

GUIDELINE ON CORPORATE GOVERNANCE - CBK/PG/02

CONTENTS

PART I: Preliminary

- 1.1 Title
- 1.2 Authorization
- 1.3 Application
- 1.4 Definitions

PART II: Statement of Policy

- 2.1 Purpose
- 2.2 Scope
- 2.3 Responsibility

PART III: Sound Corporate Governance Principles

- 3.1 Principle 1 - Ethical Leadership and Integrity
- 3.2 Principle 2 - Responsibilities of Shareholders
- 3.3 Principle 3 - Overall responsibilities of the Board
- 3.4 Principle 4 - Role and competence of Board members
- 3.5 Principle 5 - Board's Governance practices
- 3.6 Principle 6 - Corporate Governance in a Group structure
- 3.7 Principle 7 - Senior Management
- 3.8 Principle 8 - Risk Management Framework
- 3.9 Principle 9 - Compliance with Laws, Rules, Codes and Standards
- 3.10 Principle 10 - Internal Control Functions
- 3.11 Principle 11 - Compensation Systems
- 3.12 Principle 12 - Governance of Information Technology
- 3.13 Principle 13 - Bank's Operational Structure
- 3.14 Principle 14 - Disclosure Requirements

PART IV: Code of Conduct

PART V: Remedial Measures and Administrative Sanctions

PART VI: Guidance on Board and Individual Director's Performance Evaluation

PART VII: Effective Date

PART I: PRELIMINARY

1.1 Title – Guideline on Corporate Governance

1.2 Authorization - This Guideline is issued under Section 33(4) of the Banking Act, which empowers the Central Bank of Kenya to issue Guidelines to be adhered to by institutions to maintain a stable and efficient banking and financial system.

1.3 Application - All institutions licensed under the Banking Act (Cap. 488) and Non-operating Holding Companies.

1.4 Definitions - Terms used in this Guideline are as defined in the Banking Act (Cap. 488). Other terms used in this Guideline shall be taken to have the meaning assigned to them hereunder:

1.4.1 ‘Act’ means the Banking Act (Cap 488).

1.4.2 ‘Board’ means the board of directors of an institution.

1.4.3 ‘Beneficial Owner’ means the natural person who ultimately owns or controls a legal person or arrangements or the natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person or arrangement.

1.4.4 ‘Compliance Function’ means a function reporting independently to the Board, or committee of the Board, that identifies, assesses, advises, monitors and reports on the institution’s compliance risk, which is the risk of legal or regulatory sanctions, financial loss, or loss to reputation an institution may suffer as a result of its failure to comply with all applicable laws, guidelines, codes of conduct and standards of good practice.

1.4.5 ‘Compliance Risk’ means the current or prospective risk to earnings and capital arising from violations or non-compliance with laws, rules, regulations, agreements, prescribed practices, or ethical standards, as well as from the possibility of incorrect interpretation of effective laws or regulations.

1.4.6 ‘Conflict of Interest’ refers to a situation in which a person has direct or indirect private or personal interest in a matter which is sufficient to directly or indirectly influence or has the potential to directly or indirectly influence the objective

exercise of his or her official or professional duties or the making of impartial judgment over the same or related matter.

1.4.7 ‘Corporate Governance’ involves the manner in which the business and affairs of an institution are governed by its board and senior management and provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined. Good corporate governance should provide proper incentives for the board and management to pursue objectives that are in the interests of the institution and its shareholders, facilitate effective monitoring and define how an institution:

- a) sets corporate objectives, including generating economic returns to owners;
- b) runs the day-to-day operations of the business;
- c) considers the interests of recognized stakeholders; aligns corporate activities and behaviors with the expectation that the institution will operate in a safe and sound manner, and in compliance with applicable laws and regulations;
- d) ensures implementation of robust corporate governance policies and processes commensurate with their risk profile and systemic importance; and
- e) protects the interests of depositors and other creditors.

1.4.8 ‘Director’ means an executive director or a non-executive director, unless expressly stated otherwise.

1.4.9 ‘Executive Director’ (ED) refers to a director who is involved in the day-to-day operations of the institution. The ED is a full-time salaried employee of the institution or of its subsidiaries. The ED is assigned day-to-day responsibilities and is accountable to the Managing Director or the Board of Directors depending on the institution’s organizational structure.

1.4.10 ‘Money Laundering Reporting Officer’ (MLRO) means a senior officer designated by an institution with responsibility for overseeing the institution's anti-money laundering (AML), counter-financing of terrorism (CFT), and counter-proliferation financing (CPF) compliance framework, including the receipt, review, and reporting of suspicious transaction reports to the competent authorities, and serving as the principal point of contact with regulatory and law enforcement authorities on AML/CFT/PF matters.

1.4.11 ‘Non-Executive Director’ means an individual not involved in the day-to-day management and not a full-time salaried employee of a banking institution or of its subsidiaries. An individual in the full-time employment of the bank holding

company would be considered to be a non-executive director of the institution's subsidiaries, unless such individual, by his / her conduct or executive authority, could be construed to directing the day-to-day management of the concerned subsidiaries.

1.4.12 'Independent Non-Executive Director' means a director who:

- a) has not been employed by the institution in an executive capacity within the last five years;
- b) is not associated to an advisor or consultant to the institution or a member of the institution's senior management or a major customer or supplier of the institution or with a not-for-profit entity that receives more than fifty percent (50%) of its contributions from the institution; or within the last five years, has not had any business relationship with the institution (other than service as a director);
- c) has no personal service contract(s) with the institution, or a member of the institution's senior management;
- d) is not a member of the family of any person described above or;
- e) has not had any of the relationships described above with any affiliate of the institution;
- f) does not have direct or indirect interest in the institution which exceeds five percent (5%) of its equity interest or its related companies;
- g) is not a direct or indirect representative of a significant shareholder. Indirect representation includes a nominee or an associate of a shareholder; and
- h) has not served for more than 9 years since they were first elected.
- i) A director previously nominated by a significant shareholder may only be regarded as independent after the expiry of the five-year period, provided that the director does not have a direct or indirect interest that could reasonably be perceived to impair the director's independence.

1.4.13 'Institution' means a bank or financial institution or a mortgage finance company.

1.4.14 'Material Information' means information whose omission or misstatement may reasonably influence the decision of an investor, shareholder, or such other person regarding the value or performance of an institution.

1.4.15 'Nominations and Compensation Committee' refers to a board committee responsible for all aspects of the appointment of an institution's directors and for overseeing the compensation system's design and operation on behalf of the Board of Directors. The committee should be chaired by an independent non-executive

director and should be constituted in a way that enables it to exercise competent and independent judgment on compensation policies and practices. Majority of the committee members should be independent non-executive directors with substantial knowledge about compensation arrangements. Its key responsibilities may include:

- a) Regular review of structure, size and composition of the board and make recommendations on any adjustments deemed necessary;
- b) Identify, nominate and recommend for the approval of the board, candidates to fill board vacancies as and when they arise;
- c) Satisfy itself with regard to succession planning, that processes and plans are in place with regard to both board and senior management appointments;
- d) To recommend the continuation (or not) in service of any director who has reached the institution's retirement age limit; and
- e) To attend to any other tasks that may be assigned by the board from time to time.

1.4.16 'Non-operating Holding Company' means a company, other than the institution, which has approved control of the institution.

1.4.17 'Senior Management' means a chief executive officer or any person who heads a significant unit in an institution.

1.4.18 'Senior Officer' has the same meaning as senior management and may be used interchangeably.

PART II: STATEMENT OF POLICY

2.1 Purpose

This Guideline is intended to provide the minimum standards required from shareholders, directors, chief executive officers, management and employees of an institution so as to promote proper standards of conduct and sound banking practices, as well as ensure that they exercise their duties and responsibilities with clarity, assurance and effectiveness. The broad principles, standards and requirements under this Guideline are aligned with international best practices on corporate governance.

This Guideline should not restrict or replace the proper judgment of the management and employees in conducting day-to-day business. Each institution is therefore required to formulate its own special policies (taking into account the institution's special needs and circumstances) on the duties, responsibilities and conduct of its directors, chief executive officers and

management. Institutions should ensure that they have implemented robust corporate governance policies and processes commensurate with their risk profile and systemic importance.

2.2 Scope

This Guideline applies to the duties, responsibilities and code of conduct for shareholders, directors, chief executive officers, management and employees of an institution.

2.3 Responsibility

The Board of Directors of each institution shall be responsible for formulating policies, procedures and guidelines, which ensure that:

- a) all directors, chief executive officers and management are made fully aware of their duties, responsibilities and code of conduct.
- b) all management decisions are made in accordance with prudent banking practices. The shareholders of each institution shall be responsible for the appointment of a competent and dedicated board of directors.

PART III: SOUND CORPORATE GOVERNANCE PRINCIPLES

3.1 Principle 1 - Ethical Leadership and Integrity

The board should provide effective leadership based on ethical foundations. Good corporate governance is essentially about effective, responsible leadership characterized by the ethical values of responsibility, accountability, fairness and transparency.

Specific Requirements

- 3.1.1** The board is responsible for ensuring that management actively cultivates a culture of ethical conduct and sets the values to which the institution shall adhere. The board should align its conduct and the conduct of management with the values that drive the institution's business and ensure these values are incorporated in a code of conduct and adhered to in all aspects of its business.
- 3.1.2** The board should ensure that integrity permeates all aspects of the institution and its operations and that the institution's vision, mission and strategic objectives are ethically sound. The manner in which the institution conducts its internal and external affairs should be beyond reproach.

3.1.3 The board is responsible for considering the legitimate interests and expectations of the institution's stakeholders in its deliberations, decisions and actions. The following four ethical values underpin good corporate governance:

- a) **Responsibility:** The board should assume responsibility for the assets and actions of the institution and be willing to take corrective actions to keep the institution on a strategic path that is ethical and sustainable.
- b) **Accountability:** The board should be able to justify its decisions and actions to shareholders and other stakeholders.
- c) **Fairness:** The board should ensure that it gives fair consideration to the legitimate interests and expectations of all stakeholders of the institution.
- d) **Transparency:** The board should disclose information in a manner that enables stakeholders to make an informed analysis of the institution's performance and sustainability.

3.1.4 As a steward of the institution, each director should also discharge the following key moral duties:

- a) **Conscience:** A director should act with intellectual honesty and independence of mind in the best interests of the institution and all its stakeholders, in accordance with the inclusive stakeholder approach to corporate governance. Conflicts of interest should be avoided.
- b) **Inclusivity** of stakeholders is essential to achieving sustainability and the legitimate interests and expectations of stakeholders must be taken into account in decision-making and strategy.
- c) **Competence:** A director should have the knowledge and skills required for governing an institution effectively. This competence should be continually developed.
- d) **Commitment:** A director should be diligent in performing his duties and devote sufficient time to institution affairs. Ensuring institution performance and compliance requires unwavering dedication and appropriate effort.
- e) **Courage:** A director should have the courage to take the risks associated with directing and controlling a successful, sustainable institution and the courage to act with integrity in all board decisions and activities.

3.1.5 The board should ensure that the company's ethical standards (as stated in the code of conduct and related policies) are integrated into all the institution's strategies and operations. The code of conduct should be supplemented by several ethics-related policies that provide detailed guidelines for dealing with specific issues which would adversely impact or influence the market or dent the reputation of the institution such as engaging in manipulative trading and unfair business practices.

3.1.6 The board should:

- (a) ensure that personal data is processed lawfully, and in a transparent manner;
- (b) ensure that it supports the ethical and responsible use of Artificial Intelligence;
- (c) ensure that it sets up whistleblowing channels and protects anonymous tipsters in the governance structure; and
- (d) protect its staff and stakeholders from discriminatory practices and prevent unsafe health and safety practices in the workplace.

3.1.7 The board should immediately notify the Central Bank of any material information that comes to their knowledge, that may impact on the fitness and propriety of a senior officer, director or shareholder, who was previously cleared by the Central Bank.

3.2 Principle 2 - Responsibilities of Shareholders

Shareholders of banking institutions shall jointly and severally protect, preserve and actively exercise the supreme authority of the institution in general meetings. They have a duty, jointly and severally, to exercise that supreme authority.

Specific Requirements

- 3.2.1** To the extent that the duty is vested in general meetings, the shareholders must ensure that only competent persons who can add value to the institution's banking business are elected or appointed to the board of directors;
- 3.2.2** No shareholder with more than five percentage (5%) or more of the shareholding in an institution shall be appointed as an executive director or form part of the management of the institution or institution's holding company.
- 3.2.3** Shareholders must ensure that, in general meetings and related forums, the board is constantly held accountable and responsible for the efficient and effective governance of the banking institution. In the event that the board of directors does not perform to expectation or in accordance with the mandate of the institution, shareholders are expected to take appropriate action to change the composition of the board.
- 3.2.4** Shareholders are expected to ensure that the institution applies to Central Bank for approval in the following circumstances, with respect to shareholding of financial institutions:
- Transfer of existing shareholding of 5 percent or more of an institution's share capital;

- Acquisition of 5 percent or more of the share capital of an institution where there is fresh capital injection, or from existing shareholders;
- Takeover bids involving the transfer of 50 percent or more of the institution's share capital.
- Mergers and acquisitions involving the institution.

It is similarly the institution's responsibility to ensure that the above approvals relating to significant shareholders are obtained from the Central Bank before allotment of shares. The applications relating to significant shareholders should include forms containing details of significant shareholders as specified in the form CBK/IF1-3 annexed to Guideline No. CBK/PG/01 on Licensing of New Institutions.

Accordingly, the shareholders should ensure that the institution discloses its shareholding structure all the way to the ultimate beneficial owner level. This disclosure will enable the Central Bank to identify corporate transferees, including the beneficial owners who should be vetted by virtue of indirect significant shareholding in the institution.

3.3 Principle 3 - Overall responsibilities of the Board

The board has overall responsibility for the institution, including approving and overseeing the implementation of the bank's strategic objectives, risk strategy, corporate governance and corporate values. The board shall conduct adequate oversight of senior management.

Specific Requirements

3.3.1 Board Charter

The Board of Directors (BOD) of every institution is required to formulate a Board Charter that outlines, among others, the principal role of the BOD, the demarcation of the roles, functions, responsibilities and powers of the board, various Board Committees and matters reserved for final decision-making or pre-approval by the board; and the policies and practices of the board in respect of matters such as conflicts of interest and convening of board meetings. The charter should require all directors to declare any interest that may give rise to a potential or perceived conflict including multiple directorships, business relationships or other circumstances that could interfere with exercise of objective judgment. It should define the policy on directorships in other entities by board members and the terms/tenure limits for board members where applicable.

The Charter should define the specific responsibilities of the BOD, to enhance coordination and communication between the Chief Executive and the board and more specifically, to clarify both Board and Management accountability for the benefit of the institution, its shareholders and other stakeholders. The roles of the Chairman of the Board and the Chief Executive Officer should be clearly outlined and demarcated in the charter.

3.3.2 Regulating the manner in which the business is conducted

The board must provide clear objectives and policies within which senior executive officers are to operate. These should cover all aspects of operations, including strategic planning, credit administration and control, asset and liability management encompassing the management of liquidity risk, interest rate risk and market risk, accounting and internal control systems, service quality, automation plan, prevention of money laundering, profit planning and budgeting, adequacy of capital, and human resource development. Clear lines and limits of authority for all levels of staff should be established. The seriousness of infringing on the authorized limits should be emphasized to staff at all levels.

A vital part of the responsibilities of directors is to formulate the future direction of the institution of which planning, organizing, and controlling, are three fundamental functions. Sound planning is of vital importance, and as such projections/targets must be periodically reviewed and amended as circumstances dictate.

3.3.3 Attend board meetings regularly

(a) Board Attendance

Every director has a duty to attend board meetings regularly and to effectively participate in the conduct of the business of the board. Every member of the board should attend at least seventy-five percent (75%) of the board meetings of an institution in any financial year. The Board shall adopt and maintain documented policies and procedures governing attendance at board meetings, including the acceptable modes of participation. This is to ensure every board member discharges his or her duties and responsibilities effectively.

(b) Modes of Board Meetings

Board meetings may be conducted in person, virtually, or in a hybrid format, or through such other method as may be allowed or prescribed by the Central Bank or upon

application by the institution. The institution shall implement appropriate controls to ensure compliance with the requirements and recommendations of this Guideline.

The board shall ensure that virtual or hybrid meetings are supported by appropriate governance, technology, security, and recordkeeping controls to enable effective participation, deliberation, oversight, and decision-making. The institution shall periodically assess the effectiveness of such arrangements and ensure that the format of board meetings is commensurate with the nature, significance, and risk profile of the matters under consideration.

3.3.4 Be informed about the business condition of the institution

Since the directors are jointly and severally responsible for the effective supervision of the affairs of the institution, they should be informed on a regular basis of the business condition of the institution. For the purpose of deliberating this information and providing guidance to the management, the board should meet regularly, preferably at least once in a quarter.

In addition, the board and each director should exercise independent judgment in evaluating the performance of the management. This could be enhanced by the provision of independent reviews of the operations by third parties such as external auditors, internal auditors, audit committees and other experts reporting directly to the board.

3.3.5 Observe Laws and guidelines

The board should ensure cognizance is taken by management and themselves of all applicable laws and guidelines, and systems to effectively monitor and control their compliance. This will likely include provisions for training of personnel in these matters and, when violations do occur, ensure compliance immediately. It is a duty inherent with the office of directors (or management) to know the laws and guidelines, and to ensure that compliance of all laws and guidelines receives the highest priority, and violations are not knowingly committed by themselves or by anyone in their employment.

Every director should be conversant with the provisions of the Banking Act, Central Bank of Kenya Act and any guideline issued hereunder or other relevant laws and guidelines. Directors should also review the institution's Central Bank's inspection reports and audit reports and also ensure implementation of any recommendations made. The board should ensure that the rights of minority shareholders are protected from any adverse actions by the controlling shareholders.

3.3.6 Organizational Structure

The board should ensure that the bank's organizational structure facilitates effective decision making and good governance. This should include setting and enforcing lines of responsibility and accountability throughout the organization, which define clearly the key responsibilities and authorities of the board itself, as well as of senior management and the control functions.

3.3.7 Oversight of Senior Management

It is the duty of the Board of Directors to define the duties of management and appoint those persons who are competent, qualified and experienced to administer the institution's affairs effectively and soundly. It is also the responsibility of the Board to dispense with the services of staff considered undesirable pursuant to any written law. In providing oversight of senior management the board should:

- a) select and, where necessary, replace senior management and have in place an appropriate plan for succession;
- b) monitor that senior management's actions are consistent with the strategy and policies approved by the board, including the risk tolerance/appetite;
- c) meet regularly with senior management;
- d) question and review critically explanations and information provided by senior management;
- e) set formal performance standards for senior management consistent with the long-term objectives, strategy and financial soundness of the bank, and monitor senior management's performance against these standards.

3.3.8 Policies, Processes and Controls

The board should regularly review policies, processes and controls with senior management and/or internal control functions (including internal audit, risk management and compliance) in order to determine areas needing improvement, as well as to identify and address significant risks and issues. The frequency of the review should be clearly stated in the institution's own policies. The board should ensure that the control functions are properly positioned, staffed and resourced and are carrying out their responsibilities independently and effectively.

3.3.9 Corporate values and code of conduct

The board should ensure that appropriate steps are taken to communicate throughout the bank the corporate values, professional standards or codes of conduct it sets, together with supporting policies and procedures. In doing so the board should ensure:

- a) The institution's code of conduct, or comparable document, articulates acceptable and unacceptable behaviors. It is especially important that such a document disallows behavior that could result in the bank engaging in any improper or illegal activity, such as money laundering, fraud, bribery or corruption. It should also discourage excessive risk-taking activities.
- b) The institution's corporate values recognize the critical importance of timely and frank discussion and elevation of problems to higher levels within the organization. Communication should be allowed to be channeled to the board - directly or indirectly (e.g. through an independent audit or compliance process or through an ombudsman) - and independent of the internal "chain of command".

3.3.10 Maintain Positive Image

It is the duty of the directors to ensure that the institution maintains a positive image within the industry and the economy as a whole. To this extent, therefore, the institution is expected to provide adequate services and facilities both efficiently and competitively in line with safe and sound banking practices.

In discharging their responsibilities, the board should take into account the legitimate interests of shareholders, depositors and other relevant stakeholders. It should also ensure that the bank maintains an effective relationship with its supervisors.

3.4 Principle 4 - Role and competence of Board members

Board members should be and remain qualified, including through training and Continuous Professional Development (CPD), for their positions. They should have a clear understanding of their role in corporate governance and be able to exercise sound and objective judgment about the affairs of the bank.

Specific Requirements

- 3.4.1** No director shall take up his/her position prior to being cleared by the Central Bank. The Institution shall submit to the Central Bank duly completed form CBK/IF 1-2 annexed to Guideline No. CBK/PG/01 on Licensing of New Institutions.
- 3.4.2** Institutions shall obtain the prior approval of the Central Bank before appointing the Chairperson of the Board. The Institution shall submit to the Central Bank a duly

completed form CBK/IF 1-2 annexed to Guideline No. CBK/PG/01 on Licensing of New Institutions.

- 3.4.3** The requirement to obtain Central Bank approval for the appointment of a Chairperson applies even when the proposed nominee is serving as a Non-Executive Director previously approved by the Central Bank.
- 3.4.4** The board Chairperson should be an Independent Non-Executive Director.
- 3.4.5** The board should possess, both as individual board members and collectively, appropriate experience, competencies and personal qualities, including professionalism and personal integrity.
- 3.4.6** To ensure objective judgment about the affairs of an institution, the following individuals are not eligible to be appointed as directors:
 - a) Professionals (e.g. lawyers, accountants and valuers) involved in the provision of professional services to the relevant institution;
 - b) Senior officers and non-executive directors of a government regulatory body where there may be a conflict of interest.
- 3.4.7** The board collectively should have adequate knowledge and experience relevant to each of the material financial activities the bank intends to pursue in order to enable effective governance and oversight. Examples of areas where the board should seek to have, or have access to, appropriate experience or expertise include finance, accounting, strategic planning, communications, governance, risk management, bank regulation, auditing and compliance.
- 3.4.8** In order to help board members acquire, maintain and deepen their knowledge and skills and to fulfill their responsibilities, the board should ensure that board members have access to programmes of tailored initial training (e.g. induction) and Continuous Professional Development (CPD) on relevant issues. Directors who have acquired professionally recognized CPD (locally or internationally) can be considered to have met the CPD requirements. The board should dedicate sufficient time, budget and other resources for this purpose.
- 3.4.9** The Chief Executive Officer is required to report to the Central Bank of Kenya on an annual basis the CPD programmes in which the board members participated in together with the board members annual evaluations as required under Part VI of this Prudential Guideline.

3.4.10 Board Composition

- i. The Companies Act (Cap 486) of the Laws of Kenya provides for the appointment of a minimum of one director for every company incorporated under the Act. However, due to the special nature of deposit-taking institutions which gives them an added responsibility of safeguarding the interests of the depositors, the Central Bank requires all institutions licensed under the Banking Act, to have at least seven directors. To be effective, the board must have an appropriate number of directors that are commensurate with the complexity, the size, the scope and operations of the institution.
- ii. Every board should consider whether its size, diversity and demographics make it effective. Diversity applies to academic qualifications, technical expertise, relevant banking knowledge, experience, nationality, age and gender. Every institution is required to submit an annual report to the Central Bank highlighting the initiatives taken to ensure that the board is properly constituted and is appropriately diverse. The report should be submitted together with the board members' annual evaluations as required under Part VI of this Prudential Guideline.
- iii. Foreign-owned locally incorporated institutions are required to have local representation on the board.
- iv. The board should be composed of both Executive and Non-Executive Directors with the Chief Executive being one of the board members. The non-executive directors should not be less than three-fifths of the directors in order to enhance accountability in the decision-making process. Non-executive directors could mitigate any possible conflict of interest between the policy-making process and the day-to-day management of the institution.
- v. Independent non-executive directors should constitute not less than a third (1/3) of the total members of the board. An independent non-executive director loses their independence after serving for longer than nine years. Independent non-executive directors should provide the necessary checks and balances on the board of the institution to ensure that the interests of minority shareholders and general public are given due consideration in the decision-making process.
- vi. In identifying potential board members, the board through the Board Nomination and Compensation Committee should ensure that the candidates are qualified to serve as board members and are able to commit the necessary time and effort to fulfill their responsibilities. Serving as a board member or senior manager of a company that competes or does business with the bank can compromise board independent judgment, as can cross-membership of boards.

- vii. No person shall be permitted to hold the position of a director in more than two institutions licensed under the Banking Act unless the said institutions are associates, subsidiaries or holding companies. This rule shall not apply to government bodies represented in institutions' boards by virtue of their position as shareholders.
- viii. Shareholders are ultimately responsible for the composition of the board and it is in their own interests to ensure that the board is properly constituted from the viewpoint of skill and diversity. Procedures for appointments to the board should be formal, transparent and incorporate the following aspects;
 - (a) the reasons for the removal, resignation or retirement of directors;
 - (b) the composition of the board and board committees and the number of meetings held, attendance at those meetings and the manner in which the board and its committees have discharged its duties;
 - (c) the education, qualifications and experience of the directors;
 - (d) the length of service and age of the directors; and
 - (e) any other relevant information.
- ix. Occasionally, a person may act as an alternate to a director of an institution. The "alternate directors" have all the obligations imposed on the primary directors and shall therefore be subject to the approval requirement as outlined in 3.4.1 above.

3.5 Principle 5 - Board's Governance practices

The board should define appropriate governance practices for its own work and have in place the means to ensure such practices are followed and periodically reviewed for improvement.

Specific Requirements

3.5.1 Role of the chair

- a) The chair of the board plays a crucial role in the proper functioning of the board. He or she provides leadership to the board and is responsible for the board's effective overall functioning. To achieve appropriate checks and balances, the chair of the board must be an Independent Non-Executive Director.
- b) The chair should ensure that board decisions are taken on a sound and well-informed basis. He or she should encourage and promote critical discussion and ensure that dissenting views can be expressed and discussed within the decision-making process.
- c) The Chair should also ensure:
 - the smooth functioning of the board, the governance structure and inculcating positive culture in the board;

- guidelines and procedures are in place to govern the board's operation and conduct;
 - all relevant issues are on the agenda for board meetings and board papers and all directors are able to participate fully in the board's activities;
 - the board debates strategic and critical issues;
 - the board receives the necessary information on a timely basis from the management;
 - avenues are provided for all directors to participate openly in the discussion; and that he provides leadership to the board and is responsible for the developmental needs of the board.
- d) The institution should apprise CBK when the chair vacates office within 7 days after his / her departure and the reasons for the exit should be disclosed.

3.5.2 Board Committees

i. Specific requirements

- (a) To increase efficiency and allow deeper focus in specific areas, the board shall establish specialized board committees; however, the board remains accountable. The number and nature of committees depends on many factors, including the size of the bank and its board, the nature of the business areas of the bank, and its risk profile. However, the Board Audit Committee, Board Risk Management Committee, Board Credit Committee and Board Nomination and Compensation Committee are mandatory.
- (b) Each committee should have a charter or other instrument that sets out its mandate, scope and working procedures. In the interest of greater transparency and accountability, a board should disclose the committees it has established, their mandates, and their composition (including members who are considered to be independent). To avoid undue concentration of power and to promote fresh perspectives, it may be useful to consider occasional rotation of membership and chairmanship of such committees. The Board Chairperson shall not be a member of any mandatory board committee.
- (c) There should be a formal procedure for certain functions of the board to be delegated, describing the extent of such delegation, to enable the board to properly discharge its duties and responsibilities and to effectively execute its decision-making process.
- (d) Board committees should be free to take independent professional advice as and when necessary, and to invite Senior Management to provide technical advice when needed.

- (e) The board shall not delegate any matters to a board committee, chief executive officer, executive directors or key management personnel, to an extent that such delegation would significantly hinder or reduce the ability of the board as a whole to discharge its functions.
- (f) A board may consider occasional rotation of membership and chairmanship of such committees to avoid undue concentration of power and to promote fresh perspectives.

ii. Board Audit Committee (BAC)

a. Objective

To provide independent oversight of the institution's financial reporting and internal control system, ensure checks and balances within the institution are in place and to recommend appropriate remedial action regularly.

b. Composition

To enhance independence and effectiveness of the BAC, the composition and structure of the committee should meet the following requirements;

- The committee shall comprise at least three members, all of whom shall be non-executive directors;
- Majority of the members should be independent non-executive directors;
- The committee should be chaired by an independent director;
- The Board Chairperson shall neither be a member of nor chair the BAC, but may be invited to attend meetings by the chairperson of the committee, where deemed necessary;
- Alternate directors should not be appointed as members of BAC.
- At least one member should have accounting expertise or experience in the field of finance and be a member of the Institute of Certified Public Accountants of Kenya (ICPAK) or an equivalent institute recognized by the East Africa Community member states, or an equivalent international institute recognized by ICPAK.

The BAC may invite the Chief Executive or any other member to attend the meetings occasionally, for consultation only. However, the committee should meet with the external and internal auditors at least once a year without management being present. These may be separate meetings or meetings held before or after a scheduled audit committee meeting.

The BAC is required to hold regular meetings, at least **once every quarter** and should report regularly to the full board.

The external and internal auditors of a banking institution should have free access to BAC. The auditors should be allowed to attend and be heard at any meeting of BAC. Upon the request of the auditors, the BAC Chairperson should convene a meeting to consider any matter that auditors believe should be brought to the attention of directors or shareholders.

c. Roles and Responsibilities

- i. Ensure establishment of a permanent internal audit function. In fulfilling its duties and responsibilities, the board and senior management should take all the necessary measures to ensure that the institution has a permanent internal audit function commensurate with its size, nature and complexity of its operations.
- ii. Ensure that senior management establishes and maintains an adequate, effective and efficient internal control framework and internal audit function.
- iii. Have explicit authority to investigate any matter within its terms of reference, full access to and co-operation by management.
- iv. Have full and unrestricted access to information and be able to obtain independent professional advice.
- v. Ensure that the accounts are prepared in a timely and accurate manner to facilitate prompt publication of annual accounts.
- vi. Review internal controls, including the scope of the internal audit programme, the internal audit findings, and recommend action to be taken by management.
- vii. Review internal audit reports and their overall effectiveness, the scope and depth of audit coverage, reports on internal control and any recommendations, and confirm that appropriate action has been taken.
- viii. Review coordination between the internal audit function and external auditors.
- ix. Nominate external auditors for appointment by shareholders.
- x. Review and monitor the external auditors' independence and objectivity, taking into consideration relevant professional and regulatory requirements.
- xi. Review with the external auditors, the scope of their audit plan, system of internal audit reports, assistance given by management and its staff to the auditors and any findings and actions to be taken.
- xii. Review management reports and reports from external auditors concerning deviations and weaknesses in accounting and operational controls.
- xiii. Review the institution's audit plan, with specific reference to the procedures for identifying regulatory risks and controlling their impact on the institution, including reviewing correspondence from regulatory authorities and management's responses.
- xiv. Consider any matter of significance raised at the risk management committee meetings.

- xv. Monitor the ethical conduct of the institution and consider the development of ethical standards and requirements, including effectiveness of procedures for handling and reporting complaints.
- xvi. Review any related party transactions that may arise within the banking institution.
- xvii. The audit committee should play a key role in ensuring that the company's internal audit function is independent and has the necessary resources, budget, standing and authority to enable it to discharge its functions effectively.
- xviii. Regardless of whether internal audit activities are outsourced, the board of directors remains ultimately responsible for ensuring that the system of internal control and the internal audit function are adequate and operating effectively.
- xix. In a group structure, the board of directors and senior management of the parent institution have the overall responsibility for ensuring that an adequate and effective internal audit function is established across the group and for ensuring that internal audit policies and mechanisms are appropriate to the structure, business activities and risks of all of the components of the group.
- xx. The audit committee should be responsible for the performance assessment of the Head of Internal Audit. Additionally, the committee should be consulted on the appointment and dismissal of the internal auditor.
- xxi. The audit committee should approve the internal audit plan, as well as oversee staffing and objectives of the internal audit function.

iii. Board Credit Committee (BCC)

a. Objective

To assist the board of directors in reviewing and overseeing the overall lending of the institution.

b. Composition

The board shall determine the composition of the BCC which should be guided by the skill and experience of the directors. However, to enhance independence and objectivity of the BCC, institutions are required to appoint an independent non-executive director as the chairperson of the BCC. The chairman of the institution's board should not chair the Board Credit Committee but can be included as a member.

c. Roles and Responsibilities

- (i) Review and oversee the overall lending policy of the banking institution;

- (ii) Deliberate and consider loan applications beyond the discretionary limits of the Credit Risk Management Committee;
- (iii) Review lending by the Credit Risk Management Committee;
- (iv) Ensure that there are effective procedures and resources to identify and manage irregular problem credits, minimize credit loss and maximize recoveries;
- (v) Direct, monitor, review and consider all issues that may materially impact on the present and future quality of the institution's credit risk management;
- (vi) Delegate and review lending limits to the sanctioning arms of the institution;
- (vii) Assist the board with discharging its responsibility to review the quality of the banking institution's loan portfolio, and ensuring adequate provisions for bad and doubtful debts in compliance with requirements of the prudential guidelines.
- (viii) Conduct loan reviews independent of any person or committee responsible for sanctioning credit; and
- (ix) Ensure that the credit policy and risk lending limits are reviewed at least on an annual basis and as and when the environment so dictates;

iv. Board Risk Management Committee (BRMC)

a. Objective

The responsibility to ensure quality, integrity and reliability of the institution's risk management shall be delegated to the BRMC. The Committee shall assist the board of directors in the discharge of its duties relating to the corporate accountability and associated risks in terms of management, assurance and reporting.

b. Composition

The Board Risk Management Committee shall comprise mainly non-executive directors and should be chaired by an independent non-executive director.

c. Roles and Responsibilities

- i. The committee shall review and assess the integrity of the risk control systems and ensure that the risk policies and strategies are effectively managed.
- ii. The committee shall set out the nature, role, responsibility and authority of the risk management function with the banking institution and outline the scope of risk management work.
- iii. The committee shall monitor external developments relating to the practice of corporate accountability and the reporting of specifically associated risk, including emerging and prospective impact. The committee shall provide

- independent and objective oversight and review of the information presented by management on corporate accountability and specifically associated risk, also taking account of risk concerns raised by management in the Audit Committee, Asset and Liability Committee meetings on financial, business and strategic risk.
- iv. The committee, in carrying out its task under these terms of reference, may obtain such outside or other independent professional advice as it considers necessary to carry out its duties. The Executive Committee will ensure that the committee will have access to professional advice both inside and outside of the banking institution in order for it to perform its duties.
 - v. The risk management function shall have access to any information it needs to fulfill its responsibilities.

v. Board Nominations and Compensation Committee (BNCC)

a. Objectives

To ensure that the institution is governed by a fit and competent Board and senior management, supported by fair, transparent, performance-linked, and risk-aligned remuneration structures that promote sound governance and long-term sustainability.

b. Composition

The committee should be constituted in a way that enables it to exercise competent and independent judgment on compensation policies and practices. Majority of the compensation committee members should be independent non-executive directors with substantial knowledge about compensation arrangements.

c. Roles and Responsibilities

- i. regular review of structure, size and composition of the board and make recommendations on any adjustments deemed necessary;
- ii. identify, nominate and recommend for the approval of the board, candidates to fill board vacancies from time to time;
- iii. oversee the compensation system's design and operation on behalf of the Board;
- iv. exercise competent and independent judgment on compensation policies and practices;
- v. recommend for the approval of the board, appointment of trustees of group entities;
- vi. satisfy itself on succession planning, that processes and plans are in place with regard to both board and senior management appointments;

- vii. recommend the continuation or discontinuation in service of any director who has reached the institution's retirement age limit;
- viii. lead the overall performance evaluation of the board and board committees with the assistance of the Company Secretary;
- ix. overseeing the compensation system's design and operation on behalf of the Board of Directors; and
- x. attend to any other tasks that may be assigned by the board from time to time.

3.5.3 The Board and Director Evaluation

The Board through its nomination committee, similar board committee or an independent service provider shall regularly review its required mix of skills and experience and other qualities in order to assess the effectiveness of the board. Such review shall be by means of peer and self-evaluation of the board as a whole, its committees and the contribution of each and every director, including the Chairman. Assistance from external facilitators in carrying out board assessments can contribute to the objectivity of the process. Where the board has serious reservations about the performance or integrity of a board member, the board should take appropriate actions.

The evaluations for the board, board committees and the individual directors shall be conducted annually and the fact that it has been done should be disclosed in the annual report. The Chief Executive Officer / Managing Director shall submit a report, including the peer and self-evaluations to the Central Bank of Kenya annually on the board and directors' evaluations and effectiveness. Board and peer evaluation shall be based on the guidance provided in the attached Board Evaluation Form CBK/PG/19/F1 and Individual Director Evaluation Form CBK/PG/19/F2 of this guideline, respectively. The report shall be submitted by 31st March of the following year.

3.5.4 Board and Committee evaluation

- Effective and meaningful evaluation is only possible once the board has determined its own role, functions, duties and performance criteria as well as those for directors on the board and on board committees.
- The board should carefully consider whether the evaluations of performance and independence should be done in-house or conducted by independent service providers or other criteria that may be prescribed by CBK. Evaluation procedures and results should be reviewed by the nomination committee or such similar committee of the board.
- The Chairman, through the nominating committee, may lead the overall performance evaluation of the board and board committees with the assistance of the Company

Secretary. However, independent performance appraisals should be considered in the interest of eliciting candid responses. The board should discuss the board evaluation results at least once a year.

3.5.5 Individual Director Evaluation

- The same principles adopted in the evaluation of the board should be applied when evaluating the board chairman and individual directors.
- A director's contribution to the board should be measured against his / her duties. The nomination for re-appointment of a director at the AGM should not be an automatic process and should only occur after the proper evaluation of the performance and attendance of the director in question.
- Evaluations should be led by the Chairman through the nominating committee, or by an independent service provider. The Chairman should ensure that directors know that they will be subject to evaluation, and understand the criteria used for evaluation, and the evaluation procedures that will be followed.
- Should a deficiency in a director's performance be identified, a plan should be developed and implemented for the director to acquire the necessary skills or to develop appropriate behavioral patterns. The director's evaluation should be approached in an open, constructive and non-confrontational manner.
- The board should appoint or elect an independent non-executive director from within its ranks to lead the process of the evaluation of the Chairman's performance if an independent service provider is not used.

3.5.6 Conflicts of Interest

- i. Persons empowered with decision-making authority (including directors) should exercise care to avoid situations that may give rise to a conflict of interest situation. The Code of Conduct as detailed under Part IV of this Guideline must strictly be observed.
- ii. The board should establish procedures to address conflicts of interest and should ensure that senior management implement policies to identify, prevent or appropriately manage and disclose potential conflicts of interest situations that may arise. Such policies should ensure that an institution's activities that may give rise to conflicts of interest are carried out with sufficient degree of independence from each other.

This could be done by, for example, ensuring appropriate segregation of duties so that employees are not assigned potentially conflicting responsibilities, providing for

separate reporting lines and internal controls and establishing information barriers between different activities.

Appropriate cooling off period should be included for persons who previously served as executive directors, chief executive officers, or otherwise held a controlling interest in the institution, amongst others to prevent any potential conflict of interest. This should be pursuant to a board approved policy.

- iii. The board should appoint or select one of the independent directors to chair the board meetings which deal with the succession of the Chairperson, the Chairperson's performance appraisal and when the Chairperson has conflict of interest. Where board members have an interest in a matter, they should be excluded from discussions on the said matter to ensure that the matter is objectively dealt with.

3.5.7 Controlling shareholders

Where there are controlling shareholders with power to appoint board members, the board should exercise corresponding caution. In such cases, it is useful to bear in mind that the board members have responsibilities to the shareholders and the bank. In cases where there are board members appointed by a controlling shareholder, the board may wish to set out specific procedures or conduct periodic reviews to ensure the appropriate discharge of responsibilities by all board members.

3.5.8 Resignation / Removal of Directors

It will be the responsibility of the Board of Directors to report to the Central Bank of Kenya, the resignation and/ or removal of any of its members (either executive or non-executive directors) within seven days of the date of resignation. The board should disclose the reasons for the removal, resignation or retirement of directors.

3.6 Principle 6 - Corporate Governance in a Group structure

In a group structure, the board of the parent company has the overall responsibility for adequate corporate governance across the group and ensuring that there are governance policies and mechanisms appropriate to the structure, business and risks of the group and its entities. The board shall ensure that the policies prevent potential intra-group conflicts of interest and require all actual or perceived conflicts to be identified, disclosed, and appropriately managed.

Specific Requirements

3.6.1 Subsidiary / Group Relationship

The board of a regulated banking subsidiary at the legal entity level should adhere to the same corporate governance principles as those expected for its parent company in the absence of other legal requirements or reasons of proportionality. However, the group dimension is likely to affect to a certain extent the corporate governance structure of both parent and subsidiaries, and therefore boards should pay attention to how to apply the principles, including taking in consideration the following points;

3.6.2 Board of Parent Company

- (i) In the discharge of its corporate governance responsibilities, the board of the parent company should be aware of the material risks and issues that might affect both the bank as a whole and its subsidiaries. It should therefore exercise adequate oversight over subsidiaries, while respecting the independent legal and governance responsibilities that might apply to regulated subsidiary boards.
- (ii) In order to fulfill its corporate governance responsibilities, the board of the parent company should:
 - a) establish a governance structure which contributes to the effective oversight of subsidiaries and which takes into account the nature, scale and complexity of the different risks to which the group and its subsidiaries are exposed;
 - b) set and approve a corporate governance policy at the group level for its subsidiaries, which includes the commitment to meet all applicable governance requirements;
 - c) ensure that the group's corporate governance framework includes appropriate processes and controls to identify and address potential intragroup conflicts of interest, such as those arising from intragroup transactions;
 - d) defines the strategy and risk appetite of the group, and ensures the strategy is implemented and executed in the various entities, both regulated and unregulated;
 - e) ensure that enough resources are available for each subsidiary to meet both group standards and local governance standards;
 - f) have appropriate means to monitor that each subsidiary complies with all applicable governance requirements;
 - g) establish an effective internal audit function that ensures audits are being performed within or for all subsidiaries and part of the group and group itself; and

- h) has and implements an appropriate remuneration policy that is consistent with internationally agreed standards as well as with its risk profile.

3.6.3 Board of Regulated Subsidiary

The board of a regulated banking subsidiary should retain and set its own corporate governance responsibilities and should evaluate any group-level decisions or practices to ensure that they do not put the regulated subsidiary in breach of applicable legal or regulatory provisions or prudential rules. The board of the regulated banking subsidiary should also ensure that such decisions or practices are not detrimental to:

- a) the sound and prudent management of the subsidiary;
- b) the financial health of the subsidiary; or
- c) the legal interests of the subsidiary's stakeholders.

3.6.4 Local Committees

- (i) An unincorporated branch of a foreign institution shall establish a local board of directors in Kenya, also referred to as a local committee as part of its governance model.
- (ii) An unincorporated branch of a foreign institution shall have a local representation on the board.
- (iii) The responsibilities of a local committee shall include to—
 - (a) critically evaluate and endorse the strategies and policies of the head office before they are adopted locally to ensure that they adhere to Kenyan laws, the company's Articles and its policies;
 - (b) discuss, evaluate and provide input on strategies and policies to suit the local environment and circumstances;
 - (c) deliberate and approve major issues and decisions affecting its operations in Kenya;
 - (d) make independent decisions to meet its own legal and governance responsibilities in Kenya; and
 - (e) assume all other responsibilities of the Board of Directors as specified in this Guideline.
- (iv) A locally unincorporated branch of a foreign institution shall, for the avoidance of doubt, ensure that the composition of a local committee complies with the requirements for the composition of a board under these guidelines.

- (v) Without prejudice to the generality of paragraph (3), the local committee of an unincorporated branch of a foreign institution shall, at a minimum, comprise at least—
 - a) seven members who shall be a mix of executive and non-executive directors;
 - b) majority of the members who shall be non-executive directors;
 - c) the Chairperson of the Board shall be an independent non-executive director; and
 - d) one-third of the members who shall be independent non-executive directors.
- (vi) The local committee of an unincorporated branch of a foreign institution shall not comprise wholly of executive directors or senior management or heads of significant business units, however referred to.
- (vii) The roles and responsibilities of the local committee and the senior management are separate and distinct to establish the requisite independence and mitigate any potential conflict of interest.
- (viii) The local committee of an unincorporated branch of a foreign institution shall be required to establish the mandatory committees as required in this Guideline.

3.6.5 Locally Incorporated Subsidiaries of Foreign Institutions

- (i) A locally incorporated subsidiary of a foreign institution shall be required to establish a board, by whatever name, which will be subject to the requirements in Part III of this Guideline. The local board shall be required to evaluate and ensure they endorse strategies and policy initiatives made by the foreign institution which are in accordance with the laws of Kenya, and these guidelines. Moreover, a locally incorporated subsidiary of a foreign institution shall have local representation in the board.
- (ii) Without prejudice to the generality of paragraph (3), the board of a locally incorporated subsidiary of a foreign institution shall, at a minimum, comprise at least—
 - a) seven members who shall be a mix of executive and non-executive directors;
 - b) majority of the members who shall be non-executive directors;
 - c) the Chairperson of the Board shall be an independent non-executive director; and

- d) one-third of the members who shall be independent non-executive directors.
- (iii) The Board of a locally incorporated subsidiary of a foreign institution shall not comprise wholly of executive directors or senior management or heads of significant business units, however referred to.
- (iv) The roles and responsibilities of the Board and the senior management are separate and distinct to establish the requisite independence and mitigate any potential conflict of interest.
- (v) The Board of a locally incorporated subsidiary of a foreign institution shall be required to establish the mandatory committees as required in this Guideline.
- (vi) The institution to comply with the requirements of the Board of Directors as set out in this Guideline. Adhere to the mandatory committee requirements and define a clear reporting structure for the CEO and Senior Management.

3.7 Principle 7 – Senior Management

Under the direction of the board, senior management should ensure that the bank's activities are consistent with the business strategy, risk tolerance/appetite and policies approved by the board.

Specific Requirements

- 3.7.1** Senior management consists of senior officers who are responsible and should be held accountable for overseeing the day-to-day management of the bank. They include the chief executive officer, the executive director, deputy chief executive officer (where applicable), general manager (s), chief risk officer, chief operating officer, chief financial officer, secretary to the board of directors, treasurer, chief internal auditor, or manager of a significant unit of an institution.
- 3.7.2** Institutions are required to set up management committees to support its decision making structures, increase efficiency and allow detailed deliberation on specific areas. Each committee should have comprehensive terms of references that sets out its mandate, scope of operations and working procedures. The composition and number of committees will depend on factors such as the size of the institution, nature of its business operations and its risk profile. However, the following committees are deemed mandatory and should be constituted:

(a) Executive Committee

The Executive Committee is the link between the board and management and is responsible for implementation of operational plans, annual budgeting and periodic reviews of operations, strategic plans, ALCO strategies, credit proposals review, identification and management of key risks and opportunities. The committee shall review and develop guidelines for employees' remuneration for board approval.

The Executive Committee is constituted to assist the Chief Executive Officer to manage the banking institution. The board of directors takes cognizance of authorities delegated to the Chief Executive Officer (CEO) by means of resolutions from time to time. The Executive Committee assists the CEO guide and control the overall direction of the business of the banking institution and acts as a medium of communication and co-ordination between business units and the board.

The Executive Committee shall also ensure that the risk management function has access to any information it requires to fulfill its responsibilities.

(b) Asset and Liability Committee (ALCO)

ALCO shall derive the most appropriate strategy for the banking institutions in terms of the mix of assets and liabilities given its expectations of the future and the potential consequences of interest-rate movements, liquidity constraints, and foreign exchange exposure and capital adequacy.

The committee shall ensure that all strategies conform to the banking institution's risk appetite and levels of exposure as determined by the Board Risk Management Committee or other committee assigned responsibility of risk management.

In view of the importance of ALCO in managing the bank's balance sheet, it is required that every institution should establish ALCO as a mandatory management committee. The committee shall primarily be responsible for recommending to the Board of Directors prudent asset/liability management policies and procedures that enable the bank to achieve its goals while operating in full compliance with all requirements of the Banking Act and CBK Prudential Guidelines.

(c) Management Credit Committee (MCC)

The MCC is responsible for formulating and implementing the institution's credit and lending policies, and for considering customer credit applications as delegated by the Board Credit Committee.

Every institution shall establish the MCC as a mandatory committee considering the importance of effective credit oversight in safeguarding asset quality, controlling credit risk exposures, and maintaining the institution's financial soundness.

The committee shall ensure that credit risk exposures are effectively governed by reviewing and approving management-recommended credit applications within delegated limits, escalating larger facilities to the Board Credit Committee, and overseeing the approval and modification of asset-based products in line with the Bank's credit policies.

It shall monitor all products carrying credit risk, assess the quality and performance of the loan portfolio, ensure adequate provisioning for impaired assets, continuously review non-performing loans and recovery actions, and evaluate write-off proposals for submission to the Board Credit Committee and final approval by the Board.

- 3.7.3** No Senior Officer shall take up his position prior to being cleared by the Central Bank. The institution shall submit to the Central Bank duly completed fit and proper form as prescribed in Guideline No. CBK/PG/01 on Licensing of New Institutions.

Where a non-executive director who is cleared by the Central Bank is subsequently appointed in senior management, specific approval of the appointment shall be obtained prior to taking up the position. The Central Bank of Kenya may use its powers, under section 32 of the Banking Act to verify the accuracy of the information on the fit and proper forms.

- 3.7.4** Senior management contributes substantially to a bank's sound corporate governance through personal conduct by providing adequate oversight of those they manage, and by ensuring that the bank's activities are consistent with the business strategy, risk tolerance/appetite and policies approved by the bank's board. These individuals should have the necessary experience, competencies and integrity to manage the businesses under their supervision as well as have appropriate control over the key individuals in these areas.

- 3.7.5** The Head of Finance and Head of Internal Audit should be members of the Institute of Certified Public Accountants of Kenya (ICPAK) and the Company Secretary must be a member of the Institute of Certified Public Secretaries of Kenya (ICPSK) or similar institutes recognized by the Central Banks of the East African Community member states or an international institute recognized by ICPAK and ICPSK.

3.7.6 Major duties and responsibilities of management

The primary responsibility of the management is to operate and administer the institution on a day-to-day basis paying attention to the following:

- a) The implementation and adherence to the policies, practices and standards as laid down by the Board of Directors;
- b) The systems that have been established to facilitate efficient operations and communications;
- c) The planning process that has been developed to facilitate achievement of targets and objectives;
- d) All staff matters, particularly human resource development and training;
- e) Adherence to the established code of conduct and with all the relevant banking laws and CBK guidelines; and
- f) Maintain adequate records to comply with all the reporting requirements.

3.7.7 Appointment and responsibilities of the Chief Executive

The board should appoint the chief executive and establish a framework for the delegation of authority. The chief executive, who may be referred to as the Chief Executive Officer (CEO), the Managing Director (MD) or by any other title, shall be wholly responsible to the Board for the day to day running of the institution. The collective responsibility of management is vested in the Chief Executive and bears ultimate responsibility for all management functions.

The Chief Executive is expected to undertake the following key responsibilities;

- a) Ensure that the policies spelt out by the board in the institution's overall corporate strategy of the institution are implemented;
- b) Identify and recommend to the board competent officers to manage the operations of the institution. In the fulfillment of this duty, the Chief Executive should ensure that the institution's human resources policy is adhered to;
- c) Co-ordinate the operations of the various departments within the institution;
- d) Establish and maintain efficient and adequate internal control systems;
- e) Design and implement the necessary management information systems in order to facilitate efficient and effective communication within the institution;
- f) Ensure that the board is frequently and adequately appraised about the operations of the institution through presentation of relevant board papers, which must cover, but not limited to, the following areas:

- Actual performance compared with the past performance and the budget together with explanations of all the variances.
- Capital structure and adequacy.
- Advances performance in particular problem loans, losses, recoveries and provisions.
- Income and expenses.
- Deposits: sources and distribution profile.
- All insider transactions that benefit directly or indirectly any officer or shareholder of the institution.
- Report on violation of laws and remedial activities undertaken to ensure compliance with the banking laws and CBK guidelines.
- Large exposures.
- Non-performing insider loans.
- CBK, external, internal and audit committee reports.
- Any other areas relevant to the institution's operations.
- Ensure that the institution complies with all the relevant banking and other applicable laws in the execution of its operations.
- Any other duties as may be assigned by the board from time to time.

3.7.8 Money Laundering Reporting Officer

The board shall ensure that the institution appoints a Money Laundering Reporting Officer (MLRO) pursuant to the Proceeds of Crime and Anti-Money Laundering Regulations, 2023. The MLRO shall form part of senior management. The MLRO shall have direct access to the Executive Committees and shall be the contact person with the Financial Reporting Centre (FRC). The board shall ensure that the appointment or removal of the MLRO is communicated to the FRC and the Central Bank within fourteen days of such appointment or removal. The MLRO shall, in liaison with the Human Resource function, ensure that employee adheres to high standards.

3.8 Principle 8 - Risk Management Framework

The board must ensure that the banking institution has adequate systems to identify, measure, monitor and manage key risks facing the banking institution and adopt and follow sound policies and objectives which have been fully deliberated.

Specific Requirements

- 3.8.1** The board's responsibility for risk management should be manifested in a documented risk management policy and plan. Management should develop both the risk management policy and the plan for approval by the board.

3.8.2 The board's scope of responsibility for risk governance should be expressed in its board charter and supported by induction and training processes for all board members. Where the board has delegated its responsibility for risk management to a board committee, such board committee's terms of reference should reflect this responsibility and should be approved by the board.

3.8.3 Institutions should have an independent risk management function with sufficient authority, stature, independence, resources and access to the board. The oversight of risk management should be assigned to a senior officer who may be referred to as the Chief Risk Officer (CRO) or a Risk Manager (RM) and should report independently to the Board Risk Management Committee.

The CRO/RM should be a suitably experienced person who should have access to and interact regularly with the board and appropriate board committee and executive management. The CRO/RM must sufficiently be independent of the business lines in order to ensure an adequate separation of duties and the avoidance of conflicts of interest.

3.8.4 Management is accountable to the board for designing, implementing and monitoring the system and process of risk management and integrating it into the day-to-day activities of the company. Risks should be identified and monitored on an ongoing firm-wide and individual entity basis, and the sophistication of the bank's risk management and internal control infrastructures should keep pace with any changes to the bank's risk profile (including its growth), and to the external risk landscape.

3.8.5 As part of its quantitative and qualitative analysis, the bank should utilize forward-looking stress tests and scenario analysis to better understand potential risk exposures under a variety of adverse circumstances. These should be key elements of a bank's risk management process, and the results should be communicated to, and given appropriate consideration by, the relevant business lines and individuals within the bank. A forward-looking approach to risk management should include ongoing monitoring of existing risks as well as identifying new or emerging risks.

3.8.6 Banks should obtain Central Bank approval before introducing new products, making changes to any feature of an approved product, introducing charges on any product, or increasing existing charges. Approval applications should include a risk assessment covering new products, significant changes to existing products, new business lines, and entry into new markets. The risk management function should contribute to this assessment, including evaluating risks under various scenarios and identifying any gaps

in the bank's risk management and internal control capabilities. The new product approval process should also consider whether the bank's risk management, legal and regulatory compliance, information technology, business line, and internal control functions possess the necessary expertise and tools to effectively manage the associated risks.

- 3.8.7** Effective risk management requires robust internal communication within the bank about risk, both across the organization and through reporting to the board and senior management. Information should be communicated to the board and senior management in a timely, complete, understandable and accurate manner so that they are equipped to make informed decisions.

3.9 Principle 9 – Compliance with Laws, Rules, Codes and Standards

The board should ensure that the institution complies with applicable laws and considers adherence to the institution's rules, codes and standards.

Compliance risk means the current or prospective risk to earnings and capital arising from violations or non-compliance with laws, rules, regulations, agreements, prescribed practices, or ethical standards, as well as from the possibility of incorrect interpretation of effective laws or regulations.

Specific Requirements

- 3.9.1** The institution should develop a compliance policy and the board should approve it. Management should be responsible for implementing this policy and report to the board regarding compliance with it.
- 3.9.2** Compliance risk should form part of the institution's risk management process. The risks of non-compliance should be identified, assessed and responded to through the institution's risk management processes.
- 3.9.3** As part of the broader risk management structure, the institution should establish an independent compliance function that provides assistance to the board and management in complying with applicable laws, rules, codes and standards. The compliance officer should report independently to the board, committee of the board or through the head of risk and compliance function depending on the institution's size and its organizational structure.
- 3.9.4** Each institution should consider the suitable structure and size of its compliance function, considering what is appropriate for the adequate management of the

compliance risk of the particular company and having regard to the legislative requirements that apply to the compliance function. The structure of the compliance function, its role and its position in terms of reporting lines, should reflect the institution's decision on how compliance is integrated with its ethics and risk management.

- 3.9.5** The board is responsible for the institution's compliance with applicable laws and with rules, codes and standards with which the company may elect to comply. One of the important responsibilities of the board is therefore to monitor the company's compliance with all applicable laws, rules, codes and standards.
- 3.9.6** Directors should familiarize themselves sufficiently with the general content of applicable laws, rules, codes and standards to be able to adequately discharge their fiduciary duties in the best interests of the institution and their duty of care, skill and diligence. Included in this duty is to make use of the rights and protection that the law presents in the best interests of the institution.

3.10 Principle 10 - Internal Control Functions

The board and senior management should effectively utilize the work conducted by internal audit functions, external auditors and internal control functions.

Specific Requirements

- 3.10.1** The board should recognize and acknowledge that independent, competent and qualified internal and external auditors, as well as other internal control functions (including the compliance functions), are vital to the corporate governance process in order to achieve a number of important objectives. Senior management should also recognize the importance of the effectiveness of these functions to the long-term soundness of the bank. Towards this end, the board shall:
- a. Set-up an effective internal audit department, staffed with qualified personnel to perform internal audit functions, covering the traditional function of financial audit as well as the function of management audit.
 - b. Set-up an independent Compliance Function that, among other things, routinely monitor compliance with laws, corporate governance rules, regulations, codes and policies to which the bank is subject and ensure that deviations are reported to an appropriate level of management and, in case of material deviations, to the board.

3.11 Principle 11 - Compensation Systems

The board should actively oversee the compensation system's design and operation and should monitor and review the compensation system to ensure that it operates as intended.

Specific Requirements

3.11.1 The board is responsible for the overall design and operation of the compensation system for the entire bank. The board shall constitute a board nomination and compensation committee (may be referred as remuneration committee) as an integral part of their governance structure to oversee the compensation system's design and operation on behalf of the board of directors.

Members of the nomination and compensation committee should be independent, non-executive members with substantial knowledge about compensation arrangements and the incentives and risks that can arise from such arrangements. Because compensation should be aligned with risk, an understanding of the firm's risk measurement and management, and of how different compensation practices can impact the firm's risk profile, is important as well.

3.11.2 The policy on the remuneration of directors, CEO and senior management should be developed under conditions of objectivity and transparency. The levels of remuneration should be sufficient to attract and retain directors of high caliber, but at the same time, should also be balanced against the need to ensure that an institution's funds are not used to subsidize excessive remuneration packages and not compromising the ongoing viability, solvency and reputation of an institution:

- a. The compensation of a control function (e.g. Chief Risk Officer and risk management staff) should be structured in a way that is based principally on the achievement of their objectives and does not compromise their independence (i.e. compensation should not be substantially tied to business line revenue).
- b. Since employees can generate equivalent short-term revenues while taking on vastly different amounts of risk in the longer term, a bank should ensure that variable compensation is adjusted to take into account the risks an employee takes. This should consider all types of risk over a timeframe sufficient for risk outcomes to be revealed.
- c. It is appropriate to use both quantitative risk measures and human judgment in determining risk adjustments. Where firms make such adjustments, all material risks

- should be taken into account, including difficult-to-measure risks (eg reputational risk) and potentially severe risk outcomes.
- d. In addition to adjustments for future prospects or forecasted returns (ex ante risk adjustments), institutions should take steps to better align compensation with prudent risk taking measures. One characteristic of effective compensation outcomes is that they are symmetric with risk outcomes, particularly at the bank or business line level. That is, the size of the bank's variable compensation pool should vary in response to both positive and negative performance. Variable compensation should be diminished or eliminated when a bank or business line incurs substantial losses.
 - e. Compensation should be sensitive to risk outcomes over a multi-year horizon. This is typically achieved through arrangements that defer compensation until risk outcomes have been realized, and may include "claw back" provisions whereby compensation is reduced or reversed if employees generate exposures that cause the bank to perform poorly in subsequent years or if the employee has failed to comply with internal policies or legal requirements. "Golden parachute" arrangements under which terminated executives or staff receive large payouts irrespective of performance are generally not consistent with sound compensation practice.
 - f. The mix of cash, equity and other forms of compensation (e.g. options) should be consistent with risk alignment and will likely vary across employees, depending on their position and role in the bank.
 - g. The remuneration of directors and the chief executive shall be commensurate with the nature, size of operations of the institution and the remuneration offered for similar positions in the market. Non-executive directors should not receive any salary.
 - h. As a matter of principle, the chief executive of a group should draw all his salary, including benefits, from one source, usually the parent company. Where the chief executive of an institution is entitled to receive director's fees from that institution's subsidiaries, such fees should be nominal.
 - i. Key particulars of compensation should be disclosed in the Annual Report to the public on a timely basis. The information should include the decision-making process used to determine the compensation policy, criteria used for performance measurement and risk adjustment, the amounts of remuneration for the financial year and other key information on the incentive and compensation systems.

3.12 Principle 12 – Governance of Information Technology

The board should be responsible for Information Technology (IT) Governance. IT governance can be considered as a framework that supports effective and efficient management of IT resources to facilitate the achievement of an institution's strategic objectives. IT governance is the responsibility of the board.

Specific Requirements

- 3.12.1** The board should ensure that an IT governance charter and policies are established and implemented. The charter and policies should outline the decision-making rights and accountability framework for IT governance that will enable the desirable culture in the use of IT within the company.
- 3.12.2** The board should oversee the cultivation and promotion of an ethical IT governance and management culture and awareness. The board should provide the required leadership to achieve this institution's strategic objective.
- 3.12.3** The board should ensure that an IT internal control framework is adopted and implemented and that the board receives independent assurance on the effectiveness thereof. The necessary steps should be taken to ensure that there are processes in place to ensure complete, timely, relevant, accurate and accessible IT reporting.
- 3.12.4** The board should ensure that the IT strategy is integrated with the institution's strategic and business processes. IT should be seen to add value by enabling the improvement of the institution's performance and sustainability.
- 3.12.5** The board should establish an executive IT governance committee or similar forum or function to support management oversight of information and technology and to provide advice and recommendations to the Board on technology governance matters, risks, investments, and strategic initiatives.
- 3.12.6** Each institution should consider the suitable strategy, structure and size of its IT function, considering what is appropriate for the adequate management of the IT function and associated risk of the particular institution and having regard to any legislative requirements that apply to the IT function. The structure of the IT function, its role and its position in terms of reporting lines, should reflect the company's decision on how IT is integrated with its operations.
- 3.12.7** The board should oversee the proper value delivery of IT and should ensure that the expected return on investment from significant IT investments and projects is delivered and that the information and intellectual property contained in the information systems are protected.

- 3.12.8** Where the responsibility for the provision of IT goods or services has been delegated to another party (or division), all parties (including the board) remain accountable for enforcing and monitoring effective IT governance.
- 3.12.9** Management should regularly demonstrate to the board that the institution has adequate business resilience arrangements in place for disaster recovery and business continuity.
- 3.12.10** The board should be accountable for the institution's cyber posture.
- 3.12.11** The board shall approve and oversee the Institution's Data Governance Framework, Artificial Intelligence (AI) Governance Framework, and Data and AI Strategy, ensuring the responsible, ethical, secure, and effective use of data and artificial intelligence, and the effective management of associated risks.

3.13 Principle 13 - Bank's Operational Structure

The board and senior management should know and understand the bank's operational structure and the risks that it poses (i.e. "know-your-structure").

Specific Requirements

- 3.13.1** The board and senior management should understand the structure and the organization of the group, i.e. the aims of its different units/entities and the formal and informal links and relationships among the entities and with the parent company.

This includes understanding the legal and operational risks and constraints of the various types of intra-group exposures and transactions and how they affect the group's funding, capital and risk profile under normal and adverse circumstances.

Sound and effective measures and systems should be in place to facilitate the generation and exchange of information among and about the various entities, to manage the risks of the group as a whole, and for the effective supervision of the group.

- 3.13.2** The board should approve policies and clear strategies for the establishment of new structures and should properly guide and understand the bank's structure, its evolution and its limitations.
- 3.13.3** In order to enhance the sound governance of a banking group, internal audits of individual entities could be complemented with regular assessments of the risks posed by the group's structure. Periodic reports that assess the bank's overall structure and individual entities' activities, confirm compliance with the strategy previously approved

by the board, and disclose any possible discrepancies could be useful for the audit and risk committees, senior management and the board of the parent company.

- 3.13.4** The bank should discuss with, and/or report to, the Central Bank regarding policies and procedures for the creation of new structures and the complexity of the group. This should provide the bank with further guidance about ensuring adequate governance and management throughout its operational structure.

3.14 Principle 14 - Disclosure Requirements

The governance of the bank should be adequately transparent to its shareholders, depositors, other relevant stakeholders and market participants.

Specific Requirements

- 3.14.1** The bank should disclose relevant and useful information that supports the key areas of corporate governance. Such disclosure should be proportionate to the size, complexity, ownership structure and risk profile of the bank.
- 3.14.2** Accordingly, disclosure should include, but not be limited to, material information on the bank's objectives, governance structures and policies (in particular the content of any corporate governance code or policy and the process by which it is implemented), major share ownership and voting rights and related parties' transactions.
- 3.14.3** The bank should also disclose key points concerning its risk tolerance/appetite (without breaching necessary confidentiality), with a description of the process for defining it and information concerning the board involvement in such process. When involved in complex or non-transparent structures, the bank should disclose adequate information regarding the purpose, strategies, structures, risks and controls around such activities.
- 3.14.4** Disclosures should be accurate, clear, understandable, and easily accessible to shareholders, depositors, other stakeholders, and market participants. Public disclosures should be timely and made through the bank's website, annual and periodic financial reports, or other appropriate channels. As good practice, banks should include a dedicated corporate governance statement in a clearly identifiable section of the annual report. This statement should provide information on the board's composition, members' qualifications, selection process, other directorships, independence status, and the remuneration of directors and key senior management. It should also disclose sufficient information on foreseeable risk factors that could affect the institution's future performance, enabling investors and other stakeholders to make informed decisions.

3.14.5 All material developments that arise between regular reports should be disclosed without undue delay. The institution's use of artificial intelligence should be sufficient and communicated appropriately to those affected, according to the materiality level.

PART IV: CODE OF CONDUCT

4.1 APPLICABILITY

This code of conduct contained in this guideline is applicable to directors, chief executive officers and management of institutions licensed under the Banking Act (Cap. 488). The Board of Directors should ensure that all officers adhere to the prescribed code of conduct.

4.2 PRESCRIBED CODE OF CONDUCT

4.2.1 Conflict of Interest

Directors, chief executive officers and senior management should not engage directly or indirectly in any business activity that competes or conflicts with the institution's interest. These activities include, although not necessarily limited to, the following:

- **Outside Financial Interest**

Where directors, chief executive officers and senior management have a financial interest in a customer, whether a sole proprietor, shareholder, creditor or debtor, such an interest must be disclosed immediately to the management. Thereafter, the affected director, chief executive officer and senior management should not be directly involved in the institution's dealings with the customer so long as the interest continues to exist.

The above restriction does not apply in cases where employees have holdings of public quoted securities unless the management views the interests to be material, and that the financial interest is considered likely to impair the objectivity of the member of staff concerned. The holding of five per cent or more of the voting shares of a publicly quoted company may be considered to have a conflict of interest.

- **Other Business Interests**

It is considered a conflict of interest if an executive director, chief executive officer or senior management conducts business other than the institution's business during office hours. Where the acquisition of any business interest or participation in any business activity outside the institution and office hours demands excessive time and attention

from the member of staff, thereby depriving the institution of the employee's best efforts on the job, a conflict of interest is deemed to exist.

- **Other Employment**

Before making any commitment, employees are to discuss possible part-time employment or other business activities outside the financial institution's working hours with their manager or departmental head. A written approval of the manager or departmental head should be obtained before an employee embarks on part-time employment or other business activities. Approval should be granted only where the interest of the institution will not be jeopardized.

- **Corporate Directorship**

Employees must not solicit corporate directorships. An employee should not serve as a director of another corporation without approval of the Board of Directors (or Chief Executive, in case of foreign banks). Employees who hold directorships without such approval must seek approval immediately, if they wish to remain as directors of other corporations.

However, employees may act as directors of non-profit public service corporations, such as religious, educational, cultural, social, welfare, and philanthropic or charitable institutions, subject to policy guidelines of the institution.

- **Trusteeship**

Directors, chief executive officers and management must not solicit appointments as executors, administrators or trustees of customers' estates. If such an appointment is made and the employee is a beneficiary of the estate, his signing authority for the estate's bank account(s) must be approved by the Board of Directors, who will not unreasonably withhold approval.

A director, chief executive officer and senior management shall commit to comply with the Unclaimed Financial Assets Act and make all reasonable attempts to unify beneficiaries with the assets of deceased accountholders with their institutions.

4.2.2 Misuse of Position

- (a) Directors, chief executive officers and senior management must not use the institution's name or facilities for personal advantage. They must also not use the institution's name or facilities in political, investment, retail purchasing transactions, or in similar activities, for personal benefit.

- (b) Directors, chief executive officers and senior management, and their relatives must not use their connection with the institution to borrow from or become indebted to customers or prospective customers. The use of one's position to obtain preferential treatment, such as purchasing goods, shares and other securities, is prohibited.
- (c) Directors, chief executive officers and senior management must not solicit or otherwise accept inducements either directly or indirectly whether in cash or in kind in order to provide any favors to a customer in the provision of loans, acceptance of deposits or any other conduct of the business of the institution to which they are entrusted either jointly or individually.
- (d) Directors, chief executive officers and senior management must not use the institution's facilities and influence for speculating in commodities, gold, silver, foreign exchange or securities, whether acting personally or on behalf of friends or relatives. Such misuse of position may be ground for dismissal and/or prosecution. Directors, chief executive officers and senior management should also not engage in "back-scratching" exercises with employees and directors of other institutions to provide mutually beneficial transactions in return for similar facilities, designed to circumvent these ethical guidelines.

4.2.3 Misuse of Information

- (a) Directors, chief executive officers and senior management should not deal in the securities of any company listed or pending listing on a stock exchange when in possession of information, obtained by virtue of employment or connection with the institution, which is not generally available to the company's shareholders or the public. Such information is considered material if its disclosure would likely result in a significant change in the market price of the company's shares or other securities. "Insider dealing" as this is called, is a crime.
- (b) Directors, chief executive officers and senior management who possess insider information are also prohibited from influencing any other person to deal in the securities concerned or communicating such information to any other person, including other members of staff who do not require such information in discharging their duty.

4.2.4 Integrity of Records and Transactions

- (a) All records and reports must be complete and accurate. Directors, chief executive officers and senior management should never make entries or allow entries to be made for any account, record or document of the institution that are false and

would obscure the true nature of the transaction, as well as to mislead the true authorization limits or approval authority of such transactions. Members of staff and directors of institutions should note carefully the provisions of Sections 48 and 50 of the Banking Act.

- (b) All records and computer files or programmes of the institution, including personnel files, financial statements and customer information must be accessed and used only for management purposes for which they were originally intended.

4.2.5 Confidentiality

- (a) Confidentiality of relations and dealings between the institution and its customers is paramount in maintaining the institution's reputation. Thus directors, chief executive officers and management must take precaution to protect the confidentiality of customer information and transactions. No member of staff or director should during, or upon and after termination of employment with the institution (except in the proper course of his duty and or with the institution's written consent) divulge or make use of any secrets, copyright material, or any correspondence, accounts of the institution or its customers. No employee or director shall in any way use information so obtained for financial gain.
- (b) Business and financial information about any customer may be used or made available to third parties only with prior written consent of the customer or in accordance with the arrangements for the proper interchange of information between institutions about credit risks, or when disclosure is required by law.

4.2.6 Fair and Equitable Treatment

All business dealing on behalf of the institution with the current potential customers, with other members of staff and with those who may have cause to rely upon the institution, should be conducted fairly and equitably. Staff and directors must not be influenced by friendship or association, either in meeting a customer's requirement, or in recommending that they be met. Such decisions must be made on a strictly arms-length business basis. All preferential transactions with insiders or related interests should be avoided. If transacted, such dealings should be in full compliance with the law, judged on normal business criteria basis and fully documented and duly authorized by the Board of Directors or any other independent party.

4.2.7 Insider Loans

Directors, chief executive officers and management should not use their positions to further their personal interests. An institution shall not in Kenya therefore:

- (a) Grant or permit to be outstanding any unsecured advances in respect of any of its employees or their associates.
- (b) Grant or permit to be outstanding any advances, loans or credit facilities which are unsecured or advances, loans or credit facilities which are not fully secured to any of its officers, significant shareholders or their associates.
- (c) Grant or permit to be outstanding any advance, loan or credit facility to any of its directors or other person participating in the management of the institution unless it is:
 - approved by the full board of directors of the institution upon being satisfied that it is viable.
 - made in the normal course of business and on terms similar to those offered to ordinary customers of the institution. The institution shall notify the Central Bank of Kenya of every such approval within seven days of the granting of the approval.
- (d) Grant or permit to be outstanding any advance, loan or credit facility or give any financial guarantee or incur any other liability to, or in favour of, or on behalf of, any associate or any of the persons mentioned in paragraphs 4.2.7 (a),(b) and (c) in excess of twenty per cent of the core capital of the institution; or
- (e) Grant or permit to be outstanding advances or credit facilities or give any financial guarantee or incur any other liabilities to or in favor of, or on behalf of, its associates and the persons mentioned in paragraphs 4.2.7 (a), (b) and (c) amounting in the aggregate to more than one hundred per cent of the core capital of the institution; or
- (f) Grant any advance or credit facility or give guarantee or incur any liability or enter into any contract or transaction or conduct its business or part thereof in a fraudulent or reckless manner or otherwise than in compliance of the Banking Act and Central Bank of Kenya guidelines.

PART V: REMEDIAL MEASURES AND ADMINISTRATIVE SANCTIONS

5.1 Remedial measures

- 5.1.1** When an officer is assessed and found to be unfit and not proper to work for an institution, the affected institution shall be required to dispense with the services of such an officer forthwith and to inform the Central Bank of Kenya of such a decision as soon as possible. An institution that contravenes any of the provisions of this guideline may be subject to corrective measures and administrative sanctions set out below.

5.1.2 When an institution contravenes any of the provisions of the Banking Act or is not in compliance with these guidelines then:

- a) All officers of the institution shall be liable jointly and severally to indemnify the institution against any loss arising in respect of the contravention of Section 11 of the Banking Act.
- b) In the case of violation of guidelines on an advance, loan or a credit facility to a person other than a director of the institution or a person participating in the general management of the institution, an officer shall not be so liable, provided he or she shows that, through no act or omission on his or her part, he or she was not aware that the contravention was taking place, or he or she took all reasonable steps to prevent it taking place.
- c) The Central Bank may in the case of violation of guidelines on an advance, loan or credit facility to a director of the institution, direct the removal of such director from the Board of Directors of the institution. The Central Bank of Kenya may direct the suspension of any other officer or employee of the institution who sanctioned the advance, loan or credit facility. The institution shall comply with every direction of the Central Bank of Kenya under this paragraph forthwith.
- d) Any director of an institution who defaults in the repayment of any advance or loan made to him by the institution for three consecutive months shall forthwith be disqualified from holding office as such.

5.1.3 An institution which;

- a) Fails to comply with any direction of the Central Bank of Kenya under subsection 5.1.2 (c) or;
- b) Permits a director who is disqualified by virtue of subsections 5.1.2 (c) and (d) to continue holding office shall be guilty of an offence punishable as specified in Section 49 and 50 of the Banking Act, and in addition may be assessed for penalties as specified in the Banking Penalties Regulations, 2025 (Legal Notice No. 116 of 2025).

PART VI: GUIDANCE ON BOARD AND INDIVIDUAL DIRECTORS' PERFORMANCE EVALUATION

In conducting Board and Individual Directors' performance evaluations, the questions set out in the attached forms CBK/PG/19/F1, CBK/PG/19/F2 and CBK/PG/19/F3 should be taken into consideration. These however, are by no means definitive or exhaustive and individual institutions should tailor the questions to suit their own needs and circumstances.

The responses to these questions and others should enable institutions' boards to assess how they are performing and to identify how certain elements of their performance areas might be improved.

BOARD EVALUATION FORM

(CBK/PG/19/F1)

This evaluation should be completed by a committee of the board or an independent service provider appointed by the board. Please read each of the following statements and rate the institution by indicating your level of agreement with each of the statements; where **1 = Strongly Disagree** and **5 = Strongly Agree**. (Please circle only one number for each statement and provide reasons and justification for ratings under each item).

	<u>Strongly</u> <u>Disagree</u>				<u>Strongly</u> <u>Agree</u>
1. The board has contributed adequately in formulating and approving the institution's mission and business strategy.	1	2	3	4	5
2. The board has performed well against set performance objectives.	1	2	3	4	5
3. The board has contributed in ensuring robust and effective audit and risk management functions.	1	2	3	4	5
4. Composition of board and committees is appropriate	1	2	3	4	5

with the right mix of knowledge.

.....

5. The board responded well to any problems or crises that emerged.	1	2	3	4	5
---	---	---	---	---	---

.....

6. Decisions made by the board are thoroughly discussed and agreed to before they are put into action.	1	2	3	4	5
--	---	---	---	---	---

.....

7. There is productive working relationship between the board and the shareholders, CEO and the Management.	1	2	3	4	5
---	---	---	---	---	---

.....

8. The board has a plan for the succession of the Chief Executive Director.	1	2	3	4	5
---	---	---	---	---	---

.....

9. The board formally evaluates the performance of the Chief Executive at least annually.	1	2	3	4	5
---	---	---	---	---	---

.....

10. The board is up-to-date with developments in the regulatory environment and market.	1	2	3	4	5
---	---	---	---	---	---

.....

11. The frequency of Board and committee meetings was considered appropriate.	1	2	3	4	5
---	---	---	---	---	---

.....

12. The Chairman demonstrates effective leadership of the board.	1	2	3	4	5
.....					
13. New board members receive adequate training and orientation so that they are able to effectively discharge their responsibilities.	1	2	3	4	5
.....					
14. The board's capacity to govern effectively is not impaired by excessive, or lack of conflict between board members.	1	2	3	4	5
.....					
15. Board members are recruited through a formal process considering their skills and competencies.	1	2	3	4	5
.....					
16. Directors demonstrate willingness and devote time to deliver on their mandate.	1	2	3	4	5
.....					
17. Information flows quickly & accurately between board members.	1	2	3	4	5
.....					

BOARD CHAIRPERSON EVALUATION FORM**(CBK/PG/19/F2)**

The evaluation should be completed by each director or an independent service provider appointed by the board. Please read each of the following statements and rate the chair person by indicating your level of agreement with each of the statements; where **1 = Strongly Disagree** and **5 = Strongly Agree**. (Please indicate only one number for each statement and provide comments on significant issues that support your justification).

	Evaluation Question	Director 1	Director 2	Director 3	Director 4	Director 5
1)	The Chairperson demonstrates effective leadership of the board.					
2)	The Chairperson acts independently of any stakeholder in decision making and discharge of responsibilities.					
3)	The Chairperson is up-to-date with developments in market and regulatory environment.					
4)	The Chairperson demonstrates willingness to devote time and effort to lead the institution.					
5)	The Chairperson adheres to the institution's values and beliefs.					
6)	The Chairperson has brought in knowledge and experience in strategy formulation and implementation.					
7)	The Chairperson was formally appointed through an open, transparent and competitive process.					
8)	The Chairperson encourages feedback on how the Board / Chairperson's performance could be enhanced.					
9)	The Chairperson has a positive working relationship with the CEO.					
10)	The Chairperson has a positive working relationship with other directors.Board					

11)	The Chairperson enhances public image and benefits the institution through personal and professional contacts.					
-----	--	--	--	--	--	--

Comments:

.....

Director's Name: _____

Date _____

Signature _____

INDIVIDUAL DIRECTOR EVALUATION FORM**(CBK/PG/19/F3)**

The evaluation should be completed by each director led by the chairman or an independent service provider appointed by the board.

Please read each of the following statements and rate the director by indicating your level of agreement with each of the statements; where **1 = Strongly Disagree** and **5 = Strongly Agree**. (Please indicate only one number for each statement and provide comments on significant issues that support your justification).

	Evaluation Question	Director 1	Director 2	Director 3	Director 4	Director 5
1)	The director has contributed adequately in formulating and approving institution's mission and business strategy.					
2)	The director is up-to-date with developments in regulatory environment and market.					
3)	The director demonstrates willingness to devote time and effort to understand and deliver on assigned responsibilities.					
4)	The director has contributed quality and value at Board meetings.					
5)	The director has brought in knowledge and experience in strategy formulation and implementation.					
6)	The director was formally appointed through an open, transparent and competitive process.					
7)	The director exercises diligence and is not driven by personal or individual shareholder's interests that					

	Evaluation Question	Director 1	Director 2	Director 3	Director 4	Director 5
	may disadvantage the institution.					

Comments:
.....

Director’s Name: _____

Date _____

Signature _____

PART VIII: EFFECTIVE DATE

- 8.1** The effective date of this Guideline shall be 1st January 2027. However, the implementation date of the following understated sections shall have a transition period and will be effective on the respective dates as specified below:
- 8.1.1 Clause 1.4.12: Independent Non-Executive Director** – For purposes of Clause 1.4.12 (h), the nine (9) year period for existing board members shall commence from the effective date of this Guideline.
- 8.1.2 Clause 3.4.7: Board Composition** – Institutions will be granted 18 months from the effective date of this Guideline to ensure the board is properly constituted as provided in the Guideline.
- 8.1.3 Clause 3.4.4 and Clause 3.5.2: Chairperson of the Board** – Institutions will have a transition period of 18 months from the effective date of this Guideline to ensure that the Chairperson of the Board is independent and is not a member of any mandatory board committee as provided in the Guideline.
- 8.1.4 Clause 3.5.2: Board Nominations and Compensation Committee** – Institutions will have a transition period of 12 months from the effective date of this Guideline to ensure that the Board Nominations and Compensation Committee is constituted as provided in the Guideline.
- 8.2 Supersedence** – This Guideline supersedes Prudential Guidance CBK/PG/02 on Corporate Governance issued on January 1, 2013.

ENQUIRIES

Enquiries on any aspect of this guideline should be referred to:

The Director,
Bank Supervision Department
Central Bank of Kenya
P. O. Box 60000 - 00200

NAIROBI

TEL.2860000 e-mail: fin@centralbank.go.ke