TOPIC: Code of Corporate Governance – The Case of Tanzania”


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What is Corporate Governance? -- Definitions

- Conflict of agency/Interest
- Protection of minority shareholders
- New stock exchange listing rules
- A management tool
- Corporate Governance
- Business ethics
- Unified Code of Corporate Gov – TZ
- A new control system (IFRS)
Corporate Governance is a mechanism through which boards and directors are able to direct, monitor and supervise the conduct and operation of the corporation and its management in a manner that ensures appropriate levels of authority, accountability, stewardship, leadership, direction and control.

“The importance of corporate governance lies in its contribution both to business prosperity and to accountability.”

Paragraph 1.1, Committee on Corporate Governance: Final Report Hampel Committee

“Corporate governance is concerned with holding the balance between economic and social goals and between individual and communal goals...... The aim is to align as nearly as possible the interests of individuals, corporations and society.”

Sir Adrian Cadbury
Corporate Governance Overview, 1999
[World Bank Report]
Definitions

- According to Capital Markets and Securities Act Tanzania, Capital Markets Act Kenya and Capital Markets corporate governance guidelines- Uganda, Corporate Governance has been defined as:

- The process and structure used to direct and manage business affairs of the company towards enhancing prosperity and corporate accounting with the ultimate objective of protecting and promoting shareholders’ rights and realizing shareholders’ long term value while taking into account the interests of stakeholders.
What is corporate governance? (Contd...)  

- The primary purpose of corporate leadership is to **create wealth legally and ethically**.
- This translates to bringing a high level of satisfaction to five constituencies – customers, employees, investors, vendors and the society-at-large.
- The *raison d’être* of every corporate body is to ensure **predictability, sustainability and profitability** of revenues year after year.

- N R Narayana Murthy
Definitions (cont...)  

...according to Prof. King (King II Report, 2002 South Africa)

- It (governance) is essentially a function of leadership and direction within an organisation; appropriate risk management and control over its activities; and the manner in which meaningful disclosure relating to its activities is made to shareholders and other stakeholders.
It’s about Leadership...!

• Leadership for efficiency......
  – to compete in the global economy, create jobs
• Leadership for probity.....
  – because investors require confidence
  – to provide assurance of management's integrity
• Leadership with responsibility....
  – to take account of broader stakeholder interests
• Leadership that is accountable and transparent
  – to build trust in *companies and* in the *economy*!!
Parties to Corporate Governance

Corporate Governance refers to the structures and processes for the direction and control of companies (OECD)

“Effective corporate governance requires a clear understanding of the respective roles of the board, management and shareholders, and their relationships with each other, and their relationships with others that have an interest in the company and its well-being.”

- Business Roundtable, Principles of Corporate Governance – 2010

- Shareowners/holders – those that own the company
- Directors – Guardians of the Company’s assets for the Shareholders
- Managers who use the Company’s assets
Why the Focus on CG?

Corporate Governance

- Effective Boards & management teams
- Solid risk management
- Business Ethics and Values
- Reporting mechanisms
- Compensation, Incentive & Rewards structures
- Stakeholder engagement
- Working systems, processes & internal controls
- Transparency and accountability
Four Pillars of Corporate Governance

• Accountability

• Fairness

• Transparency

• Integrity/Probity (Independence)
Accountability

• Ensure that management is accountable to the Board
• Ensure that the Board is accountable to shareholders

Fairness

• Protect Shareholders rights
• Treat all shareholders including minorities, equitably
• Provide effective redress for violations
Transparency

Ensure timely, accurate disclosure on all material matters, including the financial situation, performance, ownership and corporate governance

Integrity/Probity/Independence

Procedures and structures are in place so as to minimise, or avoid completely conflicts of interest

Independent Directors and Advisers i.e. free from the influence of others
Elements of CG

- Good Board practices
- Control Environment
- Transparent disclosure
- Well-defined shareholder rights
- Board commitment
Good Board Practices

• Clearly defined roles and authorities
• Duties and responsibilities of Directors understood
• Board is well structured
• Appropriate composition and mix of skills

Good Board Procedures

• Appropriate Board procedures
• Director Remuneration in line with best practice
• Board self-evaluation and training conducted
Control Environment

- Internal control procedures
- Risk management framework present
- Disaster recovery systems in place
- Media management techniques in use
- Business continuity procedures in place
- Independent external auditor conducts audits
- Independent audit committee established
- Internal Audit Function
- Management Information systems established
- Compliance Function established
Transparent Disclosure

- Financial Information disclosed
- Non-Financial Information disclosed
- Financials prepared according to International Financial Reporting Standards (IFRS)
- Companies Registry filings up to date
- High-Quality annual report published
- Web-based disclosure
Well-Defined Shareholder Rights

• Minority shareholder rights formalised

• Well-organised shareholder meetings conducted

• Policy on related party transactions

• Policy on extraordinary transactions

• Clearly defined and explicit dividend policy
Board Commitment

• The Board discusses corporate governance issues and has created a corporate governance committee
• The company has a corporate governance champion
• A corporate governance improvement plan has been created
• Appropriate resources are committed to corporate governance initiatives
Other Entities

- Corporate Governance applies to all types of organizations not just companies in the private sector but also in the not for profit and public sectors.
- Public sector corporations – new legislations provide better governance structure.
- NGOs, schools, hospitals, pension funds, state-owned enterprises; Other corporate vehicles: cooperative societies?
CG – Internal & External Factors

Figure 1: Modern corporations are disciplined by internal and external factors

Internal

Shareholders

Reports to

Board of Directors

Appoints and monitors

Management

Operates

Core functions

External

Private

Stakeholders

Reputational agents¹
- Accountants
- Lawyers
- Credit rating
- Investment bankers
- Financial media
- Investment advisors
- Research
- Corporate governance analysts

Regulatory

Standards
(for example, accounting and auditing)

Laws and regulations

Financial sector
- Debt
- Equity

Markets
- Competitive factor and product markets
- Foreign direct investment
- Corporate control

Adapted from CIPE, 2008

¹ Reputational agents refer to private sector agents, self-regulating bodies, the media, and civic society that reduce information asymmetry, improve the monitoring of firms, and shed light on opportunistic behavior.
Key Institutions Must Function Well

- Procedures for bankruptcy
- Property rights
- Contract enforcement – judicial system(s)
- Enforcement mechanisms for regulations
- Securities markets
- Free press – financial press
- Rating agencies
- Other systemic checks and balances
- Professionalism in auditing, legal sectors, directors’ institutes
Human Capital

- Supply of Directors – executive and non-executive
- Trained financial press
- Parliamentary oversight
- Capacity of regulatory et al personnel
- Judicial awareness and independence
Why corporate governance matters to corporations in general ... and economies in particular
Why CG Matters – Defining the Starting Point

System by which corporations are directed & controlled

The manner in which the business and affairs are governed by boards of directors and senior management, which affects how they:

- Set corporate objectives
- Operate the business on a day-to-day basis
- Meet the obligation of accountability to their shareholders and take into account the interests of other stakeholders
- Align corporate activities and behavior with the expectation that corporates will operate in a safe and sound manner, and in compliance with applicable laws and regulations
- Protect the interests of all stakeholders
Why CG Matters – The Business Case for CG

Level 1: Minimum Legal Compliance
- Improves company reputation
- Facilitates access to and lowers cost of capital
- Improves operational efficiency
- Improves risk management
- Improves sustainability

Level 2: Extra Steps to Improve CG

Level 3: Publicly Recognized as National Leader

Level 4: Publicly Recognized as Int. Leader

Adopted from the GCGF, 2012
In 2002, L Klapper and I Love from the World Bank found evidence that improving a company’s corporate governance has proportionately greater impact in countries with weak legal environments.

They have suggested that companies can partially compensate for ineffective laws and enforcement by establishing good corporate governance at the company level and providing credible investor protection.
Implications for Corporate Governance and Regulation?

- Two approaches to corporate governance related laws & regulations

1. Monitor Corporates through laws and regulations, based on international best practices and specific local and particular conditions
2. Empower corporates through information and best practices, e.g. through a code based on the OECD Principles and other codes

- Approaches not mutually exclusive: But what is best mix of private market and government oversight of corporates?

- Corporates can certainly can preempt regulatory (re)action by implementing good corporate governance
CG – Steps & Measures

ADVISORY SERVICES PROJECTS
Programmatic approach country typically at 4 levels of intervention

- Firm Level
- Market Intermediary Level
- Regulatory and Policy Level
- Macro: Awareness Raising Level

The IoDT & PARTNERS
Providing knowledge tools and world class expertise
Corporate Governance in Tanzania

• Unlike other countries especially “the West” or elsewhere, the corporate governance initiative in Tanzania was not triggered by any serious nationwide financial, banking and economic collapse

• Company Law (2002)
• Regulators
  – Bank of Tanzania
  – Capital Markets & Securities
  – National Board of Auditors & Accountants
  – Other regulators
• Controller & Auditor General
• Sundry Legislation
• Also, unlike most countries, the initiatives in Tanzania is initially driven by a directors association, the IoDT

  – Working on setting up a task force to design a (voluntary) code of corporate governance
  – The final draft of this code to be widely circulated
Important governance steps & measures

Consideration, drafting and implementation of Sundry governance and structural-related reforms by Tanzanian authorities as follows:

**BoT – Guidelines for Boards of Directors of Banks and Financial Institutions, 2008**

- Applicable to directors of all regulated banking institutions.
- Guidelines for Boards of Directors as well as individual directors.
- Risk management guidelines of 2010 provide further guidance.

**CMSA – Guidelines of Corporate Governance practices by Public Listed Companies, 2002**

- Applicable to all institutions authorised and regulated by the CMSA.
- Regulated institutions also need to take into account the Capital Markets and Securities (Conduct of Business) Regulation, 1997.

**Public Procurement Act, 2004 and Regulations**

- Applicable to all public sector organisations.

**The Commission for Human Rights and Good Governance Act, 2001**

BoT Guidelines, 2008

- Observation of minimum standards
- Given Duties and responsibilities
  - For boards
  - For individual directors
- Board Processes & Procedures
  - meetings
  - number
  - Attendance
  - reports
  - committees
- Board Structure (mix)
  - membership
  - (numbers/composition)
  - Fit & Proper criteria
- Governance of Risk
CMSA Guidelines, 2002

- Board & Committees
- Disclosure
  - directors’ remuneration
  - benefits
- Board Structure (Non-executive vs Executive)
- Directorships/chairmanship: service limitations
- Separation of the Roles of Chairman & CEO
- Role of the Shareholders in key approvals
- Recommended corporate governance best practices
Key steps and measures taken by GT in the promotion of good governance plus several reforms – with effect from 2000 – such as:

- The National Framework on Good Governance has been established. It has spelt out key interventions expected from the key Governance System players;
- Creation of the Ministry of State for Good Governance; Reports to the President’s Office;
- Creation of the Commission for Human Rights and Good Governance;
Status Quo – Tanzania Public Sector

• Existence of Public Financial Management Reform Programme (PFMRP) in 2008/09:
  – Implemented to ensure *accountable and transparent* institutional management and operational arrangements for fiscal discipline, strategic prioritization of expenditure and improved performance during budget execution.

• Legal framework reviewed aiming at the restoration of confidence in the Judiciary and law enforcement agencies; accomplished via the Legal Sector Reform Program (LSRP).
More public focus on activities and reports (media coverage) from various **oversight** and **watchdog** institutions:

- The *Prevention of Corruption Bureau (PCCB)*
- *Controller and Auditor General (CAG)* – National Audit Office
  - Robust CAG Office – oversight functions in public finance and procurement strengthened; focus has been on capacity building;
  - Better and favourable public opinion; Increased media coverage and scrutiny of audited financial reports by the CAG.
    - CAG’s reports include recommendations to promote good governance
- Creation of the *Internal Auditor General (IAG)* office in 2011;
- Circular issued to public sector organisations (2013) to implement Institutional Risk Management Framework – implications for a renewed focus on the role of Internal Audit
Status Quo – More Observations

Board of Directors
- Audit
- Risk
- Other (Nom, Remun., etc)
- Management
  - Operations
  - Financial & Admin Management
  - Risk Management
  - Internal Control

Shareholders
- Board acts as a ‘Paper’ board
- Composed of family & insiders
- Lack of Financial & Risk ‘literacy’
- Informal working procedures
- No or ineffective sub-committees
- No clear division btw Board & Mgt
- Uninformed board – poor Mgt information
- Narrow focus on financials only
- Unclear on oversight role for Risk & Control

Management

Internal Audit
External Audit
Evolution.....

- Regulated banking institutions and listed companies is growing – more focus and a growing interest in CG
- Lack of an all-encompassing code (minimum advised standards) on CG in Tanzania sticks out.
- CMSA (regional-based) guidelines for DSE-listed market players. Binding to what extent? (enforcement)
- Subsidiaries of global companies (internal measures & external measures) heavily influenced by parent
- Reliance by most local players on (mostly mish-mash and exceedingly best-effort basis) internal policies and procedures as guideline to their CG
Evolution….

• Regulatory bodies in Tanzania have increased. They mostly maintain own CG guidelines
• Grounds for conflicting requirements: listed banks are required to ensure compliance with both CMSA and BoT’s guidelines. While no overlaps have been identified, implementation may be perceived as too onerous.
• Zero coordination and possibility for “contagion”
• Global trends and developments dictate random focus improvements and responsibility across individual sectors.
Code of Corporate Governance (CoG)

- Defined generally as a systematically arranged set of principles, standards, best practices and/or recommendations:
  - precatory (in nature) – that is neither legally nor contractually binding;
  - relating to the internal governance of corporations (covering topics such as the treatment of shareholders, the organization and practices of (supervisory) boards and corporate transparency); and
  - Issued by a collective body.

- A code provides a framework for efficient and transparent running of listed companies to enhance shareholder value. The regulators need to be vigilant to enforce the code in its true spirit

- The Fundamental Objective of a Code is the enhancement of Shareholder Value, keeping in view the Interests of other Stakeholders

- CG a Way of Life rather than a Code (minimum requirements)
Why CoG?

• To define acceptable behavior
• To promote high standards of practice
• To provide a benchmark for self-evaluation
• To establish a framework for professional behavior and responsibilities
• As a vehicle for (occupational) identity
• As a mark of (occupational) maturity.
**Business Ethics**

- Established values and principles a company uses to inform and conduct its activities
- Should permeate a company’s culture and drive its strategy, business goals, policies and activities
- Usually found in a code of ethics

**Values/Code**s: Standards for measuring what is good or right eg ‘integrity’, ‘respect’, ‘responsibility’, ‘transparency’, etc.

Conduct is **ethical** if :

- it gives due consideration not only to that which is ‘good for oneself’, but also ‘good for others’
- it conforms with a set of clearly articulated code of ethics/conduct, moral principles.
Ethics, CG & CoG

- Ethics is the foundation of, and reason for, Corporate Governance (King III). In other words, CG is, in essence, a company’s practical expression of ethical standards.

- An organisation run ethically earns the necessary approval from those affected by and affecting its operations i.e. “license to operate”
Board’s Ethical Values

- **Responsibility** – for the assets and actions of the company;

- **Accountability** – to shareholders and other stakeholders for its decisions and actions;

- **Fairness** – in the consideration of the legitimate interests and expectations of all stakeholders;

- **Transparency** – disclosure in a manner that enables stakeholders to make informed analysis of the company’s performance and sustainability.
CoG – Transition

Original

Compliance
Enforcement
Punishment
Directive
Secretive

Revised

Integrity
Inspiration
Motivation
Educational
Open
Modern interest in corporate governance improvement and the development of corporate governance codes in EU Member States dates to the early 1990’s and, in particular, a series of financial scandals and related failures of listed companies in the United Kingdom.

1992 Cadbury Report – issued in an attempt to address what were perceived as underlying problems in the corporate performance and financial reporting of leading companies, the lack of effective board oversight that contributed to those problems, and pressure for change from institutional investors.

From 1991 through 1997, ten codes were issued in EU Member States. Just over half (six) of these codes were issued in the United Kingdom.

In 1998, however, interest in code development exploded across the European Union, with seven codes issued in that year alone.

Another seven codes were issued in 1999, and six were issued in 2000. Five more codes (one still in draft form) were issued in 2001.
Cadbury Report (1992)

• Wider use of INDEPENDENT DIRECTOR
• Introduction of AUDIT COMMITTEE
• Separation between CHAIRMAN and CEO
• Adherence to detailed code of BEST PRACTICES.

OECD Principles of CG (1999)

• Protect rights of SHAREHOLDERS
• Recognize the rights of STAKEHOLDERS
• Timely and accurate DISCLOSURE
• Responsibility of the BOARD
Sarbanes-Oxley Act (‘Comply or Else’)
The Public Accounting Reform and Investor Protection Act of 2002
(Paul Sarbanes (D) and Michael Oxley (R))

- Public Accounting Oversight guidelines demanding Boards to:
  - monitor auditors
  - strengthen auditor independence
  - increase CEO accountability for financial statements
  - make CEOs and CFOs sign off on financials

- New standards for auditor independence; Excluding 9 types of consulting services for external auditors (book-keeping, financial information systems design, valuation services, actuarial services, management/HR functions and investment or legal services)

- Auditors must give reports to the Audit Committee on all critical accounting policies and practices. The Audit Committee of a listed company must disclose the presence or absence of at least one member who is a 'financial expert'.
The King Reports I, II & III (S. Africa)

- Sponsored by IoDSA

- **King I (1994):** Standards of conduct for Boards & Directors of Listed Companies, Large Unlisted Cos, Banks, SOEs. Encourage all to adopt.

- **King II (2002):** Directors’ responsibilities, Risk Management, Internal Audit, Sustainability reporting

**King III (2009):** Applicable to all entities

King III became necessary because of the changes in the SA Companies Act no. 71 (2008) as well as changes in international governance trends.

- Recommends integrated performance and reporting of financial, governance, strategy and sustainability aspects.
The King Reports I, II & III (S. Africa)

- Principal 1.1 of King III: Good CG is about effective leadership, characterized by ethical conduct.
- Responsible leaders build sustainable businesses by having regard to the company’s Economic, Social and Environmental impact on the community in which it operates. This is the Triple Context or Triple Bottom Line.
Mauritius Code of Corporate Governance (2002)

- Non Executive Director
- **Qualification of a Director**
- **Tenure of Director**
- Governance Policies of the Directors
- Information to Directors
- Orientation Courses
- CFO/ Co. Sec
- Corporate and Financial Reporting
- Audit Committees
CoG – Benefits

The code movement is a positive development, both for companies and for investors, given its emphasis on disclosure, improved board practices, and shareholder protection. Codes have proven beneficial in a number of ways:

✔ Codes stimulate discussion of corporate governance issues;
✔ Codes encourage companies to adopt widely-accepted governance standards;
✔ Codes help explain both governance-related legal requirements and common corporate governance practices to investors;
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✔ Codes can be used to benchmark supervisory and management bodies; and
✔ Codes may help prepare the ground for changes in securities regulation and company law, where such changes are deemed necessary.
CoG – Benefits

- To promote entrepreneurship, flexibility and simplicity
- To encourage transparency and high standards of corporate governance
- Does legislation improve governance standards?
CoG – Country Perspective

• Corporate Governance is by way of legislation or best practice Code
• Most other developed and emerging market countries have adopted best practice Codes e.g. Combined Code in the UK, Cromme Code in Germany and the King III Code in South Africa (soon IV!!!)
• These Codes are voluntary and are enforced by shareholders
• Most of them operate on a ‘comply or explain’ approach
• The Media also play a part in highlighting good or bad practices
CoG – African Perspective

• Countries in Africa have tended to adopt a hybrid approach whereby they have followed the ‘comply and explain’ approach but have enshrined some of the principles in law to assist in enforceability.

• The reason is the weakness of the shareholder base and of the media.
**CoG – Tanzania/Africa**

- Primarily concerned with public listed companies i.e. those listed on a Stock Exchange

- Focused on preventing corporate collapses such as Enron, Polly Peck and the Maxwell companies.

- What relevance does it have to Tanzania where there are few public listed companies

- Most companies are non-listed, private family owned businesses where the shareholders and the managers are often the same people
CoG – Tanzania/Africa

• In 1994, The King Report in South Africa also included within its Code of Corporate Governance requirements on **sustainability** and **ethical** standards

• This was due to the context of a developing country and business ethics in Africa
Sustainability

• No generally accepted definition

• Most commonly used is from the Brundtland Report for the World Commission on Environment and Development 1987 which defines it as:

‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs’
Stakeholders

• Sustainability recognizes stakeholder rights i.e. the rights of interested parties e.g. employees, the community, suppliers, customers etc.

• Encourage co-operation between the company and its stakeholders in creating wealth, jobs and economic stability
CoG – Perspective

Contextual

- Differing national frameworks of law, regulation and stock exchange listing rules, differing business norms and differing cultural values and socio-economic traditions

- Effective corporate governance is supported by and dependent on framework conditions, including securities regulation, company law, accounting and auditing standards, bankruptcy laws, judicial enforcement and the nature of the market for corporate control

- To understand one nation’s corporate governance practices in relation to another’s, one must understand not only the corporate governance codes that apply but also the underlying legal and enforcement framework
CoG – Perspective

- Acknowledge that there is no single agreed system of “good” governance. They tend to recognise that each country has its own corporate culture, national personality and priorities. As stated in Italy’s Preda Report: “Corporate governance, in the sense of a set of rules according to which firms are managed and controlled.....”

- ARGUMENT FOR ONE SIZE FITS ALL: result of norms, traditions and patterns of behaviour developed by each economic and legal system and is certainly not based on a single model that can be exported and imitated everywhere.”

- Likewise, each company has its own history, culture, goals and business cycle maturity: “Determining the ‘best practice’ is not always unequivocal, because making the choice depends on company-specific factors.”
CoG – Perspective

Therefore, codes tend to recognize that many factors need to be considered in crafting the optimal governance structure and practices for any country or any company. However, the influence of international capital markets is leading to some convergence of governance practices as expressed in the codes.
CoG – Processes

NATURE OF ISSUING BODY
A wide variety of organizations in the countries having issued governance codes including:

- Governmental or quasi-governmental entities;
- Committees or commissions organized or appointed by governments;
- Stock exchange-related bodies;
- Hybrid committees related to both stock exchanges and business, industry, investor and/or academic associations;
- Business, industry and academic associations;
- Associations of directors; and
- Various types of investor groups.
CG – Processes

CONTRIBUTIONS & CONSULTATIONS

- The processes used to obtain input, the parties contributing to the creation of corporate governance codes, and the nature of broader consultations engaged in by the issuing bodies vary greatly.

- Industry groups, corporate executives, government and regulatory agencies and investor groups. Consultative activities ranged from publication of consultative documents with public invitation to comment, to consultations with government, business and investor groups.

- Some codes advocate, or through linkage to stock exchange listing requirements mandate, disclosure by listed companies of the degree to which they comply with code recommendations, together with an explanation of any areas of non-compliance. (Such disclosure against a code is referred to as disclosure on a “comply or explain” basis)
In some instances disclosure against a code is mandated, all of the codes are voluntary inasmuch as the substantive code provisions need not be implemented. Nevertheless, comply or explain disclosure requirements do exert at least some coercive pressure: the tendency for some companies may be to “comply” rather than to explain. (This leads some commentators to express concerns that comply or explain disclosure requirements may lead to an overly mechanical and uniform approach to a company’s decisions about ordering its corporate governance -- a mere “box-ticking” exercise.)
CG – Processes

MANDATE

- USA is one of the few countries to adopt a mandatory Code of Corporate Governance with a strict enforcement regime (‘comply or else’).

- Most other jurisdictions have adopted a principles based approach to Corporate Governance, that is ‘comply or explain’ non-compliance (eg UK Corporate Governance Code)

Compliance: Legislative vs Voluntary

Case Against Legislation:
- “One size fits all” approach not logically suitable;
- Cost of compliance (time & financial) burdensome
- Risk of Board & management becoming too focused on compliance at the expense of enterprise;

- The ‘robust’ SOX could not prevent the collapse of many of the leading corporates in the US banking and finance in 2008-9
- anything is allowed unless it is specifically legislated against
**CG – Processes**

**MANDATE**

Compliance:  *Legislative vs Voluntary*

Case Against Voluntary Compliance:
- Shareholders & Media are the only means of enforcement;
- Difficult in an environment where there are weaknesses in the shareholder base and the media.

Do shareholders and the media understand what comprises good corporate practices?

- United Nations – “adopt or explain”
- Netherlands – “apply or explain”
- United Kingdom “missed a trick” – FRC
- King III – “apply or explain”
- Not substantial compliance
Issues – Key Challenges

OVERSIGHT

- Apart from banking and financial institutions, enforcement of any existing guidelines has been a challenge. Other sectors do not have oversight as close as in the banking sector.
- Political influence in the constitution and operations of public sector boards may affect their effectiveness. Also ownership influence in the constitution of private sector boards may do the same.
- The regulatory agenda is not slowing down. However, it is quite uncoordinated between the different regulators and may in future result in conflicting guidelines.
**Issues – Key Challenges**

Tanzanian Special Circumstances (non exhaustive list)???

- Many family controlled companies
  - Complex control structures
  - Secretive shareholder agreements
  - Severe potential conflicts of interest
- Nominee Directors
  - Membership of Board ‘honorific’
  - Few independent directors (distrust of ‘independence’)
  - Few executive directors (‘managers manage, the board decides’)
- Little communication or shareholder relations
  - Cultural ‘Us v/s Them’ approach
  - Very poor disclosure
- Very poor public perception
  - Small elite business community
  - Recruitment not always meritocratic
  - Little visible concern for wider social or environmental issuers
Issues – Shopping List

Sections dealing with:

• Compliance and Enforcement (to whom it applies etc...)
• Board and Directors – Roles and responsibilities, composition, conflicts, Chair and CEO, nomination and director training and appraisal
• Board Committees – Audit, Corporate Governance, Nomination, Remuneration, Risk, Others (including terms of reference)
• Role and function of Company Secretary
• Risk Management, Internal Control and Internal Audit
• Auditing and Accounting
• Integrated Sustainability Reporting
• Communication and Disclosure
• Relationship with Shareholders
Issues – Shopping List

CG Section in Annual Report (main disclosures)

• Holding structure
• Dividend policy
• Directors and Senior Management profiles
• Related party transactions
• Directors dealings
• Material clauses of M & A
• Important aspects of Shareholders Agreement
• Important aspects of Management Agreements
• Remuneration per director (including executive directors)
• Terms of reference of Board Committees
• Identification of key risks, brief discussion of how they are managed
• Policies regarding social, ethical, safety and environmental issues
• Aggregate political donations
• Aggregate charitable donations
Issues – Processes

• Government involvement? How far? Cabinet appointed 10-member committee

• How much of political support from Government, particularly Minister of Finance?

• Where to source significant financial and human resources?

• Appointment of a Consultant/ Advisor (Mervyn King, South Africa?)

• Wide consultation process - seminars, plenary sessions, conferences

• Task teams to be constituted, each with influential members from the Private and Public sectors, media, unions etc...

• 1st Key task to identify ‘Tanzanian Special Circumstances’ (TSC)
Issues – Processes

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Issues – Compliance & Applicability

• Compliance – voluntary? Or mandatory? i.e ‘comply or explain’

• ‘Designated institutions’? required to comply or explain non-compliance
  – Listed companies (Stock Exchange listing rules to make some provisions mandatory)
  – Banks and non-banking financial institutions
    • Bank of Tanzania has guidelines which make certain mandatory provisions
    • Other regulators to make certain provisions mandatory through licensing conditions
  – Definition of larger public companies e.g those companies (or Groups) with turnover > (USD 9 million???)
  – Large private companies; same?
  – State owned enterprises? Executive Agencies?
Other Initiatives

• A series of training workshops to be held covering important issues:
  – Board composition and directors duties
  – Role of Audit Committee
  – Role of Corporate Governance Committee
  – Shareholder rights and responsibilities

• Elaboration of guidance notes for the implementation of the Code (work in progress)

• Elaboration of guidance notes for SOE’s (work in progress) including:
  – Special circumstances (Role of Parliament, Minister, Board)
  – Identifying appropriate stakeholders
  – The ‘Corporate Objectives Statement’ (elaborated by SOE board, approved by parent Ministry)

• Main areas
  1) Purpose, value drivers, stakeholders and objectives
  2) Corporate vision
  3) Statement of accountability
  4) Expectations of financial & non financial performance
Reactions & Key to Success

- Code to be widely recognised as the essential reference document
- Each institution to practice Corporate Governance according to the Code, but in a way that is relevant to their specific business and circumstances
- The goal of the Code is to build greater trust between
  - The Company and investors
    ⇒ To lower the cost of capital – essential for companies to buy-in to the project. Conformance without performance will never be successful
  - The Company and their other stakeholders
    ⇒ To help build a culture of social and environmental responsibility, helping to bridge the ‘Us v/s Them’ divide
  - SOE’s and the public
    ⇒ To enable SOE’s to enhance the quality of service they deliver to the public at large
Way Forward

• To come up with Tanzania Best Practice on CG (CoG)
• Appointment of competent board members
• More capacity building to boards and audit Committees

• Empowering Internal Audit units
• Auditors to widen scope to cover quality assurance on governance issues
• Training Colleges/Universities to enrich governance training
• To encourage the use of the directors register/experts and use them
I. Ensuring For Good Board Practices

- **Are the board members qualified?**
  - Right mix-of-skills in specific business/industry, finance & risk management., CG, etc,
  - Are the right election procedures in place
  - Can directors commit sufficient time and energy

- **Do they have a clear understanding of their role?**
  - Setting overall strategy and managerial oversight, not day-to-day
  - Duties & Responsibilities: Fiduciary, Care and Loyalty
  - To act in the interest of the company and all shareholders
  - Fit and proper tests; succession planning

- **Are they able to exercise independent judgment**
  - Free from any conflicts of interest, and thus able to monitor financial reporting, remuneration and nomination procedures

- **Right board size, leadership and procedures in place?**
  - Do key committees exist: audit, risk, CG/nomination, remuneration
  - Ability to obtain material information in timely manner
  - Do tough, but quality discussions take place
TAKE AWAY

Six Critical Questions for Directors!

- Do I believe I have all the information?
- Have I the necessary skills to make this decision?
- Do I have any conflict in this matter?
- Objectively, is this a rational business decision?
- Can I explain this in a transparent manner?
- Is it a responsible discharge of my duties?
Contributions from the Plenary
Final Remarks

- Do your best to make CG a way of life in Tanzania!
- Be the change that you want to be!

- Mungu Ibariki Afrika! Mungu Ibariki Tanzania!