

Annexure VII

**DIRECTIVE 2014/13/EAC
OF THE COUNCIL OF MINISTERS**

of

(Date of Approval by Council of Ministers)

DIRECTIVE OF THE EAC ON CORPORATE GOVERNANCE FOR LISTED COMPANIES

Annexure VII

Preamble

The Council of Ministers of the East African Community

Having regard to the Treaty for the establishment of the East African Community and in particular Articles 85 (d), 14 and 16;

WHEREAS Article 31 of the Common Market Protocol provides that for proper functioning of the Common Market, the Partner States undertake to co-ordinate and harmonise their financial sector policies and regulatory frameworks to ensure the efficiency and stability of their financial systems as well as the smooth operations of the payment system;

WHEREAS Article 47 of the Common Market Protocol provides that the Partner States shall undertake to approximate their national laws and to harmonise their policies and systems for purposes of implementing the Common Market Protocol and that the Council shall issue directives for the purposes of implementing this Article.

HAS ISSUED THIS DIRECTIVE

Annexure VII

ARTICLE 1 INTERPRETATION

“**board**” means the board of directors of a listed company;

“**board charter**” means a document outlining the responsibilities of the board of directors, powers of the board, board committees and their roles, separation of roles between the board and management; and the policies and practices of the board in respect of corporate governance matters;

“**board member**” means a member of board who is a director of the company;

“**conflict of interest**” means a situation that has the potential to undermine the impartiality of a person because of the possibility of a clash between the person’s self- interest and professional interest or public interest;

“**corporate governance**” means the process and structure used to direct and manage the business and affairs of a company towards enhancing business prosperity and corporate accountability with the ultimate objective of realising long-term shareholder value, whilst taking account of the interests of other stakeholders;

“**Council of Ministers**” means the Council of Ministers of the Community established by Article 9 of the Treaty;

“**Community**” means the East African Community established by Article 2 of the Treaty;

“**executive director**” means a member of the Board who holds a managerial position in a company;

“**independent director**” means a non – executive director who:

- a) is not a representative of a shareholder who has the ability to control or significantly influence management or the Board;
- b) does not have a direct or indirect interest in the company (including any parent or subsidiary in a consolidated group with the company) which is either material to the director or to the company. **A holding of five per cent or more is considered material;**

Annexure VII

- c) has not been employed by the company or the group of which it currently forms part in any executive capacity or appointed as the designated auditor or partner in the group's external audit firm, or legal adviser for preceding three financial years;
- d) does not have immediate family ties with any of the company's professional advisers, directors, senior employees or significant customers or suppliers;
- e) is not a professional adviser to the company or group, other than as a director;
- f) has not had within the last three years a material business or other relationship, contractual or statutory, which could be seen by an objective outsider to interfere materially with the individual's capacity to act in an independent manner, such as being a director of a material customer or supplier to the company; or
- g) does not receive remuneration contingent upon the performance of the company;
- h) does not hold cross-directorships or significant links with other directors through involvement in other companies or bodies;
- i) has not served for more than nine years since they were first elected;

"internal control" refers to the process effected by a company's board of directors, management and other personnel, designed to provide reasonable assurance regarding the achievement of effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations;

"Secretary General" means the Secretary General of the Community appointed under Article 67 of the Treaty.

"substantial shareholder" means a person who is a beneficial owner of, or is in a position to exert control over at least fifteen percent of the shares of a listed company;

"stakeholder" refers to a party that has an interest in a listed company and includes investors, employees, customers, suppliers, community, government and trade associations;

"sustainability" refers to conducting operations in a manner that meets existing needs without compromising future needs;

"non-executive director" means a member of the board of the company who is not involved in the administrative or managerial operations of the company;

Annexure VII

“related party transaction” refers to a business deal or arrangement between two or more parties who are joined by a special relationship prior to the deal; and

“risk management” refers to a logical and systematic process of identifying, assessing, managing and reporting all risks associated with a company’s business activities that enables it to minimize losses and maximize opportunities as it pursues its strategic goals.

ARTICLE 2 PRINCIPLES

In implementing this Directive, Partner states shall ensure that listed companies:

- (a) lay solid foundation for management and oversight;
- (b) structure the board to add value;
- (c) promote ethical and responsible decision making;
- (d) safeguard integrity in financial reporting;
- (e) make timely and balanced disclosure;
- (f) respect the rights of shareholders and facilitate the effective exercise of those rights;
- (g) recognise and manage risks;
- (h) encourage an enhanced performance;
- (i) remunerate fairly and responsibly; and
- (j) recognise the legitimate interests of stakeholders.

ARTICLE 3 OBJECTIVES

The objective of this Directive is to prescribe minimum standards for corporate governance practices by listed companies in the Community.

ARTICLE 4 SCOPE

This Directive shall apply to all listed companies **and companies that have publicly issued securities** in the Community.

ARTICLE 5 DISCLOSURE OBLIGATIONS

1. Partner States shall ensure that listed companies comply with disclosure obligations stated in the First Schedule.

Annexure VII

2. A listed company shall provide information of its compliance with sub article 5(1) in the annual report.

PART I
THE BOARD OF DIRECTORS
ARTICLE 6
THE BOARD

Every company shall be governed by a board, which shall offer strategic guidance and shall be accountable to shareholders and other stakeholders of the company.

ARTICLE 7
FUNCTIONS AND RESPONSIBILITIES OF THE BOARD

(1) The board shall have in place long-term strategic objectives of the company consistent with their fiduciary responsibility to the shareholders.

(2) In the discharge of its functions, the board shall be fully informed, while treating all stakeholders fairly.

(3) Subject to sub article (2), the board shall:

- (a) define the company's vision, mission, values, strategy, goals, risk management policy, plans and objectives;
- (b) approve its annual budgets and accounts;
- (c) oversee the management and operations of the company, its major capital expenditures, acquisitions and divestitures and review corporate performance and strategies;
- (d) identify corporate business opportunities as well as principal risks in its operating environment including the implementation of appropriate measures to manage such risks or anticipated changes impacting on the corporate business;
- (e) develop appropriate staffing, remuneration and succession plan policies;
- (f) review on a regular basis the adequacy and integrity of the company's internal control, accounting and financial reporting and management of information systems including compliance with applicable laws, regulations, rules, standards and guidelines;
- (g) establish and implement a system that provides necessary information to the stakeholders including a stakeholder communication policy for the company;

Annexure VII

- (h) monitor the effectiveness of the corporate governance practices under which it operates and proposing revisions as may be required;
- (i) ensure a formal and transparent board nomination and election process;
- (j) monitor and manage potential conflicts of interest of management, Board members and stakeholders;
- (k) prevent the misuse of corporate assets and abuse in related party transactions; and
- (l) take into consideration the interest of the company's stakeholders in its decision-making process.

ARTICLE 8

BOARD CHARTER

- (1) The board shall establish, periodically review and make public the board charter.
- (2) The board charter shall set out the vision, mission, core values, principles and mode of operation of the board.
- (3) The charter shall set out the strategic intent, roles and responsibilities of the board.

ARTICLE 9

CODE OF ETHICS AND CONDUCT

- (1) The board shall develop a code of ethics and conduct and ensure the implementation of appropriate internal systems to support, promote and ensure compliance.
- (2) The board shall sensitize the staff of the listed company on the content of the code of ethics.
- (3) The code of ethics and conduct shall include appropriate communication and feedback mechanisms, which facilitate whistle blowing.
- (4) The board shall periodically review its code of ethics and conduct and ensure that the code is made public.

ARTICLE 10

BOARD MEETINGS

- 1. The board shall, at the beginning of each financial year, prepare an annual schedule of meetings of the board.

Annexure VII

2. The board shall meet at least once in every three calendar months.

ARTICLE 11 COMPOSITION OF THE BOARD

1. The composition of the board shall:
 - (a) not be biased towards representation by a substantial shareholder, but shall reflect the company's broad shareholding structure; and
 - (b) provide for a mechanism of representation of the minority shareholders without undermining the collective responsibility of the directors.
2. The board shall develop a policy on the composition of the board to cater for diversity in relation to academic qualification, technical expertise, relevant industry knowledge, experience, nationality, age, race and gender.

ARTICLE 12 SIZE OF THE BOARD

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

ARTICLE 13 INDEPENDENT AND NON –EXECUTIVE DIRECTORS

1. The board shall reflect a balance between independent, executive and non-executive directors.
2. The independent and non-executive directors shall form at least one-third of the membership of the board.
3. An independent director who has served for a cumulative period of more than nine years shall not be deemed to be an independent director for purposes of this Directive.

ARTICLE 14 APPOINTMENT OF DIRECTORS

1. There shall be a formal and transparent procedure for the appointment of the board and all persons offering themselves for appointment as directors shall declare their interests which are likely to undermine their position or service as director.

Annexure VII

2. A person shall not be appointed as a director of a listed company unless that person complies with the fit and proper test specified in the Second Schedule to this Directive.
3. A Competent Authority shall ensure that a director of a listed company undergoes corporate governance training within six months of the appointment.
4. When appointing directors of the board, the following factors may be considered:
 - (a) evolving circumstances, the needs of the company and the nature of its business;
 - (b) the need to achieve the appropriate mix of executive, non-executive and independent directors; and
 - (c) the need to have sufficient directors to enable quorum for board and board committees meetings.

ARTICLE 15 ROTATION AND RE –ELECTION OF DIRECTORS

1. A listed company shall ensure that the terms of at least one third of its directors expire at every annual general meeting.
2. A director whose term has expired may offer himself for re-election.
3. A board shall submit the names of directors offering themselves for election or re-election to shareholders and the names shall be accompanied by sufficient personal details and any other relevant information to enable shareholders make an informed decision on their election.

ARTICLE 16 TERMS FOR NON-EXECUTIVE DIRECTORS

1. A non-executive director shall be appointed for a specified term subject to re-election and to the relevant companies' laws relating to the appointment and removal of a director.
2. A chairperson shall confirm to shareholders when proposing re-election that, following formal performance evaluation, the individual's performance continues to be effective and demonstrates commitment to the role.

ARTICLE 17

Annexure VII

INFORMATION TO THE BOARD

The board shall establish policies and procedures to enable the board members to access relevant, accurate, and complete information and may seek professional advice in order to discharge its duties effectively.

ARTICLE 18

ROLE, APPOINTMENT AND QUALIFICATIONS OF COMPANY SECRETARY

1. There shall be a company secretary appointed by the board.
2. The company secretary shall:
 - (a) ensure good information flows within the board and its committees and between senior management and non-executive directors;
 - (b) facilitate induction and assist the professional development; and
 - (c) advise the board on all governance matters.
3. The board shall have access to the advice and services of the company secretary,
4. The board shall ensure that the company secretary is a person who is suitably qualified and in good standing with the relevant professional body.

ARTICLE 19

BOARD EVALUATION

1. The board shall undertake a formal annual evaluation of the effectiveness of the board, committees of the board and individual directors.
2. The board shall determine and agree on its annual evaluation toolkit for the purposes of annual evaluation;
3. The board shall discuss the evaluation results and implement any recommendations following an evaluation exercise.
4. The board shall state in the annual report how performance evaluation of the board, its committees and its individual directors has been conducted.

ARTICLE 20

INDUCTION AND TRAINING OF BOARD MEMBERS

Board members shall receive induction on joining the board and shall regularly update and refresh their skills and knowledge.

Annexure VII

ARTICLE 21 LIMIT TO DIRECTORSHIPS

A person shall not hold office as a director in more than three listed companies at any one time.

ARTICLE 22 RESIGNATION OF DIRECTORS

1. A listed company whose director resigns shall notify the Competent Authority and securities exchange within 60 days.
2. A listed company shall ensure that the resignation of a serving director is published on the company's website and disclosed in the annual report together with the details of the circumstances necessitating the resignation.

ARTICLE 23 BOARD COMMITTEES

1. The board may establish committees of the board as the board may deem necessary.
2. The board shall specify in writing the terms of reference for a committee established under sub article (1).
3. The terms of reference shall include among other things the authority and duties of the committees.
4. The board of every listed company shall, in the minimum, establish the following two committees:
 - (a) Audit and Risk Committee; and
 - (b) Nominating and Remuneration committee.

ARTICLE 24 THE AUDIT AND RISK COMMITTEE

1. The board shall establish the Audit and Risk Committee with a majority of independent and non-executive directors.
2. The chairperson of the Audit and Risk Committee shall be an independent director.
3. The board shall satisfy itself that at least one of the committee members shall hold a professional qualification in audit or accounting and be in good standing with their respective professional body.

Annexure VII

4. Members of the committee shall demonstrate the following:
 - (i) broad business knowledge relevant to the company's business;
 - (ii) awareness of the interests of the people investing in the company;
 - (iii) familiarity with basic accounting principles;
 - (iv) objectivity in carrying out their mandate; and
 - (v) no conflict of interest.

ARTICLE 25 THE NOMINATION AND REMUNERATION COMMITTEE

1. The board shall establish the Nomination and Remuneration Committee with a majority of independent and non-executive board members.
2. The chairperson of the Nomination and Remuneration Committee shall be an independent director.
3. The Nomination and Remuneration Committee shall be responsible for:
 - (a) recommending to the board, candidates for the office of directors to be considered for appointment by the shareholders;
 - (b) recommending to the board, the remuneration of the executive directors and the structure of their compensation package;
 - (c) establishing formal and transparent remuneration policies and procedures to attract and retain members of the board; and
 - (d) assessing the performance and effectiveness of the directors of the Company.
4. The directors' remuneration shall be:
 - (a) sufficient to attract and retain directors;
 - (b) approved by shareholders in the annual general meeting; and

Annexure VII

- (c) linked to corporate performance including a share option scheme so as to ensure the maximization of the shareholders' value.

5. A Board shall disclose the remuneration policies and package for the directors in the annual report.

PART II CHAIRPERSON AND CHIEF EXECUTIVE

ARTICLE 26 INDEPENDENCE OF THE CHAIRPERSON

1. The chairperson shall be the head of a board referred to under Article 6 and shall be an independent director.
2. The chairperson shall provide leadership to the board and any other responsibilities as set out in the board charter.
3. A person shall not be a chairperson of more than two listed companies at the same time.

ARTICLE 27 RESPONSIBILITIES OF THE CHIEF EXECUTIVE OFFICER

The chief executive officer shall be responsible for the following:

- (a) implementing decisions of the board; and
- (b) ensuring that there is a clear flow of information between management and the board in order to facilitate both quantitative and qualitative evaluation and appraisal of the company's performance.

ARTICLE 28 SEPARATION OF ROLES

1. A chief executive officer of the company shall not hold office of the chairperson of the board of the same company.
2. The responsibilities of the chairperson and the chief executive officer shall be stated in the board charter.

ARTICLE 29 SUCCESSION PLANNING

Annexure VII

1. A listed company shall have a clear succession plan for its chairperson, chief executive officer and employees of the company.
2. Terms of directors of the board shall be appropriately managed in order to ensure effective succession.

PART III ARTICLE 30 THE RIGHTS OF SHAREHOLDERS

1. A shareholder shall be entitled to:
 - (a) information on the company's performance through distribution of regular annual and interim reports and accounts;
 - (b) participate in all major decisions of the company;
 - (c) access information on matters that include amendments to memorandum and articles of association or similar governing documents of the company, authorization of additional shares, rights issues, share splits, bonus issues, major disposal of company assets, restructuring, takeovers, mergers, acquisitions or reorganizations;
 - (d) a secure method of transfer and registration of ownership as well as certificates or statements evidencing such ownership in the case of a central depository environment;
 - (e) participate and vote at all shareholders meetings including the election of directors;
 - (f) ask questions or seek clarification on the company's performance as reflected in the annual reports and accounts or in any matter that may be relevant to the company's performance or promotion of shareholder's interest and to receive explanation by the directors or management; and
 - (g) distributed profit in form of dividend and other rights including bonus shares, scrip dividends or rights issues as applicable and in the proportion of his shareholding in the company's share capital.
2. A board shall respect, protect, and facilitate the effective exercise of the rights of shareholders.

ARTICLE 31 ANNUAL REPORT

The annual report to shareholders shall include:

- (a) a statement on the operations of the company;

Annexure VII

- (b) audited financial statements prepared and presented in line with International Financial Reporting Standards;
- (c) a list of the top ten shareholders of the company and their shareholding; and
- (d) a statement on compliance with this Directive.

ARTICLE 32 COMMUNICATION WITH STAKEHOLDERS

1. The board shall maintain an effective communication policy that enables both management and the board to communicate with its shareholders, stakeholders and the public.
2. A listed company shall establish a company website and encourage its use by shareholders to ease communication and interaction between shareholders and the company.
3. A listed company may organize regular investor briefings when the half-yearly and annual results are declared or as may be necessary to explain their performance.

PART IV

GENERAL MEETINGS

ARTICLE 33

MEETINGS

1. The board of a listed company shall provide to all its shareholders sufficient and timely information concerning the date, location and agenda of the general meeting as well as full and timely information regarding issues to be decided during the general meetings.
2. The board shall take into consideration the suitability of the location for the general meeting.
3. A shareholder shall have a right to participate and vote at the general meeting including the election of directors.
4. The board shall ensure that shareholders' right of full participation at general meetings are protected by giving shareholders:
 - (a) sufficient information on each subject to be discussed at the general meeting;
 - (b) sufficient information on voting rules or procedures;

Annexure VII

- (c) proxy models with different voting options;
- (d) the opportunity to ask questions at the general meeting;
- (e) the opportunity to place items on the agenda at general meetings;
- (f) the opportunity to vote by proxy; and
- (g) sufficient information to enable them to consider the costs and benefits of their votes.

ARTICLE 34

ROLE OF INSTITUTIONAL INVESTORS

1. Institutional investors shall take up the role of stewardship as the representatives of clients or investors in listed companies.
2. Institutional investors should make direct contact with the company's senior management and board members to discuss performance and corporate governance matters in addition to exercising their vote during general meetings.

PART V

ACCOUNTABILITY AND RISK MANAGEMENT

ARTICLE 35

INTERNAL CONTROLS

1. A board shall establish policies on internal controls.
2. The management shall be accountable to the board for monitoring the system of internal controls and for implementation of the activities.
3. A board shall review on a regular basis the adequacy, robustness and integrity of the company's internal control policies, management of information systems, and compliance with applicable laws, regulations, rules and guidelines.

ARTICLE 36

APPOINTMENT OF EXTERNAL AUDITORS

1. The board shall establish a formal and transparent arrangement for shareholders to appoint independent external auditors at each annual general meeting.

Annexure VII

2. The external auditors' services shall not be retained for a period exceeding five consecutive years.
3. An external auditor whose term of service expires under sub Article 2 may only be reappointed after the expiration of three years.

ARTICLE 37

INTERNAL AUDIT FUNCTION

The board shall establish an internal audit function which shall report to the Audit and Risk Committee.

ARTICLE 38

AMENDMENTS

1. This Directive may be amended by the Council of Ministers
2. Any proposals for amendment may be submitted in writing by the Partner States to the Secretary General for submission to the Council of Ministers.

ARTICLE 39

IMPLEMENTATION

1. Partner States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than one year from the date of the Council of Ministers' approval and inform the Council of Ministers.
2. When Partner States adopt those measures they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods for making such reference shall be laid down by Partner States.

FIRST SCHEDULE

Annexure VII

(Made under Article 5(1))

DISCLOSURE OF CORPORATE GOVERNANCE ARRANGEMENTS

The annual report shall include information relating to compliance with this Directive. The specific requirements for disclosure are:

1. The governing structure, including the composition and size of the Board, committees of the board, management and their mandate;
2. A statement on compliance with good corporate governance. The statement should indicate aspects of this Directive which have not complied with, the reasons thereof, indicative timelines and proposed strategies towards compliance;
3. A statement on the company's vision, mission, values, and strategic objectives.
4. A statement of how the board operates, including a statement of which types of decisions are to be taken by the board and which are to be delegated to management.
5. The names of the chairperson, the chief executive, the chairpersons and members of the nomination, audit and remuneration committees.
6. The number of meetings of the board and those committees and individual attendance by directors.
7. The names of the non-executive directors whom the board determines to be independent, with reasons where necessary.
8. How performance evaluation of the board, its committees and its directors has been conducted.
9. A separate section describing the work of the nomination committee, including the process it has used in relation to board appointments and an explanation if neither external search consultancy nor open advertising has been used in the appointment of a chairperson or a non-executive director.
10. A description of the work of the remuneration committee.
11. Policies for remuneration including incentives for the board and senior management.

Annexure VII

12. A statement from the directors that the business is a going concern, with supporting assumptions or qualifications as necessary.
13. A separate section describing the work of the Audit and Risk Committee in discharging its responsibilities.
14. The company's whistle blowing policy.
15. Environmental, social and governance policies and implementation thereof.

Annexure VII

- (1) A listed company shall, in determining whether a person is fit and proper to be appointed as a director, take into consideration the following –
 - (a) financial status or solvency of the person;
 - (b) educational or other qualifications or experience having regard to the nature of the functions that the person is expected to perform as a director in that company;
 - (c) status of legal and regulatory compliance by any other company or institution where that person is employed, holds or previously held a directorship position;
 - (d) ability to execute the functions of a director competently, honestly and fairly; and
 - (e) reputation, character, integrity and reliability of the person.
- (2) Without limiting the generality of sub-article (1), the company may:
 - (a) have regard to whether the person;
 - (i) has contravened the provision of any law designed for the protection of members of the public against financial loss;
 - (ii) was an employee or a director in a company that has been liquidated or under liquidation or wound up due to imprudent management;
 - (iii) has taken part in any business practice that was found out by a government agency to have been fraudulent, prejudicial or otherwise improper (whether unlawful or not) or which otherwise discredited his methods of conducting business;
 - (iv) has taken part or been associated with any other business practice as would, or has otherwise conducted himself in such manner as to, cast doubt on his competence and soundness of judgment; and
 - (b) take into account the state of affairs of any other business which the person carries on or proposes to carry on.