

**CORPORATE GOVERNANCE GUIDELINES FOR THE
WATER SERVICES SECTOR**



Table of Contents

FOREWORD	iii
1. INTRODUCTION	4
2. CORPORATE GOVERNANCE AND WASREB	4
3. NEED FOR CORPORATE GOVERNANCE	5
4. CORPORATE GOVERNANCE PRINCIPLES.....	5
4.1 Role and Functions of the Board	6
4.2 Board Appointment and Composition.....	7
4.2.1 Size of the Board.....	7
4.2.2 Background of the directors.....	7
4.2.3 Eligibility criteria	7
4.2.4 Stakeholder participation procedure.....	8
4.2.5 Board succession policies and period in office	8
4.2.6 Directors training and development	8
4.3 Strategy and Values	9
4.4 Company Performance.....	9
4.5 Compliance.....	9
4.5.1 Collective and individual role of directors.....	9
4.5.2 Communication	10
4.6 Accountability to Shareholders.....	10
4.6.1 Authority and duties of shareholders.....	10
4.6.3 Methods of appointing Class B shareholders.....	11
4.6.4 Duties of shareholders	11
4.6.5 Rights of shareholders	11
4.7 Relationship with Stakeholders	12
4.8 Balance of Powers.....	12
4.9 Committees.....	13
4.9.1 The Audit and Other Committees of the Board	13
4.9.2 Number of meetings, terms of reference and composition	14
4.9.3 Committees under Management.....	14
4.10 Board Performance Assessment.....	14
4.11 Management Appointments and Development	14
4.12 Technology	15
4.13 Management of Risks	15
4.14 Annual Review of Future Solvency	15
4.15 Social Responsibility.....	15
APPENDIX: FORMATS FOR SELF-EVALUATION OF THE WATER SERVICES BOARDS	16
Section A: Self-Evaluation of the Board by All Members of the Board	17
Section B: Sample Form for Evaluation of the Chairperson of the Board.....	25
Section C: Sample Form for Review of Individual Directors' Performance.....	28

FOREWORD

The objective of this guideline is to enhance the understanding of what it entails to be a water service institution. It is tailored for all water service sector institutions to assist them meet their objectives in service delivery.

For the shareholders it shows:

- The limits of involvement
- The information to be submitted
- How to relate with and involve stakeholders
- How to monitor performance

For the directors of the entities who are not primed on what to expect it will guide them on:

1. What standards of boardroom behavior to adopt
2. Where to provide guidance
3. What to monitor
4. How to instill a culture of performance and appropriate reward
5. How to serve the public with water services
6. How to inform/involve stakeholders

For the staff:

1. It shows the limits of authority
2. The reporting lines
3. The genesis of performance oriented job contracts
4. Relationship between all the parties involved.

The content of this guideline will change as the water services sector continues to mature. WASREB in approving the service provision agreements submitted will use the standards in this guideline to gauge the technical capacity of a WSP.

This guideline adheres to the standards set in the Companies Act Cap 486.

1. INTRODUCTION

1.1 The Water Policy No. 1 of 1999 discussed issues pertaining to:

1. Water Resources Management
2. Water and Sewerage Development
3. Institutional Frameworks
4. Financing the sector

1.2 This policy was supported by the Water Act 2002 which created several institutions to take charge of the provision of water services, the conservation of water catchments areas, the regulation of the water services sector and the resolution of disputes.

1.3 The water services sector has the following public institutions:

- a. The Water Services Regulatory Board
- b. The Water Service Boards which are:
 - i. Athi water Services Board
 - ii. Tana Water Services Board
 - iii. Northern Water Services Board
 - iv. Rift Valley Water Services Board
 - v. Coast Water Services Board
 - vi. Lake Victoria North Water Services Board
 - vii. Lake Victoria South Water Services Board
 - viii. Tanathi Water Services Board
- c. The Water Service Providers

Water Service Providers are appointed as agents of the water service boards and are supposed to operate in a manner that will maximize efficiency in the provision of water services and provide satisfaction and safety to all water service consumers, taking into account equity and sustainability. There is need therefore for a guideline that will govern the leadership and operation of all these entities, hence the need for the introduction of corporate governance into the sector.

This guideline is useful for all water service sector institutions with appropriate modification as the entity deems fit especially on the distinguishing features between the WSB and the WSP.

2. CORPORATE GOVERNANCE AND WASREB

2.1 Under section 47(h) of the Water Act 2002 WASREB is supposed to develop guidelines for and provide advice on the cost effective and efficient management and operation of water services.

2.2 Cost effective and efficient management and operation of water services can only be realized if the leadership in the water sector institutions is guided by the tenets of good governance. In the institutional set up, good governance is embedded in the tenets of corporate governance.

2.3 Corporate governance refers to the establishment of an appropriate legal, economic and institutional environment that allows companies to thrive as institutions for advancing long-term shareholder value and maximum human-centered development while remaining conscious of their other responsibilities to stakeholders, the environment and the society in general.

2.4 In the Water services sector good corporate governance requires that boards and senior management of the Services Boards and water service providers must govern their entities with integrity and enterprise in a manner which entrenches and enhances the objectives agreed under the license and the service provision agreement.

2.5 Interpreting the mandate in section 47(h), WASREB has created this guideline to educate the water services sector institutions on their internal management practices, on their interaction with its shareholders and other stakeholders such as the government and communities in which it operates, bankers and other suppliers of finance and credit, customers, the media, public opinion makers and pressure groups.

2.6 While the board is accountable to the owners of the corporation (shareholders) for achieving the corporate objective, its conduct in regard to factors such as business ethics and the environment for example may have an impact on legitimate societal interests (stakeholders) and thereby influence the reputation and long-term interests of the water sector enterprise.

This guideline shall be subject to the Water Act 2002 as regards the appointment of directors to the Service Boards and procedures at meetings for the water services boards.

3. NEED FOR CORPORATE GOVERNANCE

3.1 The principles of corporate governance need to be embedded in the water services sector so as to:

1. Ensure the profitability and efficiency of water services delivery.
2. To create ethical business enterprises and their capacity to create wealth and employment.
3. Ensure the long-term competitiveness of the water sector.
4. Ensure the stability and credibility of the water sector financially.
5. Improve relationships between the different players in the water sector so as to be able to deliver quality , affordable water in a sustainable manner.
6. Improve the relationship between such water enterprises and their various stakeholders comprising shareholders, managers, employees, customers, suppliers, labour unions, communities, providers of finance, etc.

3.2 When corporate governance is embraced it essentially defines leadership at board level so as to attain the following objectives:

1. Leadership geared towards efficiency in the provision and distribution of water services.
2. Leadership with probity for the sustainability of the financial resources.
3. Leadership with responsibility focused towards attainment of water for all.
4. Leadership which is transparent and which is accountable to the public.

4. CORPORATE GOVERNANCE PRINCIPLES

All the Boards of Directors in the water services sector (WASREB, WSBs and WSPs) shall adhere to the following principles as far possible as allowed by the governing laws:

4.1 Role and Functions of the Board

The following roles and functions shall apply to all water service institutions with appropriate modifications to reflect role and functions of the Boards for WSBs. The shareholder of a WSB is the government. Its directors are appointed by government and it reports to WASREB. The WSPs will largely regulate their board membership, reporting structure and stakeholder participation according to this guideline

The Board of Directors shall adhere to The Memorandum and Articles of Association whose first object shall be to be an agent of the water services board . Where the company already has a different Memorandum and Articles of Association it shall, through a members (shareholders) meeting called for this purpose, pass a resolution to adopt the articles which adhere to this guideline.

The Board of Directors shall:

1. Before commencing business sign the code of ethics as circulated by WASREB.
2. Have a schedule of full board meetings at the end of every year for the next year.
3. Have only one full board meeting in every quarter.
4. Inform the respective WSB of other meetings not within the schedule of board meetings.
5. Define the limits of authority of the Managing Director and other top executives in a schedule of duties.
6. Approve an annual budget in consultation with the respective WSB in accordance with the Service Provision Agreement.
7. Devote sufficient time to their responsibilities.
8. Have an approved organizational structure and adhere to the staff efficiency ratio guideline of 8 staff per 1,000 connections.
9. Have a performance management and appraisal system in place.
10. Map out communication strategy for internal and external liaisons to include at least one public forum in its area of supply.
11. Define how the Board will operate including:
 - a. Submission of the following information to them by management on a quarterly basis:
 - i. Amount of regulatory levy and other levies paid.
 - ii. Service obligation and performance report for supply area providing commercial and technical issues.
 - iii. Financial report reflecting the levels of tariff revenues and subsidies.
 - b. Submission of the following reports on an annual basis:
 - i. Financial report.
 - ii. Audited financial report for the year ending.
 - iii. Performance achievement report covering commercial and technical improvements on performance.
12. Embark on benchmarking with other WSPs to constantly monitor management performance and the financial progress of the company.
13. Evaluate its own performance at least once every year based on the Service Provision Agreement.

14. Ensure that the company is properly managed and for the attainment of lawful objectives.
15. Ensure that the company's affairs are not managed or conducted in a manner oppressive to any of its shareholders or for fraudulent purposes.
16. Ensure that the company complies with all statutory requirements, including directives issued by WASREB.
17. Ensure that sitting allowances and other expenditures of the board and its committees do not exceed two percent of the annual recurrent budget for a WSP, five per cent for a WSB or any other ratio set out by the Water Services Regulatory Board for efficiency purposes

4.2 Board Appointment and Composition of the Board

4.2.1 Size of the Board

The Boards of the Water Service Providers shall have a minimum of seven members (7) and a maximum of eleven (11) members with a professional mix of directors appointed from the local authority and directors appointed from the Stakeholders through a competitive stakeholder participation procedure such that no individual or group of individuals or interests can dominate its decision making. No more than one director shall be appointed from each of the local authorities covered by the WSP. A director representing a Local Authority shall be a professional member of staff of the respective local authority. The respective WSB shall oversee the nomination/ appointment process for the stakeholder representatives in the start up phases of the WSP.

4.2.2 Background of the directors

1. Two directors from the local authority where one shall be a professional officer from each of the local councils covered by the WSP.
2. Two members from the business and manufacturing community nominated by their bodies.
3. One local professional from the professional bodies nominated from the bodies.
4. One representatives from resident organizations.
5. One member from a women organization
6. Where possible at least three of these members shall be women, provided that the eligibility criteria below are not compromised.

A representative of the CEO of the respective WSB shall be invited to sit in attendance at the board where deemed necessary to offer guidance to its agent or to explain contentious issues.

4.2.3 Eligibility criteria

To be eligible all the persons appointed to the board must be:

1. Literate and numerate to at least O level.
2. Demonstrate experience and acumen in a business or any profession of at least 7 years.
3. Demonstrate participation in local development initiatives.
4. Have experience as change management agent.
5. Suppliers or other trading associates of the company cannot become directors of the company.
6. Persons in current professional or social relationships with directors of the company cannot become directors in the company.

4.2.4 Stakeholder participation procedure

This process shall apply where the WSP is in start up phase and is running assets previously owned by the local authority or any other government scheme. after a board of directors of a company is already in existence the WSPs will advertise for the positions following the criteria above.

1. The water service board shall have a list of all stakeholders in the concerned service area and shall have impressed and convinced them of the need to participate in water service provision management through its communication strategy..
2. The water service board shall advertise in the local media positions for the board of directors for an existing water company and shall set the criteria for those eligible to apply in accordance with the guideline.
3. The water service board shall call a stakeholder conference in the service area to create a selection committee of five members from the stakeholders who will evaluate the applications submitted.
4. A date shall be set by the water service board for the applicants to be interviewed by the stakeholder selection committee. The water service board shall not participate during the selection process
5. The stakeholder selection committee shall select five people (or number appropriate) and forward the names to the water service board according to the eligibility criteria above.
6. The water service board shall notify the names to the shareholders for ratification. The names of the representative of the local authorities shall also notified to the shareholders.
7. The selected directors shall then meet the water services board where they are to be inducted in a corporate governance workshop and they sign the code of ethics before commencing business.
8. The water service board shall communicate the directors list and background to the Water Services Regulatory Board.

4.2.5 Board succession policies and period in office

The Water Service Providers shall avoid a situation where all Board members retire at the same time. In order to avoid this situation, two thirds of the Board members other than those from the local authorities, shall retire from office by rotation every three years. The retiring members shall be determined on the basis of those who have served longest and, if they have served for the same period of time, then the retirement will be determined by lot.

4.2.6 Directors training and development

All directors in the water services sector shall receive some formal training on their role, duties, responsibilities and obligations as well as Board practices and procedures on first appointment. This is particularly critical for those with no previous Board experience. The water service board shall organize these training in concert with the company and all directors shall be exposed, at least once every three years, to the following matters:

1. Role, duties and responsibilities of the Board and directors.
2. Rights and obligations of a director.
3. Statutory liabilities and duties of a director under criminal and company law.
4. Board practices and procedures.
5. The Service Provision Agreement content(for WSB the licence content)
6. Corporate strategy in the water sector and institutional organization.

7. Disclosure and communication policies.
8. Financial management systems, internal control procedures and internal audit.
9. External Audit and the Board.
10. Corporate Governance
11. Performance targeting, monitoring and evaluation with emphasis to the Minimum service level agreement in the licence and the SPA and required sector benchmarks in the licence and the SPA.
12. Risk management.
13. Information Technology and information to the Board.

4.3 Strategy and Values

1. The board of directors must continuously evolve a 5 year strategic plan that clearly states the company's, vision, mission and values and the strategies it will evolve to attain its contracted and statutory objectives.
2. The board of directors must ensure that there is a business plan that will map out how the minimum service levels contracted to it in the service provision agreement will be achieved in the investment plan that is drawn up.
3. The board of directors must ensure that there is a service charter created that is communicated to its stakeholders and consumers in the service area, showing the standards of service to be delivered and how complaints will be addressed.
4. The board of directors must sign a code of ethics and ensure that there is a code of conduct and ethics for its staff.

4.4 Company Performance

The board shall ensure that:

1. The company adheres to the minimum service level guarantee in the service provision agreement and produces quarterly reports on those indicators.
2. The company does not deviate from the minimum service level guarantee unless there are mitigating circumstances which have been communicated and agreed with the water service board and WASREB.
3. The company issues a performance guarantee as advised by WASREB to ensure that the specified risks are covered.
4. The company issues a performance evaluation report to its shareholders and stakeholders at the end of every year.

4.5 Compliance

4.5.1 Collective and individual role of directors

In order to enable every director to be more clearly aware of their collective and individual accountability and liability in regard to their acts of commission and omission, the directors shall:

1. Be aware of the laws the company is supposed to comply with, that is Companies Act, Water Act 2002, Public Procurement and Disposal Act (2005) and regulations(2006).

2. Be aware of the Service Provision Agreement, (and Licence for WSBs).
3. Be aware of the Environmental Management and Co-ordination Act.
4. Be aware of the Anti- Corruption and Economic Crimes Act.
5. Be aware of the laws relating to employment .
6. Ensure that the company operates within the law and the legality of transactions.
7. Be able to understand the financial statements of the company in order to know in depth the financial status of the company and take action accordingly.
8. In good faith, a member shall disclose to the board for recording any business or other interest that he/she holds that is likely to create a potential conflict of interest.
9. Be aware of liability of directors jointly and severally in the context of:
 - a. Criminal and penal laws relevant to companies.
 - b. Fiduciary trust and agency.
 - c. Fraudulent trading with an insolvent company.
 - d. Personal liability for fraud, secret profits, corruption and bribery.

Board members having conflicting directorships or being in too many other boards or being too busy to attend board meetings: Board members who cannot spare time for the Board's meetings should resign voluntarily or be replaced.

4.5.2 Communication

1. The board shall ensure that the following reports and plans are submitted :
 - a. Quarterly Financial reports to the WSB and WASREB.
 - b. Biannual Water quality report to the WSB and WASREB.
 - c. Biannual Effluent standard report to the WSB and WASREB.
 - d. Quarterly procurement report to the WSB.
 - e. Annual Performance for quality and commercial achievements to the WSB and WASREB (achievement report).
 - f. Annual Financial report to WSB and WASREB.
 - g. Annual Investment Report by WSB to WASREB.
2. All reports must be submitted in accordance with the Companies Act, the Water Act 2002 and the requirements of the Service Provision Agreement and the License for a WSB.
3. The board shall endeavour to ensure that a financial management information system as well as the water regulatory information system are in place. In addition, proper and correct records must be maintained by the Water Service Provider.
4. All meetings shall be properly recorded and the minutes of the proceedings kept. All minutes and papers of the board shall be circulated at least 7 days before the meeting.
5. Records of resolutions shall be kept and communicated in writing to shareholders and relevant stakeholders.

4.6 Accountability to Shareholders

4.6.1 Authority and duties of shareholders

The shareholders in this case are the local authorities and other identified local institutions which are invited to be shareholders. Their representatives hold all their shares in trust for them. (In case of the WSB the issue of shares does not arise as it is a board owned by the government).

4.6.2 Classes of shareholding

1. Where the company is operating assets owned by the WSB or formerly owned by the local authority or a community the memorandum and articles of association of a company shall have two classes of shareholding. Class A shall be shares held by the local authority if the local authority was previously an undertaker under the repealed Cap 372. Class B shares shall be held by identified stakeholders in a particular area in trust for the public.
2. Class A shares shall qualify for dividend payment once the companies make profits and shall be entitled to vote on all issues in the Annual General Meeting.
3. Class B shares shall not be eligible for dividend payment but shall vote on any issue at the annual general meeting and shall have the same voting weight as Class A shareholders.
4. Where the local authority was never an undertaker it shall be one of the stakeholders with similar rights to all other stakeholders.

4.6.3 Methods of appointing Class B shareholders

Class B shareholders shall be appointed from public and private institutions resident in the area covered by the WSP. The WSB in consultation with concerned town clerks shall appoint and chair a committee to propose institutions to be appointed. The WSB shall forward the proposed shareholders to WASREB for approval. Class B shareholders shall be not less than ten and not more than fifteen in number.

4.6.4 Duties of shareholders

Shareholders of the company shall jointly and severally protect, preserve and actively exercise the supreme authority of the company in general meetings. They have a duty, jointly and severally, to exercise that supreme authority to:

1. Ensure that through the stakeholder participation procedure only competent and reliable persons who can add value to the company are elected or appointed to the Board of Directors;
2. Ensure that the Board of Directors is constantly held accountable and responsible for the efficient and effective governance of the company.
3. Change the composition of a Board of Directors that does not perform to expectation or in accordance with the mandate of the corporation.

4.6.5 Rights of shareholders

All shareholder rights shall be recognized, respected and protected and shall include the right to:

1. Secure methods of ownership registration;
2. Convey or transfer shares;
3. Receive the annual reports and audited reports every year.
4. Participate and vote in annual general shareholder meetings, provided only the shareholders who hold shares shall vote.
5. Appoint their representatives to the Board according to the eligibility criteria.
6. Be paid a lease fee if they so qualify for assets which are being used to provide water services and to re-plough that money into water service provision.
7. Dismiss directors.
8. Participate in a sufficient in and sufficiently informed on decisions concerning fundamental corporate decisions such as:
 - a. Amendments to the statutes, or articles of incorporation or similar governing documents of the company.

- b. The authorization of additional shares.
- c. Extra-ordinary transactions that in effect result in the sale of the company.
- 9. Participate effectively and vote in general shareholder meetings and shall be informed of the rules, including voting procedures that govern general shareholder meetings
- 10. Be furnished with information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be decided at the meetings.
- 11. Be provided an opportunity to ask questions of the Board and to place items on the agenda at general meetings, subject to reasonable limitations.
- 12. Be able to vote in person or in absentia, and equal effect shall be given to votes whether cast in person or in absentia.
- 13. Be provided with adequate information on competencies required on the Board and given options to elect directors from amongst a range of qualified, competent, fit and proper persons in accordance with the eligibility criteria.

4.7 Relationship with Stakeholders

The Board must identify its internal and external stakeholders, create a list of them and agree in a policy on how to relate to them especially in relation to appointing directors and monitoring the performance of the company.

In this regard, the Board of Directors shall:

- 1. Ensure that the rights of stakeholders that are protected by law are respected.
- 2. Where stakeholder interests are protected by law, ensure that stakeholders have the opportunity to seek effective redress for any violation of their rights.
- 3. Permit and facilitate performance-enhancing mechanisms for stakeholder participation.
- 4. Ensure that where stakeholders participate in performance-enhancing mechanisms, they have access to all relevant information.

4.8 Balance of Powers

The Board shall ensure that a proper management structure (organization, system and people) is in place. The structure must maintain integrity, reputation and responsibility.

4.8.1 Chairman of the board

For a WSP, the Board shall be chaired by an independent director who shall be elected from among the stakeholder directors by the other directors during the first meeting. The roles of the Chairman of the Board are:

- 1. To lead the Board;
- 2. To chair meetings of the Board and members, ensuring order, proper conduct of meetings, affording participants a reasonable opportunity to speak, ensuring decisions are fairly made, deciding on technicalities and to cast the deciding vote in case of ties;
- 3. To organize and facilitate a balance of internal and external relationships,
- 4. To facilitate effective Board management.

4.8.2 The board shall create a schedule of matters reserved for the board and circulate it to management, so as to keep the affairs of the board and management distinct.

4.8.3 Directors shall be independent of management functions and free from any business or operational relationships with management.

4.8.4 The company/board shall endeavor to always employ a qualified, competent, fit and proper company secretary who must have the requisite knowledge and experience necessary to undertake the statutory duties and responsibilities of the post and advise the Board on compliance. The Company Secretary should have responsibility for ensuring that the company complies with the law and any guidelines issued.

4.8.5 The directors will operate in a dignified manner, consistent with legislation and social expectations.

4.9 Committees

4.9.1 The Audit and Other Committees of the Board

To ensure the integrity of internal procedures of the company the board shall establish an Audit Committee. Additional committees of the Board can also be established but these additional committees shall not exceed two. The necessity of the two additional committees shall be carefully considered by the Board and established only where there is greatest volume of issues to be dealt with on a continuous basis and which may not be adequately dealt with by the Board itself. The financial ability of the WSP shall also be considered in forming such committees. Ad Hoc Committees may be established for specific issues with clear terms of reference and time span.

For the Audit Committee (which is mandatory):

- a. The internal auditor shall report to this committee, which shall be composed of 3 directors 2 of whom shall be from the stakeholder group.
- b. The committee shall keep under review the scope and results of audit, its effectiveness and the independence and objectivity of the auditors. The Managing Director shall not sit in the Audit Committee.
- c. The Audit Committee shall be given written terms of reference which deal adequately with their membership, authority and duties and shall meet at least twice a year.
- d. The Audit Committee will review the half year and annual financial statements before submission to the Board focusing particularly on:-
 - i. Changes in accounting policies.
 - ii. Significant adjustments arising from the audit.
 - iii. Major judgmental areas.
 - iv. Compliance with performance and accounting standards, disclosure and legal requirements.
 - v. Subject the financial statements to independent critical appraisal.
 - vi. Consider appointment, remuneration and the resignation or dismissal of external auditors.
 - vii. Discuss and agree on the scope, nature and priorities of audit.
 - viii. Discuss with external auditors any reservations and problems arising in the course of audit and any audit management letters and management responses prior to the issuance of the audit certificate.
 - ix. Review and discuss with the external auditors aspects relevant to internal control procedures, risk management and internal audit.
 - x. Review major findings on internal audit and investigations and consider management response or actions thereto.
 - xi. Undertake such other duties or function as may be assigned by the Board which are relevant to audit and investigations.

4.9.2 Number of meetings, terms of reference and composition

Committees shall not have more than four sittings in a financial year, unless the meetings and agenda are communicated and agreed by the respective Water Service Board. The terms of reference of the committees must be clearly set out. The mix of skills in a committee must be commensurate with its purpose.

4.9.3 Committees under Management

1. Tender committee and procurement committee

These are committees formed by management and shall be developed in accordance with the Public Procurement and Disposal Act 2005 and regulations of 2006.

4.10 Board Performance Assessment

4.10.1 The Board of Directors shall, conscious of its responsibilities to investors, suppliers, creditors, employees and the society, issue a certificate at the end of every year confirming that:

1. It has complied with the law.
2. It has conducted its affairs in accordance with the best principles and practices of corporate governance.
3. To the best of the knowledge of the Board and management, no person, employee or agent acting on behalf of the company with the knowledge or authority of the Board or management, committed any offence under the relevant corruption laws or indulged in any unethical behaviour in the conduct of the company's business, or been involved in money laundering or any practice or activity contrary to national laws.

4.10.2 The Board shall evaluate its performance once every year and set up achievable action points to achieve assess its performance as a whole and that of individual members including the Managing director. The report shall be presented at the general meeting of the shareholders. (See formats for Board self-evaluation in the Appendix).

4.11 Management Appointments and Development

4.11.1 Appointment of Senior Managers

1. The board shall ensure that it has in place a human resources policy which shall be tailored to enhance performance.
2. The Board shall appoint its Managing Director and participate in the appointment of the senior managers on performance based contracts.
3. There shall be continuous professional development to ensure appropriate and adequate training for all employees from top management to the lowest levels. All water sector institutions shall adhere to the Industrial Training Act.
4. The board shall ensure that it has a training report at the end of every year.
5. In order to avoid potential conflict of interest, the Board shall set up an independent ad hoc committee to fix the remuneration of staff and directors and ensure that the level is sufficient to attract and retain staff and directors and that remuneration remains within the benchmarks set by the WASREB.
6. When fixing remuneration of the staff the total expenditure for each financial year must not exceed the benchmarks set for the services sector for the WASREB in the SPA and License.

4.12 **Technology**

1. The board shall ensure that the company applies itself to the use appropriate technology in construction of the different water service facilities to differentiate quality of service levels for different categories of consumers.
2. The board shall use the Water Regulation Information System (WARIS) to generate reports to send to WASREB or WSB as the case may be.
3. The board shall endeavour to have a financial management information system in use.
4. The Board will develop a high ICT capability to generate communication to its stakeholders and publish annual reports to its shareholders and stakeholders.
5. The board shall endeavour to implement the latest management practices to cut down costs and improve efficiency in business.

4.13 **Management of Risks**

The board shall have a continuously evolving risk management strategy and it shall ensure:

1. All risks are identified and properly mitigated.
2. Assess and ensure that appropriate insurance is taken out including insurance against fire, loss and theft.
3. Provide back up systems for its documentation.
4. Pursue a staff retention policy.

4.14 **Annual Review of Future Solvency**

1. The board shall ensure that there is the appointment of an external auditor who shall ensure that financial statements and annual audit have been completed and reviewed every year. where the WSP is using public assets the external auditor shall be appointed under guidance from the Controller and Auditor General.
2. The board shall satisfy itself that the company shall continue as a going concern and report in its annual statement for the benefit of shareholders and other stakeholders that the company shall continue to so trade.

4.15 **Social Responsibility**

Water Service Boards and Water Service Providers shall endeavour to ensure that their organizations are responsible corporate citizens and that they have due regard for the interest of all stakeholders and the community within which they operate. The Board of Directors will monitor the social responsibilities of the company and promulgate policies consistent with the company's legitimate interests and good business practices. In particular, the Board of Directors shall:

1. Promote fair, just and equitable employment policies.
2. Promote and be sensitive to the preservation and protection of the natural environment.
3. Be sensitive to and conscious of gender interests and concerns.
4. Promote and protect the rights of children and other vulnerable groups.
5. Enhance and promote the rights and participation of host communities.
6. Publish a Social Responsibility report every year indicating how it has dealt with its social and environmental responsibilities. (This will evolve as the entity gains financial maturity).

SAMPLE TO BE MODIFIED AS APPROPRIATE

APPENDIX: FORMATS FOR SELF-EVALUATION OF THE WATER SERVICES BOARDS OF DIRECTORS

Introduction

Properly conducted, a Board self-evaluation can have a profound impact on a Board. If answers are given honestly, it can provide the impetus for a Board to resolve issues that have remained simmering unattended to and create synergy among the members.

Some of the reasons for conducting Board self-evaluation include:

- Giving individual members an opportunity to reflect on their individual and corporate responsibilities.
- Identifying different perceptions and opinions among Board Members.
- Pointing to issues that need Board attention.
- Serving as a springboard for Board improvements.
- Increasing the level of Board teamwork.
- Providing an opportunity for providing mutual Board and Staff expectations.
- Demonstrating to staff and other stakeholders that accountability is a serious organizational issue in the Board.
- Providing credibility with funders and other external persons/organizations.

Board members should see only the compiled results and not the responses of individual members in order to facilitate free and honest expressions in the responses. Responses which are not honest render the exercise useless and are of no benefit to the organization. Notes on the procedures for the evaluation have therefore been provided below the tables.

It is recommended that this evaluation be undertaken once a year.

The following Board Self-Evaluation is in three Sections:

Section A: Contains evaluation format of the Board by all members and is in three parts, i.e.

1. Board Responsibility
2. Board Operations
3. Board Effectiveness

Section B: Contains an evaluation format of the Chairperson by other members of the Board.

Section C: Contains an evaluation format of individual members of the Board by the Chairman.

It is recommended that for the Board starts initially with Section A and then move on later to Sections B and C when the members have become more familiar and comfortable with self-evaluations

Section A: Self-Evaluation of the Board by All Members of the Board

Circle the number that approximates most closely to your answer

Part 1: Board Responsibility:	Strongly Disagree	Disagree	No Opinion	Agree	Strongly Agree	Don't Know
1. The selection process of Boad Members considers any deficiencies in the skills of current Board members.						
2. The composition of the board fairly represents the diversity of stakeholders.						
3. The Board actively encourages good candidates to stand for Board appointments.						
4. New Board members are introduced to their duties with an appropriate induction process.						
5. Every Board member has been supplied with a letter of appointment.						
6. The letter of appointment defines the roles and functions of the Board and the specific role of each director.						
7. Every Board member is supplied with all establishment instruments, all legal documents, the Board's manuals, the mission statement, vision and strategy documents of the organization on first appointment and every time they are revised.						
8. The Board has identified the groups to which it is: a) Accountable b) Responsible						
9. The Board has a clear understanding of its mandate and responsibilities.						
10. The Board has an operating plan that specifies its functions, activities and objectives.						
11. Our mission and vision clearly communicate what we want to achieve						
12. Our core values and believes have been clearly stated and are reflected in all our programmes and activities						
13. The Board devotes significant time and serious thought to the organization's long-term objectives and to the strategic options available to achieve them.						
14.The roles of the Chairperson of the Board and the Chief Executive Officer are held by different persons.						
15. The division of authority and the allocation of responsibilities between the Board and executive management are clear.						
16. The majority of the Board's time is not spent on issues of day to day management.						

17. When appropriate the Board seeks counsel from professional advisors.						
18. I am satisfied that the processes now in place to manage the succession of the Chairperson, Chief Executive Officer, Board members and senior management are working well and are reviewed regularly.						
19. I feel that my overall knowledge of organization's operations is sufficient to allow me to discharge my obligations as a director.						
20. I am satisfied with organization's strategy as approved by Board.						
21. I am satisfied with the Board's level of contribution to, and process for approving, the strategic plan.						
22. Stakeholder value is appropriately considered in the Board's decision-making process.						
23. I am satisfied that the Board is kept informed of all material issues.						
24. I am satisfied with the Board's level of awareness of the nature and extent of risks faced by the organization and the Board's level of awareness of the policies and procedures the organization has in place to identify, monitor and manage those business risks.						
25. I understand the Board's financial statements very well and can detect anomalies or issues which need to be queried in financial management by reading/studying the statements						
26. The Board's financial statements are rather complex and Directors should be taken through a one or two day's course to understand the financial statements better						
27. I have, through Board, committee and informal contact, sufficient exposure to and knowledge of high potential executive and management employees in the organization.						

28. Additional comments or suggestions about the Board’s responsibilities:

Part 2: Board Operations:	Strongly Disagree	Disagree	No Opinion	Agree	Strongly Agree	Don’t Know
29. Every Board member is supplied with a calendar of meetings showing dates of Board meetings, committee meetings etc and key or critical events of the organization		2				

30. The frequency of Board and committee meetings is adequate for me to fulfill my obligations as a director.						
31. Board meetings are not excessive						
32. Board meetings are conducted in a manner that encourages open communication, meaningful participation, and timely resolution of issues.						
33 All Board members are fully informed of relevant matters and there are never any surprises.						
34. All Board members receive timely and accurate minutes, advance written agendas and meetings notices; and clear and concise background material to prepare in advance of meetings.						
35. The Board ensures that key members of management are brought into the Board meetings so that they can participate and add value to their deliberations and work on behalf of the Board.						
36. Notice given for Board and committees meeting is adequate.						
37. The Board should codify conflict of interest guidelines for directors.						
38. The Board ensures all conflicts of interest are: a) Declared b) Resolved						
39. Sufficient time is scheduled for Board and committee						
40. Board and committee meetings are candid and constructive and are conducted in a manner that ensures open communication, meaningful participation, critical						

questioning and the timely resolution of issues.						
41. My time and talents are well-utilized at Board and committee meetings.						
42. The Board has the right number of directors.						
43. The Board has the right mix of experience and skills to guide organization towards achieving its strategic goals.						
44. There are no stakeholders who are over-represented on the Board						
45. There are no stakeholders who are under-represented on the Board						
46. The Board has established and appointed committees with defined terms of reference, composition and reporting requirements.						
47. The number of the committees of the Board can be justified, taking into account the workload of the Board, the cost of running the committees and the ability of the Board to meet those costs						
48. I am satisfied that each of the Board committees is performing as it should:						
49. I am satisfied with the frequency and amount of time for discussion among independent directors without management present.						
50. The briefing materials I receive are adequate and timely.						
51. The performance and competitive information I receive allows me to monitor results, identify potential areas of concern and understand important industry issues/trends.						
52. I have adequate access to officers outside of Board and committee meetings.						
53. I am satisfied that none of the Directors interferes with the day to day running of the organization by the						

Management						
54. I am satisfied that none of the Directors, including the Chairperson, tries to dominate the meetings all the time						
55. I am satisfied that none of the Directors is consistently absent from meetings						
56. The quorum at Board and Committee meetings is usually attained in the first 30 minutes						
57. The CEO's remuneration is reviewed and determined by the Board.						
58. The performance of the Chief Executive Officer is reviewed formally on an annual basis.						
59. All proceedings and resolutions of the Board are recorded accurately, adequately and on a timely basis.						
60. All proceedings of the Board are kept under secure arrangements						
61. All Members of the Board have a sense of collective responsibility and do not discuss confidential or sensitive outside the Board's meetings						
62. Additional comments or suggestions about enhancing how the Board operates:						
Part 3: Board Effectiveness	Strongly Disagree	Disagree	No Opinion	Agree	Strongly Agree	Don't Know
	1	2	3	4	5	6
63. The Board's goals, expectations and concerns are openly communicated with management.						
64. A broad range of appropriate performance indicators are used to monitor the performance of management. Reliability is not placed solely on the financial statements by management.						
65. Formal review of the Board's performance has become an integral part of the culture of the Board.						
66. Directors understand the extent of their personal liability for the affairs of the organization.						
67. The Board has a process for handling urgent matters between meetings.						
68. The Board receives sufficient information from management in an appropriate format as determined by the Board.						
69. The Board's information requirements are communicated to management on a regular basis.						

70. Requested information is received in a timely fashion.						
71. The Board is proactive in developing an effective communication strategy for the organization.						
72. The Organization/Company Secretary advises Board members regularly on matters of governance and the applicable law.						
73. Encouragement is given for Board members to continue their study of corporate governance and improve the skills they need.						
74. The CEO's remuneration and performance is reviewed and determined by the Board.						
75. The process the Board uses to set goals with the CEO is adequate.	1	2	3	4	5	6
76. The process the Board uses to evaluate the CEO's performance is adequate.	1	2	3	4	5	6
77. Management is sufficiently responsive to questions and issues raised by the Board.	1	2	3	4	5	6
78. Management communicates with the Board in an open, candid and timely manner.	1	2	3	4	5	6
79. I receive adequate feedback as a director about my contribution to organization	1	2	3	4	5	6
80. Board members are encouraged to discuss matters with members of management after gaining the approval of the Chairperson or the Chief Executive.						
81. Board members bind themselves to uphold, honour and respect the Code of Ethics of the organization on first appointment and to resign where their actions are called into question.						
82. Board members evaluate their individual and overall Board performance, formally on an annual basis.						
83. Directors who have not been contributing to the governance of the organization, and are uninterested in improving their performance, are asked to terminate.						
84. Where the ethical or professional conduct of any director is called into question such director is suspended pending investigations.						
85. The organization's bylaws (where applicable) have been prepared or reviewed by a legal counsel						
The bylaws and Memorandum of Association have been reviewed and approved by the Members of the Board.						

86. In my view, the Board’s most significant achievement in the past year was:						
87. In my view, the most important thing the Board could do to improve its effectiveness is:						
88. With reference to my experience on other Boards, the performance of the organization and its committees is:	Much Worse	Worse	About the Same	Better	Much Better	Don’t Know
89. Are there additional things that the Board could do to boost its effectiveness?						

Notes on Section A:

1. The evaluation process should be handled confidentially and the Directors should be assured of such confidentiality. In this regard, the intended evaluation and the format it will take should be discussed by the Board as an agenda item at one of the meetings. The forms can also be modified at that meeting as appropriate.
2. Once the final formats are agreed on, the forms should be produced and given to the Directors with deadline for returning them completed to the person appointed to coordinate the exercise.
3. A senior officer cleared to handle confidential materials should be appointed to coordinate the exercise including analysis and production of the report for discussion by the Board. An external consultant can also be used for the exercise. Using an outside facilitator/consultant may make it more likely that Board Members will give frank responses.
4. The Board could take a retreat to discuss the results of the evaluation.
5. The Board should determine the interpretation and implication it wishes to give the scores e.g.
 Score 5: Very Good. No need for action
 Score 4: Good. Some improvement required
 Score 3: Fair. Substantial improvement required
 Score 2: Poor. Major review required
 Score 1: Very Poor. The Board is completely dysfunctional. Major and urgent review is required.
 Areas receiving scores of Very Poor to Fair should receive special attention by the Board depending on their priority rating. The total score for the Board should also be similarly given a rating. If the total score of the Board is poor to very poor, then a major reorganization or the appointment of a new Board may be required. An external or peer review of such a Board would be immediately desirable.
6. The column for “Don’t know” (score 6) is useful in that it can identify training needs required for the Directors.
7. As the Board becomes used to its own internal review, it should be encouraged to move on to the evaluation of individual Members of the Board and its Chairperson. A sample of such review is

given in the Appendix below but not for immediate introduction before the overall Board self-evaluation takes root as a culture of the organization.

Section B: Sample Form for Evaluation of the Chairperson of the Board (By the Other Board Members and the Chief Executive Officer)

Use a scale score of 1 - very poor, 2 - poor; 3 - fair; 4 – good, 5-very good, with comments as appropriate.

ATTRIBUTE	SCORE
-----------	-------

1. **Shareholder Relationships**

- Manages shareholder relationships and meets with shareholders
- Actively meets with potential sources of equity and debt capital
- Manages shareholder meetings effectively and promotes a sense of participation in all shareholders and promotes shareholder confidence in the Board

Comments:

2. **Leadership**

- Is the Chairperson an effective Board leader?
- Does he promote effective participation of all board members in the decision-making process?
- Does the Chairperson promote the image of the organization, portraying the requisite leadership in the community?

Comments:

3. **Management Relationships**

How effective is the Chairperson in:

- Monitoring planning and operations
- Building relationships
- Influencing strategy
- Helping define problems
- Monitoring and evaluation performance of the CEO and senior officers
- Representing shareholders and Board to the management
- Representing management to the Board and Shareholders
- Maintaining accountability
- Ensuring succession plans are in place at senior management level

Comments:

4. **Managing the Board**

How effective is the Chairperson in:

- Chairing meetings of the Board
- Managing Directors' performance
- Communicating with Directors between meetings
- Setting meeting schedules
- Setting meeting agendas
- Controlling meeting attendance
- Determining Board information packages
- Helping appoint committees
- Attending committee meetings where appropriate
- Determining Director compensation
- Promoting the training and development of directors

Comments:

5. Developing a More Effective Board

How effective is the Chairperson in:

- Encouraging Board contribution
- Planning Board composition and succession
- Establishing and working towards a vision
- Promoting effective corporate governance

Comments:

6. Relationship with other Stakeholders

How effective is the Chairperson

- In conjunction with the CEO representing the organization to public, suppliers, customers and staff
- In conjunction with the CEO developing relationships and representing the organization with regulators and government agencies
- In liaison with CEO and management, leading the organization in charitable, educational, environmental and cultural activities

Comments:

7. Overall Assessment

In your view, should the Chairperson continue in office?[YES/NO]

Section C: Sample Form for Review of Individual Directors' Performance (By The Chairperson)

Organization/Organization.....
Date of review.....

Director Details:

Title:

Surname First/other names:

Date first appointed

Expected end of term

Skill area on appointment

Membership of Board Committee(s)

-
-
-

1. Attendance at meetings

a) Number of Board/relevant committee meetings held since date of appointment:

b) Number of Board/relevant committee meetings attended by director:

c) Chairperson's comments on attendance at meetings, e.g.:

- i. Attends on time and stays for full duration of meeting
- ii. Attends briefly
- iii. Other observation

2. Preparation for meetings

a) How well does the director prepare for meetings?

Outstanding Very Good Good Satisfactory

Not Acceptable

b) Chairperson's comments:

3. Participation at meetings

a) What level of effective participation does the director have in meetings:

- Outstanding Very Good Good Satisfactory
- Not Acceptable

b) Chairperson's comments:

4. Additional Roles

- a) Does the director make other contributions (e.g. chair of a Board committee , completion of special Board assignments)
- b) Chairperson's comments:

5. Personal Attributes

The Chairperson's assessment of a director's attributes with comment, in particular, on the director's understanding of socio-economic issues facing the community and the business; the level of ethical and moral judgement, preparedness to keep abreast of the latest developments in the sector and in their corporate responsibilities; their relationship with the stakeholders.

6. Professional Attributes

The Chairperson's assessment of a Director's professional attribute with comment on the director's strategic awareness, independence, understanding of governance, technical competence, industrial relations and director responsibilities.

7. Chairperson's General Comments

The above assessment has been discussed between the Chairperson and the director concerned and the points have been agreed.

Signed:

Chairperson.....

Director.....
Date.....

Notes on Section B and C:

1. In the case of the evaluation of the Chairperson, should the Chairperson’s performance be considered unsatisfactory, the Deputy Chairperson or a Director elected by the other members for this purpose, will have a discussion with the other Directors to discuss whether the appointing authority or the shareholders should be alerted.
2. The evaluation of the individual members should be administered by the Chairperson on a one to one basis. Should a Director’s performance be found to be unsatisfactory, the Chairperson should:
 - Identify training needs for the Director especially in the case of inexperienced Directors with potential for good performance.
 - Indicate areas which need to be addressed in order for the Director’s performance to meet the needs of the organization.
 - Where necessary, indicate that recommendation for re-appointment will not be forthcoming.
3. The Board should be sensitive to the fact that the evaluation of Chairperson and individual Directors can be quite disruptive in relationships between the Directors. The Board may therefore wish to initially undertake the overall Board evaluation The others other evaluations can then be subsequently undertaken after the Directors have gotten used to the idea of Board evaluations and after these evaluations have been included in their letters of appointment as conditions for their acceptance of the appointments.
4. In the case of the evaluation of individual Directors, the process can also be varied to include a self-evaluation questionnaire and/or a cross evaluation by the other Directors.