



THE PRIVATE SECTOR ORGANISATION OF JAMAICA

CODE ON CORPORATE GOVERNANCE

PREAMBLE

The Code, which is based on The Combined Code on Corporate Governance issued by the Financial Reporting Council (FRC) of the United Kingdom (UK) on 23 July 2003, has been compiled by the Corporate Governance Committee of the Private Sector Organisation of Jamaica. Part 1 of this Code (“the Principles) will become effective for annual reporting periods commencing on or after 1st January 2007. It is hoped that those companies that are able to do so will adhere to Part 2 of the Code (“Best Practices) as soon as may be practicable thereafter.

The Code sets out the core Principles and Best Practices that the Committee proposes for adoption by all publicly listed companies in Jamaica and non-listed companies engaged in the provision of financial services. The PSOJ encourages other non-listed companies to be guided by the Principles and to adhere to the Best Practices where practicable. The Committee has tailored the provisions of the FRC code to suit the “Jamaican business climate”, in particular the embryonic state of Corporate Governance. The Committee has also taken into consideration the small number of listed companies and consequently the small number of business people, who would qualify for appointment as non-executive directors.

The intention is that companies should have a free hand to act in the spirit of good corporate governance and to explain their governance policies in the light of the Principles, including any special circumstances applying to them which have led to a particular approach. The company has either to confirm that it complies with the Code’s Principles or – where it does not – to provide a reasoned explanation. This comply or explain approach has been in operation for over ten years in the UK and the flexibility it offers has been widely welcomed both by company Boards and by investors. It is for shareholders and others to evaluate the company’s statement.

While it is expected that listed companies, and companies engaged in the provision of financial services, will comply with the Principles most of the time, it is recognized that departure from these Principles may be justified in particular circumstances. Every company should review and apply each Principle carefully and give a considered explanation if it departs from any of them.

With a view to ensuring its relevance in the context of international best practices and the Jamaican business climate, the PSOJ will periodically review and amend the Code in consultation with its members and other stakeholders.

PART 1:- PRINCIPLES OF GOOD GOVERNANCE

SECTION 1 COMPANIES

A) DIRECTORS:

1. The Board

Every company should be led by an effective Board, which is collectively responsible for promoting the success of the company by directing and supervising the company's affairs.

2. Chairman and Chief Executive

The company's constitution should include a clear division of responsibilities at the head of the company between the running of the Board (the Chairman) and the executive responsibility for the running of the company's business (the CEO). No one individual should have unfettered powers of decision.

3. Board balance and independence

The Board should include a balance of executive and non-executive directors, such that no individual or small group of individuals can dominate the Board's decision taking. Of the non-executive directors, two thirds of these should be independent non-executive directors. The Chairman should also be an independent non-executive director.

4. Appointments to the Board

There should be a formal, rigorous and transparent procedure for the appointment of directors to the Board.

5. Information and professional development

The Board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties. New directors should receive a comprehensive induction to the company's affairs on joining the Board and all directors should continually update and refresh their skills and knowledge.

6. Performance evaluation

The Board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors.

7. Re-election

All directors should be submitted for re-election at regular intervals, subject to continued satisfactory performance. The Board should ensure planned and progressive refreshing of the Board.

8. Liability of non-executive directors: care, skill and diligence

Non-executive directors and executive directors owe the same legal duty of care, diligence and skill to the company.

B) REMUNERATION

1. The Level and Make-up of Remuneration

Levels of remuneration of a company's executives and board members should be sufficient to attract and retain and motivate persons of the quality required to run the company successfully. A significant proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance.

2. Procedure

Companies should establish a formal and transparent procedure for developing policy on executive directors' remuneration and for fixing the remuneration packages of individual executive directors. No director should be involved in deciding his or her own remuneration.

3. Disclosure

The company's annual report should contain a statement of remuneration policy and details of the remuneration of its executives and directors.

C) RELATIONS WITH SHAREHOLDERS

1. Dialogue with Shareholders

There should be regular communication between the company and its shareholders based on the mutual understanding of objectives. Whilst recognizing that most shareholders' contact is with the executive directors, the chairman and the Board as a whole should maintain sufficient contact with shareholders to understand their issues and concerns.

2. Constructive Use of the AGM

Boards should use the AGM as a major opportunity to inform shareholders and investors on the company's affairs and encourage their participation. Boards should ensure that shareholders are provided with sufficient information for the AGM to make well-informed decisions on issues put for voting at the AGM.

D) ACCOUNTABILITY AND AUDIT

1. Financial Reporting

The Board should ensure that the company provides its shareholders and investors with information that presents a balanced and understandable assessment of the company's financial and business position and prospects.

2. Internal Control

The Board should ensure that a sound system of internal control and risk management is maintained to safeguard shareholders' investment and the company's assets.

3. Audit Committee and Auditors

The Board should establish an Audit Committee.

The Board should establish formal, rigorous and transparent arrangements for selecting independent auditors and ensure that the independent auditors make a thorough checking of the company's financial accounts, application of financial reporting standards and efficiency of internal control mechanisms. The Board must maintain an appropriate relationship with the company's auditors.

SECTION 2: INSTITUTIONAL SHAREHOLDERS

E) INSTITUTIONAL INVESTORS

1. Shareholder Voting

Institutional shareholders have a responsibility to make considered use of their votes.

2. *Communication with companies*

Institutional shareholders should maintain regular communication with companies based on the mutual understanding of objectives.

3. Evaluation of Governance Disclosures

When evaluating companies' Governance arrangements, particularly those relating to Board structure and composition, transparency and disclosure, institutional investors should give due weight to all relevant factors drawn to their attention¹.

¹ Activism on the part of institutional shareholders in Jamaica has been little developed. To inform institutional investors who wish to develop a level of activism, it is recommended that they should consider the framework of best practices on the implementation of fiduciary responsibilities in relation to equity shareholdings as set out in:

i. "The Responsibilities of Institutional Shareholders and Agents - Statement of Principles" as issued by the Institutional Shareholders' Committee, September 2002, (www.investmentuk.org.uk/press/2002/200212021-01.pdf) or (<https://www.rrev.co.uk/home/7%20ISC%20statement%20of%20shareholder%20activism.pdf>) and

ii. "Institutional Shareholders Responsibilities" as issued by the International Corporate Governance Network, September, 2003 (www.icgn.org/documents/sharecomm-guidelines.pdf)

PART 2: BEST PRACTICES

SECTION 1 COMPANIES

A. DIRECTORS

A.1 *The Board*

Principle:

Every company should be led by an effective Board, which is collectively responsible for promoting the success of the company by directing and supervising the company's affairs.

Code Provisions

- A. 1.1 The Board's role is to provide entrepreneurial leadership of the company within a framework of prudent and effective controls which enables risk to be assessed and managed. The Board should set the company's strategic aims and monitor their achievement, ensure that the necessary financial and human resources are in place for the company to meet its objectives and review management performance. The Board should set the company's values and standards and ensure that its obligations to its shareholders and other stakeholders are understood and met.
- A.1.2 The Board should meet sufficiently regularly to discharge its duties effectively. There should be a formal schedule of matters specifically reserved for its decision. The annual report should include a statement of how the Board operates, including a high level statement of which types of decisions are to be taken by the Board and which are to be delegated to management.
- A.1.3 All directors must take decisions objectively in the interest of the company.
- A.1.4 As part of their role as members of a unitary Board, non-executive directors should constructively challenge and help develop proposals on strategy. Non-executive directors should scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance. They should satisfy themselves on the integrity of financial information and that financial controls and systems of risk management are robust and defensible. They are responsible for determining appropriate levels of remuneration of the company's senior executives and directors and have a prime role in appointing, and where

necessary removing, the senior executives and directors, and in succession planning.

- A.1.5 At least semi-annually, the chairman should hold meetings with the non-executive directors without the executive directors being present. Led by the senior independent director, the non-executive directors should meet without the chairman present at least annually to appraise the chairman's performance (as described in A.6.1) and on such other occasions as are deemed appropriate.
- A.1.6 Where directors have concerns, which cannot be resolved, about the way in which the company is being run or about a course of action being proposed by the Board, they should ensure that their concerns are recorded in the Board minutes. Where a non-executive director resigns because of such concerns a written statement should be provided to the chairman for circulation to the Board.
- A.1.7 A written statement should be provided to the chairman, for circulation to the Board, setting out the reasons where a non-executive director resigns for reasons other than unresolved concerns.
- A.1.8 Companies should arrange appropriate insurance cover in respect of legal action against its directors in the discharge of their duties as directors.

A.2 *Chairman and Chief Executive*

Principle

The company's constitution should include a clear division of responsibilities at the head of the company between the running of the Board (the Chairman) and the executive responsibility for the running of the company's business (the CEO). No one individual should have unfettered powers of decision.

Code Provision

- A.2.1 The roles of chairman and chief executive should not normally be exercised by the same individual. The division of responsibilities between the chairman and chief executive should be clearly established. It should be set out in writing and agreed by the Board.
- A.2.2 The annual report should identify the chairman, the deputy chairman (where there is one), the chief executive, the senior independent director and the chairmen and members of all committees of the board. It should

also disclose the number of meetings of the Board and those committees and individual attendance by directors. It is only necessary to identify that the Chairman is also the CEO.

- A.2.3 The chairman should on appointment meet the independence criteria set out in A.3.3 below. A former chief executive should not go on to be chairman of the same company. If exceptionally, after a period of three (3) years a Board decides that a former chief executive officer should become chairman, the Board should consult major shareholders in advance and should set out its reasons to shareholders at the time of the next annual report.
- A.2.4 The chairman is responsible for leadership of the Board, ensuring its effectiveness on all aspects of its role and setting its agenda. The chairman is also responsible for ensuring that the directors receive accurate, timely and clear information. The chairman should ensure effective communication with the company's management and shareholders. The chairman should also facilitate the effective contribution of non-executive directors and ensure constructive relations between executive and non-executive directors.

A.3 *Board Balance and independence*

Principle

The Board should include a balance of executive and non-executive directors, such that no individual or small group of individuals can dominate the Board's decision taking. Of the non-executive directors, two thirds of these should be independent non-executive directors. The Chairman should also normally be an independent non-executive director.

Code Provisions

- A.3.1 The Board should be of sufficient size that the balance of skills and experience is appropriate for the requirements of the business and that changes to the Board's composition can be managed without undue disruption.
- A.3.2 To ensure that independent, balanced and objective decisions are made by the Board, there should be a strong presence on the Board of both executive and non-executive directors.
- A.3.3 The Board should identify in the annual report each non-executive director it considers to be independent. The Board should determine whether the director is independent and whether there are relationships or

circumstances which are likely to affect, or could appear to affect, the director's judgement. The Board should state its reasons if it determines that a director is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including if the director:

- has been an employee of the company or group within the last three years;
- has, or has had within the last three years, a material business relationship with the company either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company;
- has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance-related pay scheme;
- has close family ties with any of the company's advisers, directors or senior employees;
- holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
- represents a significant shareholder; or
- has served on the Board for more than seven years from the date of their first election.

A.3.4 At least half the Board, excluding the chairman, should comprise non-executive directors of whom at least two-thirds are determined by the Board to be independent. A company should have at least two independent non-executive directors.

A.3.5 The Board should appoint one of the independent non-executive directors to be the senior independent director, who should be identified in the annual report. The senior independent director should be available to shareholders if they have concerns, which contact through the normal channels of chairman, chief executive or finance director has failed to resolve, or for which such contact is inappropriate.

A.3.6 Unless the company is small, no individual should sit on all three principal Board Committees (audit, nomination and remuneration) at the same time.

A.4 *Appointments to the Board*

Principle

There should be a formal, rigorous and transparent procedure for the appointment of directors to the Board.

Code Provision

- A.4.1 There should be a nomination committee which should lead the process for Board appointments and make recommendations to the Board. A majority of members of the nomination committee should be independent non-executive directors. The chairman or an independent non-executive director should chair the committee, but the chairman should not chair the nomination committee when it is dealing with the appointment of a successor to the chairmanship. The nomination committee should make available its terms of reference, explaining its role and the authority delegated to it by the Board.
- A.4.2 Before making an appointment, the nomination committee should evaluate the balance of skills, knowledge and experience on the Board and, in the light of this evaluation, prepare a description of the role and capabilities required for a particular appointment.
- A.4.3 The terms and conditions of appointment of non-executive directors should be made available to the shareholders for inspection. The letter of appointment should set out the expected time commitment. The candidates for election as non-executive directors on the Board should submit their written consent to be elected and confirmation of their understanding of the duties they assume in case of election, and consent to conform to the code of conduct approved by the Board. Their material interests and commitments should be disclosed to the Board before appointment, with a broad indication of the time involved and the Board should be informed of subsequent changes.
- A.4.4 The Board should set out to shareholders why they believe an individual should be elected as a non-executive director and how he or she meets the requirements of the role. The names of directors submitted for election or re-election should be accompanied by sufficient biographical details and any other relevant information to enable shareholders to take an informed decision on their election.
- A.4.5 The nomination committee should review annually the performance evaluation of all non-executive directors in assessing whether they have effectively discharged their duties. If the non-executive director is offered appointments elsewhere, the chairman of the nomination committee

should be informed before any new appointments are accepted and the Board should subsequently be informed of any potential conflicts of interest.

- A.4.6 A full time executive director should not take on more than one non-executive directorship, nor become chairman, of a company listed on the JSE. No individual should chair the Board of more than one listed company.
- A.4.7 The Board should satisfy itself that plans are in place for orderly succession for appointments to the Board and to senior management, so as to maintain an appropriate balance of skills and experience within the company and on the Board.
- A.4.8 The nomination committee should make a statement in the annual report detailing its activities and the process it has used to make appointments.

A.5 ***Information and Professional development***

Principle

The Board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties. New directors should receive a comprehensive induction to the company affairs on joining the Board and all directors should continually update and refresh their skills and knowledge.

Code Provision

- A.5.1 The chairman is responsible for ensuring that the directors receive accurate, timely and clear information. Management has an obligation to provide such information but directors should seek clarification or amplification where necessary.
- A.5.2 The Board should ensure that directors, especially non-executive directors, have access to independent professional advice at the company's expense where they judge it necessary to discharge their responsibilities as directors. Committees should be provided with sufficient resources to undertake their duties.
- A.5.3 All directors should have access to the impartial advice and services of the company secretary who is responsible to the Board for ensuring that Board procedures are followed and that applicable rules and regulations are

complied with. Under the direction of the chairman the company secretary's responsibilities include facilitating induction and professional development, ensuring good information flows within the Board, its committees and between non-executive directors and senior management.

A.5.4 Both the appointment and the removal of the company secretary should be a matter for the Board as a whole.

A.5.5 It is the responsibility of the chairman to ensure that new directors receive comprehensive, formal and tailored induction to the company's affairs on joining the Board. This may include, amongst other things, meeting with the company's senior executives and major investors.

A.5.6 The chairman should ensure that the directors continually update the skills and knowledge required to fulfill their role both on the Board and on Board committees. The company should acknowledge that as part of the cost of running an effective Board they need to provide money and time for developing and updating their directors.

A.6: ***Performance Evaluation***

Principle

The Board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors.

Code Provision

A.6.1 Performance evaluation of the Board, its committees and its individual directors should be undertaken at least once a year. The board should develop the criteria of evaluation. The board should act on the results of the performance evaluation by recognising the strengths and addressing the weaknesses of the Board and, where appropriate, appointing new members to the Board or seeking the resignation of directors.

A.6.2 It is the duty of the chairman to evaluate the performance of the CEO once a year and report to the board. The board should develop in advance the evaluation criteria and inform the CEO.

A.6.3 The Board should state in the annual report whether such performance evaluation is taking place and how it is conducted.

A.7: Re-election

Principle

All directors should be submitted for re-election at regular intervals, subject to continued satisfactory performance. The Board should ensure planned and progressive refreshing of the Board.

Code Provision

- A.7.1 Non-executive directors should be appointed for specified terms subject to reelection and to Companies Act provisions relating to the removal of a director, and reappointment should not be automatic.
- A.7.2 All directors should be subject to election by shareholders at the first opportunity after their appointment, and to re-election thereafter at intervals of no more than three years.
- A.7.3 Non-executive directors would normally be expected to serve three terms of three years subject to continued satisfactory performance, but may exceptionally serve longer where this would be in the interests of the company and the reasons are explained to shareholders. Non-executive directors serving nine years or more should be subject to annual re-election.
- A.7.4 Before proposing re-election, the chairman should confirm as a result of performance evaluation that the board is satisfied that the non-executive director continues to contribute effectively and demonstrate commitment to the role.

A.8 *Liability of non-executive directors: care, skill and diligence*

Principle

Non-executive directors and executive directors owe the same legal duty of care, diligence and skill to the company.

- A.8.1 In order to enable directors to fulfill their duties, the company should adopt the following best practices:
- the contract or letter of appointment of the director should set out what is expected of them including the level of responsibility and time commitment;

- the chairman should provide sufficient, accurate, timely and clear information to Board members to give them a fair and balanced understanding of relevant issues;
- Non-executive directors should themselves:
 - undertake appropriate induction and, as needed, professional development,
 - make appropriate enquiries, and where necessary, take and follow appropriate professional advice which shall be paid for by the company,
 - where they have concerns, ensure that these are addressed by the Board and to the extent that they are not resolved, ensure that they are recorded,
 - give a statement of reasons to the Board if they resign.

B. REMUNERATION

B.1 *The Level and Make-up of Remuneration*

Principle

Levels of remuneration of a company's executives and board members should be sufficient to attract and retain and motivate persons of the quality required to run the company successfully. A significant proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance.

Code Provisions

Remuneration policy

- B.1.1 The remuneration committee should provide the packages needed to attract, retain and motivate executive directors of the quality required but should avoid paying more than is necessary for this purpose
- B.1.2 Remuneration committees should be aware what comparable companies are paying and should take account of relative performance. But they should use such comparisons with caution, in view of the risk that they can result in an upward ratchet of remuneration levels with no corresponding improvement in performance.

- B.1.3 Remuneration committees should be sensitive to broader issues, including pay and employment conditions elsewhere in a group, especially when determining annual salary increases.
- B.1.4 The performance-related elements of remuneration should form a significant proportion of the total remuneration package of executive directors and should be designed to align their interests with those of shareholders and to give these directors keen incentives to perform at the highest levels.
- B.1.5 Executive share options should not be offered at a discount save as permitted by the relevant provisions of the listing rules.
- B.1.6 Levels of remuneration for non-executive directors should reflect the time commitment and responsibilities of the role. Remuneration for non-executive directors should not include share options. If, exceptionally, options are granted, shareholder approval should be sought in advance and any shares acquired by exercise of the options should be held until at least one year after the non-executive director leaves the Board. Holding of share options could be relevant to the determination of a non-executive director's independence (as set out in provision A.3.3).

Service Contracts and Compensation

- B.1.7 Notice period should be set at one year or less.
- B.1.8 If it is necessary to offer longer notice to new directors recruited from outside, such periods should reduce after the initial period.
- B.1.9 Remuneration committees should consider what compensation commitments (including pension contributions) their executive directors' contracts of service, if any, would entail in the event of early termination. They should, in particular, consider the advantages of providing explicitly in the initial contract for such compensation commitments except in the case of removal for misconduct. In doing so, they should bear in mind the need to ensure that such provisions do not have the effect of rewarding poor performance which would not amount to misconduct or otherwise entitle the company to terminate the contract.
- B.1.10 Where the initial contract does not explicitly provide for compensation commitments, remuneration committees should, within legal constraints, tailor their approach in individual early termination cases to the wide variety of circumstances. The broad aim should be to avoid rewarding poor performance while dealing fairly with cases where departure is not due to poor performance and to take a robust line on reducing compensation to reflect departing directors' obligations to mitigate loss.

B.2 *Procedure*

Principle

Companies should establish a formal and transparent procedure for developing policy on executive directors' remuneration and for fixing the remuneration packages of individual executive directors. No executive director should be involved in deciding his or her own remuneration.

Code Provisions

- B.2.1 The remuneration committee should have at least three members the majority of whom should be independent non-executive directors and include the chairman, where the chairman is a non-executive.
- B.2.2 The remuneration committee should have delegated responsibility for proposing remuneration for all executive directors and the chairman, including pension rights and any compensation payments. The committee should also set the level and structure of remuneration for senior executives. The remuneration committee should make publicly available its terms of reference, explaining its role and the authority delegated to it by the Board.
- B.2.3 The members of the remuneration committee should be listed each year in the Board's remuneration report to shareholders (B.3.1 below).
- B.2.4 The Board itself or, where required by the Articles of Incorporation or Bye-laws, the shareholders should determine the remuneration of the non-executive directors, including members of the remuneration committee, within the limits set in the Articles of Incorporation or Bye-laws. Where permitted by the Articles, the Board may however delegate this responsibility to a small sub-committee, excluding the remuneration of the chairman, which should include the chairman, the chief executive and/or another executive director.
- B.2.5 The remuneration committee should consult the chairman and/or chief executive about their proposals relating to the remuneration of other executive directors. The remuneration committee should also be responsible for appointing consultants in respect of executive director remuneration.
- B.2.6 The chairman of the Board should ensure that the company maintains contact as required with its principal shareholders about remuneration in the same way as for other matters.

B.3 *Disclosure*

Principle

The company's annual report should contain a statement of remuneration policy and details of the remuneration of its executives and directors.

Code Provisions

- B.3.1 The Board should report to the shareholders each year on remuneration of the company's executives and directors. The report should form part of, or be annexed to, the company's annual report and accounts. It should be the main vehicle through which the company reports to shareholders on directors' remuneration.
- B.3.2 The report should set out the company's policy on executive directors' and non-executive directors' remuneration. It should draw attention to factors specific to the company.
- B.3.3 The Board's annual remuneration report to shareholders need not be a standard item of agenda for AGMs. The Board may consider each year whether the circumstances are such that the AGM should be invited to approve the policy set out in the report and should minute their conclusions.

C. RELATIONS WITH SHAREHOLDERS

C.1 *Dialogue with Institutional Shareholders*

Principle

There should be regular communication between the company and its shareholders based on the mutual understanding of objectives. Whilst recognizing that most shareholders' contact is with the executive directors, the chairman and the Board as a whole should maintain sufficient contact with shareholders to understand their issues and concerns.

C.1.1 The chairman should ensure that the views of shareholders are communicated to the Board as a whole. The chairman should discuss governance and strategy with major shareholders. Non-executive directors should be offered the opportunity to attend meetings with major shareholders and should expect to attend them if requested by major shareholders. The senior independent director should attend sufficient meetings with a range of major shareholders to listen to their views in order to help develop a balanced understanding of the issues and concerns of major shareholders.

C.1.2 The Board should state in the annual report the steps they have taken to ensure that the members of the Board, and in particular the non-executive directors, develop an understanding of the views of major shareholders about their company, for example through direct face-to-face contact, analysts' or brokers' briefings and surveys of shareholder opinion.

C.2 *Constructive Use of the AGM*

Principle

Boards should use the AGM as a major opportunity to inform shareholders and investors on the company's affairs and encourage their participation. Boards should ensure that shareholders are provided with sufficient information for the AGM to make well-informed decisions on issues put for voting at the AGM.

Code Provisions

C.2.1 Companies should count all proxy votes and, except where a poll is called, should indicate the level of proxies lodged on each resolution, and the balance for and against the resolution, after it has been dealt with on a

show of hands. The company should ensure that votes cast are properly received and recorded.

- C.2.2 Companies should propose a separate resolution at the AGM on each substantially separate issue and should in particular propose a resolution at the AGM relating to the report and accounts.
- C.2.3 The chairman of the Board should arrange for the chairmen of the audit, remuneration and nomination committees to be available to answer questions at the AGM and for all non-executive directors to attend.
- C.2.4 Companies should arrange for the Notice of the AGM and related papers, including the company's annual report to be sent to shareholders at least 21 working days before the meeting.

D. ACCOUNTABILITY AND AUDIT

D.1 *Financial Reporting*

Principle

The Board should ensure that the company provides its shareholders and investors with information that presents a balanced and understandable assessment of the company's financial and business position and prospects.

Code Provisions

- D.1.1 The Board should ensure that the Annual Report includes a clear description of the company's business prospects; financial accounts and a statement by the auditors on the company as a going concern and the integrity of the financial accounts.
- D.1.2 The Board's responsibility to present a balanced and understandable assessment of the company's affairs extends to interim and other price-sensitive public reports and reports to regulators as well as to information required to be presented by statutory requirements.
- D.1.3 The directors should report that the business is a going concern, with supporting assumptions or qualifications as necessary.

D.2 *Internal Control*

Principle

The Board should ensure that a sound system of internal control and risk management is maintained to safeguard shareholders' investment and the company's assets.

Code Provisions

- D.2.1 The directors should, at least annually, conduct a review of the effectiveness of the group's system of internal controls and risk management and should report to shareholders that they have done so. The review should cover material controls, including financial, operational and compliance controls and risk management systems.
- D.2.2 Companies which do not have an internal audit function should every year review the need for one.

D.3 *Audit Committee and Auditors*

Principle

The Board should establish an Audit Committee.

The Board should establish formal, rigorous and transparent arrangements for selecting independent auditors and ensure that the independent auditors make a thorough checking of the company's financial accounts, application of financial reporting standards and efficiency of internal control mechanisms. The Board must maintain an appropriate relationship with the company's auditors.

Code Provisions

D.3.1 The Board should establish an audit committee of at least three members, or in the case of smaller companies, two members, who should all be independent non-executive directors. At least one member of the audit committee should be a qualified accountant or should have significant, recent and relevant financial experience and knowledge.

D.3.2 The main role and responsibilities of the audit committee should be set out in written terms of reference and should include:

- to monitor the integrity of the financial statements of the company, and any formal announcements relating to the company's financial performance, reviewing significant financial reporting judgements contained in them.
- to review the company's internal financial control system and, unless expressly addressed by a separate Board risk committee composed of independent directors, or by the Board itself, to review the company's internal control and risk management systems.
- to monitor and review the effectiveness of the company's internal audit function.
- to ensure compliance with applicable governing statutes and regulations issued by the relevant supervisory authority.
- to make recommendations to the Board in relation to the appointment of the external auditor and to approve the remuneration and terms of engagement of the external auditor; such recommendations must take cognizance of the supply of non-audit services provided to the company by

the external auditor, which could lead to conflict of interest and impair the external auditor's independence.

- to develop and implement policy on the engagement of the external auditor to supply non-audit services.
- to review and monitor the external auditor's independence, objectivity and effectiveness of the audit process, taking into consideration relevant Jamaican professional and regulatory requirements.
- to report to the Board, identifying any matters in respect of which it considers that action or improvement is needed and making recommendations as to the steps to be taken.

D.3.3 The terms of reference of the audit committee including its role and the authority delegated to it by the Board should be made available to shareholders. A separate section of the annual report should describe the work of the committee in discharging those responsibilities.

D.3.4 The audit committee should review arrangements by which staff of the company may, in confidence, raise concerns about possible improprieties in matters of financial reporting or other matters. The audit committee's objective should be to ensure that arrangements are in place for the appropriate and independent investigation of such matters and for appropriate follow-up action.

D.3.5 The audit committee should monitor and review the effectiveness of the internal audit activities. Where there is no internal audit function, the audit committee should consider annually whether there is a need for an internal audit function and make a recommendation to the Board, and the reasons for the absence of such a function should be explained in the relevant section of the annual report.

D.3.6 The audit committee should have primary responsibility for making a recommendation on the appointment, reappointment and removal of the external auditors. If the Board does not accept the audit committee's recommendation, it should include in the annual report, and in any papers recommending appointment or re-appointment, a statement from the audit committee explaining the recommendation and should set out reasons why the Board has taken a different position.

D.3.7 The annual report should explain to shareholders how, if the external auditor provides non-audit services, auditor objectivity and independence are safeguarded.

The Smith Guidance² on audit committees published in January 2003 is to be used as a model until a local guide is developed by the Institute of Chartered Accountants of Jamaica.

² Audit Committees Combined Code Guidance (A report on proposed guidance by an FRC- appointed group chaired by Sir Robert Smith (www.frc.org.uk/publications)

SECTION 2: INSTITUTIONAL SHAREHOLDERS³

E. INSTITUTIONAL INVESTORS

E.1 *Shareholder Voting*

Principle

Institutional shareholders have a responsibility to make considered use of their votes.

Code Provisions

- E.1.1 Institutional shareholders should endeavour to eliminate unnecessary variations in criteria which each applies to the corporate governance arrangements and performance of the companies in which they invest.
- E.1.2 Institutional shareholders should, on request, make available to their clients information on the proportion of resolutions on which votes were cast and nondiscretionary proxies lodged.
- E.1.3 Institutional shareholders should take steps to ensure their voting intentions are being translated into practice.
- E.1.4 Institutional investors are expected to attend AGMs.

E.2 *Communication with companies*

Principle

Institutional shareholders should maintain regular communication with companies based on the mutual understanding of objectives.

- E.2.1 Institutional shareholders should apply the principles set out in the publication of the Institutional Shareholders' Committee- "The Responsibilities of Institutional Shareholders and Agents – Statement of Principles" (see page 5), which should be reflected in fund manager contracts.

³ See footnote 1

E.3 *Evaluation of Governance Disclosures*

Principle

When evaluating companies' Governance arrangements, particularly those relating to Board structure and composition, transparency and disclosure, institutional investors should give due weight to all relevant factors drawn to their attention.

E.3.1 Institutional shareholders should consider carefully explanations given for departure from this Code and make reasoned judgements in each case. They should give an explanation to the company, in writing where appropriate, and be prepared to enter a dialogue if they do not accept the company's position. They should avoid a box-ticking approach in assessing the company's corporate governance. They should bear in mind in particular the size and complexity of the company and the nature of the risks and challenges it faces.