



**moving towards
better corporate governance
updates on SEC's code implementation
and other developments
in Ghana's corporate landscape**

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In October 2020, Ghana's Securities and Exchange Commission (the "SEC") published the SEC Corporate Governance Code (the "Code"). Two and a half years since its introduction and a year and a half since compliance became mandatory, we sat down with the SEC to see how it is going.

What is the Code?

The Code is based on international best practices for enhancing transparency, accountability, responsibility, fairness, and ethics in the operations of listed companies. It covers board composition and responsibilities, risk management practices, financial reporting requirements, stakeholder engagement policies, executive compensation guidelines, and ethical behaviour standards. It sets out provisions for board independence, diversity, gender balance, and whistleblowing, among other issues.

The Code applies to all companies, including banks, insurance companies, and other public interest entities listed on the GSE as well as small and medium-sized companies ("SMEs") whose securities are traded on the Ghana Alternative Market (the "GAX"). Companies must disclose how they have complied with the provisions of the Code in their annual reports to shareholders, and the SEC monitors compliance with the Code's provisions through regular reviews of listed companies' compliance reports.

How is the Implementation of the Code Progressing?

Generally, the Code has been positively received by GSE-listed companies and investors. However, according to the SEC, although significant progress has been made in implementing the Code, particularly with companies listed on the main board of the GSE, there is still a considerable way to go to achieve compliance across the board.

While some companies have made significant progress in complying with the Code, others still face challenges in meeting its requirements. The SEC indicated that the compliance failures by most companies were not due to recalcitrance but due to legitimate implementation challenges companies are facing and that it is continuing to engage with listed companies on compliance issues and to provide guidance where necessary.

Companies on the GAX have had the most challenges with implementing the Code due to capacity challenges because, by the SEC's admission, many of the Code's provisions are more geared towards larger corporates and do not sufficiently consider the peculiar needs and challenges of SMEs. They noted, for example, that section 16 of the Code, which requires a separation of the positions of chairman and chief executive officer, has been difficult for these companies because of legitimate concerns about the reduced control over the governance structures of their companies.

The SEC has granted waivers to some companies upon request and based on the level of compliance of the requesting company. They noted however that such waivers were usually granted to multinational companies already implementing measures substantially similar to the provisions of the Code.

What will the SEC Be Doing to Improve Compliance Going Forward?

The SEC has indicated that its focus for the rest of the year is on facilitating compliance through training and other capacity-building measures, particularly for GAX companies.

Once this period is over, companies that remain non-compliant could face sanctions. Section 38 of the Code imposes an administrative penalty of up to three hundred penalty units (equivalent to GHS 3600) for a breach of the Code or a greater amount if the breach involves a breach of the Companies Act 2019, ACT 992.

Other Trends In The Corporate Governance Landscape

The National Corporate Governance Code

A national corporate governance code (the "National Code") was launched in 2022. The Institute of Directors Ghana ("IoD-Gh") partnered with the SEC, the Bank of Ghana ("BoG"), and other regulators to put together the National Code, compliance with which is expected to be mandatory from 2024.

The National Code is a comprehensive document that seeks to harmonise existing industry and sector-specific governance standards and to promote sound governance practices in the country.

A novel feature that the National Code introduces is the inclusion of a code for SMEs and companies in the informal sector, which makes up approximately 85% of all businesses operating in Ghana and contributes about 70% of Ghana's annual GDP.

The importance of proper governance structures for these businesses and the economy as a whole cannot be overstated.

Therefore, the introduction of a draft code for SMEs is highly commendable.

For this code for SMEs to be effective, the drafters will need to draw upon the lessons learned by the SEC from implementing the Code by companies on the GAX. Early awareness-raising and adequate training and capacity-building exercises must be put in place for SMEs before implementation begins.

The Director's Charter Bill

The Director's Charter Bill is a proposed legislation to enhance corporate governance practices in Ghana. The Institute of Directors Ghana ("IoD-Gh") introduced the bill, and it was drafted with input from various stakeholders, including the SEC, the BoG, and other industry players. The Director's Charter Bill seeks to establish a code of conduct for directors and a certification process for individuals seeking to become directors.

The bill aims to promote transparency, accountability, and professionalism in the directorship role and to enhance the overall quality of corporate governance practices in Ghana. If passed into law, the Director's Charter Bill will require directors of all public companies, banks, insurance companies, and other significant institutions to be certified by the IoD-Gh.

The certification process will involve training, assessment, and ongoing professional development. The bill will also establish a disciplinary process for breaches of the IoD-Gh's Code of Ethics by directors. The government of Ghana is currently reviewing the Director's Charter Bill. It will significantly impact Ghana's directorship role and enhance the corporate governance landscape if enacted into law.

Environment, Social, and Governance (ESG) Guidelines for Listed Companies

In November 2022, the Ghana Stock Exchange released the ESG Disclosures Guidance Manual (the "Manual"). The Manual was published to guide listed Ghanaian companies on an internationally accepted standard for ESG reporting and to show how ESG can be incorporated into their strategy, operations, and performance management.

The Manual recommends the use of the Global Reporting Initiative Sustainability Reporting Standards, 2021 (the "GRI Standards"), which is the world's most widely adopted standard for sustainability impact and is currently being used by a large percentage of the biggest companies in the world.

The GRI Standards mandate organizations to apply eight reporting principles in preparing reports: balance; clarity; comparability; completeness; verifiability. Although implementation will be voluntary from its commencement, the goal is to have large-capitalization companies take the lead in implementation with the expectation that other companies will subsequently come on board voluntarily.

The Ghana Stock Exchange intends to incorporate the Manual into the listing rules from 2023.

The Manual has also been integrated into the 10-year Capital Market Master Plan to promote sustainability and transparency.

Establishment of Office of the Registrar of Companies.

In July 2022, the President inaugurated the Office of the Registrar of Companies ("ORC") to take over the registration and regulation of businesses in the country. This role was previously played by Registrar General's Department ("RGD"), which in addition to this responsibility, oversaw the registration of marriages, deaths, births, and intellectual property rights. The ORC was established under the Companies Act 2019 (Act 992) to ease the burden on the RGD and to provide streamlined services to companies and businesses.

The functions of the ORC include registration of business names, partnerships, and companies, playing the role of official liquidator of companies, the appointment and regulation of company inspectors as well as the registration of professional bodies other than those established by an Act of Parliament. The Corporate Insolvency and Restructuring Act 2020 (Act 1015) also indicates that the ORC will contain an insolvency services division to supervise insolvency practice.



Nana Ama Botchway, Managing Partner

Nana Ama is the founder of n. dowuona & company. She is ranked as a leading lawyer in Legal 500, Chambers & Partners, and the International Financial Law Review. She has advised on numerous significant investments and divestments in Ghana and in other parts of Africa including the USD 200 million sale of Fan Milk International, the acquisition, development and divestment of the Movenpick Ambassador Hotel and Leapfrog Strategic African Investment's USD 180 million investment in the Enterprise Insurance Group. Nana Ama is a graduate of Princeton University's Woodrow Wilson School Undergraduate Program, New York University's Stern School of Business and Columbia University School of Law. Nana Ama has served on numerous boards locally and internationally, including Scancom PLC (MTN Ghana).

The creation of this office is a welcome improvement within the corporate regulatory space, as the streamlining of services will ensure faster and more efficient delivery of the services provided to companies. The ORC will continue to operate from the same premises as the Registrar General's Department in all its offices across the country until its Head Office is complete and operations moved there.



Nana Esi Agyemang-Sereboo, Pupil

Nana Esi is a pupil at N. Dowuona & Company. Her areas of focus are banking and finance and corporate and commercial. Her recent work with the firm includes advising a multinational fintech service provider on a share transfer, advising a global mining consultancy company on local participation requirements, and advising a global payment technology solutions company on entry requirements. She also routinely provides advice to a range of companies on regulatory compliance. Nana Esi obtained her LLB from Kwame Nkrumah University of Science and Technology (KNUST) and a qualifying certificate from the Ghana School of Law.