



NAMFISA

NAMIBIA FINANCIAL
INSTITUTIONS SUPERVISORY AUTHORITY

— Safeguarding the Nation's Wealth! —

NAMFISA CIRCULAR 1 OF 2003.

6 MAY 2003.

REF: NC: 1/2003

CORPORATE GOVERNANCE

1. INTRODUCTION

1. THERE is an increasing necessity for companies, funds and other entities being regulated by NAMFISA to make transparent the adequacy of their corporate governance structures, and particularly the adequacy of internal controls given the number of high profile corporate failures caused by inappropriate high level management structures and the consequent breakdown in their system of internal control resulting in a negative impact not only on shareholder investments, but also on the every user of financial services. This circular constitutes the first in a series setting out NAMFISA guidelines on corporate governance. These guidelines are framed with the Code of Corporate Practices and Conduct contained in the King II Report as reference.

2. ALTHOUGH the reference is to companies throughout this Circular, this must be construed, where applicable, as including medical and pension funds, trusts and all other entities regulated by NAMFISA. Any guidelines on Corporate Governance previously issued by NAMFISA, continue to apply unless they contradict this Circular.

2. THE BOARD

(1) THE Board is ultimately responsible and accountable for the performance of the affairs of the company. Subcommittees established by the board perform their duties subject to the authority of the board, which is not divested of any authority delegated to a subcommittee.

(2) The board must determine the policy of the company, appoint the chief executive officer and ensure that succession is planned. The board must monitor management in implementing board policies and strategies.

(3) The board must ensure that the company complies with all relevant laws, regulations and codes of business practice, and that it communicates with its shareholders and relevant stakeholders (internal and external) in a transparent manner.

(4) The board should have unrestricted access to all company information, records documents and property. Specific policies should be defined setting out the board's information needs.

- (5) The board should develop a corporate code of conduct that addresses conflicts of interest, particularly relating to directors and management, which should be reviewed regularly and updated as necessary.
- (6) The board must identify key risk areas and key performance indicators of the business enterprise. These should be regularly monitored with emphasis on technology.
- (7) The board should record the facts and assumptions on which it concludes that the business will continue as a going concern in the financial year ahead or why it will not and in that case, what steps the board is taking to remedy the situation.
- (8) The board should identify and monitor the non-financial aspects relevant to the business of the company.
- (9) The board should encourage shareholders to attend annual general meetings and other company meetings, at which the directors should be present.
- (10) A brief CV of each director standing for election or re-election at the annual general meeting should accompany the notice contained in the annual report.
- (11) Every board should have a charter setting out its responsibilities, which should be disclosed in its annual report.
- (12) The board must educate itself to the extent that it can find the right balance between conforming to corporate governance and performing in an entrepreneurial way.

3. **BOARD COMPOSITION**

- (1) An effective board able to lead and control should head the company. The board should comprise executive and non-executive directors, with the non-executive directors in the majority of whom sufficient should be independent of management so that all shareholder interests can be protected.
- (2) Procedures for appointment to the board should be formal and transparent, assisted where appropriate by a nomination committee comprised only of non-executive directors, of whom the majority should be independent.
- (3) Board continuity, subject to eligibility and performance should be ensured and a programme for the staggered rotation of directors should be put in place by the board.

4. **CHAIRPERSON AND CHIEF EXECUTIVE OFFICER**

- (1) There should be a clearly accepted division of responsibilities at the head of the company, to ensure a balance of power and authority to prevent that no one individual has unfettered powers of decision making
- (2) The chairperson should preferably be an independent non-executive director.
- (3) Given the strategic operational role of the chief executive officer, this function should be separate from that of the chairperson.

(4) Where the chairperson and the chief executive officer is the same person, there should either be an independent non-executive director serving as the deputy chairperson or a strong independent non-executive element on the board. Any such decision to combine the roles should be justified each year in the company's annual report.

(5) The board should appraise the performance of the chairperson on an annual or such other basis as the board determines.

(6) The chairperson or a subcommittee appointed by the board should appraise the performance of the chief executive officer. The board should ensure that such appraisal takes place at least once annually. The results of the appraisal should be considered by the board or its remuneration committee if any, to guide it in its evaluation of the performance and remuneration of the chief executive officer.

5. DIRECTORS

(1) The board should ensure that there is an appropriate balance of power and authority on the board, so that no individual or clique of individuals can dominate the board's decision making.

(2) Non-executive directors should be credible with the necessary skill and experience able to exercise judgment independent of management on issues of strategy, performance, resources, transformation, diversity and employment equity, standards of conduct and evaluation of performance.

(3) In the annual report and for the purposes of this Circular, directors should be categorized as follows:

- Executive director- an individual involved in the daily management or who is in the full time employment of the company or its subsidiaries;
- Non-executive director- an individual who is not an executive director. An individual in the full time employment of the holding company or one of its subsidiaries other than the company concerned, would also be considered to be a non-executive director unless such individual by his/her conduct or executive authority could be construed to be directing the daily management of the company and its subsidiaries;
- Independent director is a non-executive director who-
 - (i) is not a representative of a shareholder who has the ability to control or significantly influence management;
 - (ii) has not been employed by the company or the group of which it currently forms part, in any executive capacity for the preceding three years;
 - (iii) is not a member of the immediate family of an individual who is, or has been in any of the past three financial years, employed by the company or the group in an executive capacity;
 - (iv) is not a significant supplier to, or customer of the company or group;
 - (v) has no significant contractual relationship with the company or the group;

(vi) is free from any business or other relationship which could be seen to materially interfere with the individual's capacity to act in an independent manner

(4) A "shadow director" is considered to be a person in accordance with whose directions or instructions the directors of the company are accustomed to act. Shadow directors should be discouraged.

(5) Executive directors should at all times ensure that any other non-executive directorships which they may hold do not interfere with their immediate management responsibilities. Non-executive directors should carefully consider the number of appointments they take in that capacity so as to ensure that the companies on which they serve enjoy the full benefit of their expertise, knowledge and experience.

(6) The board must establish a formal orientation programme to familiarize incoming directors with the companies operations, senior management and its business environment. Specific attention should be paid to their fiduciary duties and responsibilities. Directors should receive further briefings from time to time on new laws and commercial risks.

(7) New directors with no or limited board experience should receive training to inform them of their duties, responsibilities, powers and potential liabilities.

(8) Boards should ascertain that potential new directors are fit and proper persons and not disqualified in any way to be directors. Prior to appointment their background should be investigated. The nomination committee should play an essential role in this.

SYNOPSIS: DIRECTORS' RESPONSIBILITIES AND DUTIES

A. As a director, executive or non-executive, you are personally liable for-

(1)	Any loss the company has suffered as a result of you acting outside the ambit of your authority or for failing to exercise the degree of care and skill expected under the circumstances.
(2)	Any loss you have caused the company in using your powers other than for the benefit of the company.
(3)	Any loss caused by you as a result of wrongful action or breach of trust.
(4)	Any debts of the company if you are found to have carried on business recklessly, for example if you incur debts when there is no reasonable grounds to suspect that the company will not be able to pay the debts when they fall due, or with the intent to defraud creditors.
(5)	Defamatory statements made in correspondence written by yourself on behalf of the business.

(6) Issuing a cheque, invoice, letter of credit or any other document which does not bear the company's formal name.

(7) Contracts where you do not specify to the third party that you are contracting as a representative of the company and not in your personal capacity.

(8) Losses arising from loans or securities given by a subsidiary to a holding company, to which you were a party, without the consent of all members or where the terms and conditions at the time of entering the transaction were not fair or failed to provide reasonable protection.

B. As a director, executive or non-executive, you are deemed to be guilty-

(1) Of a criminal offence committed by a company, unless you can prove that you did not take part in the commission of the offence and that you could not have prevented it.

(2) If you make or concur in making, circulating or publishing any certificate, report or statement in relation to the company, which is false in material respects. This covers such things as corporate governance disclosures and the statements made by the Company Secretary in the annual report that the status of the statutory returns lodged with the relevant Registrar appointed in the NAMFISA Act, 2001, is true and correct and that the statutory returns are in fact up to date.

C. As a director, executive or non-executive, you must-

(1) Be aware of all legislation that directly affects yourself or the company and must ensure that there are appropriate and adequate measures in place to ensure compliance

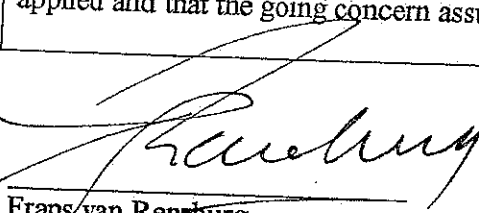
(2) Ensure that all Income Tax returns are certified true and fair by a director.

(3) Ensure that there is an appropriate risk and internal control framework in order to report on these matters in the annual report

(4) Declare your interests in all business dealings of the company. Failure to do so in the conclusion of a contract is an offence and can make the contract voidable at the instance of the company. Any profits made by you are recoverable by the company.

(5) Declare all dealings in shares of the company

(6) Acknowledge that you are responsible for preparing the Annual Financial Statements, that consistent and appropriate accounting policies which adhere to accounting statements, have been applied and that the going concern assumption is appropriate.


Frans van Rensburg

Registrar: Financial Institutions

I, _____, the undersigned, in my capacity as _____ hereby
(full name and surname) (state capacity in company)

declare that I have read and understood the contents of this Circular and will do my utmost to ensure that I and the board on which I serve, at all times shall comply with the letter and spirit thereof

DATED AT _____ ON THIS ____ DAY OF _____ 200__

(Signature)