2.7 Role of the Executive, Non-Executive and Independent Non-Executive Director

2.7.1 The designation of executive, non-executive and independent non-executive director has evolved in practice. For the purposes of this Code (and for disclosure in the annual report) the capacity of the director should be categorised as follows:

2.7.1.1 **Executive director** - a director who is involved in the day-to-day management and/or is in full-time salaried employment of the company and/or any of its subsidiaries.

2.7.1.2 **Non-executive director** - a director not involved in the day-to-day management and not a full-time salaried employee of the company or its subsidiaries and not meeting the criteria for independence in 2.7.1.3. below.

2.7.1.3 **Independent director** - a director who is non-executive and who:
(a) is not a representative or member of the immediate family (spouse, child, parent, grandparent or grandchild) of a shareholder who has the ability to control or significantly influence the board or management. This would include any director who is appointed to the board (by virtue of a shareholders’ agreement or other such agreement) at the instigation of a party with a substantial direct or indirect shareholding in the company;
(b) has not been employed by the company or the group of which the company currently forms part, in any executive capacity for the preceding three financial years;
(c) is not a professional advisor to the company or the group other than in a director capacity;
(d) is not a significant supplier to, debtor or creditor of, or customer of the company or group, or does not have a significant influence in a group related company in any one of the above roles;
(e) has no significant contractual relationship with the company or group;
(f) is free from any business or other relationship which could be seen to materially impede the individual’s capacity to act in an independent manner;
(g) in the case of banks, the Bank of Mauritius’ definition of independent applies.

2.7.2 Shadow directors should be strongly discouraged. A “shadow director” is considered to be a person in accordance with whose directions or instructions whether these extend over the whole or part of the activities of the company), a director or group of directors of the company are accustomed to act. In this case the concerned directors should remind themselves of their obligation to serve the best interests of the company according to the provisions of Clauses 2.4.6, 2.4.7 and 2.4.8 of the Code.
2.7.3 Directors whom the board considers may be acting on the directives of a third party should not be recommended by the Corporate Governance or Nomination Committees for re-election at the next Meeting of Shareholders.

2.7.4 Executive directors must always manage the conflict between their management responsibilities and their fiduciary duties as a director in the best interests of the company.

2.7.5 Non-executive and independent directors play a vital role in providing independent judgment in all circumstances.

2.7.6 Executive directors’ fees should be determined and paid separately from their management salary and perquisites.

2.7.7 The onus is on the director to inform the board of any changes or potential changes in their categorisation as director of the company.

2.7.8 In order to competently fulfil their obligations under the Code, directors, irrespective of the category under which they fall, must:

2.7.8.1 ensure that they have time to diligently carry out their responsibilities and duties to the company;

2.7.8.2 exercise the utmost good faith, honesty and integrity in all their dealings with or on behalf of the company and must act independently of any outside fetter or instruction;

2.7.8.3 in line with global best practice, not only exhibit the degree of skill and care as may be reasonably expected from persons of their competence and experience (which is the traditional legal formulation), but must also:
   • exercise both the care and skill any reasonable person would be expected to show in looking after their own affairs, as well as having regard to their actual knowledge and experience when performing their duties as a director of the company;
   • qualify themselves on a continuous basis with a sufficient (at least a general) understanding of the company’s business and the effect of the economy so as to discharge their duties properly, including where necessary relying on expert advice;

2.7.8.4 always act in the best interests of the company and never for any sectoral or other outside interest or party;

2.7.8.5 never permit a conflict of duties and interest and must disclose potential conflicts of interest to the board at the earliest possible opportunity;

2.7.8.6 be informed about the financial, industrial, environmental and social milieu in which the company operates;

2.7.8.7 be satisfied that they are in a position to take informed decisions;
2.7.8.8 treat any confidential matters relating to the company, learned in their capacity as a director, as strictly confidential and not divulge them to anyone without the authority (on a case by case basis) of the board;

2.7.8.9 insist that board papers and other material information regarding the company are provided in time for them to make informed decisions;

2.7.8.10 ensure that procedures and systems are in place to act as checks and balances on the information being received by the board and ensure that the company prepares annual budgets and regularly updated forecasts against which the company’s performance can be monitored by the board;

2.7.8.11 ensure that a proper risk assessment of the company’s current operations and proposed projects under a variety of possible or likely scenarios is undertaken on a regular basis;

2.7.8.12 be diligent in discharging their duties and obligations to the company, regularly attend meetings and must acquire a broad knowledge of the business of the company so that they can meaningfully contribute to its direction;

2.7.8.13 be prepared and able, where necessary, to express disagreement (constructive dissent, not disloyalty) with colleagues on the board including the chairperson and chief executive officer;

2.7.8.14 act with enterprise for and on behalf of the company and always strive to increase shareholder value, while having regard for the interests of all stakeholders relevant to the company;

2.7.8.15 if in doubt about any aspect of their duties, first seek advice from other board members and if not completely satisfied with this advice, obtain independent professional advice in accordance with Section 2 clause 2.3.2.(k) of the Code.

2.7.9. Non-executive and independent directors should be judicious in the number of directorships they accept, in order to ensure that they do full justice to their onerous and demanding responsibilities as board members.