**PSOJ Corporate Governance Code 2015 (Final Draft)**

**June 2015**

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# The Code on Corporate Governance – Best Practice

**This Code of Best Practice draws heavily on Codes published by other jurisdictions, including the UK, Australia, South Africa, Trinidad & Tobago and Barbados.**

**The Code is intended to guide companies in implementing good practices in corporate governance in Jamaica. This Code has been developed to apply on a comply or explain basis. While it is expected that companies will comply wholly or substantially with the recommendations, companies may elect not to comply in particular circumstances if good governance can be achieved by other means provided that they explain their departure from the code. These recommendations are therefore not mandatory in that sense and further, cannot, in themselves prevent corporate failure or poor corporate decision-making. These recommendations represent international best practices that all companies should ideally follow.**

**By implementing the comply or explain regime, the recommendations are framed in such a way that if companies deem that any recommendation is inappropriate for their business, or more time is needed for implementation, they have the flexibility to adopt such recommendation in the future or not at all provided that an explanation is given.**

**The PSOJ recommends that the companies listed on the Jamaica Stock Exchange describe in their annual report and accounts their corporate governance from two perspectives, the first dealing generally with their adherence to the Code’s main principles, and the second dealing specifically with the explanations for non-compliance with any of the Code’s provisions. These descriptions together should give shareholders a clear and comprehensive picture of a company’s governance arrangements in relation to the Code as a criterion of good practice.**

**The PSOJ’s Corporate Governance Committee encourages the association members and all registered companies in Jamaica to use this code as the golden standard against which to measure themselves and to also use it as a baseline in examining their corporate governance practices and to determine, given the size, stage of development, industry and complexity of the business, how best to implement these best practices to suit their particular company. Shareholders should be aware that the size and complexity of the company and the nature of the risks and challenges it faces will largely determine the need for departures from the Code, and these should not necessarily be viewed negatively. This code is built on the premise that these departures will be adequately explained to shareholders and thereby would be justified. Shareholders should engage in a dialogue with the company if they do not accept its position and to put such views in writing where appropriate.**

## Laws, Regulations & Rules

**The Code compliments and should be used in conjunction with the legislation, rules, and regulations that define how companies should be governed in Jamaica. These include, inter alia:**

**• The Companies Act**

**• The Financial Institutions Act**

**• The Financial Services Commissions Act**

**• The Banking Act**

**• The Securities Act**

**• The Insurance Act**

**• The Pensions Act**

**• The Protected Disclosures Act, 2011**

**• The Public Bodies Management & Accountability Act**

**• The Rules of the Jamaica Stock Exchange**

**There are other Acts which affect governance in the workplace, based on the nature of the business and other factors. These include the proceeds of Crime Act, The Health and Safety at Work Act, The Factories Act and The Corruption and Prevention Act.**

**Directors and management are expected to be reasonably aware of all legislation that affect the company and must act within the laws, regulations and rules at all times.**

**\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\***

# DIRECTORS

## The Board

### Main Principle

**Every company should be headed by an effective board, which Is collectively responsible for the long term success of the company.**

### Supporting Principles

The board's role is to provide entrepreneurial leadership of the company within a framework of prudent and effective controls, which enables risk to be assessed and managed. The board should articulate the vision and mission of the company, set the company's strategic aims, ensure that the necessary financial and human resources are in place for the company to meet its objectives and review management performance. The board should set the company's values and standards and ensure that its obligations to its shareholders and others are understood and met.

The board will typically be responsible for:

1. affirming the company's vision and mission and defining the strategic goals , while providing input into and final approval of management 's development of the corporate strategy and performance objectives
2. overseeing the company, including its control and accountability systems, and reviewing, ratifying and monitoring systems of risk management and internal control, codes of conduct, and legal compliance
3. appointing and removing the chief executive officer, or equivalent
4. where appropriate, ratifying the appointment and the removal of senior executives
5. monitoring senior executives’ development, performance and implementation of strategy
6. ensuring appropriate resources are available to senior executives
7. approving and monitoring the progress of *major* capital expenditure, capital management, and acquisitions and divestments
8. approving and monitoring financial and other reporting.

Each director must act in what he or she considers to be the best interest of the company consistent with their statutory duties[[1]](#footnote-1).

### Code Provisions

* + 1. The composition of the board should enable this important decision-making body to properly exercise its role and add value to the company and all shareholders. The number of directors, diversity and experience, skills and knowledge, and the directors’ ability to independently challenge the management and provide strategic advice on the direction of the company are all elements that shape the board's effectiveness. Diversity on the board should relate to academic qualifications, technical expertise, relevant industry knowledge, gender, age and ethnicity.
    2. The board should meet sufficiently and regularly to discharge its duties effectively. There should be a formal schedule of matters specifically reserved for its decision. The precise nature of matters reserved to the board and delegated to senior executives will depend on the size, complexity and ownership structure of the company, and will be influenced by its tradition and corporate culture, and by the skills of directors and senior executives.
    3. The annual report should identify the Chairman, the deputy Chairman (where there is one), the senior independent director (where there is one)(where there is one), the chief executive, and the Chairmen and members of the Corporate Governance, Nomination, Audit and Remuneration committees. It should also set out the number of meetings of the board and those committees and individual attendance by directors.
    4. The company should arrange appropriate insurance cover in respect of legal action brought against its directors in the discharge of their duties as directors.

## A2. Chairman and Chief Executive

### Main Principle

There should be a clear division of responsibilities at the head of the company between the running of the board and the executive responsibility for the running of the company's business. No one Individual should have unfettered powers of decision.

### Supporting Principle

The Chairman is responsible for leadership of the board, ensuring its effectiveness on all aspects of its role and setting its agenda. The Chairman is also responsible for ensuring that the directors receive accurate, timely and clear information. The Chairman should ensure effective communication with shareholders. The Chairman should also facilitate the effective contribution of non-executive directors in particular and ensure constructive relations between executive and non-executive directors.

### Code Provisions

A.2.1 The roles of Chairman and chief executive should not be exercised by the same individual. The division of responsibilities between the Chairman and chief executive should be clearly established, set out in writing and agreed by the board.

The division of responsibility may vary with the stage of development of the company. It is recommended that companies regularly review the balance of responsibilities to ensure that the division of functions remains appropriate for the needs of the company at each particular stage in its development.

A.2.2 The Chairman should on appointment, meet the independence criteria set out in B.1.1 below. A chief executive should not immediately go on to be the Chairman of the same company. If exceptionally, a board decides that a chief executive should become the Chairman, the board should consult major shareholders in advance and should set out its reasons to shareholders at the time of the appointment and in the next annual report.

## A3. Non-Executive Directors

### Main Principle

As part of their role as members of a board, non-executive directors should constructively challenge, help develop and approve proposals on strategy.

### Supporting Principle

Non-executive directors should scrutinize 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. They are responsible for determining appropriate levels of remuneration of executive directors and have a prime role in appointing and, where necessary, removing executive directors, and in succession planning.

### Code Provisions

A.3.1. Where the Chairman of the board is not independent; the board should appoint one of the independent non-executive directors to be the senior independent director (where there is one)to provide a sounding board for the Chairman and to serve as an intermediary for the other directors when necessary. The senior independent director (where there is one)should be available to shareholders if they have concerns which contact through the normal channels of Chairman, chief executive or other executive directors has failed to resolve or for which such contact is inappropriate.

A.3.2. The Chairman should hold meetings with the non-executive directors without the executives present. Led by the senior independent director, the non-executive directors should meet, led by the senior independent director, without the Chairman present at least annually to appraise the Chairman’s performance and on such other occasions as are deemed appropriate.

A.3.3. Where directors have concerns, which cannot be resolved, about the running of the company or a proposed action, they should ensure that their concerns are recorded in the board minutes. On resignation, a non-executive director should provide a written statement to the Chairman, for circulation to the board, if they have any such concerns.

# Section B: Effectiveness

## B.1: The Composition of the Board

### Main Principle

The board and its committees should have the appropriate balance of skills, experience, independence and knowledge of the company to enable them to discharge their respective duties and responsibilities effectively. The age mix and gender proportion should also be taken into account in shaping the composition of the Board to ensure that the necessary balance is achieved.

### Supporting Principles

The board should be of sufficient size that the requirements of the business can be met and

that changes to the board’s composition and that of its committees can be managed without undue disruption, and should not be so large as to be unwieldy.

The board should include an appropriate combination of executive and non-executive directors (and, in particular, independent non-executive directors) such that no individual or small group of individuals can dominate the board’s decision taking. The value of ensuring that committee membership is refreshed and that undue reliance is not placed on particular individuals should be taken into account in deciding Chairmanship and membership of committees. No one other than the committee Chairman and members is entitled to be present at a meeting of the nomination, audit or remuneration committee, but others may attend at the invitation of the committee.

### Code Provisions

B.1.1. The board should identify in the annual report each non-executive director it considers to be independent. The board should determine whether the director is independent in character and judgment and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director’s judgment. The board should state its reasons if it determines that a director is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including if the director:

* has been an employee of the company or group within the last three years;
* has, or has had within the last three years, a material business relationship with the company either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company;
* has received or receives additional remuneration from the company apart from a director’s fee, participates in the company’s share option or a performance related pay scheme, or is a member of the company’s pension scheme;
* has close family ties with any of the company’s advisers, directors or senior employees.
* holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
* represents a significant shareholder; or
* has served on the board for more than nine years from the date of their first election.

A former chief executive officer will not qualify as an independent director unless there has been a period of at least three years between ceasing employment with the company and serving on the board.

The board should regularly assess whether each non-executive director is independent. Each non-executive director should provide to the board all information that may be relevant to this assessment. If a director's independent status changes, this should be disclosed and explained in a timely manner to the market.

B.1.2 Except for small[[2]](#footnote-2) companies, at least half the board, excluding the Chairman, should comprise non-executive directors determined by the board to be independent. A small company should have at least two independent non-executive directors.

## B.2 Appointments to the Board

### Main Principle

There should be a formal, rigorous and transparent procedure for the appointment of new directors to the board.

### Supporting Principles

A search for board candidates should be conducted, and appointments to the board should be made on merit and against objective criteria and with due regard for the benefits of diversity on the board, including gender and age. Care should be taken to ensure that appointees have enough time available to devote to the job. This is particularly important in the case of the Chairman. The board should satisfy itself that plans are in place for orderly succession for appointments to the board and to senior management, so as to maintain an appropriate balance of skills and experience within the company and on the board and to ensure progressive refreshing of the board, as required.

Induction procedures should be in place to allow new directors to participate fully and actively in board decision-making at the earliest opportunity. To be effective, new directors need to have a good deal of knowledge about the company and the industry within which it operates. An induction programme should be available to enable new directors to gain an understanding of good corporate governance including:

* the company's financial, strategic, operational and risk management position
* the rights, duties and responsibilities of the directors
* the roles and responsibilities of senior executives
* the role of board committees.

### Code Provisions

B.2.1 There should be a nomination committee which should lead the process for board appointments and make recommendations to the board. A majority of members of the nomination committee should be independent non-executive directors. The Chairman or an independent non-executive director should chair the committee, but the Chairman should not chair the nomination committee when it is dealing with the appointment of a successor to the chair.

The nomination committee should make available[[3]](#footnote-3) its terms of reference, explaining its role and the authority delegated to it by the board.

B.2.2 The nomination committee should evaluate the balance of skills, experience, independence and knowledge on the board and, in the light of this evaluation, prepare a description of the role and capabilities required for a particular appointment.

The nomination committee should consider implementing a plan for identifying, assessing and enhancing director competencies. An evaluation of the range of skills, experience and expertise on the board is important when considering new candidates for nomination or appointment. Such an evaluation enables identification of the particular skills that will best increase board effectiveness.

Board renewal is critical to performance, and directors should be conscious of the duration of each director's tenure in succession planning. The nomination committee should consider whether succession plans are in place to maintain an appropriate balance of skills, experience and expertise on the board.

B.2.3 A separate section of the annual report should describe the work of the nomination committee, including the process it has used in relation to board appointments.

## B.3: Commitment

### Main Principle

All directors should be able to allocate sufficient time to the company to discharge their responsibilities effectively.

### Code Provisions

B.3.1. For the appointment of a Chairman, the nomination committee should prepare a job

specification, including an assessment of the time commitment expected, recognizing the need for availability in the event of crises. A Chairman’s other significant commitments should be disclosed to the board before appointment and included in the annual report. Changes to such commitments should be reported to the board as they arise, and their impact explained in the next annual report.

B.3.2. The terms and conditions of appointment of directors should be made available for inspection. The letter of appointment should set out the expected time commitment. Directors should undertake that they will have sufficient time to meet what is expected of them. Their other significant commitments should be disclosed to the board before appointment, with a broad indication of the time involved and the board should be informed of subsequent changes.

Model Charter for the Corporate Governance and Nomination Committee is contained in Volume 2 - Handbook and Tool Kit Best Practices in Good Governance

## B. 4: Information and Professional Development

### Main Principle

The board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties. All directors should receive information on joining the board and should regularly update and refresh their skills and knowledge.

### Supporting Principles

The Chairman is responsible for ensuring that the directors receive accurate, timely and clear information. Management has an obligation to provide such information but directors should seek clarification or amplification where necessary.

The Chairman should ensure that the directors continually update their skills and the knowledge and familiarity with the company required to fulfil their role both on the board and on board committees.

The company should provide the necessary resources for developing and updating its directors' knowledge and capabilities.

Under the direction of the Chairman, the company secretary’s responsibilities include ensuring good information flows within the board and its committees and between senior management and non-executive directors, as well as facilitating induction and assisting with professional development as required.

The company secretary should be responsible for advising the board through the Chairman on all governance matters. Where the board has a dedicated corporate governance committee, the company secretary should play a key role in guiding the committee on governance matters.

### Code Provisions

B.4.1 The Chairman should ensure that new directors receive a full, formal and tailored induction on joining the board. As part of this, directors should avail themselves of opportunities to meet major shareholders. The Chairman should regularly review and agree with each director their training and development needs.

B.4.2 The board should ensure that directors, especially non-executive directors, have access to independent professional advice at the company's expense where they judge it necessary to discharge their responsibilities as directors. Committees should be provided with sufficient resources to undertake their duties.

B.4.3 All directors should have access to the advice and services of the company secretary, who is responsible to the board for ensuring that board procedures are complied with. Both the appointment and removal of the company secretary should be a matter for the board as a whole.

Guidelines on inducting new Directors, a Model Appointment Letter and details of the Company Secretary’s Role and Terms of Reference are contained in Volume 2- Handbook and Tool Kit Best Practices in Good Governance.

## B.5: Performance Evaluation

### Main Principle

The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and Individual directors.

### Supporting Principle

Evaluation of the board should consider whether the balance of skills, experience, independence and knowledge of the company on the board is optimal, how the board works together as a unit, and other factors relevant to its effectiveness.

The Chairman should act on the results of the performance evaluation by recognizing the strengths and addressing the weaknesses of the board and, where appropriate, proposing new members be appointed to the board or seeking the resignation of directors.

Individual evaluation should aim to show whether each director continues to contribute effectively and to demonstrate commitment to the role (including commitment of time for board and committee meetings and any other duties).

### Code Provision

B.5.1 The board should state in the annual report how performance evaluation of the board, its committees and its individual directors has been conducted.

Evaluation of the board of companies should be externally facilitated at least every three years. The external facilitator should be identified in the annual report and a statement made as to whether they have any other connection with the company.

The non-executive directors, led by the senior independent director, should be responsible for performance evaluation of the Chairman, taking into account the views of executive directors.

## B.6 Re-election

### Main Principle

All directors should be submitted for re-election at regular Intervals, subject to continued satisfactory performance. The board should ensure planned and progressive refreshing of the board.

### Code Provisions

B.6 .1 All directors should be subject to election by shareholders at the first annual general meeting after their appointment, and to re-election thereafter at intervals of no more than three years. The names of directors submitted for election or re-election should be accompanied by sufficient biographical details and any other relevant information to enable shareholders to take an informed decision on their election.

B.6.2 Non-executive directors should be appointed for specified terms subject to re-election and to provisions of the Companies Act relating to the removal of a director. The board should set out to shareholders in the papers accompanying a resolution to elect a non-executive director why they believe an individual should be elected. The Chairman should confirm to shareholders when proposing re-election that, following the formal performance evaluation, the individual's performance continues to be effective and to demonstrate commitment to the role. Any term beyond six years (e.g. two three-year terms) for a non-executive director should be subject to particularly rigorous review, and should take into account the need for progressive refreshing of the board. Non-executive directors may serve longer than nine years; (e.g. three three-year terms), subject to annual re-election. Serving more than nine years could be relevant to the determination of a

Non-executive director's independence (as set out in provision B.1.1).

# Section C: Remuneration

## C.1: The Level and Components of Remuneration

### Main Principle

Executive directors’ remuneration should be designed to promote the long-term

success of the company. Performance-related elements should be transparent,

stretching and rigorously applied but should not encourage excessive risk taking or risk taking outside of the company’s defined risk parameters.

### Supporting Principles

The remuneration committee should judge where to position their company relative to other companies. But they should use such comparisons with caution, in view of the risk of an upward ratchet of remuneration levels with no corresponding improvement in corporate and individual performance, and should avoid paying more than is necessary. They should also be sensitive to pay and employment conditions elsewhere in the group, especially when determining annual salary increases.

### Code Provisions

**Remuneration Policy**

C.1.1. In designing schemes of performance-related remuneration for executive directors, the remuneration committee should include provisions that would enable the company to recover sums paid or withhold the payment of any sum, and specify the circumstances in which it would be appropriate to do so.

C.1.2. Levels of remuneration for non-executive directors should reflect the time, commitment and responsibilities of the role. Where remuneration for non-executive directors includes share options or other performance related elements, shareholder approval should be sought in advance and any shares acquired by exercise of the options should be held until at least two years after the non-executive director leaves the board. It should be borne in mind that remuneration of this nature could be relevant to the determination of a non-executive director’s independence. (as set out in provision B.1.1).

### Service Contracts and Compensation

C.1.3. The remuneration committee should carefully consider what compensation

commitments (including pension contributions and all other elements) their directors’ terms of appointment would entail in the event of early termination. The aim should be to avoid rewarding poor performance. They should take a robust line on reducing compensation to reflect departing directors’ obligations to mitigate loss.

C.1.4. Notice or contract periods should be set at one year or less. If it is necessary to offer longer notice or contract periods to new directors recruited from outside, such periods should reduce to one year or less after the initial period.

## C.2: Procedure

### Main Principle

There should be a formal and transparent procedure for developing policy on

executive remuneration and for fixing the remuneration packages of individual

directors. No executive director should be involved in deciding his or her own remuneration.

### Supporting Principles

The remuneration committee should take care to recognise and manage conflicts of interest when receiving views from executive directors or senior management, or consulting the chief executive about its proposals. The remuneration committee should also be responsible for appointing any consultants in respect of executive director remuneration. The Chairman of the board should ensure that the committee Chairman maintains contact as required with its principal shareholders about remuneration.

### Code Provisions

C.2.1. The board should establish a remuneration committee of at least three, or in the case of small companies two, independent non-executive directors. In addition the company Chairman may also be a member of, but not chair, the committee if he or she was considered independent on appointment as Chairman. The remuneration committee should make available its terms of reference, explaining its role and the authority delegated to it by the board. Where remuneration consultants are appointed, they should be identified in the annual report and a statement made as to whether they have any other connection with the company.

C.2.2. The remuneration committee should have delegated responsibility for setting remuneration for all executive directors and the Chairman, including pension rights and any compensation payments. The committee should also recommend and monitor the level and structure of remuneration for senior management. The definition of ‘senior management’ for this purpose should be determined by the board but should normally include the first layer of management below board level.

C.2.3. Shareholders should have the opportunity of having an annual binding vote on the remuneration policy. A binding vote also applies in cases where it is proposed to make exit payments that would exceed one year’s base salary.

Shareholders should have the opportunity of an annual advisory vote in regards to the pay actually given to directors. This will give shareholders the opportunity of expressing their views about how well they believe the remuneration policy has been implemented.

The pay actually given to directors includes:

* Single total figure of remuneration for each director
* Detail of performance against metrics for long term incentives
* Total pension entitlements (for defined benefit schemes)
* Exit payments made in year
* Detail on variable pay awarded in year
* Total shareholdings of directors
* Chart comparing company performance and CEO pay
* Information about who has advised the remuneration committee
* Shareholder context

If the company fails to secure at least 75% of shareholder support for the pay actually given to directors then they are required to provide details to the market describing the main areas of concern raised by the shareholders and how it is planned to deal with these matters.

In the event that shareholders are not satisfied with the pay actually given to directors they should have the option of also choosing not to re-elect those directors of the board.

A Model Charter for the Remuneration Committee is contained in Volume 2 - Handbook and Tool Kit Best Practices in Good

# D ACCOUNTABILITY AND AUDIT

## D.1 Financial Reporting

### Main Principle

The board should present a balanced and understandable assessment of the company's position and prospects.

### Supporting Principle

The board's responsibility to present a balanced and understandable assessment extends to interim and other reports to the JSE, to regulators as well as to information required to be presented by statutory and other requirements.

Financial statements should be presented in accordance with accounting standards provided for under the Companies Act.

### Code Provisions

D.1.1 The directors should explain in the annual report their responsibility for preparing the accounts and there should be a statement by the auditors about their reporting responsibilities.

D.1.2 The directors should include in the annual report an explanation of the basis on which the company generates or preserves value over the longer term (the business model) and the strategy for delivering the objectives of the company[[4]](#footnote-4).

D.1.3 The directors should report that the business is a going concern, with supporting assumptions or qualifications as necessary. In annual and half-yearly financial statements, the directors should state whether they considered it appropriate to adopt the going concern basis of accounting in preparing them.

## D.2: Risk Management and Internal Control

### Main Principle

The board is responsible for determining the nature and extent of the principal risks it is willing to take in achieving its strategic objectives. The board should maintain sound risk management and internal control systems[[5]](#footnote-5).

### Code Provisions

D.2.1. The directors should confirm in the annual report that they have carried out a robust

assessment of the principal risks facing the company, including those that would threaten its business model, future performance, solvency or liquidity. The directors should describe those risks and explain how they are being managed or mitigated.

D.2.2. Taking account of the company’s current position and principal risks, the directors

should explain in the annual report how they have assessed the prospects of the

company, over what period they have done so and why they consider that period to be appropriate. The directors should state whether they have a reasonable expectation that the company will be able to continue in operation and meet its liabilities as they fall due over the period of their assessment, drawing attention to any qualifications or assumptions as necessary.

D.2.3. The board should monitor the company’s risk management and internal control systems and, at least annually, carry out a review of their effectiveness, and report on that review in the annual report. The monitoring and review should cover all material controls, including financial, operational and compliance controls.

## D.3. Audit Committee and Auditors

### Main Principle

The board should establish formal and transparent arrangements for considering how they should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the company’s auditors.

### Code Provisions

D.3.1 The board should establish an audit committee of at least three, or in the case of small[[6]](#footnote-6) companies two, independent non-executive directors. In small companies the company Chairman may be a member of, but not chair, the committee in addition to the independent non-executive directors, provided he or she was considered independent on appointment as Chairman. The board should satisfy itself that at least one member of the audit committee has recent and relevant financial experience.

D.3.2 The main role and responsibilities of the audit committee should be set out in written terms of reference and should include:

* to monitor the integrity of the financial statements of the company, and any formal announcements relating to the company's financial performance , reviewing significant financial reporting judgments contained in them
* to review the company's internal financial controls and, unless expressly addressed by a separate board risk committee composed of independent directors, or by the board itself, to review the company's internal control and risk management systems
* to monitor and review the effectiveness of the company's internal audit function
* to make recommendations to the board, for it to put to the shareholders for their approval in general meeting, in relation to the appointment, re-appointment and removal of the external auditor and to approve the remuneration and terms of engagement of the external auditor
* to review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process, taking into consideration relevant professional and regulatory requirements
* to develop and implement policy on the engagement of the external auditor to supply non-audit services, taking into account relevant ethical guidance regarding the provision of non-audit services by the external audit firm; and to report to the board, identifying any matters in respect of which it considers that action or improvement is needed and making recommendations as to the steps to be taken.
* to report to the board on how it has discharged its responsibilities.

D.3.3 The terms of reference of the audit committee, including its role and the authority delegated to it by the board, should be made available .

D.3.3.1 The Audit Committee has authority to:

1. Conduct or authorize investigations into any matters within its scope of responsibility.
2. Appoint, compensate, and oversee the work of any registered public accounting firm employed by the organization.
3. Resolve any disagreements between management and the auditor regarding financial reporting.
4. Pre-approve all auditing and non-audit services.
5. Retain independent professional advisors to advise the committee or assist in the conduct of an investigation.
6. Seek any information it requires from employees, all of whom are directed to cooperate with the committee’s requests, or external parties.
7. Meet with company officers, external auditors, or outside counsel, as necessary.
8. Monitor the activities of the internal audit ensuring its objectivity and independence in the performance of its duties.
9. Ensure the internal audit function reports to the board through the Audit Committee.
10. Facilitate the chief internal audit executive confirmation to the board at least annually on the organizational independence of the internal audit activity.

D.3.4 Where requested by the board, the audit committee should provide advice on whether the financial statements, taken as a whole, and give a true and fair view of the company’s financial affairs.

D.3.5 The audit committee should monitor and review the effectiveness of the internal audit activities. Where there is no internal audit function, the audit committee should consider annually whether there is a need for an internal audit function and make a recommendation to the board, and the reasons for the absence of such a function should be explained in the relevant section of the annual report.

D.3.6 The audit committee should have primary responsibility for making a recommendation on the appointment, reappointment and removal of the external auditors. JSE listed companies should put the external audit contract out to tender at least every five years. If the board does not accept the audit committee's recommendation, it should include in the annual report, and in any papers recommending appointment or re-appointment, a statement from the audit committee explaining the recommendation and should set out reasons why the board has taken a different position.

D.3.7 The annual report should explain to shareholders how, if the auditor provides non-audit services, auditor objectivity and independence is safeguarded.

D.3.7.1 A separate section of the annual report should describe the work of the audit committee in discharging its responsibilities. The report should include:

* the significant issues that the audit committee considered in relation to the financial statements, and how these issues were addressed.;
* an explanation of how it has assessed the effectiveness of the external audit process and the approach taken to the appointment or reappointment of the external auditor, and information on the length of tenure of the current audit firm and when a tender was last conducted; and
* if the external auditor provides non-audit services, an explanation of how auditor objectivity and independence are safeguarded.

A Model Charter for the Audit Committee is contained in Volume 2 - Handbook and Tool Kit Best Practices in Good Governance.

# E. RELATIONS WITH SHAREHOLDERS

## E.1. Dialogue with Shareholders

### Main Principle

There should be a dialogue with shareholders based on the mutual understanding of objectives. The board as a whole has responsibility for ensuring that a satisfactory dialogue with shareholders takes place.[[7]](#footnote-7)

### Supporting Principles

Whilst recognising that most shareholder contact is with the chief executive, finance director and corporate secretary, the Chairman (and the senior independent director (where there is one)and other directors as appropriate) should maintain sufficient contact with shareholders to understand their issues and concerns.

The board should keep in touch with shareholder opinion in whatever ways are most practical and efficient and should establish effective guidelines.

### Code Provisions

E.1.1 The Chairman should ensure that the views of shareholders are communicated to the board as a whole. The Chairman should discuss governance and strategy with major shareholders. Non-executive directors should be offered the opportunity to attend meetings with major shareholders and should expect to attend them if requested by major shareholders. The senior independent director (where there is one)should attend sufficient meetings with a range of major shareholders to listen to their views in order to help develop a balanced understanding of the issues and concerns of major shareholders.

E.1.2 The board should state in the annual report the steps they have taken to ensure that the members of the board, and in particular the non-executive directors, develop an understanding of the views of major shareholders about their company, for example through direct face-to-face contact, analysts' or brokers' briefings and surveys of shareholder opinion.

## E.2 Constructive Use of the General Meeting

### Main Principle

The board should use General Meetings to communicate with Investors and to encourage their participation.

### Code Provisions

E.2.1. The company should provide the shareholders with the information on the rules with regard to the voting procedures.

E.2.2. At any general meeting, the company should propose a separate resolution on each substantially separate issue, and should in particular propose a resolution at the AGM relating to the report and accounts. For each resolution, proxy appointment forms should provide shareholders with the option to direct their proxy to vote either for or against the resolution or to withhold their vote. The proxy form and any announcement of the results of a vote should make it clear that a 'vote withheld' is not a vote in law and will not be counted in the calculation of the proportion of the votes for and against the resolution.

E.2.3 The company should ensure that all valid proxy appointments received for general meetings are properly recorded and counted. For each resolution, after a vote has been taken, except where taken on a poll, the company should ensure that the information regarding the resolutions of the meeting is given at the meeting and disseminated as required.

When, in the opinion of the board, a significant[[8]](#footnote-8) proportion of votes have been cast against a resolution at any general meeting, the company should explain when announcing the results of voting what actions it intends to take to understand the reasons behind the vote result.

E.2.4 The Chairman should arrange for the Chairmans of the audit, remuneration corporate governance and nomination committees to be available to answer questions at the AGM and for all directors and external auditors to attend.

E.2.5 The company should arrange for the Notice of the AGM and related papers to be sent to shareholders at least 21 days[[9]](#footnote-9) before the meeting. For other general meetings this should be at least 14 days in advance.

# F. TIMELY AND BALANCED DISCLOSURES

### Main Principle

Companies should promote timely and balanced disclosure of all material matters concerning the company.

### Supporting principles

Companies should put in place mechanisms designed to ensure compliance with the Companies Act and with JSE Listing Rule requirements such that:

* all investors have equal and timely access to material information concerning the company - including its financial position, performance, ownership and governance
* company announcements are factual and presented in a clear and balanced way. "Balance" requires disclosure of both positive and negative information.

### Code Provisions

F.1 Companies should establish written policies designed to ensure compliance with JSE Listing Rule disclosure requirements and to ensure accountability at a senior executive level for that compliance and disclose those policies or a summary of those policies.

F.2 There should be vetting and authorisation processes designed to ensure that company announcements:

* are made in a timely manner
* are factual
* do not omit material information
* are expressed in a clear and objective manner that allows investors to assess the impact of the information when making investment decisions.

F.3 Companies should include commentary on their financial results to enhance the clarity and balance of reporting. This commentary should include information needed by an investor to make an informed assessment of the company's activities and results.

# G. CORPORATE SUSTAINABILITY AND ETHICS

### Main Principle

The board should ensure that the company acts ethically and responsibly with honesty, integrity and in a manner consistent with the legitimate interests and expectations of stakeholders and the broader community. The Board should ensure that the company is and is seen to be a good corporate citizen.

### Supporting Principles

Stakeholder interests include employee, environmental, social, governance and economic matters. The Board needs to recognize that stakeholders contribute to company performance in different ways and should therefore take measures to protect their interests and respect their rights during the decision-making process. The best interests of the company should be understood within the parameters of the company being a sustainable enterprise and a responsible citizen.

### Code Provisions

#### G.1.1 Corporate Social Responsibility

The board should:

1.2.1 Consider not only on financial performance but also the impact of the company’s operations on society and the environment;

1.2.2 Protect, enhance and invest in the well-being of the economy, society and the environment;

1.2.3 Ensure that the company’s performance and interaction with its stakeholders is guided by the Constitution and the Bill of Rights;

1.2.4 Ensure that collaborative efforts with stakeholders are embarked upon to promote ethical conduct and good corporate citizenship;

1.2.5 Ensure that measurable corporate citizenship programmes are implemented; and

1.2.6 Ensure that management develops corporate citizenship policies.

#### G.2: Codes of Conduct /Ethics

The board should adopt high standards of business ethics through codes of conduct/ ethics (or similar instrument) and oversee a culture of integrity, notwithstanding differing ethical norms and legal standards in various countries. This should permeate all aspects of the company’s operations, ensuring that its vision, mission and objectives are ethically sound and demonstrative of its values. Codes should be effectively communicated and integrated into the company’s strategy and operations, including risk management systems and remuneration structures.

## Decision-Making

## Main Principle

**Companies should actively promote ethical and responsible decision-making.**

### Supporting Principles

To make ethical and responsible decisions, companies should not only comply with their legal obligations, but should also consider the reasonable expectations of their stakeholders including: shareholders, employees, customers, suppliers, creditors, consumers and the broader community in which they operate.

It is a matter for the board to consider and assess what is appropriate in each company's circumstances. It is important for companies to demonstrate their commitment to appropriate corporate practices and decision making.

### Code Provisions

**G.2.1. Companies should**:

* comply with their legal obligations and have regard to the reasonable expectations of their stakeholders
* publish the policy concerning the issue of board and employee trading in company securities and in associated products, including products which operate to limit the economic risk of those securities.

**G.2.2. Companies should clarify** the standards of ethical behaviour required of the board, senior executives and all employees and encourage the observance of those standards **by establishing a code of conduct and disclose the code or a summary of the code as to:**

* the practices necessary to maintain confidence in the company's integrity
* the practices necessary to take into account their legal obligations and the reasonable expectations of their stakeholders
* the responsibility and accountability of individuals for reporting and investigating reports of unethical practices.

**G.2.3.** Good corporate governance ultimately requires people of integrity. Personal integrity cannot be regulated. Investor confidence can be enhanced if the company clearly articulates acceptable practices for directors, senior executives and employees.

**G.2.4.** The board has a responsibility to set the ethical tone and standards of the company. Senior executives have a responsibility to implement practices consistent with those standards. Company codes of conduct, which state the values and policies of the company can assist the board and senior executives in this task and complement the company's risk management practices.

**G.2.5..** Companies should formulate policies on appropriate behaviour of directors, senior executives and employees. Companies should encourage the integration of these policies into company-wide management practices. A code of conduct supported by appropriate training and monitoring of compliance with the code are effective ways to guide the behaviour of directors, senior executives and employees and demonstrate the commitment of the company to ethical practices. Companies should ensure that training on the code of conduct is updated on a regular basis.

**G.2.6.** Companies should make advisors, consultants and contractors aware of the company's expectations as set out in the code of conduct.

**G.2.7.** There should be a single Company Code of Conduct for all directors, senior executives and staff.

Code of Ethics and Conduct are contained in Volume 2- Handbook and Tool Practices in Good Governance.

#### G.3 Bribery and corruption

The board should ensure that management has implemented appropriately stringent policies and procedures to mitigate the risk of bribery and corruption or other malfeasance. Such policies and procedures should be communicated to shareholders and other interested parties.

#### G.4 Whistleblowing

The board should ensure that the company has in place an independent confidential mechanism whereby an employee, supplier or other stakeholder can (without fear of retribution) raise issues of particular concern with regard to potential or suspected breaches of a company’s code of ethics or local law.

#### G.5 Political Lobbying

The board should have a policy on political engagement, covering lobbying and donations to political causes or candidates where allowed under law, and ensure that the benefits and risks of the approach taken are understood, monitored, transparent and regularly reviewed.

#### G.6 Employee Share Dealing

The board should develop clear rules regarding any trading by directors and employees in the company’s own securities. Individuals should not benefit directly or indirectly from knowledge which is not generally available to the market.

#### G.7 Behaviour and conduct

The board should foster a corporate culture which ensures that employees understand their responsibility for appropriate behaviour. There should be appropriate board level and staff training in all aspects relating to corporate culture and ethics. Due diligence and monitoring programmes should be in place to enable staff to understand relevant codes of conduct and apply them effectively to avoid company involvement in inappropriate behaviour.

END

## REFERENCES

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      2. Corporate Governance Board Leadership Training Resources Kit, International Finance Corporation, Giobal Corporate Governance Forum, 2121 Pennsylvania Ave.,NW Washington DC
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      12. Australia Securities Exchange (ASX) Corporate Governance Council Principles and Recommendations 2014
      13. King Report on Governance South Africa 2009 (King 111)
      14. Trinidad & Tobago Corporate Governance Code 2013
      15. Institute of Internal Auditor’s Charter (IIAC)
      16. ICGN Global Governance Principles 2014
      17. Corporate Governance Recommendations for Listed Companies on the Barbados Stock Exchange Inc 2014

**WEBSITES**

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2. <http://www.worldbank.orglifa/rosc>\_cg.html
3. [http://www.oecdtokyo2.org/pdf/theme](http://www.oecdtokyo2.org/pdf/theme%20%20) \_pdflcorporategovern \_pdf/20090304seminar.pdf
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7. http://www.osc.state.ny.us/localgov/schoolsfa/accharter .pdf

<http://www.ntn.jp/englishlinvestors/pdf/2008-p8.pdf>

1. http://www.ifu.dk/dk/Materiai+Folder/Pdf /CSR+Policy+Feb+2009

1. For directors of Jamaican incorporated companies, these duties are set out in Section 174 of the Companies Act 2004. [↑](#footnote-ref-1)
2. A small company as defined by the Seventh Schedule of the Companies Act [↑](#footnote-ref-2)
3. The requirement to make the information available would be met by including the information on a website that is maintained by or on behalf of the company. [↑](#footnote-ref-3)
4. JSE Rules Appendix 13 on MD&A [↑](#footnote-ref-4)
5. JSE Rules Appendix 13 on MD&A [↑](#footnote-ref-5)
6. See Footnote [As defined by the Seventh Schedule in the Companies Act ] [↑](#footnote-ref-6)
7. Nothing in these principles or provisions should be taken to override the general requirements of law to treat all shareholders equally in access to Information. [↑](#footnote-ref-7)
8. Significant means 25% [↑](#footnote-ref-8)
9. Companies Act, First Schedule sec. 56 “The notice shall be exclusive of the day it is served or the day it is deemed to be served and of the day for which it is given.” [↑](#footnote-ref-9)