



BANK OF MAURITIUS

Draft Guideline on Corporate Governance

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INTRODUCTION

Corporate governance is the process and structure used to direct and manage the business and affairs of an institution with the objective of ensuring its safety and soundness and enhancing shareholder value. It defines the division of power and establishes mechanisms for achieving accountability between the board of directors, management, shareholders while protecting the interests of depositors in the case of banks and deposit taking institutions and taking into account the effects on other stakeholders such as customers, employees and the community at large. It provides the structure through which the objectives of the institution are developed and implemented, and the means by which the performance of the institution to achieve these objectives is monitored and controlled.

Because of financial institutions' special position of trust in the national economy, their corporate governance is of paramount importance. Banks and deposit taking institutions, in particular are highly leveraged institutions with most of their funds coming from depositors and creditors. They provide basic financial services to the public, financing to commercial enterprises and access to the payment system. With the advent of increased globalization, advanced cross border businesses, unprecedented innovations and improved technology together with the growing sophistication of financial products, financial institutions are now challenged with the need to adopt a more systematic approach to risk management. A crucial element of risk management is strong corporate governance.

This guideline sets forth a broad framework of fundamental corporate governance principles to guide the actions of the directors and senior officers of financial institutions.

Objectives

This guideline broadly sets out the minimum standard of corporate governance that the Bank expects from financial institutions. It covers a variety of governance related issues. However, should there be additional areas arising out of the particular circumstances of the bank that merit coverage, the board will be responsible for ensuring that relevant governance systems and practices are implemented.

Authority

The guideline is issued under the authority of Section 50 of the Bank of Mauritius Act 2004 and Section 100 of the Banking Act 2004, taking cognizance of the relevant requirements of the Banking Act and the Companies Act 2001.

Scope of Application

This guideline applies to financial institutions as defined in the Banking Act and comprise banks, non-bank deposit taking institutions and cash dealers licensed under the Banking Act 2004. Some specific areas as marked with an asterisk (*) may not apply to cash dealers.

Previous Guideline Superseded

This Guideline supersedes the Guideline on Corporate Governance of April 2001.

Effective Date

This guideline shall take effect three months from the date of its issue.

Interpretation

1. In this Guideline,
 - 'affiliate' means a subsidiary of the financial institution or a company of which the financial institution is a subsidiary or a company that is under common control with the financial institution
 - board' means the board of directors of a financial institution.
 - 'Chief Executive Officer' means the person responsible under the immediate authority of the board of directors for the conduct of business of the financial institution.
 - 'executive director' means a member of the board who is in full time employment of the financial institution.
 - 'financial institution' has the same meaning as in the Banking Act and means any bank, non-bank deposit taking institution or cash dealer licensed by Bank of Mauritius.
 - 'independent director' has the same meaning as in the Banking Act and means a director having no relationship with, or interest in, whether past or present, the financial institution or its affiliates, which could or could reasonably be perceived to materially affect the exercise of his judgment in the best interest of the financial institution. For more detailed explanations please refer to appendix 1.
 - 'non executive director' means a member of board who is not an executive director.
 - 'related' has the same meaning as a related party defined under the Guideline on Related Party Transactions.

STRUCTURE OF THE GUIDELINE

The Guideline is made up of thirteen (13) sections as shown below:

Section 1	Board of directors
Section 2	Responsibilities of the board
Section 3	Specific requirements of the board
Section 4	Role of Senior management
Section 5	Reporting and Disclosure
Section 6	Remuneration
Section 7	Risk management
Section 8	Internal Audit
Section 9	Internal Control compliance
Section 10	External auditors
Section 11	Foreign banks operating in Mauritius
Section 12	Board relationship with supervisors
Section 13	Transparency

SECTION 1 - BOARD OF DIRECTORS

2. Section 129 of the Companies Act 2001 states that the business and affairs of a company shall be managed by, or under the direction or supervision of the board. The relevant provisions of the Companies Act 2001 and the Banking Act 2004 are summarised in appendices 2 and 3 respectively.

3. The role of the board is to oversee the proper functioning of the financial institution. To achieve this, the board shall have clear, well defined and understood responsibilities. There shall be a balance of skills, knowledge, experience and perspectives among directors so that the board works effectively to ensure that the safety and soundness of the institution is not undermined. The board shall possess a reasonable knowledge of risks specific to the entire spectrum of the institution's activities.

4. In order that board members are able to devote quality time to the oversight of the financial institution's activities, the financial institution should ensure that the directors, particularly the non executive directors, are not involved as directors in too many organisations, financial or otherwise.

Composition

5. Section 18(3) of the Banking Act 2004 states that *"no financial institution incorporated in Mauritius shall have a board of directors consisting of fewer than 5 natural persons"*. It is further stated that no financial institution shall have less than 40 per cent independent directors.

6. In terms of section 18(4)(a) of the Banking Act 2004, the Bank may, having regard to the scope of the activities undertaken by a financial institution, require that its board of directors be composed of such higher number of persons or, where the financial institution is a subsidiary or an associate of a foreign banking group of companies, of 40 per cent non-executive directors instead of 40 per cent independent directors, as the Central bank may direct.

7. There is a felt need to enhance the independence of the boards of subsidiaries of foreign banks. As such, the subsidiaries of foreign banks shall have a minimum of independent directors as set out below.

Subsidiaries of foreign banks having assets worth	Number of Independent Directors
Up to Rs20 billion	Not less than 1
Above Rs20 billion to Rs50 billion	Not less than 2
Above Rs50 billion to Rs100 billion	Not less than 3
Above Rs100 billion	Not less than 3 and also not less than 40 per cent of the total members of the board

8. As far as associates are concerned they should fully comply with section 18 (3) of the Banking Act 2004.

9. The Chairperson of every financial institution shall be an independent director.

10. No person shall be the Chairperson of the financial institution continuously for a period of more than four years. There should be a cooling period of three years before that person is eligible for reappointment as Chairperson of the financial institution.

11. There shall be an appropriate balance of power between the executive and independent/non-executive directors such that no individual or small group of individuals shall dominate the board's decision making process.

12. In terms of section 47(2) no director of any financial institution shall be at the same time director or senior officer or an employee of any other financial institution except with the approval of the Bank.

13. Independent directors will cease to be considered an independent director after being a member of the Board for an aggregate period of ten years even if other criteria of independence are fulfilled.

14. There should be no distinction between directors and alternate directors in terms of their duties and responsibilities. It is only during the absence of the director that the alternate director should participate in the board meetings.

15. In respect of branches of foreign banks, the functions set out in this guideline for the board shall be carried out by a local board comprising not less than three non executive directors with necessary knowledge, skills and experience and at least two of them should be Mauritian nationals residing in Mauritius. The local board can also have executives of the branch as members. The local board shall be chaired by a non executive member.

SECTION 2 - RESPONSIBILITIES OF THE BOARD

16. The board is ultimately responsible and accountable for the affairs of the financial institution. However, it may delegate the day to day operations of the financial institution to the Executive Management. Where it delegates such power the board shall

- have a formal charter that sets out its responsibility which shall be disclosed in the summary in the annual report of the financial institution. The charter shall, as a minimum, allow the board to determine appropriate policies and processes to ensure the integrity of the institution's risk management practices and internal controls, communication policy, director selection, orientation and evaluation;
- retain full and effective control over the financial institution and be responsible for the appointment and monitoring of management and the implementation of the board approved plans and strategies;
- function independently of management and put in place appropriate structures and procedures to achieve and project its independence;
- appoint and monitor management in order to allow the public to perceive that the board is independent and operates at a level higher than management;
- scrutinize and monitor in a pro-active manner the management's performance along with that of board subcommittees and individual directors;

- ensure that the financial institution's policies and systems are effective enough to achieve a prudential balance between the risks and potential returns to the shareholders;
- monitor and manage risks in order to achieve the continuous viability of the financial institution at all times;
- see that adequate systems and procedures have been established and sufficient resources committed to ensure compliance with the requirements of laws, regulations and guidelines issued by the Bank of Mauritius;
- review the effectiveness of the applicable systems and controls from time to time.

17. Essentially the board shall

- give strategic directions to the financial institution, appoint its Chief Executive Officer and ensure that succession is planned throughout the organization;
- approve the financial institution's objectives, strategies and business plans;
- ensure that the financial institution's operations are conducted prudently and within the framework of laws and board policies and that any deviation is reported to an appropriate level of management or if necessary the board;
- ensure that the financial institution's affairs are conducted by a competent senior management team with a high degree of integrity and compliance with code of business practice;
- approve the budget of the financial institution.

18. There shall be a clear demarcation of responsibilities of the board and management in the interest of an effective accountability regime. This approach will also set out the basis for measuring the CEO's effectiveness in achieving the corporate objectives entrusted to him by the board. The board, together with the CEO, shall develop a position description for the CEO, defining the limits to management's responsibility.

19. The board shall always remain responsible for the overall stewardship of the financial institution and must be ready to question, scrutinize and monitor, in a pro-active manner, the management's performance.

20. Management is responsible for creating an accountability framework for its staff but is ultimately responsible to the board for the financial institution's performance. It would be quite appropriate and indeed preferable to seek the board's approval of the accountability regime respecting at least from the top level to the middle management level.

Board Sub-Committees

21. Section 18(6) of the Banking Act 2004 requires directors of a financial institution to establish such committees of the board as the board may deem necessary to discharge its responsibilities effectively.

22. The board shall establish sub-committees comprising members of the board where this would enhance its effectiveness in key areas.

23. At a minimum the board shall ensure the following board sub-committees are in place: audit committee, conduct review committee, risk management committee and nominations and remuneration committee. The mandate of each committee, its activities and relevant scope of authority shall be established by the board and documented for examination by the Bank's examiners.

24. Every board sub-committee shall have a clear and formal charter that sets out its role, schedule of meetings and delegated responsibilities while safeguarding the ultimate decision making authority of the board as a whole.

25. The summary of the charter and membership of each board sub-committee shall be published in the annual report.

26. Proceedings of sub-committee meetings shall be reported to the board to allow other directors to be informed and seek clarifications from the sub-committee members, if so desired.

27. The Chairmanship of the sub-committees should be well distributed among the directors so that no individual is burdened with too many committees.

28. All board sub-committees shall be subject to regular evaluation by the board to ascertain their performance and effectiveness. Board sub-committee's charter shall be reviewed annually and modified when necessary.

29. The board shall consider rotation of members and the chairperson of all board sub-committees taking into account the specific experience and knowledge required to sit on a particular committee.

30. Board sub-committees should comprise exclusively of board members.

31. Non-executive board member shall not be associated with day to day activity of the institution in his individual capacity.

Audit Committee*

32. Section 40 of the Banking Act 2004 stipulates that every bank and non-bank deposit taking institution incorporated in Mauritius shall by resolution of its board of directors, establish an audit committee which shall, subject to subsection (2) of the Act, consist of not less than 3 members who shall be independent directors. In this context, it is clarified that the committee shall comprise solely independent directors. The chairperson of board shall not be the chairperson of the audit committee.

33. The audit committee of subsidiary of foreign banks shall comprise non executive directors in lieu of independent directors only to the extent that they have been permitted in this guideline. This provision should however be read in conjunction with the clarifications given under paragraph 7 of this guideline.

34. To be able to discharge the mandate assigned to the Audit Committee effectively, it is necessary that the committee meets on a quarterly basis. Ideally the interval between any two meetings should not be more than 3 months.

35. The audit committee shall ensure that the financial institution complies with regulatory requirement, including prudential requirements and any other reporting obligations.

36. In terms of the above section, the responsibilities of the audit committee shall include the following:

- review the audited financial statements of the financial institution before they are approved by the directors;
- require management of the financial institution to implement and maintain appropriate accounting, internal control and financial disclosure procedures and review, evaluate and approve such procedures;
- review such transactions as could adversely affect the sound financial condition of the financial institution as the auditors or any officers of the financial institution may bring to the attention of the committee or as may otherwise come to its attention;
- perform such additional duties as may be assigned to it by the board of directors; and
- report to the directors on the conduct of its responsibilities, with particular reference to section 39 of the Banking Act 2004.

37. The committee shall also

- Provide oversight of the financial institution's internal and external auditors;
- Review and approve audit scope and frequency;
- Receive audit reports and ensuring that management is taking appropriate corrective actions in a timely manner to address control weaknesses, non-compliance with laws and policies identified by auditors;
- Satisfy itself that accounting principles, policies and practices are adequate to ensure resources are safeguarded; laws are followed; reliable data is disclosed; and internal control systems are adequate;
- Ensure compliance with the provisions of the law regarding the presence of the Internal Auditor/External Auditor at its meetings.

Conduct Review Committee *

38. As provided for in the Guideline on Related party transactions, the board of directors shall establish a conduct review committee to monitor, review and approve related party transactions.

39. The committee shall consist of at least three independent directors.

40. The conduct review committee of subsidiary of foreign banks shall comprise non executive directors in lieu of independent directors only to the extent that they have been permitted in this guideline. This provision should however be read in conjunction with the clarifications given under paragraph 7 of this guideline

41. In the case of a branch of a foreign bank, the CEO of the branch shall constitute a committee at a senior level which is competent to fulfil the mandate of the conduct review committee in an independent manner.

42. The board of directors shall have an oversight of the Conduct Review Committee and any write-off of related party credit exposures shall be subject to the prior approval of the board.

43. At a minimum, responsibilities of the Conduct Review Committee shall include the following:

- Have the mandate to require management of the financial institution to establish policies and procedures to comply with the requirements of the Guideline on Related Party Transactions.
- Review the policies and procedures periodically to ensure their continuing adequacy and enforcement, in the best interests of the financial institution.
- Review and approve each credit exposure to related parties.
- Ensure that market terms and conditions are applied to all related party transactions.
- Review the practices of the financial institution to ensure that any transaction with related parties that may have a material effect on the stability and solvency of the financial institution is identified and dealt with in a timely manner.
- Report periodically and in any case not less frequently than on a quarterly basis to the board of directors on matters reviewed by it, including exceptions to policies, processes and limits.

Risk Management-Committee*

44. The board shall establish a Risk Management Committee with the mandate to periodically review management performance in controlling risk in the light of established policies.

45. The major tasks of the Risk Management Committee may include the following:

- To review the principal risks, including but not limited to credit, market, liquidity, operational, legal, compliance, reputational risks of the institution and the actions taken to mitigate the risks.
- Formulate and make recommendations to the board in respect of risk management issues.
- Receive periodic information on risk exposures and risk management activities from senior officer.
- Ensure officer facilitates training programmes for directors and senior management to enable them to have a robust understanding of the nature of business, the nature of the risks, the consequences of risks being inadequately managed and an appreciation of the techniques for managing the risks effectively.
- Review and approve discussions and disclosure of risks.

46. The chairman of the Risk Management Committee shall be a non executive director.

47. The Chief Executive Officer of the financial institution shall be a member of the Risk Management Committee.

48. The committee shall meet at least once every quarterly. Ideally the interval between any two meetings shall not be more than 3 months.

49. There is no objection to the Risk Management Committee performing the function of the Conduct Review Committee provided its composition meets the requirement of the Conduct Review Committee. In such cases, the committee shall be named as the Risk Management/Conduct Review Committee and the Chairperson shall be an independent director.

Nominations and Remuneration Committee*

50. Every financial institution shall appoint a nominations and remuneration committee consisting of a majority of non executive directors which shall make recommendations to the board.

51. At a minimum, responsibilities of the nominations and remuneration committee shall include the following:

- Provide oversight of remuneration and compensation of directors, senior management and other key personnel;
- Ensure that compensation is consistent with the financial institution's culture, objectives and strategy;
- Make recommendations to the board regarding the use of incentive compensation plans and equity based remuneration plans;
- Identify qualified candidates for board membership and for the positions of chairperson of the board and chairperson of the committees and committee members;
- Establish formal selection criteria for prospective directors and evaluation of criteria for current directors;
- Assess the effectiveness of the board and direct the process of renewing and replacing board members;
- Recommend nominees for each board committee;
- Recommend to the board to accept or decline any tendered resignation of a director;
- Ensure a review at least annually of incumbent directors' performance and attendance at board and committee meetings;
- Ensure that the board members receive thorough orientation on board governance and key strategic issues facing the financial institution.

Board Meetings

52. Financial institutions shall hold board meetings on a regular basis. The frequency of meeting will depend on the nature and size of the financial institution, and in no circumstances, shall the interval between any two meetings should be more than three months.

53. The Chairperson of the board shall ensure that clear and complete minutes of the board meeting are maintained and circulated to its members.

54. Agenda of the meeting shall be communicated at a reasonable time prior to the meeting.

55. Circularisation may be made by exception rather than a rule.

56. The board shall review the minutes of the board sub-committees and ratify decisions taken by the sub-committees as well as those made through circulation.

57. To maintain high ethical standard, board members shall abstain from discussions relating to matter to which he has an indirect or direct interest.

Compliance

58. A good compliance culture permeating across the financial institution is important for effective corporate governance. The board shall create respect for

laws, regulations, procedures, processing and controls amongst others and this should be instilled in every member staff of the financial institution.

59. The board shall ensure that

- there is an appropriate structure in place for identifying, monitoring and managing compliance risk and necessary feedback is obtained for an effective monitoring on a timely basis.
- it obtains appropriate management information on a timely basis.
- the compliance function has a dotted line of reporting to the board or an appropriate sub-committee of the board.
- the members of the staff obtains appropriate training.

SECTION 3 - SPECIFIC REQUIREMENTS OF THE BOARD

Fit and Proper Criteria

60. Board members of the financial institution shall be subject to a “fit and proper person test” as laid down in the Bank’s guideline on Fit and Proper Criteria with reference to competence, qualifications, experience and integrity both upon their appointment and on a continuing basis.

61. The board shall put in place an appropriate mechanism to ensure that none of the facts on which the fit and proper test was carried out has not undergone any material change, warranting a disqualification of the director.

62. Besides, each director shall, inter-alia,

- be familiar with the relevant laws and regulations pertaining to the financial institution’s operations;
- be familiar with the financial institution’s goals, basic values and strategies, as well as understand how best to conduct his/her work to reach these goals;
- fully understand the function of the board and have good judgement and intuition;
- make independent decisions in each instance;
- ensure that internal control is functioning satisfactorily and that the board receives reliable, timely and accurate information necessary for the performing of its supervisory work, and that all decisions by the board are adhered to;
- ensure that all acts, rules and regulations are complied with at all times;
- endeavour to inspire good and positive morale amongst the staff.

Orientation of Directors

63. Every financial institution shall have an agreement for orientation program for new directors as well as a periodic refresher program for the existing directors.

64. The program will, amongst others,

- include discussion on the responsibilities and legal obligations of a director and the board as a whole.
- include discussion on the nature of the business of the financial institution, current issues within the financial institution, conditions in the industry,

corporate strategy and expectations of the financial institution and its stakeholders concerning inputs from the directors.

Ethical Standards and Corporate Value

65. The members of the board of directors, in keeping with their responsibilities to the shareholders and other stakeholders, shall

- commit to the achievement of business success and enhancement of long term shareholder value with the highest standards of integrity and ethics and to safeguard depositors interest. Each director as well as each member of senior management is therefore expected to lead by example in an environment that emphasizes trust, interest, honesty, judgment, respect, responsibility and accountability;
- ensure that senior management implements strategic plans and procedures that are designed to promote good and acceptable ethical balance;
- ensure that the policies prohibit
 - discrimination of any kind;
 - improper use of the institution's property and/or information;
 - unfair dealing with customers/clients, employers and other stakeholders;
 - any other unfair and /or unethical practices;
- ensure that a policy is put in place that encourages employees to freely communicate concerns about illegal, unethical or questionable practices to the board or an independent committee thereof as well as to senior management, without fear of reprisal;
- adopt a written code of ethics that sets out explicit expectations for ethical decision making and personal behaviour by all board members and employees in performance of their duties.

Working Rules

66. The board shall adopt written working rules where the role, procedures and working methods of the board are defined and documented. The rules shall be explicitly detailed in a memorandum with a view to promoting healthy deliberation and smooth conduct among members of the board.

Evaluation of Board Performance

67. The board shall develop an appropriate mechanism for the periodical review (at least on annual basis) its own performance against present benchmarks. Such review shall be by evaluation of the board as a whole having regard to its strategic objective. In so doing, every director including the chairperson can be subject to a self and peer evaluation.

68. This exercise shall also be used to identify additional competencies and resources and the board may be required to deliver its responsibilities more efficiently and effectively.

69. The review and evaluation shall include among other things an assessment of the board's

- Composition and independence;
- Performance against its objectives at the beginning of the year;
- Effectiveness in the financial institution's strategic direction;
- Response to crises, if any;
- Responsiveness to shareholders' and stakeholders' concerns;
- Maintenance and implementation of board's governance; and
- Access to and review of information from management and the quality of such information.

70. While the above is not intended to be an exhaustive list of areas that the evaluation shall cover, the board shall adopt a well documented approach in this regard.

SECTION 4 - ROLE OF SENIOR MANAGEMENT

71. Every financial institution shall have a senior management team which shall comprise invariably the Chief Executive officer, the person who normally replaces the CEO in his/her absence and such other senior officers of the financial institution as the board may decide.

Senior management

72. Senior management shall

- have the necessary skills to manage the business under the oversight of the board and have appropriate control over the personnel in these areas;
- implement strategies and policies approved by the board and ensure that the strategies and policies are communicated to all relevant staff;
- be responsible for the design and monitoring of the control system in particular without prejudice to the generality of this requirement, , inter alia ensure adequate segregation of duties, prevalence of dual control in all areas where required and avoid conflict of interest situation;
- provide the board with timely, relevant and complete information on the affairs of the financial institution as required by the board for effective discharge of its responsibilities;

73. Senior officers must be in a position to exercise appropriate control over the key personnel in the businesses under their responsibility.

74. Furthermore, in the interest of better control, it is important that key management decisions are taken through management committees. The situations to be avoided include:

- senior officers being overly involved in business line decision-making;
- senior officers being assigned a business to manage without the necessary expertise and skills; and
- senior officers who are unwilling to exercise control over successful, key employees for fear of losing them.

75. With a view to preventing concentration of authority in a single individual, it is important that key management decisions are taken through management committees. While it is left to the discretion of the financial institution to set up

different committees and determine their mandates having regard to the size and nature of the business of the institution, as a minimum every institution should have an Assets and Liabilities Committee (ALCO).

Chief Executive Officer (CEO)

76. The CEO shall

- be a suitably qualified person with the requisite competencies to manage the affairs of the bank;
- be a fit and proper person and this should be evaluated in the minimum with reference to the requirements of the guideline on Fit and Proper person issued by the Bank of Mauritius;
- be directly responsible for the day to day operations of the institution and shall be conversant with the state of internal control, requirement of legislation as well as current issues and policies affecting the financial sector.

77. Where the CEO is absent, the financial institution shall inform the Bank of the person appointed to act in that position. The person so nominated shall be fully acquainted with the affairs of the financial institution and shall be able to act promptly with authority in matters concerning the financial institution.

78. Section 46 of Banking Act requires the prior notice of 20 days for the appointment of senior officers; accordingly financial institutions shall not appoint its CEO or make any public announcement of the proposed appointment of its CEO without complying with the required notification.

79. Ideally a financial institution should nominate an officer with competence as deputy CEO, who shall perform the job of the CEO in his absence. The Bank shall be informed of the absence of the CEO.

80. The CEO, with the active involvement and overview of the board, is responsible for leading the financial institution into the future and must, therefore, take the initiative of setting the vision and long and short-term goals. He must ensure that an appropriate strategic planning process is in place and take the lead in coming up with a proposed strategic plan, including the objectives to be achieved. The board will bring to bear its breadth of judgment on the plan and provide an objective assessment because it is not involved in the day-to-day management of the business.

81. The board must ultimately approve the strategic plan with appropriate measurable benchmarks. It will be responsible for monitoring management's success in implementing the strategy and achieving results.

SECTION 5 - REPORTING AND DISCLOSURE

82. The board shall

- demand integrity both in financial reporting and in timeliness and balance of disclosures on the financial institution's affairs. The public disclosure shall in the minimum conform to the requirement of the Banking Act and the relevant guidelines with a bias towards greater transparency;

- be responsible to ensure that the financial institution's financial statements fairly present the state of affairs of the financial institution as at the end of the financial year and the profit and loss and cash flow for the reporting period;
- attest in a statement the adequacy of accounting records and effectiveness of the system of internal controls and risk management, and this statement shall be included in the annual report.

83. The annual report shall

- include a statement confirming that appropriate accounting policies supported by reasonable and prudent judgments and estimates have been used consistently;
- state whether the International Financial Reporting Standards have been adhered to and whether the corporate governance guidelines have been adhered to and in case of non-compliance thereto, the financial institution shall give reasons thereof.

SECTION 6 - REMUNERATION

84. The remuneration of directors, executives and key employees shall be fair and reasonable.

85. The board shall have a clear policy setting out a guideline for determining the remuneration of executives, non executive directors and key employees that is fair and reasonable in a market for the skills, knowledge and experience of persons available and nature and size of the financial institution. The remuneration should be established with due regard to the financial institution's strategic plan, objective and control environment.

86. Every financial institution shall appoint a remuneration committee consisting of majority of non executive directors. The committee shall make recommendations to the board on the remuneration policy and determine the remuneration packages for each of the executive directors and key employees.

87. Incentives should be designed to discourage excessive risk-taking by employees, booking business to boost volume or short-term profitability with little regard to long-term risk consequences. The compensation should always be set within the scope of the business plan, without undue emphasis on short-term performance, such as short-term trading gains.

88. Every financial institution shall provide full disclosure in the annual report of directors' remuneration (at least on an aggregate basis) giving details of earnings, share options, restraint payments, and any other benefits.

SECTION 7 - RISK MANAGEMENT

89. Financial institutions shall have corporate governance structures that promote effective identification, monitoring, measurement and management of risks.

90. The board shall
- ensure that the financial institution's policies and systems are effective and aim to achieve prudential balance between the risks and potential returns to the shareholder;
 - specify the methods of authorization, limits and delegation as well as a dual control system to ensure accuracy of risk exposure limits;
 - require management to implement comprehensive and rigorous process for risk management and internal control which identifies, monitors, measures and controls different types of risks. Appendix 3 presents a brief description of the key risks faced by financial institutions;
 - shall receive regular reports on the operations and the nature and magnitude of the risks the financial institution is exposed to and a regular assurance that all the risks management systems and internal controls are being properly applied at all times;
 - review the adequacy of the risk management policies, systems and procedures proposed by management to conform to any changes in strategies, products and market conditions.
 - ensure that management facilitates training programs for directors and senior management to enable them to have a robust understanding of the nature of the business, the nature of the risks, the consequences of risk being inadequately managed and an appreciation of the techniques for managing risks;
 - ensure that compliance function forms part of the overall risk management framework and management is apprised of compliance related issues at least on a quarterly basis.

SECTION 8 - INTERNAL AUDIT

91. Internal audit provides feedback to management on whether (i) the internal control system in place is performing effectively and is adequate to mitigate risks consistent with the risk appetite of the financial institution; (ii) organisational goals and objectives are met and corporate governance processes are effective and efficient.

92. Every financial institution shall have an internal audit charter defining the purpose, authority and responsibility of the internal audit functions.

93. The internal audit charter shall include, among other issues, the following:

- Internal audit's role and responsibility for governance, risk management, consulting services and fraud investigations.
- The internal auditor to have access to the audit committee chairperson, employees, facilities and records of the financial institution.
- The internal auditor shall report directly to the board of directors or its audit committee in order to ensure independence from management.

94. The board shall ensure that
- internal audit function is properly established with adequate authority, scope and resources to enable the auditors to operate professionally and proficiently;
 - internal audit be performed by professionals with in-depth understanding of the business culture, system and processes of the financial institution;
 - robust internal audit procedures with appropriate reporting lines to the board of directors are implemented with an oversight by the audit committee of the board.
95. Internal auditors shall develop an annual work plan which must be approved by the audit committee and must include for each assignment the scope, objectives, timing and resources.
96. Internal auditors shall identify, analyse, evaluate and record sufficient information to achieve the internal audit objectives and once the audit is completed, results shall be communicated accurately and timely.
97. Internal auditors shall ensure that corrective actions have been taken on the deficiencies noted in the audit and those actions have been taken in a timely manner.
98. Internal auditors shall not assume any operational responsibilities as their objectivity will be impaired.

SECTION 9 - INTERNAL CONTROL COMPLIANCE

99. Senior management is responsible for the development and implementation of adequate and sound system of internal controls. The board of directors is responsible for ensuring that such a system is established, implemented and maintained.
100. The board shall ensure that the financial institution has effective and adequate internal control and management information systems.
101. The board shall
- review at least annually the system of internal controls to determine whether it works to expectation and to ensure that it remains appropriate;
 - ensure the integrity of the data and information produced;
 - ensure that the internal audit function is duly recognized in the organization by
 - appointing the head of audit at senior level;
(Banking Act defines the “Chief Internal Auditor” as a senior officer)
 - enhancing the independence of the auditors by providing them with direct access to the audit committee and the board,
 - staffing the internal audit division with appropriately qualified professionals; and

- requiring timely rectification of deficiencies identified by the auditors.

102. The board through its audit committee shall ensure that the financial institution complies with regulatory requirements including prudential requirements and various reporting obligations.

SECTION 10 - EXTERNAL AUDITORS

103. The board shall

- ensure the quality and independence of the external audit process;
- satisfy itself that there is no relationship between the auditors and the financial institution or any related person that could compromise the independence of the auditors, and shall require confirmation of this from the auditors;
- ensure that the auditors evaluate and make an opinion on the effectiveness of the financial institution's internal controls and accounting systems and other reports.

104. The audit firm that provides auditing services may be engaged to provide other non-audit work subject to:

- prior approval by the audit committee to avoid possible conflicts of interest and to ensure the independence and objectivity of the audit work;
- the selection of the firm shall not be conditioned by the fact that it is already the external auditor of the financial institution.
- the activity shall not be in conflict with the firm's role as external auditor;
- the remuneration for the non-audit work shall not be disproportionately large in relation to the audit fees;
- in any case the person carrying out the non-audit work shall not be the partner/ engagement partner carrying the audit work.

105. The annual report shall disclose any non-audit work that was undertaken by the external auditors and the board shall explain how this has not compromised the auditor's independence.

106. The appointment and re-appointment of the external auditors shall be in accordance with the Banking Act. The annual report shall disclose the amount of fees paid to the auditors by the financial institution and its affiliates and clearly distinguish between audit and non-audit fees.

SECTION 11 - FOREIGN BANKS OPERATING IN MAURITIUS*

107. In case of a foreign bank subsidiary or branch, the parent's strategic guidance and policies normally have a major influence on the operations of the local entity. The Bank has no objection to the operations in Mauritius being carried in accordance with the policy system of the parent.

108. In case of the subsidiary, the board of the subsidiary shall strictly be in accordance with the local requirements. In respect of branches, the parent shall

be responsible for overseeing the proper functioning of the financial institution. The board of directors of the subsidiary or the CEO of the branch shall be responsible for ensuring that such guidance and policies are proper and adequate in the light of the subsidiary's or branch's circumstances and operational contingencies.

109. Where the board of the subsidiary or the CEO of the branch is of the view that the parent organization is engaging in practices or giving instructions that are not in the best interest of the country, they should put their view on record and take whatever appropriate action to protect the subsidiary's or branch's interest.

SECTION 12 - BOARD RELATIONSHIP WITH SUPERVISORS

110. The board has the ultimate responsibility for ensuring that operations of the financial institution are in conformity with the legal and regulatory framework.

111. In this context, the board shall

- understand the regulatory environment in which the financial institution operates;
- devise appropriate processes to apprise of adherence to regulatory requirements;
- ensure systems, processes and controls are in place to give assurance.
- put in place the necessary mechanism for feedback in respect of recommendations made and actions taken where appropriate;
- be apprised of any failures to comply with any law, regulation and guideline.

SECTION 13 - TRANSPARENCY

112. Where financial institutions have complex shareholding structures that may foster opacity in a manner which impedes effective market and supervisory oversight, appropriate disclosure shall be made to facilitate market discipline as ownership transparency is central to the effectiveness of external governance.

113. Every financial institution shall disclose the shareholders holding directly or indirectly 10 per cent or more of its shareholding.

114. Accurate disclosures in the annual report shall be made to

- show a clear basis towards enhancing market discipline without in any manner violating section 64 of the Banking Act;
- provide the minimum disclosure by the board of directors as required in various Guidelines.

**Bank of Mauritius
November 2010**

Appendix 1

Clarifications on Independent Directors

An independent director is a person who

- has not been employed by the institution or the group of which it currently forms part of, in any executive capacity for the preceding 3 financial years;
- is not related to an individual who is or has been in any of the past 3 financial years employed by the financial institution or the group in an executive capacity;
- is not an adviser to the financial institution or the group other than as a member of the board;
- has no relationship or interest in the institution or group which could or could reasonably be perceived to materially affect the exercise of his judgement in the interest of the institution.

The Bank does not intend to specify the threshold or benchmark for dealing with relationship or interest in the institution or group which could reasonably be perceived to materially affect the exercise of judgment. However, financial institutions should ensure board approved parameters that are well defined and rationally determined to enable them to make informed judgment in the matter.

A non-exhaustive list of who cannot be considered as independent directors is provided hereunder.

1. A director of a financial institution who is also an independent director on the board of a company which is a shareholder of the financial institution (with significant interest) will not be treated as an independent director of the financial institution.
2. A director of a company in which a financial institution has a shareholding of 10 per cent or more and who is also a director on the board of the financial institution will not be treated as an independent director of the financial institution.
3. An independent director on the board of a company in which a significant shareholder of a financial institution has a majority or single largest shareholding and who is also a director on the board of the financial institution will not be treated as an independent director of the financial institution.
4. A common director of different entities forming part of a group which has a significant shareholding in a financial institution and who is also a director on the board of the financial institution will not be treated as an independent director of the financial institution.
5. A director of a financial institution who is also a director of the immediate holding company of the financial institution or any entities related to the immediate holding company or the ultimate holding company of the financial institution will not be treated as an independent director of the financial institution.

Appendix 2

The Companies Act 2001

Summary of Corporate Governance Related Provisions

Section No.

129 Subject to certain modifications, adaptations, exceptions or limitations contained in the Companies Act or in the company's constitution, the Board of a company shall have all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.

132 A company shall have at least one director who shall be ordinarily resident in Mauritius.

134 A person shall not be appointed a director of a company unless that person has consented in writing to be a director and certified that he is not disqualified from being appointed or holding office as a director of a company.

135 A person named as a director in an application for registration or in an amalgamation proposal shall hold office as a director as from the date of registration or the effective date of the amalgamation proposal and all subsequent directors of a company shall, unless the constitution of the company otherwise provides, be appointed by ordinary resolution.

136 The Court may appoint directors where there are no directors of a company, or the number of directors is less than the quorum required for a meeting of the Board.

137 The shareholders of a company shall, subject to the constitution of the company, not vote on a single resolution for the appointment of 2 or more persons as directors of the company, unless a separate resolution that it be so voted on has first been passed without a vote being cast against it.

138 **Removal of directors**

A director of a public company may be removed by an ordinary resolution at a meeting called for the purpose whereas a director of a private company may, subject to the constitution of the company, be removed by a special resolution. The notice of meeting shall state that the purpose of the meeting is the removal of the director.

139 A person who held office as a director shall remain liable in relation to acts and omissions and decisions made while that person was a director.

141 The acts of a director shall be valid even though the director's appointment was defective or the director is not qualified for appointment.

143 **Duties of directors**

The directors of a company are required to act in good faith and in the best interests of the company. They must accordingly -

- (i) exercise their powers in accordance with the Companies Act and the company's constitution;
- (ii) obtain the authorisation of a meeting of shareholders before doing any act for which such authorisation is required;
- (iii) exercise their powers honestly in good faith in the best interests of the company;
- (iv) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
- (v) account to the company for any monetary gain obtained in their capacity as directors;
- (vi) unless authorised by the company, not make use of or disclose any confidential information acquired by way of their position as directors of the company, or compete with the company;
- (vii) disclose to the Board of the company any transactions involving self-interest unless the transactions are in the ordinary course of business and on usual terms and conditions;
- (viii) not use any assets of the company for any illegal purpose;
- (ix) transfer immediately to the company all cash or assets acquired on its behalf;
- (x) attend meetings of the directors of the company with reasonable regularity; and
- (xi) keep proper accounting records and make such records available for inspection.

148 A director of a company shall, after becoming aware of the fact that he is interested in a transaction with the company, disclose to the Board of the company the nature and monetary value of that interest or where the monetary value of the director's interest cannot be quantified, the nature and extent of that interest, unless the transaction is in the ordinary course of business and on usual terms and conditions.

149 A transaction entered into by the company in which a director of the company is interested may be avoided by the company at any time within 6 months after the transaction is disclosed to all the shareholders, unless the company receives fair value under the transaction.

152 The director of a company who is interested in a transaction entered into by the company, may, in the case of a public company, not vote on any matter relating to the transaction. However, in the case of a private company, the director may vote on any matter relating to the transaction provided he discloses his interest.

156 A director of a public company who acquires or disposes of a relevant interest in shares issued by the company shall immediately after the acquisition or disposition disclose to the Board the number and class of shares, the nature of the relevant interest, the consideration paid or received and the date of the acquisition or disposition. He shall also ensure that the particulars disclosed to the Board are entered in the interests register.

157 Where a director of a company in his capacity as a director has information which is material to an assessment of the value of shares or other securities issued by the company, the director may acquire or dispose of those shares or securities only where in the case of an acquisition, the consideration given for the acquisition is not less than the fair value of the shares or securities or in the case of a disposition, the

consideration received for the disposition is not more than the fair value of the shares or securities.

159 Remuneration and other benefits

The company shall by ordinary resolution approve the remuneration, benefit and any compensation for loss of employment of a director or former director. In case the constitution provides for the Board to approve such payments, any shareholders holding between them not less than 10 per cent of the company's voting share capital may require the directors to call a meeting of shareholders to approve the payments by way of ordinary resolution.

The Board may determine the terms of any service contract with a managing director or other executive director.

Subject to certain exceptions, a company shall not make a loan, enter into any guarantee or provide any security in connection with a loan to a director of the company.

160 Where a director of a public company also holds office as an executive, he shall exercise that degree of care, skill and diligence which a reasonably prudent and competent executive in his position would exercise.

161 Subject to certain exceptions, a company shall not indemnify or effect insurance for a director in respect of liability for any act or omission in his capacity as a director.

162 A director of a company who believes that the company is unable to pay its debts as they fall due shall forthwith call a meeting of the Board to consider whether the Board should appoint a liquidator or an administrator.

Appendix 3

Banking Act 2004 Summary of Corporate Governance Related Provisions

Section 46

The directors, senior officers and service providers of a financial institution must be fit and proper persons. In determining whether a person is fit and proper for the purposes of the Banking Act, regard must be had to, among other things, the probity, competence and previous conduct of the person.

The central bank is also entitled to take remedial action in case it has reason to believe that the board of the financial institution or its senior officers are subject to such influence that would put the interests of depositors at stake.

Section 47

Directors, senior officers or employees, concerned with the management of a financial institution shall cease to hold office if they are declared bankrupt or convicted of an offence involving fraud or other dishonesty.

Further, directors or persons, directly or indirectly, concerned with the management of a financial institution which has been liquidated are debarred from being directors or directly or indirectly concerned with the management of a financial institution unless the authorisation of the Bank of Mauritius has been received to that effect.

Section 48

Where directors or senior officers of a financial institution are put in a position of conflict, directly or indirectly, in respect of advances from the financial institution or in respect of any purchase of property, they should disclose in writing the nature and extent of their interests to the board of directors and not take part in any decision-making process in relation thereto.

Appendix 4

DESCRIPTION OF KEY RISKS

Credit Risk

Credit risk is the risk of financial loss arising due to a counterparty's failure to meet its obligations. Direct loans, commitments to extend credits, settlement exposures are all subject to credit risk. Elements of a good credit risk management process will include the establishment of adequate credit policies and procedures with clear credit concentration limits, approval limits as well as credit risk mitigation techniques. Good practices respecting credit analysis, loan pricing, credit rationing, use of collateral and loan diversification contribute to minimising the credit risk.

Interest Rate Risk

Interest rate risk results from mismatches between asset and liability positions which are subject to unfavourable movements in interest rates with potentially adverse impact on margins, net interest income and the economic value of a bank's assets, liabilities and shareholders' value. Interest rate risk may be measured using methods which include sensitivity analysis and simulation modelling. Banks are expected to establish adequate interest rate risk management policies which will include managing asset and liability positions within specified limits. Such policies should normally be reviewed and approved by the Audit and the Risk Management Committees.

Market Risk

Market risk is the risk of loss resulting from adverse movements in the value of financial instruments. It encompasses exposure to interest rates, foreign exchange rates, equity prices and commodity prices. Sound market risk management practices include the measurement and monitoring of market risk as well as the communication and enforcement of risk limits throughout the institution's trading businesses.

Liquidity Risk

Liquidity risk is the risk of default that could occur if an institution does not have sufficient funds available to meet all its cash outflow obligations as they become due. Liquidity risk management ensures that funds will be available at all times to honour the institution's obligations.

Liquidity risk comes in two forms namely Market Liquidity Risk and Funding Liquidity Risk. The Market Liquidity Risk arises when a bank is unable to conclude a large transaction in a particular instrument at anything near the current market price. Funding Liquidity Risk is defined as the inability to obtain funds to meet cashflow obligations.

Liquidity risk may be measured by assessing potential liquidity and funding needs under stressed environment. The elements of good liquidity management strategy will include measuring and forecasting cash obligations, identifying cash flow gaps, diversifying funding sources, setting prudential limits and ascertaining quick access to liquid assets.

Operational Risk

Operational risk is the risk of direct or indirect loss arising from inadequate or failed processes, technology or human performance or from external events. It can cause financial loss, reputational loss, loss of competitive position or regulatory sanctions. Such risk can be minimised by the implementation of adequate infrastructure, controls, systems and trained and competent personnel. Management should also put in place appropriate methodologies which track down and adequately assess and manage operational risk.

Country Risk

Country risk is the risk of the possibility that sovereign borrowers of a particular country may be unable or unwilling, and other borrowers unable to fulfill their foreign obligations for reasons beyond the usual credit risk which arises in relation to all lending. The factors which may prevent borrowers of a given country from fulfilling their foreign obligations are diverse and the risks to which banks in Mauritius may be exposed can range from the consequences of official actions or important socio-political changes in the borrowing country to largely unpredictable events such as natural disasters or to external shocks arising from phenomena like financial crises or global recessions.