

**EQUITY BANK LIMITED**

**CODE OF**

**CORPORATE PRACTICES AND CONDUCT**

**MARCH, 2005**

## **FOREWORD**

Corporate governance has succeeded in attracting a good deal of public interest because of its apparent importance for the economic health of corporations and society in general. When banks efficiently mobilize and allocate funds, this lowers the cost of capital to firms, boosts capital formation, and stimulates productivity growth. So, weak governance of banks reverberates throughout the economy with negative ramifications for economic development.

Equity Bank Limited is a bank that operates in a complex, dynamic, highly competitive and regulated environment. As a result of this, Equity Bank Limited has adopted specific Principles of Good Corporate Governance as developed by the Private Sector Corporate Governance Trust, Nairobi to help guide the Bank in the fulfillment of its responsibilities to shareholders, customers, employees and communities. These principles have been summarized hereunder.

# **CONTENTS**

## **ORGANIZATIONAL PROFILE**

## **PRINCIPLES OF GOOD CORPORATE GOVERNANCE**

### **AUTHORITY AND DUTY OF MEMBERS (SHAREHOLDERS)**

- 1.1 Registration of membership
- 1.2 Responsibility to be sufficiently informed
- 1.3 Memorandum and Articles of Association of the Bank
- 1.4 Relevant Law
- 1.5 Operating environment
- 1.6 Responsible exercise of authority
- 1.7 Convening of meetings
- 1.8 Notices
- 1.9 Attendance at general meetings
- 1.10 Decorum at general meetings
- 1.11 Participation at general meetings
- 1.12 Resolutions
- 1.13 Directors
- 1.14 Appointment of Directors
- 1.15 Dismissal of Directors
- 1.16 Accountability of Directors
- 1.17 Disclosure of Information by Directors
- 1.18 Appointment and Dismissal of Auditors
- 1.19 Auditors' report
- 1.20 Annual report and accounts
- 1.21 Social Responsibility
- 1.22 Inspection
- 1.23 Winding up

## **THE BOARD OF DIRECTORS**

- 2.1 Leadership
- 2.2 The Role and Function of the Board
- 2.3 Composition
- 2.4 Role of the Chairperson
- 2.5 Role of the Secretary
- 2.6 Appointments to the Board
- 2.7 Remuneration
- 2.8 Disclosure
- 2.9 Supply of information
- 2.10 Training and Development

## **CORPORATE PERFORMANCE, VIABILITY AND SUSTAINABILITY**

- 3.1 Commitment to being a good corporate citizen
- 3.2 Values and ethics
- 3.3 Recognition and consideration of all stakeholders
- 3.4 Strategic Direction, Control and Organizational Structure
- 3.5 Knowledge, Creativity and Innovation
- 3.6 Risk management

## **CORPORATE REPORTING AND ACCOUNTABILITY**

- 4.1 Integrated reporting
- 4.2 Maintenance of proper books of account
- 4.3 Appointment, scope of duties of external auditors
- 4.4 Internal Audit
- 4.5 The Audit Committee

## ANNEXTURES

Annex 1	Overview of the Banking Act
Annex 2	Legal and Regulatory Framework
Annex 3	Governance Framework
Annex 4	Directors' Charter
Annex 5	Board Evaluation
Annex 6	Board meeting management and procedures

## **ORGANIZATIONAL PROFILE**

### **MANDATE**

Equity Bank Limited was established as Equity Building Society in 1984 under the Building Societies Act, Chapter 489 of the Laws of Kenya. In December, 2004 the Society was converted into a banking institution and registered under the Banking Act, Chapter 488 of the laws of Kenya.

Equity's core business is mobilizing savings and term deposits and its niche market comprises micro and small enterprises, salaried employees and small scale farmers. Currently, the Bank has a network of 22 branches as well as a mobile network of 44 units operating once a week. It has a client base of about 500,000 account holders and 80,000 borrowers; a deposit base of Ksh 6 billion and a loan portfolio of Ksh 3.5 billion.

### **STAKEHOLDERS**

- ❖ Shareholders
- ❖ Depositors
- ❖ Clients
- ❖ Employees
- ❖ Regulatory authorities
- ❖ The Government of Kenya
- ❖ Financiers
- ❖ Development Partners
- ❖ The Community

### **VISION**

To be the preferred micro-finance services provider contributing to the economic prosperity of Africa.

## **MISSION**

To mobilize resources and offer credit to maximize value and economically empower the microfinance clients and other stakeholders by offering customer focused quality financial services.

## **CORE VALUES**

- ❖ Professionalism
- ❖ Integrity
- ❖ Creativity and innovation
- ❖ Teamwork
- ❖ Unity of purpose
- ❖ Respect [ ]
- ❖ Effective corporate governance

# PRINCIPLES OF GOOD CORPORATE GOVERNANCE

## INTRODUCTION

Corporate Governance is concerned with the establishment of an appropriate legal, economic and institutional environment that would facilitate the growth of corporations as institutions for maximizing shareholder value while being conscious of and providing for the well-being of all other stakeholders. Equity Bank Limited has adopted the Principles of Good Corporate Governance as developed by the Private Sector Corporate Governance Trust and summarized hereunder:

### **Principle 1: Authority and Duties of Members [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.

### **Principle 2: Leadership**

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

### **Principle 3: Appointments to the Board**

Appointments to the Board shall, 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.

### **Principle 4: Strategy and Values**

The Board shall 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.

### **Principle 5: Structure and Organization**

The Board shall 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.

### **Principle 6: Corporate Performance, Viability and Financial Sustainability**

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

### **Principle 7: Corporate Compliance**

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

### **Principle 8: Corporate Communication**

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

### **Principle 9: Accountability to Members**

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

### **Principle 10: Responsibility to Stakeholders**

The Board shall 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.

### **Principle 11: Balance of Powers**

The Board shall 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.

### **Principle 12: Internal Control Procedures**

The Board shall 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.

### **Principle 13: Assessment of Performance of the Board**

The Board shall 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.

#### **Principle 14: Induction, Development and Strengthening of Skills of Board Members**

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

#### **Principle 15: Appointment and Development of Executive Management**

The Board shall 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.

#### **Principle 16: Adoption of Technology and Skills**

The Board recognizes 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.

#### **Principle 17: Management of Corporate Risk**

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

#### **Principle 18: Corporate Culture**

The Board shall 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.

#### **Principle 19: Social and Environmental Responsibility**

The Board shall 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, the Bank will 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.

#### **Principle 20: Recognition and Utilization of Professional Skills and Competencies**

The Board shall 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 directors' personal duty to acquire competence, training and information that would help them make informed, independent and astute decisions on issues relevant to the corporation.]

#### **Principle 21: Recognition and Protection of Members' Rights and Obligations**

Members of the Bank 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.

## **CHAPTER 1**

### **AUTHORITY AND DUTIES OF MEMBERS (SHAREHOLDERS)**

#### **1.1 Registration of Membership**

Members shall ensure that they are entered into the Register of members and that they receive evidence of ownership i.e. the share certificate. Members shall ensure that they keep their share certificates, savings deposit pass books, subscription share pass books, deposit receipt or fixed deposit receipt, or any statement or other record of payment issued by the Bank in safe custody.

In the event that any of these documents is lost or destroyed, a member shall notify the Bank with immediate effect and the Bank, upon such evidence and subject to such terms and conditions as the directors may deem fit issue a certified copy of the same.

#### **1.2 Responsibility to be sufficiently informed**

Members shall endeavor to keep themselves informed about their companies so as to be in a position to make independent and informed decisions on all issues on which they are called upon to make decisions.

#### **1.3 Memorandum and Articles of Association of the Bank**

Members shall obtain copies of, study, understand and where necessary obtain independent professional advice on the instruments constituting the Bank including but not limited to the Memorandum and Articles of Association of the Bank.

Members shall ensure that they understand clearly the objects for which the Bank is formed, the duties and limitation of the authority of the directors, their own rights and obligations; the obligations of the Bank to other parties such as creditors; and the voting procedures. Members shall ensure that the Memorandum and Articles of Association do not give anyone member or block of members unfettered power.

Members shall endeavour to ensure that the constituting instruments, being the contract between themselves and the directors to whom they cede power over their resources clearly defines the relationship between themselves and the Board of Directors and further that it defines the limits of the authority of the Board.

Members shall endeavour to ensure that the Memorandum and Articles of Association of the Bank are consistent with the principles of good corporate governance and where necessary make amendments to bring them in line with the principles of good corporate governance. Members shall ensure that they understand the effect of proposed amendments to the Memorandum and Articles of Association before voting for them.

Members shall ensure that they pay up all moneys due to the Bank as the same falls due.

#### **1.4 Relevant Law**

Members shall familiarize themselves as much as is practically possible with the Banking Act; other relevant statutes (such as the Income Tax Act); subsidiary legislation; and rules issued by supervisory and regulatory authorities.

#### **1.5 Operating environment**

Members shall endeavour to keep themselves informed about the financial, social and political environment in which the Bank operates.

#### **1.6 Responsible exercise of authority**

Members as owners of the Bank shall jointly and severally protect, preserve and actively exercise the supreme authority of the corporation in general meetings. The information pertaining to the resolutions to be taken at meeting should be comprehensible, adequate and timely.

#### **1.7 Convening of meetings**

Members shall ensure that meetings are convened as required by law and as necessitated by the

exigencies of the Bank.

Members shall where necessary requisition the convening of general meetings in accordance with the Act and the Memorandum and Articles of Association of the Bank. Where directors fail to discharge their duty to convene the Annual General Meeting, members shall seek guidance from the Registrar.

### **1.8 Notices**

Members shall ensure that sufficient notice and details are given of general meetings. The time of the meeting should be reasonable and the venue accessible or necessary arrangements are made to ensure that members can access the venue.

### **1.9 Attendance at general meetings**

Members shall endeavour to attend either in person or by proxy all general meetings of their companies. They shall also participate in general meetings.

### **1.10 Decorum at general meetings**

Members shall behave decently at general meetings. They shall give due regard and respect to the Chairman and directors. They shall raise their hands to make their contributions or ask questions and shall not heckle, jostle or boo.

### **1.11 Participation at general meetings**

Members shall participate effectively at general meetings by making contributions to issues under discussion and voting. In voting, members shall vote wisely and in their best interests.

### **1.12 Resolutions**

Members shall endeavour to ensure that resolutions are made in accordance with the law and the Memorandum and Articles of Association of the Bank. For example, that the resolutions seeking the election of directors are taken separately; and that special notice has been given for

resolutions requiring special notice.

### **1.13 Directors**

The Bank shall be led by effective directors who jointly and severally exercise leadership, enterprise, integrity and judgment and are transparent, accountable and responsible and who act in the best interest of the Bank.

### **1.14 Appointment of Directors**

Members shall ensure that only competent and reliable persons of integrity, who add value, are elected as directors. In electing directors, they shall ensure that a majority of independent, non-executive directors who possess the mix of skills and competencies-sound business acumen, integrity, innovativeness, focused intelligence and commitment and devotion to duty-are appointed to the Board. They shall further ensure that the Memorandum and Articles of Association of the Bank facilitate regular alteration of the mix and composition of the Board.

### **1.15 Dismissal of Directors**

Members shall dismiss directors who are not transparent, accountable and responsible, who do not uphold the principles of good corporate governance, those who do not provide effective leadership such that the Bank does not prosper.

### **1.16 Accountability of Directors**

Members shall 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.

### **1.17 Disclosure of Information by Directors**

Members shall ensure that there is adequate and timely disclosure by directors regarding their dealings with the Bank including but not limited to remuneration, contracts, loans and actual and potential conflicts of interest.

### **1.18 Appointment and dismissal of Auditors.**

Members shall ensure that only competent and reliable auditors are appointed. Members shall also ensure that where directors recommend the appointment of an auditor rather than the retiring auditor, that the reasons for the same are bona fide.

### **1.19 Auditors' report**

Members shall ensure that they receive and consider the report of the auditors.

### **1.20 Annual report and accounts**

Members shall ensure that the Annual General Meeting, an annual report, accounts, auditors report and a report of directors are tabled by directors in accordance with the Law. Members shall further ensure that the Annual Report shall include corporate governance reporting where the directors report to them the extent to which they have' complied with the principles of good corporate governance. Members shall carefully study the annual report and accounts and where necessary seek professional advice on the same.

### **1.21 Social responsibility**

Members shall endeavour to ensure that the Bank is a responsible corporate citizen and that it has due regard to the interest of all stakeholders and the community within which they operate.

### **1.22 Inspection**

Members shall where they consider the same to be necessary inspect the documents relating to the Bank as provided by law.

### **1.23 Winding up**

Members shall endeavour to meet their obligations in the event that the Bank is wound up.

## CHAPTER 2

### THE BOARD OF DIRECTORS

#### 2.1 Leadership

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

#### 2.2 Role and Functions of the Board

The Board shall exercise all the powers of the Bank subject only to the limitations contained in the law and the Memorandum and Articles of Association of the Bank including the following functions:

- ❖ Ensure that through a managed and effective process, appointments to the Board 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;
- ❖ 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 Bank, ensure that there is adequate training in the corporation for management and employees, and a succession plan for senior management;
- ❖ Regularly assess its performance and effectiveness as a whole, and that of the individual directors, including the Chief Executive Officer;
- ❖ 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 Bank will survive, thrive and continue as a viable going concern;
- ❖ Maintain a positive image of the Bank in the industry and within the economy as a whole.

In order to fulfill these functions, the Board shall:

- ❖ Meet regularly and retain full and effective control over the Bank.
- ❖ Evolve procedures for the selection and removal of individual directors (including the chairman and chief executive officer) 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 Bank 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 Bank in terms of human capital, 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 Bank.
- ❖ 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
  - How, with what data, and by what means, it will constantly monitor management performance and the financial progress of the Bank.
  - How it will evaluate its own performance at least once every year.
- ❖ Ensure that the Bank is properly managed and for the attainment of lawful objectives.
- ❖ Ensure that the Bank's affairs are not managed or conducted in a manner oppressive to any of its shareholders or for fraudulent purposes.
- ❖ Ensure that the Bank complies with all statutory requirements.

## **2.3 Composition of the Board**

The Board shall comprise 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 to separate the key tasks of running the Board and that of the Chief Executive responsible for running the Bank to ensure 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.

## **2.4 The role of the Chairperson**

- ❖ 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.

## **2.5 The role of the Company Secretary**

The Board shall ensure that Bank always has 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 Bank adheres to this code of best practice for corporate governance.

## **2.6 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 criteria for appointment to the Board shall be guided by the following:
  - (a) Commitment to the principles of good governance;
  - (b) Gender parity;
  - (c) Academic excellence;
  - (d) Professional skills;
  - (e) Independence;
  - (f) Geographical representation;
  - (g) Integrity;
  - (h) Age;
  - (i) Business experience;
  - (j) Financial markets- legal, marketing, public relations, IT e.t.c.
- ❖ The Board shall 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 Bank.
  - 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 Bank, 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 in accordance with the Memorandum and Articles of Association of the Bank.

## **2.7 Remuneration**

In order to avoid potential conflict of interest, the Board 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 Bank successfully while the make up should be so structured as to link corporate and individual performance.
- ❖ Ensure that the Bank's annual report contains a statement of the remuneration policy and details of the remuneration and benefits of each director, including family-related benefits.

## **2.8 Disclosure**

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 Bank.
- ❖ Any interest (direct or indirect) in any transaction with the Bank.
- ❖ 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 Bank.

If a director resigns or is removed from office before the expiry of term, the director shall disclose to the Bank's external auditors and if necessary to the members (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 the resignation or removal.

## **2.9 Supply of Information**

For Board members to exercise informed, intelligent, objective and independent judgments on the Bank's 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 Bank'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 Bank's Secretary who has a statutory duty to advise the Board on matters of procedures, Memorandum and Articles of Association and regulations, and to any other professional officer of the Bank.
- ❖ 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.

## **2.10 Training and Development**

All directors shall receive some formal training on their role, duties, responsibilities and

obligations as well as Board practices and procedures on first appointment covering:

- ❖ 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.

Directors shall be 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.

## CHAPTER 3

### CORPORATE PERFORMANCE, VIABILITY AND SUSTAINABILITY

#### 3.1 Commitment to being a good corporate citizen

The Bank underscores its commitment to being a good corporate citizen and ensuring that it effectively balances the need for long-term viability and prosperity of the Bank with that of the society on which it relies for its ability to generate economic value with the requirement for short term competitiveness and financial gain.

Consequently, the Board shall:

- ❖ Ensure that the Bank has clear corporate values which are stated and enacted
- ❖ Ensure that the Bank is governed in a way that is efficient, responsible, accountable, transparent and with probity.
- ❖ Promulgate policies defining the governance of relationships with defined key stakeholders are published.
- ❖ Ensure that the rights of members and specifically their right to expect a good return on investment and growth in the medium to long term are recognized.
- ❖ Ensure that the Bank is committed to investing for the long-term and as such developing long term relationships.
- ❖ Recognize and differentiate accountability linkages to members and responsibility linkages to other stakeholders.
- ❖ Ensure that the Bank is open in structure, process and disclosure and has open communication and engagement with key stakeholders.

#### 3.2 Values and ethics

- ❖ Have zero tolerance for corruption and related malpractices. The Board shall put in place and rigorously and persistently enforce codes.
- ❖ Recognize and inculcate respect for human rights in the Bank's operations.
- ❖ Respect and be sensitive to employees, treat them fairly and enable them to develop

their full potential.

- ❖ Practice and encourage environmental responsibility.
- ❖ Work to build capacity in all dealings with host, local, and national communities and respect the moral and cultural norms and values of others.
- ❖ Constantly engage with others in order to improve practices.

The Board shall establish the values of the Bank in support of its vision and mission; establish principles and standards of ethical business practice in support of the values, ensure communication of established principles and standards to all stakeholders, ensure communication of established principles and standards to the affected stakeholders in codified form and assume the responsibility and accountability to stakeholders for compliance with such principles and standards.

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

### **3.3 Recognition and consideration of all stakeholders**

The Bank recognizes that while directors owe their primary duty to the Bank and are essentially accountable to members, stakeholders including customers, employees, suppliers, financiers, the Government and the communities in which the Bank operates are critical to its prosperity.

Consequently, the Bank is committed to building mutually beneficial relationships with all its stakeholders and to ensure that a balance is maintained between the individual interests of stakeholders and the good of the Bank.

In particular, the Board 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.

### **3.4 Strategic Direction, Control, and Organizational Structure**

The Board recognizes that the Bank's primary purpose is to create wealth in accordance with its stated purpose within its strategic framework.

Hence, the Board shall determine the strategic objectives of the society in line with its vision and mission and establish organizational structures and procedures to achieve these objectives. It shall regularly review the strategy to ensure its relevance as well as monitor its implementation ensuring effective control over the Bank.

### **3.5 Knowledge Management, creativity and innovation**

The Board recognizes that knowledge is the competitive advantage of corporations and the new source of wealth. It undertakes to create an environment conducive to the acquisition and application of knowledge, creativity and innovation.

### **3.6 Risk Management**

Enterprise is the undertaking of risk for reward. The Board in recognition of this shall ensure the systematic identification and evaluation of actual and potential risk areas as they pertain to the Bank as a total entity and the effective management of risk through calculated termination, transfer, acceptance or mitigation.

The Board shall decide the Bank's appetite for risk and make use of generally recognized risk management frameworks to provide reasonable assurance regarding the achievement of organizational objectives with respect to:

- ❖ The effectiveness and efficiency of operations
- ❖ Safeguarding of the Bank's assets (including information)
- ❖ Compliance with applicable laws, regulations and supervisory requirements.

- ❖ Supporting sustainability under normal as well as adverse operating conditions.
- ❖ Reliability of reporting
- ❖ Corporate Social Responsibility

## CHAPTER 4

### CORPORATE REPORTING AND ACCOUNTABILITY

#### 4.1 Integrated Reporting

The Bank recognizes the need for regular, continuous accounting to members and other stakeholders. The Bank further recognizes that effective corporate reporting requires an integrated approach including both financial and non-financial reporting.

The Board shall ensure that in reporting to members and stakeholders that it includes reports including but not limited to the following:

- ❖ Corporate performance [both financial and non-financial] over the period under review and future prospects
- ❖ Governance principles and adherence to the same
- ❖ Board composition, mix, competencies, balance of powers and succession planning
- ❖ Roles and responsibilities of Directors
- ❖ Other issues relevant to directors such as access to information, training and development, compensation, disclosure, related party transactions
- ❖ Regularity and effectiveness of meetings
- ❖ Board Committees
- ❖ Human capital acquisition, retention, development, deployment and succession planning
- ❖ Development of knowledge management infrastructure, information sharing
- ❖ Safety, health and Environmental issues
- ❖ Corporate Social Responsibility
- ❖ Compliance with the law
- ❖ Solvency

## **4.2 Maintenance of proper books of accounts**

Directors recognize that it is their duty, to cause to be kept proper and accurate books of accounts in respect of all sums of money received and expended by the Bank, and the matters in respect of which receipt or expenditure takes place; all sales and purchases by the Bank; and of all the assets and liabilities of the Bank, as necessary to give with reasonable accuracy at any time, the financial position of the Bank at that time; and to lay before the Bank'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 Bank and of the state of affairs of the Bank.

The Board shall hence ensure:

- ❖ That systems of management and internal control over the Bank, including procedures designed to minimize the risk and fraud are adequate.
- ❖ The integrity and adequacy of the accounting and financial systems.
- ❖ That qualified, competent, fit and proper persons are employed.
- ❖ That the Bank complies with the accounting and auditing standards that are applicable.

## **4.3 Appointment, Scope and Duties of External Auditors**

The Board shall ensure that persons recommended for appointment as auditors are qualified, reliable and independent of the Board and management the Board shall endeavour to:

- ❖ Extend the definition and scope of audit to provide an independent opinion to those with interest in the Bank that they have received from those responsible for the direction and management of the Bank an adequate account of:
  - The proper conduct of the Bank's affairs;
  - The Bank's financial performance and position;
  - Future risks.
- ❖ Facilitate an extension of Auditors duties in regard to:
  - (i) Reporting on whether the Bank has financial and other risk management controls
  - (ii) Evaluating and reporting on aspects of propriety and efficiency
  - (iii) 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.
- ❖ Establish formal and transparent arrangements for maintaining an “arms length” relationship with the external auditors.

#### **4.4 Internal Audit**

The Board shall put in place and ensure an effective internal audit system to enable a: systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

The Board shall ensure that the internal audit function is independent of the activities audited and that internal auditors are objective in performing their work notwithstanding that those performing the function may be employees of the Bank.

The Board shall ensure that the internal audit team has a standing that commands respect. The Head of internal audit while reporting administratively to the chief executive officer, shall report “functionally” to the Audit Committee and shall have unfettered access to the chair of the Audit Committee as well as the chair of the Board.

#### **4.5 The Audit Committee**

- ❖ 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 will:
  - Review the reports 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 internal and external auditors.
  - Discuss and agree on the scope, nature and priorities of audit.
  - Discuss with internal and 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 internal and external auditors aspects relevant to internal control procedures and risk management 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.
- ❖ The Audit Committee should regularly report to the Board of Directors.

## ANNEX 1

### OVERVIEW OF THE BANKING ACT, CHAPTER 488, LAWS OF KENYA

#### 1. Purpose of the Act

The Banking Act is an Act of Parliament to regulate the business of banking and for matters incidental thereto and connected therewith.

#### 1.1 Definition of a bank and banking business

“Banking business” has been defined to mean:

- (a) the accepting from members of the public of money on deposit repayable on demand or at the expiry of a fixed period or after notice;
- (b) the accepting from members of the public of money on current account and payment on and acceptance of cheques; and
- (c) the employing of money held on deposit or on current account, or any part of the money, by lending, investment or in any other manner for the account and at the risk of the person so employing the money.

Part I of the Act defines a “bank” to mean a company which carries on, or proposes to carry on, banking business in Kenya and includes the Co-operative Bank of Kenya Limited but does not include the Central Bank.

#### 1.2 Licensing and other Requirements

Part II of the Act deals with the licensing and other requirements for persons carrying on banking business in Kenya. Section 3 (1) of the Act provides that no person can carry out banking business in Kenya unless it is an institution holding a valid license and further that it is a bank and has obtained the consent of the Minister (for the time being of finance) to use the word bank. The application for a license is made to the Minister through the Central Bank of Kenya. Some of the considerations for the granting of a license include:

- ❖ the professional and moral suitability of the persons proposed to manage the institution; and
- ❖ that the institution meets the minimum capital requirements specified in the second schedule to the Act.

### **1.3 Prohibited Business**

Part III of the Act lists the businesses that a bank is prohibited from carrying on.

- ❖ Section 10(1) of the Act provides that no advance, credit and guarantee given to any person is to exceed twenty five (25) percent of the core capital of the bank;
- ❖ Section 11(1) (a) provides that no advance or credit facility is to be granted against the security of a bank's own shares;
- ❖ Section 11(1) (c) prohibits unsecured advances to the employees of the bank or their associates;
- ❖ Section 11(1) (e) prohibits advances or loans to managing directors unless such are approved by the full board and made in normal course of business. Further the bank is to notify CBK within seven days of approval of such loans;

### **1.4 Accounts and Audit**

Part V of the Act contains the requirements relating to the books of account of the bank. Section 22 requires the last audited books of account of the bank to be exhibited in all offices and branches of the bank in Kenya and submitted to Central Bank of Kenya. Similarly, Section 24 (1) requires the appointment of auditors of the bank in accordance with the provisions of the Companies Act, Chapter 486 of the Laws of Kenya.

### **1.5 Powers of the Bank**

The bank, being a company is a separate legal entity from its owners/shareholders and has the power to, sue, borrow, lend, invest and trade in its own name in accordance with the

provisions of its memorandum and articles of association. Accordingly, the provisions of the Companies Act, Chapter 486 of the Laws of Kenya fully govern the operations of the bank.

## **2. The Regulatory Framework for Banking Institutions**

The Banking Act has in place a number of regulatory offices and measures in place, to ensure that the activities of such institutions are run in an accountable and prudent manner. There are a number of offices or bodies which exercise supervisory or policing duties over Banking Institutions.

### **2.1 Central Bank of Kenya**

The Central Bank of Kenya plays a major role in the regulation and supervision of banking institutions in Kenya. The Act contains certain provisions to facilitate such regulation.

- ❖ Section 23 of the Act requires a banking institution to submit to the Central Bank of Kenya its audited profit and loss and balance sheet together with a copy of the auditor's report not later than three months after the end of its financial year.
- ❖ Section 25 of the Act requires a banking institution not to change its auditors except with the prior written approval of the Central Bank of Kenya.
- ❖ Section 27 of the Act empowers the Central Bank to collect data and information that may be necessary to enable it maintain supervision and surveillance of banking institutions.
- ❖ Section 32 of the Act empowers the Central Bank of Kenya to inspect banks and their books of accounts if so directed by the Minister for Finance and if necessary intervene in the management of the bank.

#### **2.1.1 Prudential Guidelines by CBK**

Similarly, the Central Bank issues prudential guidelines for banking institutions. These guidelines regulate the code of conduct for directors, managers and other employees of the institutions and address issues such as:

- ❖ Conflict of interest;
- ❖ Misuse of position;
- ❖ Misuse of information;
- ❖ Integrity of records and transactions;
- ❖ Confidentiality; and
- ❖ Fair and Equitable Treatment.

## **2.2 The Minister**

The Minister is the licensing authority for all banking institutions in Kenya (Section 5 of the Act). The Minister may also by virtue of section 6 of the Act, revoke the licence if the institution ceases to carry on banking business, is wound up or dissolved or fails to comply with the Act, the Central Bank Act or any incidental rules thereto.

Section 29 of the Act also empowers the Minister to require the Central Bank or a banking institution to furnish to him, such information as he may require and the Minister may publish in whole or in part such information.

## **3. Measures to ensure good corporate governance**

### **3.1 The Central Bank of Kenya**

There are a number of provisions in the Act to ensure accountability and transparency in the running of banking institutions.

#### **3.1.1 Inspection and Request for Information**

The powers conferred on the Central Bank of Kenya and the Minister to require the production of books and cause the inspection of books of accounts and other information of the bank, are all geared towards curbing financial indiscretions and mismanagement that may occur in financial institutions. Indeed, as a measure of last resort, the Minister may invoke the power to revoke the license of a banking institution.

### **3.1.2 Central Bank Prudential Guidelines**

These regulations seek to regulate the code of conduct for directors, employees, chief executives and management of financial institutions and by extension enhance accountability and transparency in the carrying out of the business of an institution.

### **3.1.3 Auditing Requirements**

Part V of the Banking Act requires that the accounts of an institution to be in the English language, to be exhibited in the branches and published in a national newspaper and further to be submitted to the Central Bank. Regarding auditors these are to be approved by the Central Bank and any change similarly approved. All the above actions enhance corporate governance.

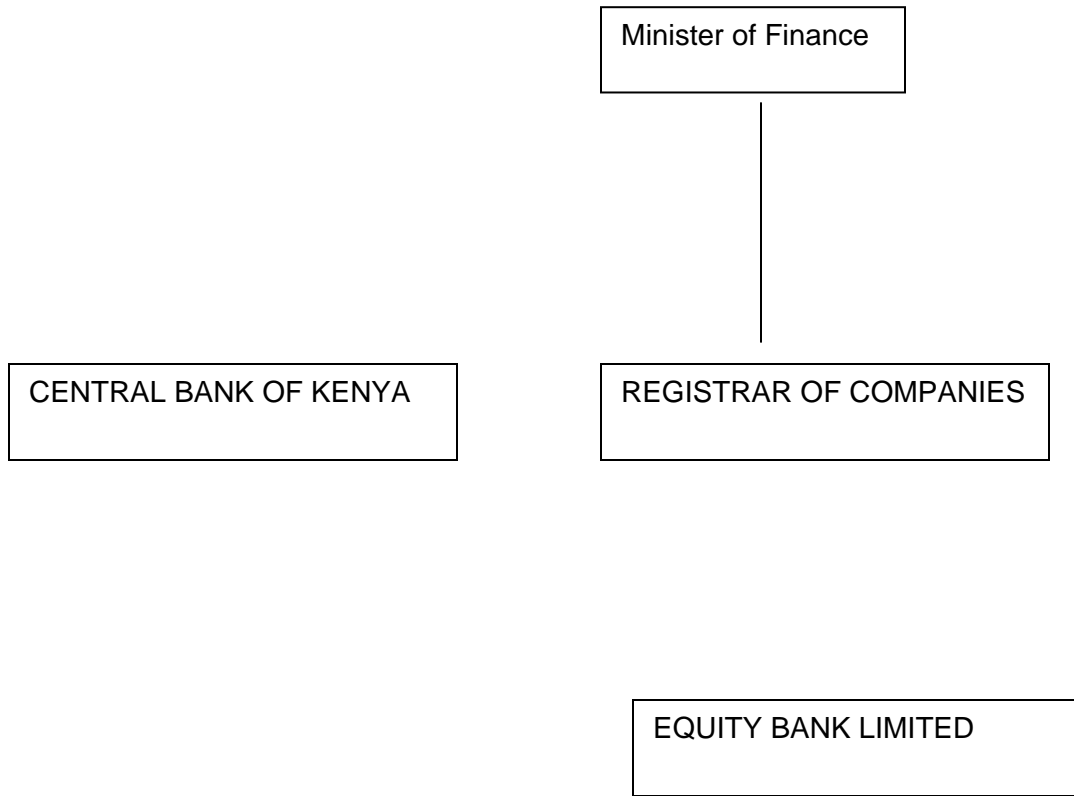
### **Conclusion**

While the Banking Act and other regulations have put in place a number of regulatory measures in order to ensure accountability and transparency in the running of banking institutions, there is need for the existing systems to be continually reviewed and updated so as to:

- (i) to seal the existing loopholes; and
- (ii) to keep up to date with the developments in the banking industry.

ANNEX 2

LEGAL AND REGULATORY FRAMEWORK



ANNEX 3

GOVERNANCE FRAMEWORK

ANNUAL GENERAL MEETING

BOARD OF DIRECTORS

CHIEF EXECUTIVE OFFICER

Management

Management

Management

## ANNEX 4

### DIRECTORS' CHARTER

The Annual General Meeting of Members elects directors on the basis of their professional competencies, personal qualities and the contribution they can make to the governance of the Bank. This Charter is established to facilitate the full and free exercise of these qualities and to ensure the effectiveness of each director's contribution, consistent with the standards of independent judgment, ethics, and integrity that they are expected to observe.

#### **ARTICLE 1: PRIMARY DUTY**

In accordance with the principles of good corporate governance, each director undertakes to:

- ❖ act first and foremost and always in the best interest of the Bank and not for any other collateral purpose; and
- ❖ to exercise his/her duties and responsibilities in good faith and with the care a prudent person would take when acting on their own behalf.

Each director undertakes that, in arriving at a decision on any issue, he or she shall strive to ensure that the decision is in the best interest of the Bank and does not favour collateral interests or the interests of one portion or category of members over those of any other.

#### **ARTICLE 2: CORE VALUES**

Each director subscribes to the Bank's values-to always act in the interests of society in promoting effective and efficient use of resources in a manner based on integrity, transparency, accountability and responsibility and commits to upholding them and ensuring their implementation.

Consequently, directors undertake to take into account not only the possible financial impact of their decisions but also their consequences for sustainable development, their effect on relations with stakeholders and the general interest of the communities in which the Bank operates.

### **ARTICLE 3: SCOPE OF RESPONSIBILITY**

Each director is fully aware that the Board is responsible for:

- ❖ determining the Bank's vision, mission and values;
- ❖ deciding its strategic objectives;
- ❖ ensuring the establishment of organizational structures and procedures to achieve its objectives; and
- ❖ ensuring effective control over the Bank and accounting to its members.

Before accepting to be a director, each director shall familiarize himself/herself with the legal and regulatory texts associated with the Bank, the Bank's particulars deriving from the Memorandum and Articles of association, the Board's operating rules and procedures and any knowledge necessary for the proper discharge of his/her duties.

### **ARTICLE 4: COMMITMENT**

Each director undertakes to dedicate the time and attention necessary to fulfill his/her duties. Should a director propose to accept another directorship in addition, to that (or those) held at the time of his/her appointment, this fact has to be brought to the attention of the Chairman with whom they are to assess whether such new responsibilities would leave them with the time necessary to be devoted to the Bank's responsibilities.

The Bank's annual report shall list the director mandates exercised, given up, or accepted during the year by the Bank's directors and shall report on director attendance at Board meetings and meetings of Board Committees to which they belong. Each director shall strive to attend the Annual General Meeting of members.

### **ARTICLE 5: INDEPENDENCE**

In all circumstances, each director undertakes to preserve his/her independence of analysis, judgment, decision, and action, and to refuse any pressure, direct or indirect, which might be exercised on him whether by other directors, member groups, creditors, suppliers or, more generally, any third party.

Each director undertakes not to seek, nor to accept, from the Bank or any other party, directly or indirectly, any advantage that might be considered as compromising his/her independence.

## **ARTICLE 6: CONFLICTS OF INTEREST**

In all circumstances, no director shall participate directly or indirectly in any contract with the Bank which may give rise to any real or potential conflict of interest. This prohibition shall extend to the associates of directors as defined in section 2 of the Banking Act.

## **ARTICLE 7: BOARD EFFICIENCY AND EVALUATION**

Each director is fully aware of the importance of regular attendance and effective participation at meetings. Each director undertakes to do everything within their power to attend all meetings. Each director further undertakes to prepare sufficiently for meetings by carefully considering board papers and attachments thereto, and where necessary seeking clarifications. Where a director is unable to attend a meeting, each director undertakes to communicate through the Chairman or the Chief Executive Officer any concerns or issues they would wish considered. Board deliberations give rise to consensus or formal votes covering, among others, approval of accounts, budget, resolutions to be submitted to the Annual General Meeting of members, as well as other matters of importance to the Bank.

Each director shall be attentive to and respectful of the delineation and exercise of powers and responsibilities attributed to the Bank's respective decision-making organs. Directors shall however ensure that no single person can exercise uncontrolled discretionary powers. They shall support the proper functioning of Board Committees, and pay particular attention to ensure that the Bank's internal controls are effective and that its statutory auditors perform their mission in a satisfactory manner.

At regular intervals, not exceeding twelve months, the Board of Directors shall undertake an evaluation of its functioning as a collective agency and as individual directors. Where necessary, the Board may obtain the services of an external facilitator to guide the evaluation.

## **ARTICLE 8: INFORMATION, CONFIDENTIALITY**

Each director is responsible for seeing to it that he is provided sufficient information in due time to permit the Board to deliberate properly on all issues. It is the duty of each director to request of the Chairman of the Board of Directors or the Chief Executive Officer, in a timely manner, information they may require for decision making.

Information concerning the Bank which is communicated to a director in confidence in connection with his/her functions is provided *intuitu personae* (in consideration of the person). Directors must personally take the necessary precautions to preserve the confidentiality of such information and not divulge it under any circumstances. This personal responsibility applies equally to representatives of legal entities which are directors.

## **ARTICLE 9: DUTY TO COMMUNICATE**

Each director commits to express his/her views clearly and to use all means at his/her disposal to convince the Board of the validity of his/her position should he/she hold the view that a proposed Board decision is not in the best interest of the Bank.

To this end, each director shall successively consider:

- airing the reasons for the opposition and the negative consequences for the Bank that would result from the prospective decision;
- to have the advice of internal or outside experts sought on the issue;
- to request a postponement of the decision if the nature of the issue permits;
- to request that a written statement of his/her position be attached to the minutes of the meeting ; and
- to request a special meeting of the Board to consider all solutions.

## **ARTICLE 10: INSIDER LENDING**

Directors should not use their positions to further their personal interests. The Bank will not grant or permit to be outstanding any advances, loans or credit facilities, grant financial guarantees or incur any financial liabilities to or in favour of any director or their associates.

BY VIRTUE OF ACCEPTING A DIRECTOR APPOINTMENT, EACH DIRECTOR, AS WELL AS EACH PERMANENT REPRESENTATIVE OF A DIRECTOR POST HELD BY A LEGAL ENTITY, SUBSCRIBES TO THIS CHARTER.

EACH DIRECTOR CONFIRMS THAT THEY UNDERSTAND THE VARIOUS PENALTIES AND LIABILITIES THAT ACCRUE AS A RESULT OF BREACH OF ANY OF THE PROVISIONS OF THE COMPANIES ACT, BANKING ACT AND CENTRAL BANK OF KENYA PRUDENTIAL REGULATIONS.

A DIRECTOR WHO NO LONGER SUBSCRIBES TO THIS CHARTER MUST DRAW THE APPROPRIATE CONCLUSION AND SUBMIT HIS/HER MANDATE TO THE BOARD OR RESIGN HIS/HER POSITION AS REPRESENTATIVE OF A DIRECTOR POST HELD BY A LEGAL ENTITY.

## ANNEXTURE

### CODE OF ETHICS

#### PREFACE

The Bank has adopted the following rules to ensure that its business is conducted according to the highest standards of ethical conduct and in compliance with all applicable laws and regulations governing the industry. These rules apply to all directors of the Bank.

#### HONEST AND ETHICAL CONDUCT

The directors will maintain the highest standards of honest and ethical conduct, including:

- ❖ Encouraging and rewarding professional integrity in all aspects of the Bank, including in its business enterprise and its dealings with customers, shareholders, governmental organizations, and others.
- ❖ Providing a mechanism to facilitate reporting of fraudulent behavior or other deviations from the Bank's policies and procedures to senior management without fear of reprisal or alienation for making such a report.
- ❖ Maintaining the confidentiality of certain information obtained during the course of employment with the Bank. This includes ensuring that confidential information regarding customers, employees, suppliers, and security operations is communicated to other Bank representatives on a "need to know" basis only and is used solely for the Bank's purposes and not as a basis for making a profit or furthering a private interest.
- ❖ Not engaging in any conduct or transaction that conflicts with the interests of the Bank. Specifically, a director will not enter into any contract with the Bank with respect to which that Director or any of his associates has any connection, association or financial interest.
- ❖ Refraining from engaging in activities outside working hours, including other employment, that interfere with job performance or compromise the reputation of the Bank as a trusted financial institution.

- ❖ Abiding by the Prudential Regulations of the Central Bank of Kenya, prohibiting solicitation or receipt of anything of value with intent to be influenced or rewarded in connection with any transaction or business of the Bank.

### **Financial Records and Periodic Reports**

The Directors will establish, manage, and maintain the Bank's transaction and reporting systems and procedures to ensure:

- ❖ Business transactions are properly authorized and recorded in accordance with generally accepted accounting principles and established Bank financial policy.
- ❖ Business and financial records are retained or properly disposed of in accordance with the Bank's financial policies and applicable local laws and regulations.
- ❖ Full, fair, accurate, timely, and understandable disclosure of information in Annual Reports and other financial reports made to the general public.

### **Compliance with Applicable Laws, Rules, and Regulations**

The directors will establish and maintain mechanisms to:

- ❖ Educate members of the Bank regarding any statutes, regulation, or administrative procedure that affects the operation of the Bank.
- ❖ Monitor the Bank's compliance with all applicable statutes, regulations, and administrative rules.
- ❖ Identify, report, and promptly correct any deviation from applicable statutes, regulations, and administrative rules.

### **Conflict of Interest**

Any director must not engage directly or indirectly in any business activity that competes or conflicts with the institution's interest. A director should avoid all possible conflicts of interest. A conflict of interest is any interest, relationship or activity that is incompatible with the best interest of the Bank or that could potentially adversely affect a director's objectivity in

performing services for the Company, and may arise when any director takes actions or has interests that may make it difficult to perform his or her work objectively and effectively. As a director of the Bank, it is imperative that you avoid any investment, interest or association that interferes, might interfere, or might appear to interfere with your independent exercise of judgment in the Bank's best interest. When a potential conflict of interest exists, it is important that each director acts with honesty and integrity avoiding even the appearance that their actions were not in the best interest of the Company and its shareholders.

### **Misuse of Position**

A director must not:

- ❖ use the institution's name or facilities for personal advantage in political, investment or retail purchasing transactions, or in similar types of activities. Directors and their relatives must also not use their connection with the institution to borrow from or become indebted to customers or prospective customers. The use of position to obtain preferential treatment, such as purchasing goods, shares and other securities, is prohibited.
- ❖ solicit or otherwise accept inducements either directly or indirectly whether in cash or in kind in order to provide any favours to a customer in the provision of loans, acceptance of deposits or any other conduct of the business of the institution to which they are entrusted either jointly or individually.
- ❖ use the institution's facilities and influence for speculating in commodities, gold, silver, foreign exchange or securities, whether acting personally or on behalf of friends or relatives. Such misuse of position may be ground for dismissal and/or prosecution. Directors should also not engage in "back-scratching" exercises with employees and directors of other institutions to provide mutually beneficial transactions in return for similar facilities, designed to circumvent these ethical regulations.

### **Misuse of Information**

- ❖ Directors should not deal in the securities of any company listed or pending listing on a stock exchange at any time when in possession of information, obtained by virtue of employment or connection with the institution, which is not generally available to

shareholders of that company and the public, and which, if it were so available, would likely bring a material change in the market price of the shares or other securities of the company concerned. “Insider dealing” as this is called, is a crime.

- ❖ A director who possesses insider information is also prohibited from influencing any other person to deal in the securities concerned or communicating such information to any other person, including other members of staff who do not require such information in discharging their duty.

### **Integrity of Records and Transactions**

- ❖ Accounting records and reports must be complete and accurate. Directors should never make entries or allow entries to be made for any account, record or document of the institution that are false and would obscure the true nature of the transaction, as well as to mislead the true authorization limits or approval authority of such transactions. Directors of institutions should note carefully the provisions of Sections 48 and 50 of the Banking Act, 1989.
- ❖ All records and computer files or programmes of the institution, including personnel files, financial statements and customer information must be accessed and used only for management purposes for which they were originally intended.

### **Confidentiality**

- ❖ Confidentiality of relations and dealings between the institution and its customers is paramount in maintaining the institution’s reputation. Thus, directors must take precaution to protect the confidentiality of customer information and transactions. No director should during, or upon and after termination of employment with the institution (except in the proper course of his duty and or with the institution’s written consent) divulge or make use of any secrets, copyright material, or any correspondence, accounts of the institution or its customers. No director shall in any way use information so obtained for financial gain.

- ❖ Business and financial information about any customer may be used or made available to third parties only with prior written consent of the customer or in accordance with the arrangements for the proper interchange of information between institutions about credit risks, or when disclosure is required by law.

### **Fair and Equitable Treatment**

- ❖ All business dealing on behalf of the institution with the current potential customers, with other members of staff and with those who may have cause to rely upon the institution, should be conducted fairly and equitably. Directors must not be influenced by friendship or association, either in meeting a customer's requirement, or in recommending that they be met. Such decisions must be made on a strictly arms-length business basis.
- ❖ All preferential transactions with insiders or related interests should be avoided. If transacted, such dealings should be in full compliance with the law, judged on normal business criteria basis and fully documented and dully authorized by the Board of Directors or any other independent party.

### **Insider Loans**

Insiders should not use their positions to further their personal interests. The Bank shall not in therefore:

- ❖ Grant or permit to be outstanding any unsecured advances in respect of any of its directors or their associates;
- ❖ Grant or permit to be outstanding any advances, loans or credit facilities which are unsecured or advances, loans or credit facilities which are not fully secured to any of its directors or their associates.
- ❖ Grant or permit to be outstanding any advance, loan or credit facility to any of its directors or other person participating in the general management of the institution unless it is:

- (i) Is approved by the full board of directors of the institution upon being satisfied that it is viable.
- (ii) is made in the normal course of business and on terms similar to those offered to ordinary customers of the institution.

### **Accountability for Adherence to this Code of Ethics**

The Board of Directors assume full responsibility and accountability for strict adherence to this Code of Ethics. Any suspected deviations from or violations of this Code must be promptly reported to either the Chairman of the Board or the Chief Executive of the Bank. No retaliation or discrimination will result from any good faith report made in connection with this Code. A thorough investigation of all reports will be conducted in as timely and confidential a manner as possible.

### **Penalties**

- ❖ When an officer of the Bank is assessed and found to be unfit and not proper to work for an institution (including for reasons of failing to observe the code of conduct and the corporate governance principles as a whole) the Bank shall dispense with the services of such an officer forthwith and thereafter inform the Central Bank of Kenya.
- ❖ Any officer of the Bank who fails to observe the code of conduct, the principles of corporate governance, the provisions of the Banking Act or the Central Bank Prudential regulations shall be liable jointly and severally to indemnify the institution against any loss arising thereof.
- ❖ In the case of violation of regulations on an advance, loan or a facility to a person other than a director of the Bank or a person participating in the general management of the Bank, an officer shall not be so liable, provided he or she shows that, through no act or omission on his or her part, he or she was not aware that the contravention was taking place, or he or she took all reasonable steps to prevent it taking place.
- ❖ The Central Bank of Kenya or the Bank may direct the suspension of any officer or employee of the Bank who sanctioned the advance, loan or credit facility.

- ❖ Any director of the Bank who defaults in the repayment of any advance or loan made to him by the Bank for three (3) consecutive months shall forthwith be disqualified from holding office as such.

## ANNEX

### BOARD AND INDIVIDUAL DIRECTOR EVALUATION

#### **Background**

The Board is appointed to guide, lead, monitor, and conduct all aspects of Bank 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 organization and to the stakeholders.

#### **Board Evaluation**

Performance measurement enhances the effectiveness of the Director and thus further reduces the risk to the organization. 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.

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.

## **Methodology**

### **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.

## ANNEX 5

### BOARD EVALUATION

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

##### 1. Shareholders

- ❖ How well do Bank objectives reflect shareholder expectations?
- ❖ Is there full and accurate reporting on Bank 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 Bank

- ❖ 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 Bank's performance against the business plan?

##### 4. Legal/Ethical Duties

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

## 5. **The Direction of the Bank**

- ❖ How satisfactory is the Board's monitoring of the Bank?
- ❖ 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 Bank 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 Bank?

**SAMPLE BOARD EVALUATION FORM**

**A.2.1 Functions of the Board**

Function	Yes	No
❖ The Board understands, agrees, defines and promulgates its functions on an annual basis.		
❖ The Board knows and understands the Bank's beliefs, core values, philosophy, mission and vision and reflects his understanding on key issues throughout the year		
❖ Such beliefs, values, philosophy, mission and vision are set and consistent with the Bank'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 the management the scope and powers, roles and responsibilities to be adhered 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.		
❖ When appropriate the Board seeks counsel from professional advisors.		
❖ The CEO's remuneration and performance is reviewed and determined by the Board.		

<ul style="list-style-type: none"> <li>❖ The Board determines, annually, the objectives and measurement criteria for the CEO.</li> <li>❖ 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.</li> <li>❖ The Board has identified the groups to which it is: (a) Accountable (b) Responsible.</li> <li>❖ The Board understands and agrees that its first duty is to: (a) The Bank (b) Members and Shareholders (c) Others.</li> <li>❖ Board activities are conducted in an atmosphere of creative tension.</li> <li>❖ The Board has procedures in place to ensure that the organization is meeting its legal responsibilities.</li> <li>❖ Formal review of the Board’s performance has become an integral part of the culture of the Board.</li> <li>❖ 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.</li> <li>❖ The Board ensures that all conflicts of interest are (a) Declared (b) Resolved</li> <li>❖ Every Board member has been supplied with a letter of appointment.</li> <li>❖ The letter of appointment defines the roles and functions of the Board and the specific role of each director.</li> </ul>		
--	--	--

**A.2.2 Board Meeting Management and Procedures**

<ul style="list-style-type: none"> <li>❖ Every Board member has been supplied with a Board manual and a copy of standing orders and regulations governing conduct of Board meetings.</li> <li>❖ 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 Bank.</li> <li>❖ Board meetings are conducted in a manner that encourages open communication, meaningful participation and timely resolution of issues.</li> </ul>	Yes	No
---	-----	----

<ul style="list-style-type: none"> <li>❖ Sufficient time is provided during Board meetings for thoughtful discussion in addition to management dialogue.</li> <li>❖ Board time is used effectively so that the Board adds value to management.</li> <li>❖ Formal meeting and reporting procedures have been adopted by the Board.</li> <li>❖ Board members receive timely and accurate minutes, advance written agendas and meeting notices; and clear and concise back ground material to prepare in advance of meetings.</li> <li>❖ All Board members are fully informed of relevant matters and there are never any surprises.</li> <li>❖ Absenteeism from Board meetings is the exception rather than the rule.</li> <li>❖ Board meetings are facilitated, but not overtly influenced by the Chairperson.</li> <li>❖ All Board members receive detailed Board papers, copies of draft minutes and agenda papers in advance.</li> <li>❖ All proceedings and Resolutions of the Board are recorded accurately, adequately and on a timely basis.</li> </ul>		
---	--	--

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

	Yes	No
<ul style="list-style-type: none"> <li>❖ The Board is involved with the selection of appointed directors.</li> <li>❖ The selection process considers any deficiencies in the skills of current Board members.</li> <li>❖ The composition of the Board fairly represents the diversity of stakeholders.</li> <li>❖ The Board actively encourages good candidates to stand for Board appointments.</li> <li>❖ New Board members are introduced to their duties with an appropriate induction process</li> <li>❖ Board members understand the extent of their relationship with management and the separation of stewardship and management</li> </ul>		

<ul style="list-style-type: none"> <li>❖ Board members evaluate their individual and overall Board performance formally on an annual basis</li> <li>❖ The performance of the Chief Executive Officer is reviewed formally on an annual basis.</li> <li>❖ Encouragement is given for Board members to continue their study of corporate governance and improve the skills they need.</li> <li>❖ Directors understand the extent of their personal liability for the affairs of the Bank.</li> <li>❖ A succession plan is in place for the Chairperson, Chief Executive Officer, Board members and senior management and is reviewed regularly.</li> <li>❖ Directors who have not been contributing to the governance of the organization, and are uninterested in improving their performance are asked to terminate.</li> <li>❖ Where the ethical or professional conduct of any director is called into question such director is suspended pending investigations</li> <li>❖ 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.</li> </ul>		
---	--	--

**A. 2.4. Board Structure**

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

<ul style="list-style-type: none"> <li>❖ The Board has established and appointed:- <ul style="list-style-type: none"> <li>- An audit Committee</li> <li>- An Alco &amp; Risk Committee</li> <li>- Credit Committee</li> <li>-Tendering &amp; Procurement Committee</li> <li>-Strategy &amp; Investment Committee</li> <li>- Board Nomination, Governance and Staff Remuneration Committee</li> </ul> </li>   <li>❖ The terms of reference of each committee are restricted and defined in their respective charters.</li> </ul>		
---	--	--

**A. 2.5 Information and Communication**

	Yes	No
<ul style="list-style-type: none"> <li>❖ Every Board member was supplied with all establishment instrument, all legal documents, mission statement, vision and strategy documents of the Bank on first appointment.</li> </ul>		
<ul style="list-style-type: none"> <li>❖ Every Board member receives a copy of the Board manual together with a letter of appointment on first appointment.</li> </ul>		
<ul style="list-style-type: none"> <li>❖ 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.</li> </ul>		
<ul style="list-style-type: none"> <li>❖ Board members are encouraged to discuss matters with members of management after gaining the approval of the Chairperson or the Chief Executive.</li> </ul>		
<ul style="list-style-type: none"> <li>❖ The Board receives sufficient information from management in an appropriate format as determined by the Board.</li> </ul>		
<ul style="list-style-type: none"> <li>❖ The Board's information requirements are communicated to management on a regular basis.</li> </ul>		
<ul style="list-style-type: none"> <li>❖ Requested information is received in a timely fashion.</li> </ul>		
<ul style="list-style-type: none"> <li>❖ The Board is proactive in developing an effective communication strategy for the Bank.</li> </ul>		
<ul style="list-style-type: none"> <li>❖ The Company Secretary advises Board members regularly on matters of governance and the applicable law.</li> </ul>		

## **CHAIRMAN OF THE BOARD**

### **B.1. Shareholder Relations**

- ❖ Managing relations with shareholders
- ❖ Facilitating advisory and monitoring processes between shareholder and Bank
- ❖ 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 Bank with the CEO in the community

### **B.3. Management Relations**

- ❖ Monitoring Bank 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 Bank to the staff, the public, the media, suppliers and Customers.
- ❖ In conjunction with the CEO, representing the Bank in developing relationships with government representatives and government agencies.
- ❖ Providing leadership to the Board in planning and direction
- ❖ Representing the Bank with the CEO in the community

### **B.3. Management Relations**

- ❖ Monitoring Bank 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 Bank to the staff, the public, the media, suppliers and Customers.

- ❖ In conjunction with the CEO, representing the Bank in developing relationships with government representatives and government agencies.

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

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

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

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

*Comments:*

-----

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

# INDIVIDUAL DIRECTOR, EVALUATION

## 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 Bank'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 I 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 Meetings

(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 judgment, 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 .....

## **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 his/her 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:

### **Board Meetings**

Facilitating the smooth operation of the Bank'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.

### **General Meetings**

Ensuring that an Annual General Meeting is held in accordance with the requirements of the Companies Act and the Bank'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-coordinating the administration and minuting of meetings.

## **Memorandum & Articles of Association**

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

## **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 Bank code for dealing in the Bank's securities, as appropriate; managing relations with the Stock Exchange through the Bank's brokers; releasing information to the market; ensuring the security of unreleased price-sensitive information; making applications for listing of additional issues of securities.

## **Statutory Registers**

Maintaining the following statutory registers:

- ❖ Members;
- ❖ Mortgage and charges;
- ❖ Directors and secretary;
- ❖ Directors' interests in shares and debentures;
- ❖ Interests in voting shares;
- ❖ Debenture holders [if applicable].

## **Statutory Returns**

Filing information with the Registrar of Companies to report certain changes regarding the Bank 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 Bank Secretary;
- ❖ Notices of removal or resignation of the auditors;
- ❖ Change of registered office;
- ❖ Resolutions in accordance with the Companies Act.

### **Report & Accounts**

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

### **Share Registration**

Maintaining the Bank's register of members; dealing with transfers and other matters affecting share-holding; dealing with queries and requests from shareholders.

### **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.

### **Shareholder Monitoring**

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

## **Share and Capital Issues and Restructuring**

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

## **Acquisitions, Disposals & Mergers**

Participating as a key member of the Bank team established to implement corporate acquisitions, disposals and mergers; protecting the Bank'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.

## **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; counseling them when preparing presentations and memoranda.

## **Non-Executive Directors**

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

## **Company Seal**

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

## **Registered Office**

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

## **Bank Identity**

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

## **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.

## **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.

## ANNEX 6

### BOARD MEETING MANAGEMENT AND PROCEDURES

Good Board meeting management procedure should ensure the following:

#### Standing Orders and Regulations on Conduct of Board & Committee Meetings

It is expected that in addition to the Memorandum and Articles of Association, a Bank 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.

## **Board 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.

## **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 e.t.c.

(b) A detailed programme indicating key aspects to be considered by the Board and Committees.

### **Board Manual**

It is expected that the Bank 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 Bank personnel - directors and management.
- ❖ Copies of memorandum and Articles of Association
- ❖ Mission statement and vision of Bank
- ❖ 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 Bank e.g.
  - Personnel policy manual
  - Financial and accounting policies
  - Ethics and values of the Bank 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 Bank 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 Bank.
- ❖ Duty not to exceed powers.
- ❖ Duty to act in good faith, honestly and reasonably in the best interest of the Bank, 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 Bank assets and not to compete with the Bank.
- ❖ 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 Bank.
- ❖ Business conducted with intent to defraud creditors.
- ❖ Failure to govern and direct the affairs of the Bank in compliance with the law.