

TOTAL KENYA LIMITED

BOARD OF DIRECTORS CHARTER

Validated by the Board on October 26,2016

Board of Directors Charter

TOTAL KENYA LTD

BOARD OF DIRECTORS CHARTER

INTRODUCTION

1. Total Kenya Limited (the “Company”) is a public limited company incorporated in the Republic of Kenya under the Companies Act and listed on the Nairobi Securities Exchange.
2. The Company is run through the direction of the Board of Directors, which is responsible for Corporate Governance. The Board of directors of Total Kenya Limited (the “Board”) is committed to the highest level of corporate governance which we consider critical to business integrity and to maintaining investors' trust in the Company.
3. The core corporate governance guidelines and regulations applying to the Company are the Code of Corporate Governance Practices for Issuers of Securities to the Public 2015 (the “Corporate Governance Code”) and the Capital Markets (Licensing Requirements)(General)(Amendment) Regulations, 2016 (the “Corporate Governance Regulations”) as issued by the Capital Markets Authority.
4. The Board has developed this board charter (the “Board Charter”) in order to document its corporate governance practices and principles, in recognition of the role of good governance in corporate performance, maximisation of shareholder value and protection of investors’ rights, and also to promote the Company’s standards of self-regulation.
5. Corporate governance, for the purpose of this Board Charter, is defined as the process and structure used to direct and manage business affairs of the Company towards enhancing prosperity and corporate accounting with the ultimate objective of realising shareholders’ long-term value while taking into account the interest of other stakeholders.
6. **This Board Charter was initially approved on October 26, 2016. Any amendments to this Board Charter requires approval of the Board.**

BOARD COMPOSITION

The Board shall establish clear roles and responsibilities in discharging its fiduciary and leadership functions. Directors have a fiduciary duty to act in the best interest of the company as a whole. In exercising fiduciary duties, each Board Member:

- (a) Must exercise reasonable degree of care, skill and diligence;
- (b) Must act in the best interest of the company and not for any other purpose;
- (c) Must act honestly at all times and must not place themselves in a situation where personal interest conflict with those of the company;
- (d) Must at all times exercise independent judgment;
- (e) Must devote sufficient time to carry out their responsibilities and enhance their skills;
- (f) Shall promote and protect the image of the company;
- (g) Must owe their duty to the company and not to the nominating authority; and
- (h) Must owe the company a duty to hold in confidence all information available to them by virtue of their position as a Board Member.

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The Board shall comprise a balance of Independent, Executive and Non-Executive Directors, with diverse skills, experience, independence and knowledge sufficient to enable the Board to discharge effectively its responsibilities for governance of the Company. The Independent Non-Executive Directors shall form at least one third of the total number of Board Members. The Board shall have policies and procedures in place to ensure independence of its members. Executive members of the Board shall manage the conflict that arises between their management role and their role in the Board.

The process of the appointment of directors shall be sensitive to gender representation, regional and national outlook for Kenyan directors and should not be perceived to represent single or narrow interest.

The Board shall have Executive Directors who understand every single risk and/or product associated with the Company and shall have knowledge of the manner in which the Company's longer term strategy is pursued in practice and have an ability to influence its policies; and effectively direct the business of the Company.

The Board shall have transparent and documented procedures for appointment of new Board members.

The Board shall be sufficient in size not to undermine interactive discussions, and still be able to include wider expertise and skills to improve effectiveness. The Board shall have a policy to ensure the achievement of diversity in its composition.

There shall be a limit to the number of directorships a member of the Board holds at any given time. A director shall not hold such position in more than three public companies at any one time. This is to ensure effective participation by such directors in the Board. In case where the corporate director has appointed an alternate director, the appointment of such alternate director shall be restricted to two public listed companies at any one time. An executive director of a listed company shall be restricted to one other directorship of another listed company. A chairperson of a public listed company shall not hold such position in more than two listed companies at any one time, in order to allow the chairperson to devote sufficient time to steering the Board.

The age limit for members of the Board shall be seventy years. In exceptional cases, members, at the Annual General Meeting, may vote to retain a Board member who is over seventy years.

The term of office of the Board members shall be organized to ensure smooth transition. The term of office should end at different times. This ensures retention of institutional memory and makes induction of new Board members easier. Where possible, no more than one third of the Board shall retire at the same time.

The Board shall be constituted to ensure effectiveness and value addition to the Company. The Board and its Committees shall have appropriate balance of skills, experience, independence and knowledge of the company and its business, to enable them discharge their respective duties and responsibilities effectively. The Board shall be structured in a way that it has different skills and expertise within itself.

The Board shall be structured in such a way that;

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- (a) It has a proper understanding of, and competence to deal with, the current and emerging issues of the business;
- (b) It exercises independent judgment;
- (c) It encourages enhanced performance of the Company; and
- (d) It can effectively review and challenge the performance of Management.

Formal letters of appointment, indicating the key terms and conditions are given to members of the Board to ensure they understand the organization's expectations of them in terms of allocation of individual responsibilities.

In the course of seeking accurate information in order to discharge its duties and responsibilities properly, the Board shall seek legal, financial, governance or any other expert advice necessary. The Board shall be entitled to seek external advice at the company's expense through an agreed procedure.

DUTIES OF THE BOARD OF DIRECTORS

The Director's duties are established by the law, notably the Company Act and comprise the following:

1. The duty to act within powers

The Act provides that a director of a company must act in accordance with the company's Constitution and only exercise powers for the purposes for which they are conferred.

2. Duty to promote the success of the company

A director of a company shall act in the way in which the director considers, in good faith, would promote the success of the company for the benefit of its members as a whole, and in so doing the director shall have regard to —

- (a) the long term consequences of any decision of the directors;
- (b) the interests of the employees of the company;
- (c) the need to foster the company's business relationships with suppliers, customers and others;
- (d) the impact of the operations of the company on the community and the environment;
- (e) the desirability of the company to maintain a reputation for high standards of business conduct; and
- (f) The need to act fairly as between the directors and the members of the company.

3. Duty to exercise independent judgment

A director of a company shall exercise independent judgment. The duty is not infringed by the director acting;

- in accordance with an agreement duly entered into by the company that restricts the future exercise of discretion by its directors; or
- In a way authorized by the constitution of the company.

4. Duty to exercise reasonable care, skill and diligence

In performing the functions of a director, a director of a company shall exercise the same care, skill and diligence that would be exercisable by a reasonably diligent person with;

- the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions performed by the director in relation to the company; and

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- The general knowledge, skill and experience that the director has.

5. Duty to avoid conflict of interest

A director must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.

6. Duty not to accept benefits from third parties

Directors should ensure that they do not receive any benefits not provided for, or allowed, under the constitution of the company. The only exceptions will be benefits that are so minor that they could not be thought to influence the director in any way.

7. Duty to declare interest in proposed or existing transactions/arrangement

A Director shall disclose the extent of his/her interest, whether directly or indirectly, in existing or proposed transaction/arrangement.

8. Duty to convene a meeting on loss of a capital

If the net assets of a public company are half or less of its called-up share capital, the director shall convene a general meeting of the company to consider how to deal with the situation.

9. Duty to prepare Financial Statement

Directors of every company shall prepare a financial statement for the company in each financial year.

10. Duty to prepare Director's Report

The directors shall prepare director's report for each financial year. The directors shall also prepare a group financial statement and a report to that effect. The report shall contain;

- Names of all directors
- Principle activities of the company during the course of the year
- The amount (if any) that the directors recommend should be paid as dividends to shareholders.
- Other information required to be disclosed by the Companies Act, Regulations.

11. Duty to prepare Directors' Remuneration Report

Directors of a quoted company shall prepare a directors' remuneration report for each financial year.

All directors are equally accountable for the proper stewardship of the Company's affairs. A director who ceases to hold such office continues to be subject to the duty to avoid conflict of interest with regard to the exploitation of any property, information or opportunity that the person became aware of while a director, and not to accept benefits from third parties with regards to things done or omitted to be done by that person before ceasing to be a director.

THE FUNCTIONS AND ACTIVITIES OF THE BOARD

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The Board has a primary responsibility of fostering the long-term business of the Company consistent with the directors' fiduciary duties. Each director shall accord sufficient time to his role and act consistently on a fully informed basis in accordance with his fiduciary duties. In order to carry out their responsibility for stewardship within their duty of care, the directors shall, directly or through one or more committees of directors:

1. Define the strategic direction of the Company through the company's mission, vision, its strategy, goals, risk policy plans and objectives, including approval of its annual budgets
2. identify the corporate business opportunities as well as principal risks in its operating environment, including the implementation of appropriate measures to manage such risks or anticipated changes impacting on the corporate business
3. The Board shall establish an effective Risk Management framework for the company to identify the principal risks of the corporation's business where identifiable and manage such risks
4. Oversee the corporate management and operations, management accounts, major capital expenditures and review corporate performance and strategies at least on a quarterly basis
5. Develop appropriate staffing and remuneration policy including the appointment of the Managing Director and the senior staff, particularly the finance director, operations director and the company secretary as may be applicable
6. Establish and implement a system that provides necessary information to the shareholders, including shareholder communication policy for the company
7. monitor the effectiveness of the corporate governance practices under which the company operates and propose revisions as may be required from time to time
8. Take into consideration the interests of the company's shareholders in its decision-making process
9. Monitor the integrity of the corporation's internal control and management information systems
10. Consider management's recommendations regarding major corporation decisions and actions, which have significant societal implications
11. Charge the Managing Director of the corporation with the general management and direction of the business and affairs of the corporation
12. Monitor the performance of the Managing Director
13. The Board shall establish relevant committees with written terms of reference, which set out their authority and duties. The Board shall also review the mandate of the committees periodically to ensure that they remain relevant
14. The Board shall continually work towards the introduction of integrated reporting. Integrated reporting is a process that brings together the material information about an organization's strategy, governance, performance and prospects in such a way that reflects its commercial, social and environmental context within which it operates
15. Satisfy itself as to the integrity of the Managing Director and other executive officers and ensure that the Managing Director and the other executive officers create a culture of integrity throughout the company
16. Approve the Company's Code of Ethics and Business Conduct. The Code of Ethics and Conduct shall include appropriate communication and feedback mechanisms which facilitate whistle-blowing. The Board shall periodically review its Code of Ethics and

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- Conduct. Besides, a summary of this code shall be made available on the company's website
17. The Board shall establish, periodically review and make public its Board Charter. The Charter shall be made public by being published on the company's website
 18. The Board shall ensure that the company's strategies promote the sustainability of the company. Attention shall be given to Environmental, Social and Governance (ESG) aspects of the business which underpin sustainability
 19. The Board shall put in place a policy on related party transactions. All related party transactions shall meet the requirements of the law and be approved by the Board before being executed. The Board shall put in place a policy to manage conflict of interest
 20. The Board shall ensure the company has appropriate corporate disclosure policies and procedures. They should be practical and include feedback from stakeholders
 21. The Board shall put in place a structure of review and authorization designed to ensure the truthful and factual presentation of the company's financial position. The Board shall take full responsibility for the accuracy of the financial statements
 22. The Board shall ensure that activities leading to good corporate citizenship are well coordinated.
 23. The Board shall establish an internal audit function, whether internally based or externally sourced and identify a head of internal audit who reports directly to the Audit Committee
 24. The Board shall disclose the company's policy on corporate social responsibility and investment. It shall also disclose the company's policy on conflict of interest
 25. The Board shall ensure that the company discloses its environmental, social and governance policies and implementation thereof in its annual report and website
 26. The Board shall organise for a legal and compliance audit to be carried out on a periodic basis
 27. The Board shall ensure that a governance audit is carried out at least annually to confirm the company is operating on sound governance practices and after undergoing the governance audit, the Board shall provide an explicit statement on the level of compliance
 28. The Board shall recognize, respect and protect the rights of shareholders and ensure that all shareholders are treated equitably. Companies shall employ modern communication techniques to communicate with shareholders
 29. The Board shall establish and put into effect a whistle blowing policy for the company
 30. The Board shall establish and approve formal and transparent remuneration policies and procedures that attract and retain Board members
 31. The Board shall take full responsibility for the accuracy of the financial statements. The Board shall explain in its annual report its responsibility for preparing the annual report and accounts, and there shall be a statement by the external auditor about their reporting responsibilities
 32. The Board shall take into account the interests of all key stakeholder groups before making its decisions
 33. The Board shall establish a formal process to resolve both internal and external disputes.
 34. The Board shall set standards of ethical behaviour required of its members, senior executives and all employees and ensure observance of those standards

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35. The Board shall recommend to its shareholders in an Annual General Meeting the rotation of auditors in order to improve their independence, objectivity and professional critique
36. The Board shall determine and agree on its annual evaluation toolkit and a formal induction program

TENURE AND INDEPENDENCE OF AN INDEPENDENT BOARD MEMBER

The Board shall determine who the independent members are on an annual basis. The tenure of an independent Board member shall not exceed a cumulative term of nine years. Upon completion of the nine years, an independent Board member may continue to serve on the Board subject to re-designation as a non-independent member. Independent Board members bring independent and objective judgment to the Board and this mitigates risks arising from conflict of interest or undue influence from interested parties.

An independent Board member is one who:

1. has not been employed by the company in an executive capacity within the last three years
2. is not associated with an adviser or consultant to the company or a member of the company's senior management or a significant customer or supplier of the company or with a not-for-profit entity that receives significant contributions from the company; or within the last three years, has not had any business relationship with the company (other than service as a director) for which the company has been required to make disclosure
3. has no personal service contract with the company, or a member of the company's Senior management
4. is not employed by a public listed company at which an executive officer of the company serves as a director
5. is not a member of the immediate family of any person described above, or has not had any of the relationships described above with any affiliate of the company
6. is not a representative of a shareholder who has the ability to control or significantly influence management
7. is free from any business or other relationship which could be seen to interfere materially with the individual's capacity to act in an independent manner
8. Does not have a direct or indirect interest in the company (including any parent or subsidiary in a consolidated group with the company) which is either material to the director or to the company. A holding of five percent or more is considered material
9. does not hold cross-directorships or significant links with other directors through involvement in other companies or bodies; and
10. Has not served for more than nine years since they were first elected.

CHAIRMAN AND MANAGING DIRECTOR

The Board shall establish clear functions reserved for the Board and those to be delegated to the management. The functions of the Chairperson and the Managing Director shall not be vested in the same person.

The responsibilities of the chairperson shall include leading the board in oversight of management. The Chairperson of the company shall be a non-executive Board member.

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The Managing Director focuses on the day-to-day management of the company. He or she is responsible for implementing the Board's corporate decisions.

The Managing Director represents the Company in its relationships with third parties and also chairs the Management Committee.

It is the responsibility of the Chairperson and the Managing Director in liaison with the Company Secretary to work closely together in planning the annual program and agendas for meetings of the Board which are held at least quarterly.

ROLE AND AUTHORITY OF THE MANAGING DIRECTOR

The Managing Director is responsible for presenting the Company's results and prospects to shareholders and the financial community on a regular basis. At each meeting of the Board of Directors, the Managing Director presents an overview of significant company events.

ROLE AND AUTHORITY OF THE CHAIRMAN

1. The Chairman represents the Board of Directors and, except under exceptional circumstances, has sole authority to act and speak on behalf of the Board of Directors
2. The Chairman organizes and oversees the work of the Board of Directors and ensures that the Company's corporate bodies operate effectively and in compliance with good governance principles
3. The Chairman coordinates the work of the Board of Directors and its Committees
4. The Chairman establishes the agenda for each Board meeting, including items suggested by the Managing Director
5. The Chairman ensures that directors receive, in a timely manner and in a clear and appropriate format, the information they need to effectively carry out their duties
6. In liaison with the company's general management, the Chairman is responsible for maintaining relations between the Board of Directors and the Company's shareholders
7. The Chairman monitors the quality of information disclosed by the Company
8. In close cooperation with the Company's general management, the Chairman may represent the Company in high-level discussions with government authorities and major partners
9. The Chairman is regularly informed by the Managing Director of significant events and situations relating to the company, particularly with regard to strategy, organization, monthly financial reporting, major investment and divestment projects and key financial transactions
10. The Chairman may ask the Managing Director or other senior executives of the Company, provided that the Managing Director is informed, to supply any information that may help the Board or its Committees to carry out their duties
11. The Chairman may meet with the statutory auditors in order to prepare the work of the Board of Directors and the Audit Committee
12. Every year, the Chairman presents a report to the Annual Shareholders' Meeting describing the preparation and organization of the Board of Directors' work, any limits set by the Board of Directors concerning the powers of the Managing Director, and the internal control procedures implemented by the Company. To this end, the Chairman obtains the necessary information from the Managing Director.

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BOARD COMMITTEES

The Board shall establish relevant Board Committees and delegate specific mandates to such committees as appropriate. There shall be two standing Board Committees, whose terms of reference shall be set forth. The committees shall meet regularly in accordance with their respective terms of reference:

- Board Audit Committee
- Board Risks and Governance Committee

OUTSIDE INTERESTS, DISCLOSURES AND CONFLICTS

On appointment to the Board and on an annual basis thereafter, each non-executive director is required to disclose to the Chairperson and the Company Secretary

- any significant commitment which he has and which may impede his ability to devote appropriate time to his role as director of the Company
- details of any other company of which he is a director
- details of any actual or potential conflict of interests which he is aware of, and
- details of any interests in shares or securities in the Company or any of its subsidiaries which he may have.

Each director is required to disclose to the Chairperson and the Company Secretary, as appropriate, any matter which may give rise to a potential or actual conflict with the interests of the Company as soon as practicable after becoming aware of the matter. The Board authorises the Chairperson and the Company Secretary to receive such disclosures on behalf of the Board and to make recommendations to the Board as to how to address the relevant matter, including whether it should be authorised by the Board or whether the director making the disclosure should refrain from participating in discussions or voting on the relevant matter.

Each director is required to be familiar with the Company's Code of Business Conduct and associated policies and standards, as they are relevant to his role. In particular, each director will comply with the provisions relating to anti-bribery and corruption (as set out in the Company's Anti-Money Laundering and Bribery and Anti-corruption Policies) and to insider dealing (as set out in the Company's Code of Conduct on Securities Dealings).

Directors shall maintain the highest standards of confidentiality of information obtained during the course of service to the Company. This includes ensuring that confidential information regarding customers, employees, suppliers, and security operations is communicated on a "need to know" basis only and is used solely for the Company's purposes and not as a basis for making a profit or furthering a private interest.

RIGHTS OF DIRECTORS

The terms of appointment of a non-executive director shall be set out in an engagement letter or contract between the Company and the director.

Each director shall undergo an induction program on appointment. The Chairperson shall review and agree with each director on specific training and development requirements. All directors are encouraged to attend periodic training to ensure that they are kept up to date

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on relevant legal developments or changes in best practice and changing commercial or other risks.

In the event that any concern expressed by a director during a Board meeting cannot be resolved, he may require that his concern is recorded by the Company Secretary in the minutes of the meeting.

In the event that a director resigns from the Board, he may demand that the Chairperson or the Company Secretary circulates to all other directors a written statement of the resigning director detailing the reasons for his resignation.