BANK OF TANZANIA

GUIDELINES FOR BOARDS OF DIRECTORS OF BANKS AND FINANCIAL INSTITUTIONS, 2008

1.0 INTRODUCTION

1.1 The proper conduct of a bank or financial institution (herein after referred to as banking institution) requires that the board of directors function appropriately and at high standards. The responsibility for the oversight and direction of banking institutions rests with the Board of directors. In discharging his responsibilities effectively, a director, must command a high level of integrity, honesty, competence and ability to adhere to good corporate governance principles. From a banking industry perspective, corporate governance involves the manner in which the business and affairs of individual institutions are governed by their boards of directors and senior management, and in particular, how banking institutions:

(a) set corporate objectives;

(b) operate the bank's business on a day-to-day basis;

(c) meet the obligation of accountability to their shareholders and take into account the interests of other recognised stakeholders;

(d) align corporate activities and behaviour with the expectation that banks will operate in a safe and sound manner, and in compliance with applicable laws and regulations; and

(e) Protect the interests of depositors.

1.2 The Bank of Tanzania has legitimate interest in ensuring that banking institutions operate in a safe and sound manner. This goal can be largely attained if boards of directors effectively discharge their oversight roles. To assist board of directors of banking institutions, the Bank of Tanzania has decided to issue these Guidelines which spell out minimum standards required to be observed by directors of banking institutions. The objectives of these Guidelines are to:

(a) promote and maintain public confidence in banking institutions;

(b) establish standards for corporate governance processes and structures;

(c) provide guidance to directors for proper discharge of their fiduciary responsibilities.

1.3 These Guidelines are issued under Section 71 of the Banking and Financial Institutions Act, 2006 and are intended to apply to directors of all banking institutions in Tanzania.

2.0 THE DUTIES AND RESPONSIBILITIES OF BOARD OF DIRECTORS

2.1 Duties and Responsibilities of the Board

The board of directors of a banking institution has the following major duties:

(a) Appointment of Executive Officers

One of the fundamental duties of the board is to appoint competent executive officers to manage the affairs of the banking institution while ensuring that the banking institution has an appropriate plan for executive succession. The board is obliged to appoint officers who portray high standards of ability, experience and integrity. A related responsibility is to remove the officers who prove incapable of effective and sound management.

(b) Effective Oversight of the Banking Institution's Affairs

The directors of a banking institution are responsible for safe custody and investment of depositors' funds. Consequently, they must commit sufficient time in the oversight of affairs of their institutions. Effective oversight entails possession of necessary skills to make sound and independent judgments and be able to apply immediate remedial measures when need arises. The board of directors should exercise their fiduciary duty and authority to question and insist upon straightforward explanations from management, and receive on timely basis sufficient information to judge the performance of management. In connection with effective oversight, directors are also responsible to establish and ensure effective functioning of various board committees and management in key areas.

(c) Regulatory Compliance

The business of banking is governed by a number of laws and regulations. Directors' responsibility in this respect is to establish policies and monitor operations to ensure their banking institutions comply with laws and regulations. To fulfill this responsibility, directors must have a clear understanding of the legal and regulatory framework under which their banking institutions operate. They must exercise duty of care to see to it that banking and other applicable laws and regulations are not violated and take actions to avoid the recurrence of any violations.

(d) Setting and Reviewing Policies and Objectives

The board of directors must establish policies and objectives that will direct the activities of a banking institution in all areas of operations. It is important that these objectives and other organization's values should be communicated throughout the organization. The policies must clearly quantify the acceptable risk and specify the capital required for safe operation of the banking institution. The board of directors should ensure that senior management adheres to objectives set by the organization.

(e) To develop a strategic plan

The board of directors in collaboration with management is obliged to prepare a strategic plan and adopt policies to achieve it. A strategic plan is a roadmap to assist a banking institution to achieve its mission and objectives. The plan should be reviewed whenever business and economic conditions call for change. The plan and the institution's mission in general should be communicated to all employees.

(f) To ensure arm's length transactions with insiders

Banking institutions should have policies that guide transactions with insiders and their related parties. Such policies should ensure, through adequate procedures, that transactions with related parties, in particular with shareholders, executive officers or members of the board and other related parties, are made on an arms-length basis and are not made on terms contrary to the interest of the banking institution, its shareholders and depositors.. Financial transactions with insiders and their related parties must be beyond reproach and in full compliance with regulations concerning such transactions. The board of directors should monitor compliance with policies and procedures relating to insider transactions on a regular basis.

(g) Setting and enforcing clear lines of responsibility and accountability.

Boards of directors should clearly define the authorities and key responsibilities for themselves as well as senior management. Clear lines of responsibility are important in hastening implementation of decisions and appropriate response. The executive management must be aware that they are ultimately responsible to the board of directors for the performance of the banking institution..

(h) Maintenance of Adequate Capital

Directors are responsible for ensuring that the banking institution is adequately capitalized at all times. This goes beyond meeting the minimum capital required by the Banking and Financial Institutions Act, 2006. The board of directors should also plan for capital needs commensurate with banking institution's risk profile and projected future activities.

(i) Effective utilization of Internal and External Auditors' work.

The board of directors should recognize and acknowledge that independent, competent and qualified auditors, as well as internal control functions (including the compliance and legal functions), are vital to the corporate governance process in order to achieve corporate objectives. The board of directors should utilize the work of the auditors as an independent check on the information received from management on the operations and performance of the banking institution.

The internal and external audit functions are of great importance in enhancing the effectiveness of the board of directors and senior management by-

1. Utilizing, in a timely and effective manner, the findings and recommendations of auditors;

2. Ensuring independence of the internal auditor through his reporting to the board or board's audit committee;

3. Engaging external auditors to, among other things, assess and report on the effectiveness of internal controls; and

4. Requiring timely corrective measures by management of problems identified by auditors.

(j) To ensure that the banking institution has a beneficial influence on the economy of its community.

One reason for approving banking institutions' charters is to meet specific community needs. Directors have a continuing responsibility to the community to provide services that will be conducive for well balanced economic growth.

2.2 Responsibilities and Legal Liabilities of Directors

Besides the joint responsibilities of the board of directors-:

(a) each director is liable for non compliance with a memorandum of undertaking to ensure safe and sound operations of his banking institution.

(b) each director is responsible for complying with secrecy provisions of the Banking and Financial Institutions Act 2006.

(c) each director should not involve himself in fraud or deliberate mismanagement.

(d) each director is responsible for ensuring that all credit facilities granted to him or his related parties by the banking institution to which he is a member of the board of directors, are given at an arm's length basis.

(e) each director is responsible for inhibiting himself from attending a meeting which intends to deliberate or approve a transaction in which he is the beneficiary.

(f) a director may be fined, removed from office, or disqualified from holding any position or office in any banking institution in case of violation of provisions of the Banking and Financial Institutions Act, 2006 or regulations issued thereunder.

(g) each director has a duty of care and loyalty to the banking institution's interests. Accordingly, a director is liable for damage caused when he breaches a duty of care.

(h) a director is liable for non-diligent and negligent performance of the job of director**.**

(i) each director is responsible for exercising rational and independent judgment**.**

2.3 Board meetings

(a) The board of directors should meet at least quarterly, to discuss the business affairs through reports as submitted by management in writing in a form prescribed by the board of directors.

(b) The reports should include, among others-

(i) a summary of balance sheet, income statement and performance review against the budget, business plan, peers and the banking sector;

(ii) the extent to which a banking institution is exposed to various risks. At minimum the review should cover credit, liquidity, interest rate, foreign exchange and operational risks;

(iii) Review of loan portfolio including problem credit facilities, related part transactions and concentration of credits;

(iv) transactions that are significant with respect to the business of the banking institution if designated as such by the senior management, in line with the rules set down by the board of directors.

(v) the operations of the banking institution in the financial market and, in its “nostro” accounts.

(vi) litigation issues

(vii) human iesources issues

(viii) internal control issues

(ix) major changes in assets and liabilities as well as details regarding provisions for non performing assets; and

(x) compliance with laws, regulations, circulars, internal policies and procedures.

(c) At least annually, the board of directors should set implementation targets which are consistent with the banking institution's mission and the business plan.

2.4 Attendance at meetings of the board of directors

(a) Every member of the board should attend at least seventy five percent of the board meetings of the banking institution in each year. Each banking institution is required to review each year the suitability of a director who has failed to comply with the seventy five percent attendance rule, without valid reasons.

(b) A director who has, whether directly or indirectly, a personal interest in an existing or proposed transaction of the banking institution that is brought for discussion before the board of directors, or in a decision that the board of directors is about to make, should declare his personal interest as aforesaid at the opening of the meeting of the board of directors at which the transaction is to be discussed.

(c) A director who is an interested party as aforesaid in paragraph (b) should not attend the meeting that discusses the matter that concerns him, and should not be counted for purposes of determining a quorum required for that discussion.

2.5 Evaluation of the Board of Directors

Board of directors should regularly review its mix of skills and experience and other qualities in order to assess the effectiveness of the board and its committees. Such review should be by means of peer and self-evaluation of the board as a whole, its committee and the continuum of each and every director including the chairman. The evaluation should be conducted annually and the report thereon should be made available to the Bank when requested.

2.6 Immediate reporting to the Bank

A report should immediately be submitted to the Bank if there occurs-

(a) A change in the composition of the board of directors or its committees, including a change resulting from the resignation, dismissal or demise of a director. The report should comprise a statement by the Chairperson of the board of directors regarding the reasons for the resignation or dismissal, as well as a signed statement by the director regarding the reasons for his resignation or dismissal;

(b) Exceptional events that constitute a departure from the proper conduct of banking business, or infringement of the provisions of the law, or substantive violation of the interests of the institutions' stakeholders.

2.7 Terms of appointment, remuneration and retirement

The board of directors should put in place a policy spelling out clearly the appointment, remuneration, and retirement terms for the members of the board, of their institutions.

2.8 Risk management

(a)At least annually, the board of directors should review all policies relating to various types of risks and determine the ceilings of exposure permitted in the various risks and activity segments. Similarly, it should review and approve the organizational arrangements for managing and controlling the institution's overall exposure to various risks in line with the Risk Management Guidelines 2005 issued by the Bank.

(b)The board of directors should ensure that it is informed of all new activities and approves strategic activities of the banking institution after it has clear understanding of the following:

(i) the risks involved in that new kind of activity,

(ii) the mechanisms the banking institution will use for the managing, measuring and controlling of the risks,

(iii) the quantitative restrictions required in connection with the risks embodied in the new activity,

(iv) the appropriate personnel, sources of finance, and technical and technological infrastructure for the new activity, and;

(v) the management of the new activity and whether can be adapted to the existing situation in the banking institution.

3.0 COMPOSITION AND CONDUCT OF THE BOARD OF DIRECTORS

3.1 Number of members of the board of directors

A board of directors of a banking institution should be composed of the following:

(i) membership of not less than five, majority of whom must be non-executive and have banking or related experience.;

(ii) The chairperson of the board must be a non-executive director;

(iii) Each banking institution should appoint at least two Tanzanians to its board; and

(iv) A board member should not simultaneously serve as a board member or in any executive capacity in other banking institution in Tanzania.

(v) To avoid conflict of interest, no individual who is a member of National Assembly or House of Representatives or local government authority should be appointed as director of a banking institution.

3.2 Ownership and Management

(i) No individual shareholder with a five per centum or more shareholding in a banking institution should form part of management of the banking institution.

(ii) No individual shareholder with a ten per centum or more shareholding in a banking institution should be appointed as Chairperson or Deputy Chairperson of the board of directors of a banking institution.

(iii) No individual shareholder who had a significant interest in a failed banking institution should acquire a significant interest in a banking institution. Significant interest means a holding of five per cent or more of the voting shares of a bank or financial institution.

(iv) No individual who was involved in the management of a failed banking institution should be allowed to hold a position of accountability in a banking institution.

3.3 Practicing Professionals

(a) In order to tap expertise of practicing professionals, a banking institution may appoint such professionals as board directors provided that they are not employed by or partners in a firm which is engaged to conduct audit of or consultancy work for the banking institution;

(b) Practicing professionals who are appointed as directors of banking institutions should exercise the highest degree of integrity and professionalism. They must always avoid being involved or appearing to be involved in any self-serving practices and conflict of interest situations while serving as directors of a banking institution.

3.4 Criteria for Fit and Proper Persons

Every banking institution should ensure that only fit and proper persons are appointed to their boards. In assessing fitness and propriety of a person to be appointed to the board of directors, every banking institution must consider his honesty, integrity, diligence, fairness, competence, capability and financial soundness. The following criteria should be used to determine a fit and proper person-

(i) Possession of formal qualifications and management or business or professional experience of at least five years,preferably, possession of a proven track record in banking industry or related activities;

(ii) non- conviction in any criminal

(iii) non-involvement as a member of the management of board of directors, with a banking institution whose registration or license has been revoked or cancelled or which has gone into liquidation.

(iv) (absence of default record of any credit accommodation taken by him or his related parties from any banking institution.

(v) Absence of bankruptcy record or suspension of payments or composition with his creditors.

3.5 Permanent Conflict of Interests – Disqualification from Serving

(a) A person should not serve as a director if his business or permanent occupation creates a permanent conflict of interests between him and the institution, or if it is reasonable to assume that such conflict may exist permanently.

(b) A person shall not be appointed a director if he was a director of another banking institution and less than a year has passed since he ceased to serve as a director of that institution unless the permission of the Bank is obtained.

3.6 Undertaking by a director

(a) After receipt of the Bank's approval on the appointment or reappointment of a director, the director concerned shall make a written undertaking, which should be submitted to the banking institution for onward transmission to the Bank undertaking:

(i) that he has read these guidelines and undertakes to act in accordance with it.

(ii) That he shall fulfill his obligations towards maintaining a safe, sound and profitable banking institution and to comply with the provisions of the Banking and Financial Institutions Act, 2006 Bank of Tanzania Act, 2006, Foreign Exchange Act, 1992, regulations and directives issued by the Bank from time to time.

4.0 BOARD COMMITTEES.

4.1 Types of Committees

While the final responsibility and accountability of the affairs of the banking institution rest with the board of directors it may delegate some of its responsibilities by forming committees. The board of directors should form an audit committee and such other committees as it may be necessary for discharge of its functions.

4.2 Composition of Board committees

(a) The board of directors should specify the composition and functions of every committee formed and the terms and conditions upon which the committee would exercise its functions.

(b) The board committees should consist solely of non executive directors, and the number of committee members should not be less than three;