

PSOJ Corporate Governance Code  
For Micro, Small or Medium-Sized Enterprises

FINAL DRAFT; September 1, 2015

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PSOJ Corporate Governance Committee

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## **INTRODUCTION**

The basic purpose of commercial enterprises is to preserve and where possible enhance their value. Good corporate governance can contribute to their success and bad governance can result in the reversal of their fortunes. It is therefore in the best interest of business enterprises to continuously strive for improvements in their system of governance.

That said, it should be recognized that there is no single right way for entities to be governed. However, there are certain basic principles which, if applied, should assist the enterprise to survive and succeed. These include:

- i) Comply with the law
- ii) Build the respect of key stakeholders
- iii) Seek to lower the enterprise's cost of capital
- iv) Be aware of and manage the risks facing the enterprise
- v) Develop and adopt systems which enhance the quality of decision making in the entity

Compliance with the guidelines that follow will, to varying degrees, assist in ensuring adherence to these principles.<sup>1</sup>

## **DEFINITION OF A MICRO, SMALL OR MEDIUM-SIZED ENTERPRISE (MSME)**

A MSME is generally defined as having between one (1) and fifty (50) employees and/or an annual turnover less than One Hundred and Fifty Million Dollars (J\$150,000,000)<sup>2</sup>.

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<sup>1</sup> Throughout the document the words "guidelines" and "code" will be used interchangeably

<sup>2</sup> The definition has been adapted from the Ministry of Industry, Investment and Commerce policy for the development of Micro, Small and Medium Enterprises, Drafted October 2010.

- Micro enterprises are generally defined as having one (1) to three (3) employees and/or an annual turnover less than Ten Million Dollars (J\$10,000,000). (Definition is continued at the footnote on Page 5)

It includes but is not limited to:

- Sole proprietors;
- Small enterprises employing non family members;
- Unincorporated partnerships;
- Medium sized enterprises with a few shareholders;
- Larger medium sized private or public enterprises with a substantial number of shareholders and representative boards or other governing bodies;
- Other enterprises owned and operated by family members or otherwise connected parties.
- Companies listed on the Junior Market of the Jamaica Stock Exchange

## **WHAT IS CORPORATE GOVERNANCE?**

Corporate Governance is the system by which enterprises are directed and controlled. As its name suggests, it is primarily designed for companies. However, there are certain basic governance principles, which should be of value to all business enterprises regardless of their size. Corporate Governance principles govern the relationship between an enterprise's management, board of directors (or governing body such as an advisory board – see B.1.), shareholders and other stakeholders.

## **IMPORTANCE OF A CORPORATE GOVERNANCE CODE FOR MSMEs**

This Corporate Governance Code will guide the implementation of a corporate governance system within a MSME. However, the use of the term MSME refers to enterprises along a broad continuum of size and legal type. As such, elements of the Code would be applicable to enterprises consisting of very few people (e.g. less than 3) and to those with staff complement up to 50 irrespective of whether

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- Small enterprises are described as having between four (4) to ten (10) employees and/or an annual turnover of over J\$10,000,000 but less than J\$40,000,000.
  - Medium enterprises are categorized as having between eleven (11) to fifty (50) employees and/or an annual turnover that falls between J\$40,000,000 and J\$150,000,000.

these enterprises are sole proprietorships, partnerships, companies or other legal forms.

Notwithstanding the above, it is important to note that the Code uses, as a benchmark, characteristics directly applicable to companies (as defined within the Companies Act of Jamaica, 2004), that is, companies formed and registered under the Companies Act 2004 or the former Companies Act or Law. The rationale for this approach lies in the view that such a benchmark provides the necessary support for employing “best practice” and can be viewed as aspirational for the smaller enterprise.

## **PURPOSE OF THIS CODE**

The purpose of this Code is to guide MSMEs, in implementing Corporate Governance frameworks suited to their needs while allowing for the effective management and control of their enterprises.

The Code sets out policies that will foster accountability and transparency within enterprises and also help to stimulate investment while improving investor confidence. It will also help in laying a foundation for the growth of the MSMEs into major enterprises.

*The PSOJ recognises that some MSMEs, may not be able to implement corporate governance principles on as large a scale as other companies, therefore the Code is not meant to be a ‘one size fits all’ manual but to highlight the general pillars of corporate governance that each enterprise can implement based on its specific needs and abilities. This said, it is envisaged that this Code will be adopted until the point at which a MSME can transition to compliance with the main PSOJ Corporate Governance Code.*

*Although not mandatory, the PSOJ encourages MSMEs to adopt the MSME Corporate Governance Code to help foster growth through good corporate governance. In addition, the PSOJ acknowledges that the implementation of this Code will be a gradual process and some MSMEs may initially only be able to*

*implement it on a small scale in view of the resources at their disposal and the depth and scope of their services/product offerings.*

## **CONTENTS OF THIS CODE**

This Code concentrates on the following areas:

1. Corporate Governance Policies and Procedures
2. Board of Directors/Advisors
3. Transparency and Shareholder Relations
4. Control Environment
5. Stakeholder Relations
6. Family Business Governance

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## **A. CORPORATE GOVERNANCE POLICY AND PROCEDURES**

In implementing this Corporate Governance Code, a MSME should seek to adopt the Corporate Governance Policies and Procedures set out below, which highlights the roles, responsibilities and rights of the management, advisory boards, boards of directors, shareholders and other stakeholders or at least seek to adapt the policies and procedures to their size and maturity of operations.

Sole proprietors have no need to consider the rights of shareholders but must create and maintain credibility in the eyes of bankers and other creditors by maintaining a basic but credible system of internal controls along with appropriate risk management practices. It will be prudent for these enterprises to develop relationships with external service providers such as accountants and tax specialists, to seek the necessary advice; an advisory board may also be beneficial in this regard. Employing such strategies should help in providing assurance of the sustainability of the enterprise.

Small enterprises, employing non-family members, should employ the basic governance policies mentioned for sole proprietors but, in addition, be aware of and adhere to relevant legislation especially in the areas of employment and employee relations. These enterprises will also benefit from relationships with external professionals and service providers as well as utilising an advisory board to offer guidance when needed.

Medium sized enterprises (MSEs) with a few shareholders, must consider the rights of all shareholders while employing the basic governance policies mentioned above for the smaller business enterprises. In this case the legal framework of a registered company with a board of directors, company secretary and other required features would be necessary. These enterprises must ensure that they maintain credible accounting and control mechanisms. As a consequence, the control and risk management mechanisms will be more sophisticated perhaps utilising best practices.

Medium sized private or public enterprises with a substantial number of shareholders and representative boards must employ governance systems that are more sophisticated than those required for other MSEs. The board will be accountable to the shareholders and must hold management accountable. Hence, an appropriate degree of separation is required to ensure the integrity of the desired shareholder/board relationship.

Other enterprises owned and operated by family members or otherwise connected parties should be governed in accordance with the policies set out in Section F below.

Companies listed on the Junior Market of the Jamaica Stock Exchange (JSE), must comply with the applicable Listing Rules as well as employ any additional governance practices described above for the MSEs with a substantial number of shareholders.

#### **A.1. Role of Management and the Advisory Board or**

##### **Board of Directors**

**A.1.1.** The MSME should indicate who may qualify to fulfil the roles of management, advisory board member or member of the board of directors and what training or orientation is required to ensure the effective fulfilment of their duties. There should also be clear procedures regarding responsibilities for decision-making and what decisions require the input of shareholders. It is noted, however, that many small enterprises will not find it practical to have a board of directors (as for a company) and thus might opt for a governing body like an advisory board. It is also noted that such enterprises might also have little to no separation between management and shareholders.

The management is responsible for the day-to-day operations of the organisation spearheaded by Chief Executive Officer (CEO) or person fulfilling the role of a CEO by whatever name called.

The CEO is the senior manager and the face of the organisation and responsible for ensuring the requirements of the advisory board or board of directors are effectively implemented.

Smaller enterprises would not be required to have a board of directors, unless the enterprise is a company registered under the Companies Act, as this may not be economic to do so. These enterprises however may find it beneficial to utilise an advisory board as explained at B.1. As these enterprises expand and become more complex, good governance practices may suggest the establishment of a board of directors.

The board of directors sets policy and strategy and is responsible for providing checks and balances over the management team.

**A.1.2.** It may arise, given the size of a MSME that the management team and the board of directors overlap. In these circumstances it would be prudent to have in place clear policies and procedures to ensure that each, both collectively and individually, remains accountable to shareholders and other stakeholders.

**A.1.3.** Clear guidelines should also be in place which distinguishes between decisions properly made by management and those reserved for the board and those which can only be made by shareholder.

**A.1.4** As the MSME grows the application of the Code should be reviewed periodically. This is to ensure that the powers, roles and functions of the members of the management team and the separation of their responsibilities from the board's functions and its accountability to the organization's shareholders remain consistent with good governance practices. In addition, as the MSME grows it should also begin documenting the policies and procedures applicable to the various areas of its operations.

## **A.2. Rights and Roles of Shareholders**

**A.2.1.** Shareholders should be aware of the nature of their share ownership including class of shares held as well as the powers and rights such holdings give them as provided for in the Articles of Incorporation in the case of a company and any resolutions adopted by the shareholders or other charter or constitutive document.

**A.2.2.** Shareholders should be aware of their role in the governance process, especially in relation to the appointment and monitoring of directors in keeping with the Articles of the company and any resolutions adopted by the shareholders or other charter or constitutive documents.

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## **B. ADVISORY BOARD AND BOARD OF DIRECTORS**

### **B.1. Advisory Board**

**B.1.1.** The advisory board, similar to a board of directors, typically has a duty to assist in guiding the enterprise in its critical policy making and other named activities, drawing of the expertise and network of its members.

**B.1.2.** The powers of an advisory board will be limited, when compared with those of a board of directors, in that they will not be responsible for the making decisions which are binding on the management.

### **B.2. Board of Directors**

#### **General Principles**

**Enterprises with shareholders, especially larger more complex enterprises and companies registered under the Companies Act, must appoint a board of directors. The board of directors should adopt a board charter setting out, among other things, as deemed necessary, its roles, responsibilities and frequency of meetings.**

Fundamentally, the board of directors is responsible for governing the MSME, making/approving all corporate policy decisions that will have an effect on the achievement of the company's strategic objectives

Every member of the board of directors owes a duty of care to the company. In discharging this duty, a director may have regard to the interests of the company's shareholders and employees and the community in which the company operates<sup>3</sup>.

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<sup>3</sup> Companies Act 2004, Section 174 (4)

In exercising his powers and duties, every director shall act with the care, diligence and skill, which a reasonably prudent person would exercise in comparable circumstances, including but not limited to the general knowledge, skill and experience of the director<sup>4</sup>. In addition, the board may rely on expert opinion.

The board should meet sufficiently regularly to ensure an effective discharge of its duties. A meeting agenda is advisable to ensure that the strategic imperatives of the company are being addressed and decisions that need to be made receive the required attention.

A board formalizes the top level decision making process within the enterprise, and provides a system of checks and balances as well as support and guidance to the management team.

### **B.3. Division of Responsibility**

**B.3.1.** It is advisable that in larger enterprises the Chief Executive and the Chairman is not the same person so as to have a clear distinction between responsibilities for setting of corporate policy and operations.

**B.3.2.** It is acknowledged that in the case of smaller enterprises, due to the size of the MSME this separation may not be practicable. However as the MSME grows and gains more shareholders this separation becomes more desirable as is required under the PSQJ main Corporate Governance Code.

### **B.4. Composition of the Board of Directors**

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<sup>4</sup> Companies Act 2004, Section 174 (1)(b)

The board should have an appropriate balance of skills, experience, independence and knowledge. **There may be other considerations which the owners may choose to take into account in selecting board members.**

#### **B.4.1. Chairman**

The Chairman is responsible for the leadership of the board. The Chairman sets the agenda for the board and ensures that the items on the agenda are sufficiently discussed and that timely decisions are taken at board meetings.

#### **B.4.2. Chief Executive**

The Chief Executive is the head of the company and responsible for the management and operation of the company and is required to regularly account to the board for the performance of the company.

#### **B.4.3. Executive Directors**

These directors are employees of the company with executive management responsibilities. They should possess the required knowledge of the inner workings of the organisation that is necessary in the decision making process.

#### **B.4.4. Independent/Non-Executive Director**

**B.4.4.1.** It is best practice that a board should appoint independent non-executive directors where the board size and nature of the company's operations allow.

**B.4.4.2.** Non-executive directors are not employees of the company and hence have no executive management responsibilities. They are concerned with corporate policy and strategy. Their duties include the monitoring of the performance of management in meeting the company's goals and objectives.

**B.4.4.3.** An independent director has no management or executive function and has no material financial or other conflicting interest in the organisation. This

allows for unbiased and independent fulfilment of the duties of the director without any view to personal gain.

**B.4.4.4.** The appointment of independent/non-executive directors is a means of bringing to the board, skill sets that may not exist among the other directors. These skill sets may include, finance, marketing, information technology, and human resource management, among others. They also bring a level of objectivity in the decision making process which is required to help enhance shareholder value.

**B.4.4.5.** The number of independent non-executive members appointed to the board of directors should be proportionate to the number of members on the board. It is recommended that the number of independent non-executive directors be 1/3 to the nearest whole number, of the members on the board, with a minimum of 1.

#### **B.4.5. The Company Secretary**

**B.4.5.1.** Registered companies must appoint a company secretary<sup>5</sup>. In the case of a sole proprietor who has registered a company, said proprietor cannot also be the company secretary<sup>6</sup>.

**B.4.5.2.** The company secretary is responsible to the board and for ensuring that the organisation complies with financial and legal obligations. The company secretary also facilitates communication between the board and its committees and between management and non-executive directors. The company secretary should be responsible for advising the board through the chairperson, on all governance matters.

### **B.5. Performance Evaluation**

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<sup>5</sup> Companies Act 2004, Section 172(2)

<sup>6</sup> Companies Act 2004, Section 172(3)

**B.5.1.** The board should perform an annual evaluation of its performance as a whole as well as the performance of individual directors. The purpose of such an evaluation is to determine the strengths and weaknesses of the board in carrying out its responsibilities. In smaller enterprises, this may take the form of a self-assessment, while larger enterprises may choose to outsource the evaluation exercise instead. The structure, size and composition of the board should be kept under regular review.

**B.5.2.** A corporate governance committee or other suitable board committee may oversee the execution of the performance evaluation. The evaluation may be based on the tracking of meeting attendance by board members as well as other measures.

## **B.6. Appointment**

**B.6.1.** Directors, especially independent non-executive directors, should be appointed on the basis of objective criteria including their skill, knowledge and capabilities, as needed by the organisation.

**B.6.2.** There should be a formal, rigorous and transparent procedure for appointment of directors to the board.

## **B.7. Orientation and Training**

**B.7.1.** Training should be made available to directors upon appointment to the board, particularly in the case of independent/non-executive directors. The objective is to ensure that members of the board are knowledgeable of the organisation and the industry in which it operates.

**B.7.2.** Each member of the board should be made aware of their duties and responsibilities regardless of whether they are executive or non-executive directors.

**B.7.3.** Board members should be given unfettered access to past board minutes as a part of their orientation.

**B.7.4.** Board members should be given a job description or letter of appointment that outlines their role and duties as members of the board.

## **B.8. Board Committees**

**B.8.1.** The board should seek to establish at least two standing committees - an Audit Committee and a Remuneration Committee. The head of these committees should be an independent non-executive director.

**B.8.2.** The Audit Committee is responsible primarily for reviewing and recommending to the board for approval, the annual audited financial statements of the Company. The committee also oversees the internal audit function, where such a function is in place. Where an internal audit function is not in place the audit committee must conduct an annual review of the situation and state to the Board how this gap is being addressed.

**B.8.3.** The Remuneration Committee (otherwise called the Compensation Committee) is responsible for reviewing and recommending for approval, the remuneration arrangements of the directors and senior officers of the company. The level and form of compensation paid to board members will vary from enterprise to enterprise, but should reflect the time, commitment, and responsibilities of the role.

**B.8.4.** As the company experiences growth it may appoint other standing committees. The naming of these committees should be based on the nature of the business of the particular enterprise and the requirements under the main PSOJ Corporate Governance Code. As an alternative, the company may expand the responsibilities of the two standing committees named at paragraph B.8.1 and alter their names, as may be appropriate.

## **C. TRANSPARENCY AND SHAREHOLDER RELATIONS**

### **General Principles**

**MSMEs as they grow must adopt procedures for transparency in its operations and for the disclosure of material information regarding the company in order to satisfy requirements such as those of regulators, providers of capital and other stakeholders. This is important as it could boost investor confidence and generate investment that will lead to economic growth.**

#### **C.1. Disclosure and Transparency**

**C.1.1.** There should be timely and accurate disclosure of material information regarding the enterprise, including the financial position, performance, ownership, and governance of the company.

**C.1.2.** The preparation of an annual report, which includes the abovementioned information, is an effective way to communicate this information to shareholders. The annual financial audit is important in this respect and for the maintenance of investor confidence. The Auditors' Report, which accompanies the audited financial statements sent to the shareholders, provides an objective independent opinion on whether the financial statements give a true and fair view of the company's financial position, income and expenditure, changes in equity and cash flows.

#### **C.2. Shareholder Relations**

The organisation should hold an Annual General Meeting (AGM) which facilitates the input of the shareholders in the decision making process, as may be allowed for in the Articles of Incorporation. There should be timely notice of a general meeting of shareholders within the period and form required by law. In the case of the AGM, notice is to be sent to shareholders at least 21 days before the

meeting. For other general meetings the notice period required is at least 14 days prior to the proposed meeting date.<sup>7</sup>

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<sup>7</sup> The Companies Act, 2004, section 129

## **D. CONTROL ENVIRONMENT**

The enterprise should establish and maintain effective internal controls through the maintenance of credible books of accounts and the regular presentation of financial statements to the advisory board or board of directors. A 'Management Letter' normally issued by the external auditor following each annual audit, forms an important part of the control environment. This "letter" which is not intended to be comprehensive, would draw attention to internal control or other weaknesses, which may have come to the attention of the external auditor in the course of the audit. Good governance requires that management seeks to eliminate as far as is possible, all the items listed in the "letter" in the course of the subsequent year or as soon as is practicable thereafter.

In establishing the control environment, appropriate risk management mechanisms should be embedded in the company's infrastructure.

Even where the enterprise does not have a board of directors and little to no separation between management and shareholders, it is advisable that the entity maintains effective internal controls, credible books of accounts and appropriate risk management measures consistent with legal and/or regulatory requirements. Keeping accurate and up to date records of revenue, expenditures, debtors and creditors, may be done with the help an appropriate accounting or other software

Enterprises should adopt International Financial Reporting Standards or other accounting standards as may be promulgated under the Companies Act or other applicable legislation.

### **D.1. Independent Auditors**

**D.1.1.** Independent Auditors should be selected via an objective and transparent process, which takes into account their experience, standard of performance and cost of providing the service. The auditors appointed will be responsible for issuing an Auditors' Report on whether the financial statements of the MSME, give a true and fair view of the entity's financial position, income and expenditure, changes in equity and cash flows during and as at the end of the period for which the Auditor is reporting.. The auditors must also report on other legal and regulatory requirements as required under the Companies Act<sup>8</sup> or other applicable legislation.

**D.1.2.** The enterprise, through the Audit Committee, should at least every seven (7) years, formally evaluate the external audit services being provided and annually review the independence of the audit function. The auditors should be able to show that they are thinking about key issues and that they can interact effectively with the management team while challenging them, if required, on contentious issues.

**D.1.3.** To ensure the independence of the auditors' report, the auditors should not audit their own firm's work. The enterprise should formulate policies which exclude external auditors from undertaking work on behalf of the company, which may compromise their independence. Where other services are needed, good governance requires that a different firm be selected to provide them.

## **D.2. Risk Management**

**D.2.1.** A simple analysis of the risks facing the company and basic policies for managing them will assist the enterprise in avoiding disaster. A well governed enterprise will be aware of the laws/regulations with which it must comply and will adopt appropriate compliance policies. This may require external professional advice.

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<sup>8</sup> The Companies Act, 2004 section 157

**D.2.2.** Risk should be defined in the broadest terms, including but not limited to, financial, operational, strategic and regulatory matters, covering areas such as health and safety, human resources, operations, the environment, IT security, and corporate reputation.

**D.2.3.** There should be a regular review of the risk management systems as well as a review of the risk facing the company. As there is growth within the organization so new risks will arise, hence there will be a need to periodically update risk management policies and procedures.

**D.2.4.** As smaller enterprises develop and in the case of larger enterprises, a formal process should be implemented to identify significant business risks and the management should adopt formal control mechanisms to safeguard the enterprise, its shareholders (if any), its investments and its assets.

**D.2.5.** In larger enterprises the board should make its risk management expectations explicit. The management team must be clear as to what is expected of them in this regard. It is important that in MSMEs where the board and management are not the same, they have a common understanding of the nature and extent of the principal risks, which the enterprise is willing to take in achieving its goals.

### **D.3. Internal Auditor**

**D.3.1.** The enterprise, depending on its size and hence its capacity to do so, may consider establishing or outsourcing an internal audit function. As MSMEs transition from micro through to medium sized, the need for this function will become increasingly important and may, at some point, be recommended by the external auditors in their annual management letter.

**D.3.2.** The head of the internal audit function should report directly to the Audit Committee on operational matters. The Audit Committee is responsible for the employment contract of the internal auditor

**D.3.3.** Internal audit's primary responsibility should be to ensure that the risk management approach is being followed throughout the company and that satisfactory internal controls are in place.

**D.3.4.** The internal audit function in carrying out its duties, should be prepared to challenge the decisions of management and/or the board of directors.

#### **D.4. Record Keeping**

**D.4.1.** Small enterprises will find it beneficial to be prudent in their record keeping, so as to be aware of their financial performance as well as their obligations to creditors and other stakeholders.

**D.4.2.** In larger MSMEs proper record keeping will be even more essential. This is to ensure that accounting and other information generated by the enterprise are accurate and credible.

**D.4.3.** In general, good record keeping will allow for management to be aware of the financial status of the enterprise they manage and ensure that compliance obligations under the law are met. In particular, it is a legal requirement to retain seven (7) years of financial records for tax purposes, as the tax authorities may ask to examine the past records of the enterprise.

## **E. STAKEHOLDER RELATIONS**

### **E.1. Stakeholders defined**

Stakeholders include employees, customers, suppliers, creditors, regulators, the community, environmental groups, and generally any party enjoying relations with the enterprise. It is important that a MSME views itself as an integral part of the community in which it operates and is committed to a sound relationship built on respect, trust, honesty and fairness.

### **E.2. Managing Stakeholder Relations**

**E.2.1.** Maintaining good stakeholder relations will reduce risks and also be a way of identifying value-enhancing opportunities. The organization should therefore ensure that communication is maintained with stakeholders to understand their issues and concerns.

**E.2.2.** The values and objectives of the organization in relation to areas such as customer satisfaction, product safety, employee relations, health and safety, the environment and the community in which the company operates, should be outlined.

**E.2.3.** Targets relating to the management of stakeholder relations should be set and progress against the targets monitored. Enterprises should identify key performance indicators and regularly monitor performance in this regard.

### **E.3. Employee Relations**

**E.3.1.** Enterprises which employ persons must be aware of their legal obligations towards their employees, as well as the rights of their employees. MSMEs must be aware of the relevant labour relations and industrial dispute legislations, the Labour Relations and Industrial Disputes Act<sup>9</sup>; the Labour Relations Code<sup>10</sup>; and

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<sup>9</sup> Labour Relations and Industrial Disputes Act, 1975.

<sup>10</sup> Labour Relations and Industrial Disputes Act, Labour Relations Code 1976.

The Employment (Termination and Redundancy Payment) Act<sup>11</sup>. External professional advice in these areas may have to be sought from time to time.

### **E.3.2. Health and Safety**

Employers have an obligation to provide for the health and safety of employees in the workplace. Conversely employees are expected not to endanger his or her health and safety as well as the health and safety of others in the workplace. MSMEs should establish and document policies to protect the privacy and rights of employees in relation their health conditions, including protecting HIV infected employees against discrimination.

### **E.3.3. Workplace Relations**

#### **E.3.3.1. Grievance Proceedings**

Mechanisms should be put in place to allow for the settlement of grievances that may arise in the workplace without the need for third party intervention. This should be done in accordance with section 20 of the Labour Relations Code.<sup>12</sup>

#### **E.3.3.2. Whistle Blowing**

Mechanisms should be put in place to allow for the reporting of protected disclosures in accordance with the Protected Disclosures Act<sup>13</sup>.

#### **E.3.3.3. Disciplinary Proceedings**

Disciplinary procedures should be agreed between the management and employees to ensure the fair and effective arrangements for dealing with disciplinary proceedings. This should be done in accordance with section 22 of the Labour Relations Code.<sup>14</sup>

#### **E.3.3.4. Dismissal**

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<sup>11</sup> Employment (Termination and Redundancy Payments) Act, 1974.

<sup>12</sup> Labour Relations and Industrial Disputes Act, Labour Relations Code 1976, Section 20.

<sup>13</sup> Protected Disclosures Act, 2011.

<sup>14</sup> Labour Relations and Industrial Disputes Act, Labour Relations Code 1976, Section 22.

MSMEs should employ clear guidelines for dismissal. Dismissal refers to the termination of a contract of employment and must be done in accordance with the terms and conditions of the contract or in accordance with common law or statute, specifically the Employment (Termination and Redundancy Payments) Act<sup>15</sup>. Failure to comply may result in the employer being liable for unfair or wrongful dismissal.

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<sup>15</sup> Employment (Termination and Redundancy Payments) Act, 1974.

## **F. FAMILY BUSINESS GOVERNANCE**

There is no legal definition of a family business and experts tend to define family businesses (FB) in a variety of different ways. An acceptable definition is one where the family owns a majority of the voting shares or effectively controls the business, one or more family members are involved in the management of the business, and more than one generation is, or will in future, become involved in the business. Typically, at least one representative of the family or kin is formally involved in the governance of the firm.

FBs comprise the majority of all businesses in the Caribbean, contributing significantly to the region's gross domestic product.

In addition to facing similar business challenges to those of non-family-owned businesses, family-owned businesses face further challenges because of their unique nature and familial inter-personal relationships. These include problems arising from family conflict, emotional issues, sibling rivalry, nepotism, inflexibility in innovation, succession, and resistance to change. Succession in both management and ownership is probably the biggest challenge faced by the majority of FBs. The concern is often that the personal business of the family may interfere with the family business. It is therefore advisable that structures and procedures be established with a view to minimizing this occurrence.

### **F.1. Family Constitution**

A family constitution should be formulated setting out the family's vision and policies regulating the family's relationship with the company as well as a succession plan.

**F.1.1.** The family constitution should set out clear lines of authority and decision-making.

**F.1.2.** There should also be policies and procedures for employing family members, and for separating personal family interests from those of the business of the family.

## **F.2. Family Council**

**F.2.1.** A family governance institution with written procedures should be established to facilitate effective communication and coordination between family members and the company. Forming a “family council” may achieve this.

**F.2.2.** The ‘family council’ serves as the link between the family and the business. This will allow for communication, giving members of the family the chance to voice their opinions on management decisions, succession planning, strategic objectives, and the future of the company. It should have clear written procedures reflecting its role as a forum for keeping all family members informed of developments in the business and allowing them to voice their opinions. Proper minutes of family council meetings must be kept. It is normally expected that the most senior family member should chair the family council.

## **F.3. Succession Planning**

**F.3.1.** In family owned MSMEs succession planning is important to ensure that as the leadership of the enterprise moves from one generation to the next, the successor is sufficiently able, well trained and willing to take over leadership of the enterprise. Careful succession planning will be valuable in this regard.

## **F.4. Non-Familial Connected Enterprises**

In some MSMEs, non-familial connected parties may govern the enterprise. In these cases the connection may be similar to one that exists in a family governed setting. In that case the enterprise may find it prudent to utilize the concepts of a constitution and council as well as careful succession planning to facilitate proper governance of the enterprise.

## **G. LISTING ON THE JSE JUNIOR MARKET**

MSMEs, as they grow and develop, may find it desirable to list on the Jamaica Stock Exchange Junior Market.

Set out in appendix 1, are extracts from the JSE Junior Market Rulebook that provide the governance requirements for listing on the Junior Market. These requirements should be seen as being in addition to the governance requirements of this code.

FINAL DRAFT; September 1, 2015

# **APPENDIX 1**

## **JSE Junior Market Listing Requirements**

The items set out below are extracts from the JSE Junior Market Rulebook that provide the governance requirements for MSMEs seeking to list on the JSE Junior Market.

To be eligible for admission to the JSE Junior Market an enterprise must meet certain minimum requirements set out under rule 501 of the Junior Market Rule Book. It must be noted that admission to the Junior Market is subject to the discretion of the JSE despite fulfillment of the requirements.

### **1. JSE Junior Market Eligibility**

#### **1.1. Minimum Requirements**

No request for the initial admission of any eligible company will be considered by the JSE unless the eligible company has demonstrated to the satisfaction of the JSE that, following its initial public offer:

- (a) it has not less than 25 participating voting shareholders who hold, in aggregate, not less than 20% of the fully paid, subscribed participating voting share capital; and
- (b) The fully paid, subscribed participating voting share capital is not less than J\$50 million and not more than J\$500 million, and such capital is fully paid.

#### **1.2. Associates**

Each eligible company must demonstrate to the JSE that it:

- (a) Has never been admitted to listing on the Main Exchange, or on the main trading platform of any other stock exchange; and
- (b) Is not an associate of any company listed on the Main Exchange, or on the main trading platform of any other stock exchange.

### **1.3. Other Requirements for Initial Admission**

Each eligible company must also provide to the JSE:

(a) The following Shelf Documents, at least 21 days prior to the proposed initial admission date or as indicated below, each of which must be duly completed to the satisfaction of the JSE:

- i. 2 original copies of the Admission Application;
- ii. 2 original copies of the Admission Agreement;
- iii. 2 original copies of the Declaration for Admission;
- iv. 2 original copies of the Mentor Agreement;
- v. in the case of the initial public offering to be carried out for the purposes of initial admission:
  - o 3 copies of the prospectus, in draft form, no less than 21 days prior to the date of its intended publication in accordance with Rule 502(2)(b); and
  - o 3 copies of the prospectus, in final form, no less than 2 days prior to the date of its intended publication in accordance with Rule 502(2)(b);
- vi. specimen certificate for the participating voting shares;
- vii. certified copies of the resolutions of both the board of directors and the original shareholders of the eligible company, in the form provided by Appendix 7, approving the proposed initial admission and the Shelf Documents required therefor;
- viii. within 10 days after the allotment of the participating voting shares in the initial public offering, a list of participating voting shareholders certified by the company secretary, confirming the number of participating voting shares held by each such shareholder, and the fact that such shares are fully paid;
- ix. payment of the applicable Junior Market Fees; and

(b) Evidence satisfactory to the JSE, that the eligible company has met any other requirements that may have been imposed by the JSE pursuant to these Rules.

## **2. JSE Junior Market Corporate Governance Requirements**

**G.2.1.** An eligible company shall, prior to its initial admission, and at all times during which it is a Junior Market Company, have a board of directors that has an appropriate level of skill and experience as a collective, having regard to the need of such board to:

- I. represent the eligible company or Junior Market Company (as the case may be);
- II. carry on the commercial business of the particular eligible company or Junior Market Company (as the case may be); and
- III. Ensure that the eligible company or Junior Market Company (as the case may be) complies with the Junior Market Rules.

**2.2.** The board of directors shall include at least 2 independent non-executive directors.

**2.3.** Establish an audit committee and a remuneration committee that, in each case, has a majority of independent, non-executive directors as its members.

**2.4.** The board must hold regular board meetings, at least on a quarterly basis, and as appropriate.

FINAL DRAFT; September 1, 2015