

CHAPTER 10:31
PUBLIC ENTITIES CORPORATE GOVERNANCE ACT

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ACT

To provide for the governance of public entities in compliance with Chapter 9 of the Constitution; to provide a uniform mechanism for regulating the conditions of service of members of public entities and their senior employees; and to provide for matters connected with or incidental to the foregoing.

WHEREAS section 194 of the Constitution provides as follows, in regard to public entities:

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NOW, THEREFORE, be it enacted by the Parliament and the President of Zimbabwe as follows:—

PART I

PRELIMINARY

1 Short title and date of commencement

(1) This Act may be cited as the Public Entities Corporate Governance Act [*Chapter 10:31*].

(2) This Act shall come into operation on a date to be fixed by the President by statutory instrument.

2 Interpretation

(1) In this Act—

“annual general meeting”, in relation to a public entity, means an annual meeting of the stakeholders of the entity referred to in section 33(3);

“associate”, in relation to a person, has the meaning given to it by subsections (5), (6) and (7);

“board”, in relation to a public entity, means the members of the governing body of the entity, by whatever name called, holding positions comparable to those of the directors of a company;

“board charter” is the document which, in addition to outlining the mission and values of the public entity for which a board is responsible, sets forth how board members will discharge their duties and the standards of conduct to which they will be held in that capacity;

- “board member representing minority interests”, in relation to a company or other entity which is government-controlled but in which one or more other persons have interests, means a member of the entity’s board representing those other persons;
- “chief executive officer”, in relation to a public entity, means the person who, either alone or jointly with one or more other persons, is responsible under the direct authority of the entity’s board for the conduct of the entity’s activities;
- “code of ethics”, in relation to a public entity, is the document outlining the mission and values of the public entity, how employees of the entity are supposed to discharge their duties and resolve problems consistently with the entity’s values, and the standards of conduct to which employees will be held towards each other and the public in their capacity as employees;
- “constitutional Commission” means a Commission established by the Constitution;
- “enabling instrument”, with reference to any public entity, means the instrument (whether or not embodied in a single document) that establishes the entity and governs its functions, powers and procedure, and with reference to—
- (a) a constitutional Commission, includes the Constitution and any enactment governing the Commission’s functions and procedure;
 - (b) a statutory body other than a constitutional Commission, means the enactment by or under which that body is established;
 - (c) a company, means the memorandum and articles of association or other foundational document establishing the company that is filed with the Companies Registry in accordance with Companies Act [*Chapter 24:03*];
 - (d) an entity established under an agreement for a partnership or joint venture between the State and any other person, which entity is declared in terms of subsection (2) to be a public entity, means the agreement establishing that entity;
 - (e) an entity declared in terms of subsection (2) to be a public entity other than one described in the foregoing paragraphs, means the operative, constitutive or foundational document of that entity;
- “executive member”, means a member of the board who is employed by the entity in a managerial or technical capacity;
- “fixed date” means the date fixed in terms of section 1(2) as the date of commencement of this Act;
- “Good Corporate Governance Code” means the National Code on Corporate Governance set forth in the First Schedule;
- “head of the line Ministry” means the Secretary of the line Ministry;
- “head of the Unit” means the head of the Unit referred to in section 5(2);
- “independent member”, in relation to the board of a public entity, means a board member who does not have a pecuniary or material relationship with the entity or an associated person of the entity;
- “line Minister”, in relation to—
- (a) a constitutional Commission, means the Minister or Vice- President responsible for the administration of the Act setting out the Commission’s functions and additionally, or alternatively, its procedures;
 - (b) a statutory body, means the Minister or Vice-President responsible for the administration of the Act governing the establishment of the body;
 - (c) a public entity other than a constitutional Commission or a statutory body—
 - (i) means the Minister or Vice-President who on behalf of the State holds the shares in or otherwise exercises control over the entity; or
 - (ii) where a public officer other than a Minister or Vice-President holds on behalf of the State the shares in or otherwise exercises control over the entity, means the Minister or Vice-President responsible for the administration of the enabling instrument under which the public officer exercises his or her functions;
- “Minister” means the Minister or Vice-President to whom the President may, from time to time, assign the administration of this Act;
- “near relative”, in relation to a member of a board of a public entity or senior staff member of a public entity, means the member’s spouse, child, parent, brother or sister;
- “non-executive member” means a member of the board who does not hold a salaried office in the entity, whether or not he or she is an independent member;

“performance contract” means a performance contract entered into in terms of Part V with a board member of a public entity or with a senior staff member of such an entity;

“public commercial entity” means a company or other commercial entity which is owned or controlled by the State or by a person on behalf of the State;

“public entity” means an entity whose operations or activities are substantially controlled by the State or by a person on behalf of the State, whether through ownership of a majority of shares in the entity or otherwise, and includes—

- (a) a statutory body; and
- (b) a public commercial entity; and
- (c) an entity established under an agreement for a partnership or joint venture between the State and any other person, which entity declared in terms of subsection (2) to be a public entity; and
- (d) any subsidiary of an entity referred to in paragraph (a), (b) or (c);

“regulatory entity” means a public entity established to regulate or supervise a particular area of activity in the public interest;

“Secretary” means the Secretary of the Ministry, or head of the Department or Office, as the case may be, for which the Minister is responsible;

“senior staff member”, in relation to a public entity, means the entity’s chief executive officer and such other members of its staff as may be prescribed or as may be specified by the Unit by written notice to the entity concerned;

“statutory body” means—

- (a) a constitutional Commission; or
- (b) a—
 - (i) body corporate established directly by or under an Act for special purposes specified in that Act; or
 - (ii) board, committee or similar entity which is established directly by an Act for special purposes specified in that Act;

whose members consist wholly or mainly of persons appointed by the President, a Vice-President, a Minister, a Deputy Minister, another statutory body or by a constitutional Commission;

“strategic plan” means a strategic plan of a public entity drawn up in terms of section 22;

“Unit” means the Corporate Governance Unit referred to in section 5(1).

(2) The Minister may, at the request of or in consultation with the line Minister concerned, by notice in the *Gazette*, specify any entity established under an agreement for a partnership or joint venture between the State and any other person to be a public entity for the purpose of this Act.

(3) Where a senior staff member of a public entity is not appointed by the board of the entity, any reference in this Act to the board in regard to the staff member’s appointment, discharge or conditions of service shall be construed as a reference to the person or body that appoints the staff member.

(4) Where this Act requires any document to be kept available for inspection at—

- (a) the office of a line Ministry, a public entity or any other entity, the document shall be kept at the entity’s head office and any provincial office and at any of the entity’s other offices where members of the public might reasonably expect to find the document;
- (b) the office of the Unit, the document may be kept at that office or at any other office or place notified by the Minister by notice in the *Gazette*;

and the document shall also be kept available in electronic form for inspection by members of the public on the website of the entity or the Unit or on such other website as may be prescribed.

(5) Where a person, other than an employee, acts in accordance with the directions, requests, suggestions or wishes of another person, whether or not the persons are in a business relationship and whether or not those directions, requests, suggestions or wishes are communicated to the first-mentioned person, both persons shall be treated as associates of each other for the purposes of this Act.

(6) Without limiting the generality of subsection (5), the following shall be treated as a person’s associate—

- (a) a near relative of the person, unless neither person acts in accordance with the directions, requests, suggestions or wishes of the other;
- (b) a partner of the person, unless neither person acts in accordance with the directions, requests, suggestions or wishes of the other;

- (c) a partnership in which the person is a partner, if the person, either alone or together with one or more associates, controls fifty *per centum* or more of the rights to the partnership's income or capital;
 - (d) the trustee of a trust under which the person, or an associate of the person, benefits or may benefit;
 - (e) a company which is controlled by the person, either alone or together with one or more associates;
 - (f) where the person is a partnership, a partner in the partnership who, either alone or together with one or more associates, controls fifty *per centum* or more of the rights to the partnership's income or capital;
 - (g) where the person is the trustee of a trust, any other person who benefits or may benefit under the trust;
 - (h) where the person is a company—
 - (i) a person who, either alone or together with one or more associates, controls the company; or
 - (ii) another company which is controlled by a person referred to in subparagraph (i), either alone or together with one or more associates.
- (7) For the purposes of subsection (6), a person shall be deemed to control a company if the person, either alone or together with one or more associates or nominees—
- (a) controls the majority of the voting rights attaching to all classes of shares in the company, whether directly or through one or more interposed companies, partnerships or trusts; or
 - (b) has any direct or indirect influence that, if exercised, results in him or her or his or her associates or nominees factually controlling the company.

3 Application of Act

- (1) Subject to subsection (2), this Act shall apply to public entities notwithstanding anything to the contrary in their enabling instruments.
- (2) This Act shall not apply to Ministries and departments of the Government.

4 Act not to affect composition or independence of constitutional Commissions

This Act shall not be construed so as to—

- (a) affect the composition of any constitutional Commission or the appointment of members to or the dismissal of members from such a Commission; or
- (b) compromise the independence conferred by the Constitution on any constitutional Commission or other body.

PART II

CORPORATE GOVERNANCE UNIT

5 Corporate Governance Unit

(1) The Corporate Governance Unit that was established in accordance with the law relating to the Civil Service as a department within the Office of the President and Cabinet shall continue in existence subject to this Act.

(2) The Unit shall be headed by a person of the grade of Permanent Secretary and shall consist of such other members of staff as may be necessary for the performance of its functions, whose offices shall be public offices and form part of the Civil Service.

6 Functions of Unit

(1) The functions of the Unit shall be—

- (a) to provide an advisory and centralised support mechanism for line Ministries to ensure strict compliance by all public entities with the applicable provisions of this Act; and
- (b) to advise line Ministries with regard to the regular evaluation of the performance of public entities and their boards and employees; and
- (c) to advise line Ministries with regard to the drawing up of performance contracts—
 - (i) between the line Ministries and the boards of all public entities under their purview; and
 - (ii) between boards of all public entities and their chief executive officers and other senior members of management;

and

- (d) to oversee the discharge by line Ministries of their responsibility to monitor compliance by boards and senior staff members with the performance contracts referred to in paragraph (c); and
- (e) to establish and maintain up to date a comprehensive directory or database accessible to all line Ministers and boards that will enable them to identify suitably qualified candidates for appointment to boards of public entities; and
- (f) to advise on the provision by line Ministries of programmes for the professional development of board members and senior staff members of all public entities under their purview, including board induction programmes and corporate governance training for board members, chief executive officers and other senior staff members.

(2) In the exercise of its functions, the Unit may differentiate between public entities according to whether they are—

- (a) regulatory entities; or
- (b) commercial entities; or
- (c) non-commercial entities; or

or on any other basis determined by the Unit.

7 Functions of head of Unit

(1) Subject to this Act and any directions given to him or her by the Minister through the Secretary, the head of the Unit shall be responsible for directing, managing and controlling the activities of the Unit and its staff, and ensuring that the Unit carries out, efficiently and effectively, its functions under this Act.

(2) With the approval of the Secretary, the head of the Unit may delegate to any member of the Unit's staff any function conferred or imposed on the head by this Act.

8 Head of Unit may engage consultants

With the approval of the Secretary, the head of the Unit may engage or retain the services of such professionals, consultants and experts as may be necessary for the proper and effective exercise of the Unit's functions.

9 Minister may give Unit policy directions

The Minister may, through the Office of the Chief Secretary to the President and Cabinet, give the head of the Unit such general directions relating to the policy the Unit is to observe in the exercise of its functions under this Act as the Minister considers to be necessary in the national interest.

10 Annual reports of Unit

(1) The head of the Unit shall, not later than the 1st October in each year, submit to the Minister, through the Office of the Chief Secretary to the President and Cabinet, a report on the Unit's activities during the previous calendar year, and the report may, after it is submitted to the Minister and with the leave of the Minister; also be kept available in electronic form for inspection by members of the public on the website of the Unit.

(2) If in the course of a year the Unit has become aware of a contravention of this Act (and in particular of any principle of good corporate governance embodied in the First and Second Schedules), or of a performance contract, and the contravention has not been rectified by the date of completion and delivery of the Unit's annual report, the head of the Unit shall note the contravention in the report (conversely, if the contravention is rectified before such date the report must note the rectification accordingly).

(3) The Minister shall lay a copy of every report submitted to him or her in terms of subsection (1) before the National Assembly on one of the thirty days on which the Assembly next sits after he or she received it.

PART III

APPOINTMENT, TENURE AND CONDITIONS OF SERVICE OF BOARDS OF PUBLIC ENTITIES

11 Appointment of boards of public entities

(1) Whenever a line Minister appoints a member of the board of a public entity, that Minister shall comply with this section as well as the requirements of the entity's enabling instrument:

Provided that this section shall prevail over the enabling instrument to the extent of any inconsistency.

(2) No person shall be appointed as a member of the board of a public entity for a term longer than four years, and the appointment may be renewed for only one further such term.

(3) No person shall be re-appointed to a board if he or she has already served on that board for one or more periods, whether consecutive or not, amounting in the aggregate to eight years.

(4) A person shall not be appointed to the board of a public entity if he or she is a member of two other such boards:

Provided that for the purposes of this subsection, a person who is a member of the boards of—

(a) a public entity that owns or controls another such entity; and

(b) the public entity that is owned or controlled by the entity referred to in paragraph (a);

shall be regarded as being a member of only one board.

(5) Subject to the Constitution and to any enactment governing the conditions of service of persons in the full-time employment of the State, such persons may be appointed to the board of a public entity:

Provided that—

(i) such persons shall not form a majority of the members appointed to any such board;

(ii) no Permanent Secretary of a line or other Ministry shall be appointed to or hold office as a member of any such board.

(6) Members of boards of public entities shall be appointed for their knowledge of or experience in administration, management or any other field which is relevant to the operation and management of the public entities concerned.

(7) A line Minister shall ensure that, so far as practicable—

(a) there are equal numbers of men and women on the board of every public entity for which he or she is responsible; and

(b) all Zimbabwe's regions are fairly represented by the members of the board of every public entity for which he or she is the line Minister; and

(c) the members of the board of every public entity of which he or she is the line Minister have an appropriate diversity of skills, experience or qualifications for managing the entity, including skills, experience or qualifications in the fields of law, accountancy and one or more of the engineering disciplines;

but all appointments to such boards shall be made primarily on the basis of merit.

(8) Where an appropriate directory or database referred to in section 44 ('Regulations') (2)(c) has been established, a line Minister in the process of appointing persons to the board of a public entity must, in addition to canvassing candidates outside such directory or database, have due regard to the selection of candidates listed on such directory or database.

(9) In appointing or terminating the appointment of any member of the board of a public entity, the line Minister concerned must notify the President of his or her intention to make such appointment or effect such termination, and must not act on such intention without the prior endorsement of the President.

(10) Where the enabling instrument of a public entity requires the line Minister to appoint to the entity's board a person who is nominated by some other person or authority, the line Minister shall appoint that person notwithstanding anything to the contrary in subsection (6), (7), (8) or (9),

(11) If the number of members of the board of a public entity falls below the number fixed by any law as a quorum of the board—

(a) the chief executive officer of the public entity concerned shall immediately notify the line Minister, in writing, of that fact; and

(b) the line Minister shall take steps to fill the vacancies on the board within ninety days from the date on which the board's membership fell below a quorum, and if within that period he or she is unable to appoint sufficient members to reach a quorum of the board, he or she shall cause the Unit to be notified immediately of that fact.

(12) Where a line Minister appoints a person to the board of a public entity, he or she shall cause written notice of the appointment to be sent to the Unit without delay, specifying—

(a) the name, address and such other personal particulars of the appointee as the Unit may require; and

(b) the appointee's qualifications; and

(c) the criteria on which the appointee was chosen for appointment; and

(d) whether the appointee is a member of the board of another public entity and, if so, which board; and

(e) whether the appointee has complied with section 37, requiring certain disclosures for the purpose of avoiding conflicts of interest.

(13) The head of the Unit shall ensure that as soon as practicable after a person has been appointed to the board of a public entity, a notice is published in the *Gazette* specifying the person's name, the board to which he or she has been appointed and the duration of the appointment.

(14) Every line Minister shall cause one or more lists to be kept at the offices of his or her Ministry, showing—

- (a) the public entities of which he or she is the line Minister; and
- (b) the particulars referred to in subsection (12) in respect of each member of the boards of the public entities referred to in paragraph (a) of this subsection;

and shall ensure that the list or lists are kept up to date and available for inspection by members of the public at all reasonable times during the Ministry's normal office hours.

12 Remuneration of non-executive members of public entities

(1) For the purpose of ensuring that, so far as is practicable, the remuneration fixed for non-executive members of public entities are—

- (a) fair and appropriate, due regard being had to the members' qualifications and experience and the functions they are expected to perform; and
- (b) reasonably consistent as between different public entities;

the Minister, may formulate standard sitting allowances, provisions for out-of-pocket expenses and other payments or benefits compatible with service as a non-executive board member, which standards shall be applicable to board members of all public entities or an particular class of such entities:

(2) In formulating standards of remuneration for non-executive members of public entities in terms of subsection (1), the Minister shall consult the Minister responsible for finance and the line Ministers concerned and shall pay due regard to—

- (a) the capacity of the public entities concerned to comply with the standards; and
- (b) standards of remuneration applicable to non-executive members of boards of well-managed companies and other entities of similar size that perform similar functions in the private sector; and
- (c) the need to ensure that the public entities concerned carry out their operations economically without sacrificing their efficiency and effectiveness.

(3) The Minister shall not formulate standards of remuneration for non-executive members of public entities that are inconsistent with this Act or the enabling instruments of the public entities concerned.

(4) The Minister may from time to time amend or replace standards of remuneration for non-executive members of public entities, and subsections (1) to (3) shall apply, with any necessary changes, to any such amendment or replacement.

(5) As soon as possible after formulating, amending or replacing any standards of remuneration for non-executive members of public entities in terms of this section, the Minister shall—

- (a) submit the standards or amendment or replacement thereof for the approval of the Cabinet; and
- (b) after obtaining Cabinet's approval, keep a copy of the standards and of any amendment or replacement—
 - (i) at the Minister's offices, where it may be inspected by members of the public, free of charge, at all reasonable times during the Minister's business hours; and
 - (ii) available in electronic form for inspection by members of the public on the website of the Ministry and the Unit.

(6) When fixing the remuneration of a non-executive member, a line Minister or public entity shall observe any standards of remuneration applicable to non-executive members of public entities formulated in terms of this section and may depart from them only with the President's written approval, given after the President has afforded the Minister and the Minister responsible for finance a reasonable opportunity to make any representations on the proposed departure.

(7) The head of the line Ministry shall without delay if approval is given to his or her line Minister by the President in accordance with subsection (6) to depart from applicable standards of remuneration for non-executive members of public entities formulated in terms of this section—

- (a) inform the head of the Unit of that fact and of the particulars of the departure; and
- (b) publish notice of the departure, and the particulars of it, in the *Gazette* and on the website of the Ministry, within thirty days of the departure being approved.

(8) Any contract or arrangement under which a non-executive member receives remuneration or a benefit in excess of an applicable standard fixed in terms of subsection (1) shall be void unless the President has approved it in terms of subsection (6), and if the member has received any remuneration or benefit under such a contract or arrangement he or she shall reimburse the entity or return any benefit, as the case may be, to the extent that it exceeds the applicable standard.

(9) Unless prompt voluntary reimbursement is made of any remuneration or benefit resulting from a contravention of subsection (6), the non-executive member of the public entity concerned shall be subjected to a surcharge levied in accordance with the Third Schedule for the reimbursable amount

13 Conditions of service of executive members of public entities

(1) For the purpose of ensuring that, so far as is practicable, conditions of service fixed for executive members of public entities are—

- (a) fair and appropriate, due regard being had to the members' qualifications and experience and the functions they are expected to perform; and
- (b) reasonably consistent as between different public entities;

the Minister may formulate model service conditions applicable to executive members of all public entities or any particular class of such entities:

(2) In formulating model service conditions in terms of subsection (1), the Minister shall consult the Minister responsible for finance and the line Ministers concerned and shall pay due regard to—

- (a) the capacity of the public entities concerned to comply with the conditions; and
- (b) conditions applicable to members of boards of well-managed companies and other entities of similar size that perform similar functions in the private sector; and
- (c) the need to ensure that the public entities concerned carry out their operations economically without sacrificing their efficiency and effectiveness.

(3) The Minister shall not formulate model service conditions that are inconsistent with this Act or the enabling instruments of the public entities concerned.

(4) The Minister may from time to time amend or replace model service conditions, and subsections (2) to (3) shall apply, with any necessary changes, to any such amendment or replacement.

(5) As soon as possible after formulating, amending or replacing any model service conditions in terms of this section, the Minister shall—

- (a) submit the standards or amendment or replacement thereof for the approval of the Cabinet; and
- (b) after being notified of the Cabinet's approval—
 - (i) transmit a copy of the standards and of any amendment or replacement to the Unit's offices, where it may be inspected by members of the public, free of charge, at all reasonable times during the Unit's business hours; and
 - (ii) keep a copy of the standards and of any amendment or replacement available in electronic form for inspection by members of the public on the website of the Unit.

(6) When fixing the service conditions of an executive member, a line Minister or public entity shall observe any applicable model service conditions formulated in terms of this section and may depart from them only with the President's written approval, given after the President has afforded the Minister and the Minister responsible for finance a reasonable opportunity to make any representations on the proposed departure.

(7) The head of the line Ministry shall without delay if approval is given to his or her line Minister by the President in accordance with subsection (6) to depart from applicable model service conditions formulated in terms of this section, inform the head of the Unit of that fact and of the particulars of the departure.

(8) Any service condition fixed in contravention of subsection (5) shall be void, and, if the member concerned has enjoyed any service condition resulting from that contravention, he or she must reimburse the entity concerned or return to it any property constituting the service condition.

(9) Unless prompt voluntary reimbursement is made of any money or money's worth of a condition of service enjoyed in contravention of subsection (5), the executive member of the public entity concerned shall be subjected to a surcharge levied in accordance with the Third Schedule for the reimbursable amount.

14 Restriction on remuneration of board members of public entities

(1) The Minister, with the approval of the Minister responsible for finance, and after consultation with the line Minister concerned, may by notice published in the *Gazette* specify the amount that may be received, by way of remuneration, allowances and other benefits, by members of the board of any public entity:

Provided that if the line Minister does not respond within thirty days from his or her receipt of a written request by the Minister seeking consultation with respect to the Minister's proposed amounts that may be received by board members by way of remuneration, allowances and other benefits, the consultation shall be deemed to have been undertaken and the Minister may proceed to publish the relevant notice in the *Gazette*.

(2) An amount may be specified for the purposes of subsection (1)—

- (a) as a specific amount or value; or
- (b) as a maximum amount or value; or
- (c) by reference to any other criteria that the Minister considers appropriate.

(3) Notwithstanding any other law, where a notice has been published in terms of subsection (1) fixing an amount to be received by members of any board., no such members shall be paid or given any remuneration, allowance or benefit in excess of the amount specified in the notice:

Provided that a person who, immediately before the notice was published, was being paid or given a higher amount shall be entitled to be paid or given that higher amount for three months after the publication of the notice.

(4) No public entity shall—

- (a) extend any loan or credit to; or
- (b) enter into or facilitate any transaction whose net effect is substantially similar to extending a loan or credit to;

a member of the entity's board or to an associate of a board member

(5) Any—

- (a) board member of a public entity who knowingly authorises a loan, extension of credit or transaction in contravention of subsection (4); or
- (b) board member who knowingly accepts, on his or her own behalf or on behalf of an associate, a loan, extension of credit or transaction in contravention of subsection (4);

shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(6) In addition and independently of the institution of any criminal or civil penalty proceedings, any property of any description obtained by means of an extension of credit, or a loan, or any other such transaction whose net effect is substantially similar to an extension of credit or a loan, made in contravention of this section, shall be deemed to be “tainted property” resulting from the commission of a “serious offence” for the purposes of section 80 (“Civil forfeiture orders”) of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] (No. 4 of 2013), and may be recovered at the instance of the Attorney-General or Prosecutor-General in terms of that section.

(7) No public entity shall pay a member of its board a sitting allowance or other amount in respect of attendance at a meeting unless the meeting has been held and the member has attended it:

Provided that an appropriate amount may be paid to a member who attends at the venue of a meeting which is subsequently postponed or cancelled.

(8) This section shall not limit the obligation of an accounting officer or member of the Civil Service employed in a line Ministry to comply with section 51A (“Separation of roles of appropriate Ministries and public entities”) of the Public Finance Management Act [*Chapter 22:19*] that is, to seek clearance from the Treasury before approving the remuneration or allowance of any member of a public entity.

(9) Unless prompt voluntary reimbursement is made of any remuneration, allowance, benefit or payment made in contravention of subsection (4) or (7), without prejudice to any other remedies that may be available in terms of this Act, the recipient shall be subject to a surcharge levied in accordance with the Third Schedule for the recovery of the amount he or she was paid or benefited from the contravention.

15 Resignation of board members of public entities

(1) Where a board member of a public entity resigns, the head of the line Ministry shall endeavour to ascertain from the member the reasons for his or her resignation, and any findings made by the head of the line Ministry in that regard shall be communicated without delay to the Unit.

(2) Where two or more board members of a public entity resign, whether simultaneously or within a period of one month, the line Minister may conduct an investigation in order to ascertain the reasons for their resignations, and any findings made by the line Minister shall be communicated without delay to the Office of the President and Cabinet.

(3) An investigation in terms of subsection (2) may be conducted as a special investigation in terms of section 41 (“Special investigations”) or in such other manner as may be prescribed or as the President, through the Office of the President and Cabinet, may determine.

(4) A person whose resignation is the subject of inquiry in terms of subsection (1) or investigation in terms of subsection (2) shall answer truthfully to the best of his or her ability all questions that are put to him or her as to the reasons for his or her resignation:

Provided that this subsection shall not be construed as compelling a person to answer any question whose answer may subject him or her to any civil or criminal penalty.

(5) In any case where a head of a line Ministry or a line Minister declines to exercise his or her powers under subsection (1) or (2), the Minister responsible for this Act may, with the leave of the President, do so, after the President has afforded the line Minister a reasonable opportunity to exercise such powers or to make such representations on the matter as the line Minister thinks fit or relevant.

16 Dismissal of board members of public entities

(1) Notwithstanding any provision to the contrary in the enabling instrument of the entity concerned, no board member of a public entity shall be dismissed or required to vacate his or her office unless—

- (a) he or she has been guilty of conduct inconsistent with his or her membership of the entity; or
- (b) he or she has become disqualified for appointment to the board; or
- (c) where he or she was appointed to the board by virtue of having a particular qualification, he or she has ceased to have that qualification; or
- (d) he or she has failed to comply with his or her conditions of service or with the provisions of his or her performance contract; or
- (e) he or she, whether individually or together with other members of the board, has failed to draw up a strategic plan or to comply with its provisions or to attain any material objective set out in it; or
- (f) he or she has been absent, without just cause and without leave of the board or its chairperson, from three or more consecutive meetings of the board;

nor, in any such case, unless the line Minister has been given at least seven days' written notice of the intended dismissal or removal from office.

(2) The head of the line Ministry shall promptly inform the head of the Unit of the dismissal or removal from office of a board member of a public entity.

(3) If the head of the Unit considers that the dismissal or removal from office of a board member of a public entity, of which he or she has been informed in terms of subsection (2) or of which he or she has become aware in the absence of such information, will be unlawful or unjustified, he or she shall without delay inform the Minister who may, if he or she agrees with the head of the Unit, request the line Minister to reconsider the matter.

(4) If the Minister and the line Minister are unable to resolve the question of whether or not a board member should be dismissed or required to vacate his or her office, the Minister shall seek the leave of the President to refer the matter to the Cabinet for a decision.

(5) This section shall not—

- (a) be construed as denying a board member any remedy to which he or she may be entitled in regard to unfair or unlawful dismissal or removal from office;
- (b) apply to the removal from office of a board member representing minority interests.

PART IV

APPOINTMENT AND CONDITIONS OF SERVICE OF SENIOR STAFF OF PUBLIC ENTITIES

17 Appointment of chief executive officers of public entities

(1) Notwithstanding any other enactment, no person shall be appointed as chief executive officer of a public entity—

- (a) for a term longer than five years, which term may be renewed for only one further such term;
- (b) if he or she has already served as chief executive officer of the entity for one or more periods, whether consecutive or not, amounting in the aggregate to ten years;
- (c) unless the appointment is reviewable annually by the entity's board and terminable if, after such a review, the board finds that the appointee's performance has not met the standards laid down in the appointee's performance contract or in any other instrument regulating his or her employment:

Provided that no chief executive officer shall, even if his or her performance has met such standards, be re-appointed after the tenth annual review, unless the President's approval of the re-appointment is obtained.

(2) Notwithstanding any other enactment, the chief executive officer of every public entity shall be appointed by the board of the entity and with the approval of the President.

(3) Before appointing a chief executive officer, the board of a public entity shall—

- (a) publish, in a newspaper circulating in the area in which the public entity concerned conducts its activities, at least two advertisements calling for applications to fill the post of chief executive officer (in this paragraph ‘newspaper’ means a national newspaper or a newspaper circulating in the area where the public entity has its principal place of business); and
- (b) interview the applicants, or such of them as appear to possess the qualifications for the post; and
- (c) select from among the interviewed applicants the person who appears to the board to be most suitable for appointment as chief executive officer,

ensuring that the selection is made primarily on merit while ensuring that, so far as practicable, men and women and all Zimbabwe’s regions are fairly represented in the entity’s management.

(4) The board of every public entity shall ensure that the post of chief executive officer of the entity is never left vacant for more than six months and that, in the event of a vacancy of more than one month—

- (a) the entity’s deputy chief executive officer, if there is one, is appointed to act as chief executive officer; or
- (b) if there is no deputy chief executive officer, a member of the entity’s staff or a board member is appointed to act as chief executive officer;

pending the appointment of a substantive chief executive officer.

(5) As soon as possible after being appointed or re-appointed a chief executive officer must comply with section 37, requiring certain disclosures for the purpose of avoiding conflicts of interest.

18 Appointment of senior staff of public entities

(1) When appointing senior staff members, other than a chief executive officer, the board of every public entity shall ensure that, so far as practicable, men and women and all Zimbabwe’s regions are fairly represented in the entity’s management, but all such appointments shall be made primarily on the basis of merit.

(2) Where the board of a public entity appoints a senior staff member, it shall cause written notice of the appointment to be sent to the line Minister without delay, specifying—

- (a) the name, address and such other personal particulars of the appointee as the Unit may require in terms of subsection (4); and
- (b) the appointee’s qualifications; and
- (c) the criteria on which the appointee was chosen for appointment; and
- (d) whether the appointee has complied with section 37, requiring certain disclosures for the purpose of avoiding conflicts of interest.

and without delay shall send the line Minister a copy of the appointee’s contract of employment with the entity.

(3) The head of the line Ministry shall promptly despatch to the Unit the particulars furnished by the board to the line Minister under subsection (2), including a copy of the appointee’s contract of employment with the entity.

(4) The Office of the President and Cabinet may circulate to heads of line Ministries, the additional personal particulars required for the purposes of subsection (2)(a).

(5) Subject to subsection (6), this section does not derogate from any statutory power conferred on a line Minister to give policy directions to a board of a public entity.

(6) If any action taken by a line Minister pursuant to a power referred to in subsection (5) has the effect of overriding a board’s judgment as to the fitness of any person to be employed by the entity for which it is responsible, and the head of the Unit considers that such action is contrary to any principle of good corporate governance embodied in the First and Second Schedules, the head of the Unit shall express his or her opinion to that effect in writing to the Minister responsible for this Act, who shall, if he or she thinks that the opinion has merit, seek the leave of the President to refer the matter to the Cabinet.

19 Conditions of service of senior staff of public entities

(1) The conditions of service of chief executive officers and other senior staff members of public entities shall—

- (a) be fixed by the boards of the entities concerned at properly constituted meetings; and
- (b) be consistent with the staff members’ performance contracts; and
- (c) specify clearly any terminal benefits to which the staff members are entitled; and
- (d) be recorded fully in the minutes of the meetings at which the conditions are fixed.

(2) For the purpose of ensuring that, so far as is practicable, conditions of service fixed for chief executive officers and other senior staff members of public entities are—

- (a) fair and appropriate, due regard being had to their qualifications and experience and the functions they are expected to perform; and
- (b) reasonably consistent as between different public entities;

the Minister, may formulate model service conditions applicable to chief executive officers and senior staff members of all public entities or any particular class of such entities.

(3) In formulating model service conditions in terms of subsection (2), the Minister shall, through the line Ministers concerned, consult the heads of line Ministries concerned and shall pay due regard to—

- (a) the capacity of the public entities concerned to comply with the conditions; and
- (b) conditions applicable to senior employees of well-managed companies and other entities of similar size that perform similar functions in the private sector; and
- (c) the need to ensure that the public entities concerned carry out their operations economically without sacrificing their efficiency and effectiveness.

(4) The Minister shall not formulate model service conditions that are inconsistent with this Act or the enabling instruments of the public entities concerned.

(5) The Minister may from time to time amend or replace model service conditions, and subsections (1) to (4) shall apply, with any necessary changes, to any such amendment or replacement.

(6) As soon as possible after formulating, amending or replacing any model service conditions in terms of this section, the Minister shall, after obtaining Cabinet's approval, keep a copy of the model service conditions and of any amendment or replacement—

- (a) at the Minister's offices, where it may be inspected by members of the public, free of charge, at all reasonable times during the Minister's business hours; and
- (a) available in electronic form for inspection by members of the public on the website of the Ministry and the Unit.

(7) When fixing the service conditions of a chief executive officer or senior staff member of a public entity, a board shall not, without the line Minister's written approval given in accordance with subsection (9), depart from any applicable model service conditions formulated in terms of this section.

(8) If the line Minister considers that it is appropriate, on the basis of representations made to him or her by the board, to depart from any applicable model service conditions formulated in terms of this section, the line Minister shall inform the President of his or her intention to do so, and shall not give the board approval to depart therefrom without the President's written leave to do so, given after the President has afforded the Minister and the Minister responsible for finance a reasonable opportunity to make any representations on the proposed departure.

(9) The head of the line Ministry shall without delay if approval is given by his or her line Minister in accordance with subsection (8) to depart from applicable model service conditions formulated in terms of this section, inform the head of the Unit of that fact and of the particulars of the departure.

(10) Any service condition fixed in contravention of this section shall be void.

(11) Unless prompt voluntary reimbursement is made of any money or money's worth of a condition of service enjoyed in contravention of this section, the non-executive member of the public entity concerned shall be subjected to a surcharge levied in accordance with the Third Schedule for the reimbursable amount.

20 Restriction on remuneration of senior staff of public entities

(1) The Minister, with the approval of the Minister responsible for finance, and after consultation with the line Minister concerned, may by notice published in the *Gazette*, specify the maximum amounts that may be received, by way of remuneration, allowances and other benefits, by the chief executive officer and other senior staff members of any public entity:

Provided that if the line Minister does not respond within thirty days from his or her receipt of a written request by the Minister seeking consultation with respect to the Minister's proposed amounts that may be received by the chief executive officer and other senior staff members of any public entity by way of remuneration, allowances and other benefits, the consultation shall be deemed to have been undertaken and the Minister may proceed to publish the relevant notice in the *Gazette*.

(2) In specifying the maximum amounts that may be received, by way of remuneration, allowances and other benefits, by the chief executive officer and other senior staff members of any public entity, the Minister shall be guided by the principle that the proportion of such remuneration, allowances and benefits that may be received by all employees of the public entity concerned (including the chief executive officer and other senior staff members) must not in general exceed thirty *per centum* of that entity's revenues or operational budget in the past financial year.

(In this subsection “operational budget” means the detailed projection of all estimated income and expenses based on forecasted revenue during a given period (usually one year), and has particular reference to an entity which is funded to a significant degree by State subventions or other monies not deriving from any revenues generated by it).

(3) Notwithstanding any other law, where a notice has been published in terms of subsection (1), no person to whom the notice applies shall be paid or given any remuneration, allowance or benefit in excess of the amount specified in the notice:

Provided that a person who, immediately before the notice was published, was being paid or given a higher amount shall be entitled to be paid or given that higher amount for three months after the publication of the notice.

(4) No public entity shall—

(a) extend any loan or credit to; or

(b) enter into or facilitate any transaction whose net effect is substantially similar to extending a loan or credit to;

a senior staff member of the entity or to an associate of a senior staff member, except in such circumstances, and on such terms and conditions, as are permitted by conditions of service that are applicable to the member and to all other employees of the entity

(5) Any—

(a) board member of a public entity who knowingly authorises a loan, extension of credit or transaction in contravention of subsection (4); or

(b) senior staff member who knowingly accepts, on his or her own behalf or on behalf of an associate, a loan, extension of credit or transaction in contravention of subsection (4);

shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(6) In addition and independently of the institution of any criminal or civil penalty proceedings, any property of any description obtained by means of an extension of credit, or a loan, or any other such transaction whose net effect is substantially similar to an extension of credit or a loan, made in contravention of this section, shall be deemed to be “tainted property” resulting from the commission of a “serious offence” for the purposes of section 80 (“Civil forfeiture orders”) of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] (No. 4 of 2013), and may be recovered at the instance of the Attorney-General or Prosecutor-General in terms of that section.

(7) Unless prompt voluntary reimbursement is made of any remuneration, allowance, benefit or payment resulting from a contravention of subsection (3) or (4), without prejudice to any other remedies that may be available in terms of this Act, the recipient shall be subject to a surcharge levied in accordance with the Third Schedule for the recovery of the amount he or she was paid or benefited from the contravention.

21 Restriction on terminal benefits payable to executive members and senior staff of public entities

(1) Subject to this section, no public entity shall pay any amount by way of a gratuity or other terminal benefit to a former executive member or senior staff member in respect of his or her service on the entity’s board or the entity, unless the proposed amount has been notified to the line Minister and the Minister responsible for finance and approved or ratified by shareholders or stakeholders at the annual meeting of the public entity concerned that is convened in terms of section 33(3):

Provided that, where the amount is paid in accordance with a scheme or arrangement that has been approved by the line Minister and the Minister responsible for finance, such approval need not be obtained for the payment of that particular amount.

(2) Unless prompt voluntary reimbursement is made of any amount resulting from a contravention of subsection (1), the recipient concerned shall be subjected to a surcharge levied in accordance with the Third Schedule for the reimbursable amount.

PART V

STRATEGIC PLANS AND PERFORMANCE CONTRACTS

22 Strategic plans of public entities

(1) The board of every public entity shall, in accordance with this section, draw up a strategic plan for every public entity for which it is responsible, to—

- (a) set the entity's objectives and priorities for a period of between two and six years, as the board may decide; and
- (b) determine the manner in which the entity is to achieve those objectives and priorities; and
- (c) strengthen the entity's management systems with a view to achieving those objectives and priorities.

(2) A strategic plan shall deal with such of the following matters as are relevant to the entity—

- (a) the core functions of the entity, and the relative importance of those functions;
- (b) key performance indicators by which the entity's performance will be evaluated;
- (c) the structure of the entity's business and financial plan;
- (d) measures needed to protect the entity's financial soundness;
- (e) the principles to be followed at the end of each financial year in respect of any surplus in the entity's revenues;
- (f) where the entity provides any service or conducts any commercial or semi-commercial business, the standards of service to be provided and the relationship between the entity and other business entities;
- (g) the relationship between the State and the entity;
- (h) the exercise of the functions of the line Minister and the board under the entity's enabling instrument;
- (i) any other matter relating to the performance of the entity's functions.

(3) The board of every public entity shall draw up a strategic plan and shall consult the line Minister, the Minister and Minister responsible for finance on all material provisions of the plan and pay due regard to any representations and recommendations the line Minister, the Minister and the Minister responsible for finance may make in regard to the plan.

(4) After approving a strategic plan the board of the public entity concerned shall—

- (a) without delay send a copy of the plan to—
 - (i) the line Minister, who shall lay a copy of the plan before the National Assembly on one of the ten days on which the Assembly sits after the line Minister approves it; and
 - (ii) the Unit; and
 - (iii) the Minister responsible for finance;
 and
- (b) cause a copy of the plan to be kept—
 - (i) at the entity's office, where it may be inspected by members of the public free of charge at all reasonable times during the entity's business hours; and
 - (ii) available in electronic form for inspection by members of the public on the website of the Unit and of the entity.

23 Performance contracts with senior staff of public entities

(1) Upon the appointment of a person as chief executive officer or senior staff member of a public entity, the board of the entity shall require him or her to enter into a written performance contract with the board, in accordance with this section.

(2) A performance contract shall—

- (a) if applicable, contain provisions relating to any matter affecting the efficient performance of the person's duties respecting the public entity concerned; and
- (b) contain provisions—
 - (i) specifying key performance indicators by which the person's performance will be measured; and
 - (ii) prescribing the penalties, including dismissal, suspension and forfeiture of remuneration or other benefits, to be incurred if the person fails to perform his or her duties efficiently in accordance with the contract; and
 - (iii) requiring the person's performance to be evaluated by the board of the entity concerned—
 - A. at least once every six months, in the case of a chief executive officer;
 - B. at such intervals as may be prescribed, in the case of any other senior staff member

(3) Notwithstanding any other enactment, a person shall not assume office as chief executive officer or senior staff member of a public entity unless he or she has entered into a performance contract in terms of this section.

(4) The board of a public entity must without delay transmit—

(a) to the head of the line Ministry a copy of the performance contract with the chief executive officer and a copy of every performance contract with a senior staff member;

(b) to the Unit a copy of the performance contract with the chief executive officer.

(5) Nothing in this section shall be construed as preventing the board of a public entity from entering into performance contracts with employees who are not senior staff members.

24 Review and monitoring of compliance with strategic plans and performance contracts

(1) In this section “review”, in relation to—

(a) a strategic plan, means an evaluation of the degree of compliance and progress (if any) achieved towards attaining the objectives of its strategic plan during the previous year;

(b) a performance contract, means an annual appraisal of the performance of an individual senior staff member who is a party to such contract, as measured against specified key performance indicators and any other benchmarks approved by the Unit.

(2) The board of every public entity shall annually review its current strategic plan and every current performance contract with senior staff members of such entity, and report the results of its review to the line Minister and the Minister

(3) Where the board of a public entity is required by its enabling instrument to submit an annual report to Parliament, the board shall submit the report to its line Minister within three months after the end of the entity’s financial year.

(4) Where a public entity is not required by its enabling instrument to submit an annual report to Parliament, its board shall, within three months after the end of the entity’s financial year, submit a report to the entity’s line Minister outlining the entity’s activities during that financial year.

(5) Together with the reports referred to in subsections (3) and (4), the board of every public entity shall submit to its line Minister—

(a) a copy of the entity’s current strategic plan; and

(b) copies of current performance contracts with the entity’s senior staff members; and

(c) the results of the latest reviews of the strategic plan and the performance contracts conducted in terms of subsection (2); and

(d) such other documents and information as may be prescribed.

(6) A line Minister shall cause every report submitted to him or her in terms of subsection (3) to be laid before the Senate and the National Assembly without delay and in any event within the next ten days on which the Houses sit after he or she received it.

(7) As soon as practicable after laying before the National Assembly the annual report in terms of subsection (5), the head of the line Ministry concerned shall make it available in electronic form for inspection by members of the public on the website of the Ministry and of the Unit.

25 Performance contracts with board members of public entities

(1) Within two months after a person is appointed to the board of a public entity, the line Minister shall enter into a written performance contract with the member, in accordance with this section and any recommendations made by the Unit:

Provided that board members representing minority interests shall not be required to enter into performance contracts in terms of this section.

(2) A performance contract may contain provisions relating to any matter affecting the efficient performance of the member’s duties in relation to the public entity concerned.

(3) Without limiting subsection (2), the following conditions shall apply to every member of the board of a public entity as if they were contained in the member’s performance contract—

(a) in the performance of the functions of his or her office, the member shall at all times—

(i) act honestly; and

(ii) exercise a reasonable degree of care and diligence;

(b) the member, while holding office and thereafter, shall not make improper use of information acquired by virtue of his or her position as a member to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the public entity;

(c) the member shall not make use of his or her position as a member to gain, directly or indirectly, an advantage for himself or herself or for any other person or cause detriment to the public entity.

(4) Notwithstanding any other enactment, if within two months after a member’s appointment to the board of a public entity he or she has not entered into a performance contract in terms of subsection (1), he or she shall thereupon cease to be a member of the board unless he or she establishes that—

- (a) the failure to enter into the contract was attributable to undue delay on the part of the line Minister or any person acting on that Minister's behalf; or
- (b) one or more of the provisions of the contract were so grossly unreasonable that he or she was justified in refusing to sign it.

(5) Copies of every performance contract concluded in terms of this section shall without delay be filed for record at the office of the line Minister concerned and transmitted to the Unit.

(6) If a person, having entered into a performance contract in terms of this section, contravenes a condition referred to in subsection (3) or any other condition of the contract—

- (a) notwithstanding anything to the contrary in the enabling instrument of the public entity concerned, the contravention shall be a ground for removing the member from office;
- (b) whether or not the member has been removed from office, the line Minister or the public entity concerned may by proceedings in a competent court recover from him or her, as a debt due to the entity—
 - (i) the amount or value of any damage or loss suffered by the entity as a result of the contravention; and
 - (ii) the amount or value of any profit or advantage that accrued to him or her or to any other person he or she intended to benefit through the contravention.

(7) Subsection (6) shall not be construed as limiting any other law relating to the criminal or civil liability of a member of a board, and shall not prevent the institution of criminal or civil proceedings in respect of any liability referred to in that subsection.

PART VI

BOARD CHARTERS, CODES OF ETHICS AND NATIONAL CODE OF CORPORATE GOVERNANCE

26 Public entities to honour Good Corporate Governance Code and prepare board charters and codes of ethics

(1) The board of every public entity shall conduct the business and affairs of the entity in accordance with—

- (a) the provisions of the Good Corporate Governance Code, where the entity is a public commercial entity; and
- (b) such of the principles of good governance set out in the Second Schedule as are applicable to the public entity concerned, where it is not a company.

(2) Subject to this Part—

- (a) the board of every public entity shall prepare a board charter;
- (b) the chief executive officer of every public entity shall prepare a code of ethics for the entity;

and shall conduct the business and affairs of the entity in accordance with that charter and code.

(3) A board charter and code of ethics shall incorporate such of the principles set out in section 27 as are applicable to the public entity concerned.

(4) So far as is practicable and appropriate, the board of a public entity and the chief executive officer shall consult the employees of the entity and the general public when formulating a board charter and code of ethics.

(5) The Unit shall provide the board of a public entity and chief executive officer with whatever assistance it can in the preparation of the entity's board charter and code of ethics.

27 Principles and contents of board charters and codes of ethics

Every board charter and code of ethics shall give effect to the following principles—

- (a) the promotion and maintenance of a high standard of professional ethics; and
- (b) efficient and economic use of available resources; and
- (c) the provision of services impartially, fairly, equitably and without bias; and
- (d) responsiveness to the needs of the people of Zimbabwe, including the prompt and sensitive processing of complaints by members of the public with respect to the entity's interaction with them; and
- (e) co-operation with governmental institutions and other public entities; and
- (f) openness and transparency in the internal workings and procedures of the public entity concerned, and in its dealings with the public; and
- (g) the maximising of the human resources of the public entity concerned; and

- (h) commercial viability, in the case of a public commercial entity; and generally shall be directed at ensuring efficiency, effectiveness, responsibility, accountability and honesty in the procedures, operations and activities of the public entity concerned.

28 Approval of board charters and codes of ethics

(1) Having prepared a board charter in terms of section 26, the board of a public entity shall without delay secure the line Minister's approval of the charter before sending it to the Office of the President and Cabinet.

(2) The line Minister may withhold his or her approval of a board charter if he or she considers that any of its provisions—

- (a) contravene this Act or any other enactment; or
- (b) are contrary to the policy of the Government or to the public interest; and in that event the public entity shall without delay alter the code to take account of the line Minister's views.

(3) Having prepared a code of ethics in terms of section 26, the chief executive officer of a public entity shall without delay secure the board's approval of the code before sending it to the Office of the President and Cabinet, which shall transmit the same to the Unit for evaluation.

(4) The board may withhold its approval of a code of ethics if it considers that any of its provisions—

- (a) contravene this Act or any other enactment; or
- (b) are contrary to the policy of the Government or to the public interest;

and in that event the chief executive officer shall without delay alter the code to take account of the board's views.

(5) If on receipt of a board charter and code of ethics the Unit considers that any of its provisions—

- (a) contravene this Act or any other enactment; or
- (b) are contrary to the public interest;

the head of the Unit shall inform the Minister accordingly, whereupon the Minister shall endeavour, by negotiation with the line Minister and (through the line Minister) the board of the public entity concerned, to secure the amendment of the charter or code.

(6) If the Minister fails to secure the amendment of a charter or code in terms of subsection (5), and the Minister is of the opinion that the failure may be detrimental to the business of the entity in question, the Minister shall seek the leave of the President to refer the matter to Cabinet.

29 Amendment of board charters and codes of ethics

The board of a public entity and the entity's chief executive officer may respectively amend the entity's charter and code of ethics at any time, and sections 26, 27 and 28 shall apply, with any necessary changes, to such an amendment.

30 Board charters and codes of ethics to be available for inspection

The board of every public entity shall ensure that a copy of the entity's board charter and codes of ethics are kept—

- (a) at the entity's office, where they may be inspected by members of the public free of charge at all reasonable times during the entity's business hours; and
- (b) available in electronic form for inspection by members of the public on the entity's website.

31 Monitoring of compliance with Good Corporate Governance Code, board charters and codes of ethics

(1) In this section "standard of compliance" in relation to a public entity refers to the level of compliance by the entity with the Good Corporate Governance Code, such of the principles of good governance set out in the Second Schedule as are applicable to the public entity concerned, and the relevant board charter.

(2) Subject to this Act and any other enactment—

- (a) every line Minister is responsible for monitoring compliance by the public entity of which he or she is the line Minister with the Good Corporate Governance Code, such of the principles of good governance set out in the Second Schedule as are applicable to the public entity concerned, and its board charter; and
- (b) every board of a public entity is responsible for monitoring compliance by the employees of the public entity with the entity's code of ethics; and
- (c) the Unit is responsible for overseeing general compliance by public entities with the Good Corporate Governance Code and such of the principles of good governance set out in the Second Schedule as are applicable to the public entities concerned.

(3) In the general exercise of the line Minister's responsibility under subsection (2)(a), or upon a request made in writing to the head of the line Ministry by the Unit to investigate a particular alleged instance of non-compliance that has come to the notice of the Unit (which request must be accompanied by any information at the disposal of the Unit that supports the request), the line Minister may—

- (a) require the board or the chief executive officer of any public entity to supply the line Minister with such information regarding the entity's standard of compliance as the line Minister may reasonably require; and
- (b) send officers of the line Ministry to conduct such inspections and inquiries at the offices of any public entity as the line Minister considers reasonably necessary to assess the entity's standard of compliance.

(4) In any case where a line Minister declines to exercise his or her powers under subsection (3), the Minister responsible for this Act may seek the leave of the President to empower the Unit to do so, after the President has afforded the line Minister a reasonable opportunity to exercise such powers or to make such representations on the matter as the line Minister thinks fit or relevant (if the President gives leave to the Unit to proceed, the Unit shall exercise the powers under subsection (3) as if references to the line Minister and the line Ministry were substituted by references to the Minister and the Unit).

(5) An officer of the line Ministry or of the Unit, as the case may be, may for the purposes of subsection (2)(b) require any board member or employee of the public entity concerned—

- (a) to produce to the officer any documents relating to the entity's standard of compliance that are in the person's custody or under his or her control; and
- (b) to provide the officer with any information relating to the entity's standard of compliance; and
- (c) to give the officer all reasonable assistance in connection with the officer's inspection or inquiry.

(5) A person who—

- (a) provides the line Minister, the Unit or an officer of the line Ministry or Unit (as the case may be) with false information for the purpose of subsection (2) or (4), knowing it to be false or having no reasonable grounds for believing it to be true; or
- (b) without just cause, fails or refuses to answer any question or provide any information or produce any document when required to do so in terms of subsection (2) or (3); or
- (c) hinders or obstructs an officer of the line Ministry or Unit (as the case may be) in the exercise of the officer's duties under subsection (4);

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

32 Application of other codes of corporate governance to public entities

Where a public entity is a company and required to comply with—

- (a) a code of good corporate governance prescribed under the Securities and Exchange Act [*Chapter 24:25*] or any other enactment; or
- (b) the listing rules of any securities exchange;

it shall, to the extent that the requirements or standards concerned are more stringent than those provided for under this Act, comply with such code and rules.

PART VII

CONDUCT OF BUSINESS BY BOARDS OF PUBLIC ENTITIES

33 Meetings of boards of public entities

(1) The chairperson of the board of every public entity shall ensure that the board meets at least once every three months.

(2) Notwithstanding anything to the contrary in the enabling instrument concerned, but subject to the Constitution, a board of a public entity may meet without a quorum for ninety days after the number of members appointed to it ceased to constitute a quorum of the board:

Provided that any decisions reached by the board while its membership does not constitute a quorum shall cease to have effect after the ninety-day period unless they have been ratified by a meeting of the board at which a quorum is present.

(3) At least once a year, the board of every public entity shall convene an annual general meeting, that is to say, a meeting to which—

- (a) representatives of the Unit; and
- (b) the Accountant-General; and
- (c) representatives of the line Ministry; and

- (d) representatives of any minority shareholders in the entity concerned; and
- (e) the Auditor-General; and
- (f) such other persons as may be prescribed;

are invited to attend and discuss the entity's operations and conduct during the previous financial year and its plans for the next financial year, and any other matters of mutual interest.

(4) At least twice a year, every line Minister shall meet the board of each public entity for which he or she is responsible, for the purpose of discussing the entity's conduct and plans, the board's compliance with its strategic plan, and any other matters of mutual interest.

(5) Minutes shall be kept in accordance with section 35 of every meeting under subsection (3) or (4) as if the meeting was a meeting of the board of the entity.

34 Conflicts of interest on part of board members and staff of public entities

(1) If—

(a) a member of a board of a public entity or senior staff member of a public entity—

- (i) being a board member, knowingly acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the board; or
- (ii) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in his or her private interests coming or appearing to come into conflict with his or her functions as a board member or senior staff member of the public entity; or
- (iii) knowingly acquires or holds a direct or indirect pecuniary interest in any matter that is or, to his or her knowledge, is likely to be the subject-matter of a contract between the public entity and any other person; or
- (iv) knows or has reason to believe that any of his or her associates—
 - A. has acquired or holds a direct or indirect pecuniary interest in any matter that (being a board member) is under consideration by the board or that is or, to his or her knowledge, is likely to be the subject-matter of a contract between the public entity and any other person; or
 - B. owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in his or her private interests coming or appearing to come into conflict with his or her functions as a board member or senior staff member of the public entity;

or

(b) for any other reason, the private interests of a board member or senior staff member of a public entity come into conflict with his or her functions as a board member or member of the entity's staff;

the board member or senior staff member shall forthwith disclose the fact to the entity's board.

(2) A member referred to in subsection (1) shall—

- (a) if he or she is a board member, take no part in the consideration or discussion of, or vote on, any question before the board which relates to any interest, property or right referred to in that subsection;
- (b) if he or she is a senior staff member of a public entity, take no part in the entity's dealings in relation to any matter requiring disclosure under that subsection, except on the written instructions of the board of the entity concerned, given after the disclosure of the interest concerned.

(3) No employee of a public entity shall be present when the entity's board discusses his or her conditions of service.

(4) The board of every public entity shall request all senior staff members of the entity to sign, as soon as possible after their first appointment, a document stating that they are aware of and will abide by their obligations under this section.

(5) The chief executive officer of every public entity shall request all members of the entity's board to sign, as soon as possible after their first appointment to the board, a document stating that they are aware of and will abide by their obligations under this section.

(6) Until—

- (a) a senior staff member of a public entity who has been requested to sign the document referred to in subsection (4) has signed the document; or
- (b) a board member of a public entity who has been requested to sign the document referred to in subsection (5) has signed the document;

he or she shall not—

- (c) take part in any business of the board, in the case of a board member; or
- (d) in the case of a board member, receive any remuneration or allowance in respect of his or her membership of the board, or, in the case of senior staff member, receive any remuneration or allowance in respect of his or her employment by the entity.

(7) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

35 Minutes of meetings of boards of public entities

(1) The board of every public entity shall cause minutes of all its meetings, and all meetings of its committees, to be entered in books kept for the purpose.

(2) Minutes referred to in subsection (1) shall record accurately and fully the proceedings at the meetings concerned and all decisions taken at the meetings.

(3) Minutes referred to in subsection (1) which purport to be signed, with the authority of the board or the committee concerned, as the case may be, by the chairperson of the meeting to which the minutes relate or by the chairperson of the next following meeting, shall be accepted for all purposes as prima facie evidence of the proceedings of and decisions taken at the meeting concerned.

(4) The chief executive officer of every public entity shall ensure that a copy of every resolution of the entity's board, signed by the chairperson of the meeting, is sent to the line Minister and the Unit without delay after it has been adopted.

36 Audit of accounts of public entities

Subject to the Public Finance Management Act [*Chapter 22:19*], the accounts of every public entity shall be audited annually by—

- (a) the Auditor-General; or
- (b) a person who is registered as a public auditor in terms of the Public Accountants and Auditors Act [*Chapter 27:12*], appointed by the Auditor-General;

and the Auditor-General or the public auditor, as the case may be, shall submit the audit report to the line Minister, the Minister responsible for finance and the Minister responsible for this Act, as well as to the board of the entity.

PART VIII

GENERAL

37 Declaration of assets by board members and senior staff of public entities

(1) In the interests of transparency and the avoidance of conflicts of interest, as soon as possible after being appointed or re-appointed (and in any event within three months after the appointment or re-appointment) as—

- (a) a member of the board of a public entity, every member of the board; or
- (b) a senior staff member of a public entity, every senior staff member of a public entity;

shall provide the Office of the President and Cabinet with a written declaration listing in full—

- (c) all immovable property which the member or senior staff member owns, leases or in which he or she has any other interest; and
- (d) any item of movable property, exceeding one hundred thousand dollars (\$100 000) or such greater value as may be prescribed, which the member or senior staff member owns, leases or in which he or she has any other interest; and
- (e) any business in which the member or senior staff member has an interest or which he or she plays any part in running; and
- (f) in relation to every associate of the member or senior staff member—
 - (i) all immovable property owned or leased by the associate, or in which the associate has any other interest; and
 - (ii) any item of movable property, exceeding one hundred thousand dollars (\$100 000) or such greater value as may be prescribed, which the associate owns, leases or in which he or she has any other interest; and
 - (iii) any business in which the associate has an interest or which he or she plays any part in running;

and stating in each case the nature of the interest in the property or business concerned.

(2) The part of the declaration referred to in subsection (1)(f) must either be countersigned by the associate concerned, or be endorsed in writing by the member or senior staff member concerned to be true to the best of his or her knowledge and belief.

(3) In addition to the declaration required by subsection (1), every member of the board of a public entity and every senior staff member shall provide the Office of the President and Cabinet with a further written declaration setting out the matters referred to in that subsection—

- (a) on the anniversary of his or her appointment or re-appointment to the board or to the post in question; and
- (b) within two months after ceasing to be a member of the board or ceasing to be a senior staff member

(4) If—

- (a) a member of the board of a public entity or senior staff member refuses to provide the Office of the President and Cabinet with any declaration required by subsection (1) or (3); or
- (b) a member of the board of a public entity or senior staff member thereof intentionally fails to list any property or interest in a declaration provided to the Office of the President and Cabinet in terms of subsection (1) or (3); or
- (c) any question arises as to the omission of any property or interest in a declaration provided to the Office of the President and Cabinet in terms of subsection (1) or (3), whether in the course of the board's or the entity's proceedings or otherwise, for the omission of which the responsible member of the board has no adequate explanation;

the member or senior staff member shall thereupon cease to be a member of the board or (where the contravention relates to subsection (3)(b)) be disqualified for reappointment, or, in the case of a senior staff member, cease to be employed in that or any other capacity in the entity concerned or (where the contravention relates to subsection (3)(b)) be disqualified for re-employment.

38 Responsibilities of State appointees to boards of certain public entities

Every appointee of the State to the board of a public entity referred to in paragraph (b), (c) or (d) of the definition of "public entity" in section 2(1) has an obligation to act in the best interests of the State, that is to say—

- (a) to promote the State's interests and policies in relation to the business or operations of the entity and in accordance with any instructions given by the line Minister, and to solicit such instructions from the line Minister in appropriate cases; and
- (b) to act as a channel of two-way communication between the line Minister and the entity concerned; and
- (c) at all times in the performance of his or her functions as the State's appointee—
 - (i) to act honestly; and
 - (ii) to exercise a reasonable degree of care and diligence; and
 - (iii) to keep the responsible Minister fully and timeously informed of all matters affecting the State's interests in the course of the deliberations of the board of the entity concerned, and in relation to the business or operations of the entity.

39 Implementing manuals

(1) The Unit shall develop, update and make available to public entities one or more manuals in consultation with line Ministries to guide the implementation of this Act, including (but not limited to) the setting of performance management standards by the boards and staffs of public entities, the formulation by boards of strategic plans, board effectiveness, risk management, standard performance contracts for boards, standard forms and procedures, and the like.

(2) Manuals may be specific to named sectors of the economy or the public domain in which public entities operate.

(3) The Minister shall approve every manual for publication, whether as a statutory instrument or otherwise.

40 Special investigations

(1) If a line Minister considers it necessary or desirable to do so, the line Minister may by notice in the Gazette direct that a special investigation be conducted into such matters concerning the operations, dealings, affairs, membership, assets or liabilities of a public entity for which he or she is the responsible Minister, as may be specified in the notice.

(2) A special investigation may take the form, or be inclusive of, a special or forensic audit of the public entity in question.

(3) The line Minister may appoint one or more persons as special investigators, on such terms and conditions as the Minister may specify in the instrument of appointment, to conduct an investigation in terms of this section.

(4) As soon as possible after appointing a special investigator, the line Minister shall notify the appointment in the *Gazette*.

(5) The powers of a special investigator, and the procedure to be followed in a special investigation, shall be as prescribed in section 41.

(6) The line Minister shall give prior written notification of his or her intention to exercise any of his or her powers under this section to the head of the line Ministry, who shall thereupon promptly inform the head of the Unit of the imminent investigation.

(7) A special investigation under this section may be conducted in parallel with or jointly with any other investigation into the affairs of the public entity concerned, whether under the Public Finance Management Act or other enactment:

Provided that—

(a) where the enabling instrument of a public entity makes provision for the special investigation of its affairs, this section shall prevail in a case where there is a possibility of concurrent investigations taking place; and

(b) the President, on the recommendation of the Minister responsible for this Act, may give directions to the line Minister on the consolidation, coordination or co-operation of the work of investigators where concurrent investigations are undertaken into the entity concerned.

(8) On completion of an investigation the special investigators shall report to the line Minister on what action, if any, is required to be taken to remedy any problems that prompted the investigation in the first place or any other problems revealed by the investigation.

(9) The line Minister shall transmit a copy of the special investigator's report to the head of the line Ministry who shall thereupon promptly avail a copy of it to the head of the Unit, together with a plan of corrective action to be taken in relation to the investigated public entity in the light of the recommendations made by the special investigator or special investigators.

(10) If the Minister responsible for this Act has reasonable cause to believe, on the basis of information availed to him or her by the Unit or any other source, that any action or failure to take action in accordance with this section on the part of a line Minister is contrary to any principle of good corporate governance embodied in the First and Second Schedules, the Minister responsible for this Act shall seek the leave of the President to refer the matter to Cabinet, which may itself authorise a special investigation in terms of this section as if it were the line Minister

41 Powers of special investigators

(1) For the purpose of a special investigation under section 40 a special investigator may require any person to produce for examination by the special investigator, at such time and place as may be appointed by the special investigator for that purpose, any deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents which the special investigator may consider necessary for the purposes of the special investigation.

(2) Any deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents which in terms of subsection (1) are produced to a special investigator; may be retained by the special investigator for as long as they may be reasonably required for the special investigation.

(3) Any person who, in terms of subsection (1), produces any deed, plan, instrument, book, record, account, trade list, stock list or document which is not a ledger, cash-book, journal, paid cheque, bank statement, deposit slip, stock sheet, invoice or other book of account may be allowed by a special investigator any reasonable expenses necessarily incurred in producing it or obtaining and producing a copy of it.

(4) A special investigator may in connection with a special investigation, by reasonable notice in writing, require any person whether on his or her own behalf or as the representative of any person, or any person whom the special investigator may consider able to furnish information, to attend at a time and place to be named by the special investigator for the purpose of being examined on oath or otherwise, at the discretion of the special investigator, respecting all transactions or any matters affecting the same, or any of them or any part of them, relevant to the special investigation. Any person so attending may be allowed by the special investigator any reasonable expenses necessarily incurred by such person in so attending.

(5) Where any statement has been made by any person as a result of his or her being examined on oath under subsection (4), such statement shall be recorded in writing and shall be read over to or by the person making it, who, after making such corrections therein as he or she may think necessary, may sign it.

(6) Any person required to attend in terms of subsection (4) shall be entitled to be accompanied by a legal practitioner, accountant or other adviser, and any person making a statement in terms of subsections (4) and (5) shall be furnished with a copy thereof.

(7) If any special investigator engaged in carrying out a special investigation, satisfies a magistrate by statement made on oath that there are reasonable grounds for suspecting that such person has committed an offence against this Act or any other law, the magistrate may by warrant authorise such special investigator and any other officers designated by the special investigator to exercise the following powers—

- (a) without previous notice, at any reasonable time during the day enter any premises whatsoever and on such premises search for any moneys, valuables, deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents;
- (b) in carrying out any such search, open or cause to be removed and opened any article in which he or she suspects any moneys, valuables, deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents to be contained;
- (c) seize any such deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents as in his opinion may afford evidence which may be material to the special investigation;
- (d) retain any such deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents for as long as they may be reasonably required for the special investigation or for any criminal or other proceedings.

(8) Any special investigator engaged in carrying out the provisions of section 40 and this section may, if he or she has reasonable grounds for believing that it is necessary to do so for the purpose of the special investigation—

- (a) at any reasonable time during the day enter any business premises; or
- (b) require any person to produce for its inspection any book, record, statement, account, trade list, stock list or other document; or
- (c) require any person to prepare and additionally, or alternatively, to produce for inspection a print-out or other reproduction of any information stored in a computer or other information retrieval system; or
- (d) take possession of any document or other thing referred to in paragraph (b) or (c) for so long as may be necessary for the purpose of any examination, investigation, trial or inquiry; or
- (e) require any person reasonably suspected of having committed an offence against this Act or any other law or any person who may be able to supply information in connection with a suspected offence against this Act or any other law to give his or her name and address.

(9) Any special investigator authorised in accordance with—

- (a) subsection (7), when exercising any power under that subsection, shall on demand produce the warrant issued to him or her thereunder; or
- (b) subsection (8), when exercising any power under that subsection, shall on demand produce proof that he or she is a special investigator.

(10) Any person whose deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents have been retained in terms of subsection (2) or which have been seized or taken in terms of subsection (7) or (8) shall be entitled to examine and make extracts from them during office hours or such further hours as the special investigator may in his or her discretion allow and under such supervision as the special investigator may determine.

(11) A special investigator is hereby empowered to administer oaths to persons examined in terms of this section. Any person who, after having been duly sworn, wilfully makes a false statement to the special investigator on any matter relevant to the inquiry, knowing such statement to be false or not knowing or believing it to be true, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(12) Any person who—

- (a) falsely holds himself out to be a special investigator carrying out the provisions of section 40 or this section; or
- (b) hinders, obstructs or assaults a special investigator in the exercise of his or her functions in terms of section 40 or this section; or
- (c) wilfully fails to comply with any lawful demand made by a special investigator in the exercise of his or her functions in terms of section 40 or this section;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(13) A special investigator may, in addition to the persons authorised to apply for a warrant under the Interception of Communications Act [*Chapter 11:20*] (No. 6 of 2007), have power to apply for a warrant under that Act.

42 Notification of establishment and dissolution of public entities

(1) The head of a line Ministry shall notify the head of the Unit in writing within thirty days of—

- (a) the formation or establishment of a public entity otherwise than by Act of Parliament, and transmit together with such notification a copy of the relevant enabling instrument;
- (b) the dissolution of a public entity that is not established by an Act of Parliament, or that is dissolved otherwise than by the repeal of its constitutive Act of Parliament, and transmit together with such notification a copy of the relevant enabling instrument;
- (c) any amendment to the enabling instrument (not being an Act of Parliament) of a public entity, and transmit together with such notification a copy of the relevant amendment;
- (d) the particulars of any material change of the ownership or control of a public entity that is not reflected in any amendment of the enabling instrument thereof:

Provided that any question as to whether any such change is “material” shall be referred by the head of the line Ministry to the head of the Unit for determination.

(2) Within sixty days of the fixed date, every head of a line Ministry shall comply with subsection (1) with respect to any existing public entity referred to in paragraphs (a) to (d).

43 Exemptions

(1) The Minister may by notice in writing to the public entity concerned, exempt the entity from any provision of this Act, where the Minister is satisfied, on the basis of representations from the line Minister, that there are compelling reasons for the exemption in view of—

- (a) the nature or size of the entity; or
- (b) any unusual difficulty the entity may encounter in complying with the provision;

and may in similar fashion amend or withdraw any such exemption:

Provided that the line Minister and Minister shall together, no later than thirty days after the end of the financial year of the public entity in question in which the exemption was granted, review the necessity for continuing the exemption and, if needed, amend or withdraw it.

(2) The reason, nature and extent of every exemption in favour of a public entity must be notified in the annual report of the entity immediately following the grant of the exemption.

(3) The head of the Unit shall ensure that a list of all exemptions granted in terms of subsection (1), specifying their terms and conditions and the reason why they were granted, is kept at the Unit’s offices where it may be inspected by members of the public at all reasonable times during the Unit’s business hours. In addition, the list of exemptions shall be kept available in electronic form for inspection by members of the public on the website of the Unit.

44 Regulations

(1) Subject to subsection (3), the Minister may by regulation prescribe anything which by this Act is required or permitted to be prescribed or which, in his or her opinion, is necessary or convenient to be prescribed in order to give effect to this Act.

(2) Without derogating from the generality of subsection (1), regulations made in terms of subsection (1) may provide for—

- (a) induction programmes and programmes to enhance the efficiency and effectiveness of board members;
- (b) the standard remuneration for civil servants serving as board members;
- (c) the establishment of one or more directories or databases of potential candidates for appointment to boards;
- (d) the qualifications and experience required for appointment as a senior staff member of any public entity or class of public entities, and the procedures to be followed in such appointments;
- (e) measures, including training programmes, to enhance the efficiency and effectiveness of senior staff members of public entities;
- (f) the disclosure of remuneration, allowances and benefits paid to board members and senior staff members of public entities;
- (g) the recovery of amounts paid unlawfully by public entities to their board members and senior staff members;
- (h) the establishment of committees by boards of public entities and the responsibilities and functions of such committees;

- (i) reports to be submitted by boards or chief executive officers of public entities to the Unit or to their line Ministers;
- (j) the stakeholders or classes of stakeholders that may be invited to annual general meetings for the purpose of section 33(3)(f);
- (k) measures for safeguarding the confidentiality of, and securing authorised access to, declarations of assets by board members and senior staff of public entities;
- (l) the circumstances in which the Secretary to the Treasury is empowered to recover by means of a surcharge raised under the Third Schedule from a public entity or from persons who are in the employment of a public entity, or are members of its board, or who were in such employment or were such members, any public resources (as defined in that Schedule) that have been misused, lost or destroyed by the public entity or its employees, agents or board members;
- (m) the regular rating of public entities for their corporate governance and the publication of such ratings and the criteria by which the entities are rated;
- (n) penalties for contraventions of the regulations:

Provided that no such penalty shall exceed a fine of level fourteen or imprisonment for a period of five years or both such fine and such imprisonment.

(3) Before making regulations in terms of subsection (1) the Minister shall consult all line Ministers whose public entities will be affected by the regulations.

45 Amendment of First and Second Schedules

- (1) Subject to subsection (2), the Minister may by statutory instrument amend—
 - (a) the First Schedule in order to reflect any changes made to the National Code of Corporate Governance Zimbabwe, and in so doing may, after consultation with line Ministers, specify that any part of the Code (as amended or not) shall be binding on public entities or any class thereof as if enacted by way of regulations;
 - (b) the Second Schedule in order to—
 - (i) extend the application or improve the efficacy of codes of good governance; or
 - (ii) give effect to generally accepted standards of good corporate governance.
- (2) The Minister shall not publish a statutory instrument in terms of subsection (1) unless—
 - (a) he or she has given not less than two months' notice in the *Gazette* and in one or more newspapers circulating generally in Zimbabwe, of the substance of the proposed amendment and has paid due regard to any comments and suggestions he or she may have received from members of the public regarding the proposal; and
 - (b) the National Assembly has passed a resolution approving the amendment

46 Savings and transitional provisions

(1) Within two months after the fixed date, the chief executive officer of every public entity shall provide the Unit, in writing, with the following particulars—

- (a) in regard to all the members of the entity's board—
 - (i) their names and addresses; and
 - (ii) which of them are executive members and which are independent members; and
 - (iii) the dates on which they were first appointed to the board and the dates on which their current terms of office expire; and
 - (iv) their terms and conditions of service, in particular their current remuneration, allowances and benefits;
- (b) in regard to himself or herself and employees of the entity concerned holding office on the next two levels of management below the level of chief executive officer—
 - (i) their names and addresses; and
 - (ii) the dates on which they were first appointed to their current positions and, where applicable, the dates on which their current terms of office expire; and
 - (iii) their terms and conditions of service, in particular their current remuneration, allowances and benefits;

and the line Minister shall ensure compliance with this subsection.

(2) The term of office of a person who, on the fixed date, was a board member, chief executive officer or senior staff member of a public entity shall not be renewed or extended—

- (a) except on terms and conditions compatible with this Act; or
- (b) in the case of a board member, unless his or her continuation in office would be consistent with section 11 ("Appointment of boards of public entities"); or

- (c) in the case of a chief executive officer, unless his or her continuation in office would be consistent with section 17 (“Appointment of chief executive officers of public entities”); or
 - (d) in the case of a senior staff member other than a chief executive officer, unless his or her continuation in office would be consistent with section 18 (Appointment of senior staff of public entities”).
- (3) Where, on the commencement date, a person holds office as chief executive officer of a public entity and has held that office—
- (a) for more than ten years, his or her term of office shall end six months after the fixed date unless—
 - (i) under his or her service conditions it ends sooner; or
 - (ii) the board, with the approval of the line Minister, appoints him or her for one more term of office, which term begins on the date of the re-appointment;
 - (b) for less than five years, his or her term of office shall end five years after his or her initial appointment, unless under his or her service conditions it ends sooner.
- (4) Notwithstanding any other enactment or anything in the conditions of service of the member concerned, a head of a Ministry who, on the fixed date, was a board member of a public entity may continue to serve as a member for two months after the fixed date, after which, if he or she is still the head of the Ministry, he or she shall cease to be a member.
- (5) Within six months after the fixed date, the board of every public entity shall—
- (a) draw up a strategic plan for the entity in accordance with section 22 (“Strategic plans of public entities”); and
 - (b) enter into performance contracts with the chief executive officer and all senior staff members of the entity in accordance with section 23 (‘Performance contracts with senior staff of public entities’).
- (6) Every member of the board of a public entity or senior staff member thereof in office or employed on the fixed date shall provide the Office of the President and Cabinet with the written declaration referred to in section 37(1) within two months of the fixed date (and sections 37(2) and (3) apply to that member accordingly) unless the member has earlier ceased to be a member for any reason.
- (7) Within six months after the fixed date, the responsible Minister of every public entity shall enter into performance contracts with the members of the entity’s board in accordance with section 25 (‘Performance contracts with board members of public entities’).
- (8) A person who—
- (a) provides the Office of the President and Cabinet or an officer of the Unit with false information for the purpose of subsection (1)(b), knowing it to be false or having no reasonable grounds for believing it to be true; or
 - (b) without just cause, fails or refuses to answer any question or provide any information or produce any document when required to do so in terms of subsection (1)(b);
- shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

FIRST SCHEDULE (Sections 21, 31 and 45)

NATIONAL CODE OF CORPORATE GOVERNANCE OF ZIMBABWE

CHAPTER I

APPLICATION OF THE CODE AND DERIVATIVES

1. This Code applies to all business entities regardless of the manner and form of their incorporation or establishment and whether the business entity is in the public or private sector or it is non-profit making. There are however certain entities which require a sector approach to corporate governance. Accordingly, codes which derive from the main principles of this Code are encouraged and should be developed.

2. Special sectors, such as the banking and financial services sector, partnerships, trusts and small to medium enterprises, should have specific codes of their own which take a sector approach to corporate governance.

3. The sector-based codes supplement and add value to, and should be read together with, this Code.

4. If a provision of a sector-based code is inconsistent with any principle of this Code then the principle of this Code prevails to the extent of that inconsistency.

5. Small to medium businesses, including family-owned businesses, constitute a special sector which requires special focus. Accordingly special principles and best practice recommendations for this sector should incorporate the provisions of the current legislation on small to medium enterprises and lift the bar on corporate governance above that prescribed in legislation.

6. The public sector has its own framework of governance which has been in existence since November 2010. It is recommended that most of the provisions of this framework should be enacted into law so as to ensure its enforcement. In regard to this sector the enactment into law of the framework will be a shift from the “comply or explain” basis of corporate governance to the “comply or else” strategy.

7. Other sectors deserving special consideration will be considered as part of a review of this Code or any derivative code.

PART II

OWNERSHIP AND CONTROL

Preamble

8. In a company, shareholders provide risk capital which the management controls under the leadership of a Board of Directors. There must be a functional balance of power among these three groups for the company to prosper and for all the stakeholders to derive benefit.

OWNERSHIP

Principles

9. Corporate power should not be concentrated in one person or in a small group of persons because this will impact negatively on focused, effective and ethical corporate leadership and may result in corporate failure.

10. Corporate power, represented by the right to vote on a one share one vote basis, must always be aligned with economic rights. Any misalignment must be justified and be approved by the shareholders.

Recommendations

11. The right to vote should be extended to all shareholders.

12. Full, timely and transparent disclosure should be made in the annual reports regarding the exercise of corporate power.

13. The Board the managers and the majority shareholder must respect the rights of minority shareholders.

CONTROL

Principles

14. The ultimate authority of any company is its annual general meeting or extraordinary general meeting of shareholders, where they exercise their rights in terms of the statutes of the company and the law.

15. Shareholders in general meeting have the power to make business decisions concerning the company and to take any action which they deem appropriate for the protection and development of the company

16. A shareholders' meeting is a forum where the board and the management inform the shareholders about the company's operations, management, administration and achievements and gives the shareholders the opportunity to participate in formulating strategies for the company.

17. The shareholders, the board and the management of the company protect and promote the interests of the company and its stakeholders.

18. Nominee shareholders should disclose the beneficial owners of the shares upon request by the relevant company or regulatory authorities.

Recommendations

19. The company's managers and employees should be given the opportunity to own shares in the company through appropriate share ownership schemes as may be approved by the shareholders in general meeting.

20. The community in which a company operates should benefit from its operations.

21. Shareholder relations should, where applicable, be governed by written shareholder agreements which specify, among other things, the purchase price of the shares, the purchasing preferences, the exercise of voting rights and mechanisms for resolving disputes and conflicts of interest. In the case of State contracts there has to be compliance with the legislation enacted in terms of section 315 of the Constitution in relation to joint-venture contracts for the construction and operation of infrastructure and facilities and concessions of mineral and other rights.

21. Shareholder agreements must be written in a simple language and made available and accessible to all shareholders and relevant regulating authorities.

23. The company must conduct its business in a manner that best serves the interests of the shareholders, including minority shareholders and other stakeholders of the company.

24. A major or majority shareholder should not be involved in the day-to-day management of the company, but if such involvement is inevitable then, as may be appropriate, the involvement should be regulated by a clear agreement and where applicable, the agreement's terms and conditions should be approved by shareholders in a general meeting.

25. Shareholders should be given reasonable and transparent access to relevant records which must ordinarily be available to them but without compromising commercially sensitive information whose disclosure is not in the best interests of the company.

26. The notice convening a stakeholders' meeting must be given to all shareholders in sufficient time to allow them enough time to formulate their positions on the agenda and consult with other persons who will attend the meeting or discuss the agenda with them.

27. A shareholders' meeting must be convened at a place and on a date and at a time which makes it possible for all shareholders to attend the meeting. The meeting should be convened by giving at least twenty-one days' notice or such other period as may be specified by law. The greater the complexity of the issues to be considered at the meeting and the wider the dispersion of the shareholders, the more time should be given.

28. The notice must contain full details of the registration process and sufficient information to enable shareholders to decide whether they will attend the meeting and how they will participate in the discussions.

29. Greater use of electronic devices or other facilitative instruments, such as web casting, e-mails, electronic and print media and proxy voting, should be encouraged.

30. Meetings of shareholders should be conducted in a simple and inexpensive manner. The shareholders should be given sufficient time to prepare adequately for the meeting and to contribute to the discussions. At a meeting shareholders should be allowed to request for the adjournment or postponement of the meeting if matters of great complexity are under consideration.

31. A list of persons authorised to participate in a shareholders meeting and their contact details must be given to all shareholders to enable shareholders to analyse possible voting patterns and position themselves accordingly.

32. Documents which are important, such as a summary of the company's strategic plan, reports on the company's performance indicators and growth prospects, management practices and policies pursued by the board, reports on analyst briefings, including positive and negative media reports, should be made

available to all shareholders in good time to give them adequate time to prepare for the shareholders meeting.

33. The information and reports given to shareholders for the purpose of a shareholders meeting must be organised in a manner which allows for easy co-relation of the information or reports to specific agenda items and which facilitates a thorough review of the agenda items.

34. Agenda items must be clear and simple and leave no room for ambiguity.

35. Chairpersons of committees of the Board should attend shareholders meetings to respond to issues which relate to their areas of jurisdiction or competence and to assist the chairperson of the Board to answer any questions.

36. The quorum of a shareholders' meeting must be defined in order to ensure reasonable participation by all classes of shareholders. Voting rules must be simple and available to all shareholders.

37. Minutes of shareholders' meetings should be prepared in a simple way and must be sufficiently detailed to communicate the discussions which took place, the resolutions adopted and dissenting views expressed by the participants.

38. The procedures for holding annual general meetings should not be unnecessarily expensive or complicated and should ensure equitable treatment of all shareholders.

39. Voting rules, especially rules on voting by proxy, must be clear; objective and simple.

40. A proxy should vote according to the wishes of the beneficial owner of shares in the company.

41. A block voting system should be adopted at shareholders' meetings convened to elect directors. Listed companies which are more than thirty percent owned by one person should adopt a block voting system. Rules for implementing such a system should be incorporated in the articles of association.

42. Voting caps are inimical to corporate democracy and should only be permitted in circumstances where the approach where the approach is justified and has been approved by the Board.

43. Absentia voting methods, such as voting by e-mail or fax, should be encouraged provided that the procedures and processes are clearly formulated to avoid abuse.

44. Procedures and mechanisms which make it possible for minority shareholders to object to a majority decision and which enable them to refer conflicts between them and controlling shareholders to arbitration, should be established.

45. Dilution of voting rights must not be permitted unless authorised by a resolution passed by a majority of all shareholders.

46. Where minority shareholders are not represented on the Board, they must be given the right to formally present their views on critical issues for consideration by Board provided that they cumulatively hold at least ten percent for the company's shares.

47. Brief curriculum vitae of every director for election or re-election should accompany the notice of the meeting appearing in the annual report.

48. Any anti-takeover measures or strategies must be approved by shareholders at a meeting held for that purpose.

49. When a merger or takeover occurs, minority shareholders should be given the opportunity to sell their shares at market value.

50. Ownership by any one person of shares in excess of thirty-five percent of the issued ordinary shares of a company should, where appropriate, trigger a buy-out offer in which all shareholders must be treated equally.

51. A company's memorandum and articles of association must comply with the law and best practice principles in this Code.

PART III

BOARD OF DIRECTORS AND DIRECTORS

Preamble

52. A company is a legal fiction, but the law permits it to do things which natural persons can do. A company acts through natural persons, mainly the Board of Directors which is the governing and controlling body of a company. To achieve the company's goals and objectives, the directors must possess certain qualities, play certain roles and perform certain functions and duties.

ROLE AND FUNCTION OF THE BOARD

Principles

53. The Board of Directors should provide effective corporate and entrepreneurial leadership.

54. The leadership of the Board must be based on—
- (a) ethics, professionalism and good morality;
 - (b) the notion that strategy, risk, performance and sustainability are inseparable;
 - (c) prudent and effective controls which make it possible for risks to be assessed and managed properly;
 - (d) complete compliance with, and respect for, applicable laws, especially the Bill of Rights as set out in the Constitution and adherence to non-binding rules, codes and best practice standards;
 - (e) the recognition that the best interests of the company and its stakeholders must always be promoted.

Recommendations

55. The Board should provide leadership by—
- (a) formulating and implementing business rescue procedures and other turnaround strategies as soon as the company becomes financially distressed;
 - (b) setting the company's strategic aims and ensuring that the necessary financial and human resources are in a place for the company to meet its objectives and review management performance;
 - (c) appointing an independent non-executive chairperson who does not double up as chief executive officer of the company and, where the chairperson is also the chief executive officer, disclosing that fact in the annual report, together with the reasons therefor;
 - (d) establishing procedures for appointing and dismissing the chief executive officer of the company and putting in place a proper framework for the appointment of other executives;
 - (e) framing and implementing a code of ethics, morality and professionalism for the company, its employees, management and board members; and
 - (f) being accountable to all shareholders and other stakeholders of the company and treating them equally
56. The Board should have a charter setting out its role and functions, which include the following—
- (a) determining the company's purpose, vision, mission and values;
 - (b) setting strategies for achieving the company's purpose;
 - (c) setting parameters for exercising leadership, enterprise, integrity and good judgement;
 - (d) ensuring that procedures, policies and practices are established and implemented;
 - (e) approving, monitoring and evaluating the implementation of strategies, policies, procedures and business plans;
 - (f) identifying key risks and key performance indicators of the company;
 - (g) ensuring that technology and systems used by the company are adequate to run its business viably;
 - (g) establishing proper succession plans for Board members, the chairperson, executive director and senior members of management;
 - (h) regularly assessing the company's performance and effectiveness and that of individual directors and the chief executive officer;
 - (i) accounting in the annual report for the directors' collective and individual performance at least once a year;
 - (j) monitoring on a continuous basis the company's solvency and ability to pay its debts as they fall and making necessary and reasonable interventions in this regard.

CONDUCT AND RESPONSIBILITIES OF THE BOARD AND DIRECTORS

Principles

57. In the discharge of its role and functions every Board must conduct itself with honesty and integrity and, above all, must always act in the best interests of the company. When acting in the best interests of the company, directors should consider the interests of all shareholders and other stakeholders.

58. The Board must correct corporate misdemeanours as and when they are detected in order to ensure that the corporate goals are achieved and the integrity and reputation of the company, its shareholders and other stakeholders are protected.

Recommendations

59. The charter referred to in paragraph 56 should set out the Board' responsibilities, which include that every director—

- (a) has time and energy for , and commitment to, the company by attending a minimum of seventy-five percent of Board and Board committee meetings, all annual general meetings and all-

stakeholders meetings, and assisting the chairperson in answering questions raised at such meetings;

- (b) is knowledgeable about the financial, social and political environment in which the company operates;
- (c) is in a position to make informed decisions;
- (d) acts independently and that his or her independence is constantly judged, assessed and monitored in accordance with this Code;
- (e) possesses, to the extent possible, the requisite skills and knowledge in relation to Information Communication Technology (ICT) and supportive equipment.

60. The Board should ensure that—

- (a) it obtains independent professional advice when necessary;
- (b) confidential matters of the company are treated as such and are not divulged to anybody without its authority;
- (c) procedures and systems on the governance of information, knowledge and experience are established to act as checks and balances;
- (d) the performance of the company's management is monitored and evaluated against set targets, complemented by an appropriate reward system in order to attract and retain talent;
- (e) the company is ICT compliant in terms of requisite skills and knowledge and supportive equipment;
- (f) the company's accounting and financial reporting systems are sound;
- (g) the company's risk management measures and financial controls are properly supervised;
- (h) the company's systems, procedures and policies are in place to resolve conflicts of interests among and between directors, management, shareholders, the company and other stakeholders;
- (i) corporate governance in relation to the company is properly monitored;
- (j) the company is not only a good corporate citizen but is seen to be one;
- (k) every Board member is given an opportunity to disagree with fellow members where necessary;
- (l) the company's major shareholders and other stakeholders are identified and a clear policy on communicating with and relating to them is formulated;
- (m) the annual activity report of the company is submitted to the shareholders' meeting for its adoption.

DUTIES OF DIRECTORS

Principles

61 Directors have legal duties of good faith, loyalty, care, skill and diligent in the discharge of their functions. They also have duties which are conscience-based and reflect their culture and values.

62. The duty of good faith and loyalty requires that directors should honestly apply their minds and act in the best interests of the company at all times, ensure that there is no conflict between their interests and those of the company, and that they are loyal to the company and its business.

63. The duty of care requires that directors should act with the degree of care expected of a reasonable person in charge of the assets of an incapacitated person, that they are good stewards of the company's assets, and that they apply their minds honestly in making decisions concerning the company's business.

64. The duty of diligence requires that directors should understand the information given to them and come to any decision-making forum fully prepared and informed about the issues to be discussed. In this regard directors must study, understand and implement every duty imposed upon them by law or by best practice.

Moral Duties

65. The moral duty of conscience requires that directors should act with intellectual honesty and independence of mind in the best interests of the company and in accordance with the principle of inclusive stakeholder approach to corporate governance.

66. The moral duty of character requires that directors should be of, and show good character in whatever they do for the company and that they are always candid and possess the courage to do the right thing.

67. The moral duty of hard work requires that directors should always see personal benefits as being by-products of hard work.

68. The moral duty of patriotism and survival in the face of adversity requires that directors should work for the good of the country and be resourceful, innovative and creative especially when faced with difficult circumstances.

69. The moral duty of inclusivity requires that directors should take an inclusive approach by embracing the legitimate interests and expectations of the company and all its stakeholders in decision making and strategy.

70. The moral duty of common sense requires that directors should have the ability to listen and to find their way in the world of business.

71. The moral duty of speaking the truth all the time requires that a director should not only always speak the truth but should also show that he or she believes in what he or she says and acts on it.

72. The moral duty of courage requires that a director should overcome fear in order to do the right thing; that he or she should take a position even if it makes him or her unpopular and that he or she should create an ethical environment even when faced with opposition from superiors and subordinates.

73. The moral duty of conviction requires a director to show commitment and passion in whatever he or she does.

74. The moral duty of creativity requires a director to inspire and generate trust in others; think about others and their concerns before thinking about himself or herself; trust in his or her intuition and rely on it as much as he or she relies on his or her intellect and experience and embrace change, and uncertainty.

75. The moral duties enumerated above find expression in the concept of *Umntu (Hunhu)* which is expressed as *Umunhu, Ngumuntu* meaning "I am because you are, and you are because we are".

Recommendation

76. The Board of directors should not engage in selective corporate disclosure.

77. The Board should not permit a situation to develop whereby the company is shunned by investors because of a failure of the directors to meet the legal and moral standards set out in this Code.

78. Directors should bear in mind that there is a strong link between law and best practice codes in respect of the principles of good governance.

QUALITIES, MEMBERSHIP CRITERIA AND QUALIFICATIONS OF BOARD MEMBERS

Principles

79. The Board should be composed of persons with good leadership qualities and core competences required by the company, such as accounting or financial expertise, legal skills, business and managerial experience, industry knowledge and strategic planning experience.

Recommendations

80. The charter referred to in paragraph 56 should set out core qualities, membership criteria, and qualifications of Board members including the need for the appointment of Board members who—

- (a) are mature and have such minimum qualifications as may be prescribed by the rules of the company;
- (b) have integrity, good character, high credibility, probity, assiduousness, knowledge, and skill and experience required to bring an independent judgement to bear on issues of strategy, performance, resource mobilisation and utilisation, key appointments and standards of conduct;
- (c) are up to date with tax obligations;
- (d) have the academic qualifications required to understand and provide corporate leadership and enhance shareholder value, preferably a relevant academic degree or other equivalent qualification as may be prescribed by the Board;
- (e) have the natural appetite for knowledge, self-improvement and the capacity to define and achieve corporate goals in a timely manner;
- (f) have the necessary emotional and social intelligence and the capacity to do what is right and good, an attitude premised on an inner value base which includes maximising benefits and minimising harm to others;
- (g) have an internal disposition that inclines towards justice before profit and truth before sales and a personality that makes principle rather than popularity the arbiter of morality;
- (h) have competence in their field of endeavour and permanent commitment to quality performance and a spirit of dedication to achieving the greatest good;
- (i) have the ability to take into account the interests of all who may be affected by the business decisions which they make before making them;
- (j) always meet their own needs and requirements in ways which do not compromise the needs and requirements of others;
- (k) indulge in thinking that leads to the making of good choices; and

- (l) have not been convicted of a serious criminal offence by a court of law.

DIRECTORS, SELECTION AND APPOINTMENT

Principles

81. All directors should be appointed through a formal, robust and transparent process that reflects broadly the diversity of the shareholders.

82. It is the Board's responsibility to recommend directors for appointment and shareholders' responsibility to elect and appoint them.

83. No election or dismissal of any director should be left to the whims of the controlling shareholder.

84. Where appropriate, a nomination committee should be established with clear terms of reference on how to invite and recommend the nomination of new directors by the Board and their election or re-election by shareholders.

Remuneration

85. The charter referred to in paragraph 56 should set out policies and procedures for the selection and appointment of directors and provide that—

- (a) the procedures for appointing Board members should be a matter for the Board as a whole, assisted by the nomination committee where appropriate, but subject to shareholders approving and electing or reelecting the directors;
- (b) the Board should determine the experience and personal traits of its non-executive directors in relation to its size and the specific nature of its activities;
- (c) the Board should determine the nature of information which may be disclosed by its prospective members including the identity of the proposed candidates, their levels of education, positions held over the last five years and at the time of nomination or election, the nature of their relations with the company, membership of other company boards, the nature of their relations with major business partners of the company and shareholders and their financial standing;
- (d) opinions and views of all shareholders should always be taken into account when recommending persons for election. In this regard, block voting should be adopted to protect the rights of minority shareholders;
- (e) the Board should ascertain whether potential candidates are competent to contribute to decision-making and that they have the necessary knowledge and experience for filling any knowledge gaps on the Board as well the integrity, skills and capacity to discharge the duties of the Board;
- (f) the appointment of directors should be by written agreements between them and the company and should incorporate a code of conduct of directors and set out the remuneration payable to and the terms of the insurance cover provided for directors;
- (g) the major or majority shareholders should not use their power to elect to the Board persons who do not meet the criteria set by the Board and approved by the shareholders;
- (h) where a nomination committee is established it should be chaired by an independent non-executive director, be wholly composed of independent non-executive directors and its tasks should include—
 - (i) determining the number of executive and non-executive posts required;
 - (ii) recommending selection of Board members on the basis of established and approved criteria only;
 - (iii) considering the number of other directorships held and the experience of the proposed candidates;
 - (iv) considering the skills and past history of the proposed candidates;
 - (v) checking if the proposed candidates are fit and proper persons to act as director with reference to their personal and commercial references, their ages and community standing;
 - (vi) consideration and recommendation of the nomination, appointment and election of the proposed candidates from a list of persons proposed by blocks of minority shareholders holding a minimum of ten percent and a maximum of fifteen percent in the company, each block being entitled to a seat on the Board;
 - (vii) considering and recommending the nomination, appointment and election of candidates from a list of no more than three candidates proposed by institutional investors, trusts or pension funds which together have a combined minimum shareholding of fifteen percent and deserving a seat on the Board;

- (viii) considering the demands of other relevant stakeholders who may require Board representation and advising on the best methods of nominating, selecting, appointing or electing their candidates to take up the seats.

BOARD COMPOSITION, STRUCTURE, NUMBER OF MEMBERS AND INDEPENDENCE OF BOARD

Principles

86. A Board should be appropriately composed and structured so as to ensure that power is evenly balanced and that it is exercised in the best interests of the company.

87. The Board should ideally have a majority of non-executive members, the majority of whom should be independent as defined in this Code.

88. Where a major shareholder is directly represented on the Board a formal agreement which defines the shareholder's rights, duties and obligations should be concluded between the shareholders and the company and approved by a special resolution passed by elected Board members and shareholders present at a meeting convened for that purpose.

Recommendations

89. The tenure of the chairperson of the Board should be confirmed annually by the Board. The chairperson should not double up as the company's chief executive officer, but where this is unavoidable—

- (a) the appointment must be approved at the annual general meeting;
- (b) a senior lead director should be appointed by Board members to perform roles, duties and functions as may be defined by the Board in a formal appointment contract;
- (c) a majority of the Board members must be independent non-executive directors.

90. A Board should—

- (a) not be determined by a single individual or a group of individuals; and
- (b) have an appropriate balance between executive and non-executive directors and not less than sixty percent of board members should be non-executive directors and the majority of non-executive directors should be independent.

91. The roles of the chairperson of the Board and chief executive officer should be kept separate and where the two roles are merged, special reasons for combining the roles should be disclosed and the safeguards provided in this Code must be implemented.

92. The Board should, where appropriate through committees composed only of independent non-executive members or in which such members are in the majority. It should have in place properly formulated terms of reference which include the scope of authority, composition, roles, responsibilities and duties of the committees. The essential committees are Audit Committee, Risk Committee, Dispute Resolution Committee and Remuneration Committee.

93. A proper balance should be maintained between continuity of Board membership and the sourcing of new ideas through the appointment of new members.

94. Every Board should consider whether its size, diversity and demographics make it effective. Diversity relates to academic qualifications, technical expertise, relevant industry knowledge, experience, nationality, age, race and gender

95. When determining the number of directors to serve on the Board, the collective knowledge, skills, experience and resources required for conducting the business of the Board should be considered.

96. Factors that determine the number of directors to be appointed include—

- (a) the evolving circumstances, the needs of the company and the nature of its business;
- (b) the need to have sufficient directors to structure Board committees appropriately;
- (c) potential difficulties of raising a quorum with a small Board;
- (d) the need to comply with regulatory requirements.

97. As a minimum, two executive directors should be appointed to the Board, being the chief executive officer and the director responsible for finance. This will ensure that there is more than one point of contact between the Board and management. As a minimum, three non-executive directors should be appointed to the Board, the majority of them being independent.

98. Board members should not serve on more than six boards at the same time and should this threshold be exceeded, the Board members concerned should give good and sufficient reasons for that and demonstrate ability, availability and capacity to discharge their roles, functions and duties in ways which best serve the interests of the company, its shareholders and other stakeholders. Such reasons must be subjected to scrutiny and approved by a resolution of at least fifty percent of shareholders present at a meeting convened for that purpose.

99. A person should not be appointed as chairperson of more than four boards and should this threshold be exceeded, then the person concerned should offer good and sufficient reasons for that and demonstrate ability; availability and capacity to discharge their roles, functions and duties in ways which best serve the interests of the company, its shareholders and other stakeholders. Such reasons must be subjected to scrutiny and approved by a resolution of at least sixty percent of shareholders present at a meeting convened for that purpose.

100. A director of a subsidiary company should not be appointed to sit on the Board of the holding company except as an alternate director for succession planning purposes.

101. Chief executive officers should not trade Board positions with other chief executive officers.

102. A Board should be composed and structured in such a way that it excludes the influence of shadow directors, that is to say, persons who are not Board members but are somehow able to give instructions to directors.

103. Directors appointed for their professional skills, such as lawyers, accountants or engineers, should not be allowed to provide professional services to the company through their firms unless good reasons confirming convergence of interest, and not conflict of interest, exist. Such reasons must be approved by a resolution passed by a minimum of sixty percent of Board members present at a meeting convened for that purpose and disclosed fully in the annual report.

104. Any term exceeding nine years in aggregate for independent non-executive directors should be subjected to a particularly rigorous review by the Board with special focus on performance and any factors which may impair their independence. The review must also take into account the need for refreshing the Board by making new appointments.

105. An independent non-executive director may serve more than twelve years if, after an independent assessment by the Board, there are no relationships or circumstances likely to affect the director's independence and decision making, such as impairment of character or judgment by long service. A statement to this effect should be included in the integrated annual report.

106. A Board member appointed as a special representative or by virtue of employment status or representation ceases to be a member when such special status ceases.

107. The size of the Board must be such that it allows for swift, prudent and fruitful discussion and decision making and the efficient composition of committees.

THE INDEPENDENT NON-EXECUTIVE DIRECTOR

Principles

108. Independent non-executive directors are appointed to serve the Board and Board committees, to balance corporate power and to protect the interests of the company, minority shareholders and other stakeholders.

109. Independent non-executive directors should be independent in character and judgment and should not have relationships or circumstances which are likely to affect, or appear to affect their independence.

Recommendations

110. Independent non-executive directors should remain independent throughout their tenure as Board members. The Board must assume the responsibility of determining, annually, whether a Board member is independent and fully disclose its findings to the annual general meeting.

OFFICERS OF THE BOARD

Main Principles

111. There should be a clearly accepted and delineated division of responsibilities at leadership levels of the company to ensure that a proper balance of power and authority exists and that no single individual has unfettered powers of decision making.

112. The chairperson of the Board should be chosen for his or her impeccable professional reputation, ample managerial experience, undisputed integrity, steadfastness, a clear commitment to the interests of the company and the unconditional trust he or she enjoys from shareholders and members of the Board.

113. The chairperson of the Board should not perform the role of the chief executive officer but if he or she does so, the principles enunciated in this Code should apply.

Recommendations

Chairperson

114. The Board as a whole must annually evaluate the independence of its chairperson.

115. The Board should weigh any factor affecting the independence of the chairperson against the need to preserve effective continuity in Board leadership.

116. The chairperson's roles and functions should be formalized and, in doing so, factors such as the life cycle or circumstances of the company, the complexity of the company's operations, the qualities of the chief executive officer and management team, and the skills and experience of each Board member, should be taken into account.

117. Retired chief executive officers should not be appointed as board members or chairpersons of Boards until three years have passed from the end of their tenure as executive directors and, even then, they may only be considered for appointment as non-executive members or chairpersons after they have been adjudged to be independent.

118. A person must not chair more than four boards of listed companies but where he does so, the Board and shareholders must give their approval and, in the case of shareholders, by a resolution passed at a meeting properly convened for that purpose.

119. The chairperson of the Board should—

- (a) not be a member of the audit committee or its chairperson;
- (b) not chair the risk or remuneration committee but may be a member of it;
- (c) be a member of and may chair the nomination committee;
- (d) provide leadership to the Board but without adversely affecting the collective responsibility of the Board and the individual duties of its members;
- (e) set the ethical tone for the Board;
- (f) identify and participate in the selection of Board members with the assistance of a nomination committee where it exists, and oversee the formal succession plan of Board members, chief executive officers and other senior management officers, such as chief finance officer;
- (g) formulate together with the chief executive officer and the company secretary, the annual plan of work of the Board on the basis of agreed objectives and play an active part in setting the agenda of Board meetings so as to have a clear understanding of the objectives of the meetings;
- (h) preside at Board meetings and ensure that the time devoted to the meetings is used productively;
- (i) encourage collegiality among Board members but without inhibiting candid debate and creative tension in Board meetings;
- (j) effectively manage conflicts of interest of Board members in ways which ensure that directors concerned recuse themselves from participating in discussions and decisions in which they are conflicted unless they are required to provide specific input during any such discussions;
- (k) -ensure that the information in the Board pack is couched in simple and understandable language;
- (l) act as the link between the Board and management, and particularly between the Board and the chief executive officer;
- (m) carry on friendly relations with Board members and management while at the same time maintaining an arm's length relationship with them;
- (n) ensure that complete, timely, relevant, accurate, honest and accessible information is placed before the Board to enable the Board to make informed decisions;
- (o) monitor how the member of the Board work together and how individual directors perform and interact at meetings;
- (p) know the strengths and weaknesses of each Board member and take appropriate measures to address any weaknesses without losing sight of human frailties;
- (q) develop the skills and enhance the confidence of directors by encouraging them to speak and actively contribute at Board meetings;
- (r) build and maintain the trust and confidence of all stakeholders in the company;
- (s) uphold rigorous procedures in preparing for meetings by studying and discussing with the chief executive officer the information packs distributed to participants and providing appropriate input.

120. The chairperson of the Board should—

- (a) ensure that all directors are made aware of their roles, responsibilities and duties through a tailor-made induction programme buttressed by a formal programme of continuing professional education;
- (b) ensure that good relations are maintained with the company's major shareholders and its strategic stakeholders;
- (c) ensure that decisions made by the Board are executed timeously and effectively;

- (d) ensure that Board members operate as a team but without discouraging creative tension between them which allows for effective debate;
- (e) ensure that chairpersons of committees attend and actively participate at annual and extraordinary general meetings and stakeholder inter-face meetings;
- (f) liaise with chairpersons of Board committees on matters of interest;
- (g) be a good listener and the last person to enter the debate and the last person to express a view on an issue;
- (h) meet with directors in the absence of the chief executive officer and senior management at least twice a year to discuss performance issues concerning management and the business;
- (i) know his or her rights and duties when chairing the Board, shareholder and other stakeholder meetings;
- (j) interact with stakeholders of the company on a need to know basis;
- (k) meet with the chief executive officer or the chief finance officer or the company secretary, or all three of them together, before Board meetings to discuss important issues and agree on the agenda;
- (l) put in place a succession plan for his or her position to ensure continuity and timely refreshment of talent and leadership;
- (m) discourage intellectual naivety and encourage intellectual honesty among and between members in Board discussions, reasoning and decision-making.

CHIEF EXECUTIVE OFFICER AND OTHER OFFICERS

Principles

121. The chief executive officer or managing director is in charge of the day to day running of the company. The Board may delegate certain of its roles, functions and duties to the chief executive officer on the basis of established benchmarks and performance indicators.

122. The collective responsibility of management vests in the chief executive officer who bears the ultimate responsibility for all decisions and management functions.

Recommendations

123. The chief executive officer and other senior executives of the company should be appointed by the Board and be accountable to it.

124. The Board must ensure that the chief executive officer and the chief finance officer are appointed in terms of written contracts of employment.

125. The chief executive officer's remuneration should be based on individual competence and should also be performance and incentive based, and such remuneration should be approved by shareholders in a resolution passed by a majority of the members present at a meeting convened for that purpose.

126. The appointment of the chief executive officer must be based on merit; skill, leadership qualities, and experience without losing sight of the need to promote gender equality.

127. The chief executive officer should not be a chairperson or director of any company outside the group without the written approval of the Board.

128. The chief executive officer or members of senior management must not chair the boards of subsidiary companies but may be non-executive directors thereof.

129. A chief executive officer of a subsidiary company should not sit on the Board of the holding company.

130. The chief executive officer and senior managers should ensure that—

- (a) the day to day business of the company is properly managed within the approved framework of delegated authority, company strategies, policies, budgets and that business plans are timeously developed and presented to the Board for its consideration and approval and Board decisions are effectively implemented;
- (b) the company has a corporate culture that promotes sustainable ethical practices, encourages individual integrity and fulfils the social responsibility objectives and imperatives of the company;
- (c) the company complies with all relevant laws;
- (d) the company applies all recommended best practice standards, failing which they must explain the failure to the Board and stakeholders of the company.

131. The chief executive officer should—

- (a) serve as the chief representative of the company and its business;
- (b) recommend or appoint the executive team and ensure proper succession planning;

- (c) develop and recommend to the Board yearly business plans and budgets that support the company's long term strategies;
- (d) develop and recommend to the Board yearly business plans and budgets that support the company's long term strategies;
- (e) monitor and report to the Board on the performance of the company and its conformance with compliance imperatives;
- (f) establish an organizational structure appropriate to the achievement of the company's strategies;
- (g) set the tone, provide ethical leadership and create a good ethical environment for management and the general workforce.

COMPANY SECRETARY

Principles

132. A company secretary plays a pivotal role in the corporate governance of a company. He or she is the gate-keeper of good corporate governance and for this reason the Board should appoint a suitably qualified, competent and experienced company secretary capable of maintaining a cordial but arm's length relationship with the members of the Board at the personal level.

133. A company secretary must be appointed where it is mandatory to do so. In other cases, consideration should be given to appointing a company secretary where the size of the company and the demands of its business require it.

134. The power to appoint and remove a company secretary vests in the Board or other authority depending on the nature and size of the company or entity concerned.

135. The Board should be aware of the company secretary's duties and should empower the company secretary to properly fulfill those duties.

136. The company secretary should not be a director of the company unless the nature and size of the company or entity makes it necessary and the law permits it to be done.

Recommendations

137. A company secretary should strive to achieve the realization of good corporate governance principles by, among other things—

- (a) assisting the nomination committee by ensuring that the procedure for the appointment of directors is complied with;
- (b) assisting in the proper induction, orientation, ongoing training and education of directors and assessing their individual training needs and those of executive managers in their fiduciary and other governance responsibilities;
- (c) assisting and guiding directors in appreciating their role, responsibilities and duties, and discharging them in the best interests of the company;
- (d) providing a central source of advice to the Board and within the company on matters of good corporate governance, law and any developments or changes thereto;
- (e) having a direct channel of communication with the chairperson and being available to provide comprehensive practical support and advice to chairpersons of the Board and Board committees;
- (f) ensuring that—
 - (i) the charter of the company and the terms of reference of the Board and its committees are kept up to date;
 - (ii) sittings of the Board and Board committees are properly recorded and that minutes are circulated with the approval of the relevant chairperson;
 - (iii) Board resolutions are implemented timeously and effectively;
 - (iv) Board members are collectively and individually evaluated annually;
 - (v) his or her role, functions and duties are assessed by the Board annually and any amendments thereto are effected;
- (g) being responsible for the proper compilation and timely circulation of Board packs;
- (h) assisting the chairpersons of the Board and Board committees in drafting yearly work plans;
- (i) obtaining appropriate responses to or feedback on specific agenda items and matters arising from meetings of the Board committees;
- (j) raising any matters that may warrant the attention of the Board.

Principles

138. Board members, collectively and individually, should have clearly defined methods of discharging their roles, responsibilities and duties in order to achieve the company's goals.

139. The Board must have such number of meetings as will ensure that critical issues are properly ventilated, discussed and resolved and that decisions taken are implemented in a timely manner.

140. The Board must ensure that procedures, practices and systems are established to enable the Board to make informed decisions and implement them timeously.

Recommendations

141. The Board should adopt methods of work, systems, procedures and processes which are designed to achieve effective interaction, decision making and implementation.

142. The Board should meet as frequently as is practicable and, in any event, it must meet at least once every quarter of the company's financial year.

143. Board members should attend all Board meetings and should, in any event, attend not less than seventy-five percent of the of Board meetings in a year and seventy-five percent of the committee meetings of which they are members.

144. The quorum of every Board or committee meeting must reflect a fair and reasonable representation of both non-executive and independent non-executive directors.

145. A board meeting should be held within one month after the date of the annual general meeting. At such meeting Board committees should be established and their chairpersons elected.

146. The Board must establish, develop and implement proper procedures, processes and systems for conducting its meetings including procedures for passing resolutions in exceptional circumstances.

147. Board meetings are best conducted in face to face discussions but written opinions and written voting preferences of absent members should be taken into consideration and should be counted towards the quorum.

148. A resolution on matters which the shareholders regard as important should be passed by personal votes.

149. Board members should be notified of the date, place and time of a meeting, its format and agenda well in advance to allow them sufficient time to consider and form an opinion on the agenda.

150. Methods of delivering the Board pack and other important company documents and information to Board members should be the most convenient and acceptable to the members having regard to efficiency, reliability, secrecy and cost of delivery.

151. The agenda should be structured in such a way that it separates formal items from substantive items which require detailed submissions, debate and the passing of resolutions.

152. Important matters should be submitted to the relevant Board committee for its preliminary consideration and guidance together with terms of reference which it must act upon.

153. The Board should determine what company decisions require the passing of special resolutions apart from those prescribed by law as requiring such a resolution.

154. Board minutes and, where appropriate, verbatim reports of meetings of the Board must be kept.

155. Persons who are not members of the Board may be invited, on notice to the chief executive officer, to attend board meetings to answer questions and provide insight into any issue as the Board may consider necessary and on terms and conditions specified in the invitation.

156. A Board member may individually meet with the company secretary, members of senior management and any shareholder but must notify the chairperson of the Board and the chief executive officer before the meeting so that the chairperson or the chief executive officer may attend if they so wish.

157. The chief executive officer and/or the company's or senior management must draw up a formal schedule of matters specially reserved for its decisions in order to ensure that the direction and control of the company remains firmly in its hands.

158. The Board must adopt efficient methods of informing and briefing the chairperson of the Board and, where necessary, the Board members prior to Board meetings.

159. The information needs of the Board must be well defined and regularly monitored.

160. All Board members should satisfy themselves that, objectively speaking, they have all material facts before participating in making any decision for the company.

Principles

161. The remuneration of Board members and members of senior management should be fair in order to enhance their motivation, reliability, commitment and effectiveness, promote the creation of value for the company and advance its short and long term interests.

162. The Board should promote a culture that supports enterprise and innovation and which is complemented by appropriate short term and long term performance-related rewards that are fair and achievable.

163. The size and mix of the remuneration package of Board members and members of senior management should attract, retain and motivate persons of high calibre, relevant experience and appropriate skills, but must be affordable to the company and based on individual company performance, and should take into account stakeholder interests.

Recommendations

164. A remuneration committee should be established to assist the Board in setting and administering remuneration policies that are in the company's short and long term interests.

165. The remuneration committee should be composed of independent non-executive Board members, including the Board chairperson who shall not chair it. The committee should be given clear terms of reference which indicate the scope of its authority, role, functions and duties, and how it relates to the Board.

166. A significant portion of executive directors' remuneration must be linked to corporate and individual performance and designed to promote the long term success of the company.

167. The level of remuneration of non-executive directors should reflect the time dedicated by them to the company's business, their level of commitment, role responsibilities, duties, and experience.

168. The Board, and where appropriate, the remuneration committee, should ensure that—

- (a) the mix of fixed and variable remuneration, in cash or shares and other benefits meets the company's needs and strategic objectives;
- (b) all benefits, including pension benefits, are justified, correctly valued and suitably disclosed;
- (c) non-executive director's fees, including committee fees, reflect the responsibilities borne by the directors throughout the year. Such fees should comprise a base fee which varies according to the level of expertise of the director and an attendance fee;
- (d) the chairperson and other non-executive directors do not receive share options or other incentive awards linked to the share price or corporate performance but, where these awards are made, they must be approved by a special resolution of at least sixty percent of the shareholders present at a meeting convened for that purpose;
- (e) non-executive directors' fees are approved by shareholders in advance and not by ratification;
- (f) remuneration levels reflect the respective contribution of senior executives and executive directors and that rigorous methods are used in selecting an appropriate comparative group when determining remuneration levels;
- (g) annual bonuses clearly relate to the performance of executives against yearly objectives consistent with long term value for shareholders;
- (h) multiple performance measures are used to avoid manipulation of results or poor business decisions, for example, linking targets to bonuses, ensuring that performance drivers are not duplicated and striking a balance with the need to reward success over the long term;
- (i) employment contracts do not commit the company to pay any benefits on termination arising from executives' failure to carry out their duties;
- (j) payments or benefits to executives on termination meet the requirements of a balanced and fair remuneration policy;
- (k) there is a contractual link between variable pay and performance and that in the event of early termination, there is no automatic entitlement to bonus fees or share-based payments;
- (l) disciplinary procedures provide for a shorter notice period than that stated in the contract will apply without any entitlement to compensation for the shorter notice period;
- (m) employment contracts do not allow for compensating executives for severance arising from a change of control of the company;
- (n) incentive schemes are regularly reviewed to assess their continued relevance and impact on shareholder value and to guard against unjustified windfalls or inappropriate gains from the operation of share-based incentives;

- (o) participation in share incentive schemes should be restricted to employees and executive directors and should have appropriate limits for individual participation which should be disclosed;
- (p) all share based incentives including share options and restricted or conditional shares, whether settled in cash or with shares, should align the interests of executives with those of shareholders and should link rewards to performance over the long term;
- (q) highly leveraged incentive schemes are used with care because of their potential excessive cost and risk to the company;
- (r) share incentive awards and options are granted for periods which reduce the risk of anticipated outcomes that arise out of share price fluctuations or activity by adopting a single performance measurement period;
- (s) the price at which shares are issued under a scheme should not be less than the mid-market price or volume weighted average price;
- (t) the rules of share option schemes provide that share or option awards are not granted within a closed period and that no backdating of awards is permitted;
- (u) options in share option schemes are not exercisable before the end of three years or after ten years from the date of grant;
- (v) the vesting of share incentive awards is conditional upon fulfilling performance conditions and the vesting is done on a sliding scale to avoid an “all or nothing” vesting profile;
- (w) when an individual voluntarily leaves the company before the end of the service period or is dismissed for good cause, any share-based awards which have not vested, lapse.

BOARD MEMBER EVALUATION

Principles

169. The Board should—

- (a) regularly assess its performance and effectiveness as a whole and the performance and effectiveness of Board committees, individual directors and the chief executive officer;
- (b) set and achieve objectives for the continuous improvement in the quality and effectiveness of its performance, including its performance during a crisis;
- (c) undertake a formal and rigorous annual evaluation of its own performance, and that of its committees and individual directors, which should be externally facilitated every three (3) years;
- (d) regularly review the degree to which its objectives are achieved and the quality of its decisions;
- (e) monitor and appraise on an annual basis the performance and effectiveness of the company, its chairperson, heads of internal audit, company secretary, and directors, collectively and individually, and its service providers; and
- (f) review the performance and effectiveness of individual directors.

170. The evaluation of the Board and the company’s performance should be based on objective criteria.

171. Non-executive directors should take the lead in appraising the Board chairperson’s effectiveness and performance. -

172. The chairperson should act on the results of the performance evaluation and address the strengths and weaknesses of the Board, its committees, individual directors, the chief executive officer, the company secretary, head of internal audit and its service providers.

173. Individual and collective evaluation of board members should aim to determine whether each director continues to contribute effectively and demonstrate commitment to the company, its shareholders and other stakeholders.

174. The chairperson should regularly review the performance of individual directors and, where necessary, agree with each one of them on their training and developmental needs.

Recommendations

175. The Board, through its nomination committee, should establish fair and transparent standards and procedures for the assessment of its performance and effectiveness.

176. The annual report of the company must reflect the results of the evaluation of the Board and its committees.

177. As part of assessing its effectiveness the Board should, through its nomination committee, regularly review the required mix of skills and experience in its composition and other factors, such as its diversity.

178. The evaluation of individual directors should—

- (a) take into account their contribution to the Board as measured against their duties;
 - (b) be led by the chairperson, through the nominations committee, or by an independent service provider; and
 - (c) be carried out on notice to them advising that they will be individually assessed and of the criteria and procedures to be used during the assessment.
179. The evaluation of the chairperson of the Board requires that—
- (a) an independent non-executive director of the Board or a senior independent non-executive director or independent service provider should be appointed by the Board to lead the process; and
 - (b) the chairperson should not be present when his or her performance is discussed by the Board.
180. The evaluation of the chief executive office and other executive directors should be—
- (a) carried out at least once a year by the chairperson of the Board or by the nomination committee;
 - (b) an evaluation of their performance as both directors and executives of the company;
 - (c) a guide to the remuneration committee in determining their remuneration.
181. The evaluation of the Board and its members requires that—
- (a) data for their performance assessment and appraisal should, among other things, come through questionnaires prepared by an outside service provider known for its competence, experience and skill;
 - (b) data should be collected through self-review and peer review procedures under the supervision of the company secretary;
 - (c) the analysis of the data and findings thereon should be done by a neutral service provider.

DIRECTOR DEVELOPMENT

Principle

182. The induction and ongoing training and development of directors should be conducted through formal and adequately resourced processes for them to deliver the desired results.

Recommendations

183. The formal induction programme should—
- (a) be established to familiarize incoming directors with the company's operations, its business environment and sustainability issues relevant to its business;
 - (b) introduce the directors to members of senior management and apprise them of their respective duties and responsibilities;
 - (c) meet the specific needs of the company and individual directors;
 - (d) enable new directors to make a maximum contribution as quickly as possible.
184. Ongoing director development should be encouraged in the same manner that continuing professional development is encouraged for other professionals.
185. Directors should receive regular briefings on matters relevant to the business of the company, changes and risks, laws applicable to the business of the company, accounting standards, policies and the environment in which the company operates.
186. Incompetent or unsuitable directors should be removed through a process led by the chairperson.

CHAPTER 4

GOVERNANCE OF RISK

Preamble

187. Businesses leaders should understand risk and how it can be measured, eliminated or mitigated. Risk management systems on an enterprise-wide basis should be independently assured for effectiveness in goal delivery.

RISK MANAGEMENT

Principles

188. The Board should ensure that principal risks are timeously identified or detected and managed in order to mitigate or reduce damages and losses to the company.
189. The Board should establish an efficient and effective system for the day to day supervision of the company's financial and business operations.
190. The Board must ensure that—
- (a) risk assessments are performed on a continuous basis;

- (b) a framework methodology is established to increase the likelihood of anticipating unpredictable risks;
- (c) management considers and implements appropriate risk responses;
- (d) risk monitoring is carried out continuously by the risk management committee and management.

191. The company's risk management policy and plan should cover—

- (a) how risks are timeously identified and evaluated including methods and procedures on how management responds to them;
- (b) details of the range and type of risk control measures which may be put in place to prevent or mitigate the identified risks;
- (c) details of how the risk management policy and plan is reviewed from time to time to take account of changes in the control environment of the company's business.

192. The Board should receive assurances regarding the effectiveness of the risk management processes.

193. The nature and extent of internal controls of a company depend on its size and complexity and are informed by a cost benefit analysis.

Recommendations

194. The Board should—

- (a) determine the levels of risk tolerance and the nature and extent of significant risks it is willing to embrace in achieving its strategic objectives;
- (b) determine whether or not it is desirable to establish a risk management committee to assist it in carrying out its risk related responsibilities or in formulating such committee's terms of reference or reviewing and monitoring the committee's performance;
- (c) formulate, implement and review the company's risk management policy and plan;
- (d) integrate the company's risk policy and plan into the day to day activities of the company.

195. The Board should ensure that processes are established to foster the complete, timely, relevant, accurate and accessible risk disclosures to the shareholders.

196. The Board may, if deemed desirable, appoint a risk management committee to assist it in the discharge of its duties and responsibilities in respect of risk management.

197. The risk management committee's responsibility should be clearly set out in its terms of reference, which must deal with the scope of its mandate, its composition, roles and duties and include provisions to the effect that—

- (a) the risk management committee comprises executive and non-executive directors, with the latter being in the majority, who should all be persons with adequate risk management skills and experience;
- (b) the risk management committee may supplement its risk management skills and experience by inviting independent management experts and senior management personnel responsible for the various aspects of risk management to attend its meeting;
- (c) the risk management committee should be composed of at least three Board members and should meet every quarter of the company's financial year; preferably before every quarterly Board meeting.

198. The Board should evaluate the risk management committee's performance in terms of its mandate and effectiveness.

199. The risk management committee should, as its main function, consider the risk management policy and plan of the company and monitor, evaluate and recommend amendments to the risk management processes, procedures, policies and implementation strategies, including—

- (a) identifying key principal risks through appropriate risk assessment, survey and mapping strategies and procedures which may use data analysis, business indicators, market information, loss control, scenario planning and portfolio analysis, threats to various income streams, critical business processes and dependencies of the business, sustainability dimensions of the business and expectations of stakeholders; and
- (b) using other methods to identify and assess risks such as financial and environmental audits and hazard and operability studies.

200. The risk management committee should ensure that—

- (a) risk frameworks or risk methodologies are implemented to increase the probability of identifying unpredictable risks;
- (b) a systematic, documented, and formal risk assessment exercise is conducted at least once a year;
- (c) it receives and reviews a register of the company's key risks;

- (d) management regularly considers and implements appropriate risk responses which should be captured in the risk register;
- (e) management demonstrates to the committee the risk responses which provide for the identification and execution of opportunities to boost the company's performance;
- (f) processes are in place for the timely and complete disclosure to the shareholders of information on principal risk which is relevant, accurate and accessible, together with the Board's views on the effectiveness of the risk management processes;
- (g) it receives assurance from the chief risk officer and chief audit executive regarding the effectiveness of the risk management processes, including ensuring that the risk management plan is integrated with the daily activities of the company;
- (h) it reviews arrangements in terms of which the company's employees may, in confidence, raise concerns about possible improprieties in financial reporting and other matters as more fully set out in this Code;
- (i) as part of the management team, a chief risk officer is appointed with sufficient authority, stature, competence, resources and independence and reports functionally to the risk committee and administratively to the chief executive officer and whose removal from office must be approved by the Board and fully disclosed to the shareholders.

201. The risk management committee should, at least once a year, set the levels and limits of the company's risk tolerance and risk appetite and more regularly review these levels or limits during periods of increased uncertainty or adverse changes in the business environment.

202. In setting the risk tolerance levels and limits, the risk management committee should—

- (a) consider risk factors in the external and internal business environment;
- (b) measure these levels or limits quantitatively and qualitatively;
- (c) use these levels or limits to set the parameters for the development of the company's business strategy;
- (d) disclose in the integrated report whether the risk appetite exceeds or deviates materially from the limits of the company's risk tolerance.

203. In evaluating and ranking risks, the risk management committee should be guided by the nature and size of the risk and its impact and likelihood of occurrence.

204. The risk management committee should ensure that in addition to the control measures introduced by "SPAMSOAP labels" (Segregation of duties, Physical controls, Authorisation and approval, Management controls, Supervisory controls, Organisation as a control, Arithmetical and accounting controls, Personnel control), and depending on the demands of the company's business, additional minimum control measures such as establishing a whistle-blowing function and an audit committee which operates separately from the risk committee are implemented.

205. The whistle-blowing procedure must be documented and a copy given to every employee. The procedure must give examples of the type of misconduct for which employees should use the procedure and set out the level of proof required to sustain an allegation.

206. The risk management committee and management should identify and consider different ways in which the company can respond to the risk identified during the risk assessment process, including—

- (a) avoiding the risks by not starting the activity that creates exposure to the risks;
- (b) restricting, reducing or mitigating the risks through improvements to the whole environment, such as contingency and business continuity plans. Risk treatment may include methods, procedures, applications, management systems and the use of appropriate resources that reduce the probability or possible severity of the risk;
- (c) transferring the risk exposure, usually to a third party better able to manage the risks, for example, through insurance or outsourcing;
- (d) tolerating or accepting the risks where the level of exposure is as low as reasonably practicable or where there are exceptional circumstances;
- (e) exploiting the risks, where the risks exposure represent potentially missed or poorly realized opportunity;
- (f) terminating the activity that gives rise to any intolerable risks;
- (g) integrating the risk responses outlined above.

Principles

207. A company's financial statements must be audited by independent external auditors who should assess whether the financial statements adequately reflect the company's financial position using the results-based and risk-based approach.

208. External auditors must be independent in that they should have no material relationship with the company whose financial statements they audit.

209. External auditors prepare an audit report for consumption by the company, the Board, management and shareholders, as the case may be.

210. The external auditors' report must indicate whether the financial statements give a true and fair view of the financial position of the company and the results of the operations for the period in question.

Recommendations

211. External Auditors are necessary for assessing the soundness of internal financial controls of a company and making recommendations for improvement where required.

212. The external auditors' report should state their responsibility, the scope of work performed and their opinion on the financial statements.

213. The Board and the audit committee should agree on the fees and work plan of the external auditors.

214. The audit committee should recommend to the Board the appointment, retention and replacement of external auditors.

215. In the absence of a Board, external auditors should report to the shareholders at the annual general meeting or at an extraordinary general meeting.

216. Recommendations from external auditors should include a discussion of the main accounting policies, material weaknesses and significant flaws of internal controls and procedures, alternative accounting approaches, instances of disagreement with management and risk assessment and analysis of possible fraud.

217. The external auditors should be appointed for a pre-defined period of time.

218. If necessary, the re-appointment of external auditors should be preceded by a formal and documented assessment of their independence and performance. Their re-appointment should be approved annually by a simple majority of the shareholders at an annual general meeting.

219. External auditors should not be allowed to provide consultancy work to the company which they audit.

220. The audit committee and the Board must be familiar with all the services provided by external auditors to ensure that the auditors' independence is beyond reproach and to avoid potential conflicts of interest.

221. The external auditors should give an assurance of their independence from the company in writing on an annual basis.

222. The relationship between the external auditors and the chief executive officer and other officers of the company should be based on professionalism and independence.

Principles

223. The Board, through the audit committee, should be assisted by a competent internal audit unit to provide assurance on internal controls, risk management and governance processes in accordance with the standards of the Professional Practice of Internal Audit.

224. The audit committee should oversee the internal audit function, evaluate its performance and ensure that the internal audit function is subjected to an independent quality assurance review.

225. The chief audit executive should report functionally to the chairperson of the audit committee and administratively to the chief executive officer.

Recommendations

226. The Board must ensure that there is a continuous and effective risk and results-based internal audit.

227. The Internal audit unit should—

- (a) evaluate the company's governance processes;

- (b) conduct an objective assessment of the effectiveness of risk management processes and the internal control framework;
- (c) systematically analyse and evaluate business processes and associated controls;
- (d) assess risk of fraud, corruption, unethical behaviour and other irregularities.

228. Internal controls should be established not only over financial matters, but also over operational, compliance and sustainability issues.

229. The Board should ensure that the internal audit activity is sufficiently empowered to perform its mandate.

230. The Board should define, approve and put in place an internal audit charter.

231. The internal audit activity should adhere to the International Internal Auditing Standards (IIAS) and Code of Ethics.

232. An internal audit plan or activity should—

- (a) follow a risk based approach;
- (b) be informed by the strategy and risks of the company;
- (c) be agreed and approved by the audit committee;
- (d) be independent of management;
- (e) be an objective provider of assurance predicted on—
 - (i) the risks that may prevent or slow down the attainment of strategic goals;
 - (ii) whether controls are in place and functioning effectively to mitigate risks;
 - (iii) the opportunities that will promote the attainment of strategic goals as may be identified, assessed and effectively managed by the company's management team;
- (f) submit to the Board at least once a year a written assessment of the effectiveness of the company's system of internal control and risk management;
- (g) form an integral part of the combined assurance model as an internal assurance provider;
- (h) submit to the audit committee a written assessment of internal financial controls.

233. Management should specify the elements of the risk control framework.

CONTROL

Principles

234. The Board should delegate to the audit committee its responsibilities of general oversight and reporting of the company's sustainability matters.

235. The financial statements should be used to provide well thought out disclosures on the company's governance and the board evaluation exercise.

236. Financial statements and other financial information included in the report should fairly present in all material respects the financial condition and results of the operations of the company.

237. The board should—

- (a) disclose to the public, on an urgent basis, information on material changes in its financial condition or operations;
- (b) if it is a listed company, prohibit the dealing in its shares by directors, officers and other selected employees for a designated period preceding the announcement of its financial results or during any other period considered sensitive, and have regard to the listing requirements of the Zimbabwe Stock Exchange rules and any other applicable rules and legislation in respect of dealing of directors;
- (c) prohibit insider trading and abusive self-dealing and ensure that members of the Board and key executives disclose to the Board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the company;
- (d) review transactions with related parties (including internal group transactions) in order to assess risk and ensure that the transactions are subject to appropriate restrictions (e.g. by requiring that such transactions be conducted on arm's length terms) and that corporate or business resources of the organization are not misappropriated or misapplied; and
- (e) formulate and document a formal written conflict of interest policy and an objective compliance process for implementing that policy.

238. The chief audit executive should have a standing invitation to attend executive or management meetings.

239. The chief audit executive should be on the same level with other heads of departments within the company.

AUDIT COMMITTEE

Principles

240. The Board should establish an audit committee but this will depend on the nature and size of the company and the complexity and diversity of its operations.

241. The audit committee approves the risk-based internal audit plan, and the annual expenditure and capital budget of the auditing department, and evaluates the performance of the internal audit function annually.

242. The audit committee should—

- (a) assist the Board to fulfil its obligations relating to financial reporting by appointing Board members to consider specific audit issues;
- (b) strengthen the independence of the external auditors by providing them with another channel of communication with the Board other than the chairperson of the Board, chief executive officer, finance director or chief financial officer;
- (c) enhance, through the manner in which it discharges its function, public confidence in the integrity of the company's financial statements.

243. The audit committee's functions vary from company to company but they invariably include the following—

- (a) recommending the nomination and remuneration of external auditors;
- (b) reviewing the audit carried out by external auditors;
- (c) discussing with the external auditors any problems that arise during audits;
- (d) reviewing the company's accounting policies and the need to make changes to them;
- (e) reviewing the company's internal control environment;
- (f) reviewing reports from the company's internal audit department and providing an independent reporting channel for the internal auditors who would otherwise report to the finance director only;
- (g) reviewing the half-year and annual financial statements prior to their approval by the Board;
- (h) reviewing the independence and objectivity of the auditors of the company;
- (i) recommending to the Board the appointment of the chief financial officer or financial director and reviewing his or her performance;
- (j) ensuring that the company's internal control procedures are adequate;
- (k) appointing a new firm of auditors and negotiating the audit fee;
- (l) preparing the terms of reference of new auditors for adoption by the Board.

Recommendations

244. The Board should ensure that—

- (a) it builds and sustains an ethical corporate culture in the company;
- (b) it clearly articulates the ethical standards and ensures that the company takes measures to meet them;
- (c) there is adherence to and measurement of ethical standards in all aspects of the business;
- (d) ethical risks and opportunities are incorporated in the risk management process;
- (e) a code of conduct and ethics-related policy is implemented;
- (f) the company's performance in regard to its ethics is assessed, monitored, reported upon and disclosed.

Combined Assurance

245. The Audit Committee should ensure that a combined assurance model is applied to provide a coordinated approach to all assurance activities and that the assurance covers all the significant functions within the organisation.

246. The combined assurance model aims to optimise the assurance coverage obtained from management, internal assurance and external assurance providers on the risk areas affecting a company.

247. The combined assurance provided by internal and external assurance providers and management should be sufficient to satisfy the audit committee that significant risk areas within the organisation have been adequately addressed and that suitable controls exist to mitigate and reduce these risks.

248. Internal audit should form an integral part of the combined assurance model as internal assurance providers.

249. The combined assurance process should be aligned to the risk management process in the organisation.

Recommendations

250. Every listed company must put in place a Combined Assurance process to—
- (a) coordinate the work of all assurance providers that, either directly or indirectly, provide the board and management with certain assurance;
 - (b) provide a communication forum for the work of internal audit, external audit, third party assurance providers and management in support of the need to report in an integrated and holistic manner to the audit committee;
 - (c) standardize risk assessment processes and foster the use of a common risk language in order to promote comparability across the company;
 - (d) discuss and create common approaches to risk management and coordinate management control self-assessments;
 - (e) ensure that a combined assurance report is presented to the risk committee quarterly.
251. The key stakeholders in the combined assurance process are the internal audit unit, the external auditors and management.
252. The internal audit unit should—
- (a) annually conduct a formal and documented review of the design, implementation and effectiveness of internal financial controls;
 - (b) provide independent assurance on the integrity and robustness of the risk management processes and a written assessment of the effectiveness of the system of internal control and risk management to the Board;
 - (c) evaluate governance processes including ethics and setting the right “tone at the top”;
 - (d) assure the Board that the combined assurance model is coordinated to best optimise costs, avoid duplication and prevent an assurance overload;
 - (e) report to the audit committee on how management has or will repair deficiencies in the system of governance and the risk control framework.
253. The external auditors should—
- (a) liaise with internal audit and risk management committees on the scope and extent of coverage; and
 - (b) report on material weaknesses in financial control and finance management systems, whether from design, implementation or execution perspectives, that result in actual material financial loss, fraud or material misstatements.
254. Management should—
- (a) coordinate the management control self-assessment exercise;
 - (b) implement risk management processes;
 - (c) develop a risk management policy and plan, including definitions of risk and risk management, objectives, risk approach, philosophy, responsibilities and ownership for risk management;
 - (d) specify the elements of a control framework according to which the company’s control environment can be measured;
 - (e) implement specific risk limits and tolerances aligned with overall risk limits set by the Board;
 - (f) promote accountability to the Board for designing, implementing and monitoring the system and processes of risk management and integrate it into day-to-day activities;
 - (g) maintain a risk register and measure risk management performance against key result indicators (KRJs);
 - (h) ensure risk responses are effective and efficient in design and operation;
 - (i) track implementation of responses and analyse and learn from changes;
 - (j) provide the Board with assurance that it has implemented and monitored the risk management plan;
 - (k) demonstrate clear links between risk management and independent assurance.

WHISTLE-BLOWER POLICY

255. A whistle-blowing system that is independent, trusted and anonymous is key to the effective implementation of an ethical corporate culture and fraud risk management strategy. A whistle-blower provides evidence of a waste of funds or mismanagement.

256. People blow the whistle because they have been unable to approach or to get a response from the company’s management through normal lines of reporting and resort to someone else with the information they have.

257. There is a strong connection between corporate governance and whistle-blowing.

258. Whistle-blowing helps to uncover significant risks and, for this reason, procedures should be put in place to encourage honest whistle-blowing whilst at the same time discouraging malicious accusations and allegations from employees against their bosses.

Recommendations

259. The board should—

- (a) take measures to manage whistle-blowing in terms of set procedures, proper analysis of reports received and acting to correct the misconduct reported upon;
- (b) have a fair system, known to the employees, for dealing with reports from whistle-blowers so that an honest individual does not feel under threat when making an allegation;
- (c) make a formal statement to all employees that it takes seriously any genuine whistle-blowing and the allegations of whistle-blowers;
- (d) indicate to employees what it regards as failures in the system sufficient to justify whistle-blowing;
- (e) respect individuals who blow the whistle;
- (f) give an assurance to its employees that it will take every measure to ensure that there is no victimisation of whistle-blowers;
- (g) provide employees with an opportunity to voice their concerns outside the line management but within the company structures.

260. Whistle-blowers should be able to take their concerns to the person designated to manage the whistle-blowing procedures. The person designated to receive, investigate and act upon complaints reported should either be an internal auditor or a company secretary or a professional body such as a firm of accountants. However, employees who make false claims or allegations should be subjected to disciplinary measures which should be made known to the employees in advance.

CHAPTER 5

INFORMATION MANAGEMENT AND DISCLOSURE

Preamble

261. Disclosure relating to the company and its business in all its varied forms, content, and pitch, explicitness of language, relevance, impact, and accessibility to all stakeholders is pivotal to the culture of building confidence, accountability and trust within the company. Disclosure is necessary for the company to remain trustworthy in the eyes of its stakeholders and to attract investment. It assists stakeholders to make informed decisions relating to the company's activities.

INFORMATION AND MANAGEMENT

Principles

262. The Board should establish systems for—

- (a) managing the company's information assets and the performance of the data functions;
- (b) ensuring the timeous availability of information through effective information systems;
- (c) implementing a suitable information security management programme;
- (d) ensuring that all sensitive information is identified, classified and assigned appropriate handling criteria;
- (e) managing the risks associated with information and information systems;
- (f) establishing processes to ensure continuous monitoring of all aspects of information and maintaining and monitoring of data quality;
- (g) formulating business continuity programmes addressing the company's information recovery requirements and ensuring that such programmes are effectively aligned to the company's business activities.

263. The Board should ensure that regular, accurate, complete, timely, reliable, easy to understand and relevant material is made available to all shareholders and directors without compromising the confidentiality and commercial sensitivity of such material.

264. The data and information disclosed should enable the company, its shareholders and other stakeholders—

- (a) to make informed decisions regarding their participation in the company or its business activities;
- (b) to evaluate the company's position and its business activities;
- (c) to check and challenge the company's compliance with the law and best practice codes on corporate disclosures;

(d) to be informed and then monitor and evaluate the execution of decisions and resolutions made by the Board or at other levels of the company;

(e) to be informed about the extent to which corporate leadership is accountable.

265. The main disclosure must be made to all the company's stakeholders and, where preferential disclosure is made, corrective action should be taken to redress the wrong done within a reasonable time, giving reasons why the wrong was committed in the first place.

266. The disclosure should be holistic and guided by the triple bottom line approach of profit, people and planet.

267. Companies should understand and manage the risks, benefits and constraints of ICT in relation to disclosure of information.

268. Disclosure should be in the form of written reports which are original, balanced and give precedence to substance over form.

269. Disclosure should be made at least half yearly and more frequently when material developments affecting the company occur.

270. Every company should have a disclosure policy which outlines, among other things, the implementation, monitoring and review of the main disclosure principles set out in this Code.

271. All executive and non-executive directors should have access to Board papers and materials and should be able to respond to any queries raised as promptly and fully as possible.

272. Pull minutes of meetings of the Board and of shareholders must be kept by the company secretary and be open for inspection at any time during office hours on reasonable notice to the company secretary.

273. If a company is under the control of another company, consolidated financial statements and combined financial statements should additionally be disclosed.

274. Where the Board has made decisions on matters of strategic and operational importance, full, timely and accurate disclosure should be made of them including details of the attending directors and voting results, if any.

275. Every company should give its shareholders and other stakeholders ample opportunity to inspect corporate books, records, minutes of Board meetings and stock registers and provide them with annual reports and financial statements free of charge and without restriction but subject only to the company's confidentiality and commercial sensitivity rules.

276. Where the interests of the company's stakeholders and the company's business conflict, such development should be disclosed subject to materiality thresholds as may be prescribed by the Board from time to time.

277. Every company must ensure that in making disclosures a broad range of communication channels are used bearing in mind the need to ensure that critical financial information reaches all shareholders at the same time.

278. Where appropriate, the results of all company decisions should be publicly disclosed.

279. Information to be disclosed should be prepared, audited and made available in accordance with the highest standards of accounting, financial and non-financial disclosure.

280. A company should not disclose its financial statements unless they have been approved by the chairperson of the board and have been signed by the chief executive officer (CEO) and the chief finance officer (CEO).

281. The Board should be responsible for the governance of the company's information communication technology.

282. The Board should establish a system for identifying and printing company information as an important business asset.

283. The board must ensure that an information security management system (SMS) is developed, implemented and recorded in an appropriate and applicable information security framework.

284. The board should supervise the information security strategy and delegate and empower management to implement it.

285. The ISMS should include the following high level information security principles—

(a) confidentiality of information;

(b) integrity of information;

(c) availability of information systems in a timely manner;

(d) retention of information.

286. The Board should provide leadership and direction to ensure that the company's Information Communication Technology, ICT, achieves, sustains and enhances the company's strategic objectives.

287. The Board should take necessary steps to ensure that there are processes in place for the complete, timely, relevant, accurate, integrated and accessible ICT reporting by management to the Board and by the Board to the shareholders.

288. The Board must establish a robust process for identifying and exploiting opportunities to improve the performance and sustainability of the company through effective and efficient ICT use.

289. The Board should ensure that ICT frameworks, policies, processes, procedures and standards are implemented with a view to minimising ICT risks, delivering value, ensuring business continuity and assisting the company in managing its ICT resources efficiently and cost effectively.

Recommendations

290. The company should have a written policy on disclosure.

291. Disclosure should include material information on—

- (a) financial and operating results of the company;
- (b) the company's objectives;
- (c) major share ownership and voting rights;
- (d) members of the Board and key Executives;
- (e) material foreseeable risk factors;
- (f) material issues regarding employees and other stakeholders;
- (g) governance structures and policies;
- (h) capital structure and arrangements, if any, which enable certain shareholders to obtain a degree of control disproportionate to their equity ownership;
- (i) the extent to which projects and policies that diverge from the primary corporate objective of generating long term economic profit are pursued;
- (j) sources of funds used to re-purchase shares by the company, the number of shares re-purchased, the price, the method of re-purchase and such other information as may be required in the public interest or for the protection of shareholders;
- (k) management decisions and analysis reports on—
 - (i) industry structure and developments;
 - (ii) opportunities and threats;
 - (iii) segment or product performance;
 - (iv) risks, and internal control systems and their adequacy;
- (l) financial performance with respect to operational performance;
- (m) material developments in human resources and industrial relations, including the number of people employed, their gender and age profiles;
- (n) transactions which have a bearing on conflict or convergence of interests on the part of directors, senior management, shareholders and other stakeholders;
- (o) the financial situation, performance, ownership and governance of the company;
- (p) reasons for any resignation or removal of any member of the Board;
- (q) disclosure to the Board of the main assets of each Board member as of the date of the report;
- (r) the structure of the board, highlighting its size, mix of skills and the attendance frequency of Board members;
- (s) whether or not the chief executive officer doubles as Board chairperson and, if so, detailed reasons why that is so, together with the voting results on this issue if any poll was demanded and taken;
- (t) the work of, and reports prepared by, committees, including the names and status of the committees, and the committee meetings attendance registers;
- (u) earnings results, requisition or disposal of assets, changes in the composition of the Board, related party transactions, shareholding by directors and changes to share ownership;
- (v) the company's current situation and prospects and the manner in which it operates and applies corporate governance principles;
- (w) whether one or several shareholders caused an increase of share capital by contribution in kind and the reasons therefor;
- (x) comments of the Board on the adequacy of the internal controls of the company;
- (y) the nature and extent of the company's social transformation, ethical, safety, health and environmental management policies and practices; and
- (z) full reasons for the resignation or dismissal of external auditors; if that has happened.

292. Disclosure should also include information on—

- (a) the performance and evaluation of Board members at Board meetings, the issuance of independent opinions and opinions regarding related party transactions, appointment and removal of directors and senior management personnel and the composition and work of specialized Board committees;
- (b) the company's remuneration policy and directors' remuneration including—
 - (i) salary, benefits, bonuses, stock options and pensions;
 - (ii) details of fixed component and performance linked incentives along with the performance criteria;
 - (iii) fees and other reimbursement or emoluments payable to independent non-executive directors;
 - (iv) all pecuniary relationships or transactions of non-executive directors;
 - (v) the total cost of remuneration and expenses of each Board member;
 - (vi) all balance sheet and off-balance sheet compensation awarded to, earned by, paid to, or to be paid directly or indirectly to all key members of senior management, including the chief executive officer.
 - (vii) separate amounts for each of the payment categories— fees, quotas, profits, shares and bonuses— received by each director or senior manager;
 - (viii) any fixed term contract exceeding four terms of three years each and detailed reasons for extending the contract beyond the twelve year cap;
- (c) share ownership patterns of connected parties where the total shareholding is greater than 5% of issued shares;
- (d) names of shareholders who own more than 5% of the issued share capital either individually or collectively or directly or indirectly;
- (e) the identities of persons who control the company or who have a significant ownership of the company or who, through indirect shareholding such as trusts or other legal devices are linked materially to such persons;
- (f) whether the company has complied with this Code during the accounting period and if the company has not complied, the reasons for the failure;
- (g) information or data which a director or any stakeholder of the company is aware of which reasonably indicates that the company is not, or was not, for any part of the accounting period, in compliance with the law or this Code;
- (h) non-compliance with any recommendation in this Code with reasons therefor;
- (i) any differences between the company's corporate governance practices and this Code and the reasons for such differences and any plans for future measures to harmonize them;
- (j) the percentage of Board members who are independent and the company's definition of independence;
- (k) whether or not Board representation satisfies the requirement to fairly reflect the investment of the minority shareholders in the company;
- (l) the name of the company's external auditors, their leading partner, the profile of their professional team and their claimed and real competencies;
- (m) the company's statement of ethics and business practices for directors and employees;
- (n) the pattern of shareholding showing the aggregate number of shares held by—
 - (i) associated companies or undertakings;
 - (ii) directors, chief executive officers and their spouses and children and other family members;
 - (iii) senior executives;
 - (iv) local and foreign public sector companies and corporations;
 - (v) banks, development finance institutions, non-banking finance institutions, insurance companies, and mutual funds;
 - (vi) shareholders with ten percent or more voting rights and how they are related;
- (o) a full statement on the responsibilities of the directors;
- (p) relevant balance sheet transactions and the materiality level for disclosure.

293. Every company should disclose to its shareholders and other stakeholders the essentials of its dividend policy, including—

- (a) how the company determines the portion of the profits to be paid out as dividends;
- (b) conditions for the payment of dividends;
- (c) the minimum amount of dividends for each category or class of shares;

- (d) the criteria and basic rules used by the Board for making decisions on payment of dividends;
- (e) the distribution of net profits;
- (f) the procedure for payment of dividends, if anyone were paid;
- (g) the reasons for non-payment of dividends, if none were paid.

294. Voting agreements among shareholders must be disclosed to the company and to the stakeholders.

295. All transactions involving property of the company whose value is equal to or in excess of 2% of the current assets of the company and which may affect the market price of the company's shares must be disclosed.

296. Reasons for issuing new shares and the names of the purchasers, especially those who purchased or intended to purchase a large percentage of the shares, should be disclosed to the company's stakeholders.

297. The company's financial position should be disclosed as required by law, in particular—

- (a) the net profit of the company as a whole, including the net operating profit, the net profit per share, and the net operating profit per share;
- (b) details of changes in asset composition and structure over the three years preceding the reporting date;
- (c) details of change in asset composition and structure over the three years preceding the reporting date;
- (d) estimates of current and prospective liquidity of assets;
- (e) profitability analysis;
- (f) the percentage share of export income of the company, if any;
- (g) assessment of the factors that influence the company's financial position and the results of its financial operations in the preceding year;
- (h) market trends that are likely to affect the company's financial position.

298. Information on critical factors that may be material to shareholders and investors must be disclosed to them including—

- (a) any change of the company's name.
- (b) decisions on increasing or decreasing the authorised and issued capital;
- (c) any acquisition by the company of its own shares, the sources of funds to acquire the shares, the quantity of shares acquired, the acquisition price and the reason for the acquisition;
- (d) any increase or decrease in the company's share price of at least 5%;
- (e) any discontinuance of the business of the company whose sales accounted for at least 10% of sales revenue for the fiscal year preceding the reporting year;
- (f) any changes in the company's priority areas of operation.

299. During preparations for a general shareholders' meeting and during such a meeting shareholders must be given cost effective information on each item of the agenda.

300. If the company's reorganization or restructuring is on the agenda of the annual general meeting the following information must be given to shareholders—

- (a) the rationale for the company's re-organization or restructuring;
- (b) the opinion of a professional securities market expert on the re-organisation or restructuring;
- (c) annual statements and annual balance sheets for the preceding three fiscal years of all entities taking part in the re-organization or restructuring;
- (d) prospects for the company's development, including sales, productivity, market share, income generation and profitability;
- (e) major risk factors;
- (f) relationships with competitors;
- (g) a review of the most significant transactions of the company during the year

301. The age, profession, principal place of work, citizenship and other attributes of each Board member should be disclosed in the annual report, including when the member was first appointed and when such member was appointed to his or her current position.

302. The annual report should incorporate a statement by the chairperson of the Board and a statement by the chief executive officer or managing director in which they evaluate the company's performance during the year.

303. Information, knowledge and experiences which constitute trade or professional secrets or is commercially sensitive must be protected from disclosure.

304. The Board should consider and approve an internal company document on information that constitutes credible professional and trade secrets and specify the items that constitute trade or professional secrets including Board members' engagement contracts.

305. Contracts of employment should include provisions on non-disclosure of information, knowledge and experience which constitute trade or professional secrets of the company

306. The company's management must inform the Board whether the company's ICT function is—

- (a) on track to achieve its objectives;
- (b) resilient and agile enough to adapt to strategic needs;
- (c) adequately protected from the risks it faces;
- (d) capable of revealing any opportunities that can be recognized and pro-actively exploited.

307. The chief executive officer should appoint a person responsible for the management of ICT who—

- (a) serves as a bridge between ICT and the business;
- (b) understands the accountability and responsibility of ICT;
- (c) is business-oriented and understands business requirements and, the long term strategy of the company and can translate these into efficient and effective ICT solutions;
- (d) has a strategic approach to business and is able to foresee the integration of ICT into business strategic thinking and to develop it;
- (e) is able to exercise care and skill in designing, developing, implementing and maintaining sustainable ICT solutions.

308. The Board should monitor and evaluate significant ICT investment and expenditure by overseeing the proper value delivery of ICT, ensuring that the expected return on investment is delivered and that the information and intellectual property contained in the information systems is protected.

309. In the acquisition and disposal of ICT goods and services good governance principles should apply to all parties in the supply chain.

310. The Board should obtain independent assurance of the company's ICT governance and controls supporting ICT services.

311. ICT risks should form part of the company's risk management processes covered in Chapter 4.

312. Management should regularly demonstrate to the Board that the company—

- (a) has adequate business resilience and strategies for disaster recovery arising from or in connection with ICT related risks;
- (b) is insulated from legal suits arising from or in connection with the possession, ownership and operational use of the ICT technology by ensuring that ICT related laws, rules, codes and standards are complied with;
- (c) uses ICI to assist it in managing risks in compliance with applicable laws, rules, codes and standards.

313. Companies should publish on their websites the texts of their memorandums and articles of association and any amendments thereto, quarterly reports, audit reports, important information relating to general shareholders meetings of the company and important resolutions of the Board relating to the company's development strategy.

314. Company disclosure, as prescribed by the law, codes and standards, should be complied with.

Integrated and Sustainability Reporting

315. Integrated reporting incorporates a company's strategy, governance, financial performance and future outlook in one report. The report should also contain environmental, social and governance issues which impact on the company's operations. The integrated report should be guided by the requirements of the Global Reporting Initiative's International Integrated Reporting Council (IIRC) as published from time to time, and any other reputable international reporting framework.

316. The Board should—

- (a) ensure that information which must be disclosed in terms of the law and this Code is disclosed in an integrated manner which gives a holistic and integrated representation of the company's performance in terms of its finances and its sustainability;
- (b) formally adopt a suitable reporting framework for use by management in integrated and sustainability reporting;
- (c) be responsible for ensuring that a company has a formal process in place for publishing the integrated and sustainability report;

(d) be responsible, through its audit committee, for reviewing the information to be published in the integrated report.

317. The integrated report should—

- (a) focus on strategic information about the company;
- (b) comment on financial and non-financial information;
- (c) as much as possible adopt a futuristic Orientation;
- (d) address the needs of stakeholders both within and outside the organisation;
- (e) be concise and contain reliable and material corporate information;
- (f) include sustainable development and environmental impact assessments and responses by the reporting entity.

Recommendations

318. The integrated report should—

- (a) be prepared every year and contain adequate information about the company's operations, sustainability issues pertinent to its business, its financial results and the results of its operations and cash flow projections;
- (b) be focused on substance rather than form and disclose information that is complete, timely, relevant, accurate, honest, accessible and comparable with the past performance of the company;
- (c) contain forward looking information;
- (d) describe how the company has made its money by reporting on the positive and negative impact its operations have had on its stakeholders;
- (e) highlight the company's plans to improve the positives and eradicate the negatives so as to enable stakeholders to make an informed assessment of the economic value and sustainability of the company;
- (f) cover all areas of the company's performance, reflecting the choices made and the strategic decisions adopted by the Board, including reporting on economic, social and environmental issues affecting the company;
- (g) comply with the third generation global reporting initiative guidelines of 2007 (G3 Guidelines) as amended from time to time, provided such compliance takes into account the company's specific practical and strategic needs, relevant areas of operation and stakeholders' concerns;
- (h) demonstrate the linkages between the organisation's strategy, governance and financial performance and the social, environmental and economic context within which it operates as well as the organisation's ability to create and sustain value in the present and in the future;
- (i) give insight into the organisation's strategic objectives, and how those objectives relate to its ability to create and sustain value over time and the resources and relationships on which the organisation depends;
- (j) provide a basis for addressing the range of issues and opportunities affecting the long-term business value by re-focussing reporting around the organisation's business model and operational priorities so as to reflect the critical opportunities and challenges that affect the business;
- (k) show the connections between the different components of the organisation's business model, external factors that affect the organisation, and the various resources and relationships on which the organisation and its performance depend;
- (l) include management's expectations about the future and other information to help users of the report to understand and assess the organisation's prospects and any uncertainties it may be facing;
- (m) provide insight into the organisation's relationships with its key stakeholders and how and to what extent the organisation understands, takes into account and responds to their needs;
- (n) provide concise, reliable information that is material to assessing the organisation's ability to create and sustain value in the short, medium and long term;
- (o) deal with all the organisation's material issues in an objective manner, providing a balanced view of the organisation including what businesses consider to be the best strategy to deal with the challenges they face.

319. To the extent that the integrated report is subject to assurance, the name of the assurer should be clearly disclosed together with the period under review, the scope of the assurance exercise and the methodology adopted.

320. The Board should delegate to the audit committee the general oversight function of integrated disclosure. This committee should review the integrated report to ensure that the information in it is reliable and that it does not contradict other aspects of the report.

321. Organisations should have policies in place to determine the initiatives and strategies to cover environmental and social activities. These policies should address stakeholder and community interests/relations and management and provide a basis for information to be included in integrated reporting.

Disclosure channels

322; The chief executive officer and the management of the company should report to the Board and the Board to the shareholders. Any deviation from this order of reporting must be disclosed by the Board to the shareholders with reasons therefor.

CHAPTER 6

CORPORATE CONFLICT PREVENTION AND RESOLUTION

Preamble

323. Corporate conflicts are inherent in business. They may be internal or external to the company. There is therefore a need to prevent conflicts and, where they occur, they should be resolved inexpensively and timeously.

Principles

324. Prevention and resolution of corporate conflict makes it possible to safeguard the rights of shareholders and protect the property and business reputation of the company.

325. Corporate conflict prevention and resolution must be based on the provisions of the law and best practice codes.

326. For a company to successfully solve corporate conflicts, controversies and problems and to achieve its corporate goals, it must establish conditions, processes, procedures and systems for the prevention and resolution of corporate conflicts.

327. The Board is responsible for corporate conflict prevention, resolution and review and may establish a corporate conflict resolution (CCR) committee to assist in this regard.

328. In preventing or resolving corporate conflicts the needs, interests and rights of the disputants must be taken into account and the processes involved must be cost effective.

329. Inquisitorial alternative dispute resolution mechanisms as opposed to the adversarial court based dispute resolution method should be preferred in corporate dispute or conflict resolution because these mechanisms are more likely to build rather than destroy relationships.

330. A distinction should be drawn between processes of dispute resolution (litigation, arbitration, mediation, conciliation and others) and the institutions that provide dispute resolution services.

331. In selecting dispute resolution institutions and regardless of the dispute resolution processes adopted, it is indispensable requirement that the institution is independent and impartial in relation to the parties to the dispute.

332. Successful resolution of corporate conflicts entails selecting a dispute resolution method that best serves the interests of the company, preserves business relationships and is cost effective and effective and efficient.

333. Insider trading and abusive self-dealing is prohibited.

334. Corporate conflict resolution should initially be undertaken by the corporate secretary who should record enquiries, letters or demands from stakeholders and take a preliminary view of the conflict and then hand over the matter to the Board or the CCR Committee for consideration and resolution.

Recommendations

Corporate Conflict Prevention

335. To ensure effective prevention and resolution of company conflicts, any conflict which arises or may arise should be identified at a very early stage and should be resolved effectively, expeditiously and efficiently.

336. Obtaining, attempting to obtain, or accepting any bribe, secret commission or illegal inducement of any sort may give rise to corporate conflicts and the company must actively discourage such conduct with appropriate sanctions.

337. Controlling shareholders should comply with applicable laws and regulations in exercising their rights as investors and should be prevented from damaging the rights and interests of the company and other shareholders by means such as asset restructuring or by taking advantage of their privileged position to gain additional benefits.

338. Company directors, officers and employees should not use their powers for any improper purpose, take personal advantage of the company's opportunities or allow their personal interests to come into conflict with those of the company.

339. The personal interests of company directors, officers or employees or persons closely associated with the company must not take precedence over those of the company and its stakeholders.

340. Supervising oneself is a typical conflict of interest situation and must be avoided hence the need to keep the positions of chairperson of the Board and chief executive officer separate.

341. Transactions between the company and a major or majority shareholder should be at arm's length, transparent and the essential terms thereof must be fully disclosed in the annual report of the company for approval by shareholders.

342. The scope of authority of an agent regarding the prevention, resolution and review of corporate conflicts must be clearly defined.

343. Full and timely disclosure of any conflict or potential conflict must be made to the Board.

344. In the extreme case of a continuing material conflict of interest, the person concerned should consider resigning from the Board or the company.

345. Board members, company executives and employees should always recognize that their primary responsibility is to act in the best interests of the company at all times.

346. Loan agreements between a company and its executive directors or persons of equivalent level and officers are discouraged except where they are part of a compensation scheme for company executives or employees but only to the extent sanctioned by their contracts of employment or by the Board.

347. A company must establish mechanisms, procedures and systems whereby—

- (a) a majority of minority shareholders can trigger mediation, conciliation or arbitration procedures to resolve conflicts between minority and controlling shareholders; and
- (b) conflicts between shareholders and the company or between controlling shareholders and minority shareholders can be resolved through mediation, conciliation or arbitration.

348. Hiring of the company's external auditors for non-audit services is discouraged. External auditors should not be members of the Board.

349. A business courtesy, such as a gift, contribution or entertainment should never be offered in circumstances that might create the appearance of an impropriety.

350. It is inappropriate to divert corporate funds, assets or profits to political causes.

351. Company directors, officers and employees must avoid situations that compromise their impartiality

352. A company should not appoint as its chief executive officer or chief finance officer its internal auditor or a member of the external audit firm or their spouses, parents or dependent or non-dependent children unless a period of at least three years has expired after they ceased to be chief executive officer, chief finance officer, internal auditor or member of the external audit firm of the company, as the case may be.

353. Every listed company should prohibit the dealing in its securities by directors, officers and other selected employees of the company for a designated period preceding the announcement of its financial results.

354. Directors, officers and employees of the company should not, whether for their benefit or for the benefit of other persons, operate any business which is of the same nature as, or competes with, the business of the company in which they are director, officer or employee, as the case may be, unless approval of the Board has been sought and obtained.

355. The appointment of nominee directors is discouraged.

356. A remuneration committee of the Board should be wholly composed of non-executive directors and an independent director as chairperson.

357. Non-executive directors or any committee or the Board should not determine the remuneration of non-executive Board members. This function should be given to a neutral professional company to make recommendations based on fairness, industry practice, Board member experience and contribution and the company's ability to pay.

358. Non-executive members should be in the critical majority on the Board.

Dispute or conflict resolution

359. The company should give full and detailed answers to any reasonable queries raised or requests made by shareholders or other stakeholders. A denial of a request or query should be well founded and based on the provisions of the law or best practice.

360. When a shareholder or a stakeholder and the company have no dispute over the essence of their obligations, but disagree on the procedure for and time, manner and other conditions of performance of the obligations, the parties should resolve the dispute amicably, quickly and inexpensively.

361. The CCR Committee should—

- (a) be composed of independent non-executive directors, a representative of minority shareholders who are appointed for their experience, integrity, competence and effectiveness in corporate conflict resolution; and
- (b) have its scope of authority, terms of reference, reporting structures and methods of work approved by the board.

362. The principal task of the Board or CCR committee is to find a lasting and rational solution that satisfies the interests of the company and the needs and interests of the disputants.

363. Where a conflict arises between or among shareholders or between shareholders and other stakeholders, the Board or the CCR committee should act as intermediary in the conflict and may suggest outsourcing the dispute to a mediator or other neutral professional body for resolution.

364. An actual or potential conflict of interest involving a director, officer or employee should be disclosed and the director, officer, or employee concerned should not sit in any meeting which discusses the conflict. Any Board resolution regarding the conflict should be passed by an affirmative vote which includes that of at least two independent Board members.

365. A real or potential conflict of interest involving a Board member or a substantial shareholder should be dealt with only by the full Board or the CCR committee at a meeting convened for that purpose.

366. The following factors should be taken into account in selecting a dispute resolution process—

- (a) time available for the resolution of a dispute: Formal proceedings, in particular court proceedings, often entail procedures lasting many years. By contrast alternative dispute resolution (ADR) methods, particularly mediation, can be concluded within a limited period of time, sometimes within a day;
- (b) principle and precedent: Where the issue in dispute involves a matter of principle and where the company desires a resolution that will be binding in the future, court proceedings are more appropriate;
- (c) business relationships: Litigation and processes involving an outcome imposed on both parties can destroy business relationships. By contrast mediation or conciliation tends to preserve business relationships;
- (d) expert recommendation: Where the parties wish to negotiate a settlement to their dispute but lack technical expertise to devise a solution, a recommendation from an expert may be appropriate;
- (e) confidentiality: Private dispute resolution proceedings are generally conducted away from public glare;
- (f) rights and interests: It is important to appreciate that adversarial corporate conflict resolution involves the decision maker imposing a resolution of the dispute on the parties after considering the legal principles and rights applicable to the dispute. This procedure results in a narrow range of possible outcomes. By contrast the inquisitorial approach to corporate dispute resolution which involves mediation, conciliation or arbitration allows the parties to consider their current and future needs and interests in fashioning a settlement of their dispute. Accordingly, where creative and forward looking resolutions are required in relation to a particular dispute, particularly where the dispute involves a continuing relationship between the parties, mediation, conciliation or arbitration are preferable.

367. To avoid prejudice, resolutions of corporate conflicts however reached should be respected by the parties and implemented expeditiously.

CHAPTER 7

COMPLIANCE AND ENFORCEMENT

Preamble

368. The nature and extent of compliance or enforcement of corporate governance principles depends on whether they are required by law or by best practice. If it is the law, then compliance with corporate governance principles is mandatory. Companies must comply or else they face legal consequences. If it is best practice, compliance and enforcement issues are determined by the principles of subsidiary and soft regulation. The subsidiarity principle shies away from regulation prescribed by law as a source of corporate governance. The principle simply states that one has to regulate all that which is necessary and do so at the most local level possible. The soft regulation principle, which is in keeping with the subsidiarity

principle, seeks to enforce corporate governance principles through entreaty. Code prescriptions supplement and compliment the mandatory prescriptions of the law, including listing requirements.

369. Different terminologies have been used to describe best practice enforcement approaches. Some countries use the “comply or explain” principle and others use the “apply or explain” principle. The two principles are different. The “comply or explain” approach denotes a mindless application of a code whereas the “apply or explain” principle reflects an appreciation of the fact that it is often not a case of whether to comply or not, but rather a case of considering how the principles of a code and recommendations contained in it can be applied in the particular circumstances of a given enterprise.

370. Following the “apply or explain” approach in making decisions, the Board can conclude that to follow a recommendation would not, in the particular circumstances, be in the best interests of the company. It can then decide, giving the necessary explanation, to apply the recommendation differently or apply another practice and still achieve the objective of recommendation differently or apply another practice and still achieve the objective of fairness, accountability and transparency in corporate governance. Explaining how the principles and recommendations were applied or, if not applied, the reasons therefor, amounts to compliance.

371. In this Code the “apply or explain” principle has been adopted because it has a bias towards indirect coercion. This Code therefore relies on disclosure principles to encourage compliance through linkage with membership to sector associations, professional bodies and to support the legal licence to be and remain in business. It uses the disclosure principles as a means of encouraging the adoption of specific corporate governance practices without mandating actual practices. It recognizes that disclosure alone has a significant coercive effect.

372. Voluntary codes rely on the market as an important mechanism for encouraging compliance with the codes especially where compliance efforts are broadly and widely disclosed or surveyed. Therefore Zimbabwe has two major sources of corporate governance, namely, the law and the voluntary codes on corporate governance.

Principles

373. The Board is responsible for the company’s compliance with applicable laws and non-binding rules, codes and standards and it should ensure that the company, its officers, employees and agents comply with and adhere to them.

374. The risk of non-compliance should form an integral part of a company’s risk management framework.

375. The Board should delegate to management implementation of an effective compliance framework and the processes connected with it.

376. The Board should ensure that compliance is understood to be more than mere observance of laws and regulations but an ethical imperative for the governance of the company. Compliance with applicable laws must be understood not only in terms of the obligations which the law creates but also in terms of the rights and protections that it affords to the company.

377. Information disclosed by the Board about compliance with the applicable laws, rules, codes and standards should enable investors and other stakeholders to assess the governance of the company when making investment decisions.

Recommendations

378. The Board must make adequate and reasonable disclosure about the extent to which the company complies with laws, regulations, non-binding rules, codes and standards and give adequate and verifiable reasons for the extent of any non-compliance.

379. Where the Board delegates its compliance verification function to management or one of its committees, such delegation must be guided by the Board’s assessment of the knowledge, effectiveness and experience of management or the committee to which the function is delegated.

380. The Board should disclose in the integrated report details on how it is discharging its responsibility to ensure efficacious processes and an effective compliance framework.

381. The disclosure of the extent of non-compliance with applicable laws, rules, codes and standards requires the Board to give full, objective and verifiable explanations including—

- (a) whether or not the non-compliance was intermittent or permanent throughout the reporting period;
- (b) whether the company did not comply with some of the provisions of the code and, if so, which ones;

- (c) the reasons for the non-compliance together with a review of those reasons and approval by the company's external auditors and the Board before publication;
- (d) whether or not compliance with any, and if so which, of the provisions of this Code is mandatory or voluntary for the company's membership of professional bodies or associations and for obtaining business licenses or listing on the Stock Exchange;
- (e) the risk of non-compliance as identified, assessed and responded to through the company's risk management processes.

382. A company should understand the context of the law within which it does its business and how other applicable laws interact with its business.

383. Compliance with applicable laws, rules, codes and standards should be pro-actively and systematically managed. Compliance issues should be regular items on the agenda of the Board even if this responsibility was delegated to a separate committee or function within the company.

384. The Board has a duty to take the necessary steps to ensure the identification of the laws, rules, codes and standards applicable to the company, its stakeholders and its business.

385. The Board should be informed of applicable laws, rules, codes and standards and any changes to them as part of their induction and ongoing training and education.

386. Management should develop a compliance policy for the approval of the Board and be responsible for implementing the policy and reporting to the Board regarding compliance.

387. Compliance policies should be integrated and aligned with other business efforts and objectives to avoid duplication of effort and to take advantage of opportunities for synergies.

388. Compliance with laws, rules, codes and standards should be incorporated in the code of conduct of the company to entrench a compliance culture. Employees should be encouraged to understand and, as necessary, implement the laws, rules, codes and standards of good corporate governance.

389. A compliance culture should be developed and encouraged by the leadership of the company through establishing appropriate structures, education and training programmes, communication and key compliance indicators.

CHAPTER 8

STAKEHOLDER RELATIONSHIPS

Preamble

390. A company is a multi-interest enterprise. It binds itself to contracts and can be held legally responsible for its actions. It has many stakeholders who have vital interests in its operations and results. Its operations have consequences beyond itself as they always affect, in one way or another, the community in which it carries on business, the national economy and society in general. In the governance of a company therefore, a balance has to be maintained between the maximization of shareholder value and interests and the protection and promotion of the interests of other stakeholders.

391. A stakeholder can affect or can be affected by a company's operations. "Stakeholder" includes shareholders, institutional investors, creditors, lenders, suppliers, customers, regulators, employees, trade unions, the media, analysts, consumers, society in general, communities, auditors and potential investors.

392. Stakeholders are the *raison d'être* for corporate governance and the prime constituency of the company. The relationship between a company and its stakeholders is regulated by law and by best practice codes.

Principles

393. The legal rights and legitimate expectations of the company's stakeholders should be identified, recognized, respected and promoted in the course of creating wealth and jobs and sustaining a financially sound business enterprise.

394. Corporate actions should take into account stakeholder and societal interests.

395. There should be constructive engagement between a company and all its stakeholders as well as among the stakeholders themselves.

396. The Board should appreciate that stakeholder perceptions affect a company's reputation. Reputation is based on how well a company performs having regard to the legitimate interests and expectations of stakeholders.

397. The Board must, in the best interest of the company, strive to achieve an appropriate balance of interests between its various stakeholders.

398. Stakeholders should know their responsibilities towards the company and should be circumspect about making public statements that can damage its interests.

399. The gap between stakeholder perceptions and the performance of the company should be measured and managed in order to enhance and protect corporate reputation.

400. The Board should bear in mind that the interests of stakeholders in the company are dynamic and subject to change.

401. Corporate transparency should be considered with reference to the company's stakeholder policies, relevant legal requirements, and the maintenance of the company's competitive advantage including the need to protect the company's intellectual property and preserve the company's commercially sensitive information.

402. Communication between the Board and stakeholders should be transparent and effective in order to build and maintain stakeholder trust and confidence in the company.

Recommendations

403. All communication to stakeholders should use clear and simple language and should set out all relevant facts, whether positive or negative.

404. Minority shareholders should be protected from abusive actions by, or acts done solely in the interests of, the controlling shareholders.

405. What the company actually does, and not merely what it communicates, ultimately shapes the perceptions of stakeholders about it.

406. The Board should delegate to management the task of pro-actively dealing with stakeholder relationships.

407. The Board should not only disclose matters required by law, but should also disclose those matters which are of material importance to decision making by stakeholders.

408. Companies should have creditor protection procedures in relation to mergers, capital decrease, split mergers and such other matters.

409. The Board should formulate, develop and implement a framework of engagement with stakeholders which it should constantly review in a structured way.

410. The Board should encourage the formation of appropriate stakeholder associations to facilitate structured and constructive stakeholder engagement.

411. Views and opinions of stakeholders should be taken on board in formulating, developing and implementing strategies of the company.

412. The Board should use generally recognized internal control models and frameworks in order to behave responsibly towards all stakeholders.

413. The Board should identify the company's stakeholders and formulate a clear policy on how to engage, communicate with or relate to them constructively. Constructive engagement should not amount to second guessing the Board or management or permitting undue interference in the running of the company.

414. Every company should engage its stakeholders in determining the company's standards of ethical behaviour.

415. The Board should, through the company secretary, have contact details of stakeholders and ensure that stakeholders are properly organized through appropriate associations which have effective leadership.

416. The Board should engage stakeholders informally and formally, at least once a year or as often as it is necessary to gather their opinions, views and input in order to make informed decisions and to reduce the risk of confrontation.

417. Stakeholders should be encouraged to attend annual general meetings and other company meetings by giving them timely notification and relevant documentation subject to normal limitations relating to confidentiality and commercially sensitive information.

418. A company should provide its stakeholders with relevant information necessary for protecting their rights.

419. Views, opinions and input from minority shareholders should be considered in making decisions so as to secure the sound protection of their interests especially where their combined shareholding is significant.

420. The interests and expectations of stakeholders, even if viewed as illegitimate or insignificant, should be considered and not be ignored.

421. The company's reputation and its linkage with stakeholder relationships should be a regular item on the agenda of the Board.

422. The Board should, from time to time, identify important groups of stakeholders and their legitimate interests and expectations relevant to the company's strategic objectives.

423. Stakeholders who can materially affect the operations of the company should be identified, assessed and considered as part of the risk management process.

424. The Board should disclose in its integrated report the nature of its dealings with its stakeholders and the outcomes of those dealings.

425. In addition to formal processes such as annual general meetings, the Board should consider informal processes such as direct contacts, websites, advertising or press releases as means of interacting with stakeholders.

426. The Board should disclose in its integrated report the nature of its dealings with its stakeholders and the outcomes of those dealings.

427. Subject to the best interests of the company, reasonable steps necessary to maintain the confidence of stakeholders should always be taken when considering their legitimate interests and expectations.

428. In dealing with stakeholder differences, conflicts or disagreements, alternative dispute resolution mechanisms should be used and litigation should be used only as a last resort.

429. Alternative dispute resolution mechanisms can enhance or restore stakeholder confidence, remove tensions, relieve pressure on company reputation and offer opportunities to align expectations, ideas and opinions on other issues.

430. A company should use communication channels that are accessible to its stakeholders and adopt communication guidelines that support a responsible communication programme with its stakeholders.

431. The stakeholder communication programme should ensure that all stakeholders who have a right to know particular matters concerning the company are properly informed about them, effective feedback systems exist, the Board is alerted in a timely fashion to matters which should be communicated to stakeholders and processes exist to deal rapidly and sensitively with any crisis.

432. A company should consider disclosing in its integrated report the number and reasons for any refusals of a request for information made to it in terms of the law or this Code by any of its stakeholders.

CHAPTER 9

ROLE OF GOVERNMENT IN CORPORATE GOVERNANCE

Preamble

433. Government plays both an administrative role and a coordinating role through its agencies at every level. It is responsible for the maintenance of security, law and order and the protection of property of all members of society.

The Facilitative and Participatory Role of Governments

434. The role of government is to provide an enabling environment within which the private and public sector can thrive.

435. Government may play a participatory role in economic development through Parastatals and State-controlled companies.

436. It is a fundamental role of Government as the biggest employer in the economy to observe corporate governance principles in Government Ministries, Parastatals and State-controlled companies.

437. Government should provide relevant infrastructure and basic service enablers such as electricity, water, communication facilities, among others, and permit private actors to do the same. This enables companies, individuals and Government itself to function efficiently in the economic development of the country.

438. Government, through its agencies at every level, must ensure that there is fair play in business.

439. Legislation is necessary to ensure fairness and transparency in business dealings and is one of the tenets of good corporate governance.

440. Government has a major role to play in combating corruption.

441. There must be will-power to combat corruption on the part of the top leadership of the country which should cascade down to the ordinary man and woman. The will-power should filter through to directors and managers of companies, parastatals and State-controlled companies.

442. Government should introduce legislation and other measures to combat corruption and set up an anti-corruption commissions with the necessary legal powers.

443. Government should itself respect all laws and regulations so as to set a good example.

444. Government should consider and adopt the most effective legislative measures to enforce good corporate governance.

445. Enforcement can be statutory-based (i.e., legislated) or a combination of both.

446. Government should uphold and play a meaningful role in instilling good values and ethics.

SECOND SCHEDULE (Sections 26(1)(b), 31(1) and (2) and 45(1)(b))

PRINCIPLES OF GOOD CORPORATE GOVERNANCE FOR PUBLIC ENTITIES

PART I

RELATIONSHIP BETWEEN PUBLIC ENTITIES AND THE GOVERNMENT AND OTHER PARTIES

1. The Government's relationship to its public entities is similar to the relationship between a holding company and its subsidiaries, features of which include—
 - (a) a strong interest in the financial performance of the public entities; and
 - (b) reporting and accountability arrangements that facilitate appropriate oversight by the Government; and
 - (c) remedial action by the Government where the public entities' strategic direction deviates from that preferred by the Government.
2. There should be a clear separation between the Government's ownership function and other State functions that may influence the conditions for public entities, particularly with regard to market regulation. As a rule, the Government should not regulate the market so as unduly to favour public entities.
3. The enabling instruments under which public entities operate should allow streamlined operational practices. They should allow creditors to press their claims and to initiate insolvency procedures.
4. Any obligations and responsibilities that a public entity is required to undertake in terms of public services beyond the generally accepted norm should be clearly mandated by law. Such obligations and responsibilities should also be disclosed to the general public and related costs should be covered in a transparent manner.
5. Public entities should not be exempt from the application of the general law. Stakeholders, including competitors, should have access to efficient redress and an even-handed ruling when they consider that their rights have been violated.
6. Public entities should have sufficient flexibility for adjustments in their capital structure when this is necessary for achieving their objectives.
7. Public entities should face competitive conditions regarding access to finance. Their relations with State-owned banks, State-owned financial institutions and other public entities should be based on purely commercial grounds.
8. The responsible Minister should develop and issue a policy that defines the overall objectives of the State's role in the corporate governance of the public entities for which he or she is responsible, and defines how the State will implement these objectives.
9. In compliance with section 51A ("Separation of roles of appropriate Ministries and public entities" of the Public Finance Management Act [*Chapter 22:19*], the Government must—
 - (a) not be involved in the day-to-day management of public entities and should allow them full operational autonomy to achieve their defined objectives;
 - (b) let boards of public entities exercise their responsibilities and should respect their independence.
10. The Government as an active owner of its public entities should exercise its ownership rights according to the legal structure of each entity. Its prime responsibilities include—
 - (a) in relation to public entities that are companies—
 - (i) being represented at shareholders' meetings and exercising its votes; and
 - (ii) establishing well-structured and transparent nomination processes for the election of board members, and actively participating in those processes;
 - (b) in relation to all public entities—
 - (i) setting up reporting systems allowing regular monitoring and assessment of the performance of public entities; and
 - (ii) when permitted by the Government's level of ownership, liaising continuously with external auditors and other institutions of control; and
 - (iii) ensuring that the remuneration of board members foster the long-term interests of the public entities and can attract and motivate qualified professionals.

PART II

EQUITABLE TREATMENT OF MINORITY SHAREHOLDERS

12. In this Part—

“minority shareholder” means a person or party, other than the Government, that has an interest in a public entity, whether as a shareholder, a partner or otherwise.

13. The Government and public entities should recognise the rights of minority shareholders and ensure their equitable treatment and equal access to information regarding the public entities in which they have an interest.

14. The Government and public entities should ensure that all shareholders are treated equitably.

15. Public entities should observe a high degree of transparency towards all shareholders.

16. Public entities should develop an active policy of communication and consultation with all shareholders.

17. The participation of minority shareholders in shareholder meetings should be facilitated in order to allow them to take part in fundamental decisions such as board elections.

PART III

RELATIONS WITH STAKEHOLDERS

18. In this Part—

“stakeholder” means any person or entity that—

(a) has a material interest, greater than that of members of the general public, in the activities of a public entity; or

(b) is directly affected by the activities of a public entity.

19. The Government and its public entities should fully recognise the public entities’ responsibilities towards stakeholders, and the entities should report on their relations with stakeholders.

20. The Government and its public entities should recognise and respect stakeholders’ rights, whether established by statute or through mutual agreements.

21. The boards of public entities should develop, implement and communicate programmes for dealing with stakeholders, in accordance with internationally- recognised norms.

22. Where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient and reliable information on a timely and regular basis.

PART IV

TRANSPARENCY AND DISCLOSURE

23. Public entities should observe high standards of transparency

24. Public entities should develop efficient internal audit procedures and establish internal audit functions monitored by and reporting directly to their boards and to the entities’ audit committees or to their equivalent institutions.

25. Public entities must be subject to an annual independent external audit based on international standards.

26. Public entities should be subject to the same high quality accounting and auditing standards as listed public companies. Large or listed public entities should disclose financial and non-financial information according to high quality internationally recognised standards.

27. Public entities should disclose material information on all matters of interest to stakeholders, particularly information that may affect their asset value or may influence governmental decisions. Examples of such information include—

(a) a clear statement to the public of the entity’s objectives and their fulfilment; and

(b) the ownership and voting structure of the entity; and

(c) any material risk factors, and measures taken to manage such risks; and

(d) any financial assistance, including guarantees, received from the State and commitments made on behalf of the entity; and

(e) any material transactions with related entities.

28. Disclosure of financial information should be made in accordance with generally accepted accounting practice.

PART V

RESPONSIBILITIES OF BOARDS OF PUBLIC ENTITIES

29. The boards of public entities should have the necessary authority, competence and objectivity to carry out their functions of strategic guidance and monitoring of management. They should act with integrity and be held accountable for their actions.

30. The boards of public entities should be assigned a clear mandate and ultimate responsibility for their entities' performance. The boards should be fully accountable to the Government and other shareholders, act in the best interest of their entities, and treat all shareholders equitably.

31. The boards of public entities should carry out their functions of monitoring of management and strategic guidance, subject to the objectives set by the Government. They should retain full and effective control of their entities and its senior staff members. In particular, they should have the power to appoint and remove the chief executive officers and other senior members of their entities' staff.

32. The boards of public entities should establish effective systems of succession planning for senior management posts.

33. All board members should ensure that they have unrestricted access to accurate, relevant and timely information concerning their public entity and act on a fully informed basis. To that end, the board should establish procedures for the rapid transfer of information from the lowest to the highest levels within the entity.

34. The boards of public entities should ensure that their entities' operations are carried out so as to minimise any conflict between the entities, on the one hand, and the Government and other shareholders on the other.

35. The boards of public entities should be composed so that they can exercise objective and independent judgement. Good practice calls for the Chair of the board to be separate from the chief executive officer.

36. If employee representation on the board is mandated by an entity's enabling instrument, mechanisms should be developed to guarantee that this representation is exercised effectively and contributes to the enhancement of the board skills, information and independence.

37. The boards of public entities should carry out an annual evaluation to appraise their performance, both collectively and for individual members.

PART VI

COMMITTEES OF BOARDS OF PUBLIC ENTITIES

38. When necessary, the boards of public entities should set up specialised committees to support the full board in performing its functions, particularly in respect to risk management and, as provided in paragraphs 39 and 40, audit and remuneration.

39. The board of a public entity should establish an audit committee that has at least two independent board members. The audit committee should be responsible for improving management reporting by overseeing audit functions, internal controls and the financial reporting process.

40. The board of a public entity should establish a remuneration committee consisting of independent board members, to determine remuneration for executive board members and the entity's senior staff members.

PART VII

RISK MANAGEMENT

41. Boards of public entities should ensure that their entities have and maintain effective, efficient and transparent systems of financial and risk management and internal control. Boards should therefore establish processes and practices within their entities to manage all risks associated with their entities' operations.

42. Boards of public entities should keep the Government informed of risk management strategies by outlining them in corporate plans and progress reports, and in other reports when necessary.

THIRD SCHEDULE (Sections 12(9), 13(9), 14(5), 19(11), 20(4) and 21(2) and 44(2)0)

SURCHARGES

Definitions

1. In this Schedule—

“excess payment”, in relation to a public entity, means so much of any payment referred to in section 12(9), 13(9), 14(5), 19(11), 20(4) or 21(2) as is paid in contravention of any one or more of these sections;

“public resources” means public money or State property as defined in the Public Finance Management Act that are advanced to any public entity.

Application of Third Schedule

2.(1) This Schedule shall apply to—

(a) persons who are in the employment of a public entity, or are members of its board, or who were in such employment or were such members at the time of any deficiency in or improper payment of, or any payment not duly vouched, or loss or destruction of public moneys for which they were responsible; or

(b) any public entity that makes any excess payment to any person who is or was an employee or member of the board of such entity, and does not, in the opinion of the Secretary to Treasury, recover such payment promptly from any such employee or member.

(2) In this Schedule any reference to public resources in relation to public moneys shall be construed as including a reference to tokens, stamps or other such instruments which have a face value or are to be sold for an amount shown on the face thereof and, in the case of any deficiency in such instruments, a surcharge in terms of this Schedule may be calculated in relation to the face value of such instruments.

Power of surcharge in relation to public resources

3.(1) If—

(a) it appears to the Secretary to the Treasury that any person to whom the provisions of this Schedule apply was responsible for—

(i) any deficiency in the collection of or accounting for public resources; or

(ii) any improper payment of public resources; or

(iii) any payment of public resources which is not duly vouched and the Secretary to the Treasury is satisfied that such payment has resulted in a loss of public resources or a further payment of public resources in respect of the same matter; or

(iv) any deficiency in or destruction of public resources;

and

(b) an explanation satisfactory to the Secretary to the Treasury is not, within a period specified by him or her, furnished to him or her with regard to such irregularity as is referred to in paragraph (a);

the Secretary to the Treasury may surcharge against the said person the amount of any sums not collected or accounted for or the amount of any deficiency in or improper payment, payment not duly vouched or loss or destruction of public resources, as the case may be.

(2) The Secretary to the Treasury may at any time withdraw a surcharge—

(a) in respect of which a satisfactory explanation has been received; or

(b) if it otherwise appears to him or her that no surcharge should have been made.

(3) Whenever the Secretary to the Treasury raises a surcharge in terms of subparagraph (1) or withdraws a surcharge in terms of subparagraph (2), he or she shall immediately notify the appropriate accounting officer.

Power of surcharge in relation to excess payments

4.(1) If—

(a) it appears to the Secretary to the Treasury that any public entity to which the provisions of this Schedule apply—

(i) is responsible for making any excess payment to any person who is or was an employee or member of the board of such entity’ and

(ii) the entity does not, in the opinion of the Secretary to the Treasury, taking any steps to recover such payment promptly from any such employee or member;

and

- (b) an explanation satisfactory to the Secretary to the Treasury is not, within a period specified by him or her, furnished to him or her with regard to such irregularity as is referred to in paragraph (a);

the Secretary to the Treasury may surcharge against the public entity the amount of any excess payment, and such excess payment so paid to the Secretary to the Treasury shall form part of the Consolidated Revenue Fund.

(2) The Secretary to the Treasury may at any time withdraw a surcharge—

- (a) in respect of which a satisfactory explanation has been received; or
- (b) if it otherwise appears to him or her that no surcharge should have been made.

(3) Whenever the Secretary to the Treasury raises a surcharge in terms of subparagraph (1) or withdraws a surcharge in terms of subparagraph (2), he or she shall immediately notify the accounting officer or the public entity concerned.

Right of public entity to make good excess payments paid as surcharge

5.(1) Where a public entity has been surcharged in terms of paragraph 4, it must recover the amount thus surcharged from any person to whom the excess payment to which the surcharge relates was paid no later than twelve months after such surcharge is raised or, if an appeal against the surcharge is lodged under paragraph 6, within twelve months after such appeal is dismissed.

(2) The chairperson of the board, accounting officer and chief executive officer shall, no later than six months after the end of the period referred to in subparagraph (1), severally or jointly make a written declaration to the Secretary to the Treasury confirming such recovery or affirming that the entity is actively taking the specified legal steps to effect such recovery.

(3) If any chairperson, accounting officer chief executive officer—

- (a) provides the Secretary to the Treasury with false information in a declaration referred to in subparagraph (2), knowing it to be false or having no reasonable grounds for believing it to be true; or
- (b) without just cause, fails or refuses to submit a declaration referred to in subparagraph (2) within the time there specified;

he or she shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Appeals against surcharge

6.(1) Any person who or public entity that is dissatisfied with a surcharge raised against him, her or it by the Secretary to the Treasury may, within a period of one month after he, she or it has been notified thereof or such further period as the appropriate line Minister in special circumstances may allow, appeal in writing to the line Minister against such surcharge, giving his, her or its reasons as to why he, she or it feels that he, she or it should not have been surcharged.

(2) An appeal in terms of subparagraph (1) shall be lodged with the appropriate line Minister who, before forwarding it to the Minister responsible for the Public Finance Management Act, shall submit it to the Secretary to the Treasury for any comments he or she may wish to make thereon.

(3) After considering an appeal in terms of subparagraph (1) the Minister responsible for the Public Finance Management Act shall—

- (a) reject the appeal; or
- (b) make an order directing that the person concerned be released wholly or in part from the surcharge;

as may appear to him or her to be just and reasonable.

Recovery of surcharge

7.(1) A surcharge raised by the Secretary to the Treasury which has not been withdrawn or from which the person or the public entity concerned has not been released in terms of this Schedule shall be a debt due to the State.

(2) The amount of any surcharge which has been recovered shall be paid to the Consolidated Revenue Fund or the account in respect of which the surcharge was raised.