PenCom

CODE OF CORPORATE GOVERNANCE FOR LICENSED PENSION OPERATORS

RR/P&R/08/013

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National Pension Commission

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About this Code

The Code of Corporate Governance essentially aims to set out rules based on best practices to guide PFAs (including CPFAs) and PFCs on the structures and processes to be used towards achieving optimal governance set up.

It is developed with a view to establishing overall economic performance and market integrity as it creates incentives for the pension scheme to impact positively on the stakeholders. This is necessary in gaining the confidence of the stakeholders directly affected by the pension reform.

The Code is also to promote the transparent and efficient implementation of the scheme by all the operators. It is intended to encourage self-regulation by providing a common value system among the operators.

The Code is based on internationally accepted principles of good corporate governance and its requirements are consistent with the provisions of the Pension Reform Act 2004, rules, regulations and guidelines issued by the Commission and are also considered transparent and enforceable.

Review and Enquiries

The Code shall be subject to review by the Commission from time to time as the need arises.

All enquiries regarding this Code shall be directed to the Director General, National Pension Commission.

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CODE OF CORPORATE GOVERNANCE FOR LICENSED PENSION OPERATORS

1.0 Introduction

1.1 All stakeholders in the Industry have a responsibility towards the actualization of the main objective of the Pension Reform Act 2004, which is to ensure that every worker receives his/her retirement benefit as and when due. It is in the light of this, that the Commission has designed a Code of Corporate Governance for Licensed Pension Operators to help them meet their own governance responsibilities.

1.2 The Code outlines minimum corporate governance requirements, meant to ensure that governance policies are entrenched in the companies.

2.0 Definitions

2.1 In broad terms, corporate governance deals with the manner in which companies are to be run to meet the owners' required return on invested capital and thus contribute to economic growth and efficiency and ethical behaviour in society.

2.2 Put differently, it refers to the processes and structure by which the business and affairs of the company are directed and managed, in order to enhance long term shareholder value through enhancing corporate performance and accountability, whilst taking into account the interests of other stakeholders.

2.3 From the perspective of the pension industry, it embodies the structure and processes put in place for overseeing, managing and administering the pension schemes to ensure that fiduciary and other obligations of the scheme are met.

2.4 Deriving from 2.1 to 2.3 above, good corporate governance, therefore, embodies both enterprise (i.e. performance) and accountability (i.e. compliance) concerns.

3.0 Purpose of the Code

3.1 Essentially, the Code has been developed to create:

3.1.1 Necessary conditions for shareholders to exercise an active and responsible ownership role;

3.1.2 A clear delineation of authority between the owners, the Board of Directors and the Executive Management;

3.1.3 A clear division of roles and responsibilities between the various levels of authority; and

3.1.4 Transparency amongst operators.

3.2 However, the aim is not only to define what acceptable corporate governance practice is, but also to serve as a source of inspiration for operators to aim at installing reasonably good corporate governance practices in their organizations.

3.3 It promotes transparency and directs PFAs and PFCs to include in their annual report, a narrative statement of how they apply the relevant principles to their particular circumstance and also to post such information to their website.

3.4 Additionally, it directs the PFAs and PFCs to submit a separate report to the Commission on corporate governance activities within their organization. The report should include an explanation for any deviations from the rules and guidelines set out in this document.

3.5 The Code deals with two broad areas:

(a) Board Issues
(b) Industry Transparency

4.0 Code on Board Issues

4.1 Board Composition and Balance

4.1.1 The number of non-executive members (excluding the Chairman) of the Board shall at all times, in the minimum, equate the number of executive members, if applicable. This shall ensure that the Board has a balanced view of issues at all times.

4.1.2 Each Board shall have at least one Independent Director.

4.1.3 An Independent Director shall be one who has no relationship with the company, its related companies (i.e. subsidiary, associate or parent) or officers that could interfere, or be reasonably perceived to interfere, with the exercise of his independent business judgment, which is in the best interests of the company.

4.1.4 A director shall not be considered to be independent if he:

(a) is being employed for any form of service by the company or any of its related companies for the current year or any of the past three (3) financial years;

(b) has an immediate family member (i.e. spouse, child, adopted child, step-child, brother, sister and parent) who is, or has been employed by the company or any of its related companies at least in the last three (3) years;

(c) is accepting any compensation from the company or any of its related companies other than compensation for Board service for the current or past three (3) financial years; or

(d) is a substantial shareholder of, or a partner in (with 5% or more equity interest), or an executive officer of any profit-making organization to which the company made, or from which the company received significant payments, in the current or past three (3) financial years.

4.1.5 The relationships set out in 4.1.4 (a) to (d) above, are not intended to be exhaustive and are examples of situations, which could make a director not to be deemed as independent. If the PFA/PFC however wishes, in spite of the existence of one or more of these relationships, to consider the director as independent, it shall disclose in full, to the Commission, the nature of the director's relationship and explain why he should be considered independent.

4.1.6 The Board shall not exceed the size that will allow it to employ simple and effective methods of work to enable each director to feel a personal responsibility and commitment. The Board shall take into cognizance, the scope and nature of the operations of the company.

4.1.7 The Board shall comprise of directors, who as a group, provide core competencies that are beneficial to the operations of the company.

4.1.8 The roles of Chairman and Chief Executive Officer (CEO) shall be separate, to ensure an appropriate balance of power, increased accountability and greater capacity of the Board for independent decision making.

4.1.9 The PFA/PFC shall disclose the relationship between the Chairman and the CEO, where they are related to each other.

4.2 Appointment of Directors

4.2.1 The Board shall specify and document the procedures and criteria for appointing a new director.

4.2.2 In the case of re-nominations, the criteria should have regard to the director's contribution and performance (e.g. attendance, preparedness, participation and candour) on the Board.

4.2.3 It shall constitute a Nominating Committee (NC) to make recommendations to the Board on all Board appointments.

4.2.4 The NC shall consist of at least three directors, including the Chairman and an Independent Director.

4.2.5 In the case of new appointments and re-appointments, the NC's recommendations shall be based on the agreed criteria for the appointment or re-appointment of directors. It shall also be based on the requirements of the Guidelines for Appointment to Board and Top Management Positions in PFAs and PFCs, GL/APPT/01, issued by the Commission.

4.2.6 The Commission shall be charged with the responsibility of determining, annually, whether or not the Independent Director is truly independent, bearing in mind the circumstances set forth in 4.1.4 (a) to (d) above and any other salient factors.

4.2.7 The PFA/PFC shall develop a comprehensive, formal induction programme that is tailored to the needs of the company and individual non-executive directors. A combination of selected written information together with presentations and activities such as meetings and a tour of the company's offices could help to give a newly appointed director a balanced and real-life overview of the company.

4.2.8 The induction process shall:

(a) Build an understanding of the nature of the company, its business and the market in which it operates. It shall necessarily cover:

i) the company's products or services;

ii) the company's Memorandum and Articles of Association, Board procedures and matters reserved for the Board;

iii) the company's major risks and risk management strategy;

iv) key performance indicators; and

v) Regulatory requirements.

(b) Build a link with the company's people including;

i) meetings with senior management; and

ii) visits to company's branches (in the case of PFAs), to see more of the company's operations and meet the employees in an informal setting.

(c) Build an understanding of the company's main relationships, including the major shareholders, PFC(s), corporate customers and competitors.

(d) A new non-executive director shall be provided with necessary information to help ensure his early effective contribution to the company.

4.3 Responsibilities of Directors

4.3.1 The Board, based on what is in the best interest of the company, its shareholders and other stakeholders, shall set objectives for the company's business operations and make sure that the company has an appropriate strategy, organization and management for achieving these objectives.

4.3.2 The Board shall ensure that the company has an effective management team. It shall monitor and evaluate the performance of the management team on a regular basis.

4.3.3 The Board shall appoint and, if necessary, dismiss the company's Managing Director.

4.3.4 On a regular basis, the Board shall follow up and evaluate the company's operations against the objectives and guidelines established by the Board.

4.3.5 The Board shall ensure that control of the company's financial situation and also in respect of PFAs, the financial situation of the Fund administered by it, is satisfactory; that the company's risk exposure is reasonable; that accounting and financial management are of high quality and are monitored in a satisfactory manner; and that the company has good internal control.

4.3.6 The Board shall ensure that the company, in its reporting to owners, the Commission and other stakeholders, gives an accurate picture of the company's progress, profitability, financial position and risks.

4.3.7 The Board shall ensure that there is a satisfactory process to monitor the company's compliance with the law and rules and regulations governing its operations.

4.3.8 The Board shall ensure that necessary guidelines are established on the company's ethical conduct in its relations with employees, customers, competitors and other related parties. The guidelines shall be in line with the Code of Ethics and Business Practices for PFAs and PFCs, issued by the Commission.

4.3.9 The Board shall put adequate structures in place by which staff of the company may, in confidence, raise concerns about possible improprieties.

4.3.10 The management of the company shall have an obligation to supply the Board with complete and adequate information on the operations of the company, in a timely manner.

4.3.11 The Board shall not rely purely on information volunteered by the management and shall, in all circumstances, have separate and independent access to the company's senior management for further enquiries, as may be required.

4.3.12 The Board shall ensure that the company has a sound system of internal controls.

4.3.13 The Board shall be responsible for issuing the company's audited financial statements.

4.3.14 All members of the Board shall complete the Code of Conduct Forms for Directors, issued by the Commission.

4.4 Conduct of Affairs of the Board

4.4.1 The Board shall meet at least once every quarter of the financial year.

4.4.2 Written notices, including agenda of the meeting, shall be circulated not less than seven days before the meeting, except in the circumstance of emergency meetings, where the notice period may be reduced or waived.

4.4.3 The Chairman of the Board shall ensure that minutes of meetings are appropriately recorded and circulated to members.

4.4.4 The Board shall establish Board Committees to facilitate its work. The Committees shall include the Audit Committee, the Investment Strategy Committee, the Risk Management Committee, and the Nominating Committee.

4.4.5 Where the nomenclature, Nominating Committee is undesirable, the Board may adopt any other nomenclature considered suitable for the Committee. The Committee, however, irrespective of its nomenclature, shall be constituted as specified in 4.2.4, and shall perform the functions that shall include those specified in 4.2.3, amongst others.

4.4.6 Where the Board appoints a committee, it shall issue, in writing, the terms of reference to guide the committee's work and shall also spell out the authorities of the committee, and in particular, whether the committee has the authority to act on behalf of the Board or simply has the authority to examine a particular issue and report back to the Board with a recommendation.

4.4.7 The Board shall have a formal schedule of matters specifically reserved for the Board's decision, to ensure that the direction and control of the company is firmly in its hands.

4.5 Performance Evaluation of the Board

4.5.1 The Board shall, on an annual basis, undertake a formal and rigorous evaluation of its own performance and that of its committees and individual directors.

4.5.2 Individual evaluation shall aim to show the contribution of each director to the Board, including time committed for Board and committee meetings and any other duties.

4.5.3 The outcome of the evaluation shall be prepared in two copies and one copy submitted to the Commission along with the company's annual report on corporate governance.

4.5.4 The evaluation process shall be used constructively as a mechanism to improve Board effectiveness, maximize strengths and tackle weaknesses. The results of the Board evaluation shall be shared with all members of the Board. The Chairman shall act on the results of the performance evaluation by recognizing the strengths and addressing the weaknesses of the Board and, where appropriate, proposing the appointment of new members or seeking the resignation of non-performing directors.

4.5.5 The Board shall disclose, in the Corporate Governance Report to the Commission, the total number of Board meetings held in the financial year and names of the directors that attended each of the meetings.

4.5.6 The Board shall state in its Corporate Governance Report to the Commission, how such performance evaluation was conducted and actions taken to address the issues brought to fore as a result of the evaluation.

4.5.7 To bring objectivity to the process, the Board may consider the use of external third party to conduct the evaluation,

4.5.8 Where the use of external third party is not desirable, the PFA/PFC may decide to design and institute its own internal board review and evaluation process, or the following shall apply:

(a) The NC shall be responsible for evaluating the performance of the Board as a whole;

(b) the non-executive directors, led by the Independent Director, shall be responsible for performance evaluation of the Chairman, taking into account the views of the executive directors;

(c) the Chairman and the non-executive directors shall be responsible for the evaluation of executive directors; and

(d) the Chairman and the executive directors shall be responsible for the evaluation of non-executive directors.

4.5.9 Where the PFA/PFC decides to design and institute its own internal Board review and evaluation process, as specified in 4.5.8, details of such processes shall be forwarded to the Commission for prior approval.

4.5.10 The following questions shall form the basis of the performance evaluation. They are, however, by no means definitive or exhaustive and the PFA/PFC shall be at liberty to tailor the questions to suit their own needs and circumstances:

4.5.11 **The Board:**

(a) How well has the Board performed against any performance objectives that have been set?

(b) What has been the Board's contribution to the testing and development of strategy?

(c) Is the composition of the Board and its committees appropriate, with the right mix of knowledge and skills to maximize performance in the light of future strategy?

(d) Are inside and outside the Board relationships working effectively?

(e) How has the Board responded to any problems or crises that have emerged and could or should these have been foreseen?

(f) Are the matters specifically reserved for the Board the right ones?

(g) How well does the Board communicate with the management team, company employees and others?

(h) How effectively does the Board use mechanisms such as the Annual General Meeting?

(i) Is the Board as a whole up to date with latest developments in the regulatory environment and the market?

(j) How effective are the Board's Committees? (Specific questions on the performance of each committee should be included such as, their role and effectiveness, their composition and their interaction with the Board.)

(k) Is appropriate and timely information of the right length and quality provided to the Board and is Management responsive to requests for clarification or amplification? Does the Board provide helpful feedback to Management on its requirements?

(l) Are sufficient Board and Committee meetings of appropriate length held to enable proper consideration of issues? Is time used effectively?

(m) Are Board procedures conducive to effective performance and flexible enough to deal with all eventualities?

4.5.12 **The Chairman:**

(n) Is the Chairman demonstrating effective leadership of the Board?

(o) Are relationships and communications with shareholders well managed?

(p) Are relationships and communications within the Board constructive?

(q) Are the processes for setting the agenda working? Do they enable Board members to raise issues and concerns?

(r) Is the Company Secretary being used appropriately and to maximum value?

4.5.13 **The Directors:**

(s) How well prepared and informed are they for Board meetings and is their meeting attendance satisfactory?

(t) Do they demonstrate a willingness to devote time and effort to understand the company and its business and a readiness to participate in events outside the Boardroom such as site visits?

(u) What has been the quality and value of their contributions at Board meetings?

(v) In the case of Executive Directors, how well have they handled the day-to-day operations of the company?

(w) What has been their contribution to development of strategy?

(x) How successfully have they brought their knowledge and experience to bear in the consideration of strategy?

(y) How effectively have they probed to test information and assumptions? Where necessary, how resolute are they in maintaining their own views and resisting pressure from others?

(z) How effectively and proactively have they followed up their areas of concern?

(aa) How effective and successful are their relationships with fellow Board members, the Company Secretary and senior management?

(ab) Does their performance and behaviour engender mutual trust and respect within the Board?

(ac) How actively and successfully do they refresh their knowledge and skills and are they up to date with the latest developments in areas such as corporate governance framework, financial reporting and the industry and market conditions?

(ad) How well do they communicate with fellow Board members, senior management and others, for example shareholders? Are they able to present their views convincingly, yet diplomatically and do they listen and take on Board the views of others?

4.6 Re-election of Members of the Board

4.6.1 Directors shall be appointed for specific tenors, subject to re-election in line with relevant statutory requirements and sections of the Memorandum and Articles of Association relating to the removal of a director.

4.6.2 The re-election of a director shall not be automatic and shall be based on the favourable performance of the director on the Board.

4.6.3 Where a director is not re-elected thus causing a vacancy on the Board, the shareholders shall appoint another director to replace the outgoing director, in line with the provisions of the Guidelines for the Appointment of Board and Top Management Positions in PFAs and PFCs, GL/APPT/01, issued by the Commission.

5.0 Code on Industry Transparency

5.1 Conflict of Interest – Relationship between PFAs and PFCs

5.1.1 The PFA shall not have any relationship with the PFC with which it chooses to do business, as specified in the Code of Ethics and Business Practices, issued by the Commission.

5.1.2 A relationship as in 5.1.2 above shall be deemed to exist in situations where:

(a) any director in a PFA is an employee or principal officer or shareholder in a PFC that the PFA appoints to carry on any form of business on its behalf, or in its subsidiary or associated company, or its parent bank;

(b) any director in a PFA is a director on the Board of a PFC that the PFA appoints to carry on any form of business on its behalf, or is on the Board of its subsidiary or associated company; and

(c) an associated company of the PFA has a significant business relationship with the PFC or its parent or its associated company, and vice versa.

5.2 Conflict of Interest - Relationship between PFAs and their Service Providers

5.2.1 A PFA/PFC shall engage service providers that have a relationship with it on an arms length basis and customary disclosures shall be made in their audited financial statements.

5.2.2 A relationship as in 5.2.1 above shall be deemed to exist where:

(a) the PFA and the service providers, which it appoints, have common ownership or directorship, no matter how insignificant; and

(b) an immediate family member (i.e. spouse, child, adopted child, step-child, brother, sister and parent) of a shareholder or director of a PFA is a shareholder or director of a service provider, which the PFA appoints.

5.2.3 Where the PFA decides to invest pension funds in a company whose registrar is related (i.e. shareholder, subsidiary or associate) to either the PFA or the PFC which the PFA appoints, the PFA shall disclose such relationship to the Commission.

5.2.4 In the circumstance highlighted in 6.2.3 above, the Commission reserves the right to allow or disallow such investment.

5.2.5 To avoid potential conflicts of interest, spouses of operator (PFA, CPFA, & PFC) employees shall be prohibited from working at the Commission. Similarly, spouses of the Commission employees shall be prohibited from working with the operators.

5.3 Directors Remuneration

5.3.1 The Board should report to the shareholders each year on remuneration. The report should form part of, or be annexed to, the company's annual report and accounts. It should be the main vehicle through which the company reports to shareholders on directors' remuneration.

5.3.2 The report should set out the company's policy on directors' remuneration. It should draw attention to factors specific to the PFA/PFC.

5.4 Reporting Requirements

5.4.1 The PFA/PFC shall include a statement in its annual report and on its website on the level of its compliance with this Code of Corporate Governance.

5.4.2 Additionally, the PFA/PFC shall submit a separate report to the Commission on corporate governance activities within its organization, not later than two months after its financial year end.

5.4.3 The report shall include the description of corporate governance practices instituted in the company within the reporting year and shall also disclose and explain any deviation from any guideline of the Code. Specifically, the report shall include reports on:

(a) Delegation of authority by the Board to any Board Committee, to make decisions on certain Board matters.

(b) The number of Board meetings held in the year and the attendance of every Board member at the meetings.

(c) The number of Board committee meetings held in the year and the attendance of every Board committee member at the meetings.

(d) The terms of reference of all Board committees.

(e) The type of material transactions that require Board approval under the company's internal guidelines.

(f) The nature of a director's relationship and the reason for considering him as independent, where the company considers him to be independent in spite of the existence of a relationship as stated in 5.1.4 above that would otherwise deem him as non-independent.

(g) The relationship between the Chairman and the CEO where they are related (spouse, child, adopted child, step-child, brother, sister and parent) to each other.

(h) The composition of the Nominating Committee.

(i) The process for the selection and appointment of new directors to the Board.

(j) Key information regarding directors, which directors are executive, non-executive or considered by the Nominating Committee to be independent.

(k) The process for assessing the effectiveness of the Board as a whole and the contribution of each individual director to the effectiveness of the Board.

(l) Composition of Risk Management, Investment Strategy and Audit Committees and details of the committees' activities.

(m) The adequacy of internal controls, including financial, operational and compliance controls and risk management systems.

(n) How performance evaluation of the Board, its committees and its directors has been conducted.

5.4.4 The PFA/PFC shall attach the outcome of the annual evaluation of the Board, the Board committees and the directors, referred to in 5.5.1 above, to its Corporate Governance report.

5.5 Non Compliance

5.5.1 Non compliance to this Code will attract sanctions by the Commission.