



# IMPROVING INSTITUTIONAL GOVERNANCE IN THE FINANCIAL SERVICES SECTOR

Presentation by:

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# Presentation Agenda



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- Introduction

2

- Regulatory Expectations around Institutional Governance

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- National Emerging Governance Agenda

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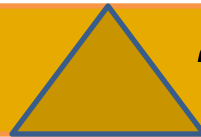
- Regional & Global Development Conversations
- Shaping the Future Discussions on Institutional Governance

# Introduction- Defining Corporate Governance (CG)



- ❑ How will it be like without banks, MFIs, Insurance Cos, cooperatives?
- ❑ Without Governance how will these institutions work?

*“To Govern”*



*“To Steer”*

- ❑ CG is a framework for making decisions which fundamentally focuses on flow of information for making informed decisions.

*CMA Code: Process and structure used to direct and manage the business of a company towards enhancing business prosperity and accountability with the ultimate objective of realising stakeholder and shareholders value.*

# Lessons From Enron \_ Who was watching?



<https://www.youtube.com/watch?v=Ml2O1bH8pvw>

- Bankers
- Capital Markets
- Accountants
- Auditors
- Lawyers
- CEO & Ex-com
- The Board
- Employees

# Introduction



## Triggers

- ❑ Cadbury Report of the UK in 1992
- ❑ The US Sarbanes-Oxley Act of 2002
- ❑ The three King Reports in South Africa
- ❑ The Taylor Committee report of 2003/4
- ❑ 2008 Financial Crisis- Ripple Effect (Wake –Up Call)
- ❑ The collapse of Crane Bank – Uganda
- ❑ Dubai Bank - Kenya
- ❑ The Imperial Bank- Kenya
- ❑ Chase Bank - Kenya

## Triggers – Effects

- ❑ Increased Regulation and associated risks for those charged with governance
- ❑ Governments and regulators rely on corporate governance as a complement to financial supervision
- ❑ Centrality of corporate governance towards ethical and moral dimensions

# Introduction- Risk Focus



## Historically

- ❑ Combined role of audit as a subset of finance
- ❑ Focus on Financial Risk
- ❑ Minimal Supervision
- ❑ “Political appointments

## The Future

- ❑ Separation of roles: Internal audit, Finance, risk, board
- ❑ Holistic institutional focus on Finance, governance, IT, business continuity, economic value....
- ❑ Increased supervision
- ❑ Appointments based on skills mix

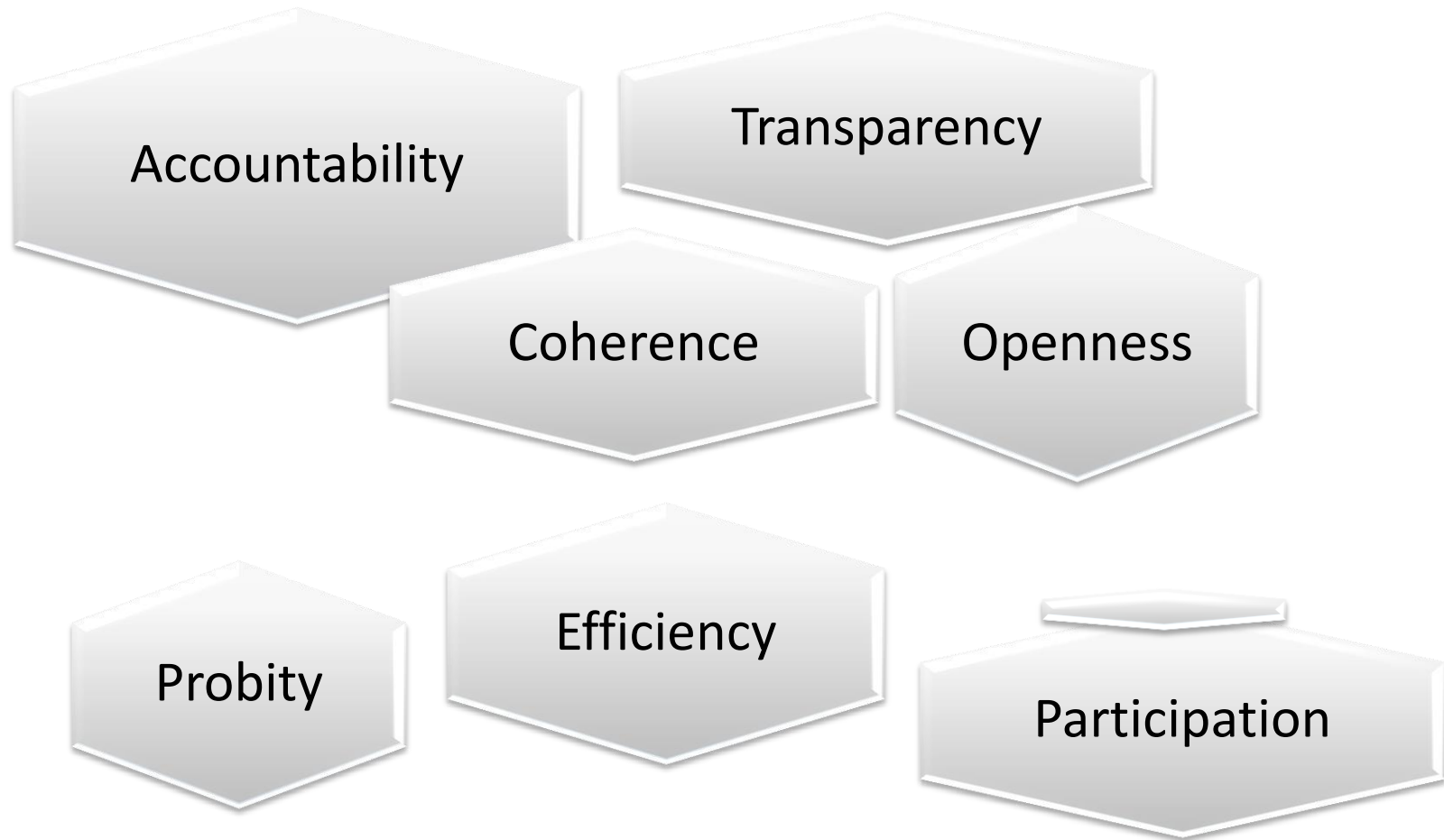
# Introduction- How Does Governance Risk Manifest?



- ✓ Personal liability
- ✓ Civil liability- lawsuits by shareholders/ contractual stakeholders
- ✓ Criminal liability – Fines & Imprisonment
- ✓ Regulatory sanctions and fines ( CBA – Common wealth Bank of Australia - \$700M on AML)
- ✓ ***Due diligence on Fit & Proper***



# Refocus on Governance Pillars



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- Introduction

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- Regulatory Expectations around Institutional Governance

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- National Emerging Governance Agenda

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- Regional & Global Development Conversations

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- Shaping the Future of Institutional Governance

# Regulatory Expectations on Corporate Governance



CBK Guidelines on Corporate Governance	IRA Guidelines on CG  SASRA Guidelines on composition of BoD
The CMA Code of Corporate Governance for Issuers of Securities to the Public (The Code)	Legal Compliance and Governance audit under the CMA Code
Directors Duties under the Companies Act 2015	Disclosure of Directors Remuneration

# CBK Guidelines on CG ( Banking Act 2015: 33(4)



**Objective:**  
To provide minimum standards required by shareholders, directors, CEOs and management to promote standards of conduct and sound banking practices.

P1: Ethical Leadership & Integrity	P7: Risk Management Framework
P2: Responsibility of Shareholders	P8: Compliance with Laws
P3: Overall responsibility of the Board	P9: Internal Control Functions
P4: Role & Competence of Board Members	P10: Governance of IT
P5: Group Structure Governance	P11: Bank Operation Structure
P6: Senior Management	P12: Disclosure Requirements

# CMA Code: CMA Act Sec 11(3)(v)



## What the Code Regulates

- Appointment, composition, size & qualification of BoD
- Structure & Functions of the BoD
- Board independence
- Remuneration of the BoD
- Rights of shareholders, institutional investors and stakeholder relations
- Ethics and Social responsibility
- Accountability, risk management and internal control

The BoD is tasked with formulating policies and procedures and all directors, CEO and management are to be made fully aware of.

Annual Report to disclose statement of policy on good governance and status of application of the Code

# Legal & Compliance Audit



Role of the Board	Internal System Adjustment	<u>How Often ?</u>
<p>Identify all applicable laws, regulations and standards that the bank must comply with such as:</p> <ul style="list-style-type: none"><li>▪ The CMA Code</li><li>▪ National and County legislations</li><li>▪ Rules and regulations</li><li>▪ Circulars and guidelines issued by Authorities</li><li>▪ Regional laws and international treaties and Codes.</li></ul>	<ul style="list-style-type: none"><li>▪ Board to develop and implement strategy on compliance</li><li>▪ Strategy alignment to the operations of the bank</li><li>▪ Strategy to include internal procedures and monitoring systems.</li></ul>	<ul style="list-style-type: none"><li>- Internal L&amp; C to be carried out on annual basis.</li><li>- Comprehensive independent L&amp;C audit should be carried out at least once every 2 years by a legal professional in good standing with LSK</li></ul>

# Directors Duties under the Companies Act 2015



Promote success of the Company. S.142

Exercise independent judgement. S. 143

Exercise reasonable skill, diligence and care. S. 144

Avoid conflict of interest. S.145

Not to accept benefits from third parties. S.146

Declare interest in a proposed transaction S. 147

Duty to act within powers. S151



# Promoting Success of a Company



- Act in good faith
- Decisions that promote long term increase in value
- Have regard to stakeholders
- Maintain a reputation for high standards of business



# Exercising independent Judgement



- Does not mean you cant consult others.
- Weigh options even if you are left alone without being compromised.
- Meetings should be a forum to challenge and should be an uncomfortable place!
- Avoid **GROUP THINK**

# Companies Regulations 2017 on Directors Compensation: The How & Why

◀ Total amount of salaries and fees

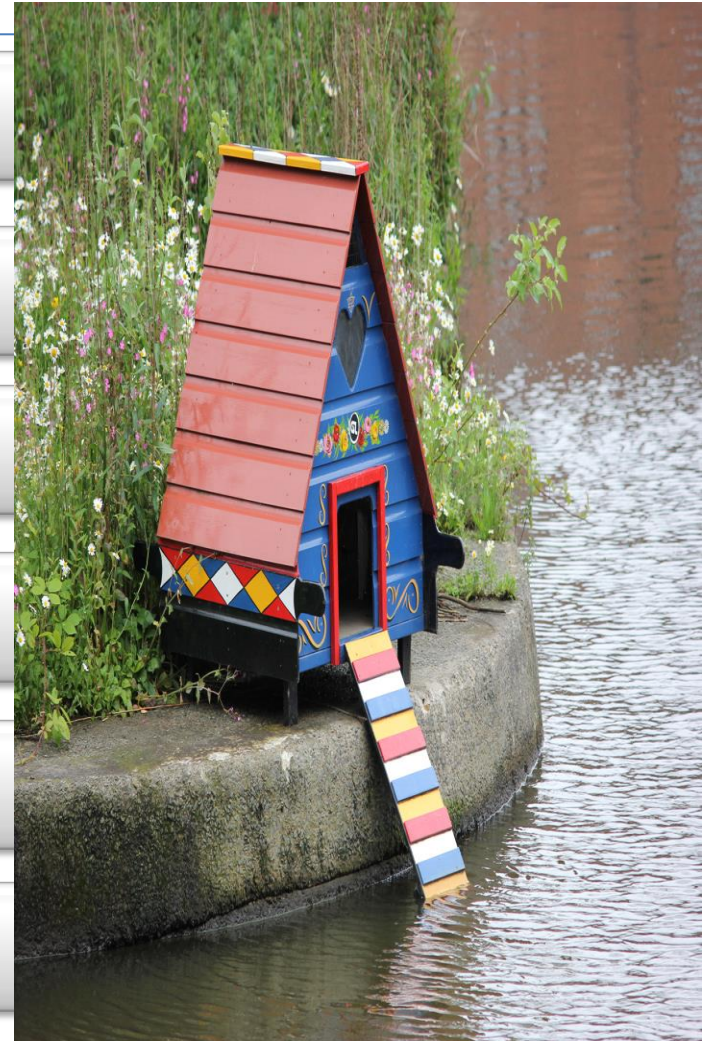
◀ Total amount of bonuses

◀ Total amount of expense allowances

◀ Total amount payable on termination

◀ Total value of non-cash benefits

◀ Total value of share option schemes



# Regional Developments towards Governance



## Tanzania

Circular **FA.178/461/01/02 (Feb 19, 2018)** requires every bank to develop a non-performing loan strategy

**Mining Local content Regulations, 2018** requires all persons who conduct mining at all levels of supply chain to maintain and transact with a bank account held at an indigenous Tanzanian bank

**Land Act** state that where mortgages for land have been financed , all proceeds should be used for developing that lands

## Uganda

**Financial Institutions (Islamic Banking) Regulations (Feb 2, 2018)** to regulate institutions conducting Islamic banking

Fit and proper classification has become onerous; 6-12 months compared to 3-5 months there before

Crane bank aftermath: All international banks to have in-country data centre

Immediate application of **IFRS 9**  
King 1V review on Banking Sector Risk Management

# Regional Developments



## South Sudan

- Political instability
- AML
- Change of guard (BoSS Governor fired on 18<sup>th</sup> May 2018)
- April 2018: Council of Ministers ratified a draft bill on organising hard currency to combat speculations

## Burundi

- Political instability
- Suspension of financial aid by major donors
- Shortage of foreign exchange reserve

### Rwanda

- Innovations
- Race for digital space and competition among international banks

# Global Developments in Financial Services Sector



## □ Rise of Fintech & Digital Transformation

- Artificial Intelligence as a key evolution is expected to detect AML occurrences.
- Blockchain technology and its culmination of Big Data availability is shifting governance from the board room to virtual world.
- Product innovations that are technology enabled will be vulnerable to high costs. *A delicate balance between ethics and increased profits as a justification of cost of risk and efficiency*



# Global Developments in Financial Services Sector



## ❑ Correspondent Banking

- Financial exclusion of Africa due to insufficient frameworks for dealing with AML, tax evasion, terrorism and other crimes.
- Poor risk governance and political interferences in institutions may cause a paradigm shift of global correspondent banks

## □ Regulatory shift on monitoring

- Regulators are using technology for transaction monitoring and reporting.
- Enacting of laws on cyber crime is giving regulators a grip on dealing with culpable victims.

# Governance and the Global Agenda – Vision 2030





# SDGs: Post 2015 Agenda



## SUSTAINABLE DEVELOPMENT GOALS



## 4. Shaping the Future of Institutional Governance



# Shaping the Future



Corporate Failures, Who Regulates  
the Regulator?

Interests at the Apex: CEO/  
Board

Political Interference

IT Governance

# Interactive Session

