

REPORT OF THE WORKING GROUP

ON CORPORATE GOVERNANCE

SET UP BY THE MALTA STOCK EXCHANGE

Introduction

The Working Group (WG) was set up to make recommendations to the Malta Stock Exchange with respect to the establishment of a basic framework for appropriate guidelines to public listed companies on corporate governance.

The WG consisted of:

- **Mr Paul J Spiteri (Chairman), Ms Eileen Muscat and Dr Robert Vella Baldacchino**, members of the executive of the Malta Stock Exchange;
- **Dr Andre Camilleri**, Company Secretary Simonds Farsons Cisk p.l.c.;
- **Mr Charles Borg**, General Manager Valletta Fund Management Limited;
- **Mr Wilfred Mallia**, Stockbroker of Curmi & Mallia (Stockbrokers) Ltd; and
- **Dr Louis de Gabriele** – Partner Camilleri Preziosi – Advocates.

The WG submitted a draft Report to the Council of the MSE on the 18 June 2001 together with a draft of a ‘Code of Principles of Good Corporate Governance’ for consideration by the Council. In that Report the WG also recommended to the Council that before the Council *determines the recommendations of the WG the Malta Stock Exchange undertake a more comprehensive consultative process.*

This recommendation was taken on board by the Council and in the latter part of June 2001 the MSE circulated, with listed companies and other interested parties, extracts from the report of the WG and a copy of the draft ‘Code’ for comments. Following receipt of comments the MSE requested the WG to consider the several contributions received before submitting a final Report to the Council.

Accordingly this Report and the attached Code builds on the draft Report originally submitted to the Council and takes into account the contributions received from several sources.

Comments were received from the following entities/persons:

- Bank of Valletta p.l.c.
- Central Bank of Malta
- Mr Gavin Fryer
- Mr Louis E Galea
- HSBC Bank Malta p.l.c.
- The Institute of Directors
- International Hotel Investments p.l.c.

- KPMG
- Lombard Bank Malta p.l.c.
- Malta Chamber of Commerce
- Malta Government Privatisation p.l.c.
- Malta Labour Party
- Malta Shareholders' Association
- Maltacom p.l.c.
- Nobel Mantrich Limited
- Prof. J.M. Ganado & Associates
- PriceWaterhouseCoopers
- Simonds Farsons Cisk plc
- Mr George Wells

Corporate Governance.

The significance of corporate governance stems from the conception of the economic function of the corporation and its acknowledgement at law. The WG believes that corporate structures and mechanisms are the result of the cultural context within which companies exist and operate. Accordingly, there is no particular structure or arrangement that can guarantee success, nor any arrangement that has been adopted in other jurisdictions that can be imported wholesale in the local scenario without the appropriate modifications dictated by the demands of the Maltese economic and social reality.

The classical paradigm of corporate law is not a new phenomenon. Indeed academics and practitioners alike have all had their own say on the matter and discussion on the subject has been extensive. The basic paradigm, however, remains- *Directors manage the corporation whilst the shareholders own it.* Hence whenever there is public ownership there may be a failure by the Directors in protecting the public shareholders.

Different systems have adopted a variety of rules to deal with the issue and any analysis must take into account a host of factors and influences that are central in addressing the matter. Corporate governance, when applied in this context, can be used to bring under one head the different kinds of rules which determine how power is exercised within the corporation- *Corporate Governance therefore deals with the issue of accountability and focuses on the relationship among the participants in the corporation.* The rules become pertinent to corporate governance when they have a material impact on the various players within the institution. Accordingly these rules have several sources including company law, banking law, securities legislation and insolvency and bankruptcy law.

It is submitted that the issue of corporate governance in the advent of the 21st Century needs to be addressed as the product of two fundamental drivers:

- the ownership structure of corporations and the financial system within which they operate; and
- the determination of the various corporate interests- namely the determination of which groups ought to participate in corporate governance.

The WG, in reaching its conclusions and making its recommendations has taken a fresh look at the matter of corporate governance and has commenced its work by posing the question: **What is Corporate Governance?**

This could well be a matter of debate and left to academics there would be no end to the discussion. The WG however had to find a pragmatic working definition and common understanding of the term. To this end we have accepted the definition adopted by the UK's Cadbury report namely that:

Corporate Governance is the system by which companies are directed and controlled.

In the opinion of the WG this is a concise but sufficiently wide definition to incorporate the various ramifications of the term. Moreover, it puts the Directors of the company, those responsible for the direction and management, at the core of the debate

We have had the benefit of learning from the way that other systems have addressed the same subject.

Notwithstanding that the underlying principles of management accountability are the same everywhere the focus and emphasis may change in different jurisdictions in line with the dictates of the local economic and social context. We have been sensitive to the current state of development of the Maltese capital markets and of listed companies. Accordingly, we have attempted through our recommendations to ensure a suitable framework for Corporate Governance of Maltese listed companies without however rendering that framework too draconian for compliance by Maltese companies.

The WG has used as its platform the basic tenets of Corporate Governance contained in Maltese legislation as the basic standard of conduct. Our remit was:

- to analyse those requirements in the context of the development of Maltese companies today and in the future; and
- to provide those companies with principles which will on the one hand ensure compliance with the basic statutory requirements, and on the other go beyond those basic requirements by providing companies with a thorough understanding of what is expected of them as a matter of good corporate conduct.

The WG also focused on the targets of these recommendations. The need for enhanced Corporate Governance structures is, of course, paramount in public companies where the distinction between ownership and control is more pronounced than in privately owned corporations where the manager is usually the owner or where at least the dichotomy between ownership and management is more of a legal fiction than it is fact.

Accordingly, the conclusion of the WG is that for the moment these recommendations should only be applied to listed companies. In the view of the WG it would be pre-mature to apply these rules to private companies where it is likely that the directors and shareholders are the same and which would therefore amount to accountability to oneself. The cost of compliance with the principles is in the view of the WG not justified in the current circumstances.

The Approach

It is submitted that Corporate Governance rules and practices are also cultural and historical practices. The company is a human response to the economic and social pressures in the generation of wealth and the relationship between the owners of capital and the managers of that capital. The central feature of Corporate Governance is a part of that response. It would serve little purpose, to attempt to find a complete global solution to Corporate Governance, which does not take into account the significant cultural and conceptual differences, expressed in the rules and practices on Corporate Governance in several jurisdictions.

Any Corporate Governance solution must reflect the cultural, social and economic background in which companies are to operate. However, globalisation of industry and cross-border transactions, are creating the need for a level of convergence of rules and practices, which establish certain basic parameters for good Corporate Governance. Accordingly, the WG has attempted, in its recommendations, to reflect the generally accepted standards of Corporate Governance internationally whilst at the same time ensuring that their application and implementation is coherent with the local economic and social contexts.

It is *not* the recommendation of the WG to prescribe any particular corporate structures, nor to advocate compliance with any hard and fast rules.

The state of development of the Maltese company, particularly those making the culture leap from private to listed companies, requires flexibility and a gradual, but steady, evolution of standards that should, in the medium term contribute, to a higher level of awareness of the importance of good Corporate Governance and the improvement of current corporate structures leading towards greater accountability.

Another significant factor that the WG has considered in devising its approach is to determine the various interests at stake. The new dimension for Corporate Governance of public companies brings to the fore the issue of determining the different components that have an interest to participate in Corporate Governance.

The traditional paradigm has always had as a focus of proper Corporate Governance the shareholder and investor as the owner and how the ownership interests are to be protected against the actions of the managers. More recent proponents on Corporate Governance have extended this traditional concept into the constituency model, which extends the responsibility of corporate directors to other interests including the interests of labour, creditors, consumers and the community at large.

Although there may be merit in the constituency model, it may not be appropriate for all the interests that are mentioned to become a matter for corporate law and good corporate practice. Indeed a re-statement of the classical shareholder model might be more conducive to attaining the proper balance within the parameters of corporate law and practice. A re-statement of that model would extend the responsibility of corporate directors to take into account all other interests in the decision making process, with the principal focus however remaining the shareholder.

The issue that arises is that even here cultural and historical approaches differ from one jurisdiction to the other. Whereas jurisdictions that have traditionally had a market oriented financial system have typically adopted a shareholder model approach, jurisdictions whose financial systems have traditionally been dominated by banking institutions have typically been more amenable to the constituency model.

In this context Malta seems to have a unique combination. On the one hand it is a jurisdiction whose financial system has been and still is principally dominated by the banks, but on the other hand has a corporate law system and culture that views directors' responsibilities as being owed to the company and its shareholders.

This, of course, does not mean that all other interests are not addressed by other legislation, measures or mechanisms – but they are not matters of corporate law and practice.

- Labour interests have always been regulated by industrial legislation and collective bargaining characterized by a strong Trade Union presence.
- Creditors' interests are protected by the general law and the laws of bankruptcy and insolvency (even if the latter in effect forms part of the Companies Act).
- Consumers' interests are the subject of general consumer protection legislation.
- In the case of depositors' of banks banking law and regulation.

The responsibility of directors as a matter of Maltese law and practice remains one embedded exclusively in the shareholder model – and the directors prime responsibility is owed to the company and directors must properly act in the best interests of the Company.

It is against this social and cultural backdrop that the WG makes its recommendation that the ***fundamental focus of corporate law and practice should be the regulation of the relationship between the shareholders and directors.***

From the comments reviewed by the WG there has not been any material negative reaction to the adoption of this approach. Indeed, there was only one contributor that considered the approach taken by the WG as possibly “too narrow”. From the various comments received the WG is of the view that the approach adopted seems to have found consensus and accordingly confirms its recommendation on the approach to be adopted.

Modifications

Following the review of comments received the WG is proposing some modifications to the final text of the code. Most of the issues that have been raised are not matters of principle and do not have a material impact on the thrust of the code. However, in view of certain clarifications requested, such as for instance giving guidance on what constitutes “Independence”, the WG has considered it useful to include a broad definition of what would constitute independence.

The modifications have now been included in the text in Section 2 of this report.

Recommendations

After due consideration the Working Group makes the following recommendations to the Council:

General

- ◆ In view of the fact that the working group has been working under the auspices of the Malta Stock Exchange, the Working Group is of the view that the Principles to be adopted should be restricted to companies whose securities are listed either on the Official List or the Alternative Companies List of the Malta Stock Exchange. **No inference should be made from this recommendation that the Working Group does not consider it appropriate that other companies, particularly public companies, should not also adopt these principles. Indeed, the Working Group believes that the principles being suggested should also constitute guidance to directors of all public companies and that their adoption should lead to breeding the right basis for the proper conduct of corporate directors.** In addition, the WG is of the view that greater awareness of good Corporate Governance principles, even at other levels of family-run companies and private companies is desirable and should be encouraged as it tends to contribute towards building the right corporate culture. The WG, however is also aware that the Principles being recommended may require companies to make certain material changes in their corporate structures, which may impose cost burdens on smaller unlisted companies where the absence of the dichotomy between ownership and control does not warrant them. In addition, it is the view of the WG that the introduction of change in this sector should be gradual, and that the companies whose securities are listed on the Exchange are the ones that should set the example.
- ◆ The set of Principles attached to this report are the basic principles which in the opinion of the WG are the most significant in the attainment of a better corporate environment. The way that these are thought out is through the enunciation of 'The Basic Principle', which we have tried to retain as concise as possible, followed by an explanation and recommendations on the measures that companies should adopt with a view to complying with the Principle.
- ◆ It is also the view of the WG that after approval of the Code transitory provisions should be promulgated to regulate the dates by when Companies will be expected to comply with the Code and when Auditors will be required to report on that compliance. In addition, it is also recommended that discussions are held with firms of accountants/auditors with a view to issuing 'guidance notes' in connection with how auditors would be expected to report and possibly to agree on a *pro forma* report.

Finally, it is our view that these Principles should remain in the realm of recommendations and as the benchmark of best practice. Indeed it is the view of the WG that these Principles ought to be adopted as the benchmark by the Exchange and that companies whose securities are listed on the MSE ought to be encouraged to adopt them. However, it is also recommended that each company should, at least once in every year report to the market on whether it has adopted these Principles and the extent to which these Principles have been adopted and the mechanisms put in place to implement them. The WG thought that it would be convenient for such a statement to be made in the Company's Annual Report. This disclosure to the market will enable investors and market players to understand better the mechanisms of each company for appropriate governance and would be able to distinguish between companies that adopt the principles and those that do not and make their own inferences about those that do not. In this context, the WG is also of the view that in order to give this disclosure more weight with the market, the auditors or legal counsel of the company should themselves report on the disclosure made by the company in the annual report.

It is also recommended that:

- The Code will apply to listed companies but should not apply to listed Collective Investment Schemes since the nature of those Schemes is certainly different to mainstream listed companies. At any rate the regulation of Collective Investment Schemes is the subject of a different regime.

Specific

There are three areas which we have considered need to be addressed, and within the parameters of which the several Principles fall.

The areas are:

1. The Board and the Directors;
2. Remuneration of the Directors;
3. Relations with Shareholders and with the Market.

Accordingly, the structure of the Code of Principles for Good Corporate Governance will follow the above division. At this stage of development, the view taken by the WG was that the first subject matter merited special focus and attention. The code of Principles is designed to provide all those involved in Corporate Governance with a concise guide on the obligations of Directors and how they may be performed.

The WG is aware that over the last few years the Maltese capital markets have also experienced the significant growth of a new player in the market – the institutional investor. The WG therefore feels that in the context of the Maltese market, which has hitherto been predominantly a small shareholders' market, institutional investors should have the requisite knowledge, expertise and resources which can add value to corporate governance in the interest of all shareholders. Indeed their actions or inactions with respect to companies in which they invest can influence smaller shareholders attitudes, and therefore the attitude of the market, towards those companies. The WG sees institutional investors as a very important market check on listed companies and their share values. In this context the WG considers the prudent use of voting by institutional investors in listed companies as a positive factor. However, to avoid creating a situation of addressing a specific class of shareholders the WG is recommending that the issue is not dealt with as a Principle but rather as part of Principle twelve.

The Working Group

1 October 2001

THE CODE OF PRINCIPLES OF GOOD CORPORATE GOVERNANCE

Objectives

This is a compendium of principles designed not only to reiterate and explain fundamental concepts of company law but to go beyond the bare minimum requirements of statute and to encourage the adoption of Principles designed to attain best practice with respect to the governance of companies based on transparency, accountability and fairness. These Principles are set up to encourage listed companies:

- to provide a framework of governance where there can be proper accountability to shareholders.
- to ensure proper transparency and disclosure of all dealings or transactions involving the Board, any Director, Senior Managers or Officers in a position of trust or other related party; and
- to protect shareholders from the potential abuse of those entrusted with the direction and management of the company.

These Principles are recommendations made to companies whose securities are admitted to the Official List or the Alternative Companies List of the Malta Stock Exchange but are not applicable to Collective Investment Schemes. It is expected that companies adopt these Principles and implement effective measures to ensure compliance therewith. The adoption of these Principles is expected to provide more transparent governance structures and improved relations with the market which should enhance market integrity and confidence.

In this context the requirement for listed companies to disclose the level and extent of compliance with these Principles is considered a significant disclosure, aimed at providing the market with the necessary information about the governance structures of public companies and their adoption of codes of best practice, which should influence their investment decisions.

THE BOARD AND THE DIRECTORS

PRINCIPLE ONE: *Every listed company should be headed by an effective Board, which should*

lead and control the company.

- 1.1** The Board should exercise leadership, enterprise, integrity and judgment in directing the company so as to achieve continuing prosperity for the company and to act in the best interest of the business enterprise in a manner based on transparency, accountability and responsibility
- 1.2** The Company can take no action on its own; all actions or omissions arise from discussion and actions taken by the Directors or their delegates and they are responsible and accountable for their actions.
- 1.3** The fundamental responsibility of the Board is to safeguard and improve the economic and commercial prosperity of the company.
- 1.4** The Directors have a duty and responsibility to act honestly and with due diligence and care in discharging their duties as Directors and in participating in the decision and policy-making process of the company. This should be reflected in all dealings of the Company and at every level of the organisation. Accordingly Directors are required to:
- (i) acquire a broad knowledge of the business of the Company;
 - (ii) be aware of and be conversant with the statutory and regulatory requirements connected to the business of the

Company; and
 - (iii) allocate sufficient time to uphold their responsibilities; and
 - (iv) attend meetings of the Board regularly.

PRINCIPLE TWO: *The Company should ensure that Board appointments are made that provide a mix of proficient Directors, each of whom is able to add value and to bring independent judgment to bear on the decision-making process.*

- 2.1** The Board should be composed of persons who are fit and proper to direct the business of the Company. The concept of fit and proper involves that Directors are honest, competent and solvent persons.
- 2.2** The shareholders, as owners of the Company, have the jurisdiction and discretion to appoint or remove Directors on the Board. It is important that the process of appointment is transparent and conducted at properly constituted shareholder general meetings where the views of the minority can be expressed.
- 2.3** It is desirable that Listed Companies have balanced Boards of Directors including both executive and non-executive Directors (including independent non-executives). The exact composition and balance on a Board will depend on the circumstances and business of each enterprise. No individual or small group of individuals should be able to dominate the Board. This may be achieved, inter alia, by separating the roles of the Chairman and Chief Executive Officer (CEO).

Ideally, the Chairman's role in leading the Board should be separate from that of the Chief Executive. However, where the CEO and the Chairman are not different individuals the Company should provide an explanation to the market through a company announcement for the decision to combine the two roles. In these cases where the roles of the Chairman and CEO are combined, then it is important that the non-executive Directors are of sufficient calibre to bring an independent judgement to bear on the various issues brought before it. In addition, non-executive Directors of sufficient calibre should be appointed whose independence and standing would offer a balance to the strength of character of such a chairman.

- 2.4 The Chairman of the Board should allow every Director to play a full and constructive role in its affairs.
- 2.5 Non-executive Directors should be free from any business or other relationship, which could interfere materially with the exercise of their independent and impartial judgement.
- 2.6 A Director should not be considered as independent if he has any involvement or relationship with the management of the Company or a business or other relationship with a significant shareholder of the Company, which could materially impede such director from exercising impartial and objective judgement.
- 2.7 When a Director is unable to acquiesce in a decision of the Board because a proposed course of action is not deemed to be consistent with his statutory or fiduciary duties and responsibilities and all reasonable steps have been taken to resolve the issue, the Director may feel that resignation may be a better alternative than acquiescence. In such instances, the shareholders are entitled to an honest account of any such disagreements between Directors.
- 2.8 The Board must be in a position to ensure a balance between enterprise and control in the Company.
- 2.9 The Board should develop a succession policy for future composition of the Board of Directors, and particularly the executive component thereof, for which the Chairman should hold key responsibility.
- 2.10 The selection process should be managed through assessment of the skills needed at Board level to add value to the business enterprise. In this context the use of Nomination Committees is encouraged. The function of Nomination Committees is to make recommendations to the Board, for recommendation to the shareholders at general meeting, on possible new appointments to the Board. A majority of the members of the Nomination Committee should be non-executives directors, and the chairman should be either the Chairman of the Board or a non-executive Director.

The names of the members of the Nomination Committee should be identified in the Company's Annual Report.

PRINCIPLE THREE: *The Board should monitor and evaluate the implementation of strategies, policies, management performance criteria and business plans within the parameters of all relevant laws, regulations and codes of best business practice.*

- 3.1 The Board should define the level of power to be retained by it in a clear manner which is known by all directors and senior management of the company. Delegation of authority to management should also be clear and unequivocal. Independently of any powers and functions that the Directors may from time validly

delegate to management, it remains a fundamental responsibility of Directors to monitor effectively the implementation of strategy and policy by management.

The Board should:

- (i) define, in clear and concise terms, the Company's strategy, policies, management performance criteria and business plans which can be measurable in a manner, which is precise and tangible;
- (ii) set up internal and external reporting systems so that the Board is supplied, in a timely manner, with information in a form and of a quality appropriate to enable the Board to discharge its duties and to enable it to conduct objective judgement on the corporate affairs of the business and take pertinent decisions to ensure that an informed assessment can be made of all issues facing the Board;
- (iii) guide and set the pace for the current operations and future developments and then review and evaluate regularly the present and future strengths and weaknesses as well as the opportunities and threats to the business;
- (iv) recognise and support enterprise and innovation amongst its management. The Board should examine how best to motivate its management;
- (v) seek to establish an effective decision-making process in order to develop the company's business efficiently;
- (vi) monitor management's implementation of corporate strategy and financial objectives. The strategy and the processes for its implementation should be regularly reviewed by the Board and effective measures taken to address any deficiencies and ensure the future sustainability of the enterprise; and
- (vii) monitor the application by management of its policies towards the Company's shareholders and other stakeholders.

3.2 Upon being appointed to the Board, Directors should ensure that they have sufficient and adequate information about the Company, its affairs and their fiduciary duties, responsibilities and liabilities. It is desirable that periodic information sessions are organized to ensure that Directors are familiar with, inter alia:

- (i) the Company's operations and prospects;
- (ii) the Senior Management and its skills and competence;
- (iii) the general business environment;
- (iv) the Board's expectations; and
- (v) their statutory and fiduciary duties.

3.3 The Directors must ensure compliance with the law and associated regulations and in respect of which each Director has a responsibility to ensure that the Company has adequate processes in place to ascertain that

management and employees comply with laws and associated regulations.

- 3.4 The Board should ensure that where necessary for the proper performance by Directors of their duties and responsibilities, each Director has available to him independent advice obtained at the Company's cost and, where applicable, additional training.
- 3.5 The Board is expected to act responsibly in regard to the environment, health and safety, employee relations, ethical consumer conduct and social accountability.
- 3.6 The Board must understand and fully appreciate the business risk issues and key performance indicators affecting the ability of the company to achieve its objectives. The Board should assess regularly any circumstances, whether actual or potential, that could expose the Company or its Directors to risk and take appropriate action.
- 3.7 The business risk and key performance indicators should be benchmarked against industry norms so that the Company's performance can be effectively evaluated.
- 3.8 The Board shall require management to constantly monitor performance and report fully and accurately on the key performance indicators to its satisfaction.
- 3.9 The Board should recognise that the Company's success depends upon its relationships with all groups of its stakeholders, including employees, suppliers, customers, and the wider community in which the company operates. The Board should maintain effective dialogue with such groups in the best interests of the company.

PRINCIPLE FOUR: *The Board should monitor and record dealings by directors and senior officers in any of the securities of the company.*

- 4.1 A Director or Senior Officer shall not deal directly or indirectly in any of the securities of the Company of which he is a Director or Senior Officer:
 - (i) on considerations of a short term nature. In particular a Director may not deal in any listed securities as aforesaid without giving advance notice to the Chairman or one or more other Directors designated for this purpose. In his own case, the Chairman or such other designated director, shall not deal without giving advance notice to the Board of Directors or any other designated Director as appropriate;
 - (ii) at any time when he is in possession of unpublished price-sensitive information in relation to those securities; and
 - (iii) during such other period as may be established by the Malta Stock Exchange from time to time.
- 4.2 The same restrictions apply to dealings by a Director in the securities of any other listed company when by virtue of his position as a Director of his own Company, he is in possession of unpublished price-sensitive information in relation to those securities.
- 4.3 These restrictions on dealings by a Director or Senior Officer shall be regarded as equally applicable to any

dealings by the Director's/Senior Officer's spouse or by or on behalf of any infant child and any other dealings in which he is to be treated as interested. It is the duty of the Director or Senior Officer therefore, to seek to avoid any such dealing at a time when he himself is not free to deal.

4.4 A written record shall be maintained by the listed Company of the receipt of any advance notice received from a Director pursuant to paragraph (i) above. The Chairman or the designated Director or Senior Officer shall confirm in writing to the Director giving notice as aforesaid that a record of such notice has been retained.

4.5 Any employee of the listed Company or Director or employee of a subsidiary undertaking or parent undertaking of the Listed Company who, because of his office or employment in the Listed Company or subsidiary undertaking or parent undertaking, is in possession of unpublished price-sensitive information in relation to the Listed Company shall comply with the terms of this Principle as though they were Directors.

PRINCIPLE FIVE: *The Board must convene regularly and conduct meetings giving all Directors equal and fair opportunity to discuss matters affecting the business so that they honour their responsibilities at all times.*

5.1 The Board should meet regularly in line with the nature and demands of the Company's business. Preferably meetings should be convened at intervals not exceeding two months.

5.2 Advance notice of the dates of forthcoming meetings should be circulated and papers to be considered at Board meetings should be made available in advance so that they can be properly considered before the meeting. Advance notice should be given of ad hoc meetings of the Board so that all directors can re-arrange commitments as to time so as to participate.

5.3 The Chairman is responsible primarily for the working of the Board and for ensuring that all relevant issues are on the Agenda supported by all available information.

5.4 Conduct of Board meetings should facilitate and encourage the presentation of views pertinent to the subject matter.

5.5 After each Board meeting and before the next Board meeting, minutes that faithfully record decisions should be prepared and should be made available to all Directors as soon after the meeting as practicable.

PRINCIPLE SIX: *The Board should regularly review processes and procedures to ensure the effectiveness of its internal systems of control, so that its decision-making capability and the accuracy of its reporting and financial results are maintained at a high level at all times.*

6.1 It is good practice for the Board to create and maintain an Audit Committee in order to review procedures and internal control systems. It is accepted best practice for a non-executive Director to chair the Audit Committee, for a majority of the members of this committee to be non-executive Directors and for the

independent auditor and head of internal audit to attend meetings of this committee.

- 6.2** The Board should determine the terms of reference, life span, composition, role and function of such committee and should establish, maintain and develop appropriate reporting procedures. The Audit Committee's primary purpose is to protect the interests of the company's shareholders and assist the Directors in conducting their role effectively. The scope of this Committee's responsibilities should, inter alia include:
- (i) to assist the Board of Directors in fulfilling its monitoring responsibility over the financial reporting processes, financial policies and internal control structures;
 - (i) maintain communications on such matters between the Board, management, the independent auditors and the internal auditors; and
 - (iii) preserving the company's assets by understanding the Company's risk environment and determining how to deal with those risks.
- 6.3** The Board should ensure that the Audit Committee establishes internal procedures and should monitor these on a regular basis. The Audit Committee should also ensure that access between the internal and external auditors of the Company is open and constructive.
- 6.4** The Board must ensure that the financial statements of the company and Annual Audit thereof have been completed. In addition, the Board should satisfy itself that any issues raised by the external auditor and communicated to the Company have been adequately addressed.

PRINCIPLE SEVEN: *The Board should appoint the Chief Executive Officer, should at least participate in the appointment of senior management, should ensure that there is adequate training in the company for management and employees and should establish a succession plan for senior management.*

- 7.1** The Board should actively consider the establishment and implementation of appropriate schemes to recruit, retain and motivate high quality executive Directors.
- 7.2** The Board should ensure that systems are in place:
- (i) for the development of the human resources element within the business enterprise generally;
 - (ii) to ensure that the staff should receive adequate and relevant training so that the company remains competitive;
 - (iii) Where appropriate to provide additional training for individual directors;
 - (iv) in order to monitor management and staff morale generally; and
 - (v) to establish a succession plan for senior management .

REMUNERATION OF DIRECTORS

PRINCIPLE EIGHT: *Companies should set out a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual Directors. No Director should be involved in fixing his or her own remuneration.*

8.1 The use of Remuneration Committees by Listed Companies is to be positively considered. To avoid potential conflicts of interests Boards of Directors should establish Remuneration Committees of independent non-executive Directors:

- (i) to make recommendations to the Board, within agreed terms of reference, on the Company's framework of executive remuneration and its cost; and
- (ii) to determine specific remuneration packages in the case of individual executive Directors.

8.2 Remuneration committees should be composed of a majority of independent non-executive Directors with no personal financial interest other than as shareholders in the Company.

8.3 The Board itself, subject to the approval of shareholders in general meeting, should determine the remuneration of the non-executive Directors, including that of the members of the Remuneration Committee.

8.4 Remuneration Committee should consult the Chairman and/or the CEO in connection with their proposals relating to the remuneration of executive Directors and should have access to independent advice at the cost of the Company.

PRINCIPLE NINE: *The remuneration of directors should be such as to attract and retain the directors needed to run the company successfully, but companies should avoid paying more than is necessary for this purpose. It is desirable that a proportion of executive directors' remuneration is linked to corporate an individual performance.*

9.1 Remuneration Committees have as their prime role the function of devising the appropriate packages needed to attract, retain and motivate executive Directors with the right qualities and skills for the proper management of the company.

9.2 Remuneration Committees should however avoid paying more than is necessary to secure the executive Directors with the proper skills and qualities.

9.3 Remuneration Committees should be sensitive to the wider scene, including pay and employment conditions of comparable companies. Comparisons, however should be used with caution so as not to create an upward spiral of remuneration levels without any corresponding improvement in performance.

9.4 Performance-related elements of the remuneration of executive Directors and other executives should

constitute a significant element of the total remuneration package, particularly of executive Directors and should be designed to align the interests of Directors with those of shareholders.

9.5 It is highly desirable that executive Directors are engaged on definite service contracts. In deciding the term of office a balance ought to be maintained between the need to provide continuity at the highest executive levels of the Company and the importance that the position of executive Directors is not entrenched in the company.

9.6 Remuneration Committees should consider what compensation would become payable in the event of early termination of Directors' service contracts and such provisions should be included in the service contracts themselves so as to avoid the uncertainty of negotiation in the event of early termination later on.

PRINCIPLE TEN: *The Annual Report of the company should contain a report by the Remuneration Committee on the remuneration policy of the company and a brief outline of the remuneration of each director.*

10.1 Disclosure of directors' remuneration is considered a significant element in the overall accountability of the directors towards shareholders with respect to their own remuneration.

10.2 The Company's Annual Report should contain a statement made by the Remuneration Committee, or until such time as a Remuneration Committee is set up, the Board, which provides useful and meaningful information to shareholders on the effect of the company's arrangements for remuneration policy including profit-sharing, share options and pension benefits.

RELATIONS WITH SHAREHOLDERS AND WITH THE MARKET

PRINCIPLE ELEVEN: *The Board should ensure that the Company communicates with the market effectively. Where practicable, the Board should be prepared to enter into a dialogue with institutional shareholders and market intermediaries based on the mutual understanding of objectives.*

11.1 The Company should provide the market with regular, timely, accurate, comprehensive and comparable information in sufficient detail to enable investors to make informed investment decisions. Listed Companies should hold at least annually a meeting with market intermediaries/stockbrokers and the media other than the Annual General Meeting. Other meetings at more frequent intervals may be necessary in the light of Board decisions or other developments affecting the Company.

11.2 Communication with the market is crucial for Listed Companies and the integrity of the market itself. The Board should ensure that long-term strategic decisions are communicated where Directors consider such to be in the best interests of the Company.

- 11.3** Directors must not disclose price-sensitive confidential information unless that disclosure has been authorised by the Board and such disclosure is made available to the market.

PRINCIPLE TWELVE: *The Board shall serve the legitimate interests of the company and account to shareholders fully. Companies should use the General Meeting to communicate with shareholders.*

- 12.1** The Board should endeavour to protect and enhance the interest of both the Company and its shareholders, present and future.
- 12.2** The Board should :
- (i) always ensure that all holders of each class of capital are treated fairly and equally;
 - (ii) act in the context that its shareholders are constantly changing and consequently, decisions should take into account the interests of future shareholders as well.
- 12.3** Shareholders must appreciate the significance of participation in the general meetings of the Company and particularly in the election of Directors. They should continue to hold Directors to account for their actions, their stewardship of the Company's assets and the performance of the Company.
- 12.4** Institutional shareholders have the knowledge and expertise to analyse market information and make their independent and objective conclusions of the information available. As such their role in the market is, and is perceived by investors as being, a very significant one. Accordingly institutional investors are expected to conduct themselves in an appropriate manner in the market and act as a more effective check on Listed Companies. Institutional shareholders should take steps to ensure that their voting objectives are being translated into practice.
- The term 'institutional shareholders' should be interpreted widely and includes any person who by profession, whether directly or indirectly, take positions in investments as principals; or manage or hold funds for or on behalf of others and includes custodians; banks, financial institutions, fund managers, stockbrokers, investment managers and others.
- 12.5** The agenda for general meetings of shareholders and the conduct of such meetings must not be arranged in a manner to frustrate valid discussion and decision-taking.
- 12.6** Sufficient explanation of proposals put before an extraordinary general meeting or proposals considered as extraordinary business must be provided in advance of the meeting with adequate time within which shareholders can evaluate them.
- 12.7** Provision must be made for shareholders who do not attend a general meeting to appoint a proxy of their choice to attend and vote on any matter either in favour of, or against, any proposal presented at a general meeting of shareholders, or to abstain.

- 12.8** The Company should consider making available for inspection to its shareholders for a period not less than 15 days particulars of service contracts and particulars of any contract in which a Director of the Company is materially interested and which is significant in relation to the business of the Company and its subsidiaries taken as a whole.
- 12.9** The Company should disclose the total of any outstanding loans granted by the company or any of its subsidiaries or the parent of such company to the Directors of the Company and of any guarantees provided for their benefit.
- 12.10** It is the Directors' responsibility not to make improper use of information acquired by them by virtue of their position as a Director.
- 12.11** The Board should consider whether, from time to time, disclosure should be made by the Company to other stakeholders than its shareholders, but in other respects treating them equally as regards content and timeliness.

PRINCIPLE THIRTEEN: *The Board shall Directors' primary responsibility is always to act in the interest of the company and its shareholders as a whole irrespective of who appointed them to the Board.*

- 13.1** A Director should avoid conflicts of interest at all times and shall not accept a nomination if he is aware that he has an actual conflict of interest. Should an actual or potential conflict arise the Director must disclose the conflict in full and in time to the Board and the Board shall determine whether or not that Director should participate in the discussion. In any event the Director shall refrain from voting on the matter. In certain circumstances it may be appropriate for the Board to disclose in a public document that an actual conflict or potential for conflict of interest has arisen.
- 13.2** The personal interest of a Director must not take precedence over those of the Company and its shareholders.
- 13.3** A Director having a continuing material interest that conflicts with the interests of the Company, should take effective steps to eliminate the grounds for conflict. In the event that such steps do not eliminate the grounds for conflict then the Director should consider resigning.
- 13.4** Each Director should declare to the Company his or her interest in the share capital of the Company distinguishing between beneficial and non-beneficial interest and should only deal in such shares as referred to in Principle Four.