accountable to the board for the execution of the company's business plan, financial performance, operational efficiency, and regulatory compliance. This accountability framework underscores the Section that while operational authority is vested in the MD/CEO, strategic oversight and ultimate responsibility remain with the board. The tenure of the MD/CEO shall be a maximum period of ten (10) years which may be broken down into two (2) terms of five (5) years each.

[35] Section 7.1 of the Code
[36] Section 7.8 of the Code
[37] Section 11.6(c) of the Code
[38] Section 7.2 of the Code

4.5.3 The Company Secretary[39]

The Board has the power to appoint and remove the Company Secretary in accordance with the provisions of CAMA 2020[40] and ensuring that she/he is an individual possessing the requisite knowledge, competence and qualifications essential for fulfilling the responsibilities of the role. The secretary shall not only fulfill statutory obligations but also bring lapses of the licensee to the notice of the board. She/he reports to the board through the chairman for board-related matters and to the MD/CEO for administrative matters.

4.6 Eligibility and Fitness Requirements for Executive Management

The Code establishes rigorous requirements for the appointment of individuals into executive management positions in NESI licensees. To be eligible for such positions, candidates must:

- Provide references from their last three employers attesting to character and suitability.
- Obtain appropriate clearances after comprehensive security checks by relevant security agencies.
- Disclose all interests and be cleared of any conflicts of interest[41].

Further, the fitness requirements for management roles differ by licensee category:

- For Generation, Transmission, System Operation, Supply, and Distribution licensees, fitness requirements are detailed in Schedule 1 of the Code.
- For Trading licensees, fitness requirements are detailed in Schedule 2 of the Code.

These measures ensure that executive leadership across NESI meets high standards of integrity, competence, and regulatory suitability.

[39] Section 8.0 of the Code
[40] Section 333 of CAMA 2020
[41] Section 1.2.1 of the Code

4.7 Risk Management and Internal Controls

The guidelines introduce comprehensive accountability mechanisms to enhance transparency. Section 5.1 establishes requirements for board performance evaluation that create formal accountability mechanisms for governance effectiveness. The board must periodically monitor and evaluate its performance, with specific evaluation requirements for committees, committee chairs, individual directors, and the chairman. The requirement for formal reports on board evaluation implementation to be submitted to the Commission annually represents a significant transparency requirement that makes board effectiveness a matter of regulatory oversight. This creates regulatory accountability for governance effectiveness that extends beyond traditional compliance requirements.

Section 5.2 requires companies to establish board development programs that ensure directors maintain and enhance their governance capabilities. Section 5.3 goes further to require companies to report board and director evaluations in annual reports through evaluation statements, creating public accountability for governance effectiveness. Section 5.4 explicitly provides for executive director evaluation through the Risk Management committee, creating a formal mechanism for evaluating executive performance that is independent of management influence.

From a commercial perspective, operational cost implications of the enhanced risk management and internal control requirements are significant. Companies must invest in systems and processes that can support the required evaluation and reporting functions. These investments represent ongoing operational costs that must be factored into business planning and pricing strategies.

Insurance and liability considerations become more complex under the enhanced accountability requirements. Directors and executives face increased personal liability for governance failures, creating demand for enhanced director and officer insurance coverage. The cost of this coverage may increase significantly as insurance providers adjust to the new liability environment.

Performance monitoring systems must be established to support the required evaluation and reporting functions. These systems must be capable of collecting and analyzing governance performance data and providing real-time feedback to support governance improvement efforts.

Taking all of this into consideration, companies must develop comprehensive implementation roadmaps that account for the complexity of the risk management and internal control requirements. These roadmaps must prioritize critical compliance requirements while ensuring that implementation efforts are coordinated and effective.

4.8 Conflict of Interest and Related Party Transactions

Section 3.3 mandates specific committee structures that fundamentally alter how electricity companies organize their board oversight functions. The required committees are Audit, Risk, and Governance, which must be established with specific composition rules that ensure independence and expertise. Section 11.2 provides detailed requirements for committee composition, including restrictions on chairman participation and requirements for non-executive director participation.

Section 6.4 addresses conflict of interest management through formal policies and procedures that must be established and maintained. The guidelines require companies to identify potential conflicts proactively and establish management processes that prevent conflicts from affecting decision-making.

The establishment of a Remuneration Committee with specific responsibilities for executive compensation represents a significant shift from informal compensation arrangements. The requirement that this committee be comprised of non-executive directors ensures independence in compensation decisions.

Business relationship restructuring may be necessary for companies with complex related party relationships. The enhanced oversight requirements may make some related party arrangements impractical or costly to maintain, forcing companies to restructure business relationships to comply with the new requirements.

Transaction approval processes create additional costs and timeline considerations for related party transactions. Companies must factor these approval requirements into transaction planning and ensure that appropriate approval processes are in place before transactions are executed.

Legal liability exposure increases under the enhanced conflict of interest requirements. Directors and executives face increased personal liability for conflicts of interest, creating incentives for more careful conflict identification and management. This increased liability exposure may affect director recruitment and retention.

4.9 Reporting, Transparency, and Disclosure Obligations

The Code establishes rigorous standards around reporting, transparency, and disclosure, reflecting the need for accountability and stakeholder confidence. Central to these obligations is the preparation of comprehensive reports that document both financial performance and governance practices.

Under Section 12.0 of the Code, licensees are required to produce an **Annual Report** that provides an equitable, unbiased, and transparent assessment of the licensee's current state and future prospects. This report must include financial statements prepared in accordance with the Companies and Allied Matters Act (CAMA)[42], standards issued by the Financial Reporting Council of Nigeria and any specific requirements set by the Nigerian Electricity Regulatory Commission (NERC). The board bears the ultimate responsibility for the accuracy, integrity, and timely communication of this information, ensuring it meets the principles of relevance, reliability, and materiality[43]. In fulfilling this obligation, the Audit Committee plays a crucial role, particularly in formulating policies governing non-audit services and in safeguarding the independence of external auditors.

Beyond the Annual Report, the Code also mandates the submission of an **Annual Compliance Report** to the Commission, as stipulated in Section 14.0. This report serves as a regulatory tool to monitor adherence to the provisions of the Code. It must be prepared in the prescribed format outlined in Appendix 4 of the Code and signed by both the Chairman and the Company Secretary of the licensee,

[42] Sections 377 and 378 of CAMA 2020
[43] Appendix 1 of the Code

underscoring joint accountability at the highest level of corporate governance. The Annual Compliance Report is expected to address critical areas, including the composition and functioning of the board and its committees, details of meetings and attendance records, governance policies, risk management frameworks, remuneration practices, confirmation of compliance with fit and proper requirements and disclosures of any deviations from the Code, accompanied by explanations and remedial actions undertaken.

Failure to submit the Annual Compliance Report within the specified timeframe, or the provision of false or misleading information therein, constitutes a breach of the Code and may attract regulatory sanctions[44].

4.10 Whistle-Blowing Mechanisms and Ethical Governance

One of the key pillars supporting this framework is the establishment of robust whistle-blowing mechanisms designed to detect and address unethical, unlawful, or fraudulent practices within licensees operating in the Nigerian Electricity Supply Industry.

Boards are mandated to institute effective channels to facilitate confidential reporting of misconduct[45]. These mechanisms are not static as the Audit Committee is expressly charged with periodically reviewing their effectiveness to ensure they remain fit for purpose and responsive to evolving risks within the organisation.

The Code further requires that boards actively encourage employees to report unethical or unlawful conduct as part of their oversight responsibilities. This proactive stance is expected to be integrated into the governance framework of the company through the development and enforcement of a comprehensive Code of Ethics and a formal Whistle-Blowing Policy. These serve as a guiding document articulating the standards of integrity and professional conduct expected across all levels of the organisation, thereby reinforcing an ethical corporate culture.

[44] Section 1.3(b) of the Code
[45] Section 11.4 of the Code

A critical protection enshrined in the Code is the prohibition against any form of detriment to whistle-blowers arising from their disclosures. The board is obligated to ensure that individuals who raise concerns in good faith are shielded from retaliation, victimisation, or any adverse consequences. Should a whistle-blower suffer any form of detriment, the Code provides recourse, allowing the affected individual to lodge complaints with either the board or relevant regulatory authorities. Furthermore, whistle-blowers who experience unjust treatment may be entitled to compensation or reinstatement, as appropriate under applicable law and the governance frameworks in place.

5.0 Consequences of Non-Compliance with the Code[46]

Compliance with the Code is not optional but a binding regulatory obligation backed by the enforcement powers of the Commission. Under the Code, NERC holds primary responsibility for monitoring adherence and possesses broad authority to take enforcement action where breaches are identified. Failure to comply with the provisions of the Code exposes a licensee to sanctions as prescribed under the Electricity Act and other regulatory instruments issued by NERC[47].

Such sanctions may include the refusal to grant a license, revocation of the license[48], monetary fines[49]. It must be noted that the principal officers of the company are equally as liable as the company where any offence was committed by the company in contravention of the provisions of the Code[50].

[46] Section 1.3 of the Code
[47] Section 75 of the Electricity Act 2023
[48] Section 71(5) of the Electricity Act 2023
[49] Sections 76 and 216 of the Electricity Act 2023
[50] Section 217 of the Electricity Act 2023

6.0 Enforcement Feasibility: Can The NERC Deliver?

The Code stipulates penalties for non-compliance, including license revocation and monetary fines. However, enforcement is only as strong as the capacity of the regulator. Questions abound as to whether NERC has adequate human capital, funding, and technological infrastructure to monitor governance compliance effectively across a complex and expanding electricity sector.

According to a 2023 report, the Commission boasts of staff strength of less than 500 people distributed across regulatory, technical, administrative, and legal departments. This limited workforce is responsible for overseeing an electricity market that includes over 400 licensees across various activities including generation, transmission, distribution, metering, embedded generation, mini-grids, and franchising. Many of these licensees operate in remote or semi-formal contexts which increases the difficulty of proactive oversight, a core function of the Commission. Moreover, the specialized nature of corporate governance ranging from auditing remuneration policies to verifying board independence requires expertise not typically abundant within standard regulatory departments.

As part of its enforcement efforts, NERC in its Q1 2025 Report[51] has recorded an issuance of 18 Notices of Intention to Commence Enforcement (NICE), 21 Rectification Directives (RD), and no monetary fines, license withdrawal, or suspension to violating licensees. While this demonstrates a baseline level of regulatory activity, it also raises legitimate concerns about the appetite of the Commission for applying the full force of its enforcement powers, particularly when dealing with non-compliance related to mandatory instruments like the Code of Corporate Governance.

In light of these numbers, one might reasonably question whether NERC is truly prepared to implement the Code with the firmness it requires. A Code that is described as “mandatory” must carry with it a strong deterrent framework. Yet, the limited use of severe sanctions, even in clear-cut cases of non-compliance, creates the impression of a regulator that prefers gentle nudges over decisive action. This could ultimately undermine the credibility and deterrent value of

[51] Nigerian Electricity Regulatory Commission (NERC), “Quarterly Report: Q1 2025,” July 2025. Available at: https://nerc.gov.ng/wp-content/uploads/2025/07/2025_Q1_Report.pdf

the Code. If licensees begin to perceive enforcement as soft or inconsistent, the incentive to treat governance standards with the seriousness they deserve may erode, further entrenching the very culture of weak accountability the Code seeks to reverse.

Perhaps it is worth giving NERC the benefit of the doubt. While its recent enforcement efforts may appear tepid, there is precedent, however limited, suggesting that the Commission is capable of taking firm action when it chooses to. In 2015, the Commission sanctioned several distribution companies for failure to remit market payments and non-compliance with metering targets, including threats of license suspension. A more notable case occurred in 2021, when NERC imposed a ₦ 50 million fine on the Abuja Electricity Distribution Company (AEDC) for issuing inflated electricity bills in violation of the capping regulation. Although there is little public clarity as to whether such fines were ultimately paid and what follow-through occurred, the act of sanctioning itself sent a strong signal at the time. In that instance, these enforcement measures were applauded by civil society for upholding consumer protection standards. More recently, the Q1 2025 report confirmed that compliance and enforcement remain one of the six strategic pillars of the Commission, emphasizing its institutional commitment to regulatory discipline across the industry.

Still, despite these occasional flashes of assertiveness, the broader pattern remains troubling. The enforcement of market rules and tariff orders often faces resistance, legal pushbacks, or political interference. In some cases, defaulting operators delay compliance without facing substantial penalties due to perceived regulatory capture or inadequate monitoring systems. Governance breaches, which are often internal and opaque (e.g., nepotistic board appointments or under-the-table compensation), present an even steeper challenge.

To overcome these barriers, therefore NERC must as a matter of urgency and necessity, invest in a combination of policy, institutional, and technological upgrades.

7.0 Stakeholders Reaction and Practical Realities

Stakeholder responses to the Code have been mixed, reflecting both optimism and concern. Many industry operators welcome the focus of the Code on professionalism and transparency, viewing it as a critical step towards restoring investor confidence and stabilizing the market.

However, small and medium-sized licensees worry about the cost implications of implementing multiple board committees, conducting annual governance evaluations, and meeting new reporting obligations. Some executives also fear that the rigid structure may not accommodate the operational realities of newer or innovative market entrants.

Investors and multilateral development agencies, in contrast, have largely supported the reforms. For them, codified governance obligations reduce the risk of mismanagement and enhance the creditworthiness of market participants. There is an expectation that the Code could help de-risk investment in NESI over time.

Consumer voices are relatively underrepresented in the design and rollout of the code. Yet, civil society organizations focused on energy access and transparency argue that if properly enforced, the Code could drive improvements in service delivery by embedding accountability into corporate structures.

8.0 Conclusion

The 2025 Code of Corporate Governance for NESI represents a significant stride toward entrenching transparency, accountability and ethical leadership in the power sector of the country. Its provisions are comprehensive, technically sound, and well-aligned with international best practices, offering a robust framework capable of fostering investor confidence and sustainable sectoral growth.

Yet, as with many regulatory initiatives in Nigeria, the true test does not lies in the quality of the rules but in their practical and consistent implementation. A persistent challenge in the Nigerian legal and regulatory landscape has been the gap between laws enacted and the realities of their enforcement.

The 2025 Code of Corporate Governance for NESI represents a significant stride toward entrenching transparency, accountability and ethical leadership in the power sector of the country. Its provisions are comprehensive, technically sound, and well-aligned with international best practices, offering a robust framework capable of fostering investor confidence and sustainable sectoral growth.

Yet, as with many regulatory initiatives in Nigeria, the true test does not lies in the quality of the rules but in their practical and consistent implementation. A persistent challenge in the Nigerian legal and regulatory landscape has been the gap between laws enacted and the realities of their enforcement. It is therefore imperative that all stakeholders commit to ensuring that the Code does not become merely another well-crafted document gathering dust on regulatory shelves. Rather, it should serve as a living instrument actively shaping corporate governance culture within the industry.

Futher, these provisions come with significant compliance costs. Smaller licensees, especially embedded generators or mini-grid operators, may find it challenging to meet these standards without external support. There is a risk that the Code could disproportionately burden smaller players unless NERC introduces a tiered compliance model.

It is the belief however, that if rigorously enforced and embraced as a tool for corporate integrity rather than viewed merely as a compliance burden, the NESI Code has the potential to mark a new era for governance in the Nigerian power sector.