IFU'S HANDBOOK ON BOARD WORK AND CORPORATE GOVERNANCE

IFU INVESTMENT FUND FOR DEVELOPING COUNTRIES

IFU as a partner

IFU – Investment Fund for Developing Countries is a development finance institution offering advice and risk capital to companies wishing to do business in developing countries and emerging markets. The purpose is to contribute to the economic and social development in the host countries.

IFU invests risk capital on market terms in the form of share capital, loans and guarantees in private sector companies that are established in developing countries or emerging markets. We provide professional advice regarding the business environment, investment terms and sustainability issues as well as cultural and political barriers, etc. with assistance from our regional offices and through our global network of advisers.

IFU as a fund manager

As a fund manager, IFU has invested in nearly 1,200 project companies in developing countries and emerging markets in Asia, Africa, Latin America and Europe. IFU is currently the manager of five funds and one facility as the entry point to ensure that each investment is undertaken within the most relevant framework, whether it is directly through IFU or through one of our funds.

IFU INVESTMENT FUND FOR DEVELOPING COUNTRIES

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AIF THE ARAB INVESTMENT FUND

IIP IFU INVESTMENT PARTNERS

KIF DANISH CLIMATE INVESTMENT FUND

DAF DANISH AGRIBUSINESS FUND

PREFACE

Corporate governance refers to the structures and processes for the direction and control of companies.[1] IFU's Policy on Corporate Governance for Investments (see Annex 1) articulates our commitment to work with our partners and project companies to ensure that IFU through its board work incorporates the corporate governance of our investments at a fit-for-purpose level and is prepared to evolve in step with the new governance challenges inherent in any growing enterprise.

The board of directors – or simply the board – is the link between the owners of the company, the shareholders and those responsible for its day-to-day operations, the management. The board must put the interest of the company first, thereby creating "shareholder value" for all shareholders.

Many of the project companies in which IFU invests have relatively small Danish partners owned and managed by one and the same person, who often has little, if any, experience in operating companies under joint ownership, where the board of directors plays an important role.

Therefore, in addition to the corporate governance policy, IFU has developed a corporate governance toolkit (CG toolkit) to operationalise the policy in our investment preparation and execution process. The CG toolkit is designed as a number of questions to get IFU's project teams thinking ahead about the desired role of the IFU-nominated board member in the governance of the company and how to support the board member in such role.

This handbook is written primarily for board members of the project companies nominated by IFU, but may be equally relevant for board members nominated by IFU's partners and the management that will be ruled by the board. Its aim is to give a short and easy introduction to the role and purpose of the board of directors in particular in project companies in cooperation with IFU.

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1. DFI Working Group on Corporate Governance, Corporate Governance Development Framework, 2011

Like IFU's policy on corporate governance and the CG toolkit, the contents of this handbook are inspired and informed by IFU's practical experience from almost half a century as a partner and investor in project companies in developing countries, and should be considered as recommendations. The handbook reflects a set of best practices on board work, but does not pretend to answer all questions related to the work of the board of directors, since exceptions always exist.[2]

The handbook is structured as a chronological tool for board members joining a newly established (green-field) company, covering the different aspects from establishment to operation.

Andreas Brogaard Buhl
Head of Sustainability and
Corporate Governance

Tommy Thomsen
CEO

Morten Christiansen
Senior Vice President

2. A complementary reference for IFU nominees is the Working Group for the Corporate Governance Development Framework's "Guidebook for Development Finance Institutions on Nominating a Board Member to the Board of an Investee Company" (2016). http://cgdevelopment-framework.com/wp-content/uploads/2016/05/RST-Nominee-Director-Guidebook_final.pdf

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1 The role and purpose of the board

The board of directors – or simply the board – is the link between the owners of the company, the shareholders and those responsible for its day-to-day operations, the management. The board is elected and can be removed by the shareholders. The members of the board must put the interest of the company first and thus over and above their own interest and the interest of a particular shareholder or group of shareholders, thereby creating "shareholder value" for all shareholders.

The board needs to always keep in mind that the paramount objective of a company is to generate a profit for its owners. Of course, the board's and the company's pursuit of profit for its shareholders must be consistent with its legal, contractual and other obligations to stakeholders beyond its shareholders. IFU's focus on sustainability is a clear reflection of our conviction that commitment to environmental and social sustainability is fully consistent with long-term value creation and profit for shareholders.

The board is not and should not be involved in day-to-day management. To this end the board appoints the management. The role of the management, a general manager or a management board, is to execute the decisions of the board and cooperate in creating growth for the company. If shareholders are dissatisfied with the management, the shareholders must act through the board; shareholders - normally - cannot appoint, instruct or remove management.

1. 1 The role and purpose of the board

In The Company Director's Guide, UK Institute of Directors, 2001, the role and purpose of the board is summarised as follows:

The key purpose of the board is to ensure the company's prosperity by collectively directing the company's affairs, whilst meeting the appropriate interests of its shareholders and relevant stakeholders. It is for the board to judge, on a case-by-case basis, which stakeholders it treats as "relevant" and which of their interests it is appropriate to meet, taking into account the law, relevant regulations and commercial considerations.

The board is essentially a collective decision-making body. It has neither the time nor the resources to enact every decision itself and so must delegate to management a great deal of authority. However, it remains ultimately responsible for the company and any actions taken on its behalf. To ensure that the company prospers, the board must address some key tasks and ensure that they are carried out effectively.

The four key tasks of the board are to:

1. *Establish vision, mission and values: (i) determine the company's vision and mission to guide and set the pace for its current operations and future development; (ii) determine the values to be promoted throughout the company; (iii) determine and review company goals; and (iv) determine key company policies.*

2. *Set strategy and structure: (i) reviewing and evaluating present and future opportunities, threats and risks in external environment; and current and future strengths, weaknesses and risks relating to the company; (ii) determining strategic options, selecting those to be pursued, and deciding the means to support them; (iii) determining the business strategies and plans that underpin the corporate strategy; and (iv) ensuring that the company's organisational structure and capability are appropriate for implementing the chosen strategies. Further, it is a key task of the board to initiate restructurings and change directions when needed.*

3. *Appoint and dismiss management: (i) employ and delegate authority to management, and monitor and evaluate the implementation of policies, strategies and business plans; (ii) determine monitoring criteria; (iii) ensure that internal controls are effective; and (iv) communicate with senior management.*

4. *Exercise accountability to shareholders and be responsible to relevant stakeholders: (i) ensure that communications both to and from (all) shareholders and relevant stakeholders are effective; (ii) understand and take into account the interests of (all) shareholders and relevant stakeholders; (iii) monitor relations with (all) shareholders and relevant stakeholders through the gathering and evaluation of appropriate information; (iv) promote the goodwill and support of (all) shareholders and relevant stakeholders; and (v) declare dividends.*

The four key tasks of the board mentioned above need to be conducted in close cooperation and dialogue with the management, and often the initiative to change strategy or redefine company goals must of necessity come from management itself.

It should be noted that the role and responsibilities of the board may vary by law and custom from country to country, for which reason the functioning of the board needs to comply with local requirements.

Importantly, the specific responsibilities of boards, the amount of time and efforts they must devote to key tasks and their structure and composition also vary significantly depending on industry. For example, the legal/regulatory framework, high leverage and the rapid pace of technological changes in the financial sector typically require that the boards of financial institutions meet more frequently, require greater technical support and rely more heavily on committees than those of manufacturing or trading enterprises. The boards of companies in other heavily-regulated industries, including utilities and pharma, may also find themselves with specific responsibilities for oversight and reporting that require the devotion of significant amounts of time and other resources.


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2 Prior to establishment of the project company: The appraisal period

IFU's corporate governance toolkit requires and assists investment officers to consider investment-specific issues that may have an impact on the role, structure and composition of the board. Among the objectives of the toolkit is to identify potential challenges early on and ensure agreement within IFU and between IFU and its partners around expectations for the board and the contribution of IFU and partner-nominated board members.

Prior to establishment, it is important to agree when and how to constitute the board and the frequency of meetings. Before joining the board, the guidelines for IFU board representation in project companies, IFU's standard rules of procedure and project-related documents should be thoroughly studied[1] by the nominee director, and the corporate governance analysis undertaken during project appraisal through application of the toolkit should be carefully reviewed. See Annex 2: Suggested introduction package to new director nominated by IFU.

2.1 Personal liability of members of the board of directors

Prior to constituting the board, it is IFU's practice to obtain a legal opinion on the personal liability of members of the board of directors from a local lawyer, because the rules and liability of boards of directors vary across countries.

Board members must be free to act in the interest of the company, in the best way they see fit, with prudence and expeditiousness, so that the company may pursue appropriate opportunities and take suitable risks to prosper and grow. However, boards do need to be concerned about liability. Specifically, boards have fiduciary duties (and hence liability in the event of breach of such duties) in two key areas:

- **Duty of loyalty:** Board members have a duty to act in the best interest of the company and to avoid potential and actual conflicts of interest.[2]
- **Duty of care:** Board members have a duty to make business decisions based on all available information after reasonable inquiry and preparation and due deliberation.

1. IFU's standard documents referred to throughout this handbook can be obtained on IFU's intranet or by contacting the relevant investment director.
2. The intermingling of company and personal assets is perhaps the clearest example of a violation of the duty of loyalty.

At the first or second board meeting after the constitution of the board, IFU's representative should take the initiative to procure a legal opinion from a local lawyer on the relevant rules and case law regarding the board's liability in the country in question, which also follows from IFU's standard rules of procedure. In some countries where this is a known challenge, these questions may already have been investigated by IFU's investment team during the project preparation.

2.2 Directors and Officers Liability Insurance Policy

Considering how the issue of directors' liability is developing globally, it is recommended for the board of the project company to indemnify board members and to take out a so-called "Directors and Officers Liability Insurance Policy" (D&O policy). Indemnifying board members means that the company will pay all legal costs as and when incurred, and cover damage claims against a board member so long as the board member did not engage in wilful misconduct or gross negligence. Similarly, a D&O policy should directly cover each board member's ongoing legal costs in connection with any suit against him/her in connection with his/her service on the board and pay any judgement or settlement except in the case of wilful misconduct or gross negligence.

In the past, D&O policies were unavailable or excessively expensive in some countries, but today they are available at reasonable premiums in most of the countries in which IFU invests. Occasionally, the parent company of an IFU investment has taken out a D&O policy, which also covers the board members of its subsidiaries.

IFU does not insure against the liability incurred by an IFU-nominated board member. IFU indemnifies, however, the representative for loss incurred, unless the loss is due to wilful misconduct or gross negligence.

2.3 Stakeholders

No company, big or small, lives in isolation. The owners are interested in the best possible return on their investment. However, any company will have a number of "stakeholders", i.e. persons, groups or organisations that are affected by the company's operations or impacted by its success or failure.

Identification of stakeholders, recognition of their legitimate claims on the company and oversight of the company's responsiveness to legitimate stakeholder interest is a key board function. The board's agenda should include regular updates from management on stakeholder engagement.

Some examples of key stakeholders are employees, consumers/customers, government (and its agencies), owners (shareholders), suppliers, unions, the community from which the business draws its resources, creditors and directors. Not all stakeholders are equal. A company's customers are entitled to fair trading practices but they are not entitled to the same consideration as the company's employees.

IFU's expertise and contribution to corporate social responsibility and sustainability in project companies often translates into a special role for IFU in ensuring good stakeholder relations.

2.4 Composition of the board

Prior to establishment of the project company, it is important to consider the composition of the board, because the board should be able to fulfil its purpose in the best way possible. In addition, the number of board members and the composition of their experience must be considered. Some key issues to focus on when deciding on the composition of the board could be the need for certain regional, sector or technical knowledge, need for local professionals as board members, etc.

IFU's CG toolkit requires IFU investment officers to consider the appropriate role, structure and composition of the board during the appraisal period. It is specifically recommended that IFU and the other partners table a focused discussion on the composition of the board as early as practical, and always before formal nominations are made.

2.5 The chairman of the board

The board will normally appoint a chairman from amongst its members, unless the chairman is nominated according to the shareholders' agreement from one of the shareholders or a group of shareholders. The chairman should preferably be a substantial figure on the board acting as the "driver" of the board's work as well as maintaining close contact with the company's general manager. IFU's nominee board member will normally not serve as chairman of a board, except under extraordinary circumstances.

2.6 Shareholders and the board

In theory, the roles of shareholders, board and management are well defined with little "overlapping": the shareholders nominate and elect the members of the board, the board appoints the management, and the management takes care of the day-to-day operation of the company. In practice, however, complete separation of roles is neither possible nor even desirable, especially in SMEs with shareholders that lack experience in cooperating with other investment partners, and who come from different countries and different business cultures.

In some cultures, the roles of the various shareholders may not be as well defined as described above, leaving the company without the expected checks and balances. In such cases, IFU's nominee board member can play an important role and thus provide "additionality" by taking the lead in explaining the benefits for all shareholders when each shareholder has a well-defined role to play and actually accepts the role and its limitations. One of the key objectives of IFU's CG toolkit and of the recommendations of this handbook is to reach clear, agreed expectations around each shareholder's contribution to the functions of the project company's governance structure.

In family-owned companies, the CEO is usually a family member from the controlling shareholder, which often implies that the CEO "runs" the board. This requires special consideration, since it will create a significant overlap between shareholders, the board and management. In these cases, it may be beneficial to appoint a "lead director", who is charged with ensuring that the board members other than the chairman have input into the board's agenda.

2.7 Management

The management is appointed by the board. The role of the management of the company (typically headed by a CEO or general director and sometimes also including other "C-suite" officers) is to execute the decisions of the board. It is of paramount importance that the employment contract with the general manager is clear and unambiguous in order to ensure a clear common understanding of the framework of the assignment and the cooperation between management and the board. The board has to continuously assess the management and its ability to execute and fulfil the strategy.

It is recommended that the full board be actively involved in defining the profile of the general manager and the selection process. The profile of the general manager often changes when the company begins its operations, because of the difference between project management/development and the task of running an operation. To ensure the right recruitment, the board has to be aware of the profile and competences required to manage the company properly during the different stages. Further, the board should continuously evaluate the CEO and management team in their effort to ensure progress towards strategic and company goals. See Annex 3: Management and recruitment, or contact IFU's HR unit for more information and advice.

2.8 Supervisory board

Company laws and regulations vary from country to country. In some countries, the board – in such cases often referred to as a "supervisory board" - does not have the power to appoint, instruct or remove the management, but merely acts on behalf of the shareholders in a monitoring or supervisory role, whereas management, appointed by the shareholders, has a wider mandate.

For all practical purposes - when agreed between the shareholders - a supervisory board can de facto have the same function as a "normal" board.

In case local company law does not require establishment of a board, IFU will normally require one anyway, or where this is not possible request that a body, which to the extent possible assumes the role of a board, is established, and ensure that the shareholders' agreement and – to the extent possible – also the articles of association reflect this understanding.

3 Establishment: Starting off on the right foot

When establishing the project company, it is important at an early stage, for instance at the first board meeting, to agree on a number of appointments as well as policies, rules and procedures governing the functioning and performance of the company. These include most notably **board charter and rules of procedure** for the board, a **corporate governance policy** and a **sustainability policy.** IFU's Model Board Charter and Rules of Procedure for Boards of Directors of Project Companies is inclosed with this handbook as Annex 4.

The board's work is guided/controlled by routines and deadlines and requires the reading of a significant amount of papers and reports. While it can be tempting to skip some of the formalities if the calendar is full, it is not advisable. In case a conflict develops between members of the board or between shareholders, it is of paramount importance to have rules of procedure and proper documentation of all proceedings at the board meetings.

Annex 5 is a checklist providing advice and guidance to board members. A substantial part of Annex 5 is a checklist of actions and documents for the first board meeting. The checklist is primarily focusing on board members nominated by IFU, but may also be useful to other members of the board. The checklist is also a short and practical guide to the continuous assignments and responsibilities of a board member. Therefore it is advisable to bring the checklist to board meetings.

Although the board is not and should not be involved in day-to-day management, it does not mean that the members of the board should be restricted to "paper work" in the board room. The board should at least once a year, preferably more often, in connection with board meetings physically inspect the company's premises during working hours in order to supplement the picture presented in the various documents prepared and submitted by the management.

3.1 Rules of procedure for the board of directors

The rules of procedure in Annex 4 concerns the internal functioning of the board. This document includes topics like the board constitution and committee members, appointment of chairman/vice-chairman, typical tasks of the board, establishment of committees, board composition, desirable competences of board members, method of decision-making, voting, records and other matters relating to the board.

Typically it will also describe relations to the company executives and in some cases also to ordinary staff with observatory status attending board meetings. However, the aspect of delegation of authority and signatories of the company is most often specified in separate documents for practical reasons as such shorter documents will have to be presented in banks and elsewhere during company operations.

The rules of procedure for the board can also include paragraphs on how to handle conflict of interest, various internal rules, reporting obligations, disclosure requirement and how to manage amendments and external communications.

3.2 Corporate governance policy, anti-corruption policy and code of ethics

An important policy to discuss at an early stage is the corporate governance policy and business ethics. Key practical aspects of corporate governance are the rights and equitable treatment of shareholders, the responsibilities of the board of directors, disclosure and transparency of the reporting of the project company and the role of its stakeholders such as its employees, customers, suppliers, creditors (lenders) and the neighbouring community.

IFU does not require a specific wording of a corporate governance policy. The board of the project company is free to establish a framework of good corporate governance on the basis of and in compliance with the law (statutes and case law), tradition and culture, in other words with the best practices of corporate governance in the country in which the project company is domiciled.

IFU does not require a specific wording of the anti-corruption policy and code of ethics. However, it should at least state that the company will operate in compliance with host country regulations and comply with international standards for significant issues. This is further elaborated in IFU's Sustainability Policy and in IFU's Sustainability Handbook. An example of a basic code of ethics is attached to Annex 4. In some companies an anti-corruption policy is combined with the code of ethics into one document.

3.3 Corporate governance matters to emerging market project companies

- **Improving performance.** Good corporate governance can contribute to better business results, because good governance structures and processes are likely to improve the quality of the decision-making within the project company as well as the image of the company projected to the outside world.

- **Access to capital.** Good corporate governance can improve access to capital for the project company. Much of the attention to corporate governance issues in emerging markets has focused on the role governance can play in improving access to equity capital, whether from domestic or international sources. An increasing volume of empirical evidence also indicates that well-governed companies receive higher market valuations. Improving corporate governance can also increase the flow of debt financing to companies, whether from domestic, international, private or public sources.

- **Improving stakeholder relations.** Better corporate governance leads to transparency and better disclosure, thus providing the opportunity to establish fair relationships with the stakeholders mentioned above.

3.4 Corporate governance concerns the responsibilities of the board of directors

Corporate governance also focuses on the relations between the project company and its shareholders – majority and minority – and how the project company is held accountable to those stakeholders deemed by the board of directors to be relevant to the project company. In other words, corporate governance requires that independent, vigilant board members exercise effective control of the project company, carefully select and motivate its management and ensure that the project company, first of all, creates value for shareholders, and then its stakeholders, not only from a financial standpoint but also in a socially and environmentally responsible way.

3.5 Sustainability policy

IFU is committed to contributing to sustainable development and strives to promote business opportunities whilst reducing risks and ensuring that project companies contribute to sustainable development. IFU expects its partners to share IFU's aspirations regarding sustainability.

IFU believes that a business perspective on sustainability can contribute to increased growth and competitiveness for the company and at the same time generate social and environmental progress. Many boards of directors today recognize that effective management of social and environmental risks and opportunities can improve business performance leading to increased oversight by boards over how the company is managing its social and environmental performance as part of their fiduciary responsibility.

Therefore sustainability should be incorporated in decision processes, so that the management and the board support and focus on environmental and social risks and opportunities. Once sustainability issues have been integrated into the business strategy, it can be a driver for innovation ensuring that the company knows the demands and expectations of customers and other stakeholders.

A well-implemented and proactive sustainability policy can contribute to reducing costs resulting from e.g. increased productivity and reduced consumption of resources. It will also strengthen the company's reputation and competitiveness and ensure long-term legitimacy. The board should set the "tone from the top".

A sustainability policy is therefore an important element of best practice board work, because it provides the framework for assessing and managing environmental and social risk and opportunities and related governance issues of the project company.

3.6 Implications of sustainability for boards

Sustainability issues can represent significant risks and opportunities to company performance. Oversight of social and environmental risk management and performance therefore needs to be incorporated into board governance to ensure that long-term shareholder and stakeholder interests are protected and promoted.

Boards should understand how and when sustainability issues can:

- Impact or enhance a company's **strategy and vision**
- Necessitate board level **oversight and accountability**
- Influence risk **identification and management**
- Require changes to board **composition and expertise**, and
- Improve **external disclosure.**

Governance of sustainability can be particularly challenging because the environmental and social performance is often reported through different business lines, making it difficult for boards to have an overall picture. The development of an effective governance framework can help boards to ensure that environmental, social and community issues and opportunities are well-managed and maximized.

A few questions for the board to consider:

1) Have board and management agreed on and communicated an explicit commitment to sustainability?
2) Has the board developed a common understanding of the company's business case for sustainability?
3) Is sustainability incorporated into the company's mission, vision and values?
4) Does the company code of conduct/ethics incorporate sustainability?
5) Does the company have a board-approved sustainability policy (either a stand-alone policy or incorporated into other policies)?
6) Are material sustainability issues and goals considered in the development of the company's business strategy?
7) Is there a designated sustainability officer with a reporting relationship to the board?
8) Does the board regularly review progress on the company's performance against sustainability goals, objectives and targets?
9) Is management's compensation linked to performance on sustainability goals and targets?
10) Are measures in place for the board to assess to which extent the company's sustainability commitments are adhered to across the company and within its supply chain?

For more information on sustainability policy, see IFU's Sustainability Handbook.

4 In operation: Regular board meetings

4.1 Board agenda and calendar of activities

When the project company is in operation, it is important to monitor its performance and development. The standard agenda (Annex 6) and board calendar (Annex 7) can be used as inspiration to structure the meetings and help as a practical guide. By listing the board's work for the forthcoming year, the board meetings can be scheduled and planned regarding content and specific topics. The minimum frequency of board meetings is typically provided in the articles of association, with the actual number and timing (and certain key agenda items) set forth in a corporate calendar or resolution approved annually by the board.

4.2 Red lights

As a board member, it is important to be as well informed as possible at all times about the situation of the project company. It is furthermore important to be observant of and to take appropriate action in case of any "red light warnings" which could flash in respect of the company (please refer to Annex 8 for a non-exhaustive list of red light warnings for board members).

4.3 Board minutes

It is the duty of all board members to oversee that business is conducted in a proper way and in accordance with the guidelines set by the board. The board member should therefore ensure that the board's decisions are properly recorded in the minutes of the meeting, and that the draft minutes are circulated to the board within a reasonable time and approved by the board latest at the next board meeting.

4.4 Periodic reports to IFU

It is furthermore the duty of IFU's board nominee to prepare a short internal meeting summary reflecting the general status of the project company (finance, management) as well as any issue of particular importance to IFU. The internal summary should normally be in the form of a short e-mail, which must be sent to relevant IFU team members, regional director and senior vice president, as well as be properly filed in IFU's electronic archive.

4.5 Audited annual accounts and financial reporting

It is a key responsibility of the board to monitor that the project company remains on track with the chosen strategy and to react in a timely manner and decisively when deviations – as they certainly will - occur.

Project companies with IFU financing are obliged to fulfil certain obligations in terms of budgeting, accounting, reporting and auditing. Such obligations pertain to principles used, frequency and deadlines for reporting, choice of auditor and receivers of the financial reports. The board should insist on receiving similar information in a timely fashion. Only when the reporting is on time and of the required quality does the board have the tools to control and navigate. Delayed reporting or reporting of poor quality is a danger signal not to be ignored.

4.6 Financial reporting as a management tool

The financial handbook prepared by IFU is required reading, not only to ensure correct financial reporting, but also as an aid to understand reporting and to ensure a reliable and sound business. It is the responsibility of management to maintain reliable operation of the project company, and financial reporting is an essential tool. Thus, through a review of the current financial reporting the management can identify risks and signs for needed attention and initiate the required actions to get the company back on track.

4.7 International Financing Reporting Standards

As a tool or reference for good practice to be used in project companies, IFU ordinarily requires that project companies report in accordance with International Financial Reporting Standards (IFRS). In IFU's Financial Handbook, the principles in IFRS are explained with the aim of serving as a manual when project companies are working with budgeting, accounting, reporting and auditing as well as securing that reporting in accordance with shareholders' and loan agreements is done professionally and in due time.

4.8 Annual report

The annual report is an important tool for external stakeholders to receive information on the company's financial situation. It is the responsibility of the board and management to ensure that the annual report is in accordance with applicable legislation and the local regulatory environment. The inclusion in the annual report of a section laying out management's discussion and analysis of the company's results of operations ("MD&A") is a best practice and an invaluable point of reference for both shareholders and board members. The board should be continuously involved in the process and ensure the report covers relevant financial and non-financial topics and developments. The board must ensure that the annual report gives a fair view of the financial situation and meets the going concern prerequisite.

4.9 Corporate compliance status report

While not mandatory, it is recommended to procure a corporate compliance check from either the project company's auditors or lawyer, e.g. in connection with the presentation of the project company's first audited accounts.

It is a standard disbursement condition for IFU's share capital contribution and loans that a legal opinion is procured relating to the legality of the company's operations and its compliance with applicable law and regulation. The lawyer will issue an opinion on the basis of an examination of the project company's key documents available at the time the disbursement is required. There may, however, be a number of permits which can only be issued when the project company is ready to start commercial operation, and such documents will not be covered by the legal opinion.

A corporate compliance status report covers registration, certification and other relevant documents required by national law, the articles of association as well as common sense business practice. The service provides verification of the existence, legality, validity and location of all such key documents.

4.10 Evaluation of the board

On a yearly or biennial basis the board should carry out an evaluation of its work.

Board evaluations can be conducted in a variety of fashions. Boards can self-evaluate or may hire third parties to oversee the process (and sometimes provide their own feedback). Responsibility for conduct of the evaluation should be clearly assigned to the corporate secretary, a board committee or an individual director. It is common in small companies for the chairman to lead the process. In any case, for the outcome to be credible, it is important that all directors have an input into the process and the content of the questions to be addressed and approve the ultimate format.

Among the questions to be raised are: How do the directors work as a team; what are their interpersonal skills; is there a dominant chairman or manager; is the chairman an effective leader; do all directors contribute; what is the level of commitment; is the board objective in acting on behalf of the company; is it robust in taking and sticking to difficult decisions; are decisions reached by the whole board; do decisions take account of shareholders' views; are there any "unmanaged" conflicts of interest; is the composition of the board being refreshed?

IFU may participate in or take initiative to arrange training courses locally either for the entire board of a project company or for the boards of project companies domiciled in a country or region.

In addition, IFU provides training of board members nominated by IFU. Training includes a 1-2 day investment seminar every second year, which focuses on IFU-specific questions of relevance to board work. Furthermore, IFU offers individual training in cooperation with other EDFIs or external consultants, dependent on the individual's background and need for training.

Annex 1: IFU's Policy on Corporate Governance for Investments

Annex 2: Suggested introduction package to new directors nominated by IFU

Annex 3: Management and recruitment

Annex 4: Model Board Charter and Rules of Procedure for Boards of Directors of Project Companies

Annex 5: Checklist for board members nominated by IFU

Annex 6: Standard agenda for ordinary board meetings

Annex 7: Board calendar

Annex 8: Red light warnings for board members

Annex 1: IFU's Policy on Corporate Governance for Investments

Scope and objectives

"Corporate governance refers to the structures and processes for the direction and control of companies. Corporate governance matters because it improves investee (IFU term 'project') companies' performance and helps develop capital markets. Sound corporate governance reduces risk, adds value to investments and avoids reputational risks for investors".[1]

The importance of good corporate governance to the success of individual enterprises and the sound development of the private sector economy is today a well-established fact. IFU's experience as an active participant in the governance of our project companies demonstrates that careful and continuous attention to governance is essential to achieving our financial, sustainability and developmental goals.

As an investor in developing economies, which could be characterised by weak institutions and limited public and private sector capacity, IFU sees corporate governance as an integral part of environmental, social and governance (ESG) due diligence and a means to promote the rule of law, reduce risks, foster a more robust private sector and contribute to a sustainable and profitable business environment attractive to investment and entrepreneurship.

IFU's objectives in corporate governance of project companies are threefold:

- To ensure that the corporate governance framework of every IFU project company (whether a greenfield or brownfield investment) is fit-for-purpose and incorporates applicable best practices tailored to the enterprise's size, industry, ownership structure and other characteristics;

- To promote continuous improvement in the structure and practice of governance in project companies via our roles as shareholders, board member nominees and advisers; and

- To contribute to the development of a corporate governance culture in the developing countries in which IFU operates, through capacity-building, the introduction of best practices in project companies and the demonstration effect our companies serve in society and the broader economy.

Through support to good corporate governance IFU will not only strengthen global partnerships, but also contribute to the practical implementation of several Sustainable Development Goals[2].

Governance in IFU project companies

IFU requires that at a minimum, each project company complies with all applicable local legal requirements for a corporate entity of its type and has in place a workable internal framework for its board and management, internal controls, transparency and shareholder rights.

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1. From the Corporate Governance Development Framework agreed by IFU and more than 30 other Development Finance Institutions. http://cgdevelopmentframework.com/wp-content/uploads/2015/02/Corporate-Governance-Development-Framework.pdf.
2. IFU's support to good corporate governance includes contributions primarily related to Responsible Consumption And Production (SDG 12) and Partnership For The Goals (SDG 17).

We recognize that corporate governance is never a matter of "one size fits all". Desirable corporate governance structures and practices vary depending on factors including the company's size, industry and ownership pattern. The local business environment and relative sophistication of the private sector in the country in which the project company operates must also be considered.

Recognizing this, IFU together with our investment partners designs and promotes corporate governance frameworks in our investments tailored to the particular internal and external circumstances of each project company.

Contributing to corporate governance culture in developing countries

IFU strives to make our project companies leading examples of good governance in the markets in which they operate. We want the positive impact of our investments on the local business culture to last long after our exits. The solid operational performance of IFU project companies that have implemented best practices in corporate governance, and their success in attracting domestic and international capital provide an important demonstration effect for the broader economy. In addition, by insisting on and fostering professional Boards, internal controls and independent auditing, IFU promotes the development of the private sector infrastructure necessary to support well-governed companies.

The IFU corporate governance toolkit

To achieve fit-for-purpose governance structures and practices in our project companies, IFU has developed a set of tools that investment teams are required to apply in the course of due diligence. The IFU CG toolkit revolves around a detailed questionnaire to help project teams to determine if the proposed investment meets our minimum governance standards and to identify key governance-related challenges the project company faces or will face. As part of the appraisal process, project teams must assess the governance strengths and weaknesses of a potential project company and, with the help of the toolkit, devise solutions to identified shortcomings. Where appropriate, these solutions may be formalized in a CG action plan providing for the implementation of identified governance improvements, which will become an integral part of IFU's investment commitment to a potential investment partner and a condition for IFU's participation in the investment.

IFU's active role in corporate governance

IFU strongly believes that we can best achieve our financial and developmental objectives by being an active investor. As a (minority) shareholder of our project companies, we must actively exercise our rights and responsibilities, including where appropriate through participation in the board of directors. IFU's board member nominees must be empowered and encouraged to share and disseminate our extensive experience in hands-on governance.

IFU's staff and external board member nominees have served on boards of companies in a variety of countries, regions, industries and stages of development. This body of experience and expertise, and the support of the toolkit, enables IFU's board member nominees to provide guidance in the area of corporate governance specifically tuned to a project company's business priorities, available resources, local environment and level of maturity. IFU's sustainability unit supports project teams and board member nominees in the use of the toolkit and in the application of this policy to specific investments and circumstances.

IFU's development objectives are the same regardless of whether we provide financing in the form of equity or debt. For this reason, also when IFU is a lender only, we endeavour to contribute experience and expertise in corporate governance in a similar fashion as when IFU is a shareholder.

Measuring results

The implementation of targets set out in agreed CG action plans will be monitored on an on-going basis through IFU's board member nominees and via direct engagement by project teams with the company's management and our investment partners. Reference to CG action plans will be included in IFU investment agreements, and project companies will be required to provide periodic reports on progress made against the CG action plan targets.

Approved by IFU's Board of Directors on 12 October 2016.

Annex 2: Suggested introduction package for new directors nominated by IFU

IFU standard documents:
- Guidelines for IFU Board Representation in Project Companies
- IFU's Model Board Charter and Rules of Procedure for Boards of Directors of Project Companies
- IFU's Sustainability Policy
- IFU's Policy for Corporate Governance for Investments
- Project CIP, BC, investment agreements, including ESG action plans, if any

Role and responsibilities:
- Terms and conditions of the appointment
- Introduction to current chairman, directors, company secretary and management group
- Terms of reference of board committees
- Memorandum on personal liability of a board member and director insurance

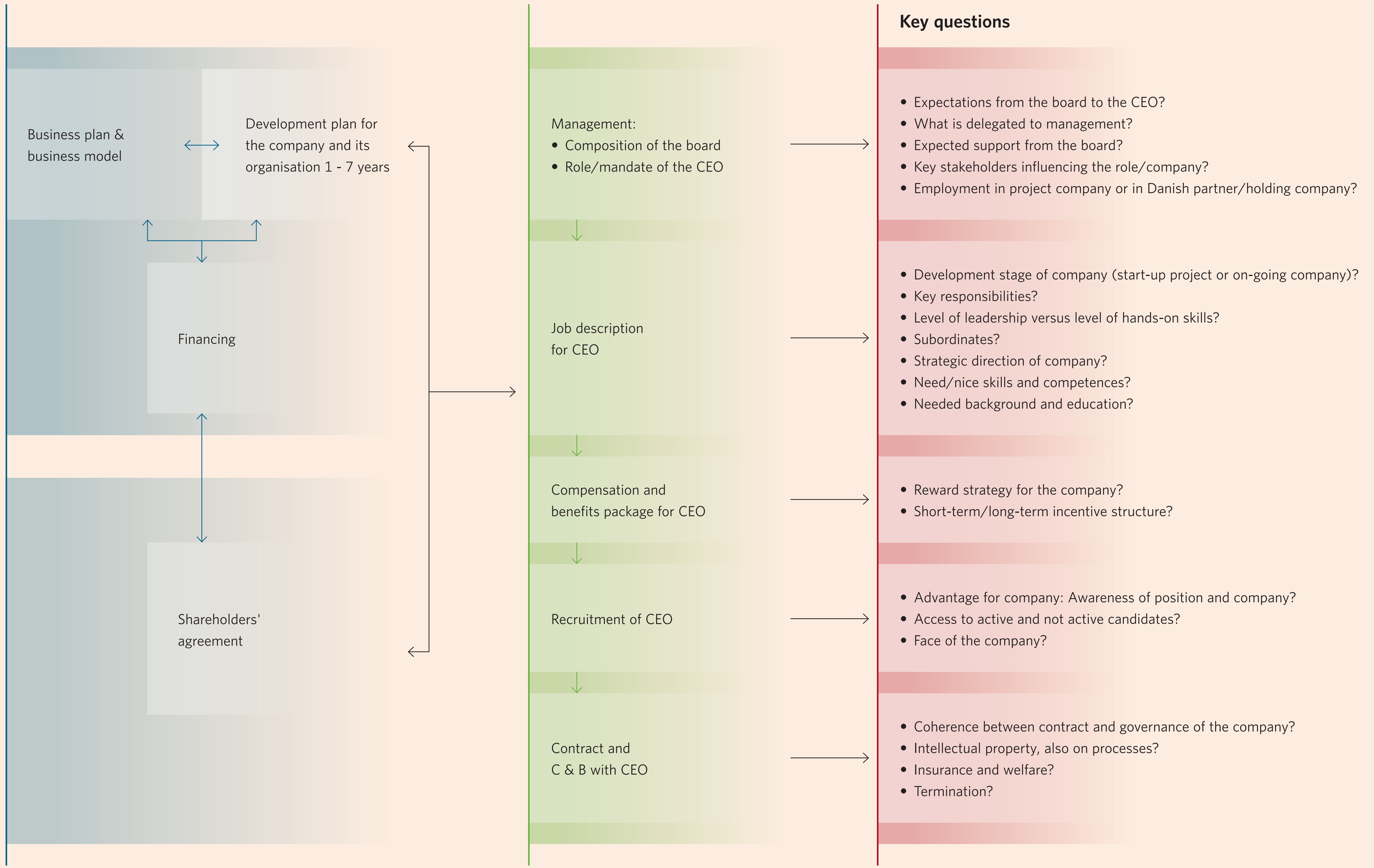
Company:
- The memorandum and articles of association
- Available and relevant legal opinions
- Annual report for past three years
- Organisational chart/list of subsidiaries and associated companies
- Strategy and business plan
- Details of project company's most important customers and suppliers
- Project company's corporate/sustainability guidelines and policy

Board:
- Minutes of annual general meetings from past three years
- Minutes of last six board meetings
- Schedule of future board and committee meetings
- Description of rules of procedure of the board and other company guidelines

Financial:
- Most recent management accounts
- Most recent update on liquidity development
- Update on financial KPIs
- IFU's Financial Handbook

Annex 3: Management and recruitment

Management and recruitment best practices - initial key questions to answer.



Annex 4: Model Board Charter and Rules of Procedure for Boards of Directors of Project Companies

Introduction to IFU's Model Board Charter and Rules of Procedure for Boards of Directors of Project Companies

IFU's Policy on Corporate Governance for Investments was approved by our board of directors on 12 October 2016. As noted in the policy "IFU sees corporate governance as an integral part of Environmental, Social and Governance (ESG) due diligence and a means to promote the rule of law, reduce risks, foster a more robust private sector and contribute to a sustainable and profitable business environment attractive to investment and entrepreneurship.

IFU's objectives in corporate governance of project companies are threefold:

- To ensure that the corporate governance framework of every IFU project company (whether a greenfield or brownfield investment) is fit-for-purpose and incorporates applicable best practices tailored to the enterprise's size, industry, ownership structure and other characteristics;
- To promote continuous improvement in the structure and practice of governance in project companies via our roles as shareholders, board member nominees and advisors; and
- To contribute to the development of a corporate governance culture in the developing countries in which IFU operates, through capacity-building, the introduction of best practices in project companies and the demonstration effect our companies serve in society and the broader economy.

Through support to good corporate governance IFU will not only strengthen global partnerships, but also contribute to the practical implementation of several Sustainable Development Goals."

Consistent with the policy, IFU developed a set of tools ("the IFU Corporate Governance Tool Kit") that project teams are required to employ as part of the appraisal process. The tools help project teams analyze the governance strengths and weaknesses of a potential project company and devise solutions to identified shortcomings. Such analysis and solutions include items of direct relevance to the boards of directors of project companies and the selection and activities of IFU's nominee board members.

When establishing a project company, it should be a priority to agree on a board charter and rules of procedure for the board of directors. Having a firm understanding of the role of the various organs of corporate governance (including the shareholders' meeting, the board and management), and how the board will be run greatly increases the likelihood that the company will achieve its financial and other objectives and treat all stakeholders fairly.

While IFU does not insist on a single, rigid format for board charters and rules of procedure for boards of project companies, we have nonetheless elaborated this model board charter and rules of procedure for the board of directors to serve as a point of reference or as inspiration for improvements if such a document already exists. This model is intended as a guide to the contents of the actual document or documents adopted by project companies, and suggests practices and language that can be adapted to a specific company's circumstances.

We are hopeful that this model will support and assist the boards of IFU project companies in the important task of formulating, adopting and adhering to sound corporate governance principles and practices. <u>This model also includes a template on "Code of Ethics" for the project company, which is attached as an appendix.</u>

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Board Charter and Rules of Procedure for the Board of Directors of
(INSERT COMPANY NAME)

Place and date of approval:
(INSERT DATE AND PLACE)

Names of approvers:
(INSERT NAMES AND SIGNATURES OF BOARD MEMBERS)

CONTENTS:

I. Responsibilities of the board of directors

1. The board of directors is chiefly responsible for monitoring managerial performance, approving strategies and achieving an adequate return for shareholders, while preventing conflicts of interest and balancing competing demands on the company from stakeholders. The board should explicitly assume responsibility for the stewardship of the company and emphasise that board responsibilities are distinct from management responsibilities. The board is accountable to the shareholders (and the company), while the management is accountable to the board.

   The board's key responsibilities include:

   (a) **Selecting and overseeing management.** The board is ultimately responsible for selection, continuance and, when appropriate, removal of the general director and for ensuring that the company has in place an adequate succession plan and processes for carrying out a change in management. The principal responsibilities of the directors are to oversee the management of the company and, in so doing, serve the best interests of the company as a separate entity on behalf of its shareholders.

   (b) **Establishing effective systems.** Directors are responsible for determining that effective systems are in place for the periodic and timely reporting to the board on important matters concerning the company. In particular directors should present a balanced and understandable assessment of the company's financial position in its accounts with the assistance of the independent auditor when preparing the annual accounts. Directors should also ensure that periodic reviews are undertaken of the internal controls of the company.

   (c) **Treating all shareholders fairly where board decisions may affect different shareholders differently.** Every board member is a fiduciary of all shareholders. In carrying out its duties, the board should not be viewed, or act, as an assembly of individual representatives. While specific board members may indeed be nominated or elected by certain shareholders, it is an important feature of the board's work that board members when they assume their responsibilities carry out their duties in an even-handed manner with respect to all shareholders.

   (d) **Reviewing and guiding corporate strategy,** major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and overseeing major capital expenditures, acquisitions and divestitures.

   (e) **Identifying, monitoring and managing potential conflicts of interest of management, board members and shareholders,** including proper use of corporate assets and vigilance in related party transactions. It is an important function of the board to oversee the internal control systems covering financial reporting and the use of corporate assets and guard against abusive related party transactions.

   In fulfilling its control supervision and monitoring responsibilities the board encourages the reporting of unethical/unlawful behaviour without fear of retribution. The existence of the company's code of ethics will aid this process.

(f) **Ensuring the integrity of the company's accounting and financial reporting systems,** including the independent audit, and also ensuring that appropriate systems of control are in place, in particular systems for risk management such as insurance, currency, sustainability, etc., financial and operational control and compliance with the law and relevant standards. The board should set and enforce clear lines of responsibility and accountability throughout the company.

II Responsibilities and role of directors

1. Conflicts of interest. Prior to their election at the general meeting of shareholders, candidates for director must make full disclosure of executive and board positions in all other public and private companies. They must also disclose any other affiliations of a business or other nature which may raise the potential for conflicts of interest in such person's service as a director of the company.

   Directors are also obligated to notify the chairman of any instances which may arise subsequent to their joining the board that may imply a potential conflict of interest.

   A director may not participate in board discussions or votes relating to agenda items, agreements or contracts with respect to which he/she has a conflict of interest. Nor may such director participate in any vote on a board resolution on the question of whether such director has a conflict of interest or not.

2. As part of their role as members of the board, directors should constructively challenge and help develop proposals on strategy. They should scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance. They should satisfy themselves on the integrity of financial information and that financial controls and systems of risk management are robust and defensible.

3. Directors are preferably and most often non-executive of the company (i.e. without a day-to-day operational responsibility), and they should:
   - Regularly update and refresh their skills, knowledge and familiarity with the company including the rules of signature (who are authorised to bind the company);
   - Where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the board and, to the extent that they are not resolved, ensure that they are recorded in the board minutes and flagged for timely follow-up;
   - Give a statement to the board if they have such unresolved concerns on resignation;
   - Have complete access to management through the general manager in order to become and remain informed about the company's business. Directors are expected to use judgement to be sure that this contact is not distracting to the business operations of the company, and the chairman shall be appropriately informed by the general manager of contacts between board members and management.

III. Responsibilities and role of the chairman

1. The board will elect a chairman of the board at the board meeting immediately following each annual general meeting of shareholders. Such selection shall be made in a manner and upon the criteria contemplated by the company's charter and any applicable shareholders' agreement.

2. The chairman of the board should be independent from management of the company. The roles of chairman and general manager should not be exercised by the same individual. No one individual should have unfettered powers of decision. There should be a clear division of responsibilities at the head of the company between the running of the board and the executive having the day-to-day responsibility for the running of the company's business.

3. The chairman is responsible for the leadership of the board and the management of the board meetings. It is the chairman's duty to ensure that all relevant issues are on the board agenda, that directors receive all appropriate and timely documentation, and that they are enabled and encouraged to play their full part in relevant discussions and debates. The chairman will work closely with the general manager, and they shall keep each other informed of all matters affecting the interests of the company.

4. The chairman shall preside at every board meeting. In the absence of the chairman at a board meeting, the directors present at that board meeting shall choose one of their numbers to be the chairman of that meeting. The chairman is pivotal in creating the conditions for overall board and individual director effectiveness, both inside and outside the boardroom. The chairman will have particular responsibility for providing effective strategic leadership on such matters as:
   - Input into the formulation of and final approval of corporate strategy and approval of budgets;
   - Formulating a strategy for discharging the board's statutory duties;
   - Ensuring the adoption of audited annual financial accounts;
   - Representing the views of the company to shareholders, stakeholders and the general public;
   - Chairing board and general meetings of shareholders;
   - Running the board and ensuring its effectiveness in all aspects of its role, including regularity and frequency of meetings;
   - Setting the board agenda, taking into account the issues and concerns of all board members. The agenda should be forward looking, concentrating on strategic matters;
   - Ensuring that there is appropriate delegation of authority from the board to the general manager;
   - Ensuring that the members of the board receive accurate, timely and clear information, in particular about the company's performance and ensuring that the annual CSR status report be approved;
   - Ensuring effective communication with shareholders;
   - Ensuring that the members of the board develop an understanding of the views of the majority and the minority shareholders;
   - Ensuring that sufficient time is allowed for discussion of complex or contentious issues and - if needed - arrange for informal meetings beforehand to enable thorough preparation for the board discussion;
   - In consultation with the manager taking the lead in identifying and meeting the development needs of individual directors. It is the responsibility of the chairman to address the development needs of the board as a whole with a view to enhancing its overall effectiveness as a team;

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- Encouraging active engagement by all the members of the board;
- Ensuring that there is an annual evaluation of the collaboration between the board and the management;
- Ensuring that the performance of the individual board members and of the board as a whole is evaluated at least once every second year (which may be a self-evaluation or an evaluation conducted with the assistance of outside consultants or experts).

5. **Corporate secretary.** The company may designate an employee of the company or an outside party to serve as corporate secretary. In such case, the corporate secretary's role shall be to assist the chairman in the execution of his/her duties, including the organization of board meetings, agendas, resolutions, minutes, board evaluations, etc.

IV. Responsibilities and role of the general manager

1. The board shall approve the appointment of a general manager of the company and he/she shall hold office until the board shall otherwise determine.

   The general manager is the senior executive officer of the company. He/she has overall responsibility for the management of the company's business and its profitable operation in accordance with the policies and objectives set by the board. Specific areas of responsibility for the general manager will be defined by the board. The general manager is accountable to the board for the satisfactory performance of his/her responsibilities.

2. The general manager is accountable <u>to the board</u> for:
   - Contributing to the development and implementation of corporate goals and objectives approved by the board;
   - Ensuring that the company's procedures and overall management are designed in accordance with established board policy;
   - Keeping the board informed of existing or impending board policy issues;
   - Providing overall leadership and management of the company, as both a financially strong and socially responsible organization;
   - Establishing an effective working relationship with the board of directors and providing support and consultative advice regarding all aspects of the company's operations;
   - Keeping the board members abreast of current issues, opportunities and potential risks to the company;
   - Meeting regularly and as required with directors to view material issues and to ensure that the board is provided, in a timely manner, with all information necessary to permit the board to fulfil its statutory and other obligations; and
   - Preparing and submitting to the directors the annual CSR status report.

3. The duties and responsibilities of the general manager are wide and varied. From an operational standpoint, duties include:
   - Developing and implementing operational policies, strategy plans, CSR policies and annual operating plans to guide the company within the framework of the strategic directions approved by the board;
   - Maintaining a regular policy review process, and revise or develop policies for presentation to the board;
   - Ensuring that the company operates within approved budgets and operating plans;
   - Ensuring the company's activities are conducted in a lawful manner and in full compliance with applicable legal and regulatory requirements;
   - Keeping abreast of issues which may significantly impact the company; and
   - Ensuring the company meets audit requirements.

4. From a human resource standpoint, duties include:
   - Creating and maintaining an organizational environment that promotes positive staff morale and performance;
   - Ensuring effective human resources programs are developed and maintained to support the strategic goals of the company (includes recruiting, performance management, training, succession planning, employee relations, and compensation);
   - Directing, motivating and maintaining a competent, well-trained, and flexible staff capable of meeting current and future needs;
   - Developing and recommending the overall organisational structure and staffing to the board; and
   - Developing and maintaining board-approved plan for the development and succession of management.

5. From a reporting perspective, the general manager is inter-alia responsible for preparing and presenting to the board:
   - Operational reports, giving an overview of major events affecting the business since the previous meeting;
   - Financial reports, presenting up to date statements of operating profit or loss, cash flow and availability of finance in accordance with agreed terms and conditions set out in the shareholders' and/or loan agreement (including status of relationship to lenders, etc.);
   - Reports on the company's compliance with applicable laws and regulations;
   - Reports relating to the company's CSR commitments; and
   - A number of further written reports for the board supporting the relevant items on the agenda such as relationship to other stakeholders than lenders, etc.

V. Board meetings

1. The key success ingredients for successful board meetings include the following:

(a) **Frequency of board meetings.** The board shall meet at least 4 times per year or as otherwise contemplated in the shareholders' agreement, or other relevant agreements or the articles of association and/or the company law.

At the end of each board meeting the chairman should confirm the date, time and location of the next meeting.

(b) **Calling a board meeting.** In case important issues crop up, which cannot wait till the next regularly-scheduled board meeting, the chairman, or any director by request to the chairman can call a meeting. Notice of such meeting must be given at least 14 calendar days in advance, unless all directors agree to a shorter period. The notice of meeting must specify the agenda items to be discussed at the meeting.

(c) **Agenda items.** The chairman of the board shall propose an agenda for each board meeting. Each board member is free to require the inclusion of other agenda items and is generally free to raise, at any board meeting, subjects not on the agenda for that meeting, although voting on matters so raised may be deferred to another meeting to permit proper preparation for a vote on unscheduled matters.
The agenda of each board meeting shall include at least the following items:

1. Approval of notice, quorum and agenda;
2. Presentation of the company's accounts and financial results since the last board meeting, the minutes of the last board meeting and any reports from the company's auditors not previously presented to the board. The minutes and the audit reports must be signed by the board;
3. Report of the general manager on the company's activities since the last board meeting;
4. Items for resolution;
5. Any other business; and
6. Place and time of next board meeting.

(d) **Calendar/special items.** Prior to each fiscal year, the chairman should propose and the board approve a calendar of regularly-scheduled board meetings. Such calendar should specify the strategic and reporting items to be reviewed at particular meetings, including the following:

1. At least every six months, a presentation by the general manager and discussion by the board of all legal compliances of the company;
2. At least once during each fiscal year, a presentation by the general manager and discussion by the board of the status and adequacy of the company's insurance;
3. At least once during each fiscal year, a discussion of the adequacy of the company's directors' and officers' liability insurance; and

4. At least once during each fiscal year, a review and discussion of the company's policies regarding board members' travel, lodging and related expenses in connection with attendance at board meetings and the general meeting of shareholders.
5. Other items specified in Annex 7 of IFU's Handbook on Board Work and Corporate Governance.

(e) **Distribution of board materials.** Materials that are important to a director's understanding of the business to be conducted at a board meeting will, to the extent practicable, be distributed to directors at least 8 business days in advance of the meeting to allow directors adequate time to prepare for the meeting. Detailed minutes of board meetings should be appropriately recorded and circulated to all directors within 10 business days after the board meeting for their comments.

(f) **Quorum and resolutions.** The presence of a majority of the members of the board shall constitute a quorum.

Resolutions which receive a simple majority of votes shall be considered approved. In the case of a tie, the chairman's vote shall be decisive. [This section may need to be amended to conform to any shareholders agreement or the company's charter.]

(g) **Minutes.** Draft minutes of each board meeting will be sent to board members within 10 business days of the corresponding meeting. If any board member has any objection or comments, such objections or comments must be communicated to the chairman in writing no later than 10 business days after receipt of such draft minutes. The final minutes of each board meeting will be presented for approval and signature at the following meeting.

(h) **Unanimous written consent.** The chairman may request approval of a resolution of the board by unanimous written consent. Any such resolution will not be effective until all directors have provided the chairman with their written affirmations of the resolution.

(h) **Location of board meetings;** electronic communications. Board meetings shall be held at the company's head office or at another location unanimously determined by the board. Under exceptional circumstances and where legally permitted, the board can convene a meeting via teleconferencing or e-meeting, subject to the agreement of all board members.

(i) **Participants.** The general director may, unless the board decides otherwise, attend and speak at board meetings but without the right to vote. Other parties and advisers may also participate in board meetings by invitation of the chairman. The company's auditor must participate in the board meeting when the annual plan of audit and annual accounts are to be considered by the board, or if a director otherwise requests.

(j) **Meeting without management.** To facilitate open discussion of management performance and other matters, the board's annual calendar will provide for regularly-scheduled meetings (or portions of board meetings) that will be conducted without the participation of the general manager or any other management representatives.

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VI. Review of management performance by the board

1. The board should review the performance of the management and in particular of the general manager. It is the role of the board to set and communicate to the management its expectations of performance, including Key Performance Indicators (KPIs). Some of the criteria to use when evaluating management's performance should include:

   - Monitoring the company's performance against business plans and budgets, long-term return objectives;
   - Strategic objectives and the performance of competitors;
   - Maintaining corporate image and customer satisfaction;
   - Staff retention and augmenting staff morale;
   - Develop and implement risk management and internal control frameworks;
   - Other performance criteria that may be used include:

     (i) Return on assets,
     (ii) Return on equity,
     (iii) Return on investment,
     (iv) Profitability on capital employed.

2. Where the performance criteria have not been met, or were under-achieved, the board should take timely steps to identify areas of under-performance and their causes, evaluate possible remedial actions and decide and act on particular remedies. In conducting this review, the board should consider whether it has reviewed and updated the company's strategic objectives, monitored progress towards these goals and communicated the results both within the organisation to management and employees, and, outside the organisation, to shareholders and other interested parties.

VII. Board interaction with shareholders and general meetings

1. The board shall secure:
   - Regular, effective and fair communication with shareholders;
   - Shareholder participation at general meetings;
   - Fair treatment of all shareholders, particularly in the area of communications, and protection of minority shareholder rights,
   - Shareholders' interests and perspectives are of paramount importance to the board, for the directors have been elected by the shareholders to operate as stewards and trustees of the company's assets.

APPENDIX

Appendix to Model Board Charter and Rules of Procedure for Boards of Directors of Project Companies

Template

Code of Ethics

1. Scope

This code of ethics and business conduct policy applies to all directors and employees of the company. Several of the provisions of the policy are to be reflected in employment agreements to be signed by employees of the company (generally prior to joining the company). While there cannot be a specific rule for every situation that may be encountered in a workday, the board has adopted this policy to provide certain principles for the business conduct of the company's board of directors (directors), its management and employees.

2. Purpose

The purpose of this code of ethics is to deter wrongdoing and promote:

Honest and ethical conduct

All employees and directors shall perform their duties in an honest and ethical manner.

Full, fair, accurate, timely and understandable disclosure

An employee or a director shall provide, or cause to be provided, full fair, accurate, timely and understandable disclosure in reports and documents that the company files with or submits to regulatory authorities, and in other public communications made by the company.

3. Changes or waivers in the code of ethics

Any change in or waiver of any provision of this code of ethics shall require approval of the board of directors.

4. Ethical business practices

All directors, management and employees are required to promptly discuss any questions or concerns they may have about this policy or the correctness of any past, present or anticipated conduct with the general manager or in larger companies a compliance officer. Any concern of the directors, management and employees will be treated in confidence and there will be no reprisal or adverse effect on them for bringing a matter forward in a bona fide spirit.

5. Fair dealings

All directors, management and employees are required to deal fairly and honestly with the company's joint venture partners, suppliers, customers, professional advisers, competitors, other employees, the authorities and others with whom they have contact in the course of performing their jobs. Directors, management and employees of the company should not take any advantage of anyone through actions such as manipulation, concealment, misappropriate or abuse of confidential information, falsification, and misrepresentation of material facts or any other unfair dealing practice.

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The company requires that all contracts, agreements and other documents correctly set forth the terms of the underlying business arrangement, and that any such documents are reviewed and approved through established company policy and procedures.

6. Corporate opportunities and duty of loyalty

All directors, management and employees of the company have a duty of loyalty to the company, which includes a duty to advance the company's legitimate interests when the opportunity to do so arises. Such persons may not appropriate for themselves any business opportunity that is within the company's line of business, but must pass such opportunities on to the company. Neither may they use their position or the company's name, property, information or goodwill for personal gain or for the gain of others.

7. Conflicts of interest

A conflict of interest arises when a director's, a member of management's or an employee's private interests interfere, or appear to interfere, in any way, with the best interests of the company. Such persons may also find themselves in a position where their duties to third parties (for example a director's employer or another company on whose board he/she serves) may conflict with his/her duties to the company. They must take care to ensure that they identify and avoid any situation of actual or apparent conflict of interest.

Some conflicts are clear-cut; others are less obvious. For that reason, all directors, management and employees must fully disclose to their superior or another member of the executive team or in larger companies a compliance officer all circumstances that could be construed or perceived as a conflict of interest. Full disclosure enables the company to resolve unclear situations and create an opportunity to dispose of or ethically handle conflicts of interest before any difficulty can arise.

To the extent a conflict of interest cannot be avoided in a reasonable fashion then appropriate procedures must be put in place to minimize the involvement of any conflicted individuals in the relationship giving rise to the conflict. Failure to make required disclosures or resolve conflicts of interest satisfactorily can result in discipline up to and including termination of employment.

The employment agreement prohibits an employee's employment or engagement in any capacity in any other business without the prior permission of the company. This provision is not applicable to employees who are also directors, who shall resolve any such matters directly with the board. This provision broadly addresses potential conflicts of interest. Specific examples include, but are not limited to:

- Acting as an employee, director or officer of or a consultant to a competitor or potential competitor of the company, regardless of the nature of the employment or consulting relationship except where the general manager has first considered and approved relationships or such activity;
- Holding a substantial financial interest in a business which is a joint venture or other business partner, competitor or supplier of the company, or which otherwise does business with the company;
- The purchase of merchandise or services for the company from, or placement of other business with, a company directly or beneficially owned or controlled by an employee, director or officer of the company, his or her spouse, relative; and
- Serving as proprietor, general partner, officer or director of any business (except charitable organizations or family businesses that in no way compete with the company or do business with the company).

8. Accepting or giving gifts

All directors, management and employees must avoid activities or relationships that conflict with the company's interests, or which may adversely affect the company's reputation. The types of activities and relationships directors, management and employees of the company must avoid include, but are not limited to:

- Accepting or soliciting a gift, favour or service that is intended to, or might appear to, influence the employee's decision-making or professional conduct; and
- Giving or offering to give any gift, gratuity, favour, entertainment, reward or any other thing of value that might influence or appear to influence the judgment or conduct of the recipient in the performance of his or her job. This includes transactions with government personnel, customers and suppliers.

Directors, management and employees of the company may give or receive unsolicited gifts or entertainment only in cases where the gifts or entertainment are of nominal value less than [specify amount in local currency], are customary to the industry, will not violate any laws and will not influence nor appear to influence the recipient's judgment or conduct at his or her employer's business.

9. Dishonesty

Any act of dishonesty or falsification in connection with the performance of a director, of a manager or an employee's duties for the company will be most severely dealt with. The company will notify the appropriate authorities of any suspicion of fraud or theft that it is required by law to so report, and as a policy, will seriously consider reporting any suspicion of fraud or theft to the applicable law enforcement agency even in cases where it is not bound to do so.

10. Compliance with laws, regulations and rules

All directors, management and employees will at all times obey and comply as a minimum with laws and regulations of all jurisdictions in which the company is domiciled and operates, including:

- Health and safety laws concerning the workplace;
- Civil rights laws concerning harassment and job discrimination;
- Employment laws concerning payment of minimum wage, overtime requirements, child labour and general working conditions;
- Immigration related laws concerning the hiring of legally documented workers;
- Laws concerning corrupt practices;
- Laws concerning the proper maintenance of books, records and internal controls;
- Laws, regulations and accepted industry practices concerning drug development and commercialization;
- Laws prohibiting illegal payments, gifts, bribes or kickbacks to governmental officials, political parties or others;
- Privacy laws;
- Environmental laws;
- Laws prohibiting misappropriation, unauthorized use, reproduction or distribution of any third party's trade secrets, copyrighted information or other confidential information;
- Antitrust and other laws prohibiting unfair competition or restraint of trade; and
- All other applicable laws.

11. Accounting and recordkeeping

Directors, management and employees of the company shall comply with the company's policies, procedures and manual regarding accounting and recordkeeping. Such persons shall not circumvent the company's established systems of internal management and accounting controls, maintain funds or assets for any improper purposes or make false or misleading statements in any company documents, reports or records. No undisclosed or unrecorded accounts may be established using the company's funds or other assets.

Transactions must be supported by accurate and reasonably detailed documentation and recorded in the proper account. Best efforts are to be made to record transactions in the proper accounting time period. To the extent that estimates are necessary, they must be based on good faith judgment and be supported by appropriate documentation.

No payment or the related accounting entry may be approved or made with the intention or understanding that any part of the payment will be used for any purpose other than that described by the document supporting the entry or payment.

If any director, management or employee of the company receives inquiries from the company's independent accountants or legal counsel, they must respond promptly, fully and accurately.

12. Use of company property

The company's directors, management and employees are entrusted with the care and cost-effective use of the company's property and will not make use of these resources for their own personal benefit or purposes or for the personal benefit of anyone else. Occasional personal use of the internet and personal email will normally be permitted unless the exercise of the privilege is deemed abusive by their respective superiors.

13. Confidential information

All directors, management and employees are to take all reasonable measures to protect the confidentiality of non-public information about the company obtained or created in connection with their activities and in this connection comply with laws on prohibition of insider-trading and to prevent the unauthorized disclosure of such information unless required by applicable law or regulation. All directors, management and employees must use confidential information and information belonging to the company only for its legitimate business purposes, and not for their personal benefit or the personal benefit of anyone else.

14. Reporting and compliance procedures

When an alleged violation of the code of ethics for an employee or a director is reported, the company shall take prompt and appropriate action in accordance with the law and regulations and otherwise consistent with good business practice and with employee policies if adopted in the company. All actions or investigations in respect to a violation shall be documented, as appropriate.

No person who in good faith reports a violation, or suspected violation of this code of ethics, shall be retaliated against and he or she should be protected (protection of the whistle blower).

15. Administration and distribution

The company's board of directors has established the standard of business conduct contained in this policy and is responsible for overseeing management's efforts to ensure compliance with it. The general manager is ultimately responsible for application and execution this code and for reporting to the board periodically on incidences of possible violations and the general adequacy of the company's policies and procedures with respect to ethical conduct.

This policy shall be distributed and presented to each new employee, senior officer and director of the company upon commencement of his or her employment or other relationship with the company. It will also be made available via the company's intranet site, if any.

Strict adherence to this policy is vital. All directors, management and employees are responsible for ensuring that they are aware of and understand the provisions of the policy. For clarification or guidance on any point in this code of ethics, please consult the general manager.

Annex 5: Checklist for board members nominated by IFU

A brief guide to the assignments and responsibilities related to board representation. The checklist is only supplementary and cannot replace thorough reading and review of the handbook.

Introduction to project:

- ☐ Meeting with senior vice president, investment management and key investment director.
- ☐ Study all relevant project documents, in particular IFU produced or procured documents like CIP, PAIR, memorandum and articles of association, agreements and legal opinions, but also business plan produced by Danish partner.

First board meeting:

- ☐ Agree on type of board (regular board, supervisory board).
- ☐ Appoint chairman and vice chairman (unless already stipulated in shareholders' agreement). Agree on responsibilities and role of board members and the chairman in particular. IFU's board representative will not normally perform the task as chairman. *(See guidelines for IFU board representation in project companies).*
- ☐ Appoint company secretary for minutes and agree on timing and procedure for circulation of draft minutes.
- ☐ Appoint general manager. *See IFU's standard shareholders' agreement, article 9. (Copy of contract with GM).*
- ☐ Decide on rules of authorisation for the general manager. See IFU's standard employment of general manager contract.
- ☐ Decide on signatory rules/banks.
- ☐ Decide on which staff members are allowed to participate in board meetings apart from general manager. *(Preferably the CFO participates regarding budget and financial reporting, head of HR regarding organisational matters and head of production regarding production issues and related).*
- ☐ Procure offers for auditors and for company legal adviser.
- ☐ Agree on rules of procedure for the board of directors. *(IFU standard preferred, but IFU standard or format not mandatory).*
- ☐ Agree on good corporate governance. *(IFU standard preferred, but IFU standard or format not mandatory).*
- ☐ Agree on sustainability policy, set of international standards to comply with anticorruption policy and HIV/AIDS guidelines *(IFU standards preferred, but not mandatory).*
- ☐ Discuss board members' liability/insurance. *(Legal opinion must be procured in order to clarify the position/risk in the host country).*
- ☐ Discuss if an annual "Corporate compliance report" should be prepared by an external law firm or internal controller.
- ☐ Decide on who (chairman and/or general manager) will be the spokesperson of the company and board – i.e. who will communicate with the press.
- ☐ Agree on format for standard agenda for ordinary board meetings. *(See IFU's BM agenda template).*
- ☐ Agree on format for annual sustainability report. *(See IFU's sustainability report guidelines).*
- ☐ Agree on format for periodical financial reporting. *(See IFU's Financial Handbook).*
- ☐ Fix dates and venue for meetings for next 12 months, incl. theme/main subject for each meeting, and if meetings can be held by phone (Skype) or mail. *(At least half of the board meetings should be held on the project company's premises).*
- ☐ Observe formalities for operations through holding company.
- ☐ Observe local formalities/requirements.

Following board meetings:

- ☐ Minutes from previous BM on time? Call and agenda on time?
- ☐ Decide on auditor. Auditors must be acceptable to IFU *(See IFU's standard shareholders' agreement, article 11.8, IFU's standard loan agreement, article 13.1).*
- ☐ Decide on choice of company legal adviser. Can be same as IFU's legal adviser, but preferable another law firm.
- ☐ Decide on other "leftovers" from the first board meeting.

Last board meeting in financial year:

- ☐ Budget on time? *(See IFU's standard shareholders' agreement, article 11.4).*
- ☐ At board meeting with discussion of budget prior to AGM approval: Make sure the existence of documentation on insurance coverage.

First board meeting in financial year:

- ☐ Annual sustainability report and audited accounts on time? *(See IFU's standard shareholders' agreement, articles 11.7 and 11.10).*
- ☐ At board meeting prior to AGM: Make sure all government taxes and tariffs are paid.
- ☐ Insist on having the auditors present, if at all possible, both during the board meeting and during the AGM.

Mandatory reading:

- ☐ CIP, PAIR, agreements, memorandum and articles of association.
- ☐ Legal opinions
- ☐ Business plan
- ☐ "Key documents when representing IFU on boards".

Recommended reading:

- ☐ Renton, Tony (2001): "Standards for the Board: Improving the effectiveness of your board".
- ☐ Renton, Tony & John Watkinson (2001): "The Company Director's Guide: Your Duties, Responsibilities & Liabilities".
- ☐ www.corporategovernance.dk

Annex 6: Standard agenda for ordinary board meetings

AGENDA

BOARD MEETING
Date and time

Location:
Members:
Also present:
Distribution:

1. Approval of notice

2. Quorum present

3. Approval of agenda

4. Signing of minutes from last board meeting

5. Matters arising from minutes of last board meeting

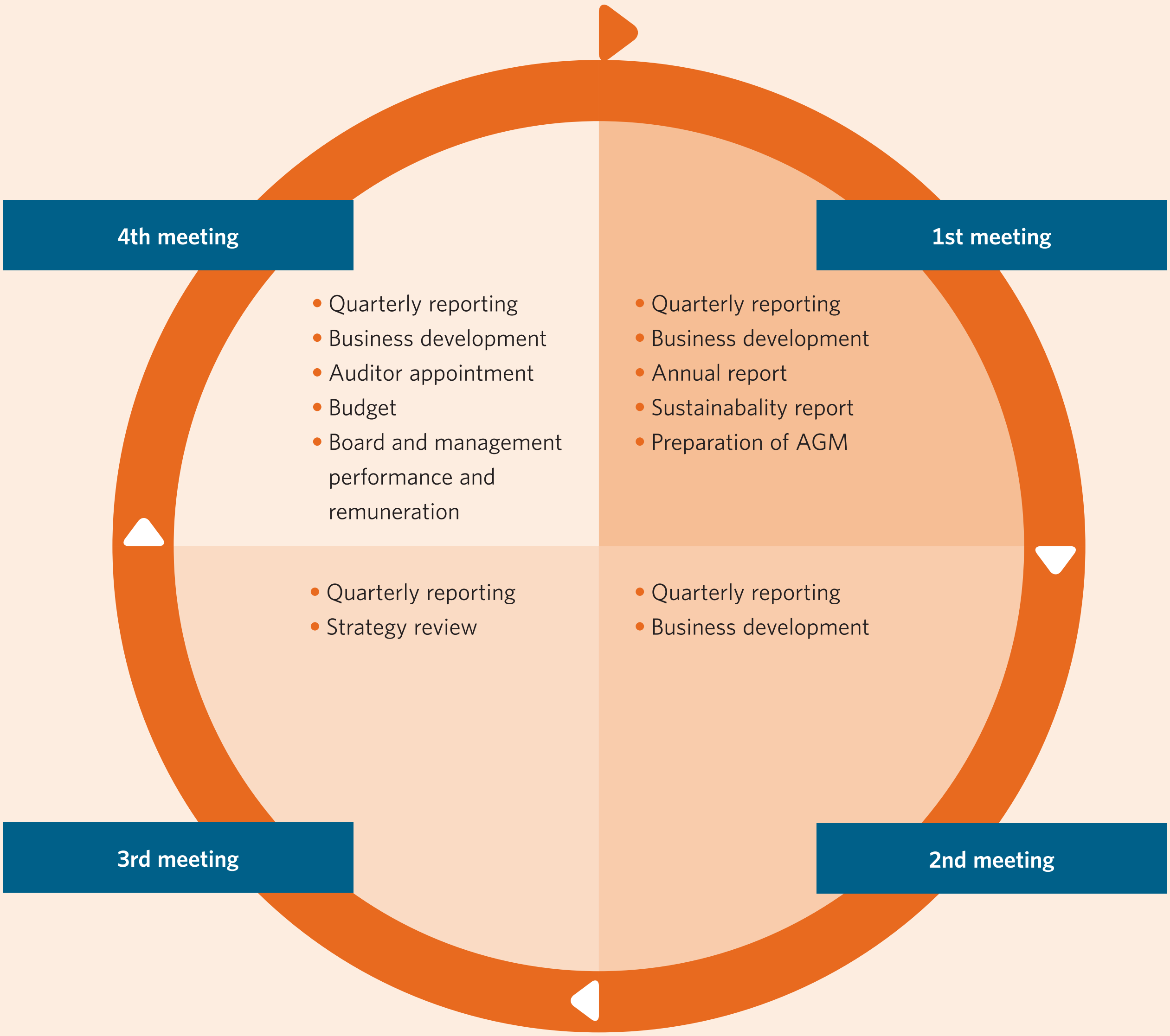
6. GM report
   i. Organisation and people
   ii. Production
   iii. Marketing and sales
   iv. Finance report
   v. Sustainability issues as appropriate incl. the sustainability report

7. Matters for decision

8. Other matters

9. Next board meeting

Annex 7: Board calendar



Annex 8: Red light warnings for board members

Red light warnings

- Lack of clear mission, vision and strategy
- Matters decided at the board meeting or just passed by CEO for "rubber-stamping" (family-owned companies)
- Matters being circulated for approval outside scheduled board meetings, unless agreed beforehand
- Board meeting rescheduled or cancelled
- Minutes and other board documents, e.g. financial reports or budgets delayed
- Change of format for reports to board members
- Board meetings being held at other location than project company
- CEO resistance to have auditors present at presentation of annual accounts
- CEO resistance in allowing other members of management to be present in connection with e.g. budget, financial, production and sales reports
- Deterioration in cash position
- Growing accounts payable and accounts receivable
- Growing work-in-progress
- Growing stock
- Negative trend in key figures
- Excessive turnover of staff and/or board members
- Frequent change of suppliers
- Frequent customer complaints
- Loss of (key) customers
- Dependence on limited number of customers
- Delays in presentation of audited reports
- Lack of reliable budgets
- Difficulties in recruitment of key positions
- Environmental problems/complaints
- High number of health & safety incidents/accidents
- Stakeholder/community complaints

The list is not exhaustive, just a quick practical reminder of frequently occurring signs that something is not as it ought to be. The list cannot replace sound judgement!

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The cover photo is from the project company Danper in Peru. Photo by Danper.

INVESTMENT FUND FOR
DEVELOPING COUNTRIES

ifu.dk

IFU
Fredericiagade 27
1310 Copenhagen K - Denmark
Tlf.: +45 33 63 75 00
Fax: +45 33 63 75 99
ifu@ifu.dk
CVR No. 23598612