Code of Best Practice for Corporate Governance in Malawi

Corporate Governance Task Force
**ACKNOWLEDGEMENTS**

This Code is the product of the hard work of many people representing different organisations and has taken months to reach this stage. Its purpose is to provide guidelines to directors, managers and stakeholders in enterprises in Malawi who wish to follow the world trend towards ethical governance. It is offering as a voluntary standard and has drawn upon other codes of corporate governance such as the King Report and the Guidelines of the Commonwealth Association for Corporate Governance.

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*Having convened Malawi’s first corporate governance conference in 1997, the Society of Accountants in Malawi is pleased to have served as the Secretariat for the Corporate Governance Task Force.*

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# Code of Best Practice for Corporate Governance in Malawi

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Corporate Governance was defined in the Cadbury Report on Corporate Governance as the system by which companies are directed and controlled.

The debate on Corporate Governance started in the western countries in the early 1990 and has since spread to other parts of the world. In Malawi the first ever open discussion on Corporate Governance took place in 1997 at a three-day conference that was organised by the Society of Accountants in Malawi (SOCAM). There have been several other seminars since then aimed at sensitising members of the public on the importance of good Corporate Governance, but no formal document has been prepared to be used as a guideline when dealing with Corporate Governance issues in Malawi.

The Code of Best Practice for Corporate Governance contained in this report is aimed at bridging this particular gap. It is therefore my hope that upon the publication of the recommendations made by the Corporate Governance Task Force, the business community and members of the general public will be more aware of good Corporate Governance principles for Malawi.

The Terms of Reference for the Corporate Governance Task Force were as follows:

1. To review the various reports issued on Corporate Governance such as the King Report on Corporate Governance, the Cadbury Report, and the CACG guidelines and recommend a Code of Best Practice and Conduct for enterprises in Malawi.

2. To recommend amendments to the Companies Act 1984 and other legislation in order to improve the Corporate Governance environment in Malawi.

3. To consider and decide whether or not it is necessary to set up an Institute of Directors in Malawi in order to improve the Corporate Governance in the country.

4. To consider any other issue related to or incidental to Corporate Governance matters.

The Task Force relied on a number of publications and the goodwill of several individuals and organisations when coming up with recommendations contained in this report. I take the opportunity to thank the Institute of Directors for allowing us to use the King Report on Corporate Governance as a basis for preparing the Code of Best Practice for Corporate Governance in Malawi and also for allowing its Executive Director, Mr Richard Wilkinson to give technical advice to the Task Force.

Similarly the Commonwealth Association for Corporate Governance (CACG) and the Private Sector Corporate Governance Trust of Kenya deserve special thanks for allowing the Task Force to include parts of their documents in this report. I also commend the CACG and the Commonwealth secretariat for sponsoring Mr Philip Armstrong to revive the work of the Task Force when he came to Malawi to make a presentation on “Corporate Governance: the Commonwealth Approach” at a workshop in May 2001.

I would also like to thank all those who sent in their comments to the task force when they were asked to do so. Very useful written comments were received from Mr T J Barnes, Chief Executive for National Bank; Dr Clive Lovatt, Partner at Deloitte & Touche; Mr Vizenge Kumwenda, Assistant General Manager (Finance) at the National Insurance Company; Mr Robert H Martin, Executive Director of Economic Resources; Mrs Madalo Minofu, Corporate Finance Executive, Sunbird Tourism; and Mr K N Chaturvedi, General Manager, First Merchant Bank. To all these I say thank you for the serious manner in which they handled our request for comments.

Finally but not least, I would like to thank all the organisations that funded the work of the task force and also the following members who worked tirelessly as
members of the Task Force to have this report produced:

1. Mr Clement Chilingulo, representing Press Trust
2. Mr Isaac Chimutu, representing the Malawi Confederation of Chambers of Commerce and Industry (MCCCI)
3. Mr Gilbert B Chirwa, representing the Tea Association of Malawi.
4. Mr Gilton Chiwaula, representing the Anti Corruption Bureau.
5. Mr Wilfred Dambuleni, representing the Employers Consultative Association of Malawi.
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15. Mr Felix Mlusu, representing the Insurance Association of Malawi.
16. Mr Anthony Mukumbwa, representing Illovo Sugar Group and Institute of Internal Auditors.
17. Ms Evelyn Mwapasa, representing Admarc Investments Holding Company.

Cynthia Selemani
Chairman, Corporate Governance Task Force
31 October 2001
CODE OF BEST PRACTICE FOR CORPORATE GOVERNANCE IN MALAWI

INTRODUCTION

Corporate Governance has become the subject of much debate since the 1990s. The several business failures that took place in the 90s due to poor governance were the catalyst for this debate. Examples of Corporate Governance failures include the Maxwell business empire, Polly Peck and BCCI in the United Kingdom; the savings and loans institutions in the USA; and the Masterbond, Crusader and Cape Investment Bond in South Africa. These failures forced people to start questioning the effectiveness and accountability of directors, the effectiveness of audits and adequacy of financial reporting.

Initiatives were taken in some countries to find ways of improving Corporate Governance. In the US the Treadway Commission was set up to look at Corporate Governance issues. In the United Kingdom, the Cadbury Committee was established and the famous Cadbury Report on Corporate Governance issued in 1992. The Cadbury Report was preceded by the Greenbury and Hampel reports. In South Africa the King Committee was formed to look at these same issues in the South African context and issued its report called the King Report on Corporate Governance in November 1994. Similar Committees were formed in other countries including Canada, Australia, India and Malaysia.

In 1997 the Commonwealth Heads of Government made a declaration to promote excellence in Corporate Governance in all Commonwealth countries. Following this declaration a Commonwealth Association for Corporate Governance (CACG) was established in 1998. The CACG produced Principles for Corporate Governance in the Commonwealth known as the CACG Guidelines in November 1999.

In Malawi, the Society of Accountants in Malawi (SOCAM) was the first to arrange a public forum in 1997 at which issues of Corporate Governance were discussed. At this Corporate Governance conference, delegates urged SOCAM to facilitate the formation of a Corporate Governance Committee that would look at Corporate Governance issues in the Malawian context and come up with a code of best practice.

The formulation of the code of best practice for Malawi was of essence due to the fact that the country has not been spared financial scandals arising from poor Corporate Governance. Participants had also noted that the Malawi economy is characterized by parastatals and private companies, most of whose directors are not very familiar with good Corporate Governance practices. This project was also to complement government’s public sector reforms aimed at fostering efficiency in the economy.

In line with the wishes of participants at the 1997 Corporate Governance conference, the Society of Accountants in Malawi (SOCAM) facilitated the formation of what became to be known as the Corporate Governance Task Force (CGTF) in 1998. The Task Force had representations from a number of relevant organisations as outlined in the foreword by its chairman. The Task Force’s Terms of Reference were initially drawn up by SOCAM but were later revised after receiving input from representatives of other organisations on the Task Force and other interested parties. A list of the Terms of Reference can be found in the foreword.

The CGTF had its first meeting in January 1999 at which meeting, Mrs Cynthia Selemani representing SOCAM was elected chairman of the Task Force while Mr Hennox Mazengera, the SOCAM Executive Director was elected the Secretary. After this first meeting a number of meetings were held. Members who attended these meetings did so voluntarily without being given any monetary incentives or any promise to
that effect. SOCAM met all the expenses for the secretarial services and also funded the meeting which took place at Ku Chawe Inn in Zomba to consider submissions received from different organisations and individuals on the CGTF’s initial draft report and agree on the final report.

The Corporate Governance Task Force reviewed a number of Corporate Governance reports and concluded that the South African King Report on Corporate Governance, the CACG Guidelines and the Kenyan Principles and Sample Code as published by the CACG should form the basis of the Code of Best Practices for Corporate Governance in Malawi.

Having done its groundwork and consulted widely, the Task Force has concluded that the Code that follows is appropriate for Malawian enterprises.

The Code has been developed bearing in mind that society now demands greater accountability and transparency from institutions and enterprises regarding their affairs. The Task Force thus believes that compliance with this Code by enterprises will go a long way in improving the Corporate Governance culture in Malawi and increase the confidence that foreign investors and donor organisation have in the business climate in the country.

**COMPLIANCE WITH THE CODE**

The Code of Best Practice for Corporate Governance (hereinafter called the Code) is concerned with the establishment of an appropriate legal, economic and institutional environment that will facilitate and allow businesses to grow, thrive, survive and create wealth for the owners as well as all other stakeholders and society. Good Corporate Governance principles should thus be applied in all enterprises be they large or small; privately owned or publicly owned.

The Corporate Governance Task Force expects all enterprises in Malawi to comply with the Code as the best practice in the management of enterprises.

However the Task Force will be most interested to see that the following organisations are taking the lead in ensuring compliance with the Code:

- Companies listed on the Malawi Stock Exchange (MSE);
- Banks, financial institutions, building societies and insurance companies as defined by the Reserve Bank Act and/or other relevant legislation in Malawi;
- Large unlisted companies with paid up capital of at least K50 million;
- Statutory Corporations;
- Public Trusts; and
- All other enterprises that publicly declare that they are following good Corporate Governance principles.

Enterprises should however note that the following Code is not exhaustive. It is designed as a basis to assist individual enterprises formulate their own specific and detailed codes of best practice.

**THE BOARD OF DIRECTORS**

**Supreme Authority of Shareholders**

Shareholders have a duty to jointly and severally protect, preserve and actively exercise the supreme authority of an enterprise in general meetings. They have the responsibility to:

- Ensure that only competent and reliable persons who add value to the enterprise are elected or appointed to the board of directors;
- Ensure that the board of directors is constantly held accountable and responsible for the efficient and effective governance of the enterprise; and
- Change the composition of a board of directors that does not perform to expectations or in accordance with the mandate of the enterprise.
**Board Structure**

The unitary board structure comprising executive and non-executive directors is considered appropriate for Malawi as it provides greater interaction among all board members when dealing with matters such as strategic planning, performance, standards of conduct, resources and communication with stakeholders.

It is recommended that no board should have less than two non-executive directors of sufficient calibre that their views will carry significant weight in board decisions.

**Responsibilities and Functions of the Board**

It is the responsibility of the board of directors to ensure that the enterprise complies with the Code.

The board must exercise leadership, enterprise, integrity and sound judgement in directing the enterprise so as to achieve continuing prosperity for the enterprise.

The board should determine and implement the enterprise’s purpose, values and strategy to achieve its purpose.

The board should ensure that procedures and practices are in place that protect the enterprise’s assets and reputation.

The board must retain full and effective control over the company, monitor the executive management and ensure that decisions on material matters are in the hands of the board.

The board should have a definition of materiality on matters such as the acquisition and disposal of assets, investments, capital projects and authority levels, etc.

The level or definition of materiality is a matter for each enterprise to decide. Further, the board may have to appoint a technical subcommittee to investigate technical matters or projects.

The board should allow every director to play a full and constructive role in its affairs while ensuring that no one person or block of persons has unfettered powers.

Directors should at all costs avoid insider trading or using privileged information for their own personal benefit or that of other people connected with them. The definition of what would constitute insider trading should be made by referring to the Malawi Stock Exchange rules.

When a director or officer of a listed company sells, buys or takes any position in the shares of a company of which he is a director, whether directly or indirectly, he should notify the company’s secretary of his intentions and record in writing immediately after the transaction, the date thereof, the price, the number of shares involved and the nature of the transaction and deliver the written record to the company secretary.

The board must identify key risk areas and key performance indicators of the business enterprises in order for the enterprise to generate economic profit so as to enhance shareholder value in the long term. This should be conducted within the context of recognising wider societal interests and other circumstances affecting the circumstances in which the enterprise fulfils its ‘licence to operate.’

For the board to carry out its functions efficiently and effectively:

- The board must meet regularly. How regularly or at what intervals the board meets is a matter for each board to decide, having regard to the enterprise’s own circumstances. It is however recommended that a board should meet at least once a quarter.

- Individual directors on the board should devote sufficient time to their responsibilities.

The board should regularly assess its performance and effectiveness as a whole and that of individual directors, including the chief executive officer. Guidelines and forms for performance assessment of the board, the chairman and individual directors are contained in appendices IV & V.

**Board Subcommittees**

Any board of an enterprise will find it useful to establish board sub-committees to deal with matters that can best be dealt
with in a small forum. All sub-committees when established should be given, in writing, clear Terms of Reference and parameters thereof and the context within which such are conferred.

As a minimum, the board should establish sub-committees dealing with the following issues:

- Directors’ and top management remuneration
- Appointments and disciplinary issues
- Auditing and financial reporting

**THE CHAIRMAN**

The Chairman should be independent and non-executive. But the requirement for the Chairman to be independent does not preclude a shareholder from becoming the Chairman.

The Chairman’s role should preferably be separate from that of the Chief Executive.

Where the roles of Chief Executive and Chairman are combined the non-executive directors have a particular responsibility to ensure that the Chairman encourages proper deliberation of all matters requiring the board’s attention and obtains optimum input from the other executive directors. It is also preferable that in such cases there should be more non-executive directors on the board. Additionally the non-executive directors on the board should be of sufficient calibre to bring independent judgement to bear on issues of strategy, performance, resources, standards of conduct, and evaluation of performance.

Where the Chairman of an enterprise is the Chief Executive of the enterprise’s holding company, he should not sit on the management meetings of the subsidiary company of which he is the Chairman.

It is the Chairman’s responsibility to ensure that the board is balanced in terms of skills and as between executive and non-executive directors except as suggested above.

The Chairman should ensure that all board members are as fully informed as possible on any issue on which a decision is to be made and afford each board member a reasonable opportunity to contribute to the board’s deliberations. It is the responsibility of the chairman to ensure that all board members that do not contribute to the board are removed.

Where the Chairman is required to exercise a casting vote, he should use it objectively.

**NON-EXECUTIVE DIRECTORS**

Non-executive directors should be independent in the sense that they are independent of management, do not take part in the day-to-day management and do not have any benefits from the company other than their fee.

Non-executive directors comprise the following:

- Those who are independent of management and do not have any benefits from the company other than their fee. This is not intended to exclude persons who have a contractual nexus with the company for reward from being appointed non-executive directors or to prevent a non-executive director from acquiring shares in the company by means independent from the company.
- Directors and managers of the enterprise’s holding company, or major investor, who have no executive responsibilities in the enterprise.
- Former executive directors who are no longer employed on a full time basis but nevertheless are capable of giving valuable input to the board arising from their past experience.
- Senior executive directors of subsidiaries and associates of the holding company, who have no executive responsibilities in the holding company.
The term served by a non-executive director should be determined by the board.

Non-executive directors do not in any way take on the status of employees.

Any advisory work that a non-executive director or any firm with which he is associated, is commissioned to undertake for the enterprise should be approved in advance by the board.

Executive directors should be encouraged by their companies to take non-executive appointments in other enterprises. However the number of non-executive appointments should not be such that the directors' executive responsibilities to their own enterprise are adversely impacted upon.

**APPOINTMENT OF DIRECTORS**

Whenever there is need to fill a casual vacancy or replace retiring directors on the board, a search and preliminary screening committee comprising appropriately skilled and experienced members of the Board, should be responsible for identifying suitable persons and have the Board recommend them to the Annual General Meeting for appointment.

An Executive Director’s service contract should not exceed three years but should be renewable on the approval of the Board.

The composition of the board should be planned with strategic considerations and objectives of the enterprise in mind. The selection process must be managed by considering the skills needed in order to add value to the processes of the board. The board should however be balanced as between executive and non-executive directors with the actual proportion depending on the circumstances and business of each enterprise.

A competent director should be diligent in discharging his/her duties to the enterprise, endeavour to regularly attend meetings and be prepared and able where necessary, to express disagreement with colleagues on the board including the chairman and the chief executive.

**DIRECTORS’ REMUNERATION**

Directors’ remuneration, including that of the non-executive directors, should be the subject of recommendations to the board by a remuneration committee. The remuneration committee’s membership should comprise persons who are competent to determine the appropriate remuneration of senior executives with the majority of its members (including the Chairman) being non-executive directors.

The remuneration committee should establish a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual executive directors.

The remuneration committee should also be responsible for setting the remuneration of top management of the enterprise.

There should be a separate, full and clear disclosure in the annual report of the aggregate amount of the executive and non-executive directors’ earnings and benefits. What is to be disclosed should represent the total cost to the enterprise.

The level of remuneration should be sufficient to attract and retain the quality and calibre of directors and staff needed to run the enterprise successfully while the make up should be so structured as to link corporate and individual performance.

**TRAINING AND DEVELOPMENT OF DIRECTORS**

Directors need proper knowledge of enterprises of which they are directors. They must acquire a broad knowledge of the business of the enterprise so that they can provide meaningful direction to it. Equally, every director should be aware and conversant with the statutory and regulatory requirements affecting the direction of the enterprise and environment in which it operates. It is therefore recommended that all directors should receive some formal training on their role, duties, responsibilities, and obligations as well as
board practices and procedures on the first appointment. This is critical for those with no previous board experience.

Every director should keep abreast of both practical and theoretical developments affecting the business and commercial environment in which the enterprise operates as well as to ensure that their expertise and experience remains relevant to the board and to the enterprise. It is desirable that directors are exposed 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 at least once every three years.

**THE COMPANY SECRETARY**

All enterprises should either employ a competent and qualified Company Secretary or contract a professional organisation experienced in the area, to render company secretarial services.

The company secretary should be responsible for advising the chairman and the board on the implementation of the Code and should have direct access to the Chairman.

All directors should have access to the advice and services of the Company Secretary and be entitled to seek independent professional advice about the affairs of the enterprise at its expense.

Before seeking independent professional advice, however, the director concerned should discuss and clear the matter with the chair or company secretary. If to approach either of them is inappropriate in the circumstances of the matter, the director must act with best interests of the company being the guideline.

The whole board should be responsible for ensuring that the secretary remains capable and any question of his/her removal from office should be handled by the whole board.

Whenever possible the role of a Chief Executive and Company Secretary should be separated.

A summary of the core duties of the Company Secretary is contained in appendix VI.

**STAKEHOLDER COMMUNICATIONS**

Directors should issue in the enterprise’s annual report a directors’ report and a statement of directors’ responsibilities.

It is the board’s duty to present a balanced and understandable assessment of the company’s position in reporting to stakeholders. The quality of the information must be based on the guidelines of openness and substance over form.

Reports and communications must be made in the context that society now demands greater transparency and accountability from corporations regarding their non-financial affairs including, for example, their employment policies and environmental issues.

Reports should be clear and succinct, balanced, objective, easy to understand and include all the relevant information that may be useful to investors.

The Annual General Meeting must be properly used by shareholders to ask questions on the accounts and reports presented. Forms should be provided in the annual reports to be used by shareholders to prepare and send written questions in advance. A summary of important matters raised at the AGM should be sent to shareholders.

The directors should report on the following matters in their annual report:

a) The directors’ responsibility to prepare financial statements that show a true and fair view of the enterprise’s state of affairs as at the end of the financial year and the profit or loss for that period.

b) The maintenance of adequate accounting records and an effective system of internal controls.

c) The consistent use of appropriate accounting policies supported by reasonable and prudent judgements and estimates.
d) Adherence with applicable accounting standards or, if there has been any departure in the interests of fair presentation, it must not only be disclosed and explained but also quantified.

e) That there is no reason to believe the business will not be a going concern in the year ahead or an explanation of any reasons otherwise.

f) The Code has been adhered to or, if not, in what respects there has not been adherence.

In the context of transparency beneficial holders of shares held by nominee companies should be disclosed to ensure that nominee shareholders are not used as a shield by a hostile bidder or used for insider trading purposes.

The auditor is responsible for reporting on the financial statements.

**Financial Reporting and Auditing**

Companies should have an effective internal audit function that has the respect and co-operation of both the board of directors and management.

The highest level of business and professional ethics should be observed by the auditors and in particular the independence of the auditor must not be impaired in any way.

The board should establish an Audit Committee with written terms of reference confirmed by the board. The majority of its members including its chairman should be non-executive directors. The Committee meetings should be attended by the head of internal audit, the external audit partner and the financial director.

The head of internal audit and the external audit partner should have unrestricted access to the chairman of the audit committee.

The head of internal audit and the external audit partners should bring all significant findings arising from audit activities to the attention of the audit committee and if necessary to the board.

Accounting standards used in the preparation of financial statements should be brought in line with international accounting standards.

**Worker Participation**

Good Corporate Governance requires that workers should participate in one form or another in the decision making processes of the enterprise. There does not exist one system of workers participation that can work in every single enterprise. The system of worker participation in governance decisions should grow out of the nature of the corporation’s business, the culture of the corporation and the workers’ organisation.

However, whatever the system is in place it should assist in developing the following:

- Practices that lead to the effective sharing of relevant information, to enable employees to gain a better understanding of the enterprise for which they work;
- Effective consultation by management with the workforce before taking decisions that affect the workers;
- Speedy identification of conflict and its effective resolution.

**Code of Ethics**

A corporation should implement its Code of Ethics as part of the Corporate Governance of that corporation.

A Code of Ethics should:

- Commit the corporation to the highest standards of behaviour.
- Be developed in such a way as to involve all its stakeholders to infuse its culture.
- Receive total commitment from the board and chief executive officer of the corporation.
• Be sufficiently detailed as to give a clear guide to the expected behaviour of all employees.

A recommended Code of Ethics is contained in Appendix I.

**IMPLEMENTATION AND COMPLIANCE**

Enterprises will be given six months from the date of this report to prepare themselves and start complying with this Code. Thereafter companies shall be required to state in their annual report whether or not they comply with the Code. As a way of promoting compliance, the media is encouraged to give appropriate publicity on compliance with these Recommendations on Corporate Governance.

Directors of all enterprises are encouraged to be members of the Institute of Directors whose establishment in Malawi is highly recommended.

**RECOMMENDED ACTION BY REGULATORY ORGANISATIONS AND OTHER AGENCIES**

In order to improve the governance environment in Malawi the Corporate Governance Task Force recommends the following:

a) The Ministry of Commerce and Industry in consultation with the relevant stakeholders should initiate the revision of the Companies Act 1984 to reflect the current pressures on entities to be more transparent and the changes taking place in the world and the region.

b) An institute of directors be established which would train, develop and provide support to directors in Malawi.

c) Capacity building should be undertaken in the registrar general’s office so that there is follow up on enterprises that do not comply with the provisions of the Companies Act.

d) All professional bodies and other regulatory bodies such as the Society of Accountants in Malawi (SOCAM), the Malawi Law Society, the Institute of Internal Auditors, the Bankers Association of Malawi, the Insurance Association of Malawi, and the Institute of People Management of Malawi, should study this Code and initiate programmes that will nurture a good Corporate Governance environment in Malawi.

**CONCLUSION**

The Corporate Governance Task Force, having looked at all aspects of Corporate Governance, is confident that the recommendations outlined in this Code are appropriate for the affected enterprises in Malawi. The Task Force is thus encouraging enterprises to comply with the Code in order to create a culture and business environment that would support the growth and prosperity of enterprises in the country.
## Purpose of this Code

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Purpose of this code

Identifying human needs, and responding by producing goods and services, is a worthwhile activity deserving of material reward. Working in business is ethical in that it gives opportunities to men and women to use their unique qualities and skills creatively in the positive development of society.

The way in which business conducts itself should be as ethical as its contribution to society. Business behaviour should be measured by standards comparable to those applied to any individual.

The ethical standards of business enterprises should reflect the values of the new Malawi and its diverse society.

This Code is intended for use to raise ethical awareness, and as a guide in day-to-day decisions. It contains aspirational ethical guidelines for everyday events that occur in business. It can also be used in training programmes, and to help assure customers, suppliers and competitors of the integrity of the business enterprise with which they deal. Reference to a document containing a Code of Ethics should not, of course, replace reliance on ethical values that form part of the human character.

CHAPTER 1: CHAPTERS AND INTERPRETATION

Division of Code into Chapters

This Code of Ethics is divided into eight chapters dealing with the following matters:

Chapter 1:
Chapters and interpretation (clauses 1 to 3)
Chapter 2:
Application and general obligation (clauses 3 and 4)
Chapter 3:
Managers (clauses 5 to 11)

Chapter 4:
Employees other than managers (clauses 12 to 16)
Chapter 5:
Owners (clauses 17 to 20)
Chapter 6:
Suppliers and lenders (clauses 21 to 23)
Chapter 7:
Customers (clauses 24 and 25)
Chapter 8:
Society at large (clause 26)

Interpretation

In this Code of Ethics:

- “Enterprise” means any person, including a company or close corporation or other corporate entity, which carries on business for gain, and includes an enterprise owned by the state.
- “Products” means the goods and services produced or rendered by enterprises.

CHAPTER 2: APPLICATION AND GENERAL OBLIGATION

Application of Code

This Code of Ethics shall apply to:

- the managers and directors of an enterprise, including non-executive directors;
- the owners and shareholders of an enterprise, where they are different persons from its managers or directors;
- the other employees and an enterprise or their representatives;
- suppliers and lenders to an enterprise;
- the customers of an enterprise;
- competitors of an enterprise;
• the people of Malawi and its government.

General Obligation to avoid harm

All people to whom this Code of Ethics applies shall observe their ethical obligations in such a way as to carry on business without causing harm other than by fair commercial competitive practices.

CHAPTER 3: MANAGERS

Managers are responsible for obligations of the enterprise

The managers of an enterprise shall, by reason of their being in control of the carrying on of the business of the enterprise:

• be responsible to communicate this code and to ensure its understanding by all the employees of the enterprise;
• be responsible for the observance of the ethical obligations of the enterprise; and
• take the necessary steps for compliance within the enterprise with the provisions of this Code of Ethics.

For the purpose of this chapter, a manager includes a director, and also a non-executive director with due regard to the extent to which they are engaged in the affairs of the enterprise.

Obligations of managers to customers

A manager shall:

• market the products of the enterprise accurately;
• disclose all relevant information regarding the products which customers cannot reasonably learn for themselves.
• charge the agreed price or, where no price was agreed, a fair price;
• if applicable, package the products in manner which is not misleading and at least meets the customer’s reasonable expectations; and
• supply the products with a promptness that at least meets the reasonable expectations of the customer and, where supply will be delayed, inform the customer of this before expiry of the contemplated delivery period.

A manager has a responsibility to customers of the enterprise to fix and maintain quality standards, and in particular shall:

• determine minimum quality standards for the products of the enterprise, ensure that the products conform to these standards;
• make known any standard of quality which is higher than the customary standard, and any price premium justified by such higher standard;
• provide customers with a ready means of lodging complaints about the quality of the enterprise’s products;
• provide a reasonable guarantee that its products conform to the standards of the enterprise, and replace any product which is below standard; and
• not knowingly supply a defective or dangerous product.

A manager shall manage the enterprise with a view to achieving the greatest possible savings and other benefits for customers, and in particular shall:

• strive to reduce inefficiencies in the enterprise, and establish standards of efficiency in consultation with other employees of the enterprise;
• introduce and maintain in the enterprise an awareness by all
employees that the resources of the enterprise, including time resources, are in limited supply;

- keep the costs of the enterprise at the lowest reasonable level;
- not abuse a position of market dominance or engage in a restrictive trade practice; and
- not permit any acts of bribery.

A manager shall respect the confidentiality of sensitive customer information.

**Obligations of managers to owners and shareholders of the enterprise.**

The managers of an enterprise have the obligations set out in this clause where they are not also owners of the enterprise.

A manager shall in relation to the enterprise act honestly and good faith, and in particular shall:

- act within their powers, and in the interests and for the benefit of the enterprise;
- carry out their duties with the skill and care to be expected from a person of their knowledge and experience, and exercise their own judgment;
- not permit wastage of the assets of the enterprise;
- report accurately to the owners on the performance and prospects of the enterprise, and justify the confidence reposed in them;
- furnish to an auditor of the enterprise all information and explanations which the auditor requires for the performance of their functions; and
- not carry on the business of the enterprise negligently or recklessly.

Managers shall not place themselves in a position where their personal interests could conflict with their duties to the enterprise, and in particular they shall:

- not divulge confidential information of the enterprise to its competitors or otherwise make improper use of such information;
- not carry on business on their own account when this is forbidden by the owners;
- not accept secret profits, bribes or any other corrupt, or unconscionable benefits;
- acquire for the benefit of the enterprise any economic opportunity which is in the same line of business as the enterprise they represent; and
- not use information that is not yet available to the public for their own gain.

**Obligations of managers to suppliers and lenders to the enterprise.**

A manager shall ensure good buying practices with suppliers of the enterprise, and in particular he shall:

- inform a supplier of any bribe or attempted bribe by the supplier’s personnel of an employee of the enterprise;
- terminate dealings with any supplier which bribes employees of the enterprise; and
- ensure that no bribe is paid to personnel of a supplier of the enterprise.

The managers of an enterprise shall ensure compliance by the enterprise with its debt obligations to suppliers to the enterprise on credit, including lenders of money, and in particular a manager shall:

- not apply funds acquired from a lender to a purpose which is contrary to any agreement with the lender;
• manage the enterprise in a way which does not unjustifiably increase the risk to creditors of the enterprise;

• report honestly on the financial position of the enterprise to its creditors;

• have regard to the interests of its creditors when requesting an extension of time in which to pay; and

• inform the creditor concerned of any inability by the enterprise to meet any such obligations.

Obligations of managers to employees of the enterprise

The manager shall:

• deal courteously with employees, having regard to cultural sensitivities and individual dignity;

• give due attention to the training and development of employees;

• provide safe working conditions, including adequate machinery and equipment and competent supervision;

• not unreasonably forbid an employee from carrying on other occupations in enterprises which are not competition with it;

• in the appointment, treatment or promotion of employees of the enterprise:

• not discriminate on any ground which does not affect the carrying out of the duties of the employee;

• provide opportunities for individuals whose potential has been restricted by unethical legislation or social discrimination in the past.

• recognise employees’ efforts by fair and adequate remuneration and other means;

• protect employees against physical, mental or emotional harassment;

• comply with the laws governing labour relations and conditions of employment;

• make this Code of Ethics and reasons for it known to employees;

• deal openly and fairly when involved in collective bargaining processes with representatives of the employees of the enterprise; and

• manage the enterprise in such a way as not to unreasonably jeopardise job security of employees.

Obligation of managers to competitors.

The managers of an enterprise shall not:

• make dishonest allegations concerning competitors of the enterprise or concerning their products;

• damage their competitors other than by accepted commercial competitive practice; and

• acquire confidential information of a competitor by espionage, the subordinating of the competitor’s employees or any other improper means.

Obligations of managers to society at large.

The managers shall in the carrying on of the business of the enterprise:

• pay due regard to environmental and public health considerations;

• not retrench employees without taking due consideration of the well-being of society at large; and

• participate within the means of the enterprise in projects that will
uplift the community in which the enterprise operates.

CHAPTER 4: EMPLOYEES OTHER THAN MANAGERS

Obligations of employees to customers.

An employee of an enterprise, other than a manager, shall:

- support and assist management to fulfill its commercial and ethical obligations as set out in this Code;
- avoid any waste of the enterprise’s resources, including time;
- respect the confidentiality of sensitive customer information; and
- help fellow employees meet their obligations.

Obligations of employees to owners of the enterprise.

An employee shall:

- avoid unreasonable disruption of production;
- use their capabilities and develop their potential as much as possible, particularly in return for training received;
- not divulge any confidential information of the enterprise to its competitors or otherwise make improper use of such information;
- act honestly at all times and report any harmful activity they may observe or come across at the workplace;
- commit to honouring their agreed terms and conditions of employment; and
- not act in any way that may jeopardise the shareholders’ rights to a reasonable return on investment.

Obligations of employees to managers.

An employee shall perform their duties diligently and efficiently, and in particular shall:

- support and assist management to fulfill its commercial and ethical obligations as set out in this Code;
- avoid any waste of the enterprise’s resources, including time;
- refuse any bribe, and report attempted bribery to a manager;
- report any harmful activity observed at the workplace;
- not abuse a strong collective bargaining position or engage in unreasonable industrial action; and
- join management in a commitment to improve productivity.

Obligation of employees to fellow employees.

An employee shall:

- not make a false accusation against a fellow employee;
- not intimidate a fellow employee; and
- recognise fellow employees’ rights to freedom of association.

Obligations of employees to society at large.

An employee shall pay due regard to environmental and public health considerations in and around the workplace.
CHAPTER 5: OWNERS

General obligations of owners concerning managers

Where the owners of an enterprise are not also the managers or directors of the enterprise, the owners shall appoint managers or directors who will in the opinion of the owners be capable of fulfilling the obligations of the enterprise that in terms of this Code are the responsibility of a manager. The owners will support managers to communicate this code and ensure its observance in terms of paragraph 5 above.

Obligations of owners to managers of the enterprise

The owners shall:

- not unreasonably forbid a manager, whilst employed by the enterprise, from carrying on other occupations in an enterprise which is not in competition with it. Such occupations should not detract from their ability to competently carry out their duties as a manager;

- confer on the managers of the enterprise sufficient authority to carry out the responsibilities imposed on the managers; and

- not insist on unreasonably short term performance results that could compel the managers to act injudiciously or unethically.

Obligations of owners/shareholders to others.

An owner/shareholder shall not:

- dishonestly manipulate the price of shares or interest in the enterprise to the prejudice of other existing or prospective owners; and

- use information, which is not yet available to the public for their own gain.

Obligations of owners to the enterprise’s employees and society at large.

In winding up an enterprise or part of it, an owner shall take due cognisance of the impact thereof on all stakeholders and the community in which it operates.

CHAPTER 6: SUPPLIERS AND LENDERS

Obligations of suppliers to an enterprise’s owners.

- A supplier of any product to an enterprise shall strive to provide products of good quality which comply with agreed standards at a competitive price within the agreed delivery period, which obligations are described more fully in Clause 6 in relation to the obligations of an enterprise to its customers.

- A supplier to an enterprise on credit, including a lender of money, shall not:

  - unjustifiably charge interest for extending credit at a usurious rate; and

  - shall assist the enterprise within reason to meet its obligations to avoid it having to realise assets of the enterprise on terms that are unfavourable to it.

A supplier of any product to an enterprise shall not abuse a position of market dominance to engage in a restrictive trade practice.

Obligation of suppliers to an enterprise’s customers.

A supplier to the enterprise shall:

- ensure that they provide a sound and safe product; and

- have regard to the expectations of that enterprise’s customers to receive products of good quality at a competitive price within the contemplated delivery period.
Obligations of suppliers to an enterprise’s managers.

A supplier to an enterprise on credit, including a lender of money, shall not:

- withdraw credit facilities from the enterprise unjustifiably;
- take advantage of a dominant market position to enforce unfair conditions or obligations upon the enterprise through the threat of a withdrawal of credit facilities.

CHAPTER 7: CUSTOMERS

Obligations of customers to an enterprise.

A customer shall:

- pay the enterprise for products received, in accordance with the agreement between the parties; and
- not abuse a position of market dominance or engage in a restrictive trade practice.

Obligations of customers to an enterprise and its suppliers.

A customer of an enterprise shall not:

- make false allegations concerning defects in products supplied to them by or through an enterprise; and
- claim a full refund for goods supplied to them which they return, if they were damaged while in their possession and control.

CHAPTER 8: SOCIETY AT LARGE

Obligations of the people of the Republic of Malawi and its government to enterprise.

The people of the Republic of Malawi and its government shall:

- provide an adequate physical infrastructure for enterprises;
- provide sufficient officials to maintain public order, prevent crime and investigate offences; and
- not impose unjustifiable restrictions on enterprises in the name of protecting environmental and other interests.
Appendix II

	normal

**FRAMEWORK FOR BOARD AND INDIVIDUAL DIRECTOR PERFORMANCE EVALUATION**

(Extract from the Kenyan Principles and Sample Code)

**Background**

The Board is appointed to guide, lead, monitor and conduct all aspects of 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, 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 the 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**

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 corporate governance.

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

**Board Goals**

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

**Confidentiality**

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

**Methodology**

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

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

**Chairman**

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

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

**Directors**

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

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

BOARD SELF APPRAISAL

(Extract from the Kenyan Principles and Sample Code)

Key Issues To Be Addressed Include, But Are Not Limited To:-

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

**The Stakeholders**
- Has the Board identified key stakeholders?
- What is the state of the relationship with the key stakeholders?

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

**Legal/Ethical Duties**
- Are all legal/ethical requirements met satisfactorily?
- Is the Company a good employer?

**The Direction of the Company**
- How satisfactory is the Board’s monitoring of the Company?
- Are the important issues being identified?
- How well are these analysed and discussed?

**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?

**Board Meetings**
- Is 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?

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

**Any Other Business**
- Does the Board have a working knowledge of other providers or competitors in their sector?
- Does the Board play a role in social accountability or the wider responsibility of the Company?
<table>
<thead>
<tr>
<th>Functions of the Board</th>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td>The Board understands, agrees, defines and promulgates its functions on an annual</td>
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<td>basis.</td>
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<tr>
<td>The Board knows and understands the Company’s beliefs, values, philosophy, mission</td>
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<td>and vision and reflects this understanding on key issues throughout the year.</td>
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<td>Such beliefs, values, philosophy, mission and vision are set and consistent with</td>
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<td>company’s status.</td>
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<td>The Board devotes significant time and serious thought to the organization’s long-</td>
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<td>term objectives and to the strategic options available to achieve them.</td>
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<td>The Board has defined and communicated to management the scope and powers, roles</td>
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<td>and responsibilities to be adhered to by management to meet routine and exceptional</td>
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<td>circumstances.</td>
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<tr>
<td>The majority of the Board’s time is not spent on issues of day-to-day management.</td>
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<tr>
<td>The Board is involved in formulating long-range strategy from the beginning of the</td>
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<td>planning cycle.</td>
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<td>The Board ensures that the organization has sufficient and appropriate resources to</td>
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<td>achieve its strategic goals.</td>
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<td>Proposals from management are analysed and debated vigorously before being approved</td>
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<td>by the Board. A proposal that is considered inappropriate is declined.</td>
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<td>The Board has an operating plan that specifies its functions, activities and</td>
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<td>objectives.</td>
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<td>The Board has reviewed its needs in terms of skills and has these skills.</td>
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<td>When appropriate the Board seeks counsel from professional advisors.</td>
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<td>The Chief Executive Officer’s remuneration and performance is reviewed and</td>
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<td>determined by the Board.</td>
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<td>The Board determines, annually, the objectives and measurement criteria for the</td>
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<td>Chief Executive Officer.</td>
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<td>A broad range of appropriate performance indicators are used to monitor the</td>
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<td>performance of management. Reliability is not placed solely on the financial</td>
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<td>statements provided by management.</td>
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<td>The Board has identified the groups to which it is:</td>
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<td>(a) Accountable</td>
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<td>(b) Responsible</td>
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<td>The Board understands and agrees that its first duty is to</td>
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<td>(a) The company</td>
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<td>(b) Members and shareholders</td>
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<td>(c) Others</td>
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<td>Board activities are conducted in an atmosphere of creative tension.</td>
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<td>The Board has procedures in place to ensure that the organization is meeting its</td>
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<td>legal responsibilities.</td>
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<td>Formal review of the Board’s performance has become an integral part of the</td>
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<td>culture of the Board.</td>
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<td>The Board ensures that key members of management are brought into the Board</td>
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<td>meetings so that they can participate and add value to their deliberations and</td>
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<td>work on behalf of the Board.</td>
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<td>The Board ensures all conflicts of interest are</td>
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<tr>
<td>(a) Declared</td>
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<td>(b) Resolved</td>
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<tr>
<td>Every Board member has been supplied with a letter of appointment.</td>
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<tr>
<td>The letter of appointment defines the roles and functions of the Board and the</td>
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<td>specific role of each director</td>
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## Board Meeting Management and Procedures

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
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<tbody>
<tr>
<td>Every Board member has been supplied with a Board manual and a copy of standing orders and regulations governing conduct of Board meetings.</td>
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<tr>
<td>Every board member was supplied with a calendar of meetings showing dates of Board meetings, committee meetings etc and key or critical events of the company.</td>
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<td>Board meetings are conducted in a manner that encourages open communication, meaningful participation, and timely resolution of issues.</td>
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<td>Sufficient time is provided during Board meetings for thoughtful discussion in addition to management dialogue.</td>
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<td>Board time is used effectively so that the Board adds value to management.</td>
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<td>Formal meeting and reporting procedures have been adopted by the Board.</td>
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<td>Board members receive timely and accurate minutes, advance written agendas and meeting notices; and clear and concise background material to prepare in advance of meetings.</td>
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<td>All Board members are fully informed of relevant matters and there are never any surprises.</td>
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<tr>
<td>Absenteeism from Board meetings is the exception rather than the rule.</td>
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<tr>
<td>Board meetings are facilitated, but not overtly influenced by the Chairperson.</td>
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<tr>
<td>All Board members are permitted to add items to the meeting agenda.</td>
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<td>All Board members receive detailed Board papers copies of draft minutes and agenda papers in advance.</td>
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<tr>
<td>All proceedings and Resolutions of the Board are recorded accurately, adequately and on a timely basis.</td>
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</tbody>
</table>
### Appointment, Selection, Induction, Training Development, Succession and Removal of Directors

<table>
<thead>
<tr>
<th>Statement</th>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td>The Board is involved with the selection of appointed directors.</td>
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<tr>
<td>The selection process considers any deficiencies in the skills of current Board members</td>
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<tr>
<td>The composition of the Board fairly represents the diversity of stakeholders.</td>
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<tr>
<td>The Board actively encourages good candidates to stand for Board appointment.</td>
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<tr>
<td>New Board members are introduced to their duties with an appropriate induction process.</td>
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<tr>
<td>Board members are introduced to their duties with an appropriate induction process.</td>
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<tr>
<td>Board members understand the extent of their relationship with management and the separation of stewardship and management.</td>
<td></td>
<td></td>
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<tr>
<td>Board members evaluate their individual and overall Board performance formally on an annual basis.</td>
<td></td>
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<tr>
<td>The performance of the Chief Executive Officer is reviewed formally on an annual basis.</td>
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<tr>
<td>Encouragement is given for Board members to continue their study of corporate governance and improve the skills they need.</td>
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<tr>
<td>Directors understand the extent of their personal liability for the affairs of the company.</td>
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<tr>
<td>A succession plan is in place for the Chairperson, Chief Executive Officer, Board members and senior management and is reviewed regularly.</td>
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<tr>
<td>Directors who have not been contributing to the governance of the organization, and are uninterested in improving their performance are asked to terminate.</td>
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<tr>
<td>Where the ethical or professional conduct of any director is called into question such director is suspended pending investigations.</td>
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<td></td>
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<tr>
<td>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.</td>
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</table>
## Board Structure

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td>The Board has a balanced mix of Executive, Non-Executive and Independent Non-Executive Directors.</td>
<td></td>
</tr>
<tr>
<td>The roles of Chairperson of the Board and Chief Executive Officer are separated and held by different persons.</td>
<td></td>
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<tr>
<td>The Board has established and appointed committees with defined terms of reference, composition and reporting requirements. These aspects are formally recorded.</td>
<td></td>
</tr>
<tr>
<td>The Committees have been established and appointed in light of:</td>
<td></td>
</tr>
<tr>
<td>- The need to increase the effectiveness of the Board by utilizing the specialized skills of Board members.</td>
<td></td>
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<tr>
<td>- Need to provide support and guidance to management</td>
<td></td>
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<tr>
<td>- Need to ensure effective and independent professional consideration of issues e.g. audit reports, finance issues, etc.</td>
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<tr>
<td>- The Board has established and appointed: -</td>
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<tr>
<td>- An Executive Committee</td>
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<tr>
<td>- An Audit Committee</td>
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<tr>
<td>- A Board appointment and remuneration committee</td>
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<tr>
<td>The terms of reference of each committee are restricted and defined.</td>
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</tbody>
</table>

## Information and Communication

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td>Every Board member was supplied with all establishment instrument, all legal documents, mission statement, vision and strategy documents of the company on first appointment.</td>
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<tr>
<td>Every Board member receives a copy of the Board manual together with a letter of appointment on first appointment.</td>
<td></td>
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<tr>
<td>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.</td>
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<tr>
<td>Board members are encouraged to discuss matters with members of management after gaining the approval of the Chairperson or the Chief Executive.</td>
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<tr>
<td>The Board received sufficient information from management in an appropriate format as determined by the Board from management.</td>
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<tr>
<td>The Board’s information requirements are communicated to management on a regular basis.</td>
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<tr>
<td>Requested information is received in a timely fashion.</td>
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<tr>
<td>The Board is proactive in developing an effective communication strategy for the company.</td>
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</tr>
<tr>
<td>The Company Secretary advises Board members regularly on matters of governance and the applicable law.</td>
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Appendix IV

CHAIRMAN OF THE BOARD

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

2. Leadership
   - Providing leadership to the Board in planning and direction
   - Representing the Company with the CEO in the community

3. Management Relations
   - Monitoring Company planning and operations
   - Building relationships
   - Guiding strategy
   - Helping define problems
   - Monitoring and evaluating the performance of the CEO and Senior Officers
   - Representing shareholders and Board to management
   - Representing Management to the Board of 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

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
     - Optimising use of the Board’s resource

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

6. Liaison with Stakeholders
   - In conjunction with the CEO, representing the Company to the staff, the public, the media, suppliers and customers.
   - In conjunction with the CEO, representing the Company in developing relationships with government representatives and government agencies.
Draft Summary Form for Evaluation of Chairman of the Board by Board Member and Chief Executive Officer

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

<table>
<thead>
<tr>
<th>1  Shareholder Relationships</th>
<th>Marks</th>
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<tbody>
<tr>
<td>• Manages shareholders relationships and meets with shareholders.</td>
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<tr>
<td>• Actively meets with potential sources of equity and debt capital.</td>
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<tr>
<td>• Manages shareholder meetings effectively and promotes a sense of participation in all shareholders. Promotes shareholder confidence in the Board.</td>
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Comments:

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<tr>
<th>2  Leadership</th>
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<tr>
<td>• Is the Chairman an effective Board leader?</td>
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<tr>
<td>• Does he promote effective participation of all board members in the decision-making process?</td>
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<td>• Does the Chairman promote the image of the company, portraying the requisite leadership in the community?</td>
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Comments:
3 Management Relationships

How effective is the Chairman in:

- Monitoring planning and operations
- Building relationships
- Influencing strategy
- Helping define problems
- Monitoring and evaluation performance of the CEO and senior officers
- Representing shareholders and Board to the management
- Representing management to the Board and shareholders
- Maintaining accountability
- Ensuring succession plans are in place at senior management level

Comments:

4 Managing the Board

How effective is the Chairman in:

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

Comments:
5 **Developing a More Effective Board**

How effective is the Chairman in:

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

**Comments:**

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6 **Relationship with other Stakeholders**

How effective is the Chairman in:

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

**Comments:**

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In your view should the Chairman continue in office? [Yes/No]
Appendix V

INDIVIDUAL DIRECTOR PERFORMANCE

1 Strategic Thought
- Contribution to the strategic planning process
- Ability to contribute at a strategic level in Board debate

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

3 Competence
- Contribution to the Board: strengths, abilities, experience and judgement
- 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

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

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

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 judgement
- Preparedness to keep abreast with latest developments in the sector and in their corporate responsibilities.

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
**Draft Summary Form for Review of Individual Directors Performance**

**Company/Organization:**

**Date of Review:**

Director Details:

Title:  

Surname: First/other names

Date first appointed:

Expected end of term:

Skill area on appointment:

Membership of Board Committee(s)

-  

-  

-  

**Performance Assessment**

1. **Attendance at Meetings**

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

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

(c) Chairperson’s comments on attendance at meetings: e.g.:
   (i) Attends in time and stays for full duration of meeting?
   (ii) Attends briefly
   (iii) Etc
2. **Preparation for Meetings**
How well does the director prepare for meetings?

☐ Outstanding  ☐ Very Good  ☐ Good  ☐ Satisfactory  ☐ Not Acceptable

3. **Participation at Meeting**
What level of effective participation does the director have in meetings:

☐ Outstanding  ☐ Very Good  ☐ Good  ☐ Satisfactory  ☐ Not Acceptable

Chairperson’s comments:

4. **Additional Roles**
Does the director make other contributions (e.g., chair of a Board Committee, completion of special Board assignments)?

Chairperson’s comments:

5. **Personal Attributes**
The Chairperson’s assessment of a director’s attributes with comment, in particular, on the director’s understanding of socio-economic issues facing the community and the business; the level of ethical and moral judgement, preparedness to keep abreast 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 Director's 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
The following list includes both those duties that are legal obligations as well as those which result from Best Practice. This is not a comprehensive list and the Company Secretary may have to use their initiative to ensure that all core duties are fulfilled. The Company Secretary will also have to refer to all relevant legislation.

The Company Secretary will need to fulfil the following duties:

1.1 **Board Meetings**

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

1.2 **General Meetings**

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

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

1.3 **Memorandum & Articles of Association**

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

1.4 **Stock Exchange Requirements**

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

Maintaining the following statutory registers:

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

1.6 **Statutory Returns**

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

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

1.7 **Report & Accounts**

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

1.8 **Share Registration**

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

1.9 **Shareholder Communications**

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

1.10 **Shareholder Monitoring**

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

1.11 **Share and Capital Issues and Restructuring**

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

1.12 **Acquisitions, Disposals & Mergers**

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

1.13 **Corporate Governance**

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

1.14 **Non-Executive Directors**

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

1.15 **Company Seal**

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

1.16 **Registered Office**

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

1.17 **Company Identity**

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

1.18 **Subsidiary Companies**

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

1.19 **General Compliance**

Monitoring and laying in place
procedures which allow for
compliance with relevant
regulatory and legal requirements,
in particular under the Companies
Act, 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.