

# **Nestlé Nigeria Plc**

## **Board Charter and Code of Ethics**

### **1. Establishment of the Board**

- a. The Board of the Company is established pursuant to the provisions of the Companies and Allied Matters Act (CAMA), Articles of Association and Code of Corporate Governance of the Securities and Exchange Commission of Nigeria.
- b. The Board shall consist of a maximum of nine directors as stated in its Articles of Association. The quorum for the meeting of the Board shall be three.

### **2. Attendance and participation at meetings**

- a. The Directors shall attend and participate actively at the meetings of the Board. The Board may also invite any Management staff or Consultants to attend its meetings in order to provide report, information and or documents that will assist the Board in the discharge of its duties. The representative(s) of the external auditor may be invited to attend its meetings.
- b. The Board may also invite the head of internal audit / internal control to its meeting whenever they deem fit.
- d. The Company Secretary / Legal Adviser shall provide secretariat and legal services to the Board.

### **3. Frequency of meetings and attendance**

- a. Meetings shall be held not less than four times a year at dates agreed by the members.
- b. The Chairman or two members may requisition a meeting of the Board to handle any urgent matters that are in furtherance of the interest of the Company.
- c. Every director should be required to attend at least two-thirds of all Board meetings.

### **4. Notice of meetings**

The notice of meeting shall be sent to all directors fourteen days before the meeting.

### **5. Legal status of Directors**

- a) Directors are Trustees of the company's moneys, properties and their powers. Consequently, they must account for all the moneys over which they exercise control and shall refund any moneys improperly paid away and shall exercise their powers honestly in the interest of the company and all the shareholders, and not in their own sectional interests.

- b) A Director may when acting within his authority and powers of the company be regarded as agent of the company.

## 6. Duties of Directors

- (a) A Director of a company stands in a fiduciary relationship towards the company and shall observe the utmost good faith towards the company in any transaction with it or on its behalf.
- (b) A Director shall also owe fiduciary relationship with the company in the following circumstances:
  - (a) where a director is acting as agent of a shareholder
  - (b) where even though he is not an agent of a particular shareholder, such a shareholder or other person is dealing with the company's securities
- (c) A director shall act at all times in what he believes to be the best interest of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed and in such manner as a faithful, diligent, careful and ordinarily skillful director would act in the circumstances.
- (d) The matters to which the director of a company is to have regard in the performance of his function include the interest of the company's employees in general, as well as the interest of its members.
- (e) A director shall exercise his powers for the purpose for which it is specified and shall not do so for a collateral purpose, and the power, if exercised for the right purpose, does not constitute a breach of duty, if it, incidentally, affects a member adversely.
- (f) A director shall not fetter his discretion to vote in a particular way.
- (g) Where a director is allowed to delegate his powers under the law, such a director shall not delegate the power in such a way and manner as may amount to an abdication of duty.
- (h) No provision whether contained in the Articles of Association or resolutions of a company, or in any contract, shall relieve any director from the duty to act in accordance with this section, or relieve him from liability incurred as a result of any breach of the duties conferred upon him under this section.
- (i) Any duty imposed on a director under this section shall be enforceable against the director by the company.

## **7. Specific obligations imposed on Directors**

- (a) The personal interest of a director shall not conflict with any of his duties as a director.
- (b) A director shall not-
  - (a) in the course of management of affairs of the company; or
  - (b) in the utilisation of the company's property, make any secret profit or achieve other unnecessary benefits.
- (c) A director shall be accountable to the company for any secret profit made by him or any unnecessary benefit derived by him contrary to the provisions of sub-section (2) of this section.
- (d) The inability or unwillingness of the company to perform any functions or duties under its articles and memorandum shall not constitute a defence to any breach of duty of a director.
- (e) The duty not to misuse corporate information shall not cease by a director or an officer having resigned from the company, and he shall still be accountable and can be restrained by an injunction from misusing the information received by virtue of his previous provision.

## **8. Directors' duty of care and skill**

- (a) Every director of a company shall exercise the powers and discharge the duties of his office honestly, in good faith and in the best interest of the company, and shall exercise that degree of care, diligence and skill which a reasonably prudent director would exercise in a comparable circumstance.
- (b) Failure to take reasonable care shall ground an action for negligence and breach of duty.
- (c) Each director shall be individually responsible for the actions of the board in which he participated, and the absence from the board's deliberations, unless justified, shall not relieve a director such responsibility.
- (d) The same standard of care in relation to the director's duties to the company shall be required for both executive and non-executive directors.

Provided that additional liability and benefit may arise under the master and servant law in the case of an executive director if there is an express or implied contract to that effect.

## **9. Prohibition of secret benefits**

- (a) A director shall not accept bribe or commission either in cash or kind from any person or a share in the profit of that person in respect of any transaction involving the company in order to introduce the company to deal with such a person.

- (b) If a director contravenes this obligation, he commits a breach of duty and the company shall recover from the director the actual bribe and then sue him and the other person jointly and severally for damages sustained without any deduction in respect of what the director has returned.
- (c) Director can only accept symbolic gifts not exceeding USD 50 in respect of any transaction involving the company.
- (d) In all cases concerning secret benefits, the plea that the company benefited or that the gift was accepted in good faith shall be no defence.

## **10. Directors' duty to disclose interests in contracts**

- (1) It shall be the duty of a director of a company who is in anyway, whether directly or indirectly, interested in a contract or proposed contract with the company, to declare the nature of the interest at a meeting of the directors of the company.
- (2) In the case of a proposed contract, the declaration required by this section to be made by a director shall be made at the meeting of directors at which the question of entering into the contract is first taken into consideration, or, if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested, and in a case where the director becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the directors held after he became so interested.
- (3) A general notice given to the directors of a company by a director to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm, shall be deemed to be a sufficient declaration of interest in relation to any contract so made:
- (4) This duty shall not prejudice the operation of any rule of law restricting directors of a company from having any interests in contracts with the company.

## **11. Duty to disclose age to the company**

- (1) Any person who is appointed or to his knowledge proposed to be appointed director of a public company and who is 70 or more years old shall disclose this fact to the members at a general meeting.
- (2) The CAMA provides that any person who fails to disclose his age as required shall be guilty of an offence and liable to a penalty.

## **12. Powers of Directors**

A Director may appoint any Director or any other person as his Alternate with the approval of the Board.

## **13. Appointment to Board Committees**

The Board may establish necessary committees to facilitate the discharge of its assignments and may appoint its members to serve on those committees. The Board shall provide terms of reference for members of the committee and the frequency of their reporting to the Board. Members of the Board Committees shall attend and participate at meetings of the committee.

## **14. Reporting procedures**

The Secretary shall circulate the minutes of meetings of the Board to all members.

The Board shall produce the directors' report to shareholders on its activities during the year which will form part of the Company's annual report.

## **15. Insider Trading**

- (a) In accordance with Section 315 of the Investment and Securities Act 2007 and Rule 110 (3) of the SEC Rules and Regulations, members of the Board are insiders as defined in that Act and, accordingly, shall not, while in possession of confidential or unpublished price sensitive information (including unaudited and audited financial statements) of or relating to the Company, utilize the information to buy or sell the Company's securities for the benefit of themselves or any other person or persons until after 24 hours of the publication of the results in a national newspaper or website of the Nigerian Stock Exchange or Securities and Exchange Commission.
- (b) A member of the Board shall in accordance with Rule 401 made pursuant to the Investments & Securities Act 2007 notify the Securities & Exchange Commission of the sale of their shares in the company or any purchase of shares in the company not later than 48 hours after such activity and Nestlé on the day the transaction occurred.

## **16. Conflict of interest**

- (a) Directors should promptly disclose any real or potential conflict of interest that they may have regarding any matters that may come before the Board or its committee.
- (b) A director should abstain from discussions and voting on any matter in which the directors have or may have conflict of interest.
- (c) If a director is not certain whether he is in a conflict of interest situation, the director concerned should discuss the matter with the Chairman of the Board or with the company secretary for advice and guidance.
- (d) If any question arises before the Board as to the existence of a real or perceived conflict, the Board should by a simple majority determine if a conflict exists. The director or directors potentially in the conflict of interest situation shall not participate in any discussion and shall not vote on the issue.

(e) A director who is aware of a real, potential or perceived conflict of interest on the part of a fellow director, have a responsibility to promptly raise the issue for clarification, either with the director concerned or with the Chairman of the Board.

(f) Disclosure by a director of potential or perceived conflict of interest or a decision by the Board as to whether a conflict of interest exists should be recorded in the minutes of the meeting.

## **17. Code of conduct and ethics**

(a) In accordance with legal requirements and agreed ethical standards, directors of the company shall act honestly, in good faith and in the best interests of the company as a whole.

(b) Directors owe a fiduciary duty to the company as a whole and have a duty to use due care and diligence in fulfilling the functions of office and exercising the powers attached to that office.

(c) They should undertake diligent analysis of all proposals placed before the Board and act with a level of skill expected from directors of a company.

(d) The directors shall not make improper use of information acquired as directors and not disclose non-public information except where disclosure is authorized or legally mandated.

(e) Directors shall keep confidential information received in the course of the exercise of their duties and such information remains the property of the company from which it was obtained and it is improper to disclose it, or allow it to be disclosed, unless that disclosure is required by law.

(f) Directors shall not take improper advantage of their position or use their position for personal gain or to compete with the company.

(g) Directors shall not take advantage of company property or use such property for personal gain or to compete with the company.

(h) Directors shall protect and ensure the efficient use of the company's assets for legitimate business purposes.

(i) Directors shall not allow personal interests, or the interest of any associated person, to conflict with the interests of the company.

(j) They should make reasonable enquiries to ensure that the company is operating efficiently, effectively and legally, towards achieving its goals.

(k) They should not engage in conduct likely to bring discredit upon the company and should encourage fair dealing by all employees with the company's customers, suppliers, competitors and other employees.

(l) Directors should encourage the reporting of unlawful/unethical behaviour and actively promote ethical behaviour and protection for those who report violations in good faith.

(m) Directors shall have an obligation, at all times, to comply with the principles of the Code of Corporate Governance of the Securities & Exchange Commission, applicable laws and regulations in Nigeria.

## **18. Board Structure and Composition**

The Board will promote diversity in its membership across a variety of attributes (including knowledge, skills, experience, age, culture and gender) relevant for promoting better decision-making and effective governance.

## **19. Access to Independent Advice**

The Board will ensure that Directors, especially the non-executive directors, have access to independent professional advice where they consider it necessary to discharge their responsibilities as Directors. The Director may obtain the independent professional advice on ethics, conflict of interest and good corporate governance after first consulting the Company Secretary for his professional advice on the issue. Thereafter, if the director still feels that he needs additional professional advice, he shall discuss the issue with the Chairman and obtain his written approval with the limit of the professional fee to be eventually paid by the Company on such independent professional advice. In case the Chairman needs independent professional advice on ethics, conflict of interest and good corporate governance, he is to first consult the Company Secretary for his professional advice on the issue. If the Chairman still feels that he needs additional professional advice, he shall discuss the issue at the Board meeting and obtain the approval of the Board with the limit of the professional fee to be eventually paid by the Company on such independent professional advice.

## **20. Appointment to the Board, Induction and Training**

The appointment to the Board will take into consideration the strength and areas of improvement of the existing Board, integrity, competence, skills, knowledge, experience, capacity to undertake the responsibility as well as diversity.

The appointment of a new Director will commence after the declaration of a vacancy by the Board. It is the responsibility of the Board to determine the required knowledge, skills, experience and competence to be possessed by the potential candidate. Thereafter, the curriculum vitae of candidates satisfying the requirements would be sourced and forwarded to the Nomination, Governance and Remuneration Committee for scrutiny, discreet validation of character and interaction with the candidates.

If the Nomination, Governance and Remuneration Committee is satisfied with the information obtained, the suitable candidate would be recommended to the Board for appointment as a Director of the Company. If the recommended candidate is approved

by the Board, it would be presented to the shareholders for election at the next Annual General Meeting.

A newly appointed Director of the Company is required to undergo an induction process in order to know the Company, business and duties better. Important corporate documents on the profile, history, values, members of the Board and top management, business principles, production facilities, projects, Creating Shared Value initiatives are made available to new Directors.

The Directors of the Company participate periodically in relevant continuing education program at the expense of the company in order to update their knowledge and skills and keep them informed of new developments in the Company's business, regulatory and operating environments. The objective of the training is to assist them to fully and effectively discharge their duties to the Company.

## **21. Board Evaluation and Corporate Governance Evaluation**

The Board has established a formal and rigorous annual evaluation of its own performance, that of its committees, the Chairman, individual Directors and corporate governance evaluation on the extent of the application of the application of the Nigerian Code of Corporate Governance 2018. The board evaluation and corporate governance evaluation processes would be externally facilitated by an independent external consultant at least once in three years.

The evaluation of the Board would consider the mix of skills, experience, objectivity, competence of members of the Board, its diversity (including gender), knowledge of the Company and its strategic direction, attendance at meetings, how the Board works together and other factors relevant to its effectiveness. The result of the Board performance would be communicated to and discussed by the Board as a whole, while those of individual Directors would be communicated to and discussed with them individually by the Chairman.

Where the performance of a Director is considered to be unsatisfactory, the Board would provide appropriate training to address the identified gaps. The results of a Director's performance would be considered in the Director's re-election process.

The summary of the report of the corporate governance evaluation would be included in the Company's annual report and on the investors' portal.

## **22. Sitting allowance and Directors' fees**

The non – executive directors who are not staff of the Nestlé Group are entitled to sitting allowance for any meeting of the Board and Committee attended.

Annually, each non – executive director who is not staff of the Nestlé Group shall be entitled to director's fee fixed by the Board and approved by the shareholders at the general meeting.

## **23. Remuneration of Executive Directors and Senior Management**

The Board will ensure that the Company remunerates fairly, responsibly and transparently in order to promote the achievement of strategic objectives and positive outcomes in the short, medium and long term. The Board should assume responsibility for the governance of remuneration by setting the direction for how remuneration should be addressed on a Company-wide basis in order to attract, motivate, reward and retain high performing human capital.

The remuneration of the MD/CEO and EDs should be structured to link rewards to corporate and individual performances and include a significant component that is long-term corporate performance related, such as stock options and bonuses. Mechanisms may be considered to align payment of certain components of the remuneration of the MD/CEO and EDs with the achievement of longer-term goals. The MD/CEO and EDs should not be involved in the determination of their remuneration. The Company's Remuneration Policy as well as remuneration of all Directors should be disclosed in the Company's annual report.

Companies should implement a claw-back policy to recover excess or undeserved reward, such as bonuses, incentives, share of profits, stock options, or any performance-based reward, from Directors and senior employees.

Claw-back can be triggered if the accounts or financial performance on which the reward was based is later found to be materially false, misstated, misleading, erroneous, etc. or in instances of misdemeanour, fraud, material violation of Company policy or material regulatory infractions.

The MD/CEO and EDs should not receive sitting allowances for attending meetings of the Board or its committees and Director's fees from the Company, its holding company or subsidiaries. Their remuneration should however encompass recompense for time spent on the Board, its committees, and related work.

Subject to the provisions of extant laws, the Company may pay compensation for loss of office or retirement to Directors. In the case of the MD/CEO, EDs and senior management, the compensation payable for any loss of office or termination of appointment should be consistent with their contractual terms, fair and not excessive.

## **24. Non-audit Services that the Board cannot approve**

The Board may allow an external auditor to provide the Company only such other non-audit services as are approved by the Board on the recommendation of the committee responsible for audit and such as does not create a self-review threat in line with the provisions of international auditing standards.

## **25. Tenor of office**

Subject to satisfactory performance and the provisions of CAMA, all directors would be submitted for re-election at regular intervals of at least once every three (3) years.

## **ACKNOWLEDGEMENT**

This is to acknowledge the receipt of a copy of the Board Charter of Nestlé Nigeria Plc. I hereby confirm my willingness to comply with the provisions of the Companies & Allied Matters Act, Investments & Securities Act, 2007 and the Nigerian Code of Corporate Governance 2018 issued by the Financial Reporting Council of Nigeria, applicable laws and regulations in Nigeria.

NAME: .....

SIGNATURE:.....

DATE: .....