



**HOME AFRIKA**

Houses Become Homes

**HOME AFRIKA LTD  
BOARD CHARTER  
MARCH 2015**

## **ABBREVIATIONS AND DEFINITIONS**

**AGM** – Annual General Meeting of Shareholders

**CEO**- Chief Executive Officer

**CG&N**- Compensation, Governance and Nominations

**CBK**- Central Bank of Kenya

**CMA**- Capital Markets Authority

**EGM**- Extra Ordinary General Meeting

**HAL** – Home Afrika Limited

**IFC**- international Finance Corporation

**MOF**- Ministry of Finance

**MoU**- Memorandum of Understanding

**SGM**- Special General Meeting of Shareholders

**THE BOARD**- The Board of Directors

**THE CHAIR**- Chairman of the Board of Directors

**U.S.A**- United States of America

**U.K**- United Kingdom

## Table of Contents

1.	INTRODUCTION .....	8
1.1	Background Information.....	8
1.2	Home Afrika Mission and Vision.....	8
1.3	Goals and objectives.....	8
1.4	Declaration.....	8
1.5	Purpose of the Board Charter .....	9
1.6	Application of the Board Charter .....	10
1.7	Defining Corporate Governance.....	11
1.8	The Main Guiding Principles of Corporate Governance .....	11
1.9	Distinguishing Corporate Governance .....	11
1.10	The Business Case for Corporate Governance .....	12
2.0	THE BOARD OF DIRECTORS .....	13
2.1	The Role of the Board .....	13
2.2	The Board’s responsibilities .....	14
2.2.1	Management Oversight.....	14
2.2.2	Exercising Business Judgment .....	15
2.2.3	Understand HAL and its Core Business .....	15
2.2.4	Establish Effective Systems.....	15
2.3	Appointments to the Board.....	15
2.4	Balance of Powers .....	16
2.5	Supply and Disclosure of Information.....	16
2.6	Proper Confidentiality and Proprietary Information.....	16
2.7	Board Balance.....	16
2.8	Board Committee and Shareholder Meetings.....	17
2.9	Indemnification.....	17
2.10	Other Directorships.....	18
2.11	Tenure.....	18
2.12	Removal or Resignation of Board Members .....	18
2.13	Selection of New Director Candidates .....	19
2.14	Formal Appointment of New Directors to the Board .....	19

2.15	Age Requirements for Appointment and Resignation .....	20
2.16	Majority Vote Policy .....	20
2.17	Separation of the Office of the Chairman and the CEO .....	20
2.17.1	Communication Protocol .....	21
2.18	Directors' Access to Senior Management and Employees .....	21
2.19	Directors' Access to Independent Advisors .....	21
3	GENERAL.....	21
3.1.1	Public Disclosure .....	21
3.1.2	Chief Financial Officer of Public Listed Companies.....	21
3.1.3	Company Secretaries of Public Listed Companies.....	22
3.1.4	Auditors of Publicly Listed Companies.....	22
3.2.0	Board Meetings.....	22
3.2.1	Board Papers.....	24
3.2.2	Agenda.....	24
3.2.2.1	Board Briefing Papers .....	24
3.2.2.2	Minutes of Board Meetings .....	25
3.2.2.3	Board Calendar .....	26
3.3	Procedures Relative to Complaints Regarding Accounting and Auditing Matters .....	26
3.3.1	General.....	26
3.3.2	Protection.....	27
3.3.3	Confidentiality .....	27
3.3.4	Detailed Procedures .....	27
3.4	Interested Parties Communication with Management .....	28
3.5	Management Succession.....	28
4.	THE ROLES OF KEY OFFICE HOLDERS .....	28
4.1	The Board Chair .....	28
4.1.1	Leadership and Board Effectiveness .....	29
4.1.2	Board Management.....	29
4.1.3	Relationships between the Board, Management and Shareholders .....	30
4.1.4	Conduct of Board Meetings.....	30
4.1.5	Board and Director Performance .....	31
4.1.6	External Functions .....	31
4.2	The Chief Executive Officer (CEO).....	31

4.2.1	Strategic Planning.....	31
4.2.2	Operations.....	31
4.2.3	Governance.....	32
4.3	The Corporate Secretary.....	32
4.3.1	Independence of the Corporate Secretary.....	33
4.3.2	Appointment of the Corporate Secretary.....	33
5.	BOARD COMMITTEES.....	34
5.1	Overview of the Committees.....	34
5.2	Formation of Board Committees.....	34
5.3	Selection of the Committee Chairs.....	35
5.4	The Role of the Committee Chairs.....	35
5.4.1	Committee Effectiveness.....	35
5.4.2	Committee Management.....	36
5.4.3	Committee Charters.....	36
5.4.4	Assignment of Committee Members.....	36
5.4.5	Selection of Board Committee Meetings Agenda Items.....	36
5.4.6	Frequency of Committee Meetings.....	37
5.5	Audit, Risk & Compliance Committee.....	37
5.6	Remuneration and Nominations Committee.....	44
6.	DIRECTORS' REMUNERATION.....	52
6.1	Introduction.....	52
6.2	Form of Compensation.....	53
6.3	Essential Components of Directors 'Compensation.....	53
6.3.1	Base Fees.....	53
6.3.2	Review of Base Fees.....	54
6.3.3	Equal Sharing.....	54
6.3.4	Supplemental Fees.....	54
6.3.5	Reimbursement of Expenses.....	55
6.3.6	Personal Transportation.....	55
6.3.7	Multi-Directorships.....	55
6.3.8	Constitutional Restrictions.....	55
6.3.9	Compensation for terminated directors.....	55
6.3.10	Amount of Compensation.....	55

6.4	Compensation for Director Service to Company Employees Serving On Other Company Boards.....	56
6.5	Prohibition of Tax- free Payments to Directors.....	56
6.6	Prohibition of Loans to Directors .....	56
6.7	Director Share Ownership .....	57
6.8	Share Trading .....	57
6.9	Payment on Termination.....	57
6.10	Role of the Nominations and Remunerations Committee .....	57
6.11	Public, Political and Shareholder Acceptance (Disclosure) .....	58
7	ORIENTATION, PERFORMANCE AND EVALUATION .....	58
7.1	Director Orientation and Continuing Education.....	58
7.1.1	Orientation.....	58
7.1.2	Continuing Education .....	58
7.2	Directors’ Performance and Evaluation.....	58
7.3	Evaluation Procedure.....	59
7.4	Performance Evaluation of Individual Directors .....	60
8	SHAREHOLDER STRUCTURE.....	61
8.1	Shareholders’ Rights.....	61
8.2	Approval of Major Decisions by Shareholders.....	62
8.3	Shareholder’s Meetings .....	62
8.4	Length of Notice for Calling meetings .....	63
8.5	Convening of an Extraordinary General Meeting.....	63
8.6	Accountability and Audit.....	64
8.6.1	Annual Reports and Accounts .....	64
8.6.2	Internal Controls .....	64
8.6.3	Independent Auditors .....	64
8.6.4	Relationship with Auditors .....	64
8.6.5	Shareholder List.....	64
8.6.6	Share Certificates.....	65
8.6.7	Share Transfers .....	65
8.6.8	Dividends.....	65
8.6.9	Reserves.....	65
8.6.10	Governance.....	65

9	BOARDS OF SUBSIDIARIES.....	66
9.1	Introduction .....	66
9.2	Wholly owned subsidiaries.....	66
9.2.1	Reporting .....	66
9.2.2	The Partly Owned Subsidiary .....	67
9.2.3	Appointment of Directors to Subsidiaries .....	67
10	BOARD AND GOVERNANCE .....	67
10.1	Regulatory Framework .....	67
10.2	Governance Audits .....	68
10.3	Enterprise Risk Management.....	68
10.4	The Media and Corporate Governance.....	69

## **1. INTRODUCTION**

### **1.1 Background Information**

Home Afrika Ltd is a Public Company formed in 2008, and seeks to grow into the largest Real Estate Developer in Africa. Home Afrika Ltd has 128 founder shareholder members that have contributed to the phenomenal growth of the company.

The Board of Directors of HAL has adopted these Corporate Governance guidelines to assist the Board in the exercise of its responsibilities. The Board may modify or make exceptions to the Guidelines from time to time at its discretion; in consistency with the duties and responsibilities owed to HAL and its shareholders.

### **1.2 Home Afrika Mission and Vision**

Home Afrika Ltd has a Mission, which is to provide quality, functional, well designed, and competitively priced housing to a wide range of income earners.

The Vision of the company is to become the largest housing developer in sub-Saharan Africa.

### **1.3 Goals and objectives**

The company seeks to grow with an average of one billion USD within the next five years through undertaking of a mix of commercial, residential, and land sub-division projects in Kenya by employing the “Go county” strategy within Kenya, and the “Go Afrika” strategy within the rest of sub-Saharan Africa.

### **1.4 Declaration**

The governing body of Home Afrika Ltd shall be the Board of Directors, which shall abide by the policies and procedures contained in this manual. Eleven (11) Members constitute the current Board and the names are depicted in table 1.



**Table 1: Board Members**

<b>Name of board member</b>	<b>Position</b>	<b>Date</b>	<b>Signature</b>
<b>1. Lee Karuri</b>	Chairman		
<b>2. Dr. Mbira Gikonyo</b>	Vice Chairman		
<b>3. Eng. Mbugua Kamau</b>	Treasurer		
<b>4. Lucy Maina</b>	Director		
<b>5. Nyagah Githinji</b>	Director		
<b>6. Mbugua Gecaga</b>	Director		
<b>7. Dan Awendo</b>	Director		
<b>8. Jane Adam</b>	Director		
<b>9. Paul Nguru</b>	Director		
<b>10. Doris Murimi</b>	Director		
<b>11. Ketan Shah</b>	Director		

By adopting this Board Charter, the Board of Home Afrika Limited formally recognizes;

- a) The respective roles, responsibilities, and authorities of the Board of Directors both individually and collectively, and of the management;
- b) The accountability of the Board and the management to HAL and its stakeholders;
- c) The right balance of authority so that no single individual has unfettered powers; decent is an obligation until a decision is made; and the interest of Home Afrika Limited as a whole is paramount; and
- d) The promotion of ethical and responsible decision-making by all its employees based on standards of ethical behavior required of each director and key executives.

### **1.5 Purpose of the Board Charter**

The Board Charter (the “Charter”) defines the Board’s roles and responsibilities as well as functions and structures in a way that supports the members in carrying out their strategic oversight function. It provides the Board members with an opportunity to think creatively and critically about how their strategic and operational plans align with the organizations strategic direction and expectations with respect to governance. The Charter will help the Board in directing the organization to maximize long term value of services provided for all stakeholders. The Charter is complementary to the requirements regarding the Board and Board members contained in applicable Kenyan laws and regulations as well as other Company policies.

The purpose of the Charter is to provide the Board with a guidance tool with regard to corporate governance in the Real Estate Development sector. The Charter outlines specific roles and responsibilities of the Board, its committees, and the C.E.O. The Charter also defines the performance monitoring mechanisms including financial performance, used by the Board. This Charter will enable;

- a) The development of a shared agreement and understanding of corporate governance throughout Home Afrika Limited;
- b) The basic authority for raising potentially contentious matters that are often the root cause of difficulties in the boardroom;
- c) The development of high performance board work groups whose members trust and challenge one another, and engage directly with the executive team and senior management.

As a publicly listed company on the Nairobi Securities Exchange, Home Afrika Limited shall disclose on annual basis a statement of the directors as to whether the company is complying with the Capital Markets Authority guidelines of Corporate Governance, as prescribed under the Capital Markets (Public Offers, Listing and Disclosures) Regulations, 2002. This will apply to any other regulatory authority in the business environment.

## **1.6 Application of the Board Charter**

This Charter applies to the members of the Board of Home Afrika Ltd and each member assumes the responsibility of complying with its content. It is designed to guide HAL's corporate governance, and to adopt the standards of self-regulation to bring levels of governance in line with international accepted bests practices.

This Charter will be amended from time to time. After each set of amendments, the Charter has the force of a binding resolution of the Board until further amended. Further development and regular review of the Charter is the responsibility of the Board of Directors and the CEO of Home Afrika Limited.

The following description of Home Afrika Limited's governance practices fully complies with the disclosure and listing requirements of the Nairobi Securities Exchange (the "NSE") and with applicable Kenyan legislation and related statutory requirements such as the **Companies Act (Chapter 486 Laws of Kenya) and the Capital Markets Act (Cap 485A)**.

## 1.7 Defining Corporate Governance

*Corporate Governance* means the process and the structure used to direct and manage the business and affairs of the corporation with the objective of enhancing shareholder value, which includes ensuring the financial viability for the business. The process and structure define the division of power and establish mechanisms for achieving accountability between the Board of Directors and management for the benefit of stakeholders such as employees, shareholders, customers, suppliers, and communities.

The Home Afrika Ltd. Board of Directors reviews the Board Charter annually with a view to continuously improve Home Afrika Ltd corporate governance practices by assessing their effectiveness, and comparing them with evolving best practices standards identified by leading governance authorities and Home Afrika Ltd changing circumstances and evolving needs.

## 1.8 The Main Guiding Principles of Corporate Governance

Home Afrika Limited will adopt the following principles of good corporate governance:

1. Constitute a Board with integrity;
2. Build trust and credibility;
3. Build respect for the individual;
4. Create a culture of open and honest communication;
5. Set the tone at the top;
6. Uphold the law;
7. Avoid conflict of interest;
8. Set metrics and report results accurately;
9. Promote substance over form;
10. Be loyal;
11. Do the right thing.

## 1.9 Distinguishing Corporate Governance

Corporate governance must not be confused with corporate management. **Corporate governance focuses on a company's structure and processes to ensure fair, responsible, transparent and accountable corporate behaviour.** Corporate management, on the other hand, focuses on the tools required to operate the business. Corporate governance is situated at a higher level of direction that ensures that the company is managed in the interests of its shareholders. One overlapping area is strategy, which is dealt with at the

corporate management level and is a key corporate governance element. Corporate governance must also not be confused with public governance, which deals with the governance structures and systems within the public sector.

Corporate governance must further be distinguished from good corporate citizenship, corporate social responsibility and business ethics. Good corporate governance will certainly reinforce these important concepts. However, while companies that invest in socially responsible projects, run charitable foundations or do not pollute often benefit with a superior reputation, public goodwill and even better profitably, corporate governance is and remains distinct from these concepts.

**1.10 The Business Case for Corporate Governance**

Home Afrika Ltd recognizes that good corporate governance is important on a number of different levels. At the company level, well-governed companies tend to have better and cheaper access to capital, and tend to outperform their poorly governed peers over the long-term. Companies that insist upon the highest standards of governance reduce many of the risks inherent to an investment in a company.

Companies that actively promote robust corporate governance practices need key employees who are willing and able to devise and implement good corporate governance policies. These companies will generally value and compensate such employees more than their competitors that are unaware of, or ignore, the benefits of these policies and practices. Such companies, in turn, tend to attract more investors who are willing to provide capital at lower cost.

Generally, well-governed companies are better contributors to the national economy and society. They tend to be healthier companies that add more value to shareholders, workers, communities, and countries in contrast with poorly governed companies that may cause job and pension losses, and even undermine confidence in securities markets.

The table below illustrates the four levels of corporate governance and the potential benefits to Home Afrika Ltd; **level four being the highest level of good governance**, and level one being the lowest.

<b>The four levels of corporate governors</b>	<b>Potential Benefit</b>
Level 4: Corporate Leadership	Governance, improved operational efficiency.
Level 3: Advanced governance system	Corporate access to capital markets.
Level 2: Initial steps to improve corporate governance	Lower cost of capital.
Level 1: compliance with legal and regulatory requirements	Better reputation of Home Afrika, its Directors and managers.

## **2.0 THE BOARD OF DIRECTORS**

### **2.1 The Role of the Board**

The Board should assume the primary responsibility of fostering the long-term business of HAL consistent with their fiduciary responsibility to the shareholders. The Board should accord sufficient time to their functions and act on a fully informed basis while treating shareholders fairly, in the discharge of the following responsibilities. The role of the Board is to provide leadership and vision to the Home Afrika Limited in enhancing its success over time.

- a) Define the company's mission, its strategy, goals, risk policy plans and objectives including approval of its annual budgets.
- b) Oversee the corporate management and operations, management accounts, major capital expenditures, and review corporate performance and strategies at least on a quarterly basis.
- c) Identify the corporate business opportunities as well as principal risks in its operating environment including implementation of appropriate measures to manage such risks or anticipated changes impacting on the corporate business.
- d) Development of appropriate staffing and remuneration policy including the appointment of the chief executive and the senior Managers, particularly the Head of Finance, Head of Operations and the Company Secretary, as may be applicable.
- e) Establish and implement a system that provides the necessary information including shareholder communication policy for HAL.
- f) Monitor the effectiveness of corporate governance practices under which the Company operates and propose revisions as may be required from time to time.
- g) Take into consideration the interests of HAL's shareholders in the decision-making process.

The Board is vested with and responsible for pursuing the objects of Home Afrika Limited and controlling its affairs and property. The Board is responsible for the overall governance of Home Afrika Limited. This includes its strategic direction, establishing goals for management and monitoring the achievement of these goals.

The Board ensures that all its members are informed of all major developments affecting HAL. The Board acknowledges that it must handle dynamic relationships between HAL and its key stakeholders including but not limited to: shareholders, employees, customers, suppliers, and regulators. It is the responsibility of the Chairman of the Board to ensure that all these responsibilities are met and to ensure that the Board's roles and responsibilities are aligned with HAL's Strategic Plan.

HAL's broader social purpose is to serve the interests of all the stakeholders such as customers, staff, shareholders, suppliers and the communities within which the company operates. Because some of these interests may be conflicted, the Board must justly balance those competing interests. Logically it should regularly measure its performance having regard to law and precedent.

The Board must direct its activities towards the achievement of the objectives set out as part of the 2012-2017 Strategic Plan. The Board of Directors plays a central role in the corporate governance framework. The Board of Directors is responsible for guiding and setting Strategy and business priorities; including the annual financial and business plans; and guiding and controlling managerial performance. It acts in the interests of the company, protects the rights of all shareholders, oversees the work of the Chief Executive Officer (CEO) as well as the financial control systems.

## **2.2 The Board's responsibilities**

An effective, professional and independent Board is essential for the implementation of good Corporate Governance practices. Some of HAL board responsibilities include but are not limited to:

### **2.2.1 Management Oversight**

- a) Appoint the Chief Executive Officer and participate in the appointment of all senior management, ensure motivation and protection of intellectual and capital crucial to HAL;
- b) Ensure that there is adequate training for management and their employees and put in place a succession plan for senior management;
- c) Review and approve on a regular basis and as the need arises, fundamental operating financial and other strategic corporate plans which take into account, among others; the opportunities and risks of business;
- d) Evaluate the performance of the company including the appropriate expenses use of corporate resources;
- e) Evaluate the performance of and oversee the progress and development of senior management and take appropriate action, such as promotions, change in responsibility and remuneration;
- f) Evaluate HAL compensation program;
- g) Establish a corporate environment that promotes timely and effective disclosure; including appropriate controls, fiscal accountability, high ethical standards and compliance with applicable laws; industry and community standards; and
- h) Evaluate HAL's systems in order to identify and manage the risks faced by HAL;
- i) Review and decide on material transactions and commitments;

- j) Develop a corporate governance structure that allows and encourages the Board to fulfill its responsibilities;
- k) Provide assistance to the Company's senior management including guidance on those matters that require Board involvement; and
- l) Evaluate the overall effectiveness of the Board and its committees.

### **2.2.2 Exercising Business Judgment**

In discharging their fiduciary duties of care, loyalty and candour, Directors will exercise their business judgment to act in what they believe to be the best interests of HAL and its shareholders free from personal interests. In discharging their duties, Directors will rely on senior management, other employees believed to be responsible, and its outside advisors, auditors and legal counsel; but will also consider second opinions where circumstances warrant.

### **2.2.3 Understand HAL and its Core Business**

With the assistance of HAL, the Board will become and remain informed about the company and its business properties, key risk areas, and prospects. The directors will also identify global Key Performance Indicators for the company.

### **2.2.4 Establish Effective Systems**

The Board is responsible for determining that effective systems are in place for the periodic and timely reporting to the Board on important matters concerning HAL. Directors will also provide for periodic reviews of the integrity of HAL's internal controls and management information systems.

## **2.3 Appointments to the Board**

The Board of Home Afrika Limited as a public listed company through the Nairobi Securities Exchange will appoint a Nomination and Remuneration Committee consisting mainly of independent and non-executive directors with the responsibility of proposing new nominees for the Board and to assess the performance and effectiveness of the directors in HAL.

The Nomination and Remuneration Committee will consider only persons of calibre, credibility, and who have the necessary skills, and expertise. There will be a formal and transparent procedure in the appointment of directors to the Board. All persons offering themselves for appointment as directors should disclose any potential areas of conflict that may undermine their position or service as a director.

## **2.4 Balance of Powers**

The Board will ensure that no one person in the group or persons has unfitted power and that there is an appropriate balance of power on the Board and that it can exercise objective and independent judgment; which is inter alia, reflected by separating the roles of the Chairman of the Board and the Chief Executive Officer; and by having a balance between executive and non-executive directors.

Where the roles of the Board Chair and the CEO are combined, a rationale for the same should be disclosed to the shareholders in HAL's annual report.

## **2.5 Supply and Disclosure of Information**

The Board will be supplied with relevant, accurate, and timely information to enable the Board to discharge its duties. The Board should annually disclose its annual report, its policies for remuneration, including incentives for the Board and senior management, particularly the following;

a) Quantum and component remuneration for the Directors including non-executive Directors on a consolidated basis; in the following categories;

- Executive directors' fees
- Executive directors' emoluments (salary, fees, or profit from employment or office)
- Non-Executive Directors' fees
- Non- Executive directors emoluments

b) A list of ten (10) major shareholders in the company

c) Share options and other forms of executive compensation that have to be made or have been made during the course of the financial year

d) Aggregate directors' loans (where applicable)

## **2.6 Proper Confidentiality and Proprietary Information**

The Board is responsible for establishing policies intended to protect the company's confidential and proprietary information from unauthorized and inappropriate disclosure. Likewise all discussions and proceedings of the Board of Directors must be treated as strictly confidential and privileged to preserve open discussions between Directors and to protect the confidentiality of Board discussions.

## **2.7 Board Balance**

The Board will compose of a balance between executive and non-executive directors; including at least one third independent and non-executive directors of diverse skills in order to ensure that no individual or small group of individuals can dominate the board's decision-making process.

An "**independent**" director refers to one whom:



- a) Has not been employed by HAL in an executive capacity within the last five years;
- b) Is not associated to an advisor or consultant to the Company or a member of the company's senior management or a significant customer or supplier of the company; and has not had any business relationship with the company for the last five years other than service as a director; for which HAL has been required to make a disclosure;
- c) Has no personal service contracts with HAL or a member of the company's senior management team;
- d) Is not employed by a publicly listed company at which an executive officer of the company serves as a director;
- e) Is not a member of the immediate family of any person described above; or and
- f) Has not had any of the relationships described above with any affiliates of the company.

**Non-executive** - director means a director who is not involved in the administrative or managerial operations of HAL.

The independent and non-executive directors should form at least one-third of the Board; and should compose a number of directors, which fairly reflects HAL's shareholding structure. The composition of the Board should also provide a mechanism for the representation of minorities without undermining the collective responsibility of the directors.

A substantial shareholder, for the purposes of these guidelines is someone who holds not less than fifteen (15) percent of the voting shares of a listed company and has the ability to exercise majority voting for the election of directors.

The Board should disclose in its annual report whether independent and non-independent directors constitute one-third of the Board, and if it satisfies the representation of the minority shareholders.

## **2.8 Board Committee and Shareholder Meetings**

Directors will be responsible for adequately preparing and attending Board meetings and meetings of Board committees on which they serve. They will devote the time needed, and meet as frequently as necessary to properly discharge their responsibilities.

## **2.9 Indemnification**

The Directors are entitled to company-provided indemnification through corporate articles and bylaws, corporate statutes, and any relevant board contracts and/or indemnity agreements.

## **2.10 Other Directorships**

Board members will not be discouraged from serving on the boards of other organizations, and the Board will not propose any specific policies limiting such activities, providing that they do not reduce the director's effectiveness or result in a continuing conflict of interest. However, the Board should take into account the nature of, and the time involved in a director's service on other boards; in evaluating the suitability of individual directors and in making recommendations.

No person who serves as a corporate director of a listed company shall do so in more than five publicly listed companies at any one time to ensure the effective participation in the Board. In the case where the corporate director has been appointed an alternate director, the appointment of such alternate director shall be restricted to three (3) listed companies at any one time, as the requirements under the Capital Market (Securities, under Public Offers, Listing and other Disclosures) Regulations 2002.

## **2.11 Tenure**

Service contracts of the Board should not exceed three years, but these are renewable with the approval of shareholders and recommendation of the Board. All directors shall be required to submit themselves for re-election at regular intervals or at least once every three years.

As an alternative to term limits, the Board will review individual director's continuation on an annual basis. This will allow a director to confirm his or her availability and ability to continue as a Board member and to allow the Board where necessary; to replace directors.

Executive Directors should have a fixed service contract not exceeding five (5) years with a provision to renew subject to:

- Regular performance appraisal; and
- Shareholders' approval.

Disclosure should be made to the shareholders at the annual general meeting and in the annual reports of all directors approaching their seventieth (70<sup>th</sup>) birthday that respective year.

## **2.12 Removal or Resignation of Board Members**

The Board can by ordinary resolution remove a director before the expiration of his/her period in office; notwithstanding anything in the company's articles of association or any agreement between the company and the individual director. The Companies Act Chapter 486 Section 185 states "*A company by ordinary resolution can remove a director before the expiration of his period in office, notwithstanding anything in its articles or in any agreement between it and him*".

Section 2 specifies that a special notice will be required of any resolution to remove a director. A copy of this notice must be sent to the director forthwith; who shall also be entitled to be heard on the resolution at the meeting.

With regard to filling a vacancy created by the removal of a director, sections (4) and (5) of the Companies Act state “A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

*(5) A person appointed director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed a director.”*

Resignation of a serving director should be disclosed in the annual report together with the details of the circumstances necessitating resignation.

### **2.13 Selection of New Director Candidates**

Except where HAL legally is required by contract, law or otherwise to provide third parties with the right to nominate directors; the Nomination and remuneration Committee will be responsible for;

- Identifying individuals qualified to be Board members, consistent with the criteria approved by the Board;
- Recommend to the Board, the persons being nominated for election as directors at any meeting of shareholders; and
- Recommending to the Board, the persons elected to fill any vacancies on the Board. The plenary Board shall consider the Nominations of the committee based on recommendations, but the recommendations are not binding upon it.

### **2.14 Formal Appointment of New Directors to the Board**

The HAL board will task the Nominations and Remunerations committee consisting mainly of independent and non-executive directors with the responsibility of proposing new nominees for the board and coordinating the assessment of the performance and effectiveness of the directors in Home Africa Limited.

The Nominations and Remunerations committee will consider only persons of calibre, credibility and whom have the necessary skills and expertise to exercise independent judgement on issues that are necessary to promote the company’s objective and performance in its area of business.

The Nominations and Remunerations committee should also consider candidates for directorship proposed by the chief executive and shareholders. The process of appointing directors should be sensitive

to gender representation, national outlook, and should not be perceived to represent single or narrow community interest amongst other Board proposed criteria.

The Chairman of the Board will extend an invitation to join the Board will be extended by the Chairman of the Board when authorized by the full Board.

### **2.15 Age Requirements for Appointment and Resignation**

No person is capable of being appointed a director of HAL, whom has not attained the age of twenty one (21) or, he has attained the age of seventy (70). A director of HAL shall vacate his/her office at the conclusion on the Annual General Meeting commencing next after he attains the age of seventy (70).

### **2.16 Majority Vote Policy**

If the votes “for” the election of a director nominee at a meeting of shareholders are fewer than the number voted, “withhold” the nominee and he/she is expected to submit his or her resignation promptly after the meeting for consideration by the Nominations and Remunerations committee. This committee will make a recommendation to the Board after reviewing the matter, and the Board will then decide whether to accept or reject the resignation.

The Board’s decision to accept or reject the resignation will be disclosed to the shareholders. The nominee will not participate in any Nomination and Remuneration committee deliberations as to whether to accept or reject the resignation. This policy does not apply in circumstances involving contested director rejections.

### **2.17 Separation of the Office of the Chairman and the CEO**

The Board will select the Chairman of the Board in a manner and upon the criteria that the Board deems fit and appropriate at the time of selection. The one person should not hold the offices of the Chairman and the CEO, in order to ensure maintenance of balanced power and authority.

Where the role of the Chairman and Chief Executive Officer is combined, there must be a clear rationale and justification, which must;

- Be for a limited period;
- Be approved by shareholders;
- Include measures that have been implemented to ensure that no one individual has unfettered powers of decision in the company; and
- Include a plan for separation of the role where such combined role is deemed necessary for a limited period during the restructuring or change process.

### **2.17.1 Communication Protocol**

To assist in ensuring a clear separation between the roles of the Board and management and maintaining lines of communication and authority; the directors should work only through the Chair, the Board Secretary and the CEO. In many occasions, the CEO will be the Board Secretary.

This means that;

- Any request from management or staff to a director for advice or assistance with an operational matter, should be referred by that director to the CEO for action, and;
- Directors' requests for access to staff and corporate information should be directed through the CEO and/or Board Chair.

### **2.18 Directors' Access to Senior Management and Employees**

All directors have at reasonable times, and on reasonable notice, full and free access to officers and employees of the Company. Any meetings or contacts should be formally arranged through the CEO. Directors will use their judgment to ensure that any such contact is not disruptive to the business operations of HAL. The directors are normally expected to provide a copy or otherwise inform the CEO of any communication between a director and an official or employee of HAL.

### **2.19 Directors' Access to Independent Advisors**

The Board and each committee shall have the power to hire and consult with independent legal, financial, and other advisors for the benefit of the Board or such committee, as they may deem necessary without consulting or obtaining the approval of any officer in the Company. The Board or any such committee is empowered without further action by the Company to cause the Company to pay appropriate compensation of such advisors as established by the Board, or any such committees.

## **3 GENERAL**

### **3.1.1 Public Disclosure**

There shall be public disclosure in respect to any management or business agreements entered into between the Company and its related companies or a director's company, which may result in a conflict of interest.

### **3.1.2 Chief Financial Officer of Public Listed Companies**

The Chief Financial Officers and persons heading the accounting department of every issuer shall be members of the Institute of Certified Public Accountants established under the Accountants Act.

Where the persons referred to in the above paragraph are members of other internationally recognized professional bodies and not yet registered as members of the Institute of Certified Public Accountants, the persons shall register as members of the Institute within a period of twelve months from the date of appointment to such position. This will be done in accordance to requirements under the Capital Markets on Public Offers, Listing and Disclosures under Regulations, 2002.

### **3.1.3 Company Secretaries of Public Listed Companies**

The Company Secretary of every public listed company shall be a member of the Institute of Certified Public Secretaries of Kenya established under the Certified Public Secretaries of Kenya Act.

### **3.1.4 Auditors of Publicly Listed Companies**

The auditor of a public listed company shall be a member of the Institute of Certified Public Accountants and shall comply with the International Auditing Standards.

### **3.2.0 Board Meetings**

Directors have a responsibility under the Companies Act Chapter 486 of the Laws of Kenya, to manage and direct; and to supervise the management of the business and affairs of their company. A directors' meeting is where the decisions and resolutions required discharging these responsibilities; and any prior discussions and debate leading up to them, will take place. An indication of the techniques and procedure for effective board meetings is set out below;

a) **Necessity:** If the Board does not meet often, there is real danger that the responsibilities as set forth in Section 2.1 above will be improperly discharged. Directors should attend all Board meetings to ensure that the company is continually executing its business objectives as set out in the 2012-2017 Strategic Plan. Failure to attend Board meetings leaves the organization without the proper leadership needed to sustain it.

b) **Frequency:** Frequency of the meetings shall be at least quarterly; with the exception of extraordinary circumstances that require the Board's attention with urgency. Some of these situations may include but not be limited to; the death or resignation of the CEO; or a targeted takeover, with the exception of these emergency meetings. Specifically, the Board meetings should be held bimonthly (every two months) and board committees should be held no more than monthly and no less than quarterly.

c) **Duration:** Meetings will last from a few minutes to all day, where necessary. The duration will be based on the number of management presentations, and agenda items that require the Board's approval. The Chairman of the Board will set the time limits for each presentation; allowing sufficient time for the presentation and a question and answer session at its conclusion. The Chairman of the Board should

ideally seek consensus with the Directors in attendance on what the duration of the meeting should be, and strive to remain within the timeframes that have been agreed upon.

d) **Location:** Meetings should be held at the HAL headquarters. However, the use of subsidiary locations, and other premises outside the headquarters are permissible and can work to provide the directors with a new perspective of the company's operations.

e) **Notice:** The directors shall be notified within a minimum of forty-eight hours, of the place, date and time of the Board meeting. The notice of meeting should be issued with an agenda and copy of the last minutes. This takes into consideration that some matters of urgency may arise giving little or no time to notify the Directors of the convention of a Board meeting Board meetings should adhere to the following procedures;

a) Nomination of a person to preside over the meeting in the absence of the Chairman;

b) Receipt of apologies, if any;

c) Any business required by law to be done before any other business;

d) Read and confirm minutes of the last meeting;

e) To consider any matters expressly required by law to be done;

f) Receipt of communication, if any from the Chairman;

g) Questions of any matters arising or deferred from previous minutes;

h) To receive and consider reports or minutes of Board committees;

i) To receive and consider reports from the CEO;

j) To consider and authorize the sealing of documents where the authority of the Board is required;

k) To consider any matters with financial implications to which require the express approval of the Board?

l) To consider any motions placed before the Board in the order which they are received.

The Board's decisions are binding as a whole. No individual director's objection(s) may prevail on any occasion. Not every matter needs to be subjected to a vote. The Chairman should save voting for formal proceedings such as the Annual General Meeting of the Shareholders.

At the end of the meeting, the Chairman should close the meeting with a vote of thanks to the Directors for their attendance and input. At this point, the Chairman should confirm the date, time, and location of the next meeting to ensure that the directors have diarized the meeting.

### **3.2.1 Board Papers**

It is important that the Board is fully informed in the areas that it needs to review and monitor organizational performance. The best way to achieve this is by management preparing board papers on substantive issues for the board's consideration. These papers are:

- a) Agenda;
- b) Minutes of the previous meeting;
- c) Action list;
- d) The CEO's report;
- e) Financial Reports;
- f) Compliance and risk reports;
- g) Papers, submissions for Board approval (by way of a Board briefing paper);
- h) Any other research or background information papers useful for the Board; and
- i) Draft Budgets or corporate plans or any other major documents requiring Board approval.

### **3.2.2 Agenda**

The Board meeting agenda is a critical document to ensure that the meetings canvas relevant issues and make decisions in the time set for the meeting. The Board Chair should approve the agenda for each Board meeting.

Each director has the right to contribute to the agenda items, which they believe are in the interests requested so that these can be included in the Board papers and considered by all directors.

#### **3.2.2.1 Board Briefing Papers**

When the Board is being asked to make a decision on, or be informed about, a significant issue, management, should prepare a well-structured and concise Board briefing paper to assist directors in their decision-making.

For each item to be discussed, an introduction paper that sets out the purpose of the item and the relevant issues. This is especially important for those that need the Board to make a decision. If emanating from the management, the paper should contain a clear recommendation of the action to be taken. The Board should refer any papers whose quality they are not comfortable with back to the source for improvement or clarification. The Board will acknowledge that certain items scheduled for discussion are of an extremely sensitive nature; and as such, distribution of any data or material before the meeting may not be practical.

Board briefing papers should be succinct; and a minimum of two pages where possible and include the following briefings;



- a) A clear statement as to the purpose of the paper and what is required of the Board; whether that is approval/decision or noting of information;
- b) Key background information or facts relevant to the subject including any relevant chronology of events;
- c) Key issues to be considered by the Board;
- d) The proposed action to deal with identified issues and if a number of options have been considered, the advantages and disadvantages of each;
- e) The financial implications arising from the issues and proposed action (quantified where possible);
- f) Whether the issues and/or proposed action have any impact on HAL's ability to achieve goals in its strategic plan; or has other strategic impacts;
- g) What risk and compliance issues have been identified arising from the issues and how proposed action will deal with them; and
- h) What action the Board is being recommended to take including the proposed wording for any resolution sought from the Board.

Each briefing paper should be signed by the manager responsible for the subject matter and authorized for provision to the Board by the CEO.

### **3.2.2.2 Minutes of Board Meetings**

A record of the minutes of all Board and Board Committee meetings should be maintained. The minutes of any board or committee meeting, once signed by the meeting's chairperson, are a legal record of the deliberations of that board or committee. Signed minutes cannot be amended and must be stored securely at the registered office by the secretary.

It is important that minutes are accurate and conform to certain accepted practices. Increasingly, minutes are being used as evidence in court to either prosecute or defend directors. In general terms, minutes of board and committee meetings should include:

- a) Nature and type of meeting (for example, directors' meeting, board committee meeting);
- b) Place, date and commencement time;
- c) Name of the chairperson;
- d) Attendees with the notation whether they physically attended or attended by telecommunication (invited guests should be separately noted from usual attendees);
- e) Apologies;
- f) Confirmation of the minutes of the previous meeting;
- g) Proceedings of the meeting and resolutions made;
- h) Broad reasons for decisions made;

- i) For any resolutions put to a vote at the meeting, the names of the persons voting for and against the resolution;
- j) References to materials distributed before and during the meeting (where possible, briefing papers put to the board should be numbered for reference purposes);
- k) When attendees enter and leave the room – with the relevant notation made at the point in the minutes so it is apparent what discussion they were present for;
- l) Declarations of conflict of interest and abstentions from voting on that basis;
- m) The time the meeting closed;
- n) The date and place of the next meeting; and
- o) The signature of the chairperson confirming the minutes and the date of signature

Matters, which are generally not included in meeting minutes, include;

- Speeches or arguments by named individuals;
- Admissions of liability;
- Detailed discussions regarding legal advice. This is in order to protect legal professional privilege as such privilege might be lost if the company is required by a court or any regulatory authority to disclose the minutes.

All directors are bound by decisions of the Board, even when they are not present at the meeting where the decision was made. Therefore, any director who is absent from a particular meeting is entitled to seek access to the minute of that meeting from the secretary.

### **3.2.2.3 Board Calendar**

Ideally, the HAL board should maintain a calendar of all events requiring director attendance and other key board functions for any 12-month period.

This calendar should be issued in November of the year prior to which it relates so that all directors can note their diaries well in advance.

## **3.3 Procedures Relative to Complaints Regarding Accounting and Auditing Matters**

### **3.3.1 General**

The purpose of HALs policy regarding accounting and auditing matters is to offer an effective and confidential method for interested parties to notify the Board of any potential or real wrongdoing with respect to accounting and auditing matters

Any person who wishes to raise issues relating to the accounting and auditing matters will be asked to email the Chair of the Audit, Risk and Compliance committee.

### **3.3.2 Protection**

The complaint procedure offers protection to those who disclose their concerns. No complaint will result in dismissal or disciplinary action or any other form of detriment for the complainant.

The Board of HAL as a very serious matter shall treat any acts of reprisal against a complainant.

### **3.3.3 Confidentiality**

The identity of the complainant under this procedure will be kept confidential and any complaint can be made anonymously.

### **3.3.4 Detailed Procedures**

The complaint procedure is reserved for complaints related to accounting and auditing matters. Complaints about other matters made using the complaint procedure will be redirected to the appropriate senior manager or other relevant person.

Complaints will be classified under four categories:

- Accounting
- Auditing
- External Audit
- Internal Audit

Detailed information about the complainant and the complaint allegations will be recorded and the complaint details will be sent to the Chair of the Audit, Risk & Compliance Committee unless the complaint or allegations concern the Chair of the Audit, Risk & Compliance Committee; in which case the complaint will be sent to the Corporate Secretary. Complainants requesting to remain anonymous will be assigned a reference number.

The Chair of the Audit, Risk and Compliance Committee or Corporate Secretary will make a quarterly report of all complaints and/or disclosures as well as any subsequent actions taken to the Audit, Risk & Compliance Committee as the case may be.

### **3.4 Interested Parties Communication with Management**

In addition to the complaint procedure, the Board shall adopt a procedure for interested parties to communicate any concerns not related to accounting and auditing practices to the Nominations and Remunerations Committee. This procedure shall adopt the protections and confidentiality of the complainant, and ensure no detriment to those submitting complaints or concerns to the Nominations and Remunerations Committee.

The Chair of the Nominations and Remunerations Committee shall be responsible for reporting to the Board, any valid concerns expressed by interested parties.

### **3.5 Management Succession**

**Succession management or Succession planning & management (SPM)** is a wider set of resourcing and development processes within which succession planning sits. These include recruitment & selection, workforce planning, skills analysis, talent management, & management development. The focus is the system. **Succession planning** aims to reconcile demand and supply of the leadership, professional and technical expertise and capability that will be key to the company's success in the future. The focus is the skills or roles needed. **Talent management** is the systematic identification, nurturing & development of high-potential individuals who are valuable to the company in the future. The focus is on the individual.

**In summary, through succession planning, HAL:**

- Recognizes the criticalness of certain jobs in the company and so plans to fill them in the best possible way;
- Creates an effective process for recognizing, developing and retaining top leadership talent.
- Builds a leadership talent pool to ensure leadership continuity;
- Develops potential successors in ways that best fit their strengths;
- Identifies the best candidates for categories of positions and;
- Allocates resources for talent development.

## **4. THE ROLES OF KEY OFFICE HOLDERS**

### **4.1 The Board Chair**

The Chairman of the Board's key role is to take all reasonable measures to ensure that the Board carries out its responsibilities effectively; and clearly understands and respects the boundaries between the Board's and management's responsibilities. An independent or non-executive director should hold the Chairmanship of a public listed company.

Every person who is the Chairperson of a public listed company shall not hold such position on more than two public listed companies at any one time, in order to ensure effective participation in the board, subject to the requirements under the *Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002*.

Legally, the Board Chair does not have any additional responsibilities or powers to that of any other director on the Board. Therefore, the Chairperson has the executive power to make decisions without the Board's approval apart from deciding matters such as the information to be provided to the Board. In the absence of the Board Chair, any other director can be appointed by the Board to chair the meeting, or act on behalf of the Board Chair.

The Board Chair may vote at meetings of the Board and at all meetings of the committees, which he/she is a member. The Board Chair may attend and participate in all meetings of the Board Committees.

The Board Chair's responsibilities include:

#### **4.1.1 Leadership and Board Effectiveness**

The Board Chair shall;

1. Take all reasonable steps to ensure that the Board works as a cohesive team and provide the leadership essential to achieve this;
2. Arrange for adequate resources to be available to the Board (in particular, timely and relevant information) to support its work; and
3. Take all reasonable steps to ensure that a process is in place for the regular assessment of the effectiveness of the Board, its committees and each director;
4. Ensure effective governance structure and systems within the Board and the entire company;
5. Set the Board culture and ethical standards;
6. Foster collegiality in the Board.

#### **4.1.2 Board Management**

The Board Chair shall;

1. Chair all Board meetings;
2. Set the agenda of each board meeting in consultation with the CEO, where the Board Chair is not also the CEO;
3. Take all reasonable steps to ensure that the conduct of Board meetings, facilitates discussions and provides adequate time for effective study and consideration of items on the agenda;
4. Adopt procedures to ensure that the Board conducts its work effectively and efficiently including the review of the committee structure and composition;

5. Oversee the Board's full discharge of its responsibilities and mandate;
6. Take all reasonable steps to ensure that, where responsibilities are delegated to the committees or individual directors, they are carried out and results thereof are reported to the Board;
7. Take all reasonable steps to ensure that independent directors meet as scheduled without management and other non-independent directors present and chair these meetings, if the Board Chair is also not the CEO.

#### **4.1.3 Relationships between the Board, Management and Shareholders**

The Board Chair shall:

1. Take all reasonable steps to ensure that the expectations of the Board toward management and the expectations of management towards the Board, are clearly expressed, understood and respected;
2. Act as a liaison between the Board and management;
3. Act in an advisory capacity to the CEO and to other senior management members in all matters concerning the interests of management of the Company;
4. Chair annual and special meetings of the shareholders;
5. At the request of the Board and in agreement with the CEO represent HAL to external groups such as shareholders and other stakeholders including community groups, and government(s).

#### **4.1.4 Conduct of Board Meetings**

The role of the Chairman is critical to the conduct of effective meetings. The Chairman shall therefore;

1. Approve the agenda for all Board meetings in collaboration with the CEO and Company Secretary;
2. Chair the meeting in a manner that will stimulate debate and discussion on the issues before the Board; limiting those board members who tend to be unnecessarily verbose while drawing out the contributions of the reticent;
3. Guide discussions so that they are courteous and harmonious; but remaining pertinent; and ensuring that genuine disagreements are aired and resolved;
4. Not dominate discussions but maintain good control of proceedings;
5. See that decisions are reached and that they are properly understood and recorded;
6. Be mindful of the potential for conflicts of interest between the director and the company;
7. Ensure that all discussions lead to a clear resolution or decision on any issue;
8. Be fair and firm;
9. Allocate sufficient time to each agenda item having regard to their importance and urgency.

#### **4.1.5 Board and Director Performance**

1. Guide the ongoing professional development of the Board as a whole and of directors individually;
2. Ensure that the Board and director performance evaluation is conducted regularly;
3. Ensure that the Board committees operate effectively and within their terms of reference;
4. Assist with the selection of new directors and board committee members;
5. Ensure that all directors operate in accordance with the Board charter and code of ethics and conduct;
6. Manage underperforming directors.

#### **4.1.6 External Functions**

1. Maintain contact with the stakeholders.
2. Act as the company spokesperson.

### **4.2 The Chief Executive Officer (CEO)**

The CEO is responsible for the management of HAL's strategic and operational agenda and for the execution of the Board's resolutions and policies. The responsibilities of the CEO include:

#### **4.2.1 Strategic Planning**

1. Formulating and recommending to the Board; a strategy that leads to shareholder value creation.
2. Assuming ultimate accountability for the execution of HAL's strategy, policies and procedures; and where appropriate, communication to HAL's internal and external stakeholders.
3. Developing and recommending to the Board annual business plans and budgets that support HAL's strategy and when approved by the Board, implementing such business plans within the parameters of such budgets.

#### **4.2.2 Operations**

1. Running HAL's day-to-day operations.
2. Seeing to the continuous improvement in the quality and value of the products and services delivered by HAL.
3. Identifying and managing the risks and opportunities that HAL faces in the course of its business.
4. Assuming the responsibility of hiring, compensation, performance assessment, leadership development and succession planning of management resources, subject to the approval of the Board as to senior management.

5. Maintaining a positive and ethical work environment that is conducive to attracting, retaining and motivating a diverse group of top-quality employees at all levels.
6. Directing and monitoring the activities of HAL in a manner that ensures that agreed upon targets are met and that the assets of HAL are safeguarded and optimized in the best interests of the shareholders.

#### **4.2.3 Governance**

1. Serving as HAL's key spokesperson on all major issues.
2. Collaborating with the Board chair in setting the Board agenda, and taking reasonable steps to ensure that the Board Chair and the Board are kept appropriately informed of HAL's overall business operations and major issues facing HAL.
3. Maintaining an effective communication link with the Board chair and the Board a whole; meeting regularly and as required with the Board chair; and the whole Board as applicable, to ensure that they are provided in a timely manner with all information and access to management necessary to allow the Board to fulfill its statutory and other obligations.
4. Fostering a corporate culture that promotes ethical practices, encourages individual integrity and fulfils social responsibility.
5. Taking all reasonable steps to ensure that HAL's policies with regard to legal, accounting, safety, security, and environmental standards are implemented and that HAL is in compliance with applicable laws and regulations; and
6. Taking all reasonable steps to ensure that HAL has in place, a reporting system are capable of producing financial statements that fairly represent HAL's financial conditions and enables investors to understand HAL's business and to make investment decisions accordingly.

Because of the CEO's demanding role and responsibilities, the CEO shall be required on an annual basis during his performance assessment, to advise the Nominations and Remunerations committee of any external at-arms-length board of directors that may have joined to ensure that such directorship(s) would not impair the CEO's ability to fulfill the responsibilities of his or her position.

#### **4.3 The Corporate Secretary**

The Corporate Secretary acts as an advisor or arranges for the provision of independent advice to the Board and its committees on legal and procedural matters and assists the Board Chair and the Nominations and Remuneration Committee in the nominations process, provision of orientation and



continuing education programs. The Board Secretary also serves as a source of expertise and advice on the Remuneration and Nominations Committee on new developments in corporate governance and best practice.

The Corporate Secretary abides by the applicable rules and standards of professional conduct imposed by law or adopted from time to time by regulatory authorities. The Corporate Secretary is the custodian of the corporate records.

The Corporate Secretary reports to the Board Chair and the CEO and is assessed annually on his/her performance by the Chairman of the Board and the CEO.

#### **4.3.1 Independence of the Corporate Secretary**

To act in the best interests of HAL, the Corporate Secretary must be shielded from any undue influence by management, or other parties. The Corporate Secretary should therefore be accountable to and controlled by the Board of Directors. He/she may not concurrently work for the auditing company which currently audits the HAL and its subsidiaries and should not be an affiliated person of the company or its officers; for example; a family member or business partner of any director or employee of the company.

##### **a) Prohibition of Certain persons being the (sole director) or corporate secretary**

According to the Companies Act Chapter 486, no company shall

1. have as secretary the sole director of the company (where applicable);
2. have as secretary to the company a corporation the sole director of which is a sole director of the company or; and
3. Have as a sole director of the company a corporation the sole director of which is the secretary to the company.

#### **4.3.2 Appointment of the Corporate Secretary**

Every Secretary to the company shall hold a qualification prescribed by Section 20 of the Certified Public Secretaries Act, 1988.

The Corporate Secretary is designated by appointment. The Board of Directors of HAL has the authority to appoint a Corporate Secretary. The Board will define the terms and conditions of the employment contract or service contract, and specifically address the issues of remuneration and termination.

## **5. BOARD COMMITTEES**

### **5.1 Overview of the Committees**

Committees of the Board comprising of members of the Board perform a valuable role in advancing the business of the Board in an efficient and effective manner. They can also demonstrate that the Directors' responsibilities are being adequately and properly discharged.

They can provide practical benefits by distributing the Board's workload. Being smaller in number than the full Board, they can also deal with complex issues in detail; and deal with said issues comprehensively and expeditiously.

The Board should take due care to ensure that once a committee is formed, the time and effort spent deliberating on specific issues and dispensing with specific company activities; is not replicated at the full Board level. Although it is not uncommon for the Board Chair to take on a Committee Chairmanship, it is recommended that the Chairman of the Board is not the Chairman of the Audit, Risk & Compliance Committee.

Executive Directors, who are not appointed committee members or company employees, should be expected to attend meetings when requested to do so.

It is important to note that under the Companies Act Chapter 486; the Board is fully liable for any committee's actions. It is therefore, recommended that any committee's activities be restricted to making recommendations to the full Board; rather than the committees being empowered to make decisions for the Board and on behalf of HAL. A system of reporting to the Board for all committees is of the utmost importance. The current system in place is that all chair persons of the various committees shall attend the Executive Committee (Excom) once a month in order to keep the Board informed of the activities, work of the committee, and give the Board the opportunity to question and comment on all aspects before they are finalized.

### **5.2 Formation of Board Committees**

Corporate Governance guidelines issued by the Capital Markets Authority under the Capital Markets Act (Cap. 485A); best practice recommends implementation of two specific Board committees; which are Audit and Nominations and Remunerations Committees which should be established with a formal written charter containing specific Terms of Reference and recording the following:

- Composition
- Chairman
- Terms of Reference including: objectives, purpose, activities

- Delegated authorities (from the full Board) including the extent of the committee to make decisions and/or recommendations, if any
- Tenure
- Board reporting mechanism

The committee structures of the HAL Board comprise of the following four committees;

- Audit, Risk & Compliance Committee;
- Remuneration & Nominations Committee;
- Executive Committee (Excom).
- Finance and Administration Committee;

The Board may from time to time, establish or maintain additional committees or sub-committees, as it deems necessary. The Board may delegate any of its powers to committees of the Board, except that it may not delegate the powers to fill Board vacancies, remove a director, change the membership or fill vacancies in a Board committee, or remove or appoint officers who are appointed by the Board.

### **5.3 Selection of the Committee Chairs**

The members and the chairs of the committees are recommended to the Board by Excom in consultation with the Remunerations and Nominations Committee.

### **5.4 The Role of the Committee Chairs**

The Committee Chair is responsible for the management and effective performance of his/her committee. The chair tables all reasonable measures to ensure that the committee fully executes its mandate.

The Committee chair's responsibilities include the following

#### **5.4.1 Committee Effectiveness**

The Committee chair shall:

1. Take all reasonable steps to ensure that they committee works as a cohesive team and provide the leadership to achieve this;
2. Arrange for adequate resources to be available to the committee especially timely and relevant information; to support its work; and
3. Take all reasonable steps to ensure that a process is in place for the regular assessment of the effectiveness of the committee of each of its members.

#### **5.4.2 Committee Management**

The Committee chair shall;

1. Chair all committee meetings.
2. Set the agenda of each committee meeting in consultation with the Board Chair, when appropriate.
3. Take all reasonable steps to ensure that the conduct of the committee meetings facilitates discussions and provides adequate time for effective study and consideration of the items on the agenda.
4. Adopt procedures to ensure that the committee conducts its work effectively and efficiently.
5. Oversees the committee's full discharge of its responsibilities.

Each committee chair shall report to the Board at Excom on all the deliberations of the committee and on any decisions or recommendations of the committee.

#### **5.4.3 Committee Charters**

Each committee will have charters that have been approved by the Board. The committee charters will set forth the purpose, goals and responsibilities of the committee. The Board will, from time to time, as it deems appropriate, but at least annually, review and reassess the adequacy of each charter, and make appropriate changes. Each charter must address those matters required by applicable laws and stock exchange roles.

#### **5.4.4 Assignment of Committee Members**

The Nominations and Remuneration committee will be responsible for recommending to the Board, persons to be appointed to each committee of the Board. All members of the Audit, Risk & Compliance Committee must meet the standards of independence applicable to the Audit, Risk & Compliance Committee as required by applicable laws, regulations, and securities exchange rules.

A majority of the directors in the Nominations and Remuneration Committee must be "independent directors" in accordance with CMA Corporate Governance Regulations.

#### **5.4.5 Selection of Board Committee Meetings Agenda Items**

Each committee chair, in consultation with the other committee members will develop the committee's agenda. A committee secretary should be appointed, and minutes of each meeting taken. Minutes of all committee meetings should be shared with the full Board and the committee chair should be expected to give a verbal summary of the committee's deliberations, during full Board meetings.

#### **5.4.6 Frequency of Committee Meetings**

The Chairman of the committee(s) in conjunction with other committee members will determine the frequency of the committee meetings consistent with any requirements set forth in the committee's charter. Any member may call special meetings from time to time to address the needs of HAL's business and fulfill the responsibilities of the committees.

The committees should schedule meetings at least four (4) times a year; before the regularly scheduled quarterly Board meetings.

It is best practice that the purpose, composition of each standing committee and the total number of meetings held throughout the year is set out in the annual report. The Chairpersons of all the standing committees, especially the Audit, Risk & Compliance Committee should be available to answer any questions or concerns of the shareholders, during the AGM of the Shareholders.

### **5.5 Audit, Risk & Compliance Committee**

#### **Establishment and Authority**

1. The Committee is established as a committee of the Board pursuant to the Articles of Association of the Company and in accordance with the principles set out in the CMA Corporate Governance Regulations for public listed companies in Kenya.
2. The Committee is authorized to undertake any activity within these terms of reference and to seek any information it properly requires in order to perform its duties from any employee or director of the Company or any of its subsidiary companies (together the "Group"). All employees are directed to co-operate with any request made by the Committee.
3. The Committee is authorized by the Board to obtain, at the Company's expense, such internal or external independent professional advice as the Committee considers appropriate. An appropriate budget is set aside each financial year for such purpose.
4. These terms of reference of the Committee are authorized by the Board and subject to amendment only by the Board.

#### **Purpose**

The Audit Risk & Compliance Committee of the Board of Directors is instrumental in the Board's fulfillment of its oversight responsibilities relating to:

- The integrity of the Company's financial statements.
- The Company's compliance with legal and regulatory requirements.

- The qualifications, independence and performance of the Company’s external auditors.
- Monitoring the performance of the Company’s internal audit function.
- Risk management and business practices.
- Corporate Governance and ethical standards of the Company.

**Membership and appointment**

The members of the Committee and its Chairman shall be appointed by the Board based on the recommendation of the Nomination Committee and in consultation with the Audit Committee chairman, where the chairman’s appointment is not being considered.

1. The members of the Committee shall be largely (two thirds) constituted by independent and Non-executive Directors. The Committee will be chaired by a Non-Executive Director or an Independent Director. The committee shall consist of not less than THREE members.
2. At least one member of the Committee shall have significant, recent and relevant financial experience ideally with a professional qualification from one of the professional accountancy bodies.
3. The Chairman of the Board shall not be a member of the Committee or its Chairman.
4. Committee members will normally serve for a period of up to three years, extendable by up to two further periods of three years, subject to the relevant person continuing to meet the criteria for membership of the Committee.

**Meetings of the Committee**

1. Meetings shall be held not less than 6 times in each financial reporting year and at such other times as the Chairman of the Committee or the external auditors or internal auditors shall require. Outside of the formal meeting programme, the Committee Chairman will maintain a dialogue with key individuals involved in the Company’s governance, including the Board Chairman, Chief Executive Officer, Chief Audit Executive, Chief Financial Officer and The external audit lead partner.
2. No one other than the Committee members shall be entitled to attend Committee meetings. The Chairman of the Board, other Non-executive Directors, Chief Executive Officer, Chief Audit

Executive, Chief Financial Officer, representatives of the external auditors or other professional advisors or other persons may attend meetings at the invitation of the Committee. It is expected that the Chief Financial Officer and the external audit lead partner will attend regularly. There should be at least one meeting a year, or part thereof, where the Committee meets the external and internal auditors without Executive Directors present. This need not be the same meeting.

3. Each member of the Committee shall disclose to the Committee:
  - Any personal financial interest (other than as a shareholder of the Company) in any matter to be decided by the Committee; or
  - Any potential conflict of interest, for example, arising from a cross-directorship or other activity or appointment.

Any such member disclosing an interest or conflict will abstain from voting on resolutions of the Committee in relation to which such interest or conflict exists and from participating in the discussions concerning such resolutions and (if so required by the Board or Committee) will resign from the Committee with immediate effect.

4. Meetings of the Committee shall be called by the secretary of the Committee at the request of any of its members. Unless otherwise agreed, notice of each meeting confirming the venue, time and date, together with an agenda and any supporting papers, shall be forwarded to each Committee member and any other person required to attend, no later than Seven (7) days before the date of the meeting.
5. In the absence of the Chairman of the Committee or any appointed deputy, the remaining members present shall elect one of their number to chair the relevant meeting. A quorum shall be two members. Each member of the Committee shall have one vote which may be cast on matters considered at the meeting. Votes can only be cast by members attending a meeting of the Committee. Save where he/she has a personal interest, the Committee Chairman will have a casting vote.
6. The Chief Audit Executive shall be secretary of the Committee. The Committee shall also have access to the services of the Company Secretariat on all Committee matters.

### **Quorum**

The quorum necessary for the transaction of business of the committee shall be a majority of the Committee Members. Alternate independent member may be appointed by the General Meeting to serve in the interim due to absence, illness, or any other cause.

## **Responsibilities**

The responsibilities of the Committee shall be:

### **1. External audit**

- a. To assess annually the qualification, expertise and resources, and independence of the external auditor, taking account of relevant Ethical Standards and ensuring that key partners are rotated at appropriate intervals;
- b. To assess annually the effectiveness of the audit process;
- c. To review with management the audit fee and audit engagement letter and to ensure that the provision of non-audit services does not impair the external auditor's independence or objectivity;
- d. To develop and implement a policy on the supply of non-audit services by the external auditor and to agree with management a policy on the employment of former employees of the firm's external auditor and monitor its implementation;
- e. To discuss with the external auditor, before the audit commences, the nature and scope of the audit and to review the auditor's quality control procedures and steps taken by the auditor to respond to changes in regulatory and other requirements;
- f. To make appropriate recommendations, if considered necessary, to the designated members regarding the continuation of the external auditor, to oversee the selection process for new auditors and, if an auditor resigns, to investigate the issues leading to this and decide whether any action is required;
- g. To consider the need to include the risk of withdrawal of the external auditor from the market in the committee's risk assessment process;
- h. To review the external auditor's management letter and management's response;

### **2. Internal controls and internal audit**

- a. To review the effectiveness of the firm's internal control framework,
- b. To monitor and review the effectiveness of the internal audit function, to review the internal audit programme and internal auditor's reports, and to seek such assurance as it may deem appropriate that the function is independent, adequately resourced and has appropriate standing within the firm;
- c. To consider with management the appointment of the head of internal audit;
- d. To consider management's response to any recommendations made by the external auditor or internal audit and review with internal audit and the external auditor any fraudulent or illegal acts,



deficiencies in internal control or other similar issue, including reviewing the results of management's investigation and follow up of any fraudulent acts.

### **3. Risk and risk management**

- a. To review the effectiveness of the firm's risk management framework, in relation to the core strategic objectives of the firm;
- b. To review regular risk management reports from management which enable the committee to consider the process established by the board for risk identification and management, assess the risks involved in the firm's business and how they are controlled and monitored by management;
- c. To consider the risks associated with proposed strategic acquisitions or disposals;
- d. To review tax compliance and tax planning initiatives of the firm;
- e. To review the firm's procedures for handling allegations from whistleblowers from time to time.
- f. To review the firm's procedures concerning the prevention and detection of fraud and financial crime.
- g. To review the firm's arrangements for regulatory compliance and consider any material findings from regulatory reviews.
- h. To review the firm's policies with regard to disaster recovery, including policies and programs for computer systems and buildings.

### **4. Annual financial statements**

- a. To review, and challenge where necessary, the actions and judgments of management in relation to the annual financial statements, paying particular attention to:
  - i. Critical accounting policies and practices, and any changes in them
  - ii. Decisions requiring a major element of judgment
  - iii. The extent to which the financial statements are affected by any unusual transactions in the year and how they are disclosed
  - iv. The clarity of disclosures
  - v. Significant adjustments resulting from the audit
  - vi. The going concern assumption
  - vii. Compliance with accounting standards and related guidance
  - viii. Compliance with other legal requirements;

- b. To review management's statement on internal control systems prior to endorsement by the board, the effectiveness of the firm's internal control systems and procedures for compliance and whether management has discharged its duty to have an effective internal control system;
- c. To review the content of the corporate governance report in the Annual Report;
- d. To review the letter of representation prior to management sign off;
- e. Where requested by the Board, to provide advice on whether the Annual Report and financial statements, taken as a whole, is fair, balanced and understandable and provides the information necessary to assess the company's performance, business model and strategy.

## **5. Governance**

- a. To review and apply principles in corporate governance in line with existing CMA regulations and the CMA code of Governance.
- b. Make recommendations to the Board of Directors to ensure that the company adopts and follows best corporate governance practices.
- c. To review the firm's annual Transparency and Sustainability Reports;
- d. Review and advice on Governance audits in line with the CMA Code of Corporate Governance for listed companies in Kenya.

## **Reporting Procedures**

1. The chair person of the committee will present the minutes and or report to Excom for approval in the presence of other committee chair persons and Excom members.
2. The secretary of the Committee shall circulate to all Directors the final versions of Committee meeting minutes once approved by the Committee.
3. The Committee shall report to the Board on a regular basis. At the next Board meeting following a Committee's meeting, the Committee shall report the Committee's decisions or recommendations to the Board, unless there are legal or regulatory restrictions on their ability to do so.
4. The chairman of the Committee shall attend the annual general meeting(s) and be prepared to respond to any shareholders' questions on the Committee's activities or in his absence, another

member of the Committee, or failing this, his duly appointed delegate.

The Audit and Risk Committee shall;

1. Review the receipt, retention, and treatment of complaints received by HAL regarding accounting controls, or auditing matters
2. The confidential, anonymous submission by HAL's employees on concerns regarding questionable accounting or auditing matters

In contributing to the Audit, Risk & Compliance Committee's discharge of its duties under this charter, each member shall be entitled to rely in good faith upon:

1. Accounting information of HAL presented to him/her by an officer of HAL or in a written report of the auditors; and
2. Any report of a lawyer, accountant, engineer, appraiser, or any other person whose profession lends credibility to a statement made by any such person

In contributing to the Audit, Risk & Compliance Committee's discharging of its duties under its Charter, each member shall be obliged only to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Nothing in its Charter is intended, or may be construed, to impose on any member a standard of care or diligence that is in any way more onerous or extensive than the standard to which all Board members are subject.

The essence of the Audit, Risk & Compliance Committee's duties is the monitoring and reviewing to gain reasonable assurance (but not to ensure) that HAL's business activities are being conducted effectively and that the financial reporting objectives are being met and enable the Audit, Risk & Compliance Committee to report thereon to the Board.

Nothing contained in the above mandate is intended to assign to the Audit, Risk & Compliance Committee the Board's responsibility to ensure HAL's compliance with applicable laws or regulations or to expand applicable standards of liability under statutory or regulatory requirements for the Trustees or the members of the Audit, Risk & Compliance Committee. Even though the Audit, Risk & Compliance Committee has a specific mandate and its members may have financial experience and expertise, it is not the duty of the Audit, Risk & Compliance Committee to plan or conduct audits, or to determine that HAL's financial statements are complete and accurate and are in accordance with generally accepted accounting principles. Such matters are the responsibility of management, the internal auditors and the external auditors.

Members of the Audit, Risk & Compliance Committee are entitled to rely, absent knowledge to the contrary, on (i) the integrity of the persons and organizations from whom they receive information, (ii) the

accuracy and completeness of the information provided, and (iii) representations made by management as to the non-audit services provided to HAL by external auditors.

The Audit, Risk & Compliance Committee's oversight responsibilities are not established to provide an independent basis to determine that (i) management has maintained appropriate accounting and financial reporting principles or appropriate internal controls and procedures, or (ii) HAL's financial statements have been prepared and, if applicable, audited in accordance with generally accepted accounting principles or generally accepted auditing standards.

## **5.6 Remuneration and Nominations Committee**

### **1.1 General**

This Remuneration and Nomination Committee Terms of Reference sets out the principles and processes to be followed by the Remuneration and Nomination Committee of the Board.

The Remuneration and Nomination Committee is a committee of the Board established pursuant to the Company's Constitution.

### **1.2 Authorities**

The Remuneration and Nomination Committee has the authority and power to exercise the responsibilities set out in these Terms of Reference and under any separate resolutions of the Board granted to the Remuneration and Nomination Committee from time to time.

The Remuneration and Nomination Committee does not have the power or authority to make decisions for or on behalf of the Board, unless specifically authorized to do so under these Terms of Reference or as directed by the Board.

### **1.3 Board approval**

The Board has approved the Remuneration and Nomination Committee Terms of Reference. The Board may approve updates and amendments to the Remuneration and Nomination Committee Terms of Reference from time to time.

### **1.4 Definitions**

Unless the contrary intention is expressed in these Terms of Reference, the following words (when used in these Terms of Reference) have the meaning set out below:

Board means the Board of Directors of the Company from time to time.

Committee means the Remuneration and Nomination Committee of the Board.

Director means a person appointed as a Director of the Company.

## **2 Role of the Committee**

The purpose of the Committee is to:

- (a) Make recommendations to the Board to achieve the optimal composition of the Board and Board Committees having regard to:
  - size and composition;
  - ensuring that they consist of individuals who are best able to discharge the responsibilities of Directors;
  - Ensure the extent to which required skills, experience, expertise, diversity or other attributes are represented; and the need to comply with the law and maintain the highest standard of corporate governance;
- (b) Establish and maintain appropriate: remuneration and incentive policies and practices;
  - recruitment,
  - retention and termination policies and practices for senior executives;
  - remuneration of directors;
  - Board evaluation.

## **3 Duties and Responsibilities of the Committee**

### **3.1 Key responsibilities**

The Committee shall consider matters relating to:

- the composition of the Board and Board Committees;
- the remuneration of Directors and executives;
- the induction and continuous development of the Directors; and
- the remuneration policies of the Company generally.

**The duties of the Committee are as follows:**

***Nomination Matters***

- (a) Make recommendations to the Board about the necessary and desirable competencies of Directors required discharging the Board's duties, and the extent to which they are represented in the composition of the Board and each Board Committee;
- (b) Manage the process to identify suitable candidates for appointment to the Board and the composition of Board Committees and to engage external consultants in this process if considered by the Committee to be appropriate;
- (c) Develop and implement Board succession plans to enable an appropriate mix of skills, experience, expertise and diversity on the Board to be maintained and make recommendations to the Board to facilitate orderly succession of Board membership;
- (d) Make recommendations to the Board on candidates it considers appropriate for appointment to the Board and Board Committees (including whether the Board should support the election or re-election of any Director);
- (e) Make recommendations to the Board on candidates it considers appropriate for appointment to senior executive positions;
- (f) Make recommendations to the Board on the terms and conditions on which Non-Executive Directors are appointed and hold office;
- (g) Review and recommend to the Board a process for the orientation and education of new Directors;
- (h) Review and recommend the re-election by shareholders of any Director under the retirement by rotation provisions or of any Director who must stand for election as a result of extended tenure.

***Remuneration Policy and Strategy***

- (i) Ensure that the Company maintains remuneration and incentive policies and practices that are competitive, equitable and will attract and retain good people;
- (j) Review and recommend to the Board, the remuneration of Key Management Personnel;
- (k) review and recommend to the Board the remuneration of the Managing Director and Chief Executive Officer (in the absence of the Managing Director and Chief Executive Officer);

(l) Review and recommend to the Board, the remuneration of the Chairman, vice chairman, and all Directors;

(m) Draw clear policies regarding the indemnities and remunerations of the board members and senior management. In laying such procedures, the standard related to performance and remuneration evaluation shall be followed;

(n) Review and recommend to the Board the recruitment, retention and termination policies and procedures for Key Management Personnel;

(o) Review and recommend to the Board the Company's remuneration arrangements with regard to gender and other diversity considerations;

### ***Remuneration Disclosure***

(q) Develop and review the strategy for shareholder and regulate communications in relation to remuneration issues;

(r) Ensure stakeholders are proactively consulted and briefed on remuneration strategies, structure and policies to mitigate reputation risk;

(s) Oversee the preparation of, content and tone of the Remuneration Report for inclusion in the Company's Annual Report;

(t) Participate in the planning of the Company's Annual General Meeting to ensure effective communication and discussion of the remuneration report, in preparation for the non-binding shareholder vote on the remuneration report;

### ***Employee Incentive Plans***

(u) review and recommend to the Board the terms and conditions of incentive plans applicable to Key Management Personnel (for example, long term and short term incentive plans or other option and share plans) and any amendments thereto in line with the HAL HR policy manual;

(v) review and recommend to the Board the participation of eligible employees in executive option and share plans or other incentive plans, and individual equity allocations to employees in line with the HAL HR policy manual;

(w) exercise the powers and responsibilities set out in the Policy Paper relating to each incentive plan, and to do any act, matter or thing as may be deemed necessary, advisable or incidental to fulfill those powers and responsibilities;

### ***Performance Evaluations***

(x) Facilitate an independent three yearly review of the performance of the Board, Board Committees and Directors.

(y) Facilitate internal annual review of the committees of the Board by the chairman.

### **3.2 Other responsibilities**

The Committee will perform other duties and responsibilities as requested by the Board or expressly delegated to the Committee from time to time.

The duties and responsibilities of a member of the Committee are in addition to those set out for a member of the Board.

## **4 Compositions and Structure of the Committee**

### **4.1 Composition**

The Committee should be of sufficient size, independence and expertise to conduct its duties effectively. The Committee will comprise at least three members appointed by the Board. A majority of Committee members must be independent non-executive Directors.

It is desirable (but not essential) for members of the Committee to have an appropriate level of knowledge of remuneration related matters, remuneration specific legal or regulatory requirements and awareness of general market practice.

The Board will appoint the Chairman of the Committee who should preferably be an independent non-executive Director. Where the chair is an executive director, the vice chair must be a non-executive director.

Other members of the Board of Directors are entitled to attend Committee meetings, but will not be entitled to vote on any matter being considered by the Committee.



## **4.2 Removal or resignation**

If a member of the Committee ceases to be a Director, that member ceases to be a member of the Committee. The Board may remove a member of the Committee.

## **4.3 Secretary**

The Secretary of the Committee is the Executive General Manager Human Resources or the Company Secretary. The Secretary of the Committee will be responsible, in conjunction with the Chairman of the Committee, for determining the agenda for each meeting.

## **5 Meetings of the Committee**

### **5.1 Frequency**

The Committee will meet as frequently as required but not less than twice a year.

The Committee may call such additional meetings as the Chairman of the Committee decides are necessary for the Committee to fulfill its duties.

In addition, the Chairman of the Committee is required to call a meeting of the Committee when requested to do so by a Committee member, the Chief Executive Officer, the Chief Financial Officer and Executive Directors, or the Company Secretary.

### **5.2 Minutes of meetings**

The Secretary of the Committee will be responsible for keeping and circulating the minutes of Committee meetings.

Minutes shall be distributed to all Committee members after the Chairman of the Committee has given preliminary approval within duration of one week.

The minutes of Committee meetings will be approved by the Committee and signed by the Chairman of the Committee.

Minutes, agenda and supporting papers shall be made available to any Director upon request to the Secretary, providing no conflict of interest exists.

To the extent practicable, copies of the minutes of each Committee meeting will be included in the papers for the next Board meeting after each meeting of the Committee. However, minutes of the previous minutes must be included in the Board papers of the next meeting.

### **5.3 Meeting attendance**

Unless otherwise directed by the Board, the Managing Director and Chief Executive Officer, and the Chief Financial Officer and Executive Directors will attend each meeting of the Committee.

The Committee may invite other people or employees to attend meetings when necessary.

The Chief Executive Officer, the Chief Financial Officer and Executive Directors, and any other invitees:

(a) must not be in attendance during Committee meeting discussions regarding their own remuneration or regarding matters in which they have a personal interest; and

(b) do not have any voting rights at any Committee meeting, regardless of the resolution being considered at the meeting.

### **5.4 Quorum, voting and resolutions**

A quorum will comprise of any two Committee members. Should the Chairman of the Committee be absent from any meeting, and there are at least two members still present, the members of the Committee present shall appoint one of their number to be Chairman of that meeting.

Each Committee member will have one vote. Questions arising at any meeting of the Committee are decided by a majority of votes, and, in the case of an equality of votes, the Chairman of the Committee meeting has a second or casting vote (except when only two Committee members are eligible to vote on the question).

The Committee may pass resolutions by circulating resolution by adopting the procedures set out in the Company's Constitution.

Members of the Committee will not participate in discussions and will not vote on any issue in respect of which there is an actual or perceived conflict of interest.

### **6 Reporting to the Board**

The Committee shall:

(a) The chair person of the committee will present the minutes and or report to Excom for approval in the presence of other committee chair persons and Excom members.

- (b) circulate minutes to all Directors after each Committee meeting, subject to the existence of any conflict of interest;
- (c) update the Board about Committee activities and make recommendations to the Board; and
- (d) inform the Board of remuneration matters that may significantly impact the financial condition or affairs of the business.

## **7 Independent External Advice**

The Committee may engage an independent external adviser in relation to any Committee matter, at the expense of the Company.

The Chairman of the Committee may determine that any external advice may be circulated to the other Directors.

In the event that the Committee seeks a ‘remuneration recommendation’ from an external advisor, the Committee will take appropriate action to satisfy itself that the advice provided by the external advisor is free of undue influence from Key Management Personnel.

## **8 Access to employees, other persons and resources**

The Committee may:

- (a) Access any employee or other individual and ask questions relating to Committee matters;
- (b) Access internal and external auditors;
- (c) Access all relevant Company records;
- (d) Invite any employee or other individual to attend a meeting of the Committee; and
- (e) Access the Company’s resources to enable the Committee to discharge its duties as the Committee considers appropriate.

## **9 Assessments and Evaluation of the Committee**

An evaluation of the Committee’s performance against the requirements of the Committee Terms of Reference will be conducted on an annual basis or as considered appropriate by the Chairman of the Committee.

The Board will evaluate the effectiveness of the Committee at regular intervals as considered appropriate by the Chairman of the Board.

#### **10 Access to the Terms of Reference**

The Committee Terms of Reference will be available for viewing by any person on the Company's website or a copy will be sent upon request.

#### **11 Review of the Terms of Reference**

The Committee Terms of Reference is subject to review by the Committee and the Board on an annual basis and will be amended (as appropriate) to reflect current practice in good corporate governance and the required duties and responsibilities of nomination committees and remuneration committees. Any amendments made will be in accordance with applicable securities exchange requirements.

Nothing contained in the above mandate is intended to assign to the Remuneration and Nominations Committee the Board responsibility to ensure HAL's compliance with applicable laws or regulations or to expand applicable standards of liability under statutory or regulatory requirements for the directors or the members of the Remuneration and Nominations Committee.

## **6. DIRECTORS' REMUNERATION**

### **6.1 Introduction**

The directors' remuneration should be sufficient to attract and retain directors to run the company effectively; and should be approved by shareholders. The Board of Directors of every public listed company should appoint a remuneration committee or assign a mandate to the nominations committee consisting mainly of independent and non-executive directors to recommend to the Board the remuneration of executive directors and the structure of their compensation package.

The determination of the compensation package for non-executive directors should be a matter for the entire Board.

The Nominations and Remunerations Committee annually reviews with the Board Chair and makes recommendations to the Board on the adequacy and form of compensation for non-executive directors, including their retainers, meeting fees, and reimbursement of expenses, taking all reasonable steps to

ensure such compensation realistically reflects the responsibilities and risk involved without compromising a director's independence.

The Executive Director's remuneration should be competitively packaged and specifically linked to performance. The non-executive directors' compensation should be competitive and in line with the remuneration for other directors in competing sectors.

HAL should establish a formal and transparent procedure for the remuneration of directors, which should also be disclosed to, and approved by shareholders.

The following should be taken into consideration when determining non-executive directors' compensation;

1. Levels applying in other comparable countries
2. Other applicable charge-out rates within Kenya
3. The legal responsibilities now carried by directors
4. The workload required to satisfactorily discharge these responsibilities

## **6.2 Form of Compensation**

A substantial portion of the total non-executive compensation should be in form of stock options.

Including equity options as part of the compensation, helps align the interest of the director with those of the company's shareholders.

## **6.3 Essential Components of Directors 'Compensation**

### **6.3.1 Base Fees**

General Principles: In setting the base fees or recommending them to shareholders, directors should consider the following:

The general amount of hourly or daily rates earned by directors in their professional capacities as, for example: lawyers, doctors, engineers, accountants, management consultants, etc.

1. The hour spent in travel and preparation for meetings as well as actual attendance of said meetings
2. The office and administrative costs of keeping abreast of matters pertinent to the role of directors
3. Company performance (such as profit) is not a material fact in the deciding on directors' compensation
4. Any determinations by the law (such as the Companies Act Chapter 486) that stipulate fair and comparable compensation rates for directors of companies

5. Base fees should be compensated in cash, **unless another form of compensation such as shares; is agreed upon**. If options to acquire shares are issued, then their financial impact to the company should be fully disclosed to shareholders

### **6.3.2 Review of Base Fees**

Ideally, base fees should be structured so that they are:

1. Calculated on an annual basis
2. A permanent agenda item for Board meetings during which annual draft financial statements are considered
3. Reviewed once a year; during which the Remuneration and Nominations Committee may also evaluate and review the directors' individual performance

The Board Chair should be conscious of the need to initiate reviews and to maintain dialogue on the matter with the CEO.

### **6.3.3 Equal Sharing**

In line with the principle of collective responsibility, base fees should be split equally among the directors with the exception of the Board Chair and Deputy Board Chair who have additional responsibility and workload.

The level of compensation for the Board Chair and the Deputy Board Chair will depend on the level of their involvement with the company. As a rough guide, the Board Chair should be compensated at 200% of a regular director's base fees; while the Deputy Board Chair would receive 125% of a regular director's base fees.

### **6.3.4 Supplemental Fees**

Remuneration should be spread as evenly as possible among board members and recognized in the level of the base fee. Supplemental fees may be paid in the following instances: (i) when a director has performed extra duties for management over and above their respective duties and (ii) towards normalizing non-executive directors' and Independent directors' compensation with the market.

1. Method of Calculation: if supplemental fees are charged separately they may be calculated as an hourly or daily rate as opposed to annually.
2. Reviews: supplemental fees should be subject to calculation in the same manner as base fees.

### **6.3.5 Reimbursement of Expenses**

Directors shall be reimbursed for all expenses related to their involvement in HAL's business as a director. Reasonable expenses may include but not be limited to; travelling, office and administrative costs, communication, and accommodation.

### **6.3.6 Personal Transportation**

Where a director uses personal transportation, travelling expenses should include a realistic mileage allowance.

### **6.3.7 Multi-Directorships**

Expenses applicable to multi-directorships should be proportioned in a fair and reasonable basis, having regard for time spent travelling for each directorship.

### **6.3.8 Constitutional Restrictions**

Directors should ensure that the reimbursement of expenses is not restricted by the company's constitution.

### **6.3.9 Compensation for terminated directors**

The Companies Act Chapter 486 Section 185 (6) states that a person removed from the role of a director on the board is still entitled to compensation for services rendered as a director, up until the point of termination.

### **6.3.10 Amount of Compensation**

1. Directors shall be compensated competitively according to comparable companies. HAL's management will from time to time present a report to the Nominations and Remunerations Committee; comparing HAL's director compensation with that of comparable companies,
2. The Board Chairman and the Committee Chairs shall receive additional compensation; if not members of management to receive additional compensation for additional duties in these positions.
3. Directors who are also employees of HAL may receive additional compensation for Board or committee service if they are not already compensated at full industry rates in their capacity as employees.
4. Non executive Directors and Independent Directors will be entitled to competitively determined compensation which may be respectively higher than that of executive directors.

5. Alternate directors are entitled to the same level of compensation as the director they are alternating for.
6. Co-opted members of Board committees will also be entitled to competitively determined compensation for meeting attendance.

#### **6.4 Compensation for Director Service to Company Employees Serving On Other Company Boards**

When an employee of HAL serves as a Director of another company at the request of HAL, that employee may not accept compensation from that other company for such service. If any such compensation is nonetheless received, it shall be received and paid on behalf of, and paid over to HAL

#### **6.5 Prohibition of Tax- free Payments to Directors**

The Companies Act Chapter 486 prohibits the remuneration of directors free of income tax or surtax, or otherwise calculated by reference to or varying with the amount of his or her income tax or surtax; or to or with the rate of income tax, except under a contract which is in force two years before the appointed day and provides expressly, and not be reference to the articles for payment of remuneration as aforesaid.

Section 191 (2) states - *Any provision contained in a company's articles, or in any contract other than such a contract as aforesaid, or in any resolution of a company or a company's directors, for payment to a director of remuneration as aforesaid shall have effect as if it provided for payment, as a gross sum subject to income tax and surtax, of the net sum for which it actually provides.*

This is not applicable to any remuneration considerations due before the appointed day or in respect of a period before the appointed day.

#### **6.6 Prohibition of Loans to Directors**

The Companies Act prohibits directors of HAL or any holding company of HAL's from obtaining loans from HAL or any of its holding companies except:

- a) *with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed: or*
- b) *on condition that, if the approval of the company is not given as aforesaid at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within six months from the conclusion of that meeting.*



Where the approval of the company is not given as required by any such condition, the directors authorizing the making of the loan, or the entering into the guarantee, or the provision of the security, shall be jointly and severally liable to indemnify the company against any loss arising thereof.

### **6.7 Director Share Ownership**

There is no requirement for directors to hold shares.

HAL shall keep a register showing each director of the company (not being its holding company) the number, description and amount of any shares in or debentures of the company or any other body corporate, being the company's subsidiary or holding company, or a subsidiary of the company's holding company, which are held by or in trust for him/her or of which he has any right to become the holder (whether on payment or not).

### **6.8 Share Trading**

Prior to purchasing or selling shares in the company, directors must advise the CEO, CFO, or HAL's legal counsel so as to avoid trading at a time when there may be undisclosed material information and so that the designated Company Spokesperson (such as the CEO, or the Head of Investor Relations) will be aware of such transactions and be able to respond to questions regarding changes in share ownership from shareholders and others.

### **6.9 Payment on Termination**

There is no entitlement to payment of retirement or terminal benefits or compensation for loss of office except for **EDs** in accordance with their terms of employment.

### **6.10 Role of the Nominations and Remunerations Committee**

The Nominations and Remunerations Committee shall be composed largely of non-executive directors, and should have access to independent surveys and consultants to facilitate the determination of all the essential components of remuneration and establishing remuneration credibility with shareholders.

For reasons of self-interest, the committee's function in relation to non-executive remuneration should not include decision-making but should be limited to making recommendations to the full board.

### **6.11 Public, Political and Shareholder Acceptance (Disclosure)**

Every effort should be made to promote acceptance by the public including politicians, shareholders, the media and other interest groups of the necessity for, and the benefits of a realistic realignment of director remuneration.

The recent legislative requirement to disclose remuneration in annual reports is seen as a constructive opportunity to communicate with shareholders and the media on all aspects of remuneration.

## **7 ORIENTATION, PERFORMANCE AND EVALUATION**

### **7.1 Director Orientation and Continuing Education**

#### **7.1.1 Orientation**

The Board and HAL's senior management will conduct orientation programs for new directors in the shortest period following their appointment as directors. The orientation program will include presentations by management that to familiarize new directors with HAL's projects and strategic plan; its significant financial, risk management and accounting issues; its compliance programs, its code of business conduct and ethics, its principal officers, its internal and independent auditors, and its outside legal advisors. In addition, the orientation program will include a review of HAL's expectations from its directors in terms of service and effort, a review of the directors' fiduciary duties, and visits to HAL's headquarters and to the extent practical, HAL's projects and other facilities.

#### **7.1.2 Continuing Education**

To enable each director to perform his or her duties better, to recognize and deal with appropriately with issues that arise, HAL will provide directors with suggestions to undertake continuing director education, the cost of which will be borne by HAL. This will be coordinated by the Nominations and Remunerations Committee.

### **7.2 Directors' Performance and Evaluation**

Any improvement in the performance of Board and individual directors will add value to HAL accordingly in the interests of HAL and its shareholders. It follows that as part of fulfilling their legal and ethical obligations to HAL and its shareholders; directors should be constantly looking to achieve such improvement. One process that should result in improvement and therefore adding value to the company; is evaluation.

Evaluation in the present context means;

- The ongoing process of reviewing the performance of the Board as a whole.
- The ongoing process of reviewing the performance of individual directors who comprise the Board, including the Chairman.

In redressing the weaknesses identified through evaluations directors will not only be adding value to HAL they will also be increasing their own personal comfort and skills levels required by their involvement in the ever-growing complexity of corporate and strategic issues and by their ever increasing exposure to potential legal liabilities.

Evaluations can be formal or informal, simple or comprehensive. All Board evaluations will be coordinated through the Nominations and Remunerations Committee.

### **7.3 Evaluation Procedure**

Before an evaluation takes place, the Board should determine what issues to consider during the evaluation and the manner in which the evaluation should be conducted. Some potential issues to consider can include but not be limited to;

1. Functions of the Board and whether these functions are being properly carried out
2. Key objectives of the Board and whether these objectives are being achieved
3. Operations and administration functions and whether there is room for improvement

Senior Management and knowledgeable shareholders have been known to be consulted with regard to Board evaluations, however this should be done with great caution due to their potential level of inexperience, the risk of disclosing sensitive board business, potential insider trading issues; and as far as shareholders are concerned; their unfamiliarity with HAL's operational functions.

The Board should allocate time for formal discussions even outside the normal Board meetings, say at annual retreat. Less formal arrangements while being more flexible run the risk that important issues may never be raised for reasons of sensitivity and other matters may be deemed to be of a higher priority.

Whatever issues are deemed to be critical, the effectiveness of the process will be enhanced if the directors are given time to properly consider them before the discussion. One procedure that can have some value is the completion by directors of a written questionnaire with all the responses anonymous if preferred, collated in advance of the discussion.

A formal process such as this need not be conducted more than once per year to derive the maximum benefit.

#### **7.4 Performance Evaluation of Individual Directors**

Again, the Board should agree the criteria and procedure on before the evaluation takes place. The criteria will largely depend on the professional and personal qualities expected of the directors.

Among these criteria could be;

- a) Breadth of vision and strategic awareness
- b) Degree of independence including relevance off any conflicts of interest
- c) Familiarity with company operations and industry trends
- d) Willingness to devote the necessary time including:
- e) Regularity of attendance of meetings
- f) Extend of preparation for meetings
- g) Willingness to participate in committee work
- h) Pertinence and value of contributions to Board discussions
- i) Level of critical awareness
- j) Personal relationships with colleagues, management and stakeholders

The recommended procedure is for the Board to determine questions to be asked of each director and for each director to answer them in writing about him or herself and about each other director including the chairperson, having regard to the chairperson's special duties and functions. The responses should be collected and collated by the chairperson who should then discuss the results with each director.

During the course of the discussion, the self- assessments can be compared with the views of the rest of the Board. It is appropriate that the Board Chair's position be discussed with the vice Board Chair and or the rest of the Board. The techniques worth considering include:

- a) Assessment by the Board Chair followed by a one-on-one session with each director; this has the advantage of both being informal and relatively easy to organize but has the danger that the Board Chair's qualitative judgement could be regarded by the director as subjective and unbalanced.
- b) Assessment by the Remuneration and Nominations Committee followed by personal discussions between the Board Chair and the committee and each director, the deliberations of a committee are thought to carry more weight than those of the Board Chair.
- c) A committee followed by a confidential written report to each director
- d) By self-assessment of each director followed by discussions with the chairman of the Board or the chairman of the relevant committee in the case of the Board Chair in particular care may again be needed to allay any suspicion on bias Confidentiality is important to ensure that no director is exposed to legal liability. The personal details of any director recording information about another should remain anonymous.

Upon completion of the evaluation process, it is useful to keep the evaluation reports on hand for a period of up to one year.

It is important to note that the use of impartial facilitators for the Board evaluation as referenced above, may have merit in situations where there are sensitive personal issues involved in the evaluation. However, it is still considered best practice for Board evaluations to be carried out amongst the directors themselves.

Assessments of individual performances are likely to be better understood and probably less embarrassing if, they are combined with the assessments of overall board performance.

## **8 SHAREHOLDER STRUCTURE**

### **8.1 Shareholders' Rights**

The essence of good corporate governance practices is to promote and protect shareholders' rights.

- a) A board of a public listed company should ensure equitable terms of shareholders including the minority and foreign shareholders.
- b) All shareholders should receive relevant information on the company's performance through distribution of regular annual reports and accounts, half-yearly results and quarterly results as a matter of best practice.
- c) The shareholders should receive a secure method of transfer and regulation of ownership as well as a certificate or statement evidencing such ownership in the case of a central depository environment
- d) Every shareholder shall have the right to participate at the general shareholders' meeting including the election of directors
- e) Every shareholder shall be entitled to ask questions, seek clarification on HAL's performance as reflected in the annual reports and accounts or in any matter that may be relevant to HAL's performance or promotion of shareholders' interests and to receive explanation by the directors or management
- f) Every shareholder shall have the right to distributed profit in form of dividend and other rights for bonus shares, script dividend or rights issue, as applicable and in the proportion of its shareholding in HAL.
- g) The Board should maintain an effective communication policy that enables both management and the Board to communicate effectively with all its shareholders, stakeholders, and public in general
- h) All shareholders should be encouraged to participate in the annual general meetings and to exercise their votes

- i) Institutional investors are particularly encouraged to make direct contact with the Company's senior management and Board members to discuss performance and corporate governance matters as well as vote during the annual general meetings of HAL
- j) Companies as a matter of good corporate governance are encouraged to organize frequent investor briefings and in particular when the half-yearly and annual results are declared or as may be necessary to explain their performance and promote interaction with investors
- k) Every public listed company should encourage the establishment and use of the company's website by shareholders to ease communication among the shareholders and the company
- l) Every public listed company should encourage and facilitate the establishment of a Shareholder's Association to promote dialogue between the company and the shareholders. The Association should play an important role in promoting good corporate governance and actively encourage all shareholders to participate in the annual general meeting of the shareholders or assign a necessary voting proxy
- m) Shareholders while exercising their right of participation and voting during annual general meetings of HAL, should not act in a disrespectful manner as such action may undermine HAL's interests.

## **8.2 Approval of Major Decisions by Shareholders**

There should be shareholders' participation in major decision of the company. The Board should therefore provide shareholders with information that include but is not limited to major disposal of HAL's assets, restructuring takeovers, mergers, acquisitions or reorganization.

## **8.3 Shareholder's Meetings**

HAL shall hold each year as its General Meeting in addition to any other meetings during the year, and shall specify the meeting as such in its notice calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of HAL and that of the next. Provided a company holds its annual meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or the next. Should the specified date fall on a legal holiday, then the meeting shall be convened on the next Saturday following.

Should the Board fail to hold a meeting within the time frame described above, the registrar may at the request of a member of HAL, call or direct the calling of a general meeting of HAL's shareholders; giving the relevant or consequential directions as deemed necessary and expedient to the meeting. One

shareholder in person or by proxy of HAL is deemed to constitute a meeting by subsection 131 (2) of the Companies Act.

The Board will supply its shareholders sufficient and timely information concerning the date, location and agenda of the general meeting as well as full and timely information regarding issues to be decided on during general meetings.

The Board should make shareholder expenses and convenience primary criteria when selecting a venue and location of annual general meetings; and the directors should provide sufficient time shareholders' questions on matters pertaining to the Company's performance and seek to explain to the shareholders' their concern(s).

If the annual meeting for election of directors is not held on the date designated therefore, the directors shall cause the meeting to be held as soon thereafter as convenient.

The Board of a public listed company should ensure that giving shareholders protect shareholders' right to full participation at annual general meetings:

- Sufficient information on voting rules and procedures;
- The opportunity to quiz management;
- The opportunity to place items on the agenda at the annual general meetings;
- The opportunity to vote in absentia;
- Sufficient information to enable them to consider the cost and benefit of their votes.

#### **8.4 Length of Notice for calling meetings**

The directors of HAL must submit to the shareholders and in writing, a meeting of no shorter than twenty-one (21) days, unless any provisions in HAL's articles provide for.

#### **8.5 Convening of an Extraordinary General Meeting**

The directors of HAL may, notwithstanding anything in HAL's articles, convene an extraordinary general meeting of the shareholders at the date of the deposit of the requisition of less than one tenth of such paid up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company, or in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having at the said date a right to vote at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company and may consist of several documents in like form, each

signed by one or more of the requisitionists. A meeting convened in this matter, should follow as closely as possible; the same format adopted in meetings called by the directors; as described in section 8.4 above  
- **Annual General Meeting of Shareholders.**

## **8.6 Accountability and Audit**

### **8.6.1 Annual Reports and Accounts**

The board should present an objective and understandable assessment of the Company is operating position and prospects. The board should ensure that accounts are presented in line with International Accounting Standards.

### **8.6.2 Internal Controls**

The board should maintain a sound system of internal control to safeguard the shareholders investments and assets.

### **8.6.3 Independent Auditors**

The board should establish a formal and transparent arrangement for shareholders to effect the appointment of independent auditors at each annual general meeting.

### **8.6.4 Relationship with Auditors**

The board should establish a formal and transparent arrangement for maintaining a professional interaction with the Company's auditors.

### **8.6.5 Shareholder List**

The Secretary to the Board/officer in charge of the share ledger of Home Afrika Ltd and make at least ten days before every meeting of shareholders, a complete list of the entitled to vote at the meeting, showing the address of each shareholder and the number of shares registered in the name of each Shareholder. Number of shares upon which any instalment is due and unpaid shall be voted at any meeting. The list shall be open for the examination of any Shareholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the



time and place of the meeting during the whole time thereof, and may be inspected by any shareholder who is present.

#### **8.6.6 Share Certificates**

The share certificates of Home Afrika Ltd shall be numbered and registered in the share ledger and transfer books of HAL at they are issued. They shall bear the corporate seal and shall be signed by the Chairman.

#### **8.6.7 Share Transfers**

Transfer of shares shall be made on the books of HAL upon surrender of the certificates thereof endorsed by the person named on the certificate or by the attorney, lawfully constituted in writing.

No transfer shall be made which is inconsistent with the law and the provisions contained in the MoU.

#### **8.6.8 Dividends**

The Board of Directors may declare and pay dividends upon the outstanding HAL shares from time to time and to such extent as they deem advisable, in the manner and upon the terms and conditions provided by the statute and the Certificate of Incorporation.

#### **8.6.9 Reserves**

Before payment of any dividend there may be set aside out of the net profits of HAL and its subsidiaries such sum or sums as the directors, from time to time, in their absolute discretion, think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the bank, or for such other purpose as the directors shall think conducive to the interests of the bank, and the directors may abolish any such reserve in the manner in which it was created.

#### **8.6.10 Governance**

The proportionate amount of equity that entitles a shareholder to a Board seat shall be discussed and agreed by the HAL shareholders. HAL shareholders shall agree on the voting rights to be allocated.

## **9 BOARDS OF SUBSIDIARIES.**

### **9.1 Introduction**

Whether wholly or partly owned, a subsidiary is a legal entity with its own right quite separate, except in very limited circumstances, from its parent company. Directors who sit on Boards of subsidiaries need to remember that they must act in good faith in genially what they believe to be in the best interests of the subsidiary.

Structurally, subsidiaries fall into two basic categories;

1. Those that are wholly owned; and
2. Those that are partly owned having either few minority shareholders or with a widely held minority including where the subsidiary is a public listed company

Because of operational decision within the group of companies of which the subsidiary form part, and based on what is believe to be in the best interests of the group as a whole, each of the above categories can usually be further classified into

1. Subsidiaries that are operationally controlled by the parent organization (HAL)
2. Subsidiaries that have a high level , if not complete autonomy

The category in which the subsidiary falls into along with its size and importance in contrast to the whole of its group will dictate the composition and mix of its board and the manner in which the board functions.

### **9.2 Wholly owned subsidiaries**

Where a subsidiary is wholly owned by HAL, HAL will normally be in a position to exercise complete control if it so deems and to appoint and remove the subsidiary's directors at will. While HAL can appoint Executive Directors to its subsidiaries, there are potential benefits to appointing non- executive directors. Some of these benefits include:

1. Specific expertise perhaps not otherwise available within the group
2. Relationships with other organizations with which the non-executive director is associated
3. A fresh and independent viewpoint on issues before the subsidiary's Board; and
4. The capacity to monitor the actions of the group's employees on the board (checks and balances)

These benefits normally offset the fees payable to the non-executive director(s).

#### **9.2.1 Reporting**

Directors of subsidiary companies will report to the board of HAL through the CEO or his appointed representative. It is however not uncommon for boards of subsidiaries to report directly to the parent

company, in this case HAL. A common practice that can provide good monitoring procedures, but may weaken the position of the CEO with regard to management.

### **9.2.2 The Partly Owned Subsidiary**

In the case of a subsidiary that is partly owned by HAL, the Board should include such number of directors, independent from the parent company HAL, as fairly reflects the investment in the subsidiary by the minority shareholders.

Independent in this case means, not having any financial interest in HAL or any other company in the group, not being a director or employee of HAL or any other group company and not having a close personal or family relationship with any member of the HAL Board; or with any group or divisional CEO.

Directors of partly owned subsidiaries who are also directors of the parent or other companies within its group need to be conscious of their disclosure of interest obligations contained in the Companies Act. These guidelines are applicable to public and private sector companies.

### **9.2.3 Appointment of Directors to Subsidiaries**

When an appointment to the board of a subsidiary is made, whether it is wholly or partly owned and whether it is in the private or public sector, the ability of the director to contribute to the subsidiary's needs, in other words; merit should take precedence over any other reason for his or her selection. Only then, will the subsidiary and the parent organization, in this case HAL and the group as a whole stand to derive maximum benefit from the appointment.

## **10 BOARD AND GOVERNANCE**

### **10.1 Regulatory Framework**

The main legislative amendments anchoring the GEMs regulatory framework is contained in the Capital Markets (Securities) (Public Offers, Listing and Disclosure) (Amendment) Regulations, 2012, gazette vide Kenya Gazette Legal Notice No. 61 of June 2012. Other relevant amendments to the Capital Markets Act have recognized and embed Real Estate Investment Trusts (REITs) structures according to the Capital Markets' Real Estate Investment Trusts and Collective Investment Schemes Regulations, (2013).

## **10.2 Governance Audits**

The HAL Board shall develop an annual work plan to guide its activities. At a minimum, the Board work-plan will focus on:

- Strategic plan development and review
- Assessment of managements implementation of strategies, policies and plans;
- Risk assessment and management;
- Budgeting and Financial management;
- Quality assurance processes; and
- Board evaluations.

The Board shall work with independent governance specialists to develop the parameters to be included in the evaluation toolkit. The Board shall ensure that it subjects the company to an annual or bi-annual governance audit by a competent and recognized professional. The governance audits should among other areas cover the company's governance practices in the following parameters:

- Leadership and strategic management;
- Transparency and disclosure;
- Compliance with laws and regulations;
- Communication with stakeholders;
- Board independence and governance;
- Board systems and procedures;
- Consistent shareholder and stakeholder's value enhancement; and
- Corporate social responsibility and investment.

After undergoing the governance audit the board will provide an explicit statement on the level of compliance.

## **10.3 Enterprise Risk Management**

The HAL Board is responsible for the total process of risk management, as well as forming its own opinion on the effectiveness of the process. Management is accountable to the Board for designing, implementing and monitoring the process of risk management and integrating it into the day-to-day activities of the company. The HAL Board is responsible for setting the Risk Strategy in liaison with management. These policies should be clearly communicated to all employees to ensure the risk strategy is incorporated into the culture of the company. The Audit, Risk and Compliance Committee has been

appointed to assist the Board in reviewing the risk management process and identifying the significant risks facing the company.

The HAL Board will make use of generally recognized risk management and internal control models and frameworks in order to maintain a sound system of risk management and internal control to:

- Safeguard the company's assets and investments;
- Support business objectives and sustainability;
- Support business sustainability under both normal as well as under adverse operating conditions; and
- Behave responsibly towards all stakeholders having a legitimate interest in the company.

The Board is responsible for ensuring that a formal risk assessment is undertaken at least annually for the purpose of making its public statement on risk management. It should at appropriately considered intervals, receive and review reports on the risk management process of the company. This risk assessment should address the following areas:

- Physical and operational risk to which the business is exposed, this is commonly known as a risk assessment;
- Technology risk to which the business is exposed, this is commonly known as a business impact analysis; and
- Credit and market risk to which the business is exposed.

#### **10.4 The Media and Corporate Governance**

The HAL Board shall proactively engage the media on dissemination of important company information and issues relating to good corporate governance in order to protect institutional investors. Information to the media shall be released proactively on a timely basis to ensure effective reporting on corporate affairs as well as issues of corporate governance.