



BOARD COMPOSITION

Madren Oluoch-Olunya
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The Leadership Group Ltd

Our Mission: To deliver cutting edge leadership development consultancy and advisory services to senior leaders of top African businesses and organizations that would deliver value and results.

Our Vision: To develop effective leaders for the future while making Leadership a continuous journey of stewardship.

Our Core Values:

Integrity: We embrace the highest standards of integrity

Collaboration: We work with others who share our values to further the cause of leadership

Commitment: We embody and exemplify the ideals we stand for

Change: We adapt to the changing dynamics of the leadership agenda

Learning: We always seek and promote continual learning

Our Solutions:



About us

The Leadership Group.....Our Services

Executive
Coaching

Change
Management

Mentorship

Business
Advisory

Leadership

Governance

Board
Practice

Our Contacts



The Leadership Group Limited
2nd Floor, Western Heights
Karuna Road, Westlands, Nairobi



moduorotieno@leadershipgroup.co.ke



www.leadershipgroup.co.ke



+254 071 531 3244 / 0202 231 3240



[The Leadership Group Limited \(K\)](#)

Module Content



- Overview of Legal and Corporate Governance Framework on Board Composition
- Forming Effective Boards and Board qualification criteria
- Board Chairperson and Secretary

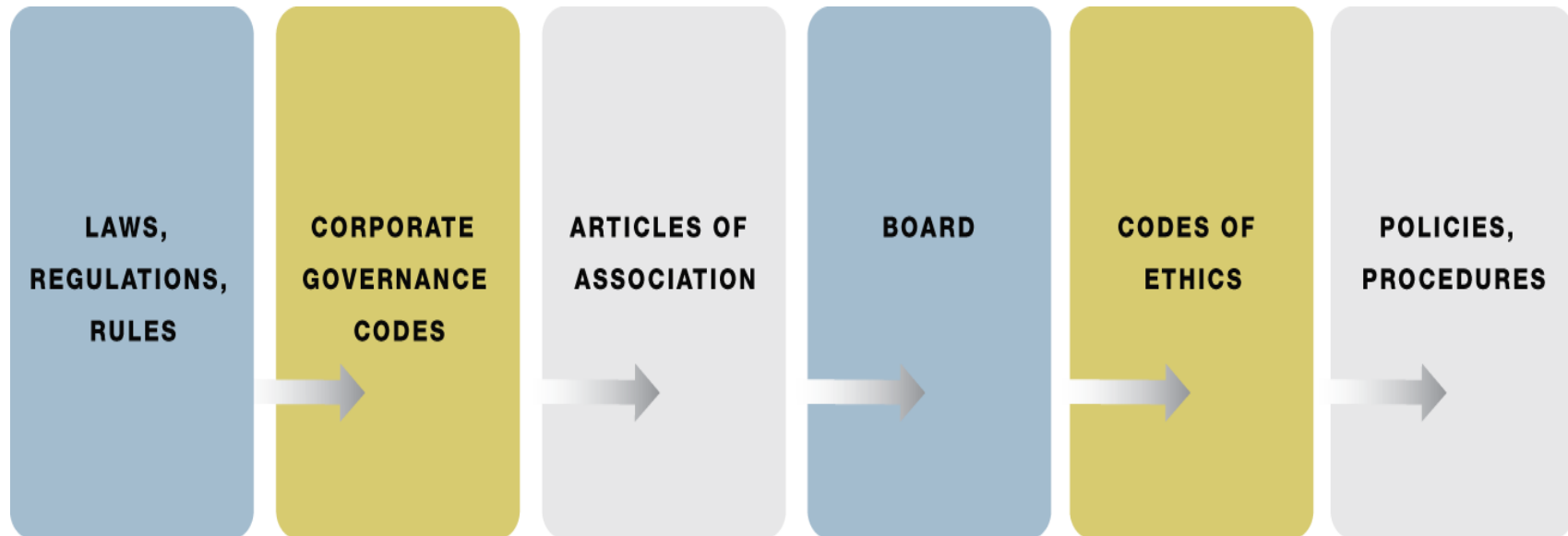
Module Objectives



By this module's end, participants will be able to:

- Appreciate the applicable **legal** framework relating to **Board Composition** in Kenya
- Articulate the **key considerations** for an **optimal** board composition
- Understand the Roles and Responsibilities of the Board **Chairperson and Secretary**

Corporate Governance System



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Laws, Regulations And Rules



- **Companies Act 2015** – 1 director, 18 years, no maximum age limit
- **State Corporations Act and Mwongozo Code 2015**
 - Addresses complex governance structure, conflicts – ministries, parliament, boards, CEO
 - Recruitment, selection, appointment and inductions of Boards, Board skills, CEO=CS

Laws, Regulations And Rules



- **Central Bank of Kenya Act/Banking Act – “fit and proper” criteria**
- **CMA/Nairobi Stock Exchange listing rules/Insolvency rules**
 - Multiple directorships, conflicts of interest, independence, Chair-CEO, remuneration, board evaluations
- Others?

Companies Act 2015 - Directors Duties



Directors should carry on his duties while having regard to:

- **Long term** consequences of any decision of the directors
- The interests of the **employees** of the company
- The need to foster the company's **business relationships** with suppliers, customers and others
- The impact of the company's operations on the **community and environment**
- To maintain a **reputation** for high standards of business **conduct**

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Board: Summary Of Regulatory Recommendations



Board composition

- » Majority independent directors recommended
- » 'Fit and proper' test
- » Diversity of directors
- » Board and management succession plan defined

Executive and Board compensation

- » Disclosure of structure of total compensation
- » Equity compensation for interest alignment
- » 'Risk-linked pay'
- » Long-term perspective of executive remuneration

Board performance assessment

- » Annual evaluation against CG principles
- » Disclosure of performance metrics to shareholders
- » Training the Non-Executive Directors (NEDs)

Board independence

- » Separate Chair/CEO Position (or Lead Director)
- » Independent executive sessions (without CEO)
- » Independent Board Committees

Board roles and accountability

- » Role of the NEDs – Ensure independence of the Board functioning
- » Delegation of authority – Board committees and CRO
- » Time commitment and minimum attendance

Reflection – Best In Class Boards



Truly exemplary boards are **well-balanced teams** that harness the **diverse experiences, skills and intellects** of their directors to pursue the **strategic** objectives of the companies they serve.

The best-in-class board fosters a **culture** of rigorous, relentless examination...presses for **continuous improvement, setting a tone** for senior management that reverberates throughout the organization.

Source: Heidrick & Struggles

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Key Message - OVERSIGHT



A Board should create an environment of **trusting** the **Management** with completeness and accuracy of **information** and **controls**, but **verify** it **independently**



Key Message - HINDSIGHT



- Boards should seek to **identify the red flags** and then drill down to the root of the problem
- Look at the **whole forest**, while leaving the individual trees to the Management.



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Key Message - FORESIGHT

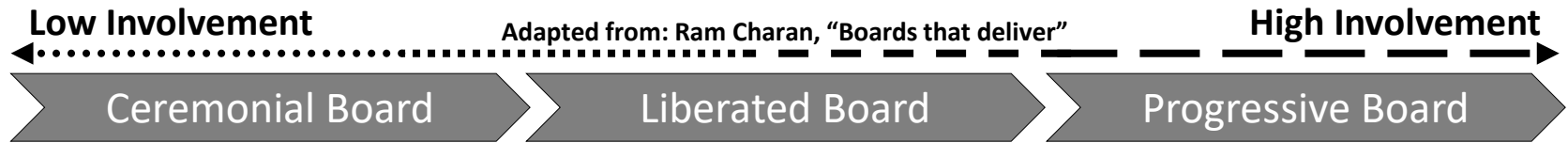


Boards should think about the **future**, set and modify the organization's **direction**, identify **strategic** opportunities while considering the **broader environment** so as to influence future **results**.

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Evolution of the role of the Board

- The **level of involvement** of the Board also determines the **effectiveness** of the Board



	Low Involvement	High Involvement	
	Ceremonial Board	Liberated Board	Progressive Board
Group dynamics	<p>CEO is all powerful, directors are passive</p> <p>Limited participation in company's strategy</p> <p>Limited accountability</p>	<p>Fragmented dialogue in the Boardroom – Absence of consensus, word of the CEO prevails</p> <p>Absence of self-evaluation</p>	<p>Understands role of independent directors</p> <p>Guides & evaluates the CEO</p> <p>Self-evaluation a core part of the Board functioning</p>
Information architecture	<p>Management tightly controls information flow</p>	<p>Management makes relevant information available to Board, but the information is not focused, timely and clear</p> <p>Lack of Board understanding of the company's business model</p>	<p>Focused, timely, accurate and clear information provided to the Board</p> <p>Directors possess right skills for the job and understand the company's business very well</p>
Focus on important areas	<p>Compliance role only</p> <p>Usually the Board passively certifies the management decisions</p>	<p>Board desires to make a contribution, but is overwhelmed by substantive issues. Driven by compliance and routine operating issues</p>	<p>Joint agenda set by Board/CEO. Board focus on anticipatory and strategic issues, as well as compliance related issues</p>

Board Formation: Key Considerations



- Boards are responsible for defining the **long term success** of their companies
- Their **optimal composition** over time is of key interest to **investors**
- Establishing and maintaining **entrepreneurial, independent** company boards with the right **competencies** and levels of **diversity** depend on robust **nomination** processes and **succession** plans
- **Roles:** Oversight, Hindsight, Foresight

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Guiding Principles in Board composition



- Independence
- Refreshment
- Engagement
- Competence
- Integrity
- Transparency
- Inclusiveness



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The System



- **Right people** - primary building blocks for any organization
- **Right culture** - open, trusting environment that inspires and encourages active debate
- Focuses on the **right issues** – value adding
- With the **right information** – knowledge is the new source of wealth
- Use the **right processes** – to harness individual and team potential
- Engage in **continuous improvement**

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The Board composition



- **Size:** An optimum board size
- **Tenure:** Expected longevity/continuity/time commitment/independence
- **Diversity:** An appropriate mix of age, gender, geographic spread, nationality, experiences and team roles
- **Relevant Qualities and Skills:** include integrity, business acumen, commitment, industry knowledge, leadership, governance, technology, finance, banking, risk management, communication, strategic planning, etc

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The Process



- **Strategy:** Reflect on the future strategic direction and the need
- **Vacancy:** Casual, Retirement by Rotation, Age
- **Skills assessment:** Current and Future Knowledge, Skills and Experience
- **Nomination process:** committee, transparent, candidate profile, referrals, advertise, head hunt, shortlist, interview, recommend to the board for appointment, pipeline for proactive succession planning
- **Appointment and Induction**

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Activity



PLENARY DISCUSSION:

Consider article “**Who gets to join your 21st Century board of directors? A provocation**” Sunwords.com, 11 July 2021)

1. Why a provocation?
2. Discuss additional considerations for Board formation and composition.

The Individual director



To be **effective**, the Board must attract directors who:

- Provide **valuable, strategic** input.
- Commit to **performing** at their **full potential**.
- Have the **courage and self-confidence** to raise and address any personal **developmental** needs.
- Are **accountable** to stakeholders.
- Give **constructive feedback** to other directors to enhance the personal effectiveness of their board colleagues.

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Role of the Chairperson



Board Leadership: Enabling the functioning of the Board, ensuring its effectiveness, setting the Board's agenda in coordination with the CEO and Chairing the Board's meetings

Communication: Providing accurate, timely and clear information to directors, ensuring timely and effective communication to key stakeholders including the shareholders

Performance evaluation: Periodically arranging for evaluation of the Board performance, including that of the Board committees, the individual directors and the CEO. Reviewing self-assessment forms of the Board and Board committees

Implementation: Ensuring effective implementation of board decisions

Director participation: Acting as a facilitator for enhancing participation from Board members and cultivating constructive relations between the executive and non-executive directors

Member induction: Ensuring, in coordination with the Board secretary, that a comprehensive induction program has been developed for new directors

Development needs: Identifying and addressing the development needs of individual Board members and the Board as a whole. Organizing training sessions in coordination with the CEO/CRO as applicable to the NEDs

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Role of Board Secretary



- Resolves **organizational matters** for Board meetings
- Notifies all Directors of Board **meetings**
- Communicates to and collects **voting** ballots from directors, if any
- Explains the **procedural requirements** of laws, the charter and by-laws
- Ensures compliance with the industry/sector's **Corporate Governance** code
- Documents the **minutes** of Board meetings
- Organizes and conducts **induction** trainings for newly elected directors
- Establishes **templates** for preparing board papers and presentations

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Summary of Board roles



Summary of Roles of Board members

Executive directors	<ul style="list-style-type: none">▪ Executive directors are responsible for the day-to-day operations at the bank▪ They are best placed to develop, set and implement strategy given their deep knowledge of the financial services industry and the bank as such
Non-executive directors	<ul style="list-style-type: none">▪ Provide an outside perspective and impartiality in their judgments▪ Provide additional external experience and knowledge and useful contacts
Independent directors	<ul style="list-style-type: none">▪ Ensure that the board includes individuals who can effectively exercise objective judgment for the benefit of the bank and its shareholders▪ Ensure that the remuneration practices are in line with the regulatory requirements
Lead directors	<ul style="list-style-type: none">▪ Ensure that the board functions independently and that the inherent conflict of interest in the common Chairman-CEO position is minimized

Shadow Director - not a member of the Board, he/she exerts significant influence on its deliberations

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Activity: Video



Conflicts of Interest, Independence, Fitness

<https://www.youtube.com/watch?v=Jam3ECsDPec&feature=youtu.be>

Activity: Video



1. Who were the **key players**?
2. What were the **ethical and leadership issues** raised?
3. What were the **outcomes/results**?

Other observations?

Director Independence



Independence provides an additional assurance to stakeholders that the role is being carried-out objectively

Plenary Discussion:

- Independence vs Independent Judgment – what is the difference?

“Fit and Proper” criteria



Regulatory Authorization:

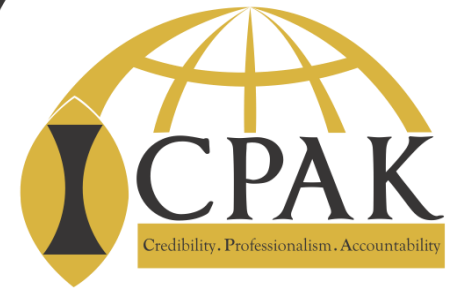
- » Director should be able to satisfy regulatory bodies in her/his capability assessment
- » This gives confidence to the Director as well as raises the bar of overall board capability

Fit and proper criteria include:

- (i) **Skills and experience** in finance commensurate with the intended activities of the financial institution
- (ii) No record of **criminal activities or adverse regulatory judgments** that make a person unfit to uphold important positions in a financial institution

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Criteria for disqualification



- History of **convictions** due to criminal offenses - Particular consideration to offences of dishonesty, fraud, financial crime and other offenses under the companies legislation
- **Adverse history** in investment or other financial business, misconduct, fraud or the formation or management of a body corporate
- History of involvement in **disciplinary proceedings** or suspensions initiated by the **regulator**

Criteria for disqualification



Other Red flags

- History of involvement in a firm whose **license has been revoked** or the registration, authorization, membership of the firm has been rejected
- History of previous positions as a director, partner, or concerned in the management, of a business that has gone into **insolvency or liquidation**
- History of **dismissals, resignations** from position of **trust, fiduciary** appointment or similar
- History of **disqualification** from acting as a director or a disqualification from acting in any managerial capacity
- **Others** as applicable

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Q&A



Thank you!

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