
PSOJ Corporate Governance Code

For Micro, Small or Medium-Sized Enterprises

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FOREWORD

Over the past ten years greater focus has been placed on corporate governance and the importance of businesses having in place appropriate systems and processes that allow Board of Directors to effectively direct and control their enterprise. The instability of the Jamaican financial sector in the late 1990s raised great concerns about governance effectiveness and gave rise to the question consistently asked by many, “*where was the board of directors*”? Subsequent to the crisis, new corporate governance regulations were introduced for financial institutions. It is against this background that in 2001 the Private Sector Organisation of Jamaica (PSOJ) established a Corporate Governance (CG) Committee with the major objective being to become the primary influencer in the delivery of corporate governance best practices for business, by providing access to knowledge and learning resources so leaders of business enterprises could effectively compete in the global market.

With this in mind, in 2006 the PSOJ launched its first Corporate Governance Code which was primarily targeted at financial institutions. However, as the business environment changed and international best practices were enhanced, the PSOJ launched an updated corporate governance Code in 2009 with the assistance of the United States Agency for International Development (USAID). This updated Code applied predominantly to companies listed on the Jamaica Stock Exchange (JSE) and supported the JSE’s introduction of its corporate governance rule 414. The CG Committee is currently in the process of revising this Code and plans to launch an updated Code during 2016. However, the changing business environment, including MSMEs being recognized as playing a major role in the country’s development, compelled the CG Committee to look at developing a Corporate Governance Code for this fast growing sector.

In May 2015, the Minister of Industry, Investment and Commerce (MIIC), the Honourable Anthony Hylton, stated that “the MSME sector is a critical pillar of the country’s economic growth agenda, and it is imperative that the Government places entrepreneurship and MSME development at the forefront of the public policy agenda.” This direction cemented the importance of developing an MSME Corporate Governance Code, which would seek to improve MSMEs’ access to finance, ensure their sustainability, and better financial

performance, while supporting the government's MSME & Entrepreneurial Policy which was formally tabled in Parliament in May 2013. It is also our belief that corporate governance for MSME's is increasingly gaining importance on the corporate governance agenda and research has demonstrated that better corporate governance of MSMEs is positively linked to their growth and long term sustainability. Notwithstanding, the Corporate Governance Committee recognises that better governance is not a panacea to all problems faced by MSMEs but is an undeniably important ingredient to their success.

As such, this new MSME Corporate Governance Code will seek to guide the implementation of a corporate governance system within an MSME and is in line with the Companies Act 2004 and other related legislation. While this Code is neither mandatory nor prescriptive, the PSOJ encourages MSMEs to adopt the MSME Corporate Governance Code to help foster growth through good corporate governance and to use the principles as a reference and framework for understanding and practising effective governance for their business. Additionally, MSMEs are expected to adopt the Code in line with their readiness and stage of development.

The development of this MSME Corporate Governance Code for Jamaica is the first in the region and effectively demonstrates strong partnership with stakeholders and enterprise owners. The Code's guidelines follow international best practices that have been customized for our region and our dynamic local environment. The overall objective of this MSME CG Code is to:

- Provide appropriate MSME corporate governance guidelines for the local market consistent with international best practices that will suit various size enterprises;
- Enhance MSME business governance systems;
- Strengthen transparency, accountability and efficiency in MSMEs; and
- Enhance investment opportunities.

For this Code, the term MSME refers to enterprises along a broad continuum of size and legal type and so the Code sets out policies that will foster accountability and transparency within enterprises of varying sizes, while improving investor confidence, which should ultimately provide greater opportunities to attract investment. We recognise that the implementation of good corporate governance practices is a gradual process and so this Code aims to provide basic guidance for MSMEs.

Corporate Governance is ultimately concerned with the decision making processes, procedures, and attitudes that assist enterprises in achieving their objectives; it is not a box-ticking exercise. The understanding and implementation of a good corporate governance framework therefore presents MSMEs with a structured path to better management practices and effective oversight and control mechanisms which lead to opportunities for growth, financing and improved performance. This is the essence of this Corporate Governance Code for MSMEs.

We recognize that not all MSMEs will be able to implement these principles at the same rate and to the same extent. As such the Code is therefore not meant to be a “one size fits all” Code but is intended to highlight the general corporate governance guidelines that each enterprise can implement based on its specific needs and abilities.

The PSOJ is extremely grateful for the support of the Development Bank of Jamaica (DBJ), which provided insightful feedback during the drafting process and has provided technical funding to train MSMEs in elements of this Code. The PSOJ also acknowledges the comments received from various stakeholders during the consultation phase, which has significantly contributed to the shaping of the final publication.

Sincere thanks must also be expressed to the Corporate Governance Subcommittee, led by Garth Kiddoe, who was responsible for developing this Code and to all the other members of the Corporate Governance Committee who reviewed the final draft and offered their time, effort and professional guidance.

The PSOJ is encouraged by the growth in awareness and implementation of corporate governance practices in Jamaican enterprises and believes this augurs well for the continued growth of Jamaica’s business environment. This MSME CG Code is yet another tool available to developing enterprises.

Greta Bogues (Miss)
Chair, Corporate Governance Committee
Private Sector Organisation of Jamaica (PSOJ)

February 1st 2016

MEMBERS OF THE PSOJ CORPORATE GOVERNANCE COMMITTEE

Miss Greta Bogues	Chair
Mr. Dennis Chung	Chief Executive Officer, PSOJ
Mr. Christopher Bovell	Consultant, Dunn Cox
Mrs. Tracey Campbell	PriceWaterhouseCoopers
Mrs. Suzanne Goldson	Faculty of Law, UWI
Mr. Garth Kiddoe	Institute of Chartered Accountants of Jamaica (ICAJ)
Mr. Alastair Macbeath	Modial
Mr. Patrick McDonald	Hart, Muirhead & Fatta
Ms Rochelle Cameron	FLOW
Mrs. Gail Moss-Solomon	Digicel
Mr. Robert Hamilton	Financial Services Commission (FSC)
Mrs. Phueona Reynolds	Centralized Strategic Services
Mrs. Camille Facey	Facey Law
Dr. Howard Haughton	Holistic Risk Solutions Ltd.
Miss Barbara Alexander	Myers, Fletcher & Gordon
Mrs. Marlene Street-Forrest	Jamaica Stock Exchange (JSE)
Mrs. Gina Phillipps-Black	Myers, Fletcher & Gordon
Mr. David Hall	Institute of Internal Auditors (IIA)
Mr. Donovan Wignal	MSME Alliance (The)
Miss Vanessa Reid	Committee's Research Assistant
Miss Gabrielle Grant	Committee's Research Assistant

INTRODUCTION

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

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

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

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

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

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

¹ Throughout the document the words "guidelines" and "code" will be used interchangeably.

² The definition has been adopted from the Ministry of Industry, Investment and Commerce MSME & Entrepreneurship Policy for the development of Micro, Small and Medium Enterprises, drafted May 2013.

- Micro enterprises are generally defined as having one (1) to five (5) employees and/or an annual turnover of less than or equal to Ten Million Jamaican Dollars (J\$10,000,000).
- Small enterprises are described as having between six (6) to twenty (20) employees and/or an annual turnover of over Ten Million Jamaican Dollars (J\$10,000,000) but less than or equal to Fifty Million Jamaican Dollars (J\$50,000,000).
- Medium enterprises are categorized as having between twenty-one (21) to fifty (50) employees and/or an annual turnover that falls between Fifty Million Jamaican Dollars (J\$50,000,000) and One Hundred and Fifty Million Jamaican Dollars (J\$150,000,000).

It includes but is not limited to:

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

WHAT IS CORPORATE GOVERNANCE?

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

IMPORTANCE OF A CORPORATE GOVERNANCE CODE FOR MSMEs

This Corporate Governance Code will guide the implementation of a corporate governance system within an MSME. However, the term MSME refers to enterprises along a broad continuum of size and legal type. As such, elements of the Code will be applicable to enterprises consisting of very few people (e.g. less than 3), as well as to those with a staff complement of up to 50, irrespective of whether these enterprises are sole proprietorships, partnerships, companies or other legal entities.

Notwithstanding the above, it is important to note that the Code uses, as a benchmark, characteristics directly applicable to companies (as defined within the Companies Act of Jamaica, 2004).³ The rationale for this approach lies in the view that such a benchmark

³ That is, companies formed and registered under the Companies Act 2004 or the former Companies Act or Law.

provides the necessary support for employing “best practice” and can be viewed as aspirational for the smaller enterprise or enterprises that are business vehicles other than companies.

PURPOSE OF THIS CODE

The purpose of this Code is to guide MSMEs in implementing Corporate Governance frameworks suited to their needs and thereby be able to effectively manage and control their enterprises.

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

The PSOJ recognises that not all MSMEs will be able to implement corporate governance principles at the same rate and to the same extent. The Code is therefore not meant to be a “one size fits all” manual, but is intended to highlight the general pillars of corporate governance that each enterprise can implement based on its specific needs and abilities. It is therefore envisaged that this Code will be adopted until the point at which a MSME can transition to compliance with the main PSOJ Corporate Governance Code.

Although not mandatory, the PSOJ encourages MSMEs to adopt the MSME Corporate Governance Code to help foster growth through good corporate governance. In addition, the PSOJ acknowledges that the implementation of this Code will be a gradual process and some MSMEs may initially only be able to implement it on a small scale in view of the resources at their disposal and the depth and scope of their services/product offerings.

CONTENTS OF THIS CODE

This Code concentrates on the following areas:

- A. Corporate Governance Policies and Procedures
- B. Board of Directors/Advisors
- C. Transparency and Shareholder Relations
- D. Control Environment
- E. Stakeholder Relations
- F. Family Business Governance

A. CORPORATE GOVERNANCE POLICIES AND PROCEDURES

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

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

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

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

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

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

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

A.1. Role of Management and the Advisory Board or Board of Directors.

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

The management is responsible for the day-to-day operations of the organisation spearheaded by the Chief Executive Officer (CEO) or other person performing the role of a CEO (by whatever title given).

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

Smaller enterprises would not be required to have a board of directors, unless legally required, as it may not be economical to do so. However, such enterprises may find it beneficial to utilise an advisory board as explained at B.1. As these enterprises expand and become more complex, good governance practices may suggest the need for the establishment of a board of directors.

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

A.1.2. Given the size of an MSME, it may possible that the management team and the board of directors will overlap. In these circumstances, it would be prudent to have in place clear policies and procedures to ensure that they, collectively and individually, remain accountable to shareholders and other stakeholders.

A.1.3. Clear guidelines should also be in place that distinguish between decisions properly to be made by management, those reserved for the board and those which can only be made by shareholders.

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

A.2. Rights and Roles of Shareholders

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

A.2.2. Shareholders should be aware of their role in the governance process, especially in relation to the appointment and monitoring of directors in keeping with the Articles of the

company and any resolutions adopted by the shareholders or other charter or constitutive documents.

B. FUNCTIONS OF THE ADVISORY BOARD AND BOARD OF DIRECTORS

B.1. Advisory Board

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

B.1.2. The powers of an advisory board will be limited, when compared with those of a board of directors, in that they have a power to advise management, but their advice and recommendations are not binding on the management.

B.2. Board of Directors

General Principles

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

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

Each member of the board of directors of a company owes a duty of care to the company. In discharging this duty, the Companies Act states that a director may have regard to the interests of the company's shareholders and employees and the community in which the company operates⁴.

⁴ Companies Act 2004, Section 174 (4).

In exercising his/her powers and duties, every director shall act with the care, diligence and skill, which a reasonably prudent person would exercise in comparable circumstances, including but not limited to the general knowledge, skill and experience of the director⁵. In addition, the board may rely on expert opinion.

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

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

B.3. Division of Responsibility

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

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

B.4. Composition of the Board of Directors

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

⁵ Companies Act 2004, Section 174 (1)(b)

B.4.1. Chairman

The Chairman is responsible for the leadership of the board. The Chairman sets the agenda for the board and ensures that the items on the agenda are sufficiently discussed and that timely decisions are taken at board meetings on the basis of relevant information provided to the board by management.

B.4.2. Chief Executive

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

B.4.3. Executive Directors

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

B.4.4. Independent/Non-Executive Director

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

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

B.4.4.3. An independent director has no management or executive function and has no material financial or other conflicting interest in the organisation. This allows for unbiased and independent fulfilment by the duties of the director without any view to personal gain.

B.4.4.4. The appointment of independent/non-executive directors is also a means of bringing to the board skill-sets that may not exist among the other directors. These skill-sets may include: finance, marketing, information technology, and human resource

management, among others. They also bring a level of objectivity in the decision making process which is required to help enhance shareholder value.

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

B.4.5. The Company Secretary

B.4.5.1. Registered companies must appoint a company secretary⁶. The secretary may also be a director of the company, provided that in the case of a company with only one (1) director, that director cannot also be the company secretary⁷.

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

B.5. Performance Evaluation

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

⁶ Companies Act 2004, Section 172(2)

⁷ Companies Act 2004, Section 172(3)

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

B.6. Appointment

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

B.6.2. There should be a formal, rigorous and transparent procedure for appointment of directors to the board to ensure that the best available candidates are considered and selected.

B.7. Orientation and Training

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

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

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

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

B.8. Board Committees

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

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

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

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

C. TRANSPARENCY AND SHAREHOLDER RELATIONS

General Principles

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

C.1. Disclosure and Transparency

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

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

C.2. Shareholder Relations

The organisation should hold an Annual General Meeting (AGM) which facilitates the input of the shareholders in the decision making process, as may be allowed for in the Articles of Incorporation. There should be timely notice of a general meeting of shareholders within the period and form required by law. In the case of the AGM, notice is to be sent to shareholders in accordance with the relevant provisions of the company's Articles, which, under the Companies Act, cannot set a shorter period of notice than 21 days prior to the

date of the meeting, though a longer period of notice may be prescribed by the company's Articles.⁸

⁸ The Companies Act, 2004, section 129.

D. CONTROL ENVIRONMENT

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

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

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

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

D.1. Independent Auditors

D.1.1. Independent Auditors should be selected via an objective and transparent process, which takes into account their experience, standard of performance and cost of providing the service. The auditors appointed will be responsible for issuing an Auditors’ Report on whether the financial statements of the MSME, give a true and fair view of the entity’s

financial position, income and expenditure, changes in equity and cash flows during and as at the end of the period for which the auditor is reporting. The auditors must also report on other legal and regulatory requirements as required under the Companies Act⁹ or other applicable legislation.

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

D.1.3. To ensure the independence of the auditors' report, the auditors should not audit their own firm's work. The enterprise should therefore formulate policies, which exclude external auditors from undertaking work on behalf of the enterprise, to avoid the possible compromising of the auditor's independence. Where other services are needed, and those services are also available from the audit firm engaged as the enterprise's auditor, good governance requires that a different firm be selected to provide them.

D.2. Risk Management

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

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

D.2.3. There should be a regular review of the risk management systems as well as a review of the risks facing the enterprise. As there is growth within the organization so

⁹ The Companies Act, 2004 section 157

new risks will arise, hence there will be a need to periodically update risk management policies and procedures.

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

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

D.3. Internal Auditor

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

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

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

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

D.4. Record Keeping

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

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

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

E. STAKEHOLDER RELATIONS

E.1. Stakeholders defined

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

E.2. Managing Stakeholder Relations

E.2.1. Maintaining good stakeholder relations will reduce risks and provide a way of identifying value-enhancing opportunities. The organization should therefore ensure that communication is maintained with stakeholders to understand their issues and concerns and to respond appropriately to those issues and concerns where necessary.

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

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

E.3. Employee Relations

E.3.1. Enterprises which employ persons must be aware of their legal obligations towards their employees, as well as the rights of their employees. MSMEs must be aware of the relevant labour relations and industrial dispute legislations, the Labour Relations and Industrial Disputes Act¹⁰; the Labour Relations Code¹¹; and the Employment (Termination

¹⁰ Labour Relations and Industrial Disputes Act, 1975.

¹¹ Labour Relations and Industrial Disputes Act, Labour Relations Code 1976.

and Redundancy Payment) Act¹². External professional advice in these areas may have to be sought from time to time.

E.3.2. Health and Safety

Employers have an obligation to provide for the health and safety of employees in the workplace in line with required legislation^{13/14}. Conversely employees are expected not to endanger his or her health and safety as well as the health and safety of others in the workplace. MSMEs should establish and document policies to protect the privacy and rights of employees in relation to their health conditions, including protecting HIV infected employees against discrimination.

E.3.3. Workplace Relations

E.3.3.1. Grievance Proceedings

Mechanisms should be put in place to allow for the settlement of grievances that may arise in the workplace without the need for third party intervention. This should be done in accordance with section 20 of the Labour Relations Code.¹⁵

E.3.3.2. Whistle-Blowing

Mechanisms should be put in place to allow for the reporting of protected disclosures in accordance with the Protected Disclosures Act¹⁶.

E.3.3.3. Disciplinary Proceedings

Disciplinary procedures should be agreed between the management and employees to ensure there are fair and effective arrangements for dealing with disciplinary proceedings. This should be done in accordance with section 22 of the Labour Relations Code.¹⁷

¹² Employment (Termination and Redundancy Payments) Act, 1974.

¹³ The Factories Act

¹⁴ Jamaica Occupational Safety and Health Act (JOSHA) Draft

¹⁵ Labour Relations and Industrial Disputes Act, Labour Relations Code 1976, Section 20.

¹⁶ Protected Disclosures Act, 2011.

¹⁷ Labour Relations and Industrial Disputes Act, Labour Relations Code 1976, Section 22.

E.3.3.4. Dismissal

MSMEs should employ clear guidelines for dismissal. Dismissal refers to the termination of a contract of employment and must be done in accordance with the terms and conditions of the contract and in accordance with common law or statute, specifically the Employment (Termination and Redundancy Payments) Act¹⁸. Failure to comply may result in the employer being liable for unfair or wrongful dismissal.

E.4. Corporate Sustainability and Ethics

As the MSME experiences grow, corporate sustainability and ethics are tools that can be utilized to enhance the prospects for the long term sustainability of the enterprise. Financial growth is a good measure of success for MSMEs, however it is important to gain the respect of stakeholders, especially external stakeholders.

E.4.1 Code of Ethics

MSMEs should adopt high standards of business ethics. This would best be done by designing and adopting a code of conduct/ethics, which reflect the nature of the business environment in which the MSME operates. This would essentially codify the relevant features of the MSME's vision, mission, objectives and values. The code should be effectively communicated and integrated into the company's operations.

E.4.2. Behaviour and Conduct

MSMEs should ensure that board members, members of the management team and employees understand their responsibilities for appropriate behaviour. There should be appropriate board level and staff training in all aspects relating to corporate culture and ethics as well as appropriate mechanisms for the ongoing monitoring of compliance with stipulated standards and the implementation of any corrective measures that may become necessary from time to time.

¹⁸ Employment (Termination and Redundancy Payments) Act, 1974.

F. FAMILY BUSINESS GOVERNANCE

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

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

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

F.1. Family Constitution

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

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

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

F.2. Family Council

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

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

F.3. Succession Planning

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

F.4. Non-Familial Connected Enterprises

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

G. LISTING ON THE JSE JUNIOR MARKET

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

Set out in Appendix 1 are extracts from the JSE's Junior Market Rulebook that provide the governance requirements for listing a company's shares on the Junior Market. These requirements should be seen as being in addition to the governance requirements of this Code, as appropriate.

APPENDIX 1

JSE Junior Market Listing Requirements

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

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

1. JSE Junior Market Eligibility

1.1. Minimum Requirements

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

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

1.2. Associates

Each eligible company must demonstrate to the JSE that it:

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

1.3. Other Requirements for Initial Admission

Each eligible company must also provide to the JSE:

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

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

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

2. JSE Junior Market Corporate Governance Requirements

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

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

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

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

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

References

1. Private Sector Organisation of Jamaica, Corporate Governance Code 2009
2. Private Sector Organisation of Jamaica, Draft Revised Corporate Governance Code 2016
3. The Corporate Governance Code for Small and Medium Enterprises, Building the Foundations for Growth and Sustainability, Dubai SME, 12 November 2014
4. The Combined Code on Corporate Governance, 2008 Financial Reporting Council, United Kingdom
5. Thomas L. Wheelen, and J. David Hunger: Strategy Management and Business Policy, 2010 Pearson Education Inc.
6. Alan Dignam: Hicks and Goo, Cases and Materials on Company Law, Alan Dignam, 7th Edition, 2011 Oxford University Press
7. Brenda Hannigan: Company Law, Brenda Hannigan, 2nd Edition, 2009 Oxford University Press
8. Corporate Governance Guidance and Principles for Unlisted Companies in the UK by the Institute of Directors (IoD) and European Confederation of Directors' Associations (ecoDa) 2010
9. International Finance Corporate, World Bank Group, Family Governance Handbook 2008
10. Ministry of Industry, Investment and Commerce policy for the development of Micro, Small and Medium Enterprises, Drafted October 2010
11. Jamaica Stock Exchange, Junior Market Rule Book, 2009
12. The Companies Act, 2004, Jamaica
13. ICGN Global Governance Principles 2014

Websites

1. <http://sme.ae/English/DataCenter/Pages/StudiesAndResearch.aspx>
2. http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/corporate+governance/publications/toolkits+and+manuals/toolkit2_codes_of_best_practice
3. <http://toolkit.smallbiz.nsw.gov.au/part/17/84/362>
4. <http://www.businessnewsdaily.com/4679-corporate-social-responsibility.html>