

Principles for Corporate Governance in Kenya

and a

Sample Code of Best Practice for Corporate Governance

Prepared by:

Private Sector Initiative for Corporate Governance

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NAIROBI

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FOREWORD

In November 1998, a workshop on the Role of Non-Executive Directors was held at the Kenya College of Communications Technology, Mbagathi, Nairobi. Although this seminar was sponsored and supported by leading organisations with specific interest in corporate governance such as the Nairobi Stock Exchange (NSE), Capital Markets Authority (CMA), Institute of Certified Public Accountants (ICPAK) and the Kenya Chapter of the Association of Chartered Certified Accountants (ACCA), with participation drawn from many leading corporate organisations, the organisers, M/s Dominion Consultants Limited, had no idea that this effort would develop into a major initiative on corporate governance. However, it was agreed that another forum be convened early the following year to deliberate more on the many issues that were mentioned but not exhaustively discussed. By the time the second seminar was being organised in March, 1999 at the Whitesands Hotel, Mombasa, it was becoming clear that the seminar would have to discuss major topics and principles of good corporate governance.

The reasons for this development included, but were not limited to:

- (1) The quality of governance at all levels was increasingly being seen as the most important factor for the success of both the politico-economy and its institutions.
- (2) Corporate governance was increasingly taking centre stage, with the privatisation and corporatization of the economies globally.
- (3) There was greater expectation from society that corporate organisations, especially private ones, should take a more leading role in the debate and implementation of economic revival strategies.
- (4) In the face of major scandals leading to the collapse of big corporations, especially state owned ones, with disastrous social and economic consequences, it was inevitable that the wider society, led by the mass media, would start questioning how these organisations were run.
- (5) Shareholders, especially in publicly listed companies were becoming increasingly vocal demanding better transparency and disclosure of information from their directors.
- (6) Regulatory bodies, notably the CMA and the NSE, were already hinting that they would require good corporate governance practices amongst the publicly listed companies.

The Mombasa seminar made important decisions one of which was to create an interim committee with the mandate of doing all that was necessary to formulate a Code of Best Practice for Corporate Governance in Kenya and to co-ordinate, where applicable, with other efforts in the region and beyond for the purpose of improving Corporate Governance. The committee was also mandated to seek the establishment of a permanent organ to oversee the implementation of the Code if the effort was to be sustained. The Interim Committee set to work immediately and co-opted additional members from all organisations that were considered to have an interest in corporate governance. The committee also produced a first draft code of best practice and distributed it to over four hundred corporate organisations, development agencies, embassies and government departments with a request to send in comments about the draft and the way forward. The response was very encouraging and in the following weeks the committee was bold enough to register a Trust, and to commence the organisation of a workshop and seminar to further discuss and arrive at a wider consensus on the way forward. With the support of three development agencies, namely the Ford Foundation, the British Department for International Development and the Friedrich Ebert Foundation, a two-day workshop of experts was held at the Safari Park Hotel on the 6th and 7th October 1999. This was followed by a Seminar attended by representatives from over seventy corporate and other organisations on the 8th October 1999. Participants at the two functions resolved, among other things:

- (1) That the Code of Best Practice for Corporate Governance, as previously circulated and subsequently refined through expert input and comments from corporate respondents, be adopted, printed and circulated as a guide for Corporate Governance in Kenya.
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- (2) That there was an urgent need to establish a “Corporate Sector Foundation” to promote, co-ordinate and guide corporate governance in Kenya and
- (3) That the steering committee be mandated to proceed to work on the implementation of this resolution.

After the Seminar in October, the Committee continued working and it is most gratifying that we can forward this document to a much wider group of corporate and other organisations. It is our hope that this document will be discussed and analysed by corporate directors and managers wishing to commence or enhance better corporate governance practices in their own organisations.

The Private Sector Initiative for Corporate Governance, and hopefully, at a later stage, the Corporate Sector Foundation, will be more than willing to assist such organisations to implement corporate governance programmes. The Initiative has already affiliated or is in communication with all major corporate governance organisations across the globe and is building a library of knowledge and ideas that should be amply sufficient for the needs of our corporate organisations. The Initiative will further conduct studies and undertake research in all the main areas that could be of interest in the improvement of corporate governance for better national economic performance.

We hope and trust that you, the recipient of this document, will read it and pass it on to others in your organisation.

We are convinced that your organisation is promoting good corporate governance for better corporate results. We look forward to your organisations’ continued collaboration in this noble objective - better corporate governance.

Thank you.

Job K. Kihumba
Chairman - Private Sector Corporate Governance Trust

BACKGROUND

1.1 WHAT IS CORPORATE GOVERNANCE?

1.1.1 Context in Which Corporate Governance Operates

Governance – the manner in which power is exercised in the management of economic and social resources for sustainable human development – has assumed critical importance in these days of political pluralism. It is a vital ingredient in the maintenance of a dynamic balance between the need for order and equality in society, the efficient production and delivery of goods and services, accountability in the use of power, the protection of human rights and freedoms, and the maintenance of an organized corporate framework within which each citizen can contribute fully towards finding innovative solutions to common problems.

1.1.2 Corporate Governance

Good Corporate Governance seeks to promote:

- ◆ Efficient, effective and sustainable corporations that contribute to the welfare of society by creating wealth, employment and solutions to emerging challenges.
- ◆ Responsive and accountable corporations
- ◆ Legitimate corporations that are managed with integrity, probity and transparency
- ◆ Recognition and protection of stakeholder rights
- ◆ An inclusive approach based on democratic ideals, legitimate representation and participation

Governance is concerned with the processes, systems, practices and procedures – the formal and informal rules – that govern institutions, the manner in which these rules and regulations are applied and followed, the relationships that these rules and regulations determine or create, and the nature of those relationships. Essentially, governance addresses the leadership role in the institutional framework.

Corporate Governance, therefore, refers to the manner in which the power of a corporation is exercised in the stewardship of the corporation's total portfolio of assets and resources with the objective of maintaining and increasing shareholder value and satisfaction of other stakeholders in the context of its corporate mission.

It is concerned with creating a balance between economic and social goals and between individual and communal goals while encouraging efficient use of resources, accountability in the use of power and stewardship and as far as possible to align the interests of individuals, corporations and society. It is about promoting:

- ◆ Fair, efficient and transparent administration of corporations to meet well-defined objectives.
- ◆ Systems and structures of operating and controlling corporations with a view to achieving long-term strategic goals that satisfy the owners, suppliers, customers and financiers while complying with legal and regulatory requirements and meeting environmental and society needs;
- ◆ An efficient process of value-creating and value-adding; and to ensure that:

- The Board has set strategic objectives and plans and put in place proper management structures [organization, systems and people] to achieve those objectives and plans.
- The structures put in place function to maintain corporate integrity, reputation and responsibility towards all stakeholders.
- The Board acts as a catalyst, initiating, influencing, evaluating and monitoring strategic decisions and actions of management and holds management accountable.
- Ensuring that the Board is not a mere formality which takes a back seat, leaving management to make all strategic decisions.
- The Board has established and put in place mechanisms to ensure that the corporation operates within the objects established by shareholders, the mandate given to it by society, utilizes the resources entrusted to it efficiently and effectively in pursuit of the stated mandate, and meets the legitimate expectations of its various stakeholders.
- There are established mechanisms, processes and systems to constantly ensure that:
 - Governance practices are effective and appropriate
 - There is transparency and accountability to the various stakeholders
 - The corporation complies with legal and regulatory requirements
 - There is disclosure of all pertinent information to stakeholders
 - There is effective monitoring and management of risk, innovation and change
 - The corporation remains relevant, legitimate and competitive; and
 - The corporation is viable, solvent and sustainable.

Simply put, corporate governance refers to the establishment of an appropriate legal, economic and institutional environment that allows companies to thrive as institutions for advancing long-term shareholder value and maximum human-centered development while remaining conscious of their other responsibilities to stakeholders, the environment and the society in general.

1.2 THE NEED FOR GOOD CORPORATE GOVERNANCE

The Global Corporate Governance Forum notes in its mission statement that:

“Corporate Governance has become an issue of worldwide importance. The Corporation has a vital role to play in promoting economic development and social progress. It is the engine of growth internationally, and increasingly responsible for providing employment, public and private services, goods and infrastructure. The efficiency and accountability of the corporation is now a matter of both private and public interest, and governance has, thereby, come to the head of the international agenda.”

The Commonwealth Association for Corporate Governance, in its publication “CACG Guidelines – Principles for Corporate Governance in the Commonwealth”, states:

“The globalization of the market place within this context has ushered in an era where the traditional dimensions of corporate governance defined within local laws, regulations and national priorities are becoming increasingly challenged by circumstances and events having an International Impact.”

Good Corporate Governance is necessary in order to:

- ◆ Attract investors – both local and foreign – and assure them that their investments will be secure and efficiently managed, and in a transparent and accountable process.
- ◆ Create competitive and efficient companies and business enterprises.
- ◆ Enhance the accountability and performance of those entrusted to manage corporations.
- ◆ Promote efficient and effective use of limited resources.

Without efficient companies or business enterprises, the country will not create wealth or employment. Without investment, companies will stagnate and collapse. If business enterprises do not prosper, there will be no economic growth, no employment, no taxes paid and invariably the country will not develop.

The country needs well-governed and managed business enterprises that can attract investments, create jobs and wealth and remain viable, sustainable and competitive in the global market place.

Good corporate governance, therefore, becomes a prerequisite for national economic development.

1.3 PILLARS OF GOOD GOVERNANCE

In all fields of human endeavour, good governance is founded upon the attitudes, ethics, practices and values of the society regarding:

- ◆ Accountability of power based on the fundamental belief that power should be exercised to promote human well-being.
- ◆ Democratic values in respect of the sharing of power, representation and participation.
- ◆ The sense of right and wrong, what is fair and just, work ethics, technology and continuing corporate social responsibility.
- ◆ Efficient and effective use of resources for the production of goods and services.
- ◆ Protection of human rights and freedoms and the maintenance of essential order and security for the person and his/her property.
- ◆ Recognition of the government as the only entity to which the society gives authority to use coercive power to maintain public order and national security, collect taxes, reallocate society's resources to meet public needs and to use that coercive power to confiscate assets, deprive a person of liberty or life; but provided always that such power and authority are not used to suppress, oppress and deny basic human rights and freedoms.
- ◆ Attitudes towards the generation and accumulation of wealth through hard work and personal effort.

These have been reduced to four pillars on which good governance is framed:

- (a) There must be an effective body responsible for governance separate and independent of management to promote:
- ◆ Accountability [leadership that must be ready to account]
 - ◆ Efficiency and effectiveness [hence leadership for results]
 - ◆ Probity and integrity [hence leadership that is honest, faithful and diligent]
 - ◆ Responsibility [hence leadership that is capable, responsible, representative and conscious of its obligations]
 - ◆ Transparent and open leadership with accurate and timely disclosure of information relating to all economic and other activities of the corporation.

- (b) There must be an all-inclusive approach to governance that recognizes and protects the rights of members and all stakeholders – internal and external.
- (c) The institution must be governed and managed in accordance with the mandate granted to it by its founders and society and take seriously its wider responsibilities to enhance sustainable prosperity.
- (d) The institutional governance framework should provide an enabling environment within which its human resource can contribute and bring to bear their full creative powers towards finding innovative solutions to shared problems.

In Corporate Governance, the above can be summarized into five basic tenets:

- ◆ Accountability
- ◆ Efficiency and Effectiveness
- ◆ Integrity and Fairness
- ◆ Responsibility, and
- ◆ Transparency

1.4 OVERVIEW OF DEVELOPMENTS IN CORPORATE GOVERNANCE

(a) GLOBAL INITIATIVES ON CORPORATE GOVERNANCE

(i) Global Corporate Governance Forum

The World Bank Group and the Organization for Economic Co-operation and Development have established the Global Corporate Governance Forum to:

- ◆ Build a consensus in favour of appropriate policy, regulatory and corporate reforms;
- ◆ Co-ordinate and disseminate corporate governance activities;
- ◆ Provide corporate development and human capacity building in the associated fields of corporate governance;
- ◆ Train the various professionals and other agents who are essential to bringing about a culture of compliance.

On October 24, 1999, the Global Corporate Governance Forum Secretariat published the 2nd Edition of “The Inventory – A survey of Worldwide Corporate Governance Activity” in which it notes on page 36:

“At a global level, the survey responses indicate that . . . companies in these emerging markets, traditionally unwilling to pay for corporate governance-related services, now understand the importance of changing their Board and disclosure practices in order to better attract international sources of capital...”

It is worth noting that James D. Wolfensohn, President of the World Bank, states:

“The proper governance of companies will become as crucial to the world economy as the proper governance of countries.”

- (ii) **The International Corporate Governance Network** was also established to promote and coordinate research and development in corporate governance.

(b) Corporate Governance in the Commonwealth

During the October 1997 Commonwealth Heads of Government Meeting in Edinburgh it was resolved that:

“Capacity should be established in all Commonwealth countries to create or reinforce corporations to promote good corporate governance in particular; codes of good practice establishing standards of behaviour in public and private sector should be agreed to secure greater transparency and to reduce corruption.”

The Commonwealth Association for Corporate Governance was subsequently established and developed the “CACG Guidelines – Principles for Corporate Governance in the Commonwealth”. These were adopted at the November 1999 Commonwealth Heads of Government meeting in Durban, South Africa, **“as guidelines for all Commonwealth countries to develop or enhance their own national corporate governance principles.”**

(c) Corporate Governance in Africa

- ◆ The Africa Capital Markets Forum is undertaking a study on the state of Corporate Governance in Africa.
- ◆ The King’s Committee Report and Code of Practice for Corporate Governance in South Africa published in 1994 continues to stimulate corporate governance in Africa.
- ◆ Zimbabwe, Ghana, Uganda and South Africa have put in place national institutional mechanisms to promote good corporate governance.
- ◆ Training, technical and awareness raising support has been extended by the World Bank and the Commonwealth Secretariat to various African countries such as Botswana, Senegal, Tunisia, Mali, Mauritania, Cameroon, Gambia, Mozambique, Mauritius, Sierra Leone and Zambia to help them put in place appropriate mechanisms to promote good corporate governance.

(d) Corporate Governance in East Africa

- ◆ Regional conferences were held in Kampala, Uganda, in June 1998 and September 1999 to create awareness and promote regional co-operation in matters of corporate governance.
At the June 1998 Conference, it was resolved that each member state be encouraged to develop both a framework and a code of best practice, to promote national corporate governance, and that efforts be made to harmonize corporate governance in the East African region under the auspices of the East African Co-operation, and through the establishment of a regional apex body to promote corporate governance.
At the September 1999 Conference, the earlier resolutions were re-affirmed and recommendations made, encouraging the member states to collaborate with other African initiatives in promoting good corporate governance.
- ◆ Uganda has established the Institute of Corporate Governance of Uganda, and is formulating a national code of best practice for corporate governance.
- ◆ Tanzania is in the process of organizing an East African Regional Workshop on corporate governance early in the year 2000.
- ◆ In Kenya, the Private Sector Initiative for Corporate Governance continues to liaise with Uganda and Tanzania towards the establishment of a Regional Center of Excellence in Corporate Governance

(e) Corporate Governance in Kenya

- ◆ Consultative Corporate Sector seminars held in November 1998 and March 1999 resolved that a Private Sector Initiative for Corporate Governance be established to:
 - Formulate and develop a code of best practice for corporate governance in Kenya;
 - Explore ways and means of facilitating the establishment of a national apex body [the National Corporate Sector Foundation] to promote corporate governance in Kenya;
 - Co-ordinate developments in corporate governance in Kenya with other initiatives in East Africa, Africa, the Commonwealth and globally.

- ◆ On October 8, 1999 the Corporate Sector at a seminar organized by the Private Sector Initiative for Corporate Governance formally adopted a national code of best practice for Corporate Governance to guide corporate governance in Kenya, and mandated the Private Sector Initiative to establish the Corporate Sector Foundation, and collaborate with the Global Corporate Governance Forum, the Commonwealth Association for Corporate Governance, the African Capital Markets Forum, Uganda and Tanzania in promoting good corporate governance.

1.5 PURPOSE OF THE PRINCIPLES AND SAMPLE CODE OF BEST PRACTICE FOR CORPORATE GOVERNANCE

- ◆ The principles of good corporate governance are neither prescriptive nor mandatory. They are designed as a basis to assist individual companies formulate their own specific and detailed codes of best practice.
- ◆ The Private Sector Initiative for Corporate Governance expects that these principles will excite debate and result in the further evolution of better practices and procedures.
- ◆ The purpose for which these guidelines are formulated will have been served if every corporate entity in Kenya examines its own governance practices, improves what needs improvement and/or otherwise enhances its own governance practices.
- ◆ The PSCGT will develop capacity and resources to assist corporate organizations develop and improve their own corporate governance practices.

PRINCIPLES OF GOOD CORPORATE GOVERNANCE

2.1 INTRODUCTION

Corporate Governance is concerned with the establishment of an appropriate legal, economic and institutional environment that would facilitate and allow business enterprises to grow, thrive and survive as institutions for maximizing shareholder value while being conscious of and providing for the well-being of all other stakeholders and society.

Good Corporate Governance requires that the State puts in place and maintains an enabling environment in which efficient and well-managed companies can thrive. It is therefore expected that companies will continue to play their part in encouraging dialogue between the public and private sectors in promoting good public governance and an enabling business environment.

It is the responsibility of the owners of the corporation to elect competent directors and to ensure that they govern the corporation in a manner consistent with their stewardship.

Good corporate governance dictates that the Board of Directors governs the corporation in a way that maximizes shareholder value and in the best interest of society. It is neither in the long-term interest of the enterprise or society to short-change customers, exploit labour, pollute the environment or engage in corrupt practices.

The guidelines which follow set 21 principles of good corporate governance, aimed primarily at the Board of Directors in corporations with a unitary Board structure. These are followed by a sample code which expounds on these principles.

2.2 PRINCIPLES OF GOOD CORPORATE GOVERNANCE: A SUMMARY

The following is a summary of the principles of good corporate governance:

Authority and Duties of Members [or Shareholders]

Members or shareholders [as owners] of the corporation shall jointly and severally protect, preserve and actively exercise the supreme authority of the corporation in general meetings. They have a duty, jointly and severally, to exercise that supreme authority of the corporation to:

- ◆ Ensure that only competent and reliable persons, who can add value, are elected or appointed to the Board of Directors;

- ◆ Ensure that the Board is constantly held accountable and responsible for the efficient and effective governance of the corporation so as to achieve corporate objectives, prosperity and sustainability.
- ◆ Change the composition of a Board that does not perform to expectation or in accordance with the mandate of the corporation.

Leadership

Every corporation should be headed by an effective Board that should exercise leadership, enterprise, integrity and judgment in directing the corporation so as to achieve continuing prosperity and to act in the best interest of the enterprise in a manner based on transparency, accountability and responsibility.

Appointments to the Board

Appointments to the Board of Directors should, through a managed and effective process, ensure that a balanced mix of proficient individuals is made and that each of those appointed is able to add value and bring independent judgment to bear on the decision-making process.

Strategy and Values

The Board of Directors should determine the purpose and values of the corporation, determine the strategy to achieve that purpose and implement its values in order to ensure that the corporation survives and thrives and that procedures and values that protect the assets and reputation of the corporation are put in place.

Structure and Organization

The Board should ensure that a proper management structure [organization, systems and people] is in place and make sure that the structure functions to maintain corporate integrity, reputation and responsibility.

Corporate Performance, Viability and Financial Sustainability

The Board should monitor and evaluate the implementation of strategies, policies and management performance criteria and the plans of the corporation. In addition, the Board should constantly review the viability and financial sustainability of the enterprise and must do so at least once every year.

Corporate Compliance

The Board should ensure that the corporation complies with all relevant laws, regulations, governance practices, accounting and auditing standards.

Corporate Communication

The Board should ensure that the corporation communicates with all its stakeholders effectively.

Accountability to Members

The Board should serve the legitimate interests of all members and account to them fully.

Responsibility to Stakeholders

The Board should identify the corporation's internal and external stakeholders; agree on a policy or policies determining how the corporation should relate to, and with them, in creating wealth, jobs and the sustainability of a financially sound corporation while ensuring that the rights of stakeholders [whether established by law or custom] are respected, recognized and protected.

Balance of Powers

The Board should ensure that no one person or group of persons has unfettered power and that there is an appropriate balance of power on the Board so that it can exercise objective and independent judgment.

Internal Control Procedures

The Board should regularly review systems, processes and procedures to ensure the effectiveness of its internal systems of control so that its decision-making capability and the accuracy of its reporting and financial results are maintained at the highest level at all times.

Assessment of Performance of the Board of Directors

The Board should regularly assess its performance and effectiveness as a whole and that of individual members, including the Chief Executive Officer. A summary of the major findings together with a statement confirming that the Board has carried out a self-assessment exercise should be made to the annual general meeting.

Induction, Development and Strengthening of Skills of Board Members

The Board should recognize the need for new members to be inducted into their roles and for all Board members to develop and strengthen their governance skills in light of technological developments, changing corporate environment and other variables. The Board should accordingly organize for the systematic induction and continuous development of its members.

Appointment and Development of Executive Management

The Board should appoint the Chief Executive Officer and participate in the appointment of all senior management, ensure motivation and protection of intellectual capital crucial to the corporation, ensure that there is appropriate and adequate training for management and other employees and put in place a succession plan for senior management.

Adoption of Technology and Skills

The Board must recognize that to survive and thrive it has to ensure that the technology, skills and systems used in the corporation are adequate to run the corporation and that the corporation constantly reviews and adopts the same in order to remain competitive.

Management of Corporate Risk

The Board must identify key risk areas and key performance indicators of the corporation's business and constantly monitor these factors.

Corporate Culture

The Board should define, promote and protect the corporate ethos, ethics and beliefs on which the corporation premises its policies, actions and behaviour in its relationships with all who deal with it.

Social and Environmental Responsibility

The Board should recognize that it is in the enlightened self-interest of the corporation to operate within the mandate entrusted to it by society and shoulder its social responsibility. For this reason, a corporation does not fulfill its social responsibility by short-changing beneficiaries or customers, exploiting its labour, polluting the environment, failing to conserve resources, neglecting the needs of the local community, evading taxation or engaging in other anti-social practices.

Recognition and Utilization of Professional Skills and Competencies

The Board should recognize and encourage professional development and, both collectively and individually, have the right to consult the corporation's professional advisers and, where necessary, seek independent professional advice at the corporation's expense in the furtherance of their duties as directors. [This is in addition to and not a substitute to their personal duty to acquire competence, training and information that would help them make informed, independent and astute decisions on issues relevant to the corporation.]

Recognition and Protection of Members' Rights and Obligations

Members of the corporation have a right to receive any information that would materially affect their membership, to participate in any meeting of members and to participate in the election of directors and be facilitated to fully participate in all other resolutions of interest to them as members.

The attention of the Boards of Directors is increasingly being drawn to the need to ensure that:

- ◆ The governance framework takes account of gender and children's rights and the special needs of disabled and/or handicapped citizens.
- ◆ The corporation promotes the interests, rights and welfare of host communities.
- ◆ The corporation protects and preserves the environment.

SAMPLE CODE OF BEST PRACTICE FOR CORPORATE GOVERNANCE IN KENYA

(This sample Code is intended to assist companies develop their own governance codes and is neither prescriptive nor mandatory)

Authority and Duties of Shareholders

Shareholders of the company shall jointly and severally protect, preserve and actively exercise the supreme authority of the company in general meetings. They have a duty, jointly and severally, to exercise that supreme authority to:

- ◆ Ensure that only competent and reliable persons who can add value to the company are elected or appointed to the Board of Directors;
- ◆ Ensure that the Board of Directors is constantly held accountable and responsible for the efficient and effective governance of the company.
- ◆ Change the composition of a Board of Directors that does not perform to expectation or in accordance with the mandate of the corporation.

Leadership of the Company

The Board of Directors shall exercise leadership, enterprise, integrity and sagacious judgment in directing the company so as to achieve continuing prosperity for the company and shall always act in the best interests of the company.

Role and Functions of the Board

The Board of Directors shall exercise all the powers of the company subject only to the limitations contained in the law and the memorandum and articles of incorporation.

In this regard, it is expected that the Board of Directors shall fulfill the following functions:

- ◆ Exercise leadership, enterprise, integrity and sound judgments in directing the corporation so as to achieve continuing prosperity and to act in the best interest of the enterprise while respecting the principles of transparency and accountability;
- ◆ Ensure that through a managed and effective process, board appointments are made that provide a mix of proficient directors, each of whom is able to add value and bring independent judgment to bear on the decision-making process;
- ◆ Determine the corporation's purpose and values, determine the strategy to achieve its purpose and to implement its values in order to ensure it survives and thrives, and ensure that procedures and practices are in place that protect the corporation's assets and reputation;

- ◆ Monitor and evaluate the implementation of strategies, policies, management performance criteria and business plans;
- ◆ Ensure that the corporation complies with all relevant laws, regulations and codes of best business practice;
- ◆ Ensure that the corporation communicates with shareholders and other stakeholders effectively;
- ◆ Serve the legitimate interest of the shareholders and the corporation and account to them fully;
- ◆ Identify the corporation's internal and external stakeholders and agree on a policy, or policies determining how the corporation should relate to them;
- ◆ Ensure that no one person or a block of persons has unfettered power and that there is an appropriate balance of power and authority on the board which is, inter alia, usually reflected by separating the roles of the Chief Executive Officer and Chairman, and by having a balance between executive and non-executive directors;
- ◆ Regularly review processes and procedures to ensure the effectiveness of its internal systems of control, so that its decision-making capability and the accuracy of its reporting and financial results are maintained at a high level at all times;
- ◆ Regularly assess its performance and effectiveness as a whole, and that of the individual directors, including the Chief Executive Officer;
- ◆ Appoint the Chief Executive Officer and at least participate in the appointment of senior management, ensure the motivation and protection of intellectual capital intrinsic to the corporation, ensure that there is adequate training in the corporation for management and employees, and a succession plan for senior management;
- ◆ Ensure that all technology and systems used in the corporation are adequate to properly run the business and for it to remain effectively competitive;
- ◆ Identify key risk areas and key performance indicators of the business and monitor these factors;
- ◆ Ensure annually that the corporation will survive, thrive and continue as a viable going concern.

In Order to fulfill these functions, the Board of Directors shall:

- ◆ Meet regularly and retain full and effective control over the company.
- ◆ Evolve procedures for the selection and removal of individual directors (including the chairman and chief executive) to facilitate regular alteration of the mix and composition of the Board ensuring relevant rejuvenation.
- ◆ Define the limits of authority of the Chief Executive and other top executives.
- ◆ Compile and communicate company policies, strategies etc. covering style of operation; external and internal relationships; markets and business; required rates of return and performance standards; growth and change policies; planning and budgetary procedures.
- ◆ Review and approve strategic plans and arrange that meaningful plans are produced at all levels on an on-going basis covering the longest realistic time-scale.
- ◆ Determine the (actual and potential) total resources of the company in terms of men, money, methods, equipment etc. and market position, and allocate these by unit and time-scale, defining closely what returns are expected and when.
- ◆ Devote sufficient time to their responsibilities.
- ◆ Structure and organize the company.
- ◆ Monitor management performance.
- ◆ Map out the mechanisms for internal and external liaison and communications.
- ◆ Define how the Board will operate including:
 - What information or reports it requires on a monthly or quarterly basis.
 - How, with what data, and by what means, it will constantly monitor management performance and the financial progress of the company.
 - How it will evaluate its own performance at least once every year.

- ◆ Ensure that the company is properly managed and for the attainment of lawful objectives.
- ◆ Ensure that the company's affairs are not managed or conducted in a manner oppressive to any of its shareholders or for fraudulent purposes.
- ◆ Ensure that the company complies with all statutory requirements.

Composition of the Board

The Board shall include a balance of executive and non-executive directors (including independent non-executive directors) such that no individual or group of individuals or interests can dominate its decision taking.

The Board shall be chaired by an independent director who is not managing the company.

There are two key tasks at the top of the company, that of running the Board and that of the Chief Executive responsible for running the company. Therefore as a general rule, there is a clear division of these roles to ensure that a balance of power and authority is maintained, and that no one individual has unfettered powers of decision. Where these roles are combined, the reasons thereof shall be publicly explained.

The roles of the Chairman are:

- ◆ To lead the Board;
- ◆ To chair meetings of the Board and members, ensuring order, proper conduct of meetings, affording participants a reasonable opportunity to speak, ensuring decisions are fairly made, deciding on technicalities and to cast the deciding vote in case of ties;
- ◆ To organize and facilitate a balance of internal and external relationships, and
- ◆ To facilitate effective Board management.

Independent non-executive directors shall be independent of management, and free from any business or other relationship which would interfere with the exercise of their ability to bring an independent judgment to bear on issues of strategy, performance, resources, key appointments and standards of conduct. Independent non-executive directors shall be relied upon in matters where there is potential for conflict of interest e.g.:

- ◆ Financial reporting (Audit Committee)
- ◆ Nomination and remuneration of directors
- ◆ Evaluation of Board performance

It is suggested that:

- ◆ The company must contain at least one third of its members as non-executive directors.
- ◆ Persons with full time employment in any company or organization should not hold many non-executive directorships elsewhere [indicatively, not more that two].
- ◆ Persons without full-time employment in one organization (professional directors, consultants etc.) should not hold more than ten non-executive directorships.
- ◆ Executives from subsidiaries, the parent company or any other of its acquisitions cannot become non-executive directors on the parent company.
- ◆ Suppliers, direct customers or other trading associates of the company cannot become non-executive directors of the company.

- ◆ Persons with prior professional or social relationships with directors of the company cannot become non-executive directors in the company.

The company must always have a qualified, competent, fit and proper company secretary who must have the requisite knowledge and experience necessary to undertake the statutory duties and responsibilities of the post and advise the Board. The Company Secretary should have responsibility for ensuring that the company adheres to this code of best practice for corporate governance.

Appointments to the Board

There will be formal and transparent procedures for nomination and appointment of new directors to the Board. In this regard:

- ◆ There shall be set up a search and nominations committee of the Board.
- ◆ The Board of Directors will formally review its composition and performance at least once every year to ensure that:
 - The mix of membership is appropriate and compatible with the needs of the Board and company.
 - Every non-executive director commits adequate time to his responsibilities and contributes effectively.
[Each non-executive director should commit at least two days per month to his duties as a director and the actual time spent shall be recorded and reflected in the annual report].
- ◆ Based on the priority needs of the Board and the Company, the nominations committee will recommend to the Board qualified, competent fit and proper persons to be nominated for election to the Board.
- ◆ All directors shall be required to submit themselves for re-election at regular intervals and at least once every three years.
- ◆ Service contracts of Executive Directors shall not exceed three years but these are renewable with the approval of shareholders on the recommendation of the Board.

Directors' Remuneration

In order to avoid potential conflict of interest, the Board of directors shall set up independent remuneration committee to determine the remuneration of respective individual executive directors. The committee shall make a report to the shareholders every year.

The Committee shall:

- ◆ Establish a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual executive directors.
- ◆ Ensure that the level of remuneration shall be sufficient to attract and retain the quality and calibre of directors needed to run the company successfully while the make up should be so structured as to link corporate and individual performance.
- ◆ Ensure that the company's annual report contains a statement of the remuneration policy and details of the remuneration and benefits of each director, including family-related benefits.

Disclosures of Information by Directors

On first appointment and at regular intervals (at least once every year), or at any time when circumstances change, all directors shall, in good faith, disclose to the Board for recording and disclosure to the external auditors, any business or other interests that are likely to create a potential conflict of interest, including:

- All business interests (direct or indirect) in any other company, partnership or other business venture.
- Membership in trade, business or other economic organizations.
- Their shareholding, share options and/or other interest in the company.
- Any interest (direct or indirect) in any transaction with the company.
- Any gifts, monies, commissions, benefits or other favours extended or received from whatsoever party in respect of or in relation to any business dealings with the company.

At any time when a director resigns or is removed from office before the expiry of his term, he shall disclose to the company's external auditors and if necessary to the shareholders (if the reason for removal or resignation is refusal to compound fraud, corruption or other activities or behaviour incompatible with the shareholders' interests) the reasons for his resignation or removal.

Supply of Information to Directors

For Board members to exercise informed, intelligent, objective and independent judgments on corporate affairs, they shall have access to accurate, relevant and timely information. In this regard:

- ◆ There shall be established a formal procedure to enable independent directors to take professional advice on any matter pertinent to their functions if and where they deem it necessary and at the company's expense but subject always to the limitations, restrictions and conditions stipulated by the Board.
- ◆ All directors shall have unlimited access to the advice and services of the Company Secretary who has a statutory duty to advise the Board on matters of procedures, rules and regulations, and to any other professional officer of the company.
- ◆ It is the duty of every director to demand and obtain any information he deems critical to the performance of his duties as a director.

Directors' Training and Development

The weighty responsibilities placed upon a director, the level of commitment called for and the fast-changing corporate environment dictates that the company must now increasingly prepare those expected to assume these roles.

It is therefore recommended that all directors shall receive some formal training on their role, duties, responsibilities and obligations as well as Board practices and procedures on first appointment. This is particularly critical for those with no previous Board experience.

It is desirable that all company directors are exposed, at least once every three years, on matters relevant to legal reforms, corporate governance, changing corporate environment, business/commercial risks and other matters that may be of interest in the execution of their role.

It is currently suggested that initial training of directors shall cover, inter alia:

- ◆ Role, duties and responsibilities of the Board and directors.

- ◆ Rights and obligations of a director.
- ◆ Statutory liabilities and duties of a director under criminal and company law.
- ◆ Board practices and procedures.
- ◆ Corporate strategy and organization.
- ◆ Disclosure and communication policies.
- ◆ Financial management systems, internal control procedures and internal audit.
- ◆ External Audit and the Board.
- ◆ The Corporate Environment.
- ◆ Performance targeting, monitoring and evaluation.
- ◆ Risk management.
- ◆ Information Technology and information to the Board.
- ◆ Any other matters of interest to the Board.

Accounts: Audit and Disclosure

It is the statutory duty of directors, jointly and severally, to cause to be kept proper and accurate books of accounts in respect to all sums of money received and expended by the company, and the matters in respect of which receipt or expenditure takes place; all sales and purchases by the company; and of all the assets and liabilities of the company, as necessary to give with reasonable accuracy at anytime, the financial position of the company at that time; and to lay before the company's annual general meeting, a profit and loss account and a balance sheet reflecting a true and fair view of the profit or loss of the company and of the state of affairs of the company.

Consequently the Board of Directors is responsible for:

- Maintaining adequate systems of financial management and internal control over the company, including procedures designed to minimize the risk of fraud.
- Ensuring the integrity and adequacy of the accounting and financial systems.
- Ensuring that qualified, competent, fit and proper persons are employed to undertake accounting and financial responsibilities.
- Ensuring that the company complies with the accounting standards applicable.

The Board shall present to the shareholders balanced and understandable assessment of the company's position and prospects at least once a every year and preferably every six months.

It shall also establish formal and transparent arrangements for maintaining an "arms length" relationship with the external auditors, and ensure that there is timely and accurate disclosure to the shareholders of any information that would materially affect either the value or worth of their investment or earnings there-from including:

- Material changes in ownership structures, take over bids, shareholders arrangements, acquisitions, mergers, script splits and consolidations, or other arrangements.
- ◆ Material information on:
 - Company objectives
 - Financial and operating results

- Material issues relevant to governance structures and policies
- Changes or factors affecting members of the Board or key executives.
- Directors' remuneration and benefits.
- Government policies or legislative amendments
- Technological or other material issues affecting sources of raw materials, suppliers etc.

All information affecting the shareholders shall be prepared, audited, [where appropriate] and disclosed in accordance with high quality standards of financial and non-financial disclosure and objectivity.

Extension of Scope and Duties of Auditors

The Board of Directors shall ensure that persons who are qualified, reliable and independent of the Board and management are appointed as auditors. In light of developments elsewhere, the Board shall endeavour to:

- ◆ Extend the definition and scope of audit to cover:-
 - “to provide an independent opinion to those with interest in the company that they have received from those responsible for the direction and management of the company an adequate account of:
 - The proper conduct of the company's affairs;
 - The company's financial performance and position;
 - Future risks.
- ◆ Facilitate an extension of Auditors duties in regard to:
 - Reporting on whether the company has financial and other risk management controls
 - Evaluating and reporting on aspects of propriety and efficiency
 - Reporting directly to the Board, regulatory authorities and shareholders as appropriate, when illegal acts are discovered and to monitor basic ethical behaviour particularly in regard to the public interest
- ◆ Enhance the independence of the auditor from the Board and management;
- ◆ Extend the liability of Auditors to third parties.

The Role of Audit Committees

A separate audit committee enables a Board to delegate to a sub-committee the responsibility for a thorough and detailed review of Audit matters, enables the non-executive directors to contribute an independent judgment and play a positive role in an area for which they are particularly fitted, and offers the auditors a direct link with the non-executive directors. The appointment of a properly constituted Audit Committee shall therefore be an important step in raising standards of corporate governance.

- ◆ The Board shall establish an Audit Committee composed of independent non-executive directors to keep under review the scope and results of audit, its effectiveness and the independence and objectivity of the auditors.
- ◆ The Audit Committee shall be given written terms of reference which deal adequately with their membership, authority and duties and shall meet at least twice a year.
- ◆ The Audit Committee will:
 - Review the half year and annual financial statements before submission to the Board focusing particularly on:-
 - Changes in accounting policies
 - Significant adjustments arising from the audit
 - Major judgmental areas

- Compliance with accounting standards, disclosure and legal requirements, and
- Subject the financial statements to independent critical appraisal
- Consider appointment, remuneration and the resignation or dismissal of external auditors.
- Discuss and agree on the scope, nature and priorities of audit.
- Discuss with external auditors any reservations and problems arising in the course of audit and any audit management letters and management responses prior to the issuance of the audit certificate.
- Review and discuss with the external auditors aspects relevant to internal control procedures, risk management and internal audit.
- Review major findings on internal audit and investigations and consider management response or actions thereto.
- Undertake such other duties or function as may be assigned by the Board which are relevant to audit and investigations.

Other Aspects Relevant to the Collective and Individual Roles of Directors

In order to enable every director to be more clearly aware of their collective and individual accountability and liability in regard to their acts of commission and omission, the company shall provide every director with a detailed manual covering, *inter alia*, the following:

❖ Accountability of Directors jointly and severally to ensure that:

- ◆ They provide direction to the company.
- ◆ They put in place independent and viable mechanisms to evaluate performance of the company and management.
- ◆ They appoint competent, qualified and able executives.
- ◆ They evaluate and manage risk.
- ◆ They manage effectively and efficiently all stakeholder relationships and reconcile any potential conflict of interest.
- ◆ They account for stewardship [efficient and effective use of entrusted resources] for the maximum benefit of shareholders.
- ◆ They ensure that the Company operates within the law and the legality of transactions.
- ◆ They ensure that the company operates within ethical guidelines that enhance integrity, social accountability and the reputation and credibility of the company.

❖ Liability of directors jointly and severally in the context of:

- ◆ Criminal and penal laws relevant to companies.
- ◆ Fiduciary trust and agency.
- ◆ Fraudulent trading with an insolvent company.
- ◆ Fraudulent promotion or misrepresentation in the promotion of the company.
- ◆ Personal liability for fraud, secret profits, corruption and bribery.

Rights of Shareholders

All shareholder rights shall be recognized, respected and protected.

Basic shareholder rights include:

- ◆ To secure methods of ownership registration;
- ◆ To convey or transfer shares;
- ◆ To obtain relevant information on the corporation on a timely and regular basis;
- ◆ To participate and vote in general shareholder meetings;
- ◆ To elect members of the Board; and
- ◆ To share in the residual profits of the company.

Shareholders have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes such as:

- ◆ Amendments to the statutes, or articles of incorporation or similar governing documents of the company;
- ◆ The authorization of additional shares; and
- ◆ Extra-ordinary transactions that in effect result in the sale of the company

Shareholders shall have the opportunity to participate effectively and vote in general shareholder meetings and shall be informed of the rules, including voting procedures that govern general shareholder meetings:

- ◆ Shareholders shall 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 meetings.
- ◆ Opportunity shall be provided for shareholders to ask questions of the Board and to place items on the agenda at general meetings, subject to reasonable limitations.
- ◆ Shareholders shall be able to vote in person or in absentia, and equal effect shall be given to votes whether cast in person or in absentia.
- ◆ Shareholders shall be provided with adequate information on competencies required on the Board and given options to elect directors from amongst a range of qualified, competent, fit and proper persons.

Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership shall be disclosed.

The Board shall endeavour to ensure that markets for corporate control are allowed to function in an efficient and transparent manner. In this regard, the Board shall always seek to ensure that:

- ◆ The rules and procedures governing the acquisition of corporate control in the capital market, and extraordinary transactions such as mergers and sales of substantial portions of corporate assets shall be clearly articulated and disclosed so that investors understand their rights and recourse.
- ◆ Transactions shall occur at transparent prices and under fair conditions that protect the rights of all shareholders according to their class.
- ◆ Anti-take-over devices shall not be used to shield management from accountability.
- ◆ Shareholders, including corporate investors, consider the costs and benefits of using their voting rights.

The Board of Directors shall ensure that there is equitable treatment of all shareholders. In particular the Board shall ensure that:

- ◆ All shareholders of the same class are treated equally.
- ◆ Equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders shall have the opportunity to obtain effective redress for violation to their rights.

- ◆ Within any class, all shareholders should have the same voting rights. All investors should be able to obtain information about voting rights affiliated with all classes of shares before they purchase them. Any changes in voting rights within or between classes of shares should be subject to shareholder vote.
- ◆ Votes shall be cast by custodians or nominees in a manner agreed upon with the beneficial owner of the shares.
- ◆ Processes and procedures for general shareholder meetings shall allow for equitable treatment of all shareholders.
- ◆ Company procedures do not make it unduly difficult or expensive to cast votes.
- ◆ Self-dealing and insider trading are prohibited.
- ◆ Members of the Board and managers disclose their material interests in transactions on matters affecting the corporation.

The Shareholders in turn have a duty and are well advised to exercise the supreme authority of the company in general meetings to hold the Board accountable for stewardship of the company.

Responsibilities to Other Stakeholders

The Board of Directors and the company recognize the rights of stakeholders as established by law and shall encourage active co-operation between the company and its stakeholders in creating wealth, jobs and the sustainability of financially sound enterprises. In this regard, the Board of Directors shall:

- ◆ Ensure that the rights of stakeholders that are protected by law are respected.
- ◆ Where stakeholder interests are protected by law, ensure that stakeholders have the opportunity to seek effective redress for any violation of their rights.
- ◆ Permit and facilitate performance-enhancing mechanisms for stakeholder participation.
- ◆ Ensure that where stakeholders participate in performance-enhancing mechanisms, they have access to all relevant information.

Code of Ethics

The Board of Directors shall develop and put in place a code of ethics outlining the values, ethics and beliefs that guide the policy and behaviour of the company and define the ethical standards applicable to it and to all who deal with it.

Social Responsibilities

The Board of Directors will monitor the social responsibilities of the company and promulgate policies consistent with the company's legitimate interests and good business practices. In particular, the Board of Directors shall:

- ◆ Promote fair, just and equitable employment policies;
- ◆ Promote and be sensitive to the preservation and protection of the natural environment;
- ◆ Be sensitive to and conscious of gender interests and concerns;
- ◆ Promote and protect the rights of children and other vulnerable groups;
- ◆ Enhance and promote the rights and participation of host communities.

General

The Board of Directors shall, conscious of its responsibilities to investors, suppliers, creditors, employees and the society:

- ◆ Issue a certificate at the end of every year confirming that it has complied with the law, conducted its affairs in accordance with the best principles and practices of corporate governance and that to the best of the knowledge of the Board and management, no person, employee or agent acting on behalf of the company with the knowledge or authority of the Board or management, committed any offence under the Prevention of Corruption Act or indulged in any unethical behaviour in the conduct of the company's business, or been involved in money laundering or any practice or activity contrary to national laws or international conventions.
- ◆ Publish a Social Responsibility report every year indicating how it has dealt with its social and environmental responsibilities.

IMPORTANT ASPECTS IN CODE OF ETHICS

An All-inclusive Code of Ethics for Enterprise and All Who Deal With the Enterprise, should cover, inter alia, the following:

That the Code of Ethics shall apply to:

- ◆ Directors and managers of the company including non-executive directors.
- ◆ All employees of the company [including professionals and consultants].
- ◆ The owners and shareholders of the company [where they are different from the directors or managers].
- ◆ Suppliers and lenders of the company.
- ◆ Other relevant stakeholders.

Objectives of the Code of Ethics

- ◆ To set out the values, ethics and beliefs upon which the company premises its policies and behaviour.
- ◆ To set down and promulgate the basic ethical principles to be observed.
- ◆ To secure adherence to uniform principles of good practice.
- ◆ To promote and maintain confidence in the integrity of the corporation.
- ◆ To harmonise the concepts of social responsibility, public accountability and profitability.
- ◆ To prevent and resist the development of undesirable practices.
- ◆ To lay down standards for personal and corporate behaviour.

Personal Conduct

- ◆ Personal standards and integrity
- ◆ Professional expectation and duty of care to render faithful service
- ◆ Confidentiality and trust
- ◆ Loyalty, fiduciary responsibility and transparency
- ◆ Duty to community
- ◆ Compliance with the law
- ◆ Declaration of personal interest and conflict of interest.

Corporate Behaviour

- ◆ Compliance with the law
- ◆ Quality standards and responsibility to customers.
- ◆ Integrity of relationships.
- ◆ Transparency and accountability of the corporation

- ◆ Conflict of interest
- ◆ Privacy of records and information
- ◆ Insider information
- ◆ Policy on corruption, bribes, gifts and entertainment
- ◆ Social responsibility and accountability, etc.

Specific Obligations of:

a) Directors and Managers:

- ◆ To shareholders and the company
- ◆ To employees
- ◆ To customers
- ◆ To suppliers and lenders
- ◆ To host communities
- ◆ To the society at large
- ◆ To the State

(b) Employees and Professionals:

- ◆ To owners of the company
- ◆ To managers/directors
- ◆ To the enterprise
- ◆ To fellow employees
- ◆ To the society at large

(c) Owners of Enterprise:

- ◆ To the company
- ◆ To directors and managers
- ◆ To employees and stakeholders
- ◆ To other shareholders
- ◆ To customers and consumers
- ◆ To the community at large

(d) Financiers, Lenders, Suppliers, etc:

- ◆ To enterprise
- ◆ To managers/directors
- ◆ To customers
- ◆ To society at large

(e) Host Communities:

- ◆ To the Company
- ◆ To Directors and Managers
- ◆ To the society at large
- ◆ To the State

(f) Trade Associations:

- ◆ To the company
- ◆ To Directors and Managers
- ◆ To the Community/society

(g) The State:

- ◆ To the Company
- ◆ To Directors and Managers
- ◆ To employees
- ◆ To the Community and Society

[It is suggested that special mention should be made in the code of ethics in regard to the duty of care , responsibility and liability attaching to professionals who are called upon to authenticate and issue certificates of compliance upon which third parties dealing with the company are expected to rely].

FRAMEWORK FOR BOARD AND INDIVIDUAL DIRECTOR PERFORMANCE EVALUATION

Background

The Board is appointed to guide, lead, monitor, and conduct all aspects of company business and to supervise or control business activities. There are considerable benefits in appointing directors from the wider community but there is a definite level of risk.

Risk can be considerably reduced and performance enhanced if appointees are briefed at the outset as part of the selection and appointment process. Risk is further reduced if directors are obliged to take part in a formal evaluation of directors and Board performance each year.

The information obtained from the evaluation provides a basis for the appointment and reappointment. A formal evaluation ensures that the Board is adding value to the organization and fulfilling its responsibilities to the organisation and to the stakeholders.

Board Evaluation

Performance measurement enhances the effectiveness of the Director and thus further reduces the risk to the organisation. The obligation to have an annual formal evaluation ensures that the Board takes time to evaluate its own performance.

The primary purpose is to enhance not only the performance, effectiveness and contribution of each director, but also to improve the effectiveness of the Board as a whole in fulfilling its role.

Formal evaluation once a year should not replace informal feedback on performance on an ongoing basis, although establishing a formal evaluation methodology provides an objective framework for analytical feedback to the Board and members for the appointment processes.

The framework provides a mechanism for ensuring that the Chairman is accountable when giving advice about Board members to the Board [and Chief Executive] and fully responsible for the effective performance of the Board.

Directors are sensitive about Board evaluation. Some directors believe there is an element of voluntary devoted service, they believe their contribution should be gratefully received and not questioned.

Other Directors are grateful for an objective framework in which to compare their performance with others or to improve their contribution around the Board table. Within this framework, experienced Directors can offer practical support to first-time Directors.

So that experienced Directors do not find the process insulting, the purpose of the evaluation should be clearly communicated.

Chief Executives are increasingly under scrutiny, with their pay package being dependent on their performance. Peer review is an integral part of professionals monitoring their own performance. It is equally relevant that Directors also have a performance evaluation.

Through this process members and stakeholders can ensure that the Board is adding value to the organization and fulfilling its legal obligations.

Director evaluations are achieving greater importance in the Corporate Sector with introduction of codes of best governance practice.

Skills Mix

The successful dynamics of a Board depends on a combination of skills. The evaluation process identifies individual Directors' special attributes and their particular contribution to Board deliberations.

The self-appraisal of Board effectiveness and evaluation of individual Directors will identify any skills gaps in the composition of the Board, providing important input into the selection and appointment process.

Letter of Appointment

It is advisable that all directors be issued with letters of appointment indicating what they are expected to do and the terms and conditions of appointment.

The obligation to take part in director and Board evaluations will be referred to in the Letter of Appointment and the accompanying terms of reference.

Acceptance by all appointees will remove the suspicion that only some Directors are being evaluated.

Board Training and Re-appointments

A formal mechanism for evaluating individuals' contributions to the Board provides valuable input to selection procedures. Some Directors might not "score" well simply due to inexperience, but training needs can be identified resulting in a bigger pool of capable Directors.

Often new Directors such as those from the management ranks of corporate bodies, though capable as managers, are not familiar with the role of the Board in corporate governance.

The formality of an evaluation process provides a framework for identifying the training needs in a professional way and, where necessary, to explain where re-appointment is not appropriate.

Board Goals

The evaluation process is completed by a full Board discussion to identify key objectives for the functioning of the Board for the subsequent year.

Confidentiality

Evaluation material about Directors should be sought on the express basis of confidentiality. Those responding should be advised that the information they give is received on a confidential basis and that their identity will be protected as far as the law allows. This should allow free expression of views.

Methodology

Evaluation can involve self-evaluation by peers or by a “consultant”, the former relying on the Board members themselves, the latter providing an external viewpoint.

Board evaluation by peers can be based on checklists for the Directors and the Chairman. The more detailed and explicit the checklists, the easier to execute and to generate transparent, comparable, written information.

Chairman

The Chairman’s own performance is linked both to the performance of each director as well as the functioning of the Board as a whole. Each director will assess the Chairman based on a checklist relating specifically to the Chairman’s duties.

Should the Chairman’s performance be considered unsatisfactory, the Deputy Chairman will have a discussion with the Board members to determine whether members or appointing authority or the shareholders should be alerted.

Directors

The Chairman assesses Directors in a one-on-one interview set annually, or more frequently if necessary, with reference to a director’s checklist. Directors are encouraged to complete a self-evaluation questionnaire prior to the Chair’s discussion.

Should a director’s performance not be satisfactory, the Chairman should identify training needs or indicate areas to be addressed or, if necessary, indicate that recommendation to reappoint will not be forthcoming.

The director takes the opportunity to report back on their assessment of the Chairman during this interview.

Functioning of the Board

Although this is partly covered within the performance of the Chairman, a separate Board discussion, included as an agenda item at least once a year will focus on the effectiveness of the Board as a team and the way it functions e.g. input into strategic planning, monitoring of the Chief Executive, relations with stakeholders and the servicing of the Board, that is, information supplied, time frames, information conveyed between Board meetings etc.

BOARD SELF APPRAISAL

A.1. KEY ISSUES TO BE ADDRESSED INCLUDE, BUT ARE NOT LIMITED TO:-

1 Shareholders

- ◆ How well do Company objectives reflect shareholder expectations?
- ◆ Is there full and accurate reporting on Company affairs to the shareholders?
- ◆ What is the state of relationship with the shareholders?
- ◆ What are the Board's relationships with monitoring agencies?

2 The Stakeholders

- ◆ Has the Board identified key stakeholders?
- ◆ Is there a policy determining how the corporation will relate with stakeholders?
- ◆ What is the state of the relationship with the key stakeholders?

3 The Company

- ◆ Is the level of strategic planning of sufficient quality and content?
- ◆ How accurately is the strategic plan reflected at an operational level in the business plan?
- ◆ Does the Board review the Company's performance against the business plan?

4 Legal/Ethical Duties

- ◆ Are all legal/ethical requirements met satisfactorily?
- ◆ Does the company have a code of Ethics?
- ◆ Is the Company a good employer?

5 The Direction of the Company

- ◆ How satisfactory is the Board's monitoring of the Company?
- ◆ Are the important issues being identified?
- ◆ How well are these analyzed and discussed?

6 The CEO

- ◆ How well is the CEO's job Description defined?
- ◆ Is the CEO satisfactorily supported by counsel from the Board?
- ◆ Is the CEO's performance monitored and appraised satisfactorily?
- ◆ Is the Board avoiding excessive intrusion in the CEO and/or management's responsibilities?

7 Board Meetings

- ◆ Is the information supplied to the Board appropriate and relevant?
- ◆ Is preparation and planning for Board meetings satisfactory?
- ◆ Is the frequency and style of meetings appropriate?
- ◆ Is Board attendance and participation working well?
- ◆ Is the Board and Committee structure still appropriate?
- ◆ Are accurate and timely minutes made and maintained?
- ◆ Is there follow up on actions necessary and/or reports to the Board on actions taken?

8 Individual Board Member Contributions

- ◆ Is the Chairman carrying out his role satisfactorily?
- ◆ Is there recognition and use of individual Board members' particular skills?
- ◆ Is the Board contributing contacts and generating business?
- ◆ Is the Board making other special contributions to the success of the Company as a whole?

9 Any Other Business

- ◆ Does the Board have a working knowledge of other providers or competitors in their sector?
- ◆ Does the Board play a role in social accountability or the wider responsibility of the Company?

DRAFT BOARD SELF EVALUATION FORM

A.2.1 Functions of The Board

	Yes	No
<ul style="list-style-type: none"> ◆ The Board understands, agrees, defines and promulgates its functions on an annual basis. ◆ The Board knows and understands the Company’s beliefs, values, philosophy, mission and vision and reflects this understanding on key issues throughout the year. ◆ Such beliefs, values, philosophy, mission and vision are set and are consistent with company’s status ◆ The Board devotes significant time and serious thought to the organization’s long-term objectives and to the strategic options available to achieve them. ◆ The Board has defined and communicated to management the scope and powers, roles and responsibilities to be adhered to by management to meet routine and exceptional circumstances. ◆ The majority of the Board’s time is not spent on issues of day-to-day management. ◆ The Board is involved in formulating long-range strategy from the beginning of the planning cycle. ◆ The Board ensures that the organization has sufficient and appropriate resources to achieve its strategic goals ◆ Proposals from management are analyzed and debated vigorously before being approved by the Board. A proposal that is considered inappropriate is declined. ◆ The Board has an operating plan that specifies its functions, activities and objectives. ◆ The Board has reviewed its needs in terms of skills and has these skills. ◆ When appropriate the Board seeks counsel from professionals advisors ◆ The Chief Executive Officer’s remuneration and performance is ◆ Reviewed and determined by the Board. ◆ The Board determines, annually, the objectives and measurement criteria for the Chief Executive Officer. ◆ A broad range of appropriate performance indicators are used to ◆ Monitor the performance of management. Reliability is not placed ◆ Solely on the financial statements provided by management. ◆ The Board has identified the groups to which it is: <ul style="list-style-type: none"> (a) Accountable 		

<p>(b) Responsible</p> <ul style="list-style-type: none"> ◆ The Board understands and agrees that its first duty is to <ul style="list-style-type: none"> (a) The company (b) Members and shareholders (c) Others ◆ Board activities are conducted in an atmosphere of creative tension. ◆ The Board has procedures in place to ensure that the organization is meeting its legal responsibilities. ◆ Formal review of the Board’s performance has become an integral part of the culture of the Board. ◆ The Board ensures that key members of management are brought into the Board meetings so that they can participate and add value to their deliberations and work on behalf of the Board. ◆ The Board ensures all conflicts of interest are <ul style="list-style-type: none"> (a) Declared (b) Resolved ◆ Every Board member has been supplied with a letter of appointment. ◆ The letter of appointment defines the roles and functions of the Board and the specific role of each director 		
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A.2.2. Board Meeting Management and Procedures

	Yes	No
<ul style="list-style-type: none"> ◆ Every Board member has been supplied with a Board manual and a copy of standing orders and regulations governing conduct of Board meetings. ◆ Every Board member was supplied with a calendar of meetings showing dates of Board meetings, committee meetings etc and key or critical events of the company ◆ Board meetings are conducted in a manner that encourages open communication, meaningful participation, and timely resolution of issues. ◆ Sufficient time is provided during Board meetings for thoughtful discussion in addition to management dialogue ◆ Board time is used effectively so that the Board <u>adds value</u> to management. ◆ Formal meeting and reporting procedures have been adopted by the Board. ◆ Board members receive timely and accurate minutes, advance written agendas and meeting notices; and clear and concise background material to prepare in advance of meetings. ◆ All Board members are fully informed of relevant matters and there are never any surprises. ◆ Absenteeism from Board meetings is the exception rather than the rule. ◆ Board meetings are facilitated, but not overtly influenced by the Chairperson. ◆ All Board members are permitted to add items to the meeting agenda ◆ All proceedings and Resolutions of the Board are recorded accurately, adequately and on a timely basis. 		

A.2.3 Appointment, Selection, Induction, Training Development, Succession and Removal of Directors

	Yes	No
<ul style="list-style-type: none"> ◆ The Board is involved with the selection of appointed directors. ◆ The selection process considers any deficiencies in the skills of current Board members ◆ The composition of the Board fairly represents the diversity of stakeholders. ◆ The Board actively encourages good candidates to stand for Board appointments. ◆ New Board members are introduced to their duties with an appropriate induction process ◆ Board members understand the extent of their relationship with management and the separation of stewardship and management ◆ Board members evaluate their individual and overall Board performance formally on an annual basis ◆ The performance of the Chief Executive Officer is reviewed formally on an annual basis. ◆ Encouragement is given for Board members to continue their study of corporate governance and improve the skills they need. ◆ Directors understand the extent of their personal liability for the affairs of the company. ◆ A succession plan is in place for the Chairperson, Chief Executive Officer, Board members and senior management and is reviewed regularly. ◆ Directors who have not been contributing to the governance of the organization, and are uninterested in improving their performance are asked to terminate. ◆ Where the ethical or professional conduct of any director is called into question such director is suspended pending investigations ◆ Board members bind themselves to uphold, honour and respect the code of Ethics of the organization on first appointment and to resign where their actions are called into question. 		

A.2.4 Board Structure

	Yes	No
<ul style="list-style-type: none"> ◆ The Board has a balanced mix of Executive, Non-Executive and Independent Non-Executive Directors. ◆ The roles of Chairperson of the Board and Chief Executive Officer are separated and held by different persons ◆ The Board has established and appointed committees with defined terms of reference, composition and reporting requirements. These aspects are formally recorded. ◆ The committees have been established and appointed in light of <ul style="list-style-type: none"> - The need to increase the effectiveness of the Board by utilizing the specialized skills of Board members. - Need to provide support and guidance to management - Need to ensure effective and independent professional consideration of issues e.g. audit reports, finance issues, etc. ◆ The Board has established and appointed:- <ul style="list-style-type: none"> - An Executive Committee - An audit committee - A Board appointment and remuneration committee ◆ The terms of reference of each committee are restricted and defined 		

A.2.5 Information and Communication

<ul style="list-style-type: none"> ◆ Every Board member was supplied with all establishment instrument, all legal documents, mission statement, vision and strategy documents of the company on first appointment. ◆ Every Board member receives a copy of the Board manual together with a letter of appointment on first appointment. ◆ Every Board member receives copies of all policy documents including organization policy documents, personnel and financial manuals on first appointment and every time these are reviewed. ◆ Board members are encouraged to discuss matters with members of management after gaining the approval of the Chairperson or the Chief Executive. ◆ The Board receives sufficient information from management in an appropriate format as determined by the Board. ◆ The Board's information requirements are communicated to management on a regular basis. ◆ Requested information is received in a timely fashion. ◆ The Board is proactive in developing an effective communication strategy for the company. ◆ The Company Secretary advises Board members regularly on matters of governance and the applicable law. 		
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CHAIRMAN OF THE BOARD

B.1. Shareholder Relations

- ◆ Managing relations with shareholders
- ◆ Facilitating advisory and monitoring processes between shareholder and Company
- ◆ Ensuring that shareholders are pre-warned of announcements or policy changes (“No surprises”)

B.2 Leadership

- ◆ Providing leadership to the Board in planning and direction
- ◆ Representing the Company with the CEO in the community

B.3. Management Relations

- ◆ Monitoring Company planning and operations
- ◆ Building relationships
- ◆ Guiding strategy
- ◆ Helping define problems
- ◆ Monitoring and evaluating the performance of the CEO and Senior Officers
- ◆ Representing shareholders and Board to management
- ◆ Representing Management to the Board and shareholders
- ◆ Maintaining accountability
- ◆ Ensuring succession plans are in place at a senior management level
- ◆ Meetings, as requested by CEO, with financial analysts
- ◆ Meetings, as requested by CEO, with potential sources of debt and equity capital

B.4. Board Management

- ◆ Chairing meetings of the Board
- ◆ Managing Directors’ performance
- ◆ Communications with Directors between meetings
- ◆ Setting meeting schedules
- ◆ Setting meeting agendas
- ◆ Controlling meeting attendance

- ◆ Determining Board information packages
- ◆ Ensuring all Board papers are distributed in advance of the meeting to enhance the knowledge base and ensure an informed level of debate
- ◆ Helping appoint committees and define Terms of Reference
- ◆ Attending committee meetings where appropriate
- ◆ Determining Director compensation
- ◆ Optimizing use of the Board's resource

B.5. Board Effectiveness

- ◆ Encouraging all Board members to contribute
- ◆ Planning Board composition and succession
- ◆ Establishing and working towards a shared vision

B.6. Liaison with Stakeholders

- ◆ In conjunction with the CEO, representing the Company to the staff, the public, the media, suppliers and customers
- ◆ In conjunction with the CEO, representing the Company in developing relationships with government representatives and government agencies.

B.7. Draft Summary Form for Evaluation of Chairman of the Board by Board Member and Chief Executive Officer

Use a scale score of 1 [very poor] to 5 [very good] with comments as appropriate. [i.e., 1 – very poor; 2 – poor; 3 – fair; 4 – good and 5 – very good].

	Marks
<p>1. Shareholder Relationships</p> <ul style="list-style-type: none"> ◆ Manages shareholders relationships and meets with shareholders. ◆ Actively meets with potential sources of equity and debt capital ◆ Manages shareholder meetings effectively and promotes a sense of participation in all shareholders and promotes shareholder confidence in the Board <p>Comments:</p> <p>-----</p> <p>2 Leadership</p> <ul style="list-style-type: none"> ◆ Is the Chairman an effective Board leader? ◆ Does he promote effective participation of all board members in the decision-making process? ◆ Does the Chairman promote the image of the company, portraying the requisite leadership in the community? <p>Comments:</p> <p>-----</p> <p>3 Management Relationships</p> <p>How Effective is the Chairman in:</p> <ul style="list-style-type: none"> ◆ Monitoring planning and operations ◆ Building relationships ◆ Influencing strategy ◆ Helping define problems ◆ Monitoring and evaluation performance of the CEO and senior officers ◆ Representing shareholders and Board to the management ◆ Representing management to the Board and shareholders 	

- ◆ Maintaining accountability

- ◆ Ensuring succession plans are in place at senior management level

Comments:

4 Managing the Board

How effective is the Chairman in:

- ◆ Chairing meetings of the Board
- ◆ Managing Directors' performance
- ◆ Communicating with Directors between meetings
- ◆ Setting meeting schedules
- ◆ Setting meeting agendas
- ◆ Controlling meeting attendance
- ◆ Determining Board Information packages
- ◆ Helping appoint committees
- ◆ Attending committee meetings where appropriate
- ◆ Determining Director compensation
- ◆ Promoting the training and development of directors

Comments:

5 Developing a More Effective Board

How effective is the Chairman in:

- ◆ Encouraging Board contribution
- ◆ Planning Board composition and succession
- ◆ Establishing and working towards a vision
- ◆ Promoting effective good corporate governance

Comments:

6 Relationship with other Stakeholders

How effective is the Chairman in:

- ◆ In conjunction with the CEO representing company to public, suppliers, customer and staff
- ◆ In conjunction with the CEO developing relationships and representing the company with regulators and government agencies
- ◆ Working with competitors in industry sector problems
- ◆ In liaison with CEO and management, leading the company in charitable, educational and cultural activities

Comments:

In your view, should the Chairman continue in office?[YES/NO]

INDIVIDUAL DIRECTOR PERFORMANCE

C.1. Strategic Thought

- ◆ Contribution to the strategic planning process
- ◆ Ability to contribute at a strategic level in Board debate

C.2. Corporate Governance

- ◆ Understanding of the role of the Board (governance versus management)
- ◆ Acceptance of collective responsibility and Board room confidentiality
- ◆ Level of understanding with regard to the legal and ethical responsibilities of the Board

C.3. Competence

- ◆ Contribution to the Board: strengths, abilities, experience and judgment
- ◆ Availability and willingness to attend meetings and actively participate in the work of the collective agency
- ◆ Understanding the financial structure of the business
- ◆ Understanding of the business as a whole
- ◆ Level of understanding of the relevant sector
- ◆ Communication with fellow Board members, CEO and shareholders
- ◆ Level of understanding of the market, the customer and quality focus

C.4. Independence

- ◆ Confidence and courage of thinking, speaking and acting
- ◆ Ability to constructively debate in a reasoned manner
- ◆ Willingness to take an independent viewpoint

C.5. Preparedness as a Director

- ◆ Preparation for meetings
- ◆ Contribution to committee work
- ◆ Willingness to give extra time with Chairman/CEO on relevant matters between meetings
- ◆ Knowledge of Company's key officers, managers and facilities

C.6. Personal Attributes

- ◆ Special attributes or skills brought to the Board
- ◆ Understanding of socio-economic issues facing the community and the business
- ◆ Level of ethical and moral judgment
- ◆ Preparedness to keep abreast with latest developments in the sector and in their corporate responsibilities.

C.7. Awareness of Stakeholders

- ◆ Awareness of shareholders expectations
- ◆ Understanding of sectoral reform
- ◆ Level of understanding of the Boards obligations to staff, the media and the community with respect to Board policy
- ◆ Understanding the relationships between other key players in the sector

C.8. Draft Summary Form for Review of Individual Directors Performance

Company/Organization:	
Date of review:.....	
Director Details:	
Title:	
Surname:	First / other names:
Date first appointed	
Expected end of term	
Skill area on appointment	
Membership of Board Committee(s)	-
-	

Performance Assessment

1. Attendance at Meetings

(a) Number of Board/relevant committee meetings held since date of appointment:

(b) Number of Board/relevant committee meetings attended by director:

(c) Chairperson's comments on attendance at meetings: e.g.:

(i) Attends in time and stays for full duration of meeting?

(ii) Attends briefly

(iii) Etc

2. Preparation for Meetings

(a) How well does the director prepare for meetings?

Outstanding Very Good Good Satisfactory Not Acceptable

(b) Chairperson's comments:

3. Participation at Meeting

(a) What level of effective participation does the director have in meetings:

Outstanding Very Good Good Satisfactory Not Acceptable

(b) Chairperson's comments:

4. Additional Roles

- (a) Does the director make other contribution's (e.g., chair of a Board committee, completion of special Board assignments)
- (b) Chairperson's comments:

5. Personal Attributes

The Chairperson's assessment of a director's attributes with comment, in particular, on the director's understanding of socio-economic issues facing the community and the business; the level of ethical and moral judgement, preparedness to keep a breast of the latest developments in the sector and in their corporate responsibilities; their relationship with the stakeholders.

6. Professional Attributes

The Chairperson's assessment of a Directors professional attributes with comment on the director's strategic awareness, independence, understanding of governance, technical competence, industrial relations and director responsibilities.

7. Chairperson's General Comments

The above assessment has been discussed between the Chairperson and the director concerned and the points have been agreed.

Signed:

Chairperson

Director.....

Date.....

SUMMARY CORE DUTIES OF THE COMPANY SECRETARY

[Adapted and Reproduced from ICSA Handbook]

The following list includes both those duties which are legal obligations as well as those which result from Best Practice. This is not a comprehensive list and the Company Secretary may have to use their initiative to ensure that all core duties are fulfilled. The Company Secretary will also have to refer to all relevant legislation.

The Company Secretary will need to fulfill the following duties:

3.1 Board Meetings

Facilitating the smooth operation of the company's formal decision making and reporting machinery; organizing board and board committee meetings [e.g. audit, remuneration, nomination committees etc]; formulating meeting agendas with the chairman and/or the chief executive and advising management on content and organization of memoranda or presentations for the meetings; collecting, organizing and distributing information, documents or other papers required for the meeting; ensuring that all meetings are minuted and that the minute books are properly maintained and that all Board committees are properly constituted and provided with clear terms of reference.

3.2 General Meetings

Ensuring that an Annual General Meeting is held in accordance with the requirements of the Companies Act and the company's Articles of Association; obtaining internal and external agreement to all documentation for circulation to shareholders; preparing and issuing notices of meetings, and distributing proxy forms; preparing directors for any shareholder questions and helping them create briefing materials; overseeing the preparations for security arrangements.

At meetings, ensuring that proxy forms are correctly processed and that the voting process is carried out correctly; co-ordinating the administration and minuting of meetings.

3.3 Memorandum & Articles of Association

Ensuring that the company complies with its Memorandum and Articles of Association; drafting and incorporating amendments in accordance with correct procedures.

3.4 Stock Exchange Requirements

Monitoring and ensuring compliance with the Stock Exchange requirements as well as supervising the implementation of the model code and/or the company code for dealing in the company's securities, as appropriate; managing relations with the Stock Exchange through the company's brokers; releasing information to the market; ensuring the security of unreleased price-sensitive information; making applications for listing of additional issues of securities.

3.5 Statutory Registers

Maintaining the following statutory registers:

- ◆ Members [see also paragraph 8];
- ◆ Mortgage and charges;
- ◆ Directors and secretary;
- ◆ Directors' interests in shares and debentures;
- ◆ Interests in voting shares;
- ◆ Debenture holders [if applicable].

3.6 Statutory Returns

Filing information with the Registrar of Companies to report certain changes regarding the company or to comply with requirements for periodic filing. Of particular importance in this regard are:

- ◆ Annual returns
- ◆ Report & accounts;
- ◆ Amended Memorandum and "Articles of Association";
- ◆ Returns of allotments;
- ◆ Notices of appointment, removal and resignation of directors and/or the Company Secretary;
- ◆ Notices of removal or resignation of the auditors;
- ◆ Change of registered office;
- ◆ Resolutions in accordance with the Companies Act.

3.7 Report & Accounts

Co-ordinating the publication and distribution of the company's annual report and accounts and interim statements, in consultation with the company's internal and external advisers, in particular, when preparing the directors' report.

3.8 Share Registration

Maintaining the Company's register of members; dealing with transfers and other matters affecting shareholding; dealing with queries and requests from shareholders.

3.9 Shareholder Communications

Communicating with the shareholders [e.g. through circulars]; arranging payment of dividends and interest; issuing documentation regarding rights issues, capitalization issues, and maintaining good shareholder relations; maintaining good relations with institutional shareholders and their investment committees.

3.10 Shareholder Monitoring

Monitoring movements on the register of members to identify any apparent 'stake-building' in the company's shares; making appropriate enquiries of members as to the beneficial ownership of holdings.

3.11 Share and Capital Issues and Restructuring

Implementing properly authorized changes in the structure of the company's share and loan capital; devising, implementing and administering directors' and employees' share participation schemes.

3.12 Acquisitions, Disposals & Mergers

Participating as a key member of the company team established to implement corporate acquisitions, disposals and mergers; protecting the company's interests by ensuring the effectiveness of all documentation; ensuring that due diligence disclosures enable proper commercial evaluation prior to completion of a transaction; ensuring that the correct authority is in place to allow timely execution of documentation.

3.13 Corporate Governance

Continually reviewing developments in corporate governance; facilitating the proper induction of directors into their role; advising and assisting the directors with respect to their duties and responsibilities, in particular compliance with company law and, if applicable, Stock Exchange requirements; counselling them when preparing presentations and memoranda.

3.14 Non-Executive Directors

Acting as a channel of communication and information for non-executive directors.

3.15 Company Seal

Ensuring the safe custody and proper use of any company seals.

3.16 Registered Office

Establishing and administering the registered office; attending to the receipt, co-ordination and distribution of official correspondence received by the company, sent to its registered office; ensuring the provision of facilities for the public inspection of company register and documents.

3.17 Company Identity

Ensuring that all business letters, notices and other official publications of the company show the name of the company and any other information as required by the statutes and that the company's name is displayed conspicuously outside all places of business.

3.18 Subsidiary Companies

Ensuring that procedures are in place for the correct administration of subsidiary companies and that correct information is given to the holding company; maintaining a record of the group's structure.

3.19 General Compliance

Monitoring and laying in place procedures which allow for compliance with relevant regulatory and legal requirements, in particular under the Companies Acts, including legal requirements on retention of documents; retaining the minimum set of records required for commercial reasons; ensuring that procedures are in place to allow adequate historical archives to be maintained.

BOARD MEETING MANAGEMENT AND PROCEDURES

Good Board meeting management procedures should ensure the following:

4.1 *Standing Orders and Regulations on Conduct of Board & Committee Meetings:*

It is expected that in addition to the memorandum and Articles of Association, a company would develop standing orders or regulations to regulate the conduct of board and committee meetings. These would cover, inter alia, the following:

- ◆ Chairman of meetings [role, functions and powers]
- ◆ General order of business, i.e.,
 - To nominate person to preside if chairman or vice-chairman not present.
 - To receive apologies if any
 - Any business required by law to be done before any other business.
 - To read and confirm minutes of last meeting
 - To consider any matters expressly required by law to be done
 - To receive communications, if any, from the chair.
 - Questions and any matters arising or deferred from previous minutes.
 - To receive and consider reports on minutes of board committees
 - To receive and consider reports from the CEO
 - To consider and authorize the sealing of documents where the authority of the board is required.
 - To consider any matters with financial implications and which require the express approval of the board.
 - To consider any motions placed before the board in order in which they are received.
 - Any other business deemed relevant and appropriate to be considered at the meeting.
- ◆ Procedure on notice of motions and motions which can be considered without notice.
- ◆ Procedure for confirmation of minutes, motion on and discussion of minutes.
- ◆ Rules of debate
- ◆ Voting procedures
- ◆ Power to resolve into committees of the board
- ◆ Confidential matters, declaration of interest and consequences thereof
- ◆ Appointment of committees, powers and proceedings of committees.
- ◆ Quorum of board and board committees and consequences on lack of quorum.

- ◆ Discussion of issues that affect individuals, rules of natural justice and personal accusations
- ◆ Notice of meetings, agenda papers and information to board members etc.

4.2 Agendas

The preparation of the agenda for board meetings is generally the responsibility of the chairperson who should consult the board, the chief executive and the company secretary.

It is however the duty of the Company Secretary to ensure that notice of the Meeting, the agenda and adequate information on all relevant issues is provided to all board members prior to the meeting.

4.3 Calendar of Board and Board Committee Meetings.

It is expected that the Board and management would agree in advance and formulate a calendar of meetings highlighting critical issues that require the attention of the board, the various committees etc taking into account the planning and budget cycle, the timing of annual general meetings, statutory returns etc as appropriate.

For example, a Board Calendar might include:

- (a) Statements that: Unless otherwise stated:
 - (i) The Board of Directors shall meet quarterly on the last Friday of March, June, September and December.
 - (ii) The Finance Committee shall meet on the last Tuesday of March, June, September and December etc.
- (b) A detailed programme indicating key aspects to be considered by the Board and Committees.

4.4 Board Manual

It is expected that the company will have a detailed Board Manual which inducts and explains to each Director his collective and individual duties, obligations and responsibilities as a Director.

The Manual would include, inter alia, the following:

- ◆ Contact details of all key company personnel – directors and management.
- ◆ Copies of memorandum and Articles of Association
- ◆ Mission statement and vision of Company
- ◆ Organization chart
- ◆ Role, responsibilities, duties and obligations of directors
- ◆ Role and responsibilities of Chairman of the Board
- ◆ Procedures for appointment of Directors

- ◆ Board Performance evaluation, procedures and conditions for re-appointment
- ◆ Board committees and their terms of reference
- ◆ Standing orders and regulations on Board and Committee meeting management
- ◆ Copies of major policies of the company e.g.
 - Personnel policy manual
 - Financial and accounting policies
 - Ethics and values of the company etc
- ◆ Latest audited accounts
- ◆ Strategy documents and budgets
- ◆ Calendar of Board meetings etc.

In addition, and in particular, the manual should highlight in detail the statutory and implied duties of individual Directors to the company as its fiduciary agents and trustees, drawing attention to:

- Duty of care and skill.
- Duty to attend Board meetings and devote sufficient time and attention to affairs of the company.
- Duty not to exceed powers.
- Duty to act in good faith, honestly and reasonably in the best interest of the company, having regard to the best interests of shareholders and their responsibility to its wider stakeholders and customers.
- Duty of confidentiality.
- Duty as agents not to make secret profits, misapply company assets and not to compete with the company.
- Duty to avoid commission of negligent acts.

In addition the Manual should indicate the liability of directors in respect of:

- Acts ultra-vires the powers of the company.
- Business conducted with intent to defraud creditors.
- Failure to govern and direct the affairs of the company in compliance with the law.