

CONSTITUTION

of the

AFRICAN CORPORATE GOVERNANCE NETWORK



Date Adopted: 16 October 2013

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Section A: The organisation and its purpose

A. 1 Name and jurisdiction

1. The organisation is called the African Corporate Governance Network (ACGN).
2. The legal jurisdiction of the ACGN follows the situation of the Secretariat.
3. The official languages of the ACGN are English, French and Portuguese.

A. 2 Definitions

For the purposes of interpretation of this Constitution, the following terms carry the meaning as set out below:

1. *Affiliate Member* means a member referred to in B.2.3(a) and other organisations which comply with the criteria in B.2.3(a) and which have been admitted to Affiliate Membership (but does not include a Member).
2. *ACGN* means the unincorporated non-profit organisation founded in terms of this Constitution.
3. *Committee* means the Executive Committee of ACGN referred to in section C.1.
4. *Constitution* means the provisions, terms and conditions as embodied in this document.
5. *Founding Member* means a Member referred to in B.1.1.
6. *Member* means organisations which comply with the criteria in B.2.1(a) and which have been admitted to Membership (but does not include an Affiliate Member).

A. 3 Notice of ACGN Membership

Each Member or Affiliate Member organisation must post a notice of ACGN Membership or Affiliate Membership on its website, providing a contact email for correspondence. The notice of ACGN Membership or Affiliate Membership must use wording agreed upon by the Committee.

A. 4 Mission

To develop the institutional capacity of ACGN members for enhancing effective corporate governance practices towards building better private and public sector organisations and corporate citizens in Africa.

A. 5 Vision statement

Africa, a continent committed to effective corporate governance and ethical leadership.

A. 6 Values of the ACGN

Transparency: Being open and clear

Integrity: Ethical behaviour and consistency of actions and values

Teamwork and Collaboration: Leveraging collective knowledge

Accountability: Being answerable to stakeholders

Diversity: Being respectful of the diversity of the African continent

A. 7 Objectives

1. In order to achieve its mission and vision as set out above and having regard to global practice and developments, the ACGN undertakes to:-
 - (a) exchange and share knowledge, information, good practice tools and resources
 - (b) demonstrate good corporate governance within each member organisation
 - (c) build sustainable capacity across the ACGN to allow member organisations and the ACGN to achieve their goals
 - (d) create a common platform for advocacy and to promote a consistent message regarding contemporary and emerging matters on corporate governance in Africa
 - (e) expand the network's influence and reach -
 - i. by forming strategic relationships
 - ii. through its advocacy role, and
 - iii. by growing membership numbers of the ACGN and of each member organisation
 - (f) represent the views of directors on corporate governance matters and participate in dialogue with national, bilateral and multilateral bodies, and
 - (g) commission research on topics related to corporate governance and directorship in Africa.

Section B: Membership

B. 1 ACGN Members

1. The Founding Members of ACGN are the following organisations:
 - Institute of Directors Kenya
 - Institute of Directors in Malawi
 - Mauritius Institute of Directors
 - Institut Marocain des Administrateurs
 - Institute of Directors Mozambique
 - Institute of Directors in Southern Africa
 - Institute of Directors in Tanzania
 - Institute of Corporate Governance of Uganda
 - Institute of Directors of Zambia
 - Institute of Directors Zimbabwe
2. The Affiliate Members of the ACGN are the following organisations:
 - FITC Nigeria
3. A register of Founding Members, Members and Affiliate Members of ACGN is kept.

B. 2 Qualifications for Membership and Affiliate Membership

1. Membership of the ACGN is not transferable and is open only to organisations that meet the following criteria:
 - (a) **Membership**
 - A Member must:-
 - i. be an appropriate not-for-profit (NFP) entity that is legally recognised as such in an African country
 - ii. have no political or religious affiliation or activity
 - iii. operate autonomously and not be controlled by any single external business or commercial interest
 - iv. be recognised in its own country as the leading non-profit professional organisation committed to:
 - 1) developing and enhancing professional standards of directors through education and learning
 - 2) researching, formulating and publishing best practice standards of corporate governance for directors, and
 - 3) representing the interests of directors.

- v. have a proven track record and experience of a minimum of three years in director development and corporate governance initiatives with an established and recurring director training programme
 - vi. have been in operation for a minimum of five years with independently audited accounts.
2. Only one Member from any one sovereign country in Africa may be admitted but more organisations could join as Affiliate Members.
 3. Organisations that do not meet the membership criteria of the ACGN in B.2.1(a) may apply for affiliate membership if they meet the following criteria:
 - (a) ***Affiliate Membership***
An Affiliate Member must:-
 - i. be an appropriate not-for-profit (NFP) entity that is legally recognised as such in an African country
 - ii. have no political or religious affiliation or activity
 - iii. operate autonomously and not be controlled by any single external business or commercial interest
 - iv. be interested and involved in the promotion of director development and corporate governance matters and the objectives of the ACGN but is not eligible to be a Member.
 4. An Affiliate Member may apply to be a Member as soon as it has achieved the Membership requirements as set out in B.2.1(a).
 5. Affiliate Membership will also include those organisations that neither qualifies for Membership, nor aspires to do so but nevertheless shares an interest and involvement in the promotion of director development and corporate governance matters and the objectives of the ACGN.

B. 3 Rights and privileges

Subject to this Constitution, the Committee may determine from time to time the benefits, services and products to be made available to Members or Affiliate Members.

B. 4 Applications for and approval of application for Membership or Affiliate Membership

1. Applications for Membership or Affiliate Membership must be in writing in a form specified by the internal regulations so as to demonstrate compliance with the relevant membership criteria and with reasons advanced for admission and must be proposed and seconded by a Committee Member.
2. The decision whether to admit new Members or new Affiliate Members is taken by the Committee in its sole and unfettered discretion. A 75% majority vote is required for admission.
3. The Committee need not give reasons for its decision which shall be final.

4. Admission to Membership or Affiliate Membership of the ACGN automatically entails acceptance of this Constitution and the internal regulations, if any, and any amendments made to them from time to time by the Committee.

B. 5 Subscriptions

1. No annual subscription is presently required. An annual subscription for Members or Affiliate Members can be introduced if resolved by a majority of 75% of Members at the AGM.
2. Each Member or Affiliate Member must fund its own expenses of any contribution they make to the ACGN.

B. 6 Donations and grants

1. The Committee may accept, on behalf of the ACGN, any donation and/or grants, including financial, *ex-gratia* services, tools and other forms of capacity enhancement made to the funds of, or for the benefit of ACGN, unless:
 - (a) such donation and/or grant is of a political nature;
 - (b) the Committee considers that it is designed to be for a purpose which the Committee considers to be inappropriate having regard to ACGN objectives; or
 - (c) the Committee considers that it might prejudice ACGN's standing, reputation and/or integrity.
2. The Committee is entitled, in its absolute discretion, to reject any donation and/or grant and shall not be obliged to give any reason for such rejection.

B. 7 Termination of ACGN membership

1. Membership or Affiliate Membership will be terminated in any of the following circumstances:
 - (a) subject to an overriding discretion in the Committee to excuse non-attendance or non- participation, if the Member does not attend the Annual General Meeting for two consecutive years or does not participate in three consecutive meetings held by teleconference or videoconference, the Members (excluding any Member concerned) may terminate the defaulting Member's membership at their discretion by a majority vote.
 - (b) if the Member or Affiliate Member resigns by written/electronic notice to the ACGN having effect from the date of receipt by the ACGN or such later date as the notice specifies (not being more than 3 months after the date of the notice).
 - (c) If the Committee terminates the Membership or Affiliate Membership on the grounds that:
 - i. the Member or Affiliate Member fails for such period as the Committee may in its absolute discretion determine to pay an annual subscription or other fees or amounts due and payable from the ACGN Member or Affiliate Member to ACGN;

- ii. the Member or Affiliate Member becomes bankrupt or is placed in liquidation or receivership or is wound up or makes any arrangements or composition with its creditors (other than for the purposes of reconstruction or amalgamation);
 - iii. the Member or Affiliate Member engages in or is alleged to have engaged in, activities or conduct which the Committee, in its absolute discretion, determines might prejudice the ACGN reputation and/or integrity;
 - iv. the Member or Affiliate Member ceases to meet the relevant criteria for admission; or
 - v. the Member or Affiliate Member engages in serious and persistent breaches of this Constitution.
2. A Member or Affiliate Member which ceases to be a Member or Affiliate Member shall remain liable to ACGN for all subscriptions, fees and other sums which may be due to ACGN at the date of the cessation of ACGN Membership or Affiliate Membership and shall not be entitled to any refund of any sum, including any payment already made in respect of any future year of ACGN Membership or Affiliate Membership.

Section C: Governance and representation

C. 1 The Executive Committee and its powers

The management and control of the affairs of ACGN, shall be vested in an Executive Committee (hereinafter called the "Committee") the members of which are appointed in accordance with this Constitution (hereinafter called "Committee Members").

C. 2 Committee composition

The Committee consists of a minimum of 6 (six) and a maximum of 13 (thirteen) Committee Members.

C. 3 Appointment of the Committee Members

1. Each Founding Member is entitled to appoint one Committee Member to the Committee. The first Committee Members shall serve for a term of three (3) years and thereafter retire by rotation subject to C.3.5.
2. Subject to this Constitution, additional Committee Members are elected by the Members at the annual general meeting.
3. No person shall be eligible as a Committee Member unless that person is a councilor, board member, executive or other officer or office-bearer of a Member.
4. No Member may have more than one Committee Member appointed to the Committee at any one time except by unanimous agreement of the Committee.
5. In order to ensure continuity whilst at the same time providing for renewal of Committee membership, a process of staggered rotation is adopted in terms of which one third of the Committee Members resign each year but may be eligible for re-election at the AGM. The criteria for retirement (whether longest serving or otherwise) and the nomination process is determined by the Committee or the sub-committee that it has been delegated to.

C. 4 Termination of office of Committee Members

1. A Committee Member ceases to hold office as such:
 - (a) on expiry of the Committee Member's term of office as determined by the Committee;
 - (b) if the Member organisation, which appointed the Committee Member, ceases to be a Member;
 - (c) if the Committee Member becomes prohibited by law of the country of her or his organisation from being a director; or
 - (d) if the Committee Member engages, or is alleged to have engaged in activities or conduct that the Committee determines in its absolute discretion might prejudice the ACGN's reputation and integrity.

C. 5 Sub-Committees

The Committee may delegate any of its powers to any sub-committee consisting of two or more Committee Members.

C. 6 Chairman and Deputy Chairman

1. The Committee elects one of their number to be Chairman and to hold office for an initial period of up to one year.
2. The Committee elects one of their number to be Deputy Chairman and to hold office for an initial period of up to one year.
3. The Chairman chairs meetings of the Committee and, failing that, meetings are to be chaired by the Deputy Chairman. Failing this, meetings are to be chaired by such Committee Member as the Committee Members present select.
4. The Chairman and the Deputy Chairman shall hold office subject at will of the Committee and may be removed at any time from such office with or without cause by majority vote of the Committee. They shall however be entitled to remain as a Committee Member unless removed from such role under the provisions of this Constitution.

C. 7 Committee proceedings

1. The Committee conducts meetings and related matters as it sees fit.
2. Committee meetings are arranged by the consensus of the Committee Members.
3. The quorum for the transaction of business of the Committee is 50% of Committee Members present throughout the meeting and entitled to vote. No business is transacted if such quorum is not present. A Committee Member is not to be counted in the quorum present at the meeting in relation to a resolution on which such Committee Member is not entitled to vote.
4. Save as otherwise provided in this document, questions at any meeting of the Committee are decided by a resolution passed by a majority vote of the Committee Members present. In the case of an equality of votes, the Chairman of the meeting shall not have an additional casting vote.
5. Any questions which may impose a financial or significant resource obligation on the Committee, ACGN or any Member must be determined by a majority of 75% of all Committee Members whether present or not.
6. In the case of any question as to borrowing or raising money or soliciting and receiving financial or other aid from individuals or organisations the Committee must give 2 weeks' notice to all Members and such questions must be determined by a majority of 75% of all Committee Members whether present or not and in any event must not in doing so exceed a limit of USD20,000 in the aggregate each financial year and not result in any intellectual, political or ethical constraints on ACGN.

7. Any questions of ACGN policy positions must be determined by a majority of 75% of the Committee Members present. For clarity, Members and Affiliate Members are at liberty to deviate from ACGN policy positions but the onus is on the Member or Affiliate Member, and not ACGN, to announce or explain to the extent it considers appropriate that the Member or Affiliate Member's policy position differs from that of ACGN.
8. Notwithstanding any other provision of this Constitution, the contemporaneous linking together by telephone, or audio visual or other means of communication, of a number of the Committee Members being not less than a quorum, is deemed to constitute a meeting of the Committee and all the provisions of this Constitution as to meetings of the Committee apply to any such meeting as long as the following conditions are met:
 - (a) All the Committee Members have received notice of the meeting, and have had access to all documents which are appropriate to be made available at the meeting, and are entitled to be linked by telephone or such other means of communication for the purposes of such meeting. Notice of such meeting may be given by telephone or other means of communication.
 - (b) Each of the Committee Members taking part in the meeting by telephone or other means of communication must throughout the meeting be able to hear each of the other Committee Members taking part.
9. Minutes are signed by the Chairman of the meeting to which they relate, or by the Chairman of the next succeeding meeting, and represents *prima facie* evidence of the proceedings at that meeting.
10. A resolution in writing, signed or approved by letter, email, facsimile or other written form by all the Committee Members is as valid and effective as if it had been passed at a duly convened meeting of the Committee.
11. For matters requiring a Committee decision between meetings, and for which a 75% majority or unanimous vote is required, advance written notice of not less than two weeks is required.

C. 8 Designation of alternate representatives

1. Each Committee Member may designate an alternate to attend Committee meetings as determined by the primary Committee Member and act as her or his proxy in matters that are presented for resolution when the primary Committee Member cannot attend.
2. An alternate must be a councilor, board member or other office bearer of the Member.
3. All Committee Members should to the extent practicable use reasonable endeavours to carry into effect any Committee resolutions requiring steps to be taken by their Member organisation subject to the governance structures and processes of those organisations.

C. 9 Interests of Committee Members

1. Any Committee Member or her or his organisation who is in any way directly or indirectly interested in a matter tabled for decision by the Executive Committee of the

ACGN must declare his or her interest to the Committee as soon as the Committee Member becomes aware of his or her interest or ought reasonably to have become aware of his or her interest.

2. A Committee Member has no vote in respect of any matter in which the Committee Member or her or his member organisation has a material interest or any matter arising therefrom and if the Committee Member does so the vote is not counted.
3. If any question at a meeting of the Committee as to whether a Committee Member is disqualified from voting (by reason of the Committee Member or her or his member organisation having a material interest or otherwise), the question may, before the conclusion of the meeting, be referred to the Chairman of the meeting and the Chairman's ruling in relation to any Committee Member other than himself or herself shall be final and conclusive. If the question relates to the disqualification of the Chairman, a ruling is made by one or more Committee Members appointed for the purpose by those present.

C. 10 Remuneration of Committee Members

1. Committee Members are not entitled to any remuneration for their services as such.
2. Committee Members and/or their member organisations meet the expenses in attending meetings of the Committee.

C. 11 Special participants

From time to time, the Committee may invite other individuals or organisations as observers or to contribute to ACGN for a specific purpose and period of time. Examples include representatives from the NEPAD Business Foundation, World Bank, IFC Global Corporate Governance Forum, the OECD, or regional director groups that have not joined the ACGN. Attendance at ACGN Committee meetings does not confer voting or any other rights.

C. 12 Frequency of Committee meetings

The Committee meets at least once per annum in person and at least a further three times per annum via teleconference or videoconference on dates and times which are to be agreed upon a calendar year in advance as determined by the Committee. The location of in person ACGN meetings may rotate amongst the various member countries as determined by the Committee.

C. 13 Annual General Meetings and General Meetings

1. An annual general meeting (AGM) is held each year at a place appointed in the notice calling the meeting subject thereto that not more than 15 months may elapse between annual general meetings year after year.
2. The purpose of the annual general meeting is:
 - (a) the election of Committee Members;

- (b) noting of the financial statements and annual report issued by the Committee on the preceding year; and
 - (c) noting or discussion of any such matters that the Committee or Members wish to place on the agenda.
3. All general meetings are called by the Committee by letter, fax or email at least 60 (sixty) days before the date of the meeting.
 4. All general meetings are chaired by the Chairman of the Committee or, failing him/her, by the Deputy Chairman, or failing him/her, by another Committee Member designated by the Committee.
 5. If all Members have agreed to meet and all are present in person or by proxy, the general meeting shall be regularly composed without the requirement of giving formal notice in advance.
 6. Members are entitled to attend and vote at any general meeting. Any Member may be represented at any general meeting by a proxy.
 7. Affiliate Members may attend for the purpose of providing comment and input but they will not be entitled to vote. The Committee may at its discretion table matters for a non-binding advisory vote by Affiliate Members.
 8. A general meeting can only deliberate on items which are not on the agenda if all Members are present or represented and if unanimously approved.
 9. Any general meeting shall validly deliberate only if at least five (5) of the Members are present or represented.
 10. Resolutions of a general meeting shall be taken by a majority of the votes of the Members present or represented.

C. 14 Sponsors and advisors

The Committee may designate certain persons or group of persons as sponsors or advisors of the ACGN or any other title as the Committee deems appropriate. Such persons shall serve in an honorary capacity.

C. 15 Internal Regulations

The Committee may by a 75% majority approve internal regulations to apply to ACGN.

Section D: Administration

D. 1 Appointment of Secretary

1. The NEPAD Business Foundation serves as the Secretary of the ACGN.
2. Should the NEPAD Business Foundation cease to serve in this capacity, the Chairman may appoint a Secretary and Secretarial Office from a Member organisation to assist with administration during the Chairman's term of office until a full-time replacement is found.

D. 2 Minutes

1. The Committee ensures that minutes of its meetings are duly recorded and kept and are made available for inspection by those entitled to attend the meetings to which the minutes relate.
2. Minutes are signed by the Chairman and secretary of the meeting to which they relate, or by the Chairman of the next succeeding meeting, and is *prima facie* evidence of the proceedings at that meeting.

D. 3 Accounts

1. If the Committee determines that there shall be accounts, the financial year shall run from 1 January to 31 December or such other dates as the Committee may decide.
2. The Committee can authorise two of its number who represent different members to jointly sign documents on behalf of ACGN.
3. The Committee controls all funds and expenditure of ACGN.
4. If all Committee Members whether present or not resolve unanimously to do so, the Committee may open and operate such bank accounts and in such names as it sees fit.
5. The Committee ensures that accounting records are kept which:
 - (a) disclose with reasonable accuracy, at any time, the financial position of ACGN at that time; and
 - (b) enable the Committee to ensure that annual accounts are prepared which give a true and fair view of the affairs of the ACGN for the financial years to which they relate.
6. The accounting records are kept at such place as the Committee determines and are open to inspection by Members during normal business hours. Copies are provided to Members upon request.
7. The Committee ensures that copies of the annual accounts are forwarded to Members within three months after the end of the financial years to which they relate.
8. The contents of the accounting records are treated as confidential and are not published or disclosed to third parties except to the extent determined by the Committee or as required by law.

9. To the extent applicable, the accounts are verified by an external auditor appointed by the Committee Members.

D. 4 Notices

1. Any notice to be given to or by any person or organisation under this Constitution is in writing or in such other form as permitted herein.
2. A notice may be given or sent by the Secretariat of the ACGN to any Committee Member or Member or Affiliate Member organisation either by post or electronic means either at the physical or electronic address supplied by the Committee Member or Member or Affiliate Member to ACGN.
3. A notice may be given or sent to ACGN care of its Secretariat by a Committee Member or Member or Affiliate Member either by post or electronic means. Any notice given by or sent to ACGN shall be deemed to have been received by the addressee:
 - (a) in the case of overseas post (international airmail), ten business days after the date of posting; and
 - (b) in the case of electronic means, on the date it is sent.
4. Electronic delivery of notices is the preferred medium of ACGN.

Section E: Inspection

Copies of this Constitution will be made available to Members or Affiliate Members on becoming Members or Affiliate Members, and otherwise upon request.

Section F: Reciprocal arrangements

Reciprocal arrangements between Members or Members and Affiliate Members will be set out in Regulations to be approved by the Committee under the Constitution.

Section G: General

1. Nothing in this Constitution gives rise to any relationship of agency, partnership or employment between any Member or Affiliate Member and any other Member or Affiliate Member or any individual Committee Member nor any relationship of partnership or employment between any Member or Affiliate Member and the Committee.
2. This Constitution contains the entire agreement between the parties as to the subject matter of it.
3. Any dispute under this Constitution is to be resolved in the first instance by appropriate escalation and direct communication between the CEO/Managing Director or equivalent of the parties concerned, and then if required by either mediation or conciliation as agreed between the parties.
4. ACGN may be wound up by a resolution passed by a 75% majority of Members. In that event an account shall be taken and ACGN's affairs wound up in accordance with that account.
5. This Constitution shall be reviewed from time to time after its adoption and may be amended by 75% majority of Members from time to time.

We the undersigned agree to this Constitution on this 16th day of October, 2013 on behalf of our respective organisations listed below:

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Institute of Directors Kenya

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Institute of Directors in Malawi

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Mauritius Institute of Directors

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Institut Marocain des Administrateurs

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Institute of Directors Mozambique

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Institute of Directors in Southern Africa

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Institute of Directors in Tanzania

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Institute of Corporate Governance of Uganda

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Institute of Directors of Zambia

.....
Institute of Directors Zimbabwe

.....
*NEPAD Business Foundation
(ACGN Secretary)*