



ANNUAL CAPACITY BUILDING
WORKSHOP 2023
FEBRUARY 23-25 · NAIROBI

GOVERNANCE MADE EASY

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ASSUMPTIONS

The presenter assumes that there is an awareness of the following :

- Juristic personality
- Multi jurisdictional nature of membership
- Governance as it relates to the person and the institution.



INTRODUCTION

A few years ago, the Vice Chairperson of the Transparency International made the following comment:

“if we Asians are to learn from the lessons of devastation that effectively wiped many of our countries off global economic radar screen, we must embrace the fact that the unbridled excesses that underpinned our bubble economies, were really no substitute for high ethical business standards and good corporate governance”(AZIZ, 2002)”.



Good governance is not about being politically correct whilst the business gets on with doing business. It is intrinsically linked to the performance of the company. Not only does governance enhance corporate performance, it reassures stakeholders that the company is well run.



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GOVERNANCE DEFINED

“Governance” has been a lot of things to many. It is loosely defined as a way entities are directed and controlled. It is pertinently concerned with the right decisions being made by the right people at the right levels. It is mostly concerned with practices and procedures which will ensure that the organisation achieves its objective.

Corporate governance is also concerned with how powers are shared and exercised by the different stakeholders of the company to ensure that objectives are achieved, and how holders of power in the organisation should be held accountable for their omissions or actions.



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Governance is intrinsically linked to performance and is concerned with how organisations are led and directed.

It is pertinently concerned with power and decision making in the organisation, ensuring that power is not abused but shared and that decisions are made by the right people at the right levels.

It relates to the transparent and ethical way by which leaders attempt to achieve the objectives of the organisation and how they are held accountable for their actions and omissions



Corporate governance, for the purposes of King IV, is defined as an exercise of ethical and effective leadership by the governing body towards the achievement of the following governance outcomes:

- Ethical Culture
- Good Performance
- Effective Control
- Legitimacy

It is envisaged that an end game would be where ethical and effective leadership complement each other.



WHY IS GOVERNANCE IMPORTANT

- Organisations are set up to achieve a specific mandate and as such organisations should be governed in a way that moves them towards achieving their mandate/ strategic objectives.
- It is entirely dependent on members of the governing body to set a strategic direction and exercise oversight on the implementation of that strategy.
- The governing body in execution of this function has to display ethical leadership premised on good corporate governance practices.



AGENCY THEORY

The juristic person on its own is incapable of acting and discharging its objectives and functions and therefore needs natural persons to act on its behalf.

The creators of the organisation, therefore, engage the directors, as professional managers, to operate the organisation on their behalf. This is what is known as the “agency theory”. The principal hires an agent to perform a task on its behalf.



STANDARD OF BEHAVIOUR

- Council is a collection of individuals, each with his or her own views, interests, and concerns. Some individuals on the Council, notably the CEO and the President, carry more influence than others. A central issue in corporate governance is, therefore, the balance of power and influence between individuals on the governance structure. In a well-governed organisation, there should be checks and balances that prevent one individual or group of individuals from dominating the governing body and its decisions.
- In a badly governed organisation, there will be an opportunity for autocratic leadership.



Leadership, where the board is opinionated by one individual. While the particular individual might be enlightened and manage the organisation well, there is also a risk that under a dominant individual, an organisation might be used in the self-interest of that individual.



CONFLICT OF INTEREST

Generally fiduciary duties require those tasked with governance function by virtue of serving as a governing body, to act in good faith, for proper purpose and in the best interest of the organisation. This is because they stand in a relationship of trust (a fiduciary relationship) with the organisation, and a member will break this relationship of trust if he /she acts in his /her best interest to the detriment of the organisation.



The fiduciary duties include various sub - duties such as:

A duty not to exceed powers: this duty is breached if members act outside their authority whether contained in the act, the charter or any other authority conferring document;

A duty to exercise their powers for a proper purpose: an example would be if the members used the organisation's resources for own benefits;



A duty to maintain an unfettered discretion: This appeals to the duty to act objectively, independently and without interference;

A duty not to compete with the organisation : This will include avoidance of tendering for the same work with the organisation avoidance of conflict between the organisation and the member's personal and/or financial interest.



DELEGATIONS OF AUTHORITY AND COMMITTEE STRUCTURE

It is not practically possible, nor is it desirable, for the Council/ Board to be actioning all the duties and functions of the organisation in their personal capacity. In this regard and in alignment with the agency theory it is encouraged that a person bestowed with powers and authority should delegate responsibility to another person to perform a task that he or she cannot perform.

The original delegator of the task (the manager) remains accountable for the satisfactory completion of the task, while the person to whom the task has been delegated (the employee) is responsible for actually undertaking the task.



Delegate potestas non potest delegari is a principle in Latin originating in common law and enshrined in constitutional law meaning “no delegated powers can be further delegated”. In common law, the general principle is that Council/Board may, except where any law or regulation requires otherwise, delegate to any committee full power to do any act on its behalf and any acts of a committee done in pursuance of such authority shall be valid and binding upon the Council/Board.



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DELEGATIONS OF AUTHORITY CONT...

Delegation as it relates to Boards/ Councils

Delegation to Registrar / Secretariat

Role of the President/ Chairperson and the Registrar



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MEETING ADMINISTRATION

The meetings of Council are conducted in terms of the respective Act. Additionally, the Rules on the Conduct of Business of Council made also dictate the requirements for meetings.



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CONVENING OF MEETINGS

The current practice in line with good governance, is that Council holds four(4) meeting in a year. The President to determine the date, venue of the special meetings of Council. The current practice is that the Registrar(Secretariat) proposes the dates for the ordinary meetings of Council which are adopted by Council.

Ordinary and special meetings of Council are convened through a notice signed by the Registrar which also specifies the business to transact at the meeting. The notice is sent to each member, in the case of ordinary meetings, at least ten (10) days before the date for which the meeting is convened.

In the case of special meetings, a period of notice, deemed sufficient by the President, will be given.



STRUCTURE OF THE AGENDA FOR COUNCIL MEETINGS

- i) The agenda for every meeting of Council should be compiled by the Registrar in consultation with the President and shall among other things include the following:
 - a. Confirmation of minutes of the previous meeting
 - b. Matters arising from the minutes of the previous meeting;
 - c. Matters arising from minutes of standing committees.
 - d. Financial matters;
 - e. Policy matters;



MOTIONS

These are written motions brought to the agenda as received by the Registrar from any member of Council at least 30 days before the date for which a meeting is to be convened. It is important to note that no matter should be considered by Council unless due notice has been given 30 days before the date for which a meeting is to be convened, unless permission is obtained from the meeting to bring it forward as a motion, provided the motion find a seconder and if there is no seconder, the motion should not be considered.



PROCEDURE FOR BRING MATTERS BEFORE COUNCIL

Notice of motions should be forwarded to the Registrar in writing at least 30 days before the set date for the meeting.

If Secretariat desires to bring a matter for the attention of Council, it is advisable that such a motion be brought before Council through the President and through the Chairperson of the Various Committees.

Members should avoid entertaining matters before them without a proper notice of motion.



Thank you!!

