



ICPAK
ANNUAL GOVERNANCE AND
ETHICS CONFERENCE
FACILITATOR: KARIITHI M. MURIMI

18TH-20TH MARCH, 2015



MATTERS RESERVED FOR THE BOARD VS. DELEGATED RESPONSIBILITIES

19th March, 2015
11:00am – 11:45am



THE ROLE OF BOARDS OF DIRECTORS

- A universally accepted principle of corporate governance is that a board has a fiduciary role. Equally, directors must control the efforts of the Board with due enterprise and integrity.
- As elected representatives of the shareholders, the Board is expected to use its integrity and capability to vet corporate strategies, plans and major decisions, and to oversee and monitor management in the interests of the shareholders and society.
- In practice, too many boards have been mere “ornaments on a corporate Christmas tree” as a landmark study of boards by Harvard Business School Professor Myles Mace put it- decorative and decorous baubles with no real purpose.
- Somehow directors forgot-if they ever knew-that they were in the Boardroom to act on behalf of shareholders. Only when they were prodded by investors and activists, only after their companies and CEOs were pilloried, were many finally goaded into action- what some call “governance by embarrassment”
(*Business Week*, November 25, 1996)



MATTERS RESERVED FOR THE BOARD

The Board should reserve the following matters for its direct stewardship and decision making in conjunction with any committees it has appointed.

Strategy and Management

- Responsibility for the overall leadership of the company and setting the company's values and standards.
- Approval of the company's long term objectives and strategy.
- Approval of the annual operating and capital expenditure budgets and any material changes to them.
- Oversight of operations to ensure:
 - Competent and prudent management;
 - Sound planning;
 - Maintenance of sound management and internal control systems;
 - Adequate accounting and other records;
 - Compliance with statutory and regulatory obligations.



- Review of performance in the light of strategy, objectives, business plans and budgets and ensuring that any necessary corrective action is taken.
- Extension of the company's activities into new business or geographic areas outside the country.
- Any decision to cease to operate all or any material part of the Group's business.



Matters reserved for the Board (cont...)

Structure and Capital

- Changes relating to the capital structure including reduction of capital, share issues (except under employee share plans), share buy backs including the use of treasury shares
- Major changes to the corporate structure including, but not limited to, acquisitions and disposals of shares which are material relative to the size of the group in question (taking into account initial and deferred consideration).
- Material changes to the senior management and control structure.
- Any changes to the Company's listing.



Matters reserved for the Board (cont...)

Financial reporting and controls

- Approval of the mid-yearly report, interim management statements and the final results announcement.
- Approval of the annual report and financial statements, including the directors report, corporate governance statement and remuneration report
- Approval of the dividend policy, declaration of the interim dividend and recommendation of the final dividend.
- Approval of any significant changes in accounting policies or practices, which the auditors have advised are a material change.
- Approval of treasury policies including foreign currency exposure and the use of financial derivatives.
- Approval of material unbudgeted capital or operating expenditures outside predetermined tolerances.



Matters reserved for the Board (cont...)

Internal controls

- Ensuring maintenance of a sound system of internal control and risk management including:-
 - Approving the Company's risk appetite statements;
 - Receiving reports on, and reviewing the effectiveness of, the company's risk and control processes to support its strategy and objectives;
 - Approving procedures for the detection of fraud and the prevention of bribery;
 - Undertaking an annual assessment of these processes;
 - Approving an appropriate statement for inclusion in the annual report.



Matters reserved for the Board (cont...)

Contracts

- Approval of proposed major capital projects.
- Approval of proposed contracts above the limits of authority delegated by the board, which are material strategically or by reason of size, and acquisitions or disposals of fixed assets.
- Approval of proposed contracts of the company or any subsidiary not in the ordinary course of business, including major acquisitions or disposals.
- Approval of proposed major investments including the acquisition or disposal of interests of more than 5 percent in the voting shares of any company or the making of any takeover offer.



Matters reserved for the Board (cont...)

Communication

- Ensuring a satisfactory dialogue with shareholders based on the mutual understanding of objectives.
- Approval of resolutions and corresponding documentation to be put forward to shareholders at a general meeting.
- Approval of all circulars, prospectuses and listing particulars.
- Approval of press releases concerning matters decided by the Board.



Matters reserved for the Board (cont...)

Board membership and other appointments

- Changes to the structure, size and composition of the board, following recommendations from the nomination committee.
- Ensuring adequate succession planning for the board and senior management in order to maintain an appropriate balance of skills and experience within the company and on the board.
- Appointments to the board, following recommendations by the nomination committee.
- Selection of the Chairman of the board and the Chief Executive.
- Appointment of the Senior Independent Director.
- Membership and chairmanship of board committees following recommendations from the nomination committee.



- Continuation in office of directors at the end of their term of office, when they are due to be re-elected by shareholders at the AGM and otherwise as appropriate.
- Continuation in office of any director at any time, including the suspension or termination of service of an executive director as an employee of the company, subject to the law and their service contract.
- Appointment or removal of the Company Secretary.
- Appointment, reappointment or removal of the external auditor to be put to shareholders for approval, following the recommendation of the audit committee.
- Appointments to board subsidiaries.



Matters reserved for the Board (cont...)

Remuneration

- Determining the remuneration policy for the chairman, executive directors, company secretary and other senior executives following recommendation from the Remuneration Committee.
- Determining the remuneration of the non-executive directors subject to the articles of association and shareholder approval as appropriate.
- The introduction of any share and long term incentive plans or major changes to existing plans, to be put to shareholders for approval.



Matters reserved for the Board (cont...)

Delegation of Authority

- The division of responsibilities between the Chairman, the Group Chief Executive, Senior Independent Director and other executive directors which should be in writing and agreed by the Board.
- Approval of the delegated levels of authority limits which should be in writing,
- Approval of terms of reference of board committees.
- Receiving reports from board committees on their activities.



Matters reserved for the Board (cont...)

Corporate Governance matters

- Undertaking a formal and rigorous review, annually, of its own performance, that of its committees and individual directors and the division of responsibilities.
- Determining the independence of directors.
- Considering the balance of interests between shareholders, employees, customers and the community.
- Review of the company's overall corporate governance arrangements.
- Receiving reports on the views of the company's shareholders.
- Reviewing recommendations made by the nomination committee in respect of existing and prospective director's conflicts of interest.



Matters reserved for the Board (cont...)

Policies

- Approval of core policies including:
 - Ethics and Anti-Bribery Policies
 - Whistle-blowing Policy
 - Equal Opportunities Policy
 - Health and Safety Policy
 - Environmental Policy
 - Sustainability Policy
 - Accounting Policy and Procedure
 - Dealing with price sensitive information



Matters reserved for the Board (cont...)

Other

- Approval of any proposed political donations.
- Approval of the appointment of the company's principal professional advisers.
- Prosecution, commencement, defense or settlement of material litigation outside the scope of authority delegated by the board.
- Approval of the overall levels of insurance for the company including Directors & Officers liability insurance.
- Major changes to the rules of the company's pension scheme, or changes of trustees or changes in the fund arrangements.
- Any decision likely to have a material impact on the Company from any perspective including, but not limited to, financial, operational, strategic or reputational.
- In addition, the board will receive reports and recommendations from time to time on any matter, which it considers significant to the company.



DELEGATED RESPONSIBILITIES

DELEGATION:

A delegate is a person or entity designated to act for, or represent, another or others – in this case the Board.

When a function is delegated, the Board is not absolved of the responsibility and remains accountable for what occurs.

The Board may delegate responsibilities to:

- A Board Sub Committee (which needs to include Board members)
- The Chief Executive Officer
- Any Board member
- Any staff member



Cont...

- Delegation is intended to ensure that the company operates effectively by empowering its employees or sub-committees with appropriate authority so they can carry out their responsibilities.
- The Board reserves the right to revoke any delegations.



General principles on delegation

Delegations are generally approved under specified conditions. These include:

- Delegations must be exercised under authorized policies and procedures of the organisation.
- Delegations must be appropriate to the functions of the position (they need this delegation to do their job).
- Delegations need to be exercised with due regard to budget limitations.
- Delegations apply to particular positions within the organisation, **not** to particular individuals.
- A delegation given to a position will apply to any subsequent person who holds that position.
- A delegate may not exercise any delegation that will result in any benefit to them personally.



Limits to delegation

The document of delegation specifies both the limits of each delegation as well as the conditions under which the delegation may be exercised; and should include:

- The position/s to whom the delegation is given (for example, the Chief Executive Officer, Manager or Financial Officer)
- The limit for both budgeted and unbudgeted items – for example, the CEO may be able to spend up to \$15,000 on a budgeted item without special approval but only \$5,000 if the expenditure is outside the budget..
- The delegation may exempt budgeted items from needing approval – for example, salaries, rent, audits, insurance costs, travel costs; training may all be allowable expenses, as long as they are within budget, without special approval.
- Conditions under which special approval is needed from the Board.
- Payments. Responsibility for payment of accounts is generally delegated. A clear process (for example one that requires authorization by the CEO and two signatures for each cheque) needs to be defined.



Delegation to Board committees

Executive Committee

It operates as a general management committee under the direct authority of the Board.

It exercises the powers, authorities and discretions as delegated by the Board in so far as they concern the management and day-to-day running of the company in accordance with its terms of reference and such other policies and directives as the Board may determine.

Audit Committee

It reviews, among other things, financial reporting, the nature and scope of audit reviews, and the effectiveness of the systems of internal control and compliance relating to financial reporting.

It is also responsible for making recommendations to the Board on the appointment, re-appointment, removal and remuneration of the Bank's external auditor.



Board Committees (cont...)

Remuneration Committee

It considers and makes recommendations to the Board on the remuneration policy and structure in order to attract, motivate and retain quality personnel.

Pursuant to delegation by the Board, it also determines the remuneration policy, and the remuneration packages of all Executive Directors, senior management and key personnel.

It also reviews at least annually and independently of the Management, the adequacy and effectiveness of the company's remuneration policy and its implementation.

Nomination Committee

It leads the process for Board appointments and identifies and nominates for the Board's approval, candidates for appointment to the Board.

It also considers, among other things, the structure, size and composition of the Board, as well as appointment to Board Committees.



MANAGEMENT AND THE BOARD: STRIKING THE BALANCE OF POWER

20th March, 2015.
9:00am – 9:50am



The Role of the Board

Every company should be headed by an effective board, which is collectively responsible for the success of the company.

Therefore, the role of the Board is to:

- provide entrepreneurial leadership for the company within a framework of prudent and effective risk management;
- set the company's strategic aims;
- make sure that the necessary financial and human resources are in place for the company to meet its objectives;
- review management performance;
- set the company's values and standards;
- make sure that the company's obligations to its shareholders are understood and met.



Objectivity of the Board

- In order to have an effective board, all directors must take decisions objectively in the interests of the company.
- To achieve objectivity at board level:
 - no one individual should have excessive powers; and
 - there should be a significant number of independent directors on the board: independence is provided by non-executive directors.



Decision making by the Board

- The main decision-making powers in the company belong to the Board. However, the Board may delegate some of those powers to management.
- When some of the decision-making powers are delegated, the Board should:
 - retain the most significant decisions to itself; and
 - monitor the performance of the executive management
- The Board remains responsible for all decisions made in the company, even those made by the delegated parties



Decision making (cont...)

- The board should retain full and effective control over the company.
- It should monitor the performance of the executive management.
- Important decisions should be referred to the board for a decision, and should not be taken by executive managers; for example, decisions on major new investments or divestments and about large mergers and takeovers.
- A formal schedule should specify matters about which decisions must be taken by the board and not by executive managers. A clear schedule of decision-making responsibilities should make it difficult for a powerful CEO to usurp decision making powers and ensure that the ultimate control of the company remains firmly in the hands of the board.



The Role of Management

The senior management is in charge of implementing the decisions made by the Board towards the achievement of company objectives.

The role of senior management is to:

- establish a corporate culture that is imprinted in the day-to-day running of the company
- determine management level goals geared towards the achievement of the company goals
- asset management and support- including budgeting at departmental level
- inspiration and motivation of employees towards achievement of company goals
- carry out duties as delegated by the Board



The Role of Management (cont...)

- The manager's task is to convert the strategic plan into action and get on with what needs to be done to achieve the vision and targeted objectives.
- Companies don't implement and execute strategies, people do.
- Every manager has an active role in the process of executing the firm's strategic plan and all employees are participants.
- Managing strategy implementation is more art than science.
- It is the job of middle and lower-level managers to push needed implementation actions on the front lines and see that the strategy is well executed on a daily basis.



FIVE LEADERSHIP ROLES FOR MANAGERS

1. Staying on top of what is happening, closely monitoring progress, ferreting out issues and learning what obstacles lie in the path of good execution.
2. Promoting a culture and esprit de corps that mobilizes and energizes organizational members to execute strategy in a competent fashion and perform at a high level.
3. Keeping the organization responsive to changing conditions, alert for new opportunities, bubbling with innovative ideas and ahead of rivals in developing competitively valuable competencies and capabilities.
4. Exercising ethics leadership and insisting that the company conduct its affairs like a model corporate citizen.
5. Pushing corrective actions to improve strategy execution and overall strategic performance.



The CEO and Chairman of the Board

The Chief Executive Officer

- The CEO is responsible for the executive management of the company's operations and is answerable to the board for the way the company is run and its performance.
- The CEO delegates many of the tactical responsibilities to other managers, focusing instead on strategic issues, such as which markets to enter, how to take on the competition, and which companies to form partnerships with.



CEO and Chairman (cont...)

The Chairman

- The chairman of a company is the head of its board of directors.
- The chairman wields substantial power in setting the board's agenda and determining the outcome of votes; but does not necessarily play an active role in everyday management.
- The Chairman should be independent of the company when they are first appointed. A governance problem with 'promoting' the CEO to become the company chairman is that the incoming CEO may find it difficult to run the company as he wishes to because the former CEO is still on the board, monitoring what he is doing.



Balancing power between the CEO and the Chairman

- The balance of power between the CEO and the chairman varies from company to company.
- However, the CEO cannot make major decisions without the board's assent, and his or her job security depends on their satisfaction; the chairman of the board is technically the CEO's superior.
- Some company by-laws allow for the CEO to affect the composition of the board of directors through selection of senior executives, who may be guaranteed board seats through said by-laws.
- In some companies, the Chairman is also the CEO of the company; as was the case with Microsoft until Bill Gates retired as its CEO in January 2000 but remained the Board chairman.



Separating the roles of the Chairman and the CEO

- While some companies allow for the same individual to hold both positions at the same time, there is a risk of the person running the company for their own benefit.
- There should be a clear division of responsibilities in the company between *running of the board* and the executive responsibility for *running the company's business*. No one individual should have unfettered powers of decision.
- In the interests of good corporate governance, the two roles should be separated so that the chairman and the CEO would then each act as a check on the other, providing a better balance of power on the board.



Effective Chairmanship

- An effective Chairman is a team-builder. He/she should develop a board whose members communicate effectively.
- He/she should have a close relationship of trust with the CEO; giving support and advice whilst still respecting the CEO's responsibilities over executive matters.
- He/she should also ensure the effective implementation of board decisions, provide coherent leadership for the company and understand the views of the shareholders.

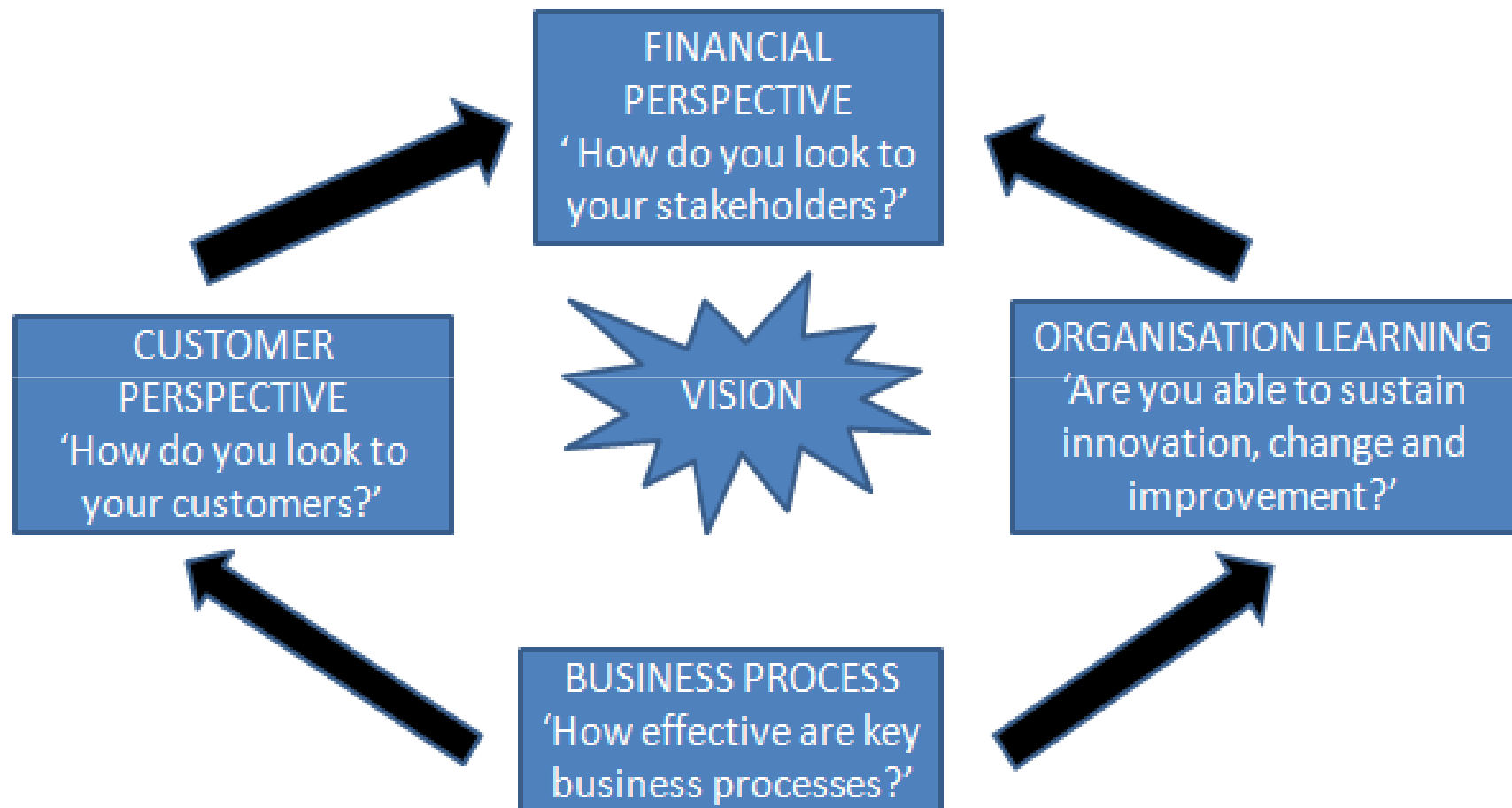


Summary of relationship between the Board and Management

- The primary relationship between the Board and Management is supervisory; the Board delegates and oversees the Management's activities.
- The Management is answerable to the Board for all the decisions made and implemented. The CEO of the company answers to the Chair of the Board.
- The Board is in charge of strategic running of the company while the management is in charge of operational running.
- The Board remains accountable for all decisions made within the company, including those delegated to other parties.



The Business Balanced Scorecard





APPENDIX 1: GOOD GOVERNANCE – A CHECKLIST

YES NO

STANDARDS OF BEHAVIOUR

1. Leadership
2. Code of Conduct
3. Objectivity, Integrity and Honesty

ORGANISATIONAL STRUCTURES AND PROCESSES

4. Statutory Accountability
5. Accountability for Public Money
6. Communication with Stakeholders
7. Roles and Responsibilities

CONTROL

8. Risk Management – Has the governing body taken steps to ensure that effective systems of risk management are established as part of the framework of internal control?
9. Internal Audit – Has the governing body taken steps to ensure that an effective internal audit function is established as part of the framework of internal control?



APPENDIX 2 : A GOVERNANCE INFORMATION CHECK-UP

Management Direction - Does everyone understand what they are meant to be doing?

Relevance – Do our activities continue to make sense in terms of the conditions, needs or problems to which they are intended to respond?

Appropriateness – Are levels of effort and selected methods of pursuing objectives sensible and sufficient?

Achievement of intended results – How challenging are our established goals, and have they been accomplished?

Acceptance – Are clients and other key stakeholders satisfied with the organisation and its products or services?

Secondary Impacts – What are the unintended effects of our activities, be they positive or negative?

Cost and productivity – Are the relationships between costs, inputs and outputs favorable?



APPENDIX : A GOVERNANCE INFORMATION CHECK-UP ..cont

Responsiveness – How well are we anticipating and responding to change?

Financial Results – How good are the financial results in terms of matching costs with revenues and appropriations and financial with obligations?

Working environment – is it happy, healthy and constructive working environment where staff are motivated to work together, adopt to change and develop?

Protection of Assets – How well do we protect against surprise events or losses of key personnel, critical occupations, client information, facilities, equipment, inventories, processes or agreements?

Monitoring and Reporting – Do management have the information they need to support their decision-making and their own accountability and do they use it appropriately?



YES NO

9. Audit Committees

10. Internal Control

11. Budgeting and Financial Management

12. Staff Training

EXTERNAL REPORTING

13. Annual Reporting

14. Performance Measures

15. External Audit

T: +254 722 523043
E: value@thevaluedirectors.com
www.thevaluedirectors.com

Thank you

