

THE FINANCIAL REPORTING COUNCIL OF NIGERIA ACT, (AMENDMENT) BILL, 2021

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A BILL

FOR

AN ACT TO AMEND THE FINANCIAL REPORTING COUNCIL OF NIGERIA ACT, 2011, TO AMONG OTHER THINGS, STREAMLINE THE MEMBERSHIP OF THE GOVERNING BOARD AS WELL AS CONFER OVERSIGHT RESPONSIBILITIES FOR FINANCIAL REPORTING AND CORPORATE GOVERNANCE REGULATIONS IN NIGERIA ON THE COUNCIL, WITH A VIEW TO REPOSITIONING AND STRENGTHENING THE STATUTORY FUNCTIONS OF THE COUNCIL IN LINE WITH NORMATIVE STANDARDS FOR OPERATIONAL EFFICIENCY AND EFFECTIVENESS, AND FOR RELATED MATTERS, 2021 (SB. 824).

Sponsored by: Senator Yusuf A. Yusuf (Taraba Central Senatorial District)

[] Commencement

Enacted by the National Assembly of the Federal Republic of Nigeria as Follows:

1. The Financial Reporting Council of Nigeria Act, 2011 in this Bill referred to as (“the Principal Act”) is amended as set out in this Bill.

Establishment and Membership of the Board

2. Section 2 of the Principal Act is amended by redrafting subsection (2) as follows: Amendment of section 2

“(2) The Board shall consist of:

- (a) a Chairman who shall be a professional accountant with considerable professional experience in accounting practices;
- (b) one representative from each of the following:
 - (i) Association of National Accountants of Nigeria;
 - (ii) Institute of Chartered Accountants of Nigeria;
 - (iii) Office of the Auditor General for the Federation;
 - (iv) Chartered Institute of Stockbrokers;
 - (v) Chartered Institute of Taxation of Nigeria;
 - (vi) Ministry charged with the responsibility of supervising the activities of the Council;

- (vii) Ministry charged with the responsibility for Finance;
- (viii) Nigerian Accounting Association;
- (ix) Nigerian Association of Chambers of Commerce, Industries, Mines and Agriculture;
- (x) Nigerian Institution of Estate Surveyors and Valuers; and
- (xi) Institute of Chartered Secretaries and Administrators of Nigeria (ICSAN).”

(c) the Executive Secretary of the Council.

Functions of the Council

3. Section 8 of the Principal Act is amended as follows:

Amendment of section 8

“(1) The Council shall—

- (a) develop and publish accounting and financial reporting standards to be observed in the preparation of financial statement of public interest entities;
- (b) review, promote and enforce compliance with the accounting and financial reporting standards adopted by the Council;
- (c) receive notices of non-compliance with approved standards from preparers, users, other third parties or auditors of financial statements;
- (d) receive copies of annual reports and financial statements of public interest entities from preparers within 60 days of the approval of the Board;
- (e) advise the Federal Government on matters relating to accounting and financial reporting standards;
- (f) maintain a register of professional accountants and other professionals engaged in the financial reporting process and corporate governance;
- (g) maintain a national repository for electronic submission of General Purpose Financial Statements;
- (h) monitor compliance with the reporting requirements specified in the adopted code of corporate governance;
- (i) promote compliance with the adopted standards issued by the International Federation of Accountants and International Accounting Standards Board or any other body that may be designated as such and any other international standards setting body relating to the mandate of the Council;
- (j) monitor and promote education, research and training in the fields of accounting, auditing, financial reporting and corporate governance;

- (k) conduct practice reviews of registered professionals;
- (l) review financial statements and reports of public interest entities;
- (m) enforce compliance with the Bill and the rules of the Council on registered professionals and the affected public interest entities;
- (n) establish such systems, schemes or engage in any relevant activity, either alone or in conjunction with any other organization or agency, whether local or international, for the discharge of its functions;
- (o) receive copies of all qualified reports together with detailed explanations for such qualifications from auditors of the financial statements within a period of 30 days from the date of such qualification and such reports shall not be announced to the public until all accounting issues relating to the reports are resolved by the Council;
- (p) adopt and keep up-to-date accounting and financial reporting standards, and ensure consistency between standards issued and the International Financial Reporting Standards;
- (q) specify, in the accounting and financial reporting standards, the minimum requirements for recognition, measurement, presentation and disclosure in annual financial statements, group annual financial statements or other financial reports which every public interest entity shall comply with, in the preparation of financial statements and reports;
- (r) develop or adopt and keep up-to-date auditing standards issued by relevant professional bodies and ensure consistency between the standards issued and the auditing standards and pronouncements of the International Auditing and Assurance Standards Board or any other body that may be designated as such and any other international standards setting body relating to the mandate of the Council; and
- (s) perform such other functions which in the opinion of the Board are necessary or expedient to ensure the efficient performance of the functions of the Council.

(2) The Council may issue rules and guidelines for the purpose of implementing auditing and accounting standards and to further its remit with respect to corporate governance.

Objects of the Council

4. Section 11 of the Principal Act is redrafted as follows:

Amendment of section 11

“**11.** The objects of the Council shall be to—

- (a) protect investors and other stakeholders' interest;
- (b) give guidance on issues relating to financial reporting and corporate governance to bodies listed in sections 2 (2) (b) of this Bill;
- (c) ensure good corporate governance practices in the public and private sectors of the Nigerian economy;
- (d) ensure accuracy and reliability of financial reports and corporate disclosures, pursuant to the various laws and regulations currently in existence; and
- (e) harmonize activities of relevant professional and regulatory bodies as relating to Financial Reporting and Corporate Governance.”

Establishment of Committees for the Council

5. Section 15 of the Principal Act is redrafted as follows:

Amendment of section 15

“15. (1) There is established for the Council 3 Standing Committees and any other committee the Board may deem necessary—

- (a) Technical and Oversight Committee;
- (b) Finance and General Purposes Committee; and
- (c) Audit Committee (non-executives).

(2) The functions of the Technical and Oversight Committee shall be:

- (a) to receive and review regular reports from the Council on breaches observed;
- (b) to receive and deliberate on all appeals against sanctions and make recommendations to the Board; and
- (c) to consider reports from the Council and make recommendations to the Governing Board on:
 - (i) new issues to be addressed by the standard setting directorates; and
 - (ii) convergence of local and international standards and other related matters.

(3) The functions of the Finance and General Purposes Committee shall be:

- (a) to consider the annual budgets and accounts, and make recommendations to the Board;
- (b) to appraise financial implication of Council's proposed capital spending;
- (c) to review the Executive Secretary's and management's regular reports on performance against budget for a financial year;
- (d) to consider the Council's staff establishment, salaries and conditions of service, staff training and development and approval of staff terminal benefits and make recommendations to the Board; and
- (e) to make recommendations to the Board on the:
 - (i) income and expenditure policies;
 - (iii) level of fines, penalties and other fees.

(4) The functions of the Audit Committee shall be:

- (a) to oversee the systems of internal controls regarding finance, accounting, and legal compliance;
- (b) to fix the fees of external auditors of the Council;
- (c) to review Council's financial statements and other financial information; and
- (d) to review Council compliance with other regulatory requirements.

(5) Membership of a Standing, Committee shall be 5 persons who are experts in the relevant fields, and the Committee shall elect one of them to be the Chairman of the Committee.

(6) Standing Committees shall hold meetings once every 3 months and the quorum shall be 3.

(7) In the absence of the Chairman, members of the committee shall elect one of them to act as Chairman, for the meeting.

(8) Without prejudice to other provisions of this Bill, the Board may appoint such other standing or ad-hoc committees as it deems fit to consider and report on any matter with which the Board is concerned.

(9) A committee appointed under sub-section (9) of this section shall:

- (a) consist of such number of persons (not necessarily members of the Board) appointed by the Council and shall remain on the Committee in accordance with the terms of his appointment; and
- (b) be presided over by a member of the Board.

(10) A decision of a committee established under this section shall be of no effect until it is confirmed by the Board,

PART II – STAFF OF THE COUNCIL

Executive Secretary and other Staff of the Council

6. Section 20 of the Principal Act is amended in subsection (3) as follows:

Amendment of section 20

“(3) The Board shall be responsible for the appointment of senior management staff from grade level 15 and above for the Council as it may deem necessary and expedient from time-to-time for the proper and efficient performance of the functions of the Council.”

PART IV – FINANCIAL PROVISIONS

Establishment of Fund of the Council

7. Section 33 of the Principal Act is redrafted as follows:

Amendment of section 33

“(1) The Council shall establish and maintain a fund into which shall be—

- (a) all incomes accruing from annual levies charged from:
 - (i) all registered professionals;
 - (ii) all registered firms of professionals;
 - (iv) Public Interest Entities; and
 - (v) Other Entities as prescribed by the Council and approved by the Minister.
- (b) every registered professional, not less than N10,000.00 annually;
- (c) every publicly quoted company, an amount based on its market capitalization, annually as follows:

- (i) an amount equal to 0.05 % of market capitalization, where the market capitalization of a company is not more than N1 Billion;
 - (ii) an amount equal to 0.04% of market capitalization, where the market capitalization of a company is greater than N1 billion but not more than N100 billion;
 - (iii) an amount equal to 0.03% of market capitalization where the market capitalization of a company is greater than N100 billion but not more than N250 billion;
 - (iv) an amount equal to 0.02% of market capitalization where the market capitalization of a company is greater than N250 billion but not more than N500 billion; and
 - (v) an amount equal to 0.025% of market capitalization, where the market capitalization of a company is greater than N500 billion.
- (d) every public interest entity other than those covered by paragraph (b), an amount based on its annual turnover as follows:
- i. an amount equal to 0.02% of annual turnover, where the annual turnover of the entity is not more than N25 million;
 - ii. an amount equal to 0.025 % of annual turnover, where the annual turnover of the entity is greater than N25 million but not more than N50 million;
 - iii. an amount equal to 0.03 % of annual turnover, where the annual turnover of the entity is greater than N50 million but not more than N500 million;
 - iv. an amount equal to 0.04 % of annual turnover, where the annual turnover of the entity is greater than N500million but not more than N1 billion;

- v. an amount equal to 0.045 % of annual turnover, where the annual turnover of the entity is greater than N1.00 billion but not more than N10 billion; and
 - vi. an amount equal to 0.05 % of annual turnover, where the annual turnover of an entity is greater than N10 billion.
- (e) budgetary allocations and subventions from the Federal Government;
 - (f) fines and penalties imposed by the Council;
 - (g) fees charged for services rendered by the Council;
 - (h) rents, fees and other internally generated revenues from services provided by the Council;
 - (i) gift, loans, grant-in-aid from national, bilateral and multilateral organizations and agencies; and
 - (j) all other sums accruing to the Council from time-to-time.

(2) The levies referred to, in subsection (1) shall:

- (a) for individual professionals and professional firms, be payable not later than 60 days from 1st January of every year;
- (b) for public interest entities, be payable not later than 120 days of the financial year; and
- (c) for other entities be payable not later than 120 days of the Financial year.

(3) Where a person or an entity fails to pay the levy as prescribed in sub-section (2) as and when due, the person or entity shall:

- (a) pay a penalty equivalent to 10% of the amount due for every month of default cumulatively until payment is made;
- (b) an entity shall be liable to sanctions as may be prescribed by the Council for any default of its agents, officers or personnel engaged in the financial reporting process for failure to comply with the provisions of this Bill;
- (c) the Council may also prosecute such person or entity for default in payment as prescribed in this section;
- (d) in addition, in the case of a company, the chief executive officer of the company shall be liable to a penalty as may be prescribed by the Council; and/or imprisonment for a term not exceeding 6 months upon prosecution.

Registration of Professionals

8. Section 41 of the Principal Act is amended in subsection (6) by rephrasing the provision as follows: Amendment of section 41

“(6) A person who contravenes sub-section (2) of this section shall be liable to a fine and/or penalty as the Council shall prescribe by regulation; and/or imprisonment for a term not exceeding 6 months upon conviction.”

Duration of Registration

9. Section 42 of the Principal Act is amended in subsections (1) and (2) as follows: Amendment of section 42

“(1) Every registration made under section 41 shall be renewed annually.”

(2) Every registered professional accountant shall, not later than 3 months before the **expiration** of the registration, make a written application for renewal of registration to the Council in such form and manner as the Council may from time to time prescribe.”

Functions of the Directorate of Corporate Governance

10. Section 51 of the Principal Act is amended in paragraph (a) by adding the letter “s” to the word “asses” to read: Amendment of section 51

“(a) assess the need for corporate governance in the public and private sector.”

Review and Monitoring of Auditing Standards

11. Section 53 of the Principal Act is amended in subsection (1) by inserting after the word “Board” the words “or any other body that may be designated as such and any other international standards setting body relating to the mandate of the Council” to read thus: Amendment of section 53

“(1) The Council shall develop or adopt and keep up-to-date auditing standards issued by relevant professional bodies and ensure consistency between the standards issued and the auditing standards and pronouncements of the International Auditing and Assurance Standards Board or any other body that may be designated as such and any other international standard setting body relating to the mandate of the Council.”

Preparation of financial

12. Section 59 of the Principal Act is amended by updating paragraphs (a) – (g) in line with the reviews carried out on the relevant applicable laws mentioned therein and a new paragraph (h), introduced as follows: Amendment of section 59

“(a) Banks and other Financial Institutions (Amendment) Act Cap. B3 LFN, 2004.

(b) Companies and Allied Matters Act, 2020;

(c) Investments and Securities Act, No. 29, 2007;

(d) Nigerian Investment Promotion Commission Act Cap. N117, 2004;

(e) Insurance Act Cap. I17 LFN, 2004;

(f) Pensions Reform Act No. 2, 2010;

(g) Federal Mortgage Bank of Nigeria Act, Cap. F16 LFN, 2004; and

(h) Finance Act, 2020.”

Frequency of practice reviews

12. Section 61 of the Principal Act is amended by renumbering the existing section 61 as 61A and a new section 61B introduced, as follows: Amendment of section 61

“**61A.** (1) Annual quality reviews (inspections) shall be conducted for professional accountants that audit more than 20 public interest entities; all others shall be conducted every three years and the Council may order a special inspection of any professional accountant at any time.

(2) The Council shall require registered professional accounting firms and other professionals to maintain for a period of not less than 6 years, audit work papers and other information related to any audit report, in sufficient detail to support the conclusion reached in the report.

(3) The Council shall require evidence of a second partner review and audit approach that registered professional accountants adopted on quality control.

Execution of warrant of distraint

“61B. (1) The Council may co-opt the assistance and co-operation of any of the law enforcement agencies in the discharge of its duties under this Bill.

(2) The law enforcement officers shall aid and assist an authorised officer in the execution of any warrant of distraint and the levying of distraint.

(3) Any official of the Council armed with the warrant issued by a judicial officer and accompanied by a number of law enforcement officers as may be determined by the Executive Secretary shall-

- (a) enter any premises covered by such warrant and seal off the premises, search for, seize and take possession of any book, document or other article used or suspected to have been used in the commission of an offence;
- (b) inspect, make copies of, or take extracts including digital copies from any book, record, document or computer, regardless of the medium used for their storage or maintenance;
- (c) search any person who is in or on such premises;
- (d) open, examine and search any article, container or receptacle;
- (e) open any outer or inner door or window of any premises and enter or otherwise forcibly enter the premises and every part thereof; or
- (f) remove by reasonable force any obstruction to such entry, search, seizure or removal as he is empowered to effect.

(4) No person shall be bodily searched under this section except by a person who is of the same gender as the person to be bodily searched.”

Obstruction of an inspector

14. Section 63 of the Principal Act is amended in subsection (2) by inserting after the word “Act” the words “shall be liable to a fine and/or penalty as the Council shall prescribe by regulation; and/or imprisonment for a term not exceeding 6 months upon conviction” to read thus: Amendment of section 63

“(2) A person who obstructs an Inspector in the execution of his powers or duties under the provisions of this Act shall be liable to a fine and/or penalty as the Council shall prescribe by regulation; and/or imprisonment for a term not exceeding 6 months upon conviction.”

Sanctions for non-compliance

15. Section 64 of the Principal Act is amended by rephrasing subsection (1) and (3) as follows: Amendment of section 64

“(1) Any person who fails to comply with the prescribed statements of accounting and financial reporting standards developed by the Council or any decision of the Council to the effect that a public interest entity has failed to comply with any of its pronouncements under this Act, and with such other accounting and financial reporting standards as may be specified under the relevant enactments, **shall be liable to a fine and/or penalty as the Council shall prescribe by regulation; and/or imprisonment for a term not exceeding 2 years upon conviction**, provided that the Council shall bring such non-compliance to the notice of the preparers of such financial statements.

“(3) Any public interest entity which fails to comply with the notice referred to in subsection (2) of this section shall be liable to a fine and/or penalty as the Council shall prescribe by regulation; and shall restate the said financial statements within 30 days thereafter.”

Sanctions on public interest entities

16. Section 65 of the Principal Act is amended in subsection (3) as follows: Amendment of section 65

“(3) Any public interest entity which fails to comply with the notice referred to in subsection (2) of this section shall be liable to a fine and/or penalty as the Council shall prescribe by regulation; and be required to restate the said financial statements within 30 days thereafter and the Council shall require such entity to disclose same in the following year’s financial statements.”

Limitation of suits against the officers of the Council and pre-action notice

17. Section 68 of the Principal Act is amended by numbering the exiting provision as section 68 (1) and new subsections (2) and (3) (a), (b) and (c) introduced thereof, as follows: Amendment of section 68

“(1) Subject to the provisions of this Bill, the provision of the Public Officers Protection Act shall apply in relation to any suit instituted against an officer or employee of the Council.

(2) No suit shall be commenced against the Council before the expiration of 30 days after a written notice of intention to commence the suit is served upon the Council by the intending plaintiff or his agent.

(3) The notice referred to, in subsection (2) of this section shall clearly and explicitly state -

(a) the cause of action;

(b) the particulars of the claim;

(c) the name and place of abode of the intending plaintiff; and the relief sought.

PART IX – MISCELLANEOUS

Publication of Official Bulletin

18. Section 72 of the Principal Act is redrafted as follow: Amendment of section 72

“**72.** (1) The Council shall –

(a) periodically publish an Official Bulletin, which shall contain:

(i) the rules made by the Council; and

(ii) such other information as the Council may deem necessary;

(b) cause to be published in the Gazette, national daily newspapers and

electronic media, notices relating to the rules of the Council which have been altered or revoked.

(2) The Council may cause to be published in the Gazette, national daily newspapers and electronic media its findings or decisions under section 60 and **61A** of this Bill.

Power to make Regulations

19. Section 73 of the Principal Act is amended by inserting the words “The Council with the approval of the” before the word Minister as follows: Amendment of section 73

“(1) **The Council may with the approval of the** Minister make such regulations as in his opinion are necessary or expedient for giving full effect to the provisions of this Bill and for the due administration of its provisions.”

PARTS X – INTERPRETATIONS

Interpretations

20. Section 77 of the Principal Act is amended as follows: Amendment of section 77

“*Annual report*” means the documents that an entity issues on an annual basis on its affairs, including its financial statements together with the audit report thereon, and the report from the Board of Directors;

“*Audit*” has the same meaning as in the International Federation of Accountants (IFAC) Code of Ethics for Professional Accountants;

“*Audit firm*” means a firm which provides audit services;

“*Auditor*” means a professionally qualified Accountant or firm of Accountants appointed to conduct an examination of the records of an enterprise and to form an opinion as to whether the accounts have been prepared in accordance with generally accepted accounting principles.

“*Board*” means the governing body of the Financial Reporting Council of Nigeria, established under section 2(1) of this Bill;

“*Code of Corporate Governance*” means the Code of Corporate Governance issued by the Council under this Bill;

“*Corporate Governance*” refers to the roles of persons entrusted with the supervision, control and direction of an entity;

“*Director*” has the same meaning given to it under the Companies and Allied Matters Act, 2020 or any amendment thereof;

“*Entity*” means any person or body of persons, whether incorporated or unincorporated;

“*Financial reporting standards*” mean accounting, auditing, actuarial and valuation standards issued by the Council under this Bill;

“*Financial statements*” means the Statement of Financial Position or balance sheet, income statements or profit or loss account, statement of changes in equity, statement of cash flows, notes, statements and explanatory materials thereon and other documents, as may be prescribed by the Council under this Bill;

“*Functions*” include powers and duties;

“*IASB*” means the International Accounting Standards Board or its successor body;

“*IFAC*” means the International Federation of Accountants or its successor body;

“*material irregularity*” includes fraud, deliberate misstatements of financial statements, falsifications, defalcations, etc.;

“*Minister*” means the Minister charged with responsibility of supervising the activities of the Council;

“*Offence*” includes but is not limited to default in payment of annual dues/subscriptions, submission of returns and other infractions, irregularities committed by entity or individual against the provisions of this Bill;

“*Official Bulletin*” means the official journal of the Council;

“*Practice*” in relation to an auditor, means the practice of the auditor or the audit firm;

“*President*” means the President of the Federal Republic of Nigeria and Commander-In-Chief of the Armed Forces of the Federation;

“*Professional Accountant*” means a person who is a member of a body of professional Accountancy body, established by an Act of the National Assembly and registered with the Council;

“*Public Interest Entities*” means:

- (a) Governments and government organizations;
- (b) listed and non-listed entities that are regulated;
- (c) Public Companies;
- (d) private companies that are holding companies of public or regulated entities;
- (e) concession entities;
- (f) privatized companies;
- (g) entities engaged by any tier of government in public works with annual contract value of N1billion and above, and settled from public funds;
- (h) Licensees of Government; and
- (i) entities that are required by law to file returns.
- (j) “*Qualified report*” has the same meaning given to IFAC.

21. This Bill may be cited as the Financial Reporting Council of Nigeria Act, Citation (Amendment) Bill, 2021.

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Financial Reporting Council of Nigeria Act, 2011, to among other things, streamline its provisions in line with global operational standards for efficiency and effectiveness; and for related matters.

