



Report on the State of
**CORPORATE GOVERNANCE
OF ISSUERS OF SECURITIES
TO THE PUBLIC IN KENYA**

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ABBREVIATIONS

<i>AIMS</i>	<i>Alternative Investment Market Segment</i>
<i>CMA</i>	<i>Capital Markets Authority</i>
<i>ESG</i>	<i>Environmental, Social & Governance</i>
<i>FY</i>	<i>Financial year</i>
<i>GEMS</i>	<i>Growth Enterprise Market Segment</i>
<i>ICS</i>	<i>Institute of Certified Secretaries</i>
<i>IFC</i>	<i>International Finance Corporation</i>
<i>LSK</i>	<i>Law Society of Kenya</i>
<i>MIMS</i>	<i>Main Investment Market Segment</i>
<i>NSE</i>	<i>Nairobi Securities Exchange</i>
<i>SME</i>	<i>Small & Medium Enterprise</i>
<i>TCFD</i>	<i>Taskforce on Climate-related Financial Disclosures</i>



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We commend the issuers and the stakeholders for the continued improvement in disclosures and good governance practices

Foreword

Message from Mr. Wyckliffe Shamiah, Chief Executive, Capital Markets Authority

The journey towards strengthening governance for issuers in the capital markets has been eventful and interesting. As we gazetted the Code of Corporate Governance Practices for Issuers of Securities to the Public in March 2016, the governance requirements in the Code were at that time considered to be onerous, insurmountable, and expensive to implement. With the publication of the first State of Governance Report in 2018, the second in 2019 and this third edition in 2020, we are proud to report commendable improvement amongst the issuers.

The State of Corporate Governance for Issuers of Securities to the Public, 2020, presents the highlights of the findings and recommendations on the governance frameworks, practices and disclosures. Assessment of the implementation of governance practices by issuers has become a key role of the Authority, with the additional step of having meetings with each issuer to take stock of the progress becoming instrumental.

Being a journey, each stage in the implementation of the Code has become a milestone, an opportunity to move forward while entrenching good governance practices. In 2020, the Authority instituted an additional step of meeting with each issuer to discuss our observations and governance recommendations. This has been helpful in clarifying issues and providing a clear understanding of the proposed recommendations to each issuer.

We commend issuers and stakeholders for continued improvement in disclosures and good governance practices. As issuers provide information in their annual reports, websites, and other media, we call on shareholders, potential investors and other stakeholders to leverage the disclosures to make informed decisions. We further recommend that institutional investors implement the Stewardship Code for Institutional Investors, a Code that calls for sustained engagement with issuers to promote good governance and sustainability.

Message from Mr. Abubakar H. Abubakar, Acting Director, Market Operations

It is my pleasure to present to you the third edition of the State of Corporate Governance Report for Issuers of Securities to the Public, 2015. This Report demonstrates the importance of good governance while highlighting the steps taken, progress made and the work ahead. As our market grows, there is need for us to ensure that we are building and strengthening sustainable institutions that can withstand turbulence due to good governance structures and practices.

We continue to note steady improvements, which underpin our continuing work on training, capacity building, partnerships and enforcement. I am happy to note that the assessment of commitment to good governance had the highest score, because with commitment, nothing is impossible. It is noteworthy that other sectors outside banking and finance have understood the importance of good governance, and are making significant strides to become sustainable, stable and strong while aligning their governance practices.



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Executive SUMMARY

As pointed out by Peter Drucker, the management consultant, "if you can't measure it, you can't improve it." The ability to annually assess the state of governance for issuers continues to present opportunities for improvement. Each year, the assessment reflects the progress made, the outstanding issues and the collective duty of all stakeholders in the journey.

In 2019/2020 the weighted overall score for all issuers was 72% a commendable improvement from the previous year's 61%.



This was based on the assessment of 51 issuers who did their governance self-assessments and submitted their reports to the Authority. However, it is important to note that three issuers were assessed as one hence reducing the total number to 48 issuers. This was occasioned by mergers and acquisitions that occurred during the year and the fact that two issuers have the same board and same shareholders hence a similar governance structure.

The highlights of the journey so far and the improvements made are summarized in table below:

<i>Description</i>	<i>2017/2018</i>	<i>2018/2019</i>	<i>2019/2020</i>
Weighted overall score	55%	61%	72%
No. of Issuers in Leadership	3	7	25
No. of Issuers in Good	5	17	11
No. of Issuers in Fair	31	21	8
No. of Issuers in Need Improvement	17	8	4

Table 2.0: Number of Issuers in rating categories.

It is clear there has been a gradual improvement on governance disclosures and practices from 2017/2018 all through to 2019/2020.

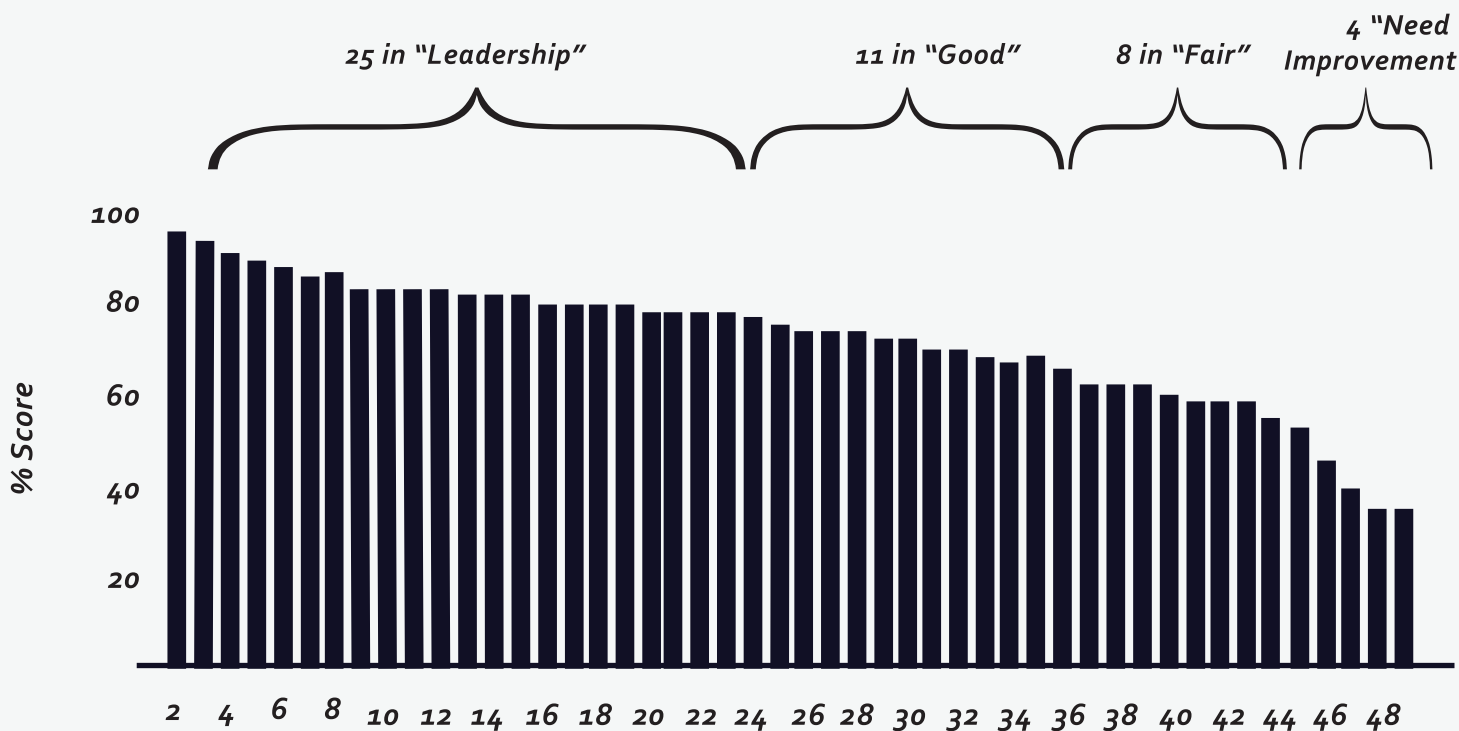


Figure 2.0: Weighted Score for each Issuer

There was a general improvement in performance across all Principles of the Code as shown in the chart below. This is an indication that the journey is on course, and issuers are making strides in all areas.

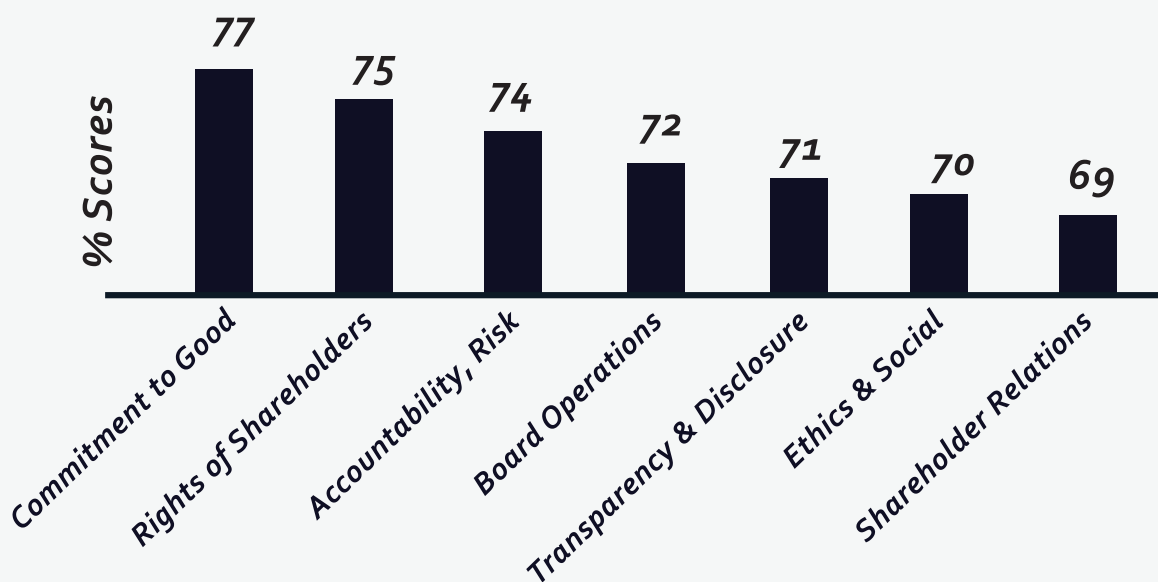


Figure 2.1: Overall Performance on all Principles FY 2019/2020

Background

The annual assessment of corporate governance practices by issuers of securities commenced in 2017/2018, against the Principles outlined in the Code. The Code requires issuers to implement the Principles and Recommendations in the Code and report at the end of every financial year on how they have applied the requirements.

Upon receipt of each issuer's governance reports, the Authority undertakes an independent assessment to verify the status of governance. This is done in line with an approved methodology and scoring criteria. Beginning 2020, the Authority introduced an additional process of meeting with each issuer to present the draft findings of their governance reports. During the engagements, clarifications are sought, and proposed recommendations discussed. This way, the Authority's governance findings and recommendations have become more transparent, exhaustive, and understandable to each issuer.



The annual assessment has been helpful in establishing the state of corporate governance among issuers in our capital markets, identifying trends, strengths, and areas of improvement. This process facilitates reporting on progress made over time. This has significantly improved the profile and importance of good governance.



Assessment Methodology

Assessment Tools

In collaboration with the International Finance Corporation (IFC) and in consultation with the issuers, the Authority developed offsite tools including the Corporate Governance Reporting Template and Corporate Governance Scorecard for reporting, measuring and monitoring the application of the Code. The reporting template, filled and submitted by issuers, serves to enhance adherence to governance requirements as well as disclosing the status of application of each requirement. On the other hand, the Corporate Governance Scorecard is assessed internally by the Authority to determine the level of implementation of the Code.

To comply with the Authority's continuous reporting requirements, all issuers are expected to submit the completed reporting template together with the complete annual report within four (4) months following the end of the financial year. Subsequently the same should be uploaded on the issuer's website.

Upon receipt of each issuer's governance reports, the Authority undertakes an independent assessment to verify the status of governance. This is done in line with an approved methodology and scoring criteria. Beginning 2020, the Authority introduced an additional process of having meetings with each issuer to present the draft findings of their governance reports, where clarifications and are sought and discussed. With this, the governance findings and recommendations have become more transparent, exhaustive, and understandable to each issuer.

The Scorecard covers the following seven (7) areas of the Code:

1. Introduction to the Code (focus on commitment to good governance);
2. Board operations and control
3. Rights of shareholders
4. Stakeholder relations
5. Ethical and social responsibility
6. Accountability, risk management and internal control; and
7. Transparency and disclosure.



Governance **ASSESSMENT**

The assessments of corporate governance practices by issuers were based on publicly available and accessible information such as annual reports, issuer websites, notices, circulars, articles of association, minutes of shareholders' meetings, Board Charter, media publications, codes of conduct, sustainability reports and other sources of public information as available.

The assessment process is as discussed in the steps below:

1. Submission of the self-reporting template by the issuer: The issuer submits the self-reporting template. The matrix indicates the level of compliance with the requirements of the Code from the issuer's perspective.

2. Review: Upon receipt of the template, a thorough review is carried out for each issuer based on publicly available information and evidence provided by the issuer to the Authority.

3. Peer-review: A peer review is carried out by different people to ensure accuracy and consistency. The goal is to minimize assessor subjectivity throughout the process.

4. Exit meeting: An exit meeting between the issuer and CMA Issuer Governance team is held to discuss the draft findings and seek any clarification on the findings before writing formally to the issuer on the same. The meeting is attended by the company secretary, a member from the senior management team and a board member depending on the availability.

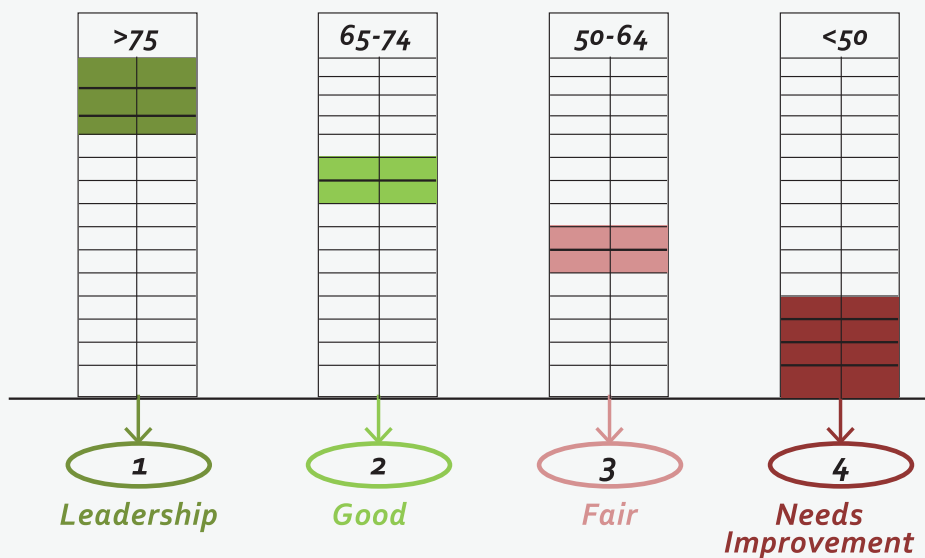
5. Final Review: The draft findings and recommendations are then amended accordingly depending on the discussions in the exit meetings. The final report is then formally shared with the issuer in writing after approval.



In the assessment, good corporate governance practices are 'observed' or 'not observed'. If corporate governance practices are 'observed', they are allocated ratings in the following criteria 'partially observed', 'good practice' and 'leadership' and points are allocated according to the scale below:

- 'Not observed' (not observed, missing or non-compliant practices (the lowest level of CG practice) – 0 points;
- 'Partially observed' (some practice evident but deficient, or missing practices) – 1 point;
- 'Good practice' (good practices evident but not all good practices evident) – 2 points; and
- 'Leadership' (the highest level of CG practice observed) – 3 points.

Based on the final score, issuers will be grouped into the following buckets:



Assessment Analysis

The review process takes into consideration the fact that some sectors like automobiles & accessories, telecommunications and investment services contain a single issuer. The sectors were therefore consolidated with similar categories for analysis purposes. The result was that:

- Automobiles & accessories was analyzed with manufacturing & allied;
- Telecommunications was analyzed with commercial & services; and
- Investment services was analyzed with investments.

A breakdown of the number of assessed issuers per sector:

Sectors	Number of Issuers
1. Banking	11
2. Commercial & services/telecommunications	8
3. Automobiles & accessories/manufacturing & allied	7
4. Energy & petroleum	3
5. Insurance	6
6. Agricultural	5
7. Investment & investment services	5
8. Construction & allied	3
TOTAL	48

Table 1.1: Breakdown of issuers per sector

Findings & Recommendations on each of the Governance Principles in the Code

Commitment to Good Governance

Good corporate governance is an integral part of a business. Strong and effective governance helps to cultivate a company's culture of integrity, leading to positive performance and a sustainable business. This Principle measures issuers' commitment to good governance based on the development, implementation and regular review of a board charter, distinction of the responsibilities of the board from management, awareness on the requirements of the Code, focus on sustainability, among others.

From the Authority's assessment of issuers for the FY 2019, most of the issuers have considered the requirements of this Principle. The average aggregate score by the assessed issuers was 77% (Leadership rating).

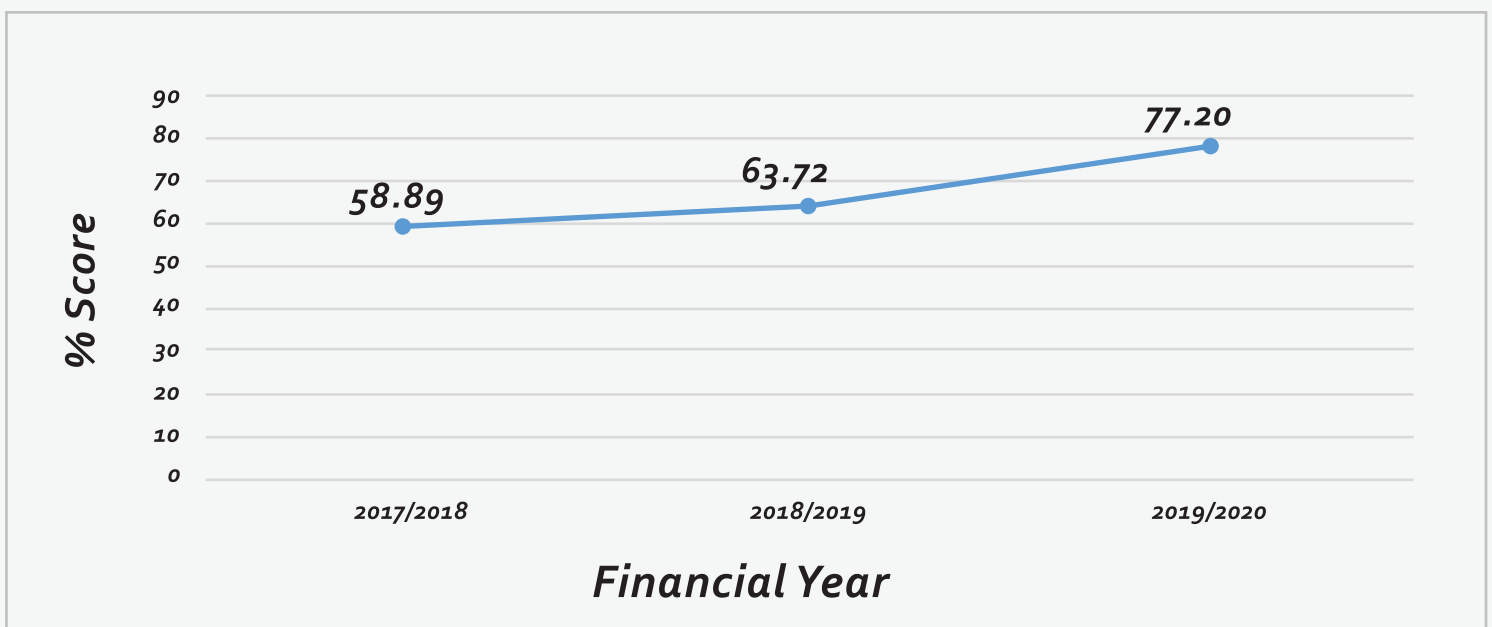


Figure 4.1: Trend Analysis on Commitment to Good Governance

The analysis shows that performance on this Principle has been improving over time from an average of 59% in 2017/2018 to an average of 77% in 2019/2020. This improvement was occasioned by most companies publicly disclosing their board charters on the website and disclosing the terms of reference of the Board Committees in the annual reports while increasingly setting out their sustainability strategies and plans.

What are the areas of improvement on this Principle?

- There is an increased need for companies develop strategies that promote sustainability.
- The role of the Board in developing and monitoring the company strategy should be defined and monitored.
- While most issuers have developed and published their board charters, it is important that the adherence to the charters be ensured.

Board Operations and Control

The Board of directors is an important body in corporate governance. This Principle focuses on the structure, appointment, composition, size, diversity and qualification of board members, functions, and independence as well as compliance with laws, regulations, and standards.

From the analysis, the average score by all the issuers on this principle was 72% (Good rating).

Figure 4.2 below represents a trend analysis on the overall performance of issuers on Board Operations and Control for the Financial Years 2017/2018, 2018/2019 and 2019/2020.

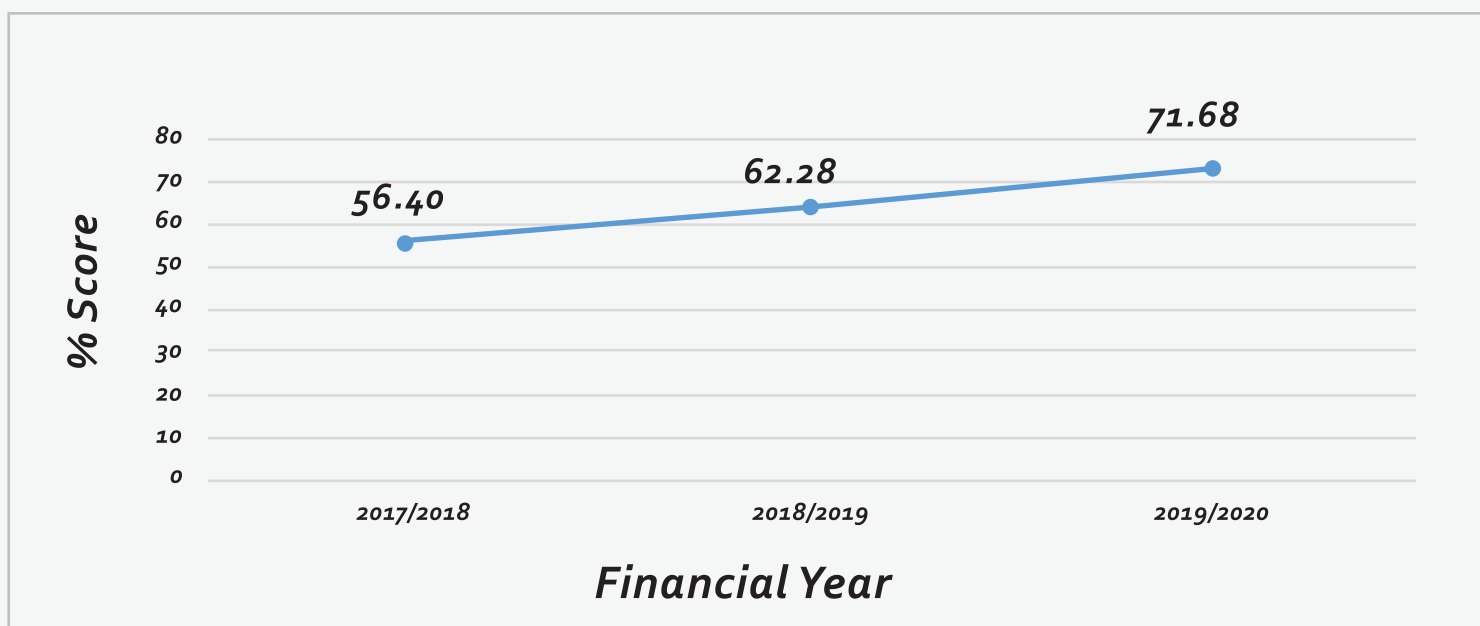


Figure 4.2: Trend Analysis on Board Operations and Control

The performance on Board Operations and Control consistently increased from 56% in 2017/2018 to 72% in 2019/2020 financial year. This improvement was underpinned by the fact that most boards: adopted and disclosed the necessary policies, having majority of the members as independent and non-executive, establishing the mandatory committees and undertaking governance audits.

What are the areas of improvement on this Principle?

Some of the matters that are key under this principle are that issuers should:

- Consider diversity in all its' aspects especially gender diversity.
- Develop strategic plans that promote sustainability of the companies and are flexible enough to change periodically depending on the operating environment.

Rights of Shareholders

This Principle highlights the requirement for an issuer to protect, respect, and enhance the rights of all shareholders, including the minority. The governance framework of an issuer must indicate how this has been done including through the articles of association, the Board Charter, annual reports, information on issuer's website, among others. This is demonstrated during an issuer's meetings with shareholders, disclosure of information and treatment of all shareholders equitably.

Covid-19 pandemic, the restrictions on public gatherings and other restrictions were initially considered detrimental to the rights of shareholders. However, the landmark court decision that allowed issuers to conduct virtual AGMs subject to approval by CMA heralded a new dawn for shareholder participation in AGMs. Issuers have recorded unprecedented shareholders' attendance in AGMs, enhanced participation, and reduced costs.

During the year, the rights of shareholders score improved to 74.57%, a notable increase from 65.1% in 2018/2019. The increase was as a result of issuers providing adequate information to shareholders through various channels, expanding the scope of participation and broadening the role of the Board in enhancing the rights of shareholders.

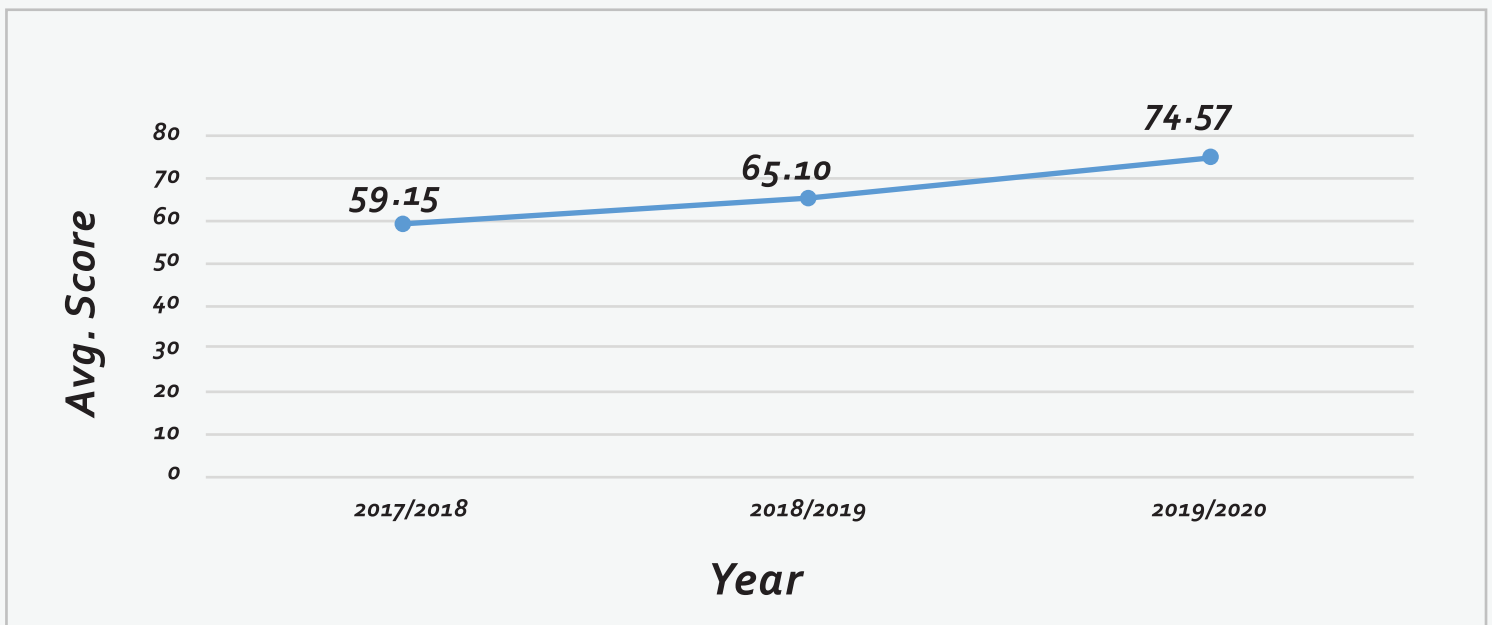


Figure 4.3: Rights of Shareholders

Some notable areas of improvement include:-

- Issuers to keep educating their shareholders on how they can actively participate during virtual AGMs.
- Information and disclosures on issuers' websites should be current, timely and easy to access especially during this period of virtual AGMs and meetings.
- Issuers should proactively avail information through their social media handles and engage their stakeholders.
- Shareholder information should be packaged in a user-friendly manner taking into account the diversity of shareholders.

Stakeholder Relations

An issuer does not exist in isolation, it needs people and the environment to deliver on its objectives and strategies. This Principle calls for issuers to identify and involve its stakeholders in their operations, decisions, and strategies. A stakeholder-inclusive approach in governance is critical.

During the year, issuers continued to improve on how they relate and involve their stakeholders, with a score of 68.71% recorded, an improvement from the previous year's score of 53.74%. The improvement was because of issuers understanding the importance of stakeholder relations through developing strategies and policies to manage their stakeholders, having constructive engagements coupled with the existence of mechanisms for resolving internal and external disputes.

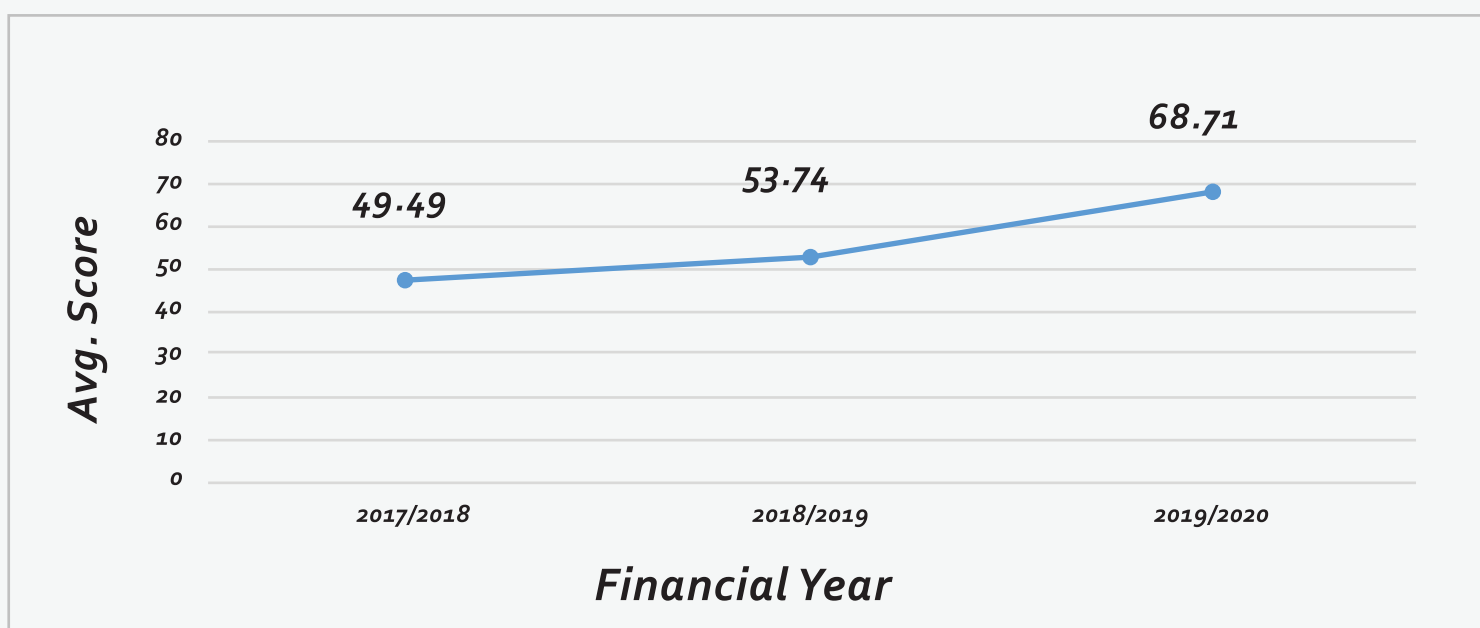


Figure 4.4: Stakeholder Relations

Some areas of improvement recommended are-

- The highlights of policies and strategies on stakeholder relations be disclosed in the annual reports and issuers' websites.
- Mechanisms for resolving external disputes particularly through alternative dispute resolution be developed by issuers.
- The whistleblowing mechanisms and channels should be highlighted in the issuers' annual reports and websites.
- The issuers should undertake an assessment of their stakeholder relations and identify areas of improvement.

Ethics & Social Responsibility

Ethics and social responsibility is a crucial part of a business. A responsible organization recognizes and considers the impact that its decisions and activities have on society and the environment; and behaves in a manner that positively contributes to the sustainable development and welfare of society.

The Code requires issuers to not only comply with their legal obligations but also consider the reasonable expectations of their stakeholders.

The average score on Ethics and Social Responsibility from the 2019/2020 assessment was 68% (Good Rating).

Figure 4.5 below represents a trend analysis on the overall performance of issuers on Ethics and Social Responsibility for the Financial Years 2017/2018, 2018/2019 and 2019/2020.

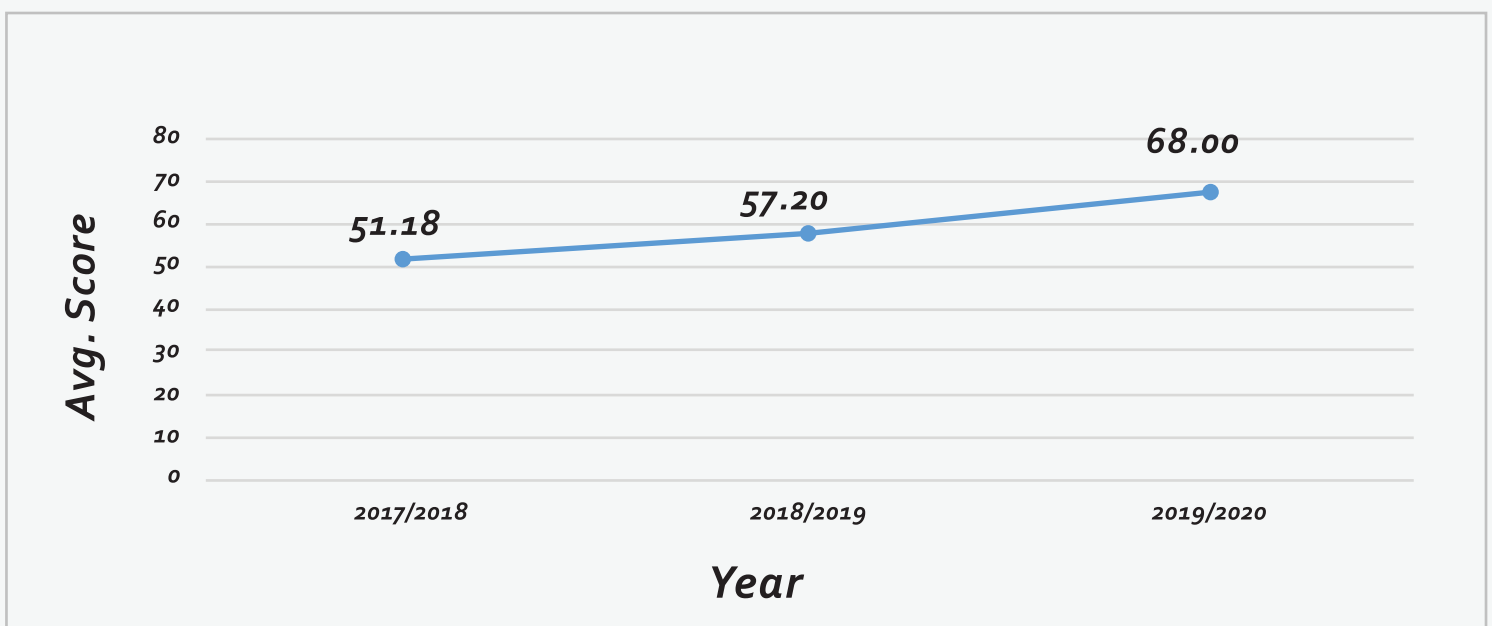


Figure 4.5: Trend Analysis on Ethics and Social Responsibility

The performance on this Principle has improved over the years from 51% in 2017/2018 to 68% in 2019/2020. The improvement is attributed to most issuers developing and disclosing their codes of ethics and conduct, development of corporate citizenship policies as well as whistle blowing policies and reporting on the impact of the company's operations on the environment.

Notable areas of improvement under this Principle are:

1. Ensuring that compliance with the code of ethics and conduct is integrated into the company's operations. The code should also be reviewed on a regular basis.
2. The need for boards to assess their performance on ethics and monitor while disclosing to internal and external stakeholders
3. Issuers to ensure that they implement the corporate citizenship and sustainability policies.

Accountability, Risk Management and Internal Control

It is critical that the interests of the shareholders and those of the company are safeguarded. This can be achieved through prudent use of resources to realise optimum return on investments, minimizing or reducing wastage, proper investment strategies and minimizing possible negative impacts of the various risks encountered in businesses.

This Principle mainly calls on issuers to ensure that the board takes responsibility and provides oversight on the critical functions of the company. The board is responsible for the integrity and accuracy of financial information, ensuring the independence of external auditors, proper functioning of the audit committee, effective risk management frameworks and internal audit, among other responsibilities.

The average aggregate performance in this Principle for the year 2019/2020 was 74.24%. It points out to Issuers embracing key issues with regards to the audit committees, adoption of elements of integrated reporting, prudence in on boarding external auditors, more disclosure with regards to risk management ;policies, frameworks and processes and also matters of internal control.

The trend has been improving has shown below.

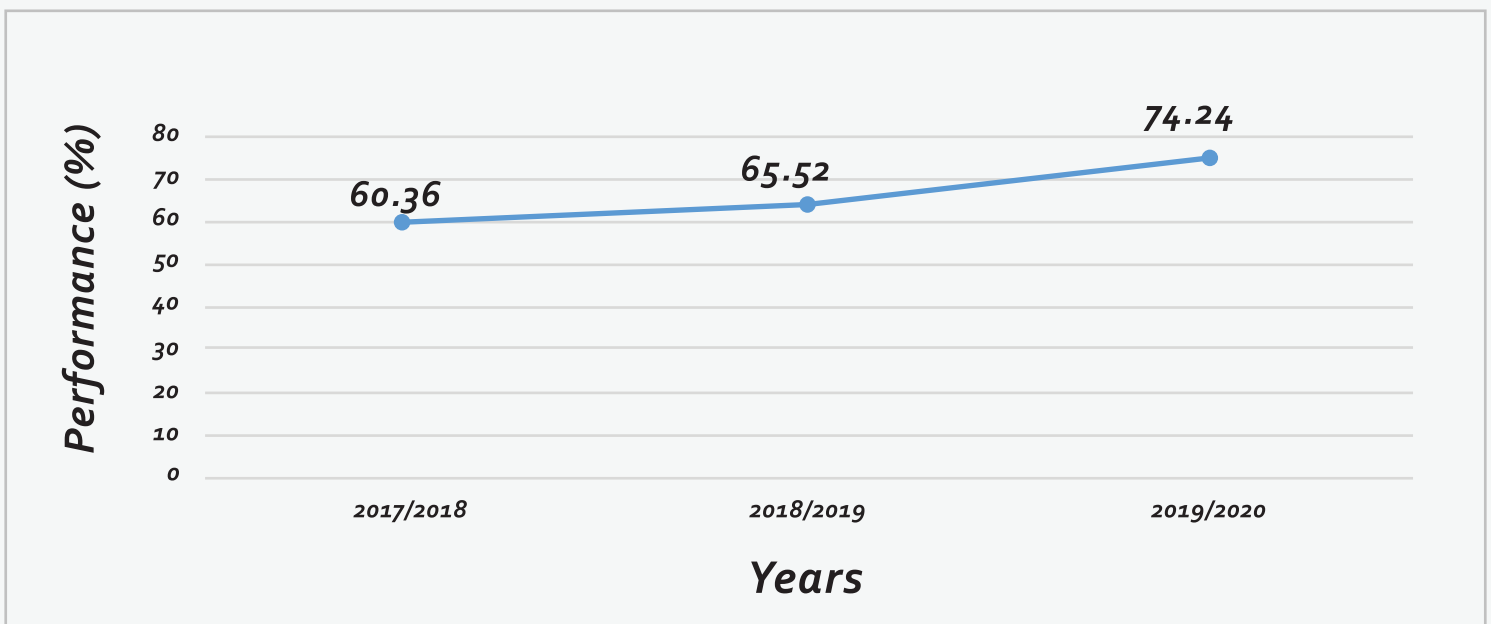


Figure 4.6: Accountability, Risk Management & Internal Control

As illustrated above there is a commendable upward trend on the implementation and compliance with the various aspects of this principle. The gradual increase as witnessed from 60.36% in 2017/2018 to 65.52% for 2018/2019 and 74.24% for 2019/2020. This positive observation is based on several factors including more disclosures by the Issuers on various aspects of this Principle including areas around the composition of the audit committee, disclosures on its activities. Issuers have also made disclosures with regards to risk management processes and framework.

What are the areas of improvement on this Principle?

- (a) Issuers should introduce integrated reporting and those who have already published their integrated reports should align them with their adopted integrated reporting standard.
- (b) Owing to risks and opportunities of working from home, there is need for issuers to have robust internal control systems and risk management frameworks to ensure continuity of business and proper safeguards.
- (c) Issuers should continually assess and monitor their risk management frameworks to ensure that the risks and opportunities are regularly updated based on lessons learnt.

Transparency and Disclosure

Companies and businesses especially the issuers have a diverse ecosystem of operations. This encompasses the natural environment, employees, community, regulators among other stakeholders. Adequate disclosures play a critical role in helping the various stakeholders understand the governance structures and operations of the companies.

Good corporate governance calls for timely and balanced disclosure of all material information as required by all laws, regulations and standards. Fair, timely and cost-effective access to the information by users is also very critical.

This Principle covers key disclosures on remuneration of directors and senior management, board charter, whistle blowing policy, code of ethics and information on resignation of directors, management discussion and analysis, compliance with laws, ethical leadership, conflict of interest, corporate social responsibilities and citizenship, governance audit, risk management policy, procurement policy, insider dealings, related party transactions, information technology policy, corporate reporting, statement of policy on good governance and status of application of the Code among others.

The average aggregate performance by all issuers on transparency and disclosures for the year 2019/2020 was 71.24%. This is a general good performance rating.

The analysis below demonstrates the improvement over the years.

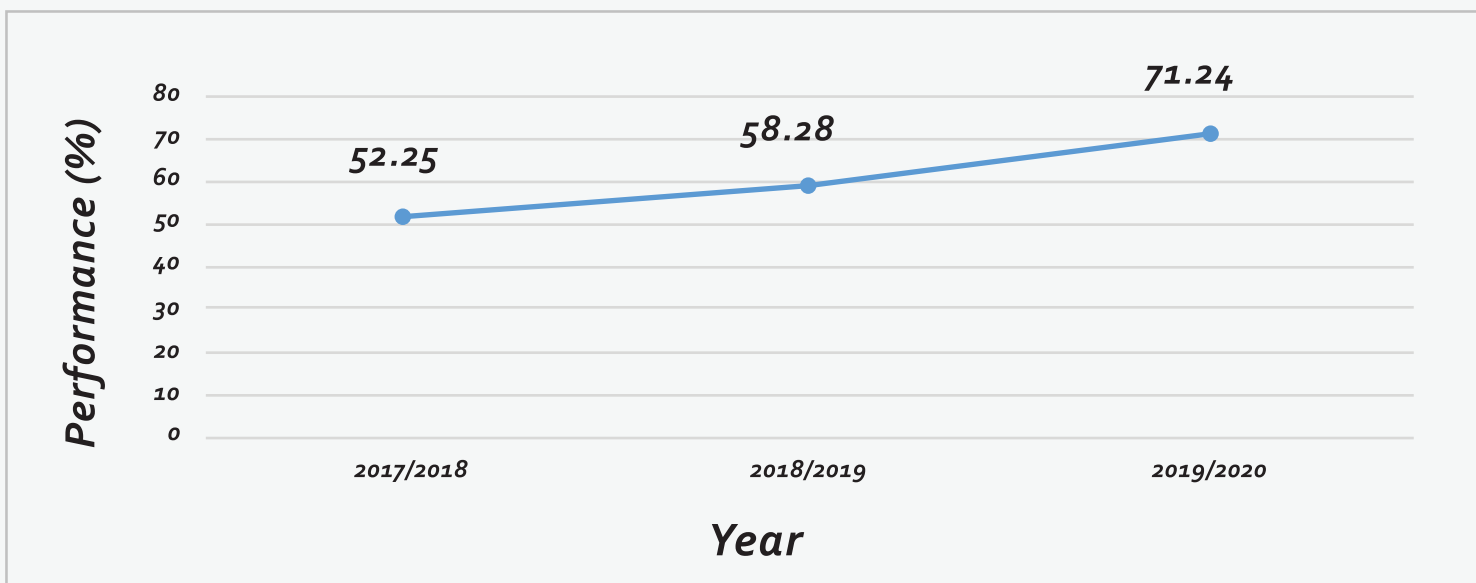


Figure 4.7: Overall performance by Issuers on Transparency & Disclosure

There is a general and gradual improvement on performance witnessed this year on this Principle. There is an impressive upward trend where in 2017/2018 the aggregate performance was at 52.25%, which increased to 58.28% for 2018/2019 and at 71.24% for 2019/2020 which is a good rating.

The improvement was as a result of issuers understanding the importance of transparency and disclosures through having proper policies and processes on dissemination of financial and non-financial information on the operations of company.

There is a general improvement on how issuers are packaging and sharing information with their stakeholders. This has been achieved through the enhanced adoption of elements of integrated reporting in preparation of the annual reports. There is also improvement in use of website and more information with regards to the companies is being disclosed through this channel. The use of other communication platforms including newspapers, social media platforms among other have also improved the quality and way in which information is proactively being shared with the various stakeholders.

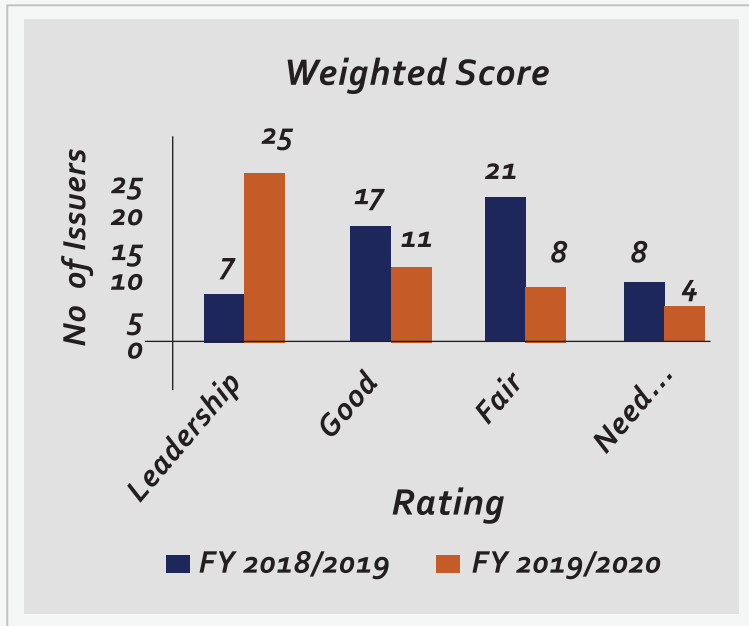


The key area recommended for improvement is:

The highlights of policies and strategies as envisaged in the Code under this Principle be disclosed in the annual reports and issuers' websites including information of the code of ethics, risk management policies, insider dealings, related party transactions, among others.

Performance on All Principles

Overall Score



Rating	FY 2018/2019	FY 2019/2020	% Change in 2019/2020 compared to 2018/2019
Leadership	7	25	+257
Good	17	11	-35
Fair	21	8	-62
Need Improvement	8	4	-50

On the overall weighted issuer performance, 2019/2020 recorded an improvement of +11% as compared to 2018/2019.

Performance on all principles as compared to 2018/2019

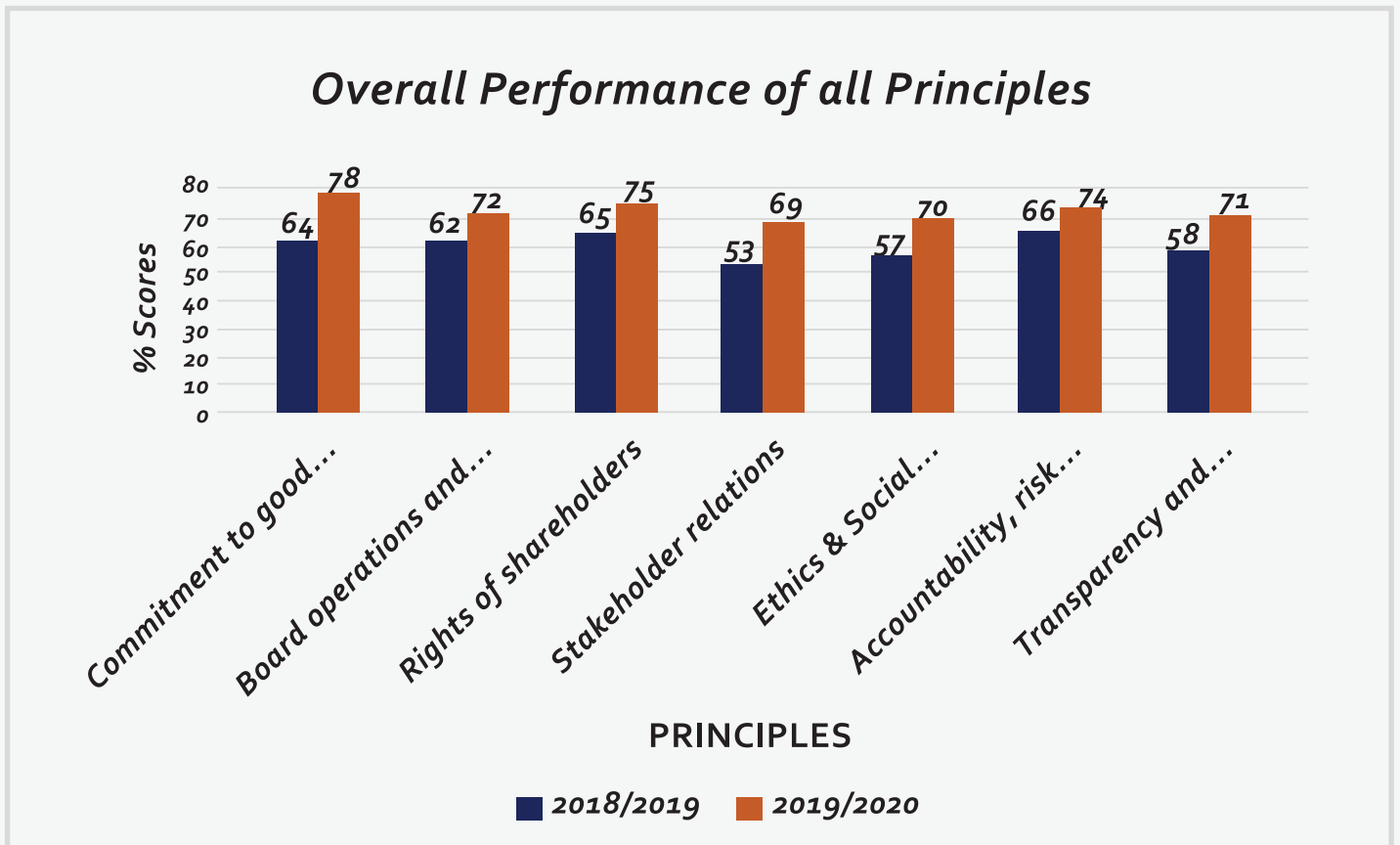


Figure 5.2: Overall performance of all Principles

As observed above, there was a general improvement across all the Principles for FY 2019/2020 as compared to FY 2018/2019. The largest improvement is witnessed on the stakeholder relations with an increase from 53 to 69 translating a 30.18% improvement. The Principle where the least improvement is witnessed, is on Accountability, Risk Management, and Internal Control which moved marginally from 66% for FY 2018/2019 to 74% for FY 2019/2020, translating to an increase of 12%.

The table below shows the percentage increase across the Principles.

<i>Principles</i>	<i>2018/2019</i>	<i>2019/2020</i>	<i>% Change</i>
Stakeholder Relations	53	68	28.30
Ethics and Social Responsibility	57	70	22.81
Commitment to Good Corporate Governance	64	77	20.31
Transparency and Disclosure	58	69	18.97
Board Operations and Control	62	71	14.52
Rights of Shareholders	65	74	13.85
Accountability, Risk Management, & Internal Control	66	74	12.12

Weighted Performance based on Market Capitalization

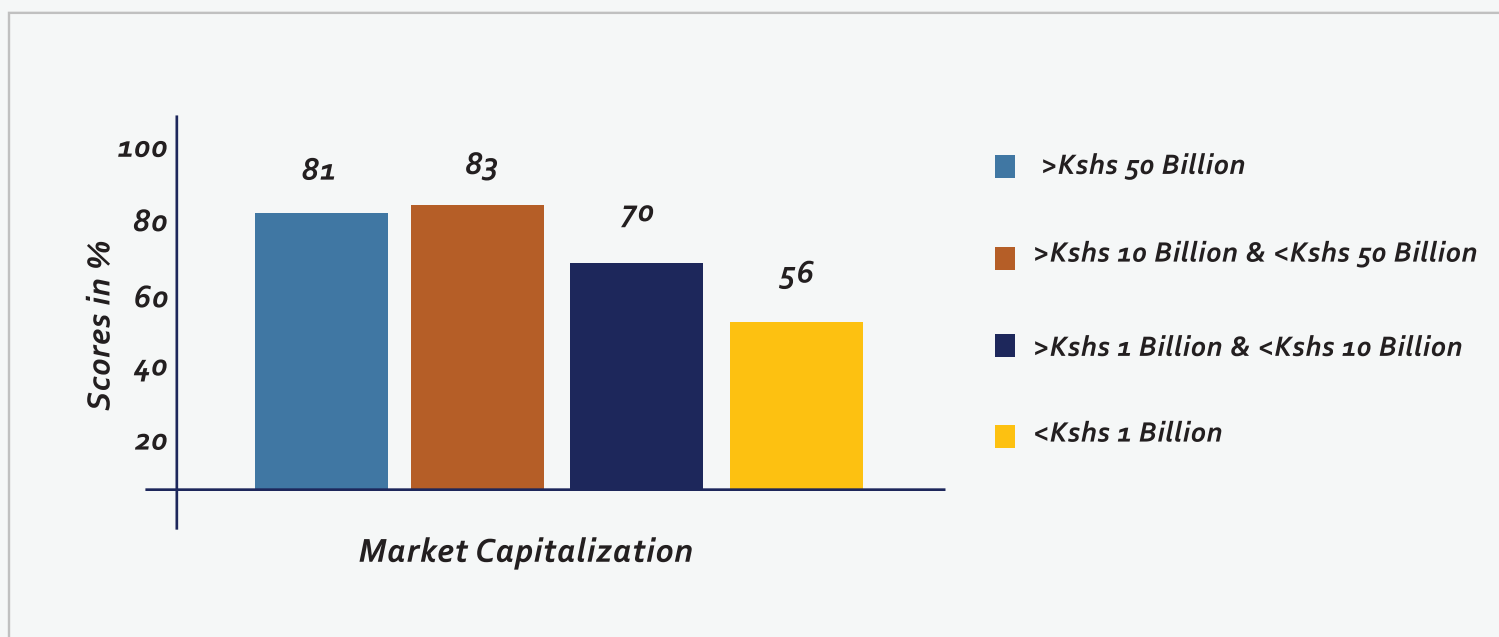


Figure 5.3: Weighted Performance based on Market Capitalization Categories

The analysis illustrates that companies with a market cap of greater than Kshs10 billion but less than Kshs50 billion had the best corporate governance practices while those with a market cap below Kshs1 billion had the least performance.

Trend Analysis on Weighted Performance based on Market Capitalization

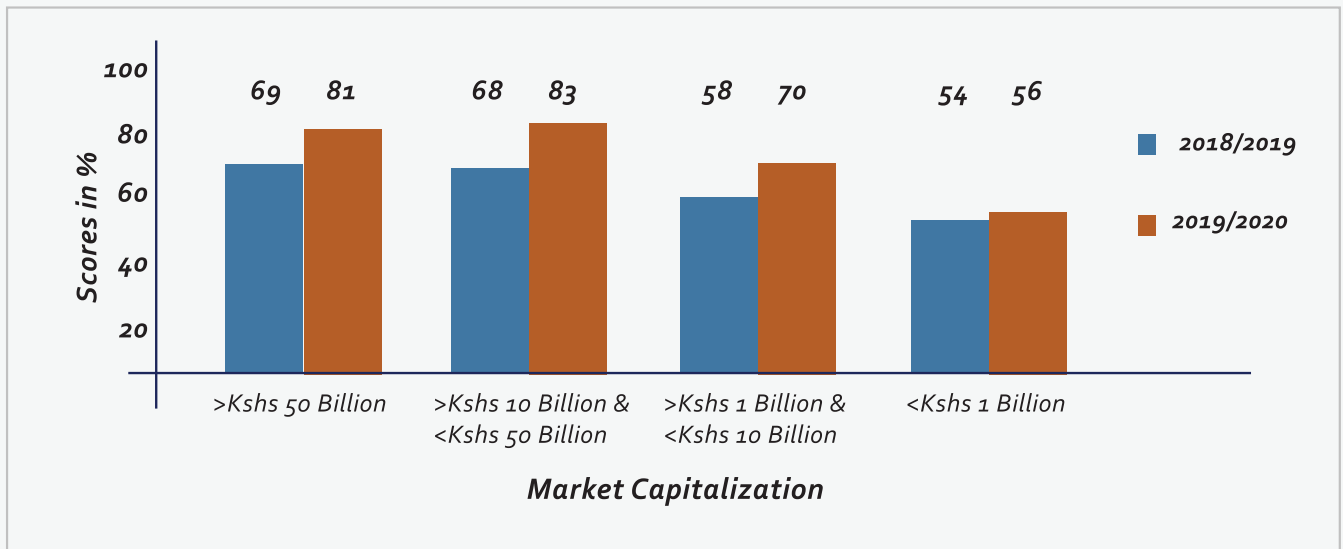


Figure 5.3.1: Weighted performance based on market capitalization categories FY 2019/2020 compared to FY 2018/2019

As shown by the above trend all market cap categories registered an improved performance compared to 2018/2019.

Weighted Overall Score per Sector

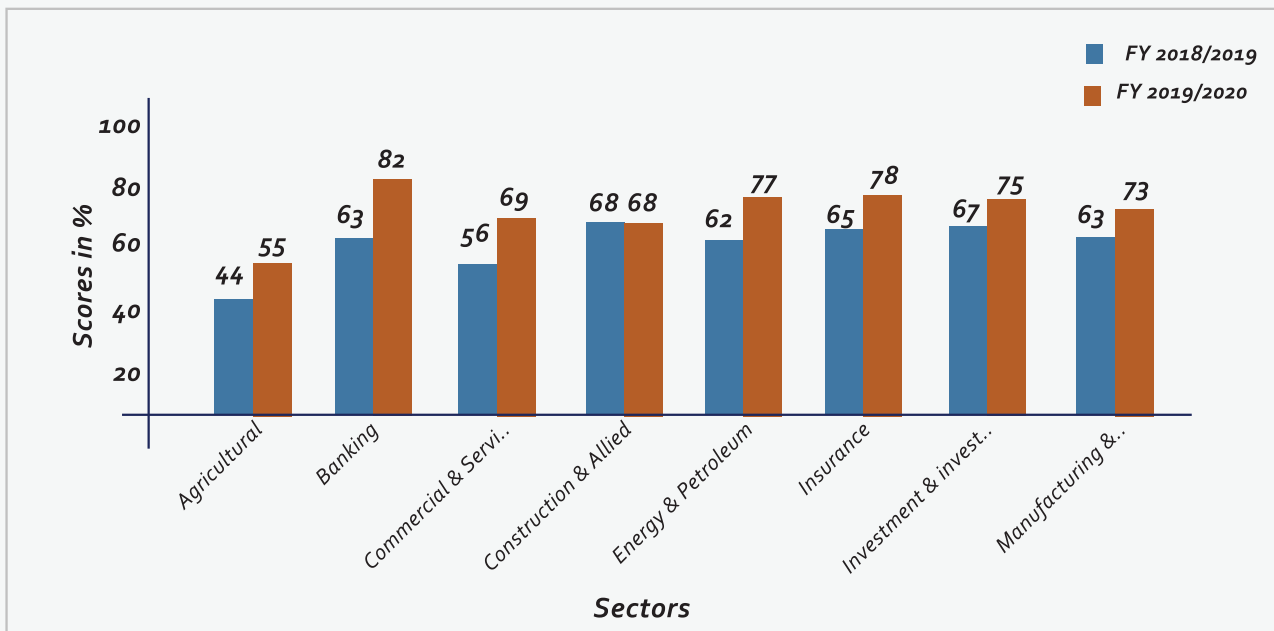


Figure 5.4: Weighted Overall Score per sector

The Banking, Energy and Petroleum, Investments & investment services and Insurance sectors scored a leadership rating, the Construction & Allied, Commercial and Services sector scored a good rating. The Agricultural sector scored a fair rating. There was an improvement in performance from the previous year across all the sectors.

Heat Map Displaying Relative Performance in the Seven Principles

SECTOR	Commitment to good CG	Board Operations and control	Rights of Shareholders	Stakeholder Relations	Ethics and Social Responsibility	Accountability, Risk management	Transparency and disclosure
Agriculture	Fair	Fair	Fair	Fair	Fair	Fair	Fair
Banking	Leadership	Leadership	Leadership	Leadership	Leadership	Leadership	Leadership
Commercial & Services & Telecommunications	Good	Good	Good	Good	Good	Leadership	Fair
Insurance	Leadership	Good	Leadership	Good	Leadership	Leadership	Leadership
Manufacturing & Allied/Automobiles & Accessories	Leadership	Good	Leadership	Good	Good	Leadership	Good
Energy & Petroleum	Leadership	Leadership	Leadership	Leadership	Leadership	Leadership	Good
Construction & Allied	Leadership	Good	Leadership	Good	Good	Good	Fair
Investment & Investment Services	Leadership	Fair	Good	Needs Improvement	Fair	Fair	Fair

Key for the heatmap:



It is worth noting that different sectors excel in different principles as represented by the heat map, the sectors with the highest overall scores did not necessarily perform well in all categories. Similarly, sectors with lower scores are not necessarily weak in all parameters. The Banking sector is the only sector that scored a leadership on all the principles. This is an improvement from the previous assessment in which none of the sectors as a whole scored a leadership rating in all the principles. The Agricultural sector scored a fair rating in all the principles.

The only Need Improvement score was observed in the investment and investment services sector under the stakeholder relations principle.

Emerging Issues and New Developments

Some of the emerging issues and new developments that issuers need to consider in their governance include:

- (a) Institutional investors are increasingly becoming an integral part in monitoring corporate governance and sustainability of companies.
- (b) Investors are likely to integrate climate-change competency and risk oversight into investment guidelines in some form, and boards will need to demonstrate that they are thinking strategically about the opportunities, risks, and impact of climate change..
- (c) With the dynamic operating environment and companies' rapid strategic evolution aimed at retaining their competitive edge, investors and other stakeholders are requiring more targeted communication.
- (d) There is need to promote sustainability reporting as a tool to attract, mobilize and drive sustainable investments for sustainable development in the capital markets.
- (e) The need for the Board to go beyond the development of company policies and focus more on the practical implementation and integration into the company's culture.

Stakeholders Feedback Matrix

The Authority engaged and is continuously engaging with the stakeholders on the report on state of corporate governance of issuers of securities to the public in Kenya including emerging issues and/or new developments in the corporate governance & sustainability space with the objective of receiving important feedback to improve the assessment process, inform policy and/or change of corporate governance requirements. Below is the status of key matters raised by stakeholders in the last 1 year and implementation of the proposed actions by the Authority:

<i>Comments and proposals from issuers on the 2018/2019 State of Corporate Governance Report</i>	<i>2020 Update from CMA</i>
There is need to review the frequency of legal/compliance audits and reduce the frequency of governance audits. It was proposed that the audits be done once every three years.	Through a circular, the Authority reduced the cycle of governance audits from annual to once every two years. For the legal audits, we are awaiting the final audit framework from the Law Society of Kenya, which will inform the review of the frequency.
Issuers sought clarification on the overlap of regulatory frameworks in companies that are cross-listed and the need for harmonization.	It was highlighted that the higher standard will be applicable where there are overlaps. There has been ongoing work on the harmonization of the regulatory framework for the capital markets in East Africa through the East Africa Securities Regulators Association (EASRA).

<i>Comments and proposals from issuers on the 2018/2019 State of Corporate Governance Report</i>	<i>2020 Update from CMA</i>
It was proposed that governance scores of individual issuers be disclosed to the issuer	In the 2019/2020 governance assessment, we disclosed the scores of each issuer, and had exit interview meetings to discuss and clarify the findings and recommendations.
It was proposed that issuers participate in Financial Reporting (FiRe) Awards to improve their governance particularly integrated reporting.	A number of issuers participated. The Authority will continue encouraging issuers to participate in FiRe Awards as well as the Champions of Governance Awards.
There is need for a balance between disclosure and the protection of confidential information that may expose issuers' competitive advantage especially as compared to unregulated/unlisted entities.	Investors are increasingly demanding information necessary for them to make investment decisions. The spirit of the Code is espoused under the principle of transparency and disclosure. However, in making the disclosures, issuers are expected to assess and balance the scope and content of such disclosures against stakeholder expectations and commercial considerations.
There were concerns about the amendment to the Companies Act that reduced the threshold for takeover of companies.	The amendments to sections 611 and 615 of the Companies Act to reduce the threshold for takeover from 90% to 50% were revoked. The 90% threshold has been reinstated.
The Authority was asked to put in place measures and strategies to promote listing by SMEs	In 2020, the Authority developed a policy framework to inform the development of a governance framework that will facilitate the listing of SMEs. The review of the Capital Markets (Securities) (Public Offers, Listing and Disclosure) Regulations, 2002 is ongoing. This will inform a comprehensive review of the public offers regulations to facilitate listings.
There was a request for an update on the status of the proposed Recovery Board at the NSE and its implications on the issuers.	In 2019 and 2020, the Authority had extensive consultations with stakeholders on the proposed Recovery Board. The finalization of the framework to operationalize the Recovery Board is still ongoing.

The Authority has developed responses to Frequently Asked Questions (FAQs) about the Code in order to assist Issuers of Securities to the Public and the market to effectively implement and apply the provisions of the Code. This can be accessed on the Authority's website via the following link;

https://www.cma.or.ke/index.php?option=com_phocadownload&view=category&id=92&Itemid=285



Conclusion and Recommendations

The 2019/2020 State of Corporate Governance Report for Issuers has provided a vital tool for issuers, the market, and regulators to review the state of the market, while identifying the proposed improvements and what needs to be done. For the last three assessments, we have noted the importance of identifying, tracking, and evaluating areas of improvement and recommendations.

As was evidenced in the assessments, each Principle recorded improvements. Going forward, the Authority will be initiating enforcement proceedings against issuers who did not submit their governance self-assessments and full set of annual reports for governance assessment purposes. As a result of this, the issuers who did not submit their governance reports have not been included in this report.

Recommendations

Principle	Recommendation
Commitment to good governance	There is an increased need for companies develop strategies that promote sustainability
	The role of the Board in developing and monitoring the company strategy should be defined and monitored.
Board operations and control	Consider diversity in all its' aspects especially gender diversity.
	Develop strategic plans that promote sustainability of the companies &are flexible enough to change periodically depending on the operating environment.
Rights of shareholders	Issuers to keep educating their shareholders on how they can actively participate during virtual AGMs.
	Information and disclosures on issuers' websites should be current, timely and easy to access especially during this period of virtual AGMs and meetings.
	Issuers should proactively avail information through their social media handles and engage their stakeholders.
Stakeholder relations	The highlights of policies and strategies on stakeholder relations be disclosed in the annual reports and issuers' websites.
	Mechanisms for resolving external disputes particularly through alternative dispute resolution be developed by issuers.
	The whistleblowing mechanisms and channels should be highlighted in the issuers' annual reports and websites.
	The issuers should undertake an assessment of their stakeholder relations and identify areas of improvement.
Ethics and social responsibility	Ensuring that compliance with the code of ethics and conduct is integrated into the company's operations. The code should also be reviewed on a regular basis.
	The need for boards to assess their performance on ethics and monitor while disclosing to internal and external stakeholders
	Issuers to ensure that they implement the corporate citizenship and sustainability policies.

<i>Principle</i>	<i>Recommendation</i>
Accountability, risk management and internal control	Issuers should introduce integrated reporting and those who have already published their integrated reports should align them with their adopted integrated reporting standard.
	Owing to risks and opportunities of working from home, there is need for issuers to have robust internal control systems and risk management frameworks to ensure continuity of business and proper safeguards.
	Issuers should continually assess and monitor their risk management frameworks to ensure that the risks and opportunities are regularly updated based on lessons learnt.
Transparency and disclosure	The highlights of policies and strategies as envisaged in the code under this principle be disclosed in the annual reports and issuers' websites including information of the code of ethics, risk management policies, insider dealings, related party transactions, among others.

Next Steps

- 1.** The Authority continues to call on the Boards and Management of issuers to implement the assessment recommendations while building a culture of compliance, integrity and sustainability.
- 2.** The Authority will continue to conduct exit interviews and provide feedback to the respective issuers at the end of every assessment to enhance and improve corporate governance practices in Kenya.
- 3.** The Authority is moving from assessing disclosures to practical implementation of the policies by issuers. The next focus area for the assessment will be the practical implementation and adherence to all corporate governance policies, procedures and standards by issuers of securities to the public. Over and above confirming when and where governance disclosures are made, the Authority will assess how these policies, procedures and standards are adopted and implemented. For example, how the conflict of interest and related party policies are adhered to in the day-to-day operations of the company and the board?
- 4.** The Authority will earnestly continue to investigate and take appropriate action on all reported or perceived corporate governance lapses and failures amongst issuers of securities to the public.
- 5.** The Authority is working with the system providers to automate the corporate governance reporting templates and scorecards to improve accuracy, efficiency, effectiveness and accelerate the assessment process. The system will be configured and in-built with prompts/alerts/reminders to the issuers/CMA and feedback through business intelligence.

- 6.** The Authority will engage and execute MoUs with Fund Managers Association and other institutional investor associations (Association of Collective Investment Schemes, Association of Kenya Insurers and Association of Pension Administrators of Kenya) to partner in the implementation of the Stewardship Code. The recommendation is based on a comparative study particularly in South Africa, Japan, Brazil, among others. The study shows that the implementation of most stewardship codes globally are spearheaded by institutional investor associations, with support from regulators where necessary.
- 7.** The Authority will work with stakeholders such as the Nairobi Securities Exchange (NSE), International Finance Corporation (IFC) and Institute of Certified Secretaries (ICS) in developing and implementing a roadmap for adopting and supporting environmental, social and governance (ESG) practices and integrated reporting amongst issuers.
- 8.** The Authority will continue to support NSE's strategy on the development of ESG index to encourage listed companies to adopt enhanced corporate governance requirements and focus on sustainability. The ESG index is expected to measure and track the listed issuers environmental, social and governance practices.
- 9.** The Authority will continue to collaborate with the IFC and NSE to create awareness and build capacity on ESG aspects and integrated reporting in the capital markets.
- 10.** The Authority is partnering with the British High Commission and FSD Kenya to scale up work on climate finance and especially on building capacity amongst issuers in implementing recommendations from the Taskforce on Climate-related Financial Disclosures (TCFDs) in Kenya. In particular, through partnerships, the Authority will look forward to train and build capacity in TCFD and other Environmental, Social & Governance (ESG) reporting; develop a contextualized TCFD guide to help issuers approach and address climate-related financial risks; and implement/adopt the guide through various incentives such as the Financial Report (FiRe) Awards and the creation of TCFD champions within the relevant institutions.
- 11.** To facilitate SMEs to come to market and noting the inapplicability of some of the Principles of the Code of Corporate Governance Practices for Issuers of Securities 2015 to SME sector, the Authority is developing a framework for corporate governance for small and medium enterprises in Kenya. It is envisaged that once a fit for purpose Code is developed and adopted, more SMEs will find the capital markets attractive, as well as cost effective for capital raising. The SMEs are potential issuers in the market hence the need for a tailor-made governance toolkit and listing requirements.
- 12.** There are a number of issuers set up as Limited Liability Partnerships (LLP) raising funds from the public. As you may be aware, LLPs do not have well-defined governance structures, with governance responsibilities that are held separate and apart from the owners. The Authority after consultations with key stakeholders will develop a suitable governance guidance to cover issuers set up as LLPs.
- 13.** The Authority will take appropriate enforcement action on violations of the mandatory provisions and continuous reporting obligations which will be published as appropriate.



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