



SELINUS UNIVERSITY
OF SCIENCES AND LITERATURE

**THE IMPACT OF ORGANISATIONAL
LEADERSHIP STRUCTURE AND PRACTICE IN
THE PERFORMANCE OF A COLLECTIVE
MANAGEMENT SYSTEM**

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A DISSERTATION

Presented to the Department of
Executive Leadership
program at Selinus University

Faculty of Business & Media
in fulfillment of the requirements
for the degree of Doctor of Philosophy
in Executive Leadership

2021

DECLARATION

The dissertation titled “**THE IMPACT OF ORGANISATIONAL LEADERSHIP STRUCTURE AND PRACTICE IN THE PERFORMANCE OF A COLLECTIVE MANAGEMENT SYSTEM**” submitted for the Award of Doctor of Philosophy (PhD) in Executive Leadership in the faculty of Business and Media, SELINUS University of Sciences and Literature, is my original work and the dissertation has not formed the basis for the award of any degree, associateship, fellowship or any other.

The materials borrowed from similar titles, other sources and incorporated in the dissertation have been duly and fully acknowledged.

The research papers published based on the research conducted out of the course of the study are also based on the study and not borrowed from other sources.

“I do hereby attest that I am the sole author of this project/thesis and that its contents are only the result of the readings and research I have done”.

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ACKNOWLEDGEMENT

I have been blessed to be gifted with good people who have impacted me positively in my professional and social life.

I want to sincerely express my gratitude to the two people I consider my mentors, Ms. Tarja Koskinen-Olson and Mr. Robert Hooijer under whose mentorship I have learnt a lot and under whose direction and advice, this thesis is possible.

I want to also express my gratitude to the chairman of the Board of Copyright Society of Nigeria (COSON), chief Tony Okoroji under whose chairmanship; I began my career as a copyright administrator and grew into the leader I am today.

I equally want to appreciate my wife; my sunshine, Mrs. Grace Ukamaka Chukwuji and our lovely children; Adaeze, Ihuoma and Chidubem for their immeasurable support and encouragement.

I am grateful to Selinus University of Science and Literature, School of Business and Media for the opportunity it gave me, to complete this Doctor of Philosophy programme in Executive Leadership and I am particularly grateful to my General Supervisor, Dr. Salvatore Fava for his guidance and advice and Dr. Adriana Nifosi Chief Academic Secretariat.

I want to also thank my family members, colleagues, associates, and friends who by their help directly or indirectly contributed to the success and completion of this thesis.

Finally, I want to express my utmost and deepest gratitude to the King of kings and Lord of lords, the One in whom ultimate wisdom, knowledge, understanding, counsel and might reside, my Lord and Saviour Jesus Christ without whom, this thesis would not have been possible. Thank you, Lord Jesus.

Signature of Student

STUDENT ID: UNISE0869IT

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ABSTRACT

This study is on the impact of Organisational leadership structure and practice in the performance of a collective management system.

The business of copyright collecting society in Nigeria, as it was then called has been a very daunting task from its earliest days when the Musical Copyright Society Nigeria (MCSN) was established, as the first indigenous society representing the owners of rights in musical works. These were the days, when the business and operations of collecting societies in Nigeria were not regulated by any government agency.

The regulation of collecting societies in Nigeria was never part of the Nigerian law until the promulgation of the Copyright Amendment Decree No. 98 of 1992, giving the Nigerian Copyright Council, as it was then also called, the power to regulate collecting societies in Nigeria.

Today, in Nigeria and in most part of the world, the name collecting society has been changed to collective management organisation (CMO); meaning and as defined under Nigerian law; an association of copyright owners which has as its principal objectives the negotiating and granting of licences, collecting and distributing of royalties in respect of copyright works.

As already stated, the business of a CMO is a very daunting and challenging task especially in an environment where respect for the creation of the work of the mind is still, at best developing. It was however, not until the approval of Copyright Society of Nigeria (COSON) by the Nigerian Copyright Commission (NCC), as it is today called, on May 20, 2010 that some life was injected into the copyright collective management environment in Nigeria.

In recent time, the subject of CMO in Nigeria has become a highly topical and contentious issue, which has generated a lot of arguments for and against its efficient running and management. In the last three years, the subject has become a major discuss particularly amongst stakeholders in the Nigerian creative sector. The success of COSON may have largely contributed to these debates especially succeeding in an environment where people find it difficult to pay for their basic utility bills. For most stakeholders and watchers, it was nothing short of a miracle.

For this researcher, the feeling is understandable, as several attempts made before the coming of COSON, in setting up CMOs in Nigeria or successfully manage the existing ones have proved unsuccessful or very difficult. From the researcher's experience, it may be safe to conclude that the setting up of CMOs and turning them into a successful and thriving entities, is never a walk in the park.

Daniel Gervais (2016) said, “I do not know whether existing CMOs will thrive and/or whether others will emerge. Not all CMOs are well managed, but this is surely true of any area of business. What I can say, however, is that setting up shop in this area is difficult. I know from personal experience that starting and operating a CMO is a complex task, one that requires specific expertise. Getting the rights, the metadata about works, authors, rights holders, contracts and contacts; designing efficient software and systems; getting people trained; providing service to rights holders and users; processing usage and distribution data; and dealing with the legal complexities of copyright are not for the faint of heart”

The birth and approval of COSON was widely celebrated in Nigeria, as artistes and copyright holders from across the country embraced the initiative and supported its take off. With a razor sharp leadership and committed management, COSON succeeded where many in the past had attempted and failed. For several years, COSON became the envy of many CMOs across the continent of Africa and left very impressive footprints on the music copyright licensing landscape in Nigeria and beyond; taking up big corporations that deploy musical works and sound recordings in their daily operations and facilities but were unwilling to meet their music copyright obligations. To execute its mandate, protect and defend the copyright interests of its members and affiliates worldwide, COSON instituted several legal cases simultaneously at the Federal High Courts across the country against big commercial users of the repertoire of COSON. Despite, the gang up and well-coordinated conspiracies against COSON by some of these big users, COSON never shirk its responsibility, as it kept its eyes on the ball and earned the admiration of both friends and foes across the world. COSON became the beautiful bride of the creative industries in Nigeria, ensuring that songwriters, artistes and copyright holders receive some form of fair remuneration for the commercial or public use of their works.

At this juncture, it seemed COSON has hit the golden auto-pilot button, as its revenue soared from year to year and the future was indeed looking very bright. The success of COSON means that a lot more people within and outside the creative industries, who were hitherto not or less interested in the affairs and management of CMOs, got interested in the organisation and wanted to be part of its decision making process. The organisation was making giant strides in licensing of musical works and sound recordings, which also means, it handles a lot of money on behalf of its members and affiliates.

However, this upward growth trajectory seemed to have hit a speed bump, slowing down its revenue generation and growth. In the last three years, recent events have left much to be desired, to the frustration and disappointment of stakeholders across the world who have invested their copyright and related rights interests in the CMO.

In 2017, the once upon a time stable Board of COSON was hit with leadership crisis, as some members of the Board in the majority resolved and voted out the chairman of the Board, alledging lack of corporate governance in the running of the affairs of the

organisation. The general assembly however exercising its powers at an extraordinary general meeting, in line with the organisation's constitution reversed the decision of the Board removing its chairman and expelled from the Board, directors who had voted for the removal of the chairman. This development would lead to a series of unpleasant events, which has resulted in several court cases, the suspension of the operating licence of the CMO, which matter is still in court at the time of this research. The leadership crisis on the Board of COSON has brought to the fore the character and make-up of the organisation's leadership structure and practices.

The economic and technical environment of CMOs have undergone profound changes in recent years and the stakeholders, more than ever before are demanding for greater efficiency, transparency and accountability from the CMOs, in the discharge of their mandates. More than ever before too, the search light is beamed steadily on the performances of CMOs, to know and determine whether they are serving the interests of their members and affiliates, by providing timely and quality services or they are serving their private and parochial interests.

It is against this backdrop and the need to help strengthen the organisational leadership structure and practices of a CMO for maximum effectiveness and continuous improvement that this research work has been embarked on. The research work would also help x-ray some of the factors that may have led to the leadership crisis at the CMO under reference and what could have been done to mitigate such occurrences. The research work will equally look at the critical elements that can be brought into the collective management system to strengthen its structures and improve its practices for maximum efficiency and forward looking growth.

The research would equally stress the importance of CMO Boards and managements understanding that right holders and stakeholders alike require a more transparent and accountable system of leadership, which are always consistent with the ideals of a well ran and managed CMO.

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

The researcher worked in the business field of music copyright collective management organisation, as the General Manager and Chief Executive Officer of Copyright Society of Nigeria (COSON), provided leadership for a team of over 50 direct and indirect staff spread across the country. He reported to a Board made up of eleven celebrated personalities representing different class of right owners in the music industry in Nigeria.

A collective management organisation (CMO) also known as collecting society is a specialized institution of right owners like authors, composers, songwriters, performers, publishers and music labels (record companies or owners of sound recordings) who have assigned copyright in their works to an organization like COSON for copyright management. A CMO could either be private or publicly managed depending on the statutory provisions of a country's domestic laws. A CMO is equally referred to a music licensing company, a terminology, which is common amongst organisations that manage rights in sound recordings on behalf of their performer and phonogram producer members.

For the purpose of this study, the researcher will adopt the use of collective management organisation or CMO to cover for collecting society or music licensing company.

Collective management is the exercise of copyright and related rights by organizations acting in the interest and on behalf of a class of copyright owners. It serves and protects the interests of all creators and holders of copyright and related rights. Collective management is therefore licensing performed by a CMO on behalf of its right owner members.

Notwithstanding the important role that CMOs play and the fact that they handle a lot of money for and on behalf of copyright holders, it is a business. It may not be a trading business in the sense of making profit but it is still a business that must subject its operations to normal business rules and practices such as having a board of directors and board meetings, having a management team that runs the day-to-day operations of the organisation, preparing annual budgets, preparation and submission of audited financial reports to relevant regulatory agencies, holding of general meetings of its members, and so on. A CMO is therefore not in any shape or form a trade union or charitable organisation.

A collective management organisation is a complex institution that requires high level leadership to run. The success or failure of the CMOs depends strongly on their leadership. CMOs that have succeeded over the years have done so through strong leadership over a long period of time. These CMOs have strong organizational leadership structures backed up by good supervising boards and effective managements headed by competent chief

executives whilst CMOs that have struggled to effectively meet their mandates and are continuously troubled may be because they lack strong organizational leadership that would have helped propel the CMO to greater heights. For lack of strong organizational leadership structure and good practices, the entire collective management system is seriously challenged leading to ineffectiveness in the running of the CMO.

Whilst there may be several factors that may be responsible for the lack of proper organizational leadership structure and practice in some of these organisations, one factor stands out. It is the common infringement of management's role by either the Board or its chairman. The lack of role clarity in the leadership structure of a CMO and the constant encroachment into another jurisdiction is one of the major reasons there is constant CEO turnovers in a lot of the small and medium scale CMOs. This has huge implications for both the survival and the effective running of the organisations.

It is based on the above scenario that the research wishes to assess the Impact of Organisational Leadership Structure and Practices in the Performance of a Collective Management System using Copyright Society of Nigeria (COSON) as a case study.

It must be stated that this research study is mostly based on the researcher's experience as a former chief executive officer of a CMO.

1.2 Statement of the Problem

Even though the collective management system has for several years been promoted as an efficient method for the negotiation, licensing, collection of copyright royalties and distribution of same to copyright owners especially in cases where many works are used by a large number of users, increasingly the structures and practices of CMOs especially within the African region continue to raise a lot of questions about their efficiency, accountability and transparency. Additionally, the question has also been raised whether the current structures and practices of the collective management system in the light of changing market conditions and business models are able to adapt and continue to be relevant.

These are questions that this research is set out to answer and providing such answers, would help resolve the problem that have hindered the collective management system from being more efficient and a non-negotiable service provider to its members and affiliates.

1.3 Objective of the Study

The objective of this research study is to access the impact of organisational leadership structure and practice in the performance of a collective management system using Copyright Society of Nigeria (COSON) as a case study.

The research study is to help establish proper rules on transparency and good governance for the collective management of copyright and related rights

The study will further help to establish a board charter or code of conduct for the board of a collective management organisation, which charter would clearly define the roles and responsibilities of the board, the chairman of the board and the organisation's chief executive.

1.4 Research Hypotheses

To successfully carry out this research study, the following research hypotheses were formulated by the researcher:

H1: There is no impact of organisational leadership structure and practice in the performance of a collective management system.

H1: There is impact of organisational leadership structure and practice in the performance of a collective management system.

H2: There is no impact of organisational leadership structure and practice in the efficient management of a collective management system.

H2: There is impact of organisational leadership structure and practice in the efficient management of a collective management system.

1.5 Significance of the Study

The findings of this research study will contribute greatly in strengthening the collective management system in Africa considering the key role that collective management organisations play as facilitators in the copyright system. The greater demand on collective management organisations to be more efficient justifies the need for their leadership structures and practices to be set up in such a way that they enhance the performances of their organisations.

Thus, the CMO that apply and activate the recommendations from the results of this study will be better placed to run an efficient system devoid of any infringement of roles and responsibilities in the collective management system. The CMO will also be able to drive organisational performance through efficient alignment of leadership structure and practices.

For the researcher, the study will help him uncover better ways of organizing the leadership structure and practices of a collective management organisation for utmost efficiency. Thus, a new concept on organisational leadership structure and practice may be arrived at.

1.6 Scope of the Study

This study focuses on the impact of organisational leadership structure and practice in the performance of a collective management system.

This study will limit its research on the effectiveness of the leadership structures and practices in some selected collective management organisations in Africa. This is because there are about 300 collective management organisations and music licensing companies in over 120 countries across the world and each has its own organisational leadership structure and practice.

It is therefore convenient to limit the study by referencing selected African CMOs for lack of time and space. The research will review CMOs like COSON in Nigeria, SAMRO and CAPASSO in South Africa, GHAMRO in Ghana and NASCAM in Namibia.

The study will also look at the general concept of organisational leadership structures and practices and how such structures and practices can be adapted into the collective management system for better performance.

The study will equally restrict its research to CMOs that manages copyright in musical works and sound recordings, as there are other types of CMOs that manages copyright in literary and audio visual works.

1.7 Definition of Terms

Copyright:

Copyright as a monopoly right, which the creator of an eligible work acquires as soon as that work is put in a tangible form and which right precludes all others from the exploitation of such work without the authorisation of the creator, for a specified period.

Neighbouring Rights:

Neighbouring rights also referred to as related rights are rights that belong to owners regarded as intermediaries in the performance, production, recording or diffusion of works. Neighbouring rights refers to works sometimes created by a performer commonly referred to as an artiste.

Musical Work:

This is the underlying composition created by a songwriter or composer along with any accompanying lyrics.

Sound Recording:

This is created when a performance of a musical work has been fixed in a recording medium such as a CD or digital file.

Songwriters:

The authors of musical works are composers, lyricists and/or songwriters. A songwriter may contribute music, lyrics, or both. A songwriter is anyone who creates or writes an original song.

Music Publishers:

A music publisher or publishing company is the person responsible for maximizing the commercial potential of a songwriter's musical works through promotion of the songs and issuance of licences in television programmes, movies/films, advertisements, video games and other commercial opportunities.

Recording Artistes:

The author of copyright in a sound recording in Nigeria is the performer or who we commonly refer to as the artiste.

Phonogram Producers:

Phonogram producers are commonly referred to as record companies or record labels in Nigeria.

Collective Management Organisation (CMO):

Collective Management Organisation is an organisation charged with the responsibility to grant music copyright licences to users of music on behalf of their members who are mostly songwriters and publishers.

Musical Licensing Company (MLC):

This is also a type of collective management organisation representing the interests of performers (artistes) and phonogram producers (record labels).

Right:

This is a claim to copyright (property) which enables the copyright owner to exclude or prevent others from exploiting or using his/her work(s) without his/her permission (licence).

Licence:

This is a permission or authorisation to use or exploit a work which the user would not otherwise have the privilege to do. A licence is therefore the exercise of a limited privilege.

Regulators:

Nigerian Copyright Commission (NCC). The NCC is in charge of copyright matters in Nigeria.

Corporate Affairs Commission (CAC) is in charge of company and business registrations in Nigeria

Member:

A copyright owner or right holder or a company representing right holders or associations of right holders, fulfilling the membership requirements of a collective management organisation and admitted by the CMO

General Assembly:

The supreme organ of a collective management organisation composed of all full members wherein they participate and exercise their voting rights, regardless of the legal form of the organisation.

Right holder:

Any person or entity, other than a collective management organisation, that holds a copyright or related right or, under an agreement for the exploitation of rights or by law, is entitled to a share of the royalty.

Royalty:

Income collected by a collective management organisation on behalf of copyright owners or right holders, whether deriving from an exclusive right, a right to remuneration or a right to compensation.

Management or Administrative Fees:

The amounts charged, deducted or offset by a collective management organisation from royalties or from any income arising from the investment of royalties in order to cover the costs of its management of copyright or related rights.

Reciprocal Representation Agreement:

It means any agreement between foreign collecting societies (CMOs) and indigenous collective management society whereby one collective management organisation grants to

the other the right to manage its repertoire in the territory of the other. Any agreement between collective management organisations whereby one collective management organisation mandates another collective management organisation to manage the rights it represents in their respective territories

Repertoire:

The works in respect of which a collective management organisation manages and controls on behalf of the copyright owners or right holders

User:

Any person or entity that is carrying out acts subject to the authorisation of right holders, remuneration of right holders or payment of compensation to right holders and is not acting in the capacity of a consumer

Tariff:

It means fee or a schedule fees chargeable by a Collective Management Organisation for the exploitation of copyright works administered by it.

1.8 Structure of the Study

This research study is organized into six chapters for easy comprehension.

Chapter one is on general introduction and provides motivation for the research study, including the statement of problem, significance of the study, scope and limitation of the study, definition of terms and structure of the study.

Chapter two looks the methodology of research, how the research was carried and instrument that was used for data gathering.

Chapter three looks at the general concept of collective management of copyright, its roles, its benefits, traditional processes and how the system of collective management is set up based on the legal framework of the individual territory. The chapter also discusses on the brief history of collective management organisation in Nigeria, characteristics and practices of CMOs in Nigeria

Chapter four takes a critical look at the CMO leadership structure and governance system in Nigeria using COSON as a point of reference. It discusses extensively the different roles of the hierarchical levels within the structure and what kind of governance support they have.

Chapter five reviews the organisational leadership and governance structure in four African CMOs, namely Southern Africa Music Rights Organisation (SAMRO), Composers,

Authors and Publishers Association NPC (CAPASSO), South African Music Performance Rights Association (SAMPRO) and Copyright Society of Nigeria (COSON). Whilst COSON is the largest Nigerian CMO with respect to membership and annual royalty receipt, SAMRO, CAPASSO and SAMPRO are South African based CMOs. The three combined are the largest CMOs representing both copyright holders in both musical works and sound recordings on the continent of Africa.

Chapter six presents the summary, conclusion and recommendations.

CHAPTER TWO

RESEARCH METHODOLOGY

2.1 Introduction

The purpose of this chapter is to explain in detail the research methods and the methodology implemented for this research. The chapter will explain first of all the choice of research approach, then the research design, as well as the advantages and disadvantages of the research tools chosen. This will be followed by a discussion on their ability to produce valid results, meeting the aims and objectives set by this research. The chapter then goes on to discuss the sample size and the sampling strategy applied by the author, and the data analysis methods which have been used. It concludes with a brief discussion on the ethical considerations and limitations posed by the research methodology, as well as problems encountered during the research.

2.2 Research Design

This research makes use of a qualitative research strategy in the sense that there will be quantitative data produced. A qualitative research strategy is particularly applicable for the purposes of this research, as it sought to establish the impact of organisational leadership structure and practice in the performance of a collective management system

2.3 Research Methods

For the purposes of this research, the author has chosen to use a combination of questionnaires, interviews and researcher's observations. The questionnaires will be distributed among select group of CEO's running the affairs of CMOs in Africa, as well as among carefully selected practitioners in the field of copyright collective management organisation who themselves have run similar organisations in different jurisdiction within and outside Africa. Questionnaires were chosen for this research because they are a reliable and quick method to collect information from multiple respondents in an efficient and timely manner. Though questionnaires have a fixed and strict format, which eliminates the possibility for more in-depth observation, its use provided the researcher a quick and effective way to reach multiple respondents within a short period of time.

As a buffer, the author conducted interviews with some practitioners in the CMO system who are amongst top management and decision makers. In order to the grounds that may have been left out in the questionnaires, one-on-one interviews were conducted either directly with the respondents or via telephone calls. This method provided in-depth observations for the researcher. The interview process provided a more open discussion, free interactions in a more informal setting the researcher and interviewee. This format also provided a deeper explanation and understanding of the subject matter.

The author would also be drawing from his personal observations and experiences. Though this may seem subjective, the researcher has tried to be objective and flexible in his reviews and observations.

2.3.1 Sample Interview Questions

1. What nature of CMO is yours? (Government, Private or both)
2. Do you need an approval or licence to operate your CMO in your territory?
3. How old is your CMO?
4. What copyright owners do your CMO represent?

Works	Yes/No	Rights	Yes/No
Musical Works		Performance (Broadcast Right, Public Performance Right, Communication to the Public Right excluding Making Available)	
Sound Recordings		Reproduction (Broadcast Mechanical, Phono- Mechanical, Synchronization, Transcription)	
Audio-visual Works		Making Available (CRBT, Streaming, Interactive and Non Interactive)	
Literary Works		Others (Please specify)	

Others (Please specify) Eg. Fine Artist, etc

5. What is your membership strength?

Right Holders	Musical Works	Sound Recordings	Audio-visual Works	Literary Works	Others	Total
----------------------	----------------------	-------------------------	---------------------------	-----------------------	---------------	--------------

Authors & Composers

Publishers

Performers

Producers

Other (Please Specify)

Total

6. What is your staff strength?

Status	No	of	Employees
---------------	-----------	-----------	------------------

Full – time

Part – time

Independent Contractors/Agents

Other (Please specify)

Total

7. How many members of Board do you have?

Board Member Compliment

Total Number Per CMO Constitution

Total Number Currently

8. What is the composition of your Board?

Board Members	Musical Works	Sound Recordings	Audio-visual Works	Literary Works	Others	Total
----------------------	----------------------	-------------------------	---------------------------	-----------------------	---------------	--------------

Authors/Composers

Publishers

Performers

Producers

Other (Please Specify)

Total

9. What is the tenure of each member of the Board?

9.1 Period of tenure of Board Members

9.2 Methodology of Rotation

10. What is the tenure of the chairman of the Board?

Board Tenure	Number of persons	Tenure duration in years
---------------------	--------------------------	---------------------------------

Chairman

Vice-chairman

11. Is your Board elected by the General Assembly or Appointed by Government?

12. Does your CMO have a Board Charter or Code of Conduct?

If yes, please are able to provide a copy or a link for download?

13. Are you able to share how you have worked with your chairman and Board in achieving the mandate of the CMO? - Board Relationships with Management

13.1 Formal Board membership

13.1.1 Are you as CEO a formal member of the Board? YES/NO

13.1.2 Are any other CMO Management Executives formal members of the

Board? YES/NO

13.2 If no, does the CMO constitution provide for the CEOs attendance at Board Meetings as a right? YES/NO

13.3 If there is no right of attendance by CEO at Board Meetings, how is the Board oversight function over management of your CMO carried out?

13.3.1 Through invitation of CEO to attend certain/all Board Meetings YES/NO

13.3.2 Are any other members of Senior management regularly invited to attend Board Meetings YES/NO

13.4 Does your CMO Board delegate authority to the CEO to run the CMO, subject to:

13.4.1 Monthly oversight

13.4.2 Quarterly oversight

13.4.3 Other oversight (please specify)

13.5 Please provide your views on the current delegated (if any) authority model at your CMO

13.5.1 Very good and is delivering to Right Holders

13.5.2 Fit for purpose

13.5.3 Antiquated and needs timely revision

14. Who makes the decision for appointment of a CEO?

14.1. General Assembly YES/NO

14.2 Full Board YES/NO

14.3 Board Sub-committee YES/NO

14.4 Other (please specify) YES/NO

15. Who makes the decision for the appointment of the Management staff?

15.1 Full Board YES/NO

15.2 Board Sub-committee YES/NO

15.3 CEO/Executive committee YES/NO

15.4 Other (please specify) YES/NO

16. At your CMO, are the roles & responsibilities of the Board chairman and CEO clearly defined YES/NO

16.1 How are these roles set out?

17. How are disagreements on views between the Board Chairman and CEO are resolved?

17.1 Between CEO and odd members of the Board

17.2 Between CEO and Chairman

17.3 Between CEO and full Board

18 What kind of leadership structure and practice do you have in place in you CMO?

19. How effective has your leadership structure been?

20. Does your current leadership structure and practice help to make decisions, which are quick and effective and indicate why you believe this is so

20.1 Quick YES/NO

Reason/s:.....

20.2 Effective YES/NO

Reason/s:.....

21. Do you think your CMO Board have sufficient knowledge and skills to direct the affairs of the CMO?

21.1 In relation to the Financial direction.....

21.2 In relation to the Licensing & Distribution direction.....

21.3 In relation to the Data solutions & systems direction.....

21. 4 In relation to the Legislative & regulatory direction.....

21.5 In relation to Lobbying & political matters.....

2.4 Instruments for Data Collection

Most of the questionnaires and interview questions were sent to the respondents through electronic emails and were collected through same way. The data for the face-to-face interviews were collected through an electronic recorder and other data were collected over telephone interactions.

2.5 Method of Data Analysis

The data collected through the service of questionnaires, interview questions and personal observation and experiences are not end its self but a means to end. The justification for gathering these data is to better understand the situations and the subject matter with a view of making useful recommendations.

CHAPTER THREE

COLLECTIVE MANAGEMENT OF RIGHTS

3.1 Introduction

CISAC University wrote that “In 1847 the French composer, Ernest Bourget, visited Les Ambassadeurs, a Paris café where live music was being performed. When he heard some of his own compositions being played, he was naturally angry that his permission for their use had not been sought and that he was not being paid either (while he, of course, had to pay the restaurant for his dinner). Subsequently, together with a lyrics writer, Paul Henrion, and a publisher, Victor Parizot, he brought an action against the owner of the café, asking the court to either forbid the performance of their works in the café or to hold that they, the creators of the works, should be paid for every performance of their works. The court found in their favour and, following appeal decisions in 1848 and 1849 upholding the original verdict, the principle was established that authors and composers had a performing right in their works which entitled them to be paid whenever and wherever their works were performed in public. Acknowledging that in practice it was difficult to monitor and enforce the performing right on an individual basis, the authors and composers of France set up SACEM two years later.”

A parallel story had Bourget sitting down at a different establishment, the Café Morel, intending to enjoy refreshment. The fact that he was not in the mood for an alcoholic beverage and preferred instead a soberer “eau sucrée” was meant with blunt refusal by a stropic waitress. In turning down his order, she was, however, merely applying the café’s policy of discouraging customers from choosing drinks that would “deceive the corkscrew”. Water with a lump of sugar in it would certainly have been less profitable for this establishment than a bottle of fragrant Burgundy or even a “carafe” of ordinary Cote du Rhone. Bourget was not to be intimidated. He left the café both thirsty and angry and immediately plotted a retaliatory move.

The café owners were soon served with a take-it-or-leave-it ‘offer’. They were to either pay Bourget 10 francs for each of the musical performances based on his work and put up by artistes on the café stage (mostly “scenes comiques” and “chansonnettes”), or they were to cease immediately to have those works performed.

Discovering for the first time that an alarming number of such performances were based on the works of their irate customer, the owners nevertheless turned down the ultimatum, arguing such performances were in themselves of direct benefit to its author as they helped connect him with his public; two tribunal hearings promptly followed, and the Court d’Appel de Paris finally settled the matter decisively in favour of Bourget in April 1849.

A court battle that had started with sharp words over an order of sugary water had considerable legal and economic implications for French authors of music, music theatre and lyrics. The principle of a right to public performance of such works was now established and the positive economic fallout needed managing.

The enterprising Bourget promptly founded the Agence et Compositeurs de Musique. A year later, in 1851, the organisation became the Société des Auteurs, Compositeurs & Editeurs de Musique (SACEM), the world's oldest authors' society for the rights of authors of music and the French law of 1791 was finally enforced.

As national precedents for the protection of creators' works grew sharply in the mid-nineteenth century, so did the momentum for an international agreement.

In 1886 in the Swiss capital, the Berne Convention for the Protection of Literary and Artistic Works was signed and for the first time under international law, rights of public performance for authors and composers along with a number of other basic rights were recognised, as a principal feature of the protection to be granted to all authors.

At the core of the Berne Convention is the principle of "national treatment". It holds that a country signatory to the Berne Convention will accord to authors who are nationals of other signatory country the same treatment as it accords to its national authors.

The Convention also requires members to recognise and uphold minimum common standards of protection for authors.

By the nature of rights granted to copyright owners, they should be able to manage their rights themselves especially for situations where the negotiations for the use of those rights are with few numbers of users. This is commonly referred to individual right management.

The copyright law grants owners of copyright in musical works and sound recordings whether they are songwriters, performers, music publishers or record labels certain exclusive rights to exploit their works to the exclusion of others or to authorise others to do same.

The copyright law also grants certain exclusive rights to owners of related or neighbouring rights in jurisdictions where such rights are recognised.

The exclusive nature of copyright and related rights means that it is only the copyright owner who is in a position to determine who exploits his or her works and under what condition(s) the exploitation can take place. The exclusive nature of these rights also allows the copyright owner to individually manage, control and monitor the exploitation and distribution of his works. The ideal situation would have been for the individual copyright owners to administer their rights themselves. Mihaly Ficsor (2002) confirmed this position when he said that an exclusive right may be enjoyed, to the fullest possible extent, if it is

exercised individually by the owner of the right himself. Mihaly Ficsor (2002) further said that in such a case, the owner maintains control over the exploitation and dissemination of his work, he can personally decide under what conditions, and against what kind of remuneration, his work may be used, and he may more or less closely monitor whether his moral and economic rights are duly respected.

However, the ability of the copyright owner to individually negotiate, manage, control and monitor the use of his or her works in cases where many works are used by a large number of users in far flung places, is made difficult, impracticable and almost impossible, for the copyright owner to do by himself or herself the acts exclusively granted to him or her by law. If the copyright owner would have to authorise or licence his works together with other numerous works exploited in distant or remote places and on different platforms, he will be failing in his or her core role of creating, which is writing or performing beautiful songs for the benefits of society.

It is because of these difficulties faced by individual right management that copyright owners in musical works and sound recordings came together to form collective management organisations (CMOs) to administer these rights on their behalf. The collective management system was therefore set up, to facilitate on behalf of the copyright owners, the negotiation and collection of licence fees from diverse users across several geographical locations thereby saving the copyright owners a lot of transactional costs and providing them with efficient system of managing their copyrights, and making it easy for the users to access their works.

Collective management was therefore established to complement individual right management and most suitable where low value uses of copyright works and large number of users.

Daniel Gervais (2016) described collective management as licensing (the contractual grant of authorisation to use work protected by copyright where such is not otherwise allowed by an applicable exception or limitation) performed by a CMO on behalf of a plurality of rights holders.

Mihaly Ficsor (2002) said collective management only refers to those forms of joint exercise of rights where there are truly "collectivized" aspects (such as tariffs, licensing conditions and distribution rules); where there is an organized community behind it; where the management is carried out on behalf of such a community; and where the organization serves collective objectives beyond merely carrying out the tasks of rights management (this is typical in the case of the management of the rights of authors and performers).

Robert Hooijer (2017) described collective management as the exercise of copyright and neighbouring rights by organizations acting in the interest and on behalf of a class of owners of rights.

It is because of the difficulties encountered in individual right management that owners of copyright across the world have always come together in different jurisdictions to establish a collective management organisation that would on their behalf manage their copyright and related rights. The formation of a collective management organisation was probably the best cost-effective way to deal with the dilemma in which the copyright owners found themselves. It is essentially required in a situation where there was the need to manage the interactions between multitude of copyright owners and various classes of users who may require copyright licences for their businesses.

In defining collective management organisation, Robert Hooijer (2017) defined it as important links between rights owners and consumers of copyright and neighbouring rights works as they ensure that the owners of rights receive payment for the use of their works.

The 2014 European Union (EU) Directive on collective management in article 3 defined collective management organisation as ‘an any organisation which is authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one rightholder, for the collective benefit of those rightholders, as its sole or main purpose...’

The Nigerian Copyright Act (2004) defined ‘collecting society’ as ‘an association of copyright owners which has as its principal objectives the negotiating and granting of licences, collecting and distributing of royalties in respect of copyright works.’

For a collective management organisation to carry out its mandate effectively as an important facilitator between the copyright owners and the users, the copyright owners traditionally, assigns or exclusively licenses some of the exclusive rights in their works to a CMO for management. By assigning such rights in their works to a CMO, the copyright owner is authorizing the CMO to negotiate, licence, collect copyright fee from users on their behalf and distribute same to the copyright owners after the CMO must have deducted its administrative fees. The assignment from the copyright owner also authorises the CMO to monitor the use of the works and where necessarily sue in its name on behalf of the copyright owners.

There is however another type of organisations which performs joint licensing but in contrast to collective management are referred to as rights clearance organisations. Mihaly Fiscor (2002) also described this type of organization as “those which perform joint exercise of rights without any real collectivized elements in the system; simply a single source is offered for users to obtain authorization and pay for it; the remuneration may be - and quite frequently is - individualized, and what is involved may not be characterized as "distribution" but rather transfer to each owner of rights of what is owed to him (this is typical in the case of rights owned by producers and publishers).”

Although, the structure, practice and scope of right representation may differ from country to country, the collective management system is a trend all over the world.

3.2 Benefits of Collective Management Organisations

The collective management system provides important benefits to different stakeholders in the creative industries ranging from the copyright owners (authors and performers), users of copyright works, the society and the national economy.

We will take a short tour of each of the benefits based on the stakeholder groups.

a) Copyright Owners

For creativity to continue to thrive there must be some guarantee of financial benefits for authors and copyright holders. By guaranteeing authors and copyright holders some form of financial rewards for the commercial and/or public exploitation of their works; they can concentrate on their core job, which is to create works for the enjoyment of mankind.

The collective management system ensures that creators and copyright holders are able to license large users of their works. For music CMO, it will be users like broadcast stations, hotels and similar establishments whilst for a reprography CMO; it will be users like universities and copy shops. The offering of this service by a CMO helps to cut down transactional cost that would have been involved in individual licensing of these large users and it also save the copyright holders time and effort that would be expended in locating the users.

CMOs act as important facilitators in the creative industries. They play an important role in administering the licensing of rights and lowering transaction costs for both their copyright holders and users. On lowering transaction cost, Daniel Gervais (2018) said that the traditional economic justification for collective management is the reduction in transaction costs and related economies of scale in administering copyrights when the information needed to administer and enforce copyrights is from the same source. Stressing further, Daniel Gervais (2018) said costs of licensing typically arise from locating copyright owners and obtaining the information needed to negotiate a price. Daniel Gervais (2018) further said, copyrights are typically negotiated before works are used or performed, so most licenses are based on little information such as a licensee's past use of music, potential signals of the work's popularity, and the parties' subjective predictions. To save time, effort and a lot of resources that goes into copyright licensing negotiations and help reduce transaction cost, CMOs around the world would usually issue blanket licences to users who are interested in exploiting their repertoires. It is the job of the CMOs to enforce compliance from users, which 'force' them to pay for the use of the CMOs repertoire and avoid litigations. Once there is compliance, it saves the CMOs and the users the cost of litigation, which is never cheap but aggressive enforcement by the CMOs may sometimes

work against the CMOs as users would rather stay from using such works than incur the wrath of the CMOs.

In practice, copyright owners cannot be at all the places where their works are used at the same time, licensing their rights by themselves, and foreign copyright owners too, are not able to licence their works outside their territories without extreme difficulty and huge cost.

With collective management, it is cheaper to spread the cost of negotiation, licensing, collection and monitoring amongst the pool of right owners who are members of a CMO.

With the increasing extensive nature of mass market exploitation of works and cross-border licensing becoming the norm especially in the digital environment, there is now a general consensus that CMOs provide the best available mechanism for licensing and managing authors' rights and that, at the very least, the collective management system is essential wherever and whenever direct or individual licensing is not a viable option for copyright owners.

The system further ensures that no work belonging to a creator and copyright holder is exploited by users without proper authorisation, which help in the fight against copyright infringement.

As collective management enables copyright owners to earn income from the exploitation of their works, which they would not otherwise be able to manage themselves either domestically or internationally, it also plays an important social and cultural role by enabling works that are less known to enter the market.

CMOs also promote and safeguard the collective interests of their members (drawing up of model contracts, issuing licenses and authorizing uses, negotiating rates and terms of use with users). They foster political action in favour of the effective protection of rights of copyright owners and promote usage of copyright works by educating creators and users about copyright matters.

b) Copyright Users

The collective management system makes it easy for users to access and exploit works belonging to creators and copyright holders legally without the fear of infringing on the copyright of the creators. The system makes it easy for rights users like broadcasters and consumers in general to legally access copyright works. The system makes it easy for the users to comply with the Copyright Act of given territory and avoid any litigation that may be instituted by the copyright holders. It allows a single point of access for users.

The collective management system makes it possible for users to clear rights for a large number of works, where individual negotiations to obtain the necessary authorisation from

every right owner, both national and foreign, would be impractical and entail prohibitive costs.

For ease of negotiation with certain type of users and subsequently licensing same, CMOs will usually negotiate with users' trade associations, saving the CMO the resources that would have been expended on moving from one geographical location to another, in order to licence the individual users.

In Nigeria, for music CMO, the CMO would be negotiating with such associations as:

- i. Broadcasting Organisation of Nigeria (BON) representing both private and government owned broadcast stations
- ii. Independent Broadcasting Association of Nigeria (IBAN) representing only private owned broadcast stations
- iii. Hotel and Personal Services Employers' Association (HOPESEA)
- iv. Hotel Owners Forum Abuja (HOFA)
- v. Association of Telecommunication Companies of Nigeria (ATCON)
- vi. Wireless Application Service Providers Association of Nigeria (WASPAN)
- vii. Experiential Marketing Association of Nigeria (EXMAN)

In this type of negotiations, the users benefit in terms of efficiencies and cost savings.

The collective management system allows users to obtain licence from a source, which for a low transaction cost gives the users the licence to use virtually any work from the CMOs' worldwide repertoire, given that CMOs control the rights administered by their sister CMOs in other countries.

With such a system, users licensed by local CMOs are generally safe from actions for copyright infringement regardless of the works used within the CMOs' repertoire.

CMOs further educate the users about the value of copyright material and their legal obligations in using it.

c) The Society

CMOs also operate in the interest of the public by ensuring that the public or society has ready access to a large body of works. Without the collective management system, a

nation's creativity and cultural products, which are of great deal of importance to the nation, would be lost.

The society must therefore care for its national creativity and cultural products by ensuring that the environment, in which the creators work, appreciates their works and also provide a system of reward that would motivate the creators to continue to create and add to the nation's repertoire of cultural products.

The Collective management system increases the marketing power of the copyright owners and small users, ensuring that they are both on the same level as all other prominent copyright owners and powerful users. This role played by CMOs helps in the protection and promotion of diversity of cultural expressions by enabling small and less popular works to be accessed by the market.

The CMOs by setting up efficient licensing processes whereby copyright works are licensed makes it possible for many works to be available, seen or heard by any significant number of users. CMOs by allowing the licensing of large repertoires effectively facilitate the mass use of creative contents for the benefit of society.

Above all, CMOs provide benefits of convenience for both the copyright owners, users and society in general that no other system is yet to match and it continues to be a useful tool that guarantees that the future of culture and creativity, and the prosperity of right owners and users alike are secured.

3.3 Roles of Collective Management Organisations

Traditionally, CMOs were set up by copyright owners for their territories to manage one or more of the rights granted to one or more categories of right owners in order for the CMOs to issue licences to commercial users on their behalf.

The collective management system offers a viable one stop solution to the challenges of individual negotiation, licensing and enforcement of copyright and related rights. This role, the CMOs have played in the copyright system over the years but with advancement in digital technology, the role has continued to evolve.

Daniel Gervais (2016) looking at the evolutionary role of CMOs said, "the pivotal role that CMOs continue to play as facilitators in the copyright system is more properly characterized as evolutionary rather than revolutionary." "CMOs facilitate the establishment of unified methods for collecting and dispersing royalties and negotiate licensing arrangements for works. Yet, licensing and royalty payment, whilst still important is not the only preoccupation of CMOs." "Overtime, the role of CMOs has evolved to oversee copyright compliance, fight piracy and perform various social and cultural functions.""

The collective management system performs two major functions:

First, it serves the copyright owners by ensuring that their works are properly licensed, fair remuneration are received on their behalf for the exploitation of their works and licence fees collected from users are distributed to them in form of royalties. This is commonly referred to as the economic role of CMOs, which is the *raison d'être* of a collective management system.

To perform this role effectively, CMOs may require the copyright owner/holder to assign or transfer certain rights in their musical works and sound recordings to them, such as:

- a. Right to reproduce the work in any material form
- b. Right to perform the work in public
- c. Right to make any cinematograph film or record in respect of the work
- d. Right to broadcast or communicate of the work to the public by loudspeaker or any other similar device
- e. Making adaptation of the work

The assignment of these rights by the copyright owners/holders to the CMOs empowers the CMOs to negotiate and collect licensing fees, and issue licences to the users on behalf of the copyright owners.

In the view of John Onyido (2017), “the designation of collecting societies as owners/assignees of the rights of its members in Nigeria are (in our view) simply convenient terminologies to describe the contractual arrangement between the society and its members in such manner as to facilitate the accomplishment of the intended policy objectives, but do not intrinsically translate into the transfer of substantive statutory rights in the traditional sense.”

In furtherance of the rights assigned to CMOs by the copyright owners, the CMOs would usually undertake to use their best endeavour to manage, administer, monitor and protect the rights assigned to them and to collect copyright royalties arising from the licences granted by the CMOs, and to distribute same to the copyright owners promptly, however, subject to deduction of necessary administrative cost or management fee.

The management of these works and rights would require the CMOs to set up and maintain a good database of members and affiliates, repertoire managed on behalf of the copyright owners, system to identify users and capture the use of the works of the copyright owners,

development of tariff, negotiating tariffs with potential licensees, collecting licence fees from the users, issuing music copyright licences on behalf of the copyright owners, distributing the licence fees less administrative fees (royalties) to copyright owners and enforcement of their rights which may include investigation and monitoring of unlicensed exploitation and where the users are recalcitrant, possible lawsuits may follow.

Furthermore, the copyright owner assigns to the CMO all accrued causes of action wherever and whenever in respect of any infringement of the assigned rights in both their musical works and sound recordings.

It is also to be noted that CMOs may require that copyright owners assign rights not just in their works which now exists, but which may also come into existence in the future.

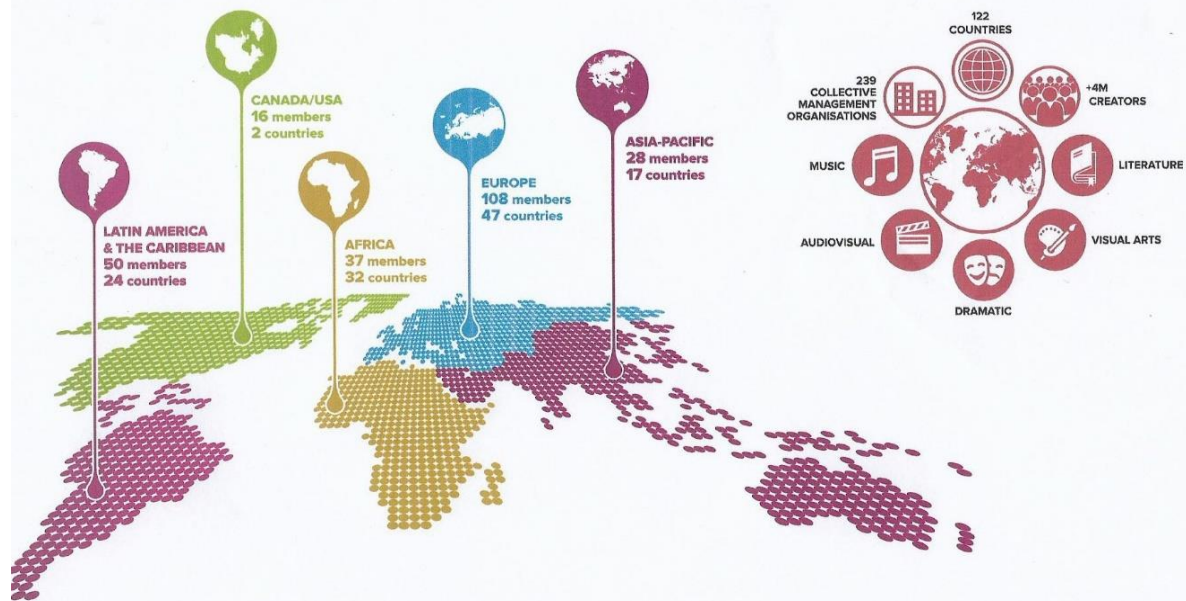
The CMOs are able to effectively licence the users of the works through a system called the 'blanket licence', which is a licence granted to users of music to access and use all the works in the entire repertoire of the CMOs for a particular period of time and at a particular rate.

For effective and efficient management of works and rights of their members across the world, many CMOs are part of international networks of right owners or rightholders and they have reciprocal representation agreements with sister CMOs across the world and because of this type of relationship, they are able to provide licensing opportunities for their members outside of their immediate territories. By such reciprocal arrangements, they are also able to facilitate the licensing of international repertoires to their local users.

The international networks that the collective management organisations or music licensing companies are part of as members are:

International Confederation of Societies of Authors and Composers (CISAC)

In 1926, in the French capital, the International Confederation of Societies of Authors and Composers (CISAC) was born. CISAC is an organisation for collective management organisations that represent the copyright interests of songwriters and publishers. In its annual report 2020, CISAC reported that it has 232 collective management organisations from 120 countries and five regions as members. These collective management organisations represent over four million creators active in five major repertoires: audiovisual, dramatic, literature, music and visual. CISAC is based in Paris, France.



CISAC: THE GLOBAL NETWORK FOR CREATORS

120
COUNTRIES/TERRITORIES

232
COLLECTIVE
MANAGEMENT
ORGANISATIONS

+4M
CREATORS

MUSIC

€ 9.65 bn

LITERATURE

GLOBAL COLLECTIONS
FOR CREATORS

AUDIOVISUAL

VISUAL ARTS

DRAMATIC

The central task for CISAC at its foundation was developing a common standard to bring about reciprocal representation of repertoire, royalty collection and disbursement between national member societies. Considerable energy was deployed in making CISAC and its constituent members as a lobbying force, to bring about changes to authors rights legislation both nationally and internationally. CISAC aims at increasing the recognition and protection of creators' right worldwide.

CISAC is non-governmental, not-for-profit confederation. It protects the right and promotes the interests of creators. The confederation ensures that creators are represented in legal and policy fora worldwide. It also enables CMOs to collect and distribute royalties accurately on behalf of authors for the use of their works globally. It also assists its members' business operations through a range of services including legal, policy, technology and governance.

Societies' Council for the Collective Management of Performers' Rights (SCAPR)

Societies' Council for the Collective Management of Performers' Rights (SCAPR) was founded in 1986. SCAPR is a not-for-profit organisation based in Brussels, Belgium. SCAPR operates as an international platform for the development of the practical cooperation between performers' collective management organisations (CMOs). It strives to improve the exchange of data and performers' rights payments across borders.

SCAPR represents 58 CMOs from 42 countries across the world and its primary aim is to improve the efficiency of management of rights and the conclusion of bilateral agreements between member CMOs. It also provides assistance for the exchange of information between CMOs via administrative procedures, legal proceedings/arbitrations, collecting procedures, publication of tariffs and distribution schemes

International Federation of Phonographic Industries (IFPI)

International Federation of Phonographic Industries (IFPI) is the voice of the recording industry worldwide. IFPI represents the interest of 1,300 record companies across the globe. It is a not-for-profit international organisation registered in Switzerland with offices in London, Brussels, Hong Kong and Miami. IFPI affiliated national groups or music licensing companies are in 56 countries around the world and its members operate 59 markets across the globe.

IFPI has four core functions but we look at the function that relates to the management of music licensing companies, which is generally referred to as CMOs for authors' societies.

The IFPI global performance rights team works to grow performance rights revenues for record producers worldwide through:

- a. Securing full performance rights in countries where they do not yet exist.
- b. Setting up new music licensing companies (MLCs) to manage and collectively license performance rights in emerging markets, including in Africa, Asia and Latin America.
- c. Improving the operation of the existing MLCs through identifying and implementing best practices.
- d. Securing fair tariffs for the broadcasting and public performance of sound recordings.

Secondly, CMOs serve the users of copyright materials by facilitating access to copyright materials and ensuring that they easily and cost effectively obtain the licence required. Here the collective management system ensures there is a balance between the right to access copyright material and the right to effective protection of works of copyright owners. The CMOs ensures that the balance is not tilted against the copyright owners. However, the CMOs must ensure that the licence fees charged the users are not exorbitant but reasonable in order to maintain that balance as guardians of both the rights of the copyright owners and that of the users. This is referred to as the political role of CMOs.

CMOs simplify the process of licensing for prospective licensees of copyright material who otherwise may need to identify and locate the copyright owners and negotiate individual licences with all the copyright owners whether local or foreign.

John Onyido (2017) said that CMOs “provide an effective channel that allows for a seamless business arrangement between authors and owners of copyrighted material on the one hand and the users of these protected works on the other.” He further concluded by saying that “the two vital justifications for the creation of collecting societies are (a) to assist the artistes in obtaining proper remuneration for their creative works and (b) to facilitate easy access to these works by potential users.”

The collective management system also plays other important roles for its members such as offering them free legal advices on issues of contracts and individual right management. It also helps its members to put away a small percentage of their royalties to assist them in times of old age, illness and even death.

However, with advancement in digital technology, the role of CMOs have continued to evolve in order to accommodate the drastic changes occasioned by these advancements such as the emergence of digital service providers, changes in licensing models as a result of users’ licensing needs, which are no longer confined to national territories, fast growing streaming businesses, withdrawal of certain digital rights and fragmentations of rights.

3.4 How the Collective Management System Operate

The collective management system operates within a broader framework of the supply of copyright works by CMOs and demand for these works by commercial users.

- a. The services provided by CMOs include:
- b. The grant of licences to commercial users.
- c. The auditing, monitoring of rights by ensuring payment and terms of licensing.
- d. The pursuing of infringers (enforcement).
- e. The collection of royalties
- f. The distribution of royalties to copyrights-holders.

CMOs deduct a fee generally referred to as administrative or management fee for the provision of these services.

The CMOs also provide services which are not necessarily connected to collective management but are critical for the survival of the creative industries such services may include social and cultural, promotional and funding activities.

A CMO will therefore normally be set up based on the type of work(s) and rights assigned or licensed to it to manage by its members and affiliates. It can also be set up based on the type of use, it is established to service.

Copyright is a basket of rights and in the case of a musical work or sound recording, the following rights are most likely inherent in either of the works:

- a. Reproduction Right
- b. Public Performance Right
- c. Communication to the Public Right
- d. Broadcast Right
- e. Making Available Right
- f. Distribution Right

g. Adaptation Right

h. Translation Right

Each of the above rights can be owned by more than one person or interested party especially where there is joint authorship or co-authorship in a particular work and each of the rights can either be assigned or transferred separately or wholly to a CMO or different CMOs covering different territories for management.

Apart from the type of works, rights and use, in establishing the *modus operandi* of a CMO, the following critical features must be considered:

3.4.1 Legal Structure

The structure of a collective management organisation is largely dependent on its legal regimes and practices within each jurisdiction.¹ The legal structure of a CMO varies from one jurisdiction to another.

Generally, most CMOs are organized as not-for-profit companies or organisations, barred from making profits but nonetheless must be run like a business to meet the aspirations of its members and affiliates. CMOs do not keep any share of royalty payment although they usually deduct a percentage as administrative fee before distributing the royalties to their members. In some jurisdictions however, some CMOs are operated as for-profit organisations or companies.

In many countries, because of the important role that CMOs play in the promotion of the rights of creators and providing easy access to their works, it is mostly set up as a company limited by guarantee with proper organisational structures before it can apply to its local copyright regulatory agency to be approved as a collective management organisation (where such approval is required by the domestic law of that country) representing a particular class of work or right.

In Nigeria, a CMO is first registered with the Corporate Affairs Commission (CAC), as either a private or public company limited by guarantee. However, before the CMO gets registered at the Corporate Affairs Commission, it must first obtain the consent of the Attorney General of the Federation, guaranteeing the CMO to operate as not-for-profit company.

As stated in the earlier, most CMOs are barred from making profits from services, it offers creators, right holders, and users. Its operations are however, run by administrative fee deducted from its total collections from users. The regulations ensure that the CMOs

¹ See Daniel Gervais on Collective Management of Copyright and Related Rights, page 8

maintain low administrative fees to allow greater shares of the collections to be distributed to right holders.

The collective management system though an organisation of creators and right owners, is not a trade union. By legislative provisions in several jurisdictions, a CMO, which is set up as mostly not for profit organisation, provides essential services for both right owners and users.

In determining the legal form that a CMO takes, it is important to recognise that any domestic Copyright Act is a bundle of exclusive rights first granted to creators of creative works, which grants the creators the power to permit or prevent the exploitation of their works. There are also other instances where the law only grants the right to equitable remuneration and not exclusive rights to the copyright holders. In the case of the right to equitable remuneration, the permission to exploit the works of the right holders is granted in the Copyright Act.

Many CMOs are de facto or de jure monopolies and they are commonly referred to as natural monopolies. This monopoly right is often called a “qualified monopoly” based on the fact that it is limited in duration to the term of copyright.

The two main legal forms of a CMO are:

3.4.1.1 Voluntary Collective Management

Voluntary collective management is premised on the principle that the Copyright Act has granted certain exclusive rights to copyright owners, which grants them the power to individually manage their rights by determining the terms and conditions upon which a user who is interested in exploiting or using their works must meet or assign such rights to a collective management organization for management either fully or partially.

Under this form of collective management, copyright owners would have to individually assign the copyright in their works, which is commonly referred to as mandates to the CMO for management without which the CMO cannot legally administer the rights of the copyright owners.

In Nigeria, the Copyright (Collective Management Organisations) Regulations 2007 considers it unethical for a CMO to grant licences for works for which it is not authorised to administer or collect and/or distribute or purport to collect and /or distribute royalties in respect of works for which it is not authorised to administer.

Under this model of collective management, the CMO makes the use of either the blanket licensing system where the CMO grants licences to users to use all the works in its repertoire for a particular exploitation within a specified period of time as allowed by the

licence or the transactional licence covering the use of a work for a specific exploitation. It must however be stated that the blanket licensing system is more commonly used by CMOs across the world.

To buttress the points made in the previous paragraph, the Canadian Copyright Act defined a CMO as a society, association or corporation that carries on the business of collective administration or remuneration right conferred for the benefit of those who, by assignment, grant of licence, appointment of it as their agent or otherwise, authorise it to act on their behalf in relation to that collective administration... The Copyright Act of Canada is an example of a country where the voluntary CMO model is expressly provided for in the law.

We will now consider the different forms of voluntary collective management system, which are:

a. Implied Licensing Model

The implied licensing model also known as the indemnity approach provides for the indemnification of a licensee against any liability caused by his copyright infringement in the circumstance that the infringed work falls within the scope of his licence.

Under this model, the licensee does not need to worry about any possible or potential copyright infringement that would occur by the exploitation of any work as long as the work is included in the repertoire of the CMO. The licensee does not need to also check whether such a work is included or not included in the repertoire of the CMO.

The United Kingdom Copyright, Design and Patent Act 1988, section 136(2) provides that where the exploitation of a work by a licensee falls within the ‘apparent scope’ of the licence issued to it by a CMO that the licensee would be indemnified against any liability as a result of any copyright infringement claim in that work.

This model favours users or licensees as they do not require the licence of the rightholders in advance or would they be worried about any potential infringement of copyright in the work.

b. Legal Presumption Model

The legal presumption based model is very common in Germany and it is also referred to as the guarantee based model. Under the German Copyright Act on Collective Management Organisations where a CMO is entitled to claim rights of information and equitable remuneration, the CMO is presumed to represent all rightholders in its area of operation.

This model involves the following elements:

- i. The law recognises the licence of works not managed by the CMO.
- ii. The CMO guarantees the licensee to whom a blanket licence has been issued that no right owner will make any claim from the licensee and if there be such claim the CMO guarantees to settle the claim and further guarantees to indemnify the licensee against any expense made in the event of any justified claims by rightholder.
- iii. The CMO further guarantees to treat rightholders who may not have assigned their rights to it well and not to discriminate against them.²

This model however puts the burden of proof on users to prove that the CMO is not eligible for claiming the rights. If the user fails to satisfy this burden of proof with respect to this presumption, the CMO will be deemed eligible to represent and manage the copyright of the rightholders.

This type of model “leaves little room for rightholders to choose whether to assign the CMO the task of representing them or not, and limit their freedom to opt out.”³ The effects of legal presumption are much the same as extended collective licensing.

c. Extended Collective Licensing Model

The extended collective licensing model is a form of voluntary licensing where the law provides that a licence granted by a CMO to a licensee for the exploitation of the works of the rightholders who have voluntarily assigned their works to the CMO is also valid or ‘extended’ for the exploitation of the works of rightholders who may not have joined the CMO.

The extended collective licensing model has been largely successful in the Nordic countries of Norway, Finland, Sweden, Denmark and Iceland and unlike the legal presumption model it provides rightholders the opportunity to opt out of the system (withdraw their works from the licence) and manage their rights individually therefore mitigating the imposition of mandatory collective management on rightholders who have selected to licence their works outside of the collective management system.

Under this system of collective management, agreements between a CMO representing a substantial number of rightholders and affiliates in a given category of work and users can be extended by virtue of the law to cover all rightholders in that category. It means in effect, a copyright licence is extended to cover non represented rightholders.

² See Daniel Gervais on Collective Management and Related Rights, page 66

³ Model for Collective Management of Copyright from International Perspective: Potential Change, s for Enhancing Performance

For a CMO to be able to carry out or be considered to carry out the extended collective management system and for such practice to conform to international norms on the protection of authors' right, the following conditions must be met:

- i. The CMO must be well-established to be able to manage and protect the rights of the different interested parties in the value chain such as authors, performers, publishers and phonogram producers and any other rightholders in line with the requirements of transparency, accountability and good governance.
- ii. In determining the need for extended collective management, the nature of rights involved must be such that may only be managed appropriately through a collective management system. The collective management system must be the only cost effective and an indispensable way of managing these rights.
- iii. The CMO must truly be representative of the majority of rights and their rightholders both domestically and internationally reflecting significantly in the actual usage of their repertoire and the remuneration collected on those repertoires within the given territory of its operation. This is also true of the reciprocal agreements signed by the CMO with sister CMOs. The reciprocal agreements must have relevant and active repertoire. If there are two CMOs in a given territory competing for such a role, the bigger of the two CMOs fulfilling all conditions herein should be chosen.
- iv. The rightholders who have not joined the CMO and may wish not to be part of the collective management system must be adequately protected by providing them the option to claim whatever remuneration is generated from the exploitation of their works or opt out of the system by indicating that they do not want to be represented by the CMO. In opting out, the rightholder(s) must give reasonable time for his/her works to be excluded from the CMO's repertoire.⁴

The extended collective management is best suited in jurisdictions where rightholders are well organised.

3.4.1.2 Non-Voluntary Collective Management

In a non-voluntary collective management, the licence or authorisation required by the user to exploit works is granted by law and consequently the authorisation of the rightholders is not required. The rightholders are however entitled to equitable remuneration for the use of their works but no exclusive rights.

⁴ See Daniel Gervais on Collective Management and Related Rights, page 67

The difference between voluntary and non-voluntary collective management is in nature of the rights.

It is evident that non-voluntary collective management restricts the way copyright owners exercises their rights. Under this model, copyright owners cannot prohibit the use of their works.

We will now consider the different forms of non-voluntary collective management system, which are:

i. Mandatory Collective Licensing

The mandatory collective licensing system is a system in which all copyright owners in a given field are collectively represented by one or more CMOs in a given territory. With this system of collective management, copyright owners do not have a right of choice in the management of their rights. It does not however take away the copyright owners exclusive rights but only insist through regulation that such rights can only be managed through a CMO.

ii. Compulsory Collective Licensing

The compulsory collective licensing system is established where the exclusive rights of copyright owners are reduced to right of remuneration. The model allows for negotiations between the copyright owners and users in order to determine the amount of remuneration to be paid by the user. It is only in the event that an agreement was not reached between the copyright owners and the users that the amount of remuneration to be paid by the user is fixed by the competent authority in that jurisdiction.

iii. Statutory Collective Licensing

In the statutory collective licensing model, the amount of royalty payable by the user for the exploitation of the copyright owners' work is determined by law or statute or a relevant administrative agency unlike the compulsory licensing model where the copyright owner is given the opportunity to first negotiate the amount of royalty to be paid.

It is to be noted that regardless of the form or mode of collective management system, no collective management of rights can be achieved without proper legal framework and goodwill or cooperation of the government.

3.4.2 Method of Acquisition of Rights from Copyright Owners

In most cases, before a CMO begins operations or even apply to the relevant regulatory agency (where that is required by law) to be registered or approved as a CMO, it must first obtain an assignment or licence from a group of right owners to be able to licence users on their behalf whether exclusively or non-exclusively. In the case of a music CMO, the right holder group will include such interested parties as songwriters, performers, publishers and record labels. The assignment from a particular rightholder group will also depend on the type of CMO being set up. In many countries right owners assign their rights to their local CMO while in other countries, right owners merely grant to the local CMO a non-exclusive licence.

In a situation where the copyright owners assign their copyright to a CMO, the assignment will have the following effects:

- i. The assignment covers all past, present and future works.
- ii. The rights once assigned to a CMO cannot be assigned to another CMO or to a third party.
- iii. In this case, the owner of the economic rights which are subject to collective management is the CMO (For example; Mechanical Rights, Public Performance Rights, Communication to the Public Rights, Making Available Rights and Broadcasting Rights).
- iv. The beneficiaries of the work done by the CMO are still the songwriters, performers, publishers and record labels.
- v. Music publishers and record labels are entitled to a share of royalties distributed by the CMOs by virtue of the agreements between the publishers and the songwriters on one hand and the record labels and the performers on the other.

Whereas, in a situation where the copyright owners grant non-exclusively mandates to a CMO to represent them, the non-exclusive licence will have the following effects:

- i. A Non-exclusive mandate does not necessarily cover all past, present and future works.
- ii. The copyright owners can still assign or grant licences to another CMO or any other third party.
- iii. The CMO has the right to represent the copyright owners but the legal owners of the economic rights are the copyright owners.

- iv. Music publishers and record labels are entitled to a share of royalties distributed by the CMOs by virtue of the agreements between the publishers and the songwriters on one hand and the record labels and the performers on the other.

In some jurisdictions, a CMO can represent more than one work. This is the case with most State run CMOs where the organisations manage rights in musical works, sound recordings, literary and audiovisual works while in some other jurisdiction, a CMO can represent certain rights inherent in a work while in other jurisdictions, a CMO may represent a class of work or right. So in whichever case, except for very few exceptions like in the United States of America, Brazil and more recently in Nigeria in the field of music, most CMOs operate as de-facto monopolies.

Once a CMO has acquired the necessary rights from the group of rightholders, it is equally important for the CMO to apply to international networks of right owners or holder to be admitted as a member. The international organisations are which music CMO may be a member of or affiliated to are CISAC, IFPI and SCAPR, which have been discussed in previous paragraphs.

Following its membership of these organisations, a CMO can enter into reciprocal representation agreements with other sister CMOs across the world. The concept of reciprocal representation agreement is to enable each CMO licence in its territory, repertoire of works including not just its local works but works and rights of copyright holders from other countries.

For example, the Nigerian local CMO, COSON has reciprocal agreement with several CMOs across the world wherein each CMO assigns to the other an exclusive or non-exclusive right to administer specific works and rights in its repertoire in their territories.

Since 1958, many contracts have been entered into between CISAC CMOs on a reciprocal representation basis in order to respect the “national treatment” principle of the Berne Convention and to reduce the cost of management and to increase efficiency.

The aim of the reciprocal agreement is to allow each CMOs in their territory to do the following:

- i. to permit or prohibit, in each other CMOs’ name or that of the copyright owner concerned, to licence the works in the repertoire of the other CMO and to issue the necessary authorizations for such exploitation;
- ii. to collect all royalties required in return for the authorizations issued by the CMO as provided in (i) above;
- iii. to receive all sums due as indemnification or damages for unauthorised usage of the works in question;

- iv. to commence and pursue, either in the name of the CMO or that of the copyright owner concerned, any legal action against any person or corporate body and any administrative or other authority responsible for illegal use of the works in question;
- v. to transact, compromise, submit to arbitration, refer to any Court of Law, special or administrative tribunal;
- vi. to take other action for the purpose of ensuring the protection of the work(s) and right(s) covered by the reciprocal agreement

In a nutshell, the result of the reciprocal representation agreement is to ensure that all the works throughout the world are possibly protected and it allows a CMO administer foreign repertoires in its national territory, exchange information and pay royalties to foreign right holders. Regardless of the nationality of the copyright owners, they are able to receive fair compensation for the exploitation of their works.

These networks of CMOs have led to model agreements of reciprocal representation especially for the CISAC CMOs, set out to ensure the best possible protection of authors' rights and to codify the conditions in which CMOs represent each other in their respective territories.

The collective management system is central to the music business and it is a very serious business.

3.4.3 Method of Determining Tariff or Price Setting

Part of the responsibility of CMOs is to develop tariffs that adequately reflects the condition of the market in which the CMOs operate whilst at the same ensuring that the copyright owners derive proper and fair remuneration for the use of their works.

The CMOs' ability to operate within a given jurisdiction and effectively license users will depend to a large extent on an assemblage of tariffs in their arsenal reflecting the works and rights administered by them and the different market segments covered by the CMOs.

In developing tariffs, the CMO is required to consider the following critical questions and ensures it provides adequate answers to them:

- i. Is the CMO a private or a government run CMO?
- ii. Is the CMO a single or multi-work CMO?
- iii. Is the CMO a single right or a multi-right CMO?

- iv. What is the nature of works administered by the CMO?
- v. What is the nature of copyright ownership?
- vi. What rights does the CMO control?
- vii. How much repertoire does the control?
- viii. What kind of economic market conditions exist in the territory in which the CMO operates?
- ix. What is the value attached the copyright work?
- x. What is the outcome a tariff negotiation in a comparable market?

In Nigeria, under the Copyright (Collective Management Organisations) Regulations 2007, a CMO is required to draw up tariff in respect of remuneration it demands for the usage of copyright works administered by it.

In setting up tariffs, the regulations mandates that the CMO may have regard to the following parameters:

- i. the monetary advantage obtained from the exploitation;
- ii. the value of the copyright material;
- iii. the purpose for which, and context in which, the copyright material is used;
- iv. the manner or kind of use of the copyright material;
- v. the proportion of the utilization of a work in the context of exploitation;
- vi. any relevant decision of the Court or the Dispute Resolution Panel; and
- vii. any other relevant matter

To ensure that a CMO does not abuse its monopolistic position and that the copyright owners receive fair and proper remuneration for the usage of their works especially where there is a dispute in tariff, the regulations provide for the setting up a copyright dispute resolution panel by the Nigerian Copyright Commission.

Since many CMOs operate as non-profit organisations, what they charge to their members through their administrative fees would be their actual management costs without making profit. In the same manner, they must operate in such a way not to incur loss, which is having higher costs over revenue from administrative fees, in order not to jeopardise the operations of the CMO.

The author has attached some relevant tariffs used during his time as CEO of COSON and they are marked as Appendix 1 for ease of reference.

3.4.4 Method of Licensing

The next step in the operations of a CMO having determined what the tariffs for the various exploitations are is to convert the tariffs into a licensing scheme.

Many CMOs would normally develop a licensing policy to direct and guide their licensing activities. A CMO licensing policy would be to grant licence to any prospective commercial user requiring one, provided the user concerned is prepared to enter into a standard form of licence agreement and pay the applicable fees. The onus lies on a user to obtain the necessary licence from the CMO before such usage commences.

A CMO must take reasonable steps to ensure that users are fully aware of their obligations. However, if a user does not comply with the law by refusing to take out a licence after their obligations have been explained in detail, the CMO may not hesitate to institute a copyright infringement action against the user, calling for an injunction restraining the user from using any of the CMOs repertoires, as well as claiming damages and the costs of the action. Apart from civil remedies, the CMO may bring a criminal charge against the user as provided by the domestic copyright Act.

In Nigeria, the Copyright (Collective Management Organisations) Regulations 2007 mandates the CMO to provide users of copyright works, or any member of the public, upon a written request, reasonable information on their services. According to the regulations, such information shall include:

- i. The description of the rights or class (es) of rights it administers.
- ii. Its Current Licensing arrangements including tariff, terms and conditions of licence for all categories of users.
- iii. Such other relevant information that may be necessary.

The regulations further provided that where a CMO seeks any change in the tariff rates for any category of users, it shall inform such users through a medium that could be accessed publicly by them.

It is a CMO's responsibility to now develop a licensing agreement as part of its licensing policy. The following features would normally be part of the CMO's licensing agreement:

a. Description of Service

For clarity, the licensing agreement must clearly describe the business model of the user.

b. Definitions

For clarity of some licensing and business terms that may not be familiar with both the users and the CMO, it is very important to properly define such words.

c. Scope of Licence

A licensing agreement must clearly state the work or right that is been licensed by the CMO. In music CMOs, whether it is musical works or sound recordings. The scope also defines the repertoire assigned to the CMO by its members and affiliates.

d. Reserved Rights

Here the works and rights not covered by the licensing agreement are properly and the users are informed that such works and rights are excluded without limitation from the licensing scheme.

e. Term of Licence

The term of a licence is very important so as not have a licensing arrangement that continues indefinitely without a commensurate review in case there is a change in the licensing situation. For example, there could be inflationary swing that may alter the amount paid in the following year; the business model may not be clear to the CMO at the beginning of negotiation and a licensing agreement, which may warrant the CMO to grant an experimental or temporary agreement. There are also situations where CMOs in order to encourage a buy in into the licensing arrangement may give rebates to users and such rebates are not expected to continue indefinitely.

f. Reporting

A licensing agreement must have a provision mandating the users to submit accurate report containing accurate data information in order to enable the CMO to be able to license and invoice the repertoire works properly and also to have accurate data to distribute the licensing fees collected as royalties to its members and affiliates. The reporting could be done monthly, quarterly or annually depending on the provisions of the licensing arrangement.

It is not uncommon to see users lag behind in fulfilling this part of their obligation, as most consider it burdensome and stressful.

The lack of usage data has however created a lot of challenges for CMOs and created a situation where the CMOs are viewed as not being transparent and accountable because they need accurate usage data or as it commonly called logs to distribute transparently to their members and affiliates.

In order to mitigate a situation where there are no accurate data, CMOs have had to invest in digital monitoring systems, which are not cheap and most times are expensive for the smaller CMOs to acquire.

The lack of accurate usage data has also encouraged the concept of ‘general distribution’, which is an unscientific distribution model, not based on any usage information but on an equal flat amount paid to all members of a CMO in an accounting year.

A good usage data is very important to both the CMO and its members as it allows the CMO to know changes that may have occurred in its repertoire based on usage and for the members, it allows them to know how well their works are doing and what level of push they may need to give to their works in order to increase patronage.

A good reporting format would normally include but not limited to information such as:

- i. Track title
- ii. The names of the composers and performers, publishers and record labels
- iii. Playing time
- iv. Number of plays/downloads/streams
- v. Price per play/download/stream
- vi. Number of views/subscribers
- vii. Country of usage/streaming/downloading

g. Auditing

An audit clause in a licensing arrangement is very important as it empowers the CMO to investigate the records of the user with respect to the licence granted to it by the CMO at least once a year during the term of the agreement or one year thereafter.

The clause obligates the user to keep and make available for inspection during and for twelve months after the termination of the agreement accurate, proper, detailed books and records of all usage as well as records of all amounts invoiced by and/or payable to the CMO during the term of this Agreement. During the term of the Agreement and for one

(1) year thereafter the CMO may inspect or appoint an independent certified auditor, at the CMO's sole cost and expense, to inspect the user's relevant books and records of accounts at the place where such books and records are normally maintained.

The audit clause enables the CMO to establish whether there has been any under payment of the correct licensing fees or incorrect reporting of usage.

h. Payment Terms

This deals with the users' financial obligations to the CMO, the rate and how payment should be made and at what intervals. It also deals with the CMO's obligation to issue invoice to the users.

The payment terms may also include payment of VAT (depending on the provisions of the law in that territory), minimum guarantees (depending on the type of exploitation) and it makes allowance for any adjustments in inflationary swings and consumers' price index.

i. Territory

It is very important that the licensing agreement indicate clearly the territory covered by the licence granted by the CMO. The territory could be urban, national or international.

j. Jurisdiction and Applicable Law

In the case of a dispute, it is important that the licensing agreement states which country and law would have jurisdiction over the agreement.

The author has attached a copy of licensing sales handbook developed during his time as CEO of COSON and they are marked as Appendix 2 for ease of reference.

3.4.5 Method of Distribution

A CMO's task is incomplete if it fails to distribute royalties to its members and affiliates in an accurate and transparent manner. To perform this all important task effectively, a CMO will need accurate data. A commercial user that deploys copyright works and is expected to submit logs or cue sheets where such is required as part of the conditions for a obtaining a licence from a CMO, showing the works exploited and fails to do so, will be creating more challenges for the CMO, as there won't be a proper basis for the distribution of royalties accruing from the use of the work.

Daniel Gervais (2016) said that from an operational viewpoint, CMOs are essentially data collecting and processing entities.

A CMO would normally require accurate data from users to properly identify works, performances and recordings exploited and the interested parties or copyright owners

involved in the works and recordings. A CMO would also have a database of members and their works, which would be matched with data collected from users in order to properly identify each copyright owner of any work in the logs or cue sheets supplied by the users.

The success of copyright collective management depends on the efficiency of collection and distribution processes. To achieve this in the area of data collection and management, CMOs and right management companies are partnering with credible third party companies who specialize in airplay monitoring and digital data capturing. These service providers provide airplay monitoring reports, created with smart technologies, that are essential to identifying and distributing music royalties among members and affiliates of CMOs.

These technologies have helped CMOs who are negotiating with mostly broadcasters and cable service providers to close licensing deals quicker because the unbiased evidence of broadcast music usage is automatically and transparently provided.

The technologies also help the CMOs to randomly audit and match the information that TV, Radio stations and cable/satellite broadcasters send to them against the logs supplied by the broadcasters and their own records. With such services, providing accurate and auditable data, the CMOs services are becoming more credible, efficient and transparent, which are the foundations of good royalty distribution system. With the adoption of airplay monitoring technology, the CMOs have been able to optimize their royalty collection and distribution processes for radio and television by providing information of great value such as percentage share of music aired both local and international, song, artiste and label rankings. These monitoring technologies have become efficient tools, which have helped the CMOs to precisely identify songs/tracks broadcast on radio and television, which is then matched against a huge database of local and international repertoire.

To improve the exchange of accurate data, CISAC and IFPI representing the two sides of the music industry have developed identifiers known as International Standard Work Code (ISWC) International Standard Recording Code (ISRC) and International Standard Recording Code (ISRC) for sound recordings.

International Standard Recording Code (ISRC)

The International Standard Recording Code (ISRC) is an identification system used around the world to identify and catalog individual sound recordings, which is commonly known as ‘masters recording’ in the music industry. The ISRC provides a means of uniquely identifying sound recordings and music videos internationally. It is a 12-character alphanumeric code/unique identifier assigned by a record label, distributor, or sound recording owner to a recording or audio file of a single song performed by an artiste or band and separates it from the hundreds and thousands of other sound recordings worldwide.

With the birth of digital commerce, ISRC has become increasingly important, as it can be used to reliably identify recordings when data is exchanged between different proprietary systems.

The assignment of ISRC code is a first step in being able to manage recordings and associated revenues and it has the following benefits:

- i. ISRCs are assigned to recordings by producers to clearly and unambiguously distinguish them from other recordings across complex value chains.
- ii. ISRCs are used by digital music distributors within their databases and stores, linked to information such as reviews, and for sales reporting.
- iii. ISRCs are by Music Licensing Companies to identify tracks and to implement track-based distribution and reporting.
- iv. ISRCs are used by broadcasters and webcasters in their reports of the usage of recordings
- v. ISRC may also have a role in certain anti-piracy scenarios.

International Standard Musical Work Code (ISWC)

The International Standard Musical Work Code (ISWC) is an 11-character alphanumeric code or international identification system cataloging individual compositions (usually songs), rather than recordings. An ISWC as an identifier was until recently usually assigned by CMOs representing authors of musical works. It tracks the song title, songwriter(s), music publisher(s), and corresponding ownership.

At the time of this research, CISAC had announced on its website that it has launched a new upgraded version of the ISWC and that the new system is a cloud based system.

The report says that the upgrade will benefit CMOs by offering new features and enhanced services that bring efficiencies, reduced costs and improved services to rights holders.

The report went on to enumerate the following benefits:

- i. Greater Accuracy - The new ISWC will be assigned centrally by CISAC unlike the current practice where it is allocated by individual CMOs, in order to avoid duplication, inaccuracies and remove the many data integrity challenges. With the upgraded system and a central assignment, a song will get only one unique code.

- ii. **More Speed** - The new ISWC system will drastically reduce the amount of time it takes to assign a code to a song. The challenge to complete the registration of a work before the code is allocated is practically removed, making it ready for use by all partners such as publishers, sub-publishers, digital services, in the commercial chain within hours of the work's release, so that a song used on any of the digital platforms can be monetized without delay. ISWCs will be available almost instantly.
- iii. **Increased Efficiency** - The new ISWC system takes the friction out of the digital licensing process, reduces costs and brings more value. The fully functioning automated allocation system will save CMOs time and resources and put more money back to the creators they represent.

The CISAC report further said that “in addition, a new ISWC interface will make the system more flexible, allowing CMOs to update and amend details to an ISWC and react to duplication when it occurs. For example, new metadata, such as additional song-writer information or a correction, can be included whenever needed. The new system will provide societies with better tools to improve the bulk corrections of ISWCs, like merges, demerges and edits.”

The report equally said, “The new ISWC system will improve the information flow between societies, publishers and platforms, helping keep pace with the explosion of music streaming and the new system will also be shortly rolled out for use by the publishing community and digital music platforms.”

An ISWC can be linked to any number of ISRCs, while each ISRC is linked only to one specific recording.

The overarching aim of the new and upgraded ISWC is to help creators “track their works better and remunerate them faster.” CISAC also emphasized that it tailored the new-and-improved ISWC for the high-volume of plays (and royalty payments) of the streaming age.

In today's world, ISRCs and ISWCs are digital fingerprints and a CMO may not be able to solve the problems of rights and licensing without consistently applied identification systems. In the digital space, the primary way sales can be tracked and royalties recovered is to link exploitations whether downloads or streams to the recordings ISRCs or songs ISWCs.

3.5 Traditional CMO/MLC Processes

Traditionally, CMOs are commonly specialized in the following classes of works as provided by the national legislations:

- i. Musical works
- ii. Sound recordings

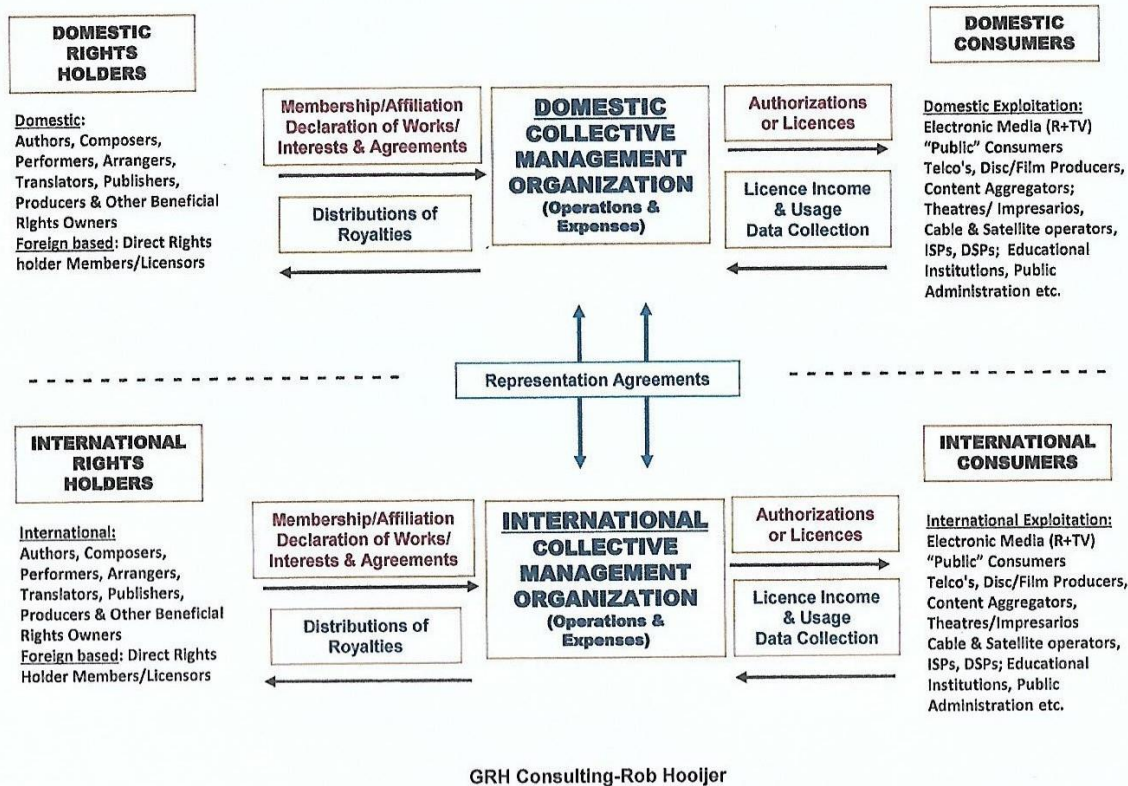
iii. Audiovisual works

iv. Literary works

The CMO process is traditionally divided into copyright owners and copyright consumers with the CMO in the middle as the link or facilitator.

For ease of understanding, the researcher has adopted Robert Hooijer (2020) diagram below showing the different processes:

Traditional CMO-MLC Process Chart



3.6 Brief History of Collective Management Organisations in Nigeria

The history of collective management organisations in Africa is a fairly new experiment compared to their European or American counterparts. The first indigenous CMO in Africa was not formed until 1946. Amongst the earliest CMOs formed in the African continent are Society of Authors, Composers and Publishers of the Arabic Republic of Egypt (SACERAU) formed in 1946 with CISAC membership code 57; Southern African Music Rights Organisation (SAMRO) formed in 1961 with a CISAC of membership code of 63;

Bureau Marocain du Droit d’Auteur (BMDA) formed in 1965 with a CISAC membership code of 19; Dramatic, Artistic and Literary Rights Organisation (DALRO) formed in 1967 with a CISAC membership code of 142; Office National des Droits d’Auteur et Droits Voisins (ONDA) formed in 1973 with a CISAC membership code of 49 and Bureau Malien du Droit d’Auteur (BUMDA) formed in 1978 with a CISAC membership code of 16.

The evolution of collecting societies as it was then known in Nigeria has been well documented in Tony Okoroji’s “Copyright, Neighbouring Rights and the New Millionaires”.

The research will however describe briefly the evolution of copyright collective management organisation in Nigeria.

The first indigenous copyright law in Nigeria was promulgated in 1970 under a military administration led by General Yakubu Gowon. Under this copyright law there was no provision for the setting up and regulation of collecting societies in Nigeria. However, section 13 of the Copyright Act 1970 gives the Federal Commissioner of Trade, the power to appoint a competent authority to review the grant of licences by a licensing body and to issue compulsory licence where appropriate.

In 1988, under another military administration led by General Ibrahim Babangida, the law was amended but despite the spirited efforts put in by stakeholders at that time, to ensure that the amendment included a provision for the setting up and regulation of collecting societies in Nigeria, this too fell on the wayside, as the law was amended without any such provision.

In 1992, still under the leadership of General Ibrahim Babangida, another attempt was made in including the provision for the setting up and regulation of collecting societies and this time it was eureka, as a new section 32B was created giving the Nigerian Copyright Council (NCC) as it was then known, the powers to approve and regulate collecting societies in Nigeria.

It must be stated that before section 32B was created to be part of the Nigerian Copyright Act, the history of collecting societies or a resemblance of it started with the firm of Giwa & Atilade and Co., which later became Giwa & Co., a Lagos based law firm, representing the old PRS of United Kingdom in Nigeria in 1971.

In 1988, in response to the agitation for a more inclusive organisation and independent of the influence of the London based PRS, Alhaji Fatai Giwa set up Musical Copyright Society Nigeria (MCSN) as the first indigenous collecting society in Nigeria for administration of copyright in musical works.

In 1993, pursuant to the newly created section 32B, the Nigerian Copyright Council established Copyright (Collecting Societies) Regulations 1993, which amongst other

conditions set out to define the manner in which application for the approval of a collecting society would be made and the conditions the applicants must fulfill before being granted an approval.

As required by the copyright law and the copyright regulations, MCSN applied to the NCC for approval to operate as a collecting society but its application was rejected for reportedly failing to meet certain conditions for the grant of an approval.

Over one year after NCC's refusal to grant MCSN approval to operate as a collecting society, it granted approval to another organisation, Performing and Mechanical Rights Society (PMRS) to operate as a collecting society in 1994.

The approval of PMRS as a sole collecting society for musical works and sound recordings in Nigeria and the rejection of MCSN's application more than a year earlier reportedly angered MCSN and a never ending war was unleashed on the music industry until on May 6, 2005 when the NCC approved MCSN as a second collecting society in the same area of administration as PMRS.

The NCC justifying the rationale behind its approval of another society in the same class of work as PMRS said, "The Commission is not satisfied that PMRS alone adequately represents or protects the interest of copyright owners, authors, and composers in the music industry. Consequently, the Commission has decided and hereby approves MCSN as a second society for music to administer the rights of its members." The approval of MCSN however lasted only for six months. On November 18, 2005 through a memo, which originated from the NCC, the MCSN approval was nullified and its certificate withdrawn following the directive of the then President of the Federal Republic of Nigeria, Chief Olusegun Obasanjo.

In 2006, when it was time for PMRS's approval to be renewed, the NCC under the leadership of Mr. Adebambo Adewopo as he was then addressed refused to renew the operating licence of PMRS. As was later discovered, one of the reasons for the non-renewal of the PMRS's approval was for the NCC, to create a level playing field for the reformation of the copyright collective management space in Nigeria.

This new attempt by the Nigerian Copyright Commission (NCC), now its new and current name, led to the issuance of a new CMO regulation; the Copyright (Collective Management Organisations) Regulations 2007, which created new rules and conditions for the operation of collective management organisations in Nigeria.

Following the making of the new CMO regulations, the NCC invited interested organisations to apply for an approval to run an CMO. It was on record that three organisations applied. The organisations were Musical Copyright Society (MCSN),

Wireless Application Service Providers Association of Nigeria (WASPAN) and Copyright Society of Nigeria (COSON).

At the end of the review process by the NCC, COSON was approved as Nigeria's sole collective management organisation for musical works and sound recordings on May 20, 2010.

The decision to set up Copyright Society of Nigeria (COSON) in 2009 was a result of a broad-based agreement between the owners of musical works and sound recordings, the users of the works and the statutory regulators on the need for the industry to close ranks and have one formidable national collective management organization, to promote and protect the copyright and related rights of practitioners in the Nigerian music industry. COSON would also ensure that the rights of copyright holders from other jurisdictions who have interest in music used in Nigeria are protected.

It was actually in the year 2000 that it was agreed between MCSN and PMRS that their structures must be collapsed into COSON to bring to an end the schism and undue rivalry in the collective management of rights in the music industry. It was not until the formation of the Nigerian Music Industry Coalition in 2009, that it was decided that the time had come to take the bull by the horn. All known stakeholder groups in Nigeria were invited to the table to develop the architecture for a proper and efficient collective management framework in Nigeria.

At the end of several weeks of consultations and consensus building, it was resolved that:

- i. Urgent steps should be taken to bring about the formation of Copyright Society of Nigeria (COSON) which had long been agreed to by major stakeholder organizations in the industry.
- ii. The emerging organization must be professional, transparent, accountable and fully democratic.
- iii. The new organization must be fully operational as soon as it is set up in order not to create a vacuum in copyright licensing.
- iv. In order to fast-track the processes, existing structures of collective management and expertise already available in the industry should be utilized.

Following the above resolutions, all stakeholder groups were invited to contribute to the takeoff of COSON on July 7, 2009 at a world press conference at the Protea Hotel, G.R.A. Ikeja, Lagos.

Whilst WASPAN whose application were denied by the NCC decided to collaborate with COSON, MCSN whose application was also denied resolved to challenge the approval of COSON in court and almost like a repeat of history, the old rivalry between MCSN and COSON who has acquired all the assets and liabilities of PMRS was re-born and the quarrels between the two organisations continued up to the time of this research.

In response to the approval of a CMO for the music industry at that time, the NCC through a position paper submitted to the office of the Attorney General of the Federation justified its reason for adopting the single society model for a class of work. The author has paraphrased the reasons as follows:

- i. The approval of more one CMO in the same class of work will create confusion in the market place.
- ii. The approval of more than one CMO for a class of work will make it more difficult and complicated for users to access the copyright works they require.
- iii. The approval of more than one CMO for the same class of work makes it difficult to demarcate the works and rights managed by each CMO.
- iv. The approval of more than one CMO increases cost of administration and leaves little money for distribution.
- v. The approval of more than one CMO will create a situation where users will be confused as to who to pay to and not be exposed to any legal liability.
- vi. The single society model is generally practiced across majority of the nations of the world.
- vii. The recommendation of World Intellectual Property Organisation (WIPO), which recommends a single society for a class of work or right for a given country.

The above justifications of the NCC policy of single CMO model for a class of work notwithstanding, on April 3, 2017, following the directive of Nigeria's Attorney General of the Federation (AGF), Mr. Abubakar Malami (SAN) to the NCC, MCSN was approved as a second CMO for the music industry halting the seven years' reign of COSON as a sole CMO for the Nigerian music industry.

The events following the decision to approve a second CMO for the music industry has further fractured the fragile industry and created deeper schism amongst the different groups and stakeholders. This decision has equally emboldened the users of music as they have returned to the usual excuses of not knowing who to pay and the continued combative attitudes of the two CMOs have left much to be desired.

The author believes that as long as the ‘war’ between MCSN and COSON continues, nobody wins and the users are happy for it because they don’t get to pay any one and the creators, the copyright owners, the music industry and country at large suffer.

3.7 Characteristics and Practices of CMOs in Nigeria

In Nigeria, the Copyright (Collective Management Organisation) Regulations 2007 defined the term CMO as meaning collecting society as defined in the Nigerian Copyright Act, which is ‘an association of copyright owners which has as its principal objectives the negotiating and granting of licences, collecting and distributing of royalties in respect of copyright works.’

The Nigerian Copyright Act provides that a CMO may be formed in respect of any one or more rights of copyright owners for the benefit of such owners and the society may apply to the NCC for approval to operate as a collective management organisation.

The implication of the above provision is that a CMO may be formed in respect of any of the exclusive rights granted to copyright owners by the Copyright Act or any of the class of work eligible for copyright protection in Nigeria.

The class of works eligible for copyright protection in Nigeria is:

- i. Literary Works
- ii. Musical Works
- iii. Artistic Works
- iv. Cinematograph Films
- v. Sound Recordings
- vi. Broadcasts

The practice in Nigeria today, is that for the music industry, there are two CMOs; COSON and MCSN, operating within the same classes of copyright works; musical works and sound recordings and both are administering the same rights. In the Nigerian film and movie industry, there is only one CMO; Audiovisual Rights Society of Nigeria (AVRS) managing the rights of copyright owners in that industry and in the reprography sector, there is also one CMO; Reproduction Rights Society of Nigeria (REPRONIG).

For an organisation to be approved as a CMO in Nigeria, it must meet the following criteria:

- i. The CMO must be incorporated as a company limited by guarantee;
- ii. The CMO's objects must be to carry out the general duty of negotiating and granting copyright licenses and collecting royalties on behalf of copyright owners and distributing same to them;
- iii. The CMO must represent a substantial number of owners of copyright in any category of works protected by the Copyright Act; The law specified that "owners of copyright" includes owners of performers rights;
- iv. The CMO must comply with the terms and conditions prescribed by the NCC regulations.

3.7.1 Corporate Structure and Business Practice

Daniel Gervais (2016) said, "The ability of CMOs to meet the needs of both authors and users is contingent on the evolution of both their internal practices and the framework in which the CMOs work to alleviate the many concerns of fragmentation within the copyright system. Countries and CMOs throughout the world must adapt their laws and infrastructure to meet the challenges of digital technology irrespective of the philosophical underpinnings of each nation's copyright system."

As mentioned in the preceding chapters, most CMOs are set up as not-for-profit organisations, barred from making profits from the licensing fees collected from users on behalf of right owners.

However, the Copyright (Collective Management Organisations) Regulations 2007 provides that "a CMO may withhold from the amount collected or received by it such deductions necessary to cover any expenditure incurred in the fulfillment of its functions and the amount so deductible shall be within the limits to be decided by the Governing Board subject to a maximum limit of 30 percent of the total royalties and fees collected during the year in which the deductions are made."

In certain circumstances especially during the gestation period of a CMO, the regulations allow prior to a written application from the CMO to the NCC, the approval of the deduction of more 30 percent of the total revenue collected by the CMO, to cover for its administrative expenses.

The gestation period of CMOs varies depending on the maturity level of the market in which the CMOs operate. In some jurisdiction, a CMO may take between three to five years before the CMO could make its first real royalty distribution to its members and affiliates. In many cases, the first three years of the setup of a CMO always see increase in administrative fees except for such CMOs run and funded by the State. It is expected that

as compliance level improves and income increases, administrative fees should drop so that more money is available for royalty distribution.

The provision for the maximum deduction of 30% as administrative fee notwithstanding, the CMOs are encouraged to strive to distribute as much percentage of their total revenue to their members and affiliates, and keep their administrative fees very low.

For the NCC to consider an application from any organisation wishing to operate, as a CMO, it must furnish the NCC with the following documents:

- a. A certificate of registration in respect of the company issued under the Companies and Allied Matters Act.
- b. The Memorandum of Association of the Company.
- c. The Articles of Association of the Company.
- d. A Statement indicating the class of right or category of right owners in which the society owns rights, or intends to represent or act for.
- e. Membership list of not less than 100 right owners, representing the class(es) of right to which the company is seeking a licence to operate as a Collective Management Organisation, which list shall indicate the signed consent of such persons to belong to the Organisation, or where the Organisation has been in existence, that they are members of the organisation.
- f. Undertakings by at least 5 (five) Directors including the Chairman of the Company that the Company shall comply with provisions of the Copyright Act and these Regulations in respect of the operations of the Organisation.
- g. Membership agreement used by the organisation.
- h. Evidence of payment of the prescribed fee(s).
- i. Such other documents as may be required by the NCC.

As a company and business, the CMO's objects are as outlined in its memorandum and articles of association. In the case of COSON, its objects are:

- a. To carry out the general duties of negotiation and grant of copyright licences and collection of royalties on behalf of copyright owners and distributing same to them.

- b. To enhance and enforce copyright and neighbouring right hereinafter called “**the rights**” administered by the company, both for its associate and full members as well as for the members of its affiliate’s foreign societies.
- c. To promote creativity.
- d. To administer, as an exclusive intermediary, within Nigeria and abroad, where appropriate, all rights relating to the public performance, broadcasting, communication to the public by wire or wireless telegraphy or mechanical reproduction of the works, performances, sound recordings and broadcasts, created or produced by nationals of or persons domiciled or resident in Nigeria and with which the company is concerned.
- e. To administer the aforesaid rights, as an exclusive intermediary, within Nigeria, on behalf of foreign rightholders by virtue of contracts.
- f. To receive and record to that end, all statements serving to identify works, performances, sound recordings and broadcasts with which the company is concerned – hereafter called “**its repertoire**”.
- g. To draw up generally applicable tariffs for the various kinds of uses, after having been duly negotiated with the appropriate users and published by the company.
- h. To collect fees corresponding to the aforementioned approved and published tariffs, according fair treatment to all users and refrain from influencing in any way the choice of works, performances, sound recordings or broadcasts.
- i. To distribute the said fees among the associate and full members and the foreign societies according to the principle that all rightholders shall, as far as possible, receive the shares brought in by their own works, performances, sound recordings or broadcasts.
- j. To ensure that the conditions laid down for the grant of compulsory licences are complied with and respected.
- k. To establish model forms of contracts with the users of protected works, performances, sound recordings or broadcasts or with their representative bodies.

- l. To act on behalf of the associate and full members to secure respect for the conditions governing authorization to use protected works, performances, sound recordings or broadcasts.
- m. To assert all rights assigned or transferred to the company in its own name, with the power to deal independently with all legal business, to institute legal proceedings and to effect own promises.
- n. To provide its associate and full members, the users and public with information or advice on all matters relating to its activities.
- o. To provide the Nigerian Copyright Commission with information or opinions on any legislation or practical problems relating to its activities.
- p. To foster such harmony and understanding between its associate and full members and the users as are necessary for the respect of copyright and neighbouring rights.
- q. To promote harmonious relations in copyright and neighbouring rights between Nigeria and other countries, and contribute thereby to the broadening of cultural exchanges, notably by the conclusion of contracts with foreign societies and by joining international organisations.
- r. To exercise activities to promote the dissemination of national culture in Nigeria and abroad.
- s. To perform such other lawful acts, acquisitions, investments, bank transactions, etc. as are conducive to the attainment of the afore-mentioned functions.

3.7.2 Nature and Extent of Repertoire Management

For a CMO to operate or function in its territory, it would normally have to acquire its repertoire from the copyright owners either through assignments or grant of licence.

In Nigeria, a CMO like COSON acquires its repertoire from copyright owners through exclusive assignments which precludes its members from licensing same works and rights assigned to it, a practice commonly referred to as **back licensing**.

COSON on behalf of its members exclusively administers the following rights which now exist or which may come into existence in the future in any musical works and/or sound recordings.

The exclusive rights in musical works assigned to COSON by its members for administration are:

- i. Reproduction of the work in any material form;
- ii. Performance of the work in the public;
- iii. Making any cinematograph films or record in respect of the work;
- iv. Broadcast or communication of the work to the public by a loud speaker or any other devices;
- v. Making any adaptation of the work

It also administers certain sound recording rights such as:

- i. Direct or indirect reproduction;
- ii. Broadcasting or communication to the public of the whole or a substantial part of the recording either in its original form or in any form recognizably derived from the original.

The members also assign to COSON all accrued causes of action wherever and whenever in respect of any infringement of those exclusive rights in both musical works and sound recordings assigned to COSON.

It is generally agreed that since CMOs operate in the interests of their members and affiliates, a complete and broader transfer of the economic rights of their members will strengthen the CMOs bargaining power especially with big and powerful users like the broadcasters.

It must however be noted that in some other CMOs across the world, the CMO articles of association require that copyright owners give consents specifically for each type of work or right or category of rights, the CMO is authorised to manage on their behalf.

Regardless of the scenario or the provisions in each CMOs articles of association, the right of the copyright owners to grant or withdraw collective management authorisation subject to the issuance of a reasonable notice from the copyright owner to the CMO must be upheld. In the same vein, care must be taken not to undermine the effectiveness of the collective management system in the area of multi-territorial and multi-repertoire licensing by what has become known as fragmentation of rights by the most popular copyright holders.

CHAPTER FOUR

CMO LEADERSHIP STRUCTURES AND GOVERNANCE SYSTEM IN NIGERIA

4.1 Introduction

Tarja Koskinen giving an overview of a CMO leadership said “A CMO is in many respects like any other organisation; it needs to be lead in a professional manner. For this to happen, the respective roles and responsibilities of the Board and the Management need to be clear. In a nutshell, the Chairman leads the Board and CEO leads the company.”

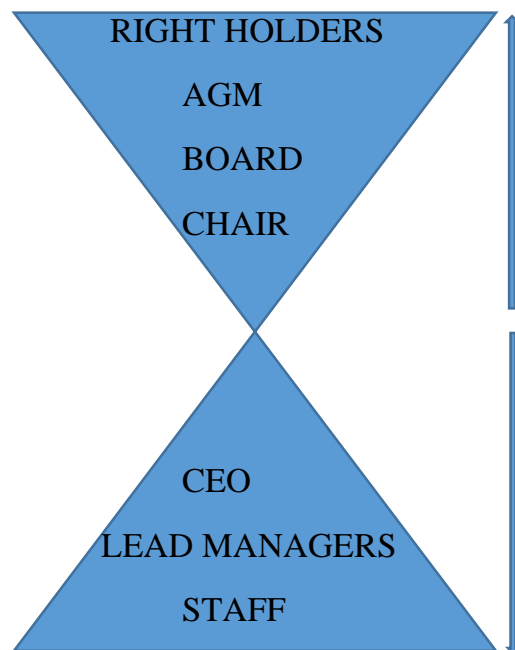


Diagram Credit: Tarja Koskinen- Olsson

The above diagram graphically illustrates Tarja Koskinen-Olsson’s position.

However, for any meaningful growth and development to happen in any corporate entity, corporate governance must be a top priority for the organisation. It does not matter whether the entity is in a developed or developing economy or it is set up for profit or not for profit, the issue of corporate governance must be put on the front burner if the organisation, CMOs inclusive, must remain viable and efficient. As one of the critical institutions in the creative industry around the world, corporate governance for collective management organisations is no doubt the sine qua non for growth and efficiency.

Whilst external control in the matter of a CMO may be exercised by the agency of government responsible for copyright matters in any given jurisdiction, in this case the

Nigerian Copyright Commission (NCC), the internal control of any CMO rest fully and indisputably in the hands of rightholders who are members and owners of the CMO. The members of a CMO make up the general assembly and by the rules or constitution of the CMO and the relevant company laws, the members elect their representatives from the general assembly, to represent them at the Board level.

This critical line separating external control overseen by a nation's copyright office and the internal control carried out by members of a CMO must be respected to avoid conflicts and bringing down the collective management structure.

4.2 Key Governance Structures in a CMO

CMOs are not different from any corporate organisation or association, as they are also set up to run both as companies and businesses. Just like any corporate organisation, CMOs are equally made up of key governance structures that ensures that their wheel of operations continue to run efficiently and effectively.

We will consider briefly some of these key governance structures with respect to collective management system:

4.2.1 General Assembly

A general assembly is the meeting of all members of an organisation or association. The general assembly depending on the particular domestic law, meets annually at its meeting called the annual general meeting. The general meeting commonly referred to as AGM is held to conduct business on behalf of the organization or company. For most organisations and companies, the AGM is the highest decision making body and its decisions or resolutions can only be overturned by itself or a competent court of jurisdiction. The domestic laws of many countries and internal rules of many CMOs also allow the convening of Extra Ordinary General Meeting (EGM).

The business at the AGM may include:

- a) to receive and consider the audited financial statements of the company,
- b) to consider the position of auditors and make changes where necessary.
- c) to authorize the Board of Directors to determine the remuneration of auditors,
- d) to elect or re-elect members of the Board of Directors,
- e) to inform the members of the organisation of past and future activities,

f) to make important decisions concerning the organisation.

The laws of many countries prescribe how these types of meetings should be called and held, and how many days' notice should be given to the shareholders or members in the case of a CMO.

At these meetings, shareholders as they are referred to in for-profit organisations or members with respect to membership based organisations must be sent copies of the audited financial report of the organisation at least 21 days before the date scheduled for the AGM. The articles of association of COSON provides that "An annual general meeting and a meeting called for the passing of a special resolution shall be called by twenty-one days' notice in writing at the least, and, a meeting of the society other than an annual general meeting or a meeting for the passing of a special resolution shall be called by fourteen days' notice in writing at the least. The notice shall be exclusive of the day for which it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business and shall be given, in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the society in general meeting, to such persons as are, under the articles of the society, entitled to receive such notices from the society: Provided that a meeting of the society shall, notwithstanding that it is called by shorter notice than that specified in this article be deemed to have been duly called if it is so agreed."

The articles further provided that "the accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting." This provision is very important as there have been situations where notices have been genuinely forwarded to all members who are entitled to receive notice of AGM or EGM but who had claimed that they never received such notices. If such provision does not exist, no AGM or EGM would successfully hold as there would be many of such complaints especially from members with ulterior motives.

At these meetings also, members of a CMO are required to review the fiscal information for the past year and ask any questions regarding the reports, accounts and the directions the business will take in the future.

For proper coordination of the AGM or EGM, the chairman of the Board of Directors, chairs or presides over the meeting and in most cases gives an overview of the status of the organisation. The COSON articles of association provided that "the chairman of the Management Board shall preside as chairman at every general meeting of the society, or if there is no such chairman, or if he shall not be present within fifteen minutes after the time appointed for holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting. If at any meeting no director is willing

to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their numbers to be chairman of the meeting.”

For most CMOs, the general assembly is made up of all the members of the CMO. It is the highest decision making body of a CMO. Drawing from the memorandum and articles of association of COSON, it states clearly that “the General Assembly shall be composed by all full members of the society.” With respect to the overall supremacy of the general assembly, the articles of association further states that “Notwithstanding any provision in these articles, the General Assembly shall be the supreme organ of the society with powers to vary, annul or otherwise modify any decision or action of the Management Board. Any powers conferred or exercisable by the Management Board under these articles shall be subject to the power of the General Assembly to regulate the scope and exercise of such powers.”

As part of CMOs’ corporate governance, AGMs must be held at least once every year and must be organised and regulated properly. The articles of association of COSON, stressing this point, provided that “The society shall in each year hold a meeting of the General Assembly as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of the society and that of the next. Provided that so long as the society holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The annual general meeting shall be held at such time and place as the Management Board shall appoint.”

The CMOs must ensure that they comply with the applicable laws and rules as contained in the CMOs memorandum and articles of associations governing the organisation of AGMs. This is particularly important in order to avoid a situation where a member who feels disenfranchised approaches a court of competent jurisdiction to seek redress.

The AGMs of any CMO would naturally be saddled with the responsibilities mentioned in the previous paragraphs and the responsibilities could further include the following:

- a) Approves general policies on royalty distribution, deduction for social and cultural purposes.
- b) Approves annual reports, which must contain the report of the external auditors and directors’ report.
- c) Approves the appointment of external auditors.
- d) Approves general investments policy.

- e) Approves any amendments to the statutes of the CMO including any amendments to its membership, licensing and distribution rules.
- f) Elects or re-elects members of the CMO into the Board of Directors and depending on the CMO, the AGM may also elect the chairman of the organisation. In some cases, the Board of Directors elect their own chairman amongst the members of the Board.
- g) Approves the remunerations and other benefits of members of the Board – It is a bad corporate governance practice for members of a CMO Board to approve remuneration or other benefits for themselves.
- h) Receives and responds to the overall works of the CMO.

For CMOs, the members of the organisations, who are the copyright holders and upon which the CMO has the mandate to function and represent copyright interests, have the highest decision making power in CMOs. They are the General Assembly, the supreme organ of the CMO.

Through their right to vote at general meetings, as granted to them by the CMO's constitution or memorandum and articles of association, copyright holders make very strategic and important decisions for the CMO. Their powers are to the extent that they can vary, annul or otherwise modify ANY decision or action of the Board of Directors. The ultimate governance of the CMO rests squarely on the general assembly.

It is however sad to note that a lot of the hit makers of today's music or those whose works are very active and who are members of these CMOs hardly attend these general meetings and the implication of their being absent from these meetings is that whatever decisions or resolutions passed by the general assembly is binding on them.

To cure this, the articles of association of many CMOs just like in many companies and organisations provide for proxy representation; where the member is unable to attend personally, the particular member can be represented by a proxy. The articles of association of COSON provided that "a poll votes may be given either personally or by proxy." It further provided that "the instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing, or, if the appointer is a corporation, either under seal or under the hand of an officer or attorney duly authorised." According to the articles, a proxy need not be a member of the CMO. The article also specified the manner in which the instrument appointing a proxy should be deposited and the time frame. It provided that "the instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy

of that power or authority shall be deposited at the registered office of the society or at such other place within Nigeria as is specified for that purpose in the notice convening the meeting, not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll. Not less than twenty-four hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.”

Like many public quoted companies, the AGM for a CMO is statutory and provides an opportunity for members of the organisation to receive the report of the Board’s stewardship for a given period. It also provides an opportunity for members to evaluate the work of the Board and how well their CMO have done in the year under review. At the AGM, members are able to ask questions, make comments and raise issues of important concern. It is equally an opportunity for members to interact amongst themselves.

With the review and passage into law of the Company and Allied Matters Act (CAMA) 2020, some new provisions included in CAMA 2020 will affect how CMOs, as companies should operate and how they should organise AGMs in Nigeria.

The author will briefly highlight some of the new provisions that CMOs who are also set up as companies limited by guarantee must comply with.

a) Place of meeting

Section 240 of CAMA provides that private companies may hold virtual general meetings, provided that such meetings are conducted in accordance with the articles of the company.

b) Ordinary business

Section 238 of CAMA defined ordinary business as declaration of dividend, presentation of the financial statements and the reports of the directors and auditors, election of directors in place of those retiring, appointment and fixing the remuneration of auditors and appointment of members of the audit committee. The disclosure of the remuneration of managers is now included in the ordinary business of an AGM.

c) Service of Notice

Section 244(3) of CAMA provides that service of notice by electronic email is now recognised in addition to personal service or by post.

d) Requirements to disclose remuneration of managers

Section 257 of CAMA provides that the compensation of managers of a company shall be disclosed to members of the company at the annual general meeting.

e) Register of directors’ residential address

Section 320 of CAMA provide that every company shall keep a register of directors' residential address which shall contain the usual residential address of each director of the company.

f) Protected information

Section 323 – 329 of CAMA provides that directors' information, particularly information on residential addresses are offered special protection and may only be used for the purpose of communicating with the directors or in compliance with the provisions of the Act. The CAC may only put the directors' addresses on public records where it has failed to establish communication with the directors.

g) Notification to the CAC of changes to particulars of secretary

Section 339 of CAMA provides that where a new secretary is being appointed, a letter of consent of the new secretary must accompany the notification to the CAC.

h) Companies' common Seal

Section 98 of CAMA gives companies the flexibility of having common seals. Where a company decides to have a common seal, the design and use shall be regulated by the company's articles.

i) Alternative to sealing

Section 103 provides that any document required by law to be executed under the common seal of a company, or provides for consequences for not sealing, would be deemed to have satisfied the provisions of the law if the document is signed in the manner set out in Act.

j) Authentication of documents

Section 101 provides that documents requiring authentication by a company need not be signed as a deed unless as required by the Act. An electronic signature is deemed to satisfy the requirements of signing of documents requiring authentication by the Company.

k) Execution of deeds by a company

Section 102 provides that a document is validly executed by a company as a deed if it is duly executed by the company and it is delivered as a deed. A company may execute a document as a deed without affixing a common seal on the document. A deed is duly executed by the company if signed by: i. a director and a secretary; or ii. at least two directors; or iii. a director in the presence of at least one witness who shall attest the signature.

l) Procedure for major asset transaction

Section 342 puts in place a procedure for companies to follow in undertaking a "major asset transaction." A major asset transaction means a transaction or related series of

transactions which includes: (a) purchase or other acquisition outside the usual course of the company's business; and (b) sale or other transfer outside the usual course of the company's business, of the company's property or other rights the value of which, on the date of the company's decision to complete the transaction, is 50% or more of the book value of the company's assets based on the company's most recently compiled balance sheet.

On the new provision of a virtual AGM by CAMA 2020, the author was part of a virtual AGM organised by the audiovisual CMO in Nigeria on November 5, 2020, as a management consultant for the CMO. It was a new and interesting experience despite the initial challenge of internet network and connectivity, which is a challenge that the CMOs must deal with if they are to organise and conduct virtual AGMs in line with their articles of association.

The members of a CMO must understand that the CMO belongs to them and not just to the Board of Directors or Management. The copyright holders are on the driver's seat and must show serious commitment, participation and representation in all decision making processes at general meetings.

4.2.2 Board of Directors (B of D) of a CMO

Now, if all the members of an organisation try to manage the organisation, nothing gets done. So, the general assembly in its wisdom and in line with the provisions of the law and its internal rules, at its annual general meeting, elects a group of people from amongst themselves to lead the organisation, as Board of Directors. In some public quoted companies, individuals can be appointed on the Board from outside the organisation. The Board of Directors interphases with the Management of the organisation through its Chief Executive Officer.

With the advent of Covid-19, organisations are facing abnormal and challenging times, which have created uncertainty and disruption in the business landscape. Hardly has the role of the Board of Directors of any going concern been more critical in piloting the affairs of organisations and ensuring that such organisations remain afloat.

A Board of Directors is an elected or appointed group of individuals that represent members of a CMO. The Board is a governing body that typically meets at regular intervals, at least once a quarter, except where there is an emergency, to set policies for corporate management and perform oversight functions. For example, the COSON Board meets at least four times a year representing one per quarter, plus strategy meetings and any emergency meetings at such other times as may be necessary to address any specific significant issues that may arise.

According to Spencer Stuart Boardroom Practice, there is really no universally acceptable definition of what makes a successful or effective Board of Directors. Spencer Stuart (2017) however characterized the hallmark of a successful Board as follows:

- 1) “Clear definition and understanding of the role of the board and how it differs from that of the management team.
- 2) Wise and sensitive leadership that fosters productive and challenging debate.
- 3) Appropriate composition of directors, all of whom are aligned with the long term strategic vision.
- 4) Active involvement of all directors.
- 5) Thorough understanding of how the company makes its money.
- 6) Confidence in the competence of the senior management team at all times.
- 7) Efficient decision-making processes.
- 8) Trusting and open working environment.
- 9) Clearly defined remits for committees and effective communication between each committee and the board.
- 10) Regular assessment of individual and collective performance.
- 11) Maturity of vision and shared understanding of the company, its culture and purpose.
- 12) Commitment to transparency and open communications with all stakeholders.
- 13) Commitment to honouring the recommendations of relevant governance codes.
- 14) Willingness to articulate and justify the role of the company in society.

Spencer Stuart (2017) said, “any board that exhibits all or a majority of these characteristics can be counted both a success and an enjoyable institution on which to serve.”

The most effective Boards are those that give confidence to their shareholders or members and have a positive and long term impact on their organisations.

Sadly, many of Board of Directors of CMOs in Africa fall short of these qualities, as many are either ‘handpicked’ by a ‘powerful’ chairman who wants a Board that can always rubberstamp his or her plans or assume a role that they are ill prepared for. There have been reports of members elected onto the Board of a CMO that never attended any Board meeting throughout their term and when they attend, they are the first to leave the meeting denying the Board and the CMO the opportunity to benefit from that members’ wealth of experience and inputs. To be effective, a Board member must be willing to commit the necessary time required to carry out his or her duties. A CMO must discourage its Board members apart from skipping meetings to also avoid overboarding.

The Boards of Directors are part of the landscape of executive leadership of an organisation. In some jurisdictions and depending on the type of organisation, whether public companies or for-profit companies or not-for-profit companies or non-governmental organisations, they could also be referred to as Boards of Trustees or Boards of Governors.

Regardless, of the jurisdiction, the applicable laws or the corporate governance structure in place, the key function of Board of Directors is to ensure that the interests of the CMO, its members and affiliates as the case may be and other relevant stakeholders are protected and sustained. The long term health of the CMO and its business, is the ultimate responsibility of the Board of Directors. In general, the Board makes decisions as a fiduciary on behalf of members and affiliates of a CMO. The Board is bound ethically to always act in the best interest of the members and affiliates.

The Board would naturally be responsible for these other responsibilities:

- 1) Setting strategic directions and broad goals for an organisation.
- 2) Monitoring the implementation of the strategies.
- 3) Monitoring the environment for opportunities and threats
- 4) Ensuring that all necessary measures are taken to mitigate and control any risk.
- 5) Approving major capital initiatives.
- 6) Hiring and firing the Chief Executive Officer.
- 7) Supporting management in the discharge of their duties by providing advice and guidance to the Chief Executive Officer.
- 8) Approving executive compensations.

9) Ensuring that shareholders or members are being treated fairly.

A CMO Board must be broadly representative of the categories of members, it represents and the representation must be balanced to show equity and fairness.

Apart from the composition of the Board, which must be made up of members who reflect the strategic priorities of the CMO, the size of the Board is also critical to the effectiveness of a Board. From research, a reasonable size would be between seven (7) and eleven (11), to allow for a wide range of opinions, inputs and participations and not too large to stifle active participation and engagement.

As part of its report to the general assembly, the Board of Directors must confirm that they have complied with the requirements of the relevant laws in preparing financial statements for each financial year, which must give a true and fair view of the state of affairs of the organisation as at the end of any particular financial year. The Board must also show in its financial statements, its Income and Expenditure for that period and must ensure it complies with the requirement of the Companies and Allied Matters Act (CAMA).

The Board of Directors of a CMO are responsible for keeping proper accounting records that are sufficient to show and explain the company's transactions and disclose with reasonable accuracy at any time the financial position of the company and enable them to ensure that the financial statements comply with the CAMA.

The Board of Directors are also responsible for safeguarding the assets of the CMO and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities. The Board directs and guides the CMO, setting the strategic direction and taking responsibility for monitoring progress with the implementation of the strategy. The Board must regularly review the organisation's governance structures, documents, procedures and processes to ensure these remain relevant to the CMO.

The Board delegates the authority for the day-to-day running of the CMO to the Chief Executive Officer (CEO) and has established Board committees to govern and discharge certain responsibilities. The Board nevertheless remains ultimately accountable to its members for the performance of the CMO and accepts responsibility for this role.

4.2.2.1 Four key activities in a Board oversight function over a CMO

i. Supervision and Monitoring

One of the key activities in a Board oversight function over a CMO is to supervise the management of the company by the CEO, provide instructions to the CEO on matters that have far reaching consequence on the survival of the company and monitor the activities of the CMO. It is the responsibility of the Board to submit the CMO's financial statements and the report of auditors to the Annual General Meeting. The Board is in charge of the

auditing process and making sure that the audit of the CMO is done in a timely manner each year. The Board also provides support and advice to the CEO.

ii. Fiduciary Responsibility

The Board of a CMO has a fiduciary responsibility to represent and protect the interest of members of the CMO. It is the Board's responsibility to ensure that the assets of the CMO are kept in good order. The assets may include the CMO's plant, equipment and facilities, including the human capital (people who work for the CMO). The Board must always respond to the demand for responsibility.

iii. Direction

It is the responsibility of the Board to set the strategic direction for the CMO, which is then executed by the CEO and his or her management team. The Board looks at the operational issues from a higher-level perspective. The Board must at all times be seen to be advancing the interest of the right holders and the CMO. Its actions must serve the best interest of the members of the CMO.

One of the key roles of the Board of a CMO is defining and reviewing the strategic direction of the CMO. It is its sole responsibility to frame the long term plan and strategic direction of the company. The Board has a strategic function in providing the vision, mission and goals of the CMO. The Board will often carry out this function in conjunction with the CEO or General Manager of the business. The strategic plan of the Board must always align with the CMO's vision.

To help the Board carry out discussions effectively on its strategic role, it must collect and analyze data connected to the industry's environment in which the CMO operates, the nature of competition, if any and the changing business model of the CMO.

The strategic role of the Board involves the following:

- i. Identification of the CMO priorities.
- ii. Establishment of CMO goals and objectives.
- iii. Finding resources to finance the CMOs goals and objectives.
- iv. Allocation of funds the Board's strategic decisions.

In the performance of its strategic role, the Board must ensure that it does not over step its role or micromanage the CEO.

iv. Governance System

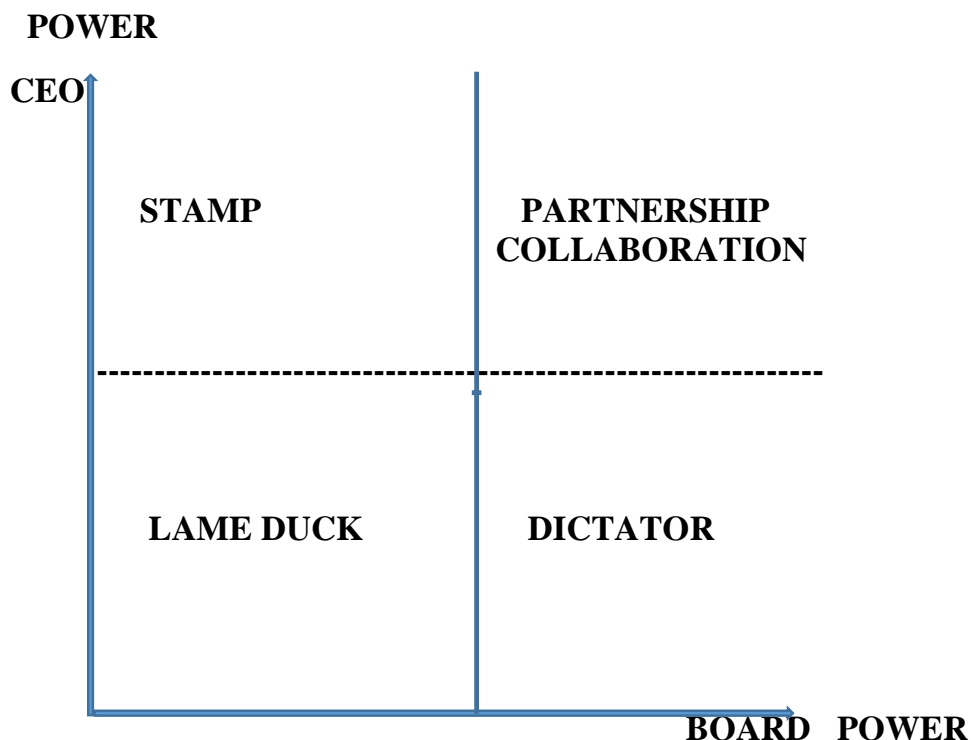
The Board has the important responsibility of developing a governance structure and processes for the CMO. The Board must establish a policy based governance structure, to guide its own actions and that of management. It must also develop governance system that establishes how the Board interacts with the CEO.

Essentially, it is the role of the Board to hire the CEO or General Manager of the CMO. While the CEO is responsible for hiring all of the other employees and overseeing to the day-to-day operation of the business.

In some CMOs, the above demarcation of roles is not present and problems usually arise when these simple guiding principles are not followed. It is very easy for conflict to occur when members of the Board begin to meddle in the day-to-day operation of the business. The Board is not responsible for the day-to-day management of the business and management is equally not responsible for the overall policy decisions of the business. These guiding principles must be strictly followed to have a stable and smooth running CMO.

On the work of the Board, Tarja Koskinen-Olsson said “any Board in any type of organisation should concentrate on its main task; strategy. In principle, a Board agenda should include 80% of strategic issues and 20% of reporting. The same should be valid for the use of time in a Board meeting”.

Tarja Koskinen-Olsson also went on to graphically describe the power variation or balance as reflected in the work of the Board.



Tarja Koskinen-Olsson further analysed the diagram above in the following manner:

- a. In cases where nobody takes power, the Board becomes a “lame duck”. Not much happens as both the CEO and the Board are unwilling or capable of making tough decisions;
- b. In cases with strong CEO and weak Board, the CEO dominates and drives through his proposals for decision. The Board becomes a “stamp” only;
- c. In cases with as a very strong Board (and mostly the chairman), the chairman sees to it that his decisions are accepted and the Board becomes a “dictator”;
- d. In cases where there is optimal division of power and clarity in responsibilities, the Board concentrates on strategy issues and the work is characterised by cooperation and partnership. Mutual respect and discussion are the name of the game.

4.2.2.2 Important CMO Board Committees

In conformity with the code of Best Practices in Corporate Governance, the Board continues to direct policies through its various committees such as:

a. Audit/Risk Committee

- i. Review financial statements.
- ii. Appointment/retirement and remuneration of auditors.
- iii. Internal control and check and risk management.
- iv. Compliance with relevant laws and regulations governing CMO.

b. Nominations Committee

- i. Composition of and changes to Board.

c. Remuneration Committee

- i. Overall CMO remuneration policies.

d. Membership Committee

- i. Rights and responsibilities of members and/or rightsholders.

e. Licensing Committee

- i. Consider, approve & review tariffs and licensing fees.

f. Documentation/Distribution Committee

- i. Grading of special classes of works.
- ii. Address and review rules for distribution

4.2.2.3 Board Training and Induction Programme

The subject of copyright, related rights and collective management may sound strange to some members of a CMO Board, which makes it important for the Board to set up an induction process to first train and coach members who are interested in being elected into the Board and subsequently organise other forms of training, coaching and mentoring for elected Board members. These trainings must not be a one-off as the business of collective management is dynamic and frequent training for members of the Board will help them stay ahead of the curve in performing their fiduciary functions.

Too many a times, the lack of the necessary skills on a CMO Board has created a situation where critical discussions and debates are always one sided and lacked the robustness they require. In such situations, a chairman or CEO who is well-informed of the subject matter may take undue advantage of the ignorance of members of the Board to push his or her agenda to the detriment of the collective interest of the CMO.

To help bridge the knowledge and skill gap that may exist on a CMO, it is important for the Board to create training and mentoring opportunities, as part of the organisational processes. This mechanism would help expose potential and current Board members to subjects such as:

- 1) The important functions of a CMO Board.
- 2) What it means to be a member of a CMO Board.
- 3) The CMO business model.
- 4) Role clarity between the AGM, Board of Directors, Management, Chairman, CEO and Secretary to the Board.
- 5) Review of the minutes of the Board for the past one year to bring the Board members up to speed with current events.
- 6) Regulatory and governance issues.

To help the Board members familiarize themselves with the CMO working environment, a guided tour of all the departments of the organisation and what each department brings to the table, is very important. This tour also help the Board members get to know the

members of staff of the CMO. The guided tour should be done by the CEO as head of management and leader of the organisation and not the chairman of the Board.

As part of the familiarization tour, the CEO should organise a meeting for the Board members to meet with key management staff of the CMO such as Head of Licensing, Head of Finance, Head of Administration and Head of Documentation and Distribution.

It is equally important that the CEO put together meetings between the members of the Board and the CMO advisors such as lawyers, consultants, bankers, regulators and so on.

This induction programme must be made compulsory for members of the CMO Board regardless of their set skills and experience. By going through this induction programme, members of the Board are able to fully participate and engage at a reasonable level and such trainings must be continuous at regular intervals.

4.2.2.4 Rights of Non-Executive Board Members or Directors

Every member of the Board of a CMO has certain rights with respect to their relationship with the CMO even though they may be in reality non-executive directors. The following are their rights:

- a. They have right to access the management of the CMO.
- b. They have right to inspect the books and accounts of the CMO but this has to be by arrangement in order not to create disorganization within the organisation.
- c. They have right to access the CMO's premises.
- d. They have right to be remunerated for the time they put in for the CMO but this is not always automatic.

In the exercise of these rights, it is important for members of the Board to observe normal courtesy and not impede executive officials in the day to day running of the CMO.

4.2.4.5 Statutory Obligations of CMO Board Members

- a. Declaration of Interests

The relationship between a Board member and the CMO is fiduciary and members must disclose interest in any contract with the CMO.

- b. Use of Inside information

Where a member of a CMO Board has access to inside information, the member may not use it to the prejudice of others.

c. Loans to Board members

The granting of loans to members of a CMO Board is prohibited unless.

The members of the Board must always apply their minds and good judgement in the interests of the CMO and they must exercise discretion at all times.

They must act with skill and care and trusting the officials of CMO to perform their duties. They must also avoid any conflict of interest by not diverting to themselves opportunities and advantages belonging to the CMO.

4.2.2.6 Characteristics of a Board Member

The personal qualities of a Board member are critical to the successful operation of the Board. Personal qualities like integrity, competence, insight, dedication and effectiveness are vital for the member of the Board to be useful on the Board and to the organisation as a whole.

Here are some of the key qualities a Board member must possess:

a. Commitment

A Board member must have deep interest in the mission of the CMO and must be willing and ready to contribute to discussions on any subject towards the growth of the CMO. He must also be diligent in the discharge of his or her Board responsibilities and to fulfilling the goals of the CMO. He must be available on time to attend to the demands of the Board and not be an absentee member.

b. Oversight

He or she must maintain confidentiality of all Board discussions and speaks with one voice when representing the CMO before the stakeholders and in any gathering. The Board member must ensure prompt reporting and work with other members of the Board to put control systems in place.

c. Fiduciary Responsibilities

A Board member must have the integrity to serve the interests of the CMO and pursue its goals. He must as well be willing and ready to serve the interests of the public as well and the interests of all those that benefits from the services of the CMO. He must exhibit good faith, independent mind, honesty and disclose any potential conflicts of interest. The Board member must possess a sincere and respectful attitude toward colleagues and their views.

d. Competence

The Board member must be knowledgeable about the business of the CMO. He or she must understand the CMO's constituents and operations. He or she must be well informed to

make decisions and have the ability to see the big picture and the courage to help set direction to achieve the CMO's mission.

(Deloitte 2014) stated that the effectiveness of a Board depends on a variety of factors, some of which it listed as follows:

- i. Board Structure:** The composition, constitution and diversity of the Board and that of its Committees are critical to the success and stability of the Board. The competencies of the members of the Board and its committees must be top notch. The Board and its committees must have charters that define each members' role, responsibilities, frequency of meetings and procedures for organizing and conducting different meetings of the Board and committees.
- ii. Dynamics and Functioning of the Board:** To help the Board function properly and maintain the right dynamics, it must agree on an annual Board calendar, how available information must flow amongst its members, how interactions and communication with the CEO and senior executives must be done. The Board agenda must be sent at least two weeks ahead of each meeting. The Board must be cohesiveness in its objectives and maintain quality participation at its meetings.
- iii. Business Strategy Governance:** The role of the Board in the company's strategy cannot be overemphasized. It is one the core roles of the Board.
- iv. Financial Reporting Process, Internal Audit and Internal Controls:** The integrity and the robustness of financial and other controls, regarding abusive related party transactions, vigil mechanism and risk management must be pursued and emphasized.
- v. Monitoring Role:** The Board must put in place mechanism to monitor its policies, strategy implementation and systems.
- vi. Supporting and Advisory Role:** This is also a key role of the Board as mentioned in previous paragraphs.
- vii. The Chairperson's Role:** The role of the chairman will be discussed in the subsequent paragraphs.

4.2.2.7 Being an Effective Board Member

In the course of the various interviews the following points were stressed as features that Board members must have to effective Board:

- i. The Board member must understand that his or her primary obligation of stewardship is to the CMO and not to the chairman or any member of the Board. He must therefore bring his personal interests and expertise to the service of the CMO at all times.
- ii. The Board member must come to meetings on time, be attentive and well-prepared for every meeting.
- iii. The Board member must respect disagreement without personalizing the debate, and avoid paralysis in the face of dissent.
- iv. The Board member must ask questions rather than accepting the status quo and must refuse being a rubber stamp of the chairman.
- v. The Board member must welcome information and advice, but reserve the right to make decisions based on his or her own best judgment.
- vi. The Board member must support Board decisions as well as management staff that have been appointed to serve the CMO.

4.2.2.8 Board of Directors Evaluations

An old saying has it that “a board of directors is like a fire department; it needs to run effectively in an emergency.”

(Mike Boland, 2009) said, a Board often doesn’t realize how good (or bad) it is until it has an emergency. So a Board of directors, especially a value-added business Board, needs to decide and understand how it functions as a group and what it does, so that during an emergency it can run effectively and efficiently.

Board evaluation is a very important tool in strengthening the overall Board. It helps create the opportunity for the Board to assess its strength and address any weaknesses. It helps the Board to continue to improve itself and provide value for the entire organisation.

PWC Directors Forum (2019) on Board Evaluation stated that the main objective of a Board Evaluation should be a genuine desire to build a high-performing Board, which is

equipped to anticipate, meet and overcome future challenges and to ensure alignment with the company's long-term strategy.

A Board evaluation is usually based on the roles and responsibility performed by the Board. (Deloitte, 2014) said, Board evaluation typically examines the roles of the Board and the entailing responsibilities, and assesses how effectively these are fulfilled by the Board.

The issue of transparency, accountability, corporate governance, stakeholders' expectations and regulatory requirements have put the quality of performance of a CMO Board in the Nigerian copyright environment on the front burner of public discuss. Boards have recognized that it would be important for them to continually assess how effectively they are performing their roles against the objectives and the goals they have set for themselves (Deloitte, 2014).

To help properly assess the performance of the Board and how it interacts with the chief executive, it is important to deploy a Board self-evaluation tool.

Here are some possible self-evaluation questions that could help a CMO Board evaluate itself.

- a. Does the CMO have short-term, medium term and long-term strategic plans?
- b. Do the Board agendas include adequate representation of the CMO's strategic plans and priorities?
- c. How satisfied are you with the planning of the Board's agendas to address ordinary items and new business items?
- d. How satisfied are you with the director's level of preparedness for Board meetings?
- e. Does the Board create financial reports for the Board's budget, allocate resources, and use human resources, and share them transparently?
- f. Does the Board express the CMO's challenges and successes to its members and stakeholders?
- g. Does the Board guide the CEO on how to implement the Board's strategies and goals effectively based on the CMO's policies?
- h. Does the Board take into account diversity of age, gender, race, ethnicity, areas of expertise including copyright matter, music business, finance, creative industry, law, investments, and other issues?

- i. How would you rate the level of awareness the individual Board members have regarding the Board's expectations for them?
- j. Do directors serve on committees of the Board?
- k. Do directors receive written reports before and after every meeting?
- l. Do all Board members actively participate in important board discussions?
- m. How supportive is the board in receiving differing perspectives of Board members?
- n. How likely is it that the Board supports all collective decisions?
- o. Does the Board have a designated process for orienting new Board members?
- p. Does the Board have an identified process for director education and development?
- q. Do the Board members enjoy a special camaraderie with each other?
- r. Do you agree/disagree that the Board has a clear distinction between the role of the board and the management?
- s. Do you agree/disagree that the Board offers and receives regular feedback from the management?
- t. Do you agree/disagree that the Board and management have a mutually honest and trusting relationship?
- u. Do you agree/disagree that the Board provides guidance and clarification to the management about new and existing policies?
- v. Do you agree/disagree that the Board is clear about the kind of information and level of detail they need from the CEO about the functioning of the CMO?
- w. Does the Board have a formal process for evaluating the CEO?
- x. Does the process for evaluating the CEO need improvement?

- y. Do you agree/disagree that the Board supports the CEO and openly expresses their appreciation for the CEO's work on a regular basis?
- z. Do you agree/disagree that the Board offers and encourages the CEO to take advantage of opportunities for professional development?
- aa. How would you rate your overall awareness of what the Board expects of you in your role as director?
- bb. Do you regularly attend Board and committee meetings?
- cc. Do you spend adequate time in reading Board minutes, reports, and other materials before Board meetings?
- dd. How familiar are you with the CMO's constitution, bylaws and governing policies?
- ee. Rate your level of listening and engagement during Board meetings.
- ff. Describe your ability to follow up with commitments made during Board meetings.
- gg. Assess your level of confidentiality as it relates to Board decisions.
- hh. How likely are you to support collaborative Board decisions that you voted against?
- ii. Do you agree/disagree that you actively promote the organization's vision and mission within your sphere of influence?
- jj. Do you frequently share information about relevant issues with your fellow board members?

PWC Directors Forum provided some key questions that Boards should be asking themselves:

- What competitive advantage is the Board delivering?
- Is there effective communication between the Board and management?
- How relevant is the company's strategy in achieving future sustainable growth in line with changes in the legal, economic and political strategies?
- What value does each member of the Board bring in terms of knowledge and experience?

- How are the interests of the shareholders balanced with the interests of other stakeholders?

PWC Directors Forum is of the view that “Boards, which commit to a regular evaluation process, find benefits across these levels in terms of improved leadership, greater clarity of roles and responsibilities, improved teamwork, greater accountability, better decision-making, improved communication and more efficient Board operations.”

4.2.2.9 Roles of Chairman of the Board of Directors

The chairman is the leader of the Board of Directors. To be effective, the chairman must bring to the Board experience, time, maturity and personality. He dictates the tone and control the conduct of the Board. Usually for a CMO, the chairman is usually a non-executive director, elected amongst the membership of the CMO or from amongst the Board membership. He is first amongst equal and the leader of the Board.

The chairman’s roles on the Board of the CMO are:

- a. To efficiently conduct the meetings of the Board of Directors.
- b. To encourage full participation by Board members in Board deliberations.
- c. To maximize the collective skills of the Board and Executive Management.
- d. To provide overall leadership to the Board of the CMO.
- e. To maintain close, but independent, working relationship with the CEO.

4.2.2.10 Characteristics of a Board Chairman

There is no doubt that every chairman is unique in his or her way and style of leadership but they all have common attributes that connect them together. These attributes may include:

- i. A good chairman must have foresight; ability to look and act beyond the executives’ horizon and must be committed to a long-term sustainable approach.
- ii. A good chairman must have good humour and the ability to invoke calm in the midst of chaos and pressure.
- iii. A good chairman must exhibit humanity, understanding and respect for others.

- iv. A good chairman must be a good, attentive and active listener.
- v. A good chairman must have the courage and humility to put his or her interests or views below the interests of the CMO.
- vi. A good chairman must have emotional intelligence to read the mood of the Board and decode non-verbal clues.
- vii. A good chairman must be socially accessible and must have the ability to be at ease with all employees from the most junior to senior.
- viii. A good chairman must have the toughness required to hold onto the course when it is right to do so, despite contrary winds.
- ix. A good chairman must exhibit complete lack of sentimentality - The ability to fire people, including the CEO in agreement with the Board, and to change tactics when this is deemed necessary to the survival of the CMO and the maintenance of its object.
- x. A good chairman must exhibit huge amount of intellectual curiosity about how different business sectors work.

4.2.2.11 Seven things you don't want in a Board

Speaking with Mike Awoyinfa co-author of the *50 NIGERIA'S BOARDROOM LEADERS—Lessons On Corporate Governance and Strategy* published on April 20, 2019 in the column of the Nigerian Sun Newspapers, Ephraim Faloughi, chairman Sovereign Trust Insurance itemized seven things you don't want in a Boardroom, which are reproduced hereunder for ease of understanding. The researcher has underlined some key sentences for emphasis.

1. A good Board must have like-minded people. Pray that you have like-minded people, otherwise, you will end up having a problematic board. Where you have like-minded people, all issues are discussed freely; when it is inevitable, they argue and debate and after the board meeting, they will still be in one accord, their ultimate objective still on course which is to ensure that the organisation succeeds. Argument on the board is not personal, but some people take it seriously. When their views seem not to be taken, they turn themselves into enemies and resort to making things difficult for other directors or the chairman or the organisation. When a disagreement ensues, it calls for wisdom. A good chairman will always read the situation, read each member of the board, especially

by their moods and, if he discerns they are on warpath, he quickly disarms them. Infighting has been the bane of boards in the corporate world.

2. Trouble starts for a chairman when he compromises his integrity with either the MD or management staff. There will be no room for venality in the board unless the chairman decides to sell himself to the MD. If he seeks to make deals, he cannot control anymore. Once he compromises himself, the problems will surely come. And when they come, he cannot put his foot down. When the chairman wants to supply the transport service of a company, what do you expect? He is bound to fail because he cannot deal with the MD when the time comes. Compromise. That is why some boards fail.
3. What makes a board strong is the group of people that constitute its membership: their professionalism, their integrity, their intellectual contributions to discussion, the candidness with which they air their views. Diversity is the grease that keeps the cogwheel of the board going. Diversity is important to the success of a board. If I am an Ijaw, why would I have only Ijaw people on the board? That is not right. From every part of this country, you will find people who are good on corporate governance, people who are intellectually fit, people that are good board material. There has to be a balance. Diversity shouldn't be mistaken for quota system.
4. Where there is gender imbalance, it is not good for the board. That tells us capable women are out there who can equally bring to the table the same value that men bring. Women have certain merits in their favour than even their male counterparts. They listen to arguments. They give candid views. They pay attention to details. And women in positions in the corporate world are less corrupt. It is a lame excuse that they are difficult to find for board appointments.
5. You have no reason to be on a board if you cannot add value. Boards seek directors who can add value to the company. To that extent, we scout for the best hands. Who is he? What is his background? What has he done? What has he achieved? More importantly, what is he bringing to the table businesswise? We don't want dormant directors who would bring nothing to the future growth of the company. Some boards do have them: directors who cannot contribute anything in terms of bringing in business. Gone are the days when directors just come in to collect allowances.
6. There is hardly room or reason for the chairman to be imperial. The chairman of a board should never be an executive of the structure. The new corporate structure

does not allow dual position of chairman-CEO. As the leader of the board, the chairman must be seen to carry along all the members, not least the MD. For good reasons. It is not every issue or subject that will come to the board for deliberation because a meeting cannot be called at short notice for each and every issue. That is why it is imperative that any given time, the MD/CEO must always liaise with the chairman of the board.

7. The chairman and his MD should be close. They cannot afford to be at variance. That does not mean that the chairman cannot exert his control when necessary. For example, the chairman should call his MD to order when he is derailing. Any organisation where the chairman and the MD are at discord is hanging on a precipice. With corporate governance codes, the board is like a ship that is on course. The boardroom of today is hardly in need of any radical change to its structure or philosophy. The guiding precept for every director is “don’t compromise yourself.” It is expected of every board member to be honest and dedicated to the structure. If you can’t, get out!

Also speaking with Mike Awoyinfa co-author of the *50 NIGERIA’S BOARDROOM LEADERS—Lessons On Corporate Governance and Strategy*, as part of his Boardroom memoir and published on May 4, 2019 in the column of the Nigerian Sun Newspapers, Ogala Osoka, former managing director/chief executive of both National Insurance Corporation of Nigeria (NICON) and Nigeria Reinsurance Corporation itemized six imperatives of Boardroom leadership, which are reproduced hereunder for ease of understanding. The researcher has also underlined some key sentences for emphasis.

1. The chairman of any board is an important member of the company. It is therefore important for the well-being of the company that there will be a good working relationship between the chairman and the managing director or the executives. But the chairman is like every other member of the board and he can be removed at the pleasure of the board. Let us consider an analogy with the office of the Senate President. The Senate President is like any other senator but chosen by his fellow senators to chairman the Senate. He is simply first among equals. Once he ceases from being the Senate President, he reverses to being an ordinary senator. Nobody is voted in by the electorate to be a Senate President unlike the President of a country, so really there is no need to glorify the office of the Senate President who should humble himself to be able to inspire the confidence of his members. The same logic applies to the chairman of the board.
2. There is nothing so glamorous about being a board chairman. He is expected to be a good leader of his members. As chairman, people expect him to be up and doing, exhibiting intellect, flexibility, fairness as well as good judgement. He should inspire confidence. As much as possible, he should let the views of all be

considered and avoid unnecessary voting on minor issues. A good chairman should encourage and create an atmosphere for all to air their views, listen to all arguments, and get them to accept the superior argument. There may be a few dissenting voices. The task therefore is to try and harmonise their views so that they can realise that it is better for the company than the other way. The moment they vote, which indeed is allowed in boards, then you may have a divided board, no matter how trivial the issue. People who voted are not usually happy. Those who lost out are likely to harbour resentment. So a key leadership quality required of a board chair is the ability to encourage consensus. In the face of an impending schism, it is not out of tune for the chairman to consult with board members beforehand. A good leader of the board can have meetings with individual members and try to explain a particular issue.

3. The chairman should show a higher level of leadership quality among other people who are from different disciplines. Unlike management where there is job description for each person, a board is really a homogenous setup with different kinds of people who see things from different points of view. If the enterprise is a bank, everybody on the board shouldn't be a banker. If it is insurance, everybody shouldn't be an insurance person. If it is a newspaper, everybody shouldn't be a newspaper person. The result is that they can have different perspectives of the same thing, and collectively, they can arrive at what is in the best interest of the company. I have served on a board of a government company whereby the chairman would sit at one end of the table and the MD as far away as possible because they didn't see eye to eye. Before the board meeting, the chairman would have talked to the other members and all of them would have agreed with him on the items on the agenda. And coming into the boardroom proper, he had already successfully carried out a coup against the MD. He had successfully zoned him out. For example, when the issue of promoting members of management comes up for consideration, the chairman would ask board members, "What do you think?" considering the MD's view last. He would end up promoting those not marked by the MD and deliberately ignore those he recommended. It was such a big indictment on the MD that by the time the chairman came around to listening to him, there was no point arguing. To do so was to risk further making a fool of himself.
4. Some consider appointments to government boards as opportunities to make money. They don't think they have gone to the board to add value. Instead they are there to take value. Imagine people congratulating you for being appointed a board member! I know a man who was appointed member of a board. When he became chairman, newspapers were awash with congratulatory adverts. I wondered: Why should you take congratulatory adverts for being a chairman? Chairmanship is at the pleasure of the other board members who appoint one of them as chairman. That is what corporate governance codes say. If you are not there, someone else would

be appointed. Why should anybody place an advert congratulating me for being appointed chairman of a bank?

5. To be appointed a member of a board is an elevation. It is a good position. It is an appointment which comes with new challenges. It gives you the opportunity to make a difference—an opportunity to play in the first eleven and if your team is successful, you take the credit.
6. A board meeting is a serious affair for the chairman and his fellow directors. The chairman is equipped because he has to see the whole picture. It is imperative he gets a better view of the overall business. He knows the ability of the board members. He gives them assignments. He prompts them to react in a certain way. He guides them. As chairman, people expect you to solve their problems. That places a heavy responsibility on you. For as long as the board meetings last, you dare not take your hands off the steering wheel. Don't doze! Don't relapse into silence. In view of the heavy duty awaiting you at every board meeting, do yourself a big favour by making a lot of preparation so that you go into the boardroom with the big picture.

4.2.3 Management Team

The management team of a CMO just like in many organisations is led by the Chief Executive Officer who is in charge of the day-to-day operations of the CMO and to whom the Board of Directors may delegate any of its duties. This officer may be described with various other titles depending on the jurisdiction and the size of the CMO. Apart from the CEO title, he/she may be referred to as General Manager or Director General.

The work of a CMO may appear creative in nature because of the composition of its membership but it is a business-like activity, which means very few creatives are trained as economist, lawyers or business managers to run and manage a CMO. In such a situation, the Board of a CMO does well by recruiting a competent CEO or General Manager and allowing him or her run the CMO by taking care of all operational matters based on common agreed strategy. The recruitment of a CEO is one of the important steps the Board of a CMO must take in order to set the organisation on the path of progress. If this common strategy is agreed upon between the Board and CEO, it helps to remove any unnecessary competition between the Board and the CEO, and everybody is important in their respective roles.

Spencer Stuart (2019) “To thrive in a turbulent world, CEOs will need core leadership traits such as curiosity, learning agility, judgment, flexibility, the ability to elicit the best ideas from diverse teams, ethical reasoning and appreciation of multiple stakeholder perspectives. Top-performing executives will display courage, empathy and humility.

These attributes will enable CEOs to lead through long stretches of uncertainty and to steer businesses through rapid change.”

In addition to the view of Spencer Stuart and whilst there may not be any formal qualification required for the position of CEO, it is critical to the success of the CMO that an individual with a good understanding and experience in legal and economic matters and a strong interest in the creative and cultural industries be part of the criteria for recruitment. The possession of organisational and advocacy skills are additional assets.

A competent CEO should be a huge advantage and is a huge advantage to the CMO. Therefore, he or she shouldn't be seen as a threat either to the Board or its chairman. The situation in some CMOs across Africa, is that once the CEOs become very knowledgeable on their jobs, they are seen as threats and fabricated charges are often cooked up against them, in order to take them out of their positions leading to frequent CEO turnover.

4.2.3.1 Role of a CEO in the Management of a CMO

4.2.3.1.1 What is Chief Executive Officer (CEO)?

A Chief Executive Officer (CEO) is the highest-ranking executive in a company, whose primary responsibilities include managing the overall operations and resources of a company, acting as the main point of communication between the Board of Directors and corporate operations, and being the public face of the company. A CEO is always appointed by the Board.

4.2.3.1.2 The Roles of the CEO

The role of CEOs is unique in that they stand at the top of the pyramid and all the other members of the organization take cues from them.

The CEO's role is not just that of a leader or even team leader who advises the Board, advocates and promotes organization's interests, supports motivation of employees in the organization but also of visionary and information bearer who ensures staff and Board have sufficient and up-to-date information, looks to the future for change opportunities, interfaces between Board and employees and interfaces between the organization and community. In his capacity as the manager of the organisation, the CEO oversees operations of the organization, implements plans, manages human resources of organization, manages financial and physical resources. The CEO as a Board developer, assists in the selection and evaluation of Board members, makes recommendations, supports the Board during orientation and self-evaluation. He is also a decision maker who formulates and recommend policies and plans to the Board. He decides or guides courses of action in operations by staff. Carried out effectively, the rewards are significant for the CEO and of immense value to the team members and the company as a whole.

One of the key conditions for a collective management organisation to succeed is the recruitment of well-trained CEO in the business of copyright, collective management and other relevant business areas.

The size of a CMO may determine the CEO's role. The CEO for a small CMO with limited resources or staff is likely to be more hands-on than the CEO for a mid-size CMO or a large CMO. In addition, the smaller a CMO, the closer a CEO is to the front-line staff, whereas in a large CMOs, the CEO may never interact with the front-line staff.

There is no higher priority for a CEO or indeed the CMO than to ensure that members and right owners' distributions are right. This task runs to the very core of what a CMO does, as it is not only mandated by its members to collect but also to ensure that royalties collected are distributed to all deserving members fairly and in a transparent manner.

The fundamental role of a CEO in the management of a CMO is to ensure that right owners are fairly remunerated for the exploitation of their works. The job of the CEO is also to safeguard the strengths and traditions of the CMO.

The CEO must have the ability to communicate the importance of the creative work the CMO administers and to advocate the case for creators in government and business circles.

A CEO must be tremendously capable, hardworking and dedicated. He or she must be ready to provide great vision and inspiration for the extremely talented workforce and members needs first and foremost in all circumstances.

4.2.3.1.3 Functions and Roles of a CMO CEO

From author's personal experiences and responses from interviews conducted on some CEOs of CMOs in Africa, here are their major functions and roles in the running of these CMOs:

- a. Develop and recommend long term strategy and business plans for the CMO.
- b. Partake in devising & implementing of Board policies.
- c. Communicate and implement strategies and policies adopted by the Board.
- d. Prepare budgets for deliberation and adoption by the Board.
- e. Receive general mandate from the Board, to run and manage the CMO.
- f. Daily management of the CMO's business affairs, which include but not limited to coordinating all licensing and distribution activities.

- g. Ensure the CMO has an appropriate team structure.
- h. Ensure proper internal check and controls.
- i. Attend to Human Resource matters, including recruitment and termination of staff.
- j. Maintain a favourable working environment for attracting, retaining and motivating staff.
- k. Seek to achieve CMO's financial and other objectives & goals.
- l. Strive for improvement in levels and quality of services rendered by CMO

4.2.3.1.4 Characteristics and Skills a CMO CEO

Being a CEO in the copyright collective management environment, comes with a lot of responsibilities and sacrifice especially leading a growing CMO in a very challenging environment. It is agreed amongst the CEOs interviewed that run and manage a CMO, a CEO must be a person of integrity, insight, common-sense and prepared to learn.

The interviewee further agreed that whoever must lead a CMO as its CEO, must have conceptual competencies, good judgement in business matters, must have analytic, deduction, good communication, advocacy and acquisition of collective management skills

The CEO is as good as his team and he or she must continue to grow and insist that his team grows too.

4.2.5 The Role of Company Secretary

A company secretary may also be referred to as Secretary to the Board. Company secretaries play unique roles in ensuring the integrity of the governance framework of any company. A company secretary is responsible for the efficient administration of a company, ensuring compliance with statutory and regulatory requirements and implementing decisions made by the Board of Directors of the company.

A company secretary is usually neither part of the Board of Directors or Executive Management. However, in the case of this researcher, he doubled as both CEO and company secretary in his previous place of employment whilst some other CMOs may appoint an external independent firm or an individual to provide company and Board secretarial services. Other larger CMOs go a step further by appointing full time Company and Board Secretary, who may either be the CMO's legal counsel or a full time company and Board Secretary.

Irrespective of the nature of appointment and jurisdiction, general duties of a CMO's Company and Board Secretary usually include:

- i. Induction of new Directors
- ii. Compliance with and updates on regulatory obligations under Corporate legislation
- iii. Guiding Board members in the proper discharge of responsibilities
- iv. Convening of Board and related Committee Meetings
- v. Taking of Minutes, including Board decisions & directives
- vi. Assist the Chairman with Annual Board plan
- vii. Board Communications
- viii. CMO Voting arrangements
- ix. Custodian of Board records, including Board membership records
- x. CMO By-laws

CHAPTER FIVE

REVIEW OF SAMRO, CAPASSO, SAMPRA AND COSON LEADERSHIP STRUCTURES AND GOVERNANCE SYSTEM

5.1 Introduction

The crying need of every organisation, institution and association is leadership. The most critical problem facing a lot of the organisations in Africa is leadership and CMOs are not inoculated from this challenge. Leadership remains one of the glaring needs of African CMOs. For the exception of few CMOs in the African continent, majority of the CMOs are either stagnated or dying, and the critical conclusion may be, lack of strong leadership.

In this time of unprecedented opportunities in the music business occasioned by advancement in digital technology, African CMOs are actually losing influence as copyright owners from the continent are gradually transferring their copyrights for management to CMOs outside the continent. In some situations, African CMOs are losing to stiffer competitions outside the continent because of weak structures or lack of effective systems.

It might be argued that these CMOs have better systems and well trained personnel but it is also a fact that the progress of an organisation rests on its leadership. Nothing is more important than leadership if a CMO must survive the tough CMO business environment especially in Africa and meet the aspirations of its members and affiliates. It is a true maxim that everything rises and falls on leadership. More than anything else, the leadership of any group or organisation will determine its success or failure.

A critical part of any leadership structure in any organisation, is the establishment of corporate governance.

Deloitte defined governance as the processes and structures used to direct and manage an organization's operations and activities. Deloitte states that governance defines the division of power and establishes mechanisms to achieve accountability among stakeholders, the board of directors and management.

According to Deloitte, good governance systems are designed to help organizations focus on the activities that contribute most to their overall objectives, use their resources effectively, and ensure that they are managed in the best interests of their stakeholders.

(KPMG, 2019) recognises that good corporate governance is a key driver in the establishment of sustainable enterprise. Alignment with leading corporate governance practices will guide companies in establishing a framework of processes and attitudes that increases their value, builds their reputation and ensures their long term prosperity.

For CISAC, to which many of the CMOs across the world are part of, as members, “building trust in the work of authors' societies—both from creators and users of creative works—is an essential goal for CISAC.” CISAC’s objective is to provide the highest standards of operational excellence throughout its international network of member societies.

To this end, CISAC has created a number of rules and code of conduct commonly referred to as Professional Rules and Binding Resolutions that all its member CMOs should abide by if they must remain on its membership. These rules help to guarantee smooth transactions within and between member CMOs, with creators and publishers, as well as with commercial and public users of copyright works. In the operations and management of a CMO, the rules emphasized:

- i. Transparency and efficiency;
- ii. Impeccable service to creators;
- iii. Fair licensing terms for users of artistic works;
- iv. Accurate and timely distribution of royalties.

A CMO complying with these rules provide it with two main benefits. Firstly, it ensures seamless accurate licensing, collection and distribution processes throughout the collective management value chain, and secondly, it builds trust between industry partners, policy-makers and the public.

To continue to improve the services provided by the CMOs to their members, CISAC constantly review its governance rules each year, for the benefit of member CMOs.

CISAC on its website listed the new governance rules approved by the CISAC General Assembly, which rules are designed to promote:

i. Greater Financial Transparency

CISAC member CMOs are to provide a yearly description of their treatment and management of undistributed and unidentified royalties, as well as their financial and non-copyright income.

ii. Stronger Corporate Governance

This is to strengthen CMOs corporate decision processes by better defining the separation of management and supervisory bodies.

iii. More Effective Compliance Reviews

To ensure the strong compliance of its Professional Rules by its members, CISAC implemented a compliance monitoring process, which entails a yearly random selection of CMOs to be reviewed and on-site visits by collective management experts in order to check their compliance with the Professional Rules. This process of monitoring compliance is being reviewed to increase its efficiency and provide lesser-developed CMOs with the support they need to achieve the standards that CISAC expects from its members.

CISAC has defined its Binding Resolutions as a set of technical criteria that pertain to the documentation and distribution operations of our member societies. According to CISAC, they complement the key principles of the Professional Rules and aim to maximize the accuracy and efficiency of royalty distribution to rights holders.

CISAC states that the Binding Resolutions deal with:

- a. The use of international standards (e.g. IPI, ISWC) to ensure the prompt identification of rights holders.
- b. The use of the systems and tools to share documentation of works, such as the CIS-Net network for musical CMOs or IDA for audiovisual CMOs.
- c. Specific distribution rules in the case of unidentified uses or works with incomplete documentation.

In a similar vein, IFPI, which is the international association of recording industries and to which the music licensing companies for the management of sound recording rights are affiliated, also has established its own code of conduct for its MLC affiliates. Of particular interest to this research is section V of the code of conduct, which treated the issue of governance amongst its affiliates. The section is hereby reproduced for ease of reference and to help buttress the role of these international organisation in strengthening the governance structures of CMOs:

1. Unless prohibited by applicable legislation each MLC is to provide right holders the opportunity for a fair and proportionate representation in the governing bodies.
2. In the event that the right holders can become direct members of the MLC, all members should be given voting powers at the general meeting on the basis of (i) duration of membership and/or (ii) amounts received or due to a member, provided that such criteria are determined and applied in a manner that is fair and proportionate to the value of their rights managed by the MLC.

3. Unless otherwise required by applicable law, each MLC shall have a general meeting of members, delegates or shareholders, as the case may be, at least once a year. The general meeting shall at least have the power to appoint and dismiss the members of the board of directors, which supervises the management of the MLC, and the MLC's auditors, as well as approve any changes to the MLC's statutes and distribution rules.

The regulators too, in this case the Nigerian Copyright Commission has a critical role to play in the strengthening of corporate governance system in CMOs. In discharging this role however, care should be taken by the regulators not to interfere in the internal rules of the CMOs, as long as these rules do not breach any aspect of the law.

To help the governance process in any CMO organisational leadership structure, results from the interviews conducted showed that a Board Charter is a critical policy document that Boards of CMOs should have.

(Effective Governance, 2016) defined a Board Charter as a policy document that clearly defines the respective roles, responsibilities and authorities of the board of directors (both individually and collectively) and management in setting the direction, the management and the control of the organisation.

(Effective Governance, 2016) further listed the benefits of Board Charters to any organisational Board:

- i. Assists the corporation's leadership in delivering good governance;
- ii. Documents the policies that the board has decided upon to meet its legal and other responsibilities;
- iii. Serves as a reminder for the board of the legal framework within which it operates;
- iv. Is a point of reference for disputes;
- v. Serves as an induction tool for new directors and senior managers;
- vi. Greatly assists in establishing effective operating procedures for a board;
- vii. Develops of a shared understanding of the board's role throughout the organisation.

(Effective Governance, 2016) stressed that as "a cornerstone of organisation's governance system, the Board charter needs to be treated as a living document, closely aligned with the strategic direction of the organisation. It needs to be reviewed and updated regularly,

and used as an important induction tool for new directors. Importantly, Board charter leaves a legacy from today's board to future boards and represents an important record of board policy making, but charters will only be of value creating if they are carefully crafted and used."

5.2 Collective Management in South Africa

In South Africa there are several CMOs representing different copyright owners, classes of works and rights. These CMOs are Southern African Music Rights Organisation (SAMRO), which manages performing rights in musical works; CAPASSO, which is a mechanical rights licensing agency and collects and distributes royalties to its members who are music publishers and composers; SAMPRA, which is a CMO that administers Needletime Rights on behalf of recording artists and record labels and Dramatic, Artistic and Literary Rights Organisation (DALRO) is a multi-purpose copyright organisation, which assists individuals and businesses obtain individual or blanket licences for a range of content, including plays, musicals, virtual arts, poems, newspaper articles, books and more.

To stay within the scope of this research, the researcher will focus on the music related CMOs in South Africa, which are SAMRO, CAPASSO and SAMPRA.

5.2.1 Southern Africa Music Rights Organisation (SAMRO)

SAMRO was established in 1961 as a company limited by guarantee. Members comprise southern African composers, authors and music publishers. SAMRO members elected to move from a company limited by guarantee to an NPC when the new Companies Act was promulgated. Since inception, SAMRO has delivered services to its members on a not-for profit basis.

SAMRO is a member-centric organisation thriving on a high-efficiency and high performance culture. This enables it to successfully execute its strategic themes, which are optimisation of the business model, diversification and innovation

The SAMRO memorandum of Incorporation (MOI) provides for a maximum of 12 Board members and the current Board was elected December 2018. However, the current SAMRO Board is made up ten members headed by an independent chairman and assisted by an independent vice chairman. The chairman and vice chairman are not members of the CMO.

The SAMRO Board currently comprises of three Independent directors, which are the Chairman of the Board, Chairman of Audit and Risk Committee and Chairman of Social and Ethics Committee, six non-executive directors split between two publishers and four composers and the Chief Executive Officer and the Chief Financial Officer. According to

its MOI, one-third of the Board stands down each year during an AGM and can stand for re-election.

Mr. Mark Rosin who was appointed as SAMRO CEO in January, 2020 for an initial term of two years is leading the South African music right body at a very challenging time. SAMRO represents about 17,000 composers and publishers. SAMRO has held a dominant position in the South Africa music industry since 1961. The CEO is appointed by the Board with a fixed term contract.

To help equip the Board of SAMRO in relation to financial direction; licensing and distribution direction; data solutions and systems direction; legislative and regulatory direction and lobbying and political matters, SAMRO is currently reviewing its corporate structure with a view to employing the skills needed to cover all of these areas.

Following the decision of its last Board to acquire non-core assets that were a drain on resources of the CMO and investment that was out of scope of the mandate of the CMO, it is the view of the management of SAMRO that the current Board has turned the CMO around despite the challenging times and repositioned it as a continental leader in collective management.

The management of SAMRO supports the view that the Board should provide strategic oversight and be involved in critical decisions like the appointment of the CEO and their executive team, with the understanding that the operations of the CMO are handled by the executives and that the Board should not interfere in the CMO's operations. It further pointed out that the move to appoint three independent Board members has been critical to the CMO overcoming past problems and becoming a better version of a CMO. It agreed that many of their past and current challenges were created by a weak Board or a Board that interfered in the operations of the CMO.

The SAMRO Memorandum of Incorporation is regarded as the constitution of the CMO and its members have the opportunity to amend the document with adequate and lawful inputs.

The roles and responsibilities of the members of the Board of SAMRO and its committee are clearly stated in its Board charter which was approved the Board of SAMRO on May 7, 2020, which is here attached and marked as appendix 1.

5.2.2 Composers, Authors and Publishers Association NPC (CAPASSO)

The Composers, Authors and Publishers Association NPC (CAPASSO) is mechanical right collective management organisation (CMO) constituted by composers and authors of musical and literary works as well as their chosen publishers. The CMO is mandated to license, collect and distribute licence fees for the reproduction of musical and literary works pursuant to section 6 (a) of the South African Copyright Act (the Act).

CAPASSO was formed in 2014 following a merger of SAMRO's mechanical rights administration arm and National Organisation of Reproduction Rights (NORM). CAPASSO's major licensing area is the digital environment which has and continues to undergo drastic changes.

CAPASSO's Memorandum of Incorporation stipulates that its governing Board shall be constituted of a minimum of 8 directors: the independent chairman/nonexecutive director, the chief executive officer, and 3 members each of SAMRO and the National Organisation of Reproduction Rights (NORM), representing 3 publishers, 3 composers, an Independent Chairperson and the Chief Executive Officer. It has over 6,000 members made up of over 800 publishers and the rest are composers and authors of musical works. CAPASSO has a staff compliment of 23 permanent staff and an average of 5 contract and casual staff.

CAPASSO do not need a licence to operate as a CMO but need to be registered with the Companies Intellectual Property Commission (CIPC) as a non-profit company owned by its members.

The CAPASSO leadership structure and practice is a pyramid type of structure where employees are allowed to express their knowledge and measured on results as opposed to micromanaging.

The Board of CAPASSO is fairly balanced with very successful music entrepreneurs and entry level directors. Overall there is enough expertise according to its CEO, Mr. Jotam Matariro who drives the CMO.

The tenure of each member of the Board of CAPASSO is 3 years including the chairman and the Board members are elected at the Annual General Meeting. According to the CEO of CAPASSO, the Chairperson is the leader of the Board and the CEO is the leader of the company and overseas strategy formulation. He further said the Chairperson directs the Board while the CEO directs the operations by implementing the Board strategy. The Board's strategy according to the CEO is driven by the joint vision of the Chairperson and the CEO.

The roles and responsibilities of the members of the Board of CAPASSO and its committee are clearly stated in its Board charter, which is here attached and marked as appendix 2.

5.2.3 SOUTH AFRICAN MUSIC PERFORMANCE RIGHTS ASSOCIATION (SAMPRA)

SAMPRA is a collective management organisation (CMO) founded 13 years ago and it is accredited by the Registrar of Copyright in South Africa to administer Needletime Rights or what is generally known as neighbouring rights on behalf of recording artistes and record labels.

SAMPRA has a membership strength of 4,900 record companies and 23,000 performers with a staff strength of 38.

SAMPRA is governed by a Board in which record companies and recording artistes enjoy equal representation. The Board representation ratio is made up of 6 record companies, 6 performers, an independent chairman and the CEO.

The tenure of each member of the Board of SAMPRA is 2 years whilst that of the chairman is 1 year renewable and the Board members are elected at the Annual General Meeting. According to the CEO of SAMPRA, the Board is not operational. The research shows that the CEO leads the operations of the company on a daily basis and reports to the Board on a quarterly basis.

Just as it is with SAMRO and CAPASSO, the Board appoints the CEO whilst the CEO appoints the executives but in the case of SAMPRA, the staff below the executives are appointed by the executives. The executive team led by the CEO meets every month to check if the company is meeting its annual objectives.

The research shows that there is role clarity, which has drastically reduced any potential conflict between the chairman, Board and the CEO. The chairman and the Board don't get involved in the operations. The CEO meets with the chairman on a regular basis to discuss strategy and not operations. According to the research results this has enabled quick and effective decision making, which has helped to bring stability and created an environment for the CMO to flourish and meet its mandate.

SAMPRA is also a member of the Societies' Council for the Collective Management of Performers' Rights (SCAPR), an international federation of needletime CMOs based in

Belgium. SCAPR strives to improve the exchange of data and performers' rights payments across borders.

The body of sound recordings licensed by SAMPRA is referred to as its repertoire. SAMPRA administers, on behalf of its members, the following rights:

- communicating sound recordings to the public;
- the diffusing of sound recordings; and
- the broadcasting of sound recordings.

SAMPRA's main functions are:

1. the licensing of needletime rights in its repertoire to users;
2. the collection of licence fees;
3. the distribution, amongst its members and international CMOs (with whom it has concluded reciprocal agreements), of royalties derived from licensing fees (less administration costs).

SAMPRA licenses users of sound recordings in South African who deploy its repertoire in their facilities such as radio broadcasters who use sound recordings (records, tapes, CDs, digital media), shops, restaurants, pubs, clubs, hotels and similar establishments.

SAMPRA is guided by its accreditation conditions, applicable legislation, and its Memorandum of Incorporation. SAMPRA carries out its functions in accordance with internationally accepted standards and practices.

The roles and responsibilities of the members of the Board of SAMPRA and its committee are clearly stated in its Board Charter but the researcher couldn't obtain a copy during the research.

5.3 Music Collective Management Organisation in Nigeria

As stated in previous chapters, under the Nigerian copyright collective management environment, there are two CMOs representing same class of works and right owners.

However, for the purpose of this research, the author will review the organisational leadership and governance system in COSON. It is easy for the author to do this without much difficulties, as the author was key principal staff of the CMO during the commencement of this research and will be writing from personal experiences and observations.

5.3.1 Copyright Society of Nigeria (COSON)

As previously stated, COSON was approved by the Nigerian Copyright Commission (NCC) on May 20, 2010 as a company limited by guarantee. It represents owners of copyright in musical works and sound recordings, which are authors, composers, performers, publishers and record labels. COSON is actually a combination of the rights managed by SAMRO, CAPASSO and SAMPRA.

At its formation, it was made up of a fifteen (15) directors cutting across copyright owners from some of the music industry groups that came together on September 24, 2009 to form COSON. Such right holder groups included Performing and Mechanical Rights Society (PMRS), Music Business Professional (MB.Pro), Performing Musicians Employers' Association of Nigeria (PMAN), Music and Recording Industries Association of Nigeria (MORAN), National Association of Recording Industry (NARI), Music Label Owners Association of Nigeria (MULOAN) and Music Producers and Marketers Association of Nigeria (MUPMAN).

At its first Annual General Meeting and following the recommendations of the Board at that time, the 15 directors were reduced to eleven (11) comprising of copyright holders in musical works and sound recordings. The General Manager who is also the CMO's chief executive officer is also a member of the Board together with a representative of the NCC, who sits on the Board in an observer capacity without a voting right.

The COSON articles of association states that "the society shall have 11 directors who shall be elected by the general assembly from among the full members of the society as follows:

- i. 6 Composers
- ii. 2 Performers
- iii. 3 Publishers

The COSON Board composition shows that its Board members are traditionally more of creative people made up of songwriters and artistes. The ratio of the representation of the Board is more in favour of the songwriters who have six slots on the Board, performers have two slots and publishers have three slots whilst there are currently no slots for producers of phonograms. Unlike the Boards of SAMRO, CAPASSO and SAMPRA that have balanced representation of right holders on their Boards, same cannot be said about the COSON Board.

On the powers and duties of the COSON Board, its articles provide that the business of the CMO shall be managed by the Management Board, which may be interpreted to mean that members of the Board are executive roles running the operations of the company with the

CMO's management team but in practice, this is not so. The Board no doubt, is responsible for the governance of the CMO.

The Board of COSON elects one of its directors as its chairman, who holds office at the pleasure of the Board and by its articles also determine the period for which the chairman holds office. In practice, the chairman's tenure ends on the day his tenure as director ends and he is eligible for re-election for as long as he or she remains qualified to act as a director. The chairman presides over all meetings of the Board and has the casting vote should there be an equality of votes in a Board meeting.

Unlike SAMRO, CAPASSO and SAMPRA where their chairmen are independent non-executive chairmen, the chairman of COSON though non-executive is not an independent Board member. The chairman and like all Board members of COSON are members of the CMO.

In COSON unlike its South African sister CMOs, the CEO does not have the power to hire independently other management staff. The Board of COSON makes all management staff appointment decisions in collaboration with the CEO. This method of recruitment has shown over the years to be ineffective. The CEO since he does not have the power to hire means he does not have the power to fire. He is therefore most times saddled with human resource personnel who may have constituted themselves as clogs in the wheel of progress, knowing very well the limitations of the CEO.

The COSON Board may direct its policies directly or through its audit and finance committee. The Board sets up other committees as occasions call for them, which is unlike then South African CMOs that have standing committees mostly chaired by independent directors and the chairman of the Board in most cases is not part of these committees.

CHAPTER SIX

SUMMARY, CONCLUSION AND RECOMMENDATIONS

6.1 SUMMARY

This research is on the impact of organisational leadership structure and practices in a collective management system.

This research has been carried out to investigate the impact of organisational leadership structure and practices in a collective management system using the South African CMOs; SAMRO, CAPASSO and SAMPRA and the Nigerian CMO; COSON as case study with respect to their leadership structures and governance practices.

The research is to help establish proper organisational leadership practices and good governance structures for the collective management of copyright and related rights in Africa and especially in Nigeria.

The research is to further help create a Board Charter that any of the CMOs in Nigeria can easily adopt. The charter clearly defines the roles and responsibilities of the Board, the chairman of the Board and the CMO's Chief Executive Officer. It is hoped that other African CMOs without such a charter would adopt it as templates for their individual CMOs.

In conducting the research, the researcher had employed a combination of questionnaires, interviews and researcher's observations. The questionnaires were distributed amongst select group of CEOs of African CMOs. The researcher also conducted interviews with some practitioners in the CMO community who are amongst top management and decision makers. In order to cover the grounds that may have been left out in the questionnaires, one-on-one interviews were also conducted either directly with the respondents or via telephone calls.

In embarking on the research, the researcher looked at how collective management organisation started in France with SACEM being the first music collective management organisation in the world. The research also took a brief tour on the history of collective management organisation in Africa and more particularly in Nigeria, the benefits and role of collective management organisations to the copyright owners, copyright users and the society. The researcher also reviewed the roles of the various international organisations responsible for copyright and related rights matters around the world and the various tools adopted by each of these international agencies in the management of copyright and related rights on behalf of the members.

The research also took a dive into how the collective management system operates. In establishing a CMO, the research reviewed the critical features that must be considered before setting up a CMO, like the legal structure, Method of Acquisition of Rights from Copyright Owners, Method of Determining Tariff or Price Setting and method of licensing.

The research also reviewed the characteristics and practices of CMOs with particular interest in the Nigerian CMO. The characteristics and practices reviewed by the researcher were the CMO's corporate structure and business practice and nature and extent of repertoire management.

Diving into the belly of the research, CMO leadership structures and governance system were reviewed with the aim of understanding the key governance structures and practices in a CMO and their various roles and how each of these structures and practices impact the overall effectiveness of the CMO.

At this juncture of the research, the role of the Board, the Board members, the chairman of the Board, the CEO and the company secretary were critically reviewed with the aim of drawing up recommendations for better role clarity amongst the key levels of a CMO leadership in the discharge of their duties and for the overall benefit of the CMO. This review enabled the researcher to look at the different leadership structures and Board governance templates across four African CMOs, which are SAMRO, CAPASSO, SAMPRA and COSON. Whilst the three Southern African CMOs reviewed have what may be considered a balanced representation of rightholders on their Boards, which ensures that the different right holder groups' interests are well captured at that level of deliberation, same cannot be said of the COSON Board, which is made up of predominately songwriters with no representation of phonogram producers on its Board.

On the need to strengthen the capacity of the Board to deliver on its mandate and strengthen corporate governance, the research reviewed that the Boards of SAMRO, CAPASSO, SAMPRA have appointed independent non-executive at least to chair their Boards.

The research also looked at the impact of copyright regulators and the international copyright and related rights organisations in the strengthening the governance system of CMOs.

6.2 Conclusion

Regardless of the legal form of a CMO, whether it is for-profit or non-profit, the research has shown that good corporate governance, good management and strategic direction are essential qualities for good organisational leadership. The findings reviewed that these elements are non-negotiable.

An effective CMO Board should ensure that structures and mechanisms are put in place in the organisation. In the light of this expectation and to stem the abuses in CMOs corporate governance system, some CMOs have taken a number of critical steps to correct these anomalies by adopting better governance models, which are aimed at rebuilding stakeholders' confidence especially amongst its members and affiliates. One of such critical steps is to separate the leadership of the CMOs into major roles; the roles of the non-executive chairman and that of the CEO. The Southern African CMOs have taken it a step further by ensuring that their Boards are chaired by independent non-executive chairmen.

An effective Board will ensure that the framework of values and principles exists to foster a culture of achievement and adherence to high ethical standards. An effective Board will also ensure that structures and mechanisms are put in place to help people both on the Board and within the executive management, develop and utilize their potentials, as fully as possible to optimize the CMO's performance in furtherance of its mandates.

In addition to performing the governance functions required by law or dictated by best practices, the best CMO Boards focus more on the long term and strategic plans than on the short term and tactical plans. These Boards are concerned more with matters of paramount importance than with the ordinary and with policy rather than operational procedures. Practically all CMO Boards that have their lenses well focused have gone on to produce the greatest outcomes to be satisfaction of their members and relevant stakeholders.

An effective Board will finally have some responsibility for the allocation of resources; primarily through the budgeting process and review of large expenditures that fall outside the approved budgets or that would create significant long term obligations. The Board will also monitor key metrics and have a mechanism for reviewing how well management is doing its job.

In many cases and based on this research, strategic direction of a CMO is usually articulated by the Board and CEO and this strategic direction must be embraced at all levels throughout the CMO.

It is the job of the CEO or General Manager and other management employees to translate the CMO's goals set by the Board into action and make resources approved by the Board productive.

A CMO that has a good Board and good management will also have high aspirations for what the CMO strives to accomplish over time. To be meaningful, however, those aspirations must be translated into actionable goals toward which the CMO's resources can be aligned.

The interplay of these three elements of good governance, good management, and strategic direction are critical to the success and survival of a CMO. Unfortunately, in too many CMOs especially in Africa, these elements are conspicuously absent.

From the research, corporate governance could be explained in two ways:

i. Definition of Ownership – This may be illustrated to mean that an owner of a property has the right to destroy his property if he chooses to. This means that anything he can destroy lawfully belongs to him as owner of that property. If for example, he owns a dry cleaning business, he may decide to give the business away for free or sell it, if he is no longer interested in the business and nobody has the right to question his action no matter how odd his reason for giving it away may seem but the moment he asks for help from a third party to invest in the dry cleaning business, he loses the right to do as he may wish, at least without consulting the other person. At this point, he ceases to be the sole owner of that business. At best he is a part owner of the business.

This research revealed that a lot of founders and entrepreneurs who are commonly referred to as pathfinders know this technicality but are not able to imbibe it. So their refusal to imbibe it, creates a problem of accountability, which is the thrust of corporate governance.

ii. Dependency factor – This may be seen as relating a company as a piece of paper, which is its Certificate of Incorporation (CoI) having some assets that belong to it. The company depends on some people called directors or officers of the company. So that dependency relationship brings a duty of fiduciary, honesty and accountability, which are key features in corporate governance.

The research further revealed that corporate governance is a practice based approach and not the fanciful words of a well-crafted document, which is never adhered to but stored up in a shelf somewhere in the Boardroom or CEO's office. The research establishes that it is better to have people focus on the practice of corporate governance rather than merely ticking the boxes of a questionnaire.

Beyond the researcher's recommendation and the following the recommendations of Nigerian Code of Corporate Governance 2018, he has further developed a Board charter template for CMOs in Africa without a Board charter to adopt

In Nigeria, a lot of what we call corporate governance regulations and recommendations for good corporate governance practices are already in the Companies and Allied Matters Act 2020 and Nigerian Code of Corporate Governance 2018.

Finally, corporate governance is about identifying a set of principles and establishing ways to implement them. The best practice of today for sustainability is to apply these principles. The researcher has recommended some of the principles in the subsequent section.

John Maxwell said “Everything rises and falls with leadership. Once the leadership issue is addressed, the organization can move forward. Establish the leader and you establish the organization.”

In conclusion the researcher has been able to establish that organisational leadership structure and practice has a great impact in the performance and management of a collective management organisation.

6.3 Recommendations

To have an effective Board, the researcher strongly recommends that members who are elected into the Board must have deep knowledge and understanding of the business, what the organisation does and strong commitment to how the organisation does it. Oftentimes, this may not usually be the case especially amongst the Boards of a majority of African CMOs.

Even where this may not be the case with some CMOs, the researcher also strongly recommends that the Board periodically mandates its members to undergo training and coaching in the key areas of the CMO’s business. In the case of a music CMO, trainings in the subject of copyrights, related rights, music business, collective management and organisational leadership would suffice.

For fairness and equity, the researcher recommends that the Board composition for a music CMO should be an equal representation of all the right holder groups whose copyright interests, the CMO is managing.

In the defining the relationship between the chairman and CEO, the chairman in all circumstances should avoid giving orders directly to members of staff or make enquiries from them including lead managers without the consent of the CEO instead, all communications to lead managers and members of staff should go through the CEO.

Conversely, the CEO should not communicate with the members of the Board without the knowledge and consent of the chairman. These boundaries must be made clear and respected for the effective organisation of the CMO, which will help eliminate every power struggles and competition between the chairman of the Board and the CEO.

In the words of Tarja Koskinen-Olsson “when the main principle; the chairman leads the Board and the CEO leads the company is clear and accepted by the organisation, this should eliminate all power struggles and competition.”

To help in strengthening corporate governance in CMOs, it would be helpful for the NCC to ensure the implementation of the Code by CMOs. Also, the NCC may either develop an appropriate code of corporate governance for CMOs or formally adopt the Code of Corporate Governance 2018.

It is further recommended that in accessing corporate governance compliance by the CMOs, the four pillars of fairness, accountability, dependence and transparency should be adopted and the NCC can create a scorecard for the observance of corporate governance by these CMOs.

In this section of this chapter and for the benefits of the research, the researcher has reproduced the recommendations as presented in the Nigerian Code of Corporate Governance 2018, which was published by the Financial Reporting Council of Nigeria (FRCN). The code provides as follows:

Part A Board of Directors and Officers of the Board

1. Role of the Board

Principle 1:

A successful Company is headed by an effective Board which is responsible for providing entrepreneurial and strategic leadership as well as promoting ethical culture and responsible corporate citizenship. As a link between stakeholders and the Company, the Board is to exercise oversight and control to ensure that management acts in the best interest of the shareholders and other stakeholders while sustaining the prosperity of the Company.

Recommended Practices

The Board, being central in corporate governance and the highest governing body in the Company, should have a charter setting out its responsibilities, which may include the following:

1.1 exercising leadership, enterprise, integrity and judgment in its oversight and control of the Company so as to achieve the Company's continued survival and prosperity;

1.2 ensuring that the Board and its committees act in the best interest of the Company at all times;

1.3 ensuring compliance with the laws of the Federal Republic of Nigeria and other applicable regulations;

1.4 considering and approving the long-term and short-term strategies for the business of the Company and monitoring their implementation by management;

1.5 ensuring the establishment and implementation of a succession plan, appointment process, training mechanism and remuneration structure for both the Board and senior management of the Company;

1.6 being accountable to the Company as well as identifying and managing the relationship with shareholders and other stakeholders;

1.7 establishing and maintaining the Company's values and standards (including an ethical culture) as well as modelling these values and standards;

1.8 overseeing the internal audit function, approving the internal audit plan, and appointing and removing the head of the internal audit function on the recommendation of the committee responsible for audit;

1.9 establishing the Company's risk management framework and monitoring its effectiveness, setting the Company's risk appetite, receiving and reviewing risk reports;

1.10 providing oversight over Information Technology governance;

1.11 defining a formal schedule of matters specifically reserved for Board decision and matters delegated to Board committees and management;

1.12 overseeing the effectiveness and adequacy of the internal control system;

1.13 overseeing the Company's communication and information dissemination policy;

1.14 performing the appraisal of Board members and executive management;

1.15 ensuring the integrity of annual reports and accounts and all material information provided to regulators and other stakeholders; and

1.16 ensuring that management systems are in place to identify and manage environmental and social risks and their impact.

2. Board Structure and Composition

Principle 2:

The effective discharge of the responsibilities of the Board and its committees is assured by an appropriate balance of skills and diversity (including experience and gender) without compromising competence, independence and integrity.

Recommended Practices

2.1 The Board should be of a sufficient size to effectively undertake and fulfil its business; to oversee, monitor, direct and control the Company's activities and be relative to the scale and complexity of its operations.

2.2 The Board should assume responsibility for its composition by setting the direction and approving the processes for it to attain the appropriate balance of knowledge, skills, experience, diversity and independence to objectively and effectively discharge its governance role and responsibilities.

2.3 The Board should consider the following factors in determining the requisite number of its members:

(a) appropriate mix of knowledge, skills and experience, including the business, commercial and industry experience needed to govern the Company;

(b) appropriate mix of Executive, Non-Executive and Independent Non-Executive members such that majority of the Board are Non-Executive Directors. It is desirable that most of the Non-Executive Directors are independent;

(c) need for a sufficient number of members that qualify to serve on the committees of the Board;

(d) need to secure quorum at meetings; and

(e) diversity targets relating to the composition of the Board.

2.4 The Board should promote diversity in its membership across a variety of attributes relevant for promoting better decision-making and effective governance. These attributes include field of knowledge, skills and experience as well as age, culture and gender. The Board should have a policy to govern this process and establish measurable objectives for achieving diversity in gender and other areas.

2.5 The Board should periodically invigorate its capabilities by ensuring the appointment of new members with relevant skills and fresh perspectives, while retaining valuable knowledge, skills, experience and diversity; and maintaining continuity.

2.6 No individual or small group of individuals should dominate the Board's decision-making.

2.7 The positions of the Chairman of the Board and the Managing Director/Chief Executive Officer (MD/CEO) of the Company should be separate such that no person can combine the two positions.

2.8 Directors may hold concurrent directorships. However, concurrent service on too many Boards may interfere with an individual's ability to discharge his responsibilities. To assist the Board in determining the appropriateness of concurrent directorships:

2.8.1 Prospective Directors should disclose memberships on other Boards, and current Directors should notify the Board of prospective appointments on other Boards. This information should be kept current by serving Board members.

2.8.2 The Board should consider the disclosed directorships, taking into account the number of other directorships and the responsibilities held, and determine whether the individual can discharge his responsibilities and contribute effectively to the performance of the Board before recommending such a person for appointment or continued service.

2.8.3 Directors should not be members of Boards of competing companies to avoid conflict of interest, breach of confidentiality, diversion of corporate opportunity and divulgence of corporate information.

2.9 The Chairman of the Board should not serve as chairman or member of any Board committee. The MD/CEO or an Executive Director should not serve as chairman of any Board committee.

2.10 A person (or group of persons) who is not a serving Director of the Company should not exercise any influence or dominance over the Board and/or Management. Such a person or group of persons would be deemed a shadow director as defined by extant laws.

3. Chairman

Principle 3:

The Chairman is responsible for providing overall leadership of the Company and the Board, and eliciting the constructive participation of all Directors to facilitate effective direction of the Board.

Recommended Practices

3.1 The Chairman's primary responsibility is to ensure the effective operation of the Board such that the Board works as a group towards achieving the Company's strategic objectives. He should also provide guidance to the MD/CEO and be available to him for regular communication.

3.2 The Chairman of the Board should be a NED and not be involved in the day-to-day operations of the Company, which should be the primary responsibility of the MD/CEO and the management team.

3.3 The MD/CEO or an Executive Director (ED) should not go on to be the Chairman of the same Company. If in very exceptional circumstances the Board decides that a former MD/CEO or an ED should become Chairman, a cool-off period of three years should be adopted.

3.4 The Chairman's functions should include the following:

3.4.1 presiding over meetings of the Board of Directors and general meetings of shareholders;

3.4.2 agreeing an annual Board plan with the Board;

3.4.3 ensuring that the agenda for Board meetings is set;

3.4.4 ensuring that the Board and its committees are composed of individuals with relevant skills, competencies and desired experience;

3.4.5 ensuring that Board meetings are properly conducted;

3.4.6 ensuring that the Board is effective and functions in a cohesive manner;

3.4.7 ensuring that induction programmes are conducted for new Directors and a continuing education programme is in place for all Directors;

3.4.8 ensuring effective communication and relations with the Company's shareholders and other stakeholders; and

3.4.9 taking a lead role in the assessment, improvement and development of the Board.

3.5 The Chairman is responsible for ensuring that management provides the Directors with accurate, timely and adequate information.

3.6 The Chairman may interact with NEDs periodically.

4. Managing Director/Chief Executive Officer

Principle 4:

The Managing Director/Chief Executive Officer is the head of management delegated by the Board to run the affairs of the Company to achieve its strategic objectives for sustainable corporate performance.

Recommended Practices

4.1 The Board may delegate any of its powers to the MD/CEO as it deems appropriate for the smooth operation of the Company.

4.2 The MD/CEO should have a broad understanding of the Company's business. He should demonstrate entrepreneurial skills, credibility and integrity and have the confidence of the Board and management.

4.3 The MD/CEO should establish a culture of integrity, conformance and performance which should be assimilated by personnel at all levels of the Company.

4.4 The functions and responsibilities of the MD/CEO should include:

4.4.1 day-to-day management of the Company;

4.4.2 proper implementation and achievement of the Company's strategic imperatives to ensure the sustainable development and growth of the Company;

4.4.3 ensuring prudent management of the Company's finances and other resources;

4.4.4 providing the Board with complete, accurate and timely information and documentation to enable it make sound decisions;

4.4.5 promoting and protecting the interests of the Company; and

4.4.6 being the Company's leading representative in its dealings with its stakeholders.

4.5 The authority of the MD/CEO and the relationship between him and the Board should be clearly set out in a contract of employment.

4.6 The MD/CEO should declare any conflict of interest on appointment and annually thereafter. In the event that he becomes aware of any potential conflict of interest at any other point, he should disclose this to the Board at the first possible opportunity. Actions following disclosure should be subject to the Company's Conflict of Interest Policy.

4.7 The MD/CEO should not be a member of the committees responsible for remuneration, audit, or nomination and governance.

4.8 The MD/CEO may be appointed an NED in any other Company, provided such appointment is not detrimental to his responsibilities and is in accordance with Board-approved policy.

5. Executive Directors

Principle 5:

Executive Directors support the Managing Director/Chief Executive Officer in the operations and management of the Company.

Recommended Practices

5.1 EDs should have a broad understanding of the Company's business in addition to possessing such other qualifications as may be needed for their specific assignments or responsibilities.

5.2 EDs should support the MD/CEO in the proper implementation and achievement of the Company's strategic imperatives, as well as prudent management of the Company's finances and other resources.

5.3 EDs should declare any conflict of interest on appointment and annually thereafter. In the event that they become aware of any potential conflict of interest at any other point, they should disclose this to the Board at the first possible opportunity. Actions following disclosure should be subject to the Company's Conflict of Interest Policy.

5.4 An ED may be appointed NED in any other company, provided such appointment is not detrimental to his responsibilities as an ED and is in accordance with Board-approved policy.

5.5 An ED should not be a member of the committees responsible for remuneration, audit, or nomination and governance.

5.6 The responsibilities and authority of EDs should be clearly set out in a contract of employment.

6. Non-Executive Directors

Principle 6:

Non-Executive Directors bring to bear their knowledge, expertise and independent judgment on issues of strategy and performance on the Board.

Recommended Practices

6.1 NEDs should be chosen on the basis of their wide experience, knowledge and personal qualities and are expected to bring these qualities to bear on the Company's business and affairs.

6.2 NEDs should constructively contribute to the development of the Company's strategy.

6.3 NEDs should not be involved in the day-to-day operations of the Company, which should be the primary responsibility of the MD/CEO and the management team.

6.4 NEDs should have unfettered access to the EDs, Company Secretary and the Internal Auditor, while access to other senior management should be through the MD/CEO.

6.5 To facilitate the effective discharge of their duties, NEDs should be provided, in a timely manner, with reasonable support as well as quality and comprehensive information relating to the management of the Company and on all Board matters.

7. Independent Non-Executive Directors

Principle 7:

Independent Non-Executive Directors bring a high degree of objectivity to the Board for sustaining stakeholder trust and confidence.

Recommended Practices

7.1 An Independent Non-Executive Director (INED) should represent a strong independent voice on the Board, be independent in character and judgment and accordingly be free from such relationships or circumstances with the Company, its management, or substantial shareholders as may, or appear to, impair his ability to make independent judgment.

7.2 An INED is a NED who:

7.2.1 does not possess a shareholding in the Company the value of which is material to the holder such as will impair his independence or in excess of 0.01% of the paid up capital of the Company;

7.2.2 is not a representative of a shareholder that has the ability to control or significantly influence Management;

7.2.3 is not, or has not been an employee of the Company or group within the last five years;

7.2.4 is not a close family member of any of the Company's advisers, Directors, senior employees, consultants, auditors, creditors, suppliers, customers or substantial shareholders;

7.2.5 does not have, and has not had within the last five years, a material business relationship with the Company either directly, or as a partner, shareholder, Director or senior employee of a body that has, or has had, such a relationship with the Company;

7.2.6 has not served at directorate level or above at the Company's regulator within the last three years;

7.2.7 does not render any professional, consultancy or other advisory services to the Company or the group, other than in the capacity of a Director;

7.2.8 does not receive, and has not received additional remuneration from the Company apart from a Director's fee and allowances; does not participate in the Company's share option or a performance-related pay scheme, and is not a member of the Company's pension scheme; and

7.2.9 has not served on the Board for more than nine years from the date of his first election.

7.3 The above-mentioned criteria for establishing the independent status of an INED are not exhaustive, but should be considered as examples of some of those relationships or circumstances which may impair, or appear to impair an INED's independent judgment.

7.4 The Board should annually ascertain and confirm the continued independence of each INED of the Company.

7.5 Reclassification of an existing NED into an INED on the same Board is not desirable.

8. Company Secretary

Principle 8:

The Company Secretary plays an important role in supporting the effectiveness of the Board by assisting the Board and management to develop good corporate governance practices and culture within the Company.

Recommended Practices

8.1 Without prejudice to the provisions of extant laws, the Company Secretary should be a person with relevant qualifications and competence necessary to effectively discharge the duties of his office. The Board should ensure that the person appointed has the gravitas and objectivity to provide independent guidance and support at the highest level of decision-making in the Company.

8.2 Where the Company Secretary is an employee of the Company, he should be a member of senior management and should be appointed through a rigorous selection process similar to that of new Directors.

8.3 The Company Secretary should be properly empowered by the Board to discharge his duties and responsibilities.

8.4 The Company Secretary should have both functional and administrative responsibilities. The functional responsibility is to the Board through the Chairman, while administratively, he reports to the MD/CEO.

8.5 The Board should approve the performance evaluation of the Company Secretary.

8.6 In addition to his statutory functions, the Company Secretary should carry out the following duties and responsibilities:

8.6.1 Provide the Board and Directors individually, with detailed guidance as to how their responsibilities should be properly discharged in the best interest of the Company;

8.6.2 Coordinate the induction and training of new Directors.

8.6.3 Assist the Chairman and MD/CEO in coordinating activities regarding the annual Board plan and with the administration of other strategic issues at the Board level;

8.6.4 Notify Board members of upcoming meetings of the Board and its committees as well as other matters that warrant their attention;

8.6.5 Compile Board papers and ensure that the Board's discussions and decisions are clearly and properly recorded and communicated to relevant persons in a timely manner;

8.6.6 Provide a central source of guidance and advice to the Board and the Company on matters of ethics, conflict of interest and good corporate governance.

8.7 Under the direction of the Chairman, the Company Secretary's responsibilities include ensuring good information flow within the Board and its committees and between senior management and NEDs.

8.8 Subject to the provisions of extant laws, the appointment and removal of the Company Secretary should be a matter for the Board.

9. Access to Independent Advice

Principle 9:

Directors are sometimes required to make decisions of a technical and complex nature that may require independent external expertise.

Recommended Practices

9.1 The Board should ensure that Directors, especially NEDs, have access to independent professional advice where they consider it necessary to discharge their responsibilities as Directors.

9.2 The Board should ensure that such independent professional advice is obtained as set out in the Company's governance policies and at the Company's expense.

10. Meetings of the Board

Principle 10:

Meetings are the principal vehicle for conducting the business of the Board and successfully fulfilling the strategic objectives of the Company.

Recommended Practices

10.1 In order to effectively perform its oversight function and monitor management's performance, the Board should meet at least once every quarter.

10.2 Every Director should endeavour to attend all Board meetings. The attendance record of Directors should be among the criteria for the re-election of a Director.

10.3 Minutes of meetings of the Board and its committees, as a record of what transpired at those meetings, should be prepared and sent to Directors on a timely basis. Such minutes should be formally reviewed and approved by the members of the Board or relevant Board committee at its next meeting.

11. Board Committees

Principle 11:

To ensure efficiency and effectiveness, the Board delegates some of its functions, duties and responsibilities to well-structured committees, without abdicating its responsibilities.

Recommended Practices

11.1 Board Committees

11.1.1 The Board should determine the number and composition of its committees as well as ensure that each is comprised of Directors with relevant skills and competencies.

11.1.2 Only Directors may be members of Board committees, while members of senior management may be required to attend committee meetings.

11.1.3 The terms of reference and composition of such committees should be set out in the Board-approved committee charter, which should be reviewed periodically.

11.1.4 The membership of Board committees should be reviewed and refreshed periodically.

11.1.5 Each committee should be composed of at least three members. Individual Board committee charters will indicate where INEDs are required.

11.1.6 To facilitate adequate oversight, the Board should establish committees responsible for nomination and governance, remuneration, audit and risk management.

11.1.7 The Board may combine any of the responsibilities mentioned in Section 11.1.6 on Board committees, taking into consideration the size, needs and other requirements of the Company.

11.1.8 The chairmen of Board committees should be appointed by the Board.

11.1.9 The Board should ensure that, in appointing members of the Board committees, there is a balanced distribution of power in respect of membership across committees so that no individual has the ability to dominate decision making and undue reliance is not placed on any individual.

11.1.10 The Company Secretary, or any other officer in the office of the Company Secretary, should be the secretary of all Board committees.

11.1.11 The agenda for the meetings of Board committees should be developed in consultation with the respective committee chairmen.

11.1.12 The timing of committee meetings should be well coordinated for the effective discharge of their duties.

11.1.13 At board meetings, the chairman of each Board committee should present a written report of the key recommendations made at all the meetings held by the committee since the last Board meeting.

11.1.14 Members of Board committees should devote sufficient time to the committees' work.

11.1.15 Board Committees may engage a consultant at the expense of the Company for the purpose of obtaining independent external expertise in carrying out their responsibilities. This should be done in line with the Company's policies.

11.1.16 Board Committees should be accountable to the Board for their own activities and performance.

11.2 Committee responsible for Nomination and Governance

11.2.1 The Board should consider assigning the responsibilities for nomination of members and oversight of governance matters to a stand-alone committee, or to any other committee capable of combining it with their existing functions, as is appropriate.

11.2.2 Members of the committee responsible for nomination and governance should be NEDs, and a majority of them should be INEDs where possible.

11.2.3 The chairman of the committee should be a NED.

11.2.4 The committee should meet at least twice a year or such number of times as may be appropriate to discharge its duties.

11.2.5 Among other things, the committee should have the duty to:

11.2.5.1 Review the structure, size, composition and commitment of the Board at least annually and make recommendations on any proposed changes to the Board;

11.2.5.2 Establish a formal and transparent process for Board appointments, including establishing the criteria for appointment to the Board and Board committees, reviewing prospective candidates' qualifications and any potential conflict of interest; assessing the contribution of current Directors against their re-nomination suitability, and making appropriate recommendations to the Board;

11.2.5.3 Identify individuals suitably qualified to become Board members and make recommendations to the Board for nomination and appointment as Directors;

11.2.5.4 Periodically determine the skills, knowledge and experience required on the Board and its committees;

11.2.5.5 Ensure that the Company has a formal programme for the induction and training of Directors;

11.2.5.6 Undertake the annual assessment of the independent status of each INED;

11.2.5.7 Ensure that the Company has a succession policy and plan in place for the Chairman of the Board, the MD/CEO and all other EDs, NEDs and senior management positions to ensure leadership continuity. Succession planning should be reviewed

periodically, with provision made for succession in emergency situations as well as long-term vacancies;

11.2.5.8 Deal with all matters pertaining to executive management selection and performance, including an annual evaluation of the performance of the MD/CEO and executive management.

11.2.5.9 Develop a process for, and ensure that the Board undertakes, an annual performance evaluation of itself, its committees, the Chairman and individual Directors, as well as the Company's corporate governance practices.

11.2.5.10 Ensure the development and periodic review of Board charters, Board committee charters and other governance policies, such as the code of ethics, conflict of interest and whistleblowing policies among others.

11.3 Committee responsible for Remuneration

11.3.1 The Board should consider assigning the responsibilities for the determination of remuneration policy and its application to executive management, performance evaluation, the adoption of incentive plans, and various governance responsibilities related to remuneration to a stand-alone committee, or to any other committee capable of combining it with their existing functions, as is appropriate.

11.3.2 Members of the committee responsible for remuneration should be NEDs, and a majority of them should be INEDs where possible.

11.3.3 It is desirable that the chairman of the committee be an INED.

11.3.4 The committee should meet at least once a year or such number of times as may be appropriate to discharge its duties.

11.3.5 The duties of the committee responsible for remuneration should include, among others:

11.3.5.1 Development of a formal, clear and transparent framework for the Company's remuneration policies and procedures;

11.3.5.2 Recommendation to the Board on the Company's remuneration policy and structure for all Directors and senior management employees.

11.4 Committee responsible for Audit

11.4.1 Without prejudice to the provision of extant laws on the Statutory Audit Committee, it is desirable for every Company to have a Board committee responsible for audit.

11.4.2 All members of the committee should be financially literate and should be able to read and understand financial statements. At least one member of the committee should be a financial expert, have current knowledge in accounting and financial management and be able to interpret financial statements.

11.4.3 For private companies, members of the committee responsible for audit should be NEDs, and a majority of them should be INEDs where possible.

11.4.4 In the case of the statutory audit committee, a chairman should be elected from amongst its members, and should have financial literacy.

11.4.5 The committee should meet at least once every quarter.

11.4.6 Subject to the provisions of extant laws, every public company should establish a statutory audit committee which shall perform the following functions:

11.4.6.1 Ascertain whether the accounting and reporting policies of the Company are in accordance with legal requirements and agreed ethical practices.

11.4.6.2 Review the scope and planning of audit requirements.

11.4.6.3 Review the findings in management letter in conjunction with the external auditor and management responses thereon.

11.4.6.4 Keep under review the effectiveness of the Company's system of accounting and internal control.

11.4.6.5 Make recommendations to the Board regarding the appointment, removal and remuneration of the external auditors of the Company.

11.4.6.6 Authorise the internal auditor to carry out investigations into any activities of the Company which may be of interest or concern to the committee.

11.4.7 The Board audit committee should have the following additional responsibilities:

11.4.7.1 Exercise oversight over management's processes to ascertain the integrity of the Company's financial statements, compliance with all applicable legal and other regulatory

requirements; and assess the qualifications and independence of the external auditors, and the performance of the Company's internal audit function as well as that of the external auditors;

11.4.7.2 Ensure the establishment of and exercise oversight on the internal audit function which provides assurance on the effectiveness of the internal controls. On a quarterly basis, obtain and review a report by the internal auditor describing the strength and quality of internal controls including identification of any issues or recommendations for improvement raised by the most recent internal audit review of the Company;

11.4.7.3 Ensure the development of a comprehensive internal control framework for the Company, obtain appropriate (internal and/or external) assurance and report annually in the Company's audited financial report, on the design and operating effectiveness of the Company's internal controls over the financial reporting systems;

11.4.7.4 Oversee the process for the identification of fraud risks across the Company and ensure that adequate prevention, detection and reporting mechanisms are in place;

11.4.7.5 Discuss the interim or annual audited financial statements as well as significant financial reporting findings and recommendations with management and external auditors prior to recommending same to the Board for their consideration and appropriate action;

11.4.7.6 Maintain oversight of financial and non-financial reporting.

11.4.7.7 Review and ensure that adequate whistle-blowing policies and procedures are in place and that the issues reported through the whistle-blowing mechanism are summarised and presented to the board;

11.4.7.8 Review, with the external auditors, any audit scope limitations or significant matters encountered and management's responses to same;

11.4.7.9 Develop a policy on the nature, extent and terms under which the external auditors may perform non-audit services;

11.4.7.10 Review the independence of the external auditors in line with the policy referred to in Section

11.4.7.9 above prior to their appointment to perform non-audit services to ensure that where approved non-audit services are provided by the external auditors, there is no real or perceived conflict of interest, or other legal or ethical impediment;

11.4.7.11 Preserve auditor independence, by setting clear hiring policies for employees or former employees of external auditors;

11.4.7.12 Ensure the development of a Related Party Transactions policy and monitor its implementation by management. The Committee should consider any related party transaction that may arise within the Company.

11.4.8 At least once in a year, the committee should hold a discussion with the head of the internal audit function and the external auditors without the presence of management, to facilitate an exchange of views and concerns that may not be appropriate for open discussion.

11.5 Committee responsible for Risk Management

11.5.1 The Board should consider assigning the responsibilities for oversight of matters relating to risk management to a stand-alone committee, or to any other committee capable of combining it with their existing functions, as is appropriate.

11.5.2 Members of the committee responsible for risk management should include EDs and NEDs, a majority of whom should be NEDs.

11.5.3 Where the committees responsible for audit and risk management are separate, the Board should consider for one or more members to have joint membership of both committees for more effective functioning as this will enhance the discussions at meetings of both committees – the risk implication of audit matters will be discussed more extensively, and a knowledge of findings from the Company’s internal audit activities will bring a unique perspective to the discussion of risk issues.

11.5.4 The chairman of the committee should be a NED.

11.5.5 The committee should meet at least twice every financial year or such number of times as may be appropriate to discharge its duties.

11.5.6 The committee should:

11.5.6.1 Review and recommend for approval of the Board, the risk management policies and framework, as well as assist the Board in its oversight of risk management strategy;

11.5.6.2 Review the adequacy and effectiveness of risk management and controls in the Company;

11.5.6.3 Exercise oversight over the process for the identification and assessment of risks across the Company and the adequacy of prevention, detection and reporting mechanisms;

11.5.6.4 Review the level of the Company's compliance with applicable laws and regulatory requirements which may impact the Company's risk profile;

11.5.6.5 Periodically review changes in the economic and business environment, including emerging trends and other factors relevant to the Company's risk profile and those trends which may threaten the Company's business model, key strategies, future performance, solvency and liquidity and make recommendations to the Board as appropriate;

11.5.6.6 Review and recommend for approval of the Board, at least annually, the Company's Information Technology (IT) data governance framework to ensure that IT data risks are adequately mitigated and relevant assets are managed effectively. The framework may include:

(a) Development of IT strategy and policy;

(b) Proactive monitoring and management of cyber threats and attacks as well as adverse social media incidents;

(c) Management of risks relating to third-party and outsourced IT service providers;

(d) Assessment of value delivered to the Company through investments in IT; and

(e) Periodic independent assurance on the effectiveness of the Company's IT arrangements.

11.5.7 The person charged with the responsibility for risk management should be a member of senior management of the Company, a professional with relevant qualifications and experience and should be in attendance at meetings of the committee. The direct reporting line of this person should be to the MD/CEO and there should be an indirect reporting line to the committee responsible for risk management.

12. Appointment to the Board

Principle 12:

A written, clearly defined, rigorous, formal and transparent procedure serves as a guide for the selection of Directors to ensure the appointment of high quality individuals to the Board.

Recommended Practices

12.1 The Board should approve the criteria for appointing Directors, as recommended by the committee responsible for nomination and governance. Such criteria should take into careful consideration the strengths and weaknesses of the existing Board, integrity, required competence and skills, knowledge and experience, capacity to undertake the responsibility as well as diversity, including gender diversity. In the case of specialised businesses, possession of requisite technical skill should be taken into account.

12.2 The committee responsible for nomination and governance should ensure that proposed Directors are fit and proper persons before recommending them to the Board for consideration for directorship positions.

12.3 Shareholders should be provided with biographical information of proposed Directors to guide their decision. Such information should include:

(a) name, age, qualifications, country of primary residence and the ownership interest represented, if any;

(b) whether the appointment is for ED, NED or INED, and any proposed specific area of responsibility or Board committee roles if any;

(c) work experience and occupation;

(d) current directorships and appointments;

(e) direct and/or indirect shareholding in the Company and/or its subsidiaries; and

(f) any other relevant information.

12.4 Every Director should receive a letter of appointment or contract of employment, specifying the terms and conditions of his appointment or employment.

12.5 The letter of appointment or contract of employment should cover the following issues:

(a) duration of the appointment or tenure;

(b) details of the remuneration;

(c) summary of the rights, fiduciary duties and other responsibilities of the Director;

- (d) requirement to disclose any material interests in the Company and other entities carrying on business or providing services to the Company;
- (e) specific requirements, such as Board or Board committee meeting attendance;
- (f) formal induction programme or training for the Director to attend;
- (g) Board Charter, Code of Business Conduct and Ethics (attached as separate documents) and the Director's responsibility to observe same;
- (h) Board performance evaluation process used by the Company; and
- (i) any other relevant information.

12.6 The Company should state the processes used in relation to all Board appointments in its annual report.

12.7 Subject to the provisions of extant laws and the recommendation of the committee responsible for nomination and governance based on the results of the individual Directors' performance appraisal, Board members may offer themselves for re-election.

12.8 NEDs should serve for a reasonable period on the Board. However, it is necessary to reinforce the Board by continually injecting new energy, fresh ideas and perspectives. The Board should ensure the periodic appointment of new Directors to replace existing NEDs.

12.9 The tenure for the MD/CEO and the EDs should be determined by the Board. In determining the tenure of an ED, the Board should take into account his performance, the existing succession planning mechanism, continuity of the Board and the need for continuous refreshing of the Board.

12.10 The tenure for INEDs should not exceed three terms of three years each.

12.11 To resign, Directors should submit a written notice of resignation addressed to the Chairman.

12.12 Where a Director has concerns about the running of the Company which cannot be resolved and he elects to resign from the Board, such concerns should be detailed in a written statement to the Chairman for circulation to the Board.

13. Induction and Continuing Education

Principle 13:

A formal induction programme on joining the Board as well as regular training assists Directors to effectively discharge their duties to the Company.

Recommended Practices

13.1 The Board should establish a formal induction programme for new Directors of the Company to familiarise them with the Company's, strategic plan, operations, business environment, senior management, and the Directors' fiduciary responsibilities. The induction of new Directors should take place as soon as feasible after their appointment.

13.2 All Directors should participate in periodic, relevant, continuing education programmes to update their knowledge and skills and keep them informed of new developments in the Company's business and operating environment.

13.3 The outcome of the performance evaluation of the individual Directors should be taken into account in developing the Board training programme.

13.4 The training programmes should be at the Company's expense but should not be such that put undue strain on the Company's finances.

14. Board Evaluation

Principle 14:

Annual Board evaluation assesses how each Director, the committees of the Board and the Board are committed to their roles, work together and continue to contribute effectively to the achievement of the Company's objectives.

Recommended Practices

14.1 The Board should establish a system to undertake a formal and rigorous annual evaluation of its own performance, that of its committees, the Chairman and individual Directors. This process should be externally facilitated by an independent external consultant at least once in three years.

14.2 The evaluation system should include the criteria and key performance indicators and targets for the Board, its committees, the Chairman and each individual Board member.

14.3 The evaluation of the Board should consider the mix of skills, experience, objectivity, competence of members of the Board, its diversity (including gender), knowledge of the Company and its strategic direction, attendance at meetings, how the Board works together and other factors relevant to its effectiveness.

14.4 The result of the Board performance evaluation should be communicated to and discussed by the Board as a whole, while those of individual Directors should be communicated to and discussed with them individually by the Chairman.

14.5 Where the performance of a Director is considered to be unsatisfactory, the Board should provide appropriate training to address the identified gaps.

14.6 The results of a Director's performance evaluation should be considered in the Director re-election process.

15. Corporate Governance Evaluation

Principle 15:

Institutionalising a system for evaluating the Company's corporate governance practices ensures that its governance standards, practices and processes are adequate and effective.

Recommended Practices

15.1 The Board should ensure that an annual corporate governance evaluation, including the extent of application of this Code, is carried out. The evaluation should be facilitated by an independent external consultant at least once in three years.

15.2 The summary of the report of this evaluation should be included in the Company's annual report and on the investors' portal of the Company.

16. Remuneration Governance

Principle 16:

The Board ensures that the Company remunerates fairly, responsibly and transparently so as to promote the achievement of strategic objectives and positive outcomes in the short, medium and long term.

Recommended Practices

16.1 The Board should assume responsibility for the governance of remuneration by setting the direction for how remuneration should be addressed on a Company-wide basis.

16.2 The Board should approve policies that articulate and give effect to its direction on fair, responsible and transparent remuneration.

16.3 The remuneration policy should be designed to attract, motivate, reward and retain high performing human capital.

16.4 The Board should periodically confirm that the implementation and execution of the remuneration policy achieves its objectives.

16.5 Remuneration for NEDs should be fixed by the Board and approved by shareholders in the General Meeting.

16.6 The remuneration of the MD/CEO and EDs should be structured to link rewards to corporate and individual performances and include a significant component that is related to long-term corporate performance, such as stock options and bonuses. Mechanisms may be considered to align payment of certain components of the remuneration of the MD/CEO and EDs with the achievement of longer-term goals.

16.7 The MD/CEO and EDs should not be involved in the determination of their remuneration.

16.8 The Company's Remuneration Policy as well as remuneration of all Directors should be disclosed in the Company's annual report.

16.9 Companies should implement a clawback policy to recover excess or undeserved reward, such as bonuses, incentives, share of profits, stock options, or any performance-based reward, from Directors and senior employees.

16.10 Clawback can be triggered if the account or financial performance on which the reward was based is later found to be materially false, misstated, misleading, erroneous, etc. or in instances of misdemeanour, fraud, material violation of Company policy or material regulatory infractions.

16.11 The MD/CEO and EDs should not receive sitting allowances for attending meetings of the Board or its committees and Director's fees from the Company, its holding company or subsidiaries. Their remuneration should however encompass recompense for time spent on the Board, its committees, and related work.

16.12 NEDs should not receive performance-based compensation as it may lead to bias in their decision-making and compromise their objectivity.

16.13 NEDs may be paid sitting allowances, Directors' fees and reimbursable travel and hotel expenses. These payments, in addition to any other allowances and benefits made to NEDs, should be disclosed in the Company's annual report.

16.14 Subject to the provisions of extant laws, the Company may pay compensation for loss of office or retirement to Directors. In the case of the MD/CEO, EDs and senior management, the compensation payable for any loss of office or termination of appointment should be consistent with their contractual terms, fair and not excessive.

Part B. Assurance

17. Risk Management

Principle 17:

A sound framework for managing risk and ensuring an effective internal control system is essential for achieving the strategic objectives of the Company.

Recommended Practices

The Board should:

17.1 ensure the establishment of a risk management framework that:

17.1.1 defines the Company's risk policy, risk appetite and risk limits; and

17.1.2 identifies, assesses, monitors and manages key business risks to safeguard shareholders' investments and the Company's assets;

17.2 formally approve the risk management framework and ensure that it is communicated in simple and clear language to all employees;

17.3 ensure that the risk management framework is integrated into the day-to-day operations of the business and provide guidelines and standards for management of key risks;

17.4 articulate, implement and review the Company's internal control systems to strengthen the risk management framework;

17.5 conduct at least annually, or more often in companies with complex operations, a thorough risk assessment covering all aspects of the Company's business and ensure that mitigating strategies have been put in place to manage identified risks;

17.6 obtain and review relevant reports periodically to ensure the ongoing effectiveness of the Company's risk management framework;

17.7 ensure that the Company's risk management framework is disclosed in the annual report; and

17.8 ensure that the risk management function is headed by a member of senior management who is a professional with relevant qualifications, competence, objectivity and experience.

18. Internal Audit Function

Principle 18:

An effective internal audit function provides assurance to the Board on the effectiveness of the governance, risk management and internal control systems.

Recommended Practices

18.1 The purpose, authority and responsibility of the internal audit function should be clearly and formally defined in an internal audit charter approved by the Board.

18.2 Where the Board decides not to establish such a function, internally or outsourced, sufficient reasons should be disclosed in the Company's annual report with an explanation as to how the Board has obtained adequate assurance on the effectiveness of the internal processes and systems such as risk management and internal control.

18.3 The internal audit function should be headed by a member of senior management who is a professional with relevant qualifications, competence, objectivity and experience; and is registered with a recognised professional body.

18.4 The Board should ensure that the internal audit function is sufficiently skilled and resourced to address the complexity and volume of risk faced by the organisation.

18.5 The head of the internal audit function should:

18.5.1 Report directly to the committee responsible for audit while having a line of communication with the MD/CEO.

18.5.2 Have unrestricted access to the chairman of the committee responsible for audit as well as the Chairman of the Board.

18.5.3 Report at least once every quarter to the committee responsible for audit, on the adequacy and effectiveness of management, governance, risk and control environment; deficiencies observed and management mitigation plans.

18.5.4 Provide assurance to the Board by conducting periodic evaluations to determine the effectiveness and efficiency of the Company's internal control systems and make recommendations for enhancement or improvement.

18.5.5 Develop an annual risk-based internal audit plan which should be approved by the committee responsible for audit.

18.5.6 Liaise with other internal and external providers of assurance in order to ensure proper coverage and to minimize duplication of efforts.

18.6 There should be an external assessment of the effectiveness of the internal audit function at least once every three years by a qualified independent reviewer to be appointed by the Board.

18.7 The evaluation of the head of the internal audit function should be performed by the committee responsible for audit, and he may only be removed by the Board on the recommendation of the committee responsible for audit.

19. Whistle-blowing

Principle 19:

An effective whistle-blowing framework for reporting any illegal or unethical behaviour minimises the Company's exposure and prevents recurrence.

Recommended Practices

19.1 The Board should establish a whistle-blowing framework to encourage stakeholders to bring unethical conduct and violations of laws and regulations to the attention of an internal and/or external authority so that action can be taken to verify the allegation and

apply appropriate sanctions or take remedial action to correct any harm done. This framework should be known to employees and external stakeholders.

19.2 The Board should ensure the existence of a whistle-blowing mechanism that is reliable, accessible and guarantees the anonymity of the whistle-blower, and that all disclosures resulting from whistle-blowing are treated in a confidential manner. The identity of the whistle-blower should be kept confidential.

19.3 The Board should accord priority to the effectiveness of the whistle-blowing mechanism and continually affirm publicly, its support for and commitment to the Company's whistle-blower protection mechanism.

19.4 The team responsible for managing disclosures obtained through the whistle-blowing mechanism should:

19.4.1 Review reported cases and bring them to the notice of the committee responsible for audit

19.4.2 Provide the committee responsible for audit with a summary of reported cases, cases investigated, the process of investigation and the results of the investigations.

19.5 A whistle-blower can disclose any information related to a violation or suspected violation of any laws, internal policies, etc. connected with the business of the Company, its employees or stakeholders.

19.6 The Board should ensure that no whistle-blower is subject to any detriment on the grounds that he has made a disclosure. Where a whistle-blower has been subjected to any detriment, he may present a complaint to the Board and/or regulators. A whistle-blower who has suffered any detriment by reason of disclosure may be entitled to compensation and/or reinstatement as appropriate.

20. External Auditors

Principle 20:

An external auditor is appointed to provide an independent opinion on the true and fair view of the financial statements of the Company to give assurance to stakeholders on the reliability of the financial statements.

Recommended Practices

20.1 Subject to the provisions of any extant laws, the recommendation for the appointment, re-appointment or removal of an external auditor should be made to the Board by the committee responsible for audit.

20.2 External audit firms may be retained for no longer than ten years continuously. External audit firms disengaged after ten years continuous service may not be considered for reappointment until seven years after their disengagement. Where an external auditor's aggregate or cumulative tenure has already exceeded ten years at the date of commencement of this Code, such auditor should cease to hold office as an auditor of the Company at the Annual General Meeting to be held immediately after this Code comes into effect.

20.3 An external auditor may provide to the Company only such other services as are approved by the Board on the recommendation of the committee responsible for audit and such as does not create a self-review threat in line with the provisions of international auditing standards.

20.4 In order to preserve independence, there should be a rotation of the audit engagement partner every five years.

20.5 In order to preserve independence, there should be an appropriate cooling off period spanning at least three years between the retirement of a partner from an audit firm and his appointment to the Board of an audit client. Similarly, there should be a cooling off period before a Company can engage any member of the audit team as a staff member in the financial reporting function.

20.6 In order to ensure quality audit outcomes, the engagement partner and audit team should possess the knowledge, relevant skills and experience. Additionally, they should demonstrate a good understanding of the Company's business, be independent of the Company and approach their work with a high level of objectivity and professionalism – including applying internationally accepted audit standards in their work.

20.7 Where the Board is satisfied that the external auditor has abused its office, acted in a fraudulent manner, colluded in any fraud or engaged in any unethical practice, it may recommend the removal of such external auditor in accordance with the provisions of extant laws. Where a Regulator is satisfied that the external auditor of a Company has abused its office as auditor, it may request the Company to remove such external auditor in line with the provisions of extant laws.

20.8 Where external auditors discover or acquire information during an audit that leads them to believe that the Company or anyone associated with it has committed an indictable

offence under any law, they should report this to the Regulator, whether or not such matter is or will be included in the Management Letter issued to the committee responsible for audit and/or the Board.

Part C. Relationship with Shareholders

21. General Meetings

Principle 21:

General Meetings are important platforms for the Board to engage shareholders to facilitate greater understanding of the Company's business, governance and performance. They provide shareholders with an opportunity to exercise their ownership rights and express their views to the Board on any areas of interest.

Recommended Practices

21.1 General Meetings should be conducted in an open manner allowing for free discussions on all issues on the agenda. Sufficient time should be allocated to shareholders, particularly minorities, to participate fully and contribute effectively at such meetings.

21.2 The chairmen of all Board committees and of the Statutory Audit Committee should be present at General Meetings of the Company to respond to shareholders' inquiries.

21.3 The venue of a General Meeting should be accessible to shareholders, to ensure that shareholders are not disenfranchised on account of the choice of venue.

21.4 Notices of General Meetings shall be at least 21 days from the date on which the meeting will be held. Copies of the annual reports, audited financial statements and all other information pertaining to any resolution to be voted upon – including voting or proxy instructions and relevant papers – that will enable members prepare adequately for the meeting should be despatched along with the notice.

21.5 The Board should ensure that unrelated issues for consideration are not lumped together at General Meetings. All matters to be considered should be clearly and separately set out. Separate resolutions should be proposed and voted on for each substantive issue.

21.6 The Board should ensure that decisions reached at General Meetings are properly and fully implemented as governance directives.

22. Shareholder Engagement

Principle 22:

The establishment of a system of regular dialogue with shareholders balances their needs, interests and expectations with the objectives of the Company.

Recommended Practices

22.1 The Board should develop a policy that ensures appropriate engagement with shareholders. The policy should be hosted on the website of the Company.

22.2 The Chairman of the Board, or other designated persons as specified in the policy referred to in Section 22.1, may interact with shareholders in order to help develop a balanced understanding of shareholder issues and ensure that their views are communicated to the Board.

22.3 The Board should encourage institutional investors to:

22.3.1 Positively influence the standard of corporate governance and promote value creation in the companies in which they invest.

22.3.2 Monitor conformance with the provisions of this Code and raise concerns as appropriate.

22.4 The Board should ensure that dealings of the Company with shareholder associations are always transparent and in the best interest of the Company.

23. Protection of Shareholder Rights

Principle 23:

Equitable treatment of shareholders and the protection of their statutory and general rights, particularly the interest of minority shareholders, promote good governance.

Recommended Practices

23.1 The Board should ensure that:

23.1.1 shareholders at annual general meetings preserve their effective powers to appoint and remove Directors of the Company;

23.1.2 all shareholders are treated fairly and equitably. No shareholder, however large his shareholding or whether institutional or otherwise, should be given preferential treatment or superior access to information or other materials;

23.1.3 minority shareholders are adequately protected from abusive actions by controlling shareholders;

23.1.4 the Company promptly renders to shareholders documentary evidence of ownership interest in the Company and related instruments. Where these are rendered electronically, the Board should ensure that they are rendered to shareholders promptly and in a secure manner; and

23.1.5 all shareholders understand the ownership structure of the Company, and support them in this by making available, current information on the ultimate beneficial owners of the major shareholdings or any shareholders owning, controlling or influencing five percent (5%) or more of the Company's shares.

23.2 At all times, Directors should act in good faith and with integrity in the best interests of all shareholders, and provide adequate information to shareholders to facilitate their investment decisions.

24. Business Conduct and Ethics

Principle 24:

The establishment of professional business and ethical standards underscores the values for the protection and enhancement of the reputation of the Company while promoting good conduct and investor confidence.

Recommended Practices

24.1 The Board should clearly model a top-down commitment to professional business and ethical standards by formulating and periodically reviewing the Code of Business Conduct and Ethics.

24.2 The Board should be responsible for monitoring adherence to the Code of Business Conduct and Ethics to ensure that breaches are effectively sanctioned. This may be delegated to the committee responsible for nomination and governance.

24.3 The Code of Business Conduct and Ethics should include the following:

24.3.1 Directors and senior management of the Company should act honestly, in good faith and in the best interests of the Company in accordance with legal requirements and agreed ethical standards;

24.3.2 Directors owe a fiduciary duty to the Company, together with a duty of care, skill, diligence and loyalty in fulfilling the functions of their offices and exercising the powers attached to those offices;

24.3.3 Directors should undertake diligent analysis of all proposals placed before the Board and act with the level of skill expected from Directors;

24.3.4 Directors should not make improper or prejudicial use of privileged information and should not disclose non-public information except where disclosure is authorised or legally mandated;

24.3.5 Directors should not take advantage of their position for personal gain or to compete with the Company;

24.3.6 Directors should not engage in conduct likely to discredit the Company, and should encourage fair dealing by all employees with the Company's customers, suppliers and competitors;

24.3.7 Directors should encourage the reporting of unlawful or unethical behaviours and actively promote ethical behaviours and the protection of those who report violations in good faith; and

24.3.8 Directors, management and other employees shall have an obligation to comply with the principles of the Code of Business Conduct and Ethics at all times.

24.4 The Code of Business Conduct and Ethics should:

(a) commit the Company, its Board, management and other employees, contractors, suppliers (under contractual terms) and other company-controlled entities to the highest standards of professional and ethical behaviour, business conduct and sustainable business practices;

(b) be designed with due consideration of the interests of the Company, its management and employees;

(c) receive its implementation commitment from the MD/CEO and executive management;

(d) be sufficiently detailed as to give clear guidance to users; and

(e) be formally communicated to all persons to whom it applies.

24.5 Companies are encouraged to explore formal mechanisms for engagement and communication with stakeholders, including the use of alternative dispute resolution mechanisms and associated processes.

25. Ethical Culture

Principle 25:

The establishment of policies and mechanisms for monitoring insider trading, related party transactions, conflict of interest and other corrupt activities, mitigates the adverse effects of these abuses on the Company and promotes good ethical conduct and investor confidence.

Recommended Practices

25.1 The Board should ensure:

25.1.1 The establishment of policies on insider trading, related party transactions and conflict of interest.

25.1.2 That insiders are precluded from buying and selling any security in breach of their fiduciary duty and other relationship of trust and confidence while in possession of material, privileged, non-public and price-sensitive information about the Company.

25.1.3 That insiders are precluded from engaging in unlawful or improper transfers of assets and profits out of companies for their personal benefits or for the benefit of those who control the companies

25.1.4 The disclosure of all transactions between related parties, whether natural persons or bodies corporate, including whether such transactions have been executed at arm's length and on normal market terms. This disclosure should be made prior to the conclusion of the transaction, if they exceed a disclosure threshold as determined by the Board.

25.2.1 Directors should promptly disclose any real or potential conflict of interest that they may have by virtue of their membership of the Board.

25.2.2 A Director may not be present during the time any matter in which he has an interest is being decided and should not seek to participate or influence any discussions or negotiations relating to that matter.

25.2.3 If a Director is not certain whether he is in a conflict of interest situation, the Director concerned should discuss the matter with the Chairman of the Board, the Company Secretary or the chairman of the committee responsible for nomination and governance for advice and guidance.

25.2.4 If any question arises before the Board as to the existence of a real or perceived conflict, the Board should by a simple majority determine if a conflict exists. The Director or Directors potentially in the conflict of interest situation should not be present during any discussion and voting on the issue.

25.2.5 Directors who are aware of a real, potential or perceived conflict of interest on the part of a fellow Director, have a responsibility to raise the issue promptly for clarification, either with the Director concerned, the Chairman of the Board or the chairman of the committee responsible for nomination and governance.

25.2.6 Disclosure by a Director of a real, potential or perceived conflict of interest or a decision by the Board as to whether or not a conflict of interest exists should be recorded in the minutes of the meeting.

25.2.7 All directors should declare any conflict of interest on appointment and annually thereafter. In the event that they become aware of any potential conflict of interest at any other point, they should disclose this to the Board at the first

25.2 The policy on conflict of interest should be communicated, supported and monitored to provide reasonable assurance that all potential conflict of interest situations will be disclosed. The policy should be guided by the following:

25.2.1 Directors should promptly disclose any real or potential conflict of interest that they may have by virtue of their membership of the Board.

25.2.2 A Director may not be present during the time any matter in which he has an interest is being decided and should not seek to participate or influence any discussions or negotiations relating to that matter.

25.2.3 If a Director is not certain whether he is in a conflict of interest situation, the Director concerned should discuss the matter with the Chairman of the Board, the Company Secretary or the chairman of the committee responsible for nomination and governance for advice and guidance.

25.2.4 If any question arises before the Board as to the existence of a real or perceived conflict, the Board should by a simple majority determine if a conflict exists. The Director or Directors potentially in the conflict of interest situation should not be present during any discussion and voting on the issue.

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25.2.6 Disclosure by a Director of a real, potential or perceived conflict of interest or a decision by the Board as to whether or not a conflict of interest exists should be recorded in the minutes of the meeting.

25.2.7 All directors should declare any conflict of interest on appointment and annually thereafter. In the event that they become aware of any potential conflict of interest at any other point, they should disclose this to the Board at the first possible opportunity. Actions following disclosure should be subject to the Company's conflict of interest policy.

25.2.8 No person who has served at directorate level or above, leaving the services of a relevant regulatory institution, for any reason, should be appointed as a Director or top management staff of an institution that has been directly supervised or regulated by the said regulatory institution until after three years of the disengagement of such executive or senior management staff from that regulatory institution.

Part E. Sustainability

26. Sustainability

Principle 26:

Paying adequate attention to sustainability issues including environment, social, occupational and community health and safety ensures successful long term business performance and projects the Company as a responsible corporate citizen contributing to economic development.

Recommended Practices

26.1 The Board should establish policies and practices regarding its social, ethical, safety, working conditions, health and environmental responsibilities as well as policies addressing corruption.

26.2 The policies should include the following:

26.2.1 the Company's business principles, practices and efforts towards achieving sustainability;

26.2.2 the management of safety issues including workplace accidents, fatalities, occupational and safety incidents;

26.2.3 plans and strategy for addressing and managing the impact of serious diseases on the Company's employees and their families;

26.2.4 the most environmentally beneficial options particularly for companies operating in disadvantaged regions or in regions with delicate ecology, in order to minimise environmental impact of the Company's operations;

26.2.5 the nature and extent of employment equity and diversity (gender and other issues);

26.2.6 training initiatives, employee development and the associated financial investment;

26.2.7 opportunities created for physically challenged persons or disadvantaged individuals;

26.2.8 the environmental, social and governance principles and practices of the Company; and

26.2.9 corruption and related issues.

26.3 The Board should monitor the implementation of sustainability policies and report on the extent of compliance with the policies.

Part F. Transparency

27. Stakeholder Communication

Principle 27:

Communicating and interacting with stakeholders keeps them conversant with the activities of the Company and assists them in making informed decisions.

Recommended Practices

27.1 The Board should adopt and implement a stakeholder management and communication policy.

27.2 The Board should ensure that the reports and other communication issued to stakeholders are in clear and easily understood language and are posted on the Company's web portal. This information may include description of structures of the Board and management among others, frameworks, policies and other material information about the Company.

27.3 Communication with stakeholders and the general public should be governed by the principle of timely, accurate and continuous disclosure of material information on the activities of the Company so as to give a balanced and fair view of the Company, including its non-financial matters.

27.4 The Board should establish an investors' portal on the Company's website, where the communication policy as well as the Company's annual reports for a minimum of five immediately preceding years and other relevant information about the Company should be published and made accessible to the public in downloadable format.

28. Disclosures

Principle 28:

Full and comprehensive disclosure of all matters material to investors and stakeholders, and of matters set out in this Code, ensures proper monitoring of its implementation which engenders good corporate governance practice.

Recommended Practices

28.1 The Board should ensure that the Company's annual report includes a corporate governance report that provides clear information on the Company's governance structures, policies and practices as well as environmental and social risks and opportunities.

28.2 The Company's corporate governance report should include the following:

(a) composition of the Board of Directors, stating the names and classification of the Chairman, the MD/CEO, EDs and NEDs as well as INEDs. This information should also be on the Company's website and other publications of the Company;

- (b) the plan for achieving gender diversity set by the Board in accordance with its diversity policy, the progress towards achieving them and the proportion of women employees in the whole organisation, including women in executive management positions and women on the Board;
- (c) Board appointment process including a summary statement on induction and training of Board members;
- (d) evaluation process for the Board, its Committees and individual Directors as well as the assessment of the corporate governance practices in the Company;
- (e) Directors standing for re-election;
- (f) composition of Board committees including names of chairmen and members of each committee;
- (g) description of the roles and responsibilities of the Board committees and how the committees have discharged those responsibilities;
- (h) the number of meetings held by the Board and its committees during the year and the attendance of individual Directors at those meetings;
- (i) cumulative years of service of each Director, the external auditor and the external consultant who performs the Board Evaluation or Corporate Governance Evaluation at the end of the reporting period;
- (j) statement on the availability or otherwise of the Code of Business Conduct and Ethics for Directors, management and other employees;
- (k) highlights of human resource policies and internal management structure, including relations with employees, employee share-ownership schemes and other workplace development initiatives;
- (l) highlights of sustainability policies and programmes covering social issues such as corruption, community service, including environmental protection, serious diseases and matters of general environmental, social and governance (ESG) initiatives;
- (m) highlights of the policy and cases of clawback being pursued by the Company; and

(n) a list of all the fines and penalties (including date, amount, and subject matter) imposed on the Company by regulators at the end of the reporting period.

28.3 The report should specify the nature of any related party relationships and transactions as follows:

28.3.1 their purpose and financial magnitude necessary to understand whether the transactions have been at arm's length and that the Company has not suffered any loss or disadvantage from such transactions.

28.3.2 any Director's interest in contracts either directly or indirectly with the Company or its subsidiaries and holding companies.

28.3.3 the name of the Director, his classification, the nature and details of the transaction and the Director's interest therein: provided that the disclosures required do not include the Director's service contract.

28.3.4 any contracts with controlling shareholder(s), their group networks and associates.

28.3.5 The names of the parties and the nature of the transaction, and the value (monetary or other value) involved in the transaction.

28.4 The Board should use its best judgment to disclose any material matter even though not specifically required by this Code to be disclosed if in the opinion of the Board such matter is capable of affecting the present or anticipated financial condition of the Company or its status as a going concern. The onus of proof of such possible negative effect is on the Board.

28.5 The annual report should contain a statement by the Board on the Company's level of application of this Code arising from the results of its corporate governance evaluation.

28.6 Where the Board has engaged independent experts in evaluating and reporting on the extent of application of this Code, they should name the consultant and include a summary of the report (provided by the consultant) in the Company's annual report.

28.7 A Director who has serious concerns about the activities of a Company should ensure that the following are promptly raised to the Board for resolution:

- (a) any unreported cases of conflict of interest, insider trading, related party transactions, fraud or any illegal or suspected illegal activities;
- (b) the impairment of the external auditor's independence and objectivity, or failure to approach his work with an acceptable degree of professional scepticism;
- (c) any violation of this Code, extant laws and regulations, and disregard for accounting standards, auditing standards or financial reporting requirements;
- (d) the impairment of the independence of the Board or any of its committees; or
- (e) condoning of unethical behaviour and conduct in the Company.

28.8 The annual report should contain a statement by the Board on the Company's ESG activities. This should be reviewed by an appropriate Board committee and may be subject to independent review.

28.9 The Company should establish policies and procedures for the identification, communication and response to concerns from stakeholders.

6.3.1 Key features to consider in drawing up a Board Charter

1. Primary Duty

- i. The Board must exercise power in good faith.
- ii. The Board must act in the best interests of the CMO.
- iii. The Board must act with care, as when acting on own behalf of the CMO.

2. Core Values

- i. Promote effective and responsible use of resources
- ii. Take into account financial impact of decisions
- iii. Appreciate consequences for sustainable development
- iv. Uphold the interests of community in which the CMO operates

3. Scope of Responsibility

- i. Uphold CMO's Values, Support its Strategic Direction
- ii. Establish appropriate structures
- iii. Ensure effective compliance, control, risk measures and accounting to members

4. Commitment

- i. Disclosure of other directorships
- ii. Dedicate time and attention necessary to fulfill Board duties
- iii. Regular attendance at Board meetings

5. Independence

- i. Resist pressures from others, Board or Non-board
- ii. Preserve independence of analysis, judgment and decisions
- iii. Undertake not to seek personal advantage

6. Conflict of interest

- i. Full disclosure of possible direct/indirect conflicts of interest
- ii. No participation in matters involving such conflict

7. Board effectiveness

- i. Use best efforts to attend all Board meetings
- ii. Prepare sufficiently for Board meetings, consider papers
- iii. Where no attendance, communicate views to chairman for consideration

8. Board evaluation

- i. No single member to exercise uncontrolled discretionary powers
- ii. Regularly undertake an evaluation of Board functioning

9. Confidentiality

- i. Information communicated in confidence is to be treated as such
- ii. Necessary precautions to be taken to preserve confidentiality
- iii. Relates personally to all Board members/directors

10. Duty to communicate dissent

- i. Give reasons for disagreement
- ii. Availability of external professional advice
- iii. Possibility of postponement of decision or agree special meeting

6.3.2 Further features to consider in drawing up a Board Charter

1. PURPOSE OF CHARTER

The Board Charter sets out the role, composition and responsibilities of the Board of Directors (“the Board”) of CMO.

The conduct of the Board is also governed by the Constitution of the CMO, a copy of which is located at the CMO website.

A number of operational matters relating to the Board such as number of meetings per year, notification of interests, and election of directors are governed by the constitution of the CMO and are not reproduced here.

2. PURPOSE OF THE BOARD

The Board has two broad purposes, compliance and performance:

COMPLIANCE: conform with or exceed all legal requirements

Legal

- i. Monitor the constitution of the CMO.
- ii. Comply with directors’ responsibilities.
- iii. Comply with relevant laws and regulations guiding the operations of the CMO.

Accountability

- i. Monitor the financials of the CMO.
- ii. Compliance with audits rules.

PERFORMANCE: assist the organization to perform to its best potential

Strategy and Policy

- i. Approve the vision and mission of the CMO and ensure it is embedded into the CMO’s operations.
- ii. Approve strategic plan and policies and monitor their implementation regularly.

Accountability

- i. Overall performance of the CMO
- ii. Board evaluation, succession planning
- iii. Report outcomes to members and stakeholders
- iv. Manage the CEO

Public Relations

- i. Represent the CMO at public fora and participate in public relations issues on behalf of the CMO

- ii. Keep members and stakeholders informed on important issues involving the CMO.
- iii. Project a strong and positive image on behalf of the CMO.
- iv. Promote the vision of the CMO at all times.
- v. Facilitate cohesion amongst membership and stakeholders.
- vi. Protect the interests of members and stakeholders.
- vii. Speak with one voice regarding Board decisions.

Risk management

- i. Ensure up-to-date and effective risk profile and management strategy
- ii. Monitor critical risks

The Board, while meeting its responsibilities, is mindful of the CMO's objects and mission as embodied in its constitution.

3. ROLES AND RESPONSIBILITIES

The Board has delegated authority for the operations and administration of the CMO to the CEO.

The functions of the Board are to:

- a. Provide effective leadership and collaborate with the Executive management team in:
 - i. Articulating the CMO's values, vision, mission and strategies.
 - ii. Developing strategic (direction) plans and ordering strategic priorities.
 - iii. Maintaining open lines of communication and promulgating through the CMO and with external stakeholders the values, vision, mission and strategies
 - iv. Developing and maintaining an organization structure to support the achievement of agreed strategic objectives.
- b. Monitor the performance of the CEO against agreed performance indicators.
- c. Review and agree the business (action) plans and annual budget proposed by the Executive management team.
- d. Monitor the achievement of the strategic and business plans and annual budget outcomes.
- e. Establish such committees, policies and procedures as will facilitate the more effective discharge of the Board's roles and responsibilities.
- f. Ensure, through the Board committees and others as appropriate, compliance obligations and functions are effectively discharged

- g. Initiate a Board self-evaluation programme and follow-up action to deal with issues arising and arrange for directors to attend courses, seminars and participate in development programmes as the Board judges appropriate
- h. Ensure that all significant systems and procedures are in place for the CMO to run effectively, efficiently, and meet all legal and contractual requirements.
- i. Ensure that all significant risks are adequately considered and accounted for by the Executive management team.
- j. Ensure that the CMO has appropriate corporate governance structures in place including standards of ethical behaviour and promoting a culture of corporate and social responsibility. The Board has no operational involvement in the conduct of the CMO's business activities and delivery of services.

The Board's role is confined to setting and reviewing policy.

4. MEMBERSHIP AND TERM

The constitution of the CMO provides for a maximum and minimum number of directors so that a quorum can be formed to transact business at Board meetings

The Board consists only of non-executive directors with a few independent directors heading critical committees. That is, no member of the Board may be a member of the paid staff of the CMO.

Directors are free from any interest and any business or other relationship which could, or could reasonably be perceived to, materially interfere with the director's ability to act in the best interests of the CMO.

Membership of the Board shall be disclosed in the annual report including whether a director is independent or not independent.

The Board has not adopted a tenure policy, but according to the constitution of the CMO, each director must be re-elected by the general assembly after the expiration of their tenure on the Board.

5. BOARD/CEO Relationship

The roles of the Chairman and CEO are strictly separated.

The CEO is responsible for:

- i. Policy direction of the operations of the CMO.
- ii. The efficient and effective operation of the CMO.

iii. Bringing material and other relevant matters to the attention of the Board in an accurate and timely manner.

The CEO is not a non-voting member of the Board.

6. BOARD CULTURE

The Board actively seeks to have an ‘engaged culture’ which is characterised by candour and a willingness to challenge.

Agendas

- i. The agenda of the Board must be such that it gives more less time for and more time for discussion and deliberation.
- ii. There are lots of opportunities for informal interactions among Board members.

Norms

- i. Board members are honest yet constructive.
- ii. Members are ready to ask questions and willing to challenge leadership.
- iii. Members actively seek out other members’ views and contributions.
- iv. Members spend appropriate time on important issues.

Beliefs

- i. “If I don’t come prepared, I will be embarrassed.”
- ii. “If I don’t actively participate, I won’t be fulfilling my responsibility.”
- iii. “I’ll earn the respect of fellow Board members by making valuable contributions and taking responsibility for what I do.”
- iv. “If I can’t carry my load, or if I can’t agree with what’s going on, I should resign.”

Values

- i. The Board serves the community by actively participating in governance.
- ii. The Board is responsible to various stakeholders.
- iii. Board members are personally accountable for what goes on at the CMO.
- iv. The Board is responsible for maintaining the CMO’s stature in the sector in which it operates.
- v. Board members respect each other.

7. REPORTING

Proceedings of all meetings are documented and signed by the chairman of the Board and the Secretary. Minutes of all Board meetings are circulated to directors before each meeting and approved by the Board at the subsequent meeting. Resolutions are first put to the Board in draft form (as a “Board Paper”) and, once passed, are properly documented in the CMO’s records.

8. REVIEW OF CHARTER

The Board will review this charter annually to ensure it remains consistent with the Board’s objectives and responsibilities.

9. PUBLICATION OF THE CHARTER

Key features of the charter are to be outlined in the organization Annual Report. A copy of the charter is available at CMO’s website.

SAMPLE BOARD CHARTER OF CMO ABC

December 23, 2020

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BOARD CHARTER

1. PURPOSE

1.1 This document sets out the following matters:

- 1.1.1 the roles and responsibilities of the Board of the Company; and
- 1.1.2 the roles and responsibilities of the Senior Company; and Management of the
- 1.1.3 the manner of operation of the Board as a whole.

1.2 In drawing up this Board charter for CMO ABC, the recommendations made in the Nigerian Code of Corporate Governance 2018 have been followed. The Code strongly advised that a Board, being central in corporate governance should have a charter.

2. DEFINITIONS

In this Charter:

- a. Board means the Board of the Company;
- b. CEO means the interim Chief Executive Officer;
- c. Chairman means the chairman of the Board;
- d. Charter means this Board Charter;
- e. Director means a director of the Company;
- f. Secretary means the secretary of the Company;
- g. Executive Management means employees of the company who manage the company pursuant to the direction and delegation of the Board

3. COMPOSITION OF THE BOARD

3.1 It is the objective of the company to establish and maintain a Board with a broad representation of skills, experience and expertise.

3.2 To assist in achieving the objectives stated above, the Board will at all times consist of:

- 3.2.1 Independent and Non-Executive Directors
- 3.2.2 Chief Executive Officer and Chief Finance Officer
- 3.2.3 Representative of the Copyright Office
- 3.2.4 Maximum of eleven (11) Directors

3.3 The members of the Board will be listed in the Annual Report of the Company

4. ELECTION AND APPOINTMENT OF DIRECTORS

- 4.1 Directors shall be elected or appointed in line with the provisions of the memorandum and articles of association of the company.
- 4.2 The Board will set the terms and conditions of the election and or appointment of a new director.
- 4.3 New directors of the company will be provided with a copy of the memorandum and articles of association and relevant policy documents of the company.
- 4.4 New directors will be fully briefed on the strategic directions of the company.
- 4.5 Directors will be offered regular opportunities for personal development.
- 4.6 The Board will establish the terms and conditions for the appointment of executive management.

5. RESPONSIBILITIES OF THE BOARD

- 5.1 The Board is ultimately responsible for the overall management and corporate governance of the company.
- 5.2 The Board has the authority to make decisions and give directions in relation to:
 - 5.2.1 the development, implementation and alteration of the strategic direction of the company;
 - 5.2.2 risk management, assessment and monitoring;
 - 5.2.3 ensure appropriate reporting to members and relevant stakeholders;
 - 5.2.4 encourage ethical behaviour, including compliance with the company governance rules and procedures and corporate governance standards; and
 - 5.2.5 establishing targets and goals for the company to achieve.
- 5.3 The Board is responsible for monitoring organisational capability in the context of agreed plans and targets, accountability and diversity.
- 5.4 The Board has responsibility for the following specific matters:
 - 5.4.1 the appointment and removal of the Chairman of the Company;
 - 5.4.2 the appointment of a new director to fill a vacancy in line with the memorandum and articles of association of the company;
 - 5.4.3 the appointment, and where appropriate, the removal of the:
 - 5.4.3.1 CEO;
 - 5.4.3.2 CFO;
 - 5.4.3.3 Company Secretary; and
 - 5.4.3.4 Ratifying the appointment and removal of executive management of the company.
 - 5.4.4 oversight of all matters delegated to executive management;
 - 5.4.5 reviewing the performance of the CEO and other members of the executive management;

- 5.4.6 establishing and managing succession plan for the position of the CEO and other members of executive management;
- 5.4.7 approving remuneration of directors and executive management;
- 5.4.8 ensuring that the code of conduct and approved Board policies are operative and adhered to;
- 5.4.9 regular review and the power to amend the code of conducts, and approved Board policies to ensure that the policies continue to meet corporate governance standards the Board is committed to;
- 5.4.10 review and oversight of compliance with approval renewal terms and conditions, financial reporting compliance, including periodic and continuous disclosure, legal compliance and related corporate governance matters;
- 5.4.11 approving and monitoring project acquisition and major capital expenditure;
- 5.4.12 monitoring and reviewing the financial performance of the Company;
- 5.4.13 monitoring and reviewing the operational performance of the Company;
- 5.4.14 proposing and recommending changes in the articles of association of the company.

5.5 The Board may, in its absolute discretion, and without abrogating its responsibilities delegate other matters from time to time.

6. ALLOCATION OF RESPONSIBILITIES

- 6.1 The Chairman of the Company has the following responsibilities:
 - 6.1.1 the organisation and efficient conduct of the business of the Board at Board meetings and on all other occasions;
 - 6.1.2 ensure that all directors are adequately informed on Board matters in timely manner to facilitate rigorous, effective and accurate decision making in all business of Board;
 - 6.1.3 reviewing the agenda for the meetings of the Board recommended by the CEO, guiding the meetings to facilitate open discussion and managing the conduct of, and frequency and length of such meetings, in order to provide the Board with an opportunity to at a detailed understanding of the company's performance, financial position, operations and challenges;
 - 6.1.4 liaising with company secretary in matters of corporate governance and conveying all information to the Board;
 - 6.1.5 encouraging engagement and compliance by Board members with their duties as directors;
 - 6.1.6 ensuring that each director is fully empowered to participate in meetings and is properly informed of director performance expectations;
 - 6.1.7 engaging with different stakeholder groups to ensure that their views are known to the Board.

- 6.2 The CEO of the Company has the following responsibilities:
- 6.2.1 recommend to the Board for review and approval the company strategy and strategic framework;
 - 6.2.2 recommend to the Board for review and approval the business plan and annual budget including setting of key targets and deliverables consistent with the agreed strategy;
 - 6.2.3 recruit and develop appropriately skilled senior management staff to execute the plans of the company when required;
 - 6.2.4 manage the company in accordance with the direction and delegations of the Board;
 - 6.2.5 report to the Board in a timely manner all matters concerning the operations of the company and the employees of the company;
 - 6.2.6 coordinate the roles and responsibilities of the management and employees of the company to achieve the goals set by the Board;
 - 6.2.7 carry out the day-to-day management of the Company;
 - 6.2.8 in consultation with the executive management establish and implement policies and procedures to:
 - 6.2.8.1 achieve the financial and operational goals set by the Board;
 - 6.2.8.2 build and maintain employee satisfaction and well-being;
 - 6.2.8.3 build and maintain a staff identity and allegiance to the Company;
 - 6.2.8.4 comply with the company Code of Conduct; and
 - 6.2.8.5 ensure a safe workplace for all employees.

- 6.3 The Company Secretary has the following responsibilities:
- 6.3.1 The adoption and implementation of corporate governance practices;
 - 6.3.2 Coordination of the Board and any Committees;
 - 6.3.3 Monitoring of the policies and procedures of the Board;
 - 6.3.4 Advising the Board through the chairman, of the corporate governance of the company;
 - 6.3.5 Ensuring that each director has access to the Company Secretary as required;
 - 6.3.6 The accurate reporting of the Business of the Board including the timely dispatch of Board agendas and briefing papers and the accurate recording and timely dispatch of the minutes of the Board;
 - 6.3.7 Ensuring compliance with Company and Allied Matters Act, 2020, Copyright Act and CMO Regulations;
 - 6.3.8 Ensuring that relevant stakeholders are kept informed of developments in the company on a timely manner.

7. BOARD MEETINGS

- 7.1 For a Board of 11 directors, a minimum of 6 directors present are required to form quorum.

- 7.2 The Board will meet no fewer than four (4) times each financial year and may meet as often as required to fulfill their duties.
- 7.3 Board papers are to be provided to all Board members no fewer than 3 days before the date of each Board meeting.
- 7.4 Minutes of each Board meeting shall be prepared by the company secretary, approved by the chairman and circulated to the directors after each meeting prior to the following meeting.
- 7.5 Minutes of meetings must be confirmed and adopted at the next Board meeting.
- 7.6 Each director has an obligation at Board meetings and concerning the company generally, to reach decisions which he or she believes to be in the best interest of the company, free of any actual or possible personal or other business related conflict of interest.
- 7.7 At the commencement of each Board meeting, each Board member must disclose any actual or potential conflicts of interest. Ongoing conflicts of interest need not be disclosed at each meeting once acknowledged.
- 7.8 Where members are deemed to have real or perceived conflicts of interest, they will be excused from discussion on the issue where a conflict may, or actually exists.

8. BOARD COMMITTEES AND CORPORATE GOVERNANCE

8.1 The Board has adopted the following policy document in the interest of corporate governance and to guide and assist the company in the pursuit of its values and achievement of its goals.

8.1.1 Code of Conduct

8.2 The Board will review the policies and any committee structure annually to ensure considering the size of the company and the composition of the Board, the Board committees are the most cost-effective and beneficial corporate structure for the company which reflect the values of the company and guide the conduct of the Board consistently with those goals.

8.3 The Board may also establish ad-hoc special purpose committees from time to time, with the terms of reference approved by the Board.

9. PERFORMANCE EVALUATION

9.1 The Board shall develop and disclose a process to periodically evaluate the performance of Board members

10. CORPORATE GOVERNANCE

10.1 The Board shall encourage ethical behaviour and compliance with the company

policies and procedure, including the code of conduct.

10.2 The Board shall periodically review the company's compliance with corporate governance standards.

11. DIRECTOR'S CODE OF CONDUCT

11.1 A director's code of conduct has been developed for the Directors of the Company

11.2 In undertaking the responsibilities described in this charter, the Board shall undertake to create further value for the members and affiliates of the company, and in accordance with the obligations imposed upon it by law and with the memorandum and articles of association of the company.

12. DIRECTOR INDUCTION

New directors will undergo induction process in which they given a briefing on the company. The induction process will include meeting with the executive management. The induction package will also include:

- Details of the roles and responsibilities of a director with an outline of the qualities to be a successful director;
- Formal policies on director's election or appointment as well as conduct and contribution expectations;
- Details of key relevant legal requirements including:
 - Company and Allied Matters Act, 2020
 - Tax office requirements
- A copy of the Board charter
- Guidelines on how the Board processes function
- A copy of the Copyright Act
- A copy of the memorandum and articles of association
- Details of past, recent and likely future developments relating to the Board
- Background information on and key contact information for key people in the company including an outline of their roles and capabilities
- A synopsis of the current strategic direction of the company including a copy of the current strategic plan and annual budget.

13. INDEPENDENT ADVICE

13.1 Any director is entitled to seek independent professional advice at the company's expense on any matter connected with the discharge of his or her responsibilities, provided the director first provides the chairman with details of:

- a. the nature of and reason for the professional advice sought;

- b. the likely cost of seeking such independent professional advice; and
- c. the details of the independent professional adviser he or she proposes to instruct.

13.2 The chairman must approve of the independent professional adviser nominated by the director;

13.3 The chairman may prescribe a reasonable limit on the amount that the company shall contribute towards the cost of obtaining the professional advice;

13.4 All documentation containing or seeking independent professional advice must clearly state that the advice is sought in relation to the company and/or the director in his or her capacity as director of the company;

13.5 The chairman shall decide if any advice received by an individual director will be circulated to other directors of the company.

14. REVIEW OF BOARD CHARTER

Any changes to the charter requires the approval of the Board. The Board will review the effectiveness of the charter at least once in every two years.

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APPENDIX 1

SAMRO BOARD CHARTER

Policy Category	Strategic Policy
Policy Title	Board Charter
Policy Owner and Custodian	Company Secretary
Last Date of review	March 2018
Next date of review by the Board	May 2022
Date of approval by the Board of Directors	7 May 2020

No.	Approved by the Board on 7 May 2020
1.	INTRODUCTION
1.1.	The Board of Director s of SAMRO NPC ("the Company") fully subscribe to the principles of corporate governance and regard these as fundamentally important to the business success and sustainability of the company.
1.2.	The Board therefore adopts this Charter, the provisions of which are at all times subject to all statutory and regulatory requirements including the Company’s Memorandum of Incorporation ("MOI").
1.4.	The purpose of the Charter is to regulate the parameters within which the Board will operate and to ensure the application of the principles of good corporate governance in all dealings by, in respect of and on behalf of the Company, and furthermore to set out the roles and responsibilities of the Board and individual Directors including the composition and relevant procedures of the Board.
2.	COMPOSITION OF THE BOARD

2.1.	The composition of the Board is regulated in the MOI of SAMRO.
2.2.	Where possible, the Board will endeavour to include independent Directors in the composition of the Board, but shall have a minimum of three independent Directors on the Board, one of whom shall be appointed as a Lead Independent Director.
2.3	The Chairperson of the Board shall be an independent non-executive Director.
2.4	The Chairman will be responsible for the effective leadership of the Board.
2.5	The Chief Executive Officer ("CEO") and ("CFO") Chief Financial Officer are ex officio members of the Board.
2.6	There should be a clear division of responsibilities between executive team responsible for the running of the Company's business and the leadership of the Board, such that no one individual has unfettered powers of decision-making.
2.7	The Nominations and Governance committee of the Board will assist with the identification of suitable candidates for appointment to the Board.
2.8	The Board will on an annual basis consider the size, diversity, demographics and skills requirements as part of the assessment of the Board and Directors performance.
2.9	At least one third of the non-executive Directors will retire by rotation on annual basis, in accordance with the relevant provisions of the Company's MOI.
2.10	The non-executive Directors will be assessed on an annual basis with a specific focus on their fiduciary duties and independence.
3.	ROLE AND RESPONSIBILITIES OF THE BOARD
3.1.	As its primary function, the Board is responsible for determining the Company's strategic direction and exercise prudent control of the Company and its affairs.
3.2.	The Board and the individual Directors will at all times act in the best interests of the Company and adhere to all relevant legal standards of conduct.
3.3.	The Board also serves as the focal point and custodian of corporate governance in the Company and shall exercise leadership role by:
3.3.1.	steering the company and set its strategic direction;

3.3.2.	approving policy and planning that give effect to the direction provided;
3.3.3.	overseeing and monitoring implementation and execution by management; and
3.3.4.	ensuring accountability for performance by means of, amongst others, reporting and disclosure.
3.4.	In fulfilling its function, the Board shall, in so-far-as is possible, apply the 16 principles of the King IV Code.
3.5.	The Board shall appoint the CEO and formally evaluate the performance of the CEO annually against agreed performance measures and targets. The Board shall satisfy itself that there is succession planning for the CEO position (emergency situations and succession over the longer term) and periodically review these plans. In addition, the Board, via the Nominations, Human Resources and Remuneration Committee shall provide input regarding senior management appointments, remuneration and succession plans.
3.6.	The Board shall approve an annually review a delegation of authority framework that articulates its set direction on reservation and delegation of power.
3.7.	The Board shall implement a formal governance framework in respect of the Company and subsidiary companies in the Group.
3.8.	The Board shall, with the support and guidance of the Nominations, Human Resources and Remuneration Committee, adopt remuneration policies that are fair, reasonable and aligned with the objectives and purpose of the Company while linking individual performance.
4.	RESPONSIBILITIES OF INDIVIDUAL DIRECTORS
4.1.	In fulfilling its responsibility to the Company, a Director shall at all times:
4.1.1.	act in the best interest of the Company, in good faith and with integrity and adhere to the Directors Code of Conduct;
4.1.2.	conduct himself/herself in a professional manner;
4.1.3.	avoid any conflict of interest between their personal affairs and that of the Company or, where unavoidable, disclose any such conflict or potential conflict;

4.1.4.	disclose any information that he or she may be aware of that is material to the Company which the Board is not aware of, unless such Directors are bound by ethical or contractual obligations of non-disclosure;
4.1.5.	only use his powers for the purposes for which they were conferred upon him or her and not to gain advantage for himself, herself or third party or to harm the Company in any way;
4.1.6.	only act within his or her powers as formally delegated by the Board;
4.1.7.	keep all information obtained in his or her capacity as a Director strictly confidential;
4.1.8.	use the best endeavours to attend Board and relevant Board committee meetings and devote the appropriate preparation and time ahead and during each meeting to ensure that he or she is in a position to contribute to the Board or Board committee discussions and to make informed decisions on matters placed before the Board or Board committee;
4.1.9.	exhibit the degree of skill and care as may be reasonably expected from a person of his or her skill and experience, but also exercise both the care and skill any reasonable person would be expected to show in looking after their own affairs; and
4.1.10.	actively participate in and contribute to Board deliberations in a constructive and frank manner under the leadership and guidance of the chairman.
4.2.	Directors who are not able to attend any meetings of the Board will submit a formal apology, with reasons, to the Chairperson or Company Secretary.
4.3.	The Director s are entitled to have reasonable access, at all reasonable times, to all necessary and relevant company information and to management. Such access shall be arranged through the chairman of the Board or the CEO.
5.	BOARD COMMITTEES
5.1.	The Board will delegate certain of its functions to well-structured committees without abdicating its own responsibilities.
5.2.	Each Board committee as established by the Board will have formal terms of reference to be approved by the Board and annually reviewed.

5.3.	The committees will be appropriately constituted with due regard to the skills required by each committee.
5.4.	As a minimum, the Board will establish a Risk and Audit Committee and Social and Ethics Committee.
6.	MEETING PROCEDURE
6.1.	The Board will hold sufficient scheduled meetings to discharge all its duties but subject to a minimum of four meetings per year.
6.2.	Any Board member may, in consultation with the chairman, request additional Board meetings to be held as and when deemed appropriate.
6.3.	The Chairman and CEO are required to facilitate the process of setting the agenda for each meeting. Each Director will be entitled, in consultation with the chairman, to add any item to the agenda for a particular Board meeting.
6.4.	Reasonable notice in writing shall be given to all Directors in respect of all Board meetings and processes.
6.5.	The detailed agenda together with supporting documentation will be circulated prior to the meeting within a reasonable time so as to enable Directors to be properly prepared for the meeting.
6.6.	The quorum necessary for the transaction of business shall be a majority of Directors unless otherwise provided for in the Companies MOI.
6.7.	Members of senior management and service providers may be invited by the chairman to attend meetings of the Board but will not be entitled to vote or be counted for quorum purposes.
6.8.	In the absence of the Chairman at a meeting, the Lead Independent Director will chair the meeting. In the absence of both, the Board will elect one of the Directors present to act as Chairman for purposes of the meeting.
6.9.	The Board's discussions shall at all times be open and constructive and the Chairman shall seek a consensus in the Board but may where considered necessary call for vote in whatever manner the Chairman, in its sole discretion, deems appropriate.

6.10.	The minutes of the meeting must be completed as soon as reasonably possible after the meeting and circulated to the Chairman and the Directors for review. The minutes will be confirmed as a correct record of the proceedings by the Board at its next scheduled meeting or via electronic communication, if necessary and will thereafter be signed by the Chairman.
6.11.	The Board will establish an annual work plan to ensure that all relevant matters covered by the agendas of the meetings planned for the year.
6.12.	Board meetings may be conducted by telephone or video conference facilities provided that all concerned can actively participate in the meeting. Directors participating by these facilities will be counted for quorum purposes.
7.	DEVELOPMENT OF DIRECTOR S
7.1	A formal induction programme will be in place for new Directors who will also be provided with a letter of appointment.
7.2	Experienced Directors will be assisted, with the guidance of the Chairman, to participate in mentoring programs were available.
7.3	The need for continuing professional development programs will be identified as part of the annual assessment of the performance of the Directors.
7.4	Director s will be provided with regular briefings on changes in risks, laws and environment but will also be expected to keep abreast of developments in the business environment and markets that may have material impact on the business.
8	COMPANY SECRETARY
8.1	The Board shall appoint and remove the company secretary and provide the Company Secretary with the necessary support to enable him or herself to properly fulfil his or her duties.
8.2	The Board will ensure that the Company Secretary has the requisite knowledge, skills and experience to fulfil the functions.
8.3	The Company Secretary shall not be a Director of the company.

9	BOARD AND DIRECTOR EVALUATION
9.1	The performance of the Board, chairman, individual Directors and Board committees will be assessed annually.
9.2	An overview of the evaluation process, results and action plans will be disclosed in the integrated report.
9.3	The nomination for the reappointment of a Director will only occur after the evaluation of the performance and attendance of the Director.
10	BOARD PROCEDURES AND POLICIES
10.1	The Board will be entitled to adopt and approve such procedures and policies as it may deem necessary to ensure proper governance in the management of its affairs.
10.2	The Board shall approve a procedure in terms of which any Director may take independent professional advice, at the expense of the company, where there is doubt as to whether the proposed course of action is consistent with his or her statutory and/or fiduciary duties and responsibilities.
10.3	The Board shall adopt a formal code of conduct and conflicts of interest policy in terms of which conflicts are defined and appropriate procedures for dealing with conflicts are prescribed.
10.4	The Board shall approve a policy in respect of the dissemination of company information.
11	DIRECTORS' REMUNERATION
11.1	Director remuneration shall be payable for the services as Directors, duly approved at the AGM in accordance with the provisions of the company MOI.
11.2	Non-executive Directors should, as a general rule, not provide any professional or business services of an ongoing nature to the company. The company may, for the purpose of a special assignment, engage the services of a non-executive Director (specific field of expertise) but the terms of engagement must be clearly recorded and all legal requirements with regard to disclosure must be complied with.

11.3	Full disclosure of all fees paid to Directors for the services as Directors will be made in the integrated report.
12	DISPUTE RESOLUTION
12.1	The Board subscribes to the principle that both internal and external disputes should be resolved as effectively, efficiently and expeditiously as possible.
12.2	To the extent reasonably possible, dispute resolution should be cost-effective and not be a drain on the finances and resources of the Company. This entails selecting a dispute resolution method, where possible, that best serves the interests of the Company, giving considerations to issues such as the preservation of business relationships and costs, both in money and time, especially executive time as well as relevant commercial considerations.
13.3	Alternative dispute resolution (ADR), including methods such as conciliation, mediation and arbitration, should therefore be considered as possible options on the resolution of both internal and external disputes, before approaching a court of law, but only when appropriate in considering the aforementioned principles.
14	COMPLIANCE
14.1	The Board subscribes to the principle that being legally compliant is essential, not only for business success, but also to protect, maintain and enhance the reputation of the Company.
14.2	The Board shall adopt a Compliance Policy for the Company and its subsidiaries.
14.3	The Board is responsible for monitoring compliance with applicable laws and regulations, rules, codes and standards applicable to the Company, through the Audit and Risk Committee.
14.4	Management is responsible for implementing required mechanisms to identify and manage compliance within the Company and the group through the implementation of an effective compliance framework and process, which should form an integral part of the Company's risk management process.
14.5	The Board should be continually informed of changes in the relevant laws, rules, codes and standards to enable the Board to adequately discharge its duties in the best interest of the Company and with due care, skill and diligence.

14.6	Any material incidences of non-compliance should be immediately reported to the Board by the Company Secretary.
15	REVIEW OF CHARTER
15.1	The Board Charter will be reviewed every two years by the Board.
	APPROVED BY THE BOARD ON 7 MAY 2020.
	CHAIRMAN OF THE BOARD
	DATE :

APPENDIX 2
CAPASSO BOARD CHARTER

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1. PURPOSE OF THE BOARD CHARTER

This charter is intended to provide a concise overview of:

- a. The role, functions, responsibilities and powers of the Board, the Members, individual directors and the executives of the company;
- b. Powers delegated to various Board committees of the company;
- c. Matters reserved for final decision-making or pre-approval by the Board;
- d. The policies and practices of the Board in respect of matters such as corporate governance, declarations and conflicts of interest, Board meeting documentation and procedures and the nomination, appointment, induction, training and evaluation of directors and Members of Board committees.

2. THE BOARD, OTHER ORGANS OF THE COMPANY AND COMPANY OFFICIALS

2.1 The Members

In terms of the Memorandum of Incorporation (“MOI”) of the company and the Companies Act, 2008 the decisions contained in **Annexure 1** are reserved for decision making by the Members of the company. A matter reserved for decision making by the Members is considered by the Board before it is recommended to the Members for decision making.

The Board will, where appropriate, provide the Members with its recommendation and the relevant material information in respect of resolutions proposed to Members.

It is the policy of the company to disclose company information to Members in such a way that the Members are apprised of all material aspects of the business of the company.

Directors and executive management of the company are expected to attend Members’ meetings. The chairpersons of the various Board committees are expected to be available at the annual general meeting of Members of the company to answer questions.

Proceedings at meetings of Members are governed by the provisions of the Companies Act and the MOI.

2.2 Board

2.2.1 General Powers of the Board

The role, function and powers of the Board, its Members and Committees are determined by law, the MOI of the company, corporate governance best practice and decisions and policies of the Board.

Article 21.1 of the articles of association of the company confers the following powers on the Board of the company

“The business and affairs of the Company shall be managed by or under the direction of the Board, which has the authority to exercise all of the powers and perform any of the functions of the Company, except to the extent that the Companies Act or this MOI provides otherwise.”

2.2.2 The role of the Board

The role and main function of the Board is to add significant value to the company by:

- a) Acting as custodians for the Members of the company;
- b) Guiding, evaluating and, where necessary, directing the management of the Company with the objective of achieving the maximum, sustainable long-term return for the Members;
- c) Guiding, evaluating and controlling the actions of the executive in meeting these objectives without becoming active in or interceding in the day-to-day management of the business. However, the Board remains ultimately accountable for the performance and affairs of the company;
- d) Setting the long-term strategic direction for the business by evaluating the strategic proposals formulated by management. This will be done at least every two years, with annual reviews.
- e) The Board will annually review the business plan for the company for the financial year ahead and a projected proposal for the following financial year and agree a formal budget with management. It will monitor management’s performance and evaluate it annually and in the long term against both the financial and the broader strategic objectives emanating from the business plan and the strategic plan. It will also identify and monitor important non- financial aspects relevant to the business. The Board will from time-to-time identify key risk areas and key performance indicators of the business and regularly monitor these.

2.2.3 Matters reserved for decision-making by the Board

Matters that have specifically been reserved for Board decision making or consent prior to final decision making and the approval authority of Board committees in respect of the company and its subsidiaries are contained in the Delegation of Authority document.

2.2.4 Composition of the Board and appointment of directors

The MOI allows for a minimum of eight directors to sit on the Board. Members of the board will be Members of the Company and shall be individuals of calibre and credibility chosen for their competence and knowledge of the business of the Company.

The Board will seek to have an appropriate mix of people and will seek to present an appropriate diversity of culture, race and gender, bearing in mind the need to prioritise racial and gender transformation.

Procedures for selecting directors will be formal and transparent.

Founding Board:

The Founding Board shall consist of three non-executive NORM (publisher) nominees, three non-executive SAMRO (composer) nominees (including the SAMRO CEO), an independent Chairman and a CEO.

Notwithstanding the term of office of the Directors on the founding Board, SAMRO's chief executive officer, or his replacement, shall be appointed onto the founding Board of the Company to serve for a period terminating upon: the repayment by the Company of the Loan and the transfer to the Company of 75% (seventy-five percent) of the BIEM Rights held by SAMRO.

The independent non-executive chairman of the Company shall serve for a term of 5 (five) years, whereafter he shall only be eligible for reappointment to the office of chairman if a period of at least 1 (one) year has lapsed from the date of his resignation or the end of his term.

Rotation of Directors

At the first Annual General Meeting and each year thereafter, one-third of the Directors for the time being (determined in exclusion of the Chairman and the CEO), shall retire from the Board by rotation.

In the first 3 (three) years during which retirement by rotation takes place the Directors to retire in every year shall include one appointee of SAMRO and NORM, respectively, determined by lot, from the Directors who have been longest in office since their appointment, but as between persons who become Directors on the same day those to retire shall, unless they otherwise agree amongst themselves, be determined by lot. Once all of the members of the founding Board have retired, the Directors to retire in each year shall be determined by lot from the Directors who have been longest in office, whilst maintaining an equal Author / Publisher ratio.

The Members shall, at each Annual General Meeting where an election of Directors takes place, elect a replacement for a retiring Director subject to the following conditions:

- i. if the Director to be elected replaces an author the Members shall elect an Author, who is a member of SAMRO or the Authors' organisation that represents a majority of the Authors in the Republic from among the Members to fill the position;

- ii. if the Director to be elected replaces a Publisher the Members shall elect a Publisher, who is a member of the Publishers' association that represents a majority of the Publishers in the Republic, from among the Members to fill the position;
- iii. if the Director to be elected replaces a Production Music representative, the Members shall elect from among the Members a Production Music representative who is a member of the Production Music association that represents a majority of the Production Music entities in the Republic;
- iv. when the chief executive officer of SAMRO, or his replacement, resigns the Members shall elect an Author from among the Members to fill his position.

2.2.5 Committees of the Board

To assist in the management of its workload, the Board may appoint committees with the specific objective of evaluating key areas of business performance, in particular governance, on a more detailed basis and to report to the Board regularly on any issues that might arise although it is understood that delegation of responsibilities to committees does not relieve the Board of its ultimate responsibility for the affairs of the company. Each committee chairperson will report on the work of the committee and the issues which it has discussed at every Board meeting. These reports will be oral, but will where necessary, be supported by appropriate documentation which will be prepared by management. In addition, the minutes of all committee meetings will be circulated with the Board papers for the regular Board meetings. Each committee will have its own terms of reference which will be reviewed by the Board.

The Board has created the following committees:

- i. Finance Committee, ii. Remuneration Committee, iii. Social and Ethics Committee

2.2.6 Board meetings and Board documentation

2.2.6.1. Frequency of meetings

The Board will meet at least four times (quarterly) a year at the company's offices, unless an alternative location is specified by the Board.

2.2.6.2. Attendance and participation

Board Members will use their best endeavours to attend all Board meetings and prepare thoroughly. Board Members are expected to participate fully, frankly and constructively in Board discussions and to bring the benefit of their particular knowledge, experience, skills and abilities to bear in discharging their duties as directors.

Failure to attend three (3) Board Meetings or Board Committee Meetings without adequate apology will result in the suspension or removal of the Board Member.

2.2.6.3. Proxies

Board members who are unable to attend Board meetings shall inform the Chairperson or CEO at an early date. The Chairperson of the Board may at his discretion authorise the use of audio or video conferencing facilities to make participation in a Board meeting possible should attendance in person not be possible.

Where the non-attending Board member wishes to appoint a proxy to attend the meeting in his/her stead, notification of a proxy attending a board meeting in place of a director should be submitted 48 hours prior to the meeting and would require the unanimous approval of all the Board members.

To qualify, the proxy should represent the same industry segment as the Board member nominating the proxy.

2.2.6.4. Agenda meeting papers and minutes

The chairperson must ensure with the assistance of the CEO that formal agendas are prepared for each Board meeting. Any director may request an item to be placed on the agenda. To the extent reasonably practicable, Board papers will be circulated to all directors at least one week before the meeting and full and appropriate information will be supplied to directors by way of succinct position papers or reports with the Board pack to enable directors to form an opinion on the issues on the agenda prior to the meeting and, if necessary, to request additional information before the meeting.

Comprehensive minutes of meeting decisions will be kept. Minutes of discussion will be limited, but any director may request a point to be minuted if he or she so wishes.

2.2.7 Access to information

The Board has unrestricted access to all company information and will liaise with management on its information needs and the appropriate reports and information that it should receive to enable it to monitor progress and to evaluate the performance of the company and of the executive team effectively.

2.2.8 The Chairperson

The directors may elect a chairperson and a deputy chairperson of the directors and determine the period for which each is to hold office. The chairperson provides leadership at Board level, represents the Board to the Members and is responsible for ensuring the integrity and effectiveness of the Board and its committees. The Chairperson's relationship with the Chief Executive Officer is one that will evolve between the two persons.

The Chairperson will not interfere in the day-to-day running of the business, but will have access to routine Company information, including internal reports, to enable him / her to be fully up to date with the operations of the group and the industry. The primary purpose

of this information is to enable the Chairperson to have a good understanding of the activities of the business and to be able to provide counsel and advice to the CEO. In particular, he/she will play the role of sounding Board for the CEO. The role is one of providing wise counsel on the company, industry or general business information and it is important that the Chairperson understands that advice given may, or may not be followed. The Chairperson will assist the CEO form the strategic plan without becoming involved in operating management.

2.2.9 The Chief Executive Officer

The CEO provides executive leadership and is accountable to the Board for the implementation of the strategies, objectives and decisions of the Board within the framework of the delegated authorities, values and policies of the Company.

The duration of his or her appointment, terms of appointment and compensation are determined by the Board on recommendation of the Remuneration committee.

3. DISCLOSURE AND CONFLICT OF INTEREST

Directors are obliged timeously to disclose their direct or indirect interests in:

- a) Any other company, partnership, trust or legal entity; or
- b) Any contract or proposed contract which is of significance to the business of the Company and which is entered into or to be entered into in pursuance of a resolution taken or to be taken at a meeting of directors of the company or by any director or officer of the company who has been authorised by the directors of the company to enter into such contract.

Full disclosures should be in writing and be submitted to the CEO who will submit it to the Board at the first subsequent Board meeting thereafter.

Enduring, material conflicts of interest are regarded by the Board as incompatible with the fiduciary duties of directors. Failure to make disclosures of interest constitutes a criminal offence in terms of the Companies Act.

4. PERFORMANCE EVALUATION OF THE BOARD, COMMITTEES AND DIRECTORS

The Board will evaluate its own performance as well as the performance of its committees and of the Chairperson annually. The performance of individual directors will normally be evaluated when they are required to retire by rotation and offer themselves for reappointment.

5. APPROVAL OF THE BOARD CHARTER

This charter was recommended to the Board for approval on date..... and approved by the Board on and will be due for review on date