



**CORPORATE GOVERNANCE STANDARDS FOR THE  
WATER SERVICES SECTOR 2024**

**WATER SERVICES REGULATORY BOARD**

## Table of Contents

.....	1
<b>CORPORATE GOVERNANCE STANDARDS .....</b>	<b>1</b>
<b>FOR THE WATER SERVICES SECTOR 2024 .....</b>	<b>1</b>
<b>FOREWORD .....</b>	<b>4</b>
<b>1. BACKGROUND TO CORPORATE GOVERNANCE IN THE WATER SERVICES SECTOR... 1</b>	<b>1</b>
1.1 CORPORATE GOVERNANCE .....	1
1.2 THE NEED FOR CORPORATE GOVERNANCE .....	2
1.3 EVOLUTION OF CORPORATE GOVERNANCE STANDARDS IN THE WATER .....	2
SERVICES SECTOR.....	2
<b>2. LEGAL FRAMEWORK OF THE WATER SERVICES SECTOR..... 3</b>	<b>3</b>
2.1 Background to the Legal Framework.....	3
2.2 The Constitution of Kenya 2010 .....	4
2.3 County Governments Act 2012.....	4
2.4 Water Act 2016 .....	4
<b>3. CORPORATE GOVERNANCE STANDARDS IN WATER SERVICE PROVISION .....</b>	<b>6</b>
3.1 Water Act 2016 .....	6
3.2 Institutional Model .....	6
3.3 Shareholders.....	7
3.3.1 Shareholding .....	7
3.3.2 Stakeholder Involvement .....	8
3.3.3 Duties of Shareholders .....	9
3.3.4 Rights of Shareholders .....	9
3.4 Board Structure.....	10
3.4.1 Size of the Board .....	10
3.4.2 Composition of Board Members .....	10
3.4.3 Background of the Directors .....	11
3.4.4 Eligibility criteria .....	12
3.4.5. Board Appointments .....	13
3.4.6 Board Remuneration .....	14
3.4.7 Board Succession Policies and Period in Office .....	14
3.4.8 Board Records .....	15
3.4.9 Directors’ Training and Development .....	15

<b>3.5 Board Operations</b> .....	<b>15</b>
3.5.1 Strategy and Values.....	15
3.5.2 Company Performance.....	16
3.5.3 Compliance.....	17
Collective and individual role of directors.....	17
<b>3.5.4 Communication</b> .....	<b>18</b>
<b>3.5.5 Accountability to Shareholders by Board of Directors</b> .....	<b>18</b>
<b>3.5.6 Relationship with Stakeholders</b> .....	<b>18</b>
<b>3.6 Balance of Powers</b> .....	<b>20</b>
<b>3.7 Committees of the Board of Directors</b> .....	<b>20</b>
<b>3.8 Board Performance Assessment</b> .....	<b>22</b>
<b>3.9 Human Resource Management Appointments and Development</b> .....	<b>22</b>
<b>3.10 Technology</b> .....	<b>23</b>
<b>3.11 Management of Risks</b> .....	<b>24</b>
<b>3.12 Annual Review of Future Solvency</b> .....	<b>24</b>
<b>3.13 Social Responsibility</b> .....	<b>24</b>
<b>ANNEX 1</b> .....	<b>25</b>
<b>MODEL MEMORANDUM AND ARTICLES OF ASSOCIATION – KEY CONTENT TO BE INCLUDED IN ALL MEMORANDUM AND ARTICLES OF ASSOCIATION</b> .....	<b>25</b>
<b>ANNEX 2</b> .....	<b>66</b>
<b>NATIONAL CORPORATE GOVERNANCE STANDARDS FIT AND PROPER TEST</b> .....	<b>66</b>
<b>FORM</b> .....	<b>66</b>
<b>ANNEX 3:</b> .....	<b>71</b>
<b>FORMAT FOR SELF-EVALUATION OF THE WATER SERVICE PROVIDERS’ BOARD</b> .....	<b>71</b>
<b>OF DIRECTORS</b> .....	<b>71</b>
<b>Section A: Self-Evaluation of the Board by all Members of the Board</b> .....	<b>72</b>
Notes on Section A: .....	80
<b>Section B: Sample Form for Evaluation of the Chairperson of the Board (By the other Board Members and the Chief Executive Officer)</b> .....	<b>81</b>
Comments: .....	83
Comments: .....	84
<b>Section C: Sample Form for Review of Individual Directors’ Performance (By the Chairperson)</b> .....	<b>85</b>

## **FOREWORD**

The objective of these standards is to improve how water service institutions especially water service providers (WSPs) are led and managed, enhance the understanding of apt governance, clarifying autonomy and oversight and the structures and systems that are needed to have economical and efficient provision of water services.

For the shareholders it shows:

1. The reason for corporatisation and how to maintain it sustainably.
2. How to appoint and manage directors and *in extenso* the water service provider.
3. The limits of involvement of shareholders.
4. How to relate with and involve stakeholders under the value of public participation in article 10 and 174 of the Constitution 2010.
5. The information to be submitted to shareholders and what to do with it.
6. How to hold board of directors accountable to the shareholder.

For the directors of the WSPs it provides guidance on:

1. The standards of boardroom behaviour to adopt.
2. Where to provide guidance.
3. What to monitor and how to monitor.
4. How to instil a culture of performance and appropriate reward.
5. How to involve stakeholders.
6. How to sustainably provide water services by effective oversight.

For the staff in water service provision:

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 in service provision.
5. Value of stakeholders.

For the stakeholders who are public, it provides information on why, where and how their participation is mandatory in improving the water services they obtain from the water service providers as water and sanitation are rights due to them under the Constitution.

The content of these standards has been modified to conform to legislative reforms under the Constitution of Kenya 2010, the County Governments Act 2012, the Companies Act 2015, the Water Act 2016, Sessional Paper No. 01 of 2021 on National Water Policy and other relevant statutes.

WASREB in licensing and monitoring the water service sector institutions will use these standards to assess commercial viability of WSPs established under section 77 of the Water Act 2016.

# **1. BACKGROUND TO CORPORATE GOVERNANCE IN THE WATER SERVICES SECTOR**

## **1.1 CORPORATE GOVERNANCE**

- a. Water governance refers to the political, social, economic and administrative systems in place that influence water uses and management. Essentially, who gets what water, when and how, and who has the right to water and related services, and their benefits. Governing the water sector includes the formulation, establishment and implementation of water policies, legislation and creation of institutions so as to clarify the roles and responsibilities of government and its different layers; the role of other stakeholders in relation water resources and services. The outcome depends on the synergy created by these different bodies in relation to the rules and roles that have been taken or assigned to them. The water sector is a part of broader social, political and economic developments and is thus also affected by decisions by actors outside of the water sector. Hence the need for clarity in how the entities that provide the right to water are governed.
- b. Corporate governance refers to the establishment of an appropriate legal, economic and institutional environment that allows institutions to thrive for advancing long-term shareholder value and maximum human-centred development while remaining conscious of their other responsibilities to stakeholders, the environment and the society in general. In the context of water services, shareholder value is realised in universal coverage in safe, clean water in adequate quantities and reasonable standards of sanitation.
- c. Efficient and effective provision of water services and progressive realization of the basic human right to water can only be achieved if the leadership and management in the water sector institutions is guided by the tenets of good governance.
- d. In the water services sector good corporate governance requires that water sector institutions be governed with integrity and thrifty enterprise in a manner which entrenches and enhances efficiency and effectiveness in water service provision. The statutory guidance also being that they are to be run as commercial enterprises following sound business principles.
- e. The board of directors is accountable to the owners of the water service providers (shareholders) for achieving the corporate objectives. The shareholder is accountable to the citizen who requires the services and owes fidelity to the Constitution 2010. The competence and conduct of the board, in regard to factors such as business ethics and the environment has an impact on legitimate societal interests (stakeholders) and thereby influences the reputation and long-term interests of the water sector enterprise in the whole country and attainment of Vision 2030 and the Sustainable Development Goals.

## **1.2 THE NEED FOR CORPORATE GOVERNANCE**

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 as water is an enabler under Agenda 4.
3. Ensure the long-term competitiveness of the water sector by ensuring the pricing and affordability promotes source protection.
4. Ensure the stability and creditworthiness of the water services sector to attract finance for asset development.
5. Improve relationships between the different players in the water sector to enhance delivery of quality and affordable water services in a sustainable manner.
6. Improve the relationship between water enterprises and their various stakeholders comprising shareholders, water resource users' associations, managers, employees, customers, suppliers, labour unions, communities, providers of finance and other government agencies.
7. Define leadership at board level so as to attain the following objectives:
  - a. Maintaining arm's length relationships that are based on the vision of creating and sustaining a commercially viable WSP.
  - b. Leadership geared towards efficiency in the provision and distribution of water services.
  - c. Leadership with probity for the sustainability of the financial resources.
  - d. Leadership with responsibility focused towards attainment of water for all.
  - e. Leadership which is transparent and which is accountable to the public.

## **1.3 EVOLUTION OF CORPORATE GOVERNANCE STANDARDS IN THE WATER SERVICES SECTOR**

The Corporate Governance Standards for water services were initially introduced in 2009 and used to largely formalize the leadership and management structure of newly corporatized Water Service Providers (WSPs) that were formally either departments of water in the local authorities or water schemes run by the national Water conservation and pipeline corporation or the Ministry of Water. The Standards were also applicable to the water service boards who were the licensees under the Water Act 2002.

Their use since 2010 has embedded material improvements in the way WSPs are led and managed and entrenched public participation. However, challenges remain and become more pronounced after every national election cycle since 2013 thus introducing a level of uncertainty in the leadership and management of WSPs and the sector as a whole.

In 2010, following the promulgation of the Constitution 2010 there was introduction of two-tier system of government at national and county level. The County Governments Act 2012, the Public

Finance Management Act 2012 were introduced and affect corporate governance of the WSPs and all public entities.

From 2014, cases in the High Court were resultant of challenges in the implementation of the Corporate Governance Standards especially in relation to competitive recruitment and appointment of directors and the role of stakeholders in the appointment of directors and the management of the WSPs. The general thrust of the rulings in these cases being that article 10 of the constitution 2010 changed the landscape of how citizens are governed by introducing meaningful public participation and good governance in the manner in which the State renders services.

There was also the enactment of the Companies Act No 17 of 2015, the Insolvency Act 2015 and finally the Water Act 2016 which commenced on 21<sup>st</sup> April 2017 which have pronounced themselves in matters that affect the governance of the water service providers.

In 2015 WASREB also started assessing the effectiveness of governance structures by introducing a governance indicator in assessing performance of WSPs. From the assessment, poorly governed WSPs would inevitably enter into a decline in performance standards thus affecting service delivery. The results of the assessed WSPs on the indicator are published in IMPACT a publication under section 72(1)(m) of the Water Act 2016.

## **2. LEGAL FRAMEWORK OF THE WATER SERVICES SECTOR**

### **2.1 Background to the Legal Framework**

The Water Policy No. 1 of 1999 led to reforms in the water sector in the Republic of Kenya and committed to introduce the tenets of Integrated Water Resource Management in the governing of water.

The adoption of the policy led to the enactment of the Water Act 2002 reformed the water sector in the country by unbundling the roles and separating institutionally to introduce.

- a. Policy making which remained the role of the Ministry of Water
- b. Economic and quality of service regulation of water services which became the role of the Water Services Regulatory Board
- c. Regulation of water resources which became the role of the Water Resource Management Authority.
- d. Water service delivery which became the role of water service boards as asset developers.
- e. Introduction of commercialised autonomous water service providers who became agents of the water service boards.
- f. Dispute resolution which was placed in the Water Appeals Board.
- g. Introducing mandatory public participation in decisions and actions that affected water users by section 107 of the Water Act 2002.
- h. Introducing ring fencing of water revenue and the professionalization of the provision of the services by providing for removal of politics from the management and use of water.

## **2.2 The Constitution of Kenya 2010**

The Constitution introduced the following changes in the governance framework of the country:

- a. Article 2, the place of international law as part of Kenyan law.
- b. Article 6, Devolution of power to two levels of government with the objective of improvement of delivery of services and further elaboration of its purpose in article 174.
- c. Article 10, the introduction of national values and principles of governance, of relevance to the water services sector being participation of the people, rule of law, human rights, accountability, good governance and sustainable development.
- d. Article 21(2), the requirement that the State take legislative, policy and other measures including the setting of standards to achieve the progressive realisation to the rights to clean and adequate water and reasonable standards of sanitation.
- e. Article 43(1)d, the right to clean and safe water in adequate quantities and the right to reasonable standards of sanitation 43(1) e.
- f. Article 46, the consumer's right to goods and services of a reasonable quality, the right to information to gain full benefit from goods and services and the protection of their health, safety and economic interests.
- g. Article 259 of the Constitution provides the manner of construing the Constitution.
- h. Fourth schedule of the Constitution which gave the functional allocation of roles as follows:

### National Government

- i. Use of international water and water resources
- ii. Protection of the environment and natural resources with a view to *establishing a durable and sustainable system of development including* water protection, securing sufficient residual water, hydraulic engineering and safety of dams

### County governments

- i. Implementation of specific national government policies on natural resources and environmental conservation including soil and water conservation.
- ii. County public works and services including water and sanitation services.

## **2.3 County Governments Act 2012**

For the institutions serving in the County, The County Governments Act 2012 is clear in section 34 and 36 that supervision of service delivery is a key function of the county executive and it must be in accordance with the law. The place of meaningful public participation for the public is also captured in great detail in section 87 and 115(2) of the Act.

## **2.4 Water Act 2016**

Under the Water Act 2016 the following institutional framework has been created for the water services sector:

- a. The ministry of water and sanitation makes the policy.
- b. The county governments own and establishes all the water service providers.



- c. The Water Services Regulatory Board (WASREB) retains its name and role as the regulator of water services with a mandate of setting national standards for water service provision for consumer protection and licensing WSPs.
- d. The former Water Services Boards (WSBs) which were also licensed under the Water Act 2002 and are listed below transformed to Water Works Development Agencies (WWDAs) with a mandate to develop national public water service works and residual water service provision on material default of county water service provision:
  - i. Athi Water Works Development Agency
  - ii. Tana Water Works Development Agency
  - iii. Northern Water Works Development Agency
  - iv. Central Rift Valley Water Works Development Agency
  - v. North Rift Valley Water Works Development Agency
  - vi. Coast Water Works Development Agency
  - vii. Lake Victoria North Water Works Development Agency
  - viii. Lake Victoria South Water Works Development Agency
  - ix. Tanathi Water Works Development Agency
- e. Existing water service providers under section 154 continue to operate as the county water service providers and their mandate as set out in section 78 is to provide water services within the area specified in the license and the development of county assets.
- f. The National Water Conservation and Pipeline Corporation changed name to National Water Harvesting and Storage Authority (NWHSA) with the mandate to undertake, on behalf of the national government, the development of national public works for water storage and flood control.
- g. The Water Services Trust Fund (WSTF) changed from a financing mechanism to a financing institution and is renamed the Water Sector Trust Fund, with an expanded mandate for collaboration with County Governments and Water Resource Users Associations (WRUAs) over water service provision in underserved areas and catchment management respectively. Further, the WSTF has the mandate to mobilize financial resources from private investors for onward lending to creditworthy utilities and to promote research on water services and water resources. Its core mandate is to assist in financing the development and management of water services in marginalized areas or any underserved area.
- h. The Water Appeals Board changed name to Water Tribunal. It has powers to hear and determine appeals from any person or institution directly affected by the decision or order of the Cabinet Secretary, the Water Resources Authority and the Water Services Regulatory Board. The tribunal also has powers to hear and determine any dispute concerning water resources or water services where there is a business contract, unless the parties have otherwise agreed to alternative dispute resolution.

### **3. CORPORATE GOVERNANCE STANDARDS IN WATER SERVICE PROVISION**

#### **3.1 Water Act 2016**

In relation to governance of water service providers the Water Act 2016 provides the following;

- a. In section 72(1) (e) that WASREB shall develop a model memorandum and articles of association to be used by all water companies applying to be licensed by WASREB to operate as water service providers.
- b. In section 75(4), it is also stated that WASREB shall develop and publish standards to regulate the conduct of licensed water service providers.
- c. In section 77(2), the institutional structure is elaborated by providing that county governments in establishing WSPs shall follow standards of commercial viability.
- d. The recommended model is that they may be public limited liability companies established under the Companies Act 2015 or other body providing water services as may be approved by the Regulatory Board in line with section 77(3).
- e. That the memorandum and articles of association of the WSP shall conform to the **model and standards** issued by WASREB.
- f. Pursuant to section 79, a water service provider shall have a board of directors and in the case of a company the members of its board of directors shall be constituted in accordance with the Companies Act 2015 or any other written law and shall be nominated to service in accordance with company's memorandum of objects and articles of association.
- g. Section 79(2) provides that all members of the board shall possess the qualifications which meet the national standards set by WASREB.
- h. Section 80 dictates that elected political officials of the county governments or political parties or serving Member of Parliament are not eligible to be board members.
- i. Section 83 is clear that all WSPs established as public institutions hold the public water service assets on behalf of the public and thus those assets cannot be alienated to the detriment of the public.
- j. In section 91, water service providers are supposed to ensure economic and efficient provision of water services so as to fulfil the rights to water and any other condition specified in the license.
- k. Section 154 there is the direction that existing WSPs continue operating as county water service providers or cross county water service providers as the case may be.

From the direction given by the law, the purpose of these standards is thus to elaborate on section 72(1) e, Section 77(1)4 and 91 of the Water Act 2016.

#### **3.2 Institutional Model**

1. Commercially viable water service providers shall be corporate bodies operating under the Companies Act 2015. This is to maintain the benefits of corporatisation where revenue is ring-fenced, human resource is professionalised and commercial principles are used to drive the creation of an efficient and economical water service provision that will fulfil the right to water for the country as per section 91 of the Water Act 2016.
2. Ring fencing of revenue is a national standard under section 131 of the Water Act 2016.
3. The recommended model by the Water Act 2016 is that a Water Service provider may be a

public limited liability company established under the Companies Act 2015 or other body providing water services as may be approved by the Regulatory Board in line with section 77(3) of the Water Act 2016 and the memorandum and articles of that entity is required to be compliant to the Model issued by WASREB. (*The Model Memorandum and Articles is annexed to these Standards as Annex 1*).

4. Currently, most companies are private limited liability companies, the issue of them being private since transfer of shares to the public is restricted.

### **3.3 Shareholders**

#### **3.3.1 Shareholding**

1. The shareholder of a WSP will for public providers remain the county government especially with regard to companies which have been providing services with assets developed publicly either by the former local authorities, water service boards, national water conservation and pipeline corporation or the ministry of water under the Water Act 2002.
2. Section 154 of the Water Act 2016 states these companies shall continue to operate as the county water service providers.
3. If their memorandum of objects and articles of association do not already state that they are owned by the county government which has taken up the shares of the defunct local authorities, amendments should be made to reflect this legal reality. This complies with the decision made by the Transition Authority through LN 137-182 of 2013 and clarified by Transition Authority in the Gazette Notice 2238 published on 1<sup>st</sup> April 2016 and is captured as the water service subsector position in section 77 of the Water Act 2016.
4. The county government shall hold the shares in trust for the people of the county and the other shareholders who hold the shares in trust and not in their personal capacity are the Office of CECM in charge of Finance, the Office of the CECM in charge of water and the County Secretary who shall hold one share each. These county executives shall be nominated by respective county governments to hold the said share in trust owing to respective functional mandates in connection to water services namely; county government finance, water and administration functions bestowed on the said offices.
5. Where companies were limited by guarantee under the Water Act 2002 to entrench public participation and the main guarantors were the defunct local authorities it is clear that even before those memorandum and articles of association are amended, the county government is a bona fide member taking up the place of the defunct local authorities as a guarantor.
6. Where the provider was registered as a Trust, and was running water service assets from the national government or any other public agency, after the commencement of the Water Act 2016 it is expected that the Trust operations are transmitted as per the law to a company under the Companies Act 2015.
7. Under the direction of section 77 of the Water Act 2016, these companies should then change their memorandum following the model for the sector care being taken that real public participation in WSP governance is retained.
8. There may be water service providers who have private owners or the community although the shareholding is not of the county government. The objects of the provider must show that

the purpose is to be a water service agent for the county government and provide water services in accordance with the standards prevailing in the water services sector. It will be required to the extent possible to adhere to the governance standards in operations to the extent possible in relation to their size and report within the framework provided to the county government and adhere to the national standards of water service provision.

### **3.3.2 Stakeholder Involvement**

1. Stakeholders are an essential asset for continued water service provision, as their input and engagement with the water service providers can spur the companies on to future achievements. In the county owned water service providers, it is recommended that stakeholders should be involved in the management of the companies, in order to entrench public participation in line with Article 10 of the Constitution of Kenya 2010.
2. Due to the nature of water use and management especially under the Integrated Water Resource Management principles, stakeholders should be an integral part in ensuring sustainable water service provision. Stakeholders have to be mapped by the company, classified into primary and secondary stakeholders and the primary stakeholders not exceeding five (5) become eligible for appointment as stakeholder directors on the board of the WSPs.
3. Under the principles of the right to water, public participation, transparency and non-discrimination are inherent in provision of the right by the State.
4. This is an area where each shareholder is required to reflect on the goal being to establish a water service provider who truly serves the county regardless of an election cycle, political affiliation or origin.
5. The stakeholder director approach in the water sector would stabilise the governance of the water service providers by having survival of stakeholders in the supreme structure of governance even after an election cycle.
6. Stakeholder directors shall be appointed from public and private registered institutions resident in the area covered by the WSP and who are key and primary stakeholders who would be negatively affected by the failure of the company or failure of water services and who are pillars of support to the company.
7. Other than the stakeholder directors appointed to the board of WSPs, representatives of stakeholders' groups may attend AGM meetings but shall not vote to appoint directors at the AGM, shall not be eligible for payment of dividends (when payable) and shall not appoint proxies. Their main role is to provide robust participation in the affairs of the WSP at the general meeting and ensure reports including reports on appointment of directors are adopted.
8. Where the WSP is operating assets that are trans-county in nature and effect, the shareholding shall reflect the usage of water and revenue raised to have equitable management of the water services.
9. All other provisions of the Companies Act 2015 on dealing with outstanding shares shall apply
10. It shall be clear in the articles of association that shares shall not be allotted except to raise substantial revenue and this only for a temporary period of time and after regulatory and shareholders' approval due to the requirement of the Constitution under article 191 and schedule 4 of the need to have a durable and sustainable system of water development.

### **3.3.3 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 competent proxies are appointed for general meetings.
3. Ensure that the Board of Directors is constantly held accountable and responsible for the efficient and effective governance of the company.
4. Change the composition of a Board of Directors that does not perform to expectation or in accordance with the mandate of the company.
5. Conform to the national standards in the water sector in maintaining a commercially viable water service provider.
6. Make policies and provide funds that sustain the growth of the WSP in progressive realisation of the right to water in the county.

### **3.3.4 Rights of Shareholders**

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

1. Secure methods of ownership and registration; it is advised that the CECM in charge of Water Affairs should keenly follow up on this issue with the Office of the Registrar General by having copies of the relevant forms submitted to the office of the CECM in charge of Water Affairs after every shareholder's meeting.
2. Convey or transfer shares according to national standards.
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 and the meetings shall be held in the locality of the WSP.
5. Appoint their representatives to the Board of Directors according to the eligibility criteria.
6. To re-plough money generated as revenue into water service provision in lieu of dividends payout.
7. Dismiss directors due to non-performance or other activity sanctioned by law.
8. Participate in a sufficient and get 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, partial sale of the company or change of status 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. 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.
14. Have a board of directors that ensures that the company is properly managed and for the attainment of lawful objectives which are sustainable water service provision and the company affairs are not conducted in a manner that is oppressive to any of its shareholders or for fraudulent purposes.
15. Ensure that the company complies with all statutory requirements, including standards under the water service sector.

### **3.4 Board Structure**

#### **3.4.1 Size of the Board**

From the experience gained since 2009 and to promote efficiency small board sizes are recommended for WSPs as follows:

1. Small companies, companies relying on subsidy for Operation and Maintenance from the county and medium companies shall have a maximum of 7 members which shall include two from county government executive.
2. Large and Very Large companies shall have 9 board members where two shall be from the county government executive.

#### **3.4.2 Composition of Board Members**

1. The appointment shall comprise of members with a professional mix of directors such that no individual or group of individuals or interest can skew decision making to the detriment of the company welfare and objectives.
2. The appointing authority should ensure it gets independent directors who should not have any relationships that may impair, or appear to impair, the director's ability to exercise independent judgment for the overall benefit of the company.
3. Where the WSP is a clustered company of two or more counties then the maximum number of directors from the county executive should be four members; where the cluster has three county governments a rotational formula should be worked out to ensure that the value of having independent stakeholder directors is not lost.
4. Directors representing the County Government Executive should be appointed in writing and be a professional member of staff of the respective County Government and it should be ensured that the appointed directors meet the technical competence criteria and any formally appointed alternates also meet this criterion.
5. The mandatory offices representing the County Government shall be the Chief Officer in charge of Water Affairs and the Chief Officer in Charge of Finance or their alternate, appointed in writing. The alternate shall not be below the cadre of County director water or Director Finance.
6. The Chief Officers should then report effectively to the CECMs on the happenings in the WSP based on county systems and structure on performance monitoring.

7. The Chief Officers should establish and maintain an information file or system for its water service providers so that transition in oversight which occurs after every five-year election cycle is seamless and minimises conflict due to information asymmetry.
8. The CECM in charge of Water Affairs and CECM in charge of Finance shall be adequately briefed by their chief officers sitting on the board of the WSPs, and attend the Annual General Meeting as shareholders along with requiring continued accountability from the board of directors.
9. Based on the experience from 2014, lower cadre officers from the water and finance department should not be sent to board meetings as the oversight and direction availed by such cadre of staff is below the competence level required. Due to the reforms of the Water Act 2002 and concerted improvement of technical competence, the decisions made at board level of the WSPs require involved leadership from the shareholder and functionally from the CECM in charge of water affairs.
10. However, if it appears to the CECM in charge of Water or Finance that the state of the WSP is such that the Chief Officers are needed in board meetings and annual general meetings, a suitable competent proxy from the executive wing has to be appointed by letter by the CECMs to attend the Annual General Meeting.

### **3.4.3 Background of the Directors**

The utility of having the water service provider appoint directors from the communities from which they provide services is to minimise conflict, have meaningful oversight and ensure governance is localised as per the aspirations of article 174 of the Constitution. Depending on the stakeholder mapping exercise of each water service provider the following is recommended:

1. Two directors from the County Government where each shall be a professional officer from county water department and at the discretion/assessment of the county also from the county finance department.
2. Depending on the size of the company, two members from the business and manufacturing community nominated by their registered bodies as stakeholders of the WSP.
3. Depending on the size of the company, one local professional from the professional bodies nominated from the bodies or any other key primary stakeholder that is of equivalent value to the professional body.
4. Depending on the size of the company, two representatives from different resident organizations as stakeholders of the WSP
5. Depending on the size of the company, one representative from domestic consumers within the service area of the WSP.
6. Where possible at least a third of these members shall be from the other gender, a competent physically disabled person and a competent youth should be included provided that the eligibility criteria below are not compromised.
7. A representative of the CEO of the respective WWDAs may with invitation from the WSP

or by them expressing interest, sit in attendance at the board to discuss a specific agenda including asset development, joint planning and loan obligations.

8. As part of its inspectorate duties, WASREB may on its own motion, or on request, attend any board meeting for a WSP that is in material non-compliance of the law and is under special regulatory regime under section 102 of the Water Act 2016.
9. The board may co-opt professional experts including City managers who shall sit in attendance.

#### **3.4.4 Eligibility criteria**

To be eligible all the persons appointed to the Board shall have a minimum of a Bachelors degree from a recognised university in the following backgrounds:

1. Advocate of the High Court of Kenya – must be in good standing with the Law Society of Kenya
2. Business Systems/ Management Systems
3. CPA – experience in accounting / Finance – must be in good standing at Institute of Certified Public Accountants of Kenya and produce letter to that effect
4. Human Resource Practitioner- Must be in good standing with the Institute of Human Resource Management
5. IT Practitioner – (useful for large and very large companies)
6. Professional Engineer - Must be in good standing at the Engineers Board of Kenya and Institution of Engineers of Kenya
7. Or any other professional field with relevant experience.
8. Must have a minimum of seven years working experience in the core profession of the person or have run a registered own enterprise for a minimum of seven years save for representatives of the youth.
9. Must meet the Leadership and Integrity criteria under Chapter 6 of the Constitution and meet the Fit and Proper test criteria from WASREB. (*Annex 2 to the Standards*)
10. For Very Large companies, must have attended a Corporate Governance Training in a recognised institution before.
11. Board directors must represent known registered stakeholder groups in the locality served by the WSP such as:
  - a. Industry / manufacturing sector.
  - b. Relevant Commercial sector.



- c. Key water catchment areas that are sources of water for WSP.
  - d. Residents' associations.
  - e. Any other recognised registered bodies that are affected by the WSP.
12. Due to the size of WSP factor, for small and medium companies the degree requirement may be lowered to that of a diploma or an equivalent qualification to a diploma in the provided fields and with a minimum of seven years working experience in senior positions.
  13. The judgement of the shareholder and adherence to article 10 and 232 of the Constitution 2010 shall be critical in increasing value by the calibre of directors appointed.

### **3.4.5. Board Appointments**

1. Board appointments shall be transparent and competitive so as to ensure the public served has an opportunity to participate in decision-making in-service delivery that affects them.
2. Vacant positions shall be advertised in the media, website of the WSP and the county government, and ensure that the criteria set out by WASREB nationally shall be used.
3. An ad hoc nominating committee of the board of directors comprising county and select committee from two or three primary/key stakeholders shall assess applications and ensure that not only is the Leadership and Integrity criteria met but shall perform a background check to ensure the candidates add value to the entity.
4. The selection committee shall receive the applications, vet them to ensure that they comply to the Fit and Proper Test plus the eligibility criteria and where necessary conduct interviews.
5. The Report of the selection committee shall be submitted to the shareholder who is required as shareholder and function owner to ensure that only persons who add value to the company are appointed.
6. The Fit and Proper Test Form is annex 2 to these Standards and must be filled by all applicants and submitted together with their applications.
7. The copy of the Fit and Proper Test Forms of each of the appointed directors shall subsequently be sent to WASREB.
8. A letter of appointment issued by the CECM in Charge of Water Affairs that adheres to the articles of association of the WSP shall be issued after ratification of names of the accepted directors at annual general meeting by the shareholder.
9. The letter must contain a termination clause on poor performance and misconduct and ensure that it captures that unless the board is retired due to poor performance, a third of the members shall retire every year from the third year.
10. Board members shall serve for a maximum of six (6) years based on the approval of the shareholder and subject to satisfactory performance.
11. Before a board member begins to serve, he/she must be inducted in governance training customized for the water services sector and sign a code of ethics based on the Leadership and Integrity Act 2012 and the Public Officer Ethics Act 2003.
12. The list of ratified board members and the stakeholder group they represent shall be

maintained on the website of the WSP and shall be communicated to WASREB.

13. It is important that board service is not disrupted by the election cycle and independent oversight must not be compromised by the election cycle.

### 3.4.6 Board Remuneration

To provide efficiency and act as an incentive to improve performance at oversight level, the following are the limits for sitting allowances and other expenditures of the board and its committees:

<b>Annual Turnover</b>	<b>Board Expenditure Limit</b>
<b>&gt;5B</b>	<b>0.4%</b> of turnover or Kshs. <b>30 million</b> , whichever is Lower
<b>&gt;1B-5B</b>	<b>1.4%</b> of turnover or Kshs. <b>20 million</b> , whichever is Lower
<b>&gt;500M-1B</b>	<b>2.1%</b> of turnover or Kshs. <b>14 million</b> , whichever is Lower
<b>&gt;250M-500M</b>	<b>2.8%</b> of turnover or Kshs. <b>10 million</b> , whichever is Lower
<b>&gt;100-250M</b>	<b>4%</b> of turnover or Kshs. <b>7 million</b> , whichever is Lower
<b>&lt;=100M</b>	<b>5%</b> of turnover or Kshs. <b>4 million</b> , whichever is Lower

\*B – Billion (Ksh)

\*M – Million (Ksh)

### 3.4.7 Board Succession Policies and Period in Office

1. The shareholder must avoid a situation where all Board members retire at the same time in order to ensure institutional memory.
2. In order to avoid this situation, one third of the Board members other than those from the County Governments, shall retire from office by rotation every year starting from the third year after appointment.
3. 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. The retiring members shall be required to reapply for their positions if they are eligible for reappointment
5. The county water department as function owner is advised to use annual performance evaluation of the board of directors and WSP to assess suitability of reapplying members and the need to make changes to improve performance.

### **3.4.8 Board Records**

1. The board of directors shall ensure that all board meetings and committee meetings shall be properly recorded and the minutes of the proceedings kept in a minute book.
2. The board of directors shall ensure that all minutes and papers of the board shall be circulated at least 7 days before the meeting.
3. Records of resolutions shall be kept and communicated in writing to shareholders and relevant stakeholders.
4. It is advised that the Chief Officer in charge of water or the County Secretary should maintain a system within the county that has information on annual and special general meetings minutes to avoid information asymmetry which occurs every election cycle or changes in the office of the Chief Officer.

### **3.4.9 Directors' Training and Development**

1. All directors in the water services sector shall receive formal induction on their role, duties, responsibilities and obligations as well as board practices and procedures on first appointment before they begin business. This is particularly critical for those with no previous Board experience.
2. Subsequent trainings involve improving understanding of the water service sector operations, deepening oversight skills in financial management different compliance requirements that are critical to the WSP business.
3. The company shall organize these trainings and inform the CECM in charge of water affairs who may appoint the chief officer to participate in the trainings.
4. All directors shall be exposed, at least once every two years, to the following matters:
  1. Corporate strategy in the water sector and institutional organization.
  2. Role, duties and responsibilities of the Board of directors.
  3. The Licence and licence obligations.
  4. Rights and obligations of a director.
  5. Statutory liabilities and duties of a director under criminal and company law.
  6. Board practices and procedures.
  7. Disclosure and communication policies.
  8. Financial management systems,
  9. Risk management, internal control procedures and internal audit.
  10. The importance of external audit by the Auditor General
  11. Performance targeting, monitoring and evaluation with emphasis to the water service sector minimum service level requirements and sector benchmarks
  12. The role of Information Technology in oversight.

## **3.5 Board Operations**

### **3.5.1 Strategy and Values**

1. The board of directors must continuously approve 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. In evolving this strategy, the board must be aware of its role as the county government water service provision agent.
3. The board of directors must approve an annual budget and ensure it is forwarded functionally to the CECM in charge of water affairs for onward processing as per the Public Finance Management Act 2012.
4. The board of directors must approve an annual procurement plan in accordance with the Public Procurement and Asset Disposal Act 2015 and ensure it receives quarterly reports on its implementation.
5. The board of directors must ensure that there is an annual work plan that shows on annual basis how it will implement its strategic plan.
6. 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.
7. The board of directors must ensure that the signed code of ethics for board and staff is a living implemented document that gives life to the value of the WSP and shapes the culture of the WSP.

### **3.5.2 Company Performance**

1. The board of directors shall sign a performance contract with the managing director who shall in turn cascade it to the management team and in adapted format to all staff.
2. The board of directors shall ensure that management submits to the board of directors the following information to them by management on a quarterly basis:
  - a. As a minimum, the technical report shall include the following:
    - i. Volume of water (abstracted, produced, distributed and sold);
    - ii. Where applicable, volume of Sewerage carried in the Sewers and treated in the Sewerage treatment works;
    - iii. Numbers and categories of Customers;
    - iv. Number of Personnel employed;
    - v. Levels of Service performance and commentary with specific reference to the Performance Targets and the Key Performance Targets;
    - vi. Water quality compliance results and commentary;
    - vii. Where applicable, treated Sewerage quality compliance results and commentary;
    - viii. Profitability, billing ratio;
    - ix. General development of works;
    - x. Renovation works and Repairs carried out or to be carried out;
    - xi. Exceptional events e.g. water shortages, major bursts, pollution incidents.
  - b. As a minimum, the Financial Report shall comprise of:
    - i. Revenue earned;
    - ii. manpower costs and other costs of employment;
    - iii. board of director costs;
    - iv. power costs;

- v. local taxation, including property taxes (if any);
  - vi. water charges (including Abstraction charges and discharge consent charges);
  - vii. materials and consumables;
  - viii. hired or contracted services;
  - ix. public consultation costs;
  - x. charges for bad and doubtful debts;
  - xi. depreciation and amortization (where charged);
  - xii. tangible assets and written-off infrastructure expenditure (analysed by - Repairs, renovations, and replacements); exceptional items; and
  - xiii. all other operating costs (on an aggregated basis);
  - xiv. an analysis of the total turnover under the following headings:
    - water supply Abstraction, treatment, transmission and distribution;
    - Sewage collection, treatment and disposal; and
- c. In summary provide information about, and an analysis of its operations for the quarter showing distinctly the gross and net billings and showing distinctly the gross and net billings.
3. Ensure on an annual basis there is an audited set of accounts prepared in accordance with the standards in the Public Finance and Management Act 2012 and any additional regulatory accounting standards imposed by WASREB and containing an opinion to the of the Board of Directors of the Service Provider that the Service Provider shall have available to it for at least the next twelve (12) months:
- a. Sufficient financial resources and facilities to discharge the activities and functions, powers and duties relating to the Services business; and
  - b. The management resources which are sufficient to enable it to carry out such activities and functions.
4. Ensure that the WSP submits the required quarterly reports to the office of the CECM in charge of water affairs as function owner and WASREB as sector regulator as per the license conditions.
5. The company does not deviate from the standards in the license conditions
6. The company issues a performance guarantee as advised by WASREB to ensure that the specified risks are covered.
7. The company issues a performance evaluation report to its shareholders and stakeholders at the end of every year.
8. The company ploughs back its profits as a public water supplier until such time that it has been able to achieve optimum coverage of its service area in terms of water and sanitation.
9. Ensure benchmarking with other better performing Kenyan WSPs to constantly monitor management performance and the financial progress of the company.

### **3.5.3 Compliance**

#### **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 are required to ensure compliance with the law. Having the assistance of competent company secretary

/ legal officer and internal auditor will largely assist the board of directors understand compliance:

1. Be aware of the Licence provisions of the water service provider.
2. Be aware of the laws the company is supposed to comply with, that is Water Act 2016, county water legislation, Companies Act 2015, Public Procurement and Asset Disposal Act,2015, Public Finance Management Act 2012.
3. Be aware of the Environmental Management and Co-ordination Act.
4. Be aware of the Anti- Corruption and Economic Crimes Act № 3 of 2003.
5. Be aware of the laws relating to employment and labour relations.
6. 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.
7. 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 and withdraw himself from participating in that decision.
8. Be aware of liability of directors jointly and severally in the context of personal liability for fraud, secret profits, corruption and bribery.
9. Board members having conflicting directorships or missing three meetings consecutively should resign voluntarily or be replaced by the shareholder as per the articles of association of the company.

#### **3.5.4 Communication**

1. The board of directors shall ensure there is a communication strategy that reaches all stakeholders and there is at least one well publicized annual stakeholders forum in the service area of the WSP where the WSP prepares the public on the appointment of new directors, reports to the public on the gains, challenges and upcoming plans for the progressive realization for the right to water in the area served.
2. The board of directors shall ensure that it receives the annual investment report from the Water Works Development Agency, the county government and any investor undertaking water service projects within its area.
3. Ensure the company maintains a website that provides customer relevant information in the service area and maintains its annual report and last audited accounts on the website.

#### **3.5.5 Accountability to Shareholders by Board of Directors**

- i. Call an annual general meeting once every year and ensure 13 months do not pass before such a meeting is called.
- ii. Disclose truthfully all material aspects of the business.
- iii. Ensure the water service provider has complied with all relevant laws and provide certification to that effect.
- iv. Act in the best interest of the company as a water service provider
- v. Ensure a sustainable water service provider is maintained.

#### **3.5.6 Relationship with Stakeholders**

1. The company must identify its internal and external stakeholders, create a list of them and provide in a policy on how to relate to them especially in relation to:

- a. appointing directors,
  - b. monitoring the performance of the company
  - c. Protection of the sources from which the WSP is authorised to draw water resources from.
  - d. protection of assets and investment of infrastructure
  - e. getting feedback on services offered
2. The company shall endeavour to ensure that stakeholders identify with aspirations of the WSP on the progressive realisation of the right to water in the county and provision of safe and affordable water services by providing relevant information and having activities involve them.



3. In this regard, the Board of Directors shall:
  - a. Ensure that the rights of stakeholders that are protected by law are respected.
  - b. Where stakeholder interests are protected by law, ensure that stakeholders have the opportunity to seek effective redress for any violation of their rights.
  - c. Permit and facilitate performance-enhancing mechanisms for stakeholder participation.
  - d. Ensure that where stakeholders participate in performance-enhancing mechanisms, they have access to all relevant information.

### **3.6 Balance of Powers**

1. The Board shall ensure that a proper management structure is put in place and elaborated in the:
  - a. Board of Director Charter
  - b. In the schedule of duties for the board of directors and management
2. The structure must maintain integrity, reputation and responsibility.
3. The Board shall be chaired by an independent director who shall be elected from among the stakeholder directors during the first meeting.
4. The roles of the Chairperson of the Board are:
  - a. To lead the Board by providing direction and maintaining mature discussions;
  - b. 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;
  - c. To organize and facilitate a balance of internal and external relationships and maintain the relevant political contacts for the good of the company;
  - d. To facilitate effective Board management.
5. 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.
6. Directors shall be independent of management functions and free from any business or operational relationships with management.
7. A WSP in the large and very large category must always employ a qualified, competent, fit and proper company secretary with 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 shall be responsible for ensuring that the company complies with the law and any Standards issued by the Regulatory Board.
8. The directors will operate in a dignified manner, consistent with legislation and social expectations, especially with the Leadership and Integrity Act and the Public Officer Ethics Act

### **3.7 Committees of the Board of Directors**

1. The following committees are mandatory and relevant members of the top management team may be ex officio members of the committees. The recommended practice is that a board member should not sit in more than two committees.



- a. Audit Committee – According to the Public Finance and Management Act 2012, the committee must possess the following competences to perform outlined duties.
  - i. Possess Financial acumen and meet minimum financial literacy standards, one member should be a financial expert.
  - ii. External auditor - The audit committee is responsible for the company’s relationship with its external auditor.
  - iii. Financial statements - The committee should discuss significant issues relating to the company’s financial statements with management and the external auditors before they are published.
  - iv. Internal controls - The committee oversees the company’s system of internal controls over financial reporting and its disclosure controls and procedures, including the processes for producing the certifications required of the managing director and principal financial officer.
  - v. Risk assessment and management.
  - vi. Compliance.
  - vii. Internal audit- The committee oversees the company’s internal audit function and receives reports directly from the internal auditor who reports to them.
  
- b. Technical Services Committee duties shall include:
  - i. Network expansion and rehabilitation issues
  - ii. Water quality and effluent issues
  - iii. Consumer complaint issues
  - iv. Water connection issues
  - v. Sewerage connection and faecal sludge management issues
  - vi. Source protection issues
  - vii. Water business development
  
- c. Finance, Human Resource and Administration Committee duties shall include:
  - i. Corporate Strategy and budget
  - ii. Water sales and revenue collection issues
  - iii. Debt management
  - iv. Asset inventory and management
  - v. Management accounts
  - vi. Technical competence and Human Resource Issues
  - vii. Administration of WSP issues
  
2. As good practice, Committees shall not have more than four sittings in a financial year and the dates for the following year’s meetings must be defined in a schedule before the start of the new financial year.

3. Unless extra meetings and agenda are communicated and agreed functionally with the CECM in charge of water affairs, the recommended best practice is not to exceed 6 board meetings in a year.
4. The mix of skills in a committee must be commensurate with its purpose and for purposes of efficiency especially in very large and large WSPs, a committee member from the stakeholder group shall only sit in two committees.
5. The chairperson of the board of directors should not be a member of any committee however each committee meeting and report must be shared with him when being sent to the other committee members.

### **3.8 Board Performance Assessment**

1. The Board of Directors shall, conscious of its responsibilities to shareholders, investors, suppliers, creditors, employees and the society, issue a certificate at the end of every year confirming that:
  - a. It has complied with the law.
  - b. It has conducted its affairs in accordance with the best principles and practices of corporate governance.
  - c. 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.
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.
3. The report shall be presented to the CECM in charge of water affairs as function owner and at the general meeting of the shareholders in the Chairperson's report.

*(See formats for Board self-evaluation in Annex 3)*

### **3.9 Human Resource Management Appointments and Development**

1. The board of directors shall ensure that it has in place a human resources policy which shall be tailored to enhance performance and incorporates the national standards on productivity.
2. The board of directors shall ensure that it has a staff establishment showing in-post and vacancies based on sector standard competencies.
3. The board of directors shall ensure all staff is appointed after competitive advertisement and

that they meet the competence criteria created under section 86 of the Water Act 2016.

4. The Board of Directors shall appoint its Managing Director and also appoint senior managers on performance-based contracts.
5. The board of directors shall ensure that all employees are on productivity-based contracts.
6. The board shall ensure that any collective bargaining agreements negotiated are not in breach of the standards of staff productivity ratios under the Water Act 2016.
7. The board of directors shall ensure there shall be continuous professional development to ensure appropriate and adequate training for all employees from management to the lowest cadres to ensure efficiency and effectiveness in water service provision. All water sector institutions shall adhere to the Industrial Training Act Cap 237
8. The board of directors shall ensure that it has a training report at the end of every year.
9. In order to avoid potential conflict of interest, the Board shall set up a relevant committee in which the county government has competent membership to fix the remuneration of staff and ensure that the level is sufficient to attract and retain staff and directors and that remuneration remains within the benchmarks set by WASREB.

When fixing remuneration of staff, the total expenditure for each financial year must not exceed the benchmarks set for the services sector by nationally, so that personnel cost as share of operations and maintenance cost shall be contained within the following parameters:

Very large companies <30%

Large < 35%

Medium companies <40%

Small companies < 50%

### **3.10 Technology**

1. Ensure technology is used to leverage efficiency in asset development and maintenance, financial management, human resource management, water service operations, consumer complaints handling and obtain stakeholder feedback.
2. The board shall endeavour to ensure that it migrates its business to robust enterprise management system that ensures that it has correct and live information that enables it to perform its functions.
3. 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.
4. The board shall ensure that water service infrastructure as much as possible adopts the most efficient model and uses the least cost in terms of electricity and use of chemicals.
5. The board shall ensure the use of GIS to map out its water infrastructure and networks in order to improve efficiency and security.
6. The board shall use the Water Regulation Information System (WARIS) to generate reports to send to WASREB, WWDAs or its successor as the case may be.
7. The board shall endeavour to have a financial management information system in use.
8. The Board will develop a high ICT capability to generate communication to its stakeholders and publish annual reports to its shareholders and stakeholders.
9. The board shall endeavour to implement the latest management practices to cut down costs and improve efficiency in business.

### **3.11 Management of Risks**

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

1. All risks are identified and properly mitigated.
2. Ensure all its real property is titled.
3. All its infrastructure and assets are secured
4. Assess and ensure that appropriate insurance is taken out including insurance against fire, loss and theft.
5. Provide back-up systems for its documentation.
6. Pursue a staff retention policy.
7. It becomes a valued citizen in the community served.

### **3.12 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.
2. Where the WSP is using public assets, the external auditor shall be appointed under guidance from the Office of the Auditor General.
3. 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.

### **3.13 Social Responsibility**

1. 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.
2. 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:
  - a. Promote fair, just and equitable employment policies in accordance with National Cohesion and Integration Act 2008.
  - b. Promote and be sensitive to the preservation and protection of the natural environment especially with regard to disposal of waste water.
  - c. Be sensitive to and conscious of gender interests and concerns and other marginalised groups within their area of service.
  - d. Enhance and promote the rights and participation of host communities.
  - e. Publish a Social Responsibility Report every year indicating how it has dealt with its social and environmental responsibilities as part of its annual report.

**ANNEX 1  
MODEL MEMORANDUM AND ARTICLES OF ASSOCIATION – KEY CONTENT TO  
BE INCLUDED IN ALL MEMORANDUM AND ARTICLES OF ASSOCIATION**

**THE COMPANIES ACT 2015**

**(LAWS OF KENYA)**

---

**PRIVATE COMPANY LIMITED BY SHARES**

---

**MEMORANDUM OF ASSOCIATION**

**OF**

**..... WATER AND SANITATION COMPANY LIMITED**

1. The name of the company is ..... **WATER AND SANITATION COMPANY LIMITED (hereinafter called the ‘Company’)**

2. The Registered office of the company will be situated at ..... in the Republic of Kenya.

3. The objects for which the company as established are: -

a) to be an agent of the county government of ..... to deliver water services within the jurisdiction of the county as prescribed in the license or as may be expanded

from time to time by the Licence and Licence Conditions and in accordance with section 96 of the Water Act 2016 or any laws and amendments thereof.

b) To carry on business of water and sanitation as prescribed by the Water Act 2016 and national standards thereat within the municipality and its environs and to manage the assets handed over to the county by the National Government and the County Government.

These assets shall **NOT** be subject to any resolution of the company that is prejudicial to the interest of both the National Government and the county government of ..... and the beneficiary community.

c) To exercise overall control over the sources and supply of water in the area of the area of service and in particular, to conserve, redistribute and augment those water resources, including sinking wells and shafts, and to make, build and construct, lay down and maintain, reservoirs, waterworks, cisterns, culverts, filter-beds, mains and other pipes and appliances, and to execute and do all other works and things necessary or convenient for conserving, obtaining, storing, selling, delivering measuring and distributing water and regenerating water or otherwise for the purposes of the Company.

d) To provide and distribute a constant continuous supply of potable water for commercial, industrial and domestic purposes within the area of service set out in the license or as may be expanded from time to time with the approval of the Regulatory Board as per section 98 of the Water Act 2016.

e) To be responsible for the provision, control and maintenance of sanitation system for commercial, industrial and domestic purposes within the area of the license area of service or as may be expanded from time to time the approval of the Regulatory Board as per section 98 of the Water Act 2016.

f) Subject to the approval of the National Government and/or the county government of ..... as the case may be, to design and construct dams, reservoirs and weirs, to dig wells and drill or sink boreholes and carry on any other water conservation measures and reticulation works for the provision of water for domestic, industrial and agricultural purposes.

g) To acquire for its own use and distribution by sale to the public water pumps, engines tanks, pipes and any other equipment and chemicals that may be deemed necessary for and connected to the carrying out of the said business of the Company.

h) To be responsible for the treatment and disposal of waste water by such means and at such times and locations as the company may deem appropriate as guided by standards in the water services sector.

i) To manufacture, import, distribute, use or sell chemicals, other materials, equipment or goods relevant or incidental to the conduct of the aforesaid business of the company

j) To establish laboratories facilities for analysis and to levy charges when applications or requests for the testing are made to the Company.

k) To undertake laboratory analysis to ensure that acceptable water standards are maintained.

l) To ensure that lawful and efficient methods of disposal of effluent are applied.

m) To levy from the consumers charges in respect of the services, which the Company provides, and to make revisions to those rates as the company may from time to time deem appropriate subject to national standards.

n) Subject to national standards to carry on any other business which may seem to the Company necessary to, incidental to, or capable of, being conveniently carried on in connection with the objects of the Company or calculated directly or indirectly to enhance the value of, or render profitable, any of the property or rights of the Company or to improve the quality, efficiency, effectiveness or extent of the services provided to the customers of the Company.

o) To purchase or otherwise acquire or lease facilities such as land, canals, dams, reservoirs, pipelines waters, warehouses buildings or machinery and construct and equip the same, which may seem to the Company necessary to, or capable of, being conveniently carried on in connection with the objects of the Company or calculated directly or indirectly to enhance the value of, or render profitable, any of the property or rights of the Company or to improve the quality, efficiency, effectiveness or extent of the services provided to the customers of the Company, subject to national standards in the water sector

p) To establish workshops for the repair and fitting of metering equipment electric motors, pumps and other associated equipment common and incidental to the provision of water and sanitary services and to offer these services at a fee to other organizations.

q) To purchase, take in exchange equip, construct, maintain, hire, or otherwise acquire movable property including vehicles, ships or other water-borne vessels, machinery, plant and apparatus necessary or convenient for the carriage of equipment, passengers, freight and goods of all descriptions subject to the national standards in the water sector.

r) To acquire, establish, construct and provide workshops, waterworks, offices and other premises and facilities necessary or convenient for the performance of the objects of the Company and for that purpose, buy, take on, lease or in exchange, hire or otherwise acquire immovable property and interests therein, and rights over the same and concessions, grants, rights, powers and privileges in respect thereof.

s) To apply for, buy or otherwise acquire patents, patent rights, trade marks, designs, licenses, concessions, or the like conferring an exclusive or non-exclusive or limited right to their use, or any confidential or otherwise.

t) To acquire and undertake the whole or any part of the business, property, and liabilities of any person or company carrying on or proposing to carry on, any business which the Company is authorized to carry on, or possessed of property suitable for the purposes of the Company, which can be carried on in conjunction there with or which is capable of being conducted so as directly or indirectly to benefit the Company.

u) To amalgamate, enter into partnerships or into any arrangement for sharing profits, union of interest, co-operation, joint venture, or reciprocal concession, with any person or company carrying on in conjunction therewith or which is capable of being conducted so as to directly or indirectly benefit the Company or to improve the quality, efficiency, effectiveness or extent of the services provided to the customers of the Company.

v) To subscribe for, take or otherwise acquire and hold shares, stock, debentures or other obligations or securities of any other company having objects wholly or in part similar to those of the company or carrying on any business capable of being conducted so as to



directly or indirectly benefit the company.

w) To apply for, purchase, take on lease or in exchange, hire or otherwise acquire any real and personal property and any rights or privileges which the company may think necessary or convenient for the purpose of its business or businesses and in particular any land, buildings, plant, and stock in trade, provided that such investments shall not exceed ten percent (10%) of the overall company income subject to the approval of the Water Services Regulatory Board.

x) To pay for any business, property, or rights acquired or agreed to be acquired by the company by the issue or transfer of shares of this or any other company credited as fully or paid up or debentures or other securities of this or any other company, subject to the national standards in the water sector.

y) To lend and advance money or give credit to such persons or companies and on such terms as may seem expedient, and in particular to customers and persons having dealings with the company, and to guarantee to performance of any contract or obligation and the payment of money of or by any such persons or companies and generally to give guarantees and indemnities subject to the national standards in the water sector.

z) Subject to the national standards to receive money on deposits or loan and borrow or raise money in such manner as the company shall in consultation with the county government think fit to advance the objects of the company.

aa) To make draw, accept, endorse, negotiate, discount, buy, sell, execute, issue and deal in bills of exchange, promissory notes bills of lading, warrants debentures and other negotiable or transferable instruments subject to the national standards in the water sector.

bb) To apply for, promote and obtain any legislation, charter, privileges, concession, license or authorization of any government, state, city or other authority to enable the company to carry out any of its objects into effect or for extending any of the powers of the company or for extending any modification of the constitutions of the company or for any other purpose any proceedings or application which may seem calculated directly or indirectly to prejudice the interests of the company subject to the national standards in the water sector.

cc) To enter into any arrangements with any government or authorities (international, regional, national, local or otherwise) or any person or company that may seem conducive to the objects of the company and to obtain from any such governments, authority, person or company, any rights, privileges, charters, contracts licenses and concessions which the company may think it desirable to obtain, and to carry out, exercise and comply with any such arrangements, rights privileges and concessions.

dd) To establish and maintain or procure the establishment and maintenance of any contributory pension or super-annuation funds for the benefit of, and to give or procure the giving of donations, gratuities, pensions, allowances or emoluments, to any persons who are or were at any time in the employment or service of the company ,or of any dependents of any such persons and to establish and subscribe to any institutions, or funds calculated to be for the benefit of or to advance the interests and wellbeing of the company as aforesaid, and make payments of the matters aforesaid.

ee) To remunerate or make reimbursements to any person or persons whether Directors, Officers or Agents of the company for services in or about rendered the conduct of the company's business.

ff) To invest and deal with the monies of the company not immediately required in the manner agreed upon in the License and especially for the purpose of improving the efficiency of the infrastructure and facilities used in the provision of water services in consultation with the county government and subject to the national water standards.

gg) To insure against losses, damages, risks and liabilities, which the Company may incur.

hh) To deal with company's employees in all matters including:

(i) To appoint and employ such persons on such terms and condition as the company thinks fit, and to terminate their appointments accordingly.

(ii) To purchase, rent, take on lease or in exchange or otherwise acquired dwelling houses of occupation by employees of the company.

(iii)To purchase land and construct there on dwelling houses for occupation by employees of the company.

- (iv) To sell, Rent or lease dwelling houses and land for residential purposes to employees of the company.
  - (v) To guarantee loans made to employees of the company for house purchase, motor vehicles, dwelling houses and the improvement of dwelling houses or land which are the property of employees of the company.
  - (vi) To provide security in presence of loans as described in sub paragraph (v) above by the deposit of securities in which the company is authorized to invest such monies as it may deem fit for the purposes.
  - (vii) To make loans to employees of the company for the purposes of purchasing vehicles, tools or other equipment to be used by those employees in carrying out duties.
- ii) To carry out all acts necessary for the purposes of improving: -
- i). The skills knowledge and experience of persons employed in connection with the provision of Water and Sanitation services.
  - ii). The efficiency of the equipment of the company, or the manner in which the equipment is operated; and in that connection to providing or assist other persons in provide facilities for training, education and research.
- kk) To carry out all acts as are incidental to or conducive to the attainment of the above objects provided such acts do not contravene any given law.

And it is hereby declared that the word “company” in these clauses, except where used in reference to this company, shall be deemed to include any partnership or other body of persons whether incorporated or not incorporated and whether domiciled in Kenya or elsewhere and that the object specified in each paragraph shall be separated as independent objects of the company and shall not be limited or restricted by reference to the terms of any other paragraph in the name of the company but may be carried out in as full and apply a manner as construed in a wide a sense as if each of the said paragraphs defined the objects of a separate and distinct company

4. The Liability of the members is limited.

5. The share capital of the company is Kenya shillings one hundred thousand (100,000/=) divided into five thousand (5000/=) shares of Kenya shillings (Kshs 20/=) each with power for the company to increase reduce the said capital and to issue any part of its capital original or increased with it or without any preferred priority or special privileges or subject

to any postponement of rights to any conditions restrictions so that unless the conditions or the issue shall otherwise expressly declared every share or shares whether declared to be preference shall be subjected to the powers here in before contained. The rights and privileges for the time being attached to any class of share may be alerted, modified, varied, abrogated or taken away with the consent in writing of the owners of three fourths of the shares in the class or with the sanction of an extract ordinary resolution to be passed at a separate general meeting of the holders of the shares in the class.

We, the several persons whose names, addresses and occupations are subscribed, are desirous of being formed into a company in pursuance of this Memorandum of Association and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names.

Names, addresses and Description of subscribers	Numbers of shares taken by each Subscriber	Signatures of subscribers
County Government of .....	4997	.....
Mr./Ms..... County Secretary in trust for the County Government of ..... P.O. Box .....	1	.....
Mr./Ms..... CEC Member in Charge of Finance in trust for the County Government of ..... P.O. Box .....	1	.....
Mr./Ms..... CEC Member in Charge	1	.....

of Water Affairs in trust for the County Government of ..... P.O. Box .....		
TOTAL NUMBER OF SHARES TAKEN	5000 (Five thousand)	

Dated this ..... day of ..... 20....

**Witness to the above signatures**

**CERTIFICATE UNDER THE COMPANIES REGULATIONS**

It is hereby certified that the above Memorandum of Association of has been produced by the process of **XEROGRAPHY**.

**THE COMPANIES ACT, 2015**

**(LAWS OF KENYA)**

---

**PRIVATE COMPANY LIMITED BY SHARES**

---

**ARTICLES OF ASSOCIATION**

**OF**

**..... WATER AND SANITATION COMPANY LIMITED**

1. The Regulations contained in Part 1 of the First Schedule to the Companies Act shall not apply to the company in so far as they are excluded by these regulations.

2. In these Articles, if not inconsistent with the subject of context:

(a)“The Act” means the Companies Act 2015 of the Laws of Kenya and any later amendments to that Act

“The Board” means the Board of directors of the Company or the Directors present at a duly convened meeting of the directors at which quorum is present.

“The Company” means the ..... Water and Sanitation Company Limited.

“The county’ means the devolved unit of government established under the first schedule to the Constitution 2010 and in these articles primarily refers to the executive arm of the county government.

“director “means a technically competent person in engineering, law, human resources, business, ICT, finance, organizational management, or any other professional with relevant experience appointed competitively through the process of stakeholder participation under the Corporate Governance Standards organized under the supervision of the law.

“These Articles” shall mean these Articles of Association as now framed or as from time to time altered by special resolution but not to depart from the standards in the Water Act 2016.

“The Seal” means the common seal of the company

“Secretary” means any person appointed to perform the duties of the Company Secretary of the company.

“Stakeholder” means a person who may have a direct or material interest in the achievement of the economic and social objectives of the company.

“Stakeholder participation procedure” means the open and competitive process stakeholder based process, by which the Water Service Provider advertises for directors from the community served by the water service provider who have no conflict of interest with the company and such persons are then subjected to scrutiny and the most competent are appointed as board members to the water service companies and is elaborated in the Corporate Governance Standards issued by the Water Services Regulatory Board.

“Treasury” means the National Treasury and the County Treasury as the case may be.

“Water Services Regulatory Board” means the body established pursuant section 70 to the

Water Act 2016 and is a successor to the body established under section 46 of the Water Act 2002.

b) Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photographs and other modes of representing or reproducing words in a visible form.

c) Unless the context otherwise requires words or expressions contained in these articles shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these articles becomes binding on the company.

d) Words denoting the singular number shall include the plural number and vice versa, words denoting the masculine gender shall include the feminine gender also; words denoting persons shall include corporations.

### **PRIVATE LIMITED COMPANY**

3. The company shall be Private Limited Liability Company, and accordingly the following provisions shall apply subject to the national standards on consumer protection and of commercial viability of the company:

a. The right of transfer of shares shall be restricted as hereinafter provided

b. The number of the members of the company shall not exceed fifty, exclusive of persons who are in its employment and of persons, having been formerly in the employment of the company, were while in such employment and have continued after the determination of such employment to be members of the company

c. No invitation shall be made to the public to subscribe for any shares or debentures of the company.



## **SHARE CAPITAL AND VARIATION OF RIGHTS**

4. The share capital of the Company is Kenya Shillings One Hundred Thousand (Kshs, 100,000/=) divided into Five Thousand (5,000) shares of Kenya Shillings Twenty (20/=) each with power to divide or subdivide the shares in the capital whether original or increased into several classes and to attach thereto respectively and preferential, deferred, qualified or special rights, privileges or conditions as regards dividends, capital, voting or otherwise.

5. Shares shall be issued to such persons and on such terms and conditions and with such rights and privileges attached thereto as a General Meeting may, by resolution, direct that the shares shall be issued by the Directors, subject to the provisions of the Act on such terms and conditions and with such rights and privileges attached as the Directors may determine. Notwithstanding the foregoing, the company's shares shall not be issued to individuals or natural persons or to other persons not being COUNTY GOVERNMENT OF ..... or office holders of the same County.

6. If a share certificate is worn out defaced, lost, or destroyed it may be received on such terms, if any as to evidence and indemnity as the Directors think fit

7. No part of the funds of the company shall be employed in the purchase of, or in loans upon security of, the company's shares, but nothing in this clause shall prohibit transaction permitted by the Act and any funds so employed shall be subject to the approval of the County Government and in accordance with the Capital Investment Plan.

### **LIEN**

8. The Company shall have lien on every share, not being a fully paid share, for all monies (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares other than fully paid shares standing registered in the name of a single person for all monies presently payable by him or his estate to the company; but the Directors may at any time declare any share to be wholly or in part exempt from provision of this article. The Company's lien if any, on a share shall extend to all dividends payable thereon.

9. The Company may sell in such a manner as the Directors think fit, any shares on

which the company has a lien, but no sale shall be made unless the sum in respect of which the lien exist is presentably payable, or until the expiration of 14 days (fourteen) after a notice in writing, stating and demanding payment of the sum presently payable, has been given to the registered holder for the time being of the share or the person entitled, by reason of his death or bankruptcy, to the share.

10. To give effect to any such sale the Directors may authorise some person to transfer the share sold to the purchaser thereof. The purchaser shall be registered as the holder of the share comprised in any such transfer, and he shall not be bound to see to the application of the purchase money nor shall his title to the shares be effected by any irregularity or in validity in the proceeding reference to the sale.

11. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exist as is presently payable, and the residue shall be held (subject to alike lien for sums not presently payable as existed upon the shares prior to the sale) by the Company on behalf of the person entitled to the shares as the date of the sale.

### **CALLS ON SHARES**

12. The Directors may time to time make calls upon the members in respect of any money unpaid on their shares, and each member shall (subject to receiving at least (14) Fourteen days' notice) specifying the time or times of payment to the company at the time or times so specified the amount called on his shares. A call shall be deemed to have been made at the time when the resolution of the directors authorizing the call was passed.

13. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

14. If a sum called in respect of a share is not paid before or on the day appointed for the payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of 5 per centum (5%) per annum from the day appointed for payment thereof to the time of actual payment, but the directors shall be at liberty to waive payment of such interest wholly or in part.

15. The provision of these Articles as to payment of interest shall apply in the case of

nonpayment of any sum to which, by the terms of issue of a share, become payable at a fixed time, whether on account of the amount of the share, or by way of premium as if the same as become payable by virtue of call duly made and notified.

16. The Directors may, on the issue of shares, differentiate between the holder as to the amount of calls to be paid and times of payment.

17. The Directors may, if they think fit receive from any members willing to advance the same, or any part of the monies uncalled and unpaid upon any shares held by him, and upon all or any of the monies so advanced may (until the same would, but for such advance, become payable) pay interest at such rate not exceeding (unless the company in general meeting shall otherwise direct) 5 percent per annum between the directors and the members paying such sums in advance.

### **TRANSFER OF SHARES**

18. Subject to the provisions hereinafter contained shares in the Company shall be transferable by written instrument in any common form signed by both transferor and transferee and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register of members in respect thereof subject to the approval of the county government.

19. The Directors may decline to register any transfer of shares, not being fully paid shares to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The Directors may decline to recognise any instrument of transfer unless;

a). The instrument of transfer is fully stamped and accompanied by the certificate of the shares to which it relates, and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer and

b). It relates only to one class of shares.

c). It has received the approval of the County Government.

If the Directors refuse to register a transfer of any shares they shall within two months after the date on which transfer was lodged with the company send to the transfer notice of the refusal.

20. The Company's shares shall not be transferred to an individual or natural person {s} or to a person who are not COUNTY GOVERNMENT OF ..... or office holders of the said County, subject to the provisions of the Act.

21. The Directors may suspend the registration of transfers during any period for which they in their absolute discretion think fit provided that any such period does not exceed a period prescribed by the Act.

### **FORFEITURE OF SHARES**

22. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof the Board may, at any time thereafter while any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid together with any interest which may have accrued and all expenses that may have been incurred by the Company by reasons of such non-payment.

23. The notice shall specify a date, not less than fourteen days from the date of service of the notice, on or before which and the place where the payment required by the notice is to be made and shall state that, in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made or instalment is payable will be liable to be forfeited. The Board may accept the surrender of any share liable to be forfeited hereunder and, in such case; references herein to forfeiture shall include surrender.

24. If the requirements of any such notice are not complied with, any shares in respect of which such notice has been given may, at any time after the date specified therein, before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect.

25. When any shares have been forfeited, notice of the forfeiture shall forthwith be given to the holder of the shares or, as the case may be, to the person entitled to the shares by the reasons of the death or bankruptcy of the holder but no forfeiture shall be invalidated by any omission or neglect to give such notice as aforesaid.

26. Forfeited shares shall be deemed to be the property of the Company and may be sold, re-allotted or otherwise disposed of upon such terms and in such manner as the Board may think fit but, at any time before a sale, re-allotment or other disposition, the forfeiture may be cancelled on such terms as the Board may determine.

27. A person whose shares have been forfeited shall cease to be a Member in respect of the forfeited shares but shall, notwithstanding, remain liable to pay to the Company all moneys which, at the date of forfeiture, were presently payable by him to the Company in respect of the shares together with interest thereon, from and including the date of forfeiture to and including the date of payment, at such rate, not exceeding fifteen per cent per annum, as the Board may determine.

28. A statutory declaration that the declarant is a Director or the Secretary of the Company and that shares have been duly forfeited on a date stated in the declaration shall be conclusive evidence of the facts stated therein as against all persons claiming to be entitled to the shares. The Company may receive the consideration, if any, given on the sale, re-allotment or disposition of the shares and, in the case of sale, may appoint some person to execute a transfer thereof to the purchase who, or, as the case may be, the person to whom the shares are re-allotted or otherwise disposed of shall be registered as the holder hereof and shall not be bound to see to the application of the consideration (if any) and whose title to the shares shall not be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, re-allotment or other disposition of the shares.

### **CONVERSION OF SHARES INTO STOCK**

29. The Company may by ordinary resolution convert any paid-up shares, into stock, and reconvert any stock into paid up shares of any denomination

30. The holders of stock may transfer the same of any part thereof, in the same manner, and subject to the same regulation as and subject to which the shares from which the stock

arose might prior to conversion have been transferred, or as near there to as circumstances admit as the directors may from time to time fix the minimum amount of stock transferable but so that such minimum shall not exceed the nominal amount of the shares from which the stock arose.

31. The holders of the stock shall, according to the amount of stock held by them have the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as if they held the shares from which the stocks arose but no such privileges or advantage (except participation in the dividends and profits of the Company and in the assets on winding up) shall be conferred by an amount of stock which would be not, if existing in shares, have conferred the privileges or advantage.

Such of the Articles of the Company as are applicable to paid up shares shall apply to stock and the words “share” and “shareholder” therein shall include “stock” and “stock holder”.

### **ALTERATION OF CAPITAL**

32. The Company may, from time to time, by Ordinary Resolution:

- (a) consolidate and divide all or any of its shares capital into share of larger amount than its existing shares;
- (b) sub-divide its shares or any of them into shares of smaller amount than is fixed by the Memorandum of Association (subject, nevertheless, to the provision of 405 of the Act); and
- (c) cancel any share which, at the date of the passing of the Resolution, have been issued or agreed to be taken by any person and diminish the amount of its share capital by the amount of the shares so cancelled.

33. The Directors may from time to time, at their discretion borrow from any and secure the payment of any sum or sums of money for the purpose of the company subject to the approval of the County government.

34. The Directors may secure the repayment of such moneys in such manners and upon such terms and conditions in all respects as they think fit, by the issue of debentures or

debenture stock of the company, charged upon or any part of the property of the company, charged upon or any part of the property of the company, (both present and future) including the uncalled capital for the time being subject to the approval of the County Government

### **GENERAL MEETINGS**

35. The Company shall in every year hold a general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the public notices calling it and not more than fifteen months shall not elapse between the date of one annual general meeting and the next. The annual General Meeting shall be held at the registered offices of the company or a premise in its area of water service operation which the Directors shall appoint and notify publicly to all members and stakeholders. At such annual general meeting the Company shall be represented by all members of the Company and that the County shall be represented by the persons holding the share in trust for the county and no one else. **PROVIDED** that on a poll at any General Meeting or Annual General Meeting members of the County shall not have individual voting rights but as representatives of the county holding proxy for the county and shall vote on behalf of the county by show of hand or on a poll during the general meetings.

36. All general meetings other than annual meetings shall be called extraordinary general meetings.

37 (i). The Directors may, whenever they think fit, convene an extraordinary general meeting, and they shall, on the requisition of members of the Company representing not less than one-fifth of such of the paid-up capital of the company as at the date of the requisition carries the rights of voting at general meetings, forthwith proceed to convene an Extraordinary General Meeting of the company and in the case of such requisition the following provisions shall have effects:

(ii) a) The requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the office, and may consist of several documents in like form each signed by one or more of the requisitionists.

b). If the Directors do not within 21 days from the date of deposit of the requisition proceed to convene a meeting, the requisitionists, or any of them representing more than one-half of the voting rights of all of them may themselves convene the meeting, but the meeting so convened shall not be held after three months from the date of such deposit.

c). In the case of a meeting at which a resolution is to be passed as a special resolution the directors shall be deemed not to have duly convened the meeting if they do not give such notice as is required by the Act.

d). Any meetings convened under this article by the requisitionists shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

e). A requisition by joint holders of shares must be signed by all such holders.

If at any time they are not within Kenya sufficient Directors capable of acting to form a quorum, any Director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the Directors.

### **NOTICE OF THE GENERAL MEETING**

38. An annual general meeting shall be called by twenty-one-days' notice in writing at the least, and a meeting for the passing of a special resolution shall be called by seven days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business, and shall be given, in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the Articles of the company, entitled to receive such notices from the company; provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in this Articles, be deemed to have been duly called if it is so agreed:



- a. in the case of a meeting called at the annual general meeting, by all the members entitled to attend and vote thereat; and
  - b. in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than 95% in nominal value of the shares giving that right.
39. In every notice calling a meeting of the company there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint one or more proxies to attend and vote in his stead and that a proxy need not to be a member.
40. The accidental omission to give notices of meeting to, or the non-receipt of notices of a meeting by, any person entitled to receive notice shall not invalidate the proceeding at that meeting.

#### **PROCEEDINGS AT GENERAL MEETINGS**

41. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets, and the reports of the Directors and auditors, the election of Directors in the place of retiring and the appointment of, and the fixing of the remuneration of the auditors.
42. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business, the quorum shall be half of the members expected to attend in person or proxy. The representative of a corporation shall count towards such quorum.
43. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved in any other case it shall stand adjourned to the same day in two weeks' time, at the same time and place or such other day and at such other time and place as the Directors may determine, and if at the adjournment meeting a quorum is not present within half an hour from the time appointed for the meeting, the members

present, fifty percent of whom must be Board members, shall be a quorum.

44. The chairman, if any, of the board of directors (or in his absence the vice-chairman, if any) shall preside as chairman at every general meeting of the company.
  
45. If there is no such chairman (or vice-chairman) or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman, the Directors present shall choose someone of their number to be chairman. If no Director is willing to act as chairman or no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their numbers to be chairman of the meeting.
  
46. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from the time to time and from place to place, but no business shall be transacted at any adjourned meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall no be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
  
47. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded.

- a. by the chairman, or

- b. by at least three members present in person or by proxy; or

unless a poll is so demanded a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost and an entry to that effect in the book containing the minutes of the proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.

48. Except as provided in Article 51, if a poll is duly demanded it shall be taken in such manner as the chairman direct, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demand.
49. In the case of equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands take place or at which the poll is demanded, shall be entitled to a second or casting vote.
50. A poll demanded on the election of a chairman or on a question of adjournment shall be taken at such time as the chairman of the meeting directs, and any business other than upon which a poll has been demanded may be preceded with pending the taking of the poll.

### **VOTE OF MEMBERS**

51. Subjects to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every member present in person shall have one vote PROVIDED THAT on a poll every person empowered by Article 35 to attend any General Meeting or Annual General Meeting shall have one vote regardless of the number of shares held by the corporate body represented by the said person.
52. In the case of joint holders the vote of either who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.
53. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.
54. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such

objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

55. On a poll, votes may be given either personally or by proxy shall be in writing under the hand of the appointed person or of his attorney duly authorized in writing or, if the appointer is a corporation, either under seal, or under the hand of an officer or attorney duly authorized. A proxy need not be a member of the company.

56. Every instrument of proxy whether for a specified meeting or otherwise shall as nearly as circumstances will admit be in the form or to the effect following or in any other form which the Directors shall approve

I/We,.....of.....  
.....

..... being a  
Member/Members of the above-named Company, hereby  
appoint.....of.....  
of failing

him.....as my/our proxy to vote for  
me/us on my/our behalf at the Annual/Extraordinary General Meeting  
of the Company to be held on the.....day  
of.....20..... and at any adjournment thereof.

Signed this.....day of.....20.....

57. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

58. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or mental incapacity of the principal or revocation of the proxy or of the authority under which the proxy was executed provided that no intimation in writing of such death, incapacity revocation as

aforesaid shall have been received by the company at the office before the commencement of the meeting at which the proxy is used.

### **CORPORATIONS**

59. Any corporation which is a member of the company may by resolution of its Directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company or any class of members of the company, and the person so authorized shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

### **DIRECTORS**

#### **60. Appointment and Composition of the Board**

##### **60. (i)(a) Size of the Board**

The Board of ..... Water and Sanitation Co. Ltd. shall be ..... members with a professional mix of directors appointed from the County Government of ..... 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. Directors representing the County Government of ..... shall be two drawn from the Executive Arm {professionals} of the County Government namely the Chief Officer for Finance and Chief officer in charge of water affairs, and the remaining ..... Directors be appointed from the stakeholders.

**60 (i)(b).** The CEC Member in Charge of Water and the CEC Member in charge of Finance for the time being shall be shareholders holding respective shares in trust for the County Government.

##### **60.(ii) Background of the directors**

1. The Chief Officer in Charge of Water, County Government of .....
2. The Chief Officer in Charge of Finance, County Government of .....
3. One {1} member representing both the business and manufacturing community nominated following a process of open competition by the local branch of the Kenya National Chamber of Commerce and Industry and of the Kenya Association of

Manufacturers who shall not be a member of the City Board or the County Assembly or the County Executive or County Government.

4. Two {2} members representing the local Professionals nominated by a recognized stakeholder professional organization who shall not be a member of the City Board or the County Assembly or the County Executive or County Government chosen through open competition.
5. One {2} members from the consumers representing the institutions of Higher learning and religious organizations who shall not be a member of the City Board or the County Assembly or the County Executive or County Government chosen through open competition.
6. One {1} member from the local hotel and hospitality industry who shall not be a member of the City Board or the County Assembly or the County Executive or County Government chosen through open competition.
7. One (1) member from the special interest groups namely the youth, women and persons living with disability.
8. The Managing Director or a person acting in that capacity with the authority of the Board or shareholders shall be an *ex-officio* member of the Board and shall attend all meetings of the Board and/or its committees save where there is a conflict of interest

**PROVIDED** that the appointment of Directors shall have due regard to the two third (2/3rd) gender rule provided for under the Constitution of Kenya 2010 and shall ensure that not more than two thirds (2/3rd) of the members of the Board shall be of the same gender.

#### **60.(iii) Eligibility criteria**

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

1. Literate and numerate to at least degree level
2. Minimum of 7 years working experience in law, engineering, finance, human resource issue, administration, ICT or business.
3. Must meet the leadership and integrity requirements of the constitution of Kenya 2010 or any enabling legislation applicable in the public service.
4. Demonstrate participation in local development initiatives.
5. Have experience as change management agent.
6. Suppliers or other trading associates of the company cannot become directors of the company.

A selection committee (ad hoc nominating committee) of the Board will be constituted to vet all nominations for compliance before presentation for appointment by the shareholders at a general meeting.

#### **60.(iv) Director's training and development**

All directors in the water services sector shall receive induction 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 provider shall organize this training in concert with the company and all directors shall be expected, at least once every three years, to the following matters:

- a. Role, duties and responsibilities of the Board and directors.
- b. Rights and obligations of a director.
- c. Statutory liabilities and duties of a director under criminal and company law.
- d. Board practices and procedures.
- e. The License and compliance requirements.
- f. Corporate strategy in the water sector and institutional organization.
- g. Disclosure and communication policies.
- h. Financial management systems, internal control procedures and internal audit.
- i. External Audit and the Board.
- j. Corporate Governance
- k. Performance targeting, monitoring and evaluation with emphasis to the Minimum service level agreement in the license and the licence conditions and required sector benchmarks.
- l. Risk management.
- m. Information Technology and information to the Board.
- n. Knowledge and understanding of water Act 2016

#### **61. Directors' remuneration and Expenses**

- 1) Directors' remuneration may be determined by the Company only at a general meeting in compliance with the National standards determined by the

Regulatory Board.

- 2) The remuneration of Directors shall from time to time be determined by the Company in a general meeting. Such remuneration shall be deemed to accrue from day to day. The Directors may also be paid all travelling expenses from their ordinary place of residence to the place where the meeting is held, hotel and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings of the Company or in connection with the business of the Company.
62. Any Director who, being so requested by the Directors, performs special or extraordinary services on behalf of the company, or who travels or resides outside Kenya (or travels to reside in any place other than where he usually reside) for the purpose of discharging his duties may be paid such extra remuneration (whether by way of lump sum, salary, commission or participation in profits or otherwise) as the Directors may determine.
63. A Director of the company may be or become a Director or other officer of, or otherwise interested in, any company promoted by the company or in which the company may be interested as shareholder or otherwise, and no such Director shall be accountable to the company for any remuneration or other benefits received by him as a director or officer or, or from his interest in, such other company unless the company otherwise direct.
64. The business of the company shall be managed by the Directors who may exercise all powers of the company as or not by the Act or by these Articles, required to be exercised by the company in general meeting, and the exercise of the said powers shall be subject also to the control and regulation of any general meeting of the company but no resolution of the company in general meeting shall invalidate any prior act of the Directors which would have been valid if such resolution had not been passed. In the management of the company's business no Director as such incurs any personal liability except for a breach of trust knowingly and wilfully committed by himself.

### **PROCEEDINGS OF DIRECTORS**

65. The Directors shall in their first meeting elect a Chairperson to preside over their meetings for a period of three (3) years, provided that Directors representing the County government shall not be eligible for Election as Chairperson. If at any meeting the Chairperson is not present within thirty (30) minutes after the time appointed for holding the same, the Directors present may choose one of their members to chair the meeting. The initial elections of the Chairperson of the Board shall be presided over by



the Company Secretary.

66. The Board shall hold its meetings at the registered offices of the Company for the dispatch of business, and may adjourn and otherwise regulate its meetings as it thinks fit provided that the Board shall meet at least once in every quarter. Such meetings may, in exceptional circumstances and subject to applicable laws, standards and applicable government circulars, be held in a place other the registered offices of the Company.
67. Questions arising at any meeting shall be determined by a majority of votes. In case of an equality of votes, the Chairperson of the meeting shall have a second or casting vote.
68. No business shall be transacted at any Board meeting unless a quorum is present when the meeting proceeds to business. Save as otherwise provided by these Articles of Association, two thirds (2/3) of the Directors present either personally, by electronic means or by Alternate shall constitute a quorum.
69. The directors shall form an Audit Committee as per the requirements of the Public Finance and Management Act 2012 and other committees as prescribed in the national water sector governance standards.
70. A Director who is at any time out of Kenya shall not during his absence have the right of vote.
71. At the end of every year directors shall perform an evaluation of themselves as described in the governance standards in the water service sector.

### **POWERS AND DUTIES OF DIRECTORS**

72. The Board of directors shall appoint a Managing Director and senior management team through competitive advertising in the national media to manage the company, for remuneration by way of salary and allowances subject to regulatory standards and performance-oriented terms as may be agreed upon, and likewise may revoke any such appointment in accordance with the terms and conditions of employment of the company as approved by the board of directors.
73. A managing director so appointed shall head the management team of the company and be responsible for the day-to-day operations of the company in order to provide for the effective and efficient provision of water services at optimum Cost: be responsible for ordinary expenditure of the company within approved budgets; keep the Board informed on performance; prepare corporate plans and budgets; implement board resolutions and shall sit in the Board of Directors as the managing director.
74. No person shall be appointed or hold office as a Managing Director unless if such a person:

- a) Has a degree in Engineering, Finance, Economics, Management or Law
- b) Has a minimum of five (5 years' experience in Utility Management and/or service industry.
- c) Is in good standing with his professional body.
- d) Meets the leadership and Integrity criteria under the Constitution.

75. The Directors may within the Public Finance Management Act 2012, and Standards issued in the Water sector exercise all the powers of the company to borrow or raise money, and to mortgage or charge its undertaking, property and uncalled capital and to issue debentures and other securities whether outright or as security (principal or collateral) for any debt, liability or obligation of the company or any third party:

**PROVIDED ALWAYS** that the Directors shall restrict the borrowings of the company and exercise all voting and other rights or powers of control (if any) exercisable by the company in relation to its subsidiary companies (if any) so as to secure (as regards such subsidiaries so far as by such exercise as aforesaid they can secure) that the aggregate amount for the time being remaining undischarged of any monies borrowed by the company and its subsidiaries (exclusive of monies outstanding in respect of borrowings by the company from any such subsidiary or by any such subsidiary from another subsidiary or from the company) shall not at any time without the previous sanction of the company in general meeting exceed two times the issued and paid up capital and reserves of the company;

**PROVIDED** further that no lender or other person dealing with the company shall be concerned to see or inquire whether such limit is observed and that no debt incurred or security given in excess of such limit shall be invalid or ineffectual except in the case of express notice to the lender or recipient of such security at the time when the debt was incurred or security given that the limit **hereby** imposed had been or was thereby exceeded.

76. The Directors shall duly comply with the provisions of the Act or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company, or created by it, and to keeping a register of the Directors and secretaries, and to sending to the Registrar of Companies an annual list of members, and a summary of particulars relating thereto, and notice of any consolidation or increase of share capital or conversion of shares into stock, and copies of special and extraordinary resolutions and a copy of the register of Directors and notifications of any changes therein.

77. The Board of directors may from time to time with the advice of the Managing Director and Company Secretary and in accordance with the Public Procurement and Asset Disposal Act appoint any company or firm to be Advocate or Advocates of the Company to carry out any legal undertakings of the Company as it may be deemed fit.
78. The Board of directors shall be responsible for implementation of the company's Memorandum and Articles of Association provide guidelines and control the functions of the Company. Specifically they shall: in accordance with national standards prevailing in the sector determine the strategic plan of the company, annual budget of the company, subject to national standards staffing levels of the company , approve a Human Resource Manual for appointment and dismissal of staff, terms and conditions of service that are performance oriented, approve the annual corporate plan, provide management guidelines, approve major contracts, authorize changes of policy, hold quarterly meetings and ensure approval of tariffs in compliance with existing legislation and keep open and effective communication channels with the county government.
79. The company may exercise the powers conferred by Section 42 of the Companies Act with regard to having an official seal for use abroad, and such powers shall be vested in the Directors.
80. The company may exercise the powers conferred upon the company by section 573 of the Act with regard to the keeping of debenture registers, and the Directors may (subject to the provisions of those sections) make and vary such regulations as they may think fit respecting the keeping of any such registers.
81. A Director, employee or their proxies shall not be eligible to trade and or in any way contract with the company for the provision of goods and services.
82. All cheques, promissory notes, draft, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, by signatories who one shall be the managing director of the company and the other the chief financial officer of the company and any other member of the management team that the directors shall from time to time by a resolution determine. Any such change shall be communicated

to the County Government.

83. The Directors shall cause minutes to be made in books provided for the purpose-

- a) of all appointments of officers made by the Directors;
- b) of the names of the Directors present at each meeting of the Director and of any committee of Directors;
- c) of all resolutions and proceedings at all meetings of the company, and of the Directors and of committees of Directors, and every Director present at any meeting of Directors or committee of Directors shall sign his name in a minute book to be kept for that purpose.

84. The directors may grant contributory retirement pensions or annuities or other gratuities or allowances, including allowances on death, to any person or to the widow or dependants of any person in respect of service rendered by him to the company whether as Managing Director or in any other office or employment under the company and may make payments towards insurance or trusts for such purposes in respect of such person and may include rights in respect of such pensions, annuities and allowances in the terms of engagement of any such person. Provided always that a policy allowing these provisions shall have been agreed upon with the county government.

### **REMOVAL OF DIRECTORS**

85. (i). A Director shall vacate office as such if: -

- a) He/she is removed from the office pursuant to Section 139 of the Act, or by special resolution by the company in General Meeting.
- b) He/she ceases to be a director under the Act or under section 411 of the Insolvency Act or is prohibited from being a director by law.
- c) He/she ceases to be an officer of the County Government.
- d) He/she becomes bankrupt or makes an arrangement of composition with his/her creditors.

- e) He/she becomes of unsound mind as provided under the Mental Health Act.
- f) He/she fails without reasonable cause and without the consent of the Board to attend three (3) consecutive meetings of the Board, and/or for more than six consecutive months has been absent without the directors' permission from meetings of the Board and/or its committees, and the Board resolves that by reason of such failure he shall cease to be a director.
- g) He/she resigns his office by notice in writing to the company.
- h) He or any persons to who he has personal ties and transacts with the company
- i) Unsatisfactory performance on performance evaluation
- j) Breaches the Signed Code of Ethics and Conduct
- k) He/she ceases to be a representative of the stake holder's body entity that has appointed him or her.
- l) He/she is charged with an offence under Penal Code, the Anti-Corruption and Economic Crimes Act or the Water Act 2016.
- m) He becomes a director in any other water sector institution.
- ii). A director who held a share or shares in trust or by virtue of his or her office shall cease to hold such a share or shares and cease to be a director upon vacating the office.

### **RETIREMENT OF DIRECTORS**

86. Unless otherwise determined by the shareholders or otherwise contained in the letter of appointment, at each annual general meeting of the Company a third (1/3rd) of all the directors shall retire from office or, if their number is not three or a multiple of three then the number nearest one-third (1/3rd), shall retire from office provided that this rotation shall not apply if it is so stated in a letter of appointment executed between a Director and the Company or if such rotation is suspended by shareholders for such period as they may deem fit.
87. The Directors to retire in every year shall be those who have been longest in office since their last election, provided they have served as Directors in the company for no less than three years but as between Directors of equal seniority those to retire shall unless they otherwise agree among themselves be determined by lot.

## **THE SEAL**

88. The Seal of the Company shall not be affixed to any instruments except by the authority of a resolution of the Board of Directors and in the presence of one Director, Managing Director and of the Company Secretary and that the Managing Director and the Company Secretary shall sign every instrument to which the seal of the company is so affixed.

## **UNDERWRITING COMMISSION**

89. It shall be lawful for the company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any shares, stock or debentures of the company or procuring or agreeing to procure subscription, either absolute or conditional, for any shares, stock or debentures of the company, but so that if the commission in respect of shares shall be payable out of capital the statutory condition and requirements shall be observed and complied with and the amount or rate of commission shall not exceed five per cent of the price at which the stock or shares are issued or debenture subscribed subject to authority previously having been obtained from the company in general meeting, such commission may be paid or satisfied in shares, debentures or debenture stock of the company. The company may, in addition to or in lieu of such commission, pay such brokerage as is permitted by law or may pay such commission in cash without the consent of the company in general meeting.

## **THE COMPANY SECRETARY**

90. The Company Secretary shall be appointed by the Board of the directors at such terms conditions as shall be agreed.

91. No person shall be appointed or hold office as Company Secretary unless if such a person;

- a) Has a Bachelor of Laws Degree from a recognized University,
- b) Is an advocate of the High Court of Kenya in
- c) good standing and has at least 5 (five) years' experience as a registered Certified Public Secretary, or
- d) Is a practicing registered Certified Public Secretary in good standing with at least

ten years' experience.

### **DIVIDENDS AND RESERVES**

92. No dividends shall be paid to the shareholders for the time being and all the profits made by the company shall be ploughed back to the company in accordance with the License and Water Act 2016 for the advancement of the company's objectives.

### **ACCOUNTS**

93. The Directors shall cause proper books of accounts to be kept with respect to:
- a. All sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
  - b. All sales and purchases of goods by the company; and
  - c. The assets and liabilities of the company;

**Provided** that proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions as a water service provider operating under the Water Act 2016.

94. The books of accounts shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

95. The Directors shall subject to the License in force and subject to directives from the Water Service Regulatory Board from time to time determine whether and to what extent and what time and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being Directors, and no members (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorized by the Directors.

96. The Directors shall annually cause to be prepared and to be laid before the company in general meeting such profit and loss accounts balance sheets, group accounts (if any) and reports as are required by the Act.

97. Subject to the provisions of the License a copy of every balance sheet, billing revenue (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the auditor's report shall not less than twenty-one days before the date of the meeting be sent to every member of, every holder of debentures of, the company and to every person registered under Article 26 hereof and all the stakeholders identified in the stakeholder participation procedure.

### **PROCUREMENT**

98. The directors shall ensure that all procurements in the company are undertaken in accordance with the Public Procurement and Asset Disposal Act 2015 and the Public Procurement Regulations and any subsequent amendments thereof.

### **CAPITALISATION OF PROFITS**

99. Subject to the financial regulations in the water services sector and the obligations under the service provision agreement, the company in general meeting may upon the recommendation of the directors resolve that it is desirable to capitalize any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportions on condition that the same be not paid in cash but be applied either in or towards paying up any amounts for the time unpaid on any shares held by such members respectively or paying up in full unissued shares or debentures of the company to be allotted and distributed credited as fully paid up to and amongst such members in the proportion aforesaid, or partly in the one way and partly in the other and the directors shall give effect to such resolution: Provided that a share premium account and a capital redemption reserve fund may, for the purposes of this regulation, only be applied in the paying up of unissued shares to be issued to members of the company as fully-paid bonus shares.



100. Whenever such a resolution as aforesaid shall have been passed the directors shall make all appropriations and applications of the undivided profits resolved to be capitalized thereby, and all allotments and issues of fully-paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, with full power to the directors to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions, and also to authorize any person to enter on behalf of all the members entitled thereto into an agreement with the company providing for the allotment to them respectively, credited as fully paid up of any further shares or debentures to which they may be entitled upon such capitalization, or (as the case may require) for the payment up by the company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalized, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.,

### **AUDIT**

101. Subject to the provisions of the License, at least once in every year the accounts of the Company shall be examined and the correctness of the profit and loss account and balance sheet ascertained by an independent auditor approved in accordance with statute prevailing law in the water services sector.

102. The company at each Annual General Meeting shall appoint an auditor to hold office in accordance with statute prevailing in the water services sector until the next Annual General Meeting and his remuneration, rights and duties shall be regulated by the provisions of the Companies Act 2015.

### **NOTICES**

103. A notice may be served by the Company upon any member either personally or by sending it through the post in a prepaid letter, envelope or wrapper addressed to each member at his registered place and address.

104. All notices shall with respect of any registered shares of which persons are jointly entitled be given to whichever of such persons is named first in the register and notice so given shall be sufficient notice to all the holders of such shares.

105. Any notice or document sent by post shall be deemed to have been served on the day (following that) on which the letter, envelope or wrapper containing the same is posted, and in proving such service it shall be sufficient to prove that the letter, envelope or wrapper containing that notice was properly addressed and put into the post office.

106. In case of special resolution twenty-one days' notice shall be given. In any other case where a given number of days' notice or notice extending over any other period is required to be given the day of service shall, but the day upon which such notice shall expire shall not be counted in such number of days or other period.

### **WINDING UP**

107. If the Company shall be wound up, whether voluntarily or otherwise the assets of the company shall revert back to the County Government of .....

### **INDEMNITY**

108. Every Director, Managing Director, Agent, Auditor, Company Secretary and other officers for the time being of the Company shall be indemnified out of the assets of the Company against liability incurred by him in defending any proceedings, whether civil or criminal, relating to anything done or not done by him on behalf of the Company which judgment given in his favour or in which he is acquitted or in connection with any application under section 763 (1), of the Act in which relief is granted to him by the Court and he shall not be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of his office or in relation thereto. This Article shall however only have effect in so far as its provisions are not avoided by section 206 of the Act.

### **ARBITRATION**

109. Whenever any difference arises between the company and the directors on the one hand, and any of the members or their representatives on the other, or between any members or classes of members or between the directors with regards to the true construction of these presents or with regard to anything done, executed, omitted and suffered in pursuance of these presents or the companies act, or with regard to any breach of alleged breach of these presents or any claim on account of any such breach or alleged breach, or otherwise relating to the premises or to these presents or to any of the affairs of the companies, every such difference shall be referred to the decision of a mediator or arbitrator to be appointed by the parties or if they cannot agree upon a single mediator or arbitrator to the decision of two arbitrators of whom one shall be appointed by each of parties in difference, and any such reference shall be subject to all the provisions of the arbitration act and any statutory

modification thereof for the time being in force.

Names, addresses and Description of subscribers	Numbers of shares taken by each Subscriber	Signatures of subscribers
County Government of .....	4997	.....
Mr./Ms..... County Secretary in trust for the County Government of ..... P.O. Box.....	1	.....
Mr./Ms..... CEC Member in Charge of Finance in trust for the County Government of ..... P.O. Box.....	1	.....
Mr./Ms..... CEC Member in Charge of Water Affairs in trust for the County Government of ..... P.O. Box.....	1	.....
TOTAL NUMBER OF SHARES TAKEN	5000 (Five thousand)	

Dated this ..... day of ..... 20.....

**Witness to the above signatures**

**CERTIFICATE UNDER THE COMPANIES REGULATIONS**

Certified that the above Articles of Association has been produced by the method of Xerox photocopying.

**ANNEX 2  
NATIONAL CORPORATE GOVERNANCE STANDARDS FIT AND PROPER TEST  
FORM**

**To be filled by Applicants to the Board of Directors of a Water Service Provider**

NOTE: Read the declaration on Section 6 below before completing this form. In case the space provided is inadequate, use additional paper.

**1. WATER SERVICE PROVIDER**

a) Name.....

b) Certificate No.....Date of  
Registration.....

**2. PERSONAL INFORMATION**

a) Surname.....Other Names.....

b) Previous Names (if any) by which you have been known:

.....

c) Year and Place of birth: .....

d) Personal Identification Number.....

e) ID. Card/Passport number and date of issue.....

f) Postal Address: .....

g) Previous Postal Addresses (if any).....

h) Physical Address.....

i) Educational Qualification and year  
obtained.....

.....

j) Professional Qualifications and years obtained.....

.....

k) Name(s) of your bankers during the last 5 years.....

.....

**3. EMPLOYMENT/ BUSINESS RECORD**

Name of Employer /Business	Address	Period	Position Held	Dates - From	Dates -To	Reasons for Leaving

**4. DESCRIPTION OF YOUR PAST AND CURRENT ACTIVITIES**

**4.1 SHAREHOLDING (DIRECTLY OWNED OR THROUGH NOMINEES)**

Name of Institution	Date of Incorporation	Amount of Shareholding	% of	Past Shareholding		Remarks
				A	B	

A: Refers to date of closure or surrender of shares

B: Refers to reasons for closure or surrender

**4.2 DIRECTORSHIP Name of Institution**

Name of Institution	Date of Incorporation	Amount of Executive or Non Executive	Position held in case of executive	Past Directorships		Remarks
				C	D	

C: Refers to date of retirement

D: Refers to reasons for retirement or resignation

**4.3 PROFESSIONAL BODIES**

Name of Body	Membership No	Position	Past Memberships		Remarks
			E	F	

E: Refers to date of retirement

F: Refers to reasons for retirement or resignation

**4.4 SOCIAL CLUBS**

Club name	Membership No	Position held	Past Memberships		Remarks
			G	H	

G: Refers to date of retirement

H: Refers to reasons for retirement or resignation

4.5 BORROWINGS

Name of Borrower	Lending Institution	Type of Facility	Date of Offer	Security offered	Value of Security	Remarks

\* Borrower to indicate individual/personal as well as the Private Company shareholdings in excess of 5%.

5. QUESTIONNAIRE

5.1 Have you or has any entity with which you are associated as director, shareholder or manager, ever been investigated by the EACC or the DCIO? ..... If so, give particulars

.....  
 .....  
 .....  
 .....

Was the investigation completed? ..... If so, give particulars on the outcomes

.....  
 .....  
 .....  
 .....

5.2 Have you at any time been convicted of any criminal offence in any jurisdiction? ..... If so, give particulars of the court in which you were convicted, the offence, the penalty imposed and the date of conviction.....

...  
 .....  
 .....  
 .....

5.3 Have you, or any entity with which you have been involved, been censured, disciplined, warned as to future conduct, or publicly criticized by any regulatory authority or any professional body in any country? ..... If so, give particulars

.....  
 .....  
 .....  
 .....

5.4 Have you, or has any entity with which you are involved, or have been associated as a director, shareholder or manager, been the subject of an investigation, in any country, by a government department or agency, professional association or other regulatory body?..... If so, give particulars .....

.....  
 .....



.....  
5.5 Have you ever been dismissed from any employment, or been subject to disciplinary proceedings by your employer or barred from entry of any profession or occupation?  
..... If so give particulars  
.....  
.....

5.6 Have you failed to satisfy any debt adjudged due and payable by you on an order of court, or have you made any compromise arrangement with your creditors within the last 10 years?  
..... If so, give particulars  
.....  
.....

5.7 Have you ever been declared bankrupt by a court or has a bankruptcy petition ever been served on you? .....If so, give particulars.  
.....  
.....  
.....

5.8 Have you ever been held liable by a court, for any fraud or other misconduct?  
.....If so, give particulars.....  
.....  
.....

5.9 Has any entity with which you were associated as a director, shareholder or manager in any country made any compromise or arrangement with its creditors, been wound up or otherwise ceased business either while you were associated with it or within one year after you ceased to be associated with it? ..... If so, give particulars  
.....  
.....

5.10 Are you presently, or do you, other than in a professional capacity, expect to be engaged in any litigation in any country? ..... If so, give particulars.....  
.....  
.....

5.11 Indicate the names, addresses, telephone numbers and positions of three individuals of good standing who would be able to provide a reference on your personal and professional integrity. The referees must not be related to you, and should have known you for at least five years. i).  
..... ii).  
..... iii).  
.....

5.12 Is there any additional information which you consider relevant for the consideration of your suitability or otherwise for the position(s) held/to be held? ..... if so give

particulars.....  
.....  
.....

NOTE: The information given in response to this questionnaire shall be kept confidential by the WASREB except in cases provided for by law. The omission of material facts may represent the provision of misleading information.

6. DECLARATION I am aware that it is an offence to knowingly or recklessly provide any information, which is false or misleading in connection with an application for to serve in water service provider in Kenya. I am also aware that omitting material information intentionally or un-intentionally shall be construed to be an offence and may lead to rejection of my application and legal action being taken against the offender. I certify that the information given above is complete and accurate to the best of my knowledge, and that there are no other facts relevant to this application of which WASREB should be aware. I undertake to inform the WASREB of any changes material to the applications which may arise while the application is under consideration. Further, I confirm that I have agreed to fulfil the responsibilities related to this position.

Name: ..... Signed:  
Dated at ..... this..... Day of .....20.....

WITNESSED BEFORE ME: SIGNED.....  
(Witness) COMMISSIONER FOR OATHS/ MAGISTRATE  
Name.....  
Signature..... Address  
.....  
.....  
.....

NOTES FOR COMPLETION OF APPLICATION FORMS GENERAL These completion instructions are issued to give further guidance on completion of certain items in the application forms for a license to provide water services. These include.

- (i). Fit and Proper Test This should be completed by all persons proposed as directors and senior management. In the case of senior management, the following officers: managing director, his deputy if any or the equivalent by whatever title they are called by the water service provider and the officers in charge of finance and audit functions, or any other officer as may be determined by the WASREB.
- (ii). Educational qualification - State only qualifications attained at college level or highest educational qualification.
- (iii). The rest of the items are considered self-explanatory and should be completed as fully as possible.
- (iv) Copy of the form must be submitted to WASREB.

### **ANNEX 3:**

#### **FORMAT FOR SELF-EVALUATION OF THE WATER SERVICE PROVIDERS' BOARD OF DIRECTORS**

##### **Introduction**

1. 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.
2. Some of the reasons for conducting Board self-evaluation include:
  - a. Giving individual members an opportunity to reflect on their individual and corporate responsibilities.
  - b. Identifying different perceptions and opinions among Board Members.
  - c. Pointing to issues that need Board attention.
  - d. Serving as a springboard for Board improvements.
  - e. Increasing the level of Board teamwork.
  - f. Providing an opportunity for providing mutual Board and Staff expectations.
  - g. Demonstrating to staff and other stakeholders that accountability is a serious organizational issue in the Board.
  - h. Providing credibility with the shareholder, funders and other external persons/organizations.
3. 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.

4. It is recommended that this evaluation be undertaken once a year. The following Board Self-Evaluation is in three Sections:
  - a. Section A: Contains evaluation format of the Board by all members and is in three parts,
    - i. Board Responsibility
    - ii. Board Operations
    - iii. Board Effectiveness
  - b. Section B: Contains an evaluation format of the Chairperson by other members of the Board.
  - c. Section C: Contains an evaluation format of individual members of the Board by the Chairman.
  
5. 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

<b>Part 1: Board Responsibility:</b>	<b>Strongly Disagree 1</b>	<b>Disagree 2</b>	<b>I do not know 3</b>	<b>Agree 4</b>	<b>Strongly Agree 5</b>
1. The selection process of Board 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 apply for Board appointments.					
4. New Board members are introduced to their duties with an appropriate induction process.					
5. Every Board member has been issued 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					

<b>Part 1: Board Responsibility:</b>	<b>Strongly Disagree 1</b>	<b>Disagree 2</b>	<b>I do not know 3</b>	<b>Agree 4</b>	<b>Strongly Agree 5</b>
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 a charter that specifies its functions, activities and objectives.					
11. Our mission and vision clearly communicate what we want to achieve					
12. Our core values and beliefs 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 managing director 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					

<b>Part 1: Board Responsibility:</b>	<b>Strongly Disagree 1</b>	<b>Disagree 2</b>	<b>I do not know 3</b>	<b>Agree 4</b>	<b>Strongly Agree 5</b>
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 the Board.					
21. I am satisfied with the Board's level of contribution to, 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					

<b>Part 1: Board Responsibility:</b>	<b>Strongly Disagree</b> 1	<b>Disagree</b> 2	<b>I do not know</b> 3	<b>Agree</b> 4	<b>Strongly Agree</b> 5
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

<b>Part 2: Board Operations:</b>	<b>Strongly Disagree</b>	<b>Disagree</b>	<b>No Opinion</b>	<b>Agree</b>	<b>Strongly Agree</b>
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.					
30. The frequency of Board and committee meetings is adequate for me to fulfil 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.					

<b>Part 2: Board Operations:</b>	<b>Strongly Disagree</b>	<b>Disagree</b>	<b>No Opinion</b>	<b>Agree</b>	<b>Strongly Agree</b>
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 understands the conflict of interest standards for directors.					
38. The Board ensures all conflicts of interest are: a) Declared b) Resolved					
39. Sufficient time is scheduled for Board and committee meetings.					
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 are who are over-represented on the Board					
45. There are no stakeholders are under-represented on the Board					



<b>Part 2: Board Operations:</b>	<b>Strongly Disagree</b>	<b>Disagree</b>	<b>No Opinion</b>	<b>Agree</b>	<b>Strongly Agree</b>
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.					

<b>Part 2: Board Operations:</b>	<b>Strongly Disagree</b>	<b>Disagree</b>	<b>No Opinion</b>	<b>Agree</b>	<b>Strongly Agree</b>
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 matters outside the Board's meetings					
<b>Part 3: Board Effectiveness</b>	<b>Strongly Disagree</b>	<b>Disagree</b>	<b>No Opinion</b>	<b>Agree</b>	<b>Strongly Agree</b>
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
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 provided 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.					

<b>Part 2: Board Operations:</b>	<b>Strongly Disagree</b>	<b>Disagree</b>	<b>No Opinion</b>	<b>Agree</b>	<b>Strongly Agree</b>
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.					
76. The process the Board uses to evaluate the CEO's performance is adequate.					
77. Management is sufficiently responsive to questions and issues raised by the Board.					
78. Management communicates with the Board in an open, candid and timely manner.					
79. I receive adequate feedback as a director about my contribution to organization					
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.					

<b>Part 2: Board Operations:</b>	<b>Strongly Disagree</b>	<b>Disagree</b>	<b>No Opinion</b>	<b>Agree</b>	<b>Strongly Agree</b>
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:	<b>Much Worse</b>	<b>Worse</b>	<b>About the Same</b>	<b>Better</b>	<b>Much Better</b>	<b>Don't Know</b>
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 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.
5. 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.
6. 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.
7. The column for “Don’t know” (score 6) is useful in that it can identify training needs required for the Directors.
8. 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

<ul style="list-style-type: none"> <li>• Communicating with Directors between meetings</li> <li>• Setting meeting schedules</li> <li>• Setting meeting agendas</li> <li>• Controlling meeting attendance</li> <li>• Determining Board information packages</li> <li>• Helping appoint committees</li> <li>• Attending committee meetings where appropriate</li> <li>• Determining director compensation</li> <li>• Promoting training and development of directors</li> </ul> <p><b>Comments:</b></p> <p>.....</p>	
<p style="text-align: center;"><b>5. Developing a More Effective Board</b></p> <p>How effective is the Chairperson in:</p> <ul style="list-style-type: none"> <li>• Encouraging Board contribution</li> <li>• Planning Board composition and succession</li> <li>• Establishing and working towards a vision</li> <li>• Promoting effective corporate governance</li> </ul> <p><b>Comments:</b></p>	

**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)

---

**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:
  - a) Identify training needs for the Director especially in the case of inexperienced Directors with potential for good performance.
  - b) Indicate areas which need to be addressed in order for the Director's performance to meet the needs of the organization.
  - c) 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 and it should be handled maturely. However, since it is included in the letters of appointment it must be carried out.
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.