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The African Corporate Governance Network (ACGN) was founded in October 2013 in order to promote effective corporate governance in Africa. It is an important home grown African initiative. While Africa is still seen by many as one of the last frontiers of economic development, it is catching up fast. Rapid changes are creating opportunities for growth and development and it is essential that this growth and development benefits all Africans first and foremost. Poverty will only breed instability and insecurity and bring underdevelopment.

Of course governance is all about leadership. Political, economic and social governance are intertwined and while we are only focusing on corporate governance in this report, we should not forget the links. We also acknowledge that there is no single model of corporate governance, no one size fits all. But what is clear is that those economies which are leading the way generally have political stability with effective public institutions, efficient public sectors which contribute to development, and strong private sectors with good corporate governance practices. Better corporate governance is therefore an imperative with proper checks and balances, and greater accountability and transparency. Corruption often flourishes where institutions are weak, gradually but surely eroding development and the very fabric of society.

This report sets out to provide a baseline study of the research and information available on the state of corporate governance in 13 African countries. If corporate governance is an important factor in economic development then we need more facts and figures. Knowledge and data is essential and one of the objectives of the ACGN is to become the repository of information on corporate governance in Africa. We plan to add more countries each year and to keep the report updated annually. In this way, we hope that this report will be a useful and informative document for policy makers, institutional and private investors, company directors, business professionals, and all those interested in corporate governance.

The ACGN recognizes that this work reflects the cooperation, contribution and hard work of many parties. We would like to specifically thank EY for conducting the research and preparing this report which has taken over one year to produce. We also gratefully acknowledge the valued and continued support of EY for the ACGN. In particular, special thanks are owed to Joanne Henstock, Executive Director, EY South Africa. We would also like to acknowledge the input and review feedback received from the ACGN member Institutes who worked alongside to help ensure the information content of this report is complete and accurate, and as up to date as possible. The Institutes could only do that successfully through a myriad of in-country partners, all of whom we thank for extending their support. Our warm thanks for their support for this report and their own contributions are also owed to Mervyn King, Chairman of the International Integrated Reporting Council (IIRC) and Chairman of the King Committee South Africa, Baroness Chalker of Wallasey, Founder and Chairman of Africa Matters Ltd, and Philip Armstrong, Independent Governance Consultant.
It is a truism that investment is attracted to an area where good corporate governance is practised.

Corporate governance has moved away from the exclusive to the inclusive approach, namely taking account of the legitimate and reasonable needs, interests and expectations of a company’s stakeholders in the board’s decision making.

African countries have also not escaped the drive in the world for greater transparency and accountability.

There are three major shifts in the corporate world. Firstly a move away from short term profit to inclusive capitalism. The next shift is a move away from the financial market model as the foundation of how the company makes its money to a sustainable capital model. The question being asked is: Will the company maintain value creation in a sustainable manner? Finally there is a shift from silo reporting, such as the financial statements and the so-called non-financial statements according to standards, to integrated reports. This is a reflection of the reality that in the daily running of the business of a company, the resources used by the company and the company’s relationships with its stakeholders are interconnected and interrelated. Consequently a company’s primary corporate reporting for external accountability should be presented in clear, concise and understandable language to reflect that interrelationship and should not be presented in technical, financial reporting or non-financial reporting standards language.

Today’s companies exist in the information age and company financial statements and non-financial statements presented according to the relevant reporting standards can be accessed online from the company’s website. Consequently users of corporate reporting are able to drill down from the integrated report to obtain more detailed financial and/or non-financial information prepared in accordance with the relevant standards, should they require.

Every country has its own particular circumstances and challenges. Consequently it is appropriate for every country to develop its own corporate governance framework. This notwithstanding, the basic principles of good governance are equally applicable to both public and private entities in every country.

These are responsibility, accountability, fairness, transparency and the collective mind of the board acting with intellectual honesty in the best interests of the incapacitated and inanimate company of which the directors are collectively the company’s heart, mind and soul.

The overview contained in this report will assist investors in their investment decisions. This is why it must be remembered that in drafting a framework for a country, taking account of its special circumstances, it is quality governance that is important, not a mindless, quantitative approach.

Quality governance attracts investment.

This report is unique because it gives investors an opportunity to assess the nature of corporate governance practices in the 13 countries which are reviewed.

I have little doubt that this report will be used by asset owners and managers in their allocation of capital decisions.
The African continent has made notable improvements in democratic governance, with countries now holding successful elections as we saw in 2015 in Nigeria, Tanzania and Zambia among others. There is a strong linkage between good governance and economic development, which the African Union and the Economic Commission for Africa have been promoting. This report is therefore an important addition to the body of literature that will help spread vital information on the state of corporate governance in the 13 countries on the African continent covered in this report.

Accounts of individual country journeys to develop their corporate governance frameworks are explained against the background of development of their respective political and economic environments. Corporate governance does not exist in a vacuum. It is profoundly influenced by the political and economic environment of each country. With real political will on the part of leaders to make their countries and regions more efficient, peaceful and attractive, corporate governance can be greatly strengthened. The east African region is already witnessing the strengthening regional cooperation through the planning of joint Northern Corridor projects and the East African Community. Other regions are also implementing regional projects that will pool resources to improve infrastructure and trade.

The ACGN report draws attention to the interplay between a country’s level of economic development and its growth prospects, and development of a country’s corporate governance systems. This should set the tone for interactions between public and private sector entities and the local and global markets with which they will interface through economic activity. This is a clear illustration of ‘why corporate governance matters’!

To provide context, an overview of the development of corporate governance in each of the 13 countries has been given, outlining the historical evolution of corporate governance. The report also addresses the regulatory environment and the current corporate landscape in each the countries. The report gives a brief summary of the approach to corporate compliance in each country and a brief overview of any emerging practices, trends or areas of leading practice in the country. Additionally, areas of challenge for corporate governance in the country are covered including the outlook for further development of essential corporate governance. Finally the report stresses the critical importance for all countries on the African continent, and their policy makers, to pay full attention to the development of their respective corporate governance frameworks. It is true that it may vary between different country environments, but broadly speaking, wide collaboration between government/regulators, the corporate environment and the private and public sectors needs to exist to properly embed corporate governance awareness and behaviours in the country environment over time.

Every journey begins with the first step, and in many cases the “first step” in a country’s corporate governance journey often arises in the private sector. This is where the drive to demonstrate credit worthiness to facilitate access to financing, often the most critical constraint, is a powerful incentive.

The Investment Climate Facility for Africa (ICF), of which I am a Trustee, partners with governments, private companies and development partners, to provide tangible improvements to Africa’s investment climate. In our engagements with the key stakeholders, there is strong awareness of the importance of good corporate governance and an open and friendly investment climate. This recognition will foster sustainable economic growth, job creation and poverty alleviation in the countries across Africa.

The African continent continues to have strong champions of corporate governance both in public and private sectors, who should find this report a useful high-level reference. Some countries have adopted a national Code on Corporate Governance such as Mauritius, Malawi and Zimbabwe, or have national codes under development currently, such as Nigeria and Kenya, while other countries have governance codes issued by private sector institutions or bodies suited to wide application across all sectors, such as the King Code in the case of South Africa. With the available literature and committed leadership, there will indeed be increased impetus for those that have not yet done so.

Corporate governance is evolving to meet the ever changing environment. It really is about who controls what, and how well and openly they are enacting those controls. This is what impacts on the countries’ economies, multi- national corporations, small businesses, institutions and individuals alike.

This report is an important addition to the body of literature, which I encourage those in government and the private sector to read.
This report on the state of corporate governance in Africa: An overview of 13 countries is a welcome addition to understanding the different governance frameworks that exist across the African continent. When considering Africa, there remains an unfortunate tendency to cast issues in something of a sweeping generalisation. The Report survey clearly highlights the diversity of corporate governance systems and practices across Africa, owing in large part to various historic customs and origins of the relevant countries, and emphasises that Africa’s diversity is defined not only by its rich cultural heritage, natural resources and geography.

Of course, as observed in the report, corporate governance is strongly influenced by the level of sophistication of each economy and the accompanying development or maturity of its capital market. This is very obvious when reviewing the reports on each of the countries covered by this survey. In an era of the global economy, economic growth and development is driven as much by external factors as internal issues especially in relation to the flow of capital. The increasing significance of so-called emerging economies like China, India, Indonesia, Colombia, Brazil, Turkey and a number of others in the mainstream global economy in the 21st century has only sought to increase the competition for those capital flows.

Africa for the most part continues to be challenged by various structural impediments that constrain its capacity to attract private investment and thereby hinder the necessary incentives to improve corporate governance. One of the profound questions is whether good corporate governance can prevail in an environment of poor public governance. That we have seen the emergence of a number of director institutes across the continent over the past decade or so, and the accompanying development of codes of corporate governance seeking to define standards of good practices for businesses in both the private and public sectors often initiated by these institutes, is encouraging notwithstanding such challenges.

While corporate governance owes its origins to improving the investment climate in the more advanced economies, thereby seeking to build the trust of both domestic and international investors, and society more generally, it is now a concept that has wide relevance in almost every economy in the world today. The broad principles of corporate governance as a policy instrument have been universally defined by the Organisation for Economic Co-operation and Development (OECD) \(^1\). Despite suggestions that the rise of emerging market economies might lead to a deviation from the established principles of the OECD, this is unlikely and remains the foundation for most regulations, codes and standards around the world including Africa.

What has become increasingly evident is that no matter the dominant form of company in an economy – private, family-owned, state-owned, etc. – corporate governance has been most successful where it has been allowed to evolve gradually according to a country’s economic development but notably as part of a wider set of policy improvements and not as an isolated exercise in itself.

Tailoring corporate governance and associated reforms to an economy’s unique or particular circumstances promises to yield the greatest results, but it is a process that requires patience, steady resolve and consistent policy making within a broader economic strategy. This calls for unequivocal commitment to improved performance, transparency, accountability and value creation and not just in the private sector, but should embrace public sector enterprise too especially given its dominance of many of the economies surveyed.

It is widely recognised that natural resources and other structural features often are key to driving investment and capital flows, witness the unprecedented growth of China’s economy over the past few decades and the continuing investment in oil and gas in some of Africa’s most challenging economies in governance terms. Corporate governance remains a strong hygiene factor especially where this involves investor confidence. Corporate governance is increasingly not just about the rules and standards that might be in place in a country, but also the associated reputation of the market and security of the investment.

It is striking, in reading the survey of each of the countries covered by this report that significant impediments that are almost universally common to all the countries surveyed and very relevant to the issue of corporate governance – notably access to financing, inefficient government bureaucracy, corruption – continue to feature prominently despite the efforts to introduce reforms that would improve the corporate governance of these countries.

\(^1\) http://www.oecd.org/corporate/principles-corporate-governance.htm
Most of the surveyed countries are subject to major structural impediments that must also be factored into any consideration of their corporate governance reform efforts. A number of these are highlighted in the introduction to the report, but worth reiterating:

- Improvements in corporate governance cannot be undertaken in isolation. It is important that it constitutes part of a broader economic blueprint accompanied by political commitment to genuinely enhance the business environment. This is not a matter only for the private sector but must incorporate the public sector enterprises which continue to dominate a number of the economies surveyed and therefore have a material influence over the quality of the business environment.

- Wealth remains concentrated and the benefits of corporate governance are too often seen as an inconvenient cost with little or no incentive to reform business conduct to attract investment, as this is all too frequently appropriated to the benefit of the existing concentrated interests to the detriment of the overall economy.

- Small- and medium-sized businesses, mostly operating in the informal sector, remains prominent in many of these countries. The ability to convert these into large, formal enterprises remain elusive given limited incentive or economic strategy to encourage this and possibly also through lack of trust in the system generally.

- A number of these countries continue to suffer from a weak institutional framework, often operating under outdated or poorly designed laws and regulations, rendering an observable lack of enforcement or appropriate capacity for this purpose. This is likely to be a concern that is not only relevant to international investors, but domestic investors too and a major impediment for capital formation from local sources in stimulating long-term sustainable economic growth.

- Domestic investment is further hindered by the poor administration of pension resources in these countries, while the stock exchanges in most of the surveyed countries (with the exception of South Africa) are insufficiently capitalised and lack liquidity to attract any significant portfolio investment from domestic as well as international investors. In both instances, a significantly strengthened corporate governance and regulatory framework is a critical factor and would require to be comprehensively enhanced to address this issue.

- Another feature that is not given adequate recognition is building capacity to promote availability of the professional skills necessary to ensure effective oversight, supervision and guidance of good corporate governance practices within the market generally, and specifically accounting, auditing, corporate secretarial and legal professionals.

Against this background of significant areas of challenge in public governance, there are a number of good examples of successes in the sphere of corporate governance, South Africa continues to be a leader internationally in corporate governance especially in defining the application of global standards in an emerging market environment, while Mauritius has made important strides in setting internationally recognised standards of corporate governance for its small island economy and continues as the top ranked country in the Ibrahim Index of African Governance. Kenya at the same time has embarked on an ambitious programme of regulatory reforms to enhance its capital markets, including the recent promulgation of an internationally-acknowledged stewardship code for investors and a significantly enhanced corporate governance code.

The corporate governance model adopted by all the countries in the survey broadly follows the market-based system evolved from the United Kingdom where the market strongly influences adherence to corporate laws and regulations, which is largely absent in most of the surveyed countries. This is not an issue unique to these countries, or Africa generally, for that matter but is something that challenges many countries in other regions. This, therefore, brings to mind the alternative mechanisms that might need to play a role in a more composite model of governance system as postulated by Justice Geoffrey Kiryabwire of Uganda that involves a combination of both conventional mechanisms of a market-based governance system along with other mechanisms that are more likely to influence better behaviours and practices involving the banking sector for example. Indeed there is evidence of a flow-down of international regulatory norms and systems in regulation of corporate governance in the banking and insurance sectors of a number of African countries that feature in this survey.

Improving systems of governance of state-owned companies and municipalities would be another important feature of any such multi-faceted system. This would require considerable political will and tenacity. In a number of the economies surveyed, public sector enterprise is apparent in both the commercial and public utility sectors and a dominant feature of the economy. It is incumbent, therefore, for the public sector in whatever form its participation in the national economy takes place to set the tone for good business conduct and behaviours both in defining the policy intent and given the considerable influence this would have over the economy in facilitating change in practical terms. Absent this, public sector governance systems can, and do, present the most pressing impediments to achieving change.

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2 “No transparency, no trust; no trust, no credit; no credit, no investment, no growth. There is a simple logic: corporate governance and financial reporting are an essential building block for financial intermediation, foreign investment, and sustainable economic development”: Martin Gruell, CFO and a member of management board, Raiffeisen Bank International AG

3 http://www.moibrahimfoundation.org/iiaig/
A useful discussion I had with a globally prominent investor some years ago highlighted something we tend to often underestimate in determining good governance. Many of the markets in the countries covered by the survey were perceived to lack individuals with the necessary skills, perspectives and experience to ensure that boards of companies in these markets were operated along the lines of internationally acceptable standards. The role being played by the director institutes covered by the report is particularly crucial to ensuring that this concern is addressed, through their training and education programmes and participation in the African Corporate Governance Network (ACGN). This allows for sharing of skills and experiences across the African continent. It is equally important to realise that, at the end of the day, no amount of rules and regulations can fully regulate proper and appropriate behaviour – that is a standard that boards and the directors serving on them need to see is undertaken with the right level of diligence and ethical integrity. Accordingly the contemporary emphasis on the role of governance in self-regulating corporate culture and behaviours is a critical aspect in formulating internationally acceptable corporate governance practices and behaviours. Board directors and management have an equal responsibility for promoting good governance practices and it is not a matter that should be left only to the policy makers, regulators and market participants generally.

Another encouraging aspect of the literature survey has been the acknowledgement that considerable research on corporate governance is being undertaken across Africa. One of the earlier concerns with the upsurge in corporate governance as a key policy issue was the tendency for the researched experiences of more developed economies to inform the standards and rules that should apply universally across all economies. While the OECD principles form the foundation for corporate governance systems, it is essential for individual economies to tailor their requirements according to those principles to their particular circumstances to ensure that the standards are both enforceable and practicable in the environment for which they are designed. This is a common flaw in many corporate governance systems that I have observed. Through the ACGN and the insights elicited from this report, a useful starting point has been established for the identification of a sound and relevant contemporary research agenda for the advancement of good corporate governance practices across the African continent.

Corporate governance was always intended as a set of practices and rules, suitably customised to local conditions and expectations appropriate to its stage of economic development, and not necessarily a parallel form of regulation. In the end it is about generating sufficient confidence in the economy and the key actors in the economy, namely, companies, regulators, policy makers, etc., such that: “...good governance is fundamental to public trust in wealth creation and to the legitimacy of whatever form of capitalism a country pursues. From an economic point of view, good governance is a key to ensuring stable capital inflows into emerging markets.”

Good corporate governance standards should be a reflection of the national intent to build the integrity of the practices of its private and public sector institutions. This calls for a co-ordinated and well-structured policy framework of laws and regulations that are consistently applied across all sectors of the economy and enforced vigorously and fairly without favour or preference. It would typically be built around clearly defined incentives for investment and capital formation, drawing on both international and domestic sources. Institutional capacity for effective supervision and enforcement should be suitably facilitated with particular emphasis on protecting minority shareholder and property rights. Development of the necessary human skills and capacity would be an integral part of this process and the role of a directors’ institute and other relevant professions in supporting this would be essential. Much of this cannot be processed solely through a corporate governance code or similar instrument, but the code can at least set the tone for the expected processes, behaviours and transparency necessary to put these policies, laws and regulations into practice.

When thinking about corporate governance in Africa and the enormous possibilities it offers, and as demonstrated by efforts such as this ACGN report and the commendable work of the ACGN and its sponsors, it would be appropriate to perhaps close by quoting one of the great figures of the Italian Renaissance, Michelangelo Buonarroti (1475-1564): “The greatest danger for most of us is not that our aim is too high and we miss, but that our aim is too low and we reach it.”

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*John Plender, lead writer for the Financial Times*
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ACCA</td>
<td>Association of Chartered Certified Accountants</td>
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<td>ACGN</td>
<td>African Corporate Governance Network</td>
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<td>AfDB</td>
<td>African Development Bank</td>
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<td>APRM</td>
<td>African Peer Review Mechanism</td>
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<td>AU</td>
<td>African Union</td>
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<tr>
<td>BRICS</td>
<td>Brazil, Russia, India, China and South Africa (country grouping)</td>
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<tr>
<td>CACG</td>
<td>Commonwealth Association of Corporate Governance</td>
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<tr>
<td>CIMA</td>
<td>Chartered Institute of Management Accountants</td>
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<td>CMA</td>
<td>Capital Markets Authority</td>
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<tr>
<td>CSR</td>
<td>Corporate Social Responsibility</td>
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<tr>
<td>CRR</td>
<td>Country Review Report</td>
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<td>EAC</td>
<td>East African Community</td>
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<td>EU</td>
<td>European Union</td>
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<tr>
<td>FDI</td>
<td>Foreign Direct Investment</td>
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<td>G20</td>
<td>The Group of Twenty</td>
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<tr>
<td>GDP</td>
<td>Gross Domestic Profit</td>
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<tr>
<td>IFC</td>
<td>International Finance Corporation</td>
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<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
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<tr>
<td>MSME</td>
<td>micro-, small- and medium-sized entities</td>
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<tr>
<td>MENA</td>
<td>Middle East and North Africa</td>
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<tr>
<td>NEPAD</td>
<td>New Partnership for Africa's Development</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<tr>
<td>ROSC</td>
<td>Report on Observance of Standards and Codes</td>
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<tr>
<td>SADC</td>
<td>South African Development Community</td>
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<tr>
<td>SEC</td>
<td>Securities and Exchange Commission</td>
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<tr>
<td>SME</td>
<td>small- and medium-sized entities</td>
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<tr>
<td>SOC</td>
<td>state-owned corporation</td>
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<td>SOE</td>
<td>state-owned enterprise</td>
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<tr>
<td>SRO</td>
<td>self-regulatory organisation</td>
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<td>SSA</td>
<td>Sub-Saharan Africa</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNCTAD</td>
<td>UN Conference on Trade and Development</td>
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<td>UNDP</td>
<td>United Nations Development Program</td>
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<tr>
<td>USD</td>
<td>United States Dollar</td>
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<td>WEF</td>
<td>World Economic Forum</td>
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Purpose of this publication

This publication presents the results of a literature survey undertaken to provide an overview of the state of corporate governance in 13 countries on the African continent, listed below. All of these 13 countries are part of the current membership of the African Corporate Governance Network (ACGN).

The survey draws on key sources of published information concerning the development of corporate governance in each country.

It is believed that the information from this cross-country survey establishes a baseline that may be used to identify a research agenda to explore the development of corporate governance frameworks and systems in the various countries and regions within the African continent.

Information about associated successes and benefits, and main areas of challenge encountered, in individual country settings will enable identification of common themes to help build an understanding and context for further development and enhancement of such frameworks in the African context.

A variety of publications were consulted, including academic research, publications of national governments and regulatory agencies, NGOs, private-sector professional bodies, including Institutes of Directors, and international development finance bodies. Collectively, the information sources consulted provide a picture of the corporate governance framework and systems in each country; and of how they have developed to date, and are still developing.

Given that development and implementation of corporate governance in any country setting is critically dependant on the state of development of the political infrastructure, the economic development context and the legal framework, these are covered for each country as brief background to provide context for an appreciation of the main focus of the survey, i.e. to give a picture of the current state of corporate governance in each of the 13 countries.

With the broad aim of this publication set out above, following is a brief description of the methodology applied to complete this survey and the process applied to present the results of the survey. We also note certain caveats about the scope of the study that we ask readers of this publication to bear in mind.

1 The ACGN Members of the countries covered in this report are: Institute of Directors Kenya, Institute of Directors in Malawi, Mauritius Institute of Directors, Institute of Directors Mozambique (Instituto de Directores de Moçambique), 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 (founding members of the ACGN), and the Egyptian Institute of Directors, the Institute of Directors Ghana, the Institute of Directors Nigeria and the Institut Arabe des Chefs d’Entreprise (Tunisia).
Survey methodology

The literature survey performed for each country accessed a range of resources, depending on availability and quality of commentary on corporate governance and related areas for the country. Included were the following broad types of published literature found to be easily available in most cases:

Institutional research. International development finance and development aid bodies are a key source of information about the legal and regulatory infrastructure, economic policy and national development agenda(s), private sector development initiatives across practically the range of countries. Due to their history of engagement with various African countries and extent of their involvement in investment and aid development programmes, these institutions, maintain extensive updated information derived from well-established research and development programmes, and due diligence programmes, about the development agendas and the economic performance and outlook of countries they engage with. Such information sources were available for all the countries covered in this report to a greater or lesser extent. For example, the World Bank, the International Monetary Fund, UN Development Program, African Development Bank, and European Bank for Reconstruction and Development.

International or regional policy or research institutes are a further source of published research on development of corporate governance in Africa, often linked to the pursuit of research in relation to particular policy agendas (international, regional or national), for example economic freedom, public sector accountability, fighting corruption and environmental sustainability. A number of these agencies have developed a range of useful global and/or regional index-based information to facilitate global, regional or country-level comparability, and also to be able to periodically rank countries covered by specified attributes and/or performance indicators. Examples are: the Heritage Foundation’s Index of Economic Freedom², Transparency International’s Corruption Perceptions Index³, the World Bank’s Ease of Doing Business survey⁴, the World Economic Forum’s Global Competitiveness Index⁵ and the Ibrahim Index of African Governance⁶.

Review programmes of African regional bodies and institutions, and related research. For example, the African Union’s African Peer Review Mechanism (APRM) provided a key source of information and research about the country environment, giving useful context to development of corporate governance in countries where APRM reviews have been performed to date.

Academic research. Academic sector contributions were also sought, for academic research on corporate governance systems in the countries surveyed. Some, but not all countries, evidenced a range of quality published research. Overall, there is evidence of a growing stream of research activity in the sphere of corporate governance across Africa, with a growing body of published research, a good signal of the relative importance of corporate governance research for development of national and regional economies in Africa. Research on main factors relevant for furthering development of corporate governance systems, especially in relation to public and private sector awareness-building and education, on implementation and enforcement of standards and codes, and on areas of innovation and challenge were found especially useful.

Promulgated laws and regulations, and published standards and codes in each country that, taken together, comprise the legal and regulatory environment for private and public sector entities and the foundation for the corporate governance framework and implementation of corporate governance requirements and best practices. These comprised laws and regulations promulgated at national government level or by the relevant regulatory bodies, or by specialised agencies as relevant to their specific mandate. Also, standards and codes published by private bodies to highlight best practices for the business sector.

Publications of the country Institutes of Directors. A greater or lesser extent of publications are available, typically according to the extent the Institute assumes an active role in the range of activities that serve the development of corporate governance in their country. A number of Institutes have assumed the role of “custodian” of the country’s corporate governance code. They have also committed resources to maintain the code and to measure levels of awareness and implementation in the corporate sector. Many institutes have assumed an advocacy role, facilitating and engaging in forums to encourage public-private sector dialogue forums, to assert a collective professional voice and influence to shape development of the country-level corporate governance framework.

Other types of publications, for example news releases and press articles of contemporary relevance in the country or regional context.

² http://www.heritage.org/index/about
³ http://www.transparency.org/cpi2015
⁴ http://www.doingbusiness.org/
⁶ http://www.molbrahimmfoundation.org/iaag/
Process

The surveyed literature was evaluated for relevance and information content across a number of broad themes relevant for developing an overview and contemporary picture of the development of corporate governance in each country.

The following broad themes are addressed in each country chapter, to the extent to which they are covered in the surveyed literature:

- Brief background to describe the country's political, economic and social development, as background to and context for building an understanding of the backdrop to development of the country’s corporate governance framework and systems.
- Overview of development of corporate governance in the country, including:
  - evolution of corporate governance in the country setting
  - main components of the regulatory environment as relevant to the corporate governance framework and its implementation in the current corporate governance landscape.
- Brief explanation of the approach to compliance with corporate governance laws and regulations, standards and codes (as applicable) within the country.
- Coverage of emerging practices, trends and areas of leading practice in corporate governance within the country, as well as areas of challenge.
- Coverage of the outlook for further development of corporate governance in the country.

These themes provided focus for structuring the content of the 13 country chapters to achieve presentation of a brief and reasonably complete contemporary overview of the state of corporate governance in each country. A further aim was to present the results of the survey in a consistent format, both to enhance the readability of the report and its overall usefulness through achieving a level of comparability between the information presented across the 13 countries.

While the results of this survey might have been presented in a variety of alternative ways, for example, to capture various other key themes or nuances, the structure outlined above was thought to be suited to the overall purpose of presenting the high-level results of this survey as simply and consistently as possible, and also in a balanced manner. This will enable readers to obtain a high-level understanding of corporate governance in each country and across the set of countries surveyed.

Highlights of this survey and report

Immediately apparent from undertaking such a survey is that discussions of development and implementation of corporate governance frameworks are very much “alive and well” across the country-level and African regional economies, from the more sophisticated to the least developed economies. While there are many different reasons why this is true, including an individual country’s state of political and economic development and the sophistication of its regulatory environment, there are many common themes.

Clearly evident from the survey and this report is that the development of such systems is very much a journey that involves a variety of role-players across the spectrum of the political and business environment. As is already well-established in the international research literature on development of corporate governance systems, the level of political and economic development is a key influencer of the state of corporate governance in a country context.

A number of key themes emerge from reading the thirteen chapters of this report:

- Lack of a common understanding of what the concept of corporate governance means, both in the different country settings (where in some cases an emerging Afrocentric concept of corporate governance appears to resonate), and in different sector environments (e.g. public sector vs. private sector).
- The critical and unique roles of both the private-sector and the public-sector institutions and actors in successful development of effective corporate governance frameworks and systems.
- The pervasive influence of the level of economic development and economic independence at individual country level on the level of sophistication of corporate governance frameworks and systems developed and implemented in country settings.
- The need to ensure availability of capacity and resources to support sustained implementation of policy agendas and work programmes of the key institutions typically needed to co-exist with well-functioning systems of corporate governance. This includes human capital resources and specialised professional associations to support professional skills development (in particular, directors, accountants, lawyers and jurists), creating capacity and capability to support robust educational systems to sustain the supply of such resources and capabilities from within the country over time, and availability of technological capability to support effective and efficient operations of those institutions and associations.

Contemplating these factors in the context of any particular country environment often makes interesting, even exciting, reading as each of the countries surveyed has a different starting point on their common journey towards achieving a sound, well-developed system of corporate governance. Some countries are “new-adopters” of policy underpinnings for development of corporate governance systems, while others have a more established history of development of corporate governance.

Also notable is the involvement of different actors and role players in this journey: in some countries the national government is either a main or key role player with clear recognition of the contributions corporate governance makes in implementing economic development strategies, and achieving economic growth targets on a sustained basis, while in others that is not the case.
Also clearly evident is the influence of international development partners and investors, for example the World Bank Group and the International Finance Corporation (IFC), the UN Development Program (UNDP) and the African Development Bank and very many other international aid and development agencies, that both individually and collectively provide the impetus for development of corporate governance. While these institutions’ capacity building and development agendas are largely dedicated to the much larger objective of building up country- and regional-level institutions and systems for long-term sustainable economic development, oftentimes they also bring a sharp focus to the need for sound and capable institutions in both the public and private sectors. This includes maintaining sound and healthy corporate governance practices.

Accordingly, the synthesis of the literature sources surveyed for this report results in a unique story for each of the countries covered. While some countries are at a very early stage in their development of corporate governance and still working to overcome some significant hurdles at the outset, others are leading the field and able to model new avenues of corporate governance thinking of interest globally, or demonstrate implementation of corporate governance values and/or practices that are of unique importance in the African context.

The value of this publication very much lies in enabling an appreciation of the richness and variety of the corporate governance development stories of these 13 African countries, evident from this overview.

An important point to appreciate is that all of these countries have established an Institute of Directors or Institutes of Corporate Governance as part of furthering their corporate governance development journey. These Institutes play a key role, and sometimes even a leading role, in pushing the boundaries of corporate governance development forward in order to remain aligned with achieving the country’s contemporary economic and social agendas.

In this sense no single country may claim to have “arrived” in their corporate governance journey. The status overview presented for each country highlights the future development agenda in each case, either to the extent one has been communicated or where the broad direction is otherwise fairly clear based on the recent history. Whether that agenda is just to get the basics done, or to achieve a set of more ambitious future development goals, what is clear is that there is abundant scope for further development and for continued involvement by the Institutes in each country, through their various programmes and activities in the policy development, advocacy and training arenas. Accordingly, the work programme and plans of each member Institute would presumably look to address salient aspects of that future development space. In summary, corporate governance in Africa is very much an evolutionary process, just as elsewhere.

Establishing a research agenda: role of the ACGN

The ACGN serves as a unique continental platform for Africa’s many Institutes of Directors, and Institutes of Corporate Governance, to share and compare information and research on the benefits and successes, challenges and impediments, and strategies and approaches deployed by country-level Institutes in the course of embedding effective corporate governance practices and serving their role towards society.

The ACGN member Institutes also share a number of common aims, the first of which is to nurture and sustain that core ingredient of all sound and effective corporate governance systems: an adequate availability of persons of appropriate calibre, competency, independence and leadership capability to contribute their professional and business skills towards conducting those types of collective activities that create value in society on a sustainable basis. The latter aim of sustainable value creation may be simply summarised as “fostering good business” in the private sector context, and similarly as “delivering public value against the specific public management mandate in accordance with probity principles” in the public sector context.

In developing an ACGN research agenda aimed at developing a body of knowledge, understanding and appreciation of both the ordinary and the unique aspects of corporate governance frameworks and practices in the African setting, there is much merit in considering a diverse research agenda. One that not only looks to include the types of benchmarking research activities that would help interested parties to understand “how Africa is doing” at country, regional and continental levels, but also one that looks to create a good understanding of the unique cultural and societal influences on corporate governance and frameworks at the country and regional levels in Africa. The unique contribution that can be made in so doing would be to develop an African body of research dedicated to exploring the established theory in existing corporate governance research that (given the varying legal, economic, social and cultural circumstances that are present in different country settings, and particularly relevant for countries classed as developing countries, development of country and regional corporate governance frameworks) must be developed to be responsive to the country context in order to be effective. The practice of adopting frameworks used in other developed countries often fails at implementation level due, in no small part, to a failure to align with the reality of the conditions driven by the combined effect of local (national) legal, economic, cultural social and ethical contexts. Assembling a body of research that would facilitate such an understanding would be an immense contribution to the international body of research on corporate governance.

It is hoped that this initial baseline survey of corporate governance in 13 African countries within the ACGN network will serve as a useful starting point for development of the ACGN’s future research agenda. It is planned to extend this research to other countries in Africa.
Egypt

Brief background

The development of corporate governance in Egypt

Overview of the evolution of approach to compliance

Emerging practices, trends and areas of leading practice in corporate governance

Areas of challenge for corporate governance in Egypt

Outlook for further development of corporate governance in Egypt

Egyptian Institute of Directors
http://www.eiod.org
20 Emad eldin St., 2nd Floor, Ramsis, Cairo
Tel:+202 25797368

Brief background

Egypt is a middle income country and an important emerging market. It is recognised as a key political and economic player in Africa, attracting many different interests, large investment and development assistance programmes from all over the world. It holds a key geopolitical role given its central location in the Arab world, and with the Suez Canal under its control it remains an important economic hub connecting the African, European and Asian continents.

After four years of political turmoil between 2011 and 2014, Egypt embarked on a political roadmap that saw adoption of its new constitution in January 2014, completion of presidential elections in May 2014 with the country’s new president taking office from June 2014, and conclusion of parliamentary elections in December 2015.

The long-term dynamics that form the foundation of the Egyptian economy are, in principle, positive, and its economy is well diversified. Between 2004 and 2010 Egypt achieved an annual growth rate of more than 5% (culminating in 7% in 2005-2008), and approximately USD 50 billion in foreign direct investments.
In Egypt’s post-revolution period, progress in resolution of political uncertainty and significant economic adjustment efforts were seen as important factors to restore confidence and accelerate the return of private investors 4.

The new government’s program of major reform includes an economic reform programme designed to restore fiscal responsibility and drive growth, improve the business climate in Egypt and attract domestic and international investors across key sectors 5,6.

Legislative reforms designed to improve the business climate coupled with the development of key investment projects and expansion of private sector investment opportunities are stimulating growth, and are contributing to a renewed sense of optimism and confidence within business and investment circles in Egypt 7,8.

An aggressive legislative reform programme was initiated in 2014 to improve the business and investment environment, aiming to streamline key regulations, including investment law, bankruptcy law, energy law and employment law, as well as expanding private sector investment opportunities and developing key infrastructure projects. The government has issued the Microfinance Law, the Renewable Energy Law, and the Mining Law, and is currently reforming the Special Economic Zones Law, the Capital Market Law, the Electricity Law, and most importantly, the Investment Law 9.

The improved political situation following implementation of Egypt’s political reforms and the improving business outlook following its wide-ranging economic reforms, have created positive conditions for recovery of the Egyptian economy and GDP growth of in excess of 4% is expected in 2015 and 2016 10. Key sectors driving economic growth prospects are the services sector, industrial sector (mainly textiles) and the agricultural sector (mainly cotton) 11. SMEs account for about 75% of employment and 80% of GDP 12.

Egypt has seen both increased aid and increased investment inflows following its return to political stability. The 2015 EY Africa Attractiveness Survey highlighted Egypt’s position as the second-most attractive FDI destination in Africa during 2014, securing significant inflows that made it Africa’s champion for both investment and job creation in that year. The report noted the government-led focus on driving significant infrastructure projects, including the widening of the Suez Canal and building new port facilities among other things as significant boosts for the further development of Egypt’s economy 13.

Egypt has several programs intended to attract FDI into special and economic trade zones, including the Suez Canal Area Development project which seeks to transform the Suez Canal area into an international business hub, attracting investment and providing employment opportunities 14. The successful outcome of the March 2015 Egypt Economic Development Conference (EEDC), which aimed to promote investment in Egypt through highlighting the government’s new pro-investment policy and reforms, is believed to have secured over USD60 billion worth of investments, loan agreements and grants and reinforced the government’s commitment to continue the structural reforms and promote inclusive growth and restore investor confidence 15,16.

The development of corporate governance in Egypt

Overview of the evolution of corporate governance in Egypt

The history of development of Egypt’s corporate governance framework is linked to the development of its capital markets and financial sector development 17. In Egypt, stock exchanges have existed as time-honoured institutions. Egypt’s Stock Exchange, renamed the Egyptian Exchange (EGX) and formerly known as the Cairo and Alexandria Stock Exchange (CASE), comprises two exchanges, Cairo (in existence since 1903) and Alexandria (since 1883) 18,19.

A 2010 OECD report on assessment of corporate governance in Egypt, part of the OECD’s business climate development strategy for Egypt done at that time, noted that Egyptian regulators had been among the regional leaders in recognising the value of good corporate governance and promoting the concept within corporate circles. The report noted as positive factors both the overall level of development of the Egyptian capital markets vis-à-vis the rest of the region and the strong political support given to advancing the corporate governance agenda in the country.

It also noted the longstanding partnership between Egypt and the OECD and that Egypt had been cooperating with the World Bank and the IFC since 2004 in efforts to improve governance practices in Egypt 20.

The OECD report observed that much had been achieved through the Egyptian government’s reform efforts to improve the legal, regulatory, and institutional framework for corporate governance 21. In relation to the institutional landscape the Ministry of Investment (MoI), established in 2004, led and oversaw institutional reforms in Egypt’s regulatory authorities and spearheaded numerous corporate governance reform efforts. This included its support and supervision of the Egyptian Institute of Directors (EIoD) established in 2003, the region’s first professional director institute 22. In addition, through creation of a single non-bank financial regulator in 2009, the Egyptian Financial Supervisory Authority (EFSA), with increased oversight and enforcement capacity 23.
The EIoD, established under MoI to advance the corporate governance agenda, led the introduction of two governance codes—the Egyptian Code of Corporate Governance for Listed Companies in 2005 (the Code) 24 and Code of Corporate Governance for State-Owned Enterprises in 2006 25—both based on the OECD guidelines.

The corporate governance framework was further improved by revision of the Company Law and the Capital Market Law, and related Executive Regulations, and the tightening of the EGX Listing Rules 26.

Support for creation of sound corporate governance frameworks in Egypt came from both the private and the public sector. Emergence of corporate governance centres such as the EIoD and the Hawkamah Institute of Corporate Governance was a natural extension of the commencement of processes to respond to the tremendous need and demand for corporate governance education and training services and to create a stronger appetite for corporate governance in the region 27, 28. The EIoD has been active in promoting the corporate governance agenda in Egypt by raising awareness of the benefits of corporate governance and by providing training to directors 29.

Egypt has been among the pioneers in development of corporate governance codes in 2005 and 2006 following the introduction of such recommendations in developed markets. Key drivers were the desire to attract foreign investment, and effectively intermediate between Egyptian corporates on one hand and investors or banks on the other hand 30. In a region where corporate governance was a relatively nascent concept such efforts were considered nothing short of revolutionary.

The EIoD led the drafting of the Code, which the MoI and the General Authority for Investment and Free Zones (GAFI) endorsed and issued in 2005 31. The Code was intentionally not published as a mandatory code; rather it was designed to promote and regulate responsible and transparent corporate behaviour according to international best practices that existed at that time. To complement the Code, the EIoD issued its Audit Committee Manual in 2008 32, 33. An updated version of the Code was issued in February 2011 34, and since then EIoD has continued its work on refining the Code both to streamline it and to further align it with international corporate governance standards 35.

In the banking sector, in light of the global financial crisis the Central Bank of Egypt (CBE) Board of Directors sought to review and enforce the implementation of corporate governance regulations. The CBE’s corporate governance regulation applicable to all banks was launched in August, 2011, together with instructions for Egyptian banks to begin developing their governance systems to establish compliance by March 2012, applying the comply-or-explain approach 36, 37.

Recommendations for improving the effectiveness of Egypt’s corporate governance framework identified in the 2009 ROSC Report included the need to 38:

- Re-invigorate the company law reform process to streamline/combine the multitude of overlapping laws and regulations into one consistent corporate governance framework that incorporates recent trends and developments in best practices.
- Build a cadre of qualified, experienced and professional directors and owners that understand the business case for good corporate governance, and that are able to apply the legal tools, standards and best practices to effectively implement good corporate governance.
- Support the director-training programmes of the EIoD including focusing on family-owned businesses that fall outside the EGX 30.
- Further strengthen enforcement capacity of Egypt’s key market regulators.
- Improve corporate disclosure practices and transparency by requiring companies to implement the Code on a comply-or-explain basis.
- Improve board practices among Egyptian companies to include processes to monitor corporate governance.
Key initiatives to promote development of corporate governance in Egypt

<table>
<thead>
<tr>
<th>Initiative</th>
<th>Year</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>Central Bank of Egypt Corporate Governance Regulation</td>
<td>August 2011</td>
<td>Applies to all banks, with compliance required from 1 March 2012. The Regulation provides a comprehensive set of corporate governance provisions to strengthen: board practices and composition, board of directors committees, internal control functions (Risk, Audit, Compliance), disclosure and transparency.</td>
</tr>
<tr>
<td>Code of Corporate Governance for Private Sector</td>
<td>February 2011</td>
<td>Updated version of the Code issued by EIoD</td>
</tr>
<tr>
<td>S&amp;P/EGX Environment, Social and Governance (ESG) Index</td>
<td>March 2010</td>
<td>Developed by the EloD, the Egyptian Corporate Responsibility Centre (ECRC) in collaboration with Standard and Poor's (S&amp;P)</td>
</tr>
<tr>
<td>Egyptian Financial Services Authority</td>
<td>2009</td>
<td>EFSA established together with its Central Department for Enforcement</td>
</tr>
<tr>
<td>ROSC: Corporate governance</td>
<td>2009</td>
<td>ROSC Report: Corporate governance Country Assessment for the Arab Republic of Egypt</td>
</tr>
<tr>
<td>Audit Committee Manual</td>
<td>2007</td>
<td>EIoD</td>
</tr>
<tr>
<td>Code of Corporate Governance for the Public Enterprise Sector</td>
<td>2006</td>
<td>Issued by EloD, Ministry of Investment</td>
</tr>
<tr>
<td>Code of Corporate Governance for the Private Sector</td>
<td>2005</td>
<td>Issued by EloD, Ministry of Investment</td>
</tr>
<tr>
<td>ROSC: Corporate Governance</td>
<td>2004</td>
<td>Established by the Ministry of Investment</td>
</tr>
<tr>
<td>Egyptian Institute of Directors</td>
<td>2003</td>
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</tr>
<tr>
<td>ROSC: Corporate Governance</td>
<td>2001</td>
<td>ROSC Report: Corporate Governance Country Assessment for the Arab Republic of Egypt</td>
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Regulatory overview

Egypt's legal framework for companies is a civil codified law system based on French civil law. Anglo-American common law concepts prevail in the capital market. The primary laws, regulations, and decrees that comprise Egypt's corporate governance framework are:

- the Company Law (Law 159/1981 and Law 159/1984, as amended, and Executive Regulations No. 96 of 1982), which regulate incorporation and management of all Egyptian companies;
- the Capital Market Law (Law 95/1992, as amended, and its Executive Regulations No. 135 of 1993) (the "CM Law"), which regulates EGX and capital markets issues affecting all Egyptian companies (whether listed or not);
- the Public Business Sector Law No. 203 of 1991 which governs incorporation of public business sector entities; and
- the Investment Law No. 8 of 1997 (as modified by Law 94 of 2005).
The Central Depository Law No. 93 of 2000 regulates trading of securities in respect of registration, clearance and settlement procedures.

In 2007 the Capital Markets Authority (now EFSA) issued governance rules (the “EFSA Rules”) that must be followed by all companies incorporated under the Capital Market Law (that is, companies that perform one or more of the capital market activities as set out in that Law). The EFSA Rules include further governance requirements in relation to, inter alia, the composition of the board of directors, structure of the mandatory board sub-committees, disclosure requirements, conflict of interest and internal trading, dividend distribution and internal supervision.

The Listing Rules for EGX-listed companies are contained in Decree No. 30 of 2002 of the CMA’s Board of Directors on Securities and De-Listing Rules of the Cairo and Alexandria Stock Exchanges as amended in 2008, 2009, 2010 and 2011, which regulate all matters relating to the listing of securities on EGX, including eligibility criteria and ongoing compliance obligations once listed. (Listing Rules)

The Companies Law applies to domestic and foreign investment in sectors not covered by the Investment Law.

 Presidential Decree 17/2015 issued in 2015 to reform many of Egypt’s investment-related laws and also the company law, introduced reforms in key areas including: extending corporate veil protection to senior executives of companies; trimming customs duties; establishing additional forums for investor-state disputes; and setting the foundation for a true “one-stop-shop” business registration system to better facilitate investment

The principle institutions tasked with enforcing the legal and regulatory framework are:

- the MoF oversees all non-bank financial institutions;
- the Companies Department of GAFI supervises implementation of the Company Law including company formation and regulation;
- the EFSA (previously CMA) is the securities market regulator with responsibility for supervising non-bank financial institutions and markets including the capital and derivatives markets, as well as activities related to insurance services, mortgage finance, financial leasing, factoring, and securitization;
- the EGX has the authority to enforce the EGX Listing Rules; and
- the Central Bank of Egypt supervises and regulates banks.

The GAFI also has a role in regulating and facilitating investment in Egypt and serves as a liaison between investors applying for business licences and government agencies.

The EFSA is recognised as an independent entity under Egypt’s new Constitution.

The EGX’s regulatory powers to enforce the Listing Rules for listed companies complement those of the EFSA, and the EGX has relatively more powers to enforce compliance by listed corporate entities compared with other securities exchanges in the region. For example it can issue regulatory decisions, issue fines on listed companies, cancel transactions if relevant laws or regulations are violated, and revoke licences of broker dealers. The EGX can also refer insider trading and market manipulation cases to the EFSA, which has the authority to conduct on-site inspections and refer cases to specialized economic courts. The EGX’s Surveillance Department also has the power to cancel executed trades in certain cases, for example when orders are placed to give a misleading picture of the liquidity or price of listed securities.

The 2009 ROSC Report acknowledged the EGX for its efforts in exercising its powers to enforce its Listing Rules, which prompted significant de-listing activity as companies exited the listed sector over the five-year period to 2009. The EGX also took action in 2010 to de-list a large number of companies, mostly for failure to comply with disclosure and free float requirements.
The current corporate governance landscape

Ownership of most companies in Egypt remains concentrated and is typically in family hands. This brings a unique set of corporate governance challenges, including the need to formalise policies, ensure succession planning, and add independence and professionalism to the board 57.

In line with the observations of the 2009 ROSC Report that Egypt’s laws and regulations do not offer companies modern corporate governance or enforcement frameworks that fully protect shareholder rights, both the 2010 OECD Report and the 2013 EBRD Report observed a need for legal reform in Egypt’s corporate laws and corporate governance infrastructure in the areas of strengthening minority shareholder rights, addressing the challenges evident from the problems arising from the concentration of ownership in Egypt’s corporate entities, clarifying director accountability and liability, and improving non-financial disclosure and transparency, especially regarding conflict of interest situations and related-party transactions 58,59.

The World Bank Doing Business Surveys have also highlighted room for improvement in this area of corporate governance in Egypt. The 2016 survey ranked Egypt 135th among 189 countries for protection of minority investors (13th among 20 MENA countries). Areas of relative weakness are identified in the director liability and shareholder suits indices (on conflict of interest regulation) and in the shareholder rights and corporate transparency indices (on shareholder governance) 60.

Approach to compliance

Compliance with corporate governance laws and regulations is enforced primarily through EFSA and EGX activity 61.

The EloD Corporate Governance Code for the Private Sector is a voluntary code but certain of its provisions are mandatory for EGX listed entities following the incorporation of certain elements of the ECGC into the EGX Listing Rules. The updated EGX Listing Rules issued in 2012 require all EGX listed firms to disclose certain financial and non-financial information on the company website. The EGX thus plays an important role in promoting good governance practices and its monitoring of implementation of this requirement showed that as of June 2014, 75% of companies were complying with this rule 62, 63.

Emerging practices, trends and areas of leading practice in corporate governance

Egypt is well acknowledged for its leadership role in demonstrating awareness of corporate social responsibility (CSR) and there are a number of organizations working to foster the development of CSR in Egypt. The MoI established the Corporate Responsibility Centre as part of the EloD, which has taken a leadership role in raising awareness of CSR issues. The Center is the UN Global Compact local network focal point in Egypt, and aims to empower businesses to develop sustainable business models as well as improve the national capacity to design, apply and monitor sustainable corporate social responsibility policies 64,65. In addition, Egypt launched the Egyptian Corporate Social Responsibility Index in 2010, the first index of its kind in the MENA region. The Index measures the volume of information companies make available on their efforts to discharge their corporate governance, environmental and social responsibilities 66,67. The Index tracks the performance of regional listed companies against over 200 indicators in 11 markets in the MENA region. The Index comprises 50 companies, and has outperformed the market every year since it was launched 68.
**Areas of challenge for corporate governance in Egypt**

Egypt is still confronted with serious political and environmental challenges as well as social disparities. The country continues to face significant financing needs and remains dependent on financial assistance, primarily from Gulf States, to provide temporary economic relief and bolster foreign reserves.\(^{69,70,71}\)

Key economic challenges are the need to address economic stagnation and poverty. With its population of more than 89 million people, Egypt is the most populated Arab country. Poverty and unemployment remain major issues, with around 20% of the population living below the poverty line.\(^{72,73,74}\)

A growing informal sector is observable, attributed to very significant regulatory costs.\(^{75}\)

The Global Competitiveness Index has showed a deterioration of Egypt's overall ranking over the last four years. Relatively low scores in relation to macroeconomic efficiency and business costs of terrorism, crime and violence are perceived to undermine the strength of Egypt's institutions. The Index also reveals relatively low scores in areas that drive economic efficiency (including higher education and training, labour market efficiency and financial market development).\(^{76}\)

Significant impediments to investment include lack of availability of foreign exchange and lengthy delays in executing foreign exchange transactions, inflexible labour rules and a mismatch between job skills and labour market demand, lack of protection of intellectual property rights and slow and cumbersome customs procedures.\(^{77}\)

Transparency International's Corruption Perceptions Index ranking of Egypt has been consistently higher relative to other countries in the region. Commentators have also noted a disparity between Egypt's de facto laws and their implementation in practice largely due to weak institutions.\(^{78}\)

In a March 2015 visit to Egypt the Head of the IMF, Christine Lagarde, referred to Egypt's “moment of opportunity” to deliver on Egypt’s aspirations to achieve stronger growth, better health and education systems, and higher standards of living for its people.

In highlighting the reform process already underway, she noted that striving to continue and complete the process to achieve these aspirations on a sustainable basis will be equally important and emphasised that the further implementation of reforms in the areas of improving the business environment in Egypt, liberalizing its trade and strengthening its financial sector are all areas where action can generate tangible results in terms of increased investment and higher growth.\(^{79}\)

**Outlook for further development of corporate governance in Egypt**

It has been noted that Egypt's future direction in improving its corporate governance infrastructure rests on making further changes both in relation to its level of compliance with internationally recognised corporate governance principles and in relation to increasing its capacity for enforcement and monitoring within its regulatory infrastructure.\(^{80,81}\)

Future development of Egypt’s corporate governance infrastructure is linked to progress being made in the country’s development agenda. The wider legislative reform process already underway in Egypt provides an avenue to further strengthen corporate governance in tandem with achieving Egypt's broader development aims.
### Selection of country assessments for Egypt

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<tr>
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<tbody>
<tr>
<td>Ranked 24th/54 countries (2014: 26th/52)</td>
<td>Economy is ranked 125th freest in the Index (economic freedom score = 56.0), a “mostly unfree” economy</td>
<td>Ranked 88th/168 (2014: 94th/175 countries)</td>
</tr>
<tr>
<td>Overall governance score = 51.3/100 (2014: 48.8)</td>
<td>Ranked 12th out of 14 countries in the MENA-region, its score is below the regional average (62.6) and the world average (60.7) scores</td>
<td>CPI score = 36/100 (2014: 37/100; 2013: 32/100)</td>
</tr>
<tr>
<td>2015 African average score = 50.1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Highest category score achieved: Human Development (score = 65.2); lowest score: Participation and Human Rights (score = 36.7)</td>
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</table>

<table>
<thead>
<tr>
<th>2015-2016 Global Competitiveness Index</th>
<th>2016 Ease of Doing Business Index</th>
<th>Economist Intelligence Unit, Business Environment Rankings</th>
</tr>
</thead>
<tbody>
<tr>
<td>An efficiency-driven economy</td>
<td>Ranked 14th/20 MENA-region countries (2015: 11/20)</td>
<td>Regional ranking: 9th out of 17 African countries covered</td>
</tr>
</tbody>
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2. The Heritage Foundation’s 2016 Index of Economic Freedom tracks 10 factors of economic freedom grouped into four broad categories, or pillars: rule of law; limited government; regulatory efficiency; and open markets, for 186 countries. [http://www.heritage.org/index/country/egypt](http://www.heritage.org/index/country/egypt)
3. Transparency International’s 2015 Corruption Perceptions Index (CPI) measures country perceptions of freedom from corruption in the public sector, ranking CPI scores for 168 countries. The CPI score indicates the perceived level of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean). [https://www.transparency.org/country/EGY](https://www.transparency.org/country/EGY)
Brief background

Ghana is the second largest economy in West Africa after Nigeria. It is the world’s second largest cocoa producer and Africa’s biggest gold producer after South Africa. Rich in natural resources, including gold, diamonds, manganese ore, and bauxite, in 2010 Ghana also joined the African league of oil-producing countries.

A stable democracy since 1992, Ghana has enjoyed increasingly stable and deepening democratic governance over the last decade. Four successful elections since 2000 have strengthened the effectiveness of key national institutions, enhanced investor confidence and anchored the new Ghana economy in an environment for positive growth. Foreign direct investment in Ghana has continued to grow owing to the environment of political stability and sound macroeconomic management.

Ghana’s population exceeds 26 million people. It manifests a liberal political economy with vibrant media, and is considered one of West Africa’s most resilient democracies. On measures of...
civil liberty, political rights and political stability it is viewed as outperforming most countries in West Africa and in the continent, and consistently ranks among the top three countries in Africa for freedom of the press and freedom of speech 8, 9, 10, 11.

Ghana attained lower middle income country status in 2012 after years of sustained growth spurred by favourable commodity prices of its main exports (gold and cocoa), the emerging oil and gas industry, inflows of foreign direct investment and robust growth in the banking sector 12, 13. Its broad-based economy has achieved an annual average growth rate of around 8% over the past six years including revenues from oil production.

Despite its impressive growth in the last decade Ghana still faces enormous challenges in its development trajectory 14, and is now at a key stage of its development as it looks to transition from a low to an emerging middle-income economy 15.

SMEs and private sector entities are significant in the economy, contributing a high percentage of the country’s GDP. SMEs constitute over 80% of businesses 16.

The business climate is considered still relatively weak and continues to hold back productive investment, particularly in manufacturing 17. Private sector development has been hampered by adverse conditions that have significantly affected business confidence. Key among those is Ghana’s energy crisis and the negative impact of inadequate power supply has been a drag on economic performance since the crisis began in 2012 18, 19. Other factors cited as most problematic for doing business in Ghana are: limited access to credit for SMEs; foreign currency regulations; tax rates; and inflation 20, 21, 22. While corruption in Ghana is perceived to be comparatively less prevalent than in other countries in the region, it remains an obstacle to FDI 23, 24, 25.

In the face of a number of current challenges for Ghana’s economy, the IMF has forecast real GDP growth at around 3.5% and 5% in 2015 and 2016 respectively 26, 27. Key factors affecting Ghana’s future economic outlook include the falling global prices of gold and oil, significant infrastructure challenges and the recent sharp decline of Ghana’s domestic currency 28, 29.

The development of corporate governance in Ghana

Overview of the evolution of corporate governance in Ghana

Ghana was among the first African countries to accede to the African Union’s African Peer Review Mechanism (APRM) and the first country to undergo the APRM review 30. The APRM Country Review Report published for Ghana in 2005 noted that despite the existence of elements of a corporate governance framework, entities in Ghana tended to operate solely with reference to the extent Companies Act, considered outdated. The level of awareness on matters of corporate governance and corporate social responsibility was considered generally low, even among company directors. The report observed that the level of application and enforcement of internationally accepted corporate governance principles was low 31.


Ghana has also undertaken two World Bank corporate governance assessments, with ROSC reports issued in 2005 and 2010 respectively, and also two assessments of its accounting and auditing standards and regulations, with those ROSC reports issued in 2004 and 2014 respectively 36, 37.

The 2010 ROSC Report for the country assessment of corporate governance in Ghana (ROSC Report) noted that extensive legal and regulatory changes occurred in the period 2005 to 2010 to further develop its legal and regulatory framework. New legislation was introduced for insurance, credit, non-bank financial institutions, alternative dispute resolution, and pensions, along with key amendments to the laws on banking and foreign investment. The SEC introduced a code on takeovers, and the Ghana Stock Exchange (GSE) set up the securities depository for listed companies to improve record keeping and transfers of securities, and launched an automated trading system 38.

The ROSC Report observed that while Ghana does well in terms of transparency and disclosure compared with other countries in Sub-Saharan Africa, it lags in equitable treatment of shareholders and especially in responsibilities of the board. It observed increases in some of Ghana’s scores for compliance with the OECD Principles, including in the areas of shareholder rights, equitable treatment of shareholders and disclosure, but also noted a decreased implementation of the Principles as relating to boards. This was explained as being in large part due to low awareness of and compliance with the SEC Code 39.

The ROSC Report highlighted several areas where key reforms are needed to further develop Ghana’s legal and regulatory infrastructure and the corporate governance framework 40. These included:

• providing the SEC with the resources and independence to
fully carry out its duties, and reviewing the governance of the SEC with the goal of increasing its independence with greater financial autonomy and direct oversight by Parliament;

• strengthening the Registrar General’s capacity to exercise its powers under the Companies Act; completing the move to electronic company records to facilitate online filing and access to records;

• revising the outdated Companies Act to increase clarity and better protect shareholder rights, including stronger requirements for the review, approval, and disclosure of related party transactions;

• mandating better disclosure of indirect and beneficial ownership by companies and shareholders, and better disclosure of trading in company shares by insiders;

• encouraging capital market development, through encouraging more listing, including for SOEs, effective implementation of pension regulation and greater institutional investor involvement in encouraging good corporate governance;

• updating and revising the SEC Code to include board responsibilities, increase non-financial disclosure, and encourage online disclosure of company information;

• raising awareness of the SEC Code, and requiring all companies to disclose their compliance with the code. Listed companies should be required to disclose their compliance on a “comply or explain” basis; and

• increasing training and awareness of corporate governance for directors and other market participants.

There is no explicit corporate governance regulation for banks in Ghana. However the Bank of Ghana (BoG) has incorporated some corporate governance rules into the Banking Act, 2004 (as amended) and published a Code of Conduct for Primary Dealers in Government Securities in 2011 41, 42.

In the public sector environment the State Enterprises Commission developed a code of corporate governance for state-owned enterprises 43. The Ghana Public Services Commission (PSC) published the Corporate Governance Manual for Governing Boards/Councils of the Ghana Public Services in 2015. The PSC Manual addresses corporate governance for public service organisations and aims to streamline the corporate governance practices of those organisations 44.

### Key Initiatives to promote development of corporate governance in Ghana

<table>
<thead>
<tr>
<th>Initiative</th>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa Corporate Governance Program launched for Ghana</td>
<td>2015</td>
<td>In collaboration with the IFC and the Swiss State Secretary for Economic Affairs SECO</td>
</tr>
<tr>
<td>Corporate Governance Manual for Governing Boards/Councils of the Ghana Public Services</td>
<td>2015</td>
<td>Issued by the Public Services Commission</td>
</tr>
<tr>
<td>Code of Conduct for Primary Dealers of Government Securities in Ghana</td>
<td>April 2011</td>
<td>Issued by the Bank of Ghana</td>
</tr>
<tr>
<td>ROSC Assessment – Corporate Governance</td>
<td>December 2010</td>
<td></td>
</tr>
<tr>
<td>ROSC Assessment – Corporate Governance</td>
<td>May 2005</td>
<td></td>
</tr>
</tbody>
</table>
Regulatory overview

Ghana's legal system is based on British common law and customary law 45.

The regulatory framework for corporate governance in Ghana largely comprises 46:

- the Companies Code 1963, Act 179, revised in 2006 and amended in 2012 47. Based substantially on the 1960 UK Companies Act, this legislation provides for governance of all companies incorporated in Ghana. However, few amendments to the Companies Act have been made since the Act was originally promulgated and accordingly the legislation is viewed by most stakeholders as being outdated 48. As part of the Ministry of Justice’s Financial Sector Strategic Plan the Companies Bill 2013 has been developed and is currently being progressed through Parliament 49;
- the Securities Industry Law of 1993, as amended by the Securities Industry Act, 2001 (Act 590), and the SEC Regulations 2003, which govern issuers and the securities industry in Ghana 50, 51; and
- the Membership and Listing Regulations of the Ghana Stock Exchange (GSE).

The SEC commenced operations in early 1999 as the regulator of the securities market and securities industry in Ghana 52. It is charged with the responsibility of developing the securities market and enforcing the Securities Industry Act to ensure a free, fair and transparent securities market which protects investors. The SEC supervises listed companies, capital market intermediaries and the GSE 53. It performs market surveillance, and conducts inspections and other monitoring activities for the various regulated market participants 54.

Established in 1989 the GSE operates as a self-regulatory organisation responsible for regulating listed companies in Ghana. It operates within a set of rules collectively called the GSE Rule Book contains the Listing Regulations (1990) that apply to all GSE-listed entities, and which the GSE also enforces 55. The rules allow for alternative dispute resolution, and require that all avenues for alternative dispute resolution be covered before a matter is taken to court 56.

Other regulatory agencies in Ghana include the Bank of Ghana (BOG) which has overall supervisory and regulatory authority in all matters relating to banking and non-banking financial institutions under the Banking Act, 2004 (Act 673) and the Non-Bank Financial Institutions Act, 2008 (Act 774). The BOG also periodically issues Notices /Directives/Circulars relating to its regulatory activities and functions 57. The BOG monitors bank corporate governance practices as part of its regular examinations and wider prudential supervision.

The State Enterprise Commission oversees corporate governance of state-owned enterprises. SOEs are established under their own enabling Acts. After a government-led programme of full and partial privatisation, relatively few SOEs remain 58. The remaining SOE sector weighs heavily on the economy due to the generally poor financial condition of these entities 59.

Development of Ghana’s financial sector and capital markets continued with the introduction of the Ghana Alternative Exchange (GAX) in 2013. The GAX provides an alternative source of financing for Ghana’s SMEs, whose main challenge over the years has been a lack of access to credit. A further positive development has been the first ever listing of the Eurobond in November 2014 60.
The current corporate governance landscape

Commenting on the prospects and challenges of corporate governance in Ghana Agyemang et al (2013) noted that while Ghana has sufficient laws and regulations for corporate governance, the major challenge is the absence of active devices for their effective enforcement. To ensure effective enforcement of existing laws and regulations concerning corporate governance the authors recommended a multi-faced strategy of improving the regulatory framework by:

- making the laws accessible to all equity holders and to the populace;
- fashioning effective mechanisms for law enforcement as well as strengthening existing enforcement mechanisms (through availability of training and resources);
- adopting use of alternative dispute resolution strategies;
- fostering a regulatory environment conducive to maintaining the will to execute policies;
- maintaining an independent judiciary; and
- encouraging media reporting of corporate governance issues and encouraging greater levels of media inquiry into matters of corporate governance 61.

Approach to compliance

Enforcement of laws and regulations that comprise Ghana's corporate governance framework is primarily the responsibility of the BOG, for registered banks, the SEC in relation to capital market participants, and the Registrar General for other companies 62. The National Pensions Regulatory Authority and the National Insurance Commission regulate pensions and insurance companies, respectively.

The 2010 and 2014 ROSC Report observed, however, that the effectiveness of these regulatory bodies is constrained, partly due to operational challenges – most particularly resource constraints. While the SEC is seen as an effective regulator, the agency lacks autonomy from government and resource constraints limit its ability to fully enforce its regulations and to perform its oversight role 63.

The SEC Code, intended as a source of good practice for listed companies, is voluntary. It states that the annual reports of companies to which it applies should contain a statement from the board as to the company’s degree of compliance with the corporate governance practices specified in the code.

The 2010 ROSC Report noted limited awareness of, and compliance with the SEC Code and recommended that all companies to which it applies should be required to disclose their compliance therewith 64.

In relation to banks, while the BOG actively monitors bank corporate governance practices as part of its regular examinations carried out for its prudential supervision role, the relevant corporate governance standards for banks are not codified in any particular regulation 65.

Corporate governance of SOEs is overseen by the State Enterprise Commission, which encourages SOEs to be managed as profit-making entities in line with limited liability companies. However loss-making SOEs continue to be subsidised by the government 66.

In relation to companies other than issuers and listed companies, the Registrar General responsible for enforcing the Companies Act is not viewed as actively applying its regulatory powers and is not seen as a source of shareholder redress 67.

In so far as Ghana’s courts are concerned there are reportedly time it takes to pursue legal disputes through the court and uncertainty of outcomes, due to resource constraints and institutional inefficiencies 68,69. Ghanaian courts are perceived as acting with increased autonomy in the past two decades, however corruption remains widespread as low salaries and scarce resources provide incentives for the judges to engage in rent-seeking behaviours 70, 71.

In 2005 the government established a Commercial Court for disposition of commercial cases. The Commercial Court also handles disputes involving commercial arbitration and other settlement awards, intellectual property rights, commercial fraud, applications under the Companies Code, tax matters and insurance and re-insurance cases. A distinctive feature is the use of mediation or other alternative dispute resolution mechanisms, which are mandatory in the pre-trial settlement conference stage of proceedings 72, 73.
Emerging practices, trends, areas of leading practice and challenges in corporate governance

Recognising that more can be done to improve the corporate governance environment in Ghana, the government has recently launched the Africa Corporate Governance Program for Ghana in collaboration with the International Finance Corporation (IFC) and SECO. The overarching goal of the programme is to, among other things, help Ghana businesses attract and retain investment.

The programme aims to improve the performance of businesses in Ghana by helping them adopt good corporate governance practices and standards adapted to regional priorities. Specifically it will help Ghanaian companies to:

- assess their businesses, operational structures and processes, and provide advice on how to improve them;
- look at the makeup of their boards, including their effectiveness, controls and governance;
- establish reporting mechanisms;
- build their capacity through training; and
- work with family-owned businesses, as well as others.

The ROSC Report noted that while basic shareholder rights are in place within Ghana’s commercial laws and regulations, enforcement challenges mean that shareholders have made limited use of their redress rights under the law. Further, the legal regime for conflicts of interest and related party transactions is viewed as confusing and narrow in scope.

Ghana is not a signatory to the OECD Convention on Combating Bribery. However it has taken steps to amend laws on public financial administration and public procurement to include anti-corruption provisions. While it is considered that Ghana has a strong legal anti-corruption framework in place, there is wide acknowledgement that its implementation in practice has remained a challenge. Addressing the perceived high levels of corruption and public cynicism towards the fight against corruption, including due to rife corruption among the judiciary, the government launched the National Anti-corruption Action Plan (NACAP) in 2014, under development from 2011, to further strengthen the governance framework and combat corruption.

Outlook for further development of corporate governance in Ghana

Ghana’s business community continues to support efforts to improve corporate governance requirements, practices and culture in the country, working with partners such as the Association of Chartered Certified Accountants (ACCA) and the IFC on various joint activities aimed at raising awareness of the value and importance of good corporate governance. There is acknowledgement of the need to strengthen Ghana’s legal infrastructure supporting corporate governance to bring Ghana into line with global best practices, including through the new Companies Bill. Also acknowledged is the need for more clarity on the enforcement channels for existing laws, and greater availability of resources for regulators to perform their enforcement functions.
Selection of country assessments for Ghana

2015 Ibrahim Index of African Governance

Ranked 7th/54 countries (2014: 7th/52)
Overall governance score = 67.3/100 (2014: 68.1)
2015 African average score = 50.1
Highest category score achieved: Participation and Human Rights (score = 76.1); lowest score: Sustainable Economic Opportunity (score = 51.3)

2016 Index of Economic Freedom

Economy is ranked the 72nd freest in the Index (economic freedom score = 63.0), a “moderately free” economy
Ranked 5th out of 46 countries in the SSA-region, its score is above both the regional average score (55.5) and the world average score (60.7)

2015 Corruption Perceptions Index (CPI)

Ranked 56th/168 countries (2014: 61st/175)
CPI Score = 47/100 (2014: 48/100; 2013 46/100)

2015-2016 Global Competitiveness Index

Ranked 119th/140 countries overall (2014-15: 111th/144)
A factor-driven economy
Top five most problematic factors for doing business:
• access to financing
• inflation
• foreign currency
• tax rates
• corruption

2016 Ease of Doing Business Index

Ranked 114th/189 countries (2015: 112th)
Ranked 11th/47 SSA-region countries (2015: 4/47)

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2 The Heritage Foundation’s 2016 Index of Economic Freedom tracks 10 factors of economic freedom grouped into four broad categories, or pillars: rule of law; limited government; regulatory efficiency; and open markets, for 186 countries. [http://www.heritage.org/index/country/ghana](http://www.heritage.org/index/country/ghana)
3 Transparency International’s 2015 Corruption Perceptions Index (CPI) measures country perceptions of freedom from corruption in the public sector, ranking CPI scores for 168 countries. The CPI score indicates the perceived level of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean). [https://www.transparency.org/country/IGHA](https://www.transparency.org/country/IGHA)
5 The World Bank’s Doing Business survey project provides objective measures of business regulations and their enforcement across 189 economies. [http://www.doingbusiness.org/data/exploreeconomies/ghana](http://www.doingbusiness.org/data/exploreeconomies/ghana)
Brief background

The development of corporate governance in Kenya

Approach to compliance

Emerging practices, trends, areas of leading practice and challenges in corporate governance in Kenya

Outlook for further development of corporate governance in Kenya

Kenya is a lower middle-income developing country in East Africa. Since independence it has maintained a leadership position among the economies of the East Africa region, especially in relation to economic performance and its well-developed financial markets.

The ninth largest economy in Africa has consistently delivered positive growth over the last decade. Given its future outlook as one of East Africa’s fastest growing economies, with growth rates in excess of 6% forecast for the next two years, the World Bank has pointed out that Kenya has the potential to realise transformative economic growth if it addresses its concurrent problems of poverty, inequality, low investment and low firm productivity.

By African and regional standards, the Kenyan private sector is large and the majority of Kenya’s GDP is attributable to private sector activities. With its dynamic private sector, a new constitution adopted in 2010, and its pivotal role in the region, it is thought to have great potential as one of Africa’s success stories.

However Kenya also faces a number of challenges in attempting to maintain its image as an attractive investment.
The development of corporate governance in Kenya

Overview of the evolution of corporate governance in Kenya

Development of corporate governance in Kenya’s post-independence era spans over two decades. Early involvement of the World Bank, the Commonwealth Secretariat, and the Private Sector Initiative for Corporate Governance to assist Sub-Saharan Africa countries put in place appropriate mechanisms to promote good corporate governance. This resulted in issuance of the Principles for Corporate governance in Kenya in 2003, developed by the Private Sector Corporation Governance Trust.

These developments coincided with Kenya’s economic reforms of the mid-1990s, and concurrent efforts by both private-sector bodies and the Kenyan government to promote further growth and development of the private sector and to improve the business climate.


Among the APRM’s recommendations were that Kenya improve the investment climate and restore its competitiveness by significantly developing infrastructure; reducing the costs of doing business, and eliminating insecurity in the country; updating the legal and regulatory framework and enforcing the capacities of professional and government supervisory institutions; and promoting micro-sized entity (MSE) and SME activities by easing business registration and improving access to finance.

There is some evidence of poor governance practices in the listed company sector in the form of governance scandals and boardroom wars that have tended to follow years of alleged poor corporate governance, corruption and mismanagement of investor funds requiring regulatory intervention that has at times put the reputation of the Capital Markets Authority (CMA) to the test. These incidents have added to concerns about how well minority investors are protected in Kenya.

The 2016 Doing Business survey has highlighted some areas of relative weakness in Kenya’s regulatory framework with respect to shareholder protection. In the 2016 survey Kenya was ranked 15th among 189 countries and 17th among the 47 Sub-Saharan Africa countries for protection of minority investors in relation to both conflict of interest regulation and shareholder governance.

The Kenyan government and the CMA are addressing these issues within the government’s broader strategic objectives to initiate policy reforms that are expected to increase the competitiveness of Kenyan business and strengthen the capital markets. A series of action plans identified under the government’s Kenya Vision 2030 Plan, the government’s development blueprint for the period 2008 to 2030, is being progressed. The broad aim is to transform Kenya into a newly industrializing, middle income country by 2030.

The current focus is to gain a stronger presence for Kenya in Sub-Saharan Africa’s growing financial services market. The government’s primary role is to provide the enabling environment for sector growth and development through an appropriate policy, legal and regulatory framework to allow mobilization of funds to respond to the diverse funding needs of the Vision 2030 Plan. The CMA accordingly developed the Capital Market Master Plan: 2014-2023 supporting achievement of the Vision 2030 and setting out policy objectives and settings to provide direction for development of the Kenyan capital market over the next 10 years. It is recognised that the success of Kenya’s financial services sector depends in large part on adoption of strong corporate governance standards supporting the capital markets.
The CMA’s Corporate Governance Blueprint was developed as a high-level strategic statement containing recommendations (together with 33 action plans addressing reforms across 6 key areas) aimed at strengthening the laws, regulations and institutions that will impact corporate governance in Kenya over the next decade 26.

The following action plans were identified for implementation in the short-term 27:

• **Updating the CMA’s Guidelines on Corporate Governance Practices by Public Listed Companies in Kenya (the Guidelines) of 2002,** to introduce best practice reforms in the areas of board operations and control, shareholder rights and minority shareholder protection, and transparency and disclosure (including improving company interaction with shareholders, investors and other stakeholders). There is also need to better shape the compliance environment for implementation of the updated corporate governance guidelines/code, including identification of mandatory requirements that are better addressed in the form of regulations or in the stock exchange listing rules. The CMA completed its public consultation process expected to be gazetted (forthcoming).

• **Updating the capital markets legal framework to address the areas of stakeholder relations issues,** including improving company interactions with their stakeholder groups, and ethics and social responsibility, including incorporating ethics management processes in companies.

• **Reviewing the resource requirements of the office of the Registrar of Companies** and completing the automation of the company filing system.

• **Providing corporate governance input into the draft Companies Bill.** Kenya’s new Companies Act was enacted in September 201528. A date has yet to be set for commencement of the legislation.

• **Addressing supervision and enforcement,** completing the de-mutualisation of the Nairobi Stock Exchange and clarification of its self-regulatory role.
<table>
<thead>
<tr>
<th>Initiative</th>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Companies Act 2015</td>
<td>September 2015</td>
<td>New company legislation gazetted (but not yet in effect)</td>
</tr>
<tr>
<td>Draft Stewardship code for Institutional Investors</td>
<td>August 2015</td>
<td>Developed and issued by the CMA Stewardship Code Committee, for public consultation</td>
</tr>
<tr>
<td>Draft Code of Corporate Governance Practices for Public Listed Companies</td>
<td>May 2014</td>
<td>Developed and issued by the CMA for public consultation; currently expected to be gazetted in the Kenya Gazette</td>
</tr>
<tr>
<td>Capital Markets Steering Committee on Corporate Governance</td>
<td>February 2014</td>
<td>A Corporate Governance Blueprint for Kenya - (Draft Kenya Corporate Governance Blueprint).</td>
</tr>
<tr>
<td>Capital Markets Master Plan</td>
<td>2013</td>
<td>Developed by the CMA</td>
</tr>
<tr>
<td>Prudential Guidelines for Institutions Licensed Under The Banking Act: CBK/PG/02 Corporate Governance</td>
<td>2012</td>
<td>Issued by the Central Bank of Kenya</td>
</tr>
<tr>
<td>Corporate Governance Guidelines for Insurance And Reinsurance Companies</td>
<td>2011</td>
<td>Issued by the Insurance Regulatory Authority</td>
</tr>
<tr>
<td>Constitution of Kenya</td>
<td>October 2010</td>
<td></td>
</tr>
<tr>
<td>Principles for Corporate Governance in Kenya and a Sample Code of Best Practice for Corporate Governance.</td>
<td>2003</td>
<td>Issued by the Private Sector Corporation Governance Trust, The Private Sector Initiative for Corporate Governance 1999 - 2003</td>
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<tr>
<td>Guidelines on corporate governance practices by public listed companies in Kenya</td>
<td>May 2002</td>
<td>Issued by the Capital Markets Authority (CMA)</td>
</tr>
<tr>
<td>Private Sector Corporate Governance Trust (PSCGT)</td>
<td>1999</td>
<td>The Centre for Corporate Governance (CCG), private sector organization established to promote the highest standards of corporate governance in African corporations and institutions through training, education, research, advocacy, monitoring, and evaluation. Renamed to the Centre for Corporate Governance in 2002</td>
</tr>
</tbody>
</table>
Regulatory overview

The CMA is Kenya’s main regulatory body for all securities market participants addressed under the Kenyan Capital Markets Act. As sole regulator of the listed company sector it plays a crucial role towards inducing good governance among all private sector market participants.

In line with these major policy developments the CMA initiated a number of regulatory measures aimed at developing the country’s securities markets including enactment of the Capital Markets (Amendment) Act No. 48 of 2013, in December 2013. Further developments during 2014/15 are:

(i) the draft Capital Markets Code of Corporate Governance 2014 (draft Code) was issued for public consultation in May 2014 (intended to replace the existing Guidelines on Corporate Governance Practices issued in 2002). An Annex to the Code indicates the mandatory requirements of the Code for public listed companies; and

(ii) the CMA approved the demutualisation of the Nairobi Stock Exchange (NSE) in June 2014, making it the second exchange in Africa to be demutualised. This reform addressed the NSE’s corporate governance, ownership and operational structures as a self-regulatory organisation, in line with global trends.

The new Companies Act 2015 was enacted in September (gazetted, but still to come into effect) to replace the Companies Act Chapter 486. The new legislation draws heavily on the Companies Act, 2006 of the United Kingdom and includes a number of new provisions affecting directors’ duties, and provisions on director disqualification and tenure.

The NSE, Kenya’s only stock exchange, has traditionally played a relatively small role in the oversight of listed companies and brokers with the CMA taking the lead role. The new regulatory environment more significant role is expected for the NSE.

The Blueprint has targeted the need for capacity building across all the regulatory agencies that play a role in the capital markets. This is a critical part of the action plans as there has been a great deal of commentary pointing to weak enforcement of laws, regulations, standards and codes as a key problem area in Kenya discouraging private-sector investment. This is thought to largely be due to constrained-capacity of some regulators for enforcement activity, although political interference is also cited as being an issue in some cases.

There has in addition been a great deal of public commentary about lack of independence, efficiency and effectiveness in Kenya’s judicial system. Further, the slow and inefficient domestic court processes represent a significant cost to doing business in Kenya, and dispute resolution processes administered through the courts are typically slow and expensive even through the specialised commercial courts.

The Kenyan government has also initiated significant reforms to address this area. The policy developments outlined above extend to addressing this through reforms to improve the quality of the judiciary and administration of the judicial system as well as promoting greater use of alternative dispute resolution mechanisms.

In addition to addressing regulatory gaps and the need for additional capacity building, the Blueprint identified areas of challenge in ensuring companies/issuers in Kenya are sufficiently incentivised to adhere to good corporate governance practice. The draft Code aims to address some of these areas (along with legislative changes needed to update the underlying legislation).

Some examples are:

- Board operations and control. There are currently no requirements or recommendations for boards to prepare and disclose key documents and policies relating to the company’s governance processes (e.g. board and committee charters); also, directors’ fiduciary duties are not explicit in the Companies Act, which may weaken their impact, and the Companies Act does not require the company’s board of directors to take account of stakeholder interests.

- Ethics and social responsibility. Kenya has scored poorly in the area of corruption. Corrupt practices are reportedly generally rooted in poor ethical standards being applied, including by directors and senior managers of companies, for example in the area of managing conflicts of interest. Mismanagement, bureaucracy, wastage, pilferage, incompetence and irresponsibility by directors and employees are reportedly among the main reasons why corporations and state corporations in particular fail to achieve their objectives.

- In the area of shareholder rights, protection of shareholders from abusive related party transactions and self-dealing is limited.

- Recommendations for institutional investors regarding the need to demonstrate accountability regarding exercising their voting rights, and their level of engagement with companies in which they own shares.
The current corporate governance landscape

Kenya's policy and regulatory reform initiatives to date have extended to revision of much of its legal and regulatory framework, including as relevant to the corporate governance framework. The changes will extend to revision of securities law, company law and corporate governance guidelines. In due course the NSE regulations and listing requirements that set out operational and procedural rules for compliance with the Capital Markets Act and related regulations and guidelines will also require amendment to ensure alignment with the updated laws and regulations 43,44.

Private sector initiatives by bodies such as the Centre for Corporate Governance, the Institute of Directors Kenya and Institute of Certified Public Accountants (ICPAK) are also thought to have made important contributions to improving corporate governance, particularly in the listed company sector. In general, there are good levels of awareness of corporate governance concepts across the business environment 45.

Approach to compliance

The extant CMA Guidelines (in effect until the CMA’s draft Code is finalised and issued) requires all listed companies and listed debt issuers to include a statement by the company/issuer’s directors in the company/issuer’s annual report as to whether the company/issuer has complied with the Guidelines. If the company/issuer was not fully compliant, the directors’ statement is required to identify the reasons for non-compliance and indicate the steps being taken to become compliant 46.

There is evidence, however, that companies have not been complying with these requirements in relation to stating their compliance, and certainly are not indicating non-compliance or steps being taken to achieve compliance. A key theme recognised in developing the CMA’s draft Code (2014) is that this approach has not been effective and that corporate governance culture needs to shift from mere adherence to rules and regulation, and “box-ticking”, to one that more fittingly captures the essence of good corporate governance and fosters a relationship of trust between companies and stakeholders 47.

The CMA’s draft Code is predicated on use of the “apply or explain” principle, recognizing that while there is need for flexibility in applying the Code, there are certain governance requirements that, as a minimum, every listed company must comply with. These requirements were identified in the Annex published together with the draft Code, and are intended to be enforceable as regulations under the CMA legislation 48.

The draft Code contains a set of proposed 29 governance principles and recommended practices (standards that flow from the principles that companies are expected to adopt as part of their governance structure and processes), addressing 7 specific governance dimensions (board operations and control; rights of shareholders; stakeholder relations; ethics and social responsibility; accountability, risk management and internal control; transparency and disclosure; supervision and enforcement). The principles encapsulate broad concepts underpinning good corporate governance that companies should apply when implementing the recommended practices. There are also guidelines supporting each recommendation, intended to assist companies in understanding and implementing the recommendation.

The new compliance approach established for companies that will be required to apply the draft Code (when effective), includes principles aimed at promoting supervision and enforcement of the Code by the CMA and by the relevant securities exchanges for listed entities. It is anticipated that compliance breaches will be sanctioned through both administrative procedure and criminal procedures, when warranted 49.
Emerging practices, trends, areas of leading practice and challenges in corporate governance

Kenya has embarked on a comprehensive regulatory and corporate reform programme set to help the country achieve the Vision 2030 target of 10% annual average economic growth. It is recognised that realising this goal requires the government and financial sector regulators to work together to create a vibrant and globally competitive financial sector that will promote a high level of savings to finance the country’s overall investment needs.

Accordingly, delivery of the CMA’s plans detailed in the Capital Market Master Plan, including those that aimed at improving corporate governance and financial reporting set out in the Corporate Governance Blueprint for Kenya, are critical foundations for achieving the Vision 2030 target 50.

In addition to these existing initiatives the Institute of Directors Kenya has entered into a 3 year partnership with the IFC, announced in April 2015 as part of the IFC’s East Africa Corporate Governance Program, to promote best practices in corporate governance among businesses and institutions 51.

Areas of challenge do exist. For example, the legal and regulatory framework in Kenya and the high costs and delays associated with certain regulatory processes have been cited as a challenge to business operations and growth in Kenya 52. These issues appear to be being addressed as part of Kenya’s wider reform efforts.

Outlook for further development of corporate governance in Kenya

In summary, there are evidently many challenges, including most importantly the pressing need to update and improve legal, regulatory and institutional arrangements to strengthen the corporate governance framework in Kenya. From the above summary of the many initiatives already underway for further development of corporate governance in Kenya, it is apparent that the Kenyan government and regulatory authorities are making significant headway in addressing these challenges, both through regulatory reform processes and through implementation of action plans already underway.
### Selection of country assessments for Kenya

<table>
<thead>
<tr>
<th>2015 Ibrahim Index of African Governance ¹</th>
<th>2016 Index of Economic Freedom ²</th>
<th>2015 Corruption Perceptions Index (CPI) ³</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ranked 14th/54 countries (2014: 17th/52)</td>
<td>Economy is ranked 115th freest in the Index (economic freedom score = 57.5), a “mostly unfree” economy</td>
<td>Ranked 139th/168 countries (2014: 145th/175)</td>
</tr>
<tr>
<td>Overall governance score = <strong>58.8/100</strong> (2014: 57.0)</td>
<td>Ranked 19th out of 46 countries in the SSA-region, its score is above the regional average score (55.5) but below the world average score (60.7)</td>
<td>CPI score = <strong>25/100</strong> (2014: 25/100; 2013: 27/100)</td>
</tr>
<tr>
<td>2015 African average score = 50.1</td>
<td>Highest category score achieved: Participation and Human Rights (score = <strong>63.3</strong>); lowest score: Safety and Rule of Law (score = <strong>53.8</strong>)</td>
<td></td>
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</tbody>
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<thead>
<tr>
<th>2015-2016 Global Competitiveness Index ⁴</th>
<th>2016 Doing Business Survey ⁵</th>
<th>Economist Intelligence Unit, Business Environment Rankings ⁶</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ranked 9th among the top 10 most competitive SSA economies</td>
<td>Ranked 9th/47 SSA-region countries (2015: 15/47)</td>
<td>Regional ranking: 14th out of 17 African countries covered</td>
</tr>
<tr>
<td>A factor-driven economy</td>
<td></td>
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<tr>
<td><strong>Top five most problematic factors for doing business:</strong></td>
<td></td>
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<tr>
<td>• corruption</td>
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<td>• access to financing</td>
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<tr>
<td>• tax rates</td>
<td></td>
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<tr>
<td>• inadequate supply of infrastructure</td>
<td></td>
<td></td>
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<tr>
<td>• inefficient government bureaucracy</td>
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</tr>
</tbody>
</table>

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² The Heritage Foundation’s 2016 Index of Economic Freedom tracks 10 factors of economic freedom grouped into four broad categories, or pillars: rule of law; limited government; regulatory efficiency; and open markets, for 186 countries. [http://www.heritage.org/index/country/kenya](http://www.heritage.org/index/country/kenya)

³ Transparency International’s 2015 Corruption Perceptions Index (CPI) measures country perceptions of freedom from corruption in the public sector, ranking CPI scores for 168 countries. The CPI score indicates the perceived level of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean). [https://www.transparency.org/country/#KEN](https://www.transparency.org/country/#KEN)


⁵ The World Bank’s Doing Business survey project provides objective measures of business regulations and their enforcement across 189 economies. [http://www.doingbusiness.org/data/exploreeconomies/kenya](http://www.doingbusiness.org/data/exploreeconomies/kenya)

Brief background

Malawi is a low income country in the central region of the African continent. The country has no history of civil war or conflict and is renowned for being a peaceful nation. It is rated the 5th most peaceful country in Sub-Saharan Africa in the 2015 Global Peace Index. It is considered a gradually maturing democracy and politically stable. The country’s 5th president in the country’s half decade of independence was elected in May 2014, under a multi-party democracy system.

Malawi is among the world’s least developed and most densely populated countries. More than half the population lives below the poverty line and urbanisation is low. Agriculture is the main source of GDP, contributing around 30% of income mainly from exported tobacco.

Malawi had a large exposure of foreign debt equal to about 30% of GDP in 2004 which was eroded by virtue of the benefits attained from debt relief under the Heavily Indebted Poor Countries (HIPC) initiative from 2006 to 2010.

Institute of Directors Malawi
http://www.iod.mw/
Through this initiative, Malawi became eligible for further debt relief from the World Bank, the IMF and the African Development Fund (ADF) under the Multilateral Debt Relief Initiative (MDRI). A total USD2.3 billion was written down in 2006 and the foreign debt to GDP ratio fell to under 30% of GDP 9,10.

In the past, Malawi has been heavily dependent on donor funding to support the national budget, with one third of the budget financed by foreign donor money. The 2015/16 national budget does not have-budgetary support from development partners. Numerous development partners are now providing more off-budget support 11.

Malawi’s ranking in the World Bank 2016 Doing Business Survey has pointed to the overall weak environment for private investment across the range of measures of the business environment. Positive reforms identified for Malawi for promoting ease of doing business have included improvements in processes in relation to starting a business and for getting access to electricity 12.

The 2015 Economic Freedom Index noted the uncertain economic environment and the poor legal and regulatory framework as among the main obstacles hindering private investment in Malawi 13.

Endemic corruption, remains a major deterrent to economic development 14,15. One report put Malawi’s income from corruption at an estimated 5% of GDP 16. The significant “Cashgate scandal” of 2013 caused an economic crisis from which the country is still recovering, and revealed the vulnerabilities of Malawi’s anti-corruption system. The resulting confidence crisis precipitated a significant loss of budgetary support from Malawi’s development partners over poor governance and corruption concerns 17,18.

In seeking to increase domestic and foreign investment Malawi has taken important steps to strengthen its business environment and institutional framework over the past few years 19,20,21. The government has committed to continuing with sound economic reforms, including reforming the public sector and strengthening the public financial management system 22,23. However delayed implementation of reforms and policy reversals associated with different political cycles remains an ongoing challenge to the sustainability of reforms 24.

In February 2015, the Malawian President launched the government’s Malawi Public Service Reform Commission. The overall aim of the Commission is to transform Malawi’s public service to facilitate creation of an effective and efficient public service, to spur economic growth through the nurturing of a market economy that is FDI-friendly, and that will facilitate long-term investments in health, education and other social programmes. To date the implementation of strategic reforms in 46 parastatal institutions has been approved, and the reforms will be effective from 1 October 2015 25,26.

The development of corporate governance in Malawi

Overview of the evolution of corporate governance in Malawi

The Institute of Chartered Accountants in Malawi (ICAM), formerly the Society of Chartered Accountants in Malawi (SOCAM) led initial discussions on corporate governance in Malawi from 1997/8. This led to the constitution of a Corporate Governance Task Force in 1998. The Task Force initiated development and adoption in 2001 of the Code of Best Practice for Corporate Governance in Malawi (the 2001 Code), drawing on the corporate governance code models of the UK and South Africa (King Report). The 2001 Code was voluntary, principles-based, and intended to apply to all enterprises in Malawi 27,28.

The Task Force also initiated establishment of the Institute of Directors of Malawi (IoDM) in 2004 29. The primary aim of the IoDM is to promote good corporate governance in Malawi, with two major objectives: being the custodian of the Malawian Corporate Governance Code (in conjunction with various other bodies designated as custodians under the IoDM’s sector specific guidelines), and promoting compliance, and education and professionalisation of directors and managers in the Malawian business community 30.

The World Bank’s 2007 Report on the Observance of Standards and Codes (ROSC Report) for its assessment of corporate governance in Malawi recommended that both the Companies Act and the Securities Act in Malawi be updated, clarified and fully harmonised with other laws and regulations in Malawi, including the Malawi Stock Exchange (MSE) Listing Rules, as part of a range of policy recommendations to address weakness in Malawi’s corporate governance and investor protection framework. Further, there was need to harmonise the 2001 Code with the company law reform process for Malawi also recommended in the ROSC Report 31.

Among other changes recommended in the ROSC Report were the need to introduce the concept of independent directors into the code, and to expressly require reporting on compliance with the code in the directors’ report accompanying a company’s statutory financial reports. The Report observed that many Malawian companies continued to refer in their annual reports to compliance with the corporate governance codes of their parent companies, especially in South Africa (King Code) and the United Kingdom (Cadbury Report) 32.

Subsequently, the IoDM constituted the National Corporate Governance Review Committee (NCGRC) to review the 2001 Code. In the interest of enhancing its applicability for various types of entities the Committee decided to develop a voluntary code comprising a set of Overarching Principles applicable to all organisations (not only companies), and a set of guidelines that would explain how those overarching provisions apply in specific cases or for specific types of entities 33.

The updated Malawi Code II Code of Best Practice for Corporate Governance in Malawi: Overarching Provisions (Malawi Code II)
was issued by the IoDM in 2010. New areas addressed included risk management, related party transactions, board evaluations, good corporate citizenship, sustainability and integrated reporting.

In the same year the Reserve Bank of Malawi (RBM) issued its Corporate Governance Guidelines for Malawian Banks (RBM Code), requiring mandatory application by all entities licensed under the Banking Act, 1989.

The NCGRC subsequently issued 5 sector specific Guidelines in 2011: for listed companies, for parastatal organisations and SOEs, for incorporated MSMEs, for unincorporated MSMEs (businesses registered under the Business Names Registration Act), and for cooperatives, associations and other membership-based organisations. These guidelines provide interpretation, best practices and additional guidance for implementation of the Malawi Code II by entities in the respective sectors. The Guideline for Parastatals and SOEs mentions that government itself should, while exerting its ownership rights and responsibilities in relation to those entities, fully respect and promote the regulatory framework and corporate governance principles for parastatal organisations and SOEs, in order to set a good example.

In addition to the issuance of the Malawi Code II and the various sector guidelines, the Malawian government has also commenced a review of key legislation, including the Companies Act and the Securities Act.

### Key initiatives to promote development of corporate governance in Malawi

<table>
<thead>
<tr>
<th>Sector specific Guidelines for:</th>
<th>2011</th>
<th>Issued by the NCGRC</th>
</tr>
</thead>
<tbody>
<tr>
<td>• listed companies</td>
<td></td>
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<tr>
<td>• parastatal organisations and SOEs</td>
<td></td>
<td></td>
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<tr>
<td>• incorporated MSMEs</td>
<td></td>
<td></td>
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<tr>
<td>• unincorporated MSMEs (businesses registered under the Business Names Registration Act)</td>
<td></td>
<td></td>
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<tr>
<td>• cooperatives, associations and other membership-based organisations.</td>
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</tbody>
</table>

| Corporate Governance Guidelines for Malawian Banks                                              | 2011 | Issued by the Reserve Bank of Malawi (RBM) |

| Malawi Code II Code of Best Practice for Corporate Governance in Malawi: Overarching Provisions | 2010 | Developed and published by the re-launched IoDM |

<table>
<thead>
<tr>
<th>ROSC Assessment - Corporate Governance</th>
<th>2007</th>
<th>ROSC Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>Following the ROSC assessment, the IoDM constituted the National Corporate Governance Review Committee (NCGRC) to review the 2001 Code</td>
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</tbody>
</table>

| Institute of Directors of Malawi                                                                | 2004 | The Corporate Governance Task Force initiated development and adoption of the Code, and establishment of the Institute of Directors Malawi (IoDM) |

| The Code of Best Practice for Corporate Governance in Malawi                                      | 2001 | Private sector initiative |

### Regulatory overview

Malawi has a common law heritage, and inherits many of its shareholder protection law from much earlier versions of UK company law.

The legal framework governing companies is the Companies Act 1984 administered by the Registrars General, which regulates non-listed private companies. The Capital Markets Development Act of 1990 (CMD Act) establishes the Reserve Bank of Malawi (RBM) as the sole regulator of securities markets, and regulates the MSE, listed companies and brokers.

The MSE is run as a self-regulatory organisation and, while owned by the RBM, is believed to maintain adequate arrangements to operate independently. RBM has delegated some regulatory powers to the MSE which plays a significant enforcement role in relation to the listed company sector. The MSE Listing Rules (issued in 2008) are an important part of the corporate governance framework and are largely harmonised with the Listing Rules of the Johannesburg Stock Exchange and other members of SADC.

Malawi’s key regulatory bodies are generally recognised as being constrained in their activities by resource and authority constraints. The ROSC Report for Malawi highlighted that the enforcement powers and resources available to the RBM are modest.
The key body with responsibility for oversight of governance of parastatals is the Department of Statutory Companies, a ministerial-level government department.

A special commercial court division of the High Court was created in 2007 to settle commercial disputes, which has significantly reduced the time taken to settle commercial disputes.\(^{42,43}\)

## The current corporate governance landscape

The ROSC Report observed that ownership of large companies in Malawi is relatively concentrated. Controlling shareholders are mainly local holding companies, along with the State and several foreign multinationals. In developing countries such ownership structures typically reflect concentrated control, which poses risk for non-controlling/minority shareholders, and in such circumstances director accountability to other shareholders becomes critical as a means to reduce the potential scope for abuse.\(^{44}\)

Malawi ranked 141st among 189 countries for protection of minority investors in the 2016 Doing Business Survey (and 17th among 47 countries in Sub-Saharan Africa). Areas of relative weakness were identified in both conflict of interest regulation indicators and shareholder governance indicators.\(^{45}\)

## Approach to compliance

The Malawi Code II containing the Overarching Provisions was developed as a principles-based, voluntary code applicable to all types of organisations in Malawi in all sectors.\(^{46}\)

The revised code and its related sector guidelines encourage organisations’ compliance with the code and encourage organisations to report on their compliance with the Code in their annual or directors’ reports, on a ‘comply or explain’ basis.\(^{47}\)

The sector guidelines that address the micro/small business sector permit use of the “apply or explain” basis of reporting, as a pragmatic and flexible implementation approach better suited to these types of entities.

Under the MSE Listing Rules listed companies are required to disclose their compliance with the Malawi Code II and the Sector Guidelines for Listed Companies in a separate section of the annual report required to be submitted to the MSE. Every listed company is required to specify any provisions that have not been adhered to along with the reasons for non-compliance.\(^{48}\)

While the code and related guidelines have voluntary status (except insofar as the Listing Rules and the RBM Guidelines require compliance reporting) it is anticipated that the encouragement to report on code compliance, if actually implemented, will enable the IoDM, and other bodies designated as custodians in relation to the code and the sector guidelines, to perform the functions monitoring and measuring compliance in Malawi.

The IoDM also expects annual reporting on the implementation of the code and guidelines by the custodians as part of the monitoring implementation to allow a periodic assessment of the extent to which they are being applied in Malawi.\(^{49}\)

This approach derived from the IoDM’s belief that a dynamic and phased approach is needed), recognising that some provisions of the sector guidelines may only be achieved over time (noted in the Sector Guidelines for Parastatals and SOEs) and also that corporate governance frameworks must evolve to remain relevant for implementation by economic participants.\(^{50}\)

As is signalled in research studies on enforcement of corporate governance best practice in voluntary and mandatory settings, the risks of adopting a strategy of voluntary application warrant careful consideration, particularly in relation to ensuring there is adequate capability to monitor and address areas of non-compliance.
Emerging practices, trends, areas of leading practice and challenges in corporate governance

Lipunga (2014) reviewed the extent of disclosure provisions of international best practice codes (i.e. the OECD Principles of Corporate Governance) present in the Malawi Code II and identified an “incorporation gap” (not present to the same degree in the RBM Code). Lipunga underlines the importance of maintaining disclosure provisions of the Malawi Code II on a par with international best practice benchmarks, citing Malawi’s status as a developing country and the need to attract private and foreign investment as critical considerations to be mindful of in further developing the Malawi Code II. Referencing the need often cited in the African context to develop country corporate governance codes taking account of relevant country environment factors, such as the legal and financial system, corporate ownership structures, culture and economic circumstances, he highlights the risk of dilution of basic standards inherent in that process 51.

Features of the Malawi Code II and related guidelines that may positively influence its implementation are 52, 53:

• the code is structured and designed to be applicable to a broad range of organisations, not only listed companies. The guidelines are the mechanism enabling application of the overarching principles to the various sector contexts; and
• while they were developed drawing on international best practices (including as relevant for the sector context) they are also specifically designed and tailor-made to meet the challenges and needs of entities in Malawi. For example, the principle on business ethics references African values as an influencing factor.

It remains to be seen whether the system of monitoring of compliance put in place by the IoDM to be able to regularly report on how well Malawian entities are using the code and the guidelines to demonstrate observance of good corporate governance practices, will work and whether it will show adequate compliance levels.

In relation to achieving better levels of compliance in the listed entity sector, given the historically weak levels of compliance with some parts of the Listing Rules (for example concerning large and related party transactions), the ROSC Report recommended, that the MSE consider providing training programmes for company secretaries, directors and managers to heighten awareness of their responsibility for compliance 54.

Among the greatest challenges faced in Malawi are in the parastatal sector. While governance has improved in recent years as boards have become more professional, many boards continue to have high turnover and low calibre 55. High levels of corruption in both the private and public sector are also considered a major deterrent to economic development 56.

Outlook for further development of corporate governance in Malawi

The last two years has seen a reinvigoration of reform efforts to improve the business regulatory environment in Malawi. Several business laws that were pending for many years were enacted in 2013/14 with a view to addressing major regulatory obstacles to enable the business environment, and to promoting sustained and inclusive private sector growth and development 57.

Further corporate governance reforms aimed at improving adherence not only with Malawi’s national corporate governance codes and guidelines but also with international best practice in good corporate governance (for example, as benchmarked in the Ease of Doing Business surveys) will have an important influence on private investment levels contributing to much needed economic growth in Malawi 58.
## Selection of country assessments for Malawi

<table>
<thead>
<tr>
<th>Assessment</th>
<th>Ranking and Source</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Highest category score achieved: Safety and Rule of Law (score = 64.0); lowest score: Sustainable Economic Opportunity (score = 45.6)</td>
</tr>
<tr>
<td><strong>2016 Index of Economic Freedom</strong></td>
<td>146th, mostly unfree economy</td>
<td>Economy is ranked freest in the Index (economic freedom score = 51.8)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ranked 36th out of 46 countries in the SSA-region, its score is below both the regional average score (55.5) and the world average score (60.7)</td>
</tr>
<tr>
<td><strong>2015 Corruption Perceptions Index (CPI)</strong></td>
<td>112th/168 (2014: 110th/175)</td>
<td>CPI score = 31/100</td>
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<tr>
<td></td>
<td></td>
<td>(2014: 33/100; 2013: 37/100)</td>
</tr>
<tr>
<td><strong>2015-2016 Global Competitiveness Index</strong></td>
<td>135th/140 countries (2014-15: 132nd/144)</td>
<td>A factor-driven economy</td>
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<tr>
<td></td>
<td></td>
<td>Top five most problematic factors for doing business:</td>
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<tr>
<td></td>
<td></td>
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<td></td>
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<td></td>
<td></td>
<td>• tax rates</td>
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<td></td>
<td></td>
<td>• inflation</td>
</tr>
</tbody>
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2. The Heritage Foundation’s 2016 Index of Economic Freedom tracks 10 factors of economic freedom grouped into four broad categories, or pillars: rule of law; limited government; regulatory efficiency; and open markets, for 186 countries. [Heritage website link](http://www.heritage.org/index/country/malawi)
3. Transparency International's 2015 Corruption Perceptions Index (CPI) measures country perceptions of freedom from corruption in the public sector, ranking CPI scores for 168 countries. The CPI score indicates the perceived level of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean). [Transparency website link](https://www.transparency.org/country/#MWI)
5. The World Bank’s Doing Business survey project provides objective measures of business regulations and their enforcement across 189 economies. [World Bank website link](http://www.doingbusiness.org/data/exploreeconomies/malawi)
Brief background

Mauritius is a southern Indian Ocean island nation. Post-independence the country established itself as a sustainable and diversified upper middle income emerging economy achieving historical annual growth rates of between 5 and 6%.

It has shown resilience to external economic shocks of the last decade sustaining consistent levels of economic growth above 3 per cent over the past few years and has one of the highest GDP per capita income levels in Africa.

Since the start of the millennium Mauritian governments have aggressively pursued free-market policies, seeking to position Mauritius as a central destination for financial and business services in the larger south-east Africa region.

Economic development has been facilitated by a stable macroeconomic environment, prudent policy decisions, and openness to competition. Adoption of open-market policies has been accompanied by the development of growing manufacturing, financial, tourism, and Information and Communication Technology (ICT) sectors that have helped to replace traditional subsistence agriculture.
Steps taken to promote private sector-led economic growth, and to create an international financial centre, include adoption of high-quality laws and regulations, low taxation and the creation of a pool of skilled professionals ⁶.

State-owned enterprises continue to play a major role in the economy, including utilities, transportation, logistics, ICT and financial services. Several listed companies are controlled by the government ⁷.

The Mauritian government associates improving the business environment and entrenching good corporate governance in the country as being among the drivers of its plans to further grow the national economy ⁸.

Over the last decade Mauritius has been improving its position in international indices for the rule of law, investment and ease of doing business ⁹.

The Index of Economic Freedom ranks Mauritius as the 10th freest economy in the 2015 index, scoring well above the regional and world average scores. The report noted that rule of law is enforced effectively within a framework of transparency and accountability, although corruption remains a concern ¹⁰.

The 2015-2016 Global Competitiveness Report highlights Mauritius as Sub-Saharan Africa’s most competitive economy. It has the region’s best infrastructure, most healthy and educated workforce, and most efficient goods market. The country’s institutions are a further asset. The Report noted however that as Mauritius moves up the development ladder, more needs to be done to unlock the areas of competitiveness conducive to a knowledge-driven economy. The Report points to the following focus areas: developing its human capital by improving the quality of higher education and training; the rate at which it adopts new technologies; and its capacity to nurture innovation ¹¹.

Today Mauritius is among the most competitive, stable and successful economies in Africa and actively seeks and attracts FDI¹². The government’s objective is for Mauritius to rank among the top 15 most investment and business friendly locations in the world over the next decade ¹³.

The development of corporate governance in Mauritius

Overview of the evolution of corporate governance in Mauritius

The 2015 African Economic Outlook Report cites Mauritius as an excellent example of how strong corporate governance can play an important role in enhancing the business environment and contributing to a stronger economy ¹⁴.

Mauritius acceded to the African Peer Review Mechanism (APRM) in 2003 thus committing, among other things, to observe good corporate governance as defined under the APRM and agreeing to be reviewed periodically by African peers. In line with this undertaking the APRM review for Mauritius was completed and the APRM Country Review Report issued in 2010 ¹⁵.

The World Bank also completed an assessment of corporate governance in Mauritius in 2009/2010. The resulting ROSC Report issued in 2010 noted that in the preceding 10 years the authorities and the private sector had established a strong legal and institutional framework for corporate governance ¹⁶.

In 2001 a modern Companies Act, based on New Zealand company law was enacted. The Bank of Mauritius (BOM) issued its first guidelines for governance of banks to establish good practice for banks (revised guidelines were issued in 2012 and 2014). Also in 2001 the Committee on Corporate Governance (CCG) was set up with the purpose of providing a framework for improved corporate governance in Mauritius. This Committee developed the Report on Corporate Governance incorporating the first Mauritian Code on Corporate Governance in 2003 ¹⁷, ¹⁸.

In 2004 the government passed the Financial Reporting Act to regulate financial reporting, and established the Financial Reporting Council and the National Committee on Corporate Governance (NCCG) as the co-ordinating body responsible for all matters pertaining to corporate governance in Mauritius, including development of the Code of Corporate Governance for Mauritius (the Code).

The NCCG published a revised version of the Code in 2004 and in 2007 issued Guidance Notes for State-Owned Enterprises to assist application of the Code in that sector ¹⁹. Under the provisions of the Act, the NCCG also established the Mauritius Institute of Directors (MIOD) as an independent legal entity in 2008 ²⁰.
The ROSC Report noted that Mauritius is perceived as an international leader in many respects, especially in the area of board practices and disclosure, viewed as being on par with many market leaders in Asia (India, Thailand and Malaysia) across most of the aspects of corporate governance as defined by the OECD Principles of Corporate Governance 21.

The Report also drew attention to a number of other areas where implementation of the Mauritius corporate governance legal and institutional framework could be improved, including 22:

- Governance of state-owned enterprises (SOEs). There is a perception that implementation of good governance practices lags behind the progress made with governance practices of private sector companies.
- Potential weakness in incomplete disclosure of ownership, control and group structures, making it difficult to understand ultimate beneficial ownership and control. This in turn limits the effectiveness of rules on conflicts of interest. It was acknowledged that, in general, obtaining information about group structures and ultimate owners is difficult in Mauritius, which is inconsistent with the otherwise very high level of transparency in corporate disclosure.
- There is a limited pool of qualified people to serve as directors on boards, as well as an observable lack of diversity in corporate boards.
- Lack of an institutional framework for public enforcement with the result that few of the legal remedies available under the Companies Act are being applied in practice. Also, there is an observable lack of formal enforcement actions in the area of corporate governance.

### Key initiatives to promote development of corporate governance in Mauritius

<table>
<thead>
<tr>
<th>Initiative</th>
<th>Year</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Code of Corporate Governance</td>
<td>2016</td>
<td>Currently being finalised by the NCCG and the Ministry of Financial Services, Good Governance and Institutional Reform for implementation in 2016</td>
</tr>
<tr>
<td>Enactment of the Good Governance and Integrity Reporting Bill, 2015</td>
<td>2015</td>
<td>New legislation to support the anti-corruption initiatives of the Mauritian government</td>
</tr>
<tr>
<td>First draft of the Revised Code of Corporate Governance</td>
<td>2014</td>
<td>Issued by the NCCG for public consultation and comment</td>
</tr>
<tr>
<td>ROSC Assessment: corporate governance</td>
<td>2010</td>
<td>ROSC Report: Corporate Governance Assessment for Mauritius</td>
</tr>
<tr>
<td>Mauritius Institute of Directors</td>
<td>2008</td>
<td>Established by the NCCG</td>
</tr>
<tr>
<td>National Committee on Corporate Governance (NCCG) established under legislation as the co-ordinating body responsible for all matters pertaining to corporate governance in Mauritius</td>
<td>2007</td>
<td>Issued Guidance Notes for State-Owned Enterprises on the Code</td>
</tr>
<tr>
<td></td>
<td>2004</td>
<td>Developed and issued a revised version of the Code</td>
</tr>
<tr>
<td>Report on Corporate Governance incorporating the first Mauritian Code on Corporate Governance</td>
<td>2003</td>
<td>Developed and issued by the Committee on Corporate Governance</td>
</tr>
<tr>
<td>Bank of Mauritius (BOM) issued guidelines for governance of banks</td>
<td>2001</td>
<td>Revised versions issued in 2012 and 2014</td>
</tr>
<tr>
<td>Committee on Corporate Governance set up</td>
<td>2001</td>
<td>Key purpose was to provide a framework for improved corporate governance in Mauritius.</td>
</tr>
</tbody>
</table>
The Report’s recommendations on key reforms to further strengthen the corporate governance framework in Mauritius, included:

- Better anchoring of the Code in the legal and regulatory framework, and working to continue to align it with the OECD Principles of Corporate Governance.
- Reforms to the SOE governance framework, including broader-based reforms to the ownership framework to improve performance.
- Improving disclosure of ownership and control, and developing new (mandatory) regulation to disclose ownership in line with new definitions.
- New approaches to improve minority shareholder representation on boards.
- Strengthening rules for related party transactions.
- Explicitly encouraging board diversity, especially in terms of gender (it was noted that at the time of the Report fewer than 2% of directors were women).
- Reforms to increase public sector enforcement and to build regulatory capacity.

Many of these areas have since been addressed, or are being addressed through improvements to the corporate governance infrastructure.

Regulatory overview

Mauritius has a hybrid legal system combining both civil and common law practices. The Code Civil Mauricien is largely inspired by the French Code Napoleon and co-exists with company law from the Anglo-Saxon legal tradition.

The legal system is generally non-discriminatory and transparent. The court system is considered relatively fair and impartial and the judiciary is perceived as independent. A Commercial Court was established in 2009 to deal with corporate and bankruptcy matters.

The Companies Act 2001 provides detailed requirements on director duties, simplified procedures for calling meetings, and mandatory use of IFRS for all public and private companies. The Act also contains provisions on protection of shareholder rights and shareholder redress.

The Financial Reporting Council (FRC), established as a statutory body in 2004, regulates the accountancy profession, oversees auditors and monitors financial reporting of public interest entities. The FRC also monitors compliance with the reporting requirements of the Code.

The Bank of Mauritius (BOM) licenses and supervises banks. The Financial Services Commission (FSC) regulates and supervises listed issuers, insurance companies and non-bank financial institutions. It also oversees the Stock Exchange of Mauritius (SEM). The SEM enforces compliance with its listing rules.

Both the BOM and the FSC are designed to function as independent agencies and have established reputations for being relatively transparent and effective.

The Code has been viewed as a key part of the legal and regulatory framework in Mauritius. It applies, by its own definition, to all public interest entities, including companies listed on SEM, banks and non-bank financial institutions, large public entities, state-owned enterprises including statutory corporations and parastatal bodies, and large private companies.

The Financial Reporting Act requires public interest entities (as defined in the Act, including listed issuers) to adopt corporate governance in accordance with the Code, and highlights directors’ responsibility to ensure compliance with the Code. The Code requires all entities to which it applies to disclose the extent of their compliance with the Code in a separate corporate governance section of their annual report. They must also disclose any areas of non-compliance and the reasons for non-compliance, together with alternative practices, if any, or measures being taken to ensure compliance. Among the items the Code requires are the main terms of reference and composition of board committees.

Revised versions of the BOM Guideline on Corporate Governance were issued in 2012 and in 2014, setting out the minimum standard of corporate governance expected for all financial institutions as defined in the Banking Act 2004. The Guideline is aligned with the corporate governance requirements of that Act as well as the Companies Act 2001. The Guideline requires the annual report of a financial institution to include a statement as to whether the Guideline has been adhered to, and to provide reasons in any instances where it is not adhered to.

The Mauritius Institute of Directors has grown rapidly in size and influence and is a key driver of development of professionalism in the director community in Mauritius.

The mission of the MIOD is:

“to champion best business practices and effective corporate governance, supporting Mauritius as a regional leader; and to be the voice of Directors, through training and certification programmes, workshops and networking events, advocacy, research and thought leadership, reaching out to both private and public sector enterprises.”
The current corporate governance landscape

Following the World Bank and the APRM reviews of corporate governance in Mauritius and the resulting reports that pointed to the need to further improve Mauritius’ corporate governance framework in a number of areas including better compliance with the Code (see further discussion below), the Mauritian Ministry of Finance and Economic Development commenced a process to revise the Code in 2014.

The NCG released a first draft of the new Code of Corporate Governance for public consultation and comment in late 2014. A process of significant public consultation on the new Code ensued leading up to the third and final draft of the Code currently with the Ministry of Financial Services, Good Governance and Institutional Reform, for review and approval. The new Code is expected to be published in 2016.

Approach to compliance

One of the FRC’s statutory functions is to monitor compliance with the reporting requirements specified in the Code of Corporate Governance and in any other guidelines issued by the NCG.

Both the ROSC and APRM Reports had highlighted a significant level of non-compliance with the Code and its disclosure provisions. The Reports respectively recommended that the FRC should aim to achieve full compliance with the Code including through monitoring compliance with corporate governance reporting in company annual reports.

In general entities in Mauritius are required to apply the Code on the “comply or explain” basis, i.e. compliance with the Code is voluntary and an entity may choose not to comply, with disclosure of the entity’s level of compliance in its annual financial report.

In 2013 the FRC published guidelines for public interest entities to clarify the Financial Reporting Act requirement for public interest entities to adopt corporate governance in accordance with the Code – including a template statement by the entity’s directors about the entity’s compliance. A further guideline was issued to clarify the requirement of that Act for the entity’s auditor to report on the extent of the entity’s compliance with the Code as disclosed in the entity’s annual report, and whether the disclosure is consistent with the requirements of the Code.

In order to address the issue of compliance more substantively, the new and substantively revised Code to be issued in 2016 will recommend compliance with the Code on an “apply and explain” basis, i.e. entities to whom the Code applies are required to apply the Code and to specifically indicate how they have applied the Code as well as explain any areas where they are not compliant.

Emerging practices, trends and areas of leading practice in corporate governance

A laudable attribute of the Mauritian approach to developing legislation, regulations, standards and codes noted in the ROSC Report is that significant consultation processes are usually followed in the development stage for new and revised laws and regulations, ahead of their enactment or promulgation. It was noted that an adequate consultation period is usually provided to obtain stakeholder input through comments and suggestions. The same consultative process appears to have been followed in relation to the development of the new Code of Corporate Governance for Mauritius (forthcoming) prior to reaching the stage of final review and approval by the government.

The ROSC Report noted that financial reporting is considered to have significantly improved in recent years, and compliance with both International Financial Reporting Standards (IFRS) and the International Standards on Auditing (ISAs) are relatively high, particularly by emerging market standards. In addition to financial statements, an entity’s annual report must include a variety of non-financial disclosures, many recommended by the Code. Many companies make significant disclosures about governance structures and policies, especially those participating in the capital market.
Further, stakeholder issues have become increasingly visible in Mauritius and the Mauritian corporate governance framework has undergone significant transformation in recognition and protection of both employee and creditor rights, including significant reform to the insolvency framework. There has also been a strong push towards corporate and social responsibility 45, and the MIOD notes that many Mauritian companies are also now adopting Integrated Reporting.

Areas of challenge for corporate governance in Mauritius

Both the APRM and the ROSC Reports highlighted a number of areas of challenge for Mauritius in entrenching good corporate governance practices and emphasised the need for the relevant authorities to consider better ways to enforce compliance with the existing laws and regulations, standards and codes that comprise the corporate governance framework in Mauritius 46,47. It was recommended also that the Mauritius authorities further improve public sector governance and reporting. Both reports also highlighted the need to address some aspects of basic shareholder rights under the Companies Act and to introduce measures to better address protection of the rights of minority shareholders.

Addressing the need to strengthen Mauritius’ anti-corruption infrastructure the 2015 Index of Economic Freedom noted that Mauritius’ generally positive reputation for transparency and accountability has been hurt by several high-profile corruption scandals 48.

A 2014 Transparency International Report noted that various indices measuring perceptions of freedom from corruption have recorded increased perceptions of corruption, more especially at government and municipal level. While overall Mauritius is viewed as having a strong legal framework to curb corruption and implementation is generally good, a number of areas for improvement were noted including the need to further strengthen the impact of anti-corruption legislation in both the public and the private sector 49.

Related to controlling corruption the ROSC Report noted the lack of legislation or regulation in Mauritius on whistle blower protection and that the Companies Act, the Code and the SEM Listing Rules are all silent on this issue. The absence of formal requirements and of safe harbours for whistle blowers was thought to explain the near absence of reports of illegal practices by corporate officers and ensuing litigation 50.

A recent government initiative to address deficiencies in the current legislative framework and to stimulate performance in public and private sector organisations through effective reporting and other processes is the enactment in December 2015 of the Good Governance and Integrity Reporting Act , 2015. This new legislation seeks to promote a culture of integrity and good governance in Mauritius through a range of statutory measures 51.

Outlook for further development of corporate governance in Mauritius

As noted above, the ROSC Report confirmed that Mauritius had undertaken a variety of important reforms in recent years, and is viewed as having institutions and laws that reflect, and even set, international good practice. The Report noted that the key reforms recommended for Mauritius were largely focused on achieving better implementation of the existing framework, rather than major changes. It expressed the view that undertaking the recommended reforms would help to reinforce Mauritius’ reputation as a safe and secure international financial centre, help supervisors to protect investors and maintain financial stability, particularly during the period of international uncertainty, and improve governance in parastatal companies 52.

The anticipated issuance of the new Code during 2016 and its subsequent implementation within the wider legal and regulatory framework already in place in Mauritius, is expected to largely address many of those recommended reforms.
Selection of country assessments for Mauritius

**2015 Ibrahim Index of African Governance**

Ranked **1st** in this index - Mauritius has retained this rank placement in every year since 2000

Overall governance score = **79.9/100** (2014: 80.7)

2015 African average score = 50.1

Highest category score achieved: Human Development (score = **85.7**); lowest score: Participation and Human Rights (score = **73.8**)

**2016 Index of Economic Freedom**

Economy is ranked the **15th** freest in the Index (economic freedom score = 74.7), a “mostly free” economy

Ranked **1st** out of 46 countries in the SSA-region, its score is above both the regional average score (55.5) and the world average score (60.7)

**2015 Corruption Perceptions Index (CPI)**

Ranked **45th/168** countries

CPI Score = **53/100**

(2014: 54/100; 2013: 52/100)

**2015-2016 Global Competitiveness Index**

Ranked **46th/140** overall (2014-15: 39th/144)

Ranked **1st** among the top 10 most competitive SSA economies

Transitioning to an innovation-driven economy

Top five most problematic issues for doing business:

- inefficient government bureaucracy
- insufficient capacity to innovate
- inadequately educated workforce
- access to financing
- poor work ethic in labour force

**2016 Ease of Doing Business Index**

Ranked **32nd/189** countries (2015: 31st)

Ranked **1st/47** SSA-region countries (2015: 1/47)

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1 The Mo Ibrahim Foundation’s 2015 Ibrahim Index of African Governance measures the quality of governance in 54 African countries across 4 categories of governance performance indicators (with 14 sub-categories): safety and rule of law; participation and human rights; sustainable economic opportunity; and human development.

http://static.moiibrahimfoundation.org/u/2015/10/02201418/33_Mauritius.pdf

2 The Heritage Foundation’s 2016 Index of Economic Freedom tracks 10 factors of economic freedom grouped into four broad categories, or pillars: rule of law; limited government; regulatory efficiency; and open markets, for 186 countries.

http://www.heritage.org/index/country/mauritius

3 Transparency International’s 2015 Corruptions Perceptions Index (CPI) measures country perceptions of freedom from corruption in the public sector, ranking CPI scores for 168 countries. The CPI score indicates the perceived level of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean).

https://www.transparency.org/country#MUS

4 The World Economic Forum’s 2015-2016 Global Competitiveness Index contains an annual assessment of the factors driving productivity and prosperity in 140 countries.


5 The World Bank’s Doing Business survey project provides objective measures of business regulations and their enforcement across 189 economies.

http://www.doingbusiness.org/data/exploreeconomies/mauritius
Brief background

Mozambique is a low income developing economy currently in a period of political and economic transition. Characterised as a “post-conflict economy”, relative peace after the 16-year civil war that ended in 1992 has seen Mozambique enjoy a remarkable recovery, and the country has consistently attained high economic growth rates over the last two decades. Mozambique’s economy is now viewed as one of the most dynamic on the African continent with the expected launch of natural gas projects that promise to alter the country’s economic and social landscape dramatically.

The primary sector plays a key role in the economy, employing 80% of the population, and contributing more than 25% of GDP. Foreign direct investment, also a main driver of growth, is highly correlated with mega-projects and infrastructure development. In 2014 Mozambique received FDI flows of USD4.9 billion. Official development aid flows declined to around 9.5% of GDP in 2014 and the

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http://www.iomz.com/
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Telephone: +258 21300596
The general level of donor budgetary support was expected to drop significantly in 2015, partly due to donor concern in relation to public finance management issues 8.

The African Development Fund (ADF) is providing continued support for the government’s economic governance reforms and has approved grants worth USD 21 million over 3 years to finance Mozambique’s Economic Governance and Inclusive Growth Program Phase II (EGIGP). The objective of the operation is to support the Government’s effort in promoting inclusive and sustainable growth through (i) consolidating transparent and accountable public financial management and natural resource management frameworks; and (ii) improving the enabling environment for private sector development 9.

The 2015 Ibrahim Index of African Governance notes that, since 2011, Mozambique has shown a weakening overall governance score, one of the ten largest fallers in overall governance over this time period and the largest decline seen within Southern Africa 10.

The 2015 Index of Economic Freedom notes that despite Mozambique’s significant levels of economic growth in recent years, improvements in economic freedom have not followed, with Mozambique showing an overall decline in economic freedom over the past five years. The Index highlighted, in particular, the large score decline in management of government spending. It observes that this downward trend undermines an already weak economic foundation given Mozambique’s high poverty level and pervasive corruption in the public sector 11. The business environment is undermined by burdensome business regulations that inhibit entrepreneurship, rigid labour market regulations, an inefficient judicial system and concerns about transparency in licencing and public procurement processes 12, 13.

Business reforms undertaken in Mozambique in recent years have included positive reforms in the areas of paying taxes, registering property and resolving insolvency 14.

### The development of corporate governance in Mozambique

#### Overview of the evolution of corporate governance in Mozambique

The 2009 African Peer Review Mechanism (APRM) Country Review Report for Mozambique (APRM Report) noted that corporate governance in Mozambique is still in an “embryonic” stage. Corporate governance principles are not entrenched in the core businesses of most companies and there are no proper regulatory institutions in place dedicated to upholding such principles. Public awareness of corporate governance is low and best practice is a new concept in most businesses other than foreign-based organisations 15.

The Mozambican government’s response to the APRM Report recommendations acknowledged the need to commence initiatives to promote development of the capital market. Among the key measures envisaged were: compiling and disseminating ratified international codes and standards in corporate governance including compliance with international standards and rules for corporate governance; enhancing the regulatory framework for corporate governance; building capacity for implementing corporate governance codes, and raising public awareness of, and advocacy for professional standards in corporate governance 17.

#### Key Initiatives to promote development of corporate governance in Mozambique

<table>
<thead>
<tr>
<th>Initiative</th>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code of Corporate Governance</td>
<td>2011</td>
<td>Issued by IoD Mozambique</td>
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<tr>
<td>Code of Ethics for the Business Sector in Mozambique</td>
<td></td>
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<tr>
<td>Institute of Directors in Mozambique (Instituto de Directores de Moçambique)</td>
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<tr>
<td>The new institute held its first national corporate governance conference</td>
<td>2007</td>
<td>Private-sector led initiative to establish the IoD Mozambique, a private non-profit organisation, with support from the IFC (IFC Private Enterprise Partnership for Africa, and the Global Corporate Governance Forum).</td>
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<tr>
<td>Commercial Code</td>
<td>2006</td>
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</tbody>
</table>
Regulatory overview

The Bank of Mozambique is Mozambique’s sole regulator of the country’s capital markets, which are considered underdeveloped. The Mozambique Stock Exchange (BVM), the smallest exchange in Africa and also the smallest in the world, is regulated by the Bank but plays no active role in corporate governance of listed entities 18, 19.

Regulation of business conduct of financial institutions and listed companies in Mozambique is mainly by application of the 2006 Commercial Code. However public awareness of the Commercial Code is believed to still be at a low level 20, 21.

The APRM Report observed that the legal basis for protection of shareholders’ rights in Mozambique is in place and well-articulated in different laws and regulations, including in the 2006 Commercial Code which has legislated some of the basic practices for fair treatment of stakeholders 22.

The Report also noted a number of critical constraints that hold back fulfilment of those rights, including that:

- there is a very limited tradition of business associations or shareholding in the country on account of its history;
- the size of businesses in Mozambique is generally very small so compliance with corporate governance is viewed as relatively costly for businesses; and
- the weak judiciary system 23.

The Report noted further that a number of key areas are not addressed in the legislation, including: lack of guidance on enterprise management; annual general or extraordinary meetings; board structures and responsibilities; directors’ duties; and shares and shareholder protection 24.

It noted accordingly that the Commercial Code, being the primary legislation for regulation of corporate conduct, would need to be amended to address some additional key areas including protection of shareholder rights for shares, minority shareholder protection, codification of directors’ responsibilities and financial reporting and disclosure 25.

The current corporate governance landscape

The APRM Report’s key recommendations on the theme of corporate governance were 26:

- appointing a National Corporate Governance Regulator to supervise the development of the country’s capital markets;
- developing a national code that would define a suitable model for corporate governance (taking into account corporate governance rules and structures already in place, for example under the Commercial Code);
- highlighting corporate governance and best-practice indicators in relation to financial transparency, accountability, social responsibility etc. to encourage their adoption by corporations; and
- raising capacity to enable implementation of relevant standards, codes and policies.

Also, to further develop Mozambique’s regulatory infrastructure to encourage good corporate governance practices, its laws and standards for corporate governance would need to define accountability parameters for corporations addressing the range of functions that are needed to promote development of effective corporate boards 27.

Recommendations regarding the Commercial Code were that it should be further strengthened regarding shareholder rights, protection of minority shareholders and directors’ responsibilities. In addition, public awareness of the Commercial Code needed to be further developed among the business community 28.

Mozambique’s 2013 APRM Progress Report (Progress Report) reported very modest progress made in these areas, but also mentioned some encouraging trends. In addition to the development of a corporate governance code (which appears not as yet being implemented), these included development of new laws to improve the business environment and institutional framework (including establishment of a new competition authority) and creation of professional institutions 29.

The Progress Report observed, however, that implementation of the code would not be effective without adding definitional clarity to pave the way for its operationalisation. It noted that the government has been progressing a strategy of improving the legal framework by stimulating development of professional associations (accountants and auditors, economists, directors, engineers and medical professionals) to contribute to the improvement, implementation and monitoring of the legal framework and education in relation to corporate governance 30.
Areas of challenge for corporate governance in Mozambique

The APRM Report acknowledged that while legal reforms introduced in Mozambique over the last decade, including the Commercial Code, have improved the business environment, there is still a fundamental lack of awareness of promulgated laws and regulations affecting the business environment, including as relating to sound corporate governance practices.

Private sector business is predominantly informal and unskilled, with limited understanding of corporate governance. The degree of application of the law was not considered adequate and medium-sized companies, in particular, including those registered as limited liability companies, were perceived as being less responsive to implementing corporate governance principles. There is a perception that many of these entities do not comply with shareholder agreements and rules as stipulated in the Commercial Code.

The Report accordingly noted a significant need to raise the availability and level of capacity and skills for implementation of laws, regulations and standards, codes and policies in Mozambique. The Report also noted that some of the main issues are centred on:

- the need to build nationwide awareness of business ethics, work ethics, individual ethics and integrity;
- respect for systems;
- efficiency and effectiveness;
- importance of safe-guarding national assets; and
- regulating conflict of interest in all sectors of the economy.

Various capacity-building initiatives for development of anti-corruption initiatives in Mozambique have highlighted also the critical need for political will to proactively address corruption for further development of the business environment and the regulatory system.

Outlook for further development of corporate governance in Mozambique

Mozambique’s engagement with the APRM process highlighted a number of important initial steps needed to advance development of good corporate governance practices in Mozambique, and a number of those steps are currently being implemented in the interest of strengthening the Mozambican business environment and regulatory framework.
### Selection of country assessments for Mozambique

#### 2015 Ibrahim Index of African Governance
- Ranked **21st/54** countries (2014: 22nd/52)
- Overall governance score = **52.3/100** (2014: 52.5)
- 2015 African average score = 50.1
- Highest category score achieved: Participation and Human Rights (score = **59.9**); lowest score: Sustainable Economic Opportunity (score = **45.4**)

#### 2016 Index of Economic Freedom
- Economy is ranked the **139th** freest in the Index (economic freedom score = 53.2), a “mostly unfree” economy
- Ranked **31st** out of 46 countries in the SSA-region, its score is below both regional average score (55.5) and the world average score (60.7)

#### 2015 Corruption Perceptions Index (CPI)
- Ranked **112th/168** countries (2014: 119th/175)
- CPI Score = **31/100** (2014: 31/100; 2013: 30/100)

#### 2015-2016 Global Competitiveness Index
- Ranked **133rd/140** countries overall (2014-15: 133rd/144)
- A factor-driven economy

#### 2016 Ease of Doing Business Index
- Ranked **133rd/189** countries (2015: 128th)
- Ranked **14th/47** SSA-region countries (2015: 11/47)

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2. The Heritage Foundation's 2016 Index of Economic Freedom tracks 10 factors of economic freedom grouped into four broad categories, or pillars: rule of law; limited government; regulatory efficiency; and open markets, for 186 countries. [http://www.heritage.org/index/country/mozambique](http://www.heritage.org/index/country/mozambique)

3. Transparency International's 2015 Corruption Perceptions Index (CPI) measures country perceptions of freedom from corruption in the public sector, ranking CPI scores for 168 countries. The CPI score indicates the perceived level of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean). [https://www.transparency.org/country/#MOZ](https://www.transparency.org/country/#MOZ)


Brief background

Nigeria is Africa's most populous nation with a population of over 170 million. It is ethnically and linguistically diverse with three major ethnic groups (Hausa, Yoruba and Igbo) and several minor ones.

In 2014 Nigeria surpassed South Africa as the continent's largest economy after re-basing its GDP data from 1990 to 2008, resulting in a 40% increase in its total GDP and making it among the 30th largest economies in the world.

Nigeria is Africa's largest oil producer and its oil and gas sector accounts for 11% of its GDP, but over 90% of export earnings and over 70% of government revenues. With its economy heavily dependent on oil exports, the dramatic drop in the price of crude oil from 2014 has created a significant economic challenge for Nigeria, including a foreign exchange challenge against the US dollar.

Nigeria continues to develop a robust and diversified economy driven by a strong demand in agriculture, services and manufacturing sectors, as well as exports to other Sub-Saharan countries, the US...
and Europe. The agriculture sector sustains over 80% of rural households. The country also has Sub-Saharan Africa’s largest natural gas reserves and abundant natural resources. Despite the weak business environment Nigeria remains one of Africa’s most important investment destinations, mostly in the oil sector. The UNCTAD World Investment Report 2015 reported 2014 FDI inflows to Nigeria of USD4.7 billion, the fifth largest after South Africa, Congo, Mozambique and Egypt.

Consistently strong GDP growth averaging 7% over the past decade has developed a growing consumer class and attracted considerable investor interest. The IMF noted that reduced government spending, greater tax collection and low oil prices were among factors contributing to a slowdown in real GDP growth to 4% in 2015. Real GDP growth for 2016 and 2017 is forecast by the IMF at 4.1% and 4.2% respectively.

Commentary on Nigeria’s economic potential points to much of its market potential being unrealised due to a range of significant impediments to development of the business environment. Pervasive corruption, inadequate power and transportation infrastructure, high energy costs, an inconsistent regulatory and legal environment, insecurity, a slow and ineffective judicial system, inadequate intellectual property rights protections and enforcement, and an inefficient property registration system are the main impediments.

Overview of the evolution of corporate governance in Nigeria

With the arrival of Nigeria’s new democratic government in 1999 came a government initiative to drive the country’s economic reform in the form of a medium-term strategy called the National Economic Empowerment and Development Strategy (NEEDS). The main strategic emphasis is on accelerating economic growth, reducing poverty and achieving Nigeria’s Millennium Development Goals. From this broader strategy, the Nigerian government developed its Vision 2020 agenda under which Nigeria aspires to be one of the 20 most developed economies internationally by 2020.

Among the first steps taken to address Nigeria’s corporate governance framework was to address the statutory framework. Among various new and updated legislation were: the amended Companies and Allied Matters Act (CAMA) promulgated in 1990, which established the Corporate Affairs Commission (CAC); the Central Bank of Nigeria Act, establishing the Central Bank of Nigeria (CBN) as the main regulator of banks and non-banking financial institutions; the Banks and Other Non-Financial Institutions Act of 1991 (BOFIA); and the Investments and Securities Act in 1999 (ISA). The Corrupt Practices and Other Related Offences Act was promulgated in 2000.


Combined, these legislative and code-development activities largely established Nigeria’s initial corporate governance framework in place through to 2009 with some amendments and further developments. The amended Investment and Securities Act was introduced in 2007 along with the amended Central Bank of Nigeria Act 2007.

Nigeria underwent review by the African Peer Review Mechanism (APRM) in 2008, resulting in issuance of the APRM Country Review Report for Nigeria in June 2009. The APRM report observed significant corporate governance weaknesses and challenges in the Nigerian national and corporate environment, and made recommendations on many changes needed across all areas to advance Nigeria’s corporate governance environment.
A 2007 survey of corporate governance practices in Nigerian Banks provided the baseline for commencing a 5-6 year IFC Technical Assistance/Advisory Services programme focused on various institutional building activities designed to enhance the transparency and efficiency of Nigeria’s financial sector 46.

Economic events in Nigeria from 2008 drove further developments. By the beginning of 2008 the Nigerian stock market had become significantly overvalued with a price earnings ratio of 57 (the 4th highest in the world at the time). More than 70% of the stock market capitalisation was accounted for by banks that had used margin loans to artificially inflate their share prices, a situation that wound up in a banking crisis in 2008-2009 following a stock market slump, and subsequent reform and re-regulation of the banking sector 47, 48. The Nigerian regulators’ examination of the conduct of the banking sector after the banking sector crisis pointed to systemically weak governance practices in the sector, including overall poor governance and financial reporting and disclosure practices 49, 50.

The CBN’s reforms of 2009 drove significant change addressing establishment of a comprehensive risk-based supervisory framework to address weak financial sector oversight, and to increase market confidence. The CBN issued its revised Code of Corporate Governance for Banks and Discount Houses in Nigeria in May 2014, along with Guidelines for Whistle-Blowing in the Nigerian Banking Industry 51.

The SEC initiated a review of its Code in 2008, leading to its re-issuance in 2011 52, 53, 54.

In 2010/2011 the World Bank performed an assessment of Nigeria’s observance of standards and codes for accounting and auditing. The resulting ROSC Report identified various ways to strengthen the institutional framework underpinning accounting and auditing practices and improve financial reporting in Nigeria 55. Among the key policy recommendations set out in the Report were:

- update the statutory framework of accounting, auditing and corporate financial reporting.

The national financial reporting requirements for Nigerian companies contained in CAMA were identified as being in conflict with IFRS requirements. Following this the Nigerian government announced adoption of International Financial Reporting Standards in 2012 for public listed entities and significant public interest entities.


The government’s plans to develop a comprehensive national financial and corporate reporting infrastructure for Nigeria, with appropriate monitoring and enforcement capability, were implemented in passage of the Financial Reporting Council of Nigeria Act, 2011 (the FRC Act). This legislation provided for establishment of the Nigerian Financial Reporting Council (FRC) responsible for issuing, monitoring and enforcing accounting, auditing, actuarial and governance standards in relation to Nigerian public companies and public interest entities 57.

The ROSC Report also pointed to the need for a strategic plan for the FRC to enhance its capacity and effectiveness in oversight and regulation as well as a plan for collaborative arrangements with each of Nigeria’s key financial sector regulators 58.

The FRC subsequently commenced regulatory operations in 2011 as a federal government agency, under supervision of the Federal Ministry of Industry Trade and Investment. The FRC’s regulatory scope extends to public entities and public interest entities 59.

The FRC’s broad regulatory mandate includes certain regulatory purposes and functions relating to corporate governance, as specified in the FRC Act (section 11) 60:

- to give guidance on issues relating to financial reporting and corporate governance to the professional, institutional and regulatory bodies in Nigeria (i.e. those bodies represented on the FRC Board, which include the CBN, the SEC, the Nigeria Stock Exchange (NSE) and the CAC, among others);
- to ensure good corporate governance practices in the public and private sectors of the Nigerian economy; and
- to harmonise activities of relevant professional and regulatory bodies as relating to corporate governance and financial reporting.
Following recognition of the need for a unified front to effectively monitor the practice of corporate governance in Nigeria in the post-financial crisis era the Financial Sector Regulatory Co-ordination Committee (FSRCC) set up an inter-agency committee to review and harmonise the existing corporate governance codes in Nigeria. The multiplicity of governance codes spanning different sectors had become confusing on account of there being conflicting provisions on the same subject matters in the various codes.

With the establishment of the FRC, a National Code of Corporate Governance Steering Committee was formed in 2013 with terms of reference to develop a National Code of Corporate Governance for Nigeria under the FRC’s regulatory mandate.

The Steering Committee proposed that the code should be issued in three parts:

(i) The private sector code, applicable to public companies, private companies that are holding companies or subsidiaries of public companies, and to public interest entities as defined in the FRC Act. (The proposed code is mandatory for the entities to which it applies);

(ii) The public sector code, applicable to all government ministries, departments and agencies and to all state-owned entities, parastatals and government commercial entities; and

(iii) The not-for-profit sector code, applicable to not-for-profit organisations. (The proposed code is mandatory for the entities to which it applies.)

An exposure draft of the proposed National Code of Corporate Governance was issued for public consultation in April 2015. A further revised exposure draft was released for public consultation in December 2015.
<table>
<thead>
<tr>
<th>Key initiatives to promote development of corporate governance in Nigeria</th>
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<td><strong>Africa Corporate Governance Program (AfCGP) for Nigeria</strong></td>
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<td><strong>Proposed National Code of Corporate Governance 2015</strong></td>
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<td><strong>Corporate Governance Rating System (CGRS)</strong></td>
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<td><strong>Corporate Governance Code for the Telecommunications Industry</strong></td>
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<td><strong>Code of Corporate Governance for Banks and Discount Houses in Nigeria</strong></td>
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<td><strong>ROSC Assessment: Accounting and Auditing Standards</strong></td>
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<td><strong>Revised Code of Corporate Governance for Public Listed Companies in the Nigerian Stock Exchange</strong></td>
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<td><strong>Code of Governance for Licensed Pension Operators</strong></td>
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<td><strong>National Committee for review of the 2003 SEC Code</strong></td>
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<td><strong>Nigeria Corporate Governance Program</strong></td>
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<td><strong>Code of Corporate Governance for Banks in Nigeria Post Consolidation</strong></td>
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<td><strong>Committee on Corporate Governance of Public Companies</strong></td>
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</tbody>
</table>
Regulatory overview

English law has a significant influence on Nigerian law, and the Nigerian legal system is based on the English common law and legal tradition. The regulatory framework for corporate governance is contained in key legislation including:

- CAMA, which designates the CAC to monitor compliance with CAMA;
- the Central Bank of Nigeria Act, which designates the CBN as the main regulator of banks and non-banking financial institutions, and established the FSRCC to co-ordinate the supervision of financial institutions, and the Banks and Other Financial Institutions Act;
- the Investment and Securities Act, which establishes the SEC as the apex capital markets regulator;
- the Insurance Act, which designates the National Insurance Commission (NAICOM) to regulate financial reporting by insurance companies; and
- the National Pension Commission (PENCOM) which formulates and oversees pension policy in Nigeria and regulates and supervises the private pension industry.

The NSE is licensed under the Investment and Securities Act and regulated by the SEC. The NSE's function is to regulate the listed company sector under the NSE Listing Rules. In addition, there are the corporate governance codes issued by various regulators to be applied by entities in the relevant sectors (see above).

Overview of the current governance landscape

As can be observed above, Nigeria’s corporate governance landscape has undergone much change over the last decade and a half, and changes continue to address the underlying systemic issues that have featured in the Nigerian experience of implementing corporate governance systems and practices. Among those highlighted in the 2009 APRM Report were: incompatible legal regimes, outdated statutes, legislative gaps, and ineffectual implementation of existing laws and weaknesses in oversight functions.

Notwithstanding that, there is further scope to strengthen the corporate governance framework applied and implemented in Nigeria’s corporate sector.

Coinciding with the SEC’s publication of its Nigerian Capital Market Master Plan 2015-2025, a March 2015 report on the Nigerian Capital Markets resulting from a collaborative project undertaken by the UK Foreign and Commonwealth Office’s Emerging Capital Markets Taskforce, and the NSE (Nigeria-United Kingdom Capital Markets Project), highlighted scope for strengthening Nigeria’s market infrastructure, its legal and regulatory framework and national capital market policies. The report observed that sustained actions undertaken in these areas by Nigeria’s capital market regulators would deepen Nigeria’s capital markets and enhance their attractiveness to domestic and international investments.

The outcomes of this initiative have been vaunted as having the potential to greatly impact the transformational development of the Nigerian capital market and bring economic growth to the country. Among the core themes explored in the 2015 report is the need to enhance key aspects of Nigeria’s regulatory infrastructure, including through better co-ordination among Nigeria’s financial markets regulators, and the need for co-ordination of Nigeria’s corporate governance standards, codes and rules and enforcement thereof.

The report called for establishment of a broad industry platform for all capital market operators to devise a market-based strategy for improving the ethical standards that apply in the market, and perceptions thereof, and also to drive establishment of model corporate governance and transparency standards. It observed that these actions, if implemented, would lead to improved transparency and corporate governance, lower cost of capital and improved market confidence.
Approach to compliance

A key area of weakness identified in the APRM Report was the limited implementation of oversight functions by Nigerian regulators and absence of enforcement action. With the establishment of the FRC as a new regulatory body with functions focused on enforcement of existing laws, standards and codes, this seems set to change 82 . As noted above, the FRC has been established with extensive regulatory powers and strong enforcement powers.

The FRC's proposed corporate governance codes currently under development, which are intended to be mandatory codes, incorporate a strong emphasis on information disclosure about companies’ corporate governance policies and practices, as well as requiring statements of compliance by corporate boards about the company's degree of code compliance. The scope of information disclosure mandated by the proposed codes is extensive 83 . Combined with active enforcement of code compliance by the FRC these developments would represent a significant change to the compliance regime for corporate governance in Nigeria.

The CBN has also adopted a more proactive approach to enforcement of the CBN Corporate Governance Code among the Nigerian banking sector. The Code requires banks and discount houses to render quarterly returns to the CBN on their compliance with the provisions of the CBN Code. The CBN has commenced the practice of undertaking compliance examinations and spot checks on compliance to encourage higher levels of compliance that are thought to be encouraging good results 84 .

In the realm of the private sector there are a number of initiatives positively influencing the development of corporate governance. The Institute of Directors of Nigeria and its Centre for Corporate Governance play an important role, as do the Society for Corporate Governance Nigeria 85 , the Nigerian Capital Market Institute and the Nigerian Capital Markets Solicitors’ Association 86 .
Emerging practices, trends, areas of leading practice and challenge in corporate governance

Evident from the developments outlined above is that the Nigerian government appears to be taking action to address weaknesses in the business environment, and to strengthen Nigeria’s corporate governance framework ⁸⁷.

These efforts are encouraged and assisted by Nigeria’s development partners, in particular the UK Foreign and Commonwealth Office, in respect of further development of Nigeria’s capital markets, and the IFC and Switzerland’s State Secretariat for Economic Affairs (SECO), in respect of their support for the Africa Corporate Governance Program for Nigeria. The IFC/SECO programme aims to improve business expansion and performance improvement by helping Nigerian businesses adopt good corporate governance practices and standards that are adapted to regional priorities. Such improvement will in turn help businesses to attract and retain investment, among other benefits ⁸⁸.

A further recent and innovative corporate governance development in Nigeria is the NSE’s development of a Corporate Governance Rating System (CGRS) that will rank NSE-listed companies based on their corporate governance practices and anti-corruption policies. The new rating system, introduced for the first time in November 2014, is designed to promote a more transparent business climate in Nigeria and to attract foreign investment by enabling individuals to better assess the corruption risks associated with NSE-listed companies. Rankings will reflect companies’ business policies, internal and external audit and controls, and transparency measures.

The NSE’s stated intention is to create a “Premium Board” listing major Nigerian companies that exhibit the highest standards of corporate governance, as reflected by the CGRS rankings. A further ambition is to use the CGRS rankings to develop and launch a tradable corporate governance index capturing all listed companies ⁸⁹.

Priorities for Nigeria’s economic development include investment in infrastructure, singled out as the most problematic factor for doing business in the World Economic Forum’s 2015-16 Global Competitiveness Index ⁹⁰, ⁹¹ and human capital, where poor health in the workforce and inefficient higher education holds the country back from fulfilling its potential ⁹².

While Nigeria continues to face challenges that tend to complicate and increase the cost of regulatory processes, recent actions aimed at easing these constraints are encouraging, and signal a positive future direction for Nigeria. These have included, for example, a focus on longer-term judicial reforms to strengthen the legal institutions for contract enforcement. Other issues that are significant constraints on the business environment and are being addressed by the Nigerian government include corruption, security and waning investor confidence ⁹³.

Outlook for further development of corporate governance in Nigeria

The foregoing discussion of the evolution and continuing development of Nigeria’s business environment and corporate governance framework evidence a pathway of continued development. Driving this positive trajectory is a broad awareness of the importance of sound corporate governance as an influencing factor on Nigeria’s ability to attract investment and drive economic performance and growth of its economy.
Selection of country assessments for Nigeria

**2015 Ibrahim Index of African Governance**
- Ranked **39th/54** countries (2014: 37th/52)
- Overall governance score = **44.9/100** (2014: 45.3)
- Highest category score achieved: Human Development (score = **52.0**); lowest score: Sustainable Economic Opportunity (score = **37.0**)

**2016 Index of Economic Freedom**
- Economy is ranked the **116th** freest in the Index (economic freedom score = 57.5), a “mostly unfree” economy
- Ranked **20nd** out of 46 countries in the SSA-region, its score is above the regional average score (55.5) but below the world average score (60.7)

**2015 Corruption Perceptions Index (CPI)**
- Ranked **136th/168** countries (2014: 136th/175)
- CPI Score = **26/100** (2014: 27/100; 2013: 25/100)

**2015-2016 Global Competitiveness Index**
- Ranked **124th/140** countries overall (2014-15: 127th/144)
- Transitioning from a factor-driven to an efficiency-driven economy

**Top five most problematic issues for doing business:**
- inadequate supply of infrastructure
- corruption
- access to financing
- policy instability
- inefficient government bureaucracy

**2016 Ease of Doing Business Index**
- Ranked **169th/189** countries (2015: 170th)
- Ranked **36th/47** SSA-region countries (2015: 36/47)

**Economist Intelligence Unit, Business Environment Rankings**
- Ranked **77th** out of 82 countries (2015-2019 score 4.65/10; 2010-2014 4.41/10)
- Regional ranking: **13th** out of 17 African countries covered

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2. The Heritage Foundation’s 2016 Index of Economic Freedom tracks 10 factors of economic freedom grouped into four broad categories, or pillars: rule of law; limited government; regulatory efficiency; and open markets, for 186 countries. [http://www.heritage.org/index/country/nigeria](http://www.heritage.org/index/country/nigeria)
3. Transparency International’s 2015 Corruption Perceptions Index (CPI) measures country perceptions of freedom from corruption in the public sector, ranking CPI scores for 168 countries. The CPI score indicates the perceived level of public sector corruption on a scale of 0 (very clean) to 100 (very corrupt). [https://www.transparency.org/country/NGA](https://www.transparency.org/country/NGA)
South Africa

Brief background

The development of corporate governance in South Africa

Approach to compliance

Emerging practices, trends and areas of leading practice in corporate governance

Areas of challenge for corporate governance in South Africa

Outlook for further development of corporate governance in South Africa

South Africa is an upper middle-income economy, well-established within the emerging markets group in global markets. As a BRIC country it is well integrated into the global economy, and is one of the world's largest producers and exporters of gold and platinum. It is the only African member of the G20 nations.

The second largest African economy, South Africa holds a unique position in Sub-Saharan Africa as an important regional hub with a dominant stake in intra-regional trade flows. Its regional impact is also felt through its leading role in SADC and the African Union.

South Africa has a well-established constitutional multi-party democracy. It has a bicameral parliament and an executive president elected by parliament.

The most advanced on the African continent, South Africa's diverse and mature economy is broad-based, with sophisticated banking, financial services, mining, telecommunications, agricultural, IT, commercial and industrial sectors, and a developed road, rail, airport and port infrastructure.
South Africa’s efficiency-driven economic development trajectory continues towards a knowledge-based economy with a greater focus on technology, e-commerce, retail and financial services. Outlook for economic growth is seen to reside largely in South Africa’s financial services, agriculture, forestry and fisheries sectors.

South Africa has a relatively open economy, and its government is generally open to foreign investment as a means to drive economic growth, improve international competitiveness, and access foreign markets. UNCTAD’s World Investment Report 2015 reported that South Africa remains the country in Africa that receives the most foreign investment with inward FDI of USD5.7 billion in 2014.

The financial sector is considered the most well developed on the African continent, and its sophisticated financial system is comparable with those of the major financial centres of the developed world. Globally regarded as well regulated, it also enjoys strong financial sector stability. South Africa’s deep and liquid financial markets comprise both a well-functioning equity market and healthy private sector lending capability.

The post-GFC period saw South Africa slump into a short-lived recession that was not followed by a return to earlier GDP levels. GDP growth in 2011-2013 reflected a downward trend, with the main contributing factors being persistent weak levels of trade with South Africa’s main trading partners and the negative effect of key structural weaknesses in the economy, including labour market rigidities, skills shortages and infrastructure gaps.

South Africa achieved real GDP growth of only 1.5% in 2014, attributed largely to damage to the economy caused by protracted industrial action and significantly weak demand from its trading partners. Other factors that acted as a drag on growth were the inadequate energy supply, weak domestic demand, and anaemic investment rates.

The GCI points to the need for changes to strengthen South Africa’s institutional environment to advance overall productivity and competitiveness. These include reducing corruption and the burden of government regulation, and improving the security situation. Also noted is the need to address the country’s inefficient electricity supply, and the inflexible labour market. The index also records worrisome rankings for South Africa in the spheres of health and the quality of education, where higher secondary enrolment rates will not be enough to create the skills needed for a competitive economy.

The South African government endorsed a National Development Plan (NDP) in September 2012, with two main strategic goals: to double national GDP by 2030 and to eliminate poverty and reduce inequality in South Africa’s dual economy.

The IMF’s current economic growth forecasts for South Africa are at 0.7% for 2016 and 1.8% for 2017, reflecting an economy that continues to be stuck in low gear. These low real GDP growth forecasts reflect a combination of domestic constraints and external headwinds arising from the fall in commodity prices and slowdown of the Chinese economy. South Africa’s weak growth performance has exacerbated already high unemployment, inequality, and macro vulnerabilities. A slight recovery is expected in 2017 with real GDP growth estimated at 2.4% as new electricity supply is expected to come on line.

With other African economies demonstrating more impressive forecast GDP figures, and South Africa’s forecast GDP growth the weakest among its African middle-income country peers, the position of economic influence and regional leadership South Africa has enjoyed in the Africa region is said to be in danger of declining. Despite the generally stable business environment, there are concerns about the general direction of economic policy making and structural reform issues, including the likely impact of economic disruption on South Africa’s credit rating.

The NDV envisages delivering these outcomes by boosting growth and implementing job creation strategies, with a focus on improving education for improved skills development.

In the public sector governance arena SOEs play a significant role in the South African economy, and play a lead or dominant role in key sectors such as electricity, transport (air, rail and freight) and telecommunications. The government is also implementing plans to overcome South Africa’s persistent infrastructure gap, including addressing the pressing need to upgrade the country’s power generation capacity. The National Infrastructure Plan sets out planned government expenditure on public-owned infrastructure over a three-year period from 2013/14.
The development of corporate governance in South Africa

Overview of the evolution of corporate governance in South Africa

Corporate governance has been a reasonably well-developed concept in South Africa since establishment of the King Committee in 1992, under the auspices of the Institute of Directors of Southern Africa, and release of the first King Report on Corporate Governance in 1994.

These developments were driven by South Africa’s re-admission to the global economy following its transition to a fully-fledged democracy in the early 1990s, and a growing appreciation among market participants in South Africa of the high standards of governance required for corporate entities to operate with credibility in international markets.

South Africa was among the first countries to accede to the African Peer Review Mechanism (APRM) in March 2003, and its first country review report was issued in September 2007.

Historically, South Africa’s corporate governance framework has evolved broadly in line with the Anglo-American approach to corporate governance. Post-1994, South Africa’s newly formed constitutional democracy gave prominence to economic liberalisation programmes and economic and social transformation policies and programmes, such as the affirmative action and black economic empowerment programmes. These programmes posed new compliance challenges for corporate entities.

Following the changing currents of South African’s political economy, the adoption of the wider “stakeholder responsibility” approach that has come to the fore through the various King Reports has resulted in a hybridisation of the traditional Anglo-American and Continental European corporate governance models that is entirely unique to the South African corporate governance landscape.

Due to the imperative for economic development to be broadly inclusive and the expectation of business to play its role in uplifting disadvantaged communities, South Africa’s overarching approach to corporate governance as set out in the King Reports gives significantly more prominence to a company’s balance of responsibilities owed to various groups of stakeholders (including shareholders), and encourages broad stakeholder engagement as an integral element of corporate strategy.

This first King Report (King I) was instrumental in raising public awareness about what constitutes good governance, in both the public and private sectors. Following the international trend of establishing codes of corporate governance setting out recognised best practices – commencing with issuance of the Cadbury Report in the United Kingdom in 1992 – the first King Report offered all economic role players in the South African economy a governance framework that was relevant to local circumstances, including recommended standards of conduct for boards and directors of listed companies, banks, and certain state-owned enterprises with the objective of promoting good corporate governance practices in South Africa.

Even though modelled on the Cadbury Report, King I went beyond the financial and regulatory aspects and also advocated and acknowledged an integrated approach that acknowledged the importance of all stakeholder interests by encouraging the implementation of good financial, social, ethical and environmental practice. In keeping with the local environment, King I emphasised the need for companies to become a responsible part of the societies in which they operate.

In line with this and other developments in the broader economic environment taking shape in South Africa in the 1990s, a range of new legislation was enacted to establish laws and regulations to regulate a variety of areas of business practice in South Africa, including labour practices and employment relations, environmental safety, market conduct and public financial management in public sector entities.

The Public Finance Management Act of 1999 (PFMA) was enacted to put in place an approach to financial management of public sector institutions focused on performance in service delivery, and economic and efficient deployment of state assets and resources. The government also issued the Protocol on Corporate Governance in the Public Sector to lay down comprehensive guidelines for good corporate governance in public sector institutions.

A process to review the first King Report was commenced in 2000, to evaluate its currency in light of local and international developments. Pursuant to the review, the second King Report...

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The King II Report was designed as a tool to identify the core areas of good governance for companies, corporate boards and company directors, and to elaborate on the practices of good governance as defined in law. It incorporated the King Code of Corporate Practices and Conduct. Ancillary outcomes of this review were identification of legal deficiencies in the company law regime that needed addressing, along with recommendations for consideration by the relevant authorities.

The Companies Act, 2008, as amended in 2011, and the Companies Regulations 2011 have further strengthened corporate governance for entities in the corporate sector. The Companies Act also provides scope for companies to regulate certain aspects of their existence and conduct, including as relates to arrangements for corporate governance, through its establishment document called the Memorandum of Incorporation (MoI).

The Act requires public companies and state-owned companies to have an audit committee comprising at least three non-executive directors, to be appointed by the company shareholders, and further sets out statutory functions for the audit committee. Furthermore, the Act and its accompanying regulations established the new regulatory requirement for entities of a certain size and/or economic significance, including listed companies and state-owned entities, to establish a social and ethics committee. The statutory governance functions of such committees include monitoring the company’s activities in relation to social and economic development, good corporate citizenship, the environment, health and public safety, consumer relationships and labour and employment, having regard to relevant laws and regulations, standards and codes.

In parallel with the development of the Companies Act the King Committee recognised the need to align the King Report with the corporate governance provisions of the Act and its accompanying regulations, as well as the need to further develop King II to account for a number of international developments. The Third King Report and Code (together “King III”) was published in 2009 and became effective from March 2010. King III applies to all entities: private or public sector, listed or privately-owned including non-profit entities and pension funds.

King III incorporates a set of corporate governance principles and related recommended practices that taken together form a holistic approach to governance. The philosophy of King III rests on the concepts of leadership, sustainability and corporate citizenship. King III also recommends integration of economic, social and environmental reporting to explain how the company’s business has impacted positively and negatively on its stakeholders.

A 2013 Report published in collaboration with the Institute of Directors in Southern Africa (IoDSA) by the South African Corporate Governance Research Programme, a research group within the University of Pretoria’s Albert Luthuli Centre for Responsible Leadership, explored the perceptions of South African corporates and key corporate governance figures on the corporate governance principles and recommendations established in King III. Many of the recommendations raised in this report are currently being addressed in the IoDSA’s current review of the King III Code (explained further below).

In the public sector governance sphere the Department of Public Enterprises (DPE) Minister has oversight responsibility in full or in part for eight of the approximately 300 SOEs that exist at the national, provisional and local levels. Emanating from the NDP and government policy and plans to place SOEs and state-owned development finance institutions at the heart of its economic development agenda, the Presidency established the Presidential SOE Review Committee (PRC) in 2010 with the aim of strengthening the role and delivery performance of SOEs in South Africa, to ensuring they respond to a clearly defined public mandate and support the “developmental state” aspirations of the government. The PRC’s recommendations were made public in 2013 after Cabinet approval. The recommendations included the key recommendation for the State to ensure governance policies and practices are in place in SOEs, and that effective contact is maintained between regulators, agencies, government and SOEs.
Regulatory overview

South Africa has a common law legal system, based on Roman-Dutch law with important influences from English law. The Constitution is the supreme law and entrenches basic freedoms, human rights and the independence of the judiciary.

The main sources of corporate governance requirements and guidelines that comprise the corporate governance framework in South Africa are:

- common law
- Acts of Parliament: statutory requirements for mandatory implementation of corporate governance rules and practices contained in enacted legislation and associated regulations that regulate the activities of different types of entities. Examples are the Companies Act, for companies, the Public Finance Management Act (PFMA) for public sector entities, the Municipal Finance Management Act (MFMA) for local government and related Regulations issued by the National Treasury;
- standards, codes and guidelines that promote the adoption of corporate governance best practices on a non-legislated basis, including King III and the Protocol on Corporate Governance in the Public Sector; and
- the JSE Listing Requirements for companies with securities listed on the JSE.

The legislative mandate of the South African National Treasury derives directly from the Constitution, which calls for the establishment of a national treasury to ensure transparency, accountability and sound financial controls in the management of the country’s public finances. This role is further elaborated in the PFMA.

The department is mandated to promote the national government’s fiscal policy and the coordination of macroeconomic policy; ensure the stability and soundness of the financial system and financial services; coordinate intergovernmental financial and fiscal relations; manage the budget preparation process; and enforce transparency and effective management in respect of revenue and expenditure, assets and liabilities, public entities and constitutional institutions.

The Department of Trade and Industry (DTI) is responsible for the Companies Act and Regulations, including enforcement of the legislation together with the Companies and Intellectual Property Commission (CIPC) which was also established under the Act with responsibility for registration of companies and intellectual property rights and enforcement of the provisions of the Act.

The JSE, South Africa’s only licensed securities exchange, and the largest securities exchange in Africa, is the frontline regulator for entities with securities listed on the exchange and is responsible for setting and enforcing listing and membership requirements and trading rules. The JSE regulates issuers and investors as a licensed exchange under the Financial Markets Act 2012, and is supervised by the Financial Services Board (FSB) in performance of its regulatory duties.

In 2011 the IoDSA took the important initiative of issuing the Code of Responsible Investing in South Africa (CRISA), effective in February 2012. This Code encourages adoption and implementation of sound governance practices by institutional investors in relation to the companies they choose to invest in.

With implementation of CRISA South Africa became the second country in the world, after the United Kingdom, to formally encourage institutional investors to integrate sustainability issues into their investment decisions.

Following new legislation introduced in 2013/14 to effect a streamlined “twin peaks” model for regulation and oversight of the financial sector, the Financial Markets Act, 2012, the functional separation of the prudential and market conduct mandates is performed by two regulators: the Reserve Bank as the prudential regulator, and the restructured Financial Services Board (FSB) as the dedicated market conduct regulator.

The Reserve Bank is responsible for bank regulation and supervision in South Africa with functions including issuance of banking licences to banking institutions, and monitoring their activities in terms of the Banks Act 1990 and the regulations relating thereto. Amendments to the Banks Act in 2003 and accompanying regulations further strengthened corporate governance arrangements for banks in South Africa.

The IMF’s 2015 Financial Sector Assessment Program Report on its assessment on South Africa’s Observance of the Insurance Core Principles noted the absence of explicit corporate governance requirements in South Africa’s legislation regulating insurers. In line with the IMF Report recommendation that this be addressed, the FSB issued a Board Notice in late 2014 setting out a corporate governance, risk management and internal control framework for South African insurers.

Key initiatives to promote development of corporate governance in South Africa

<table>
<thead>
<tr>
<th>Initiative</th>
<th>Year</th>
<th>Description</th>
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<tbody>
<tr>
<td>King Committee’s process is currently underway to update the King Code</td>
<td>2015 - 2016</td>
<td>The Committee announced commencement of a process to update the King Code in August 2014. A proposed “King IV” Code is expected to be issued for public comment in the first quarter of 2016.</td>
</tr>
<tr>
<td>Document/Act/Protocol</td>
<td>Year</td>
<td>Description</td>
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<tr>
<td>ROSC Assessment: Accounting and Auditing</td>
<td>2013</td>
<td>Report issued June 2013</td>
</tr>
<tr>
<td>Code of Responsible Investing in South Africa (CRISA)</td>
<td>February 2012</td>
<td>Developed and Issued by the Institute of Directors in Southern Africa, code for institutional investors</td>
</tr>
<tr>
<td>Companies Regulations 2011</td>
<td>2011</td>
<td>Issued by the DTI in April 2011; included requirement for certain entities to establish a social and ethics committee</td>
</tr>
<tr>
<td>King Report on Governance for South Africa 2009, and the Code of Governance Principles for South Africa 2009 (known as King III)</td>
<td>2009</td>
<td>Developed and issued by the King Committee; published by the Institute of Directors in Southern Africa</td>
</tr>
<tr>
<td>Companies Act, 2008</td>
<td>2009</td>
<td>New legislation enacted in February 2009, and came into effect on 1 May 2011</td>
</tr>
<tr>
<td>JSE Socially Responsible Investment Index (SRI)</td>
<td>2004</td>
<td>SRI Index for companies in the FTSE/JSE All Share Index</td>
</tr>
<tr>
<td>ROSC Assessments on the Observance of Standards and Codes: • Auditing and Accounting Assessment • Corporate Governance Country Assessment</td>
<td>2003</td>
<td>ROSC Reports issued in April and July 2003, respectively</td>
</tr>
<tr>
<td>Protocol on Corporate Governance in the Public Sector</td>
<td>2003</td>
<td>Issued by the Department of Public Enterprises (original version of the protocol was issued in 1997)</td>
</tr>
<tr>
<td>Banks Amendment Act, 2003</td>
<td>2003</td>
<td>Various amendments to the Banks Act, 1990, promulgated including provisions to strengthen corporate governance processes and provisions relating to entities regulated under the Act.</td>
</tr>
<tr>
<td>King II Report issued, incorporating the King Code of Corporate Practices and Conduct</td>
<td>2002</td>
<td>King Committee, Institute of Directors in Southern Africa</td>
</tr>
<tr>
<td>Public Finance Management Act, 1999</td>
<td>1999</td>
<td></td>
</tr>
<tr>
<td>First King Report on Corporate Governance for South Africa (King I)</td>
<td>November 1994</td>
<td>Developed and issued by the King Committee; published by the Institute of Directors in Southern Africa</td>
</tr>
<tr>
<td>King Committee on Corporate Governance established under the auspices of the Institute of Directors in Southern Africa</td>
<td>1992</td>
<td>Judge Professor Mervyn King appointed to Chair the Committee</td>
</tr>
<tr>
<td>Companies Act No. 61, 1973</td>
<td>1973</td>
<td>The 1973 Act was based on the framework and general principles of the English law.</td>
</tr>
</tbody>
</table>
The current corporate governance landscape

Corporate governance in South Africa has been institutionalised through the King Reports on Corporate Governance issued over the last decade and a half, between 1994 and 2009. The Companies Act and Regulations, together with the detailed principles and recommendations contained in King III, have to date provided a comprehensive basis towards ensuring fair, transparent and accountable corporate governance in South Africa. The need to adapt corporate governance practices to accommodate changes in the corporate landscape and business environment, including to respond to investor and stakeholder expectations of corporate entities.

The IoDSA continues to play a key role in shaping the corporate governance landscape of South Africa. In addition to being the custodian of the King Reports and Codes and serving as secretariat to the King Committee, the IoDSA is the recognised professional body for directors in Southern Africa. The IoDSA pursues an active director development programme, including both education and certification programmes to advance the professionalisation of the director community in South Africa.

The IoDSA also has a number of programmes and initiatives to promote implementation of the King Code, including issuance of IoDSA guidelines, forum papers and practice notes from time to time that either supplement or further explain elements of King III.

South Africa’s vibrant corporate governance landscape offers excellent scope for interaction on corporate governance issues across both the public and private sectors. The South African press is active in providing commentary and news coverage on corporate governance issues and also in exposing actual and perceived corporate governance failures in the South African environment. In addition, there are a number of Institutes and Corporate Governance Centres of Excellence, including within the tertiary education sector, that continue to play an active role in development of corporate governance best practices across the range of role players in corporate governance in South Africa.

South Africa does not have any prominent shareholder activist groups or proxy advisory firms, however large institutional investors have adopted a more active stand in assessing the corporate governance practices of JSE-listed companies in recent years. For example, the Public Investment Corporation Limited, an investment company wholly owned by the South African government which manages the investment of government employees’ pension funds, has taken an active role in addressing issues relating to corporate governance and transformation (specifically in relation to black economic empowerment). PIC has published its Corporate Governance and Proxy Voting Policy that specifies a framework of principles and action for its stakeholders, mainly the companies that PIC invests in and fund managers that invest on its behalf. Global investment funds with a presence in South Africa, notably Hermes Investment Management (Hermes), are similarly exercising their stewardship responsibilities proactively. In 2014 Hermes published its Corporate Governance Principles to amplify South African corporate governance guidance set out in King III as part of its stance of active management of its investments, including as relating to corporate governance.
Approach to compliance

King III is not legislative in nature. Rather it is a voluntary set of principles, practices and guidance underpinned by a stated philosophy articulated within the King Report. The principles, practices and related recommended practices contained in King III are suited to being applied by all entities regardless of their manner and form of incorporation.\(^ {96, 97} \)

King III adopts the regime of ‘apply or explain’ to regulate corporate governance practice and behaviours, and practical execution of this approach to compliance is explained in King III as follows:\(^ {98} \)

It is the legal duty of directors to act in the best interests of the company. In following the ‘apply or explain’ approach, the board of directors, in its collective decision-making, could conclude that to follow a recommendation would not, in the particular circumstances, be in the best interests of the company. The board could decide to apply the recommendation differently or apply another practice and still achieve the objective of the overarching corporate governance principles of fairness, accountability, responsibility and transparency. Explaining how the principles and recommendations were applied, or if not applied, the reasons, results in compliance. In reality, the ultimate compliance officer is not the company’s compliance officer or a bureaucrat ensuring compliance with statutory provisions, but the stakeholders. This disclosure is aimed at enabling the company’s stakeholders to make informed decisions on the levels of governance that are applied within the entity.\(^ {99} \)

As King III relies on self-regulation and without legislative authority there is no sanction for non-compliance. However it is commonly recognised that a company director’s liability exposure may be affected by non-compliance with King III. For instance, non-compliance with principles contained in King III may influence a court’s decisions as to whether or not a director has properly fulfilled the director’s common law and statutory duties in relation to the company.\(^ {100} \)

The influence of the JSE Listing Requirements in promoting implementation of the corporate governance best practices contained in King III by companies with JSE-listed securities has been significant.\(^ {101} \) Subsequent to publication of King III, the JSE Listings Requirements were amended to require every listed company to disclose in its annual integrated report how the company has applied the principles of the King Code, the extent of its compliance with the Code and the reasons for any areas of non-compliance. The JSE Listing Requirements also mandated compliance with a number of specifically itemised provisions of the King Code, together with disclosure of the company’s compliance therewith in its annual report. In the event of non-compliance the JSE Listings Committee has the power to suspend or terminate the company’s listing, or to impose a fine.\(^ {102} \)

As noted above, entities that are regulated under specific regulatory regimes, such as banks and insurers, are subject to regulatory supervision of their corporate governance practices including compliance with corporate governance provisions contained in the relevant laws and regulations applicable to entities in those sectors.
Emerging practices, trends and areas of leading practice for corporate governance

South Africa is recognised as a pioneer in corporate governance reform. Its innovative approach to corporate governance has been instrumental in assisting corporate entities in South Africa face the unique challenges of the country’s political, social and environmental landscape.

The concept of corporate social responsibility within the context of sustainable development has always featured prominently in South Africa’s corporate history and is a noticeable feature of the current corporate governance framework.103, 104, 105

With the launch of the first King Report in 1994, the King Committee extended corporate governance to recognise the importance of the concept of corporate citizenship and wider stakeholder accountability. The updated versions of the King Report issued in 2002 and 2009 incorporated principles addressing the non-financial aspects of corporate governance and responsibility for corporate sustainability.

The King III Report has driven innovation in stakeholder-oriented accountability through its principles addressing board responsibility for good corporate citizenship, effective stakeholder communications and integrated reporting.

The Companies Act, 2008 gives the concept a statutory focus in context of the regulation of South African companies, by including the following purposes among the stated purposes of the Act (section 7):106:

- to promote the development of the South African economy by, among other things, encouraging transparency and high standards of corporate governance as appropriate, given the significant role of enterprises within the social and economic life of the nation;
- to reaffirm the concept of the company as a means of achieving economic and social benefits; and
- to continue to provide for the creation and use of companies, in a manner that enhances the economic welfare of South Africa as a partner within the global economy.

The JSE is an active proponent of corporate disclosure of sustainability performance and it was the first stock exchange to incorporate integrated reporting into its Listing Requirements on an apply or explain basis. J SE-listed companies have been required to publish an integrated report (or explain if they do not) for financial years starting on or after 1 March 2010.107, 108 South African listed companies have accordingly gained substantial experience in use of integrated reporting to report corporate performance across a wide range of non-financial performance measures, incorporating environmental, social and governance reporting, since the J SE requirement was introduced.

The JSE was also the first emerging market as well as the first stock exchange globally to introduce a sustainability index measuring companies on indicators related to environmental, social and governance (ESG) practices. The J SE introduced its Social Responsible Investment (SRI) Index in 2004 to promote good corporate citizenship and sustainable development. The SRI served to inform investment markets about the sustainability policies and practices of listed companies in South Africa. In October 2015 the J SE announced the launch of its new index series, the FTSE/JSE Responsible Investment Index Series, replacing the SRI. The new index affords South African companies the opportunity to be assessed as part of a global process alongside their international peers, as well as exposure to a greater pool of international investors. Internationally, the J SE remains at the forefront of advancing sustainability practices among stock exchanges globally through participation in the Sustainable Stock Exchanges (SSE) initiative and ongoing contributions to the work of the World Federation of Exchanges in this sphere.

Areas of challenge facing corporate governance in South Africa

There are a number of challenges for implementation of corporate governance in South Africa. Not only for entities and their boards, but also for South Africa’s legislators and market regulators in relation to both policy development and enforcement of the laws and regulations that comprise the current framework.

Some commentators have noted that the foremost challenge for improving corporate governance in South Africa is that increased effort is needed to improve the level of implementation of corporate governance principles and best practices across all sectors.112, 113, 114

A specific area of challenge for South African corporates and policy makers lies in appreciating the unique challenges that the corporates entities face in applying corporate governance principles and best practices, and maintaining the quality of corporate governance, while also complying with the range of legislation that applies to South African entities. The combined weight of compliance with applicable laws and regulations, and standards and codes, also influences both the perception and the reality of the ease of doing business in South Africa, for both local and overseas entities.115, 116, 117

Implementation of South Africa’s Broad-Based Black Economic Empowerment (B-BBEE) legislation and its related regulatory
A further area that raises significant challenge for proper implementation of good corporate governance practices in South Africa is the apparent increasing levels of corruption as reported in a variety of public surveys and reports, including Corruption Watch in South Africa, the Business Anti-Corruption Portal. Corruption is cited as being particularly concerning in the public sector and government departments and agencies, accompanied by general lack of awareness of governance best practices and lack of accountability for maladministration and corrupt practices. Areas most often cited for corrupt practices and maladministration are public procurement tendering and granting of government contracts, where the observed corrupt practices include political interference, bribery and money laundering.

Notwithstanding South Africa’s extensive array of anti-corruption laws, regulations, policies and national mechanisms, there is a growing public perception that collectively these mechanisms are not working effectively. South Africa’s robust anti-corruption framework is adequate, but laws are inadequately enforced.

Various commentators have also pointed to a lack of effectiveness of South Africa’s whistle-blowing laws and regulations, with resulting perceived serious lack of protection for persons who would be whistle-blowers for corrupt activity. For example, the Institute of Internal Auditors in South Africa has reported that increasing numbers of internal auditors in South Africa are experiencing intimidation as a direct result of their work uncovering fraud, corruption and other wrong-doing.

In January 2015 eight professional bodies in South Africa including the IoDSA, acting together, convened an anti-corruption initiative called the Anti-Intimidation and Ethical Practices Forum (AEPF). These bodies, which represent a variety of professionals working in the fields of auditing, risk management and governance, have expressed a shared concern about the rising levels of corruption in the country and the concomitant increase in intimidation of professionals. Among the AEPF’s aims are:

- to create a more enabling environment for Forum members and others to blow the whistle on corruption; and
- to be a collective professional voice on the state of governance in South Africa and make recommendations to improve accountability within the public and private sectors.

Another area of challenge is the relatively limited pool of competent directors in South Africa. The ongoing efforts of the IoDSA, through its Chartered Director program, and similar bodies and institutions that promote development of corporate governance in South Africa are critical to ensure a supply of competent, qualified directors to serve on corporate boards for South African companies. The 2007 APRM Report noted the limited pool of competent directors, and truly independent directors in South Africa, and that as a consequence a few individuals hold many directorships. A 2013 research report by Inoxico similarly highlighted a high concentration of directorships in JSE-listed South African companies.

Finally, there is the enduring debate about how best to encourage adherence to corporate governance principles and best practices among corporate entities in both the public and private sectors, given that the King Code remains a voluntary, principles-based code. A prevailing concern is that some corporates are perceived as only paying lip-service to application of the Code, adopting a “check-box” approach sufficient to be able to report technical compliance with the principles of the Code. Absent any proper evaluation of whether and how the principles are being/have been achieved at a substantive level with identification of the need for changes to address any areas of no- or marginal compliance, some commentators have observed that reporting merely on a compliance basis may not be useful.

Implementation of CRISA in the institutional investor community similarly requires more attention. As envisaged by CRISA, the community of institutional investors is able to play a critically important role in encouraging adherence to corporate governance best practices. A research report published by IoDSA and EY in 2013 reported the results of a study on the implementation of CRISA performed in the year after CRISA became effective. The report showed that 49% of the surveyed institutions had provided some form of disclosure relating to CRISA. It also highlighted some areas of shortcoming, specifically with regard to monitoring and control structures, and pointed to there being varying practices and degrees of accountability across all types and categories of institution. Since this research was performed, a few institutional investors certainly have advanced their implementation of CRISA, as described above.
Outlook for further development of corporate governance in South Africa

Questions and expectations abound on whether and how “King IV”, the anticipated updated version of the King III Code that is expected to be released for public consultation during 2016, will address some of the areas of challenge explained above.

A commonly discussed issue is how the proposed revised Code will approach the matter of achieving the wider goal of lifting the corporate governance performance across the range of South African entities that will be expected to apply the revised Code. The King Committee's track record of demonstrating vision and leadership in promoting corporate governance reforms through the King Code may again move the boundaries forward in identifying new and innovative ways to assist entities achieve that goal.

Some entities and governance role players have raised the question of whether and how the proposed revised Code will move in the direction of being easier to apply by a range of entities – or whether it will merely increase the existing compliance burden, already significant for entities in more highly-regulated sectors.

At a March 2015 corporate governance seminar themed ‘Promoting Good Corporate Governance in South Africa, the Region and the Continent’ the IoDSA’s stated its aspiration for King IV as being that different types of entities, including those from the public sector “will better understand how to apply corporate governance in their unique contexts”.

Of course further improvement of corporate governance practices in South Africa is not all up to the King Code, and the need to review and further improve the Companies Act for better application by companies is also recognised.
<table>
<thead>
<tr>
<th>Survey</th>
<th>Year</th>
<th>Rank (Score)</th>
<th>Description</th>
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<td>2016</td>
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<td>Economic Freedom tracks 10 factors of economic freedom grouped into four broad categories, or pillars.</td>
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<tr>
<td></td>
<td></td>
<td>(score = 61.9)</td>
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<tr>
<td>Index (CPI)</td>
<td></td>
<td></td>
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<tr>
<td>2015-2016 Global Competitiveness Index</td>
<td>2015-2016</td>
<td>49th/140 countries (56th/144)</td>
<td>Assesses the attractiveness of the investment climate across 82 countries.</td>
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<td>2016 Ease of Doing Business</td>
<td>2016</td>
<td>73rd/189 countries (69th)</td>
<td>Analyzes the factors driving productivity and prosperity in 140 countries.</td>
</tr>
<tr>
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<td></td>
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<tr>
<td>Economist Intelligence Unit,</td>
<td>2016</td>
<td>4th/47 SSA-region countries</td>
<td>Provides objective measures of business regulations and their enforcement across 189 economies.</td>
</tr>
<tr>
<td>Business Environment Rankings</td>
<td></td>
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1 The Mo Ibrahim Foundation's 2015 Ibrahim Index of African Governance measures the quality of governance in 54 African countries across 4 categories of governance performance indicators (with 14 sub-categories): safety and rule of law; participation and human rights; sustainable economic opportunity; and human development. [Link](http://static.moiibrahimfoundation.org/u/2015/10/02201449/45_South_Africa.pdf)

2 The Heritage Foundation's 2016 Index of Economic Freedom tracks 10 factors of economic freedom grouped into four broad categories, or pillars: rule of law; limited government; regulatory efficiency; and open markets, for 186 countries. [Link](http://www.heritage.org/index/country/southafrica)

3 Transparency International's 2015 Corruption Perceptions Index (CPI) measures country perceptions of freedom from corruption in the public sector, ranking CPI scores for 168 countries. The CPI score indicates the perceived level of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean). [Link](https://www.transparency.org/country/#ZAF)


5 The World Bank's Doing Business survey project provides objective measures of business regulations and their enforcement across 189 economies. [Link](http://www.doingbusiness.org/data/exploreeconomies/south-africa)

Brief background

The development of corporate governance in Tanzania

Approach to compliance

Areas of challenge for corporate governance in Tanzania

Outlook for further development of corporate governance in Tanzania

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Tanzania

Brief background

Tanzania is a low-income developing country in East Africa, currently in a period of transition since adopting an economic liberalisation strategy in the mid-1980s. This included embarking on a structural adjustment programme supported by the World Bank and the IMF aimed at transforming its economic infrastructure from a socialist-oriented, state-ownership economy to a market-oriented, private sector-led economy.

Since 1992 Tanzania has been governed as a multiparty democracy, and it is currently in the process of adopting a new Constitution.

Under Tanzania’s Development Vision 2025 national strategic plan to encourage social and economic development the country aims to transform into a middle income economy by 2025. Adoption of a market approach in which the private sector is viewed as the engine of economic growth is central to the national strategy. In line with this, the government is currently undertaking a roadmap of sectoral and macro reforms, including a number aimed at improving the investment climate.
Under these reforms Tanzania has experienced strong economic growth since the 1990s13. While Tanzania’s overall macroeconomic performance remains strong, with economic growth of more than 7% p.a. achieved in 2013 and 2014, and forecast economic growth broadly in line14,15, this performance has not engendered broad-based, inclusive development or structural transformation16,17.

Tanzania continues to experience high poverty levels by regional and international standards, with average per capita income significantly lower than the Sub-Saharan Africa average and around 30% of its population living below the poverty line18,19. In light of this Tanzania’s current infrastructure transformation and development aims to achieve more broad-based results to address poverty reduction20,21.

The country is highly aid dependent, with around 14% of its GDP derived from official development assistance through various programmes with a range of development aid partners22.

Tanzania’s economy has to date been largely agrarian23. The agricultural sector contributed between 27%-32% of GDP in the period 2007-2013 and provides employment to around 75% of Tanzania’s workers. The growth of this sector has been lower than the growth of the overall economy, constrained by infrastructure gaps and low productivity24,25.

More recently the significant drivers of economic growth have been information and communications, construction and manufacturing26. The most significant transformative factor on the economy, however, is the large natural gas reserves discovered in 2012-13 through oil and gas exploration activities which are expected to draw strong private capital and net inflow of foreign direct investment to Tanzania27.

Decades of public sector reforms have resulted in Tanzania scoring relatively better than most African countries on public finance management. Despite its good progress with reforms there are mixed results in the areas of governance and corruption28,29. While corruption is viewed as pervasive in all aspects of political and commercial life in Tanzania, it is considered particularly prevalent in the energy and natural resources sectors30,31.

The development of corporate governance in Tanzania

Overview of the evolution of corporate governance in Tanzania

Prior to Tanzania’s economic liberalisation programme the economy was dominated by the state, and the private sector played an insignificant role32,33. State-owned corporations were the dominant form of corporation in the country’s socialist era, and consequently Tanzania’s private sector is less developed than in its neighbouring countries. Accordingly Tanzania now faces many challenges in promoting development of its private sector, which is dominated by small enterprises34.

Linked to this, the concept of corporate governance is very much in its infancy in Tanzania, and has to date received little attention. There is little debate on corporate governance issues reflecting an underlying lack of awareness of its importance for economic development35,36.

Tanzania’s relatively new and small, but growing private sector is being sensitised to the need to implement sound corporate governance standards and practices, including with support of international financial institutions such as the World Bank and the IMF37,38.

In common with the situation that often prevails in developing countries private-sector entities in Tanzania tend to be characterised by concentration of shareholder ownership. This is generally attributed to strategic shareholders’ need to maintain control given the perceived weaknesses surrounding capacity to enforce company legislation aimed at protecting shareholder rights39.

Prevailing corporate governance practices have been influenced by the institutional and behavioural legacies of the previous state-dominated economy where state-owned corporations were shielded from exercise of the disciplines of control and accountability by market participants. In these corporations, corruption, managerial incompetence, political interference and government subsidisation of failing enterprises were reportedly prevalent, and it is thought that the lack of accountability and effective control in these corporations were among the factors contributing to their poor performance and failure40,41.

Entities in the banking and insurance sectors are already well-oriented to implementing corporate governance standards through the system of prudential regulation and supervision42,43. Similarly the listed company sector is required to implement the corporate governance guidelines applicable to listed companies44.

Within the framework of Tanzania’s Vision 2025 strategy, institutions are evolving that are focused on advancing the interests of the private-sector entities. For example, the Tanzania National Business Council (TNBC) is a forum for public-private sector dialogue on key issues related to Tanzania’s social and economic development45.

Other private sector associations and bodies in Tanzania that facilitate dialogue on strategic issues related to the business environment and with government are: the Confederation of Tanzania Industries, and the Tanzania Private Sector Foundation, and the Tanzania Chamber of Commerce and Industry Association46.

As a relatively new institution, the Institute of Directors Tanzania (IoDT) has yet to follow the example of other African Institutes of Directors in producing a code of corporate governance and best practices to guide corporate governance best practices for private-sector entities in Tanzania. However initial work on developing a code is underway47,48.
The Tanzanian legal system is based on English common law, statutes and case law. Economic reforms included attempts to evolve local sources of capital for development of private-sector business, and the Tanzanian government has enacted new or revised legislation to establish the framework of laws and regulations that comprise the corporate governance framework for Tanzanian corporate entities.

Enactment of the Tanzania Capital Market and Securities Act, 1994 established the Capital Markets and Securities Authority (CMSA) to regulate the capital markets in Tanzania, promote Tanzanian securities markets and establish a stock exchange. The Dar es Salaam Stock Exchange (DSE) is the sole exchange and began operations in 1997.

The DSE regulates activities of the listed company sector through its listing requirements, and companies seeking listing on the exchange are required to comply with the Corporate Governance Practices by Public listed Companies in Tanzania (CMSA Guidelines) issued by the CMSA in 2002.

The Companies Act, 2002 came into effect in March 2006, introducing a modern shareholder-oriented legal framework for corporate entities along the lines of the Anglo-Saxon model of corporate governance, replacing previous outdated company legislation. The Business Registration and Licensing Agency (BRELA) administers the Companies Act in mainland Tanzania and the Registrar General in Zanzibar.

The Bank of Tanzania (BT) is responsible for administering and enforcing the laws applicable for prudential supervision of banks and other financial institutions. The Guidelines for Board of Directors of Banks and Financial Institutions, 2008, issued under the Banking and Financial Institutions Act, 2006 apply to directors of all banking institutions in Tanzania.

Key initiatives to promote development of corporate governance in Tanzania

<table>
<thead>
<tr>
<th>Initiative</th>
<th>Date</th>
<th>Details</th>
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<tbody>
<tr>
<td>Institute of Directors in Tanzania</td>
<td>2012</td>
<td>Established</td>
</tr>
<tr>
<td>Guidelines for Board of Directors of Banks and Financial Institutions</td>
<td>2008</td>
<td>Issued by Bank of Tanzania</td>
</tr>
<tr>
<td>Companies Act 2002</td>
<td>2006</td>
<td>Effective date</td>
</tr>
<tr>
<td>Corporate Governance Practices by Public listed Companies in Tanzania</td>
<td>2002</td>
<td>Issued by the Capital Markets and Securities Authority</td>
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Regulatory overview

The Tanzanian legal system is based on English common law, statutes and case law.

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Overview of the evolution of corporate governance in Tanzania

There is a long history of economic reform in Tanzania spanning two decades to bridge the divide between the post-independent socialist, state-dependent economy and the evolving liberalised economy that the Tanzanian government is pursuing currently and going forward 60.

Notwithstanding all that has already been accomplished to develop a more conducive investment climate and to remove unnecessary barriers to doing business in Tanzania, including ongoing effort to establish a sound corporate governance infrastructure for the country, greater commitment to structural and institutional reforms is needed to create an efficient entrepreneurial environment and open markets 61.

Overall, based on Tanzania’s rankings in the Doing Business survey and the Global Competitiveness Index, it would appear the business environment is perceived as relatively unattractive. Further economic growth will depend on the government’s ability to remove existing constraints on business 62.

Rampant corruption in Tanzania is cited as a main constraint for doing business in the country. Despite the government’s history of anti-corruption efforts, including adopting a comprehensive National Anti-Corruption Strategy and Action Plan (NACSAP) in 1999, international assessments of Tanzania’s levels of corruption seem to indicate that the situation is deteriorating. The overall view reflected in various reports and commentary on Tanzania’s legal framework to fight corruption is that notwithstanding the various legislation in place, specifically in the form of the Prevention and Combating of Corruption Act, 2002 (as amended) and the Anti-Money Laundering Act, 2006 (as amended), there is significant room for improvement in many areas 63, 64, 65.

A further area of difficulty is the perceived lack of effectiveness and independence of Tanzania’s judiciary. It is seen as largely inefficient, underfunded and susceptible to political influence and corruption - including in the eyes of the country’s citizens 66, 67.

Approach to compliance

The CMSA Guidelines state that the directors of every listed company are expected to undertake or commit themselves to adopt good corporate governance practices as part of their continuing listing obligations, and underline the importance of disclosure of the extent of a company’s compliance with the Guidelines in the corporate annual reports (and also of any areas of non-compliance or alternative practices) 68.

Further, the Guidelines state that every listed company or issuer of securities (incl. debt instruments) shall disclose in its annual reports and directors report (or in the case of a debt securities issuer, the information memorandum) whether the company is complying with these guidelines on corporate governance, and where the company is not fully compliant the directors shall indicate the steps the company will take to adhere to full compliance 69.

The Guidelines also encourage companies in the private sector other than listed companies and issuers to practice good corporate governance 70.
Areas of challenge for corporate governance in Tanzania

Some of the main challenges mentioned by various reports and commentaries addressing development and implementation of sound corporate governance in Tanzania, including as relating to the larger economic goal of encouraging higher levels of private-sector investment, are thought to be:

- Overall lack of development of Tanzania’s corporate sector as a result of the country’s past history of socialism. This extends to a general lack of awareness about the importance of corporate governance for economic development 71.

- The overall weak enforcement environment creates conditions where concentration of share ownership has become the norm among corporates as a way to maintain shareholder control in the absence of effective market and enforcement mechanisms 72,73. This creates an adverse legal environment for protection of minority shareholder interests and in turn further discourages the formation of private-sector investment 74.

- Lack of enforcement capacity among Tanzania’s capital markets regulators, affecting levels of accountability by corporations, directors and corporate officers and enforcement of disclosure regimes among corporates and by entities in regulated sectors 75.

- Related to the above is the acute shortage of qualified accountants in Tanzania, and the poor quality of professional education within Tanzania to support development and qualification of professional accountants 76.

- Challenges within the economic environment, particularly the pervasive levels of corruption and perceived weak and ineffective judiciary undermine the rule of law in Tanzania 77,78.

Outlook for further development of corporate governance in Tanzania

From the above summary of commentary on the development of Tanzania’s corporate governance environment to date, it is evident that while important progress is being made across many areas – particularly in relation to the ongoing effort surrounding private sector development – significant work remains to be done to strengthen Tanzania’ regulatory infrastructure and to develop a sound corporate governance framework, for both private sector and public sector enterprises.

The private sector itself has an important role to play in advancing development of Tanzania’s corporate governance environment. The IoDT has been encouraged to develop a code of corporate governance for the private sector 79, and such a project has been commenced.

Tanzania has the benefit of being able to draw on experiences and learnings from among its neighbouring countries, and other African economies, as well as significant international development agency support, as it continues its corporate governance development journey.
Selection of country assessments for Tanzania

The 2015 Ibrahim Index of African Governance

Tanzania ranked 18th/54 countries (2014: 15th/52)
Overall governance score = 56.7/100 (2014: 58.0)
2015 African average score = 50.1
Highest category score achieved: Participation and Human Rights (score = 64.1); lowest score: Sustainable Economic Opportunity (score = 49.0)

2016 Index of Economic Freedom

Economy is ranked 110th freest in the Index (economic freedom score = 58.5), a “mostly unfree” economy
Ranked 17th out of 46 countries in the SSA-region, its score is above the regional average score (55.5) but below the world average score (60.7)

2015 Corruption Perceptions Index (CPI)

Ranked 117th/168 countries (2014: 119th/175)
CPI score = 30/100 (2014: 31/100; 2013: 33/100)

2015-2016 Global Competitiveness Index

Ranked 120th/140 countries overall (2014-15: 121st/144)
A factor-driven economy
Top five most problematic factors for doing business:
• access to financing
• corruption
• inadequate supply of infrastructure
• tax rates
• inefficient government bureaucracy

2016 Ease of Doing Business Index

Ranked 139th/189 countries (2015: 140th)
Ranked 15th/47 SSA-region countries (2015: 13/47)

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2 The Heritage Foundation’s 2016 Index of Economic Freedom tracks 10 factors of economic freedom grouped into four broad categories, or pillars: rule of law; limited government; regulatory efficiency; and open markets, for 186 countries. http://www.heritage.org/index/country/tanzania

3 Transparency International’s 2015 Corruption Perceptions Index (CPI) measures country perceptions of freedom from corruption in the public sector, ranking CPI scores for 168 countries. The CPI score indicates the perceived level of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean). https://www.transparency.org/country/#TZA


Brief background

The development of corporate governance in Tunisia

Approach to compliance

Emerging practices, trends, areas of leading practice and challenges in corporate governance in Tunisia

Outlook for further development of corporate governance in Tunisia

Tunisia Institute of Directors
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Telephone: +216.70 018 100
The newly elected government is placing priority on introducing economic reforms and attracting FDI. A significant share of Tunisia’s FDI in recent years came from privatisation of state-owned or state-controlled enterprises. New legislation being developed in 2015 includes a new, simplified Investment Code to regulate foreign investment in Tunisia that is expected to lower restrictions and comply with international standards.

Other areas of economic reform are introducing new legislation to facilitate growth and development of power generation from renewable energy. Further law reform considered essential for attracting foreign and domestic investment is being undertaken affecting banking reform and bank re-capitalisation, public-private partnerships, tax policy, competition, bankruptcy and access to information.

Tunisia’s economy in the 1960s was dominated by the agricultural sector, but since the 1970s the structure of the economy has change profoundly in favour of growing Tunisia’s industry and services sectors. Today, Tunisia’s economy is characterised as an efficiency-driven economy that is well diversified across manufacturing, tourism, agriculture and mining. Europe remains the country’s main industrial partner and main client.

Tunisia has traditionally placed well in international rankings on private sector development. The private sector largely comprises small, medium-sized and very small enterprises and relatively few large entities. Fewer than 0.2% of its enterprises employ more than 200 people, and both salaried and unsalaried employment are increasingly informal.

State-owned enterprises are still prominent throughout the economy. Senior management of SOEs is appointed by the government and report to the respective ministries. Boards of directors comprise ministry representatives and those of public shareholders depending on the relevant sector. The government encourages, but does not enforce, adherence to the OECD’s Guidelines on Corporate Governance for SOEs.

The development of corporate governance in Tunisia

Overview of the evolution of corporate governance in Tunisia

Development of awareness of corporate governance, and corporate governance best practices, has largely been led by private sector bodies in Tunisia.

The Institut Arabe des Chefs d’Entreprise (IACE) (Arab Institute of Business Managers) is Tunisia’s largest business association and think tank. Based in Tunis, it was created in 1984 by a group of Tunisian business leaders as an independent policy and advocacy organisation concerned with advancing private sector development. It is a private membership-based organisation with more than 400 members representing small, medium, and large enterprises in all sectors of the Tunisian economy. IACE has been instrumental in developing forums for the public and private sector to work in partnership on policy and legislative reform issues, including as relates to corporate governance.

In 2005, the Centre for International Private Enterprise (CIPE) joined IACE in a partnership to promote good corporate governance practices and further awareness of corporate governance in Tunisia. Resulting from this collaboration, in 2008 IACE published a Code of Best Practice of Corporate Governance (Code). The Code, intended to be applied voluntarily, sets out guidelines and practical steps to assist business managers and directors in implementing good corporate governance.

Notable features of the Code are firstly, that it was a private-sector driven initiative and, secondly, the extensive multi-stakeholder consultation process used to develop the Code. The Code was developed from a process of engagement of various professional and regulatory groups, including representatives of the Conseil du Marché Financier (CMF), the Central Bank (la Banque Centrale de Tunisie (BCT)) and la Bourse des Valeurs Mobilières de Tunis (BVMT), Ministry of Finance, l’Association Tunisienne des Auditeurs internes (ATAI) and l’Association Professionnelle des Banques Tunisiennes et des Etablissements Financiers (APBTEF). As the Code was developed for voluntary rather than mandatory application it was thought that use of this approach would be important for promoting broad-based support for the Code, from both the government and the private sector, and for its implementation.

The European Institute of Corporate Governance registered the Code in its online index which provided the exposure needed for raising awareness and implementation of the Code. Subsequently, similar guidelines have been developed for banks/credit institutions, and an SOE Code is under development.

Further to the Code development initiative IACE developed a Corporate Governance Index based directly on the guidelines contained in the Code, to assist businesses seeking to implement good governance standards.

Such private sector initiatives have encouraged Tunisian companies to take steps toward better governance and improved corporate transparency. In particular, strong support from the Central Bank (Banque Centrale de Tunisie (BCT)) encouraged the securities regulator (CMF) to incorporate components of the Code in its listing regulations to enhance transparency and accountability of companies in the listed sector. The CMF now requires that listed companies publish any business agreements on both the CMF Board and the Tunis Stock Exchange official bulletin. On the legislative side, the Ministry of Finance introduced amendments to Tunisia’s Commercial Code based on recommendations included in the IACE Corporate Governance Code. These amendments provide more protection for minority shareholders, and require greater disclosure of financial information.

In 2009 IACE launched the Center for Corporate Governance (CTGE), the first in North Africa, to serve as a center for...
Regulatory overview

Tunisia’s secular legal system is based upon French civil law, the French Napoleonic Code 24. The primary sources of governance requirements for companies are company law, and securities laws and regulations, i.e. the Commercial Companies Law No. 93 of 2000, the Strengthening of the Security of Financial Relations Law No. 96 of 2005 and the Stimulation of Economic Initiative Law No. 2007-69 of 2005. In addition, companies listed on the Tunis Stock Exchange (Bourse de Tunis) need to comply with the additional requirements of the Financial Act Regulations of the securities regulator (CMF) – and also the Tunis Stock Exchange Code 25, 26.

The main business entities in Tunisia are partnerships (limited or one man limited companies) and joint-stock corporations (a limited liability Company (SA) or partnership limited by shares (SCA).

Tunisia’s financial system is dominated by its banking sector, with banks accounting for roughly 90% of financing in Tunisia. Equity capitalisation is relatively small, and Tunisia’s stock exchange (originally created in 1969) provides only around 6-7% of corporate financing. There are around 78 stock-exchange listed companies, and the stock market capitalisation is around 12% of Tunisia’s GDP (mid-2015) 27.

Main bodies in Tunisia involved in regulating corporate governance practices are the Ministry of Justice, in collaboration with different public agencies, the Central Bank (BCT) and the securities regulator (CMF) which also supervises and regulates the Tunis Stock Exchange. In common with most countries in the same region, the powers of the stock exchange in relation to oversight and enforcement of corporate governance arrangements of listed companies are limited relative to the securities market regulators or capital markets authorities 28.

The voluntary IACE Code supplements the various national laws and regulations affecting corporate governance 29.

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### Key initiatives to promote development of corporate governance in Tunisia

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<thead>
<tr>
<th>Initiative</th>
<th>Year</th>
<th>Description</th>
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<td>Guide on Best Practice in Local Government</td>
<td>2015</td>
<td>Issued by IACE, developed in collaboration with the CIPE, for private sector participation in municipal reforms to improve governance in local government</td>
</tr>
<tr>
<td>OECD CleanGovBiz Integrity Scan of Tunisia</td>
<td>2013</td>
<td>Report issued following an analysis by OECD CleanGovBiz initiative specialists focused on analysis of thirteen priority areas to improve the climate of integrity and transparency in Tunisia, including public sector integrity, and action plans for addressing these areas</td>
</tr>
<tr>
<td>L’Institut Tunisien des Administrateurs (ITA) Tunisian Administrators Institute</td>
<td>2009</td>
<td>Private institution established to advance good governance within the Tunisian public and private companies. Through its action plans, programmes and projects, the Institute aims to assist members of boards of directors in fulfilling their duties, including through demonstrating the practices of governance and tools to promote transparency</td>
</tr>
<tr>
<td>Centre Tunisie de Gouvernance d’Entreprise (CTGE) Centre for Corporate Governance (CCG)</td>
<td>2009</td>
<td>Launched by IACE</td>
</tr>
<tr>
<td>Corporate Governance Index Code of Best Practice of Corporate Governance</td>
<td>2008</td>
<td>Issued by IACE</td>
</tr>
<tr>
<td>Institute Arabe des Chefs d’Entreprise (IACE)</td>
<td>2007</td>
<td>Corporate Governance Advisory Council formed to build awareness of local and international best practices, and to establish an Institute of Corporate Governance in Tunis</td>
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Overview of the current governance landscape

In 2013 the European Bank for Reconstruction and Development (EBRD) reported on its assessment of the quality and implementation effectiveness of Tunisian commercial laws, including as relevant to private sector development. The Report showed room for reform in a number of areas relevant to investment, noting that Tunisian financial sector stakeholders have identified corporate governance as an area in need of further strengthening 30.

While the EBRD Report assessed the quality of national legislation on the books as appearing to be generally sound, and in “high level of compliance” with relevant international standards, it also noted that there is room for improvement of the institutional framework in several areas – specifically relating to shareholder rights (regulation of conflict of interest situations), disclosure and transparency (adoption of international accounting standards, and non-financial information disclosures), and the responsibility of the board (board independence). The EBRD’s assessment of effectiveness of corporate governance legislation in practice also pointed to the need for reform addressing redress when minority shareholders rights are breached 31.

The World Bank’s 2016 Doing Business survey ranked Tunisia 105th among 189 countries on measures relating to protecting minority investors (5th among the 20 MENA region countries). Areas of relative weakness identified in the survey are in the disclosure index (extent of conflict of interest regulation) and in the extent of ownership and control index (extent of shareholder governance index) 32.

Approach to compliance

The IACE Code is a voluntary governance code. Corporations adopting it are encouraged to report their compliance with the Code to shareholders on the “comply or explain” basis 33, 34.

Tunisia’s legal and regulatory corporate governance requirements are reported as being generally clear and well understood by economic participants, as well as sufficiently enforced 35.

A drawback noted in the EBRD Report is there does not seem to be an effective system of co-operation between the different regulatory authorities, and that the low level of coordination of provisions under different laws, decrees and regulations causes uncertainty. It suggested that adoption of a uniform law consolidating the many company law provisions that exist in a variety of legislative texts into one uniform code could significantly improve the efficiency of the overall framework, and decrease the uncertainty on the scope of application of those different laws and regulations 36.

Courts are generally viewed as competent, and Tunisia’s handling of commercial disputes is considered fairly efficient by regional standards 37, 38. Special court sections exist in the judiciary to handle corporate cases, and a sufficient portion of corporate governance law has been tested in court.

In addition, the securities market regulator is able to intervene on behalf of shareholders in corporate disputes 39.

Recent reforms led to the creation of a commercial court department in the Tunisian courts that specialises in commercial dispute resolution, including mediation. These departments comprise of a judge (or three, depending on the type of the dispute), as well as lay appointees from the sector involved in the dispute, for specialisation and to counter the problem of lack of practical commercial expertise and financial literacy in the judiciary 40.

In general, regulators in those countries in the region known as the “transition” Arab economies, like Tunisia, are viewed as having a relatively lenient approach to enforcing corporate governance breaches, with great reliance on warnings and relatively small financial fines, especially by international standards, and there have been relatively few sizeable enforcement cases 41.

Public enforcement in the area of corporate governance has focused largely on graft and corruption. For example, the CMF intervened to freeze shareholdings and assets in companies associated with the corrupt Ben Ali regime, to pave the way for confiscation and it also facilitated the resulting restructuring of those companies 42.
Emerging practices, trends, areas of leading practice and challenges in corporate governance

In co-operation with the OECD Tunisia became the first country to launch an Integrity Scan under the OECD CleanGovBiz initiative. This review has enabled Tunisia to obtain an overall diagnosis of the corruption problem in the country and establish a roadmap for dealing with it. The results of the Integrity Scan are set out in a report issued in June 2013, addressing thirteen aspects relating to the promotion of integrity and the fight against corruption in Tunisia. Notable aspects of the report are identification of areas for priority attention, including regulatory policy, public finance management, public sector integrity, business sector integrity and whistleblower protection, details of reforms already underway in Tunisia and building action plans for implementation of priority reforms 43.

In the area of strengthening public sector integrity, for example, Tunisia is giving priority to the need to build a culture of transparency and integrity in the public sector, and has initiated a number of reforms in co-operation with the UNDP and the OECD. These include developing a code of conduct for the public services. Attention is also being given to a new regulatory framework governing whistleblower protection 44.

Under the Tunisian government’s programme of reforms and its commitment to combat corruption and to promote integrity and good governance at institutional level, following an intensive consultation with the good governance units and representatives of civil society and the business sector it launched a national anti-corruption strategy in December 2012. A Minister of Governance and Combatting Corruption was appointed and the National Anti-corruption Unit was established. Good governance units are also in place in all ministries, public enterprises and regions of the country 45.

In the area of regulatory policy, overall regulatory governance is well established in Tunisia but the OECD report identified room for improvement in several areas including the need for policy concerning stakeholder participation in the preparation of laws. Tunisia is already pursuing a raft of measures designed to strengthen the rule of law, including improving the accessibility of laws and regulations, introducing regulatory impact analysis to ensure the effectiveness of legislation and regulations and simplifying the existing stock of regulations 46.

A key challenge for Tunisia is to move from a fairly closed socioeconomic system, where the prevailing tendency of state interventionism enabled corruption and privileged for the elite, to more open and inclusive systems that benefit all Tunisians. Inconsistent rule of law and regulatory inefficiency under Tunisia’s previous government are viewed as having weakened Tunisia’s fragile economic framework and prevented much-needed market liberalisation 47. Empowering strong independent governance institutions that enforce the rule of law on elites and vested interest groups will accelerate the change process 48.

Encouraged by international donors and its technical and financial partners (including the IMF, UNDP, OECD, IFC, CIGE and SECO), Tunisia’s government and the private sector are analyzing Tunisia’s economic model and scope to enhance the role of the private sector, to identify new engines of growth for lasting and inclusive development of the Tunisian economy. Tunisian authorities have committed to an in-depth revision of the regulatory environment of the private sector to introduce improvements intended to bring structural change to regulation of the private sector and to enable a more transparent and competitive environment for doing business 49,50.

Several reforms await adoption by the new Tunisian government, and the ability to follow through on structural and institutional reforms will be critical to Tunisia’s successful transitioning to a functioning market economy that is more open and inclusive and with a transparent private sector and a healthy business environment 51,52,53. The fight against corruption at every level is also viewed as a determining factor in Tunisia’s future development 54.

Outlook for further development of corporate governance in Tunisia

Looking to the further development and implementation of corporate governance in Tunisia the EBRD Report pointed to the need for corporate governance reforms in several specific areas, as well as reform of the institutional framework within which corporate governance is regulated. The Report further observed that notwithstanding the many positive trends and interactions promoting corporate governance development in Tunisia, the corporate reform process in Tunisia would benefit from increased transparency and predictability 55.

Further, the diagnostic work performed through the OECD CleanGovBiz Integrity Scan in 2012/13 provides an excellent platform for Tunisia’s ongoing programme of reforms aimed at strengthening its integrity framework across several priority areas, all of which are critical underpinnings for the development of sound corporate governance institutions and systems in Tunisia.
### Selection of recent global surveys: country assessments for Tunisia

#### 2015 Ibrahim Index of African Governance
- **Ranked 8th/54 countries** (2014: 8th/52)
- **Overall governance score = 66.9/100** (2014: 65.3)
- **2015 African average score = 50.1**
- **Highest category score achieved:**
  - Human Development (score = 77.8)
  - **Lowest score:** Sustainable Economic Opportunity (score = 61.2)

#### 2016 Index of Economic Freedom
- Economy is ranked the **114th freest** in the Index (economic freedom score = 57.6), a "mostly unfree" economy
- **Ranked 11th out of 14 countries in the MENA-region, its score is below both the world average score (60.7) and the regional average score (62.6)

#### 2015 Corruption Perceptions Index (CPI)
- **Ranked 76th/168 countries** (2014: 79th/175)
- **CPI Score = 38/100** (2014: 40/100; 2013: 40/100)

#### 2015-2016 Global Competitiveness Index
- **Ranked 92nd/140 countries overall** (2014-15: 87th/144)
- An efficiency-driven economy
- **Top five most problematic issues for doing business:**
  - inefficient government bureaucracy
  - access to financing
  - policy instability
  - corruption
  - complexity of tax regulations

#### 2016 Ease of Doing Business Index
- **Ranked 74th /189 countries** (2015: 75th)
- **Ranked 5th/20 MENA-region countries** (2015: 5/20)

#### Economist Intelligence Unit, Business Environment Rankings
- **Ranked 65th out of 82 countries** (2015-2019 score 5.47/10; 2010-2014 5.19/10)
- Regional ranking: **9th** out of 17 African countries covered

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2. The Heritage Foundation's 2016 Index of Economic Freedom tracks 10 factors of economic freedom grouped into four broad categories, or pillars: rule of law; limited government; regulatory efficiency; and open markets, for 186 countries. [http://www.heritage.org/index/country/tunisia](http://www.heritage.org/index/country/tunisia)

3. Transparency International’s 2015 Corruption Perceptions Index (CPI) measures country perceptions of freedom from corruption in the public sector, ranking CPI scores for 168 countries. The CPI score indicates the perceived level of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean). [https://www.transparency.org/country/ATUN](https://www.transparency.org/country/ATUN)


Brief background

The development of corporate governance in Uganda

Approach to compliance

Emerging practices, trends, areas of leading practice and challenges in corporate governance in Uganda

Outlook for further development of corporate governance in Uganda

Uganda has mostly recovered from its history of post-independence civil and political unrest that saw the country among the world’s poorest and least-developed countries in its post-independence era.

Moderate reforms undertaken as Uganda embarked on a programme of economic liberalisation in the post-conflict period produced more than a decade of strong economic growth and recovery that lasted until around 2006, when Uganda's GDP growth slowed from an average of 7% p.a. in the 1990s and 2000s to around 5% per annum.

Uganda’s macroeconomic recovery is viewed as having been achieved largely based on development aid rather than on any fundamental improvement of its economic infrastructure. Aid in the form of budgetary and project support historically formed roughly one half of its annual budget. With not enough as yet done to put the economy on the path to sustainable growth the pace of reform has slowed. The country has experienced greater economic volatility over the past...
The development of corporate governance in Uganda

Overview of the evolution of corporate governance in Uganda

Uganda’s business sector mainly comprises micro-, small and medium-sized enterprises (MSMEs) established as either sole proprietorships or family-owned, and a very large informal sector which is not regulated. Other significant sectors are the large state owned corporations sector and co-operatives 20.

Notwithstanding Uganda’s considerable progress in liberalising its economy and opening its markets in recent years its progress in corporate governance has been viewed as slow. The level of awareness of corporate governance is viewed as still being in its infancy in Uganda and remains a fairly new concept. As a consequence, corporate governance practices in the business sector are perceived as weak 21, 22, 23.

In the 1990s and early 2000s Uganda’s banking industry suffered a number of bank failures, subsequently attributed to poor corporate governance practices, among other things 24. Losses incurred on insider loans arising from pervasive insider lending were the single most important contributor to the collapse of these banks 25. In analysing corporate governance failures revealed by these bank failures, researchers have held them up as illustrations of problems that arise from unstable political structures, particularly in developing nations. Uganda’s recent turbulent political past, for example, destroyed the economy of an otherwise flourishing country and is thought to have ushered in an era of moral degeneration, extensive corruption, and unethical business activities 26.

These bank failures prompted the Bank of Uganda (BOU) and the government to move to strengthen banking regulation. The parliament enacted the Financial Institutions Act in 2004. Section 14 of this legislation provides a regulatory framework for good corporate governance in financial institutions and is supplemented by the corporate governance regulations issued by BOU in 2005 27, 28. Further progress was made with enactment of the Microfinance Deposit-Taking Institutions Act, 2003. The standards and codes that comprise Uganda’s extant corporate governance framework were mainly introduced from the late 1990s and early 2000s and largely informed by the OECD Principles of Corporate Governance, the CACP Guidelines, the King II Report (South Africa) and the Basle Committee on Banking Supervision for the banking sector 29, 30, 31.
The Capital Markets Authority (CMA)’s Capital Markets Corporate Governance Guidelines (CMA Guidelines) contain minimum standards of corporate governance for public companies and issuers of corporate debt and require listed companies/issuers to report on compliance with the guidelines in their annual reports.

In the area of private-sector developments, the Institute of Corporate Governance of Uganda (ICGU), established in 1998, contributes to training and capacity building through its established company directors training and development program, with support of a number of development partners including the Center for International Private Enterprise (CIPE), the World Bank’s Global Corporate Governance Forum, the Commonwealth Secretariat and BOU.

The ICGU Manual of Corporate Governance including Recommended Guidelines is applicable to all corporate bodies in Uganda, irrespective of size and ownership, public and private companies as well as state enterprises. The Guidelines provide guidance to companies on best practices relating to the conduct of board meetings, accounting and audit, risk management, board composition and treatment of shareholders.

A number of other private sector organisations in Uganda are active in advocacy for improvement in the business environment and in promoting enhanced business practices among their members, including regarding corporate governance. Examples are the Private Sector Foundation Uganda (PSFU), the Uganda National Chamber of Commerce and Industry (UNCCI) and the Uganda Manufacturers Association (UMA).

### Key initiatives to promote development of corporate governance in Uganda

<table>
<thead>
<tr>
<th>Initiative</th>
<th>Date</th>
<th>Description</th>
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<tbody>
<tr>
<td>Companies Act</td>
<td>2012</td>
<td>Enacted in September 2012, and commenced on 1 July 2013. The Act includes a code of corporate governance in section 14 and Table F of the Act that is required for public companies.</td>
</tr>
<tr>
<td>Financial Institutions Act</td>
<td>2004</td>
<td>Enacted in 2004 to repeal and replace the Financial Institutions Act, Cap. 54. The 2004 Act aimed to address the crisis in the banking sector of the late 1990s that resulted into the closure of several commercial banks.</td>
</tr>
<tr>
<td>Capital Markets Corporate governance Guidelines</td>
<td>October 2003</td>
<td>Issued by the CMA as the minimum standard for good corporate governance practices by public companies and issuers of corporate debt in Uganda.</td>
</tr>
<tr>
<td>Capital Markets Authority Act</td>
<td>1996</td>
<td>Act to establish the Uganda Capital Markets Authority (CMA), responsible for promoting, developing and regulating the capital markets industry in Uganda.</td>
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</table>
Regulatory overview

Uganda’s legal system comprises its 1995 Constitution, statutes and other written law, English common law and the doctrine of equity in so far as not in contradiction with the written law.

The corporate governance framework comprises the relevant laws and requirements of the various regulatory and supervisory authorities in Uganda. In addition, there are codes and guidelines setting out voluntary and self-regulatory arrangements to encourage adherence to corporate governance principles.

Corporations and statutory entities are regulated and supervised by a range of bodies: all companies are regulated by the Registrar General’s Office under the Companies Act 2012, listed companies by the Uganda Securities Exchange (USE) and SOCs under the respective ministries responsible for administering the respective parliamentary statutes under which they are established.

The CMA was established under the Capital Markets Authority Act 1996 to regulate capital markets including the USE, which in turn is responsible for regulating USE-listed companies.

As Uganda’s only securities exchange, the USE provides an avenue for domestic private investment. It therefore has a significant role to play in development of transparent corporate governance practices for potential listing targets through the influence of its Listing Requirements. The Listing Requirements address financial transparency, regular reporting and auditing requirements, among other things.

The current corporate governance landscape

In common with many other countries in Africa and throughout the world, the overall effectiveness of Uganda’s corporate governance system rests on interaction between mandatory legal rules and regulations, and voluntary adherence to best practices as established in the various standards and codes developed for application by entities within Uganda.

Academic studies point to evidence that the underlying political, economic, accounting, social, and ethical frameworks have a major influence on corporate behavior. A key factor highlighted through this research is that, given the extent of apparent weaknesses in the corporate governance system in Uganda, there is a perception that publication of guidelines alone will not significantly reduce the extent of corporate abuses.

The difficult question of striking an appropriate balance between public regulatory intervention and non-statutory methods of regulating corporate behavior and conduct has been highlighted by leaders in Uganda’s regulatory community in light of the need to stimulate the behaviours and disciplines of a market economy. In this context the Deputy Governor of the BOU emphasised that good corporate governance is an essential complement to good bank regulation and supervision.
Approach to compliance

A general challenge for enforcement of corporate governance in Uganda by the various regulators is that it would appear there is no implementation strategy of generally agreed principles focused on enforcement of corporate governance standards.

The 2009 APRM Report noted that save for a few sectors, such as banking and the capital market, where corporate governance standards are enshrined in the laws and regulations governing the banking sector, most companies in Uganda do not observe corporate governance standards because there is no law compelling them to.

Further, compliance with laws is also conditioned by the fact that most enterprises are found in the informal sector, where they are not regulated and are negative towards compliance and tend to routinely ignore laws relating to corporate governance.

With enactment of the Companies Act 2012 (commenced from 1 July 2013) this has changed for public companies, which are now required under the Act to comply with the corporate governance code (contained in Schedule 2, Table F of the Act) and also to annually file a statement of the company’s compliance with the code with the Registrar General and the Capital Markets Authority. The Act also specifies that there are penalties for non-compliance.

The APRM Report further observed that while overall Uganda has adequate laws in place to govern corporate behavior, only limited efforts are made by the responsible institutions to disseminate information on these laws. Also, while the government has established a range of supervisory and regulatory bodies to oversee the application of established laws and regulations, apart from the BOU and the CMA, the capacity of regulators to monitor and enforce compliance with applicable laws is hampered by a critical shortage of human, technical and financial resources within these institutions. The resulting weak enforcement capacity significantly hinders the effectiveness of these bodies.

The ICGU Recommended Guidelines are voluntary.

Emerging practices, trends, areas of leading practice and challenges in corporate governance

Uganda has been working to overhaul a significant amount of legislation to address weaknesses in its corporate governance framework to improve regulation of corporate governance, overall to create a more enabling business environment. In doing so it faces the range of challenges that typically exist in a developing country environment.

The APRM report noted a number of challenges for Uganda, including the need to deepen reforms already under way and prevent their reversal.

The Report highlighted the need for capacity-building programmes for enforcement and regulatory agencies are needed to address the lack of appropriate institutional, financial and human capacity in most regulatory bodies which limits their ability to effectively carry out their regulatory mandates in regulating, monitoring and supervising economic activities.

It also pointed to the need for Ugandan corporates to strengthen their business practices and adopt codes of good business ethics. With pervasive corruption a major issue strong anti-fraud and anti-money laundering laws that protect investors and consumers are needed backed by active and fair enforcement to boost confidence in Ugandan markets. Further, the report noted that the government would need to take steps to strengthen the governance framework for state-owned enterprises to improve their performance and public service delivery.

Continued effort is also needed to build capacity at director and managerial levels and increased public awareness on good governance issues and to help improve the accountability of corporations, directors and management. Ongoing training efforts by private sector institutions, such as the ICGU, are important to promote professional directorship in Uganda and enhance the professionalism of directors, to enhance corporate governance in all types of business.

It is acknowledged that SMEs have largely been left out of the good corporate governance agenda and that effort is needed to promote training in good governance and to disseminate best practices among SMEs and small entrepreneurs. Deepening the range of operators in the financial market is also important, including encouraging venture and development capital investment for small business in order to enhance corporate governance in the SME sector.
Recognising that embedding regulatory reforms takes time academic researchers have pointed out that informal mechanisms for monitoring corporate conduct and behaviour, particularly bank finance, will continue to play an important role in Uganda until its regulatory reform processes and capacity-building to strengthen institutions responsible for enforcing legal rules become more advanced 64.

Within the broader framework of commercial justice reform, efforts are being made to strengthen and build the capacity of institutions, such as the Registrar of Companies and Commercial Courts.

Outlook for further development of corporate governance in Uganda

The CMA has concisely summarised the need to improve Uganda’s corporate governance framework and underlying regulatory systems by taking the following actions, among others, to drive improvements in corporate governance in Uganda 65:

• incorporate corporate governance requirements into laws and regulations;

• fast-track development and enactment of legislation that would enhance corporate governance;

• initiate programmes to enhance public awareness of corporate governance issues, including the rights and obligations of various role players under the laws, policies, regulations and standards addressing corporate governance;

• enhance risk management, and the roles of compliance officer, internal audit, independent directors, the audit committee, and the company secretary;

• embed governance in day-to-day management;

• punish offenders;

• USE listing rules should require listed companies to disclose their level of compliance with the CMA Guidelines;

• extend good governance to all sectors - corporate, government, NGOs; and

• increase the role of the ICGU and other private sector organisations in building capacity at director and managerial levels, disseminating best practices among SMEs and training small entrepreneurs.

While many of these areas have already been addressed in Uganda's ongoing law reform programme, including through implementation of the Companies Act 2012, significant work awaits to advance implementation of corporate governance practices throughout Uganda's economy.
Selection of country assessments for Uganda

### 2015 Ibrahim Index of African Governance
- Ranked **19th / 54** countries (2014: 19th/52)
- Overall governance score = **54.6/100** (2014: 55.4)
- 2015 African average score = 50.1
- Highest category score achieved: Human Development (score = 60.1); lowest score: Sustainable Economic Opportunity (score = 47.8)

### 2016 Index of Economic Freedom
- Economy is ranked the **102nd** freest in the Index (economic freedom score = 59.3), a “mostly unfree” economy
- Ranked **13th** out of 46 countries in the SSA-region, its score is above the regional average score (55.5) and below the world average score (60.7)

### 2015 Corruption Perceptions Index (CPI)
- Ranked **139th/168** countries (2014: 142nd/175)
- CPI Score = **25/100** (2014: 26/100; 2013: 26/100)

### 2015-2016 Global Competitiveness Index
- Ranked **115th/140** countries overall (2014-15: 122nd/144)
- A factor-driven economy

### 2016 Ease of Doing Business Index
- Ranked **122nd/189** countries (2015: 135th)
- Ranked **12th/47** SSA-region countries (2015: 22/47)

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2. The Heritage Foundation’s 2016 Index of Economic Freedom tracks 10 factors of economic freedom grouped into four broad categories, or pillars: rule of law; limited government; regulatory efficiency; and open markets, for 186 countries. [http://www.heritage.org/index/country/uganda](http://www.heritage.org/index/country/uganda)
3. Transparency International’s 2015 Corruption Perceptions Index (CPI) measures country perceptions of freedom from corruption in the public sector, ranking CPI scores for 168 countries. The CPI score indicates the perceived level of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean). [https://www.transparency.org/country/UGA](https://www.transparency.org/country/UGA)
Brief background

The development of corporate governance in Zambia

Approach to compliance

Emerging practices, trends and areas of leading practice in corporate governance

Areas of challenge for corporate governance in Zambia

Outlook for further development of corporate governance in Zambia

Zambia is a lower middle-income developing economy in Southern Africa. Governed as a parliamentary democracy, it has a post-independence history of stable government committed to strong governance and democratic processes. The Zambian government signed a new constitution for Zambia into law on 5th January 2016, and presidential and parliamentary elections are scheduled for the country in August 2016.

One of Sub-Saharan Africa’s 10 fastest growing economies with its history of rapid economic growth at average annual growth of more than 7% over the last decade, Zambia achieved middle income country status on its 2011 economic performance. After rebasing its national accounts during 2014 (from 1994 to 2010) new estimates have put the Zambia economy at around 25% larger than the previous estimates, with mining, construction and trade gaining more prominence.

Until recently Zambia’s economic growth was driven predominantly by its mining sector and rising copper prices, but also...
the combination of prudent macroeconomic management and market liberalisation policies. It is Africa’s second largest copper producer.

Economic growth declined from 2013 due to waning copper production. The IMF forecasts economic growth at above 4% in 2015/16.

Zambia actively seeks foreign investment. Its recent economic performance attracted increased investment from Canada, Australia, the UK and China in the mining sector. A new mining royalty tax regime introduced from 2015 reduced the flow of FDI to that sector, however, and together with the current sharp decline in copper prices is thought to have significantly affected the economic performance of both the sector and the Zambia economy. The tax change has subsequently been reversed.

The government’s overarching policy goals are to diversify the economy away from dependence on copper, and to develop the country’s economic capability in the areas of agriculture, construction, manufacturing and trade. Agriculture is the major employer (70% of the population), and the potential of this sector to contribute to Zambia’s economic development is believed to be under-exploited.

Zambia’s sustained economic growth has not translated into significant poverty reduction, and some 60% of the population still lives below the poverty line. The current iteration of the government’s national development plan is focused on addressing this issue, with agricultural development at the core of the government’s strategy for rural development and poverty reduction. The 6th National Development Plan highlights the theme of broad-based wealth and job creation, targeting inclusive growth, fostering a competitive economy, reducing poverty and reaching middle-income status.

The Zambian business environment is perceived as being relatively conducive for investment and doing business relative to its neighbouring countries. Despite some improvements in business and investment freedom, Zambia has however lagged in other aspects of the business environment. The 2015 Index of Economic Freedom reported the sharp decline in 2013 data measuring economic freedoms in Zambia and an overall decline in economic freedom by 1.0 point since 2011. The 2015 Ibrahim Index of African Governance has also measured a declining overall governance score for Zambia.

Zambia is ranked as the 7th most competitive economy in Sub-Saharan Africa in the World Economic Forum’s 2015-2016 Global Competitiveness Index.

The development of corporate governance in Zambia

Overview of the evolution of corporate governance in Zambia

Zambia has evolved over a few decades from a state-oriented economy in its post-independence period to a liberalised, private-sector led economy today.

Given Zambia’s history, the concept of corporate governance is a fairly new initiative along with that of developing the Zambian private sector – both linked to the government’s economic liberalisation programme commenced in the mid-1980s.

The collapse of a number of banks in Zambia in the mid-1990s was largely attributed to poor corporate governance. Characteristics of the corporate governance environment at that time identified factors such as the conduct of dominant key shareholders, poor transparency and inadequate disclosure practices as having contributed to those failures.

The 2006 World Bank ROSC Report for the corporate governance assessment of Zambia (ROSC Report) noted that fully tapping the potential of capital markets and professionalising boards and management would require reform efforts in Zambia to continue, while acknowledging that important steps had already been taken to improve corporate governance in Zambia over the last few years.

The government’s Financial Sector Development Plan approved in 2004 established corporate governance as one of the pillars of promoting financial system stability. With the support of its international development partners, notably the Commonwealth Association of Corporate Governance (CACG) and the Centre for International Private Enterprise (CIPE), Zambia commenced the process of establishing a corporate governance framework aligned with Zambia’s economic development initiatives.

Following the initial work of the Zambian National Task Force on Corporate Governance in 1999, the Institute of Directors of Zambia (IoDZ) was established and commenced operations in 2000. Since establishment, the IoDZ assumed much of the subsequent work for the development of corporate governance in Zambia, including developing a strong and sustainable Director Training Programme which embraces both the private and public sectors. IoDZ has trained over 1,000 directors - a significant contribution to boardroom performance in various companies and organisations.

The IoDZ has taken a visible role in matters of corporate governance, and plays a key role encouraging development of professional directors and director training, especially in the private sector. The IoDZ has a major impact on awareness of corporate governance and duties and responsibilities of directors through its ongoing induction and training programmes, and publications aimed at maintaining sound corporate governance practices, particularly for private sector entities. With CIPE support the IoDZ published its manual of corporate governance containing its corporate governance code, and also a corporate governance code for SMEs, in 2008.
IoDZ’s future outlook identifies continued focus in three main areas: membership growth; increased corporate governance sensitization workshops and seminars (in conjunction with other reform-oriented groups); and contributing to the formulation and pursuit of a corporate governance agenda for Zambia. The IoDZ is seeking greater powers to regulate its members.

Other professional bodies and associations such as the Zambian Institute of Management (ZAMIM) and the Zambian Institute of Chartered Accountants (ZICA) also make a significant contribution to the overall corporate governance framework through their requirements for their membership’s adherence to their professional codes of ethics and standards of conduct.

While Zambia’s current corporate governance framework is relatively more advanced than many other countries in Sub-Saharan Africa the evolution of Zambia’s corporate governance framework is ongoing, as Zambia seeks to continue strengthening its financial sector and to attract investment capital to fund further economic growth.

<table>
<thead>
<tr>
<th>Key initiatives to promote development of corporate governance in Zambia</th>
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<tr>
<td>• Manual on Corporate Governance and Corporate Governance Code</td>
<td>2008</td>
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<tr>
<td>• Corporate Governance Code for Small and Medium Enterprises</td>
<td></td>
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<tr>
<td>ROSC Report: Accounting and Auditing Standards</td>
<td>2007</td>
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<td>ROSC Report: Corporate Governance</td>
<td>2006</td>
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<tr>
<td>Banking and Financial Services (Corporate Governance) Guidelines</td>
<td>November 2006</td>
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<td>Lusaka Stock Exchange Corporate Governance Code</td>
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<td>Institute of Directors in Zambia (IoDZ)</td>
<td>July 2000</td>
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<tr>
<td>Zambian National Task Force on Corporate Governance</td>
<td>1998/99</td>
</tr>
</tbody>
</table>

**Regulatory overview**

Zambia’s dual legal system is founded on statutory law based on the English common law system and principles of equity applied by English Courts, as well as customary law.

The regulatory and legislative framework includes a number of legislative, policy and institutional frameworks aimed at regulating and supporting sound corporate governance, supplemented by various international standards and codes the Zambian government has adopted and/or ratified. Key legislation that makes up the corporate governance framework includes:

- the Companies Act 1994 (Cap 388), administered by the Patents and Companies Registration Agency (PACRA) which regulates non-listed, private companies;
- the Securities Act 1993, which regulates the stock exchange, brokers and listed companies and is administered by the Securities and Exchange Commission (SEC);
- various financial sector legislation, including the Bank of Zambia Act and the Banking and Financial Services Act which provide for regulation of banks and financial institutions by the Bank of Zambia (BoZ), and the Insurance Act 1997 and National Pensions Schemes Act which regulate insurers and pension funds respectively.
- the Public Finance Act; and
The Zambia business environment is divided into two main sectors: large-scale enterprises with relatively concentrated ownership that drive the economy and MSMEs, mostly informal and owner-operated businesses that employ the vast majority of the labour force. There are three main types of companies: private companies, public limited companies and foreign companies.

Public limited companies are regulated under the Lusaka Stock Exchange (LuSE) Listing Rules, which are an important part of the corporate governance framework through establishing higher levels of compliance and disclosure for public limited companies.

Main bodies responsible for regulating Zambia’s markets and institutions are the SEC, established under statute passed in 1993 and the LuSE, which is licensed by the SEC and operates as an SRO. The LuSE began operations in 1994 and has both equity and debt listings. The equity market has 2 tiers: the main board and the second tier market. The LuSE is the sole secondary market for government bonds.

Guidelines comprise a framework of 15 principles of corporate governance and related guidelines that together aim to guide the quality of corporate governance conduct of directors and managers of banks and financial institutions.

The Commercial Court, a division of the High Court, deals with disputes arising out of commercial transaction by judges experienced in commercial law.

The current corporate governance landscape

Zambia’s corporate governance framework outlined above represents the current foundation for corporate governance practices in the country, and evidences a high level of involvement from regulatory bodies and other private-sector bodies.

The Zambian government has invited, and benefited from, the participation, advice and support of a variety of international development partners. It supports initiatives to strengthen financial systems in the African continental setting, for example through participation in the APRM and the African Corporate Governance Network (ACGN).

After a wave of privatisation in the 1990s, a few state-owned entities now remain which are either incorporated under the Companies Act or statutory corporations established under particular statutes. The government has relinquished control of SOEs to boards of directors that comprise a mix of private sector, civil society and government representatives, but these boards have a majority of government officials, and board members appointed from private sector civil society can be removed by the line minister. Zambia strives to adhere to the OECD Guidelines on Corporate Governance to ensure a level playing field between SOEs and private sector enterprises. The government launched its Public Financial Management Reform Strategy in 2013, with the aim of improve accounting systems and control of public finances among other things.

Commenting on Zambia’s legal system Mwenda (2010) noted that development of Zambian laws has lagged, and has not been responsive to changes occurring in Zambia’s socio-economic environment.

International surveys of economic governance and corporate governance development acknowledge that Zambia has made good progress but also highlight scope for improvement in certain areas. For example, the 2016 Doing Business survey ranked Zambia 88th among 189 countries (9th among 47 Sub-Saharan Africa countries surveyed) for protecting minority investors. The survey results for Zambia’s showed areas of weakness in conflict of interest regulation (extent of disclosure), and in shareholder governance regulation (corporate transparency).

Other assessments have similarly pointed to the need for improvement across these areas, including increasing the disclosure regime and improving Zambia’s regulatory landscape affecting shareholder rights, including shareholder participation in major transactions. The need for better alignment with the OECD Principles of Corporate Governance has also been noted.

While the LuSE has a growing number of listed companies, policymakers have the dual challenges of implementing reforms to improve regulation and supervision of listed companies in Zambia to encourage greater level of investment participation, but without incentivising listed companies to leave the listed entity sector by unduly raising the costs to corporate entities of being listed.
Approach to compliance

The LuSE Code is not mandatory, but it is a mandatory requirement for listed companies to disclose their compliance with the code to stakeholders on the “comply or explain basis” 53.

Under the LuSE Listing Rules listed companies are required to include in their annual report 54:

• a narrative statement of how the company has applied the principles set out in the LuSE Code of Corporate Governance, providing explanation(s) that enable(s) its shareholders to evaluate how the principles have been applied; and

• a statement addressing the extent of the company’s compliance with the LuSE Code and the reasons for non-compliance with any of the principles in the LuSE Code, specifying whether or not the company has complied throughout the accounting period with all the provisions of the LuSE Code, and indicating for what part of the period any non-compliance occurred.

The APRM and ROSC Reports observe that while the LuSE is responsible for monitoring and ensuring compliance with the LuSE Code it is capacity-constrained and the LuSE Rules do not appear to be being effectively enforced 55,56.

The BoZ Guidelines applicable to banks and financial institutions do not have the same force of law as principal or secondary legislation, as in the case of Acts of Parliament or statutory instruments, and are therefore not of themselves legally binding. Mwenda (2010) notes, however, that they are a corollary to and form part of the tenets of the legal and regulatory framework for banking supervision in Zambia, and non-compliance with the Guidelines would potentially not be without consequence if, in regulatory action taken by the BoZ, non-compliance is shown to be linked with non-compliance with the Banking and Financial Services Act 57.

Emerging practices, trends and areas of leading practice in corporate governance

The status and the contributions of the IoDZ to date in promoting corporate governance in Zambia has been well noted, along with the capability and capacity it has created towards pursuit of its mandate, and its financial stability relative to many other Institutes in Africa 58,59,60.

Ongoing education and training efforts of strong private-sector bodies such as the IoDZ are critical inputs for achieving further improvements and to realise benefits from the existence of a community of professionalised directors to guide sound corporate governance practices in corporate entities 61,62.

A roundtable discussion held by IoDZ and the Chartered Institute of Management Accountants (CIMA) in 2013 to discuss ethical challenges faced in corporate life in Zambia and strengthening a culture of integrity in corporate enterprises, noted that while there is a trend to focus on corporate ethics in Zambia, experience shows that practice is very variable. The discussion noted the findings of a 2012 CIMA survey on responsible business, where Zambian respondents reported experiencing significant pressure from colleagues to compromise ethical standards, and to a greater degree than has been reported elsewhere. The subsequent CIMA report observed that leading organisations in Zambia would need to lift their commitment to corporate ethics, with support from government and regulatory authorities.

The CIMA Report also mentioned growing interest in integrated reporting as an essential form of more holistic reporting by corporate entities including key non-financial information about the entity’s opportunities and risks 63.
Areas of challenge for corporate governance in Zambia

While Zambia is thought to have a reasonably good legislative infrastructure to effect legislation and regulation supporting good corporate governance in the public and private sectors, the APRM Report observed that monitoring and supervision of commercial enterprises in Zambia by relevant government agencies needs to be strengthened.

Regulatory compliance and compliance with international standards and codes and with local legislation is perceived as low. This is thought to be partly due to a general lack of awareness about regulation among regulated entities, and also partly due to lack of enforcement capacity in the responsible institutions.

Both the APRM Report and the earlier ROSC Report noted critical shortages of human, technical and financial resources within Zambia’s regulatory institutions, except for BoZ, and that weak enforcement capacity has hindered their regulatory efficiency and effectiveness. The ROSC Report suggested creating a central coordinating agency responsible for ensuring that the respective regulatory and supervisory institutions are performing their functions.

It has also been observed that policy co-ordination between Zambia’s different institutions and authorities remains a major challenge, and harmonisation of policies and procedures is needed in some areas to streamline co-ordination among the various institutions.

Surveys of Zambia’s regulatory system have noted that legislation, standards and codes relating to the financial sector need harmonising and strengthening in the interest of promoting a sound, stable financial system in Zambia, including as relates to corporate governance.

The ROSC report recommended strengthening enforcement of listed companies’ compliance with disclosure regulations including compliance with the LuSE Code. While IoDZ has played a leading role in promoting corporate governance standards and codes and ethical business practices, especially in the private sector, the standards and codes do not always appear to be followed in practice and there seem to be no functional avenues for enforcement.

Various surveys and commentators observe that corruption in Zambia continues to be a problem facilitated by weak or non-existent corporate governance systems, most especially in the public sector enterprises where awareness of corporate governance is viewed as generally weak. Corruption is viewed as most pervasive in government procurement and dispute settlement. The government has taken steps to fight corruption through its National Anti-Corruption Policy adopted in 2009. While Zambia’s anti-corruption legislative framework is thought to be adequate, implementation by the Anti-Corruption Commission is perceived as falling short. Zambia lacks adequate laws on whistle-blower protection, asset disclosures, evidence and freedom of information to promote greater transparency and accountability and to induce ethical behaviour in public institutions.
Outlook for further development of corporate governance in Zambia

The APRM Report observed a great deal of progress in Zambia’s commitment to various international and regional agreements in context of promoting good corporate governance and enhancing social economic development. The report noted, however, that Zambia will need to increase its level of implementation of those commitments.

APRM recommendations addressing main areas for further development of corporate governance in Zambia are:

- strengthening regulatory authorities and institutions in terms of their human resource capacities and guaranteed public budget support. These authorities and institutions also need to be given sanctioning and enforcement powers to enhance their effectiveness;

- laws and regulations, including the Companies Act and the Securities Act need review and amendment to ensure they keep pace with developments in good corporate governance practice. For example, the Companies Act needs to afford better protection of the rights of minority shareholders;

- the legal framework of corporate governance ought to be reviewed to afford better protection to the main classes of other stakeholders that interact with or are affected by the activities of corporate entities (for example suppliers, consumers and members of the community);

- corporates need to be encouraged to establish corporate governance compliance systems to strengthen their business practices, for example through adopting a code of ethics aligned with meeting their business objectives. In the listed entity sector, the LuSE’s Code should be enhanced to offer better guidance on the minimum content of a Code of Ethics for listed companies. The 2014 CIMA Report also noted that there is scope for large corporate entities and public enterprises to improve their systems of corporate governance compliance, particularly in the sphere of creating appropriate systems to promote good ethical conduct; and

- the country’s institutions and structures established for improving accountability of corporations, directors and management, including the IoDZ, should continue its ongoing effort to increase public awareness of good governance practices and training of their members.

Further, there is also scope for these corporates to take the lead in developing sector focus corporate governance forums (for example, in the mining and construction sectors), to encourage leading organisations to play an active role towards shaping further corporate governance developments within Zambia’s corporate sector.
Selection of country assessments for Zambia

### 2015 Ibrahim Index of African Governance
- Ranked 12th / 54 countries (2014: 13th / 52)
- Overall governance score = **59.5/100** (2014: 59.2)
- 2015 African average score = 50.1
- Highest category score achieved: Safety and Rule of Law (score = **66.7**); lowest score: Sustainable Economic Opportunity (score = **50.7**)

### 2016 Index of Economic Freedom
- Economy is ranked the **106th** freest in the Index (economic freedom score = 58.8), a “mostly unfree” economy
- Ranked 16th out of 46 countries in the SSA-region, its score is above the regional average score (55.5), but below the world average score (60.7)

### 2015 Corruption Perceptions Index (CPI)
- Zambia is ranked 76th / 168 countries (2014: 85th / 175)
- CPI Score = **38/100**
- (2014: 38/100; 2013: 38/100)

### 2015-2016 Global Competitiveness Index
- Ranked **96th/140** countries overall (2014-15: 96th/144)
- A factor-driven economy
- Ranked 7th among the top 10 most competitive SSA economies

### Top five most problematic issues for doing business:
- access to financing
- corruption
- inadequate supply of infrastructure
- tax rates
- inefficient government bureaucracy

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2 The Heritage Foundation’s 2016 Index of Economic Freedom tracks 10 factors of economic freedom grouped into four broad categories, or pillars: rule of law; limited government; regulatory efficiency; and open markets, for 186 countries. [http://www.heritage.org/index/country/zambia](http://www.heritage.org/index/country/zambia)
3 Transparency International’s 2015 Corruptions Perceptions Index (CPI) measures country perceptions of freedom from corruption in the public sector, ranking CPI scores for 168 countries. The CPI score indicates the perceived level of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean). [https://www.transparency.org/country/#ZMB](https://www.transparency.org/country/#ZMB)
5 The World Bank’s Doing Business survey project provides objective measures of business regulations and their enforcement across 189 economies. [http://www.doingbusiness.org/data/exploreeconomies/zambia](http://www.doingbusiness.org/data/exploreeconomies/zambia)
Zimbabwe is a low income developing economy in Southern Africa. It is characterised as a “fragile economy” on account of the significant level of economic challenges the country faces emerging from a protracted period of fundamental political and economic uncertainty 1,2.

Formerly one of Africa’s most promising economies post-independence Zimbabwe had a diversified economy, well-developed infrastructure, an advanced financial sector and was on the path to middle-income status in the 1990s 3, but is now one of Africa’s poorest countries 4. More than 80% of workers are employed in the informal sector 5.

In the era of relative political stability that commenced with the advent of the Government of National Unity (GNU) in 2009 Zimbabwe began a process of economic reconstruction after decades of political turmoil and economic mismanagement6. After a period of economic rebound that saw strong economic growth over 2009-2012 underpinned by the mining and agricultural sectors, Zimbabwe’s economic performance deteriorated sharply after 2012 7,8.
Zimbabwe’s severe debt situation arising from its accumulation of debts owed to international partners due to non-payment in the period of Zimbabwe’s isolation from the international community imposes significant constraints on its access to further donor funding as well as to private investment and international capital markets 9,10,11.

Given continuing political uncertainty surrounding the new majority government elected to power in 2013, ending the tenure of the GNU in mid-2013, Zimbabwe’s development partners have remained cautious on participation in the country’s economic recovery process. Their role and engagement with the new government on the country’s development process has accordingly remained uncertain 12,13. The lifting of EU economic and trade sanctions on Zimbabwe in November 2014 on account of improvements in the political environment after adoption of Zimbabwe’s new constitution in that year is expected to result in normalisation of relations and resumption of development and finance co-operation with Zimbabwe 14.

The Zimbabwe Government issued its 2013-2018 economic blueprint in 2013, known as the Zimbabwe Agenda for Socio-Economic Transformation (Zim Asset) designed to reposition the economy and enable Zimbabwe to achieve economic growth 15. An inter-ministerial committee on doing business has been set up to improve the investment climate and spearhead the harmonisation of investment laws 16.

The overall economic outlook in the short to medium term is sluggish owing mainly to the continued liquidity crunch, policy inconsistency and Zimbabwe’s unsustainable debt situation 17. The IMF has forecast Zimbabwe’s real GDP growth at 1.4% for 2015 and 2.4% in 2016 18. Negative investor sentiment due to ongoing political uncertainty is also an exacerbating factor 19. Limited resources and dilapidated infrastructure, obsolete technologies and high cost of capital are among the impediments to investment in Zimbabwe 20.

The development of corporate governance in Zimbabwe

Overview of the evolution of corporate governance in Zimbabwe

Prior to Zimbabwe’s period of economic decline post-1998, the country boasted a small but healthy capital market. In the subsequent two decades Zimbabwe’s economy was decimated by corruption and mismanagement and currently ranks last of the 46 Sub-Saharan African countries surveyed in the 2015 Index of Economic Freedom, described as a repressed economy, with economic freedom scores far below the world and regional averages 21. It ranks 155 out of 189 countries in the 2016 World Bank Doing Business Survey, a significant improvement on its much lower previous rankings 22.

The Institute of Directors Zimbabwe (IoDZ), a voluntary, not-for-profit private-sector membership organisation first established as a branch of the Institute of Directors in the United Kingdom in 1958 existed throughout this period, and in 1993 it changed its status to an Affiliate of the UK IoD. It continued to work with the Commonwealth Secretariat to provide training to directors and shareholders 23.

In the difficult post-independence political and economic environment the country’s commercial law system continued in operation and was perceived as efficient. Even though there was no capital markets regulator until 2008 the Zimbabwe Stock Exchange (ZSE) established under the Stock Exchange Act of 1974 regulated capital market activity under its statutory mandate adopting listing rules based on those of the London Stock Exchange and the Johannesberg Stock Exchange 24,25.

In the financial sector the banking sector experienced a period of significant turmoil as a number of banks failed in the period 1998-2003. These failures were attributed in large part to mismanagement and a raft of corporate governance weaknesses in these failed institutions 26. The Reserve Bank of Zimbabwe (RBZ) moved to attempt to ensure banks in Zimbabwe adopted good corporate governance principles and practices, including among other actions issuing a guideline in 2004 aimed at influencing the corporate governance practices of banks and setting down minimum internal audit standards for banks 27,28.

Subsequently the persistent financial sector vulnerabilities led to further difficulties in this sector that necessitated further RBZ interventions, and it is noted that the condition of the banking sector in Zimbabwe remains vulnerable 29,30. The RBZ continued to note concerns about quality of corporate governance and effective supervision of banks 31. Commenting on banking sector risk in Zimbabwe the Economist Intelligence Unit cites negative factors including state interference in the sector and the risk of rising levels of non-performing loan levels for many banks in the sector, particularly if economic growth falters 32.

In 2009, the government endorsed a private sector-driven initiative led by a partnership of the IoDZ, the Zimbabwe Leadership Forum and the Standards Association of Zimbabwe to develop a national corporate governance code for Zimbabwe 33,34,35. This initiative involved a collaboration of the government and the private sector 36,37. The project to develop the National Code on Corporate Governance of Zimbabwe (the Code) was completed in 2014, and the long-awaited Code was officially launched in April 2015 38. The Code applies to all types of organisations in Zimbabwe, including parastatals and SOEs, and is voluntary. It comprises nine chapters covering key governance issues of relevance to the Zimbabwe business environment 39.

Key initiatives to promote development of corporate governance in Zimbabwe

<table>
<thead>
<tr>
<th>Initiative</th>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Code on Corporate Governance of Zimbabwe (NCCGZ)</td>
<td>2009 - 2014</td>
<td>Process established to develop a national code for Zimbabwe under the NCCGZ Project Board</td>
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<tr>
<td></td>
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<td>Final Code issued in 2014</td>
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<tr>
<td>Constitution of Zimbabwe</td>
<td>2013</td>
<td>Approved by the Zimbabwe Parliament in May 2013</td>
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<tr>
<td>Corporate Governance Framework for State Enterprises and Parastatals</td>
<td>2010</td>
<td>Issued by the Zimbabwe Ministry for State Enterprises and Parastatals</td>
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<tr>
<td>Reserve Bank of Zimbabwe Guideline no. 01-2004/BSD: Corporate Governance,</td>
<td>2004</td>
<td>Issued by the Bank Licensing, supervision and surveillance department of the Reserve Bank of Zimbabwe in September 2004, together with an addendum issued in November 2004</td>
</tr>
<tr>
<td>First Corporate Governance Code issued in Zimbabwe</td>
<td>1996</td>
<td></td>
</tr>
<tr>
<td>Institute of Directors Zimbabwe</td>
<td>1993</td>
<td>Established as an Affiliate of the Institute of Directors United Kingdom</td>
</tr>
</tbody>
</table>

Regulatory overview

Zimbabwe is a common law country reflecting the historical evolution of its legal system prior to independence.

Corporate governance practices in Zimbabwe are regulated by the Companies Act (Chapter 24:03) and Zimbabwe Stock Exchange Act (Chapter 24:18) (ZSE) listing requirements, Public Finance Management Act (Chapter 22:19) (PFMA) as well as the rules of professional bodies such as the IoDZ.

The Companies Act (Chapter 24:03) is administered by the Office of Registrar of Companies 42.

The Securities and Exchange Act 17/2004 (operationalised in 2008) established the Securities Commission of Zimbabwe (SECZ). With the passage of this Act the ZSE came under regulation of the SECZ. In addition to regulating exchanges the SECZ also regulates, registers and licences brokers 43.

The ZSE operates as a self-regulatory organisation responsible for regulation and oversight of the market conduct of listed companies through its listing requirements. It was demutualised in March 2015 and is now a privately-owned entity.

The ZSE Listing Rules, last issued in updated form in 2002, are based on the listing rules of other established stock exchanges including the London Stock Exchange and the Johannesburg Stock Exchange 44.

Banks are regulated by the Reserve Bank of Zimbabwe (RBZ) under the Reserve Bank of Zimbabwe Act, Chapter 22: 15 of 1964 45.

State-owned enterprises are governed by the individual acts of parliament under which they are incorporated, and by the Public Finance Management Act 46.

The World Bank’s 2011 Report on Observance for Standards and Codes for Zimbabwe included a policy recommendation signalling the need to strengthen the supervisory capacity of all these regulators, particularly in relation to recruiting and retaining qualified staff, in order to continue effectively discharging their respective roles 47.

The current corporate governance landscape

Despite much adverse publicity on Zimbabwe’s political and economic governance its commercial law system has continued with the support of key institutions, including ZSE and IoDZ 48.

A period of implementation of the National Code now lies ahead for Zimbabwe’s economic actors, although there is little publicity on how its implementation will be monitored and measured across the different sectors where it is expected to be applied, including in the listed entity sector.
Approach to compliance

Up until issuance of the National Code on Corporate Governance in 2014 Zimbabwe did not have any such national code. However under the ZSE Listing Rules, ZSE-listed companies were (and still are) required to include the following information in their listing particulars and in a separate section of each annual report: “...a narrative statement of how it has applied the principles set out in the Code of Corporate Practice and Conduct as set out in the King Report or Cadbury Report on Corporate Governance providing explanation which enables its shareholders and potential investors to evaluate how the principles have been applied” (i.e. on a comply or explain basis) 49.

The 2014 National Code, which is a voluntary code, adopts the “apply or explain” principle to encourage compliance through disclosure of entities’ compliance with the Code but without mandating compliance with specific practices. The Code states that an entity’s governing board is responsible for the company’s compliance with the Code and for disclosing information about the company’s compliance that will enable investors and other stakeholders to assess the governance of the company when making investment decisions (Chapter 7, Compliance and Enforcement) 50.

Emerging practices, trends, areas of leading practice and challenge in corporate governance in Zimbabwe

Besides the recent launch of the Code some positive trends have served to advance development of corporate governance in Zimbabwe over difficult and challenging economic times, including 51:

• evidence of research activities referencing corporate governance in Zimbabwe;
• increased membership numbers in the IoDZ along with training initiatives through workshops and conferences on corporate governance topics; and
• promotion of corporate social responsibility and integrated reporting as a guiding concept for business operations in Zimbabwe 52.

Notwithstanding the continued positive impetus of such private-sector initiatives, Zimbabwe’s continued difficulties in right-tracking its systems of political and economic governance continue to pose challenges as does the situation of endemic corruption in the country across all sectors 53.

The African Development Bank has described the investment climate in Zimbabwe as challenged, even while the government is making limited strides on the policy front to improve the investment climate (for example, establishment of the Zimbabwe Investment Authority (ZIA)), noting downside risks arising from the lack of a clearly agreed economic policy framework 54.

Outlook for further development of corporate governance in Zimbabwe

Fairly evident from the literature and commentaries cited above the ongoing development of good corporate governance in Zimbabwe faces steep challenges. As Maune (2015) suggested, in the current positive environment of support for Zimbabwe’s economic rehabilitation there would be merit in fostering a tripartite social contract between the government, and the public and private sectors, to realise the benefits from improved corporate governance practices and improved perceptions of Zimbabwe’s economic and corporate governance environment 55.
Selection of country assessments for Zimbabwe

2015 Ibrahim Index of African Governance ¹

Ranked 44th/54 countries (2014: 46th/52)

Overall governance score = 40.4/100 (2014: 38.7)

2015 African average score = 50.1

Highest category score achieved: Human Development (score = 54.2); lowest score: Sustainable Economic Opportunity (score = 24.6)

2016 Index of Economic Freedom ²

Economy is ranked 175th in the Index (economic freedom score = 38.2), a “repressed” economy

Ranked last out of 46 countries in the SSA-region, its score is below the regional average score (55.5)

2015 Corruption Perceptions Index (CPI) ³

Ranked 150th/168 countries (2014: 156th/175)

CPI score = 21/100 (2014: 21/100; 2013: 20/100)

2015-2016 Global Competitiveness Index ⁴

Ranked 125th/140 countries overall (2014-15: 124th/144)

A factor-driven economy

Top five most problematic factors for doing business:
- access to financing
- policy instability
- restrictive labour regulations
- inadequate supply of infrastructure
- inefficient government bureaucracy

2016 Ease of Doing Business Index ⁵

Ranked 155th/189 countries (2015: 153rd)

Ranked 27th/47 SSA-region countries (2015: 37/47)


² The Heritage Foundation’s 2016 Index of Economic Freedom tracks 10 factors of economic freedom grouped into four broad categories, or pillars: rule of law; limited government; regulatory efficiency; and open markets, for 186 countries. http://www.heritage.org/index/pdf/2015/countries/zimbabwe.pdf

³ Transparency International’s 2015 Corruption Perceptions Index (CPI) measures country perceptions of freedom from corruption in the public sector, ranking CPI scores for 168 countries. The CPI score indicates the perceived level of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean). http://www.transparency.org/country#ZWE


### Reviews of corporate governance systems of the countries covered in this report

<table>
<thead>
<tr>
<th>Country</th>
<th>African Peer Review Mechanism</th>
<th>World Bank Review of Standards and Codes</th>
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<tbody>
<tr>
<td>Egypt</td>
<td>The APRM review has not yet been performed</td>
<td>-Corporate governance 2009 2002</td>
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<tr>
<td>Ghana</td>
<td>J une 2005</td>
<td>2005 2004</td>
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<td>Kenya</td>
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<td>Malawi</td>
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<td>Nigeria</td>
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<td>South Africa</td>
<td>September 2007</td>
<td>2003 2013</td>
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<td>Tanzania</td>
<td>J anuary 2013</td>
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<td>Tunisia</td>
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<td>Uganda</td>
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<td>Zambia</td>
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<tr>
<td>Zimbabwe</td>
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1 The government of Zimbabwe has not as yet acceded to the African Union’s African Peer Review Mechanism.
<table>
<thead>
<tr>
<th>Country</th>
<th>Corporate governance codes, principles, guidelines and regulations (excluding primary legislation)</th>
<th>Date Issued</th>
<th>Issuing Body</th>
</tr>
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<tbody>
<tr>
<td>Egypt</td>
<td>Code of Corporate Governance for Private Sector</td>
<td>2011</td>
<td>Egyptian Institute of Directors, Ministry of Investment</td>
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<td></td>
<td>Code of Corporate Governance for State-Owned Enterprises</td>
<td>2006</td>
<td>Egyptian Institute of Directors, Ministry of Investment</td>
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<td>Corporate Governance Regulation</td>
<td>2011</td>
<td>Central Bank of Egypt</td>
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<td></td>
<td>Guide for Application of Executive Rules of Corporate Governance in Unlisted Securities Brokerage Companies</td>
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<td></td>
<td>Corporate Governance Manual for Governing Boards/ Councils of the Ghana Public Services</td>
<td>2015</td>
<td>Public Services Commission (PSC)</td>
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<td></td>
<td>Guidelines on corporate governance practices by public listed companies in Kenya</td>
<td>2002</td>
<td></td>
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<td></td>
<td>Prudential Guidelines for Institutions Licensed under the Banking Act: CBK/PG/O2 Corporate Governance</td>
<td>2012</td>
<td>Central Bank of Kenya</td>
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<td>Corporate Governance Guidelines for Insurance and Reinsurance Companies</td>
<td>2011</td>
<td>Insurance Regulatory Authority</td>
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<td>Malawi</td>
<td>The Malawi Code II Code of Best Practice for Corporate Governance in Malawi: Overarching Provisions; Sector Guidelines</td>
<td>2010</td>
<td>Institute of Directors Malawi, National Corporate Governance Review Committee</td>
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<td></td>
<td>- For Listed Companies</td>
<td>2011</td>
<td>(NCGRC)</td>
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<td>- For Parastatal Organisations and State-Owned Enterprises</td>
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<td>- For Co-Operatives, Associations and other Membership-based Organisations</td>
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<td>- For Incorporated MSMEs</td>
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<tr>
<td></td>
<td>- For Businesses Registered under the Business Names Registration Act</td>
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<td>[Draft] Revised Code of Corporate Governance</td>
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<td>Code of Corporate Governance</td>
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<td>Guidance Notes for State-Owned Entities</td>
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<td>The Code of Corporate Governance in Mozambique</td>
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<td>Code of Ethics for the Business Sector in Mozambique</td>
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<td>Country</td>
<td>Corporate governance codes, principles, guidelines and regulations (excluding primary legislation)</td>
<td>Date Issued</td>
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<td>Nigeria</td>
<td>Exposure Drafts of National Code of Corporate Governance (including a private sector code, a public sector code and a not-for-profit sector code) (issued for public consultation)</td>
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<td>Corporate Governance Code for the Telecommunications Industry</td>
<td>2014</td>
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<td>Code of Corporate Governance for Banks and Discount Houses in Nigeria</td>
<td>2014</td>
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<td>Code of Corporate Governance for Public Listed Companies in the Nigerian</td>
<td>2011</td>
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<td>2009</td>
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<td>Code of Corporate Governance for Licensed Pension Operators</td>
<td>2008</td>
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<td>South Africa</td>
<td>King Report on Corporate Governance for South Africa and Code of Governance Principles for South Africa (King III)</td>
<td>2009</td>
<td>King Committee, Institute of Directors in Southern Africa</td>
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<td></td>
<td>Code of Responsible Investing in South Africa (CRISA)</td>
<td>2012</td>
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<td>2014</td>
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<td>Banks Act, 1990: Regulations Relating to Banks (Chapter III, Corporate Governance)</td>
<td>2012</td>
<td>South African Reserve Bank</td>
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<td>Tanzania</td>
<td>Guidelines for Boards of Directors of Banks and Financial Institutions</td>
<td>2008</td>
<td>Bank of Tanzania</td>
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<td>Guidelines on Corporate Governance Practices by Public Listed Companies in Tanzania</td>
<td>2002</td>
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<td>Guide on Best Practice in Local Government</td>
<td>2015</td>
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<td>Uganda</td>
<td>Financial Institutions (Corporate Governance) Regulations</td>
<td>2005</td>
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<td>Capital Markets Corporate Governance Guidelines</td>
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<td>Manual on Corporate Governance: Incorporating Recommended Guidelines for Uganda</td>
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<td>Corporate Governance Code for Small and Medium Enterprises</td>
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<td>Banking and Financial Services (Corporate Governance) Guidelines</td>
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<td>Lusaka Stock Exchange Corporate Governance Code</td>
<td>2005</td>
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<td>National Code on Corporate Governance Zimbabwe</td>
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<td>Corporate Governance Framework for State Enterprises and Parastatals</td>
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<td>Reserve Bank of Zimbabwe Guideline No. 01-2004/BSD: Corporate Governance (and the Addendum)</td>
<td>2004</td>
<td>Reserve Bank of Zimbabwe</td>
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Summary of a selection of global surveys for the countries covered in this report

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<td>Overall Rank</td>
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<td>Level of economic freedom</td>
<td>Overall Rank</td>
<td>Stage of development</td>
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<td>Egypt</td>
<td>24</td>
<td>125</td>
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<td>Efficiency driven</td>
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<td>Ghana</td>
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<td>56</td>
<td>Factor driven</td>
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<td>Kenya</td>
<td>14</td>
<td>115</td>
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<td>139</td>
<td>Factor driven</td>
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<td>Malawi</td>
<td>17</td>
<td>146</td>
<td>Mostly unfree</td>
<td>112</td>
<td>Factor driven</td>
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<td>Mauritius</td>
<td>1</td>
<td>15</td>
<td>Mostly free</td>
<td>45</td>
<td>Transition economy (efficiency to innovation)</td>
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<td>Mozambique</td>
<td>21</td>
<td>139</td>
<td>Mostly unfree</td>
<td>112</td>
<td>Factor driven</td>
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<td>Nigeria</td>
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<td>Mostly unfree</td>
<td>136</td>
<td>Transition economy (factor to efficiency)</td>
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<td>South Africa</td>
<td>4</td>
<td>80</td>
<td>Moderately free</td>
<td>61</td>
<td>Efficiency driven</td>
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<td>Tanzania</td>
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<td>Mostly unfree</td>
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<td>Tunisia</td>
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<td>Uganda</td>
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<td>Zambia</td>
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<td>76</td>
<td>Factor driven</td>
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<tr>
<td>Zimbabwe</td>
<td>44</td>
<td>175</td>
<td>Repressed economy</td>
<td>150</td>
<td>Factor driven</td>
</tr>
</tbody>
</table>

1 The Mo Ibrahim Foundation’s 2015 Ibrahim Index of African Governance measures the quality of governance in 54 African countries across 4 categories of governance performance indicators (with 14 sub-categories): safety and rule of law; participation and human rights; sustainable economic opportunity; and human development. (See http://www.molibrahimfoundation.org/iaig/)

2 The Heritage Foundation’s 2016 Index of Economic Freedom tracks 10 factors of economic freedom grouped into four broad categories, or pillars: rule of law; limited government; regulatory efficiency; and open markets, for 186 countries. (See http://www.heritage.org/index/ranking)

3 Transparency International’s 2015 Corruption Perceptions Index (CPI) measures country perceptions of freedom from corruption in the public sector, ranking CPI scores for 168 countries. The CPI score indicates the perceived level of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean). (See http://www.transparency.org/cpi2015)

4 The World Economic Forum’s Global Competitiveness Index contains an annual assessment of the factors driving productivity and prosperity in 140 countries. (See https://wefomics.weforum.org/global-competitiveness-report-2015/)

5 The World Bank’s Doing Business project provides objective measures of business regulations and their enforcement across 189 economies. (See http://www.doingbusiness.org/)
## Country rankings in global surveys on investor protection/minority interest protection

<table>
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<tr>
<th>Country</th>
<th>2015-2016 Global Competitiveness Index ¹</th>
<th>1st Pillar: Institutions ²</th>
<th>2016 Ease of Doing Business - Protecting Minority Interests ³</th>
<th>Recent business reforms introduced to strengthen investor protection recorded in the survey</th>
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<tbody>
<tr>
<td></td>
<td>Protection of minority shareholders' interests</td>
<td>Strength of investor protection</td>
<td>Overall rank/189 countries</td>
<td>Overall rank/140 countries</td>
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<tr>
<td>Overall rank/140 countries</td>
<td>Overall rank/140 countries</td>
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<td></td>
</tr>
<tr>
<td>Egypt</td>
<td>82</td>
<td>113</td>
<td>122</td>
<td>2016: subsidiaries are barred from acquiring shares issued by their parent company.</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2015: additional requirements introduced for approval of related-party transactions, and greater requirements for disclosure of such transactions to the stock exchange.</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2009: introduced requirement that an independent auditor assess related-party transactions before approval.</td>
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<tr>
<td>Ghana</td>
<td>68</td>
<td>55</td>
<td>66</td>
<td>--</td>
</tr>
<tr>
<td>Kenya</td>
<td>61</td>
<td>105</td>
<td>115</td>
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<tr>
<td>Malawi</td>
<td>77</td>
<td>110</td>
<td>115</td>
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<tr>
<td>Mauritius</td>
<td>32</td>
<td>28</td>
<td>29</td>
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</tr>
<tr>
<td>Mozambique</td>
<td>119</td>
<td>85</td>
<td>99</td>
<td>2012: enacted its commercial code allowing shareholders to bring derivative suits against company directors; introduces detailed duties and liability for directors and major shareholders; expands the range of company information accessible to shareholders and permits shareholders to request the appointment of an expert to investigate the activities of the company.</td>
</tr>
<tr>
<td>Nigeria</td>
<td>64</td>
<td>55</td>
<td>20</td>
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<td>South Africa</td>
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<td>Tanzania</td>
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</tr>
<tr>
<td>Tunisia</td>
<td>81</td>
<td>74</td>
<td>105</td>
<td>2010: Approval and disclosure requirements for related-party transactions enhanced</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>2009: Minority investors allowed to request in court the rescission of related-party transactions that harm the company.</td>
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<tr>
<td>Uganda</td>
<td>106</td>
<td>95</td>
<td>99</td>
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<tr>
<td>Zambia</td>
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<td>88</td>
<td>--</td>
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<tr>
<td>Zimbabwe</td>
<td>70</td>
<td>81</td>
<td>81</td>
<td>2016: introduced provisions allowing legal practitioners to enter into contingency fee agreements with clients.</td>
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</table>

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ACGN

The African Corporate governance Network (ACGN) is a collaborative network of director membership organisations that promote effective corporate governance on the African continent and now has 16 members and 7 affiliate members from 16 African countries representing over 16 000 senior executives and directors across the continent.

The ACGN was formed to develop institutional member capacity for enhancing effective corporate governance practices, building better organizations and corporate citizens in Africa. The ACGN will provide policy makers and market participants with an important forum to exchange experiences and best practices aimed at addressing ongoing corporate governance challenges in Africa. For more information about our network, please visit www.afcgn.org

Members:

- Egyptian Institute of Directors
- Ethiopian Institute of Corporate Governance
- Institute of Directors Ghana
- L'Institut National des Administrateurs de Cote d'Ivoire
- Institute of Directors Kenya
- Institute of Directors in Malawi
- Mauritius Institute of Directors
- L'Institut Marocain des Administrateurs
- Instituto de Directores de Moçambique
- Institute of Directors Nigeria
- Institute of Directors in Southern Africa
- Institute of Directors in Tanzania
- L'Institut Arabe des Chefs d'Entreprise (Tunisia)
- Institute of Corporate Governance of Uganda
- Institute of Directors of Zambia
- Institute of Directors Zimbabwe

Affiliate Members:

ACCA (Association of Chartered Certified Accountants)
African Securities Exchanges Association (ASEA)
Ethics Institute of South Africa (EthicsSA)
The FITC (Nigeria)
ICSA Uganda
Society for Corporate Governance Nigeria

Partners:

Cliffe Dekker Hofmeyr
EY
IFC
Standard Bank
In Closing

Lynette Chen
Chief Executive Officer, NEPAD Business Foundation

In order to achieve the goals and objectives of the African Union’s Agenda 2063, which is a 50 year plan towards Africa’s development, growth and prosperity to eradicate poverty, proper governance structures must be in place to succeed in attaining the “Africa we want”. Going forward, our continent’s potential and ability to maintain current growth trajectories and high investor confidence in growing economies over prolonged periods, is going to hinge on good corporate, political and economic governance. It is therefore the responsibility of both public and private sector role players to cooperate in efforts to change the perception that corporate governance is a “soft issue” and to work together to ensure that good governance is a priority, if the long term sustainability of Africa’s development is to be realised.

Since 2008, the global economy has been in turmoil, and with the recent fall in demand for African resources by China, our continent needs to actively seek out every advantage and opportunity to support local economic growth with the support of both local and foreign investors. This will mean placing a focus on improving the levels of governance of African companies in order to improve intra-Africa business transactions and to increase the flow of Foreign Direct Investment into Africa. It is therefore imperative to come up with initiatives that guide the formulation of Africa-specific guidelines on corporate governance, that will improve the business dynamics of the continent and align to global standards.

There are challenges to developing an Afrocentric harmonised governance system owing to the various dynamics and varying stages of development of different African countries. A model for how this can be overcome is the African Union’s African Peer Review Mechanism (APRM), established in March 2003 as a ‘self-monitoring instrument of good governance’ based on the understanding that for Africa to progress and prosper, the continent must find ‘durable, home-grown responses to its challenges’ by encouraging partnerships between businesses, professional bodies and governments to ensure cross-border cooperation on governance. By modelling aspects of the African Corporate Governance Network (ACGN) after the APRM, we believe that peer learning and sharing lessons learnt among African countries will form the basis of an Africa specific corporate governance framework.

According to the International Monetary Fund, Africa will host seven of the top ten fastest growing economies in the world in the next five years. With the current focus on growth and development in Africa, good corporate governance and capacity building in this area, is highly important. Good governance, in general, is critical for sound macroeconomic policy management, meaningful and sustainable economic growth and the implementation of successful poverty reduction mechanisms.

As the NEPAD Business Foundation, our role is to mobilise the private sector for the development of Africa, through partnerships with governments and communities and by ensuring that corporate investments deliver meaningful and impactful change to the lives of Africans in a sustainable manner. We are proud to partner with the African Corporate Governance Network as its Project Management Unit and will strive towards the achievement of the ACGN’s vision for Africa - a continent committed to effective corporate governance and ethical leadership.
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