NAMIBIA INSTITUTE OF CORPORATE GOVERNANCE

COVID-19

The Corporate Governance Perspective

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1. About NICG

The NICG is the centre of excellence in driving the governance agenda in Namibia. The organisation sees governance as a critical lever in enhancing sustainable economic development.

1.1 Mandate

The Namibia Institute of Corporate Governance is member-based non-profit organisation established for the purpose of enhancing sound governance across all sectors in Namibia.

1.2 Objectives

The institute seeks to advance the following objectives:

- To promote the implementation of good corporate governance principles, concepts and practices in Namibia;
- To steer improvements in corporate governance in Namibia, through the sensitisation and creating public awareness amongst corporate and policy makers on the need for enhanced public and political leadership;
- To train and promote of commercial probity and effective management with emphasis on transparency and integrity in the corporate community;
- To enhance performance of boards, individual directors and senior management in the private, public, quasi-public, SOE, SME and NGO sector by improving their knowledge, personal development and professional skills, in particular with regard to their rights, responsibilities and liabilities for the benefit of all stakeholders;
- To develop and review codes of best governance practice within the private, public, SME, NGO, SOE and other sectors (municipal, retirement sectors);
- To promote research and academic discourse in the field of corporate governance;
- To help set professional standards in the field of corporate governance, through director certification, collaborations with institutions of higher learning in designing certificate, diploma and other graduate programmes which have Corporate Governance as major or minor content.

1.3 Mission

The NICG mission is to champion best business practices and effective corporate governance, positioning Namibia as a regional, continental and global leader; and to be the voice of governance practitioners, professionals and policy makers, through training and certification programmes, workshops and networking events, advocacy, research and thought leadership, reaching out to both private and public enterprises.

1.4 Vision

The NICG seeks to be the most important national corporate governance reference point, providing knowledge and awareness in the field of CG in Namibia.

1.5 Values

The following shall be the guiding values as the institute seeks to discharge its mandate:

- Professionalism
- Transparency
- Fairness
- Accountability
- Dynamism
- Synergy

2. Context and background

COVID – 19 (popularly known as the coronavirus) broke out in Wuhan, China during December 2019. The virus rapidly spread to other parts of the world and was declared a pandemic by the World Health Organisation (WHO) on 11 March 2020. Namibia recorded its first two cases of COVID-19 infections on 14 March 2020 and at the time of writing this piece, the number of confirmed infected cases in the country had reached 21, with 14 recoveries and 0 deaths.

The Namibian Government responded by declaring the State of Emergency (SOE) on 17 March 2020. The SOE would continue for 6 months. In terms of the Regulations made by Proclamation by the President of the Republic of Namibia, Dr Hage Geingob under the SOE, certain fundamental freedoms, e.g. freedom of movement and assembly, etc were curtailed. Gatherings of more than 10 people have been prohibited, while the regions of Erongo and Khomas were locked down for twenty one (21) days, effective from 27 March 2020. On 14 April 2020, the lockdown was extended to the entire country. This was Stage 1. The President, announced on 30 April 2020 that, Stage 1 restrictions would be relaxed through progression to Stage 2 restrictions on 5 May 2020.

The challenges posed by the COVID-19 pandemic and consequential restrictions in the manner of conducting business have prompted the need for organisations to reconsider new approaches to corporate governance processes and dynamics. It is no longer business as usual and the various governance structures and role-players need to re-align the governance ecosystem to current demands.

It is against this background that the Namibia Institute of Corporate Governance has written this document to set out guidelines and perspectives on corporate governance during the COVID-19 era, as part of its advocacy and thought leadership mandate.

3. The Role of the Board

The Namibia Code of corporate Governance (Namcode) re-affirms the position that the Board remains the focal point for corporate governance in the organisation. The primary role of the Board is to define the organisational purpose and set the strategy in order to deliver on the corporate mandate. Central to fulfilling the mandate, the directors are charged with discharging the following primary duties, being to act in the best interest of the company

(i) in good faith and for a proper purpose; and
(ii) with care, skill and diligence.

Management, on the other hand, is responsible for day-to-day operations of the organisation, under the stewardship and oversight of the Board. Therefore, while the role of the Board is to govern, the role of management is to manage.

The outbreak of COVID-19 has presented Boards with major challenges in so far as executing their strategic oversight functions are concerned. As in any crisis situation, the environment is so dynamic such that the Board needs to lead from the front by exercising clear, decisive and ethical leadership. In fact, it is during situations like the COVID-19 pandemic that Boards are put to their biggest leadership test.

4. A new form of Governance emerges

The evolution of the crisis calls for renewed governance workings since the conditions are no longer conductive for the pre-crisis board practices. The Board should continue focussing on high level strategic issues, but should be flexible enough to align its work routine with the governance demands of the crisis. These can mean an increased frequency of meetings, change in the agendas and re-alignment of focus. However, through all these, the Board should endeavour to stay away from executive functions. The Board should render required support and direction to management, while retaining objective oversight, but should remain amenable to getting more involved when management cannot provide the requisite operational leadership.

It is therefore incumbent upon the Board to exercise the required leadership during the crisis through being agile, flexible, responsive and calculated, and most importantly to exercise sound and ethical judgement. In this context, Boards should take the opportunity now to assess their own composition and their capacity to deliver urgent, high-quality leadership and decision making during and emerging from the crisis. This may be the time to supplement the skills of the Board, especially taking into account the commitments of existing directors. Equally, effective and quickly implementable succession planning is a governance imperative at a time when key directors and executives may become suddenly incapacitated.

5. Governance Structures at Board and Management level

It is governance best-practice that Boards establish committees. The rationale behind setting up committees is to allow Boards to divide the work of the Board into manageable structures. The most common committees on Namibian boards are the Audit and Risk (''ARCO'') and the Remuneration Committees (''REMCO"), or variations thereof.

The ARCO role should focus more on ascertaining the financial impact of COVID-19 on the business, assessment of the financial forecast, the solvency and liquidity tests, scenario planning and the adequacy of the internal control environment, during the crisis. This committee should further deal with the existence and adequacy of the business continuity plan, risk management and disaster recovery plan as well as on the integrity of its information communication technology risk management.

The REMCO, on the other hand, should focus on issues of employee health and safety, lay-offs, salary cuts, leave, etc. The committee also needs to look into issues of executive remuneration which includes possible cuts in salaries and other forms of executive compensation. Concrete recommendations and guidelines should be aimed at advising the Board on the impact of the SOE on employability of employees and the viability of implementing remote-working policies and guidelines.

The organisation should also establish a business continuity team at management level, which is responsible for developing and implementing a comprehensive plan to address crisis impacts. This team will consist of key executives drawn from the strategic business units, finance, operations, communications and stakeholder management, legal, human resources and risk and/or internal control. This is a critical structure at operational level and should serve as a contact point (for the Board) at management level through which most of the crisis management activities will be undertaken.

The methodology of how the Board should operate vis-à-vis management during the crisis depends upon a number of factors. These include complexity, sector specifics and governance maturity of the organisation.

The following are some of the possible options:

(i) Establish a Board - level *ad hoc* crisis committee to work on issues raised by management;
(ii) Constitute the entire Board as a COVID–19 committee;
(iii) Constitute a COVID–19 committee made up of various committee chairs with the ARCO chairpersons supporting the Chief Financial Officer ("CFO") and the REMCO supporting the Chief Financial Officer ("CHRO");
(iv) The Board should work through the Risk Committee where one already exists; and
(v) The Board could also conduct joint board committee meetings e.g. combined REMCO and ARCO meetings.

In choosing the appropriate governance framework, the organisation should strike a balance between the Board having to be fluid and flexible, on the one hand, and the need to carry out its responsibility with due care and diligence, without abdicating its governance role. Ultimately, the decisions of Board committees are also the decisions and collective responsibility of the Board.

6. Key Governance Focal Areas and Guidelines in the light of COVID-19

6.1 Risk Oversight, Business Continuity Management and Risk Register

6.1.1 Risk Monitoring and Oversight

The Board's role in risk governance is one of its most critical, yet elusive, responsibilities. The Board bears the responsibility to proactively oversee, review and approve the approach to risk management. Ordinarily, the Board approves the enterprise-wide risk policy framework, sets the risk appetite levels and monitors the risk register.

The outbreak of COVID-19 has resulted in altering the risk dynamics of virtually every organisation. The Board, as ultimate steward of risk oversight, should therefore develop appropriate strategic responses to the impact of COVID-19 as parameters change**.**

6.1.2 Review of the Risk Register

The COVID-19 threat has made it imperative for the Board to revisit the existing risk register for its relevance in the prevailing climate. A risk register is a tool that documents risks and actions to manage each risk, and remains an essential mechanism for effective management of risk. The Board, through ARCO, should review the risk register to take into account COVID-19 related risks. In particular, the Board should robustly assess whether the risk register proved supportive of the decisions and actions actually being required to be taken in the crisis: this may be an important occasion for a root-and-branch re-evaluation of the way the risk register is prepared and monitored.

6.1.3 Business Continuity Plan

A Business Continuity Plan (“BCP’’) is the plan that outlines how the business will continue operating during an unplanned disruption in service. The BCP entails a process of creating systems, structures, protocols, processes and procedures for prevention and recovery from potential threats to the organisation. The BCP is a critical aspect of corporate governance.

An effective BCP should follow the five (5) logical steps below:

(i) identify the scope, objective and goals of the plan;
(ii) assemble the business continuity team;
(iii) perform the business impact analysis;
(iv) develop and document the prevent, response and recovery analysis; and
(v) design and implement testing, training and revision procedures.

The Board should establish whether the existing BCP is sufficient to mitigate the risks posed by the current crisis or whether it needs to be adjusted.

6.2 Corporate Strategy and Scenario Planning

The Board is ultimately responsible for corporate strategy, including setting the tone, adoption, oversight and monitoring the implementation thereof. Strategic planning (and execution) generally hinges on a high degree of certainty and predictability, which unfortunately is not possible within the context of the COVID-19 crisis. The Board should review its corporate strategy, as some of the pre-crisis assumptions may warrant an adjustment to the plan. In view of the dynamic and rapidly evolving environment caused by COVID-19, the Board should therefore set the tone for scenario planning.

Scenario planning would entail the following steps:

(i) consider a range of likely scenarios and the impact of each. For example, the following are the likely scenarios and likely impacts: prolonged period of infection with the economy slowing into recession or depression as well as a shorter, more intense infection period followed by a quicker economic rebound;

(ii) consider the financial, operational and organisational impact of each scenario, as well as external factors, such as government and competitor responses;

(iii) assess how likely each scenario is and how it will develop over time; and

(iv) for each scenario, consider the continuing viability and liquidity of the business (including the availability of bank credit lines and any Government support): take into account the impact of decisions and policies arising out of each scenario on stakeholders including shareholders, employees, customers, suppliers, the community (and environment), regulators and creditors.

The Board should therefore ensure that it stays on top of its strategic oversight responsibility since the future strategy and business model can no longer be premised on any one scenario. Therefore the Board must appreciate various other possible outcomes, hence the need for proper scenario planning.

6.3 Human Capital Management

The Board, through REMCO, should work closely with management in ensuring that the wellness and safety of the workforce is prioritised. The organisation should undertake steps to mitigate employee welfare risks during the crisis by ensuring that the workplace is hygienic and that employees take adequate steps to minimise risks associated with the pandemic. The Board should further ensure that there is adequate medical, psychological and social support for employees who contract the coronavirus.

The Board should consider the impact of the crisis on remuneration, taking into account the need to maintain a delicate balance between the rights of employees to remuneration and the ability of the organisation to continue trading as a going concern. The Board, through REMCO, should have particular regard to such critical issues as forced leave (paid or unpaid), remuneration cuts and retrenchments.

The Board, through REMCO, should discharge the responsibilities pertaining to forced leave and reduction in remuneration, in full compliance with Regulation 12 of Proclamation 18, issued by the President relating to reduction in remuneration as well as forced leave. Regulation 12 (1) (a) specifically provides that an employer may not force an employee to take unpaid leave for reasons related to COVID – 19. Regulation 12 (1) (b) similarly prohibits an employer from reducing an employee’s remuneration for reasons related to COVID – 19.

6.4 Executive Remuneration

This guideline is closely related to 5.3 but deals more with the senior leadership of the organisation. Organisations may need to consider bringing the issue of executive remuneration into the equation, if all efforts to realise the survival of business are to be realised. The Board, through the remuneration committee, should consider the short-term review of executive remuneration in so far as this can help alleviate the adverse impacts of COVID-19.

Components of executive remuneration that should be considered for revision include:

(i) executives taking salary cuts for a defined period;
(ii) non-payment or delay of cash bonuses;
(iii) freezing of salary increases for a certain period of time; and
(iv) deferment of vesting of share incentives.

Any cut in remuneration should be done within the confines of the law, and should be carried out after consultation with concerned executives.

6.5 Virtual Board Meeting and Annual General Meetings (AGMs)

The State of Emergency restricts gatherings to 10 people. This means that Boards are not in a position to conduct face-to-face meetings, since many meetings consist of 10 or more people, taking into account an average of 5 non-executive directors, the executive management team and the company secretary.

Boards, through the company secretary, should consider migrating from in-person meetings to virtual meetings. Virtual meetings are defined as meetings which do not involve physical or face-to-face gathering of the attendees but are conducted through electronic means (telephone/videoconferencing facilities). The Board should ensure that there is nothing in the constitution of the organisation which specifically prohibits virtual meetings. In such an event the constitution should be amended to provide for the holding of virtual meetings.

The AGM is clearly an essential part of companies' engagement with their shareholders. In addition to the passing of necessary resolutions, it is also an occasion for views to be exchanged. Limitations on physical gatherings also pose challenges to holding in-person AGMs. In terms of Section 187 of the Companies Act, 28 of 2004, a company is required to hold an AGM not more than nine (9) months after year-end, or within not more than fifteen (15) months after the last AGM. Section 187(9) provides that the company needs not hold an AGM if all members entitled to attend that meeting agree in writing, and in that event, a resolution in writing dealing with and disposing off any matter required by the Act to be dealt with and disposed of at the AGM and any other matter. Organisations may therefore use this provision until it is deemed safe to have face-to face AGMs.

Organisations should also resort to holding virtual AGMs provided that there is nothing in the founding documents or any applicable law that specifically prohibits the holding of the virtual meeting.

The organisation should take into account possible cyber security risks associated with holding virtual meetings and ensure that these are mitigated. It may also be possible to hold a physical meeting and still comply with limitations on gatherings. The presence of certain directors and the company secretary may be sufficient to constitute a quorum and at the same time comply with the gathering restrictions. Shareholders would have to be told clearly in advance that their own physical presence was not permitted, but be encouraged to vote by proxy and send questions ahead of the meeting.

Any challenges completing annual financial statements in time for AGMs because of constraints, for example, on auditors finalising their audit process, should also be considered.

6.6 Communications and Stakeholder Relations

The Namcode recommends that companies institute measures to ensure that they proactively manage the relationships with all their stakeholders. The stakeholders for this purpose include shareholders, employees, customers, suppliers, banks, insurers, regulators, communities, the environment and Government structures. A key intervention in managing relations with stakeholders is the adoption of an appropriate communication strategy to relevant stakeholders during the crisis.

The Board should therefore accord enough support to management in executing communication responsibilities. This should involve regular communication with key stakeholders. As the crisis evolves, stakeholders develop an urge for communication of appropriate messages to help deal with the anxiety posed by the crisis. It is therefore critical that communication is clear, frequent and simple.

6.7 Disclosure and Reporting

There is a strong likelihood that the disruptive effects of COVID-19 would impact the disclosure and reporting regime of most entities. The Board should ensure that there is adequate disclosure around the impact of COVID-19 on the sustainability of the business. Corporate reports should have an added focus on issues of liquidity, viability, impairment assessment, fair value assessment, solvency and governmental assistance (where applicable) to the business.

6.8 Dividend Payment Decisions

The Board should monitor the impact of COVID-19 on the company's performance, in order to inform dividend decisions. The Board should take decisions guided by what is in the best interest of the company, taking into account the liquidity of the entity under the prevailing market climate.

6.9 Strategic Opportunities

The Namcode recommends that the Board should ordinarily exercise diligence and enterprise in directing the business of the company. King IV, in turn, emphasises ethical leadership by the Board in its oversight over risks and opportunities. COVID-19, as a pandemic of major proportions, presents strategic business opportunities that should be identified, assessed, evaluated and seized by the organisation as they emerge during the crisis.

7. Conclusion

COVID – 19 has presented unprecedented challenges to all the actors in the corporate governance value chain. It is no longer business as usual since every of aspect of governance has to be adjusted to the new normal. It is therefore necessary for the key role players in governance to acknowledge that the new era will require boards to reposition their frameworks to remain relevant. What remains certain, however, is the fact that any crisis will come to pass and COVID – 19 will not be any different. It is those entities that will turn the adverse effects and learnings of the crisis into positives, that will stand the test of time.

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8. Abbreviations and Acronyms

AGM	**Annual General Meeting**
AICD	**Australian Institute of Corporate Directors**
ARCO	**Audit and Risk Committee**
BCP	**Business Continuity Plan**
CFO	**Chief Financial Officer**
CHRO	**Chief Human Resources Officer**
COVID – 19	**Corona Virus Disease**
ICGN	**International Corporate Governance Network**
IOD	**Institute of Directors**
IODSA	**Institute of Directors**
NGO	**Non-governmental Organisation**
NICG	**Namibia Institute of Corporate Governance**
REMCO	**Remuneration Committee**
NACD	**National Association of Corporate Directors**
NAMCODE	**Namibian Code of Corporate Governance**
NSX	**Namibian Stock Exchange**
SME	**Small and Medium Enterprise**
SOE	**State of Emergency**
WHO	**World Health Organisation**

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