



Code of Governance for Private Organizations in Kenya



**Institute of Certified Public
Secretaries of Kenya**

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Organizations in Kenya**

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TABLE OF CONTENTS

FOREWORD	i
ABBREVIATIONS	iii
INTRODUCTION AND BACKGROUND	iv
CHAPTER ONE - THE BOARD OF DIRECTORS	1
CHAPTER TWO - ETHICAL LEADERSHIP AND CORPORATE CITIZENSHIP	12
CHAPTER THREE - ACCOUNTABILITY, RISK MANAGEMENT AND INTERNAL CONTROL	15
CHAPTER FOUR - TRANSPARENCY AND DISCLOSURE	20
CHAPTER FIVE - SHAREHOLDER RIGHTS AND OBLIGATIONS	24
CHAPTER SIX - STAKEHOLDER RELATIONSHIPS	27
CHAPTER SEVEN - COMPLIANCE WITH LAWS AND REGULATIONS	29
CHAPTER EIGHT - SUSTAINABILITY AND PERFORMANCE MANAGEMENT	32
CONCLUSION	35
GLOSSARY OF TERMS	36

FOREWORD

It is a well-known fact that performance of any organization depends to a large extent on the capabilities of the Board. It is for this reason that the Institute of Certified Public Secretaries of Kenya (ICPSK) deemed it necessary to develop a Code of Governance to provide a firm foundation for good corporate governance. This code is intended to be applied across all organizations in the private sector as a means of strengthening the roles and responsibilities of the Board, Board audit committees and the internal audit functions.

ICPSK recognizes that Boards have a duty to be effective stewards and guardians of the organization, not only in setting strategic direction and overseeing the conduct of business, but also in ensuring that the organization complies with laws and ethical values, and maintains an effective governance structure. It is therefore important for Boards and management to be mindful of their duty to direct their efforts and resources towards the best interest of their organizations and stakeholders.

Some of the key governance challenges facing organizations in Kenya that require redress include absence of a clear framework for recruitment, selection, appointment and induction of Boards; lack of uniformity in the application of appointment procedures; inadequate induction processes for Board members; lack of proper skills mix; improperly constituted Boards; lack of understanding of the role of Boards by Board Members; and failure to engage qualified Board Secretaries.

This Code is not only geared towards providing a harmonized approach on matters of governance with the aim of addressing the above identified governance challenges, but also to enhance the performance of organizations towards the achievement of organizational and national development goals.

Good governance in our institutions will enhance and sustain our social and economic transformation. This Code should serve as the anchor on which this transformation will be founded. The development of this Code is therefore an important milestone in realizing the goals embedded in Kenya's long term development blue print, the Kenya Vision 2030.

In line with the statutory mandate of ICPSK in championing good governance, the Council of the Institute formed a taskforce with the specific mandate of developing this Code. The taskforce composed of the following members: CS. Catherine Musakali (Team Leader); CS. Raphael Mwai, MBS; CS. Sam G. Ogutha; CS. Jackson K. Maingi, HSC; CS. Joe M. Mbutia; CS. Pius M. Nduatih, OGW; CS. Nkirote Mworira Njiru; CS. John K. Mburugu; and CS. Jeremiah N. Karanja.

I would like to thank the Council for their guidance and support, taskforce members for their commitment, Ms. Felistas M. Musyoka for the secretarial services on the development of the Code and Dr. Consolata Mwimali for her editorial support. Similarly, I thank all the stakeholders who have in one way or another contributed towards the success of this noble task. I urge the Boards and Management of private organizations to fully embrace and apply the provisions of this Code in order to enhance good governance.



CS. CATHERINE MUSAKALI, FCPS (K)

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ABBREVIATIONS

CEO	Chief Executive Officer
COG	Champions of Governance
CoK	Constitution of Kenya
CS	Certified Secretary
EACC	Ethics and Anti-Corruption Commission
FCPS(K)	Fellow of the Institute of Certified Public Secretaries of Kenya
HSC	Head of State Commendation
ICPAK	Institute of Certified Public Accountants of Kenya
ICPSK	Institute of Certified Public Secretaries of Kenya
IFC	International Finance Corporation
IIA	Institute of Internal Auditors
KAM	Kenya Association of Manufacturers
KEPSA	Kenya Private Sector Alliance
MBS	Moran of the Order of the Burning Spear
OECD	Organization for Economic Co-operation and Development
OGW	Order of the Grand Warrior of Kenya
RBM	Results Based Management
SMART	Specific; Measurable; Attainable; Realistic; and Time bound
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
USA	United States of America

INTRODUCTION AND BACKGROUND

Corporate governance is a set of rules that define the relationship between stakeholders, management, and the board of directors of an organization. It has been established that good governance translates to better performance, provides better access to capital and therefore aids growth. Good governance ensures that the business environment is fair and transparent, and that organizations can be held accountable for their actions. Good governance ensures the sustainability of any business by generating long-term value for its shareholders and other stakeholders. Currently, there is an increased focus on improved corporate governance, that is, that stakeholders want to ensure that there are better governance structures while regulators and governments all over the world are putting in place rigorous checks and balances for greater accountability to stakeholders. It is for this reason that forward-looking Boards need to clearly understand the key principles in corporate governance. While this code aims at providing that guidance, it is anticipated that once implemented, boards of directors will realize better governance.

ICPSK is a professional membership organization established under The Certified Public Secretaries of Kenya Act, Cap.534 of 1988. It has a statutory mandate to promote good corporate governance. The Vision of the Institute is, *“To be a world class professional body and centre of excellence in governance”* while the Mission is, *“To promote the practice of good governance and leadership through competence development of members and dissemination of knowledge and best practice to stakeholders.”*

In line with its statutory mandate, its vision and mission, the Council of the Institute therefore deemed it necessary to develop a code of governance to address governance challenges in private organizations in Kenya. Development of this Code is therefore one of the key initiatives that the Institute has taken on the promotion of good governance in both public and private sectors. Other initiatives include:

- i. “The ICPSK Champions of Governance (COG) Award”. This is an award for excellence in corporate governance that aims at recognizing institutions and individuals who exhibit the highest standards of practice of good corporate governance. Since its inauguration in 2010, the data collected from the assessment of the participants has been used to develop a governance index for Kenya.

- ii. Sector specific Codes of Governance. The Institute is working with various stakeholders to develop other codes which are specific to the relevant sectors.
- iii. Monthly governance forums to discuss topical governance issues in the Country.
- iv. Periodic governance seminars and forums for Government institutions, County Governments, and Private entities.

In developing this Code, the Institute ensured that it adheres to both the provisions of the Constitution of Kenya and international best governance practices. ICPSK therefore reviewed existing documents and international best practices which were adopted and contextualized with the position obtaining in Kenya. The documents reviewed, among others are;

- (i) The Constitution of Kenya 2010;
- (ii) The Vision 2030 and the Second Medium Term Plan;
- (iii) Relevant Acts of Parliament;
- (iv) Report of the Presidential Taskforce on Parastatal Reforms;
- (v) OECD Principles of Corporate Governance, 2004;
- (vi) OECD guidelines on Corporate Governance of State Owned Enterprises, 2005;
- (vii) The King Code of Governance for South Africa (King III), 2009;
- (viii) The Malaysian Code of Corporate Governance, 2012;
- (ix) Corporate Governance Voluntary Guideline, 2009 India;
- (x) Achieving Shared Prosperity in Kenya, a World Bank Report, 2013;
- (xi) Guidance for the Directors of Banks by Richard Westlake, IFC; and
- (xii) Wealth and Wellbeing: Shaping Kenya's Growth to Prosperity and Wellbeing, World Bank, 2013.

This code has been developed on the 'comply or explain' basis. It outlines fundamental governance principles that when well implemented would lead to sustainable and effective organizations. The Code is organized into eight chapters with each chapter addressing a specific governance dimension:

- Chapter One - The Board of Directors
- Chapter Two - Transparency and Disclosure
- Chapter Three - Accountability, Risk Management and Internal Control
- Chapter Four - Ethical Leadership and Corporate Citizenship
- Chapter Five - Shareholder Rights and Obligations
- Chapter Six - Stakeholder Relationships
- Chapter Seven - Sustainability and Performance Management
- Chapter Eight - Compliance with Laws and Regulations

CHAPTER 1

CHAPTER ONE - THE BOARD OF DIRECTORS

Broad Governance Statements

To achieve its strategic objectives, the organization should be led by an effective Board. The Board should be composed of competent, diverse and qualified members capable of exercising objective and independent judgment. It should have appropriate autonomy and authority to exercise its functions and be accountable to shareholders. The composition and size of the Board should provide a diversity of competencies and skills required for the effective leadership of the organization.

The Board should provide strategic direction to the organization, exercise control and remain accountable to shareholders. It should also ensure that Board members are inducted and that their skills and knowledge are continually developed to enhance effectiveness. The performance of the Board, its committees and individual directors should be evaluated annually.

1.1 Appointment, Composition and Size

The Board should have in place a formal process for the appointment of directors. This process should take into consideration diversity and the skills required on the Board, while providing for a balance between Executive and Non-Executive directors. There should be a Nomination Committee responsible for the identification of suitable candidates for appointment to the Board. The Board should comprise a sufficient number taking into consideration the size and complexity of the organization.

Recommended Practice

- 1.1.1 The Board should be appointed through a transparent and formal process governed by the overriding principle of merit.
- 1.1.2 Board appointments should be based on recommendations of the Nominations Committee.
- 1.1.3 Board membership of the organization should not be less than five.
- 1.1.4 The Board should be composed of Executive and Non-Executive members, the latter being no less than two-thirds.
- 1.1.5 Executive Board members should manage the conflict that arises between their roles as managers and members of the Board.
- 1.1.6 Board appointments should take into consideration competencies, diversity and mix of skills.
- 1.1.7 The Chairperson of the Board should be a Non-Executive Director.

- 1.1.8 The appointment of each Board member should be in writing.
- 1.1.9 Each Board member shall signify their acceptance of the appointment in writing.
- 1.1.10 The Board may recommend to the shareholders the removal of a Board member based on non-performance, non-attendance of meetings, unethical conduct or as set out in the Articles of Association of the organization or any applicable law.

1.2 Role and functions of the Board

The Board provides the overall leadership and is responsible for the strategic direction of the organization. It is accountable for the mission and values that guide and shape the organization and has the ultimate responsibility of ensuring that the organization has adequate resources to fulfill its mandate.

Recommended Practice

The Board should:

- 1.2.1 Determine the organization's mission, vision, purpose and core values;
- 1.2.2 Set and oversee the overall strategy and approve significant policies of the organization;
- 1.2.3 Approve the organizational structure;
- 1.2.4 Approve the annual budget of the organization;
- 1.2.5 Monitor the performance of the organization to ensure sustainability;
- 1.2.6 Enhance the corporate image of the organization;
- 1.2.7 Appoint management;
- 1.2.8 Remunerate management taking into account performance; and
- 1.2.9 Ensure effective communication with shareholders and stakeholders.

1.3 Duties of Individual Board members

Each Board member is in a position of trust. A Board member must act in good faith and should exercise care and diligence in carrying out their responsibilities.

Recommended Practice

Each Board member:

- 1.3.1 Must exercise the highest degree of care, skill and diligence in discharging their duties;
- 1.3.2 Must act in the best interest of the organization;
- 1.3.3 Must act honestly and at all times avoid conflict of interest;
- 1.3.4 Should at all times exercise independent judgment;
- 1.3.5 Should understand and accept the principle of collective responsibility;

- 1.3.6 Should devote sufficient time to carry out their responsibilities;
- 1.3.7 Should regularly update their knowledge and enhance their skills;
- 1.3.8 Should promote transparency at Board level;
- 1.3.9 Should promote teamwork within the Board and the organization;
- 1.3.10 Should promote and protect the image of the organization.
- 1.3.11 Owes their duty to the organization and not to the nominating or appointing authority; and
- 1.3.12 Owes the organization a duty to hold in confidence all information available to them by virtue of their position as a Board member.

1.4 The Role of the Chairperson

The role of the Chairperson is to guide the Board to effectively discharge its mandate. An effective Chairperson should guide the agenda of the Board and lead by facilitating and encouraging, rather than directing. The Chairperson provides support and advice to the CEO and rallies the Board around the common goals of the organization.

Recommended Practice

The Chairperson should;

- 1.4.1 Provide overall leadership to the Board;
- 1.4.2 Play a key role in setting the agenda for Board meetings;
- 1.4.3 Conduct efficient Board meetings and guide the Board decision-making process;
- 1.4.4 Encourage Board members to participate fully in Board deliberations;
- 1.4.5 Harness the collective skills of the Board and its Committees;
- 1.4.6 Lead the annual Board Evaluation Process;
- 1.4.7 Monitor the performance of the Chief Executive Officer and lead in the evaluation of their performance;
- 1.4.8 Maintain a close, but independent working relationship with the Chief Executive Officer;
- 1.4.9 Ensure appropriate balance of power between the Chief Executive Officer and the Board;
- 1.4.10 Be available for consultations with Board members and the Chief Executive Officer;
- 1.4.11 Ensure that there is a formal succession plan for Board members;
- 1.4.12 Ensure new Board members are inducted in accordance with the agreed induction programme;
- 1.4.13 Encourage Board members to develop their skills and competencies;
- 1.4.14 Promote a positive image of the organization; and

1.4.15 Encourage a culture of transparency and teamwork among Board members.

1.5 Term Limits for Non-Executive Board Members

Term limits for non- executive directors ensure that the Board remains dynamic. Term limits therefore provide an opportunity for challenging the existing viewpoints and creating new ones.

Recommended Practice

- 1.5.1 The tenure of a Non-Executive Board member should not exceed a cumulative term of six years or two terms of three years each.
- 1.5.2 The renewal of a Board Member's tenure for a second term should be subject to a favourable evaluation.

1.6 Committees of the Board

Committees assist the Board in fulfilling its mandate. Committees operate within a framework of delegated responsibility. The Committee structure allows the Board to consider specified matters in great detail and with due regard to professional input.

Recommended Practice

- 1.6.1 The Board should establish such Committees as are necessary to discharge its mandate and in any event there should be Committees responsible for the following functions:
 - Audit
 - Risk
 - Remuneration
 - Nomination
 - Governance and Compliance
- 1.6.2 The Board should provide Terms of Reference for each Committee.
- 1.6.3 The Board should review the mandate of the Committees periodically.
- 1.6.4 Committee members should have the necessary skills and expertise to execute their responsibilities.
- 1.6.5 The decisions of the Committees are subject to ratification by the Board.
- 1.6.6 The Board should determine the procedure and process within which Committees may be allowed to take independent professional advice at the organization's expense.
- 1.6.7 The Board shall determine the frequency of Committee meetings.
- 1.6.8 The Board shall appoint the Chairperson of each Committee.

- 1.6.9 The Chairperson of the Board should not be a member of any Committee responsible for audit and risk management.
- 1.6.10 The Chairperson of the Board shall not chair any Board Committee.
- 1.6.11 The Board should annually review the effectiveness and performance of its Committees.

1.7 Board Meetings

Boards formally transact their business and make decisions through meetings. Board meetings should be properly convened and held at regular intervals with the proceedings being recorded.

Recommended Practice

- 1.7.1 Board members should dedicate adequate time and effort for meetings.
- 1.7.2 Board members should meet as regularly as required and at least quarterly in order to effectively lead the organization.
- 1.7.3 The Chairperson shall chair all Board meetings and in their absence or inability to chair, the Board will elect a Chairperson for the meeting from Board members present.
- 1.7.4 The quorum for Board meetings shall not be less than one third of the Board members.
- 1.7.5 The Corporation Secretary should attend all Board meetings.

1.8 Board Work Plan

The Board should have a work plan that enables the Board and Management to effectively prepare for meetings and other Board activities. In developing the work plan, a forward looking Board will identify all key actions and/or decisions required in any given year and assign these to specific dates for the Board's attention.

Recommended Practice

- 1.8.1 Board members should ensure the development of an annual Board work plan.
- 1.8.2 The Board work plan should at a minimum focus on:
 - A review of management's implementation of strategies, policies and plans
 - Risk Assessment and Management
 - Budgeting and Financial Management
 - Quality Assurance Processes
 - Board Evaluation
 - Strategic planning and review
 - Governance and compliance

1.9 Board Induction and Continuous Skills Development

On appointment, Board members should be inducted into their roles and responsibilities by being provided with a structured and practical orientation to the policies and activities of the organization.

In addition to the induction programme, Board members should continuously assess their competencies and put in place a development programme to address any gaps relative to their roles and responsibilities, particularly in the area of corporate governance.

Recommended Practice

- 1.9.1 The Board should develop an induction programme for new Board members.
- 1.9.2 The Board should ensure that a competence needs assessment is carried out and an annual development programme for Board members put in place.
- 1.9.3 Board members should receive briefings on matters relevant to the business of the organization and changes in laws and regulations.

1.10 Board Charter

The Board should have a Board Charter that sets out the roles, responsibilities, structure, processes and authorities of the Board. The Board Charter indicates the legal framework within which the Board operates, and assists in delivering good governance.

Recommended Practice

- 1.10.1 The Board should develop and adopt a Board charter.
- 1.10.2 The Board charter should define the role, responsibilities and functions of the Board in the governance of the organization.
- 1.10.3 The Board should periodically review its Board charter.

1.11 Board Evaluation

Board evaluation is central to good corporate governance. Boards should conduct periodic evaluation to ensure that they carry out their responsibilities efficiently and effectively.

Recommended Practice

- 1.11.1 The Board should determine its performance criteria.
- 1.11.2 The Board should undertake an annual evaluation of its performance.
- 1.11.3 The evaluation should cover the Board as a whole, its committees, individual Board members, the Chairperson, the Chief Executive Officer and the Corporation Secretary.
- 1.11.4 The annual evaluation should be facilitated by an independent governance specialist.
- 1.11.5 The annual evaluation should result in a report with recommendations for implementation.
- 1.11.6 The re-appointment for a subsequent term of any Board member should be based on a favourable evaluation.

1.12 The Governance Audit

The Board should conduct an annual governance audit. The purpose of the audit is to assess the extent to which the organization has complied with good governance practices.

Recommended Practice

- 1.12.1 The Board should ensure that it subjects the organization to an annual governance audit by a member of the Institute of Certified Public Secretaries of Kenya (ICPSK) who is accredited for that purpose.
- 1.12.2 The Governance audit should among other areas cover the governance practices of the organization in the following parameters:
 - Leadership and strategic management;
 - Transparency and Disclosure;
 - Compliance with Laws and Regulations;
 - Communication with stakeholders;
 - Board independence and governance;
 - Board systems and procedures;
 - Consistent shareholder and stakeholders' value enhancement;
 - Corporate social responsibility and investment.

1.13 Succession Planning

The Board should have a succession plan for the non-executive Board members. A succession plan provides guidance for the identification and sourcing of potential Board members to ensure Board continuity with the right set of skills and competencies.

Recommended Practice

- 1.13.1 The Board should ensure that the terms of the Non-Executive Board members are staggered to ensure a phased transition.
- 1.13.2 The succession plan should take into consideration the required skills and competencies.

1.14 Board Remuneration

The Board should develop a remuneration policy for non-executive Board members, which must be approved by shareholders. The policy should safeguard the long term interests of the organization and take into consideration any specific matters, including assignments and responsibility undertaken by the Board.

Recommended Practice

- 1.14.1 The Board should establish a formal and transparent policy for its remuneration.
- 1.14.2 The remuneration policy should be approved by the shareholders.

1.15 Board Independence

Board members must at all times act in the best interest of the organization. While Board members could take into consideration the views of other stakeholders, they must make decisions independently and not let any other interests influence their decision making process.

Recommended Practice

- 1.15.1 The Board should exercise independent judgment in discharging its duties.
- 1.15.2 Board members should disclose all real or perceived conflicts of interest and manage these within an agreed framework.
- 1.15.3 Board members should be free to seek independent advice in connection with their duties following an agreed procedure.

1.16 Liability

Board members should exercise due diligence in overseeing the activities of the organization. They are required to act in good faith and in the best interest of the organization. They may be personally liable for failure to act as stated under any law or for mismanagement of an organization.

Recommended Practice

Board members should:

- 1.16.1 Act in the best interest of their organization; and
- 1.16.2 Be held liable for their acts and omissions arising from their negligence, default, breach of duty or breach of trust.

1.17 Appointment of the Chief Executive Officer

It is the responsibility of the Board to appoint and delegate requisite authority to the CEO. The Board should continually monitor and assess performance of the CEO.

Recommended Practice

The Board should:

- 1.17.1 Appoint and remove the Chief Executive Officer;
- 1.17.2 Define and approve authority levels for the Chief Executive Officer;
- 1.17.3 Set performance targets of the Chief Executive Officer;
- 1.17.4 Ensure that there is a succession plan for the Chief Executive Officer and top management which is reviewed regularly; and
- 1.17.5 Participate in the recruitment and appointment of top management.

1.18 Appointment of the Certified Secretary

The Board should appoint a Certified Secretary to advise it in matters of corporate governance and to act as the link between the Board and shareholders.

Recommended Practice

- 1.18.1 The Board should be assisted by a qualified, competent and experienced Certified Secretary.
- 1.18.2 The Board should appoint and remove the Certified Secretary.
- 1.18.3 The Certified Secretary should be qualified in terms of the provisions of the Certified Public Secretaries of Kenya Act.
- 1.18.4 The Board should ensure that its Certified Secretary is a member of the Institute of Certified Public Secretaries of Kenya in good standing.
- 1.18.5 The Board should empower the Certified Secretary to enable them effectively carry out their role.
- 1.18.6 The Certified Secretary should have an arm's length relationship with the Board.
- 1.18.7 The Certified Secretary may be full time or part-time depending on the needs of the Organization.
- 1.18.8 The Certified Secretary should not be a member of the Board.

- 1.18.9 The Certified Secretary should provide guidance to the Board on their duties and responsibilities and on matters of governance.
- 1.18.10 The Certified Secretary should assist the Board in carrying out the following:
- a) Board induction and training;
 - b) Updating the Board and Committee charters;
 - c) Preparation of Board work plans;
 - d) Board evaluation; and
 - e) Governance audit
- 1.18.11 The Certified Secretary should ensure the timely preparation and circulation of Board and Committee papers.
- 1.18.12 Except in exceptional circumstances, the Certified Secretary should ensure that Board and Committee papers are circulated in advance of relevant meetings.
- 1.18.13 The Certified Secretary should ensure the preparation and timely circulation of Board and Committee minutes.
- 1.18.14 The Certified Secretary should assist in the Board evaluation exercise.
- 1.18.15 The Certified Secretary should have custody of the seal of the organization and account to the Board for its use.
- 1.18.16 The Certified Secretary should maintain and update the register of conflicts of interest.
- 1.18.17 The Certified Secretary should facilitate effective communication between the organization and the shareholders.
- 1.18.18 The Certified Secretary should attend all meetings of the Board and, with the permission of the Chairperson, participate in the deliberations of the Board.

1.19 Separation of Roles

There should be separation in the roles of the Chairperson and CEO to ensure Board independence and enhance monitoring and oversight of management. In addition, there should be separation in the roles of the CEO and the Certified Secretary for improved governance.

Recommended Practice

- 1.19.1 The role of the Board should clearly be separated from that of Management.
- 1.19.2 The office of the Chairperson and that of the Chief Executive Officer should be held by different persons.
- 1.19.3 The office of the Chief Executive Officer and that of the Certified Secretary should be held by different persons.

CHAPTER 2

CHAPTER TWO - ETHICAL LEADERSHIP AND CORPORATE CITIZENSHIP

Broad Governance Statements

The operations of the organization should be guided by ethical practices that seek to promote good corporate citizenship. The organization should commit to operate ethically and promote corporate social responsibility and investments.

2.1 Ethics and Integrity

The Board should ensure that its operations and the conduct of members of staff are anchored on high standards of ethics and integrity.

Recommended practice

The Board should:

- 2.1.1 Provide ethical leadership in the management of the organization;
- 2.1.2 Develop and promote an ethical culture based on core values;
- 2.1.3 Ensure that the core values are adhered to by all members of the organization;
- 2.1.4 Ensure that the corporate strategy includes measurable targets for improving ethical behavior; and
- 2.1.5 Ensure that the ethical practices of the organization are effectively monitored.

2.2 Code of Conduct and Ethics

The Board should ensure that there is a Code of Conduct and Ethics that promotes ethical behavior in the organization.

Recommended practice

- 2.2.1 The Board should ensure that a code of conduct and ethics is developed.
- 2.2.2 The Board should ensure that all members of the organization subscribe to the code of conduct and ethics.
- 2.2.3 The code of conduct and ethics should be reviewed as often as necessary.
- 2.2.4 The Board should promote ethical conduct and sanction misconduct.
- 2.2.5 The Board should ensure that a corporate gifts policy is in place.

2.3 Conflict of Interests

The Board should ensure that there is a policy that governs the conflict between the personal interests of Board members and that of the organization.

Recommended practice

- 2.3.1 The Board should ensure that a policy on the management of conflict of interests is in place.
- 2.3.2 Board members should declare any real or perceived conflict of interests upon appointment to the Board.
- 2.3.3 Board members should declare to the Board any real or perceived conflict of interests that may subsequently arise.
- 2.3.4 A Board member shall not take part in any discussions or decision making regarding any subject or transaction in which they have a conflict of interests.

2.4 Corporate Reputation and Image

The Board should ensure that the actions of its members and staff promote the reputation and image of the organization.

Recommended practice

The Board should:

- 2.4.1 Ensure that the organization develops a strategy on corporate reputation and image; and
- 2.4.2 Promote a positive image of the organization.

2.5 Corporate Social Responsibility and Investment

The Board has a responsibility to promote good corporate citizenship in its operations.

Recommended practice

The Board should:

- 2.5.1 Ensure that a policy on good corporate citizenship is in place;
- 2.5.2 Ensure the implementation of the policy on good corporate citizenship;
- 2.5.3 Ensure that an appropriate budget is allocated for corporate social responsibility and investment; and
- 2.5.4 Ensure that the organization respects and promotes a sustainable environment.

2.6 Whistle Blowing

The Board should encourage whistle blowing within a controlled environment to safeguard the assets of the organization.

Recommended practice

The Board should:

- 2.6.1 Ensure that there is a whistle blowing policy in the organization; and
- 2.6.2 Ensure the protection of whistle blowers.

CHAPTER 3

CHAPTER THREE - ACCOUNTABILITY, RISK MANAGEMENT AND INTERNAL CONTROL

Broad Governance Statements

The Board has the responsibility to ensure that the organization has effective systems and processes of accountability, risk management and internal controls. Therefore, the Board should ensure timely preparation of accurate financial statements. It should also ensure that effective processes and systems of risk management and internal controls are in place. In addition, the Board should also ensure that the procurement process is cost effective and delivers value for money.

3.1 Financial Reporting

The Board should ensure the preparation of accurate financial statements which show the performance of the organization at different times. An external audit of the financial statements should be completed within six months of the year-end.

Recommended Practice

The Board should:

- 3.1.1 Ensure that the books of account are prepared on a timely basis;
- 3.1.2 State in the annual report, its responsibility for preparing the report and accounts;
- 3.1.3 Report in the annual and half-year financial statements that the organization is a going concern, with supporting assumptions or qualifications as necessary; and
- 3.1.4 Ensure that the external audit of the financial statements is completed and an audit opinion given within six months of the year-end.

3.2 Risk Management

The Board should put in place an effective risk management framework which sets out the level of risk tolerance and entails active identification, assessment and monitoring of business risks.

Recommended Practice

The Board should:

- 3.2.1 Ensure the development of a policy on risk management;
- 3.2.2 Ensure the development of a policy on risk management;
- 3.2.3 Set out its responsibility for risk management in the Board Charter;

- 3.2.4 Approve the risk management policy and the risk management framework;
- 3.2.5 Delegate to Management the responsibility to implement the risk management framework;
- 3.2.6 Monitor that risks taken are within the set tolerance and appetite levels;
- 3.2.7 Review the implementation of the risk management framework on a quarterly basis;
- 3.2.8 Appoint a committee responsible for risk management in the organization; and
- 3.2.9 Evaluate the performance of the committee once a year.
- 3.2.10 The committee should obtain relevant technical advice where necessary.
- 3.2.11 The Board should establish a risk management function within the organization.
- 3.2.12 The Board should ensure that risk assessment is carried out on a continuous basis.
- 3.2.13 The Board should receive from internal audit function a written assessment of the effectiveness of the system of internal controls and risk management.

3.3 Internal Control

The Board should establish and review on a regular basis the adequacy and integrity of the internal control system of the organization.

Recommended Practice

The Board should:

- 3.3.1 Maintain an effective and efficient system of internal control;
- 3.3.2 Set out its responsibility for internal control in the Board Charter;
- 3.3.3 Delegate to Management the responsibility of designing, implementing and monitoring effectiveness of internal control system;
- 3.3.4 Receive from the internal audit function a written assessment of the effectiveness of the system of internal controls on a quarterly basis;
- 3.3.5 Receive from the external auditor an assessment of the effectiveness of the system of internal control after the audit process; and
- 3.3.6 Ensure that the internal audit function monitors for rectification, weaknesses noted by the external auditor.

3.4 Audit Committee and External Auditor

The Board should establish an independent Audit Committee which is responsible for overseeing the internal audit function and the external auditor.

Recommended Practice

- 3.4.1 The Audit Committee is responsible for overseeing the internal audit function
- 3.4.2 The Committee should have at least three non-executive Board Members.
- 3.4.3 The Board should ensure that at least one member of the committee has relevant financial experience and is a member of ICPAK in good standing.
- 3.4.4 The Board should establish an internal audit function.
- 3.4.5 The Board should ensure that there is an effective risk-based internal audit system.
- 3.4.6 The Board should approve the internal audit charter.
- 3.4.7 The Board should ensure that the internal audit function is independent.
- 3.4.8 The Board should ensure that the Head of Internal Audit is a member of the senior management team.

3.5 Procurement Process

The Board should establish a procurement function and develop a policy on procurement which promotes sustainability, high ethical standards and best practice.

Recommended Practice

The Board should:

- 3.5.1 Establish a procurement policy that promotes sustainability, high ethical standards and best practice;
- 3.5.2 Establish a procurement function in the organization which is managed by competent and professionally qualified persons of high integrity;
- 3.5.3 Approve the annual procurement plan which should be aligned with the annual budget;
- 3.5.4 Periodically review the implementation of the procurement plan; and
- 3.5.5 Ensure that the committee responsible for risk monitors risks in the procurement process.

3.6 Information Communication Technology (ICT)

The Board should establish an ICT governance framework that ensures business integrity and continuity.

Recommended Practice

The Board should:

- 3.6.1 Ensure that ICT related risks are identified and managed; and
- 3.6.2 Ensure that an appropriate Business Continuity Plan (BCP) is in place.

CHAPTER 4

CHAPTER FOUR - TRANSPARENCY AND DISCLOSURE

Broad Governance Statements

Transparency and disclosure is an important aspect of corporate leadership and management. It creates and sustains confidence of investors, stakeholders and the wider society. In addition, it provides opportunities for continuous improvement of business structures and processes. The Board should ensure effective, accurate, timely and transparent disclosure of pertinent information on the performance of the organization.

Recommended Practices

The practices recommended hereunder will ensure the minimum disclosure of governance information to key stakeholders.

4.1 Organizational Vision and Values

- 4.1.1 The Board should ensure that the annual report includes a statement on the vision and values of the organization and how these shape corporate behavior.

4.2 Policy on Corporate Governance

- 4.2.1 The Board should include a statement of policy on Corporate Governance in the annual report.
- 4.2.2 The statement should indicate aspects of the Code of Corporate Governance that have not been complied with and reasons thereof.

4.3 Governance structure

- 4.3.1 The Board should include in the annual report the governance structure including the composition and size of the Board, the Committees of the Board and the Management.

4.4 Key Stakeholder Groups

The Board should:

- 4.4.1 Disclose the key shareholders and the extent of their shareholding;
- 4.4.2 Disclose key stakeholders who may have an influence on organizational performance and sustainability;
- 4.4.3 Disclose the nature of its engagement with key stakeholders and the outcome of those engagements in its annual report; and
- 4.4.4 Disclose all relevant information to key stakeholders to enable them exercise their rights.

4.5 Board Performance

- 4.5.1 The Board should disclose a summary of the Board evaluation results.

4.6 Remuneration Structure

The Board should:

- 4.6.1 Disclose in the financial statements, the remuneration of directors, individually and collectively; and
- 4.6.2 Disclose the salaries and remuneration of the Executive Directors.

4.7 Code of Ethics and Conduct

The Board should:

- 4.7.1 Disclose the Code of Ethics and Conduct of the organization on its website; and
- 4.7.2 Disclose the policy of the organization on conflict of interest.

4.8 Whistle Blowing Policy

- 4.8.1 The Board should disclose the Whistle Blowing Policy of the organization on its website.

4.9 Key Organizational Risks

The Board should:

- 4.9.1 Disclose in the annual report the organization policy on risk management;
- 4.9.2 Disclose in the annual report key risks to which the organization is exposed; and
- 4.9.3 Ensure complete, timely, relevant, accurate and accessible risk disclosure to stakeholders.

4.10 Financial Reporting

The Board should:

- 4.10.1 Disclose in the Annual Report the management discussion and analysis which sets out the assessment of management of the factors that affected the financial condition and results of operations over the period under review;

- 4.10.2 Disclose in the Annual Report the management discussion and analysis which sets out known trends that are reasonably likely to have a material effect on the financial condition and results of operations in the future;
- 4.10.3 Disclose that it has complied with the International Financial Reporting Standards in preparing the financial statements;
- 4.10.4 Disclose any deviation from financial policies; and
- 4.10.5 Disclose related party transactions.

4.11 Information Communication Technology

- 4.11.1 The Board should disclose the policy of the organization on Information Communication Technology.

4.12 Procurement

- 4.12.1 The Board should disclose the policy of the organization on procurement.

4.13 Compliance with Laws, Regulations and Standards

- 4.13.1 The Board should disclose the extent of compliance with Laws, Regulations and Standards.
- 4.13.2 The Board should disclose material departure from compliance, the cause of non-compliance and the measures to address the same.

4.14 Sustainability Reporting

- 4.14.1 The Board should include a commentary on sustainability in the Annual Report.
- 4.14.2 The Board should disclose if the organization is a going concern based on the Triple Bottom Line concept.
- 4.14.3 The Board should disclose the major sources of revenue and items of expenditure.

CHAPTER 5

CHAPTER FIVE - SHAREHOLDER RIGHTS AND OBLIGATIONS

Broad Governance Statements

The organization should recognize the rights of all shareholders and in keeping with good governance practices ensure their equitable treatment.

5.1 Ownership Rights and Interests

The Board should recognize and safeguard the rights and interests of all shareholders and treat them equitably. In particular the Board should ensure that shareholders have access to relevant information concerning the organization on timely and regular basis.

Recommended practice

The Board should:

- 5.1.1 Safeguard the rights of all shareholders;
- 5.1.2 Ensure that there is an effective shareholder dispute resolution mechanism;
- 5.1.3 Ensure that the shareholders receive adequate and timely information to enable them make appropriate decisions;
- 5.1.4 Ensure that the financial statements are presented to shareholders on time;
- 5.1.5 Ensure that where approved, shareholders receive dividends;
- 5.1.6 Facilitate consultation amongst shareholders on key issues; and
- 5.1.7 Facilitate shareholder education on their rights and obligations.

5.2 Shareholder Obligations

Shareholders have an obligation to appoint and monitor the performance of the Board and to exercise their obligations and rights as provided in law, the constitutive documents of the organization and in line with good corporate governance.

Recommended practice

The shareholders should;

- 5.2.1 Appoint the Board;
- 5.2.2 Monitor the performance of the Board;
- 5.2.3 Approve remuneration of the Board members;
- 5.2.4 Appoint the external auditor;
- 5.2.5 Attend and participate in the general meetings;
- 5.2.6 Approve the Financial Statements;

- 5.2.7 Approve the distribution of profits; and
- 5.2.8 Approve all material transactions.

5.3 Minority Shareholders

The Board has a responsibility to ensure that the rights of minority shareholders are protected in line with the law and best practice in good governance.

Recommended practice

- 5.3.1 The Board should facilitate the participation of minority shareholders in material corporate decisions.
- 5.3.2 The Board should ensure that minority shareholder rights are safeguarded.
- 5.3.3 Where appropriate, minority shareholders should be encouraged to form shareholder associations to champion their rights.

CHAPTER 6

CHAPTER SIX - STAKEHOLDER RELATIONSHIPS

Broad Governance Statements

The effective management of stakeholder interests creates goodwill, promotes a positive image of the organization and enhances the achievement of corporate goals. In this regard therefore, stakeholder relationships should be managed in a proactive manner to ensure the realization of the legitimate interests and expectations of stakeholders and the achievement of corporate objectives.

6.1 Stakeholder Engagement

The Board should identify key stakeholders and develop policies to guide the relationship between the organization and the stakeholders.

Recommended Practice

The Board should:

- 6.1.1 Carry out stakeholder mapping;
- 6.1.2 Ensure that a policy on the management of stakeholder relationships is developed and implemented;
- 6.1.3 Ensure periodic review of the policy for the management of stakeholder relationships; and
- 6.1.4 Promote effective communication with stakeholders.

6.2 Stakeholder Rights

The Board should recognize the legitimate rights of the stakeholders and develop policies to safeguard those rights.

Recommended Practice

The Board should:

- 6.2.1 Identify the rights of key stakeholders and ensure that the rights are respected; and
- 6.2.2 Take account of the legitimate interests and expectations of its stakeholders in its decision-making.

6.3 Dispute Resolution

The Board should establish a dispute resolution mechanism to ensure that disputes are resolved amicably and in a timely manner in order to safeguard the interest of the stakeholders.

Recommended Practice

The Board should:

- 6.3.1 Ensure that disputes with and among stakeholders are resolved effectively and expeditiously; and
- 6.3.2 Take reasonable steps to encourage stakeholders to resolve their disputes through Alternative Dispute Resolution mechanisms.

CHAPTER 7

CHAPTER SEVEN - COMPLIANCE WITH LAWS AND REGULATIONS

Broad Governance Statements

The organization should conduct its business affairs in full compliance with all applicable laws, rules and regulations and in line with accepted national and international standards, as well as, the internal policies of the organization.

7.1 Applicable Laws, Regulations and Standards

The Board should ensure compliance with all applicable laws, rules, regulations, codes and standards.

Recommended Practice

The Board should:

- 7.1.1 Ensure that laws, rules and regulations which are applicable to the organization are identified, documented and observed; and
- 7.1.2 Ensure codes and standards which are applicable to the organization are identified, documented and observed.

7.2 Compliance Strategy

The Board should develop policy on compliance with laws, rules and regulations governing the organization.

Recommended Practice

The Board should:

- 7.2.1 Establish internal procedures and monitoring systems to ensure and promote compliance with applicable laws, rules, regulations and standards; and
- 7.2.2 Ensure that the compliance strategy is aligned to the operations of the organization.

7.3 Legal Compliance Audit

The Board should conduct annual legal compliance audit. The purpose of the audit is to assess the extent to which the organization has complied with laws, rules and regulations.

Recommended Practice

- 7.3.1 The Board should ensure that a legal compliance audit is carried out at least annually, with the objective of establishing the level of adherence to applicable laws, rules, regulations and standards.
- 7.3.2 The Board should ensure the implementation of the recommendations in the legal compliance audit report.
- 7.3.3 The Board should ensure that a comprehensive and independent legal audit is carried out at least once every two years.

CHAPTER 8

CHAPTER EIGHT - SUSTAINABILITY AND PERFORMANCE MANAGEMENT

Broad Governance Statements

Organizations should embrace policies that meet the needs of the present without compromising their ability to sustain their future development needs and objectives. Therefore, the goals and objectives of the organization should focus on the long term sustainability of the organization.

8.1 Sustainability Goals and Strategy

The Board should develop a policy on the sustainability of the organization and ensure its implementation.

Recommended Practice

The Board should:

- 8.1.1 Integrate sustainability into the organization's strategy and management practices;
- 8.1.2 Spend a greater share of their time focusing on the future sustainability of the organization;
- 8.1.3 Balance economic, social, and environmental concerns in the performance of the organizations;
- 8.1.4 Work closely with the management to ensure long term goals are well formulated and subsequently met;
- 8.1.5 Focus on long term talent development; and
- 8.1.6 Ensure continuous innovation of its processes, products and services.

8.2 Performance Management

The Board should develop a policy on performance management and ensure its implementation.

Recommended Practice

The Board should:

- 8.2.1 Put in place a performance management system that is linked to the strategy of the organization;
- 8.2.2 Identify key performance indicators for the organization;
- 8.2.3 Set performance targets that will form the basis of performance evaluation;

- 8.2.4 Ensure that the performance targets set are Specific, Measurable, Attainable, Realistic and Time bound (SMART);
- 8.2.5 Ensure that the performance targets are cascaded to the management and staff of the organization through the performance management system; and
- 8.2.6 Continually monitor organizational performance and identify areas that require improvement.

8.3 Information Communication Technology

The Board should establish an ICT Policy which is aligned to the objectives of the organization.

Recommended Practice

The Board should:

- 8.3.1 Establish an ICT function in the organization; and
- 8.3.2 Integrate ICT in the operations of the organization.

CONCLUSION

Good Corporate governance is essential for the growth of organizations and transformation of the private sector in its endeavor to maximize shareholders' wealth, which in effect contributes to the creation of jobs and improvement of citizens welfare as enshrined in the Vision 2030, Kenya's long term development blue print.

The Board has an obligation to promote good governance practices. They should have the necessary authority, competencies, and objectivity to carry out their functions on strategic guidance and monitoring of management. In addition, they should act with integrity and be held accountable for their actions. The Board should therefore take responsibility for full compliance with this Code.

The Certified Secretary, who is a professional on matters of governance and compliance, will be a key asset in assisting the Board to comply with governance requirements set out in the Code. In addition, the Certified Secretary should ensure that the following governance tools: the Board Charter; the Code of Conduct and Ethics; Board Performance Evaluation Tool, among others, are developed to assist the Board in the implementation of this Code.

It is the conviction of the Institute that once this Code of Governance is fully implemented, it will assist Boards to establish and enhance governance systems in changing environments that will ensure efficiency and effectiveness in the achievement of organizational strategic objectives. Consequently, this Code should be reviewed regularly to respond to the changes in the environment.

GLOSSARY OF TERMS

Comply or explain	Full compliance with the Code is required but in the event of non-compliance reasons should be given.
Corporate Social Investment	Donations, other kinds of financial assistance and contributions beyond financial assistance.
Corporate Responsibility	The responsibility of the company for the impacts of its decisions and activities on society and its environment.
Fiduciary	A legal or ethical relationship of trust between two or more parties.
Independence	Absence of undue influence and bias which could affect the ability of an individual to make objective decisions.
Member in Good Standing	Status assigned to a Member when he or she has remained current on Society dues and continuous professional development credits.
Risk Management	Process of identifying real or potential events that may impact the organization's ability to achieve its objectives and developing a framework for managing the risks.
Senior Management	The team at the highest level of the organization with the responsibility for day-to-day management.
Sustainability	Conducting operations in a manner that meets existing needs without compromising the ability of future generations to meet their needs.
Triple bottom line	The pursuit of balance in economic, social and environmental aspects in the management of an organization.

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