



**Corporate Governance Code
for the Capital Markets**

June 2008

1. Background to the Principles

In 2006 the CMDA developed what became its Corporate Governance Project. The aim of the project was to come up with a Code of Corporate Governance which could be used by intermediaries, listed companies and players within the capital markets as a benchmark of expected good corporate governance behaviours. With funding from AusAID the project commenced with Phase I which included a desk and field review of the current status of the governance situation within the intermediary and listed company entities. In September, 2007 the Phase II Corporate Governance Conference was held at the Radisson Resort in Nadi. At that conference participants were able to discuss and identify the main governance issues for inclusion in the Principles.

Phase III of the Project is the finalisation of the Code and identification of implementation date.

The Code is voluntary although listed companies and intermediaries are required to report how they are addressing the principles under the code in their annual reports.

2. Definition

Corporate governance is the system by which companies and organisations are directed and managed. It influences how the objectives of the company are set and achieved, how risk is monitored and assessed, and how performance is optimised. Good corporate governance structures encourage companies and organisations to create value (through entrepreneurship, innovation, development and exploration) and provide accountability and control systems commensurate with the risks involved.

Corporate governance influences how:

- the objectives of the company are set and achieved;
- risk is monitored and assessed; and
- performance is optimized.

3. How is good corporate governance achieved?

What constitutes good corporate governance will evolve with the changing circumstances of a company and must be tailored to meet those circumstances. Best practice must also evolve with developments both in Fiji and overseas. There is no single model of good corporate governance.

This document articulates 10 core principles that participants at the corporate governance conference in 2007 believes underlie good corporate governance. Each principle is explained in detail, with implementation guidance in the form of best practice recommendations. Although the Council's recommendations are not mandatory and cannot, in themselves, prevent corporate failure or mistakes in corporate decision-making, they can provide a reference point for enhanced structures to minimise problems and optimise performance and accountability.

4. Why is good corporate governance important to our Capital Markets in Fiji?

Demonstrably, good corporate governance practices are increasingly important in determining the cost of capital in a global capital market. Fiji companies must be equipped to compete globally and to maintain and promote investor confidence both in Fiji and overseas. In an examination of our corporate governance practices, intermediaries and listed companies vary in the position of strength of governance within entities. Majority of companies are at a position of strength whilst some companies may have to use more effort in meeting some basic benchmarks. However, it is important that we continue to review those practices to ensure they continue to reflect local and international developments and position Fiji at the forefront of best practice.

5. How to approach the Principles (“if not, why not’ approach)

These principles do not prescribe a “one size fits all” approach to corporate governance but aims to set out principles and best practices on structures and processes that companies may use in their operations towards achieving the optimal governance framework. If a company considers that a recommendation is inappropriate to its particular circumstances, it has the flexibility not to adopt it but the company is required to explain why.

Companies are required to provide a statement in their annual report disclosing the extent to which they have followed these best practice recommendations in the reporting period. Companies must identify any recommendations that they have not been followed, and give reasons for not following them.

Companies are encouraged to use the guidance provided by this document as a focus for re-examining their corporate governance practices and to determine whether and to what extent the company may benefit from a change in approach, having regard to the company's particular circumstances. There is little value in a checklist approach to corporate governance that does not focus on the particular needs, strengths and weaknesses of the company.

The CMDA recognises that the range in size and diversity of companies is significant and that smaller companies may face particular issues in attaining all recommendations from the outset. Performance and effectiveness can be compromised by material change that is not managed sensibly. Where a company is considering widespread structural changes in order to meet best practice, the company is encouraged to prioritise its needs and to set and disclose best practice goals against an indicative timeframe for meeting them.

6. What disclosures are necessary?

It is only where a recommendation is not met or where a disclosure requirement is specifically identified that a disclosure obligation is triggered. Each recommendation is clearly identified as such.

The commentary and guidance that follows each recommendation does not form part of the recommendation. It is provided to assist companies to understand the reasoning for the recommendation, highlight factors which may be relevant for consideration, and make suggestions as to how implementation might be achieved.

7. Where should disclosure be made?

Specific guidance is given at the end of each principle as to what disclosure the company is required or encouraged to make and where. In some cases the company is required to set out the relevant disclosure in a separate corporate governance section of the annual report. Where the Companies Act requires particular information to be included in the directors' report, the company has the discretion to include a cross-reference to the relevant information in the corporate governance section of the annual report rather than replicating that information.

For more general information, there are requirements to make information publicly available, ideally by provision on the company's website. This information should be clearly presented in a dedicated corporate governance information section within the website. The corporate governance section of the annual report should contain appropriate website references, links or instructions to enable shareholders to readily access this information. Where a company does not have a website, this information must be made publicly available by other means. For example, a company may provide the information on request by email, facsimile or post.

8. What is the disclosure period?

The change in reporting requirement applies to the company's first financial year commencing after 1 January 2009. Accordingly, where a company's financial year begins on 1 July, disclosure will be required in relation to the financial year 1 July 2008 – 30 June 2009 and will be made in the annual report published in 2009. Companies are encouraged to make an early transition to the best practice recommendations and are requested to consider reporting by reference to the recommendations in their corporate reporting this year.

9. Acknowledgements

The CMDA Corporate Governance principles and best practice recommendations have benefited from the invaluable contributions made by a number of industry intermediaries, corporate governance experts and listed companies, their directors and chairpersons. The CMDA is most grateful for their input.

Principle 1: Establish clear Responsibilities for Board oversight

The company's framework should be designed to:

- enable the Board to provide strategic guidance for the entity and effective oversight of management;
- clarify the respective roles and responsibilities of board members and senior executives in order to facilitate board and management accountability to both the company and its shareholders;
- ensure a balance of authority so that no single individual has unfettered powers.

Best Practices:

Recommendation 1.1: Clear separation of duties between board and senior management. Boards should adopt a board charter that details their functions and responsibilities.

The responsibilities of the Board include, but are not limited to:

- overseeing the company, including its control and accountability systems;
- reviewing and approving the company's organizational structure, business objectives, strategies and plans, systems of risk management and internal control policies, codes of conduct and legal compliance;
- appointing and removing of the chief executive officer, or its proxy;
- succession planning, including appointing, training, monitoring, fixing the compensation of and where appropriate, replacing senior executives;
- ensuring appropriate resources are available to senior executives; and
- developing and implementing an investor relations programme or shareholder communications policy for the company.

Principle 2 : Constitute an effective Board

The board should be structured in a way, in terms of its composition, size and commitment that it effectively carries out its responsibilities.

This requires that the board:

- has a proper understanding of, and competence to deal with, the current and emerging issues of the business; and
- can effectively review and challenge the performance of management and exercise independent judgment.

Best Practices:

Recommendation 2.1: A nomination committee should be established.

A nomination committee can be a more effective mechanism for the selection and appointment practices.

Composition and commitment of the Board

The board should examine its size, with a view to determining the impact of the number upon its effectiveness. Board members should be able to commit themselves effectively to their responsibilities. Should there be changes in its Directors, the company should provide an updated list to the CMDA.

Size of non-executive/independent members

Board composition should be balanced, with at least thirty percent to be independent and non-executive directors. An independent director is a non-executive director who is not a member of management and who is free of any business or other relationship that could materially interfere with-or could reasonably be perceived to materially interfere with-the independent exercise of their judgment.

Non-executive members should be persons of caliber, credibility and have the necessary skills and experience to bring an independent judgment to bear on the issues of strategy, performance and resources, including key appointments and standards of conduct.

To be effective, independent non-executive directors should make up at least one-third of the board membership.

Directors' competencies

Shareholders to undertake the necessary due diligence in appointing their directors. The company must have adequate policies and procedures for the selection, approval, renewal and succession of Directors.

In appointing directors, the following factors should be considered:

- skills, knowledge, expertise and experience;
- professionalism; and
- integrity.

Selection of directors' requirement to be in line with the company's Memorandum of Association.

Furthermore, the Directors should meet the criteria of fit and proper as per CMDA requirement and policy.

Election of Directors

Approval from major shareholders must be obtained on appointment of a board member.

The names of candidates submitted for election as directors should be accompanied by the following information to enable shareholders to make an informed decision on their election:

- biographical details, including competencies and qualifications and information sufficient to enable an assessment of the independence of the candidate;
- details of relationships between:
 - the candidate and the company; and
 - the candidate and directors of the company.
- directorships held;
- particulars of other positions which involve significant time commitments;
- the term of office currently served by any directors subject to re-election; and
- any other particulars required by law.

There should be a fixed appointment period for each director, after which they may be subject to re-election. Reappointment of directors should not be automatic

Board evaluation

Companies should disclose the process for evaluating the performance of the board, its committees and individual directors. Evaluation could be tied to performance key performance indicators.

The performance of the board should be reviewed regularly against appropriate measures.

Directors' Training

Induction procedures should be in place to allow new directors to participate fully and actively in board decision-making at the earliest opportunity.

An induction program should be available to enable new directors to gain an understanding of:

- the company's financial, strategic, operational and risk management position;
- the rights, duties and responsibilities of the directors;
- the roles and responsibilities of senior management;
- the role of board committees;
- financial statements.

Directors should have access to continuing education to update and enhance their skills and knowledge.

Board Sub-committees

The board must have sub-committees which must at a minimum, include:

- Audit committee;
- Risk management committee; and
- Recruitment committee.

Each sub-committee must have a formal charter which clearly defines their functions, responsibilities and reporting channels. The committees should meet on a sufficient frequency to fully inform the Board on relevant issues pertaining to the company's operations.

Principle 3: Appointment of a Chief Executive Officer

Directors are expected to exercise due diligence in appointing the Chief Executive Officer or the officer-in-charge.

There should be a clearly accepted division of responsibilities between the Board and the Management which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision.

Best Practices:

Recommendation 3.1: Companies must appoint a suitably qualified and competent Chief Executive Officer or Officer-in-charge.

The qualification and criteria of the CEO/Officer-in-charge shall be at the discretion of the Board or the board-nominated committee.

Total remuneration package for the CEO should be the final decision of the Board. Component parts of remuneration could be structured so as to link rewards to corporate and individual performance.

The ex-Chief executive should not go on to become chair of the same company.

A former CEO will not qualify as an 'independent' director unless there has been a period of at least three years between ceasing employment with the company and serving on the board.

Recruitment and performance of the CEO should be carried out by the Board or by an independent institution where possible.

Senior management on contract should be reviewed after every three years.

The decision of a terminating of the CEO rests with the Board.

Principle 4: Board and company secretary

The company must appoint a competent board secretary and clearly set out the responsibilities.

Best Practices:

Recommendation 4.1: Companies must appoint a suitably qualified and competent board secretary.

The Company Secretary is the administrative link between the Board and the Management and is responsible for ensuring compliance to company activities.

The company secretary monitors statutory requirements and board policy and procedures are followed and co-ordinates the timely completion and dispatch of board agenda and briefing material.

The secretary is responsible for ensuring that the board have proper and detailed minutes where records on major decisions of the Board are made. These should be made available to the CMDA or SPSE in the case of listed companies, when required.

All directors must have access to the company secretary. The company secretary is accountable to the board, through the chair, on all governance issues.

The appointment and removal of the company secretary should be a matter for decision by the board as a whole.

Ideally the company Secretary should be a member of the Institute of Chartered Secretaries.

Principle 5: Timely and balanced disclosure

The company must promote timely and full disclosure of all material matters concerning the company.

This requires the company to develop processes ensuring that:

- all stakeholders have equal and timely access to material information relating to the company; and
 - company announcements are factual and presented in a clear and balanced way.
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Best Practices:

Recommendation 5.1: Companies should promote timely and disclosure of all the company.

Annual reports

Companies should ensure that timely and accurate disclosure are made in their annual reports on material information which should include, at a minimum:

- company objectives;
- members of the Board and executives;
- financial and operating results;
- major share ownership and voting rights; material foreseeable risk factors; and
- governance structures and policies, company's compliance to this Corporate Governance Policy.

Eliminating surprise

Shareholders' concerns about executive payments are often aggravated by a lack of information concerning core entitlements when they are agreed. This can be alleviated if the information is disclosed to the market at the time they are agreed as well as at the time the actual payment is settled.

Continuous disclosure policies and procedures

Companies should have vetting and authorization processes that ensure that company announcements:

- are made in a timely manner;
- are factual;
- do not omit material information;
- are expressed in a clear and objective manner that allows investors to assess the impact of the information when making investment decisions.

Principle 6: Promote ethical and responsible decision-making

Actively promote ethical and responsible decision-making.

The company should:

- clarify the standards of ethical behaviour required of company directors and key executives and encourage observance of those standards; and
 - publish its position concerning the issue of board and employee trading in company securities and in associated products which operate to limit the economic risk of those securities.
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Best Practices:

Recommendation 6.1: Companies should establish a minimum code of conduct for the company.

Purpose of a code of conduct

Company codes of conduct which state the values and policies of the company can assist the board and senior management in enhancing investor confidence and complements the company's risk management practices.

The board has a responsibility to set the tone and the ethical standards of the company and to oversee adherence to them. Senior management have a responsibility to implement practices consistent with those standards. Shareholders set the tone for the board.

Application of a code of conduct

Companies should determine their own policies on appropriate behavior by directors, senior management and employees. Training on the code of conduct should be regularly updated and conducted for employees at all levels.

Content of code of conduct

Companies should clearly set out its code of conduct and ensure that it is understood by all employees.

Principle 7: Register of interests

Companies should develop policies to ensure that all conflicts of interest are disclosed.

Best Practices:

Recommendation 7.1: The board should ensure that all conflicts of interest are disclosed and a register could be maintained for this.

Conflicts of interest arise in a related party transaction, which is a transfer of resources or obligations between related parties, regardless of whether a price is charged. Parties are considered to be related if one party has the ability to exercise significant influence over the other party in making financial or operating decisions.

In declaring a conflict of interest, the director should abstain from voting or participating in the decision making on that matter.

Principle 8: Respect the rights of Shareholders

In respecting the rights of shareholder, the company should empower shareholders by:

- communicating effectively with them;
 - accessing them to balanced and understandable information about the company and corporate proposals; and
 - encouraging their participation in general meetings.
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Best Practices:

Recommendation 8.1: Design a communication strategy to promote effective communication with shareholders and encourage effective participation.

The board must ensure that the interests of the minority shareholders are protected.

Annual reports are a way of communication between the companies and the shareholders.

Dialogue between board and shareholders

Companies and institutional shareholders should each be ready, where applicable, to enter into dialogue based on the mutual understanding of objectives.

Annual General Meeting

Companies should use the AGM to communicate with private investors and encourage their participation.

Website

All companies should have a website and are encouraged to communicate with shareholders via electronic methods. If a company does not have a website, it must make relevant information available to shareholders by other means like email, facsimile or post.

Electronic communication

Companies should consider how best to take advantage wherever practicable of new technologies that provide:

- opportunities for more effective communications with shareholders; and
- improved access for shareholders unable to be physically present at meetings.

Principle 9: Accountability and audit

The board should present a balanced and understandable assessment of the company's position.

Best Practices:

Recommendation 9.1: Companies must appoint internal and external auditors.

The board should ensure that the roles, responsibilities and reporting channels of the auditors are clearly defined.

A company should consider having an internal audit function. An alternative mechanism may be used to achieve the same outcome depending on the company's size and complexity and the types of risks involved.

The company shall appoint an external auditor who reports directly to the Board Audit Committee.

The Auditors must be independent. Companies must ensure that the extent of the non-audit work given to the external auditor does not cause any compromise of the independence of the auditors.

Recommendation 9.2: The board must establish a board audit committee.

The audit committee provides independent oversight of the company's internal control and operations, verifying and safeguarding the integrity of the company's financial reporting.

The audit committee should have at least three members of which majority are independent and the chairperson must not be a chairperson of the board.

Principle 10: Recognise and manage risk

The company should establish a sound system of risk oversight and management and internal control.

The system should be designed to:

- identify, assess, monitor and manage risk; and
 - inform investors to material changes to the company's risk profile.
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Best Practices:

Recommendation 10.1: Companies should establish a sound system of risk oversight, risk management and internal control.

Risk profiling

Each company shall determine the material business risks it faces. Risk may include, but not limited to: operational, environmental, sustainability, compliance, strategic, ethical conduct, reputation or brand, technological, human capital, product or service quality, financial reporting, legal and market-related risks.

Policies on risk oversight, management and internal control

The company's risk management policy should clearly define the roles and responsibilities of the board, audit committee, or other appropriate board committee, management and any internal audit function. Management should develop, implement and review the company's risk management and internal control system. The board should review the effectiveness of the implementation of the system at least annually.

Risk management committee

The company may form a separate risk management committee for risk oversight and risk management but the ultimate responsibility rests with the full board.

Capital Markets Development Authority

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