

**SECURITIES AND EXCHANGE
COMMISSION**



**CORPORATE
GOVERNANCE**

GUIDELINES ON BEST PRACTICES

CORPORATE GOVERNANCE

Introduction

Corporate Governance in its most simplified iteration refers to the manner in which corporate bodies are managed and operated. Until the latter part of the 1900's the expression good corporate governance was invariably used to describe how well a business was directed and managed from the perspective of its controllers or managers. This was no doubt a truism in the context of privately owned companies in which the operators and shareholders were usually one and the same persons and there was no conflict between the persons managing or controlling the company and the ultimate beneficiaries. However the same could not be said in respect of publicly owned enterprises in which the managers and controllers are not the sole beneficiaries of the enterprise. In such circumstances situations do arise wherein the objectives of the controllers or managers of the enterprise and the shareholders as a whole regarding the manner in which a company is directed and managed does not necessarily coincide.

This impasse invariably gives rise to tensions between the controllers/managers and shareholders, which can sometimes have disastrous consequences not only for the company itself but also the commercial and economic environment the company, operates in. These tensions are sometimes aggravated through the lack of transparency and communication between the parties.

In this background good corporate governance in modern terminology has been often described as the mechanism of addressing and easing the tensions which arise between the controllers or managers and other stakeholders of a company. The expression stakeholders being an indication of the development that has been witnessed in corporate cultures wherein a corporate citizen is deemed to owe obligations not only to its owners but to its employees, creditors and in some instances generally to society at large.

PART I – THE CONCEPT OF CORPORATE GOVERNANCE

Corporate Governance

Corporate governance in the context of a modern corporation has become synonymous with the practices and processes used to direct and manage the affairs of a corporate body with the object of balancing the attainment of corporate objectives with the alignment of corporate behaviour to the expectations of society and accountability to shareholders and other stakeholders.

Corporate governance encapsulates -

- The management of the relationships between a corporate body's management, its board, its shareholders and other stakeholders.

- The provision of the structure through which the objectives of the company are identified and the monitoring of the means used to attain these objectives including the monitoring of performance in this regard.
- Bringing more transparency to bear on the decision-making processes of the company.
- The provision of proper incentives for the board and management to pursue objectives that are in the interests of the corporate body and shareholders.
- Encouraging the use of resources in a more efficient manner.
- The management of risk and the minimisation of the effects of commercial misadventure.

Corporate governance is only part of the larger economic context in which companies operate. It is recognised though as a key element in improving economic efficiency and is considered a powerful micro-policy instrument and effective lever for change in transitional economies. It is however, no substitute for entrepreneurial ability. It only offers a framework of accountability and checks and balances. Further good corporate governance cannot prevent ill-conceived strategies, product failures or missed opportunities. It can however contain the harm arising from such corporate shortcomings and enable the tackling of issues such as defective leadership, persistent poor business performance and a general erosion of trust or confidence in or around businesses. In the circumstances it could be said to contribute to the preservation, sustenance and nurturing of the fruits of entrepreneurial activity.

Corporate governance is affected by a multiplicity of factors. It is affected by the relationships among participants in the governance system. The legal, regulatory, and institutional environment in which, a corporate body operates affects the manner in which it governs. In addition, factors such as business ethics and corporate awareness of the environmental and societal interests of the communities in which it operates can also have an impact on the governance of the corporate body.

The Importance of Corporate Governance

The subject of corporate governance commenced attracting attention at national level in more developed markets in the late 1900's. This was in the wake of some spectacular business collapses, which appeared to be largely attributable to the lack of proper corporate governance. The above coupled with the globalisation of economies and financial and investment markets in the 1990's lead to the convergence of national initiatives on the subject. This development was accelerated with the onset of the Asian crisis in mid 1997 after which the subject attracted significant attention internationally especially in the context of emerging markets. Whilst the causes of the crisis are still the subject of contention and debate there is an overall consensus that the lack of proper corporate governance in companies operating in the affected economies contributed significantly to the onset and spread of the contagion.

In this background a concerted international effort was initiated to improve the levels of corporate governance especially in emerging market economies. This initiative was no doubt spurred on amongst other factors by the recognition that the degree to which corporations observe basic principles of good corporate governance will be an increasingly important factor for investment decisions in the future.

With the subject taking on international dimensions many multilateral agencies commenced encouraging governments, regulators and organisations assist and interact with, to begin examining the subject closely and to take proactive steps to introduce and implement proper corporate governance procedures. To facilitate this introduction and implementation many of these agencies either individually or collectively issued codes containing the general principles upon which acceptable corporate governance frame-works should be based. Notably amongst these are the codes and principles issued by organisations such as the Organisation for Economic Co-operation and Development and the Commonwealth Association for Corporate Governance.

The Principles of Corporate Governance

The principles advocated in these codes are essentially non-binding and embody the experience and views of member countries of these organisations on the subject. While a multiplicity of factors affect the governance and decision-making processes of firms, and are important to their long-term success, the principles focus primarily on governance problems that result from the separation of ownership and control.

It is accepted that there is no single model of good corporate governance and that no one size fits all. This is due to corporate governance being comprised and influenced by not only of financial and economic considerations but by social and cultural aspects as well, some of which are indigenous to the country or even sphere of application. However some identifiable common elements that underlie good corporate governance have been discerned and the principles are built on these common elements that are intended to form the basis for further evolution and development.

All though public listed companies have been in the spotlight of the corporate governance initiatives it is universally accepted that corporate governance is not the exclusive preserve of the private sector alone and that the lack of it may be more real in the government sectors of an economy.

The principles of corporate governance cover the following areas:

1. The rights of shareholders;
2. The equitable treatment of shareholders;
3. The role of stakeholders;
4. Disclosure and transparency;
5. The responsibilities of the board.

The principles enunciated by the Organisation for Economic Co-operation and Development and as summary of the principles enunciated by the Commonwealth Association for Corporate Governance are annexed as an Appendix to this document.

PART II – IMPLEMENTATION OF CORPORATE GOVERNANCE PRINCIPLES

Implementation in the Context of the Ghanaian Securities Market

The Securities Industry Law, 1993 PNDLC333 vests the Securities Regulatory Commission of Ghana with the function of creating an atmosphere for the orderly growth and development of the capital market and protecting the integrity of the market.

Considering the significant contribution that that good corporate governance can make to the achievement of the above objectives, the Commission has considered it appropriate to formulate and enunciate its position on the matter. The Commission has also considered it appropriate to issue guidance notes on the manner in which taking into consideration, the state of development of the market in Ghana, the regulatory framework and the domestic corporate culture and circumstance, the principles of corporate governance could be implemented in the Ghanaian context.

In doing so the Commission has been cognisant of the fact that the shaping of an effective regulatory framework must be balanced by the need for sufficient flexibility to allow markets to function effectively and to respond to expectations of shareholders. The Commission is confident though that the adherence to good corporate governance practices will help improve the confidence of investors and thereby ultimately reduce the costs of capital by inducing more stable sources of financing. Of particular relevance in this respect is the co-relation between accepted corporate governance practices and foreign fund flows. In view of the increasingly international character of investment needed to drive the capital market in Ghana this is a feature of much significance. If Ghana is to reap the full benefits of global investment its corporate governance arrangements must be credible, well understood and have universal acceptance.

In the circumstances it is the intention of the Commission that all listed corporate bodies and companies licensed by it should endeavour to adopt as far as is practically feasible, mechanisms which will ensure the implementation of appropriate corporate governance practices in their management and operations.

It is also necessary for corporate bodies especially those that are listed to regularly disclose their degree of compliance with acceptable corporate governance practices in a public manner.

Collective Responsibility to Monitor Corporate Governance

The Commission envisages the ensuring of proper corporate governance practices as a collective responsibility cast upon all persons involved in the operations of a corporate body.

For instance controlling shareholders, who may be individuals, family holdings, bloc alliances, or other corporations acting through a holding company or cross shareholdings, can significantly influence corporate behaviour. In the same vein institutional investors are in a position to demand acceptable standards of corporate governance in the companies they invest in.

Individual shareholders usually do not seek to exercise governance rights but can be concerned about obtaining fair treatment from controlling shareholders and management. Creditors too can play an important role in governance and have the potential to serve as external monitors over corporate performance. Employees and other stakeholders play an important role in contributing to the long-term success and performance of the corporation, while governments establish the overall institutional and legal framework for corporate governance.

Consequently all these persons in a position to influence a corporate body should endeavour to encourage compliance with corporate governance practices. In this context there are three important groupings of persons whose co-operation the Commission considers integral to achieving acceptable corporate governance practices. They are the directors and managers of a corporate body and its shareholders and other stakeholders and auditors.

The Board of Directors

Investors in equity have certain property rights over which they must have control and which should be protected. However a corporation cannot be managed practically on a day to day basis by shareholder referendum. In the light of these realities the responsibility for corporate strategy and operations is placed in the hands of the board of directors of the corporation and a management team that is selected, motivated and, when necessary, replaced by the board.

In the above context the implementation of good corporate governance hinges on the competence and integrity of the board of the body corporate.

The board is required to fulfil certain key functions, including:

- Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures.
- Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning.
- Reviewing key executive and board remuneration, and ensuring a formal and transparent board nomination process.
- Monitoring and managing potential conflicts of interest that may arise amongst management board members and shareholders.
- Curtailing the misuse of corporate assets and abuse in related party transactions.
- Ensuring the integrity of the corporation's accounting and financial reporting systems.
- Ensuring the credibility of the independent audit and the existence of appropriate internal control systems.
- Ensuring the monitoring and management of risk
- Ensuring compliance with the law.
- Monitoring the effectiveness of the governance practices under which the body corporate operates and making changes as needed.
- Overseeing the process of disclosure and communications.

Independence from Management

In order for boards to effectively fulfil their responsibilities they must have some degree of independence from management. Board independence usually requires that a sufficient number of board members should not be employed by the company or be closely related to the company or its management through significant economic, family or other ties. It does not mean though that shareholders are discouraged from being board members. However it does imply that a balance must be maintained between controlling shareholders and managers and other persons with ownership or proprietary interests in the company.

Independent or non-executive board members can contribute significantly to the decision-making processes of the board by bringing an objective view to bear on the evaluation of the performance of the board and management in particular. In addition, they can play an important role in areas where the interests of management and shareholders may diverge such as executive remuneration, succession planning, changes of corporate control and the audit function.

The boards of companies are encouraged to consider appointing a sufficient number of non-executive board members capable of exercising independent judgement to tasks where there is a potential for conflicts of interest as described above. Examples of such key responsibilities are financial reporting and executive remuneration. Whilst the ultimate responsibility for these matter lie with the board as a whole, independent non-executive board members can provide additional assurances to market participants that their interests are being looked after.

The Role of the Chairman

The chairman as the head of the board can play a central role in ensuring the effective governance of the corporate body and functioning of the board. The separation of the roles of the chairman and the chief executive is advocated as a mechanism of ensuring an appropriate balance of power, increasing accountability and enhancing the capacity of the board for independent decision making.

General Responsibilities of Directors

Directors should devote sufficient time to their responsibilities. Service on too many boards can interfere with the performance of board members. Companies must consider whether excessive board service interferes with board performance and this should be a fact taken into account at the time of nomination.

Specific limitations on the size of the board of a corporate body are not advocated. However it is necessary to emphasis the need to ensure that members of the board enjoy legitimacy and confidence in the eyes of shareholders as regards their commitment to discharge the functions and obligations imposed on them.

Training

In order to improve board practices and the performance of its members, it is useful for corporate bodies to engage in orientating new inductees to the board with the activities of the company and the law under which it operates. This is of paramount importance especially in circumstances in which the directors can be held personally liable for breaches of the law. Continuing education in order to remain abreast of relevant new laws, regulations, and changing commercial risks is also recommended.

Access to Information

In order to fulfil their responsibilities and to support decision making, board members should have access to accurate and relevant information on a timely basis.

Shareholders and Stakeholders

Shareholders must have the right to influence the corporate body on certain fundamental issues, such as:

- The election of board members;
- Changes in capital;
- Amendments to the regulations of the company;
- Approval of extraordinary transactions; and
- Other issues as specified in corporate law and the regulations of the corporate body.

Additional rights accruing to shareholders include the approval or election of auditors and the approval of the distributions of profits.

Shareholders are also entitled to secure methods of ownership registration; to convey or transfer shares; and to obtain relevant corporate information on a timely and regular basis.

The Commission does not advocate that shareholders or investors should follow any particular investment strategy. Neither does it seek to prescribe the optimal degree of investor activism. However the Commission taking into account the emerging nature of the Ghanaian stock market and the relative lack of sophistication of domestic individual investors considers that institutional shareholders have a responsibility to make considered use of their voting rights. This will assist in the addition of value to their investments.

Auditors

Financial and annual reports are increasingly becoming the most extensively used methods for the conveyance and dissemination of corporate information to shareholder and investors. These reports are a medium for disclosing not only the financial status of a company and its performance but also information pertaining to ownership, governance, business ethics and in some instances the environment and other public policy commitments.

The Commission recognises that the quality of this information depends on the standards under which it is compiled and disclosed. Financial information should be presented in accordance with acceptable accounting standards with any deviations being disclosed. The presentation should facilitate comparability. The information must also conform to the highest standards of accuracy and veracity as regards content.

In this respect the auditors of a company play an important role in assuring the quality control of financial information that is disseminated. The Commission considers the independence of auditors and their accountability to shareholders to be crucial to the proper governance of a corporate body.

PART III – REVIEW OF THE GHANAIAN REGULATORY FRAMEWORK

The Regulatory Framework and Corporate Governance

The purpose of this segment of this document is to examine and ascertain the degree to which the legal and regulatory framework prevalent in Ghana facilitates the recognition of the underlying principles of corporate governance. The regulatory framework for corporate governance insofar as the securities markets are concerned is contained in the Companies Code 1963 (Act 179), the Securities Industry Law 1993 (PNDCL 333) and the Membership and Listing Regulations of the Ghana Stock Exchange. These framework is supplemented by the Ghana National Accounting Standards and the principles and codes of professional conduct imposed by the Institute of Chartered Accountants (Ghana) on its members.

1. The rights of shareholders

The Companies Code 1963, the Securities Industry Law 1993 and the Regulations of the Ghana Stock Exchange provide the primary regulatory framework for the establishment and operations of companies that issue publicly traded securities. These laws and regulations provide for basic shareholder rights including the right to:

- (a) secure methods of ownership registration;
- (b) convey or transfer shares;
- (c) obtain relevant information on the corporation on a timely and regular basis;
- (d) participate and vote in general shareholder meetings;
- (e) elect members of the board; and
- (f) share in the profits of the corporation.

The laws and regulations also ensure that shareholders have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes such as:

- (a) amendments to the statutes, or articles of incorporation or similar governing documents of the company;
- (b) the authorisation of additional shares;
- (c) variation of class rights;
- (d) extraordinary transactions that in effect result in the sale of the company.

The Companies Code also makes provision for –

- (a) giving opportunities for shareholders to participate and vote in general shareholder meetings;
- (b) shareholders to be furnished with sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be decided at the meeting;
- (c) for shareholders to place items on the agenda at general meetings, subject to reasonable limitations;
- (d) shareholders to vote in person or in absentia.

The Securities Industry Law, the Take-overs and Mergers Regulations, Listing Regulations and Trading Regulations of the Ghana Stock Exchange-

- (a) requires equity ownership over and above specified thresholds to be disclosed;
- (b) ensures that the market for corporate control of listed companies functions in an efficient and transparent manner;
- (c) specifies the rules and procedures governing the acquisition of corporate control with the objective of ensuring fair and equal treatment to all shareholders.

The existing provisions specifically in the area of changes in corporate control in listed companies will be further strengthened by proposed Take-over and Mergers Regulations to be issued by the Securities Regulatory Commission

2. The equitable treatment of shareholders

The laws referred to above recognise the principle of equitable treatment of all shareholders. No distinction is made between foreign and domestic shareholder as regards shareholder rights under the law except that foreign holdings in listed companies are subject to ownership thresholds based on exchange control restrictions. Minority shareholders are afforded the opportunity of obtaining effective redress for violation of their rights under the Companies Code and all shares issued unless otherwise specified rank *pari passu* with other shares of the same class in issue and in the case of ordinary shares, one share carries one vote.

The Securities Industry Law prohibits and penalises insider trading and abusive self-dealing.

3. The role of stakeholders in corporate governance

Stakeholder rights are established and protected under the general laws pertaining to commerce, contracts and labour.

4. Disclosure and transparency

The Companies Code 1963 mandates the laying of annual audited accounts of a company before its shareholders in general meeting. The Code specifies the minimum content of such accounts and also the qualifications of auditors competent to report on such accounts. The Listing Regulations of the Ghana Stock Exchange provides the time frames within which annual reports of listed companies must be circulated. The standards adopted and issued by the Institute of Chartered Accountants (Ghana) provide for the quality of presentation financial information must conform to.

The Listing Regulations also requires investors to be provided with information of a price sensitive nature including information on issues that materially effect the:

- (a) The financial and operating results of the company.
- (b) The objectives of the company.
- (c) Major share ownership and voting rights.
- (d) Members of the board and key executives, and their remuneration.
- (e) Material foreseeable risk factors.
- (f) Material issues regarding employees and other stakeholders.

The Companies Code also requires directors to disclose any material interests in transactions or contracts affecting the company.

The Companies Code and the Listing Regulations specify the channels for dissemination of information to the stock exchange, shareholders and the general public in the case of listed companies.

The provisions for the dissemination of information will be strengthened by the proposed regulations of the Securities Regulatory Commission.

5. The responsibilities of the board

The Companies Code 1963 specifies the basic responsibilities of the board of a company. It also makes provision for the appointment, retirement and removal of directors and also with regard to their qualifications. The provisions contained in the Companies Code are supplemented by the Listing Regulations of the Ghana Stock Exchange, which inter alia requires all listed companies to establish and maintain audit committees.

The Commission recognises though that many aspects of good corporate governance must necessarily have their origin in the culture and conduct of the board of a company. Hence the best practices on corporate governance being identified by the Commission in this document are mainly based on this premise.

PART IV – CODE OF BEST PRACTICES ON CORPORATE GOVERNANCE

Preamble

The Securities Regulatory Commission with a view to providing some guidance on mechanisms which will contribute to the implementation of suitable corporate governance practices in corporate bodies licensed under the Securities Industry Law and the issuers of publicly traded securities particularly those listed on stock exchanges approved under Law has formulated the following body of best practices. These best practices are based on principles enunciated by the Organisation for Economic Co-operation and Development, the Commonwealth Association for Corporate Governance and codes of corporate governance issued by regulatory authorities in emerging markets. The practices embodied in this document do not have the force of law. They are primarily intended to be guidelines whereby the standards of governance in corporate bodies regulated by the Commission may be benchmarked. . The best practices are evolutionary in nature and should be adapted by users to suit their own particular circumstance provided the spirit of the principles underlying the practices is maintained.

Application

The Code of Best Practices on Corporate Governance will apply to all corporate bodies approved or licensed as stock exchanges, dealers and investment advisers under the Securities Industry Law, the managers, operators, trustees and custodian of unit trusts and mutual funds and the issuers of publicly traded securities.

Section I – The Mission, Responsibilities and Accountability of the Board of Directors

Principle Objectives

1. (a) The principle objective of the board of directors of a corporate body is to ensure that the corporate body is properly managed in order to protect and enhance shareholder value and to meet the corporate body's obligations to:
 - (i) shareholders;
 - (ii) the industry in which it operates; and
 - (iii) to the law.
- (b) The interests of other stakeholders are relevant as a derivative of the duty to shareholders.

Primary Responsibility for Corporate Governance

2. The primary responsibility for ensuring that good corporate governance prevails lies with the board of directors of the corporate body.

Principle Duties of the Board

3. The principle duties of the board will include the:
 - (a) the strategic guidance of the corporate body in keeping with its business objectives;
 - (b) overseeing the management and conduct of the business;
 - (c) the identification of risk and the implementation of systems that manage risk;
 - (d) succession planning and the appointment, training, remuneration and replacement of senior management;
 - (e) overseeing of internal control systems;
 - (f) maintenance of the corporate body's communications and information dissemination policy.

4. The board will be accountable to the corporate body and its shareholders.

The Size of the Board

5. The size of the board of every corporate body should be arrived at with a view to promoting effectiveness and ensuring appropriate representational needs.

6. No specific numbers are prescribed with regard to membership however a board of between 8 – 16 members is considered ideal.

Appointment

7. Procedures for appointments to the board should be formal and transparent.

8. Shareholders should be provided with biographical information of all new directors sought be appointed including:
 - (a) name, age and country of principal residence;
 - (b) whether appointment is executive and if so the specific area of responsibility;
 - (c) working experience and occupation during the past ten years;
 - (d) other directorships (present and for the past five years);
 - (e) shareholding in the corporate body and its subsidiaries;
 - (f) family relationship with any director and/or substantial shareholder of the corporate body or its principal subsidiaries;
 - (g) any conflict of interest;

Orientation

9. New directors should be formally orientated with and informed of the corporate body's business, competitive posture and strategic plans and objectives.
10. Directors should also be apprised and informed of the relevant laws, regulations and rules that govern the operations of the body corporate and the responsibilities and obligations placed on directors by such laws, regulations and rules.

Training

11. Directors should be subject to ongoing training not only in their particular field of expertise but also in other areas which will assist them in the discharge of their duties and functions.

Multiple Board Seats

12. It is not intended to place any limitations on the number of other directorships a director of a corporate body should hold.
13. However in assessing suitability for appointment consideration should be given to the external obligations of nominees vis-à-vis the time they can devote as director of the corporate body to which they seek appointment.

Separation between Chairman and Managing Director/ CEO

14. There should ideally be a separation between the role of chairman and managing director/chief executive officer particularly in listed companies unless there are specific reason which militate against such separation or as may be in the case of smaller corporate bodies, the cost of separation is uneconomical.
15. If the two offices are combined in the case of corporate bodies having their securities listed on a stock exchange the rationalisation behind the decision to combine the roles should be explained to shareholders and the board must enact procedures that ensure the independence of the board as a whole.
16. In the event of a separation of the two offices the relationship between the managing director/chief executive office and the chairman and board as a whole along with their respective responsibilities should be formally defined.

The Chairman

17. The chairman's plays a crucial role in securing good corporate governance.
18. The chairman should ensure that the board is in complete control of the corporate body's affairs and fully alert to the obligations to shareholders, industry and the law.

19. As regards the functioning of the board the chairman is expected to -

- (a) ensure that the board meets regularly and that meetings of the board are conducted in a proper manner;
- (b) ascertain the views and/or the decision of the meeting on the issues being discussed;
- (c) ensure that directors, are encouraged to contribute within their respective capabilities in order to secure the maximum benefit for the corporate body;
- (d) be responsible for the directors receipt of qualitative and quantitative information;
- (e) ensure that any non-executive director who is not contributing to the deliberations of the board is either not re-elected or requested to resign or is removed.

20. The chairman should ensure that the board develops and implements a process for assessing the effectiveness of the board, committees of the board and the contributions of individual directors.

Composition

21. The board should include a balance of executive and non-executive directors with the complement of independent non-executive directors being at least one third of the total membership of the board and in any event not less than two.

Appointment and Qualifications of Non-executive Directors

22. The appointment of non-executive directors should ordinarily be a matter for the board as a whole and the selection process should be based on merit.

23. For the purposes of this code a director would be deemed to be independent if he –

- (a) is not a substantial shareholder of the corporate body;
- (b) has not been employed by the corporate body in an executive capacity for the previous three years;
- (c) is not a professional adviser or consultant to the corporate body;
- (d) is not a significant supplier or customer;
- (e) has no significant contractual relationship with the corporate body; and
- (f) is free from any other relationship with the corporate body, which may interfere with an his capacity to act in an independent manner.

24. Non-executive directors should not accept their appointments if they are of the view that they cannot provide the corporate body with the time and attention necessary to discharge the duties of office.

25. Non-executive directors should be persons possessed of the necessary skill and experience to bring an independent judgement to bear on the issues of strategy, performance and resources including key appointments and standards of conduct.

26. Non executive directors are encouraged to limit the number of other boards on which they serve taking into account potential board attendance and their ability to effectively participate in and contribute to the work and deliberations of these boards.
27. Non-executive directors should also advise the chairman and board secretary in advance of their acceptance of an invitation to serve on another board.
28. Non-executive directors should provide independent viewpoints and assistance to executive directors.

Finance Director

29. The finance function of the corporate should be made the responsibility of a specific director of the board.

Term and Age Limits

30. All directors should submit themselves for re-election at regular intervals and at least once in every three years.
31. All directors must be subject to the age restrictions specified in the Companies Code 1963 or the statute under which the corporation was incorporated or its internal regulations.

Access to Information

32. All directors should have unrestricted access to all company information, records and documents.
33. The board should formulate a policy whereby directors can within reason enjoy the right to retain outside professional experts for counsel.

Board Committee Meetings

34. The board should meet regularly and in the case of listed corporate bodies at least six times a year.
35. Committees of the board should meet as periodically as is required to properly discharge their functions.
36. Attendance of directors (especially non-executive directors) at these meetings should be a key element in their continued service on the board.
37. Due notice should be given of issues to be discussed.
38. The company secretary should properly maintain records of meetings and conclusions reached.

39. Contrary or dissenting views should be clearly disclosed in the minutes of meetings.

Company Secretary

40. The company secretary should be qualified company secretary as required under the Companies Code 1963.

41. The company secretary should be a source of advice and guidance to the chairman and board on the implementation of appropriate corporate governance practices insofar as the workings of the board are concerned.

Section II – Committees of the Board

Committees in General

42. The board should constitute such committees, as it may deem appropriate to assist it in the discharge of its functions and responsibilities.

43. The composition of these committees may include persons other than directors provided that the responsibility for any decisions or recommendations made shall lie only with the directors of the corporate body who are members of the committee.

44. The terms of reference, scope of functions and limits of authority of committees of board should be clearly delineated in writing.

45. The committees of the board and the membership of these committees should be disclosed in the annual report issued by the corporate body.

Audit Committee

46. Every corporate body at whom this Code is directed should establish an audit committee.

Composition of the Audit Committee

47. The audit committee should comprise at least three directors, the majority of whom should be non-executive.

48. The membership of the audit committees should ideally comprise directors with an adequate knowledge of finance, accounts and the basic element of the laws under which the corporate body operates or is subject to.

49. The chairman of the committee should be a non-executive director.

50. The managing director/chief executive officer, the finance director, the head of internal audit and a representative of the external auditors should ordinarily be invited to attend meetings.

Functions of the Audit Committee

51. The primary functions of the audit committee will be to –

- (a) recommend the appointment of the external auditors of the corporate body;
- (b) liaise with the external auditors for the purposes of maintaining and ensuring audit quality, effectiveness, risk assessment, interaction with internal auditors and dealing with situations governing the resignation of the external auditors
- (c) review with the auditors their report on the financial statements of the corporate body ;
- (d) review the adequacy of systems of internal controls and of the degree of compliance with material policies, laws and the code of ethics and business practices of the corporate body;
- (e) provide a direct channel of communication between the board and the external and internal auditors of the corporate body, accountants and compliance officers (if any) of the corporate body;
- (f) to report to the board on all issues of significant extraordinary financial transactions;
- (g) to assist the board in developing policies that would enhance the controls and operating systems of the corporate body.

Authority of the Audit Committee

52. The audit committee should:

- (a) have the authority to investigate any matter under its terms of reference;
- (b) be provided with the resources it needs to carry out such investigation; and
- (c) be given full access to necessary information.

53. The committee should with the permission of the board be in apposition to obtain external professional advice if and when the need arises.

Report on Activities of the Audit Committee

54. Every listed company should report the establishment of its audit committee in its annual reports if it has not done so already.

55. The audit committee should perform an annual review of the corporate body's internal control over financial, operational and compliance matters and report on the same to shareholders in the annual report of the corporate body.

Remuneration Committee

56. Every corporate body at whom this Code is directed should establish a remuneration committee.

Composition of the Remuneration Committee

57. The remuneration committee should comprise of a majority of non-executive directors.

58. Executive directors who are members of the committee should exclude themselves from deliberations concerning their own remuneration.

Functions of the Remuneration Committee

59. The primary functions of the remuneration committee will be-

- (a) establishing a formal and transparent procedure for developing policy on executive remuneration;
- (b) ensuring that a proper system of long term and short term compensation is in place to provide performance orientated incentives to management;
- (c) scrutinising executive service contracts with a view to ascertaining any inordinate losses the corporate body may be liable to incur in the event of an early termination of services.

Reporting on the Remuneration Committee

60. The membership of the remuneration committee and remuneration policy should be disclosed to shareholders in the annual report. Such report should contain at least the aggregate amount of fees, basic salaries, allowances, benefits in kind, contribution to pension schemes, bonuses paid and compensation paid for loss of office to directors and executive officers in the financial year to which the report pertains.

Remuneration Policy

61. Levels of remuneration in corporate bodies should be competitive taking into account industry practices.

62. Remuneration should focus on retaining management and be linked as far as possible to corporate and individual performance.

63. Stock options, employee share ownership schemes and other equity oriented plans should be considered as a means of linking management's interest to that of shareholders.

Remuneration of Executive and Non-executive Directors

64. Remuneration levels of directors should reflect experience and the level of responsibilities undertaken by the particular director concerned.
65. The board as a whole should determine the remuneration of non-executive directors with the individuals concerned excluding themselves from deliberations on the matter.
66. The remuneration of non-executive directors should be fixed at a level that will ensure their commitment to the duties and obligations they are required to discharge.

Section III – Relationship to Shareholders and Stakeholders

Shareholders and Stakeholders

67. Corporate governance practices implemented by the board should not be aimed at benefiting stakeholders at the expense of shareholders but should endeavour to increase shareholder value by monitoring and maintaining stakeholder relationships effectively and professionally.

Communications Policy

68. The board must adopt and implement a communications policy that enables management to communicate, interact with and disseminate information regarding the direction, operations and management of the corporate body to shareholders, stakeholders and the general public.
69. In the case of listed corporate bodies the policy with regard to shareholders and the general public must be governed by the concept of timely and continuous disclosure.
70. All shareholders should have equal access to corporate information.

Quality of Information Communicated

71. Communications and reports by the board to shareholders and other stakeholders must be in plain language, understandable and consistent with previous reports.
72. The information must be based on the principles of fairness, promptness, relevance and openness with substance taking precedence over form.
73. The highest level of disclosure should be aspired to within competitive constraints.
74. Reports supported by figures should endeavour to strike a balance between the positive and negative aspects of the activities of the corporate body for the period or event under review.

Information on Non-Financial Affairs

75. Corporate bodies are encouraged to include information on their non-financial affairs as well, in such reports.
76. Such information can include information on employment; environmental matters; social responsibility; and matters of customer and supplier interest.

Meetings of Members

77. The board should use the annual general meeting of the corporate body as the primary means of meeting and interacting with shareholders.
78. The board of the corporate body should facilitate the creation of an environment in which:
- (a) General meetings are held with adequate notice and at a time and place which will facilitate maximum attendance of shareholders;
 - (b) Adequate notice and information is given of matters to be discussed and deliberated;
 - (c) Shareholders are given the opportunity within the ambit of the law and the regulations of the corporate body to place matters on the agenda of such general meetings.
79. The board should ensure that:
- (a) That all shareholders are given equal access to corporate information;
 - (b) Disparate issues are not bundled and presented for single vote;
80. Opportunities of voting by mail and other means should be supported.
81. The chairmen of board committees should be present at general meetings of the corporate body to respond to shareholder queries and questions.

Section IV – Financial Affairs and Auditing

Financial Governance

82. The board of the corporate body is responsible for -
- (a) maintaining adequate records for safeguarding the assets of the corporate body;
 - (b) ensuring that that statutory payments payable by the corporate body are met in a timely manner;
 - (c) ensuring that appropriate systems of internal control are in place for monitoring risk, adherence to financial governance measures and compliance with the law;

- (d) ensuring that the financial statements of the corporate body are audited at such frequent intervals as specified by the law, regulations or internal policies of the corporate body by competent and qualified auditors.

Financial Reporting

83. The board is responsible for:

- (a) the accuracy of information contained in financial statements;
- (b) ensuring that suitable accounting policies have been consistently applied in the preparation of financial statements;
- (c) ensuring that annual financial statements of the corporate body are presented in accordance with the Ghana National Accounting Standards and other the accounting standards and principles issued by the Institute of Chartered Accountants of Ghana and for disclosing any deviations from the said standards;
- (d) ensuring that annual and interim financial statements of the corporate body are circulated to shareholders and regulators within the time frames specified by law and regulation;
- (e) ensuring that annual and interim financial statements are prepared on a basis that facilitates comparability;
- (f) ensuring that the auditor's reports on the financial statements are faithfully reproduced to the users of such statements;
- (g) ensuring that a balanced and understandable assessment is given of the financial and operating results of the corporate body in the financial statements.

Disclosure of Price Sensitive Information

84. The board of directors of a listed corporate body is responsible in the case of a listed company for:

- (a) disseminating price sensitive information to the market and shareholders in a timely manner;
- (b) requesting a temporary suspension in the securities of the corporate body where a disclosure may cause untoward price movements in the market for the securities of the corporate body.

Role of the External Auditor

85. The external auditor should be the primary source of an objective, independent and effective opinion on the financial statements of the corporate body.

86. In order to achieve the above the auditor must employ diligence, objectivity and independence in the discharge of his duties and functions.

Duties of the Auditor

87. The external auditor is responsible for ensuring that the audit of the corporate body is conducted in accordance with the generally accepted standards of auditing required by the Institute of Chartered Accountants (Ghana) of its members.

Audit Report

88. The external auditor should be required to specify in his report if the financial statements audited have been prepared in accordance with the Ghana National Accounting Standards.

Departures or Deviations from Standards

89. The external auditors report on the financial statements of the corporate body must specify any departure from the accounting standards and should contain the auditors opinion as to whether or not the auditor acquiesces with the departure and the reasons given for such departure.

90. The external auditor's report must also specify any departure or deviation from the auditing standards on his part and the reasons for the same.

Rotation of Audit Personnel

91. To ensure the continued effectiveness of the audit, personnel including the audit partner should be regularly rotated or changed to enhance fresh approaches to audit work.

Removal or Resignation of an Auditor

92. An auditor's removal, resignation or refusal to stand for re-election should be accompanied by an explanation, which the corporate body should circulate to all shareholders.

Section V – Disclosures in Annual Reports

General

93. The disclosures recommended in this part are supplementary to those mandated by any law or regulation or under any other section of this Code.

Chairman's Statement

94. The Chairman's statement in the annual report should provide a balanced and readable summary of the corporate body's performance for the period under review and future prospects and should reflect the collective view of the board.

95. Material foreseeable risk factors should also be dealt with in such report.

Statement of Responsibility for Financial Statements

96. The annual report should include a statement from the board accepting responsibility for the information contained in the report and the financial statements annexed thereto.

Statement as to Adequacy of Internal Controls

97. The annual report should contain a statement from the board as to the adequacy of the internal control mechanisms and procedures of the corporate body.

Statement as to Degree of Compliance with the Law

98. The annual report should contain a statement from the board as to the degree of compliance of the corporate body with any regulatory and other legal requirements governing its operations and the extent to which statutory payments have been met in respect of the period under review.

Statement as to Degree of Compliance with Corporate Governance Practices

99. The annual report should contain a statement from the board as to the corporate body's degree of compliance with the corporate governance practices specified in this Code.

Statement as to the Enterprise being a Going Concern

100. The annual report should contain a statement from the board indicating that the board is satisfied that the corporate body is a going concern.

Other Matters to be disclosed

101. The board should also ensure that information is disclosed on the following matters in the annual report insofar as they are relevant to the period under review –

- (a) all management fees paid by the corporate body with details of the names of the parties and their relationship to the corporate body;
- (b) the identities and percentage holdings of substantial shareholders;
- (c) significant cross shareholding relationships;
- (d) related party transactions;
- (e) details of incentive schemes, such as stock option schemes;
- (f) the fees paid to the auditors of the corporate body for audit and non-audit related work; and
- (g) any other material issues concerning employees and other stakeholders such as creditors and suppliers.

Section VI – Code of Ethics

The Requirement of a Code of Ethics

102. Every corporate body to which this Code is directed should have its own code of ethics and statement of business practices, which should be implemented as part of the corporate governance practices of the corporate body.

Responsibility for Formulation

103. The board will be responsible for formulating this document the contents of which will be applicable to the board and all employees.

Monitoring Adherence

104. The board will also be responsible for introducing a system that will monitor adherence and discipline breaches or deviations.

Matters pertaining to the Development of the Code of Ethics

105. The document should –
- (a) commit the corporate body to the highest standards of professional behaviour and business conduct;
 - (b) be developed in association with management and employees;
 - (c) receive total commitment in respect of its implementation from the board and the managing director/chief executive officer of the corporate body;
 - (d) be sufficiently detailed as to give clear guidance to users;
 - (e) be formally communicated to the persons to whom it applies;
 - (f) be reviewed regularly and updated when necessary.

Section VII – Glossary

106. In this Code the unless the context otherwise indicates the following words shall have the following meanings –

“Body corporate” includes a company incorporated under the Companies Code 1963 or any other statute, domestic or foreign and includes a body incorporated under the Incorporated Private Partnerships Act 1962.

“Board” shall mean the board of directors or managers or governing council of a body corporate

“Director” shall mean any member of the board or governing council of a body corporate.

“Executive” in relation to a body corporate shall mean any person by whatever title known who is concerned or takes part in the management of the body corporate whether or not he is a director of the body corporate.

“Substantial Shareholder” shall mean a share holder entitled to exercise or control the exercise of 30% or more of the voting power at general meetings of the corporate body or one who is in a position to control the composition of a majority of the board of the corporate body.

PART V – CONCLUDING REMARKS AND ISSUES FOR THE FUTURE

Implementing Corporate Governance

The Securities Regulatory Commission is aware that corporate governance being a matter concerning the internal operations of a body corporate would not lend itself to convenient or effective external regulation. Audit committees, remuneration committees, independent boards and non-executive directors do not guarantee good corporate governance. They are only structures, processes and mechanisms, which must be properly implemented if corporate governance is to be achieved. Whilst not ruling out the possibility of certain aspects, and external manifestations of good corporate governance practices being mandated by law or regulations in the future the Commission views the implementation of good corporate governance practices in the Ghanaian securities market as principally a market and industry led initiative.

Motivation

The major motivating factor for the industry to embrace the concept is the benefits that can accrue to the body corporate as a whole, its managers, shareholder and other stake holders by adherence to commonly accepted corporate governance principles.

Objectives for the Future

In furtherance of this, the Commission using this document as a foundation will be seeking to initiate dialogue on the matter with the Ghana Stock Exchange and its members, listed companies, the Directors Institute, the Institute of Chartered Accountants of Ghana, trade chambers and other, professional organisations and institutions including multi-lateral agencies willing to fund the development of the concept.

The objectives of the Commission with regard to facilitating the implementation of corporate governance standards will focus on;

- i. Familiarising corporate decision-makers and board members of listed companies with the concept and the need for corporate governance on the basis of the value it could add to their respective companies.
- ii. Exploring the possibilities of providing technical assistance to companies through foreign aid donors on the manner in which, taking into account domestic

circumstances, the structure, framework and procedures for the working of the external manifestations of corporate governance such as audit committees could be established and operated.

- iii. Assisting in the education of directors, both present and future, in the concept to ensure its practical implementation.
- iv. Educating investors and shareholders on the concept of corporate governance and the value it could add to their investment in an effort to encourage greater investor and stake holders insistence on adherence to corporate governance practices.
- v. Further developing and improving this Code of Best Practices.

Dr. Charles Asembri
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Securities Regulatory Commission