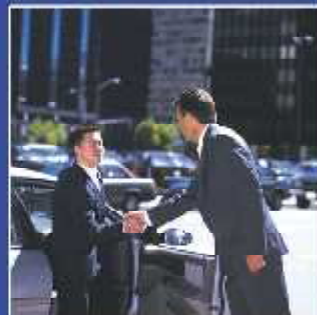


CODE OF CORPORATE GOVERNANCE FOR MAURITIUS

GUIDANCE NOTES FOR STATE-OWNED ENTERPRISES



Message from The Honourable Rama Krishna Sithanen

*Deputy Prime Minister,
Minister of Finance & Economic Development*

In October 2003, the **Code of Corporate Governance** for Mauritius was formally released. Based on the OECD Principles, the Code had been adapted to suit the particular legal, economic and cultural circumstances prevailing in the country. Compliance with the Code is on a voluntary (comply or explain) basis, and applies to listed companies, banks and non-bank financial institutions, large public and private companies, and state-owned enterprises (including statutory corporations and parastatal bodies) as from the reporting year ending 30th June 2005.

Like many jurisdictions around the world, state-owned enterprises (SOEs) in Mauritius play a strategic role in the provision of essential goods and services for the betterment of living conditions. The activities of SOEs impact on the quality, accessibility and affordability of services provided to the community, especially the poor and vulnerable. As trustees of public assets, directors of SOEs have the added responsibility not only to safeguard public goods but also to ensure the long-term sustainability of their respective organisations.

Compared to private companies, SOEs face a distinct set of governance challenges as they have a social obligation to the nation in addition to the running of an enterprise ensuring that resources are used in an optimum manner. It is Government policy to improve the standards of management in SOEs in order to reduce waste and obtain a better utilisation of resources. Better governance is one of the elements that will contribute to improving the efficiency of SOEs.

The “Guidance Notes for State-Owned Enterprises” is designed as a tool to introduce directors to best practices in corporate governance and give them the necessary skills and knowledge to better manage their enterprises. It comes at an opportune time when SOEs have to gear up to meet the rising expectations of the population to deliver better and timely goods and services.

I am pleased to be associated with the publication of the Guidance Notes, and it is my earnest wish that boards and their management teams would be inspired by this document to overhaul their governance landscape, and turn our SOEs into vibrant enterprises that would grow and generate employment for the prosperity of the nation.

December 2006

Introduction by the Chairperson

Since the setting up of the Committee of Corporate Governance in 2001 and the publication of “The Report on Corporate Governance for Mauritius” in 2003, corporate governance has been an important concern of the boards of many listed and designated companies. This has led to a significant improvement in governance in a number of these companies.

State-Owned Enterprises (SOEs) are among the entities that have been designated to comply with the provisions of the Code. SOEs are different from private sector corporations in a number of important ways. They are a means by which government deliver on some of their social programmes, which means that often SOEs will have social objectives as well as economic ones. Members on the boards of SOEs also tend to change at a greater frequency than board members on private sector boards, which means there is a question of continuity. Also, and most importantly, the relationship between the board of the SOE and its ‘parent’ Ministry has to be managed.

State-Owned Enterprises (SOEs) are major players in the Mauritian context. In a world of growing inter-dependence and changing technology, SOEs need to “re-engineer” to maintain a high level of operational efficiency consistent with their mandate.

The focus of the Guidance Notes is to create the environment that will empower SOEs to operate in a way that maximises economic value and financial performance. It attempts to provide solutions to a number of key issues, e.g. accountability, monitoring of board performance, risk management, internal control and internal audit, and communication with stakeholders.

The Guidance Notes for SOEs covers the above issues and more. It is designed to assist the Board and management of SOEs improve the level of corporate governance within their institutions so that they can be compliant with the Code of Corporate Governance.

The first part of this publication contains the Guidance Notes, and this is followed by a reproduction of the Code of Corporate Governance.

Tim Taylor
Chairperson

December 2006

Code of Corporate Governance for Mauritius

Guidance Notes for State-Owned Enterprises

Code of Corporate Governance for Mauritius ¹

Guidance Notes for State-Owned Enterprises

I. Background

It is now recognised that there exists an important link between governance and development. For sustained development to take place, governance has to operate on many levels:-

- at the national level,
- at local government level,
- at the level of N.G.O.S., and
- at the corporate level - to quote Jim Wolfenden, one time President of the World Bank, "*the proper governance of companies will become as crucial to the world economy as the proper governing of countries.*"

The Code of Corporate Governance for Mauritius was launched in October 2003 and gazetted in May 2005. As from the reporting year ending 30 June 2005, all designated institutions (set out in section 1.1 of the Code) are obliged to comply or explain why they have not complied. All state-owned enterprises (SOEs), including statutory corporations and parastatal bodies, are designated institutions. However, it is recognised that there are special circumstances affecting state-owned enterprises.

II. The Special Circumstances of State-Owned Enterprises

State-owned enterprises have to operate within the overall policy framework set by Government. However, globalization has put pressure on state-owned enterprises to operate along business lines and adopt international standards of corporate governance as multilateral agencies take good governance into account while making lending decisions.

State-owned enterprises play an important part in the Mauritian economy being present in a number of sectors including transport, infrastructure, energy, water supply and trade. The rationale for state ownership of commercial enterprises is the belief that it is essential to provide important public services that would otherwise not be met from a purely financial or economic standpoint, as well as the belief in some quarters that they help to reduce inequalities and promote a fairer society. Therefore, given the scale of these enterprises, and their overall impact on economic performance, the application of good governance practices stands high on the agenda.

Privatisation was viewed, and is still viewed by some, as a means to boosting the performance of state-owned enterprises. Although, the political and social climate is not ready for the application of a privatisation policy, yet it is felt that the implementation of good governance frameworks by SOEs will help towards a smooth transition to private / semi-private ownership at the time Government feels appropriate.

State-owned enterprises need to adopt an integrated approach encompassing clear mandate, political insulation, greater financial discipline and transparency to boost efficiency and productivity, while operating within the set of legal and regulatory frameworks, and based on principles of good governance.

¹ In terms of Section 65(c) of the Financial Reporting Act 2004, the Code of Corporate Governance for Mauritius was "issued", by the National Committee on Corporate Governance, in the Government Gazette No. 44 of 7 May 2005 under General Notice No. 844 of 2005.

The OECD² has identified three key challenges facing state-owned enterprises in the attainment of good corporate governance. These are :-

- (i) better identify the ownership function within the state administration;
- (ii) improve transparency of their objectives and performance; and
- (iii) strengthen and empower the boards.

As regards state-owned enterprises, “The Report on Corporate Governance for Mauritius” draws attention that :-

“5.7 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 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.”

Lastly, it is government policy to promote good corporate governance in the private sector. This being the case, for consistency and to set good example, it is clearly important that good corporate governance should also be practised by SOEs.

III. Guidance Notes For State-Owned Enterprises

Section 1.10 of the Code states that “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.”

The National Committee on Corporate Governance has developed a set of “**Guidance Notes**”, as a **complementary** document to the **Code** issued in May 2005. The objective is to assist state-owned enterprises in addressing their specific corporate governance issues. The Guidance Notes is also designed to inform directors, senior executives and other stakeholders of the requirements under the different sections of the Code so that they can discharge their duties and responsibilities efficiently.

The Guidance Notes has adopted the premise that :-

- (i) state-owned enterprises are “social institutions” that are accountable to the wider community in general;
- (ii) the State is the “owner” and the population is the “stakeholder”; and
- (iii) state-owned enterprises are required to comply with the Code or explain their reasons for non-compliance, unless the respective Acts establishing these organisations specifically provides otherwise.

² Guidelines on Corporate Governance of State-Owned Enterprises, December 2004

The term “parastatal bodies” is meant to include corporations set by an Act of Parliament and corporations where Government owns a majority of shares.

Section 1 – Compliance and Enforcement

Corporate Governance is a combination of self-regulated compliance and legal enforcement. Voluntary disclosure of compliance with the Code acts as a deterrent to malpractices and reinforces the trust of stakeholders and investors in the enterprise. The Media and stakeholders have an important role in exerting external scrutiny of state-owned enterprises by bringing forth cases of suspected malpractices for the information of the public. The designated institutions that are expected to comply with the Code are listed in **Section 1.1** which is reproduced below.

“Section 1.1 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”.

Section 1.11 provides that “*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

Every state-owned enterprise should be led by an effective board which exercises leadership, enterprise, integrity and judgment in directing the enterprise, and one which acts in the best interest of the enterprise in a transparent, accountable and responsible manner. The board should be empowered to function in full operational autonomy, and should be the link between the shareholders/ stakeholders and the enterprise.

2.1 - Structure of the Board

It is recommended that the concept of “unitary board” should apply to state-owned enterprises, and that these boards should lead and control these organisations keeping in mind that :-

- the population and its clients/users are the stakeholders, and
- Government, as the representative of the population, is the shareholder.

2.2 – Composition of the Board

The composition and procedures to be followed for the appointment of directors is laid down in the respective Acts. The Code recommends that only the best qualified persons who can add value to the board should be appointed as directors.

In terms of composition, the boards should include the right mix of skills and competencies - sound business acumen, integrity, innovativeness, knowledge of Government policies, and commitment - without compromising quality.

The board should have the appropriate balance of executive, non-executive and independent directors (as defined in **Section 2.7.1.3** of the Code). The specific recommendations under the various sections of the Code are listed hereunder :-

- 2.2.1** • State-owned enterprises should encourage “executives” to be on their boards
 - **Aspiration** : the Chairman of the board should be “independent”
- 2.2.2** • boards should have at least “two independent directors” to protect the interests of any minority shareholders and stakeholders other than government
- 2.2.3** • boards should have “two executives” as member
- 2.2.4** • the board should propose names of persons, giving a short CV of each as well a short justification for its choice, for the consideration of the Minister
- 2.2.5** • applies to boards of state-owned enterprises
- 2.2.6** • state-owned enterprises which are registered under the Companies Act should abide by that Act
 - succession planning - in some state-owned enterprises, the appointment of directors are staggered (i.e. directors are appointed for different terms of one, two or three years) to ensure continuity of the board
 - **Proposal** – directors of state-owned enterprises should be appointed for a two to three-year term
- 2.2.7** • applies to state-owned enterprises
- 2.2.8** • the appointment of alternate directors is recommended

2.3 – Role of the Board

The board is the focal point of the corporate governance system, and it is ultimately accountable and responsible for the performance and affairs of the enterprise. The appropriate chain of reporting should be from the board to the Minister and ultimately to Government which is the shareholder.

The board should continually review and determine the purpose, strategy and values of the enterprise.

Personal liability of directors – Like any other director, the directors of state - owned enterprises must exercise the highest degree of care and diligence in the discharge of their duties as they can be held to be personally liable for cases of negligence, fraud and for not acting in the higher interests of the organisation of which they are directors.

The responsibilities of the board, as defined in **Section 2.3.2** of the Code, apply to state-owned enterprises. In addition, it is recommended that the board of each state-owned enterprise prepares a “**Corporate Objectives Statement**” (COS) for the approval of the Minister. The suggested contents of the Corporate Objectives Statement are enumerated in the box below.

CORPORATE OBJECTIVES STATEMENT

1. Within the corporate governance structure, every state-owned enterprise should conclude a Corporate Objectives Statement (COS). This COS must be agreed to by the board and the parent Ministry.
2. The COS must be expressed in clear terms, with outputs and time frames which can be measured and monitored. The COS must contain the purpose or the purposes of the organisation, its value drivers and stakeholders, and its objectives.
3. Having identified those factors, a Mission Statement for the organisation should be developed and expressed in the COS.
4. The objectives which the board and the parent Ministry want the state-owned enterprise to achieve, must be spelt out very clearly with time frames for meeting these objectives.
5. A corporate vision for three years must be expressed in the COS.
6. A statement of expected behaviour of stakeholders of the organisation should be developed and it should contain a provision that this statement will be a term of every contract of employment or appointment (may need an amendment to law) of any nature to the organisation and a material term of every contract concluded with any stakeholder, more particularly suppliers of the organisation.
7. There should be a clear statement of accountability by the board, including reporting obligations and time frames for doing so, more particularly if, for any reason considered to be in the best interest of the organisation, that the time frames should differ from those required in terms of the Act under which the organisation is set up.
8. The expectations on financial performance for the year ahead should be spelt out.
9. The expectations in respect of non-financial performance, e.g. if there is a social (could also be an economic, political or environmental) objective which the Government wants the organisation to achieve, should also spelt out (e.g. integrated sustainability reporting issues).
10. The COS should not contain confidential information.
11. In developing the COS, the board members and the Ministry should not repeat issues and principles which are contained in the Code or the Act.
12. It is of utmost importance that each state-owned enterprise applies its mind together with the parent Ministry in developing the COS, and that the citizens of the country be made aware of the contents of the COS. It is acknowledged that this public disclosure will have a withering effect on any misconduct and will enable the beneficiaries of the state-owned enterprise to monitor its performance.
13. It is the duty and responsibility of all directors to act in the interest of the state-owned enterprise irrespective of the party who nominated them.

The other recommendations are listed hereunder :-

- 2.3.3 • appointment of the CEO should be the responsibility of the board unless the Act provides otherwise
- 2.3.4 • section applies to state-owned enterprises
- 2.3.5 • section applies to state-owned enterprises
- 2.3.6 • section applies to state-owned enterprises

2.4 – Conflicts of Interest

To ensure the independence of the board, directors should disclose actual or perceived conflicts of interest so that the board can function independently and objectively in the best interests of the enterprise.

It is recommended that, on appointment and on a continuous basis, all directors should, in good faith, disclose any business or other interest that is likely to create a potential conflict of interest.

The other recommendations are as hereunder :-

- 2.4.5 • all parastatal bodies should have a “Register of Interests”
- 2.4.6 • it is the duty and responsibility of all directors to act in the interest of the state-owned enterprise irrespective of the party who nominated them
- 2.4.7 • the representative of the parent Ministry may disclose, to his Ministry, only those matters where the “Ministry may have a legitimate interest”, and the prior approval of the board should be sought for such disclosures
- 2.4.8 • applies to state-owned enterprises
 - in terms of the Code, a director should inform the board if he needs prior consultation in a matter before a decision is made

2.5 – Role and Function of the Chairperson

The Chairperson of the board of a state-owned enterprise is appointed in terms of the provisions of the Act setting up the enterprise. It is the duty of the Chairperson to provide overall leadership to the board, to assist the board in the selection of directors, to ensure that strategies for monitoring and evaluating the effectiveness of the board and the management are in place, and to bring out the best in each director. The Chairperson should bring independence of mind and intellectual honesty in the discharge of his functions.

All the provisions of this Section of the Code apply to state-owned enterprises.

2.6 – Role and Function of the Chief Executive Officer

It is the responsibility of the board to appoint the Chief Executive Officer and participate in the appointment of other senior management personnel. The board should also ensure adequate training and put in place succession planning for all senior management personnel.

The board and management should operate in an enabling environment and an effective atmosphere within which good governance and efficient management practices can thrive.

All the provisions of this Section of the Code apply to state-owned enterprises.

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

In state-owned enterprises, directors representing the parent Ministry are in a special position as one of their role is to provide the vital link between the Ministry and the board. As the representative of the Minister, these directors convey the broad policy orientations of the parent Ministry to the board. In turn, the board may refer “policy matters” to the parent Ministry for a decision.

Representatives of other Ministries may not be totally independent as the thrust of their particular Ministry may be in conflict.

It is an aspiration that, at least once a year, the board meets with its shareholders as represented by the Minister.

The other recommendations are listed hereunder :-

- 2.7.1.1 • **Aspiration** – two Executives should be nominated on the board
- 2.7.1.3 • in the case where there is no “Nomination Committee”, then the board should act as the nomination committee
 - Section applies to state-owned enterprises unless otherwise provided for in the respective Acts
 - **Aspiration** – encourage more independent directors on boards. Independent directors should be “fit and proper” persons having experience and interest in the field of business of the state-owned enterprise

2.8 – Remuneration of Directors

It is recommended that remuneration of directors of state-owned enterprises should be governed by the provisions under the respective Acts or as laid down by the Pay Research Bureau (PRB).

However, the remuneration of directors should be attractive enough to bring the necessary skills and competence to the boardroom. Such remuneration should reflect the amount of work done for the organisation, time spent, etc.

2.9 – Director Selection, Training and Development

Dealt with under Section 2.2 above.

The board should put in place an effective induction programme for new directors. Continuous training and development programmes should be mounted in order to provide the directors with newer and emerging skills in good corporate governance.

The provisions of this Section of the Code apply to state-owned enterprises.

2.10 – Board and Director Appraisal

In order to ensure that it is adding value to the enterprise, the board should monitor its collective performance as well as the performance of individual directors, including the Chairperson, on a yearly basis.

It is recommended that board appraisal should be an annual feature of boards of state-owned enterprises.

Section 3 – Board Committees

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.

The boards of state-owned enterprises should establish such Committees as are required for the smooth functioning of the enterprise.

It is recommended that, as a minimum, the following Committees of the board are established :-

- Audit / Risk Committee, and
- Corporate Governance / Remuneration / Nomination Committee.

In the above case, the Nomination Committee could also look into the appointment and remuneration of senior management personnel.

Section 4 – Role and Function of the Company Secretary

The provisions of this Section of the Code apply to the Secretary of the Board of state-owned enterprises.

Section 5 – Risk Management, Internal Control and Internal Audit

It is the duty of the board to establish the process to identify, analyse and manage risks, while at the same time reconciling its commercial objectives and its social service obligations / public policy objective.

As regards “Reporting and Disclosure” (**Section 5.4** of the Code), state-owned enterprises have an obligation to communicate with their stakeholders (the public and its clients) through their Annual Reports. These Annual Reports should be in accordance with the Code unless there are specific provisions to this effect in the respective Acts.

As an aspiration, Annual Reports of state-owned enterprises should be published within six months after the close of the financial year.

Section 6 – Auditing and Accounting

Directors are responsible for maintaining adequate accounting records and for putting in place effective internal control systems. They are also 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).

It is recommended that, wherever applicable, financial statements should be prepared in accordance with International Financial Reporting Standards, and Auditing performed in conformity with the provisions laid down in the respective Acts.

Section 7 – Integrated Sustainability Reporting

Every enterprise 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 an enterprise 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.

The board of a state-owned enterprise should constantly monitor and satisfy itself that the enterprise is meeting its social / environmental obligations.

As regards ethics, the board should approve and ensure the implementation of a written code of best practice for the enterprise.

It is also recommended that state-owned enterprises take care of "integrated sustainability reporting" issues in their Corporate Objectives Statement (COS).

Section 8 – Communication and Disclosure

Transparency is the cornerstone of good governance principles. Access to information provides the basis for accountability, performance assessment and attainment of strategic objectives.

In a state-owned enterprise, the Chief Executive Officer is accountable to the board, which in turn is accountable to the responsible Minister.

The board should establish an effective communication channel within and outside the organisation. All relevant financial and non-financial information regarding the **performance** of the state-owned enterprise should be communicated in a comprehensive and timely manner to the shareholders and other stakeholders.

As state-owned enterprises deal with public funds, it would **not** be appropriate for them to provide funding, directly or indirectly, for political causes. However, the board may decide on donations to charitable institutions. The need for greater financial discipline is, therefore, emphasised.

Section 9 – Relationship with Shareholders

It is an onus on state-owned enterprises to inform their shareholders (Government) and their stakeholders (the public and their clients) of their financial, non-financial and operating performance at all times.

Code of Corporate Governance

The Financial Reporting Act 2004¹

Notice is hereby given that the following Code of Corporate Governance is issued by the National Committee on Corporate Governance and is hereby published for general information pursuant to section 65(c) of the Financial Reporting Act 2004.

Code of Corporate Governance

Section 1 Compliance and Enforcement

1.1 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”.

1.2 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.

1.3 Corporate holding structures

The board of directors of a diversified group or similar corporate holding structure which

¹ Published in the Government Gazette No. 44 of 7 May 2005 under General Notice No. 844 of 2005

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 noncompliance, 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 reelection 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 sociétés 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, preemption 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 reelection 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.

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