

THE CAPITAL MARKETS CORPORATE GOVERNANCE GUIDELINES.

Guidelines

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The Capital Markets Corporate Governance Guidelines.
*(Under section 102 of the Capital Markets Authority Statute, 1996;
Statute No. 1 of 1996)*

IN EXERCISE of the powers conferred on the Capital Markets Authority (“Authority”) by sections 6 and 102 of the Capital Markets Authority Statute, 1996 (“Statute”), these Guidelines are made this 25th day of February, 2003.

PART I – PRELIMINARY.

- 1.** These Guidelines shall be referred to as the Capital Markets Corporate Governance Guidelines.
- 2.** The Authority has developed these Guidelines as a minimum standard for good corporate governance practices by public companies and issuers of corporate debt in Uganda, in response to the growing importance of governance issues both in emerging and developing economies and for promoting domestic and regional capital markets growth. It is also in recognition of the role of good governance in corporate performance, capital formation and maximization of shareholders value as well as protection of investors’ rights.
- 3.** Corporate governance, for the purposes of these Guidelines is defined as the process and structure used to direct and manage business affairs of the company towards enhancing prosperity and corporate accounting with the ultimate objective of protecting and promoting shareholders’ rights and realizing shareholders’ long term value while taking into account the interests of stake holders.
- 4.** These Guidelines have been developed taking into account work which has been undertaken extensively in several jurisdictions through many task forces or committees, including but not limited to the United Kingdom, Malaysia, South Africa, the Commonwealth Association for Corporate Governance and the OECD principles of Corporate Governance.
- 5.** The Authority has also supported the development of a code of best practices for corporate governance in Uganda issued by the Institute of Corporate Governance of Uganda, whose efforts have also been useful in the development of these Guidelines and are supplementary thereto.
- 6.** The objective of these Guidelines is to strengthen corporate governance practices by listed companies in Uganda and promote the standards of self-regulation so as to bring the level of governance in line with international trends.

7. The Authority, in developing these Guidelines has adopted both prescriptive and non-prescriptive approaches in order to provide for flexibility and innovative dynamism to corporate governance practices by public listed companies.

8. Good corporate governance practices must be nurtured and encouraged to evolve as a matter of best practice but certain aspects of operation in a body corporate must of necessity require minimum standards of good governance. In this regard the Authority expects the Directors of every listed company to undertake or commit themselves to adopt good corporate governance practices as part of their continuing listing obligations.

9. In these Guidelines, the following words and expressions shall carry the meaning attributed to them:

“Authority” shall mean the Capital Markets Authority as established under section 5 of the Capital Markets Authority Statute 1996;

“Independent director” shall mean a director who:

(a) has not been employed to the company in an executive capacity within the last five years;

(b) is not affiliated to an adviser or consultant of the company or a member of the company’s senior management or a significant customer or supplier of the company or with a not-for-profit entity that receives significant contributions from the company; or within the last five years, has not had any business relationship with the company (other than service as a director) for which the company has been required to make disclosure;

(c) has no personal service contract (s) with the company or a member of the company’s senior management;

(d) is not employed by a public company at which an executive officer serves as a director;

(e) is not a member of the immediate family of any person described above;

(f) has not had any of the relationships described above with any affiliate of the company.

“Non-executive director” means a director who is not involved in the administrative or managerial operations of the company;

“Substantial shareholder” means a person who holds not less than fifteen percent of the voting rights of a listed company and has the ability to exercise a majority voting, for instance, in the election of Directors.

10. The extent of compliance of these Guidelines shall form an essential part of disclosure obligations in corporate annual reports. Disclosure of all areas of non-compliance or alternative practices shall also form part of these disclosure requirements.

11. Where a company is not fully compliant with these Guidelines, the Directors shall indicate the steps being taken to adhere to full compliance and the reasons for departure.

PART II – BEST PRACTICES RELATING TO THE BOARD OF DIRECTORS

12. Every listed company should be headed by an effective Board to offer strategic guidance, lead and control the company and be accountable to its shareholders and responsible to its stakeholders.

13. The Board of Directors should assume a primary responsibility of fostering the long-term business of the company consistent with their fiduciary responsibility to the shareholders.

14. Board members should accord sufficient time for their functions and act on a fully-informed basis, while treating all shareholders fairly in the discharge of the following functions (among others):

- (a) Defining the company's vision, mission, values, strategy, goals, risk management policy, plans and objectives;
- (b) Approving its annual budgets and accounts;
- (c) Overseeing the management and operations of the company, its major capital expenditures, acquisitions and divestitures and reviewing corporate performance and strategies, including management accounts at least on a quarterly basis;
- (d) Identifying corporate business opportunities as well as principal risks in its operating environment including the implementation of appropriate measures to manage such risks or anticipated changes impacting on the corporate business;
- (e) Developing appropriate staffing and remuneration policies including the appointment of a Chief Executive and senior staff, particularly the finance director, operations director and the company secretary as may be applicable;
- (f) Reviewing on a regular basis the adequacy and integrity of the company's internal control, accounting and financial reporting and management of information systems including compliance with applicable laws, regulations, rules and guidelines;
- (g) Establishing and implementing a system that provides necessary information to the shareholders including a shareholder communication policy for the company.

(h) Monitoring the effectiveness of the corporate governance practices under which it operates and proposing revisions as may be required.

(i) Taking into consideration the interest of the company's stakeholders in its decision-making process.

15. The Board of Directors should reflect a balance between independent, non-executive Directors and executive Directors of diverse skills or expertise, in order to ensure that no individual or group of individuals dominates the Board decision-making processes.

16. The independent and non-executive Directors should form at least one-third of the membership of the Board.

17. The composition of the Board should fairly reflect the company's shareholding structure and should not be biased towards representation by a substantial shareholder. In addition, it should contain an element of representation of the minority shareholders without undermining the collective responsibility of the Directors.

18. In circumstances where there is no majority shareholder but there is still a single substantive shareholder, the Board should exercise judgment in determining the Board representation of such shareholder and those of the other shareholders, which reflects the shareholding structure of the company.

19. The size of the Board should not be too large to undermine an interactive discussion during Board meetings or too small such that the inclusion of a wider expertise and skills to improve the effectiveness of the Board is compromised.

20. The Board should monitor and manage potential conflicts of interest at management, Board and shareholder levels.

21. The Board should ensure that it obtains relevant, accurate and timely information to enable it discharge its duties.

22. The Board should maintain an effective communication policy that enables both management and the Board to communicate effectively with its shareholders, stakeholders and the public in general.

23. There should be a formal and transparent procedure in the appointment of Directors to the Board and all persons offering themselves for appointment as Directors should disclose any potential area of conflict that may undermine their position or service as Director.

24. All Directors should be required to submit themselves for re-election at regular intervals or at least every three years.

- 25.** Executive Directors should have a fixed service contract not exceeding five years with a provision to renew subject to regular performance appraisal.
- 26.** Disclosure should be made to the shareholders at the Annual General Meeting and in the annual reports of all Directors approaching their seventieth (70th) birthday that respective year.
- 27.** (1) The Board of every listed company should appoint a Nominating Committee composed of majority non-executive Directors with the responsibility of proposing new nominees for the Board and for assessing the performance and effectiveness of Directors to perform their role in the company.
- (2) The Nominating Committee should consider only persons of high caliber and credibility and who have the necessary skills and expertise to exercise independent judgment on issues that are necessary to promote the company's objectives and performance in its area of business.
- (3) The Nominating Committee should also consider candidates for Directorship proposed by the Chief Executive and shareholders.
- (4) The Board, through the Nominating Committee, should on an annual basis, review its required mix, skills and expertise of which the executive Directors as well as independent or non-executive Directors should bring to the Board and make disclosure of the same in the annual report.
- (5) The Nominating Committee should recommend to the Board candidates for Directorship to be filled by the shareholders as the responsibility of nominating rests on the full Board, after considering the recommendations of the nominating committee.
- 28.** The Board, through the Nominating Committee, should also implement the process of assessing the effectiveness of the Board as a whole, Committees of the Board, as well as individual Directors.
- 29.** Newly appointed Directors should be provided with necessary orientation in the area of the company's business in order to enhance their effectiveness on the Board.
- 30.** The process of appointment of Directors should be sensitive to gender representation.
- 31.** No person should hold more than five Directorships in any listed company at any one time, in order to ensure effective participation on the Board.
- 32.** (1) The Board of Directors of every listed company should appoint a Remuneration Committee or assign a mandate to the Nominating Committee consisting mainly of independent and non-executive Directors to recommend to the Board the remuneration of the executive Directors and the structure of their compensation package.

(2) The determination of the remuneration for non-executive Directors should be a matter for the whole Board.

(3) The remuneration of executive Directors should include an element that is linked to corporate performance including a share option scheme so as to ensure the maximization of shareholder value.

33. Every Board should disclose in its annual report, its policies for remuneration including incentives for the Board and senior management, particularly the following:

(a) Quantum and component of remuneration for Directors including non-executive Directors on a consolidated basis in the following categories:

(i) Executive Directors fees;

(ii) Executive Directors emoluments;

(iii) Non-executive Directors' fees;

(iv) Non-executive Directors' emoluments.

(b) Share options and other forms of executive compensation that have to be made or have been made during the course of the financial year; and,

(c) Directors' loans.

PART III – BEST PRACTICES RELATING TO THE POSITION OF CHAIRPERSON AND CHIEF EXECUTIVE

34. There should be a separation of the role and responsibilities of the Chairperson and Chief Executive, which will ensure a balance of power of authority and provide for checks and balances such that no individual has unfettered powers of decision-making.

35. Where such roles are combined, a rationale for the same should be disclosed to the shareholders in the annual report of the company; and the position should be:

a) For a limited period;

b) Approved by the shareholders;

c) Include measures that have been implemented to ensure that no individual has unfettered powers of decision-making in the company; and,

d) Include a plan for the separation of the roles where such combined role is deemed necessary during a restructuring or change process.

36. The Chairpersonship of a public listed company should be held by an independent or non-executive Director.

37. Every listed company should have a clear succession plan for its Chairperson and Chief Executive in order to avoid unplanned and sudden departures, which could undermine the company and shareholder interest.

38. No person shall be Chairperson of more than two public listed companies at any one time.

39. (1) The Chief Executive should be responsible for implementing Board corporate decisions and there should be a clear flow of information between management and the Board in order to facilitate both quantitative and qualitative evaluation and appraisal of the company's performance.

(2) The Chief Executive should undertake a primary responsibility of organizing information necessary for the Board to deal with and for providing necessary information to the Directors on a timely basis.

(3) The Chief Executive is obliged to provide such necessary quality information to the Board in the discharge of the Board's business.

PART IV – BEST PRACTICES RELATING TO THE RIGHTS OF SHAREHOLDERS

40. The Board of every public listed company should ensure equitable treatment of shareholders including the minority and foreign shareholders.

41. All shareholders should receive relevant information on the company's performance through distribution of regular annual reports and accounts, half yearly results and quarterly results as a matter of best practice.

42. There should be shareholder's participation in all major decisions of the company. The Board should therefore provide the shareholders with information on matters that include but are not limited to major disposal of company assets, restructuring, takeovers, mergers, acquisitions or reorganizations.

43. The shareholders should receive a secure method of transfer and registration of ownership as well as a certificate or statement evidencing such ownership in the case of a central depository environment.

44. Every shareholder shall have the right to participate and vote at the general shareholders meeting including the election of Directors.

45. Every shareholder shall be entitled to ask questions or seek clarification on the company's performance as reflected in the annual reports and accounts or in any matter

that may be relevant to the company's performance or promotion of shareholder's interest and to receive explanation by the Directors and /or management.

46. Every shareholder shall be entitled to distributed profit in form of dividend and other rights for bonus shares, scrip dividends or rights issues as applicable and in the proportion of its shareholding in the company's share capital.

47. The annual report and accounts to shareholders must include highlights of the operations of the company, financial performance and a list of the ten major shareholders of the company and their shareholding.

48. (1) Listed companies are encouraged to organize regular investor briefings when the half-yearly and annual results are declared or as may be necessary to explain their performance and promote shareholder interaction.

(2) Listed companies should endeavor to establish a company website and encourage its use by shareholders to ease communication and interaction between shareholders and the company.

49. Every listed company should encourage and facilitate the establishment of a Shareholder's Association to promote dialogue between the company and the shareholders. The Association should play an important role in promoting good governance and actively encourage all shareholders to participate in the annual general meeting of the company or assign necessary voting proxy.

PART V – BEST PRACTICES RELATING TO THE CONDUCT OF GENERAL MEETINGS

50. The Board of a listed company should provide to all its shareholders sufficient and timely information concerning the date, location and agenda of the general meeting as well as full and timely information regarding issues to be decided during the general meetings.

51. The Board should make shareholder's expenses and convenience primary criteria when selecting venue and location of annual general meetings.

52. The Board of a listed company should ensure that the shareholder's rights of full participation at general meetings are protected by:

- (a) Giving shareholders information in a simplified and generally understandable manner;
- (b) Giving shareholders sufficient information on voting rules and procedures;
- (c) Giving shareholders the opportunity to quiz management, for this purpose, the Directors should provide sufficient time for shareholders questions on matters pertaining to the company's performance and seek to explain to their shareholders their concerns;

- (d) Giving shareholders the opportunity to place items on the agenda at general meetings;
- (e) Giving shareholders the opportunity to vote in absentia;
- (f) Giving shareholders the opportunity to consider the costs and benefits of their votes.

53. All shareholders should be encouraged to participate in the annual general meetings and to exercise their votes.

54. Institutional investors are particularly encouraged to make direct contact with the company's senior management and Board members to discuss performance and corporate governance matters in addition to exercising their vote during annual general meetings.

55. Shareholders while exercising their right of participation and voting during annual general meetings of their company should not act in a disrespectful manner as such conduct may undermine company interest.

PART VI – BEST PRACTICES RELATING TO ACCOUNTABILITY AND THE ROLE OF AUDIT COMMITTEES

56. The Board should present an objective and understandable assessment of the company's operating position and prospects.

57. The Board should ensure that financial statements are presented in line with International Financial Reporting Standards. To this end, any departure from these standards and the impact thereof, should be explained in the annual report.

58. The Board should maintain a sound system of internal control to safeguard the shareholders investments and assets.

59. The Board should establish a formal and transparent arrangement for shareholders to effect the appointment of independent auditors at each annual general meeting.

60. The Board should establish a formal and transparent arrangement for maintaining a professional interaction with the company's auditors.

61. The Board shall establish an audit committee with a majority of independent and non-executive Directors, who shall report to the Board, with formal terms of reference addressing its authority and duties.

62. The Chairperson of the audit committee should be an independent or non-executive Director, and the Board should disclose in the annual report, whether it has an audit committee and the mandate of that committee.

63. Important attributes of the audit committee members should include:

- (a) Broad business knowledge relevant to the company's business;

(b) Keen awareness of the interests of the investing public;

(c) Familiarity with basic accounting principles; and,

(d) Objectivity in carrying out their mandate with no conflict of interest.

64. The Audit Committee should have adequate resources and authority to discharge their responsibilities, and it shall:

(a) Be informed, vigilant and effective overseers of the financial reporting process and the internal controls of the company;

(b) Review and make recommendations on management programs established to monitor compliance with the code of conduct;

(c) Consider the appointment of the external auditor, the audit fee and any questions of resignation or dismissal of the external auditor;

d) Discuss with the external auditor before the audit commences, the nature and scope of the audit and ensure co-ordination where more than one audit firm is involved;

e) Review management's evaluation of factors related to the independence of the company's external auditor. Both the audit committee and management should assist the external auditor in preserving its independence;

f) Review the quarterly, half-yearly and year-end financial statements of the company, focusing primarily on:

- Any changes in accounting policies and practices;
- Significant adjustments arising from the audit;
- The going concern assumption; and
- Compliance with International Financial Reporting Standards and other legal and regulatory requirements.

(g) Discuss problems and reservations arising from the interim and final audits, and any matter that the external auditor may wish to discuss (in the absence of management where necessary);

(h) Review the external auditor's letter(s) to the management and management's response;

(i) Consider any related party transactions that may arise within the company group;

- (j) Consider the major findings of the internal investigations and management's response;
- (k) Have explicit authority to investigate any matter within its terms of reference, the resources that its needs to do so and full access to information;
- (l) Obtain external professional advice and to invite outsiders with relevant experience to attend, if necessary; and,
- m) Consider other topics as defined by the Board including regular review of the capacity of the internal audit function.

65. The Board should establish an internal audit function.

66. In relation to the internal audit function, the audit committee's functions should include:

- (a) Review the adequacy, scope, functions and resources of the internal audit function and ensure that it has the necessary authority to carry out its work;
- b) Review the internal audit program and results of the internal audit process and where necessary ensure that appropriate action is taken on the recommendations of the internal audit function;
- (c) Review any appraisal or assessment of the performance of the members of the internal audit function;
- (d) Approve any appointment or termination of senior staff members of the internal audit function;
- (e) Ensure that the internal audit function is independent of the activities of the company and is performed with impartiality, proficiency and due professional care;
- (f) Determine the effectiveness of the internal audit function;
- (g) Be informed of resignations of internal audit staff members and provide the resigning staff members an opportunity to submit reasons for resigning.

67. The finance director, head of internal audit (where such function exists), a representative of the external auditors or any Board members may attend the meetings of the Audit Committee upon invitation by the audit committee.

68. The Audit Committee shall meet with the external auditors at least once a year, in the absence of executive Board members.

69. The Audit Committee should meet regularly with due notice of issues to be discussed and should record its conclusions in discharging its duties and responsibilities.

70. The Board should disclose in an informative way, details of the activities of the Audit Committee, the number of audit committee meetings held in the year and details of attendance of each Director in respect of such meetings.

Issued this 1st day of October, 2003.

LEO KIBIRANGO
Chairman Capital Markets Authority