Capital Market Corporate Governance Code

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Pursuant to the Law N° 11/2011 of 18/05/2011 establishing the Capital Markets Authority especially in its articles 3 & 4;

Pursuant to the Law N° 01/2011 of 10/02/2011 regulating the Capital market, especially in its article 74;

Pursuant to the Law N° 40/2011 of 20/09/2011 regulating the Collective Investment Schemes especially in its article 64;

The Capital Market Authority hereinafter referred to as the “AUTHORITY”, decrees:

Article 1 – Purpose of the code

The purpose of this code is to ensure that companies are directed and managed at board and management level in a fair and transparent manner. It provides guidance on how the objectives of the company are set and achieved, how risk is monitored and assessed, and how performance is optimized.

Article 2 – Definitions

In this Code, unless the context otherwise requires:

"Auditor" means an external auditor that is a member of the Institute of Certified Public Accountants of Rwanda;

"Authority" means the Capital Markets Authority;

"Company" means a company under the law related to Companies of 2008 as amended to date;

‘director’, in relation to a body corporate, includes a person occupying in relation to it the position of a director (by whatever name called) and any person in accordance with whose directions or instructions not being advice given in a professional capacity the directors of that body are accustomed to act;

"Independent director", in relation to a body corporate, means a director:

(i) Who has not been employed by the company in an executive capacity within the last two years;

(ii) Is not associated with an adviser or consultant to the company or a member of the company’s senior management or a significant supplier or customer of the company or within the last two years and has not had any business relationship with the company other than service as a director for which the company has been required to make disclosure;

(iii) Has no personal service contract/s with the company or with a member of the company’s senior management;

(iv) Is not a member of the immediate family of any person described above;

(v) Has not had any of the relationships above with an affiliate of the company;
"Listed" means that the securities of the company in question are accepted for listing on a securities exchange approved by the Authority;

"Non-Executive Directors" are persons who are appointed to the Board and who are not currently employed by the company, but who, either because they do not qualify to be an independent director or otherwise, cannot be considered an independent director;

"Executive Directors" are persons who are appointed to the Board and concurrently hold a senior management position in the company and for the avoidance of doubt includes the CEO or the general manager. For the avoidance of doubts, the CEO refers to a person who performs the functions of chief executive of the company, by whatever name called, and typically includes the general manager and managing director;

"An immediate family member" means the spouse and children of the particular director;

"Public company" is a public company as defined in the law related to Companies 2008;

"Share" means a transferable security carrying voting rights in a company;

"Shareholder" means a holder of a transferable security carrying voting rights in a company;

"Unlisted" means that the securities of the company in question are not accepted for listing on a securities exchange approved by the Authority.

**Article 3 – Scope of the Code**

The Code applies to all listed companies, regardless of the nature of their business.

Other public companies are strongly encouraged to comply with the provisions of the Code. Likewise, private companies, and especially those that intend to be listed, are encouraged to comply with the provisions of the Code.

All listed companies will be encouraged to voluntarily comply with the Code with effect from day it is published in the Official Gazette of the Republic of Rwanda. With effect from 1 January 2013, the Code will be mandatory for all listed companies, unless a specific provision is expressly exempted from such mandatory compliance.

**Chapter I**

**The Board**

**Article 4 – Effective Board**

Every company must be headed by an effective Board of Directors which is accountable to the shareholders and, as the circumstances may require, to other stakeholders, including creditors and employees of the company.

The Board is collectively responsible for promoting the success of the company by directing and supervising the company's affairs.

Each director must be well qualified to carry out his duties. Such qualifications can be shown through relevant prior experience. As a guide, the following basic qualifications and professional competencies must be exhibited:

(i) Integrity in personal and professional dealings;
(ii) Wisdom and ability to take appropriate decisions;
(iii) Ability to read and understand financial statements;
(iv) An acknowledged record of business acumen and achievement so as to effectively contribute to the company's management;
(v) Ability to deal with others with a sense of responsibility, firmness, and cooperation;
(vi) Ability to interact with and consult with the company’s employees in order to achieve high management standards;

(vii) A track record of a range of skills and experience as well as the ability to think strategically and with foresight.

Each director must be able and prepared to devote sufficient time and effort to his duties as a director. To ensure a director has sufficient time to undertake his or her duties, an individual director should not hold directorships in more than three (3) Boards of public listed companies.

Each director should add value to the Board and, whether or not an independent director, bring an independent and objective judgment to bear on their duties and decision making.

Each director must disclose any conflict of interests he may face and abstain from any decision-making process where he is so conflicted.

No term limit will be set for directors of listed companies generally. However, given the time and effort that directors are expected to spend in executing their duties as listed company directors, it is strongly recommended that directors do not continue as directors for more than a maximum of six (6) years. In this regard, it is strongly recommended that one third of the Board should be required to retire once every two years to ensure some degree of continuity whilst ensuring that the Board is adequately refreshed.

To ensure that the Board is effective, any quorum for Board meetings must comprise a majority of non-executive and/or independent directors.

**Article 5 – Composition of the Board**

The size of the Board should be large enough to include directors with diverse expertise and experience to suit the specific requirements of a company and its business. As a guide, the international benchmark on board sizes range from 7 to 10 directors, depending on the size of the company.

To ensure active, unbiased and diverse advice is brought to the company, the Board should have a mix of executive, non-executive and independent directors.

At least half the Board should comprise non-executive directors, with a majority of such non-executive directors being independent directors.

At least two members of the Board should be executive directors. One such director must include the Chief Executive Officer (‘CEO’).

The board should periodically review its size and composition.

**Article 6 – Nomination of New/Re-election of existing Board Members**

The Nominating Committee should identify suitable candidates for Board appointments or reappointments and make recommendations to the Board.

When nominating new directors, the Nominating Committee should consider the mix of directors’ characteristics, experiences, diverse perspectives and skills that is most appropriate for the company.

Shareholders should have an opportunity to nominate Board candidates, with at least 21 days notice provided to shareholders to allow them to make their nominations. Any shareholder nomination should be reviewed by the Nominating Committee in accordance with the criteria set out in the preceding Paragraph.

All candidates seeking to be a director must submit at least the following information to the Nominating Committee:

i) education;

ii) experience;

iii) current directorships.
iv) any interests in the company, and
v) in the case of independent and non-executive directors, any other affiliation that may affect the director's ability to make Independent and Impartial decisions.

The Board must release at least the Information provided in the preceding subparagraph (d) submitted by the candidates to all shareholders. This Information will assist in comparing director candidates and identifying the most suitable person, as well as enable shareholders to make informed decisions.

Article 7 – Separation of Chairman and CEO

The Chairman and CEO must be separate persons, to ensure an appropriate balance of power and increased accountability.

A company must disclose the relationship between the Chairman and CEO where they are related to each other.

The Chairman must meet the criteria for independent directors.

The division of responsibilities between the Chairman and CEO must be clearly established and set out in writing by the Board.

Article 8 – Role of the Board, Chairman and Chief Executive Officer

The role of the various parties outlined here provide guidance and should not be taken as a comprehensive list of all the duties and responsibilities of such party. For the avoidance of doubts, the Board acts collectively and no individual director can seek to issue policies or other directions without first raising such policy or direction at a Board meeting and discussing the policy or direction and getting the consensus of all.

The Board's role is to:

(i) provide entrepreneurial leadership, set strategic aims, provide direction to the Management, and ensure that the necessary financial and human resources are in place for the company to meet its objectives;

(ii) ensure that a framework of prudent and effective internal controls which enables risk to be assessed and managed is established, and monitor and assess the effectiveness of such internal controls established;

(iii) review Management performance and determine its remuneration; and

(iv) set the company's values and standards, and ensure that obligations to shareholders and other stakeholders are understood and met;

(V) always act in the best interests of the company and shareholders as a whole;

(vi) If authority to make decisions on certain board matters is delegated by the Board to any Board Committee or to Management, such delegation should be disclosed.

The non-executive and independent directors' role include the following:

(i) review all relevant Board papers to acquire a thorough understanding of the company's business and Management’s performance;

(ii) constructively challenge the company’s business directions and Management’s performance as may be necessary;

(iii) develop proposals on long term strategy for the company; and

(iv) review the performance of Management in meeting agreed goals and objectives and monitor the reporting of performance.

The Chairman's role includes the following as set out:

(i) lead the Board to ensure its effectiveness on all aspects of its role and set its agenda;
(ii) ensure that the directors receive accurate, timely and clear information;

(iii) encourage constructive relations between the Board and Management;

(iv) facilitate the effective contribution of non-executive directors in particular during and outside of Board meetings;

(v) encourage constructive relations between executive directors and non-executive directors;

(vi) not to unilaterally issue policies without consulting with the Board as a whole with full frank and discussions being completed, and

(vii) ensure effective communication with shareholders;

(viii) promote high standards of corporate governance.

**Article 9 – Training**

Companies must recognize that a directorship is a professional appointment and therefore they should provide opportunities and funds for training of individual directors and the development of the Board.

New directors must attend a corporate governance orientation or training on the law, accounting rules and other business matters, offered by a reputed institution or trainer.

On a continuing basis and in any event at least once a year, the Board must go through a refresher course on the latest developments in relevant laws, accounting and tax matters.

**Article 10 – Board Committees**

a) **Nominating Committee**

Companies must establish a Nominating Committee to make recommendations to the Board and to the shareholders on all Board appointments after evaluating the skills, knowledge and experience of the directors whose candidacy are being considered for the Board position.

The Nominating Committee should comprise of at least three (3) directors, all of whom must be non-executive, and a majority of such non-executive directors, including the Chairman, must be independent.

Where there are insufficient directors or if the company deems it appropriate, the Nominating and Remuneration Committee can be combined as one committee. Where the Nominating and Remuneration Committee are combined into one, the reasons for this must be disclosed in the annual report.

The Nominating Committee must review annually whether the constitution of the Board remains appropriate, and whether all directors are spending sufficient time to fulfill their duties. If the non-executive directors are offered appointments elsewhere, the chairman of the Nomination Committee must be informed before any new appointments are accepted and the Board should subsequently be informed of any potential conflicts.

The Board must provide clear terms of reference to the Nominating Committee in respect of the frequency, length and agenda of committee meetings.

The Nominating Committee must issue a statement in the company's annual report detailing its activities and the process it has used to nominate appointments to the Board.

b) **Remuneration Committee**

The Board must set up a Remuneration Committee to recommend remuneration packages for each director and the CEO. If the Board is small, then this function can be undertaken by the Nominating Committee.
The Remuneration Committee should comprise of at least three (3) directors, all of whom must be non-executive, and majority of whom, including the Chairman, must be independent.

The Remuneration Committee must establish remuneration packages which are sufficient to attract, retain and motivate directors to run the company successfully, but without paying more than is necessary. The level of remuneration must strike a balance between the interests of the company.

The Board must provide clear terms of reference to the Remuneration Committee in respect of the frequency, length and agenda of committee meetings.

c) **Audit Committee**

The Board must establish an Audit Committee.

The Audit Committee must comprise of at least three (3) directors, all of whom must be non-executive, and majority of whom, including the Chairman, must be independent.

The Board must ensure that the members of the Audit Committee are duly qualified with at least two (2) members with accounting or related financial expertise or experience.

Audit committee must meet at least once every quarter to monitor internal and external audits, with one meeting necessary before finalization of annual accounts.

The Audit Committee must prepare reports on all meetings for the Board, and make a report in the company’s annual report for the benefit of all the shareholders.

**Article 11 – Remuneration policy**

There must be a formal and transparent procedure for developing policy on executive remuneration and for fixing the structure and the amount of the remuneration packages of individual directors. No director must be involved in deciding his own remuneration.

The Remuneration Committee must provide the packages needed to attract, retain and motivate executive directors of the quality required but must avoid paying more than is necessary for this purpose.

The performance-related elements of remuneration must form a significant proportion of the total remuneration package of executive directors and must be designed to align their interests with those of shareholders and to give these directors keen incentives to perform at the highest levels.

The levels of remuneration for non-executive directors must reflect the time commitment and responsibilities of the role.

The Remuneration Committee must be aware of what comparable companies are paying and should take account of relative performance.

**Article 12 – Evaluation of Board performance**

There must be a formal assessment of the effectiveness of the Board as a whole and the contribution by each director to the effectiveness of the Board.

The Board must evaluate its own performance, both collectively and individually including the performance of the chairman, at least once a year, to ensure it is operating effectively and adjust its constitution and policies accordingly. The exact process of evaluation can be determined by the Nominating Committee and or the Remuneration Committee.

Boards may also consider using an independent consultant to conduct an external evaluation of the Board and its performance, which independent consultant shall make recommendations based on its evaluation.

The Board must also conduct a formal, rigorous and transparent evaluation of the performance of the CEO and the key top Management based on the company's performance and their success in meeting personal development and leadership plans.
Article 13 – Board remuneration disclosure

Each company must provide clear disclosure of its remuneration policy, level and mix of remuneration, and the procedure for setting remuneration for the Board and top Management in the company’s annual report.

The company must provide disclosure in relation to its remuneration policies to enable investors to understand the link between remuneration paid to directors and key executives, and performance.

The company should report to the shareholders each year in the annual report on the global remuneration of directors and top Management (who are not also directors) of the company. A company may choose to disclose the individual salaries of its directors and its top Management.

Chapter II
Management matters

Article 14 – Constitution

The Management must comprise the CEO/ Managing Director, executive directors and the key managers of the company, involved in the day-to-day activities of the company.

Article 15 – Roles & responsibilities of Management

The Board must clarify the roles and responsibilities of senior management in order to facilitate Board and Management accountability to both the company and its shareholders.

The Board must ensure that the Management is responsible for implementing the principles of corporate governance provided under this Code, as framed by the Board.

The Board must ensure that the Management maintains a sound system of internal control to safeguard the shareholders’ investments and the company's assets.

The Board must ensure that there is a procedure in place that requires all managers of the company to disclose to the Board all situations of conflict of interests immediately upon such a conflict arising, whether potential or real.

Article 16 – Access to information

Disclosures must be made by the Management to the Board relating to all material, financial and commercial transactions, where they have a personal interest, that they may have a potential conflict with the interests of the Company at large.

The Board may invite Management and such others as appropriate persons to board meetings, as required, to provide information deemed appropriate or necessary in order to effectively deliberate on decisions and perform its duties.

The Board can obtain, at the company's expense, outside legal or other professional advice on any matter deemed necessary for it to effectively perform its duties.

Chapter III
Audit, external auditors and internal control

Article 17 – Internal audit

(a) All listed companies must have an internal audit function within the company.
(b) The Audit Committee should approve the appointment and removal of the internal auditor.
(c) The internal audit department should have a broad scope of work to investigate all levels of the organization and be independent from Management, with direct access to the Board of Directors and the Audit Committee.
(d) The Audit Committee should monitor and review the effectiveness of the internal audit activities, including reviewing all internal audit reports and plans and monitoring management’s responsiveness, and ensure that it is adequately resourced.
(e) The Audit Committee should, at least annually, ensure the adequacy of the internal audit function.
(f) The internal auditor’s primary line of reporting should be to the chairman of the Audit Committee although the internal auditor can also report administratively to the CEO.

Article 18 – External auditors

(a) The Audit Committee must have primary responsibility for making a recommendation on the appointment, re-appointment and removal of the external auditors and approving the remuneration and the terms of engagement of the external auditors, bearing in mind their qualifications, expertise, resources and the effectiveness of the external audit.
(b) The appointment of the external auditors must be affirmed by the shareholders at the annual general meeting.
(c) External auditors must be independent, well qualified to carry out their duties, and free of conflicts of interests. Audit firms must not be engaged in accounting or non-audit consulting in enterprises in which they have been appointed as the statutory auditors.
(d) Auditors must not hold shares in companies they audit. If auditors hold shares in a company for which they are appointed as the statutory auditor, the shareholding amount should be disclosed.
(e) The Audit Committee must review the independence and objectivity of the external auditors annually.
(f) The Audit Committee must review and approve the annual audit plan, meet regularly with the external auditor.
(g) The external audit partners should be rotated every five (5) years for all listed companies.

Article 19 – Internal controls

The Board must ensure that the Management maintains a sound system of internal controls to safeguard the shareholders’ investments and the company’s assets.

The Audit Committee must, at least annually, review the adequacy of the company’s internal financial controls, operational and compliance controls, and risk management policies and systems established by the Management (collectively ‘internal controls’).

The Board must comment on the adequacy of the internal controls, including financial, operational and compliance controls, and risk management systems in the company’s annual report.

Article 20 – Company Secretary

Companies must employ a qualified Company Secretary to perform all compliance functions of the company.

The Company Secretary must advise Management and the Board on their responsibilities and liability with regard to legal and regulatory requirements and compliance with this Code.
The Company Secretary must keep an annual record of the company’s compliance/non-compliance with this Code and all other relevant laws, and in the event of non-compliance an explanation should be sought for the record from the Board.

In the event that the Board cannot justify the cost of a full-time in-house Company Secretary, the functions may be performed by external advisers provided that these advisers are not also the auditor, company lawyer, or other adviser to the board.

Chapter IV
Shareholder rights

Article 21 – Educating shareholders

A primary concern is that shareholders do not know or understand their rights and responsibilities. To address this problem, listed companies must make an effort to educate their shareholders as to their rights and responsibilities.

Article 22 – Shareholder communications

Companies must engage in regular, effective and fair communication with shareholders at general meetings or through other means.

Companies must regularly convey pertinent information, gather views or inputs, and address shareholders’ concerns. In disclosing information, companies should be as descriptive, detailed and forthcoming as possible.

Companies must disclose information equally to all shareholders, where there is inadvertent disclosure made to a selected group, companies should make the same disclosure publicly to all others as soon as practicable.

Article 23 – General meetings

The general meetings, in particular the annual general meeting, is the main means of communication between shareholders, Management and the Board.

Companies must encourage greater shareholder participation at annual general meetings by requiring shareholder attendance, and allow shareholders the opportunity to communicate their views on various matters affecting the company.

Shareholders should be well informed regarding general meetings through issue of notices and the meeting should be organized in a manner that allows for maximum shareholder participation, subject to reasonable limitations, and equitable treatment of shareholders.

The notice of the annual general meeting should include information about the agenda items to be discussed, including a description of auditor candidates, director candidates, and the text of proposed resolutions. The information provided about the agenda items for any general meeting should be detailed enough to allow shareholders to make an informed decision. The agenda should be presented in the order items will be addressed in the meeting.

The outcome and proceedings of general meetings should be recorded and be verifiable.

The chairpersons of the Audit, Nomination and Remuneration Committees should be present and available to address questions at general meetings. The external auditors should also be present to address shareholders’ queries about the conduct of audit and the preparation and content of the auditors’ report.

Article 24 – Voting rights

Voting rights and procedures must be clearly explained to shareholders so they may fully assert their rights in general meetings.
In establishing the voting procedures and rights for companies, the principle of one share, one vote must guide every company. Within a class of shares, all shareholders must have the same voting rights. Information regarding the voting rights of all classes of shares must be available to potential shareholders.

To facilitate voting by shareholders, proxy voting rules must be simple and easy to follow.

Shareholders may also be allowed to vote in absentia. In this regard, companies are encouraged to make the appropriate provisions in their Articles of Association to allow for absentia voting methods such as by mail, email, fax, and at banks or such other suitable official premises.

There should be separate resolutions at general meetings on each substantially separate issue. Companies should avoid ‘bundling’ resolutions unless the resolutions are interdependent and linked so as to form one significant proposal. Where resolutions are ‘bundled’, companies should explain the reasons and material implications.

**Article 25 – Disclosure**

Every Company must ensure that it issues an annual report that complies with the provisions of the Companies Act and the Listing requirements and explain how the Company has achieved compliance with the provisions of this Code. Where there has been no compliance, the Company must explain why the compliance could not be achieved.

**Article 26 – Financial statements**

Companies must ensure that their financial statements and accounts conform to international standards and thus, strive to have their financial statements and accounts audited to conform with full International Accounting Standards (‘IAS’).

The Balance Sheet and Profit and Loss Statement must be reviewed and signed off by the Chairman of the Board, CEO, and to certify that the accounts reflect a true and fair picture of the company, and that there are no post balance sheet events or off-balance sheet items, the non-disclosure of which can affect the ability of the users of the financial statements to evaluate the company or make decision.

**Article 27 – Non-financial statements**

The company must ensure that all current or potential conflicts of interests and interested third party transactions by the directors or the management are disclosed in the annual report.

The company must report to the shareholders each year on the remuneration of directors and the key executives (who are not also directors) of the company. This annual remuneration report should form part of, or be annexed to the company’s annual report of its director.

**Chapter V**

**Miscellaneous**

**Article 28 – System to raise concerns**

The Board should introduce a system of ensuring that an appropriate process is put in place to enable employees or Management to raise any concerns that they have whether on a confidential basis or otherwise, of any noncompliance or fraud or other misdemeanor within the company. The exact implementation process should be left to each company to develop on its own.

All employees must be made aware of the system for raising concerns that has been implemented. All employees must also be given the assurance that they will not be in any way penalized for raising the concern.

A company which has implemented a system for raising concerns must disclose the same in its annual report.
Article 29 – Investors and media relationship

The media must have a clear understanding of the principles of corporate governance, as they play an important role in not only making sure that good governance practices are adhered to, but also in creating an awareness amongst the business and investment communities on the need to do so.

It is important to initiate exchange of experience between the general public, the companies and the local media on corporate governance which would not only provide information about the risks of poor corporate governance, but will also provide increased awareness of principles key to combating corruption.

Companies should:

(a) Promote development of a strong financial press by disclosing information, and preparing short objective articles and editorials defining the concept of good corporate governance for publication in the business media.

(b) Encourage the media to publicize corporate governance reforms by providing success stories from regional and national business associations and others in the business network to identify companies that practice good corporate governance.

(c) Incorporate the principles of good governance into the agenda of the media seminars or workshops held regularly by institutes and associations.

Article 30 – Repealing of inconsistent provisions

All prior regulatory provisions contrary to this Code are hereby repealed.

Article 31 – Commencement

This code shall come into force on the date of its publication in the Official Gazette of the Republic of Rwanda.