



REPUBLIC OF KENYA
EXECUTIVE OFFICE OF THE PRESIDENT

THE ROLE OF THE BOARD AND ITS ORGANS

PRESENTATION BY

THE INSTITUTE OF CERTIFIED PUBLIC SECRETARIES OF KENYA



The Role and Functions of the Board

- The Board is an important governance structure of the organization;
- The Board has both leadership and Governance roles in the organization;
- In the leadership role, the Board provides the strategic direction of the organization;
- In the governance role, the Board ensures that good corporate governance practices are embedded in the management of the organization;
- The Board approves the organizational structures;
- The Board appoints the CEO through a competitive process and on terms approved by the Government; and approves the appointment of senior management staff. The Board also removes the CEO.
- The Board appoints and removes the Corporation Secretary
- The Board ensures effective communication with stakeholders



The Role and Functions of the Board

- The functions of the Board should be guided by the Board Work Plan and the Board Charter
- The Work Plan should cover the activities of the board for the year. Some of these activities include:
 - Strategic planning and review
 - Governance and compliance
 - Board evaluation
 - Risk assessment and management



The Role and Functions of the Board

Board Charter:

The Board should develop and adopt a Board Charter.

The Board Charter should define the role, responsibilities and functions of the Board.

The Board should periodically review its Board Charter.



Duties of Individual Board Members

Individual Board members have specific duties and responsibilities to the organization arising from Statutes, constitutive documents and common law.

In carrying out their duties, each Board member must:

- exercise the highest degree of care, skill and diligence;
- exercise independent judgment at all times;
- understand and accept principles of collective responsibility ;
- act in the best interest of the organization and avoid conflict of interest;
- promote teamwork within the Board and the organization;
- promote transparency and accountability at Board level;
- Owe their duty to the organization and not to the nominating or appointing authority.



Fiduciary Duties of Board Members

Fiduciary is from the Latin word *Fiducia* meaning trust;

A fiduciary duty is an obligation to act in the best interest of another party. For instance, an organization's Board member has a fiduciary duty to the shareholders, a trustee has fiduciary duty to the trust's beneficiaries and a lawyer has fiduciary duty to a client.

When one person agrees to act for another in a fiduciary relationship, the law forbids the fiduciary from acting in a manner adverse or contrary to the interests of the client, or from acting for his own benefit in relation to the subject matter.

Directors **MUST** do the right thing for the organization and its stakeholders, which means sometimes they must go against their own interest.

Fiduciary Duties



Duty	Meaning	Test for whether duty is met	Remedy
Loyalty	Acting in the best interest of the organization and not in own interests. Avoiding conflict of interest	Fair process (approval by non-interested directors) or else burden on directors to show entire fairness	Injunction or damages
Care, skill and diligence	The duty to pay attention and to make good decisions in accordance with his skill	Business judgment rule The prudent/reasonable man's test. May not require Special skill	Damages
To act in good faith	To act always in the best interest of the organization – No conflict and no profit. Confidentiality	Fair process	Injunction or damages



Liability of Board Members

According to Mwongozo (1.17), Board members should be held liable for their acts and omissions arising from their negligence, default, breach of duty or breach of trust.

A Director has NO inherent power to act individually as the Organization's agent. He cannot, for example, sign contracts on the Organization's behalf on his own volition and if he does so, he will be personally liable.

A Director may be liable to and may be sued by his company for breach of his fiduciary duty or duty of skill and care.

A Director will be liable to account to the Organization for any profit made in securing an advantage for himself.

Liability for Directors is also set out under various statutes and includes failure to keep books of account.

Where an Organization commits a crime, Directors may be help personally liable.



Role of the Chairperson

The Chairperson provides leadership to the Board. In this role the chairperson will:

- Conduct effective Board meetings;
- Harness the collective skills of the Board and its committees;
- Ensure new Board members are inducted into the organization and that they continuously update their knowledge and competence;
- Ensure appropriate balance of power between CEO and the Board;
- Ensure that there is a formal succession plan for Board members.



Committees of the Board

The detailed work of the Board is carried out by committees. In this respect:

- **The Board should establish not more than four committees;**
- **It is mandatory that the Board shall establish the Audit Committee out of the four mandated committees;**
- **Other committees could deal with governance, strategy, technical matters and finance;**
- **The Board can appoint ad hoc sub-committees as the need may arise;**
- **The committees shall report to the Board;**
- **The chairperson should not be a member of any Board committee save for an ad-hoc committee.**



Board Meetings

The Board transacts its business through meetings.

- Meetings of the Board should be regular, but should be held at least on a quarterly basis;**
- Board members should dedicate adequate time to the business of the organization;**
- The Chairperson shall chair all Board meetings. In the absence of the chairperson, members present shall appoint one of their number to preside over the meeting;**
- The quorum of Board meetings shall be five (for boards with 8-9 members); and four where membership is seven and below;**
- The Corporation Secretary should attend all Board meetings; in their absence the Board will appoint a secretary of the meeting from amongst staff of the corporation.**



The Role of the CEO

The CEO shall:

- **Serve as the link between the Board and Management;**
- **Be responsible for the day-to-day operations of the organization;**
- **Provide leadership to senior management and staff;**
- **Be responsible for the execution and communication of the Board's strategies, decisions and policies.**



The Corporation Secretary

The Corporation Secretary should:

- **Provide guidance to the Board on their duties and responsibilities and on matters of governance;**
- **Be the custodian of the seal of the corporation and account to the Board for its use;**
- **Maintain and update the register of conflicts of interests;**
- **Facilitate effective communication between the organization and the shareholders;**
- **Ensure Board and Committee papers are circulated in advance of any meeting.**



Separation of Roles

The role of the Board should clearly be separated from that of the Management;

The office of the Chairperson should be separated from that of the CEO.

The two positions should be held by different persons;

The office of the CEO and that of the Corporation Secretary should be held by different persons.



Governance Audit

Governance audit is an assessment of the extent to which the organization has complied with good corporate governance practices.

The purpose of the governance audit is to ensure that the organization conforms to the highest standards of good governance.

The Governance Audit should cover at least the following :

- Compliance with Laws and Regulations**
- Board Independence and governance**
- Transparency and disclosure**



THANK YOU

Questions

