

The Report on Corporate Governance For Mauritius





Strengthening Financial Sectors



First Edition, October 2003

First Edition (Revised), April 2004

A copy of this Report is available from :

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Rejoinder to the First Edition (Revised), April 2004

Dear Stakeholders,

"**The Report on Corporate Governance for Mauritius,**" which was launched on October 6th 2003, has in general met with a very positive response. The initial printing of the first edition of the Report has all been taken up. Demand is still strong and, therefore, the Committee on Corporate Governance has undertaken a reprint of the Report.

We have availed ourselves of this opportunity to rectify some minor editing errors that escaped our attention in the first edition. I would, however, wish to reassure you that the substance of the Code and the supporting chapters has not changed.

The only significant addition is in **Section I.1, sub-sections (c) and (e) of the Code** where "Large Public Companies" and "Large Private Companies" *have been defined as "individual companies or group of companies with an annual turnover of Rs 250 million and above"*.

Tim Taylor
Chairman, Committee on Corporate Governance
April 2004

PREFACE

The Report on Corporate Governance for Mauritius is the result of twelve months of hard work by the Committee on Corporate Governance. This Committee was set up in September 2001 by the Honourable Sushil Khushiram, Minister of Economic Development, Financial Services and Corporate Affairs, with the purpose of providing a framework for improved corporate governance in Mauritius. After initial work and consultation, it became evident that there was a lack of awareness in corporate Mauritius of what exactly constituted “good corporate governance”. This Report and the accompanying Code had been prepared with the objective of filling this knowledge gap.

The Committee took as its advisor Mervyn King, the person responsible for the preparation of the two King Reports on corporate governance for South Africa and a person with vast worldwide experience in corporate governance. Five task teams were set up to consider particular issues with regard to: (i) Boards and Directors, (ii) Auditing and Accounting, (iii) Risk Management, Internal Control and Internal Audit, (iv) Integrated Sustainability Reporting and (v) Compliance and Enforcement. Each task team was chaired by a member of the Committee and resourced with between six and twelve members drawn from all the stakeholders of corporate Mauritius. The task teams and the main committee have spent literally hundreds of hours in the compilation of this Report and I would like to record my thanks, appreciation and admiration for the work done by the task teams and the Committee. I would also like to thank Mervyn King who has guided and encouraged us in our work and who has been instrumental in raising the profile of corporate governance with the stakeholders of corporate Mauritius. Minister Sushil Khushiram has always given the Committee his full backing as regards the preparation of the Code and I would like to thank him for this.

The Code of Corporate Governance is not a separate document from the Report, but reflects the conclusions of the Report. The content and intention of the Code has to be read in the context of the full Report in order to understand and implement the Code successfully.

I must emphasise that although the Report is relevant and appropriate to current circumstances in Mauritius, it is not an end in itself but part of an evolving process that will bring inevitable change in our corporate governance thinking and practices. The Report should therefore be seen as a living document which will evolve with time.

In the final instance, good governance is about trust and stewardship in and by corporate leaders. These principles are not in conflict with the essential purpose of business enterprise to seek legitimate return on risk capital. In fact, good governance is the leverage, not the constraint in achieving that end. The Report and Code has been crafted and is published in that spirit of enterprise with integrity.

Tim Taylor
Chairperson
October 2003

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INTRODUCTION AND BACKGROUND

I. What is Corporate Governance?

- *“Corporate Governance is a system by which corporations are directed and controlled.”*

- *“Corporate Governance is concerned with holding the balance between economic and social goals, and between individual and communal goals...the aim is to align as nearly as possible the interests of individuals, corporations and society.”*

Sir Adrian Cadbury
Corporate Governance Overview, 1999
World Bank Report

2. Introduction

- 2.1 In September 2001, the Minister of Economic Development, Financial Services and Corporate Affairs, The Honourable Sushil Khushiram, appointed a Committee on Corporate Governance for Mauritius. The Committee was given the task of raising the level of corporate governance in Mauritius so that it would compare favourably with international best practice. As part of its terms of reference, the Committee was asked to consider the appropriateness of introducing a Code of Best Practice on Corporate Governance for Mauritius. After a review of corporate governance practices in Mauritius, the Committee decided that it was appropriate to prepare a Code of Corporate Governance for Mauritius. This Code is contained in this document.

- 2.2 In the early 1990's, after a number of corporate scandals in the UK, a report on the financial aspects of corporate governance was produced in Britain by Sir Adrian Cadbury. In South Africa, the King Committee on Corporate Governance was set up in 1992 as a result of South Africa moving to a democratic state and the previously disadvantaged majority into the mainstream economy. The King Report was published in 1994 and dealt with all stakeholders on a groundbreaking basis.

- 2.3 These seminal studies, together with the Organisation for Economic Co-operation and Development (OECD) and Commonwealth reports, opened new thinking on corporate governance - which had originated in the King Report. This new thinking incorporated the fundamental notion that corporate governance went beyond regulating the relationship between shareholders and management. Furthermore, it recognised that there were other parties that interacted with corporations such as employees, customers, suppliers and the public in general -

the stakeholders of the enterprise. Today, therefore, corporate governance is not just a matter of regulating the relationship between shareholders, the board and managers. It is now a question of recognising the relationship between the corporation and stakeholders and dealing consistently on a holistic basis to align the different interests of each group. Most corporations have the following stakeholders:

- ❑ shareholders
- ❑ employees
- ❑ customers
- ❑ suppliers
- ❑ the national community/communities in which the corporation is established and operates
- ❑ the local community/communities in which the corporation conducts its business
- ❑ the government of the day.

However, corporations may have other stakeholders and an essential role of the board is to identify all the corporation's stakeholders.

- 2.4 This stakeholder orientation has been termed the inclusive approach which is now an international trend. In the inclusive approach to corporate governance, the corporation recognises its responsibility to its various stakeholders. In framing a code of corporate governance for Mauritius, we have resolved that we should adopt this inclusive approach to corporate governance.

3. Corporate Governance in Mauritius

- 3.1 Corporations have existed in Mauritius from the early days of colonisation. At the beginning of the French colonial period, Mauritius was in fact administered by a corporation, "La Compagnie des Indes". However, it was only in 1984 that Mauritius stepped into the modern era with the introduction of a new Companies' Act in that year. In 1989, there was another step forward with the setting up of The Stock Exchange of Mauritius. However, it was at the beginning of the new millennium that things really started to move ahead. Both government and the private sector realised that for Mauritius to make headway in the global economy, it was essential to adopt laws and conventions that were in tune with the changes taking place in the developed economies of the world. Therefore, in 2001 a raft of new measures was introduced, designed to align where possible the practices of corporate Mauritius with best practice world-wide.

These measures were:

- ❑ Introduction of a new Companies Act.
- ❑ Introduction of International Accounting Standards (IAS)

- ❑ Introduction of new listing rules for companies listed on the Stock Exchange of Mauritius.
- ❑ Setting up of a National Committee on Corporate Governance.
- ❑ The World Bank was asked to complete a Report on Standards and Codes (R.O.S.C.) on corporate governance in Mauritius that was published in August 2002.
- ❑ In 2002 and 2003 the World Bank undertook and published Reports on Standards and Codes in respect of Auditing and Accounting, Insolvency, and the Rights of Creditors.

3.2 In July 2002, the Committee on Corporate Governance decided that it should prepare a Code of Corporate Governance for Mauritius and invited Mervyn King, chairman of the King Committee of South Africa, to be its consultant to help complete this task.

4. The inclusive approach

4.1 A distinction needs to be made between accountability and responsibility:

In governance terms, the board is accountable at common law and by statute to the company. The company, on the other hand, should act responsibly and responsively towards the stakeholders identified as relevant to the business of the company.

4.2 The inclusive approach requires that the purpose of the company be defined, and the values by which the company will carry on its daily affairs should be identified and communicated to all stakeholders. The stakeholders relevant to the company's business should also be identified. These three factors should be combined in developing the strategies to achieve the company's goals. The relationship between the company and its stakeholders should be mutually beneficial. A wealth of evidence has established that this inclusive approach is the superior way to create sustained business success and steady, long-term growth in shareowner value.

4.3 However, it must be constantly borne in mind that entrepreneurship and enterprise are the most important factors that drive business. Performance must not be diluted by conformance. The key for good governance is to seek an appropriate balance between enterprise (performance) and constraints (conformance), so taking into account the expectations of shareowners for reasonable capital growth and the responsibility concerning the interests of other stakeholders of the company. This is probably best encapsulated in the statement

attributed to the President of the World Bank, Jim Wolfensohn, that “the proper governance of companies will become as crucial to the world economy as the proper governing of countries.” Proper governance in the 21st century embraces both performance and conformance. Conforming to corporate governance standards results in constraints on management. Boards have to balance this fact with performance for financial success and the sustainability of the company’s business.

5. Special circumstances pertaining to Mauritius

There are special circumstances relevant to corporate governance in Mauritius that all the task teams had to consider. These are:

5.1 Smallness

Mauritius is a small country in terms of geographical size and population. Its smallness will impact on corporate governance. For instance:

- ❑ In international terms, Mauritius corporations are small enterprises. Corporate governance has a cost and because of the size of Mauritius’ corporations, there will be relatively few that will be able to meet the cost of the whole range of governance measures that would be imposed on corporations operating in larger economies.
- ❑ Mauritius’ smallness brings with it a fragile ecosystem. This means that corporations need to pay special attention to the environmental aspects of corporate governance.
- ❑ One of the recognised international components of good governance is to have independent non-executive directors. In a country as small as Mauritius, the pool of such skills is small and true independence is very difficult to achieve.

5.2 Isolation

Mauritius is an island 3 1/2 hours flying time from the nearest continent and 12 hours flying time from Europe. With modern means of communication, isolation is clearly less of a factor than it was, but it can still have an impact. For instance, because of the difficulty in finding truly independent directors in Mauritius, a solution is to appoint directors from abroad. The isolation of Mauritius means that a director from overseas would have to devote 3 days for each board meeting when travelling is taken into account. If a company has 6 board meetings a year, an independent director from overseas would have to devote 18 days annually to his Mauritian directorship, without preparation time, which is a considerable commitment for a non-executive director.

5.3 Diversity

Mauritius is very diverse in terms of ethnic groups, religions and culture. As a result of this diversity a number of prejudicial behaviour patterns have evolved in corporate Mauritius, the most important one being a lack of fair employment practices in many sectors of the economy. For corporate Mauritius to play its full part in the economic and social development of Mauritius, employment practices need to be made fair to all. This needs to be addressed by corporations in a Code of Ethics, which forms an essential part of good governance.

5.4 Statutes and regulations

Corporate activity in Mauritius is regulated by statute and regulation, the main one being the Companies Act of 2001. These statutes and regulations are specific to Mauritius and any Code that is written must take them into account.

5.5 Listing Requirements

The Stock Exchange of Mauritius has introduced Listing Rules which companies need to respect if they are listed on the Stock Exchange of Mauritius. These Listing Rules are special to Mauritius.

These special circumstances have been taken into account by the task group on Compliance and Enforcement.

5.6 The Private Sector

The private sector in Mauritius is slowly evolving from a business environment dominated by family companies. This has had significant implications for corporate governance. For instance, there are still companies where senior management are also major shareholders or related to major shareholders. The governance issue here is that the manager must run the business for the benefit of the company and consequently for all shareholders, not just his or her group of shareholders.

5.7 State-owned Enterprises

The State in Mauritius owns a number of enterprises. There are two ways in which this ownership is exercised. A number of enterprises, e.g. Central Water Authority and Central Electricity Board, are parastatal bodies that are regulated by their own acts of parliament. Other enterprises are owned through public limited liability companies. In certain of these companies, apart from government, there are other state-owned enterprises as shareholders. In a number of these companies, there are minority non-governmental shareholders. One company where government has effective control, Air Mauritius, is listed on the Stock Exchange of Mauritius. Government has indicated that they wish state-owned

enterprise to practise good governance and follow the Code. To achieve this will require rethinking the relationship of the board of each of these state-owned enterprises and its Ministry of “Tutelle”.

5.8 Stewardship

Directors need to ensure that the necessary skills are in place for them to discharge their responsibility of stewardship of the assets of the company. Directors empower management to run the enterprise on their behalf. One of the key aspects necessary to protect the assets of the company is a proper control environment and a well functioning system of internal controls.

6. Capital Markets

- 6.1 If there is a lack of good corporate governance in a market, capital will leave that market with the click of a mouse. As Arthur Levitt, the former Chairperson of the US Securities and Exchange Commission said: *“If a country does not have a reputation for strong corporate governance practices, capital will flow elsewhere. If investors are not confident with the level of disclosure, capital will flow elsewhere. If a country opts for lax accounting and reporting standards, capital will flow elsewhere. All enterprises in that country - regardless of how steadfast a particular company’s practices may be - suffer the consequences. Markets must now honour what they perhaps, too often, have failed to recognise. Markets exist by the grace of investors. And it is today’s more empowered investors that will determine which companies and which markets will stand the test of time and endure the weight of greater competition. It serves us well to remember that no market has a divine right to investors’ capital.”*
- 6.2 As regards Mauritius, the government is trying to attract foreign direct investment to help in the development of the country while the private sector for its part is keen that foreign investors should invest in companies quoted on the Stock Exchange of Mauritius. A significant inflow of foreign capital will only take place if companies in Mauritius are seen to be subject to good corporate governance. Apart from foreign capital, corporate Mauritius is also trying to attract investment from pension funds based in Mauritius. Good corporate governance will encourage the trustees of these funds to invest in equities listed on the Mauritian stock market.
- 6.3 Relying on corporate information, capital flows across geographic borders as if they were non-existent. Mauritius forms part of this borderless world. Both foreign and local investors are free to invest or disinvest in the 45 companies listed on the Stock Exchange of Mauritius.

- 6.4 It follows that the information must be trustworthy before an investor will decide to invest. The measurement for this trust and confidence is the quality of governance of the company imparting the information.

7. The Triple Bottom Line

- 7.1 There is a global move from the single to the triple bottom line, which embraces the economic, environmental and social aspects of a company's activities. This trend is relatively advanced in countries such as South Africa and the United Kingdom and is also becoming a factor in Mauritius. While it may not be possible, at this stage, to have triple bottom line reporting as part of the Code, it should certainly be one of the aspirations.
- 7.2 A board should identify the non-financial aspects relevant to the business of a company. The environmental aspects include the effect on the environment of the product or services produced by the company. The social aspects embrace values, ethics and the reciprocal relationships with stakeholders other than just the shareowners. There is an endeavour now through the Global Reporting Initiative to develop a common language for reporting social and environmental aspects.
- 7.3 It is now generally accepted by corporations that *“demonstrating concern creates an atmosphere of trust and a better understanding of corporate aims, so that when the next crisis comes, (and these are inevitable for companies) there will be a greater goodwill to help the company survive.”* (Reputation Assurance)

8. Shareholders and Corporations

- 8.1 Shareholders obtain their power from the democratic process of voting by which means they can, inter alia, elect or dismiss directors, who carry out the objectives of the company.
- 8.2 The relationship between the company and the shareholders arises out of the articles of association, which are nothing more than a contract between them. This is the only means of shareholder protection, which is generally quite ineffective in practice. Because the shareholders have limited protection, the quality of governance is of absolute importance to them.

9. Leadership

Corporate governance is essentially about leadership:

- 9.1 leadership for efficiency in order for companies to compete effectively in the global economy, and thereby create jobs;

- 9.2 leadership for probity because investors require confidence and assurance that the management of a company will behave honestly and with integrity in regard to their shareholders and other stakeholders;
- 9.3 leadership with responsibility as companies are increasingly called upon to address legitimate social concerns relating to their activities;
- 9.4 leadership that is both transparent and accountable because otherwise business leaders forfeit trust and this will lead to the decline of companies and the ultimate demise of a country's economy.

10. Empirical evidence that good corporate governance makes good business sense

10.1 In recent years, research has been developed that increasingly supports this proposition. In its Investor Opinion Survey published in June 2000, McKinsey & Co., working with Institutional Investors Inc., found that good governance could be quantified and was significant. For the survey, well-governed companies were defined as:

- ❑ having a clear majority of outsiders on the board, with no management ties;
- ❑ holding formal evaluations of directors;
- ❑ having directors with significant stakes in the company and receiving a large proportion of their pay in the form of stock options;
- ❑ being responsive to investor requests for information on governance issues.

10.2 The survey found that:

- ❑ more than 84% of the more than 200 global institutional investors, together representing more than US\$3 trillion in assets, indicated a willingness to pay a premium for the shares of a well-governed company over one considered poorly governed but with a comparable financial record;
- ❑ three-quarters of these investors indicated that board practices were at least as important as financial performance, when evaluating companies for potential investment;
- ❑ the actual premium these investors would be willing to pay varied from country to country. In the United Kingdom, they would pay 18% more for the shares of a well-governed company than for the shares of a company with similar financial performance but poorer governance practices. In emerging markets or markets perceived to

have poor governance practices, this premium escalated to 22% for a well-governed Italian company and to as much as 27% for one in Venezuela or Indonesia.

- 10.3 The implications for companies are profound. Simply by developing good governance practices, managers can potentially add significant shareholder value and other stakeholder benefits. The results of this survey should also be apparent to policy makers and regulators in recognising that the creation of a good governance climate can make countries, especially in the emerging markets, a magnet for global capital. This survey emphasised that companies not only need to be well-governed, but also need to be perceived in the market as being well-governed.
- 10.4 Other similar surveys support the contentions put forward by McKinsey. In March 2001, Stanford University issued a report on corporate governance in emerging markets, re-enforcing the McKinsey findings. Add to this the immense influence of US pension funds, where the proportion of overall foreign holdings of some US\$410 billion in 1999 held by the top 25 pension funds leapt from 42% in 1998 to 66%. Amongst these are many of the funds that have been at the forefront of the governance movement in the United States, such as CalPERS, TIAA-CREF, CalSTRS, and the States of Wisconsin and Florida. It is notable that these funds are developing activist strategies abroad, and that a number of such funds are invested in Southern African companies.

11. Shareholder Activism

The era of deference of shareholders and society to the company generally, has gone. Shareholder activism has taken root globally, notwithstanding that share ownership is now dispersed amongst institutions throughout the world. Institutional investors, both national and global, are drafting criteria for “socially responsible” investment and how investors can measure the quality of governance in companies in which they invest. Up to now, Mauritian institutional investors have not generally played an active role in ensuring that companies are managed for the benefit of all their shareowners. To increase the confidence of investors in Mauritian capital markets, it is essential that Mauritian institutional investors follow the lead given by their counterparts in overseas capital markets and increase their level of activism both at meetings of shareholders and during private meetings with company chairpersons and CEOs.

12. International Practices

- 12.1 Apart from the value added to a company by good corporate governance, interest

in such practices has been fuelled by the international financial crises of the 1990s. In East Asia, in 1997 and 1998, it was demonstrated that macro-economic difficulties could be worsened by systemic failure of corporate governance, stemming from:

- ❑ weak legal and regulatory systems;
- ❑ poor banking regulation and practices;
- ❑ inconsistent accounting and auditing standards;
- ❑ improperly regulated capital markets;
- ❑ ineffective oversight by corporate boards, and scant recognition of the rights of minority shareowners.

12.2 The significance of corporate governance is now widely recognised, both for national development and as part of international financial architecture, as a lever to address the converging interests of competitiveness, corporate citizenship, and social and environmental responsibility. It is also an effective mechanism for encouraging efficiency and combating corruption. Companies are governed within the framework of the laws and regulations of the country in which they operate. Communities and countries differ in their culture, regulation, law and generally the way business is done. In consequence, as the World Bank has pointed out, there can be no single generally applicable corporate governance model in the sense of “one size fits all”. Yet there are international standards that no country can escape in the era of the global investor. Thus, international guidelines have been developed by the Organisation for Economic Co-operation and Development (OECD), the International Corporate Governance Network, and the Commonwealth Association for Corporate Governance. The four primary pillars of fairness, accountability, responsibility and transparency are fundamental to all these international guidelines of corporate governance.

12.3 What shareholders, especially institutional investors, want are understandable measurements that are coherently and consistently communicated, to enable them to judge stewardship, performance, conformance and sustainability.

13. Compliance

All companies are encouraged to take note of and apply where appropriate the principles contained in this Report and Code. The Compliance section of the Code sets out in detail the corporate entities that shall comply with the Code.

14. Incentives for Compliance

In summary, successful governance in the world of the 21st century requires companies to adopt an inclusive and not an exclusive approach. The company must be open to

institutional activism and there must be greater emphasis on the sustainable aspects of its performance that specifically includes non-financial activities and responsibilities. Boards must apply the tests of fairness, accountability, responsibility and transparency to all acts or omissions and be accountable to the company but also responsive to and responsible towards the company's identified stakeholders. The best balance between conformance with governance principles and performance in an entrepreneurial market economy must be found, but this will be specific to each company.

15. Guiding Principles

The guiding principles for the preparation of this report are as follows:

15.1 We have taken the King Report on Corporate Governance in South Africa 2002 as our model because it is most appropriate to a developing economy. Mr Mervyn King, the author of the King Report, has been our consultant and advisor for the preparation of the Mauritius Code of Corporate Governance.

15.2 We have taken note of all the recent developments in Corporate Governance following the various high profile scandals such as Enron, WorldCom, Xerox and Tyco including the Sarbannes Oxley Act, the revised NYSE rules, the Higgs Report and the Smith Report.

15.3 We have taken note of the five principles of corporate governance as enunciated by the OECD. These are:

- The Rights of Shareholders
- The Equitable Treatment of Shareholders
- The Role of Stakeholders in Corporate Governance
- Disclosure and Transparency
- Responsibilities of the Board

16. The World Bank prepared a report on standards and codes (ROSC) on Corporate Governance in Mauritius in 2002 and we have taken into account the findings of this report.

17. Committee and Task Teams

A number of task teams were established to undertake a detailed review of specified areas of corporate governance in Mauritius, namely:

17.1 The Boards and Directors task team looked into issues regarding board practice, the status and responsibilities associated with executive, non-executive and independent directors, as well as executive and non-executive director remuneration. This task team was chaired by Marc Lagesse.

- 17.2 The Accounting and Auditing task team considered developments surrounding auditing and non-audit services, accounting standards in relation to international developments, and auditor skills required for reporting on non-financial aspects. This task team was chaired by Ms Clairette Ah Hen.
- 17.3 The Risk Management, Internal Control and Internal Audit task team reviewed the role and function of internal audit. It also investigated recommendations introducing risk management as a criterion for boards and companies in corporate governance. This task team was chaired by Nassir Ramtoola.
- 17.4 The Integrated Sustainability Reporting task team perhaps had the most compelling brief in that it had to analyse a wide range of complex, and in some cases undefined, areas of reporting of a non-financial nature. Topics ranged from stakeholder engagement to ethics and ethical reporting. This task team was chaired by Cyril Mayer.
- 17.5 The Compliance and Enforcement task team was required to consider the supervision and enforcement of existing statutory and regulatory provisions governing companies in Mauritius and to make recommendations to improve compliance with governance guidelines. This task team was chaired by Mrs Prabha Chinien.
18. The task teams, comprising some 50 or so individuals in total, represented a cross-section of Mauritian business and society in both the private and public sectors. Furthermore, on May 26 2003, a draft of the Code was presented to a wide range of the stakeholders of corporate Mauritius, feedback was sought and a number of amendments and enhancements to the Code have been made following this feed-back.
19. The actual Code of Corporate Governance should be read in conjunction with the supporting chapters.
20. Many thanks to the Financial Sector Reform and Strengthening Initiative (FIRST) who has financed the preparation of the Code. Also we thank the Institute of Directors (IoD) of Southern Africa for the right to use and copy what is appropriate from The King II Report.
21. I would like to thank all those that have contributed to the preparation of this Report: Mervyn King, our guide and mentor, all the members of the Committee on Corporate Governance, the members of the task teams, Jeewonlall Seeruttun and his colleagues at the Ministry of Economic Development, Financial Services and Corporate Affairs, Anton Roodt the editor of the Report and Michaela Manuel who has worked tirelessly on the numerous drafts of the Report.

Tim Taylor
Chairperson
October 2003

CODE OF CORPORATE GOVERNANCE

Section I Compliance and Enforcement

I.1 Designated Institutions

The Code of Corporate Governance applies to the following business enterprises. In case of non-compliance, these enterprises shall disclose and explain the reasons for their non-compliance.

(a) Companies listed on the official list of the Stock Exchange of Mauritius
All such companies shall comply with all the provisions of the Code.

The Stock Exchange of Mauritius (SEM) may, through the listing rules, add further requirements in respect of corporate governance.

(b) Banks and non-banking financial institutions

All such companies shall comply with all the provisions of the Code.

The Bank of Mauritius and Financial Services Commission may further require that certain provisions of the Code be mandatory, and prescribe, for specific prudential reasons, more stringent requirements in respect of corporate governance for companies under their regulation.

(c) Large Public Companies

Large Public Companies have been defined as “individual companies or group of companies with an annual turnover of Rs 250 million and above”.

(d) State-owned enterprises, including statutory corporations and parastatal bodies

(e) Large Private Companies

Large Private Companies have been defined as “individual companies or group of companies with an annual turnover of Rs 250 million and above”.

I.2 Other companies

Other companies should give due consideration to the application of this Code insofar as the principles are applicable, and disclose in their directors’ report the extent to which they are complying with the Code.

I.3 Corporate holding structures

The board of directors of a diversified group or similar corporate holding structure which wholly owns or effectively controls other companies as subsidiaries, should ensure that the principles of good governance are followed and applied throughout the group. However, subsidiary companies would not be expected to have separate sets of board committees, and in the case of wholly owned subsidiaries, there would be no obligation to have independent directors.

- 1.4 The boards of the institutions designated above shall be responsible for the implementation and compliance of this Code.
- 1.5 The board should recognise that adhering to good governance principles is not merely compliance with a set of rules and regulations, but entails aiming for the highest standards of corporate governance with a culture of best practice as a performance benchmark for their companies.
- 1.6 Companies shall state in their annual reports the extent of their compliance with the Code in accordance with clause 8.4 of this Code. The board may request the auditors to assess and state the extent of the company's compliance with the Code of Corporate Governance.
- 1.7 Companies shall, in their annual reports, identify and give reasons for areas of non-compliance, and where applicable, state the alternative practice(s) adopted.
- 1.8 Regulators and stakeholders should be responsible for monitoring the application by these companies of the principles set out in this Code.
- 1.9 Large Public and Private companies will be defined at a later date by the Committee on Corporate Governance.
- 1.10 As regards State-Owned Enterprises, the enterprises which will be required to comply with the Code will be defined by a Joint Committee of the Ministry of Civil Service Affairs and Administrative Reforms and the Committee on Corporate Governance.
- 1.11 Compliance with this Code is a requirement as from the reporting year (financial period) ending 30th June 2005, i.e. companies should comply as from July 2004. Earlier compliance, however, is encouraged.

Section 2 Boards and Directors

2. Role and Function of the Board

2.1 Structure

- 2.1.1 The board is the link between shareholders and the company. As such, all companies should be headed by an effective board which can both lead and control the company.
- 2.1.2 The concept of a unitary board should be the favoured board structure for companies in Mauritius.

2.2 Composition

- 2.2.1 The board should have an appropriate balance of executive, non-executive and independent directors under the firm and objective leadership of a chairperson to ensure satisfactory performance within a framework of good governance to serve the interests of all the stakeholders of the company.
- 2.2.2 It is essential for the protection of shareholder interests (including minority interests) that the board has some directors who are independent from the company and from any dominant shareholder. All companies should have at least two independent directors on their boards, as defined in this Code.
- 2.2.3 All boards should have a strong executive management presence with at least two executives as members.
- 2.2.4 Every board should determine its optimal size and composition for effective execution of its responsibilities.
- 2.2.5 Crucially, all members of the board should be individuals of integrity who [can] bring a blend of knowledge, skills, objectivity, experience and commitment to the board.
- 2.2.6 Each director should be elected (or re-elected as the case may be) every year at the Meeting of Shareholders and a brief CV of each director standing for election or re-election should accompany the notice contained in the annual report. Each director should be elected by a separate resolution.
- 2.2.7 Companies should ensure that the word 'director' is not included in the job title of a person unless he/she is a director of the company.
- 2.2.8 There is no distinction between directors and alternate directors in terms of their duties and responsibilities. A person may be appointed as an alternate director to more than one director on the same board. However, he/she may only act as the alternate to two directors at any one time. In the case where the alternate director is also a director in his own right, he/she can be appointed as alternate for more than one other person but he can only act as alternate to one other director at any given board meeting. The overriding principle is that no individual can exercise more than two votes at a board meeting.

2.3 Role of the Board

- 2.3.1 The board is the focal point of the corporate governance system and is ultimately accountable and responsible for the performance and affairs of the company.

2.3.2 It follows that it is the board's responsibility to provide effective corporate governance. This involves a set of relationships between the board, the management of the company, its shareholders and other relevant stakeholders (as determined by the board), in a manner whereby the board should:

- (a) Determine the company's purpose, strategy and values.
- (b) Exercise leadership, enterprise, intellectual honesty, integrity and judgment in directing the company so as to achieve sustainable prosperity for the company.
- (c) Ensure that procedures and practices are in place that protects the company's assets and reputation. Therefore, the board should regularly review processes and procedures to ensure the effectiveness of the company's internal control systems.
- (d) Consider the necessity and appropriateness of installing a mechanism by which breaches of the principles of corporate governance could be reported (see clause 5.2.4 of this code).
- (e) Monitor and evaluate the implementation of strategies, policies, management performance criteria and business plans. In effect, the board must provide guidance and maintain effective control over the company, and monitor management in carrying out board plans and strategies.
- (f) Define levels of materiality, reserving specific powers for itself and delegating other related matters with the necessary written authority to management. These matters should be monitored and evaluated by the board on a regular basis. Such delegation by the board must have due regard for the directors' statutory and fiduciary responsibilities to the company, while taking into account strategic and operational effectiveness and efficiency.
- (g) Identify key risk areas and key performance indicators of the business enterprise in order for the company to generate economic profit, so as to enhance shareholder value in the long term. The wider interests of society should at the same time be recognized.
- (h) Ensure that the company complies with all relevant laws, regulations and codes of best business practice.
- (i) Record the facts and assumptions on which the board relies to conclude that the business will or will not continue as a going concern in the financial year ahead, and in the latter case, the steps the board is taking.
- (j) Determine a policy for the frequency, purpose, conduct and duration of its meetings and those of its formally established committees. The board should meet at least once a quarter if not more frequently as circumstances require.
- (k) Ensure that there are efficient and timely methods for informing and briefing board members prior to meetings. This should include an agreed procedure whereby directors may, if necessary, obtain independent professional advice at the company's expense.
- (l) Ensure that non-executive directors have access to management without the

presence of executive directors. The appropriate procedure in this regard should be agreed collectively by the board.

- (m) Identify, monitor and report regularly on the non-financial aspects relevant to the business of the company;
- (n) Ensure that the board communicates with shareholders and relevant stakeholders (internal and external) openly and promptly with substance prevailing over form.

2.3.3 It is a key responsibility of the board to appoint a chief executive officer and ensure that succession is professionally planned in good time.

2.3.4 The board must appoint a company secretary and in so doing satisfy itself that the appointee is fit and proper and has the requisite attributes, experience and qualification to properly discharge his/her duties.

2.3.5 The work of the board is to balance “conformance” and “performance”. Conformance is compliance with the various laws, regulations and codes governing companies. Ensuring performance requires the development of a commensurate enterprise culture within the organisation so that returns to shareholders are maximised while respecting the interests of other stakeholders.

2.3.6 The entire board must contribute fully in developing and sustaining that enterprise culture. Therefore the board should be constituted in a manner that provides a balance between enterprise and control.

2.4 Conflicts of Interest

2.4.1 Transactions between the company and its managers, directors or large/dominant shareholders are sources of conflicts of interest.

2.4.2 The personal interests of a director, or persons closely associated with the director, must not take precedence over those of the company and its shareholders, including minority shareholders.

2.4.3 A director should make a best effort to avoid conflicts of interest or situations where others might reasonably perceive there to be a conflict of interest.

2.4.4 Full and timely disclosure (preferably in writing) of any conflict, or potential conflict, must be made known to the board. In the case of banks, the regulator may set different disclosure provisions. The board should develop a corporate code of conduct that specifically addresses conflicts of interest, particularly relating to directors and management, which should be regularly reviewed and updated as necessary.

- 2.4.5 Where an actual or potential conflict does arise, on declaring their interest and ensuring that it is entered on the Register of Interests of the company, a director can participate in the debate and/or indicate their vote on the matter, although such vote would not be counted. The director must give careful consideration in such circumstances to the potential consequences it may have for the board, company and him.
- 2.4.6 Any director who is appointed to the board at the instigation of a party with a substantial interest in the company, such as a major shareholder, substantial creditor or significant supplier or advisor, should recognise that their duty and responsibility as director is always to act in the interests of the company and not the party who nominated them.
- 2.4.7 Any such director must treat confidential matters relating to the company, learned in his/her capacity as director, as strictly confidential and must not divulge them to anyone without the authority of the board. The board must consider each such request on its merits and on a case by case basis.
- 2.4.8 No such director may refer back to the interested party before voting on a board matter.

2.5. Role and Function of the Chairperson

- 2.5.1. All boards should be subject to the firm and objective leadership of a chairperson who brings out the best in each director. The chairperson should bring independence of mind and intellectual honesty to his/her role, irrespective of whether he/she is officially designated as independent in terms of the categories of directors set out in Section 2 clause 2.7 of this Code.
- 2.5.2. The chairperson's primary function is to preside over meetings of directors and to ensure the smooth functioning of the board in the interests of good governance. The chairperson will usually also preside over the company's Meetings of Shareholders.
- 2.5.3 There are a number of common core functions which should be performed by the chairperson:
- (a) providing overall leadership to the board without limiting the principle of individual responsibility for board decisions. The chairperson should also encourage and ensure active participation of each director in discussions and board matters;
 - (b) participating in the selection of board members to ensure that the board has an appropriate mix of competencies, experience, skill and independence;

- (c) overseeing a formal succession plan for the board, chief executive officer and senior management;
- (d) attending meetings of the Nomination Committee, or any other such committee whose responsibilities include those listed in Section 3.
- (e) ensuring that monitoring and evaluating of board and director appraisals are carried out;
- (f) ensuring that all the relevant information and facts are placed before the board to enable the directors to reach informed decisions;
- (g) maintaining sound relations with the company's shareholders and ensuring that the principles of effective communication and pertinent disclosure are followed.

2.5.4 The titles, functions and roles of chairperson and chief executive officer must be kept separate as a cornerstone of good governance.

2.5.5 The chairperson can be any non-executive or independent non-executive director elected by his or her fellow directors.

2.5.6 The chairperson should fill this role for a pre-agreed period. Once this period has expired, and if the chairperson has been re-elected to serve as a director, he/she may be re-elected by the board to serve as chairperson.

2.6 Role and Function of the Chief Executive Officer

2.6.1 The title, function and role of the chief executive officer must be separate from that of the chairperson.

2.6.2 Important functions that the chief executive officer should fulfil are to:

- (a) develop and recommend to the board a long-term vision and strategy for the company that will generate satisfactory levels of shareholder value and positive, reciprocal relations with relevant stakeholders;
- (b) develop and recommend to the board annual business plans and budgets that support the company's long-term strategy. In the development of these plans, it is essential that the chief executive officer ensures a proper assessment of the risks under a variety of possible or likely scenarios is undertaken and presented to the board (whether through a separately constituted Board Risk Committee or through an Executive Risk Management Committee);
- (c) strive consistently to achieve the company's financial and operating goals and objectives, and ensure that the day-to-day business affairs of the company are appropriately managed and monitored;
- (d) serve as the chief spokesperson for the company on all operational and day to day

matters. The chairperson and chief executive officer should discuss and agree with the board the division of responsibilities for communication to shareholders and other stakeholders. It is important that the chief executive officer and other key officers attend Meetings of Shareholders and be prepared to present material operational developments to the meeting.

- 2.6.3 The chief executive officer should maintain a positive and ethical work climate conducive to attracting, retaining and motivating a diverse group of top-quality employees at all levels of the company. In addition, it is incumbent on the chief executive officer to foster a corporate culture that promotes ethical practices, rejects corrupt practices, offers equal opportunities, encourages individual integrity, and meets social responsibility objectives and imperatives.

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

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

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

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

2.7.1.3 **Independent director** - a director who is non-executive and who:

- (a) is not a representative or member of the immediate family (spouse, child, parent, grandparent or grandchild) of a shareholder who has the ability to control or significantly influence the board or management. This would include any director who is appointed to the board (by virtue of a shareholders' agreement or other such agreement) at the instigation of a party with a substantial direct or indirect shareholding in the company;
- (b) has not been employed by the company or the group of which the company currently forms part, in any executive capacity for the preceding three financial years;

- (c) is not a professional advisor to the company or the group other than in a director capacity;
- (d) is not a significant supplier to, debtor or creditor of, or customer of the company or group, or does not have a significant influence in a group related company in any one of the above roles;
- (e) has no significant contractual relationship with the company or group;
- (f) is free from any business or other relationship which could be seen to materially impede the individual's capacity to act in an independent manner;
- (g) in the case of banks, the Bank of Mauritius' definition of independent applies.

2.7.2 Shadow directors should be strongly discouraged. A "shadow director" is considered to be a person in accordance with whose directions or instructions (whether these extend over the whole or part of the activities of the company), a director or group of directors of the company are accustomed to act. In this case the concerned directors should remind themselves of their obligation to serve the best interests of the company according to the provisions of Clauses 2.4.6, 2.4.7 and 2.4.8 of the Code.

2.7.3 Directors whom the board considers may be acting on the directives of a third party should not be recommended by the Corporate Governance or Nomination Committees for re-election at the next Meeting of Shareholders.

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

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

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

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

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

2.7.8.1 ensure that they have time to diligently carry out their responsibilities and

- duties to the company;
- 2.7.8.2 exercise the utmost good faith, honesty and integrity in all their dealings with or on behalf of the company and must act independently of any outside fetter or instruction;
- 2.7.8.3 in line with global best practice, not only exhibit the degree of skill and care as may be reasonably expected from persons of their competence and experience (which is the traditional legal formulation), but must also:
- ❑ exercise both the care and skill any reasonable person would be expected to show in looking after their own affairs, as well as having regard to their actual knowledge and experience when performing their duties as a director of the company;
 - ❑ qualify themselves on a continuous basis with a sufficient (at least a general) understanding of the company's business and the effect of the economy so as to discharge their duties properly, including where necessary relying on expert advice;
- 2.7.8.4 always act in the best interests of the company and never for any sectoral or other outside interest or party;
- 2.7.8.5 never permit a conflict of duties and interest and must disclose potential conflicts of interest to the board at the earliest possible opportunity;
- 2.7.8.6 be informed about the financial, industrial, environmental and social milieu in which the company operates;
- 2.7.8.7 be satisfied that they are in a position to take informed decisions;
- 2.7.8.8 treat any confidential matters relating to the company, learned in their capacity as a director, as strictly confidential and not divulge them to anyone without the authority (on a case by case basis) of the board;
- 2.7.8.9 insist that board papers and other material information regarding the company are provided in time for them to make informed decisions;
- 2.7.8.10 ensure that procedures and systems are in place to act as checks and balances on the information being received by the board and ensure that the company prepares annual budgets and regularly updated forecasts against which the company's performance can be monitored by the board;
- 2.7.8.11 ensure that a proper risk assessment of the company's current operations and proposed projects under a variety of possible or likely scenarios is undertaken on a regular basis;
- 2.7.8.12 be diligent in discharging their duties and obligations to the company, regularly attend meetings and must acquire a broad knowledge of the business of the company so that they can meaningfully contribute to its direction;
- 2.7.8.13 be prepared and able, where necessary, to express disagreement (constructive dissent, not disloyalty) with colleagues on the board including

the chairperson and chief executive officer;

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

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

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

2.8 Remuneration of directors

2.8.1 Companies should include a transparent “Statement of Remuneration Philosophy” in their annual report and financial statements so that shareholders and stakeholders can comprehend the board’s policy and motivation in determining remuneration for directors in accordance with specified benchmarks. The statement should also incorporate the criteria used for remunerating executive directors approaching retirement.

2.8.2 Companies should disclose in their annual report details of remuneration paid to each director on an individual basis. Such remuneration should include salaries, fees, severance payments, share options and any other benefits whether received from or in respect of the company, or from or in respect of any subsidiary of the company, or any company on which the director serves as a representative of the company. Furthermore, the disclosure should indicate the extent to which the individuals retain remuneration from a subsidiary or as a representative of the company and how much is paid over to the company of which the persons are directors.

2.8.3 In the case where there are fixed-term contracts for executive directors, this fact should be disclosed in the annual report, including the duration of the contract.

2.8.4 The remuneration of directors should be decided by the Remuneration Committee or the Corporate Governance Committee that has the responsibility for remuneration matters as set out in Section 3 of this Code.

2.9 Director Selection, Training and Development

2.9.1 New directors appointed to the board should be familiarised with the company’s operations, senior management and its business environment. They must also be made aware of their fiduciary duties and responsibilities and of the board’s and chairperson’s

expectations. Since their responsibility carries with it significant personal liability, new directors with no board experience should receive the relevant education and development.

2.9.2 The appropriate induction of directors contributes to ensuring that a company maintains a well-informed and competent board. It is vital therefore that a suitable induction program is in place which meets the specific needs of both the company and the individual, and enables any new director to make the maximum contribution as quickly as possible. Although it is the responsibility of the chairperson to ensure the relevance and quality of the program, the induction training itself should be delegated to the company secretary.

2.9.3 An essential element of the induction process must be to help and advise the director to recognise situations of potential conflict of interest before they arise. The director must be consciously aware of the situations that can lead to conflicts of interest, in order to be in a position to point them out to the chairperson and board at an early stage.

2.10 Board and Director Appraisal

2.10.1 Companies must have controls in place to promote their continued survival and profitability. As this is a function of the board, it makes sense for the performance of the board and directors to be included in the monitoring and evaluation process.

2.10.2 Effective and meaningful evaluation is only possible once the board has determined its own functions and identified the key roles and performance standards for directors. Key roles for executive, non-executive and independent non-executive directors would be different.

2.10.3 Directors should be assessed both individually, and collectively as a board.

2.10.4 While individual evaluations should be conducted annually, an assessment of the functioning of the board could be undertaken less frequently, particularly if the composition of the board is stable. An appropriate time to conduct a further board assessment would be when there are no major changes to strategy or structure.

2.10.5 Directors who fail to discharge their duties and responsibilities to the satisfaction of the board (including those who fail to attend meetings without acceptable explanation) should be removed, after training has failed, (taking relevant legal and other matters into consideration) with the chairperson usually leading the process.

Section 3 Board Committees

- 3.1 As stated above, the board is the focal point of the corporate governance system and is ultimately accountable and responsible for the performance and affairs of the company. Delegating authority to board committees or management does not in any way discharge the board from its duties and responsibilities. Board committees are a mechanism to assist the board and its directors in discharging their duties through a more comprehensive evaluation of specific issues, followed by well-considered recommendations to the board.
- 3.2 In establishing board committees, the board must determine their terms of reference, life span, role and function. The terms of reference for each committee should cover:
- objectives, purpose and activities
 - composition
 - delegated authorities including extent of power to make decisions and/or recommendations (if any)
 - tenure
 - reporting mechanism to the board
 - agreed procedure for seeking independent outside professional advice when necessary.
- 3.3 There should be transparency and full disclosure from the board committee to the board. However, time should not be wasted on repeating a committee's deliberations at board level.
- 3.4 Board committees should, as far as possible, only comprise members of the board. It may be necessary, where certain board committees fulfil a specialised role, to co-opt specialists as permanent members of such committees but this should be the exception rather than the rule and they should comprise a minority on the committee. Such co-opted persons should contract not to disclose confidential information.
- 3.5 All companies should have, at a minimum, an audit committee and a corporate governance committee.
- 3.6 Industry and company specific issues will dictate the necessity and requirements for other committees. The overriding principle is that boards must establish committees that are responsive and relevant to the nature of the company's business and where direct involvement of directors, particularly non-executives, is necessary. It is the responsibility of the board to consider the committees appropriate for its purposes.

- 3.7 In companies where a large client, substantial creditor or significant supplier of the company also has a significant shareholding in the company by virtue of which it is represented at board level, decisions with regard to the commercial relationship with that client should be delegated to a specific board committee. This committee should be composed entirely of directors unconnected with the client, creditor or supplier.
- 3.8 A secretary should be appointed for each committee and minutes of each meeting recorded.
- 3.9 The composition and membership of the committees should comply with the following principles:

3.9.1 The Audit Committee

(a) Terms of reference

The Audit Committee should focus on:

- the functioning of the internal control system;
- the functioning of the internal audit department;
- the risk areas of the company's operations to be covered in the scope of the internal and external audits;
- the reliability and accuracy of the financial information provided by management to the board and other users of financial information;
- whether the company should continue to use the services of the current external and internal auditors;
- any accounting or auditing concerns identified as a result of the internal or external audits;
- the company's compliance with legal and regulatory requirements with regard to financial matters;
- the scope and results of the external audit and its cost effectiveness, as well as the independence and objectivity of the external auditors;
- the nature and extent of non-audit services provided by the external auditors, where applicable;
- the financial information to be published by the board.

Shareholders, on request, should be able to obtain a copy of the current terms of reference of the Audit Committee at the registered office of the company.

(b) Composition

- The chairperson of the board should not be a member of the Audit Committee
- The chairman of the Audit Committee should be an independent non-executive director.

- ❑ The chief executive officer should not be a member of the Audit Committee.
- ❑ The Audit Committee should be composed entirely of non-executive directors.
- ❑ It is not a requirement that the majority of the Audit Committee be independent non-executive directors although this is strongly recommended. The aspiration is for the majority to be independent.
- ❑ The chairman of the Audit Committee should have substantial accounting or financial experience.

3.9.2 The Corporate Governance Committee

(a) Terms of Reference

The Corporate Governance Committee should include in its terms of reference the key areas normally covered by a Nomination Committee and a Remuneration Committee unless these committees have been separately constituted. Its role is also to ensure that the reporting requirements on Corporate Governance, whether in the annual report as set out in Section 8 clause 8.3, or on an ongoing basis, are in accordance with the principles of this Code.

(b) Composition

- ❑ A non-independent chairperson of the board can only be the chairperson of the Corporate Governance Committee on condition that the majority of the committee are independent non-executive directors. If this is not the case, the non-independent chairman of the board can be a member of the Corporate Governance Committee, but not its chairperson. The chairperson of the committee would then have to be an independent non-executive director. The aspiration is that the chairman of the corporate governance committee should be an independent non-executive director.
- ❑ The chief executive officer may be a member of the Corporate Governance Committee.
- ❑ The Corporate Governance Committee should be composed of a majority of non-executive directors.
- ❑ Other than in the case where the non-independent chairperson of the board is also chairperson of the Corporate Governance Committee, it is not a requirement that the majority of the Corporate Governance Committee be independent non-executive directors, although this would be strongly recommended. The aspiration is that the committee will always have a majority of independent non-executive directors.

3.9.3 Board Risk Committee

(a) Terms of reference

The necessity for, and composition of a Risk Committee will depend on the nature and complexity of the business. In relatively simple businesses, it will be acceptable for risk management to be the direct responsibility of the board rather than a board committee. Responsibility for setting risk strategy will remain with the board but the responsibility for assessing and assuring the quality of the risk management process may be delegated to the Audit Committee if a Risk Committee has not been constituted.

(b) Composition

In more complex businesses, the board may decide that a separate Board Risk Committee is required to set risk strategy, advise the board on risk issues and monitor the risk management process. In this case, the composition of the committee should be determined according to the following principles:

- ❑ The chairman of the committee should be a non-executive director;
- ❑ The chief executive officer should be a member of the committee;
- ❑ The committee should be composed of suitably qualified members who should include at least one independent director.
- ❑ The company may also set up committees composed of management or appoint a chief risk officer, if deemed appropriate, who would then report to the Board Risk Committee. The Audit Committee would retain an assessment and assurance role in this case.

3.9.4 The Remuneration Committee

(a) Terms of reference

The role of the Remuneration Committee (if separately constituted) or the Corporate Governance Committee, will be to work on behalf of the board and be responsible for recommendations with regard to:

- ❑ determining, developing and agreeing the company's general policy on executive and senior management remuneration;
- ❑ determining specific remuneration packages for executive directors of the company, including but not limited to basic salary, benefits in kind, annual bonuses, performance-based incentives, share incentives, pensions and other benefits;
- ❑ determining any criteria necessary to measure the performance of executive directors in discharging their functions and responsibilities;
- ❑ determining the level of non-executive and independent non-executive fees to be recommended to the shareholders at the Meeting of Shareholders.

(b) Composition

- ❑ A non-independent chairperson of the board can be the chairperson of the Remuneration Committee. The aspiration is that the committee should be chaired by an independent non-executive director.
- ❑ The chief executive officer may be a member of the Remuneration Committee.
- ❑ The Remuneration Committee should be composed of a majority of non-executive directors.
- ❑ Other than in the case where the non-independent chairperson of the board is also chairperson of the Remuneration Committee, it is not a requirement that the majority of the Remuneration Committee be independent non-executive directors, although this would be strongly recommended. The aspiration is that the Committee should always be composed of a majority of independent directors.
- ❑ No member of the Remuneration Committee can be involved or vote on committee decisions in regard to his/her own remuneration.

3.9.5 The Nomination Committee

(a) Terms of reference

The Nomination Committee (if separately constituted) or the Corporate Governance Committee that has responsibility for board and senior executive nominations should:

- ❑ ascertain whether potential new directors are fit and proper and are not disqualified from being directors. Prior to their appointment, their backgrounds should be thoroughly investigated;
- ❑ ensure that the potential new director is fully cognisant of what is expected from a director, in general, and from him or her in particular;
- ❑ ensure that the right balance of skills, expertise and independence is maintained;
- ❑ ensure that there is a clearly defined and transparent procedure for shareholders to recommend potential candidates;
- ❑ ensure that potential candidates are free from material conflicts of interest and are not likely to simply act in the interests of a major shareholder, substantial creditor or significant supplier of the company. This is of particular importance when a candidate has been nominated by virtue of a shareholders' agreement, or other such agreement. In any case, candidates so nominated can not be considered independent as stipulated in Section 2 clause 2.7.1.3;

- ❑ the committee should also pay particular attention to the potential conflicts of interest and other ethical problems that could arise in cases where the potential candidate is already a director of a company, or forms part of a group, that is a competitor to the company;
- ❑ ensure that those directors who, in the opinion of the board, have either acted in accordance with the instructions of a third party or have not discharged their duties as directors to the satisfaction of the board, not be nominated for re-election.

(b) Composition

- ❑ A non-independent chairperson of the board can be the chairperson of the Nomination Committee. The aspiration is that the committee should be chaired by an independent non-executive director.
- ❑ The chief executive officer may be a member of the Nomination Committee.
- ❑ The Nomination Committee should be composed of a majority of non-executive directors.
- ❑ Other than in the case where the non-independent chairperson of the board is also chairperson of the Nomination Committee, it is not a requirement that the majority of the Nomination Committee be independent non-executive directors, although this would be strongly recommended. The aspiration is that the committee should always be composed of a majority of independent directors.

3.9.6 Board committees should be subject to regular evaluation by the board to assess their performance and effectiveness.

3.9.7 Disclosure of material information on the board committees including their composition, terms of reference, number of meetings held etc should be dealt with in the annual report.

3.9.8 The chairpersons of board committees should be in attendance at the company's Meetings of Shareholders.

Section 4 Role and Function of the Company Secretary

4.1 The company secretary plays a key role in the application of corporate governance in a company.

- 4.2 The company secretary should ensure that the company complies with its constitution and all relevant statutory and regulatory requirements, codes of conduct and rules established by the board.
- 4.3 The company secretary must provide the board as a whole and directors individually with detailed guidance as to how their responsibilities should be properly discharged in the best interests of the company.
- 4.4 The company secretary is a central source of guidance and advice to the board on matters of ethics and good governance.
- 4.5 The company secretary is the focal point of contact within a company for institutional and other shareholders.
- 4.6 The company secretary should be subjected to a fit and proper test of suitability in the same manner recommended for a new director.

Section 5 Risk Management, Internal Control and Internal Audit

5.1 Risk Management

- 5.1.1 The board is responsible for the total process of risk management and should ensure that the company develops and executes a comprehensive and robust system of risk management.
- 5.1.2 The process of risk management includes the systematic and continuous identification and evaluation of risks as they pertain to the organisation, followed by action to terminate, transfer, accept or mitigate each risk.
- 5.1.3 The Board is responsible for the definition of the overall strategy for risk tolerance, to monitor management and the assurance process on risk management and to take corrective action where and when deemed necessary.
- 5.1.4 The objective of risk management is not to completely eliminate risk but to reduce it to an acceptable level, having regards to the objective of the company. Commercial enterprise is the undertaking of risk for reward and where the company accepts to tolerate risk, it should ensure that the risk is appropriately mitigated and commensurate with the measurable reward.
- 5.1.5 The board must communicate its risk management policies to management and all

other employees as appropriate to their roles within the organisation and must satisfy itself that communication has been effective and understood.

5.1.6 Management is accountable to the board for the design, implementation and detailed monitoring of the risk management processes.

5.1.7 Risk management should include the reporting, consideration and the taking of appropriate action on the risk exposure of the organisation in at least the following areas of risk:

- physical
- operational
- human resources
- technology
- business continuity
- financial
- compliance
- reputational

5.1.8 In companies exposed to significant risks, it may be appropriate that the Board constitutes a Board Risk Committee. This committee should be constituted as described in Section 3 clause 3.9.3(b).

5.1.9 The role of the committee is to regularly advise the board on the total process of risk management within the organisation and to support management in the continuous and on-going management of risk.

5.2 Internal Control

5.2.1 The board is responsible for the system of internal control and must set appropriate policies to provide reasonable assurance that the control objectives are attained.

5.2.2 The board must satisfy itself that the system of internal control is functioning effectively and that the system manages risk in the manner approved by the board.

5.2.3 Management is responsible for the design, implementation and monitoring of the internal control system.

5.2.4 The board should also ensure that, as part of its internal control procedure, the company has an effective mechanism in place which facilitates and encourages the reporting of any lack of, or breach of internal controls and any unethical or irregular behaviour concerning the company.

5.3 Internal Audit

- 5.3.1 Companies should have an effective internal audit function that has the respect, confidence and co-operation of both the board and management. Where the board, at its discretion, decides not to establish an internal audit function, full reasons must be disclosed in the company's annual report, with an explanation as to how assurance of effective internal controls, processes and systems will be obtained.
- 5.3.2 The external auditor or any of its related or associated firms should not provide internal audit services to the company.
- 5.3.3 The board of a company which does not have an internal audit function should review, at least annually, the need for one.
- 5.3.4 The board may delegate the responsibility for managing the internal audit function and for receiving internal audit reports to the audit committee.
- 5.3.5 The internal audit function is responsible for providing assurance to the board regarding the implementation, operation and effectiveness of internal control and risk management. It is not responsible for the implementation of controls or the management and mitigation of risk, responsibility for which remains with the board and operational management.
- 5.3.6 Internal audit should report at a level within the company that allows this vital function to fully accomplish its responsibilities. The head of internal audit should have ready and regular access to the chairperson of the company and the chairperson of the audit committee. Internal audit should report at all audit committee meetings.
- 5.3.7 The appointment or dismissal of the head of the internal audit should be with the agreement of the audit committee.

5.4 Reporting and Disclosure

- 5.4.1 The board shall ensure that any report delivered as an annual report under the Mauritius Companies Act 2001 includes, or has appended to it, a statement which acknowledges the directors' responsibilities for internal control and describes the methods by which this responsibility is discharged.
- 5.4.2 This "Statement of Directors' Responsibilities" shall be signed by two or more directors as representatives of the board.
- 5.4.3 The disclosure of the methods used by the board to discharge its responsibility for

internal control must, as a minimum, include a description of the following:

- (a) the systems and processes in place for implementing, maintaining and monitoring of the internal controls;
- (b) the process by which the board derives assurance that the internal control systems are effective;
- (c) the existence or otherwise of an internal audit function, and for companies where no internal audit function exists, the frequency of reviews for the need to establish one and the date of the last such review;
- (d) any significant enterprise areas not covered by the internal controls including joint ventures, subsidiaries or associates;
- (e) the process applied to any material problems disclosed in the annual report or financial statements.

5.4.4 It is the responsibility of the board to make disclosure as regards risk management. The statement on the risk management processes shall, as a minimum, include the following:

- (a) the structures and process in place for the identification and management of risk;
- (b) the methods by which internal control and risk management are integrated together;
- (c) the methods by which the directors derive assurance that the risk management processes are in place and are effective;
- (d) a brief description of each of the key risks identified by the company and the way in which each of these key risks is managed.

5.4.5 Where the board cannot make any of the disclosures required above in relation to internal control or risk management, it must state this fact and provide a suitable explanation.

Section 6 Auditing and Accounting

6.1 Accounting

6.1.1 Directors are responsible for adequate accounting records and maintenance of effective internal control systems.

6.1.2 Directors are responsible for the preparation of accounts which fairly present the state of affairs of the company and the results of its operations and which comply with International Financial Reporting Standards (IFRS).

6.1.3 The directors are responsible for selection of appropriate accounting policies supported by reasonable and prudent judgements.

6.2 Audit

- 6.2.1 The audit committee should submit a recommendation to the board for consideration and acceptance by shareholders for the appointment and, if necessary, the removal of the external auditors.
- 6.2.2 Companies should aspire to efficient audit processes using external auditors in combination with the internal audit function.
- 6.2.3 Management should encourage consultation between internal and external auditors. Co-ordination of efforts involves periodic meetings to discuss matters of mutual interest, the management letters and reports, and sharing common understanding of audit techniques, methods and terminology.
- 6.2.4 Since the proper functioning of the external auditors depends on their independence, the following should be borne in mind:
- ❑ Audit fees should be set in a manner that enables an effective external audit on behalf of shareholders. Targeting audit fees as a means of cost savings to the company should be discouraged.
 - ❑ Auditors compete with each other for the performance of other functions, such as management consultancy and corporate finance. This should not have the unacceptable consequence of impairing their effectiveness in the performance of their audit functions.
- 6.2.5 Auditors should observe the highest standards of business and professional ethics and in particular their independence should not be impaired in any way.

6.3 Non-Audit Services

- 6.3.1 In considering the use of the external auditors for non-audit services, the Audit Committee should consider how the accounting firm is structured to ensure independence, the ownership of the auditors' firm and whether that firm has formed alliances with entities which provide clients with services the auditors would not be allowed to offer.
- 6.3.2 The audit committee should set the principles for using the external auditors for non-audit services to be delivered either through a department of the audit firm or through a subsidiary, associated or connected firm or company.
- 6.3.3 A detailed description of non-audit services rendered by the external auditor should be provided in the annual report of the company, stating particulars of the nature of the

services and amounts paid for each of the services described. Where appropriate, it might be useful for the annual corporate governance statement to provide additional explanation or justification for these services.

Section 7 Integrated Sustainability Reporting

7.1. Every company should recognise that it operates within a social and economic community, and should identify the particular circumstances, whether environmental or social, relevant to the company's business. It is in the long-term economic interest of a company to conduct itself as a "responsible corporate citizen", and to act in a manner which is non-exploitative, non-discriminatory and respectful of human rights. Failure to adopt such policies may well hinder its development and participation in an international context which is increasingly sensitive to sound corporate values, good practice and respect for the environment.

7.2 Every company should regularly (at least annually) report to its stakeholders on its policies and practices as regards:

- ethics
- environment
- health and safety
- social issues

7.3 Ethics

7.3.1 Every company should adopt a code of ethics which sets out clear corporate values and standards of behaviour in its dealings.

7.3.2 When adopting a code of ethics the company should primarily address issues relating to ethical practices of relevance to the particular circumstances of its business environment, including the practical application of its corporate values and the concepts of honesty and integrity. The code should make clear what is acceptable and unacceptable practice and should be easily communicable to all stakeholders, especially the company's officers and employees who will rely on it to guide them in their dealings.

7.3.3 The code of ethics should refer to the principles, norms and standards that the company wants to promote and integrate within its corporate culture that determines the conduct of its activities, including internal relations, interaction and dealings with external stakeholders.

7.3.4 In the formulation of its code of ethics, a company should consider the specific

circumstances and identify risk areas within the particular industry in which it operates. Where necessary, reference should be made to relevant laws and regulations that apply to the company's activities and services.

7.3.5 Companies should monitor and evaluate compliance with established ethical principles and standards on a regular basis. They should, when necessary, reconsider the nature of their relationship with stakeholders in terms of ethical consequences.

7.3.6 A company should promote awareness, both internally and externally and emphasise the importance for the reputation of the company of adherence to exemplary standards of conduct and ethical practice.

7.4 Environment

Economic activities can have a profound impact on the environment, especially in Mauritius which is a small, densely populated, and geographically isolated island. Environmental issues are therefore vital to the economy in Mauritius and companies must not only be aware of the importance of these issues but should also be actively involved in managing their activities so as to minimise any negative impact on the environment.

7.5 Health and Safety

7.5.1 Companies should develop and implement safety, health and environment policies and practices to at least comply with existing legislative and regulatory frameworks.

7.5.2 Companies should undertake health and safety risk identification and assessments leading to sound risk management strategies within the company's particular field of activity.

7.6 Social issues

7.6.1 Companies in Mauritius play an important role in sustaining social harmony, especially through their employment policies and their ownership structure.

7.6.2 It is essential that enterprises in the private and public sectors practice and are seen to practice fair policies in recruitment and promotion. Procedures which are both transparent and based on merit should be adopted by them.

Section 8 Communication and Disclosure

8.1 Communicating on operational and day-to-day matters is a management task. However, boards should consistently and transparently address the shareholders and other stakeholders on matters of material interest.

8.2 Annual Report

Annual reports should present a comprehensive and objective assessment of the activities of the company so that all stakeholders can obtain a full and fair view of its performance.

8.3. The directors should report on the following matters in their annual report:

That

- it is the directors' responsibility to prepare financial statements that fairly present the state of affairs of the company as at the end of the financial year and the profit or loss and cash flows for that period;
- the external auditors are responsible for reporting on whether the financial statements are fairly presented;
- adequate accounting records and an effective system of internal controls and risk management have been maintained;
- appropriate accounting policies supported by reasonable and prudent judgements and estimates have been used consistently;
- applicable accounting standards have been adhered to or, if there has been any departure in the interest of fair presentation, this must not only be disclosed and explained but quantified;
- the Code of Corporate Governance has been adhered to, or if not, to give reasons where there has not been compliance.

8.4 Corporate Governance Report

There should be a separate corporate governance section in the annual report. Amongst other items, the company should disclose the following:

- Cascade holding structure up to and including the ultimate holding company. This should include the names of common directors at each level and the shareholding percentages at each intermediate level. The aspiration is for full disclosure, including society's etc, up to the ultimate beneficial owner.
- List of shareholders holding more than 5% of the company.
- Dividend policy
- Directors' profile, and the category into which they fall. The number of other directorships (in listed companies) held should also be disclosed. Finally, the number of shares held by the director, both directly and indirectly in the company should be disclosed.

- ❑ A profile of each member of the senior management team.
- ❑ Related party transactions between the company or any of its subsidiaries or associates and a director, chief executive, controlling shareholder or companies owned or controlled by a director, chief executive or controlling shareholder. (In the case of banks the regulator may set different disclosure provisions.)
- ❑ With regard to directors dealings in the shares of their own company, a statement should be made to the effect that the directors follow the principles of the model code on securities transactions by directors as detailed in Appendix 6 of the Mauritius Stock Exchange listing rules. Disclosure of shares purchased and sold over the period should be made.
- ❑ Material clauses of the company's constitution (i.e. ownership restrictions, pre-emption rights etc)
- ❑ Important aspects of any shareholders' agreement which affects the governance of the company by the board (for example if a third party is allowed to nominate some directors or if there is an agreement to rotate the chairmanship between partners.)
- ❑ Important aspects or terms of any management agreement which third parties may have with the company or its subsidiaries, particularly those where the third party is a director or a company owned or controlled by a director.
- ❑ From 2005, total detailed remuneration per director should be disclosed as set out in Section 2 clause 2.8 of the Code. If in the interim the company decides to report director remuneration by band, then it should be reported in accordance with clause 2.8.2. of the Code.
- ❑ Statement of remuneration philosophy in accordance with Section 2 clause 2.8.1 of the Code.
- ❑ Main terms of reference of board committees as well as the composition of committees. The number of times in the year the board and committees met, plus attendance details for directors, must also be disclosed.
- ❑ Identification of key risks for the company, including a brief discussion of how they are managed.
- ❑ Details of all share option plans.
- ❑ A detailed timetable specifying important events including reporting dates, dividend declaration and payment dates, and Meetings of Shareholders etc.
- ❑ Share price information. Directors should demonstrate concern and interest with respect to the share price.
- ❑ Its policies and practices as regards social, ethical, safety, health and environmental issues as set out in clause 7.2. to 7.6 above.

8.5 Funding

8.5.1 *Political Contributions*

It is the responsibility of the board to decide whether the company should make donations to political parties or causes.

It goes without saying that any political funding should be within the law and in the interests of the company.

In the event that the directors decide that it is appropriate to provide funds for political parties or causes, then the aggregate sum contributed to political parties/causes should be declared in the annual report.

8.5.2 *Charitable Donations*

It is the responsibility of the board to decide whether the company should make any charitable donations. In the event of the company making any such donations, the aggregate amount should be declared in the annual report.

8.5.3 *Aspiration*

As an aspiration, companies are encouraged to give the funding details of the causes (political and charitable) that the company supports.

Section 9 Relationship with Shareholders

9.1 It is the duty of the board to keep shareholders informed regarding material events affecting the company, especially if an event could have an effect on the share price.

9.2 The board should encourage shareholders to attend all Meeting of Shareholders, annual or special, at which the directors should be present, and more particularly the chairpersons of each of the board's committees.

9.3 The board should ensure that each item of special business included in the notice of Meeting of Shareholders, or any other shareholders' meeting, is accompanied by a full explanation of the effects of any proposed resolutions.

9.4 Each director should be elected (or re-elected as the case may be) every year at the Meeting of Shareholders and a brief CV of each director standing for election or re-election should accompany the notice contained in the annual report. Each director should be elected by a separate resolution.

9.5 At the Meeting of Shareholders, the chairman and the chief executive officer, assisted by chairpersons of board committees where appropriate, should be prepared to answer wide-ranging questions on the management of the company.

- 9.6 The board should ask management to present major operational developments to the Meeting of Shareholders and should encourage shareholder questions and discussion.
- 9.7 The Code lays down the principle that the board should seek to encourage greater shareholder participation in general meetings. It stops short of making it a requirement (i.e. through proposing a greater quorum or minimum vote) because it is felt that shareholders must also take some initiative and responsibility. The aspiration, however, must be that the current all-to-prevalent atmosphere of confrontation and distrust be replaced by a more participative and inclusive approach. One suggestion would be to include a section on the proxy voting form, allowing questions to be sent to the board before the meeting.
- 9.8 The notice sent to shareholders should clearly explain the procedures regarding proxy voting and should include deadlines as to when proxies should be received.
- 9.9 It is considered imperative that institutional investors such as pension funds, insurance companies and investment managers play a front-line role in the encouragement of good corporate governance practices. This includes treating the vote that a share confers as an asset of the client or the fund. It also involves greater shareholder activism in order to encourage required changes at the companies where the institutions invest. Institutional investors must also be encouraged to ensure that good governance practices exist in their own organisations. The setting out of explicit statements of investment principles and the clear and unambiguous identification of performance benchmarks are essential if they are to play this role.
- It is recommended that a professional body be set up to help define the rules and a code of good practice for these institutional investors. The body should be inspired by the Myners Report of 2001 in Britain.

SECTION I - COMPLIANCE AND ENFORCEMENT

Chapter I - Enforcement and existing remedies

1. Corporate governance is a combination of self-regulated compliance and legal enforcement. In formulating any recommendation in this regard, it is necessary to consider existing legal remedies and sanctions for non-compliance. There is already a multitude of legislation applicable in the Mauritius jurisdiction.
2. One should not lose sight of the fact that principles of corporate governance often coincide with existing legal principles. The provisions of the Companies Act 2001, for example, already deal with the liability of directors for the conduct of business in the best interest of the company. Other sets of legislation are the Financial Services Development Act 2001 and the Banking Act.
3. The Bank of Mauritius has recently issued a set of corporate governance codes for the banking institutions in the country. Whilst reliance on existing legal remedies may be the starting point for any enforcement and compliance mechanism, it is necessary to identify the reasons which render such remedies unenforceable. Also, there is no statutory requirement in place to ensure compliance with a Code of Corporate Governance except for the financial services sector where there is a requirement for the Financial Services Commission to issue guidelines and codes of practice.
4. To the extent that corporate governance principles co-exist with established legal provisions, it is not recommended that new sanctions and remedies be adopted.
5. As regards statutory corporations and parastatal bodies, appropriate amendments to existing legislation would have to be introduced so that the Code becomes applicable to these corporate bodies.
6. There is a widespread concern that the application of criminal sanctions to breaches would be likely to be counter-productive. It is considered that administrative measures are more suited than criminal sanctions for the enforcement of governance requirements, which may often contain an element of judgment (for example, whether financial accounts comply with the prescribed Standards; whether the reasons given for non-compliance with the Code are sound). Such an approach is also likely to be more effective in achieving the desired improvement in disclosure.

7. The view is held that the scope of administrative enforcement to cover the entire range of reporting documents should be extended.
8. Legal remedies, especially civil remedies are available to shareholders for breach of legal provisions that give rise to action for personal liability. Directors and managers should be made aware of sanctions which may be enforced. However, minority shareholders rarely have recourse to legal proceedings due to the excessive cost of litigation. The apparent lack of enforcement of existing remedies is also due to the fact that the judiciary is under-resourced, resulting in delays in the court process. There is at present a set of legislation, as pointed out earlier, which deals with corporate governance issues. However, the apparent lack of enforcement of those existing remedies is cause for concern.

Chapter 2 - Principles of Disclosure

1. Disclosure of the extent of compliance with the Code acts as a deterrent to malpractices and prevents a laissez-faire attitude on the part of companies. Increased disclosure levels should be encouraged by the companies and the regulators, even to an extent greater than required by rules and regulations.
2. Another benefit of disclosure is that it highlights areas of conformance as well as non-conformance, thereby allowing remedial action to be taken by the board.
3. When the extent of compliance to good governance principles is disclosed, there is dissemination of relevant corporate information, which allows the marketplace and investors to react well-informed.
4. It is essential that companies seek to create a culture of compliance with high standards of conduct. This would lead to cost-effective regulation with minimum interference from the authorities. Self-regulation and self-enforcement will only be possible if a culture of compliance is created.
5. Voluntary and maximum disclosure by companies should be encouraged both in cases where there is an existing legal remedy and where there are none.

Chapter 3 - Role of the Media

1. The press in Mauritius is a key player in keeping the public informed about corporate events and high profile cases of corporate irregularities, thus emphasizing the need for

- high standards of conduct amongst financial journalists and corporate professionals.
2. The media also plays a vital role as regards the corporate image of companies. It is through the press that the extent of a company's compliance with principles of good governance will be communicated to the stakeholders and the public at large. An active press on negative issues of corporate governance would demonstrate that the company's reputation may be at risk in case of non-compliance and misconduct on the part of the directors and employees.
 3. It is important for companies to create and maintain appropriate channels of communication with the media. The incidence of compliance and non-compliance with good corporate governance principles should, when appropriate, be disclosed to the public and stakeholders through the press. The role of an investor relations officer would contribute towards establishing a sound relationship with the media.

Chapter 4 - Encouraging shareholder activism

1. Shareholder activism is very new in Mauritius. However, as witnessed in other jurisdictions, it can have a positive effect on corporate behaviour.
2. An interesting fact is that, in Mauritius, regardless of their common role as owners of their companies, shareholders' roles and involvement in these companies differ significantly. Proof of this statement lies in the fact that few minority shareholders are present at general meetings - supposedly the natural forum where all shareholders are legally entitled to take action. Moreover, it is here that accounts are approved, members of board of directors and auditors appointed, and where dividends are declared, to mention but a few basic rights.
3. Responsible shareholders, even as minorities, can protect the integrity and sustainability of their investment by becoming active shareholders within the company. The absence of shareholder activism, more particularly institutional shareholders, may seriously undermine good levels of compliance. As seen in other jurisdictions, institutional investors remain passive for the most part despite poor corporate governance practices. A certain level of activism, for example the setting up of shareholders' associations, has recently emerged in Mauritius and should be encouraged.
4. Another way to encourage shareholder activism is by education and communication about the ways through which the minority shareholders can be protected. For example, the Companies Act 2001 allows a shareholder to request from the company a statement of his rights explaining the shareholder's entitlements and relative position in the company's structure. Shareholders are also given a reasonable opportunity to raise matters at company meetings relating to the management of the company.

Chapter 5 - Recommendations

1. A register of delinquent directors should be created and maintained at the office of the Registrar of Companies, and could be disclosed on its website. This register would consist of persons who have been disqualified to act as director by virtue of the provisions of the Companies Act 2001.
2. It is recommended that the business community should give assistance, whether by means of training or rewards, in the promotion of investigative reporting through an active profession of skilled financial journalists. This however appears to be a scarcity area and must be taken up with the Media Trust, which organizes courses for journalists.
3. The methods of giving access to the courts to minority shareholders have been discussed extensively. In that respect, the issue of allowing class actions has been thoroughly canvassed.

A class action is one where a large number of claimants whose claims are based on a well-defined common question of fact or law, may have their cases heard in one proceeding.

Class actions are extensively used in the United States and have proved to be a common form of litigation. Such method of litigation should be introduced in our legal system subject to well-defined parameters.

4. The Code of Ethics of the legal profession embodied in General Notice in Mauritius states the following:

“A barrister in independent practice may accept a brief or instructions on terms that payment of fees shall be postponed or shall depend upon or be related to the outcome of the work performed provided that such contingency fees do not exceed 10% (ten percent) of the sum of the value of the result obtained by the client, whether such result is obtained through a judgment, award or negotiations.” (GN 1702/1997 under Law Practitioners Act 1984).

Minority shareholders can have access to litigation through the mechanism of contingency fees, which is an agreement between a legal practitioner and a client that no fees will be charged if the case is conducted unsuccessfully. The Bar Council and the law society should be requested to devise a consistent approach in the legal profession as regards contingency fees.

Encouraging the application of the contingency fee principle would help considerably towards promoting accessibility to the legal system but the risk of opening a floodgate of litigation should not be overlooked.

5. The “Code de Procedure Civile” already provides for arbitration in our jurisdiction. It is considered that arbitration procedures may be one of the solutions which will render speedier justice.

The Review on Company Law in UK noted the following:

“Disputes between shareholders can lead to legal costs that far exceed the sums in dispute, or sometimes even the value of the company itself.”

It is recommended that steps should be taken to:

- ❑ increase awareness of and accessibility to all forms of alternative dispute resolution (ADR); and
- ❑ work with arbitration providers to establish an arbitration scheme for shareholder disputes.

In that respect, administered ADR would constitute a sound, reliable, quick and cost-effective means of delivering justice to stakeholders.

6. It is also recommended that the regulators be provided with trained personnel and adequate resources, for example the office of the Registrar of Companies needs sufficient resources to regulate compliance with the Companies Act.
7. The necessary amendments to the Companies Act 2001 and other relevant legislations need to be carried out at the earliest possible opportunity.
8. It is suggested that the resources within the Police Department be enhanced. Investigators often do not have the requisite experience to investigate corporate cases. It is therefore recommended that the Police Department should recruit a pool of professionals including lawyers and forensic accountants to investigate complex cases.
9. It is recommended that at the level of the applicable entities or corporations, an investor relations officer be appointed to deal with the media and the public at large.

SECTION 2 - BOARDS AND DIRECTORS

“The key challenge for good corporate citizenship is to seek an appropriate balance between enterprise (performance) and constraints (conformance)”

King Committee on Corporate Governance, 2002 (“King II”)

Chapter I - Role and Function of the Board

I. Structure

- 1.1 The board is the link between shareholders and the company and as such, all companies should be headed by an effective board which can both lead and control the company.
- 1.2 The concept of a unitary board should be the favoured board structure for companies in Mauritius. It should consist of executive directors, with their intimate knowledge of the business, non-executive directors who can bring a broader view to the company’s affairs, and independent non-executive directors who can bring additional experience as well as independence and clarity of thought to deliberations.

2. Composition

- 2.1 The board should have an appropriate balance of executive, non-executive and independent directors under the firm and objective leadership of a chairperson to ensure both performance and good governance to serve the interests of all stakeholders of the company.
- 2.2 The actual proportion and balance of executive, non-executive and independent directors will depend on the circumstances and nature of business of each company.
- 2.3 It is essential for the protection of shareholder interests (including minority interests) that the board has as directors persons who are independent from the company and also from any dominant shareholder. All companies should have at least two independent directors, as defined in this Report, on their boards.
- 2.4 All boards should have at least two executives as members.

- 2.5 There is no distinction between directors and alternate directors in terms of their duties and responsibilities. A person may be appointed as an alternate director to more than one director on the same board. However, he/she may only act as the alternate to two directors at any one time. In the case where the alternate director is also a director in his own right, he/she can only act as alternate to one director. The overriding principle is that no individual can exercise more than two votes at a board meeting.
- 2.6 Companies should ensure that the word 'director' is not included in the job title of a person unless he/she is a director of the company.
- 2.7 Crucially, all members of the board should be individuals of integrity who bring a blend of knowledge, skills, objectivity, experience and commitment to the board.
- 2.8 Every board should determine its size and composition for effective execution of its responsibilities.

3. Role of the Board

- 3.1 The board is the focal point of the corporate governance system and is ultimately accountable and responsible for the performance and affairs of the company.
- 3.2 The work of the board is to effectively balance "conformance" and "performance".
- 3.3 As regards conformance, the board must, to the best of its ability, ensure that the company adheres to all the laws of Mauritius, complies with the listing requirements of The Stock Exchange of Mauritius (for listed companies) and follows the guidelines laid down in the Code.
- 3.4 The board must also focus on "performance" in directing the commercial and economic well-being of the company. Enterprise involves the taking of risk with the expectation of earning a return commensurate with that level of risk. This is the essence of business. There are no certainties that the enterprise will succeed, but shareholders and concerned stakeholders can and should expect the board to take informed decisions using their best judgement to minimize these risks.

- 3.5 The entire board must contribute fully in developing and sustaining that enterprise culture and thus the board should be constituted in a manner that provides a balance between enterprise and control.
- 3.6 It follows that it is the board's responsibility to provide effective corporate governance. This involves a set of relationships between the board, the management of the company, its shareholders and other relevant stakeholders, in a manner whereby the board should:
- (a) Determine the company's purpose, strategy and values.
 - (b) Exercise leadership, enterprise, intellectual honesty, integrity and judgment in directing the company so as to achieve sustainable prosperity for the company.
 - (c) Ensure that procedures and practices are in place that protect the company's assets and reputation. Therefore the board should regularly review processes and procedures to ensure the effectiveness of the company's internal systems of control.
 - (d) Monitor and evaluate the implementation of strategies, policies, management performance criteria and business plans. In effect, the board must provide guidance and maintain effective control over the company, and monitor management in carrying out board plans and strategies.
 - (e) Ensure that the company complies with all relevant laws, regulations and codes of best business practice.
 - (f) Record the facts and assumption on which the board relies to conclude that the business will or will not continue as a going concern in the financial year ahead, and in the latter case, the steps the board is taking.
 - (g) Determine a policy for the frequency, purpose, conduct and duration of its meetings and those of its formally established committees. The board should meet at least once a quarter if not more frequently as circumstances require.

- (h) Ensure that there are efficient and timely methods for informing and briefing board members prior to meetings. Each board member is responsible for being satisfied that he/she has been furnished with all the relevant information and facts before making a decision.
- (i) Have an agreed procedure whereby directors may, if necessary, take independent professional advice at the company's expense.
- (j) Ensure that the non-executive directors have access to management and the opportunity to meet separately with management without the attendance of executive directors. The procedure should be agreed collectively by the board and the meeting usually facilitated by the non-executive chairperson or an independent non-executive director if it is inappropriate to deal with the chairperson for any reason.
- (k) Collectively ensure it has unrestricted access to all company information, records, documents and property. These information needs should be well-defined and regularly monitored.
- (l) Define levels of materiality, reserving specific powers in regard to itself and delegating other related matters with the necessary written authority to management. These matters should be monitored and evaluated by the board on a regular basis. Such delegation by the board must have due regard for the directors' statutory and fiduciary responsibilities to the company, while taking into account strategic and operational effectiveness and efficiencies.
- (m) Ensure that technology and systems used in the company are adequate and subject to risk management in order to run the business properly and for it to compete through the effective and efficient use of its assets, processes and human resources.
- (n) Identify key risk areas and key performance indicators of the business enterprise in order for the company to generate economic profit, so as to enhance shareholder value in the long term. The wider interests of society should at the same time be recognized).

- (o) Regularly (at least once a year) assess its performance and effectiveness as a whole, and that of individual directors, including the chairman and the chief executive officer. The assessment should include a review of the remuneration of each director to ensure that board members are properly remunerated for their input and effort and that the level of remuneration properly reflects the level of responsibility.
- (p) Appoint a chief executive officer and ensure that the company has developed a succession plan, both for its executive directors and senior management;
- (q) Identify, monitor and report regularly on the non-financial aspects relevant to the business of the company.
- (r) Ensure that the board communicates with shareholders and relevant stakeholders (internal and external) openly and promptly with substance prevailing over form. Communication should include disclosing in a transparent manner all material information (other than obviously sensitive commercial information) regarding, amongst others, management contracts, shareholder agreements and controlling shareholdings, so that minority shareholders and concerned stakeholders may make an informed decision in relation to their dealings with the company or in the shares of that company. Communication and relevant disclosures are covered in more detail in Section 9 of the Report.

4. Conflicts of Interest

- 4.1 Transactions between the company and its managers, directors or large/dominant shareholders are sources of conflicts of interest.
- 4.2 The personal interests of a director, or persons closely associated with the director, must not take precedence over those of the company and its shareholders.
- 4.3 A director should make a best effort to avoid conflicts of interests, even where these could only be perceived to be as such.
- 4.4 Full and timely disclosure (preferably in writing) of any conflict, or potential conflict, must be made known to the board. In the case of banks, the regulator may set different disclosure provisions. The board should develop a corporate code of

conduct that specifically addresses conflicts of interest, particularly relating to directors and management, which should be regularly reviewed and updated as necessary.

- 4.5 Where an actual or potential conflict does arise, on declaring their interest and ensuring that it is entered on the Register of Interests of the company, a director can participate in the debate and/or indicate their vote on the matter but must give careful consideration to their own integrity in such circumstances and the potential consequences it may have for the board, company and him/her.
- 4.6 In the extreme case of continuing material conflict of interest, the director should consider resigning from the board.
- 4.7 Any director who is appointed to the board at the instigation of a party with a substantial interest in the company, such as a major shareholder, substantial creditor or significant supplier or advisor, should recognize that their duty and responsibility as director is to always act in the interests of the company and not the party who nominated them.
- 4.8 Furthermore, any such director must treat confidential matters relating to the company, learned in their capacity as director, as strictly confidential and must not divulge them to anyone without the authority of the board. The board must consider each such request on its merits and case by case basis.
- 4.9 Additionally, it is self-evident that such a director may not refer back to the interested party before voting on a board matter.

5. Enterprise Culture

- 5.1 The board, in motivating management and employees effectively and productively, should promote a culture that supports enterprise and innovation with appropriate short-term and long-term performance-related rewards that are fair and achievable.
- 5.2 It is imperative that the board seeks to drive the business enterprise proficiently through proper and considered decision-making processes, and recognises entrepreneurial endeavour amongst its management without contravening laws and regulations.

6. Role in Society

Boards should recognize that companies do not act independently from the societies in which they operate. Accordingly, boards should strive to ensure that corporate actions are compatible with societal objectives concerning social cohesion, individual welfare and equal opportunities for all. The latter is of particular importance in the hiring practices of affected companies. This does not change the fundamental tenet in law that the board is accountable to the company for the performance of the business. It simply serves to remind boards that a company must act responsibly towards relevant stakeholders.

7. Meetings of Shareholders

7.1 Boards should recognise the importance of shareholder attendance and participation at Meetings of Shareholders.

7.2 The board should encourage shareholders to attend all Meeting of Shareholders, annual or special, at which the directors should be present, and more particularly the chairpersons of each of the board's committees.

7.3 The boards should ensure that each item of special business included in the notice of Meeting of Shareholders, or any other shareholders' meeting, is accompanied by a full explanation of the effects of any proposed resolutions. Each director should be elected (or re-elected as the case may be) every year at the Meeting of Shareholders and a brief CV of each director standing for election or re-election should accompany the notice contained in the annual report. Each director should be elected by a separate resolution.

7.4 Boards should ask management to present material operational developments to the Meeting of Shareholders and should encourage shareholder questions

8. Aspirations

8.1 Structure

The Code meets the aspiration in this regard. The unitary board is considered a minimum requirement rather than an aspiration.

8.2 Composition

8.2.1 The aspiration with regard to the mix of executive, non-executive and independent directors is for the board to have an equal number of each category.

8.2.2 It is recommended that companies should have at least 2 executive directors

although the aspiration would be for more.

8.2.3 While the Code requires a minimum of two independent directors, more would be preferable, but the quality of the independent directors is more important than the number.

8.2.4 It goes without saying that each director should bring intellectual independence and honesty to his/her role.

8.2.5 It is recognised that the close family, business and societal ties that exist in Mauritius make it difficult to find a significant number of truly independent directors. The larger companies may wish to look abroad in this case, although cost may make it prohibitive for smaller companies. In any case, it is recognised that these factors make it difficult to argue for a majority of the board to be independent.

8.2.6 The Code does not specify an optimum size for the board but generally there should be smaller boards than exist at present. Boards of more than 12, even for the larger companies, can become unwieldy. Since it is accepted that competent and qualified independent directors will be difficult to find in the required numbers in Mauritius, one of the better ways to increase the proportion of independents on the board is to reduce the board's size. In the early stages of implementation, it may be difficult for companies to replace incumbent non-executive directors with the required number of executives and independents. The board size may therefore temporarily increase. The clear goal, however, should be to reduce boards to more focused and effective levels.

8.3 Role of the Board

8.3.1 The Code meets the aspiration in this regard.

8.3.2 Every board should consider whether to have a charter setting out its responsibilities. There is no clear aspiration on this but boards are encouraged to consider the issue. If there is a charter, it should be disclosed in the annual report.

8.4 Conflicts of Interest

8.4.1 The provisions of the Code of Conduct recently elaborated by the Joint Economic Council with regard to corrupt practices could be adopted as a model by those aspiring to meet best practice for Mauritius in this area.

8.4.2 The Code recognises that nominations of specific named directors to the board through shareholder agreements or political decision are prevalent in Mauritius. The aspiration should clearly be that the Nomination Committee of the board should be free to propose the entire list of candidates for board election, free from any constraints or impositions. The Code does not propose that cumulative voting be introduced for the election of directors. However, individual companies may choose to follow this route and allow minority shareholders to have a greater say in the election of at least one director.

8.5 Enterprise Culture

The Code meets the aspiration in this regard.

8.6 Role in Society

The Code does not prescribe particular courses of action with regard to the role of the company in society. The clear aspiration as regards equal opportunities is that all decisions on hiring practices should be based on merit and ability to do the job but it should be equally clear that the candidate with the best academic record should not automatically be assumed to be the best choice. With regard to charitable and political donations the board is required to act within the law. Disclosure is a first step and the aspiration must be that board takes into account the views of all shareholders when making decisions of this nature.

8.7. Meetings of Shareholders

8.7.1 The Code lays down the principle that the board should seek to encourage greater shareholder participation in general meetings. It stops short of making it a requirement (i.e. through proposing a greater quorum or minimum vote) because it is felt that the shareholder must also take some initiative and responsibility. The aspiration, however, must be that the current all-to-prevalent atmosphere of confrontation and distrust be replaced by a more participative and inclusive approach. One suggestion would be to include a section on the proxy voting form, allowing questions to be sent to the board before the meeting. It is suggested that minor procedural issues which equally affect each shareholder could be decided on a one shareholder one vote basis (for e.g. day and venue of next Meeting of Shareholders).

8.7.2 It is considered imperative that institutional investors such as pension funds, insurance companies and investment managers play a front-line role in the encouragement of good corporate governance practices. This includes treating

the vote that a share confers as an asset of the fund. It also involves greater shareholder activism in order to encourage required changes at the companies in which these institutions invest. Institutional investors must also be encouraged to ensure that good governance practices exist in their own organisations. The setting out of explicit statements of investment principles and the clear and unambiguous identification of performance benchmarks are essential if they are to play this role.

8.7.3 It is recommended that a professional body be set up to help define the rules and a code of good practice for these institutional investors. The body should be inspired by the Myners Report of 2001 in Britain.

Chapter 2 - Role and Function of the Chairperson

1. All boards should be subject to the firm and objective leadership of a chairperson who brings out the best in each director. The chairperson should bring independence of mind and intellectual honesty to his/her role, irrespective of whether he/she is officially categorised as independent.
2. The chairperson's primary function is to preside over meetings of directors and to ensure the smooth functioning of the board in the interests of good governance. The chairperson will usually also preside over the company's Meetings of Shareholders.
3. The role and function of the chairperson will be influenced by such matters as the size or particular circumstances of the company, the complexity of its operations, the qualities of the chief executive officer and the management team, and the skills and experience of each board member. There are a number of common, core functions which should be performed by the chairperson:
 - 3.1 providing overall leadership to the board without limiting the principle of individual responsibility for board decisions. The chairperson should also encourage and ensure the active participation of each director in discussions and board matters;
 - 3.2 participating in the selection of board members to ensure that the board has an appropriate mix of competencies, experience skill and independence;
 - 3.3 overseeing a formal succession plan for the board, chief executive officer and senior management;

- 3.4 attending meetings of the relevant board committees whose responsibilities include those listed in Section 3 of the Report.
 - 3.5 arranging for new directors appointed to the board to be properly inducted and oriented. In this regard the chairperson must ensure that each new member of the board is made fully aware of his or her duties and responsibilities;
 - 3.6 monitoring and evaluating board and director appraisals;
 - 3.7 determining, normally in conjunction with the chief executive officer and the company secretary, the formulation of an annual work plan for the board against agreed objectives and goals, as well as playing an active part in setting the agenda for board meetings;
 - 3.8 acting as the main link between the board and management, and particularly between the board and the chief executive officer;
 - 3.9 maintaining sound relations with the company's shareholders and ensuring that the principles of effective communication and pertinent disclosure are followed;
 - 3.10 ensuring that all directors play a full and constructive role in the functioning and decisions of the board;
 - 3.11 taking a lead role in removing non-performing or unsuitable directors from the board. The corollary to this is that the board should appraise the performance of the chairperson on an annual or such other basis as the board may determine;
 - 3.12 ensuring that all the relevant information and facts are placed before the board to enable the directors to reach informed decisions;
4. The titles, functions and roles of chairperson and chief executive officer must be kept separate as a cornerstone of good governance. The chairperson is primarily responsible for the working of the board. This position is made more onerous by the complex environment in which many modern companies now operate. The chief executive officer's task is to run the business and to implement the policies and strategies adopted by the board. It is essential that there should be a clearly accepted division of responsibilities at the head of the company to ensure a balance of power and authority, so that no one individual has unfettered powers of decision-making.

5. The chairperson can be any non-executive or independent non-executive director elected by his or her fellow directors to fill this function.
6. The chairperson should fill this role for a pre-agreed period. Once this period has expired, and if the chairperson has been re-elected to serve as a director, he/she may be re-elected by the board to serve as chairperson.

7. Aspirations

- 7.1 It is essential that the chairperson encourage the full participation of all board members in discussions and decisions. To this end, the chairperson must challenge those not making an adequate contribution or those simply remaining silent. In cases where the chairperson is personally in favour of a board recommendation, he or she must seek out the views of all directors to ensure that there is no risk of potential constructive dissent going unheard. It is important that the distinction between constructive dissent (positive) and disloyalty (negative) be stressed.
- 7.2 The proper composition of the board plays a crucial role in the governance of a company. The clear aspiration must be that the chairperson always insists on competence rather than affiliation, especially in State and family controlled companies. It is also essential that the chairperson ensures that a formal succession plan exists for directors and key officers. Given the close nature of these ties, it is recognised that these can be delicate issues. Notwithstanding these relational problems, the chairperson must have the courage to tackle these issues.
- 7.3 The aspiration is that the chairperson becomes the champion for both internal and external communication. It can be convenient for a board to declare certain information to be commercially sensitive and therefore decide not to disclose it. The chairperson must robustly challenge the assumptions and facts that lead to such a declaration in order to ensure that a culture of non-disclosure does not develop.
- 7.4 The Code is not explicit as to whether the chairperson should be an independent non-executive director as it is recognised that this could cause legitimate problems in companies with a controlling shareholder. It is, however, clear that an independent chairperson would have less constraints and fewer relation issues when fulfilling their role and functions. It is also clear, however, that the spirit of independence must always prevail, and that the chairperson must always be seen to be acting independently.

- 7.5 Given the considerable importance and powers granted to the chairperson, the board should carefully appraise the chairperson's performance to ensure that his or her objectivity is not compromised. The aspiration must also be that the board regularly assesses the performance of the chairperson. It is essential to avoid a situation where a chairperson becomes de facto elected for life. Conversely, it is not advisable to change the chairperson too often as continuity can provide essential stability to the board.

Chapter 3 - Role and Function of the Chief Executive Officer

1. The title, function and role of the chief executive officer should be separate from that of the chairperson.
2. Important functions that the chief executive officer should fulfil are to:
 - 2.1 develop and recommend to the board a long-term strategy and vision for the company that will generate satisfactory levels of shareholder value and positive, reciprocal relations with relevant stakeholders;
 - 2.2 develop and recommend to the board annual business plans and budgets that support the company's long-term strategy. In the development of these plans, it is essential that the chief executive officer ensures that a proper assessment of the risks under a variety of possible or likely scenarios is undertaken and presented to the board (whether through a separately constituted Board Risk Committee or through an Executive Risk Management Committee);
 - 2.3 strive consistently to achieve the company's financial and operating goals and objectives, and ensure that the day-to-day business affairs of the company are appropriately monitored and managed;
 - 2.4 ensure continuous improvement in the quality and value of the products and services provided by the company, and that the company achieves and maintains a satisfactory competitive position within its industry(ies);
 - 2.5 ensure that the company has an effective management team and actively participate in the development of management and succession planning (including the chief executive officer's own position);
 - 2.6 develop and recommend to the board major corporate policies and oversee their implementation;

- 2.7 serve as the chief spokesperson for the company on all operational and day-to-day matters. The chairperson and chief executive officer should discuss and agree with the board the division of responsibilities for communication to shareholders and other stakeholders. As mentioned in Chapter 1, however, it is important that the chief executive officer and other key officers attend Meetings of Shareholders and be prepared to present material operational developments to the meeting.
3. The chief executive officer should maintain a positive and ethical work climate conducive to attracting, retaining and motivating a diverse group of top-quality employees at all levels of the company. In addition, it is incumbent on the chief executive officer to foster a corporate culture that promotes ethical practices, offers equal opportunities, encourages individual integrity, and fulfills social responsibility objectives and imperatives.

Chapter 4 - Role of the Executive, Non-Executive and Independent Non-Executive Director

1. The board should ensure that there is an appropriate balance of power and authority on the board, such that no one individual or block of individuals can dominate the board's decision-making.
2. All directors, whether executive, non-executive or independent non-executive ('independent') are bound by fiduciary duties and duties of care and skill. Non-executive and independent directors perform such duties intermittently and have less regular access to the books and records of the company than do executive directors.
3. Executive directors on the other hand, must always manage the conflict between their management responsibilities and their fiduciary duties as a director in the best interests of the company.
4. Non-executive and independent directors play a particularly vital role in providing independent judgement in all circumstances.
5. Although the law does not recognise the distinction between executive and non-executive director, every director has both a legal and moral duty to act independently, in good faith, with due care and skill, and without fetter or instruction.

6. Non-executive and independent directors should be individuals of calibre and credibility, and have the necessary skill and experience to bring judgement to bear, independent of management, on issues of strategy, performance, resources, transformation, equal opportunities, standards of conduct, and evaluation of performance.

7. Categories of Directors

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

- 7.1 Executive director - a director who is involved in the day-to-day management and/or is in full-time salaried employment of the company and/or any of its subsidiaries.
- 7.2 Non-executive director - a director not involved in the day-to-day management and not a full-time salaried employee of the company or its subsidiaries and not meeting the criteria for independence in 7.3. below.
- 7.3 Independent director - a director who is non-executive and who:
- ❑ is not a representative or member of the immediate family (spouse, child, parent, grandparent or grandchild) of a shareholder who has the ability to control or significantly influence the board or management. This would include any director who is appointed to the board (by virtue of a shareholders' agreement or other such agreement) at the instigation of a party with a substantial direct or indirect shareholding in the company;
 - ❑ has not been employed by the company or the group of which the company currently forms part, in any executive capacity for the preceding three financial years;
 - ❑ is not a professional advisor to the company or the group other than in a director capacity;
 - ❑ is not a significant supplier to, debtor or creditor of, or customer of the company or group, or does not have a significant influence in a group related company in any one of the above roles;
 - ❑ has no significant contractual relationship with the company or group;
 - ❑ is free from any business or other relationship which could be seen to materially impede the individual's capacity to act in an independent manner;
 - ❑ in the case of banks, the Bank of Mauritius' definition of independent applies.

- 7.4 The onus is on the director to inform the board of any changes or potential changes in their categorisation.
8. An individual in the full-time employment of the holding company or of its subsidiaries, other than the company concerned, would be considered to be a non-executive director unless such individual by his/her conduct or executive authority could be construed to be directing the day-to-day management of the company and its subsidiaries.
9. Shadow directors should be strongly discouraged. A “shadow director” is considered to be a person in accordance with whose directions or instructions (whether they extend over the whole or part of the activities of the company), a director or group of directors of the company are accustomed to act. In this case the concerned directors should remind themselves of their obligation to serve the best interests of the company according to the provisions of Chapter 1, clause 4 of this Section.
10. Directors whom the board considers may be acting on the directives of a third party should not be recommended by the Nomination Committee or the Corporate Governance Committee for re-election at the next Meeting of Shareholders.

11. Obligations

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

- 11.1 ensure that they have the time to devote to diligently carry out their responsibilities and duties to the company;
- 11.2 exercise the utmost good faith, honesty and integrity in all their dealings with or on behalf of the company and must act independently of any outside fetter or instruction;
- 11.3 in line with global best practice, not only exhibit the degree of skill and care as may be reasonably expected from persons of their competence and experience (which is the traditional legal formulation), but must also:
- exercise both the care and skill any reasonable persons would be expected to show in looking after their own affairs as well as having regard to their actual knowledge and experience when performing their duties as a director of the company;

- qualify themselves on a continuous basis with a sufficient (at least a general) understanding of the company's business and the effect of the economy so as to discharge their duties properly, including where necessary relying on expert advice;
- 11.4 always act in the best interests of the company and never for any sectoral or other outside interest or party;
- 11.5 never permit a conflict of duties and interests and must disclose potential conflicts of interest to the board at the earliest possible opportunity;
- 11.6 be informed about the financial, industrial, environmental and social milieu in which the company operates;
- 11.7 be satisfied that they are in a position to take informed decisions;
- 11.8 treat any confidential matters relating to the company, learned in their capacity as a director, as strictly confidential and not divulge them to anyone without the authority (on a case by case basis) of the board;
- 11.9 insist that board papers and other material information regarding the company are provided in time for them to make informed decisions;
- 11.10 ensure that procedures and systems are in place to act as checks and balances on the information being received by the board and ensure that the company prepares annual budgets and regularly updated forecasts against which the company's performance can be monitored by the board;
- 11.11 ensure that a proper risk assessment of the company's current operations and proposed projects under a variety of relevant scenarios is undertaken on a regular basis;
- 11.12 be diligent in discharging their duties and obligations to the company, regularly attend meetings and must acquire a broad knowledge of the business of the company so that they can meaningfully contribute to its direction;
- 11.13 be prepared and able, where necessary, to express disagreement (constructive dissent, not disloyalty) with colleagues on the board including the chairperson and chief executive officer;

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

11.15 if in doubt about any aspect of their duties, obtain independent professional advice at the earliest opportunity in accordance with Chapter 1, clause 3.6(i) of this Section.

12. It is incumbent on every director to ensure that that he/she has the time to properly carry out his/her duties. In addition the board must ensure that any new or potential director has been made clearly aware of the time requirements and responsibilities before he/she seek election.

13. Executive directors may be encouraged to take one or two other non-executive directorships, provided these are sanctioned by the board. These should not be detrimental to their immediate responsibilities as an executive director of the company, nor represent an actual or potential conflict of interest.

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

15. The level of directors' fees and other forms of remuneration should be sufficient to attract, retain and motivate individuals of the quality required by the board.

16. The non-executive and independent directors are encouraged to acquire shares from their own resources in order to positively align their interests with those of the shareholders.

17. Remuneration of directors

17.1 Companies should include a transparent "Statement of Remuneration Philosophy" in their annual report and financial statements so that shareholders and stakeholders can comprehend the board's policy and motivation in determining remuneration for directors in accordance with specified benchmarks. The statement should also incorporate the criteria used for remunerating executive directors approaching retirement.

17.2 Companies should disclose in their annual report the aggregate earnings, fees, bonuses, severance payments, share options and any other benefits, for each category of director as defined in clause 7 of this chapter. In addition, companies

should disclose total director remuneration bands, indicating how many directors fall into each band. The overriding principle in regard to directors remuneration, must be full disclosure on a category aggregate basis of all payments, benefits and incentives received from or in respect of the company, any subsidiary of the company and any company on which the director serves as a representative of the company. Furthermore, the disclosure should indicate the extent to which the individuals retain remuneration from a subsidiary or as a representative of the company and how much is paid over to the company of which the persons are directors.

- 17.3 By reporting year 2005, full disclosure of earnings, fees, bonuses, severance payments, share options and any other benefits on an individual basis will form part of the Code and companies are very strongly encouraged to adopt this policy at the earliest opportunity.
18. An executive director's fixed-term service contract, if any, should in principle not exceed three years. If it does, full disclosure of this fact with reasons should be given. This does not mean that the contract may not be renewed. It simply serves to ensure that an incumbent does not become too difficult to remove if the board feels that his/her removal is required for the good of the company.
19. The board should constitute a Remuneration Committee, or a wider Corporate Governance Committee, to consider issues in relation to the remuneration of executive directors and other senior management, as well as that of the chairperson and other non-executive and independent directors. The composition and terms of reference of this committee are discussed in section 4.
20. Such a committee should be composed of non-executive and independent directors, although the chief executive officer could also sit as a member of such a committee, or at least be invited to provide input on issues surrounding executive pay and performance. Directors should be absent from any discussions relating to their own packages. Generally, while levels of remuneration should be sufficient to attract and retain the directors needed to run the company successfully, companies are urged to consider structuring a proportion of the executive directors' remuneration in a manner that more directly rewards corporate and individual performance of the executive director.

21. Aspirations

- 21.1 It is self-evident that a controlling shareholder will seek to ensure that his/her views are properly represented on the board. Equally, it is clear that the directors' fiduciary responsibility lies in ensuring that decisions are taken in the interests of the company and not those of the controlling shareholder. When these interests are in alignment, there is clearly no area of disagreement. Where there is pressure on directors to take decisions which are not obviously in the interests of the company, the directors must have the moral integrity and courage to voice and register their dissent and to act in the best interests of the company
- 21.2 The Code defines the three categories of director. Although clause 7.3 in Chapter 4 lists the criteria for an independent categorisation, the obligation is that each and every director, regardless of category, exercises independence of mind. The Code must not develop into a 'box-ticking' exercise. On the contrary, directors must always strive to practice quality governance.
- 21.3 The family connection is deliberately limited in the Code to the immediate family as defined in clause 7.3 of Chapter 4. This is in recognition that there are very large extended families in Mauritius and, therefore, no list could ever be complete and still remain relevant. The clear aspiration is that the spirit of the definition of independence be respected and that directors who are distant relatives of controlling shareholders or senior executives disclose this fact.
- 21.4 The clear aspiration is that there should not be any shadow directors. Those persons should either seek to become a director themselves or allow the director(s) that they have successfully nominated onto the board to act entirely as they deem fit without referring back.
- 21.5 The aspiration is that non-executive and independent directors not only purchase shares in the company, but also that the company buys shares on their behalf, out of a part of the proceeds of the fees due to them.
- 21.6 In regard to the allocation of share options, the Code does not go into detail as these are not yet prevalent in Mauritius. In general, the aspiration with regard to options is that boards should be mindful of the following:
- A vesting period in relation to the allocation of share options to non-executive directors should be applied to dissuade short-term decision taking, but should also have regard to the possibility or consequences of the removal or resignation of such directors prior to the vesting period

maturing and any perceived impact on their independence.

- Where it is proposed to re-price share options, this should be the subject of prior shareholder approval. Details of the share options of each executive and non-executive director who stands to benefit from any such proposal should be provided and should be subject to shareholder approval individually in respect of each director.
- If share options are to be issued at a discount to the ruling price, shareholders should vote separately on this clause in the trust deed at its inception. Any subsequent amendments proposed to an existing trust deed that would permit allocations of these options at a discount must be subject to the specific approval of shareholders.

Chapter 5 - Director Selection, Training and Development

1. Shareholders are ultimately responsible for electing or removing board members, and it is in their interests that the board is properly constituted. Procedures for appointments to the board should be formal and transparent. The Nomination Committee (if separate) or the Corporate Governance Committee has a vital role to play in proposing candidates for election (as described in Section 3 of the Report) but the board as a whole has a major role in planning for its own continuity and succession. This should be managed by assessing the skills needed on the board to add value to the processes of the board, in the context of the business of the company.
2. In looking at the skills mix for a board, there are three dimensions of board effectiveness requiring consideration. These are: the knowledge or information required to fill a significant gap on the board, the capacity of an individual to influence preferred outcomes (internally and externally) through his/her involvement on the board, and the extent to which an individual has the opportunity or availability to meaningfully contribute time and ability to the affairs of the board.
3. New directors appointed to the board should be familiarised with the company's operations, senior management and its business environment. They must also be made aware of their fiduciary duties and responsibilities and of the board's and chairperson's expectations. Since their responsibility carries with it significant personal liability, new directors with no board experience should receive the relevant education and development.

4. The appropriate induction of directors contributes to ensuring that a company maintains a well-informed and competent board. It is therefore vital that a suitable induction program is put in place which meets the specific needs of both the company and the individual, and enables any new director to make the maximum contribution as quickly as possible. Although it is the responsibility of the chairperson to ensure the relevance and quality of the program, the induction training itself should be delegated to the company secretary.
5. An essential element of the induction process must be to help and advise the director to recognise situations of potential conflict of interest before they arise. The director must be consciously aware of the situations that can lead to conflicts of interest, in order to be in a position to point them out to the chairperson and board at an early stage.
6. When a senior manager becomes a director, he or she needs to take a longer and broader view of the company's activities and relationships with external stakeholders. Experienced, independent non-executive directors should guide new executive directors on the importance of independence from their employment, as well as the need for intellectual honesty and unfettered discretion in their function as a director.
7. It is important that areas where there is a lack of knowledge be discussed prior to any training or mentoring. All directors should be provided with details of any key roles or functions that are expected of them. Their contribution and reporting to the board will be measured against fiduciary obligations.
8. Mentorship under an experienced director can clarify the dynamics and subtle nuances of the workings of a board.
9. Annual performance appraisals should be performed as they can provide the basis for identifying future training needs and, where necessary, explain why re-appointment may not be appropriate.
10. All directors have a duty to keep up to date with industry and legal and regulatory developments. The company secretary should regularly circulate updates on legal, corporate governance and regulatory issues to directors - including these updates in the board pack - so that there is an appropriate forum for discussion. Any ongoing or ad hoc obligations of directors under listing requirements should also be addressed in this way.

11. Recommendation

It is highly recommended that an Institute of Directors be set up in Mauritius, or alternatively that an affiliation with the Institute of Directors (IOD) in South Africa or the UK or other such internationally recognised IOD be established, to enable continuing training and development.

Chapter 6 - Board and Director Appraisal

1. Companies must have controls in place to promote their continued survival and profitability. As this is a function of the board, it makes sense for the performance of the board and directors to be included in the monitoring and evaluation process.
2. While it is difficult to prove a direct link between a board's effectiveness and the company's profits, a board that knows it will be regularly monitored is more likely to focus its attention on good corporate governance issues. Once this is entrenched in the company's culture, it is difficult for a chief executive officer or any director to dominate a board or avoid being held accountable for poor performance.
3. Effective and meaningful evaluation is only possible once the board has determined its own functions and identified the key roles and performance standards for directors. Key roles for executive, non-executive and independent non-executive directors would be different.
4. The non-executive and independent non-executive directors would be expected to contribute to establishing strategic direction, to bring experience and/or specific knowledge to discussions and to influence key decisions. The measurement would be the effectiveness in each role against the importance of that role within the board. The key roles for executive directors are easier to measure.
5. Directors should be assessed both individually, and collectively as a board.
6. Formal evaluations should be conducted by the chairperson and, if peer reviews are in place for executive management, these should be extended to director level. The chairperson should ensure that the directors know that they will be the subject of a review, the criteria used for assessment and the procedure that will be followed. A series of assessment questions should be distributed in time for directors to complete prior to any meeting with the chairperson.
7. Performance evaluations should take place towards the end of the financial year. The Chairperson should discuss and review the findings with the nomination committee (if

separate) or the corporate governance committee of the board. This is the most appropriate place as it forms part of the process of succession planning referred to earlier, but it is also important for the remuneration committee to be briefed on any issues that may be pertinent to the performance of an executive director.

8. If a deficiency has been identified, a plan should be developed and implemented for the director to acquire the necessary skills or behaviour patterns. It is important that director evaluation be approached in an open, constructive and non-confrontational manner and that this should be a two-way process.
9. The assessment questions should also include evaluation of the chairperson and chief executive officer. The action plan arising out of the assessment should be reported and discussed with the nomination committee (is separate) or the corporate governance committee. Thereafter, a consolidated summary of the whole process should be reported to the full board. This will also form the basis for the board to identify key objectives for the effective functioning of the board for the subsequent year.
10. While individual evaluations should be conducted annually, an assessment of the functioning of the board could be undertaken less frequently, particularly if the composition of the board is stable. An appropriate time to conduct a further board assessment would be when there are no major changes to strategy or structure.
11. Directors who fail to discharge their duties and responsibilities to the satisfaction of the board (including those who fail to attend meetings without acceptable explanation) should be removed, (taking relevant legal and other matters into consideration) with the chairperson usually leading the process.
12. **Recommendation**
A draft self-evaluation questionnaire for the board is included in appendix 4 of King II and this should be made available on the Ministry website.

SECTION 3 - BOARD COMMITTEES

1. Committees of the board can help to efficiently advance the business of the board. At the same time, committees can demonstrate that directors' responsibilities are being adequately and properly discharged. However, the board is the focal point of the corporate governance system and is ultimately accountable and responsible for the performance and affairs of the company. Delegating authority to board committees or management does not in any way mitigate or dissipate the discharge by the board and its directors of their duties and responsibilities. Board committees are merely a mechanism to assist the board and its directors in giving detailed attention to specific areas of their duties and responsibilities in a more comprehensive evaluation of specified issues. Being smaller, committees can go into greater detail and deal with complex issues where the full board might not have sufficient time.
2. In establishing board committees, the board must determine their terms of reference, life span, role and function. It must create reporting procedures and proper written mandates or charters for its committees and ways of evaluating their performance. There should be a formal procedure for certain functions of the board to be delegated (describing the extent of such delegation) to enable the board to properly discharge its duties and responsibilities and to effectively fulfil its decision-making process. As a general principle, there should be transparency and full disclosure from the board committee to the board, except where the committee has been mandated otherwise by the board. However, time should not be wasted on repeating a committee's deliberations at board level.
3. Board committees should, as far as possible, only comprise members of the board. It may be necessary, where certain board committees fulfil a specialised role, to co-opt specialists as permanent members of such committees but this should be the exception rather than the rule and they should comprise a minority on the committee. Of course, in order to ensure its effective functioning, a committee will of necessity from time to time have to call on specialised skills to assist it with its deliberations and decisions. Such co-opted persons should contract not to disclose confidential information.
4. All companies should have, at a minimum, an audit committee and a corporate governance committee. The Corporate Governance Committee should include in its terms of reference the key areas normally covered by a Nomination Committee and a Remuneration Committee (unless these have been separately constituted).
5. Industry and company specific issues will dictate the necessity and requirements for

other committees. The overriding principle is that boards must establish committees that are responsive and relevant to the nature of the company's business and where direct involvement of directors, particularly non-executives, is necessary. It is the responsibility of the board to consider the committees appropriate for its purposes.

6. In companies where a large client, substantial creditor or significant supplier of the company also has a significant shareholding in the company by virtue of which it is represented at board level, decisions with regard to the commercial relationship with that client should be delegated to a specific board committee. This committee should be composed entirely of directors unconnected with the client, creditor or supplier.
7. The terms of reference for each committee should cover the:
 - objectives, purpose and activities
 - composition
 - delegated authorities including extent of power to make decisions and/or recommendations (if any)
 - tenure
 - reporting mechanism to the board
 - agreed procedure for seeking independent outside professional advice when necessary.
8. Wherever practicable, committee members should be provided with a schedule of meeting dates and venues for the ensuing year. Members should also receive a proper agenda for each meeting.
9. A secretary should be appointed for each committee and minutes of each meeting recorded.
10. The committee chairperson should give, as a minimum, a verbal summary of the committee's deliberations at the next board meeting. The committee chairman must be prepared to answer appropriate and legitimate questions pertaining to the committee's work to the board. It is important that the committee does not become the de facto place where decisions that should properly be taken by the full board are made. The board should not, however, be the venue for a duplication of the committee's work.
11. The composition and membership of the committees should comply with the following principles:

11.1. The Audit Committee

Terms of Reference

The Audit Committee should focus on:

- ❑ the functioning of the internal control system;
- ❑ the functioning of the internal audit department;
- ❑ the risk areas of the company's operations to be covered in the scope of the internal and external audits;
- ❑ the reliability and accuracy of the financial information provided to management and other users of financial information, and whether the company should continue to use the services of the current external and internal auditors;
- ❑ any accounting for auditing concerns identified as a result of the internal or external audits;
- ❑ the company's compliance with legal and regulatory provisions, its articles of association, code of conduct, by-laws and the rules established by the board;
- ❑ the scope and results of the external audit and its cost effectiveness, as well as the independence and objectivity of the external auditors; and
- ❑ the nature and extent of non-audit services provided by the external auditors , where applicable;
- ❑ Shareholders, on request, should be able to obtain a copy of the current terms of reference of the Audit Committee at the registered office of the company.

Composition

- ❑ The chairperson of the board should not be a member of the Audit Committee.
- ❑ The chairman of the Audit Committee should be an independent non-executive director.
- ❑ The chief executive officer should not be a member of the Audit Committee.
- ❑ The Audit Committee should be composed entirely of non-executive directors.
- ❑ It is not a requirement that the majority of the Audit Committee be independent non-executive directors although this would be strongly recommended (Aspiration: majority independent).
- ❑ All members of the Audit Committee should have financial awareness. The chairman should be skilled and experienced in financial matters.

11.2 The Corporate Governance Committee

Terms of reference

The Corporate Governance Committee should include in its terms of reference the key areas normally covered by a nomination committee and a remuneration committee (unless these have been separately constituted). Its role is also to ensure that the reporting requirements on corporate governance, whether in the annual report or on an ongoing basis are in accordance with the principles of the Code.

Composition

- ❑ A non-independent chairperson of the board can only be the chairperson of the Corporate Governance Committee on condition that the majority of the committee are independent non-executive directors. If this is not the case then the non-independent chairman of the board can be a member of the Corporate Governance committee, but not its chairperson. The chairperson of the Committee would then have to be an independent non-executive director (Aspiration: the chairman of the Corporate Governance Committee should be an independent non-executive director).
- ❑ The chief executive officer may be a member of the Corporate Governance Committee.
- ❑ The Corporate Governance Committee should be composed of a majority of non-executive directors.
- ❑ Other than in the case where the non-independent chairperson of the board is also chairperson of the Corporate Governance Committee, it is not a requirement that the majority of the Corporate Governance Committee be independent non-executive directors, although this would be strongly recommended (Aspiration: always majority independent).

11.3 The Remuneration Committee

Terms of Reference

The role of the Committee (if separately constituted)will be to work on behalf of the board and be responsible for recommendations with regard to:

- ❑ determining, agreeing and developing the company's general policy on executive and senior management remuneration;
- ❑ determining specific remuneration packages for executive directors of the company, including but not limited to basic salary, benefits in kind, any annual bonuses, performance-based incentives, share incentives, pensions and other benefits;
- ❑ determining any criteria necessary to measure the performance of executive directors in discharging their functions and responsibilities;
- ❑ determining the level of non-executive and independent non-executive fees to be recommended to the shareholders at the Meeting of Shareholders.

Composition

- ❑ A non-independent chairperson of the board can be the chairperson of the Remuneration Committee (Aspiration: committee chaired by an independent non-executive director)
- ❑ The chief executive officer may be a member of the Remuneration Committee.
- ❑ The Remuneration Committee should be composed of a majority of non-executive directors.
- ❑ Other than in the case where the non-independent chairperson of the board is

also chairperson of the Remuneration Committee, it is not a requirement that the majority of the Corporate Governance Committee be independent non-executive directors, although this would be strongly recommended (Aspiration: always majority independent).

- ❑ No member of the Remuneration Committee can be involved or vote on committee decisions in regard to his/her own remuneration.

11.4 The Nomination Committee

Terms of Reference

The Nomination Committee (if separately constituted) or the Corporate Governance Committee that has responsibility for board and senior executive nominations should:

- ❑ ascertain whether potential new directors are fit and proper and are not disqualified from being directors. Prior to their appointment, their backgrounds should be investigated thoroughly;
- ❑ ensure that the potential new director is fully cognisant of what is expected from a director, in general, and from him or her in particular;
- ❑ ensure that the right balance of skills, expertise and independence is maintained;
- ❑ ensure that there is a clearly defined and transparent procedure for shareholders to recommend potential candidates;
- ❑ ensure that potential candidates are free from material conflicts of interest and are not likely to simply act in the interests of a major shareholder, substantial creditor or significant supplier of the company. This is of particular importance when a candidate has been nominated by virtue of a shareholders' agreement, or other such agreement. In any case, candidates so nominated can not be considered independent (see Section 2, chapter 4, clause 7).
- ❑ ensure that those directors who, in the opinion of the board, have either acted in accordance with the instructions of a third party or have not discharged their duties as directors to the satisfaction of the board, not be nominated for re-election.

Composition

- ❑ A non-independent chairperson of the board can be the chairperson of the Nomination Committee (Aspiration: Committee chaired by an independent non-executive director)
- ❑ The chief executive officer may be a member of the Nomination Committee.
- ❑ The Nomination Committee should be composed of a majority of non-executive directors.
- ❑ Other than in the case where the non-independent chairperson of the board is also chairperson of the Nomination Committee, it is not a requirement that the majority of the Nomination Committee be independent non-executive directors, although this would be strongly recommended (Aspiration: always majority independent).

11.5 Risk Committee

Terms of Reference

The necessity for and composition of a Risk Committee will depend on the nature and complexity of the business. In relatively simple businesses, it will be quite acceptable for risk management to be the responsibility of the board rather than a board committee. Responsibility for setting risk strategy will remain with the board but the responsibility for assessing and assuring the quality of the risk management process may be delegated to the Audit Committee if a Risk Committee has not been constituted.

Composition

In more complex businesses, the board may decide that a separate Board Risk Committee is required to set risk strategy, advise the board on risk issues and monitor the risk management process. In this case, the composition of the committee should be determined using the following principles:

- ❑ the chairman of the Committee should be a non-executive director;
- ❑ the chief executive officer should be a member of the Committee;
- ❑ the Committee should be composed of suitably qualified members which should include at least one independent director;
- ❑ the company may also set up committees composed of management or appoint a chief risk officer, as appropriate, who would then report to the Board Risk Committee. The Audit Committee would retain an assessment and assurance role in this case.

11.6 Board committees should be subject to regular evaluation by the board to ascertain their performance and effectiveness.

11.7 Disclosure of material information on the board committees including their composition, terms of reference, number of meetings held etc should be dealt with in the annual report and the chairpersons of such committees should be in attendance at the company's shareholder meetings.

11.8 Recommendation

Model terms of reference for board committees are included in the Appendix of the Report.

SECTION 4 - ROLE AND FUNCTION OF THE COMPANY SECRETARY

1. The Companies Act 2001 makes various provisions regarding the appointment, removal and duties of the company secretary. The company secretary is required to be appointed by the board as a whole and in doing so, the board must satisfy itself that the appointee has the requisite attributes, experience and qualification to properly discharge his/her duties. The company secretary should therefore be subjected to a fit and proper test in the same manner as recommended for new director appointments.
2. The chairperson and board will look to the company secretary for guidance on their responsibilities and duties to which they are subject, and how such responsibilities and duties should be properly discharged in the interests of the company.
3. While the role and function of the company secretary will vary from company to company and can be very diverse, the core role concerns three primary areas:

3.1 The board

- ❑ The company secretary must guide the board collectively, and each director individually, as to their duties and responsibilities and make them aware of all relevant legislation, regulations, listing rule obligations and corporate governance requirements.
- ❑ The company secretary must ensure that the procedure for the appointment (as opposed to selection) of directors is carried out according to the legal provisions and he/she should assist the board in the proper induction and orientation of directors. He/she should also assist the Corporate Governance Committee (or Nomination Committee if separate) in assessing the specific training needs of directors and executive management in regard to their fiduciary and other responsibilities.
- ❑ The company secretary needs to be available to provide comprehensive practical support and guidance to directors, with particular emphasis on supporting the non-executive directors and chairperson.
- ❑ The company secretary should ensure unhindered access to information by all board and committee members so that they can contribute to board meetings and other discussions.

- ❑ The company secretary is responsible for the compilation of board papers and for filtering them to ensure compliance with the required standards of good governance.
- ❑ The company secretary's role should also be to raise matters that may warrant the attention of the board.

3.2. The company

- ❑ The company secretary should ensure that the company complies with all relevant statutory and regulatory requirements, having due regard for the specific business interests of the company. In particular, the company secretary must be aware of the duties set out in the Companies Act.
- ❑ The company secretary should help to carry out corporate strategies by ensuring that the board's decisions and instructions are clearly communicated to the relevant persons.
- ❑ The company secretary should be available to provide a central source of guidance and advice within the company on matters of ethics and good governance.

3.3. The shareholders

- ❑ The company secretary needs to communicate with the shareholders as appropriate, and to ensure that due regard is paid to their interests. The procedure must be agreed and harmonised with the respective roles of the chairperson and chief executive with regard to communication.
- ❑ The company secretary needs to act as the primary point of contact for institutional and other shareholders (unless a specific committee has been set up for that purpose in which case the company secretary should be a member of that committee, or a separate appointment has been made in which case the company secretary should liaise with that individual), especially with regard to matters of corporate governance. It is of particular importance to ensure that all shareholders are treated in a fair and equal manner.

4. Recommendations

- ❑ The company secretary should be required to sign off on the corporate governance section of the annual report (see Section 8 clause 7).
- ❑ Every board meeting agenda should include a standing item entitled 'Report of the Company Secretary'.

SECTION 5 - RISK MANAGEMENT, INTERNAL CONTROL AND INTERNAL AUDIT

Chapter I - Risk Management

Definition

1. Risk management refers to the process used by an organisation to monitor and mitigate its exposure to risk.
2. Risks are uncertain events that could influence the achievement of an organisation's objectives.
3. The process of risk management includes the systematic and continuous identification and evaluation of risks as they pertain to the organisation followed by action to terminate, transfer, accept or mitigate each risk.
4. The objective of risk management is not to completely eliminate risk but to reduce it to an acceptable level, having regards to the objective of the company. Commercial enterprise is the undertaking of risk for reward and where the company accepts to tolerate risk, it should ensure that the risk is appropriately mitigated and commensurate with the measurable reward.
5. Risk management is effected by the board of directors, management and all employees in accordance with their defined roles within the organisation.
6. Risk management reduces the probability that the attainment of an organisation's objectives are jeopardised by unforeseen events but does not provide absolute assurance of their attainment.
7. Risk management should include the reporting, consideration and the taking of appropriate action on the risk exposure of the organisation in at least the following areas of risk:
 - physical
 - operational
 - human resources
 - technology
 - business continuity
 - financial
 - compliance
 - reputational

8. Internal controls are one of the mechanisms for the management and mitigation of risk.

Responsibility

9. The board is responsible for the total process of risk management.
10. The board is responsible for the definition of the overall strategy for risk tolerance, to monitor management and the assurance process on risk management and to take corrective action where management or the assurance process is found to be inadequate.
11. The board must communicate its risk management policies to management and all other employees as appropriate to their roles within the organisation and must satisfy itself that communication has been effective and understood.
12. Management is accountable to the board for the design implementation and detailed monitoring of the risk management processes.

Application

13. An organisation must develop a comprehensive and robust system of risk management.
14. Risks must be identified and evaluated on a continuous and on-going basis.
15. Control activities should be designed to respond in a manner that is appropriate and proportional to the risks identified and these controls should be embedded in the internal control activities throughout the organisation.
16. However, risk should not only be viewed from a negative perspective and the risk management process should be capable of identifying circumstances which represent an opportunity or can be turned to competitive advantage.
17. The operation of controls that form part of the risk management and mitigation process should be monitored and a process of assurance established to enable the board to satisfy itself on their operation and effectiveness.
18. The risk management mechanisms of the organisation should include the following:
- a system for the ongoing identification and assessment of risk;
 - the development of strategies in respect of risk and the definition of acceptable and non-acceptable levels of risk;

- ❑ the communication of risk management policies to all levels of the organisation as appropriate, and methods to ensure commitment, both by managers and by other employees, to the process;
 - ❑ the implementation of a documented system of internal control that closely aligns the control effort to the nature and importance of the risk; and
 - ❑ processes to reduce or mitigate identified risks and contain them within the levels of tolerance defined by the board and management of the organisation.
19. Risks are by nature dynamic, subject to change and often very specific to the business of each organisation. Accordingly, the day to day management of risk is best performed by operational management.
20. However, in complex organisations it is recommended that the board constitutes a Board Risk Committee.
21. The Board Risk Committee should be composed of the chief executive and other suitably qualified directors.
22. The involvement of independent directors in the work of this Committee is encouraged in order to stimulate thinking and bring an external, independent and fresh perspective to the identification of risks and the develop of strategies to manage these risks.
23. Internal audit or other providers of assurance should not assume the function of risk management but should assist the board and management with the monitoring of the risk management process.
24. The Board Risk Committee may be assisted by operational management or appropriate internal or external advisors and may establish sub-committees to actively monitor and manage specific types of risk.
25. The board should consider the need a confidential process to receive reports of fraud or other irregularities.

Reporting and Disclosure

26. In any report containing a Statement of Directors' Responsibilities for Internal Control required under Chapter 2 paragraph 9 below, the directors shall also include a statement acknowledging the responsibility of the board for risk management and the processes in place within the organisation for risk management.
27. The statement on the risk management processes shall, as a minimum, disclose the following:
- ❑ the structures and process in place for the identification and management of risk;
 - ❑ the methods by which internal control and risk management are integrated together;
 - ❑ the methods by which the directors derive assurance that the risk management process are in place and effective;
 - ❑ a brief description of each of the key risks identified by the organisation and the way in which each of these key risks is managed.

Chapter 2 - Internal Control

Definition

1. Internal control is a process designed to provide reasonable assurance regarding the achievement of organisational objectives with respect to:
- ❑ effectiveness and efficiency of operations;
 - ❑ safeguarding of the assets and data of the organisation;
 - ❑ reliability of financial and other reporting;
 - ❑ prevention of fraud and irregularities;
 - ❑ acceptance and management of risk;
 - ❑ conformity with the codes of practice and ethics adopted by the organisation;
 - ❑ compliance with applicable laws and regulations;
 - ❑ supporting business sustainability under normal as well as adverse operating conditions.
2. Internal control is one of the mechanisms which is used to reduce risk to an acceptable level. Internal control should be operated by the organisation's board, its management and staff and should be embedded in the daily activities of the company.

Responsibility

3. The board is responsible for the system of internal control.
4. The board must set appropriate policies to provide reasonable assurance that the control objectives are attained.
5. The board must satisfy itself that the system of internal controls is functioning effectively and manages risk in the manner approved by the board.
6. The board must communicate its policies to management and all other employees as appropriate to their roles within the organisation and must satisfy itself that communication has been effective and understood.
7. The board may delegate the implementation and monitoring of internal control systems to management or to sub-committees of the board as it sees fit but the board remains ultimately responsible for the operation of internal controls.

Reporting and Disclosure

8. The board shall ensure that any report delivered as an annual report under the Mauritius Companies Act 2001 includes, or has appended to it, a statement which acknowledges the directors' responsibilities for internal control and describes the methods by which this responsibility is discharged.
9. The Statement of Directors' Responsibilities for Internal Control shall be signed by two or more directors as representatives of the board.
10. The Statement of Directors' Responsibilities for Internal Control may be included in a general statement of directors' responsibilities for corporate governance or combined with a statement of directors' responsibilities for preparation of accounts.
11. The description of the methods used by the board to discharge its responsibility for internal control must, as a minimum, include a description of the following:
 - the systems and processes in place for implementing, maintaining and monitoring of the internal controls;
 - the process by which the board derives assurance that the internal control systems are effective;
 - the frequency of reviews;

- ❑ the information required under Chapter 3, paragraphs 16 and 17 below in respect of internal audit;
- ❑ any significant areas not covered by the reviews including joint ventures, subsidiaries or associates;
- ❑ the process applied to any significant problems disclosed in the annual report or financial statements.

Chapter 3 - Internal Audit

Definition

1. Internal audit is an objective assurance function reporting to the board of directors and management.
2. Internal audit provides assurance as to the adequacy and effectiveness of the risk management and internal control framework of an organisation. Internal audit assists the board and management to maintain and improve the process by which risks are identified and managed and helps the board discharge its responsibilities to maintain and strengthen the internal control framework.

Responsibility

3. The board of directors is responsible for determining the need for an internal audit function and, where one is established, the structure, scope, work plan and reporting lines of this function.
4. The board may delegate the responsibility for managing the internal audit function and for receiving internal audit reports to an Audit Committee.
5. The internal audit function is responsible for providing assurance to the board regarding the implementation, operation and effectiveness of internal control and risk management. It is not responsible for the implementation of controls or the management and mitigation of risk, responsibility for which remains with the board and operational management.

Application

6. Organisations should have an effective internal audit function. However, the board of directors may, at its discretion, decide not to establish an internal audit function where it is satisfied that adequate alternate means exist to provide assurance on the operation and effectiveness of internal controls and risk management.

7. The board of companies which do not possess an internal audit function should review, at least annually, the need for one.
8. The internal audit function must remain independent of the activities audited and must be objective in their work.
9. The internal audit function must possess appropriate skills and sufficient resources for the discharge of its duties.
10. Internal audit must report at a level within the organisation that allows it to fully accomplish its responsibility. Normally the internal auditor will report to the Audit Committee of the board. Administratively the internal audit may fall under the responsibility of an executive director who should not also be the finance director.
11. The Audit Committee shall have the following duties in respect of the internal audit function:
 - ❑ advise and approve decisions on the appointment or removal of the head of internal audit;
 - ❑ approve the scope and work plan of the internal audit function;
 - ❑ receive and consider reports from the internal audit function;
 - ❑ advise the board on significant matters arising from the internal auditors' work and ensure that appropriate action has been taken following detection of inadequacies within the internal controls and risk management processes;
 - ❑ Coordinate the activities of internal and external auditors to maximise the efficiency of audit effort and avoid omissions in coverage;
 - ❑ where the internal audit function is carried out by the professional firm providing external audit, the Committee shall satisfy itself that there is adequate segregation between the two functions to ensure that independence and objectivity are not impaired;
12. The internal audit plan shall be based on the principles of risk management to align coverage and effort with the degree of risk attributable to the areas audited.
13. Where internal audit carries out specific work at the request of the board or management, care must be taken to ensure that the overall level of coverage is consistent with the audit plan approved by the Audit Committee.
14. An effective internal audit function will provide:
 - ❑ assurance that risk management and internal control processes operate effectively;

- assurance on the reliability of financial and other reporting;
 - an objective view on the operation of the risk management and governance processes;
 - synergy with external auditors and other internal compliance functions.
15. The principles of internal audit are equally applicable to the non-financial processes of the organisation and the internal audit function should possess an adequate range of skills to cover these processes.

Reporting and Disclosure

16. The Statement of Directors' Responsibilities for Internal Control shall state whether or not the board has established an internal audit function.
17. Where no internal audit function exists, the board must describe:
- the methods it uses to provide assurance on the operation and effectiveness of internal controls and risk management;
 - the frequency of review for the need to establish an internal audit function and the date of the last review.
18. Where an internal audit function exists, the following information shall be disclosed:
- an outline of the structure and organisation of the internal audit function;
 - the reporting lines within the organisation both administratively and for delivery of internal audit reports.
 - a description of the areas, systems and processes covered by internal audit including assurance on risk management and non-financial matters;
 - any significant enterprise areas of the organisation not covered by internal audit including joint ventures, subsidiaries and associates;
 - any restrictions placed over the right of access to the records, management or employees of the organisation.
19. The information provided under paragraph 18 above may be included within the Statement of Directors' Responsibilities for Internal Control as part of a general statement of disclosure in respect of risk management or corporate governance.

Chapter 4 - Guidance on Implementation

1. This guidance is given to assist organisations in their implementation of the risk management, internal control and internal audit sections of the Code.
2. It is important that disclosures given in respect of this section of the Code reflect the underlying facts. Organisations that emphasise form over substance may suffer from greater damage to their reputation in the event of governance or control failures than those that have provided accurate disclosure of their risk management and internal control capabilities.
3. Risk management as a systematic activity is a recent development in Mauritius and organisations should initially target their effort at identifying, evaluating and managing risks that may have a significant impact on performance or reputation.
4. Disclosure of risk management activities should cover only the most significant risks. Descriptions should be concise, factual and, where possible, quantify the risk and the outcome of the management or mitigation activities.
5. Where disclosure of risk management and internal control is already required under other regulatory provisions, these disclosures may be referred to and shall be accepted as forming part of the disclosure under this code, provided that the minimum requirements of the Code are satisfied.

SECTION 6 - ACCOUNTING AND AUDITING

“If you are looking for signs that governance is working, look for clear purpose, inspiring vision, shared values, robust relationships, reciprocal accountability and balanced measurement.”

The Corporate Reporting Jigsaw
Centre for Tomorrow’s Company

Chapter I - Auditing

I. External Audit

- 1.1 The external audit provides an independent and objective check on the way in which the financial statements have been prepared and presented by the directors when exercising their stewardship in the interest of the stakeholders. An annual audit is an essential part of the checks and balances required, and is one of the cornerstones of corporate governance.
- 1.2 While external auditors have to work with management, they must be objective and consciously aware of their accountability to the shareholders. An audit committee, comprising a majority of non-executive directors with an independent non-executive director chairperson, can maintain the objectivity between the auditors and management. Differences of opinion between the two can be aired, discussed and overcome in that committee. The auditors should also be able to turn to the non-executive directors in regard to any concerns they may have about the company or its business.
- 1.3 Auditors, through their audit activities, have an important impact on the quality of the internal control system, including holding discussions with management, the board of directors, the internal auditors and the audit committee. They may recommend improving internal controls.
- 1.4 Since the proper functioning of the external auditors depends on their independence, the following procedure should be borne in mind:
 - ❑ Audit fees should be set in a manner that enables an effective external audit on behalf of shareholders. Targeting audit fees as a means of cost savings to the company should be discouraged.
 - ❑ Auditors compete with each other for the performance of other functions, such as management consultancy and corporate finance. This should not

have the unacceptable consequence of impairing their effectiveness in the performance of their audit functions.

1.5 Auditors should observe the highest standards of business and professional ethics.

1.6 Directors or officers may have by their acts of commission or omission, contributed to a company's failure and should be held liable for any such conduct. Damages against auditors for company failures are becoming a matter of concern. Directors and auditors should be held liable for damages in proportion to their contribution to the failure.

1.7 RECOMMENDATION

Directors or officers may have by their acts of commission or omission, contributed to a company's failure and should be held liable for any such conduct. Damages against auditors for company failures are becoming a matter of concern. Directors and auditors should be held liable for damages in proportion to their contribution to the failure.

2. Review of Interim Results

2.1 The Audit Committee should consider whether or not interim reports should be subject to an independent review by the auditors.

2.2 The Audit Committee's report commenting on the interim report, together with the auditor's review report, should be tabled at the board meeting to adopt the interim report.

2.3 RECOMMENDATIONS

- ❑ The Audit Committee should consider whether or not interim reports should be subject to an independent review by the external auditor.
- ❑ The Audit Committee's report commenting on the interim report and the external auditor's review report should be tabled at the board meeting to adopt the interim report.

3. Going Concern

3.1 International Financial Reporting Standards ("IFRS") state that when preparing financial statements, management should make an assessment of the company's ability to continue as a going concern. Financial statements should be prepared

on a going concern basis, unless management either intends to liquidate the company or to cease trading, or has no realistic alternative but to do so. When management is aware, in making its assessment, of material uncertainties related to events or conditions that may cast doubt upon the company's ability to continue as a going concern, those uncertainties should be disclosed. When the financial statements are not prepared on a going concern basis, that fact should be disclosed, together with the basis on which the financial statements are prepared and the reason why the company is not considered to be a going concern.

- 3.2 In addition, IFRS require that, in assessing going concern, management should take into consideration all available information for the foreseeable future. This should be at least, but is not limited to, 12 months from the balance sheet date.
- 3.3 Directors should state in the annual report that there is no reason to believe that the business will not be a going concern in the year ahead, or to explain any reasons otherwise.
- 3.4 Although directors cannot be expected to consider going concern as fully for interim reporting as they would for final reporting purposes, they should nevertheless review the previous work in this regard. Directors should consider the position at the previous year end and determine whether any of the significant factors identified at that time have changed in a way that affects the going concern assumption at the interim reporting stage.

3.5 RECOMMENDATIONS

- ❑ The board should minute the facts and assumptions used in the assessment of the going concern status of the company at the year end.
- ❑ At the interim reporting stage, the directors should consider their assessment at the previous year end of the company's ability to continue as a going concern, and whether there have been changes that affect that conclusion.
- ❑ The board should minute the conclusion reached by the directors at the interim reporting stage.

4. Relationship between External and Internal Auditors

- 4.1 The roles and responsibilities of external and internal auditors are different. External auditors have a statutory duty to report their independent opinion to

the shareholders on the company's financial statements and to consider statutory requirements and standards for financial reporting, as well as auditing. This contrasts with the internal audit which is a service to the company focusing on the system of internal control and which reports to the executive management and the Audit Committee. These are the individuals that determine the scope of internal audit, which varies depending on the size and structure of the company. Internal auditors also have to adhere to professional standards relevant to the conduct of their work.

4.2 Since some of the means of achieving the respective objectives of external and internal audit are often similar, some of the work of internal audit may be useful for determining the nature, timing and extent of external audit procedures.

4.3 The degree of reliance that the external auditors may wish to place upon an internal audit function should be maximised by dialogue and co-ordination. These matters could be formalised by an audit "partnership". If an audit "partnership" is in place, the matters that should be considered within this "partnership" could include the following:

- ❑ the provisions of International Standard on Auditing ISA 610: "Considering the Work of Internal Auditors";
- ❑ a good understanding of the audit approach by each party, and a co-ordinated approach (including assistance to either party where appropriate) to ensure consistent risk assessment and to avoid unnecessary duplication of work. Special emphasis should be placed on this understanding at the planning stages, when information could be shared on risk assessments and materiality levels;
- ❑ a continuing dialogue on problems and issues found by the internal and external auditors that they may, or may not, include in their management letters. In addition to the normal control weaknesses and audit adjustments, issues may include illegal acts, problems in conducting their audit work, disagreements with management, matters that need follow-up by internal audit, and suspicions related to potential fraud; and
- ❑ a formal annual review of the working arrangements in the audit "partnership".

4.4 It is important that the external auditors are able to express their views on the quality of the internal auditors' work.

4.5 RECOMMENDATIONS

- ❑ Companies should aim for efficient audit processes using external auditors in combination with the internal audit function.
- ❑ Management should encourage consultation between internal and external auditors. Co-ordination of efforts involves periodic meetings to discuss matters of mutual interest, management letters and reports, and a common understanding of audit techniques, methods and terminology.

5. Audit Committees

5.1 The formation of audit committees and their inter-action with the external auditors is an essential plank in corporate governance. The role, objective and responsibility of the audit committee include:

- ❑ to monitor the integrity of the financial statements of the company;
- ❑ to review financial statements with both management and external auditors prior to their approval;
- ❑ to review the company's internal financial control system and, unless addressed by a separate risk committee or by the board itself, risk management systems;
- ❑ to monitor and review the effectiveness of the company's internal audit function;
- ❑ to make recommendations to the board in relation to the appointment of the external auditor and to approve the remuneration and terms of engagement of the external auditor;
- ❑ to monitor and review the external auditor's independence, objectivity and effectiveness;
- ❑ to develop and implement policy on the engagement of the external auditor to supply non-audit services.

5.2 The appointment of an Audit Committee gives the board a means to monitor an effective internal control system. In addition, the Audit Committee reinforces both the internal control system and the internal audit function.

5.3 The Audit Committee is a committee of the board, comprising of entirely of non-executive directors. It is not a requirement that the majority of the Audit Committee be independent non-executive directors although this would be strongly recommended. The majority of the members of the Audit Committee should be financially literate.

5.4 The chairperson of the Committee should be knowledgeable about the status of the position, have the requisite business, financial and leadership skills and be a

good communicator. The chairperson should be an independent non-executive director and should not be the chairperson of the board.

- 5.5 The board chairperson should not be a member of the Audit Committee. The attendance of the board chairperson at meetings of the Audit Committee may at times be necessary or appropriate, in which case he or she could be invited at the discretion of the chairperson of the audit committee.
- 5.6 The chief executive officer should not be a member of the Audit Committee. He should attend only by invitation
- 5.7 The Audit Committee should have written terms of reference dealing adequately with its membership, authority and duties. The terms of reference of the Audit Committee should be confirmed by the board and reviewed every year.
- 5.8 Shareholders, on request, should be able to obtain a copy of the current terms of reference of the Audit Committee at the registered office of the company.
- 5.9 The Audit Committee should review:
- the functioning of the internal control system;
 - the functioning of the internal audit department;
 - the risk areas of the company's operations to be covered in the scope of the internal and external audits;
 - the reliability and accuracy of the financial information provided to management and other users of financial information, and whether the company should continue to use the services of the current external and internal auditors;
 - any accounting for auditing concerns identified as a result of the internal or external audits;
 - the company's compliance with legal and regulatory provisions, its articles of association or constitution, code of conduct, by-laws and the rules established by the board; and
 - any other item delegated to it by the board.
- 5.10 The Audit Committee should encourage communication between members of the board, senior executive management, the internal audit department and the external auditors.

- 5.11 The Audit Committee should confirm the internal audit department's charter and the internal audit plan, as well as the resource required. It should receive the activity reports and a summary of the department's main recommendations and management's plans for their implementation.
- 5.12 The Audit Committee should expect the external auditors, as experts in accounting and financial reporting, to express an independent judgement on the appropriateness, not just acceptability of the accounting policies and practices and on the clarity of the financial disclosure practices used or proposed by the company.
- 5.13 The Audit Committee and the external auditors should develop a direct strong and candid relationship. Lines of communication and reporting should facilitate independence from management and encourage the external auditors to speak freely, regularly and confidentially with the audit committee.
- 5.14 The Audit Committee should, without the presence of executive directors, have a discussion with the external auditors at least once a year to ensure that there are no unresolved issues of concern.
- 5.15 The duties of the Audit Committee include reviewing the scope and results of the external audit and its cost effectiveness, as well as the independence and objectivity of the external auditors. Where the auditors supply non-audit services to the company, the Audit Committee should review the nature and extent of such services, seeking to balance the maintenance of objectivity and value for money.
- 5.16 The minutes of the meeting of the Audit Committee must be placed before the board at its next meeting which follows that of the Audit Committee. This will ensure that the board will not only receive the verbal report of the audit committee chairperson, but they shall also have the opportunity to consider any other issues that may be contained in the minutes which may warrant consideration, in addition to matters highlighted by the Audit Committee chairperson.
- 5.17 The Audit Committee should consider the rotation adopted by the external auditors, and whether there is any need to recommend that the audit partner or senior staff be changed because of the extent of time served on the audit engagement.

- 5.18 Companies should avoid opinion shopping in regard to audit and accounting matters. The Audit Committee can prevent this by acting as arbiter between management and the external auditors when there is a disagreement over accounting policies or disclosure in the financial statements. The Audit Committee should enquire whether or not opinion shopping has occurred on issues within the scope of their activities. Where this has occurred, the reasoning for the opinion adopted should be obtained.
- 5.19 The Audit Committee should draw up a recommendation to the board for the appointment and removal of the external auditors.
- 5.20 The Audit Committee should have explicit authority to investigate any matters within its terms of reference. It must be provided with the required resources that have full access to information. The Audit Committee should be able to obtain outside professional advice and, if necessary, to invite outsiders with relevant experience to attend meetings. The Audit Committee must safeguard all the information supplied to it as specified by law.
- 5.21 The Audit Committee's activities and effectiveness should be assessed periodically and reviewed by the board.
- 5.22 Companies should, in their annual report, disclose whether or not the Audit Committee has adopted formal terms of reference and, if so, whether or not the committee satisfied its responsibilities for the year, in compliance with its terms of reference.
- 5.23 Membership of the Audit Committee should be disclosed in the annual report and the chairperson of the Committee should be available to answer questions about its work at the annual meeting.

5.24 RECOMMENDATIONS

- ❑ The board should appoint an Audit Committee consisting of non-executive directors.
- ❑ The Audit Committee should select a chairperson who is an independent non-executive director. The chairperson of the Audit Committee should be selected without cronyism or tokenism, be knowledgeable of the status of the position, have the requisite business, financial and leadership skills, and be a good communicator.

- ❑ The board chairperson should not be a member of the Audit Committee, but could be invited to attend meetings as necessary by the chairperson of that committee.
- ❑ The chief executive officer should not be a member of the Audit Committee. He should attend only by invitation.
- ❑ The Audit Committee should have written terms of reference, dealing adequately with its membership, authority and duties. The terms should be confirmed by the board and shareholders should, on request, be able to obtain a copy of the current terms of reference of the Audit Committee at the company's registered office.
- ❑ The Audit Committee should review:
 - ❑ the functioning of the internal control system;
 - ❑ the functioning of the internal audit department;
 - ❑ the risk areas of the company's operations to be covered in the scope of the internal and external audits;
 - ❑ the reliability and accuracy of the financial information provided to management and other users of financial information and whether the company should continue to use the services of the current external and internal auditors;
 - ❑ any accounting or auditing concerns identified as a result of the internal or external audits;
 - ❑ the company's compliance with legal and regulatory provisions, its articles of association or constitution, code of conduct, by-laws and the rules established by the board; and
 - ❑ any other item delegated to it by the board.
- ❑ The duties of the Audit Committee include reviewing the scope and results of the external audit and its cost effectiveness, as well as the independence and objectivity of the external auditors. Where the auditors supply non-audit services to the company, the Audit Committee should review the nature and extent of such services, seeking to balance the maintenance of objectivity and value for money.
- ❑ Companies should avoid opinion shopping in regard to the audit process. The Audit Committee can prevent opinion shopping by acting as arbiter between management and the external auditors when there is a disagreement over accounting policies or disclosure in the financial statements. The Audit Committee should enquire whether or not opinion shopping has occurred on issues within the scope of its activities. Where opinion shopping has occurred, the reasoning for the opinion adopted should be obtained.

- ❑ The Audit Committee should draw up a recommendation to the board for consideration and acceptance by the shareholders for the appointment of the external auditors.
- ❑ Companies should, in their annual report, disclose whether or not the Audit Committee has adopted formal terms of reference and, if so, whether or not the committee satisfied its responsibilities for the year in compliance with those terms.
- ❑ Membership of the Audit Committee should be disclosed in the annual report. The chairperson of the committee should be available at the annual meeting to answer questions about its work.
- ❑ The Audit Committee's activities and effectiveness should be assessed periodically and reviewed with the board.

5.25 ASPIRATION

- ❑ The Audit Committee should comprise a majority of independent non-executive directors.
- ❑ The members of the Audit Committee should be financially literate.

Chapter 2 - Non-audit Services

1. The importance of external auditor independence is a vital pre-condition for the workings of efficient capital markets. Accounting firms and the public benefit when firms have effective quality controls that ensure the independence of external auditors. These controls protect the public and the accounting firms on whose audit the public relies. Public companies benefit as well, since they are able to access capital at a lower cost through the capital markets.
2. A critical unbiased eye gives investors and other users of financial information comfort and faith in the numbers and disclosures presented. In recent years, economies around the world have faltered because of lax standards of financial reporting.
3. More than anyone else, it is the external auditors who guard the public interest. It is their duty and unique franchise to protect and honour that interest.
4. Accounting firms have provided non-audit services throughout the history of the profession. These services, by and large, have grown as logical extensions to the performance of audits.
5. Audit and consultancy services can be constructed as contradictory as one demands

objectivity and independence and the other a direct interest in a client's success.

6. An option considered internationally is to prohibit accounting firms from providing certain identified non-audit services to their audit clients. However, firms could provide those services to non-audit clients.
7. In considering the use of the external auditors for non-audit services, the Audit Committee should consider how the accounting firm is structured to ensure independence, the ownership of the auditors' firm and whether that firm has formed alliances with entities which provide clients with services the auditors would not be allowed to offer.
8. Audit committees should have the business acumen to address external auditors' independence issues on a case-by-case basis, thereby preserving a company's ability to select its external auditor for non-audit services if, in the circumstances, that is the best option for the company and the investors.
9. The Audit Committee should set the principles for using the external auditors, either through a department of the audit firm or through a subsidiary, associated or connected firm or company, for non-audit services.
10. In accordance with legal requirements there should be separate disclosure of the amount paid for non-audit services as opposed to audit services.
11. Information relating to the use of non-audit services from the external auditors of the company should comprise detailed disclosure in the notes to the annual financial statements, providing a comprehensive description of the nature of those services together with an indication of the amounts paid in respect of each of those services rendered. It might be useful where appropriate, for the annual corporate governance statement contained in a company's annual report to provide additional explanation or justification for the approach taken by the company in this regard and would probably be best dealt with in the section dealing with the Audit Committee, Internal Controls and/or Risk Management. This should provide a basis for the Audit Committee's recommendation supporting such an approach and confirmation of the board's reasons for implementing such recommendation.

12. RECOMMENDATIONS

- The Audit Committee should set the principles for using the external auditors, either through a department of the firm or through a subsidiary, associated or connected firm or company, for non-audit services.

- ❑ In accordance with legal requirements there should be separate disclosure of the amount paid for non-audit services as opposed to audit services.
- ❑ A detailed description of non-audit services rendered by the external auditor should be provided in the annual financial statements of the company stating particulars of the nature of the services and amounts paid for each of the services described. Where appropriate, it might be useful for the annual corporate governance statement to provide additional explanation or justification for these services.

Chapter 3 - Legal Backing for, and the Monitoring of Compliance with Accounting Standards

1. The law requires that financial statements of companies, in conformity with International Financial Reporting Standards (IFRS), give a true and fair view of the matters to which they relate, and present fairly their financial position, financial performance and cash flows.
2. It is acknowledged that it is neither reasonable nor practical to require small enterprises to comply with IFRS. Therefore, it is proposed that the law should provide for small private companies, under specified circumstances, to prepare their annual financial statements in conformity with limited purpose financial reporting standards approved by the Financial Reporting Council (FRC).
3. As financial reporting is not limited to companies, it is proposed that a new Act, the Financial Reporting Act, provides for:
 - ❑ the laying down of limited purpose financial reporting standards for small private companies;
 - ❑ the establishment and functions of a Financial Reporting Council (FRC); and
 - ❑ supervision of compliance and penalties for non-compliance with the financial reporting standards.
4. It is proposed that the proposed Financial Reporting Act is administered by an independent body. The proposed processes are new and complex with new ground to be broken. The provisions on accounting, auditing, and financial reporting in the other relevant laws should be amended to include cross-reference to the relevant provisions of the new Financial Reporting Law.

5. As the monitoring and enforcement processes would be of direct benefit to the companies and their many and varied stakeholders, it is proposed that the processes should be funded, in part, by a levy to be charged to and collected from companies by the Registrar of Companies on behalf of the proposed FRC.
6. Annual financial statements should be meaningful, relevant and reliable for investors. As the law requires public interest entities to prepare their financial statements in accordance with International Financial Reporting Standards (IFRS), both local and foreign investors will be able to rely on the information contained in a company's financial statements.

7. RECOMMENDATIONS

- ❑ There should be legal backing for public interest entities to prepare their financial statements in accordance with IFRS.
- ❑ In addition to the above, provision should be made for:
 - ❑ the laying down limited purpose financial reporting standards for small private companies and non-public interest entities;
 - ❑ the establishment and functions of a Financial Reporting Council (FRC); and
 - ❑ supervision of compliance, and penalties for non-compliance, with IFRS and other requirements of law and regulations.
- ❑ The FRC should, in part, be funded by a levy to be charged to and collected from companies.

Chapter 4 - Information Technology

1. There have been significant changes in the role of information technology ("IT") and IT is now seen as being an integral part of enterprise strategy rather than a mere enabler within organisations. Technology trends can help companies achieve greater transparency and accountability. While technology developments can help improve governance, they have also brought increased risks and challenges that need to be addressed so that management can discharge its governance responsibilities.
2. IT has had a major impact on the way business is conducted and how businesses are assessed. IT enables companies to manage information more effectively and react more quickly to changing business conditions. Organisational boundaries have become blurred with e-businesses increasing the degree of integration along the supply chain. This has resulted in governance challenges since responsibility is no longer confined to a single organisation. The rate of technological advancement and limited understanding of it among stakeholders has provided further challenges.

3. Legislation is not able fully to accommodate all the regulatory issues that are required in an e-commerce environment. Where regulations and guidance are not available, self-regulation is even more important.

4. Areas in which IT has a significant impact on corporate governance include:

4.1. Internal Control system

- ❑ The directors have a responsibility to ensure that an effective internal control system is being maintained.
- ❑ Modern enterprise resource planning systems are an integral part of many organisations. The introduction of these systems has had far-reaching implications for management and auditors alike. Pre and post implementation reviews have become a key part of successful implementation strategies.
- ❑ Auditing around the computer is no longer an option for the auditors. The controls and processes incorporated in modern systems have to be evaluated and tested. In many instances internal control systems are altered to bring them in line with best practices included with the basic functionality of many of these systems.
- ❑ Employees across the organisation have been empowered with a greater degree of responsibility. Some important controls occur at transaction level rather than in a central accounting area.
- ❑ All of these changes have had fundamental implications for management in discharging its responsibility for maintaining a sound control environment. Responsible management needs to demonstrate adequate knowledge of modern IT-enabled systems as well as an appreciation of the related changes in the organisation's internal control system.

4.2 Reporting

- ❑ IT is a potentially powerful enabler for making information available to stakeholders. Many organisations publish financial and other relevant information on web sites, while e-mail is a highly effective means of sharing information.
- ❑ There have been recommendations and debate around IT issues such as interim reporting, preliminary announcements, press releases and the scope and content of annual reports. Issues that have to be considered in this regard include:
 - the possibility of these forms of communication replacing the current dissemination of information;
 - implications for audit and information integrity;
 - access of all stakeholders to electronic information; and
 - IT systems providing the potential for more frequent reporting.

4.3 Fiduciary implications

- ❑ The laws and regulations affecting IT are broader in scope than those associated with other business operations and typically include a greater emphasis on intellectual property rights. Accordingly, the organisation needs to be sensitive to its exposure in these areas.
- ❑ Blurred organisational boundaries that arise as a result of e-business initiatives also have an effect on statutory compliance.
- ❑ Legislators are acutely aware of the shortcomings of existing statutes in addressing many of the challenges created in e-business. These include:
- ❑ the application to electronic communications of statutory provisions that mandate paper or paper-based concepts such as original writing and signature;
 - ❑ electronic formation of contracts
 - ❑ taxation - direct and indirect
 - ❑ admissibility of electronic evidence
 - ❑ authenticity and integrity of electronic communications
 - ❑ verification of dispatch
 - ❑ acknowledgement of receipt
 - ❑ management and retention of records; and
 - ❑ protection of the consumer.

4.4 Business

The introduction of e-business initiatives has resulted in a fundamental change in the way that business is conducted, with a greater degree of integration of processes in the supply chain than traditional systems ever allowed. This change has implications for internal control systems, as well as statutory compliance with legislation.

4.5 Technology

- ❑ Technology has had a fundamental impact on the way in which business is conducted and businesses are measured. All of the responsibilities to stakeholders that are part of good governance have a pronounced role in IT companies.
- ❑ Typically these organisations have traded at a significant earnings multiple because of their perceived growth potential. Employees are often attracted to these businesses with comparatively low fixed income because of the same growth expectations. Many stakeholders in these organisations do not have a full understanding of the true opportunities and threats facing the organisation. Consequently, the importance of the basic tenets of good

governance is particularly significant.

- ❑ Management needs to be completely honest and transparent in reporting on organisational results and prospects.

4.6 Cost / value relationship

- ❑ With shareholders widely viewed as the most important stakeholder group, management has to give due consideration to the cost/value relationship in considering IT strategy. While this is true for all business expenditure, the high rate of development and obsolescence in IT makes decisions on IT expenditure particularly important.
- ❑ IT is also an area where management is not traditionally able to apply cost/value principles as easily as in other areas of business. There is often a perception that IT expenditure is motivated by strategic instinct more than sound commercial principles. The challenge of rigorously applying basic economic evaluation criteria has to be embraced if the company is to discharge its performance obligation to stakeholders.

4.7 RECOMMENDATIONS

- ❑ Information technology has had a profound effect on processes within organisations. Accordingly, boards need to ensure that the necessary skills are in place to ensure that their responsibilities in respect of internal control systems are adequately discharged.
- ❑ Potential benefits that result from using technology to improve reporting and transparency should be embraced.
- ❑ Directors need to be mindful of the implications of blurred organisation barriers that arise as a consequence of e-business, to the extent that these result in their governance responsibilities extending beyond the traditional corporate boundaries. They need to ensure that the same levels of governance are applied in the companies with which they integrate along the supply chain.

Chapter 5 - Accessibility of Financial Information

I. Accessibility

- 1.1 Traditionally, the major channel of communication with the broad stakeholder and investor community has been the annual report, incorporating the financial statements. This is supported by other channels of communication.
- 1.2 Given the impact of technology on communication, there will be increased pressure to make information available electronically. While this represents an

opportunity to communicate in good time with stakeholders and the broader investor community, an important aspect will be to ensure the security of the data and/or information communicated by electronic means so that its integrity is not compromised through unauthorised means.

- 1.3 A clear distinction should be made between audited and unaudited financial information, as well as other non-financial information that has been externally validated. This would apply particularly to information that is released via websites.

1.4 RECOMMENDATION

Companies should make every effort to ensure that information is distributed via a broad range of communication channels, including the Internet; having regard for its security and integrity while bearing in mind the need that critical financial information reaches all shareholders simultaneously.

2. Summarised Financial Statements

- 2.1 Due to the cost involved in printing and distributing the annual financial statements to all shareholders, consideration should be given to amending the law to provide for the “electronic” distribution of summarised or abbreviated annual financial statements to all shareholders. The full set of financial statements would be retained and distributed on request.
- 2.2 IAS 34: “Interim Financial Reporting”, prescribes the minimum content of an interim financial report and prescribes the principles for recognition and measurement in complete or condensed financial statements for an interim period.

2.3 RECOMMENDATION

Subject to requisite changes to the law, companies may distribute summarised or abbreviated annual financial statements to all shareholders. This may be either in printed or electronic form. These statements should include a clear indication as to how and where the full set of annual financial statements can be obtained.

SECTION 7 - INTEGRATED SUSTAINABILITY REPORTING

Aspirational

1. Integrated sustainability and long term development

- 1.1 Internationally, the focus of a company and its societal role is widening. The trend is for companies to formulate objectives of a non-financial nature towards the achievement of balanced economic, social and environmental performance now generally referred to as the “triple-bottom-line”.
- 1.2 In order to set non-financial objectives and policies a company identifies its non-financial or “off balance sheet” assets, for example its reputation, and determines the extent to which these assets will contribute towards the “sustainable development” of the company, and protect the company’s ability to create future wealth.
- 1.3 It is in the long term economic interest of a company to conduct itself as a “responsible corporate citizen”, and, to act in a manner which is non-exploitative, non-discriminatory and respectful of human rights. Failure to adopt such policies will hinder its development and participation in an international context which is increasingly sensitive to sound corporate values, good practice and respect for the environment.
- 1.4 Integrated sustainability reporting primarily looks at policies that focus on the social context, physical environment and community within which the company operates with the aim of achieving long term objectives and social aspirations as defined, recognised and formulated by the company.
- 1.5 Integrated sustainability reporting differs from the more traditional financial reporting. Whereas financial reporting provides a record of the past performance of the company has been, integrated sustainability reporting provides an indication of past achievements of a non-financial nature as well as the aims of the enterprise in the long run and its plans on how to get there.

2. Code of ethics

- 2.1 When adopting a code of ethics the company should primarily address issues relating to ethical practices of relevance to the particular circumstances of its business environment, including the practical application of its corporate values and the concepts of honesty and integrity. The code should make clear what is acceptable and unacceptable practice and should be easy to communicate to all

stakeholders, especially the company's officers and employees who will rely on it to guide them in their dealings.

- 2.2 The code of ethics should refer to the principles, norms and standards that the company wants to promote and integrate within its corporate culture in the conduct of its activities, including internal relations, interaction and dealings with external stakeholders.
- 2.3 In the formulation of its code of ethics, a company should consider the specific circumstances and identify risk areas within the particular industry in which it operates. Where necessary, reference should be made to relevant laws and regulations that apply to the company's activities and services.
- 2.4 Companies should monitor and evaluate compliance with established ethical principles and standards on a regular basis. They should, when necessary, reconsider the nature of their relationship with stakeholders in terms of ethical implications.
- 2.5 A company should promote awareness, both internally and externally, and emphasise the importance for the reputation of the company of adherence to exemplary standards of conduct and ethical practice.

3. Stakeholder Relations

- 3.1 The stakeholder in modern Mauritius can be defined as follows:
 - ❑ shareholders as providers of capital;
 - ❑ employees and officers of the enterprise;
 - ❑ parties that contract with the enterprise;
 - ❑ non-contractual parties, including civil society, local communities, non-governmental organisations, trade unions and other special interest groups whose concerns may be issues such as customer protection, market stability and the environment;
 - ❑ the State as a policy maker, legislator and regulator.
- 3.2 A company should take into consideration the interest of all stakeholders such as its customers, employees and suppliers when implementing the company's strategies. The company's policies and values should, as far as possible, be communicated to all stakeholders so as to build a mutually beneficial relationship. International experience suggests that this inclusive approach favours sustained business success and steady, long-term growth in shareholder value.

- 3.3 The company must ensure that an appropriate balance is maintained between the interests of stakeholders and the interests of the company. It is now agreed that there is a need to weigh the shareholders' expectations of maximum returns against other priorities which are the interests of those with whom the company is contractually engaged as well as the concerns of its immediate community and society at large.
- 3.4 Companies should consider that although responsibilities of certain stakeholders such as its officers might be confined to the interests of the corporation, companies are responsible to society as regards their social role and functions. Accountability to the company does not preclude responsibility to society.

4. Safety, Health and Environment

- 4.1 Companies should develop and implement safety, health and environment policies and practices to at least comply with existing legislative and regulatory frameworks.
- 4.2 Companies should be familiar with relevant provisions of the labour laws, the Occupational Safety, Health and Welfare Act, the Environment Protection Act and any other legislation applicable to the relevant industry. This does not imply that companies should only seek to abide by minimum legal requirements. They should instead aim for best practice in line with the company's corporate values and long term objectives.
- 4.3 Companies should undertake health and safety risk identification and assessments leading to sound risk management strategies within the company's particular field of activity.

5. Special circumstances in Mauritius

5.1 Environment

- 5.1.1 Mauritius is an island which is small, densely populated, geographically isolated and is widely held to be extremely beautiful. Economic activities can thus have a profound impact on the environment. Environmental issues are therefore particularly important in Mauritius and companies need not only be aware of the importance of these issues but should also be actively involved in managing their activities so as to minimise any negative impact on the environment.
- 5.1.2 Tourism, one of the country's main industries, is the example of dependence on the natural environment. Its sustained development depends on the country's

ability to preserve the environment. This may involve consultation and communication between economic operators, whose activities may also have adverse impact on the ecosystem. Such consultation should be done with a view to adopt best practices in order to protect environmental assets.

5.1.3 Companies should liaise with the authorities and enforcement agencies, with the participation of stakeholders, to ensure that all is done to protect the environment. Where possible, they should lead and promote environmental awareness in the regions where they operate.

6. Social issues

6.1 While the people of Mauritius are of diverse ethnic origins and religions, they are unanimous in wishing to create and sustain a unified nation which also respects the specificities of different groups. Companies play an important role in sustaining social harmony, especially through their employment policies and their ownership structure.

6.2 Employment

A common public perception is that employment and promotion within the private and public sectors are linked to the “community” of the employee and that of the company’s shareholders. This perception could be redressed by the application of a code of ethics in the Code of Corporate Governance, which commits the company to merit in recruitment and promotion.

6.3 Ownership

The shareholding of the corporate sector in Mauritius is concentrated in a small percentage of the population. Such concentration exists in many other economies and may not be negative for economic growth, but a wider ownership is desirable in Mauritius. Such a change would provide the corporate sector with greater support from the Mauritian society as a whole, and allow more people from all communities to be shareholders in the economy. Pension funds should be encouraged to invest in the stock market as this is one of the ways to obtain wider ownership.

SECTION 8 - COMMUNICATION AND DISCLOSURE

1. Communicating on operational and day-to-day matters is a management task.
2. Communicating with shareholders, the authorities, the regulators and the media is the duty of both the board and the management, depending on the circumstances and the issues. The board must agree and clearly lay out the division of responsibilities. Boards should also consider creating an investor relations and complaints position or committee. The company secretary should perform this task, unless a specific committee or appointment has been made, in which case the company secretary should be a member of that committee. Analyst meetings with market participants should also be encouraged.
3. The items laid out below are over and above what may already be required in International Accounting Standards (IAS) and Listing Rules or any relevant legislation. The quality of a company's communication and disclosure can be seen as a measure of the importance that the company gives to good corporate governance in general.
4. Commercially sensitive information is the obvious exception to the spirit of openness and transparency that should prevail. It is not expected that the company disclose commercially sensitive information. However, the board must weigh up the commercial benefits of non-disclosure against the communication needs. Potentially embarrassing information should not be kept secret if it is relevant to an informed assessment of the company.
5. It must be remembered that disclosure is important to all stakeholders, be they shareholders, bankers, suppliers or personnel.
6. Communication is vital to ensure that the company is seen as valuing its role in society. It is not disclosure for disclosure's sake that is important. The board must judge the relevance of the information appropriate for disclosure. It must also act in accordance with any relevant laws or legislation preventing such disclosure. In this case, however, it would be desirable for the board to explain the reasons for non-disclosure clearly and unambiguously.
7. There should be a separate corporate governance section in the annual report. Amongst other items, the company should disclose the following:

7.1 Cascade holding structure up to and including the ultimate holding company. This

should include the names of common directors at each level and the shareholding percentages at each intermediate level.(The aspiration is for full disclosure, including societe's etc, up to the ultimate beneficial owner)

- 7.2 List of shareholders holding more than 5% of the company.
- 7.3 Dividend policy
- 7.4 Directors resume, and the category (i.e. independent etc.) into which they fall. The number of other directorships (in listed companies) held should also be disclosed. Finally, the number of shares held by the director, both directly and indirectly in the company, should be disclosed.
- 7.5 Related party transactions between the company or any of its subsidiaries or associates and a director, chief executive, controlling shareholder or companies owned or controlled by a director, chief executive or controlling shareholder.
- 7.6 With regard to directors dealings in the shares of their own company, a statement should be made to the effect that the directors follow the principles of the model code on securities transactions by directors as detailed in Appendix 6 of the Mauritius Stock Exchange listing rules. Disclosure of shares purchased and sold over the period should be made.
- 7.7 Material clauses of the company's constitution (i.e. ownership restrictions, pre-emption rights etc)
- 7.8 Important aspects of any shareholders agreement which affects the governance of the company by the board (i.e. if a third party is allowed to nominate some directors or if there is an agreement to rotate the chairmanship between partners etc.)
- 7.9 Important aspects or terms of any management agreement which third parties may have with the company or its subsidiaries, particularly those where the third party is a director, or a company owned or controlled by a director.
- 7.10 Aggregate remuneration figures plus bands (as per Section 2 chapter 4, clause 17). These figures should include amounts earned from subsidiaries.(Aspiration: That total detailed remuneration per director is disclosed)

- 7.11 Statement of remuneration philosophy (as per Section 2 chapter 4, clause 17.1)
- 7.12 Main terms of reference of board committees as well as the composition of committees. The number of times in the year the board and committees met, including attendance details for directors, must also be disclosed.
- 7.13 Identification of key risks for the company, including a brief discussion of how they are managed.
- 7.14 Details of any Employee Share Option Plan.
- 7.15 A detailed timetable regarding important events including reporting dates, dividend declaration and payment dates, and Meetings of Shareholders etc.
- 7.16 Share price information. Directors should demonstrate concern and interest with respect to the share price.
- 7.17 Charitable donations, including the number of different recipients.
- 7.18 Political donations, the aggregate amount.
- 7.19 Its policies and practices as regards social, ethical, safety, health and environmental issues.

8. Recommendations

- ❑ The scope of the Mauritius Stock Exchange listing rules with regard to related party transaction requirements should be widened, with more emphasis placed on disclosure.
- ❑ The model code for securities dealings by directors of listed companies as detailed in appendix 6 of the Stock Exchange listing rules should be reviewed to include a provision for such dealings reported to the Stock Exchange to be published in the 'Bulletin Officiel' within two weeks of dealing.
- ❑ The Registrar of Companies must take much sterner action against late filing of returns by all companies. Although provisions for fining and striking off exist, these must be used much more frequently. There is a serious concern that the level of

disclosure required of companies as outlined in this section can in some instances hand a commercial advantage to smaller competitors. This can be limited if there is stricter enforcement of the filing requirement as some smaller companies have been known to file up to three years late.

MODEL TERMS OF REFERENCE FOR BOARD COMMITTEES

Note: The following specimen terms of reference for typical board committees are not intended to be definitive nor to specifically represent any particular position of the Mauritius Committee on Corporate Governance, but are provided as guidance on precisely the terms necessary to meet its particular requirements.

I. Audit Committee

I.1 Constitution

Every company should establish a Committee to be known as the Audit Committee (“Committee”) to assist the board in discharging its duties relating to the safeguarding of assets, the operation of adequate systems, control processes and the preparation of accurate financial reporting and statements in compliance with all applicable legal requirements and accounting standards. The Committee should not perform any management functions or assume any management responsibilities. It provides a forum for discussing business risk and control issues for developing relevant recommendations for consideration by the board. The Committee should mainly make recommendations to the board for its approval or final decision. The membership, resources, responsibilities and authorities (composition, functions and operation) of the Committee to perform its role effectively, is stipulated in these terms of reference which may be amended by the board as and when required. The Committee is constituted in terms of the requirements of sound corporate governance practices and operates within that framework.

I.2 Membership

- The members shall consist of not less than three directors appointed by the board, the majority of whom shall be non-executive directors and (where possible) shall be independent non-executive directors.
- The board shall appoint a chairperson from the non-executive members of the Committee and determine the period for which he or she shall hold office. The chairperson of the board shall not be eligible to be appointed as chairperson of the Committee.
- The board shall have the power at any time to remove any members from the Committee and to fill any vacancies created by such removal.
- The company secretary shall be the secretary of the Committee.

I.3 Responsibilities of the committee

- Auditors and external audit
 - The Committee may be requested to recommend to the board which firm(s) should be appointed as external auditor(s). Several firms should be screened and the Committee should obtain written or verbal proposals to enable it to arrive at its recommendation.
 - The Committee will:
 - i. Evaluate the independence and effectiveness of the external auditor(s) and consider any non-audit services rendered by such auditors as to whether this substantively impairs their independence;
 - ii. Evaluate the performance of the external auditor(s);
 - iii. Consider and make recommendations on the appointment and retention of the external auditor(s), and any questions of resignation or dismissal of the auditor(s);
 - iv. Discuss and review, with the external auditor(s) before the audit commences, the auditor(s) engagement letter, the terms, nature and scope of the audit function, procedure and engagement, the audit fee, and ensure co-ordination (where more than one audit firm is involved) and maintenance of a professional relationship between them;
 - v. Negotiable procedures, subject to agreement, beyond minimum statutory and professional duties - there are certain minimum non-negotiable procedures required from the external auditors;
 - vi. Agree to the timing and nature of reports from the external auditor(s);
 - vii. Consider any problems identified in going concern or statement of internal control;
 - viii. Make suggestions as to problem areas that the audit can address;
 - ix. Consider any accounting treatments, significant unusual transactions, or accounting judgements, that could be contentious;
 - x. Identify key matters arising in the current year's management letter and satisfy itself that these are being properly followed up;
 - xi. Consider whether any significant ventures, investments or operations are not subject to external audit;
 - xii. Review overall audit role, explore objectives, minimise duplication, discuss implications of new auditing standards and ensure that the external audit fee will sustain a proper audit and provide value for money;
 - xiii. Agree to the timing and nature of reports from the external auditor(s); and

xiv. Obtain assurance from the external auditor(s) that adequate accounting records are being maintained.

□ Financial statements

The Committee will examine and review the annual financial statements, the interim reports, the accompanying reports to shareowners, the preliminary announcement of results and any other announcement regarding the company's results or other financial information to be made public, prior to submission and approval by the board, focussing particularly on:

- The implementation of new systems;
- Tax and litigation matters involving uncertainty;
- Any changes in accounting policies and practices;
- Major judgmental areas;
- Significant adjustments resulting from the audit;
- The basis on which the company has been determined a going concern;
- Capital adequacy;
- Internal control;
- Compliance with accounting standards, local and international, compliance with stock exchange and legal requirements;
- The efficiency of major adjustments processed at year end;
- Compliance with the financial conditions of loan covenants; and
- Reviewing special documents such as prospectuses as and when prepared.

□ Internal control and internal audit

An important role of the Committee will be to monitor and supervise the effective function of the internal audit, ensuring that the roles and functions of the external audit with internal audit are sufficiently clarified and co-ordinated to provide an objective overview of the operational effectiveness of the company's systems of internal control and reporting. This will include:

- Evaluating the performance of internal audit;
- Reviewing the internal audit function's compliance with its mandate as approved by the Committee;
- Reviewing the effectiveness of the company's systems of internal control, including internal financial control and business risk management and maintaining effective internal control systems;
- Considering the appointment, dismissal or re-assignment of the head of the internal audit function;
- Reviewing and approving the internal audit charter, internal audit plans and internal audit's conclusions with regard to internal control;

- Reviewing the adequacy of corrective action taken in response to significant internal audit findings;
 - Reviewing significant matters reported by the internal audit function;
 - Reviewing the objectives and the operations of the internal audit function;
 - Assessing the adequacy of performance of the internal audit function, and the adequacy of available internal audit resources;
 - Reviewing the co-operation and co-ordination between the internal and external audit functions and co-ordinating the formal internal audit work plan with external auditors to avoid duplication of work;
 - Reviewing significant differences of opinion between management and the internal audit function;
 - Maintaining proper and adequate accounting records;
 - Evaluating the independence and effectiveness of the internal auditors;
 - Controlling the overall operational and financial reporting environment;
 - Safeguarding company's assets against unauthorised use or disposal;
 - Directing and supervising investigations into matters within its scope, for example, evaluations of the effectiveness of the company's internal control, cases of employee fraud, misconduct or conflict of interest.
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- **Ethics**

There are a number of statutory, common law and other requirements that cover the ethical behaviour of directors, managers and officers of companies. In addition, the company can establish a clearly defined and documented code of ethics. The directors must declare the nature and extent of their interest in contracts.
 - The Committee will be responsible for:
 - i. Monitoring the ethical conduct of the company, its executives and senior officials;
 - ii. Reviewing any statements on ethical standards or requirements for the company and assisting in developing such standards and requirements;
 - iii. Compliance with the requirements of the articles of association;
 - iv. Compliance with the law and regulations of any other applicable statute and of controlling bodies;
 - v. Identification of any violations of ethical conduct;
and
 - vi. Environmental and social issues.
 - The Committee will also give recommendations on any potential conflict of interest or questionable situations of a material nature.

I.4 Reporting and accountability

- The chairperson of the Committee shall account to the board for its activities and make recommendations to the board concerning the adoption of the annual and interim financial statements and any other matters arising from the above responsibilities.
- The chairperson (or, in his/her absence, an alternate member) of the Committee shall attend the annual general meeting to answer questions concerning matters falling within the ambit of the Committee.

I.5 Activities of the Committee

In discharging its responsibilities, the Committee will:

- Financial statements
 - Review the quality of financial information, interim and financial statements and other public and regulatory reporting;
 - Review the annual report and accounts taken as a whole, to ensure they present a balanced and understandable assessment of the position, performance and prospects of the company;
 - Review the external auditor(s) proposed audit certificate;
 - Discuss problems and reservations arising from the audit, and any matters the auditor(s) may wish to discuss (in the absence, where requested by the Committee, of executive directors, and any other person who is not a member of the Committee);
 - Review the external auditors' management letter and management response; and
 - Review the credibility, independence and objectivity of the auditor(s), taking into account their audit and non-audit fees. Where the auditors also supply a substantial volume of non-audit services to the company, the Committee should keep the nature and extent of such serves under review, seeking to balance the maintenance of objectivity with value for money.

- Internal control and internal audit
 - Review the company's statement on internal control systems prior to endorsement by the board, and in particular to review:
 - i. the procedures for identifying business risks and controlling their impact on the company;
 - ii. the company's policies for preventing or detecting fraud;
 - iii. the company's policies for ensuring that the company complies with relevant regulatory and legal requirements;
 - iv. the operational effectiveness of the policies and procedures;

- consider whether or not the objectives, organisation, staffing plans, financial budgets, audit plans and standing of the internal audit function provide adequate support to enable the Committee to meet its objectives;
- review the results of work performed by the internal audit function in relation to financial reporting, corporate governance, internal control, and any significant investigations and management responses;
- review co-ordination between the internal audit function and the external auditors and deal with any issues of material or significant dispute or concern;
- review such significant transactions not directly related to the company's normal business as the Committee might deem appropriate;
- review significant cases of employee conflicts of interest, misconduct or fraud, or any other unethical activity by employees or the company;
- review the controls over significant risks; and
- consider other relevant matters referred to it by the board.
- The Committee, in carrying out its duties under these terms of reference, will have due regard for the principles of governance and code of best practice as contained in the Mauritius Report on Corporate Governance 2003.

1.6 Meetings

- Meetings of the Committee will be held as frequently as the Committee considers appropriate, but it will normally meet not less than four times a year. The board or any member thereof, including members of the Committee, the external auditors, and the head of internal audit may call further meetings.
- Reasonable notice of meetings and the business to be conducted shall be given to the members of the Committee, the chairperson of the board, the chief executive, executives and managers responsible for finance, the head of internal audit and the external audit partners to make proposals as necessary.
- The quorum for decisions of the Committee shall be any two members of the Committee present throughout the meeting of the Committee.
- The finance director, senior audit partner in charge of the external audit and head of internal audit shall be in attendance at meetings of the Committee and shall have unrestricted access to the chairperson or any other member of the Committee as is required in relation to any matter falling within the remit of the Committee.
- The chairperson, at his/her discretion, may invite other executives to attend and to be heard at meetings of the Committee.
- No attendee shall have a vote at meetings of the Committee.

- ❑ The minutes of all meetings of the Committee, or summaries thereof, shall be submitted to the board at the immediate following board meeting, the agenda for each such board meeting shall provide an opportunity for the chairperson of the Committee to report orally on any matters of importance as well as on the Committee's findings and shall recommend actions.

1.7 Proceedings

- ❑ Unless varied by these terms of reference, meetings and proceedings of the Committee will be governed by the company's articles of association regulating the meetings and proceedings of directors and committees.
- ❑ The committee secretary shall take minutes of meetings. These shall be reviewed and approved by the members of the Committee.

1.8 Authority of the Committee and resources available to it

The Committee, in carrying out its tasks under these terms of reference:

- ❑ Is authorised to investigate any activity within its terms of reference;
- ❑ May, at the discretion of the Committee, require other employees of the company to attend meetings or parts of meetings;
- ❑ May consult with and seek any information it requires from any employees, and all employees shall be required to co-operate with any request made by the Committee in the course of its duties;
- ❑ Shall at least once a year meet with external auditors without any executive member of the board in attendance; and
- ❑ Shall at least once a year meet with the internal auditors without any executive member of the board in attendance.

1.9 Remuneration

- ❑ Having regard for the functions performed by the members of the Committee in addition to their functions as directors and in relation to the activities of the Committee and pursuant to the specific power conferred upon the board by the articles of association of the company, members of the Committee shall be paid such special remuneration in respect of their appointment as shall be fixed by the board.
- ❑ The chairperson of the Committee shall, in addition to his or her remuneration as member, receive a further sum as determined by the board.
- ❑ Such special remuneration in terms hereof shall be in addition to the annual fees payable to directors.

1.10 General

- ❑ The Committee, in carrying out its tasks under these terms of reference, may obtain such outside or other independent professional advice as it considers

necessary to carry out its duties.

- ❑ The board shall ensure that the Committee will have access to professional advice both inside and outside the company in order for it to perform its duties.
- ❑ These terms of reference may be amended as required, subject to the approval of the board.

2. Remuneration Committee

2.1 Constitution

Every company should establish a formal and transparent procedure for developing a policy on executive remuneration and for fixing the remuneration packages of individual directors, within agreed terms of reference, to avoid potential conflicts of interest. A formal appointed remuneration committee of the board, composed wholly or substantially of non-executive directors, with access to independent surveys and consultants, can be a useful mechanism for facilitating the determination of all the essential components of remuneration and establishing remuneration credibility with shareowners. The Committee's function in relation to remuneration of non-executives, for reason of self-interest, should be limited to making recommendations to the full board and, as applicable, to the shareowners. The financial reward offered by the company should be sufficient to attract people of the required calibre. Failure to attract the right people will have a negative impact on the efficiencies of the company and, consequently, on the returns to its shareowners.

2.2 Membership

- ❑ The Remuneration Committee ("Committee") shall consist of not less than three directors appointed by the board of directors ("board"), all of whom shall be non-executive directors and the majority deemed to be independent.
- ❑ The board shall appoint the Committee chairperson and determine the period for which he or she shall hold office. The chairperson of the board, if he or she is an independent non-executive director, may be eligible to be appointed as chairperson of the Committee.
- ❑ The Committee shall nominate a committee secretary.

2.3 Terms of Reference

- ❑ The role of the Committee will be to work on behalf of the board and be responsible for its recommendations and will, within these terms of reference:
- ❑ Determine, agree and develop the company's general policy on executive and senior management remuneration;
- ❑ Determine specific remuneration packages for executive directors of the company, including but not limited to basic salary, benefits in kind, any annual

bonuses, performance-based incentives, share incentives, pensions and other benefits;

- ❑ Determine the level of non-executive and independent non-executive fees to be recommended to the shareholders at the Meeting of Shareholders;
- ❑ Determine any criteria necessary to measure the performance of executive directors in discharging their functions and responsibilities.
- ❑ The Committee will aim to give the executive directors every encouragement to enhance the company's performance and to ensure that they are fairly, but responsibly rewarded for their individual contributions and performance.
- ❑ The Committee will review (at least annually) the terms and conditions of executive directors' service agreements, taking into account information from comparable companies where relevant.
- ❑ The Committee will determine any grants to executive directors and other senior employees made pursuant to the company's executive share scheme(s).
- ❑ The Committee will be kept informed of relevant information for other group executives and senior managers.
- ❑ The Committee will not determine the remuneration or terms of any consultancy agreement of any non-executive director, although it may make recommendations to the board if requested.
- ❑ The Committee will co-ordinate its activities with the chairperson of the board and the chief executive as well as consult them in formulating the Committee's remuneration policy and when determining specific remuneration packages.
- ❑ The broad framework and cost of executive remuneration should be a matter for the board on advice of the Committee.
- ❑ The Committee may wish to consult other non-executive directors in its evaluation of the chairperson of the board and the chief executive.
- ❑ The Committee will have due regard for the principles of governance and code of best practice.
- ❑ The Committee will liaise with the board in relation to the preparation of the Committee's report to shareowners as required and will consider each year (and minute its conclusions) whether the circumstances are such that the annual general meeting of the company should be invited to approve the remuneration policy set out in the Committee's report.

2.4 Guidelines for components of remuneration

As part of achieving and maintaining reasonable, acceptable levels of remuneration, the Committee is encouraged to consider the following guidelines:

- ❑ **Base Fees**
 - ❑ The general level of hourly or daily rates of fees earned by directors in their

- professional capacities (e.g. as lawyers, accountants, executives, management consultants);
 - The hours spent in travel and preparation for meetings, as well as actual attendance;
 - While indirect costs pertinent to the role of directors are separately reimbursed, a fair and reasonable allowance for any direct costs should, however, be made in the base fee;
 - In the case of companies of unusual size or complexity, a comparison can be made and a relativity established with the level of the chief executive officer's remuneration disregarding any incentive package;
 - Company performance (i.e. profit, dividend and share price) is not considered to be of special significance for the purpose of setting a base fee; and
 - The fee must be fair.
- Forms of payment
 - Cash;
 - Shares or share options - this can have the advantage of aligning remuneration with the interests of the shareowners by increasing the focus of directors on company performance and share value. Where share options are to be offered to non-executive directors, shareowners must approve this offer in a general meeting prior to the allocation being implemented.
 - Reviews

The dates for review would also be an appropriate time to undertake evaluations of the performances of individual directors.
 - Equal sharing

In line with the principle of collective responsibility, base fees should, wherever possible, be shared equally except in the case of additional responsibility or workload such as the chairperson and deputy chairperson. The level will depend on the extent of their involvement with the company.
 - Supplementary fees

Supplementary work resulting from the membership of board committees (e.g. audit, remuneration, etc) should be spread as evenly as possible among board members and recognised in the level of the base fee. If supplementary fees are charged separately, they may be calculated at an hourly or daily rate rather than annually, and should be subject to review in the same manner as base fees.

- Reimbursement of expenses
 - Directors should ensure that they are reimbursed for all direct and indirect expenses reasonably and properly incurred (e.g. office, secretarial, accommodation, travelling expenses).
 - Accommodation and travelling expenses should include those incurred in attending all meetings of directors and board committees, shareowners' meetings or otherwise in connection with company business.
 - Where a director uses personal transport, travelling expenses should include a realistic kilometric allowance.
 - Expenses applicable to multi-directorships should be apportioned on a fair and reasonable basis, having regard for the time spent on each directorship, including travelling costs.
 - Directors should ensure that the company's articles of association do not restrict the reimbursement of expenses.

- Directors' and Officers' liability insurance
 - Directors should, wherever practicable, arrange for such insurance to be taken out, and for such insurance to be paid by the company.
 - The cover provided by the insurance should be as extensive as permitted by law, including all risks relating to legal costs.
 - Directors should ensure that the payment of insurance cover is authorised by the company's articles of association.

- Payments on termination
 - The payment of retirement benefits to executive directors is an accepted practice in many companies and should be determined by the company's particular circumstances. Alternatively, a termination payment can be negotiated as part of their overall remuneration package.
 - If retirement benefits are paid it is recommended that unless authorised otherwise by shareowners, the lump sum amount or the base for the pension should not exceed the total remuneration of the director in his or her capacity as a director in any three years chosen by the committee.
 - The Committee should ensure that the payments or benefits of any nature on termination are not restricted by the company's articles of association but are fair to the company and can be adequately justified to shareowners if called on to do so.

- Flexibility

All the components of remuneration are, in the normal course, a matter of negotiated commercial contract and, accordingly, should be sufficiently flexible to suit each individual circumstance.

2.5 Shareholder acceptance

- ❑ Every effort should be made to promote acceptance of the necessity for, and benefits of, a realistic realignment of director remuneration.
- ❑ Requirements to disclose remuneration in the annual report is seen as a constructive opportunity to communicate with shareholders on all aspects of remuneration.
- ❑ The information disclosed could in relation to each director, usefully include such matters as a breakdown of remuneration into its individual components, the remuneration package as a total cost to the company, the number of meetings attended and, if practicable, the number of hours worked.
- ❑ The adoption by companies of formal remuneration policies, encompassing such matters as the philosophy behind remuneration assessments, the criteria for remuneration setting, the remuneration components, the composition and role of the Committee, and the disclosure of such policies to shareholders, can also indicate to the public a responsible approach by companies to remuneration issues.

2.6 Meetings

- ❑ Meetings of the Committee will be held as the Committee deems to be appropriate, however, the Committee should meet at least once each year. Further meetings may be called by the chairperson of the Committee or any member of the Committee.
- ❑ The notice of each meeting of the Committee, confirming the venue, time and date and enclosing an agenda of items to be discussed, shall other than under exceptional circumstances, be forwarded to each member of the Committee not less than four working days prior to the date of the meeting.
- ❑ The quorum for decisions of the Committee shall be any two members present who shall vote on the matter for decision.
- ❑ The Committee shall normally invite the chairperson of the board and the chief executive to attend meetings to discuss the performance of other executive directors and to make proposals as necessary.
- ❑ The chairperson (or in his/her absence, an alternative member) of the Committee shall attend the annual general meeting and be prepared to answer questions concerning the appointment of executive and non-executive directors and maintain contact as required with the company's principal shareholders about the appointment of executive and non-executive directors in the same way as for other matters.

2.7 Proceedings

- ❑ Unless varied by these terms of reference, meetings and proceedings of the Committee will be governed by the company's articles of association regulating the meetings and proceedings of directors and committees.
- ❑ The committee secretary shall take minutes of meetings. Any director may, provided that there is no conflict of interest and with the consent of the chairperson, obtain copies of the Committee's minutes.
- ❑ No Committee attendee shall participate in any discussion or decision in respect of their own remuneration.

2.8 Remuneration

- ❑ Having regard for the functions performed by the members of the Committee in addition to their functions as directors in relation to the activities of the Committee, and pursuant to the specific power conferred upon the board by the articles of association of the company, members of the Committee may be paid such special remuneration in respect of their appointment as shall be fixed by the board.
- ❑ Such special remuneration shall be in addition to the annual fees payable to directors.

2.9 General

- ❑ The Committee, in carrying out its tasks under these terms of reference, may obtain such outside or other independent professional advice as it considers necessary to carry out its duties.
- ❑ The board will ensure that the Committee will have access to professional advice both inside and outside the company in order for it to perform its duties.
- ❑ These terms of reference may from time to time be amended, as required, subject to the approval of the board.

3. Nomination Committee

3.1 Constitution

Unless the board is small, every company should establish a nomination committee, with a clear remit and whose authority is well accepted, to make recommendations to the board on all new board appointments. A formal process of reviewing the balance and effectiveness of the board, identifying the skills needed and those individuals who might best be seen to be providing such skills in a fair and thorough manner, is increasingly required as an appropriate mechanism for ensuring that the board remains effective and focused.

3.2 Membership

- ❑ The Nomination Committee (“Committee”) shall consist of not less than three directors appointed by the board of directors (“board”), all of whom shall be non-executive directors and the majority deemed independent.
- ❑ The chairperson of the Committee shall be the chairperson of the board if he or she is an independent non-executive director or, failing which, an independent non-executive director shall be appointed chair.
- ❑ The Committee shall nominate a committee secretary.

3.3 Terms of reference

- ❑ The Committee shall make recommendations to the board on the appointment of new executive and non-executive directors, including making recommendations on the composition of the board in general and the balance between executive and non-executive directors appointed to the board.
- ❑ The Committee shall regularly review the board structure, size and composition and make recommendations to the board with regards to any adjustments that are deemed necessary.
- ❑ The Committee shall be responsible for identifying and nominating candidates for the approval of the board to fill board vacancies as and when they arise, as well as put in place plans for succession, in particular for the chairperson and chief executive.
- ❑ The Committee shall make recommendations to the board for the continuation (or not) in services of any director who has reached the age of 70.
- ❑ The Committee shall recommend directors who are retiring by rotation, for re-election.
- ❑ The Committee will have due regard for the principles of governance and code of best practice.
- ❑ The Committee will liaise with the board in relation to the preparation of the Committee’s report to shareholders, as required.

3.4 Meetings

- ❑ Meetings of the Committee will be held as the Committee deems appropriate. However, the Committee should meet at least once each year. Meetings should be organised so that attendance is maximised. The chairperson of the Committee or any member of the Committee may call a meeting at any other time.
- ❑ The notice of each meeting of the Committee confirming the venue, time and date and enclosing an agenda of items to be discussed shall, other than under exceptional circumstances, be forwarded to each member of the Committee not less than four working days prior to the date of the meeting.

- ❑ The quorum for decisions of the Committee shall be any two members present throughout the meeting who shall vote on the matter for decision.
- ❑ The chairperson (or in his/her absence, an alternative member) of the Committee shall attend the annual general meeting and be prepared to answer questions concerning the appointment of executive and non-executive directors.

3.5 Proceedings

- ❑ Unless varied by these terms of reference, meetings and proceedings of the Committee will be governed by the company's articles of association regulating the meetings and proceedings of directors and Committees.
- ❑ The committee secretary shall take minutes of meetings. Minutes of all meetings shall be circulated to all the members of the Committee and may also, if the chairperson of the Committee so decides, be circulated to other members of the board. Any director may, provided that there is no conflict of interest and with the agreement of the chairperson, obtain copies of the Committee's minutes.

3.6 Remuneration

- ❑ Having regard for the functions performed by the members of the Committee in addition to their functions as directors in relation to the activities of the Committee, and pursuant to the specific power conferred upon the board by the articles of association of the company, members of the Committee may be paid such special remuneration in respect of their appointment as shall be fixed by the board.
- ❑ Such special remuneration shall be in addition to the annual fees payable to directors.

3.7 General

- ❑ The Committee, in carrying out its tasks under these terms of reference, may obtain such outside or other independent professional advice as it considers necessary to carry out its duties.
- ❑ The board will ensure that the Committee will have access to professional advice both inside and outside the company in order for it to perform its duties.
- ❑ These terms of reference may be amended as required, subject to the approval of the board.

4. Board Risk Committee

4.1 Constitution

The quality, integrity and reliability of the company's risk management is delegated to the Board Risk Committee ("Committee"). The objective of the Committee is to assist

the board of directors (“board”) in the discharge of its duties relating to corporate accountability and the associated risk in terms of management, assurance and reporting. The Committee will review and assess the integrity of the risk control systems and ensure that the risk policies and strategies are effectively managed. The Committee will set out the nature, role, responsibility and authority of the risk management function within the company and outline the scope of risk management work. The Committee will monitor external developments relating to the practice of corporate accountability and the reporting of specifically associated risk, including emerging and prospective impacts. The Committee provides an independent and objective oversight and review of the information presented by management on corporate accountability and specifically associated risk, also taking account of reports by management and the Audit Committee to the board on financial, business and strategic risk.

4.2 Membership

- ❑ The Committee shall consist of an equal number of executive and non-executive directors appointed by the board.
- ❑ At least one member of the Committee shall be a non-executive director sitting on the Audit Committee.
- ❑ The board shall appoint the Committee chairperson, a non-executive director, and determine the period for which he/she shall hold office. The chairperson of the board shall not be eligible to be appointed as chairperson of the Committee.
- ❑ The Committee shall nominate a committee secretary.

4.3 Terms of reference

- ❑ The Committee together with the company’s legal advisor, will review any legal matters that could have a significant impact on the company’s business.
- ❑ The Committee will review executive management reports detailing the adequacy and overall effectiveness of the company’s risk management function and its implementation by management, and reports on internal control and any recommendations, and confirm that appropriate action has been taken.
- ❑ The Committee will review the risk philosophy, strategy and policies recommended by the executive management and consider reports by the executive management. The Committee will ensure compliance with such policies, and with the overall risk profile of the company. Risk in the widest sense includes market risk, credit risk, liquidity risk, operation risk and commercial risk, which together cover detailed combined risks such as:
 - ❑ Interest rate risk;
 - ❑ Country risk;
 - ❑ Counterpart risk, including provisioning risks;

- ❑ Currency and foreign exchange risk;
 - ❑ Technology risk;
 - ❑ Price risk;
 - ❑ Disaster recovery risk;
 - ❑ Operational risk;
 - ❑ Prudential risk;
 - ❑ Reputational risk
 - ❑ Competitive risk;
 - ❑ Legal risk
 - ❑ Compliance and control risks;
 - ❑ Sensitivity risks, e.g. environmental, health and safety;
 - ❑ Concentration of risks across a number of portfolio dimensions;
 - ❑ Investment risk;
 - ❑ Asset evaluation risk; and
 - ❑ Other risks appropriate to the business which may be identified from time to time.
-
- ❑ The Committee will review the adequacy of insurance coverage.
 - ❑ The Committee will review risk identification and measurement methodologies.
 - ❑ The Committee will monitor procedures to deal with and review the disclosure of information to clients.
 - ❑ The Committee will have due regard for the principles of governance and codes of best practice.
 - ❑ The Committee will liaise with the board in respect of the preparation of the Committee's report to shareholders as required.

4.4 Meetings

- ❑ Meetings of the Committee will be held as the Committee deems appropriate. However the Committee should meet at least twice a year. Meetings should be organised so that attendance is maximised. The chairperson of the Committee or any member of the Committee may call a meeting at any other time.
- ❑ The notice of each meeting of the Committee, confirming the venue, time and date and enclosing an agenda of items to be discussed shall, other than under exceptional circumstances, be forwarded to each member of the Committee not less than seven working days prior to the date of the meeting.
- ❑ The quorum for decisions of the Committee shall be any three members present and voting on the matter for decision.
- ❑ The chairperson, at his/her discretion, may invite such executives and senior

management as appropriate, to attend and be heard at meetings of the Committee. In addition, the finance director, chief executive officer and executives specifically responsible for risk in the company, including the head of internal audit, shall attend meetings of the Committee but shall not have a vote.

4.5 Proceedings

- ❑ Unless varied by these terms of reference, meetings and proceedings of the Committee will be governed by the company's articles of association regulating the meetings and proceedings of directors and committees.
- ❑ The Committee secretary shall take minutes of meetings. Minutes of meetings shall be circulated to all the members of the Committee and shall be included in the board papers for the next meeting and circulated to all board members, together with any specific corporate accountability and risk management reports prepared by or on behalf of the Committee. The minutes will also be forwarded to the chairperson of all other board committees.

4.6 Remuneration

- ❑ Having regard for the functions performed by the members of the Committee, in addition to their functions as directors in relation to the activities of the Committee and pursuant to the specific power conferred upon the board by the articles of association of the company, members of the Committee who are non-executive directors may be paid such special remuneration in respect of their appointment as shall be fixed by the board.
- ❑ Such special remuneration shall be in addition to the annual fees payable to directors.

4.7 General

- ❑ The Committee, in carrying out its tasks under these terms of reference, may obtain such outside or other independent professional advice as it considers necessary to carry out its duties.
- ❑ The board will ensure that the Committee will have access to professional advice both inside and outside the company in order for it to perform its duties.
- ❑ The Committee will have access to any information it needs to fulfil its responsibilities.
- ❑ The Committee will investigate matters within its mandate.
- ❑ These terms of reference may from time to time be amended as required, subject to the approval of the board.

5. Corporate Governance Committee

5.1 Constitution

Every company should establish a Corporate Governance Committee, composed substantially, if possible, of independent non-executive directors, which will act as a useful mechanism for making recommendations to the board on all corporate governance provisions to be adopted so that the board remains effective and complies with prevailing corporate governance principles. The Corporate Governance Committee shall be constituted to ensure that the reporting requirements with regard to corporate governance, whether in the annual report or on an ongoing basis, are in accordance with the principles of the applicable Code of Corporate Governance.

5.2 Membership

- ❑ Other than in the case where the non-independent chairperson of the board is also chairperson of the Corporate Governance Committee, it is not a requirement that the majority of the Corporate Governance Committee be independent non-executive directors, although this would be strongly recommended (Aspiration: always majority independent).
- ❑ A non-independent chairperson of the board can only be the chairperson of the Corporate Governance Committee on condition that the majority of the committee are independent non-executive directors. If this is not the case then the non-independent chairman of the board can be a member of the Corporate Governance Committee, but not its chairperson. The chairperson of the committee would then have to be an independent non-executive director (Aspiration: the chairman of the Corporate Governance Committee should be an independent non-executive director).
- ❑ The chief executive officer may be a member of the Corporate Governance Committee.
- ❑ The Corporate Governance Committee should be composed of a majority of non-executive directors.
- ❑ The Committee shall nominate a committee secretary.

5.3 Terms of Reference

- ❑ The Corporate Governance committee should include in its terms of reference the key areas normally covered by a Nomination Committee and a Remuneration Committee, unless these have committees been separately constituted. The terms of reference for these two committees are listed above in this Appendix.
- ❑ Over and above the work on remuneration and nomination, the Committee should have the following activities:
- ❑ determine, agree and develop the company's general policy on corporate

- governance in accordance with the applicable Code of Corporate Governance;
- ❑ preparation of the corporate governance report to be published in the company's annual report;
- ❑ ensure that disclosures are made in the annual report in compliance with the disclosure provisions in the Code of Corporate Governance.

5.4 Meetings

- ❑ Meetings of the Committee will be held as the Committee deems appropriate. However, the Committee should meet at least once each year. Meetings should be organised so that attendance is maximised. The chairperson of the Committee or any member of the Committee may call a meeting at any other time.
- ❑ The notice of each meeting of the Committee confirming the venue, time and date and enclosing an agenda of items to be discussed shall, other than under exceptional circumstances, be forwarded to each member of the Committee not less than four working days prior to the date of the meeting.
- ❑ The quorum for decisions of the Committee shall be any two members present throughout the meeting who shall vote on the matter for decision.

5.5 Proceedings

- ❑ Unless varied by these terms of reference, meetings and proceedings of the Committee will be governed by the company's articles of association regulating the meetings and proceedings of directors and committees.
- ❑ The committee secretary shall take minutes of meetings. Minutes of all meetings shall be circulated to all the members of the Committee and may also, if the chairperson of the Committee so decides, be circulated to other members of the board. Any director may, provided that there is no conflict of interest and with the agreement of the chairperson, obtain copies of the Committee's minutes.

5.6 Remuneration

- ❑ Having regard for the functions performed by the members of the Committee in addition to their functions as directors in relation to the activities of the Committee, and pursuant to the specific power conferred upon the board by the articles of association of the company, members of the Committee may be paid such special remuneration in respect of their appointment as shall be fixed by the board.
- ❑ Such special remuneration shall be in addition to the annual fees payable to directors.

5.7 General

- ❑ The Committee, in carrying out its tasks under these terms of reference, may obtain such outside or other independent professional advice as it considers necessary to carry out its duties.
- ❑ The board will ensure that the Committee will have access to professional advice both inside and outside the company in order for it to perform its duties.
- ❑ These terms of reference may be amended as required, subject to the approval of the board.

**COMPOSITION OF COMMITTEE ON CORPORATE GOVERNANCE
AND TASK TEAMS**

COMMITTEE ON CORPORATE GOVERNANCE

Mr Tim Taylor
Mrs Prabha Chinien
Ms Clairette Ah Hen
Mr Marc Lagesse
Mr Nassir Ramtools
Mr Cyril Mayer
Mr Megh Pillay
Mr Arnaud Lagesse
Mr Vinod Chidambaram
Mrs Karuna Bhoojedhur-Obeegadoo

COMPOSITION OF TASK TEAMS

Boards and Directors

1. Mr Marc Lagesse (Convenor)
2. Mr Pierre Guy Noel
3. Mr Arnaud Lagesse
4. Mr Arnaud Dalais
5. Mr Hector Espitalier-Noel
6. Mr Sunil Benimadhu
7. Mr H Jowaheer
8. Dr Arjoon Sudhoo
9. Mr Silendra Gokhool
10. Mr Bashir Currimjee
11. Mrs Karuna Bhoojedhur-Obeegadoo
12. Me Jean-Pierre Montocchio
13. Ms Shalini Gokhool

Auditing and Accounting

1. Ms Clairette Ah Hen (Convenor)
2. Mr Jean-Paul de Chazal
3. Mr Jacques Pougnet
4. Mr Jaye Jhingree
5. Mr Simon Pierre Rey
6. Mr Jean Marc Ulcoq
7. Mr J Ribet

8. Mr Swadeck Taher
9. Mr Gérard Lincoln
10. Mr Chandra Gujadhur

Risk Management, Internal Control and Internal Audit

1. Mr Nassir Ramtoola (Convenor)
2. Mr Mike Burgess
3. Mr Satyam Ramnauth
4. Mr James Leung
5. Ms Meenakshi Sandrassagren
6. Mr Louis Rivalland
7. Mr Geeanduth Gopee
8. Mr Edwin Marion

Compliance and Enforcement

1. Mrs Prabha Chinien (Convenor)
2. Mrs Jaya Allock
3. Mrs Sharda Dindoyal
4. Mr Rajesh Ramloll
5. Mr Yusuf Aboobaker
6. Mr Steve Leung

Integrated Sustainability Reporting

1. Mr Cyril Mayer (Convenor)
2. Mr Dev Seebaluck
3. Mr Philippe Lahausse de la Louvière
4. Dr Satish Boolell
5. Mr Alain Rey
6. Mr Dayanand Kurrumchand
7. Mr Sen Ramsamy
8. Mr Malen Oodiah
9. Mr Yousouf Sooklall
10. Mr Rajiv Servansingh
11. Mrs Sheri Roberts Updike

Prepared by
THE COMMITTEE ON CORPORATE GOVERNANCE