Tanzania
Mkono & Co
Dar es Salaam

Corporate governance

The main legislation in Tanzania dealing with corporate governance is the Companies Act, Cap 212 (the CA) and the Capital Markets and Securities Act 1994.

Companies Act

The CA and the Public Corporations Act 1992 provide the regulatory framework for corporate governance in corporations, both private and public, and public companies. Tanzanian companies tend to have a unitary board structure comprising of a balance of executive and non-executive directors, with a minimum of two directors. Directors are appointed by shareholders at the annual general meeting and must upon appointment, sign and deliver for registration at the Companies Registry consent in writing to act as directors.

Subject to the CA and limitations by shareholders' resolutions, the articles of the company specify the scope of the directors' powers and duties, which involve managing the company's affairs.

The directors' duties are laid down in the company's articles and their appointment letters. However their statutory duties include a duty to disclose any remuneration they receive and to disclose any interests they might have in contracts entered into by the company. Although a director's liability depends on the company's memorandum, the CA restricts any clauses that exempt any director from any liability that, by virtue of any rule of law, would attach to them in respect of any negligence, default, breach of duty or breach of trust.

As for the shareholding structure of the company, the CA provides that a private company must have a minimum of two members to be able to carry on its business. The general powers of shareholders are stipulated in the company's articles. These include voting powers at any general meeting, and power to approve decisions made at director level. Minority shareholders are protected under the CA. They are entitled to apply for court intervention if they believe that they are oppressed or the company is being mismanaged.

Corporate governance principles in relation to internal control of business risks are also provided under the CA, which stipulates that every company keeps proper accounts for all sums of money received and expended, its sales and purchases, and its assets and liabilities. Furthermore all companies must appoint auditors at the annual general meeting, who will incur civil liability for professional negligence if the audited accounts are inaccurate, and will be criminally liable if they intentionally circulate false accounts.

Guidelines on corporate governance

The Capital Markets and Securities Act Guidelines on Corporate Governance by Public Listed Companies in Tanzania contains a list of recommended best practices in corporate governance, which were developed to promote the standards of self-regulation to bring the level of governance in line with international standards. The guidelines require that the responsibilities of the board of directors should be defined, and that the appointment and qualifications for an effective board and the remuneration of the directors should also be outlined.

Every listed company is required to ensure equitable treatment of shareholders, including the minority shareholders. All shareholders should receive relevant information on the company's performance through distribution of regular annual reports and accounts and every shareholder should have a right to receive information on voting rules and procedures, to participate and vote at the general shareholders meeting, place items on the agenda and be entitled to ask questions or seek clarification on the company's performance.

Reforms

Although the Companies Act 2002 is not yet in force, it was drafted to take into consideration developments in corporate governance and directors' duties. Once in force, the Companies Act will introduce statutory directors' duties that are currently under common law, such as the directors' duty of care, a minimum age of 21 years for appointment as a director coupled with a duty on directors to disclose their age, a prohibition of loans to directors of the company or its holding company, a statutory procedure for the removal of directors, personal liability for the companies debts if a person is disqualified from being a director, prohibition of tax-free payments to directors and opening directors' service contracts for inspection.

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