



REPUBLIC OF KENYA
EXECUTIVE OFFICE OF THE PRESIDENT

**MWONGOZO; THE CODE OF GOVERNANCE
FOR STATE CORPORATIONS**

PRESENTATION BY
THE STATE CORPORATIONS ADVISORY COMMITTEE

Specific governance challenges facing State Corporations;



- Absence of a clear framework for recruitment, selection, appointment and removal of boards;
- Multiple principles
- Untimely appointment/replacement of Boards and CEOs
- Inadequate induction processes for Board members;
- Lack of proper skills mix;
- Bloated Boards;
- Lack of uniformity in management of Board Affairs;
- Conflicting guidelines in appointment of CEOs;
- Lack of understanding of role of Boards by board of directors; and
- Fusing of the Chief Executive and Board Secretary roles

MWONGOZO; the Code of Governance for State Corporations



It is a uniform code of governance to provide a firm foundation for good corporate governance and be applicable across all Corporations as a means of strengthening Governance in Boards

Issued on 26th April, 2015 by His Excellency vide the Executive Order No. 7 instructing all Boards to implement its provisions

The recent Joint commitment to promote good governance and anti-corruption efforts in Kenya between the governments of Kenya and USA intends to fully enforce Mwongozo for State Corporations to institutionalize good governance, efficiency, transparency and accountability in the discharge of Corporations mandates.

The Government plans to encourage County Governments to adopt the same best practices in the Code.



Basis of Mwangozo;

◆ The Constitution of Kenya, 2010

- Article 10 – National values and principles of governance
- Article 73 - Public trust, honor and dignity of public offices.
- Article 232 –Personal integrity, values and principles of public service, efficiency, effectiveness and economic use of resources.
- Chapter Six of the Constitution on Leadership and Integrity.

◆ The Public Officers and Ethics Act, 2003.

◆ OECD Guidelines on Corporate Governance of SCs, (2005)

◆ King III

◆ SCAC Guidelines (2004)

◆ Global best practice



COMPLY or Explain model

- Recognizes that at the implementation of *Mwongozo*, SCs will be at different levels of compliance with corporate governance norms.
- This approach will allow organizations time to fully comply at a pace that is realistic in their circumstances and to learn from the experience of others, whilst at the same time taking responsibility and ownership for any non-compliance.
- While full compliance is expected, the approach positively recognizes that a satisfactory explanation, coupled with a roadmap to full compliance will, in certain circumstances be acceptable.
- This requires that the disclosures for non-compliance will need to be detailed and Boards will be held to account for any explanations given.

OUTLINE OF MWONGOZO



PRELIMINARY

Foreword – H.E. The President, Preface - Chief of Staff and Head of the Public Service, Chairperson PSC,
Glossary of terms, Introduction and background

CHAPTERS OF THE CODE

- Chapter One - The Board of Directors
- Chapter Two - Transparency and Disclosure
- Chapter Three - Accountability, Risk Management and Internal Control
- Chapter Four - Ethical Leadership and Corporate Citizenship
- Chapter Five - Shareholder Rights and Obligations
- Chapter Six - Stakeholder Relationships
- Chapter Seven - Sustainability and Performance Management
- Chapter Eight - Compliance with Laws and Regulations

APPENDICES

- Sample Board charter
- Sample Code of conduct and ethics



BENEFITS OF MWONGOZO

FROM MANAGEMENT POINT OF VIEW

- a) Enhance competitiveness
- b) Provide critical infrastructure, financial, commercial & social services in cost efficient manner.
- c) Reduce fiscal burden/risks
- d) Improve SCs access to external sources of finance.
- e) Strengthen transparency & accountability(reduce corruption)
- f) Improve economic growth

REGULATORY FRAMEWORK POINT

- Improves the GoK ownership role
- Improves performance monitoring system for accountability
- Enhances financial & fiscal discipline
- Rationalizes SC Boards
- Enhances transparency & disclosure
- Ensures stakeholders protection
- Builds support & capacity for implementation

KEY HIGHLIGHTS ON MWONGOZO

	SUBJECT	NEW POLICY DIRECTION
1.	Board appointments	<ul style="list-style-type: none">-Shall be guided by Article 27 of the Constitution-Transparent and formal process involving the oversight body-Gazettement of all Board members including Ministry/Institutional reps.-Principle of merit to override other considerations-Must be staggered to ensure continuity / smooth succession
2.	Board Size	<ul style="list-style-type: none">-Between 7 and 9 members including the CEO- The CEO shall be a member without voting rights
3.	Board Composition	<ul style="list-style-type: none">-Must have mix of skills and competencies required-At least one member to be a financial expert
4.	Chairpersons	<ul style="list-style-type: none">-All Chairpersons shall be appointed by the President but must have set minimum qualifications-Board members appointed by CSs but must possess set minimum qualifications.-Appointment means formal gazettement followed by an appointment letter from appointing authority.-The Chairpersons and members must signify their acceptance in writing.

KEY HIGHLIGHTS ON MWONGOZO cont'd

	SUBJECT	NEW POLICY DIRECTION
5.	Recruitment of the CEO	<ul style="list-style-type: none">- Exclusively by the Board-The CEOs shall be accountable to the Boards
6.	Term limits	<ul style="list-style-type: none">- Tenure should not exceed a cumulative term of six years or two terms of three years each-Renewal of a Board member's term should be subject to a favourable evaluation
7.	Multiple Directorships	<ul style="list-style-type: none">- A Board member shall not hold such position in more than 2 Corporations at any one time.-A Chairperson shall not hold such position I any other Corporation concurrently.
8.	Committees of the Board	<ul style="list-style-type: none">- Not more than four Committees of the Board (including the Audit Committee)shall be established-Chairperson shall not be a member of any Committee save for ad hoc Committee-All recommendations of the Committee must be ratified by the Board for them to become applicable.
9	The Corporation Secretary	<ul style="list-style-type: none">- All Boards shall acquire the services of a Corporation Secretary.-The Corporation Secretary shall be the Secretary to the Board

KEY HIGHLIGHTS ON MWONGOZO cont'd

	SUBJECT	NEW POLICY DIRECTION
10.	Board Induction	<ul style="list-style-type: none">-All Boards to have Induction programme-All new Board members to undergo induction as per the programme
11.	Board Training and Education	<ul style="list-style-type: none">-Competence Needs Assessment for the Board done-Annual development programme for a minimum of two days per Board member-continuous professional development by respective bodies
12.	Succession Planning	<ul style="list-style-type: none">- Tenure of members to be staggered for continuity purposes- Succession planning strategy
13.	Board Evaluation	<ul style="list-style-type: none">- Mandatory for all Board members-Covers The Board as a whole, Committees, individual members, Chairperson, the CEO and the Corporation Secretary

KEY HIGHLIGHTS ON MWONGOZO cont'd

	SUBJECT	NEW POLICY DIRECTION	EXPECTATIONS
14	Board/ Governance principles	1. Strategy and Mission	- Boards should be involved in the process of setting strategies
		2. Accountability	<ul style="list-style-type: none"> - Directors are responsible for representing the interest of shareholders - Directors should be selected in a transparent fashion and based on objective criteria - The Board should engage in CEO succession planning
		3. Oversight	<ul style="list-style-type: none"> - Board should have adequate mix of independent and executive Directors - The Board should exert sufficient control over management
		4. Stakeholder Interests	<ul style="list-style-type: none"> - Corporations should adhere to disclosure and transparency requirements - Minority shareholders and stakeholder interests should be protected.
		5. Separation of powers	- Board structure to ensure separation of policy, oversight, management and operational levels
		6. Conflict of Interest	- There should be a clear process for managing conflict of interest
		7. Efficiency and Effectiveness of	- Boards to ensure that the following documents are in place and



Performance Contracting and Mwangozo

Implementation of Mwangozo has been embedded in the PC framework. Considerations for 2015/16 FY are:-

Boards to undertake induction and continuous skills development

Boards to undertake annual evaluation

Boards to undertake governance audits

Board secretariat functions to be professionalized and separated from the CEO's Role

Mwongozo institutional framework



Oversight/SCAC: Issue guidelines and Monitor implementation of:

- Governance Audit
- Board induction
- Board Evaluation
- Review of Mwongozo
- Coordinate implementation of Mwongozo

Chairpersons

- Capture and report gaps in Boards
- Ensure appointment of CEO, Board Committees, Corporation Secretaries and Internal Auditors
- Report on gazettelement of members
- Ensure induction, training and evaluation
- Ensure functional Board tools are in place
- Manage Board dynamics
- Timely report on issues
- Quarterly communication to SCAC and appointing authorities

Institutions/ responsibilities

Cabinet Secretaries

- Ensure gazettelement of Board members
 - Timely appointments
 - Sector policy formulation
- Ensure adequate Board mix

Principal Secretaries

- Appoint PS representatives in writing
 - Ensure timely reports / consultations
- Timely communication of Ministry policies



Expected outcome on implementation of Mwongozo

Streamlined responsibility of Government as owner

Streamlined appointment and management of Board matters

Enhanced Transparency and Disclosure

Strengthened Accountability, Risk Management and Internal Control

Enhanced Ethical Leadership and Corporate Citizenship

Shareholder Rights and Obligations

Strengthened Sustainability and Performance Management

Adequate Compliance with Laws and Regulations

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