

Training Workshop

Corporate Governance

for Directors of

State Owned Enterprises

Code of Corporate Practices and Conduct (King Committee on Corporate Governance)

- Applies to public sector enterprise and agencies that fall under the Public Finance Management Act (PFMA).
- While it is acknowledged that certain forms of State enterprises may not lend themselves to some of the principles set out in the Code, it is recommended that the principles should be adapted by such enterprises.

What is Corporate Governance?

Corporate governance is concerned with holding the balance between economic and social goods and between individual and communal goals ...the aim is to align as nearly as possible the interest of individuals, corporations and society.”

Sir Adrian Cadbury

Corporate Governance Overview, 1999

Responsibilities of the Board

The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.

OECD Principles of Corporate
Governance

Key Legislation

- Companies Act
- Public Finance Management Act (PFMA)
- Code of Corporate Practices and Conduct

Order of Precedence

1) PFMA

- In the event of inconsistency between the PFMA and other legislation, the PFMA prevails (Chapter 1, Section 3 [3])

2) Companies Act

- Subordinated to the PFMA if the public entity is organised under the Companies Act

Order of Precedence

(continued)

3) Code of Corporate Governance

- Provisions to be embodied in other legislation
- Must be observed by JSE-listed companies
- Otherwise voluntary

Key concepts for directors

- Responsibilities
- Authority
- Liability

PFMA Imposed Responsibilities

- Public entities must have an “accounting authority”
- Directors must seek to prevent any prejudice to the financial interests of the state
- The board must ensure that all revenue due to the authority is collected

PFMA Imposed Responsibilities

(Continued Part1)

- The board must prevent irregular, wasteful and and fruitless expenditure
- The board must ensure that budgets and corporate plans are prepared and submitted

PFMA Imposed Responsibilities

(Continued Part 2)

- The board must keep proper records of financial affairs
- The board must cause an annual audit to be completed
- The board must appoint auditors

PFMA: Director Authority

- Very little actual authority conveyed through the PFMA
- Board may delegate certain functions to officials of the entity (Section 56 (1) (a))
- Board appoints auditors
- Board may authorize the borrowing of money, consistency with provisions of Section 66

PFMA:Liabilities

- Every member of the Board of Directors is individually and severally liable for any financial misconduct of the accounting authority

Types of directors

A Board has three types of Directors:

1. Executive Director

- An individual who is involved in day-to-day management of the enterprise and/or any of its subsidiaries.

2. Non-Executive Director

- An individual who is not involved in day-to-day management of the enterprise and/or its subsidiaries, and who is not a salaried employee of either

Types of Directors (continued Part1)

3. Independent Director

- A Non-Executive Director who:
 - i. Is not a representative of a major shareholder or nominated by such a shareholder
 - ii. Has not been employed by the company or associated companies for a period of three years.
 - iii. Is not a professional advisor to the company

Types of Directors

(continued Part 2)

- iv. Is not a significant supplier or customer to the company
- v. Has no significant contractual relationship with the company
- vi. Is free from any business or other relationship which could materially interfere with the individual's ability to act in an independent manner.

Committees of the Board

- Executive Committee
- Finance and Audit Committee (may be divided into 2 committees)
- Remuneration Committee

Other Committees

- Human Resources
- Risk
- Special (ad hoc, e.g., projects)

The Board Meeting

Board Papers

- Board papers should be treated as confidential documents
- Should be available prior to meeting for proper review, read them and prepare questions as necessary
- If Board Papers are not available, the meeting should be postponed since you can not properly discharge your duties as a director

Agenda

- Review the agenda for completeness and call any omissions to the Secretary

The Board Meeting

Board Papers (continued Part 1)

Agenda

- Review the agenda for completeness and call any omissions to the Secretary

The Board Meeting-(continued Part2)

Signing of Register

Minutes of Previous Meeting

- Approved by vote and signed by Chairman

Matters Arising from the Minutes

Minutes of any intervening ExCo meetings

The Board Meeting-(continued Part 3)

Management reports/Operations

Management Accounts

- Expense/Income against budget
- Variance Reporting
- Ratio Analysis

Annual Activities

- Review and update corporate plan
- Approve current budget
- Approve capital expenditure
- Approve audit
- Approve auditors and audit fee

Upon Being Appointed to the Board

- File Form CM 27
- Ensure that you receive an induction
- Obtain recent reports: financial as well as operational
- Read and understand the PFMA, the King Code and the Protocol
- Evaluate directors insurance

Director's "Toolkit"

- PFMA
- Protocol
- Corporate Plan
- Ratio analyses
- Variance reporting
- Reports against benchmarks or baseline

The Company Secretary

- Principal role is to ensure that the board functions effectively
- Induction of new directors and together with chairperson, develop programme for continuous training and education
- Should provide a central source of guidance and advice to the board on ethics and good governance

Performance Assessment of Directors

- The board should on a regular basis a circumstances determine review its size, mix of skills and expertise
- Entire board should assess performance of chairperson
- Non-executive directors should assess executive directors and vice-versa

The Directors' Report

- A component of the annual financial statements and requirements and required by section 286 of the Companies Act

Must contain

- A review of financial performance
- Information relating to internal and external factors affecting performance, stressing risks and strategies to manage them

The Directors' Report(continued)

- Significant events during the year
- Relations with stakeholders
- Any judicial proceedings
- Any significant post-balance sheet events
- Should be submitted to the auditors, who should provide written comment