

CODE/GUIDELINES OF BEST PRACTICE: A SUMMARY

The following is a summary of the principles of good corporate governance in state-owned corporations:

Authority and Duties of the Government (Shareholder)

The Government of Kenya as the shareholder, on behalf of the public, shall protect, preserve and actively exercise the supreme authority of the state-owned-corporations to:

- Ensure that the legal framework establishing and determining the operations of the state-owned corporations is clearly defined.
- Ensure that the role of Parliament in enacting laws of the state owned corporations is effectively undertaken.
- Ensure that the authorities of the Boards of state corporations are exercised in accordance with the law and in the best interests of the corporations.
- Ensure that the legislation is in place to ascertain that only competent and reliable persons, who can add value, are 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.

Role, Functions and Responsibilities of the Board

Every state-owned corporation should be led by an effective Board which exercises leadership, enterprise, integrity and judgment in directing the corporation and which acts in the best interest of the corporation in a transparent, accountable and responsible manner.

Appointment of Directors

The procedures followed by the Boards and State Corporations Monitoring Unit in appointing directors of state-owned corporations should ensure that only the best qualified persons who can add value to the state-owned corporations are appointed as directors.

Remuneration

The Board of Directors should set up an independent Remuneration Committee to determine, in consultation with the SCMU, equitable and attractive remuneration packages for directors as well as the management for ratification by the Government as the shareholder.

Disclosures of Interests by Directors

On appointment and on a continuous basis all directors should, in good faith, disclose to the Board and SCMU for recording any business or other interest that is likely to create a potential conflict of interest.

Composition, Mix of Skills and Competencies

The responsible Minister in consultation with the SCMU and the respective Boards of state-owned corporations should ensure that a majority of independent, non-executive directors who possess the mix of skills and competencies - sound business acumen, integrity, innovativeness, knowledge of Government policies, focused intelligence and commitment and devotion to duty – are appointed to the Board. The Boards should strive to achieve balance and mix of skills without compromising quality.

Succession Planning

In order to ensure continuity of the Board, the appointment of the members of the Board should be staggered and the practice of rotation of directors be applied.

The Chairman of the Board

The Chairman of the Board of a state owned corporation should be appointed by the Government as the shareholder. The Chairman should provide overall leadership to the Board, playing an effective role in the selection of Board members and ensuring that constant strategies for monitoring and evaluating the effectiveness of the Board and the management are in place.

Strategies and Values

Directors should continuously review and determine the purpose and strategic plans and shape the values of their corporations, devise appropriate strategies to achieve these in order to ensure that the corporations thrive and survive.

Corporate Communication

There should be well defined formal channels of communication in state owned corporations and all relevant information regarding the corporations should be communicated in a timely manner to all stakeholders.

Induction, Training and Development

The Board should put in place an effective induction programme for new directors and, that training and development programmes should be

continuously mounted in order to provide the directors with newer and emerging skills in good corporate governance.

Board's Independence

The appointment procedures for directors should ensure that the directors disclose actual or perceived conflicts of interest so that the Boards of state-owned corporations can function independently, objectively and only in the best interests of the corporations.

Board Meetings

In order to bring effectiveness in the governance of state-owned corporations as business enterprises, the directors should devote their time and resourcefulness to their corporations by meeting as regularly as dictated by the needs of each corporation.

Financial, Operational and Governance Reporting

The Boards of state-owned corporations should ensure that financial reports follow the international accounting standards and that there is an effective communication of all operational reports to the various supervisory agents and various stakeholders.

Committees of the Board

The Boards of state-owned enterprises should ensure that, at least, the following Committees of the Board are established: the Audit Committee, the Remuneration Committee and the Nominations Committee

Monitoring the Performance of the Board

In order to ensure that it is adding shareholder value, the Board should monitor its collective performance, the performance of individual directors and the performance of the management.

Liabilities of the Directors

The directors of state owned corporations must exercise the highest degree of care and diligence in the discharge of their duties and should be held jointly and severally liable for all acts and omissions.

Accountability of the Board

The appropriate chain of accountability in state-owned corporations should be from the CEO, to the Board and to the Responsible Minister

Risk Management

The Board should establish a process of identifying, analyzing and managing risks.

Commercial Versus Social Objectives

The Boards should put in place strategies to balance its commercial and social obligations after consulting with all stakeholders. In addition, the Boards should ensure that the commercial objectives and the social service obligations are clearly documented

State-Owned Corporation's Social Responsibilities

The Boards of state-owned corporations should constantly monitor and satisfy themselves that the corporations are constantly meeting their social responsibilities.

The Relationship between the Board and the Management

The culture and environment within which the Board and the management operate should provide an enabling and effective atmosphere within which good governance and efficient management can thrive.

Appointment and Development of the Executive Management

The Board should appoint the Chief Executive Officer and participate in the appointment of all senior management and ensure that there are adequate development programmes for the management and other employees, and putting in place management succession planning for senior management.

Codes of Best Practice

The Boards should approve and ensure the implementation of written codes of best practice for their individual corporations.