CAPITAL MARKETS AUTHORITY

*Promoting the Integrity and Growth of the Capital Markets*

# THE REPORT ON THE STATE OF CORPORATE GOVERNANCE OF ISSUERS OF SECURITIES TO THE PUBLIC IN KENYA 2023

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## ABBREVIATIONS

| | |
|---|---|
| COP 28 | The 28th Meeting of the Conference of Parties to the UNFCCC |
| CMA | Capital Markets Authority |
| FY | Financial Year |
| ESG | Environmental, Social and Governance |
| GRI | Global Reporting Initiative |
| ICPAK | Institute of Certified Public Accountants of Kenya |
| IFRS | International Financial Reporting Standards |
| NSE | Nairobi Securities Exchange |
| OECD | Organization for Economic Cooperation and Development |
| SASB | Sustainability Accounting Standards Board |
| SME | Small & Medium Enterprise |

## 1. FORWARD

**Message from Mr. Wyckliffe Shamiah, FCPA, Chief Executive Officer, Capital Markets Authority (Kenya)**

The Code of Corporate Governance Practices for Issuers of Securities to the Public in Kenya, 2015, set a high bar for enhancing governance within Kenya's capital markets. Since its inception in 2016, it has steered issuers towards embedding robust governance principles and practices in their operations.

The State of Corporate Governance Report, 6th Edition, stands as a testament to fostering a culture of transparency, accountability and excellence within the realm of issuers.

Amidst this era of transformative change characterized by the advent of groundbreaking technologies like Artificial Intelligence (AI), blockchain and machine learning, the significance of robust governance practices cannot be emphasized enough. It transcends being a mere regulatory necessity; rather, it stands as the cornerstone upon which trust and sustainability are established. This report serves as a reflective tool, offering a clear view of advancements, accomplishments and the direction ahead.

Over the past 6 years, commendable strides have been witnessed as issuers embed good governance principles and practices into their DNA. However, this journey is not static; it is an ongoing evolution, a relentless pursuit that challenges the norms, expands horizons and welcomes innovation while unwaveringly upholding ethical standards.

The paradigm of corporate governance has expanded, encompassing Environmental, Social and Governance (ESG) considerations. Advocating for a holistic approach is crucial as custodians of these markets, where responsible business practices are as vital as financial performance.

This report represents more than just a snapshot; it's a narrative of the shared journey, a testament to the resilience and adaptability of Issuers. It underscores the need for perpetual vigilance, continuous improvement and unwavering dedication to the highest governance standards.

Let this report guide towards a future where integrity, accountability and sustainability form the bedrock of every decision both within the capital markets sector and beyond. Together, let's forge ahead, surpassing expectations and setting new benchmarks for excellence in corporate governance.

**Message from the Mr. Daniel Warutere, Director, Markets Operations, Capital Markets Authority (Kenya)**

Reflecting on the journey thus far, the groundbreaking launch of the inaugural Report on the State of Corporate Governance for Issuers of Securities to the Public in 2018 was not merely a milestone; it represented a monumental leap toward realizing the ambitious vision outlined in the Capital Markets Master Plan (2014-2023) to position Kenya as the paramount hub of capital markets financing in Africa. This historic moment symbolized a resolute dedication to advancing corporate governance, a foundational pillar requiring the strengthening of governance standards while seamlessly aligning with regulatory requirements and global benchmarks.

In the past, the lack of an evaluation mechanism and publication of comprehensive governance reports left investors and stakeholders navigating through a maze of disjointed data to understand governance practices. However, the introduction of the Code signaled a seismic shift compelling issuers to publicly disclose vital governance documents such as board charters, terms of reference for board committees and policies. This transformation is not just about transparency; it establishes a pinnacle of reliability and accessibility in information, benefiting stakeholders including investors, researchers and academicians.


Though numerous issuers have shown commendable strides in adopting good governance practices, the pressing need remains to prioritize the effective management of board operations, stringent control mechanisms, fostering robust stakeholder relations and championing ethics alongside social responsibility. These fundamental principles stand as the bedrock of every issuer's essence, being quintessential for fostering enduring and sustainable growth.

Looking ahead, the aim is active engagement with issuers and stakeholders. The goal is to collaboratively chart pathways towards robust governance and sustainability practices. This engagement is not a mere box-ticking exercise; it is about cultivating issuers that not only compete but also thrive on sustainable practices. In addition, this engagement signifies a significant leap towards a future where embracing good governance and sustainability practices is not merely a goal but an embraced reality by all.

## 2. EXECUTIVE SUMMARY

The comprehensive assessment of issuers' performance in adhering to corporate governance principles as contained in the Corporate Governance Code reveals a positive trend towards fostering robust governance practices within the issuers' operational frameworks. Of the assessed issuers, 31 secured a leadership rating, 8 attained a good rating and 6 achieved a fair rating whereas a reduced number of 4 issuers only falling into the needs improvement category. This reduction signifies substantive progress in embedding strong corporate governance practices within issuers organizational structures.

The annual weighted overall score by all issuers witnessed a commendable improvement surging from 72.27% (Good rating) in the financial year 2021/2022 to an impressive 75.71% (Leadership rating) in the financial year 2022/2023. The table below illustrates the annual weighted overall score achieved by all issuers spanning from the financial year 2017/2018 to the financial year 2022/2023:


*Figure 2:1: Annual Weighted Overall Score by all Issuers*

This substantial improvement underscores a collective dedication among issuers towards enhancing their governance structures and practices resulting in an elevated performance standard across the assessed period.

However, it is noteworthy that the overall weighted score dropped from 72% (Good Rating) in 2019/2020 to 70.15% (Good Rating) in 2020/2021. This was mainly due to the following two reasons:

a) The penalty of 2% was imposed on the 9 non-responsive issuers. This decreased the overall score by 0.375% calculated as 2% of 9 divide 48 which is the total number of issuers assessed.

b) An issuer was assessed for the first time which decreased by 0.96%. It had the lowest score of 24.73 which pulled down the average score of the other issuers. The average weighted score of all the other issuers without this issuer would have been 71.11%.

Throughout the assessment period, there has been a consistent upward trajectory in the average performance across all principles. Notably, Accountability, Risk Management and Internal Control emerged with the highest score of 80.77% (Leadership rating) showcasing the highest proficiency. Simultaneously, Board Operations and Control showed a commendable rise to 71.99% (Good rating) exhibiting marked progress from the prior financial year's performance of 70.32% (Good rating). Other principles securing a leadership rating include Rights of Shareholders at 79.59%, Commitment to Good Governance at 78.6% and Transparency and Disclosure at 77.26%. Additionally, Ethics and Social Responsibility achieved a solid rating of 74.82%, while Stakeholder Relations reached 73.04%.

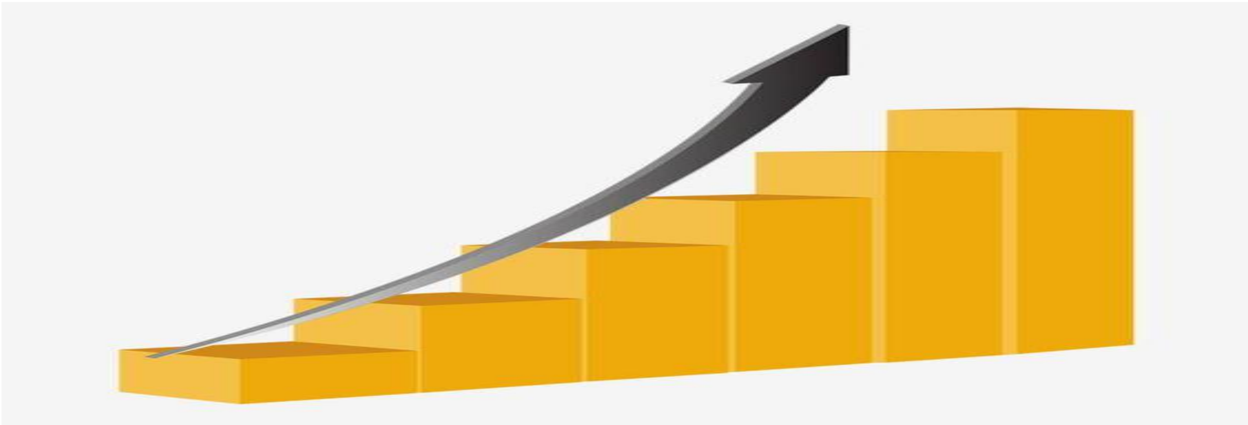
Noteworthy is the remarkable improvement in Ethics and Social Responsibility surging by 5.34% from the previous financial year's performance of 69.48% (Good rating).

Sector-wise analysis showcased outstanding performance in the Banking, Manufacturing & Allied/Automobiles & Accessories, Insurance and Energy and Petroleum sectors, all achieving a leadership rating. Conversely, other sectors secured a good rating, except for the Agricultural and Construction & Allied sectors which recorded fair rating. The most improved sector was the Investment and Investment Services sector from its previous score of 64.00% to 78.74%, being an increase of 14.74%. In contrast, the Agricultural sector experienced a marginal decline of 1.41% from the preceding year's score of 59.75%.

The Banking sector maintained its consistent leadership rating across all principles. Remarkably, the Insurance sector notably improved, securing a leadership rating in all principles, a substantial enhancement from the prior year. However, the Construction and Allied Sector, along with the Agricultural sector, encountered a needs improvement rating in the stakeholder relations principle signaling areas for focused improvement.

This comprehensive assessment serves as a vital guide for issuers, highlighting areas of excellence and pinpointing avenues for refinement, with an overarching aim to fortify corporate governance and sustainability practices, ensuring sustained growth, transparency and stakeholder confidence in the capital markets sector.

## 3. BACKGROUND



Since 2017/2018, issuers of securities to the public have been assessed on an annual basis, on their corporate governance practices against the principles, recommendations and guidelines outlined in the Code. The Code mandates issuers to implement principles, recommendations and guidelines and report on their application at the close of each financial year. The Authority conducts an independent assessment of the issuers' self-assessment reports alongside publicly available information. Subsequently, the Authority generates and issues a comprehensive report to each issuer.

Following this assessment process, a report on the state of corporate governance among issuers of securities to the public is compiled and published on the Authority’s website. This report meticulously showcases the performance of all issuers concerning their adherence to corporate governance standards and sustainability practices.

Globally, such rigorous annual assessments of corporate governance practices align with international best practices and standards in ensuring transparency, accountability and sustainability within capital markets. These assessments not only encourage compliance with regulatory requirements but also foster a culture of continuous improvement. They mirror the essence of numerous global frameworks and standards such as those set by the International Organization of Securities Commissions (IOSCO) and the Organization for Economic Co-operation and Development (OECD), among others, that emphasize the importance of robust corporate governance and sustainable business practices for the stability and growth of financial markets worldwide.

## 4. ASSESSMENT METHODOLOGY

### 4.1. Assessment Tools

The Corporate Governance Reporting Template, Corporate Governance Scorecard and Assessment Methodology serve as pivotal instruments for reporting, assessing and monitoring the implementation of the Code's principles, recommendations and guidelines. Issuers utilize the reporting template to disclose their adherence to governance requirements and reveal the status of each requirement's application. This transparency not only bolsters compliance but also promotes accountability in governance practices.

Internally, the Authority employs the Corporate Governance Scorecard to gauge the extent of the Code's implementation. This tool aids the Authority in assessing the overall governance and sustainability practices among issuers facilitating regulatory interventions.

Aligned with the Authority's emphasis on continual reporting, issuers are required to furnish the completed reporting template and the comprehensive annual report within four (4) months from the financial year-end. Additionally, issuers are required to upload this information onto their respective websites ensuring wider accessibility and transparency to stakeholders.

Upon receipt of the Corporate Governance reporting templates and annual reports from issuers, the Authority conducts a thorough and independent assessment to ascertain the governance and sustainability status of each entity. This assessment aligns closely with an approved methodology and specific scoring criteria established for this purpose. The methodology and scoring criteria serve as benchmarks against which the governance and sustainability practices of each issuer are measured and evaluated.

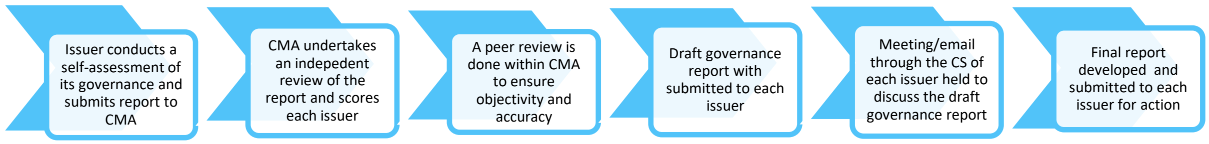
The Scorecard covers the seven (7) principles of the Code:

1. Introduction to the Code (focus on commitment to good governance);
2. Board operations and control;
3. Rights of shareholders;
4. Stakeholder relations;
5. Ethical and social responsibility;
6. Accountability, risk management and internal control; and
7. Transparency and disclosure.

### 4.2. Assessment Process

The assessments of corporate governance practices by issuers are based on publicly available and accessible information such as annual reports, issuer websites, notices, circulars, articles of association, resolutions of shareholders' meetings, Board Charter, media publications, codes of conduct, sustainability reports and other sources of public information as available.

To reduce differences in opinions among assessors and improve the accuracy and consistency of the review process, we use a system of checks and balances. In summary, the assessment process adheres to a structured sequence of steps outlined below:




The issuer scores zero points on each question if they have not observed the practices, 1 point if they have partially observed, 2 points if they have fully observed and 3 points if they have gone above and beyond the requirements of the code.

Based on the final score, issuers will be grouped into four groups; Leadership rating (75% and above), Good rating (between 65% and 74%), Fair rating (between 50% and 64%) and Needs improvement rating (below 50%).

### 4.3. Assessment Analysis

The review process takes into account the unique circumstances where specific sectors such as automobiles & accessories, telecommunications and investment services contain only one issuer each. To maintain anonymity, these sectors were consolidated with similar categories. This consolidation facilitates a more meaningful and robust analysis of the governance and sustainability landscape within these sectors allowing for better comparative assessments and a deeper understanding of the governance and sustainability practices involved. The result was that:

a) Automobiles & Accessories was consolidated with Manufacturing & Allied;

b) Telecommunications was consolidated with Commercial & Services; and

c) Investment Services was consolidated with Investments.

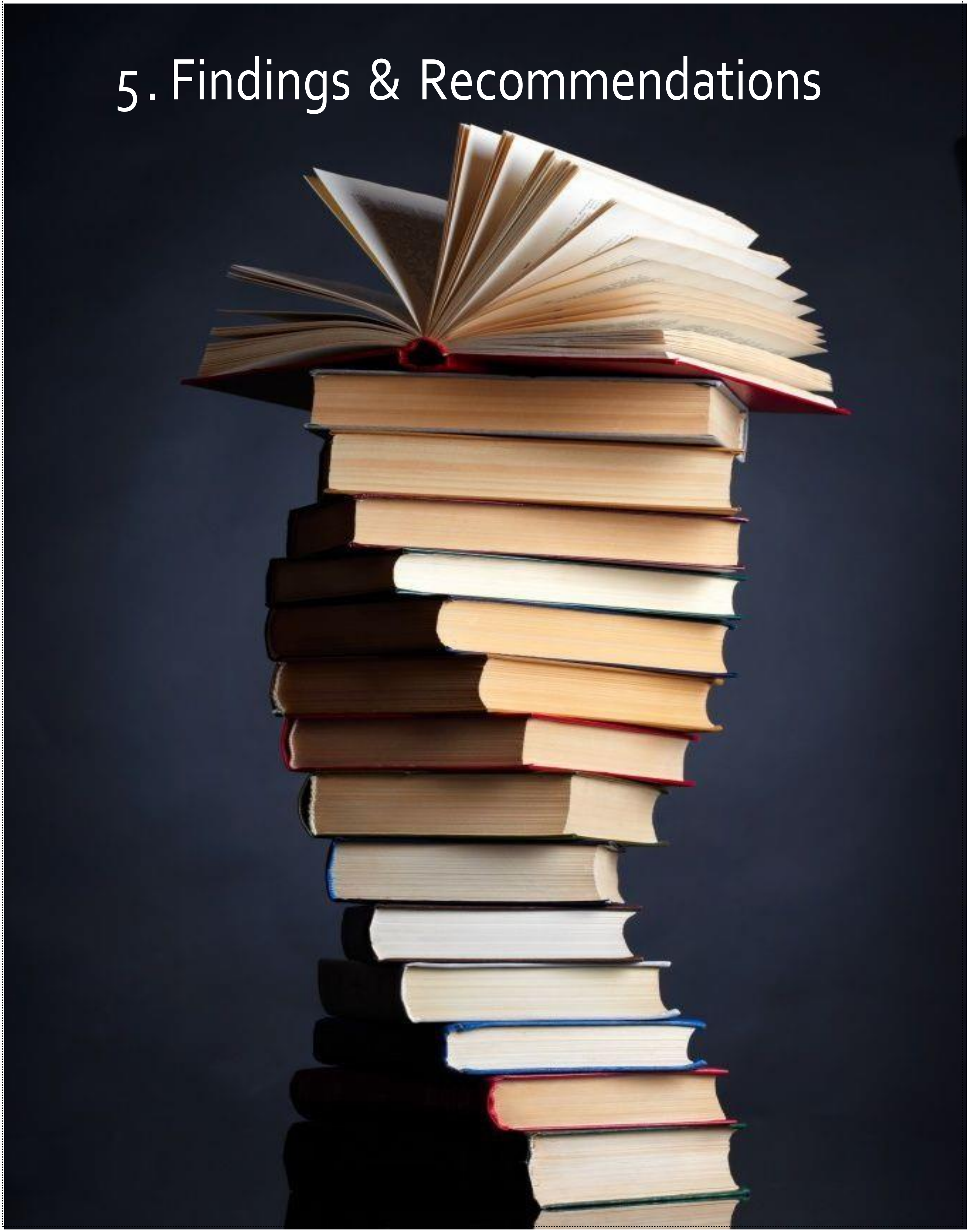
A breakdown of the number of assessed issuers per sector:

*Table 1: Breakdown of Issuers per Sector*

| | Sectors | No. of Issuers |
|---|---|---|
| 1 | Banking | 10 |
| 2 | Commercial & services/telecommunications | 9 |
| 3 | Automobiles & accessories/manufacturing & allied | 4 |
| 4 | Energy & petroleum | 3 |
| 5 | Insurance | 6 |
| 6 | Agricultural | 6 |
| 7 | Investment & investment services | 3 |
| 8 | Construction & allied | 4 |
| 9 | Non-listed | 2 |
| | **TOTAL** | **50** |

This was based on the assessment of 50 issuers who undertook their governance self-assessments and submitted their reports to the Authority. However, it is important to note that two issuers were assessed as one hence reducing the total number to 49 issuers. This was occasioned by the fact that two issuers have the same board and same management hence a similar governance structure.

# 5. Findings & Recommendations



## 5. FINDINGS AND RECOMMENDATIONS ON SPECIFIC CORPORATE GOVERNANCE

### 5.1. COMMITMENT TO GOOD CORPORATE GOVERNANCE

Commitment to good corporate governance includes but is not limited to Issuers ensuring that there is a board charter in place that is periodically reviewed, that the board charter distinguishes the responsibilities of the board and the responsibilities of the management, that there is a statement in the board charter that indicates the responsibility of board members for the application of corporate governance policies and procedures of the companies, that the boards ensures that all directors, CEOs and management are fully aware of the requirements of the Kenyan Corporate Governance Code, that company documents indicate the role of the board in developing and monitoring the company strategy, that the company strategy promotes sustainability of the company and finally that all board committees are governed by a written charter/ terms of reference that disclose their mandates, authorities, duties, composition, leadership and working processes.

**The average performance of Issuers on the commitment to good corporate governance**

The figure below represents the overall performance of issuers on this principle.

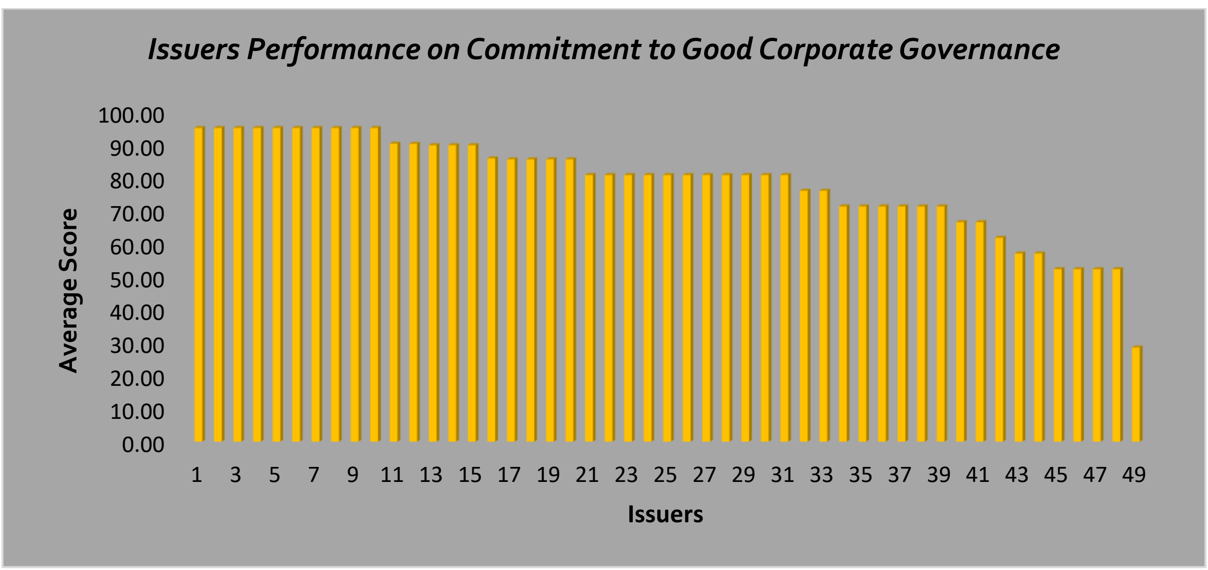



*Figure 5:1: Average performance of Issuers on Commitment to good corporate governance*

An analysis of performance on this principle shows that 33 issuers scored leadership rating, 8 issuers scored good rating, and 7 Issuers had a fair rating while the rest had a needs improvement rating.

**Trend analysis on the overall performance on commitment to good corporate governance**

The figure below represents the overall performance of issuers on the commitment to good corporate governance.

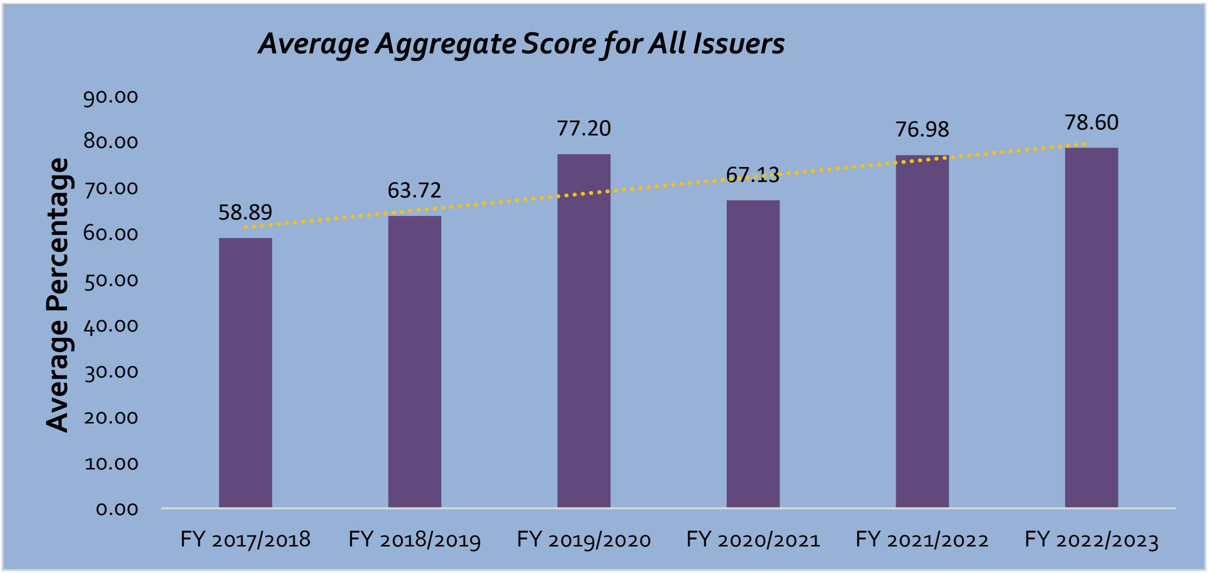



*Figure 5:2 Average Aggregate Score for all issuers on Commitment to good corporate governance*

The average score by all assessed issuers on this principle was 78.60% (Leadership Score Rating). This was an improvement from the previous assessments which was also a leadership score rating of 76.98%. The improvement was as a result of the improved responsiveness by issuers on incorporating sustainability practices in their strategies.

## 5.2. BOARD OPERATIONS AND CONTROL

At the heart of corporate governance lie several principles, a significant one being the board structure. The board being the apex in any organization is integral to ensuring good governance and the overall performance of an institution. A company that strives for effective board composition, dynamism and effective board operations will have a resulting impact in profitability and value. This principle is used to assess the performance of Issuers' boards based on the provisions of the Code.

**The average performance of Issuers on the commitment to Board Operations and Control**

The figure below represents the overall performance of issuers on this principle.

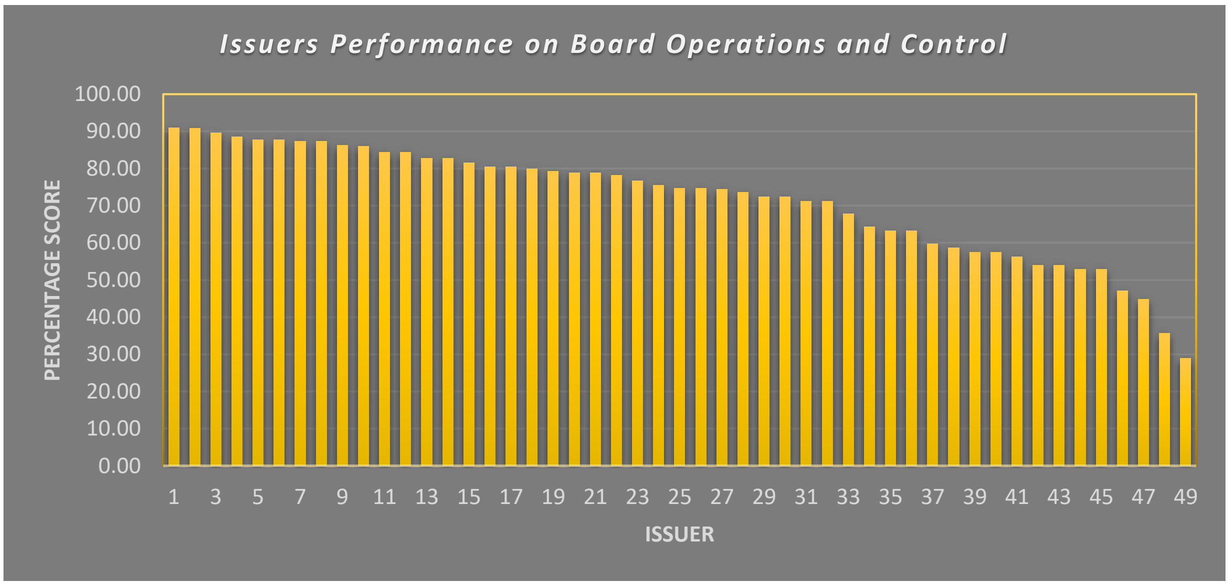



*Figure 5:3 Issuers Performance on Board Operations and Control*

An analysis of performance on this principle shows that 24 Issuers scored leadership rating while 10 Issuers scored good rating respectively. 11 Issuers had a fair rating while the rest had a needs improvement rating.

**Trend analysis on the overall performance on Board Operations and Control**

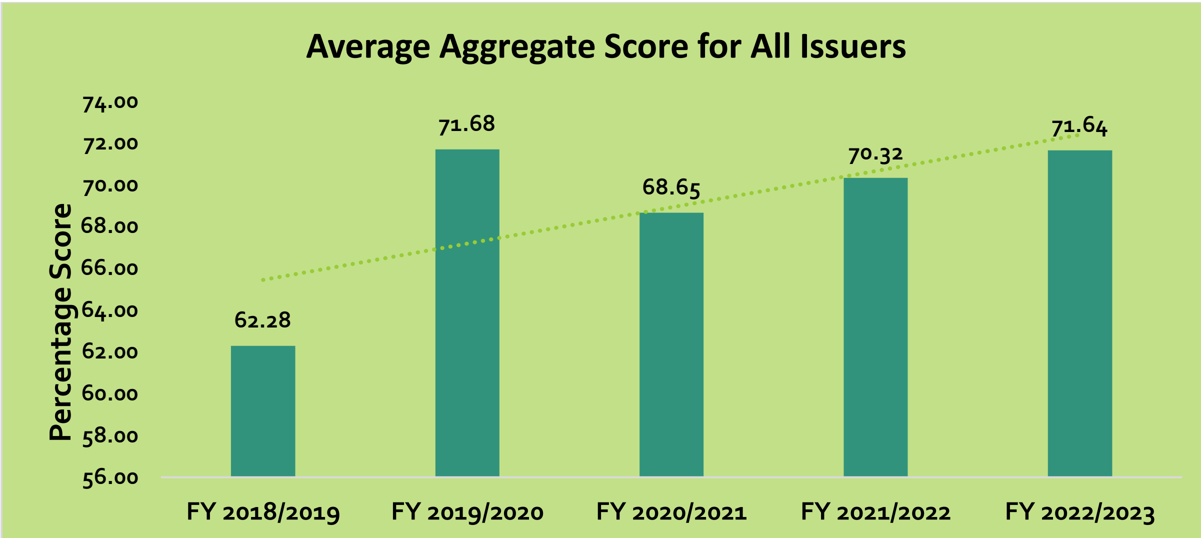



*Figure 5:4 Average Aggregate Score for all Issuers on Board Operations and Control*

The performance of this principle had a gradual increment from 70.32% in FY 2021/2022 to 71.64% in FY 2022/2023. This was attributed to undertaking of corporate governance trainings by the boards of issuers, realignment of the nomination commitees particularly on the independence of the board members and adoption of policies enshrining ESG aspects. As a step towards enhancing corporate governance structures, the Authority urges boards of issuers to continuously anaylse and meet the requirements on the composition of their boards.

We identified the following areas of improvements by the boards of issuers:

- Re-designation of independent directors in the composition of the boards and in constitution of the nomination and audit committees coupled with continuous evaluation of independence of the directors.
- In a time where institutional investors are demanding more diversification of boards, there is need to enhance gender and minorities representation in the board.

## 5.3. RIGHTS OF SHAREHOLDERS


The Code of Corporate Governance places a strong emphasis on the rights of shareholders. The boards of directors should provide an effective oversight mechanism in ensuring that shareholders' interests are safeguarded. In order to ensure that the shareholder's rights are upheld, the board of directors needs to observe the following parameters; shareholders, including the minority and foreign shareholders, are equitably treated, shareholders' rights are facilitated and upheld, shareholders actively participate in AGMs and that information regarding corporate affairs and corporate governance is proactively provided to shareholders on a timely basis.

**The average performance of Issuers on Rights of Shareholders**

The figure below shows the performance of all the assessed issues on the Rights of shareholders principle.

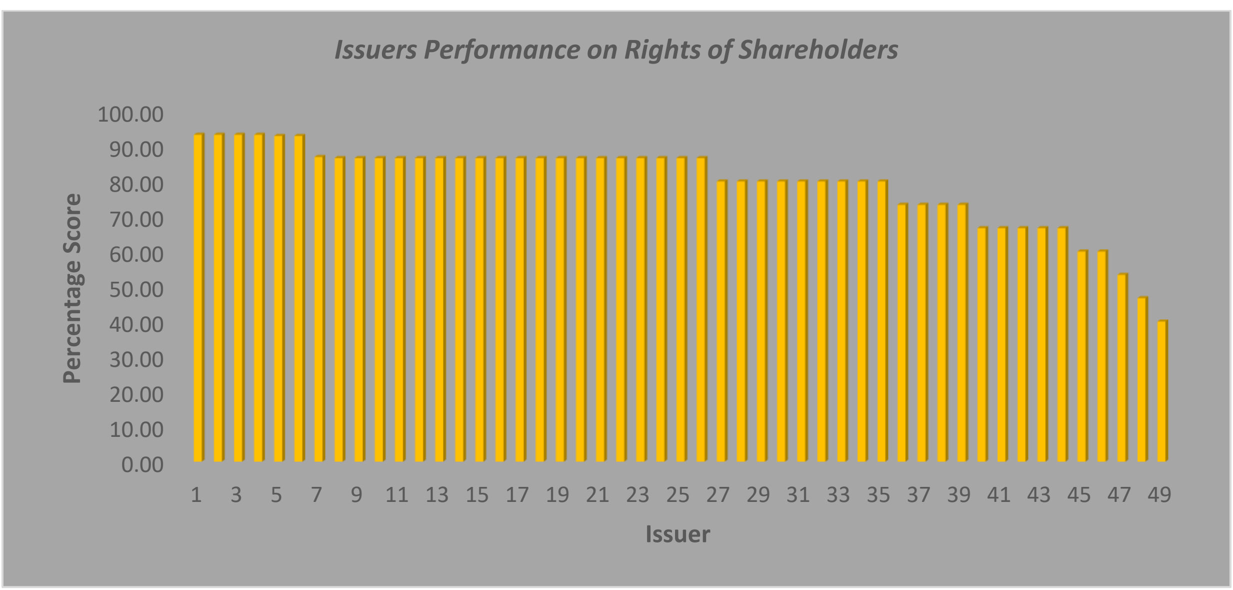



*Figure 5:5 Issuers Performance on Rights of Shareholders*

The analysis on this principle shows that 35 issuers scored leadership rating, 9 issuers scored good rating and 3 issuers scored a fair rating while the rest had a needs improvement rating.

### Trend analysis on the overall performance on Rights of Shareholders

The figure below shows the overall performance on the rights of shareholders.

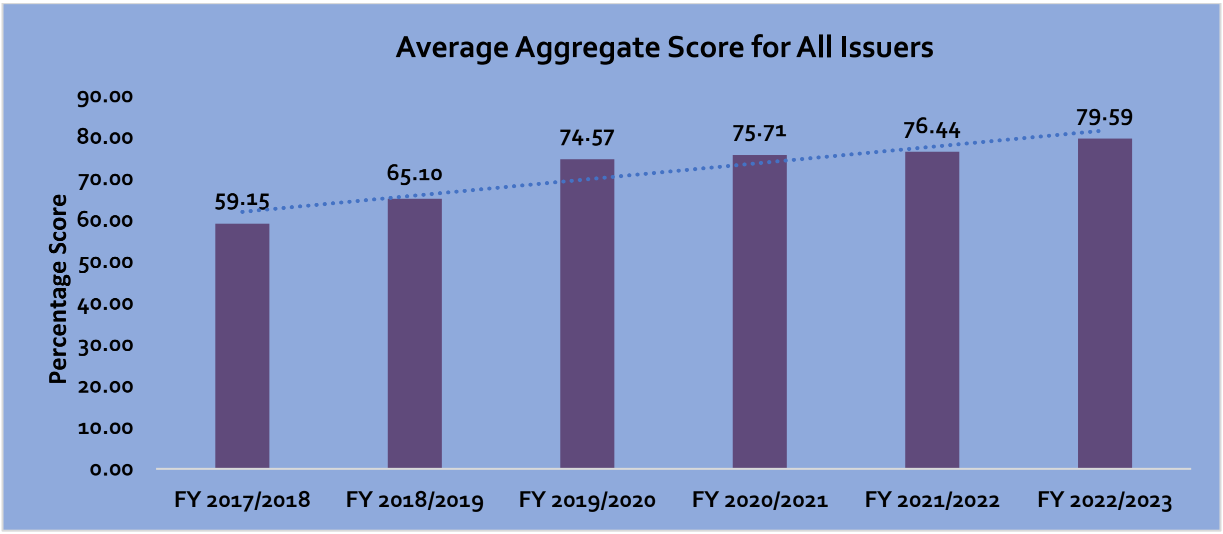



*Figure 5:6 Average Aggregate Score for all Issuers on Rights of Shareholders*

The performance on this principle has been improving in all the assessment cycles. An increase in performance from 76.44% (Leadership rating) in FY 2021/2022 to 79.59% (Leadership rating) in FY 2022/2023 was occasioned by the improved proactive provision of information to the shareholders and the increased facilitation by issuers to ensure that shareholders virtually attend AGMs.

Going forward, the Authority calls on issuers to ensure that:

a) The virtual AGMs mirror physical AGMs to the extent possible by allowing shareholders enough time to ask questions and seek clarifications on the company's performance or any relevant matters. Issuers are strongly encouraged to make available, on their individual websites, a comprehensive record of questions posed by shareholders during the AGMs along with the corresponding responses provided by the Directors/Management.

b) Disclosures regarding financial and non-financial reports, policies and procedures are published on the individual websites to ensure transparent disclosures to shareholders.

c) Their annual reports and accounts are made available to shareholders through multiple communication channels including uploading on their respective websites and social media channels when issuing AGM Notices to allow sufficient time for scrutiny.

d) The minority shareholders are protected from any adverse actions by the controlling shareholders and have effective means of redress. Issuers to provide information that is regarded to contribute to appropriate decision-making by shareholders at general meetings of shareholders, through the improvement of the contents of convocation notices, reference materials, and business reports, as well as timely disclosure of financial results.

### 5.4. STAKEHOLDER RELATIONS


Engaging with potentially affected stakeholders allows a company to grasp their interests and concerns which is crucial for business performance. In today's economic landscape, businesses must swiftly enhance their awareness and responsiveness towards stakeholders for sustained success.

### The Average Aggregate performance of Issuers on Stakeholder Relations

The Figure below shows the performance of issuers on this principle.

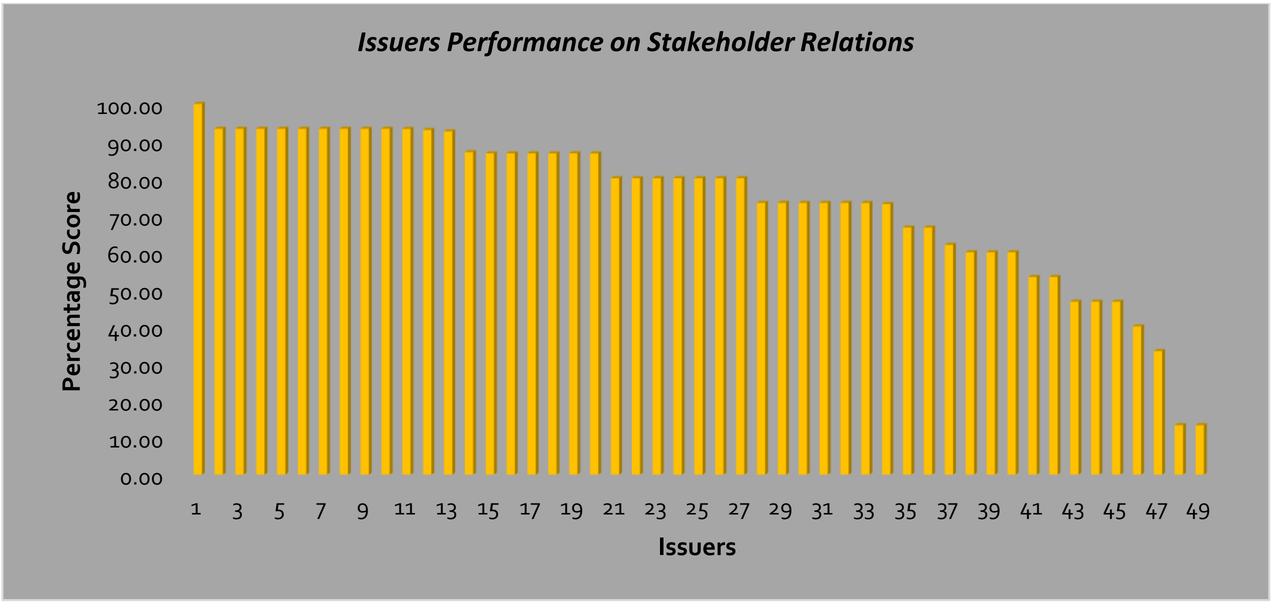



*Figure 5:7 Issuers Performance on Stakeholder Relations*

An analsyis of the performance of the individual stakeholders indicates that 27 issuers achieved a leadership rating, 9 scored a good rating, 6 scored a fair rating while 7 scored a needs improvement rating.

### Trend analysis on the overall performance of Issuers on Stakeholder Relations

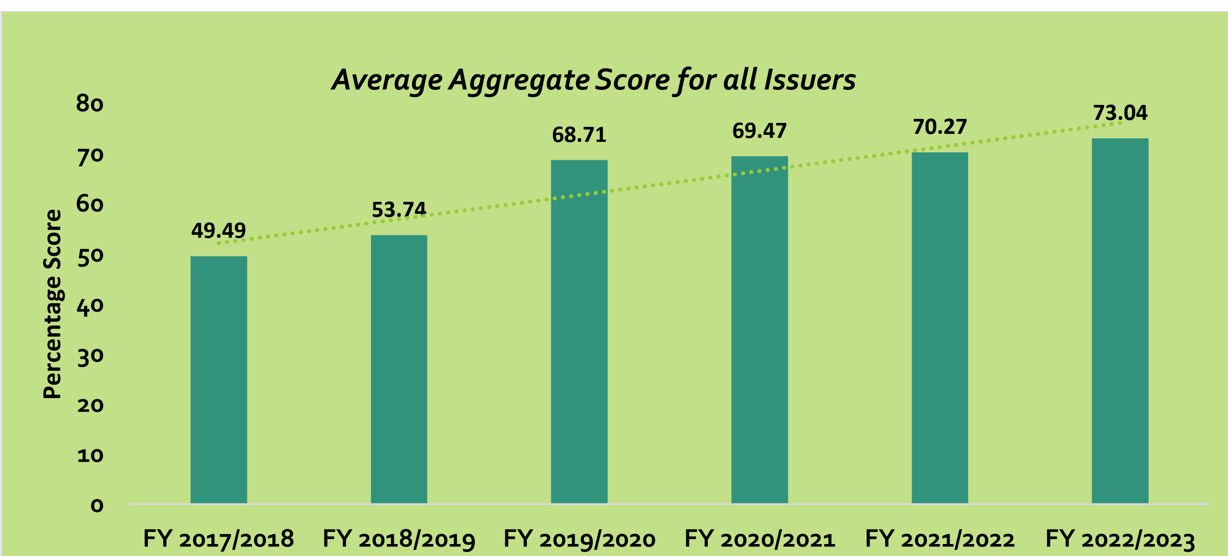



*Figure 5:8 Average Aggregate Score for all Issuers on Stakeholder Relations*

There has been a steady improvement in performance of this principle with a score of 73.04% recorded in 2022/2023 against a score of 70.27% in the preceding year. Issuers have continued to embrace stakeholder engagement mechanisms with a focus on enhanced communication and mapping of the stakeholders, incorporating more feedback loops from stakeholders while making decisions for their respective companies.

As an area for improvement within this principle, the Authority urges the issuers to go beyond just establishing communication channels with its stakeholders but to also establish interactive processes that allow stakeholders to play a role in the company's decision making. Boards of issuers should also regularly review the mechanisms for stakeholder engagement and the reporting of stakeholder relations.

### 5.5. ETHICS AND SOCIAL RESPONSIBILITY


To achieve long-term success and sustainability in any business, Issuers must adhere to ethical standards and take responsibility for their impact on society. Issuers are urged to play a positive role in societal wellbeing. By conducting business with integrity, companies can build a positive reputation. Further, embracing sustainability practices not only aligns with evolving societal expectations but also mitigates risks associated with Environmental, Social and Governance (ESG) factors. This guiding principle evaluates how well issuers prioritize and uphold ethical standards in their operations.

**The average performance of Issuers on Ethics and Social Responsibility**

The figure below illustrates the individual performance of Issuers on Ethics and Social Responsibility.

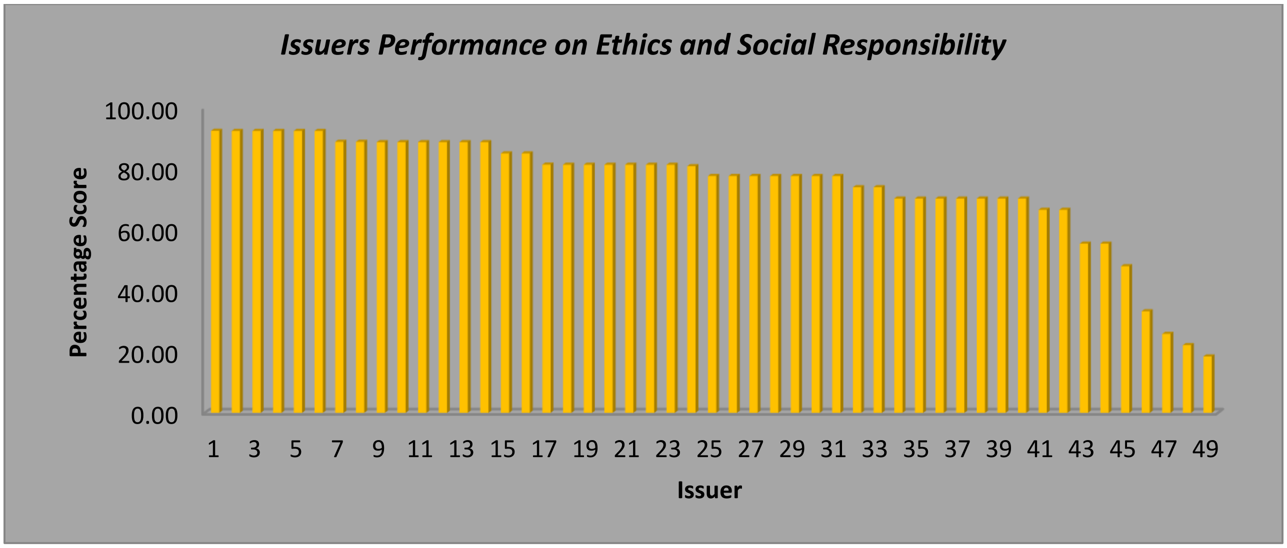



*Figure 5:9 Issuers Performance on Ethics and Social Responsibility*

An illustration on this principle indicates that 31 Issuers had a Leadership rating, 11 had a Good rating, 2 had a fair rating and the rest were in the needs improvement category.

**Trend analysis on the overall performance of Issuers on Ethics and Social Responsibility**

The figure below illustrates the overall performance on Ethics and Social Responsibility across different assessment periods.

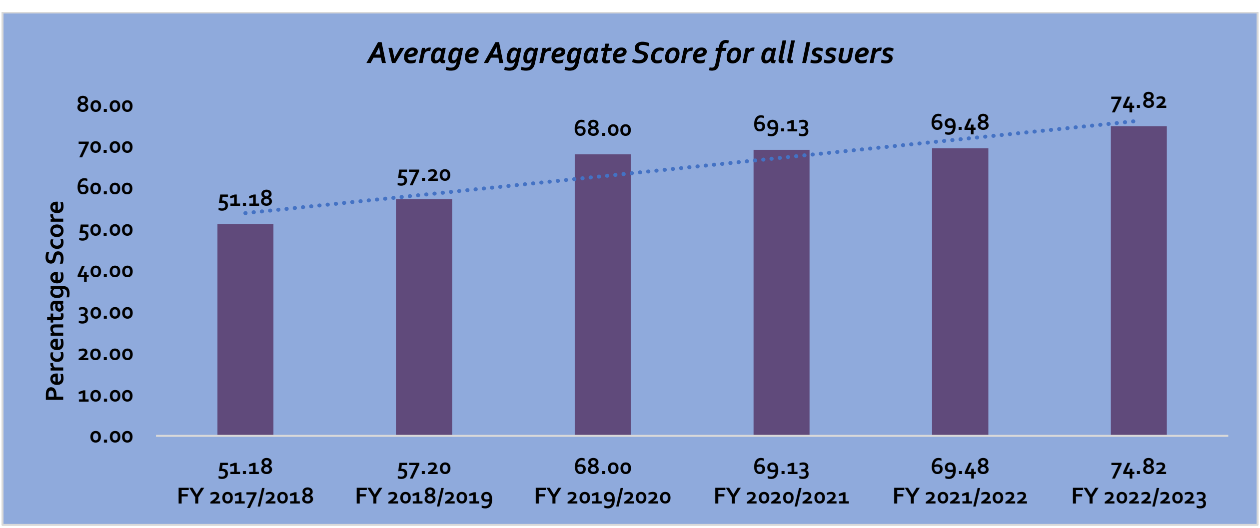



*Figure 5:10 Average Aggregate Score for all Issuers on Ethics and Social Responsibility*

The average aggregate performance on Ethics and Social Responsibility significantly increased by 5.34% in the FY 2022/2023 compared to the FY 2021/2022. The increase from 69.48% (Good rating) in FY 2021/2022 to 74.82% (Good rating) in FY 2022/2023, was attributed to the fact that Issuers have implemented and integrated the code of conduct and ethics and corporate citizenship policies in their day-to-day operations.

Issuers can further enhance their performance on Ethics and Social Responsibility by:

- Disclosing information in a manner that enables stakeholders to make an informed analysis of the company's performance on ethics and social responsibility.
- Ensuring that the company's ethical standards as set out in the Code of Ethics and Conduct are integrated into the company's strategies, culture and operations.
- Ensuring that the Board reports to its shareholders and other stakeholders on the company's economic, ethics, social and environmental performance.

## 5.6. ACCOUNTABILITY, RISK MANAGEMENT AND INTERNAL CONTROL

A company cannot achieve its objectives and sustain success without effective accountability, risk management and internal control processes. To this end, Boards are urged to take a holistic approach when assessing information about the business, in order to timely identify risks, including social and environmental risks; to design processes and controls that are responsive to the identified risks; and to effectively identify information that Issuers are required to communicate to stakeholders.

**The average performance of Issuers on Accountability, Risk Management and Internal Control**

The figure below illustrates the individual performance of Issuers on Accountability, Risk Management and Internal Control.

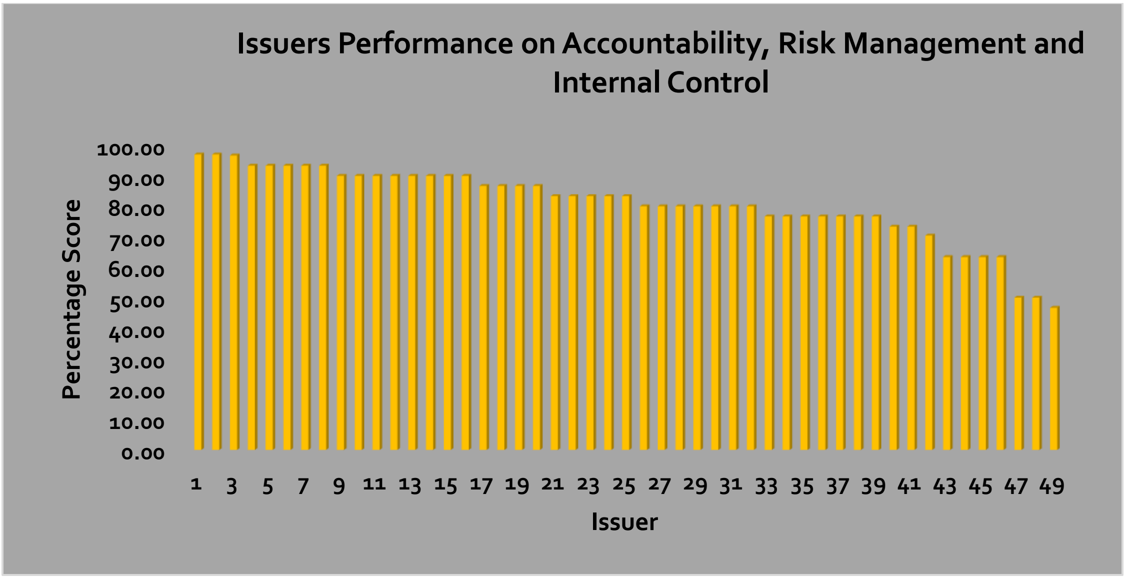



*Figure 5:11 Average Performance for Issuers on Accountability, Risk Management and Internal Control*

The illustration on this principle indicates that 39 Issuers had a Leadership rating, 3 had a good rating, 6 had a fair rating and only one was in the needs improvement category.

**Trend analysis on the overall performance on Accountability, Risk Management and Internal Control**

The figure below illustrates the overall performance on Accountability, Risk Management and Internal Control.

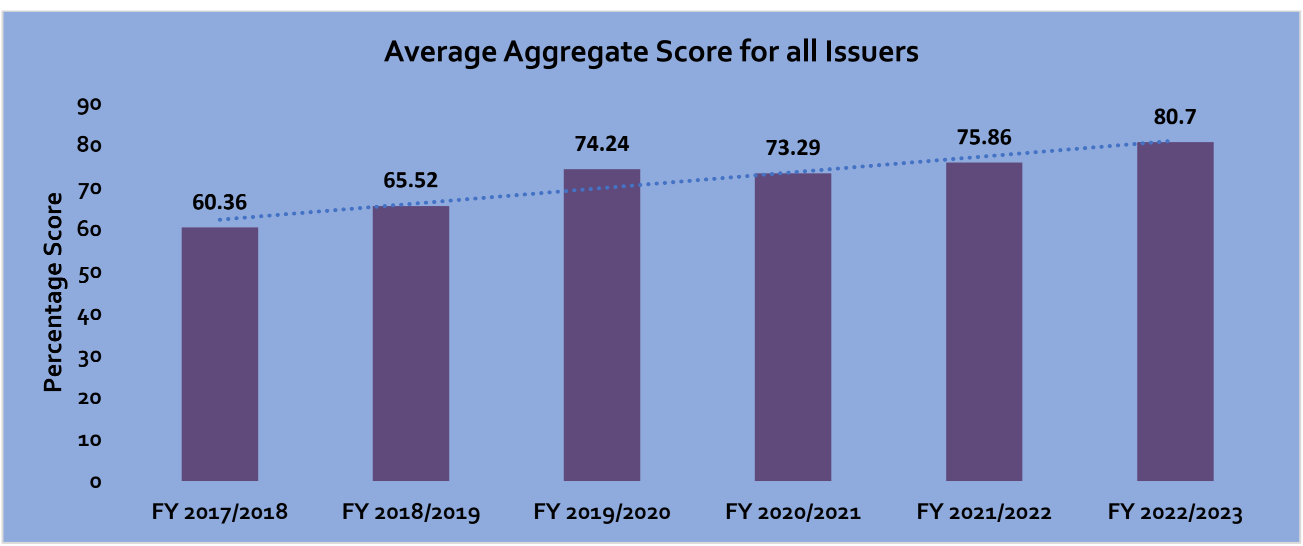



*Figure 5:12 Average Aggregate Score for all Issuers on Accountability, Risk Management and Internal Control*

The overall performance on Accountability, Risk Management and Internal Control significantly increased by 4.84% in the FY 2022/2023 compared to FY 2021/2022. The increase from 75.86% (Leadership rating) in FY 2021/2022 to 80.7% (Leadership rating) in FY 2022/2023, was attributed to the fact that Issuers have implemented code of conduct and ethics and corporate citizenship in their day-to-day operations.

Issuers can further enhance their performance on Accountability, Risk Management and Internal Control by:

- Clearly delineating the board's responsibility for internal control in the Board Charter, indicating the steps that need to be taken to achieve a good internal control position for the company.
- The Boards, through the Audit committees, should develop and implement appropriate mechanisms or criteria for assessing the independence and competence of external auditors on an annual basis.
- Annually reviewing the effectiveness of the company's risk management practices and internal control systems and reporting the same to shareholders.

## 5.7. TRANSPARENCY AND DISCLOSURE

Transparency and disclosure are central to shareholders' ability to exercise their ownership rights because they increase public trust in the company and improve its credibility. Issuers are urged to manage and publish information that is relevant and accessible i.e., information should be presented in plain and readily comprehensible language and formats appropriate for the different stakeholders. It should also be timely and accurate i.e., information should be made available in sufficient time to permit analysis, evaluation and engagement by relevant stakeholders.

**The average performance of Issuers on Transparency and Disclosure**

The figure below illustrates the individual performance of Issuers on Transparency and Disclosure.

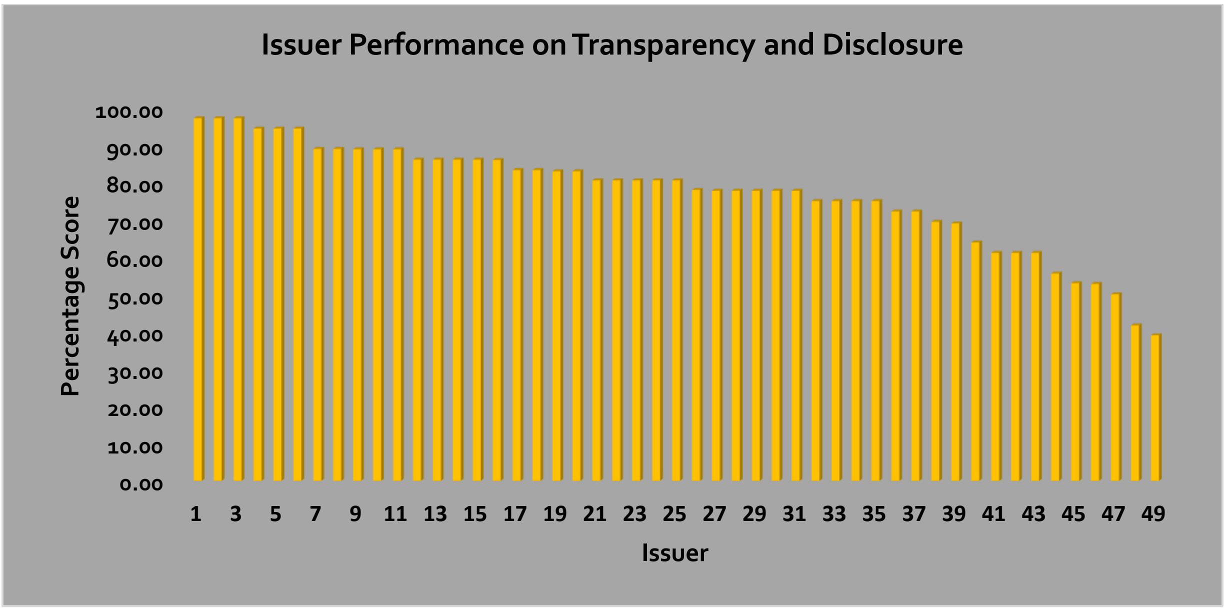



*Figure 5:13 Issuers Performance on Transparency and Disclosure*

The illustration on this principle indicates that 35 Issuers had a Leadership rating, 4 had a good rating, 8 had a fair rating and the rest were in the needs improvement category.

### Trend analysis on the overall performance on Transparency and Disclosure

The figure below illustrates the overall performance on Transparency and Disclosure.

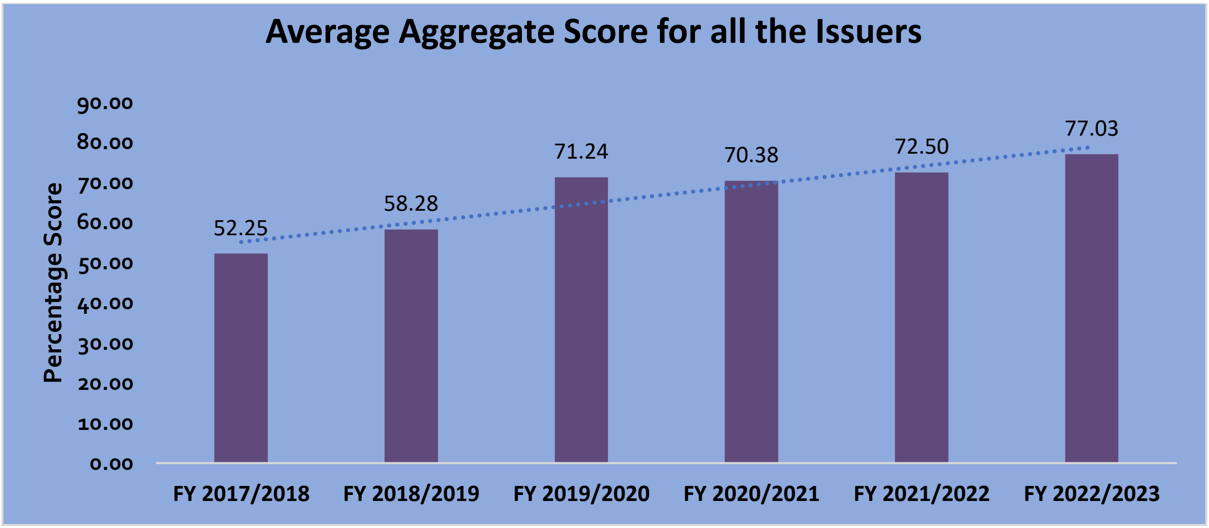



*Figure 5:14 Average Aggregate Score for all Issuers on Transparency and Disclosure*

The overall performance on Transparency and Disclosure increased by 4.53% to 77.03% (Leadership rating) in FY 2022/2023 compared to 72.50% (Good rating) in FY 2021/2022. The increase was attributed to the fact that most Issuers have disclosed their policies and procedures on individual websites, annual reports and have made the policies accessible to stakeholders.

Issuers can further enhance their performance on Transparency and Disclosure by:

- Disclosing procurement policies.
- Recognizing that insider dealings are illegal, disclosing insider dealings and confirming that there were no known insider dealings (if there were no known insider dealings).
- Establishing and continuously updating policy on dealings by insiders including clearly delineating black-out periods.
- Providing more detailed information on potential risks that could impact on the company's operations, financial position or future prospects.
- Enhancing disclosures regarding cybersecurity measures and data privacy policies to address growing concerns data breaches and privacy issues.
- Providing clearer details on executive compensation structures aligned with performance.
- Increasing transparency in interactions with stakeholders, addressing their concerns and disclosing how their input influences decision-making.

# 6. Weighted performance

## 6. WEIGHTED PERFORMANCE

### 6.1. OVERALL WEIGHTED SCORE ACROSS PERIODS

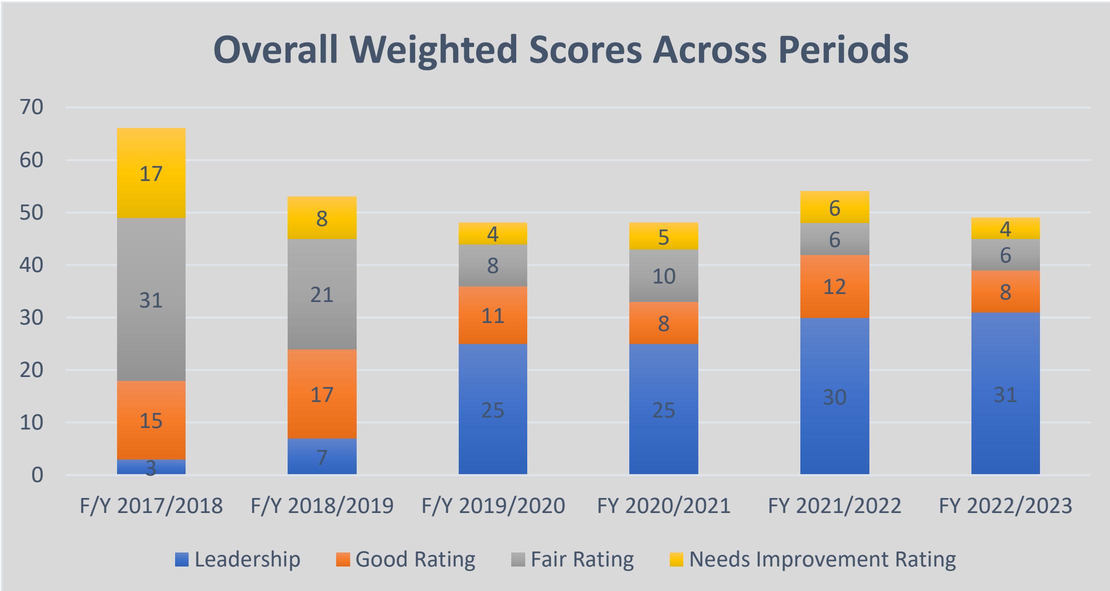



*Figure 6:1 Overall Weighted Score across Periods*

| Rating | F/Y 2017/2018 | F/Y 2018/2019 | F/Y 2019/2020 | FY 2020/2021 | FY 2021/2022 | FY 2022/2023 |
|---|---|---|---|---|---|---|
| Leadership | 3 | 7 | 25 | 25 | 30 | 31 |
| Good | 15 | 17 | 11 | 8 | 12 | 8 |
| Fair | 31 | 21 | 8 | 10 | 6 | 6 |
| Needs Improvement | 17 | 8 | 4 | 5 | 6 | 4 |

A total of 31 assessed issuers had a leadership rating, 8 had a good rating, 6 had a fair rating and the rest had a needs Improvement rating. It is worth noting that the number of issuers scoring a needs improvement rating had reduced which shows progress towards entrenching good corporate governance principles within their structures and operations.

### 6.2. AVERAGE PERFORMANCE ON ALL PRINCIPLES

The figure below represents the performance on all the principles.

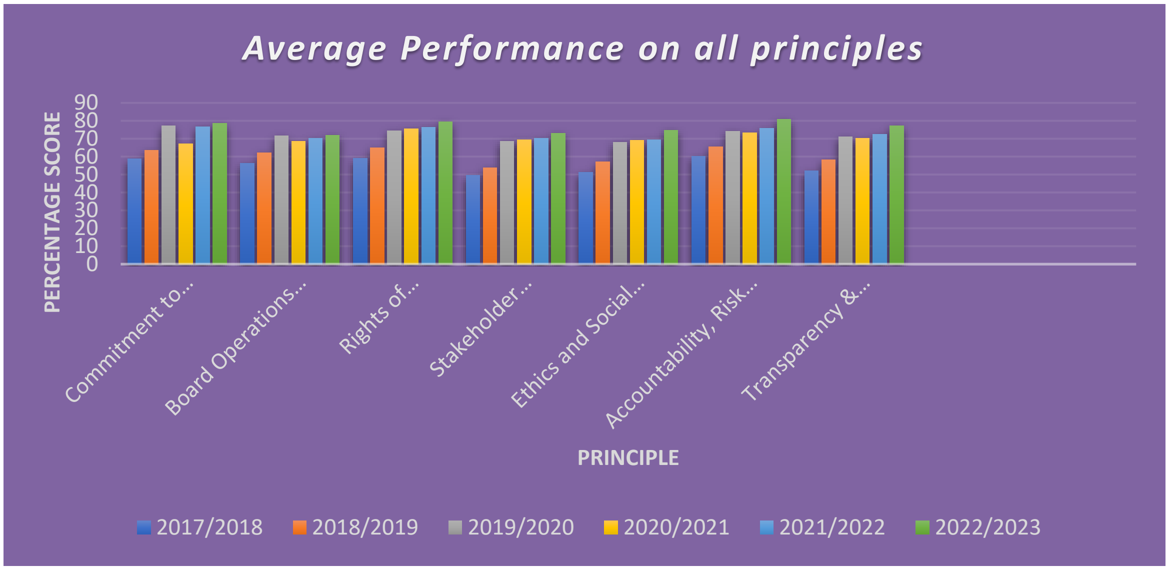



*Figure 6:2 Average Score on all Principles*

From the above, the average performance of all principles has had an upward trend across the period. Accountability, Risk Management and Internal Control had the best score of 80.77% (Leadership rating) while Board Operations and Control had the lowest score of 71.99% (Good rating) which was nonetheless an improvement from 70.32 (Good rating) in FY 2021/2022. The other principles which scored a leadership rating were Rights of shareholders at 79.59%, Commitment to good governance at 78.6% and Transparency and disclosure at 77.26%. A Good rating was also recorded in the principles of ethics and social responsibility at 74.82% and Stakeholder Relations at 73.04%.

Ethics and social responsibility score was the most improved by 5.34% from a previous score of 69.48% FY 2021/2022.

## 6.3. OVERALL PERFORMANCE PER SECTOR

The figure below represents the overall performance across the sector.


*Figure 6:3 Weighted Overall Score*

The above analysis illustrates that Banking sector, Manufacturing & Allied/Automobiles & Accessories sector, Insurance sector and Energy and petroleum sector achieved a Leadership rating. All the other sectors scored a good rating with the exception of the Agricultural and Construction & Allied sectors which scored a Fair rating. The most improved sector was the Investment and Investment Services sector from its previous score of 64.00% to 78.74%, being an increase of 14.74%. On the other hand, the Agricultural sector recorded a decline of 1.41% from the previous year's score of 59.75%.

### 6.4. PERFORMANCE BY VARIOUS SECTORS ACROSS ALL PRINCIPLES

The performance of all the sectors on the various principles has been illustrated in the heatmap below.

| | Commitment to Good Corporate Governance | Board Operations and Control | Rights of Shareholders | Stakeholder Relations | Ethics and Social Responsibility | Accountability, Risk Management and Internal Controls | Transparency and Disclosure |
|---|---|---|---|---|---|---|---|
| Agricultural | 66.67 | 51.03 | 66.67 | 46.67 | 53.33 | 67.33 | 56.69 |
| Banking | 89.43 | 83.51 | 89.27 | 90.59 | 87.74 | 91.07 | 88.63 |
| Commercial & Services & Telecommunications | 74.61 | 67.02 | 77.78 | 64.44 | 67.90 | 80.74 | 73.44 |
| Construction & Allied | 64.29 | 59.52 | 61.67 | 41.58 | 53.70 | 65.83 | 66.61 |
| Energy & Petroleum | 68.25 | 72.18 | 86.67 | 80 | 88.15 | 90.00 | 75.00 |
| Insurance | 84.90 | 76.36 | 83.39 | 85.49 | 82.12 | 82.22 | 84.61 |
| Investment & Investment Services | 73.01 | 79.49 | 84.45 | 79.99 | 75.31 | 81.11 | 77.85 |
| Manufacturing & Allied/Automobiles & Accessories | 82.31 | 72.06 | 73.81 | 77.43 | 81.48 | 79.10 | 79.76 |
| Non-Listed Issuers | 90.48 | 65.52 | 80.00 | 80 | 81.48 | 78.34 | 76.39 |

**Table 2 : Key**

| |
|---|
| Leadership |
| Good |
| Fair |
| Needs Improvement |

The Banking sector has once again scored a Leadership rating in all principles. It is worth noting that in FY2023, the insurance sector also scored a Leadership rating in all principles which is an improvement from last year where one of its principles scored a good rating. The Construction and Allied Sector together with the Agricultural sector featured a Needs Improvement Rating in the stakeholder relations principle.

## 7. EMERGING ISSUES AND NEW DEVELOPMENTS IN GOVERNANCE

| | |
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| **Environmental, Social and Governance (ESG)/Sustainability Reporting** | There is a growing focus on disclosing climate-related risks and opportunities, including carbon emissions, transition risks, physical risks, and strategies to mitigate them.<br><br>Companies are increasingly expected to disclose indirect emissions associated with their value chain (Scope 3 emissions) requiring comprehensive reporting beyond their direct operations.<br><br>There is a rising emphasis on reporting social impact metrics, such as diversity, equity, and inclusion (DEI), human rights, labor practices, employee well-being and community engagement initiatives.<br><br>Stakeholders are demanding greater transparency into supply chains to assess environmental and social impacts throughout the entire value chain including sourcing practices and supplier relationships. |
| **IFSR S1 and S2** | The International Sustainability Standards Board (ISSB) is a body that was formed with the aim of developing global sustainability reporting standards, providing a common framework for companies to disclose non-financial information related to environmental, social, and governance (ESG) factors. On 26 June 2023, the body developed the first IFRS Standards S1 (General Requirements for Disclosure of Sustainability-related Financial Information) and S2 (Climate-Related Disclosures) to facilitate consistent and comparable disclosures on risks and opportunities related to sustainability and climate.<br><br>The two standards are to be applied for reporting periods beginning on or after 1 January 2024. |
| **Climate Change and COP 28**<br> | Global temperatures are rising because of human activity, with more intense heatwaves and rising sea-levels among the consequences. Things are likely to worsen in the coming decades but urgent action can limit the worst effects of climate change. These urgent actions were discussed in the 28th annual United Nations (UN) climate meeting (COP28) that was held at Expo City, Dubai in the United Arab Emirates (UAE) from November 30 to |

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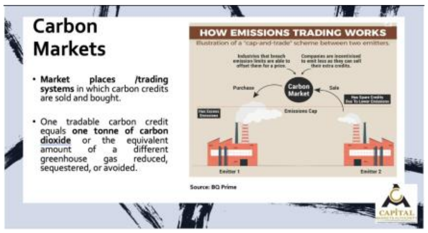
| | December 12, 2023. COP28 focused on fast-tracking the move to clean energy sources, to "slash" greenhouse gas emissions before 2030, delivering money for climate action from richer to poorer countries, and working on a new deal for developing nations, focusing on nature and people and making COP28 the "most inclusive" ever. Issuers are encouraged to consider the resolutions passed during COP 28 and the extent to which they should adopt them. |
| **Carbon Markets**<br><br> | With the proliferation of carbon credits and offsetting mechanisms, regulators are seeking to standardize methodologies for issuing, trading and verifying carbon credits to enhance transparency and credibility.<br><br>Kenya will soon have a carbon registry, which will allow trading in carbon credits. |
| **Green Bonds**<br> | Regulators are emphasizing the need for clear, consistent and transparent definitions and standards for what constitutes a "green" bond. This includes defining eligible projects and establishing reporting and verification requirements to ensure the credibility of green bond issuances.<br><br>Regulators are exploring ways to certify and validate the green credentials of issuers and their projects.<br><br>Acorn Project (Two) Limited Liability Partnership issues a green bond in August 2019 to build climate-resilient student housing and KMRC issued a social bond in 2022 to support affordable housing agenda. On the basis of these milestones Kenya ranks among the highest in implementation of sustainable finance frameworks in Africa. |
| **Digital transformation and technological disruption i.e. AI and Machine Learning in corporate governance/ESG** | AI and machine learning, which are considered to be the most disruptive technology have become great pathways for ESG reporting and overall transformation of corporate governance. AI facilitates greater transparency through data analytics that inform investing efforts and help companies to transition towards more sustainable practices. |

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| **Data privacy (Data Protection Act, 2019)** | In the wake of Data protection, the Office of the Data Protection Commissioner has taken a vigilant stand in combating offences against the Data Protection Act. To avoid facing heavy penalties, issuers should develop and implement robust risk management frameworks on data privacy and compliance. |
| **Shareholder activism (Stewardship, minority shareholder associations etc.** | Shareholder activism has taken root as an agreeable strategy in some global markets. Shareholder activists tend to exert pressure on potential weaknesses in a company such as succession vacuum and ESG-related agendas while some use it as a mechanism to intervene into governance practices that affect the long-term value of a company. Boards should therefore aim at paying attention to activism trends and receptivity to shareholder concerns including consistent investor dialogue.<br><br>In 2017, the Stewardship Code for Institutional Investors was gazetted aimed to encourage institutional investors such as pension funds, asset managers and insurance companies to adopt principles and practices that promote effective stewardship of the assets they manage. A record of 8 institutional investors in Kenya have signed up as signatories to the Stewardship Code. The Authority is actively pursuing other institutional investors to sign up as signatories to the Stewardship Code to promote better corporate governance practices by encouraging investors to exercise their rights and responsibilities as shareholders effectively.<br><br>In 2023, the Authority also issued a letter of no concern for the registration of the first Public Companies Minority Shareholders Association in Kenya. This move is meant to empower the minority shareholders to actively engage with the issuers, exercise their rights and participate in shaping corporate governance and sustainability practices. This will ensure that the interests of minority shareholders are taken into consideration and that they receive fair treatment from the company's management and majority shareholders. |
| **AML/CFT/CPF** | Emerging issues in business ethics and integrity pose significant challenges for Issuers. Anti-Money Laundering (AML), Countering the Financing of |

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| | Terrorism (CFT) and Combating the Proliferation of Financing (CPF) have gained prominence as regulators globally intensify efforts to curb illicit financial activities. Ensuring compliance with Financial Action Task Force (FATF) standards is crucial for maintaining the integrity of financial systems. |
| **Corruption** | Fraud and bribery, both internal and external, remains a constant concern, necessitating robust measures to safeguard financial transactions and protect stakeholders. Although corruption remains a persistent challenge, with sophisticated schemes which are constantly evolving, issuers are urged to implement robust internal controls and vigilant oversight. |
| **Counterfeit** | The rise of counterfeit activities jeopardizes the credibility of products and brands requiring issuers to implement stringent quality control and authentication mechanisms. The proliferation of counterfeit products poses ethical dilemmas as companies must navigate the complexities of global supply chains to ensure the authenticity and safety of their products. |
| **Child Labour** | In an era marked by heightened awareness and social responsibility, companies are increasingly scrutinized for their commitment to human rights. Combating child labor involves rigorous supply chain monitoring to ensure that products are not produced at the expense of exploited individuals. Combating child labor remains a paramount concern, urging companies to scrutinize and address supply chain practices to ensure they are free from exploitative labor. |
| **Sexual Harassment** | Sexual harassment, a pervasive concern, demands comprehensive policies and cultural shifts within issuers to create safe and respectful workplaces. Issuers must proactively address these emerging human rights issues, not only to comply with evolving legal standards but also to foster an inclusive and responsible corporate culture that respects and upholds the dignity of every individual. Sexual harassment, both within the workplace and throughout the supply chain, poses a significant threat to |

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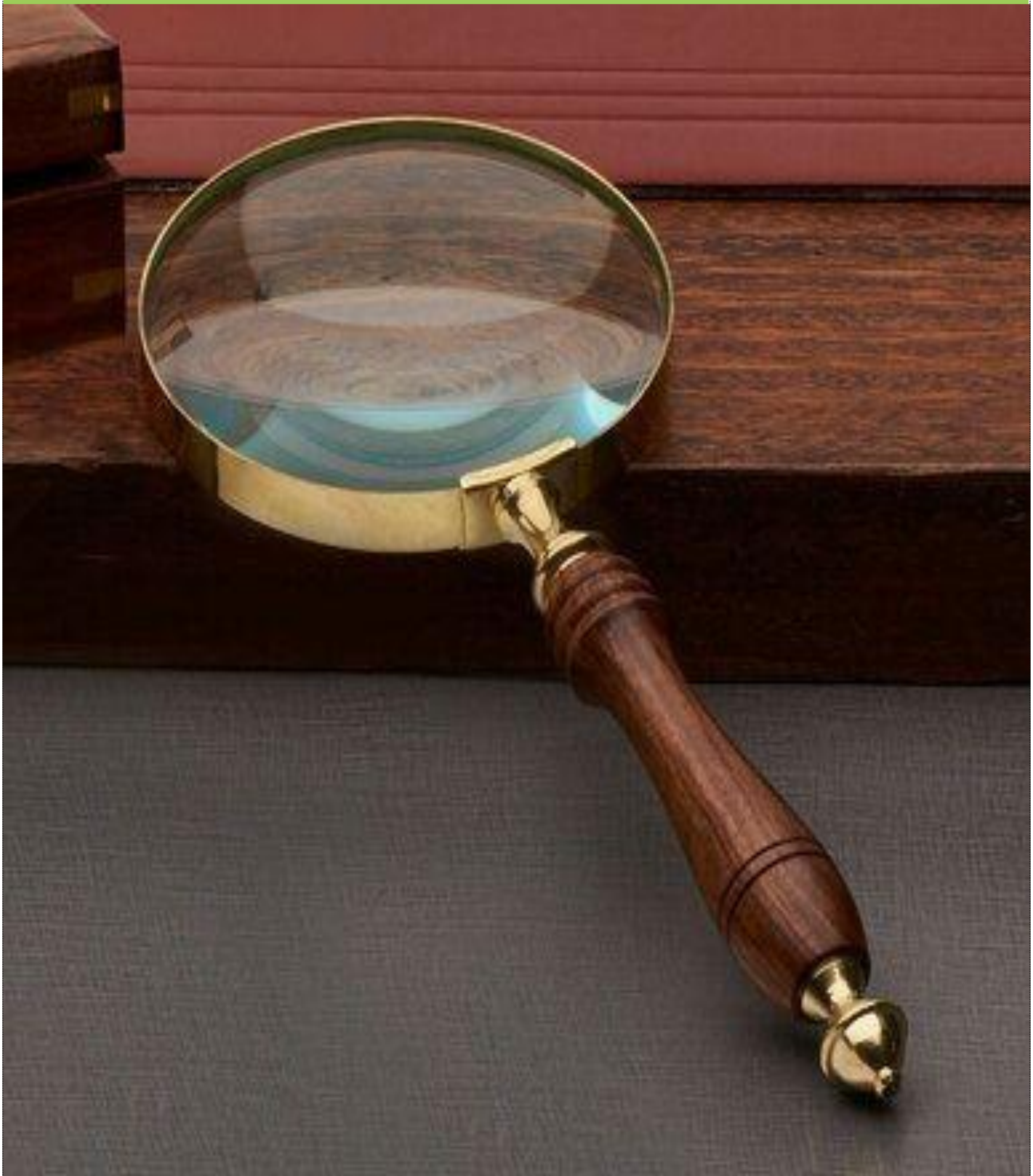
| | human rights and corporate reputation, necessitating robust policies and reporting mechanisms to create safe working environments. |
| **Employee Welfare** | Employee welfare is a cornerstone of effective corporate governance. Recognizing the importance of a healthy, satisfied and engaged workforce is integral to fostering a positive corporate culture. Issuers are urged to provide opportunities for professional development and maintain a safe working environment as it contributes to a motivated and loyal workforce. Robust employee welfare practices contribute to the long-term sustainability of the organization by creating a positive internal environment that aligns with the broader principles of responsible business conduct. |
| **Mental Health** | Issuers must recognize that employees' well-being extends beyond physical health and should therefore actively promote a supportive environment that addresses mental health concerns. Implementing policies and resources that reduce stigma, provide access to mental health support services and foster a work culture that values work-life balance. Acknowledging and addressing mental health concerns not only enhances employee morale and productivity but also reflects a commitment to a holistic ethical leadership and social responsibility. |

# 8.KEY OBSERVATIONS



## 8. KEY OBSERVATIONS AND CHALLENGES

### a) Corporate Culture

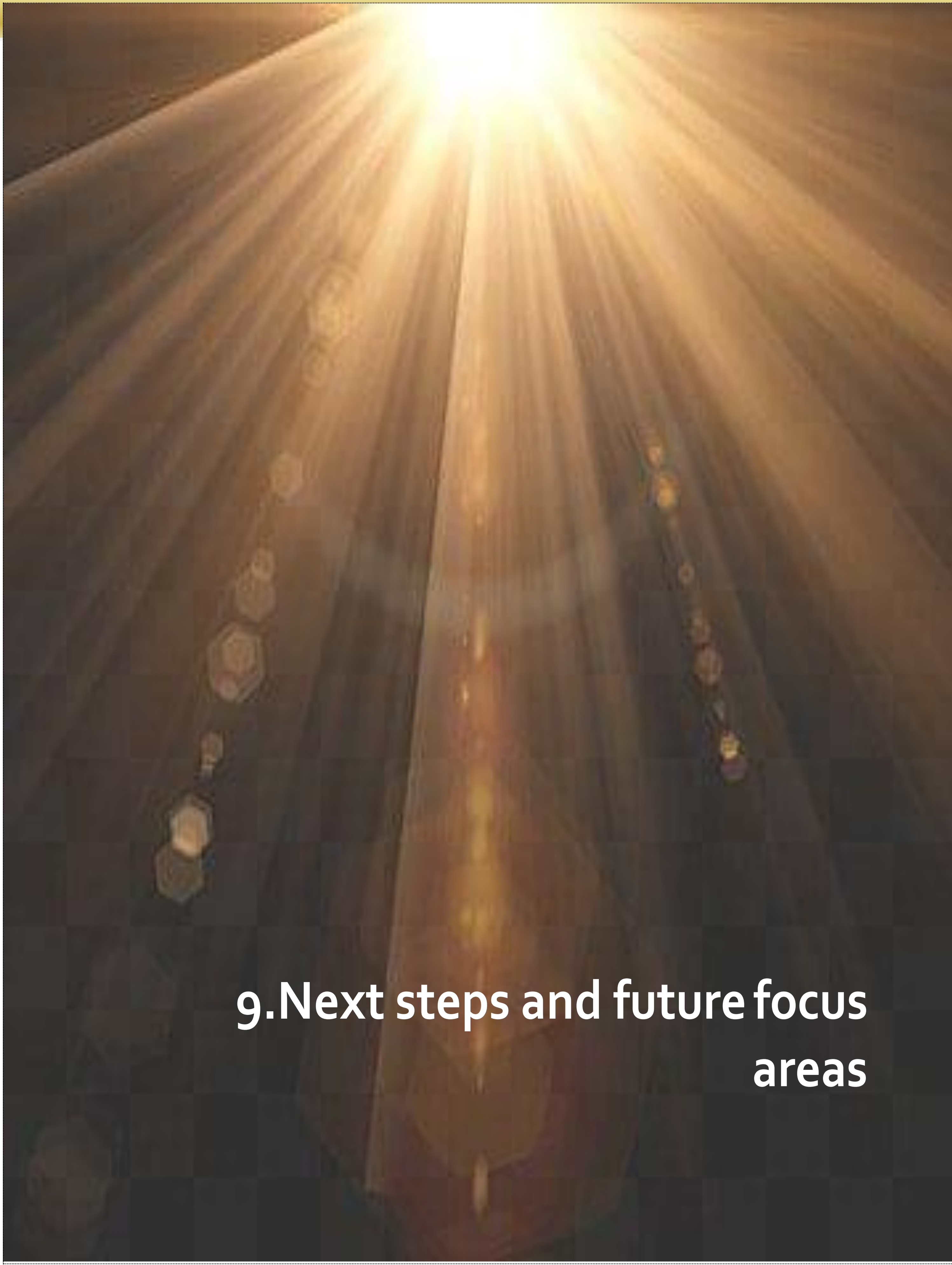
In the absence of a strong corporate culture, there is a higher risk of ethical lapses. This can lead to misconduct, fraud or unethical behavior within the company, tarnishing its reputation and potentially leading to legal and financial repercussions. In addition, without a clear and positive corporate culture, decision-making may be driven by short-term gains or individual interests rather than long-term sustainability and stakeholder interests.

The emerging role of corporate culture has become significant as it influences the company's performance and the effectiveness of the board. Corporate culture plays a pivotal role in fostering good governance within companies. A strong and positive corporate culture aligns with the principles of good governance and influences behavior, decision-making and ethical standards across all levels of the company. Companies should not be complacent with their initial cultures as corporate cultures are evolving. The concept of 'the tone at the top' suggests that the values and ethical environment begins from the board cascading down the company ladder. This is a call to issuers to ingrain agility in the corporate culture of the company and monitor progress.

### b) Effectiveness of Company Secretaries

A company Secretary plays a crucial role in companies by ensuring regulatory compliance, offering board support and instilling corporate governance practices. Ineffectiveness in this role can lead to regulatory non-compliance, legal risks and potential fines or penalties for the company. In addition, Company Secretaries are responsible for supporting the Board of Directors and ensuring good governance practices. Ineffectiveness in this role may result in governance failures, inadequate oversight and decision-making deficiencies.

The Corporate Governance Code requires all issuers to onboard a company secretary registered and accredited by the Institute of Certified Secretaries of Kenya. Specifically, the Corporate Governance Code requires a company secretary to provide guidance to the Board on its duties and responsibilities and on other matters of governance.



# 9.Next steps and future focus areas

## 9. NEXT STEPS AND FUTURE FOCUS AREAS

a) **Review of the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations 2002 (‘**2002 Regulations**’)**: The Authority finalized the review of the Public Offers Listing and Disclosure regulations for issuers of securities to the public in Kenya. This was necessitated by the need to incorporate emerging areas and streamline eligibility and listing requirements necessitating the review to overhaul the 2002 Regulations. It is important to note that Clause 8.1 of the Thirteen Schedule of the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations 2023 requires issuers to comply with all the Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015 issued by the Authority and as may be amended from time to time and any other codes as may be prescribed by the Authority for specific issuers or segments. The debate surrounding mandatory versus voluntary requirements in the Corporate Governance Code has been firmly settled with the comprehensive overhaul of the 2002 Regulations. The transition is clear: all principles, guidelines and recommendations outlined in the Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015 will now be enforceable as mandatory requirements.

b) **Re-definition of an independent director:** Please take note that going forward, Regulation 2(1) of the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations 2023 provides that a director shall cease being independent after 6 years of continuous service.

c) **Define cross directorship**: To enhance clarity regarding the independence of independent directors as per the Corporate Governance Code, the Authority is actively addressing concerns raised by issuers regarding the definition of 'cross directorship.' The aim is to mitigate potential conflicts of interest that could emerge when directors hold positions on the boards of multiple related or associated companies. One of the criteria for assessing the independence of an independent director as outlined in the Corporate Governance Code includes the absence of cross directorships or significant connections with other directors through involvement in various companies or bodies. This proactive step by the Authority seeks to ensure that independent directors maintain unbiased decision-making and act in the best interests of each company they serve without exhibiting favouritism. By defining 'cross directorship,' the goal is to establish clear boundaries that prevent potential conflicts of interest thereby upholding the integrity of governance practices within the capital markets sector in Kenya.

d) **Review the corporate governance reporting templates and assessment methodology**: The Authority will undertake a comprehensive regulatory review of corporate governance reporting templates and assessment methodology for issuers in order to maintain relevance improve accuracy and align with global standards, thereby promoting transparency, accountability and investor confidence in the capital markets sector.

e) **Introduce risk-based approach in the corporate governance assessment process**: The Authority is seeking to introduce a risk-based approach in assessing application of corporate governance requirements for issuers in Kenya to ensure a more targeted, efficient and effective assessment process that is aligned with the issuer's specific risks and fosters better risk management practices. A risk-based approach allows prioritization based on materiality, focusing on areas with the highest impact on the issuer's operations, resources and stakeholders. This will ensure that governance practices address significant risks more comprehensively.

f) **Integrating sustainability into the listing requirements**: The Authority is exploring avenues to integrate sustainability into the listing requirements, emphasizing the significance of ESG performance for companies seeking access to the capital markets in Kenya.

g) **Endorsement of IFRS S1 (General Requirements for Disclosure of Sustainability-related Financial Information) and S2 (Climate-Related Disclosures)**: Further to the endorsement of the IFRS Sustainability Disclosure Standards by IOSCO and the launch of these standards in Kenya by ICPAK, the Authority fully embraces and advocates the implementation of IFRS S1 and S2, pivotal frameworks that underscore the significance of ESG considerations in financial disclosures.

h) **NSE ESG Guidance Manual Alignment**: The Nairobi Stock Exchange (NSE) ESG Guidance Manual will undergo revisions to align seamlessly with the new IFRS standards, fortifying our commitment to global ESG best practices.

i) **ESG Integration in Investment Decisions**: The Authority will strongly encourage institutional investors to integrate ESG factors into their investment decision-making processes. They are expected to transparently articulate their ESG integration strategies and provide reports on the resultant impact on investment performance.

j) **ESG Guideline**: The Authority is committed to developing a comprehensive ESG guideline for the capital markets sector, encompassing ESG listing requirements, integration strategies in investment decision-making and ongoing reporting obligations. The design of an overarching ESG guideline will support the full scope of ESG in the capital markets sector in Kenya including but not limited to sustainable and sustainability-linked finance such as issuance of Gender Bonds, Water Bonds, Agricultural Bonds, Aquaculture & Fisheries Bonds, Renewable Energy Bonds and Covid Bond. This is driven by emerging global trends where issuers and investors are leaning more towards ESG-linked capital raising and investments.

k) **Carbon Markets**: The Authority is actively dedicated to formulating a robust and all-encompassing carbon markets policy framework. This framework will play a pivotal role in guiding the creation and deployment of an intricate regulatory structure specifically tailored for carbon markets in Kenya. By engaging in extensive research, consultation and collaboration with various stakeholders, the Authority endeavors to establish a framework that not only addresses the current challenges in carbon markets but also anticipates and adapts to the dynamic landscape of climate-related policies and market developments.

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