

The Governance Framework for Public Bodies & *The PBMA Act & CORPORATE GOVERNANCE*

Public Enterprises Division, MOFP

04/2014

Development of Governance Framework for Public Entities

Background:

- Public sector entities - critical element of the overall delivery mechanism relied on by government to transmit policy goals to the population.
- Persistent history of weaknesses in the governance - undermined their effectiveness in fulfilling their mandate to undertake a range of administrative, service delivery and regulatory functions.
- Since 1980s consideration given to instituting a structured framework to address the accountability and efficiency of public sector enterprises
- The need was further highlighted in the 1990s when GOJ had to assume substantial debt obligations on the divestment of two large public sector entities

Development of Governance Framework for Public Entities

Government was continually under local and external pressure to improve the quality and efficiency of entire public sector.

With assistance from multi-lateral institutions during 1980's – 1990's, GoJ embarked on a series of programmes designed to improve public sector management and efficiency

but events of late 1990's showed up areas of substantial weakness in the overall public sector ...

GoJ formed Thorburn Committee with mandate to examine and make recommendations on the efficiency and accountability of public sector entities

Development of Governance Framework for Public Entities

A major recommendation of the Committee was the early enactment of umbrella legislation applicable to the accountability of all public sector entities.

2000 - GoJ accepted recommendation and issued drafting instructions for what eventually became the PBMA Act and later the Executive Agencies Act as well.

Development of Governance Framework for Public Entities

The Public Bodies Management and Accountability (PBMA) Act

- Introduced in 2001
- amended in 2003, 2010, 2011 & 2014
- Is applicable to Public Bodies

Public Bodies

Public Bodies (PBs) –

- ▶ Defined as Statutory Bodies/Authorities/Government Companies (approximately 200 active ones)
- ▶ Integral to the development and implementation of key policy objectives of the Government at any point in time
- ▶ Are either fully funded (from the Consolidated Fund), partially funded or ‘self-financing’.
- ▶ Are held accountable to various statutory requirements: (PBMA Act, Companies Act, Enabling Statute, FAA Act, Regulations and policies)

Development of Governance Framework

Key Provisions – PBMA Act

- ✓ Minister (Finance) to submit summary corporate plans/budgets to Parliament for approval (S.2A)
- ✓ Formal reporting regime with specified timelines and requirements as to content (S.3 & 22 – *Annual Reports*, S.23 – *Qtrly, H/Yrly & Other Reports*)
- ✓ Provision for the payment of financial distributions (S.4)
- ✓ Uniform restriction on borrowing powers (S. 5)
- ✓ Boards given mandate to govern public bodies with emphasis on ensuring efficient, effective & accountable management (S.6 *Corporate Governance*)

Development of Governance Framework

Key Provisions – PBMA Act

- ✓ Creation of audit committees mandated - with clearly defined roles and indication of composition (S. 8, 9)
- ✓ Duty of care and disclosure for directors of public bodies (S.17, 19)
- ✓ Specifies criteria for formation of new public bodies (S.21)
- ✓ Regulations (S.24)
- ✓ Provides for sanctions for breach of specified provisions of the Act (S.25)

The PBMA Act

The Act is the Authority that guides the Corporate Governance Framework (CGF), and seeks to promote improved Corporate Governance of Public Bodies.

It provides a structured framework in which the following can be achieved:

- Consistency and harmony in the rules governing their operations.
- Ensure greater compliance with overall government policy.
- Improve their operating performance.

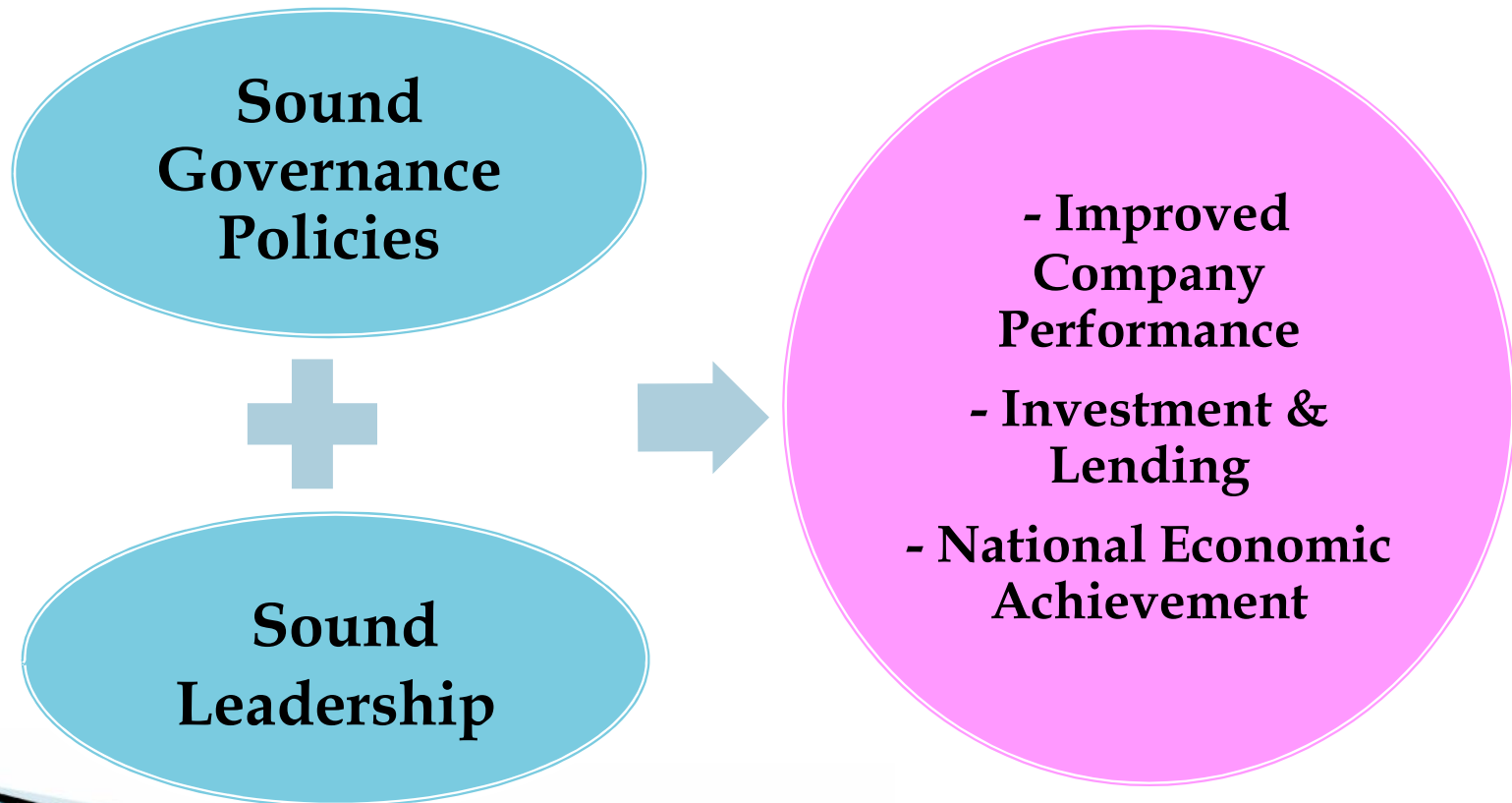
Corporate Governance

It embodies processes and systems by which corporate entities are directed, controlled, managed and held to account. It influences how objectives are set and achieved; how risk is monitored, assessed and how performance is optimized. It encompasses authority, accountability, stewardship, leadership and direction of an organization.

Corporate Governance

- ▶ Corporate Governance involves the totality of the systems and procedures that ensure that a culture of accountability permeates the organization, so that individuals know what their responsibilities are and are equipped with the appropriate tools and skills to exercise them.
- ▶ It seeks to promote effective systems of control and accountability and responsible attitudes on the part of those handling government resources

Relationship between Good Governance Practices and Performance



Relationship between Good Governance Practices and Performance

“We find that well-governed firms significantly outperform poorly governed firms by up to 15% a year.”

Bauer, R., Frijns, B., Otten, R., Tourani-Rad, A., 2008. “The impact of corporate governance on corporate performance: Evidence from Japan”. Pacific-Basin Finance Journal, Vol16, Issue3.

“Promoting good governance in all its aspects, including by ensuring the rule of law, improving the efficiency and accountability of the public sector, and tackling corruption, are essential elements of a framework within which economies can prosper.”

"The IMF's Approach to Promoting Good Governance and Combating Corruption – A Guide".
International Monetary Fund. 2005

CGF- BACKGROUND

The CGF was approved by Cabinet via Cabinet Decision No. 33/11 **dated 29 August 2011** and tabled in Parliament via Ministry Paper #78 on **October 4, 2011**

The Revised Framework was approved via Cabinet Decision No. 39/12 dated **November 12, 2012** tabled in the Houses of Representative **November 20 and 23, 2012** respectively via Ministry Paper #100/12

CGF - BACKGROUND

- ▶ The CGF for Public Bodies is intended to strengthen the mechanisms for accountability of the Boards, Chairperson, Chief Executive Officer, and Company Secretary and other key personnel
- ▶ Ensure that the public interest is advanced by adherence to proper standards and codes of conduct.
- ▶ Strengthen the governance accountability systems of public bodies in order to facilitate greater probity, transparency and efficiency in the functions of government.

Corporate Governance Framework (CGF)

The principles addressed in the Corporate Governance Framework under the following headings:

- ▶ Governance of Boards
- ▶ Role and Responsibilities of the Board
- ▶ Role of Chairman
- ▶ Role of Chief Executive Officer (CEO)
- ▶ Role of Corporate Secretary
- ▶ Role and Authority Board Invitees
- ▶ Role and Authority Ex-Officio Officers
- ▶ Board Composition
- ▶ Board Diversity & Equality Issues
- ▶ Board Selection and Appointment

Corporate Governance Framework (CGF)

- ▶ Board Orientation, Sensitisation & Professional Development
- ▶ Board Performance Evaluation
- ▶ Role and Independence of Audit and Internal Control Functions
- ▶ Role of the Board in Enterprise Risk Management
- ▶ Monitoring Arrangements of Ministries
- ▶ Role of the Ministry of Finance
- ▶ Board Information Management & Disclosure
- ▶ Managing Stakeholder Relations
- ▶ Code of Ethics
- ▶ Corporate Social Responsibility

CGF – Elements & Principles

Governance of Boards

- ▶ Every PB should be headed by an effective Board
- ▶ collectively responsible for oversight, serves as the focal point for Corporate Governance.
- ▶ The Board is accountable to the Responsible Minister



Permanent Secretary (PS) is administrative head of portfolio ministry

PS provides guidance on implementation of policy

CGF – Elements & Principles

Role & Responsibilities of the Board



- ▶ The Board is the primary decision making authority of the Public Body
- ▶ constitutes the fundamental base for corporate governance for the Public Body

Retain full and effective control over the strategic direction of the Public Body

Allow the CEO to take full responsibility for day to day operations

CGF – Elements & Principles

Role of the Chairperson

Ideally, the position of Chairperson should be separated from that of the Chief Executive Officer and must be independent and have no executive or material connection with the Public Body.

Authorises and oversees the execution of the annual performance evaluation of the entire Board and individual members.



Invitees: experts on specific matters.

consistent long term relationships

voting at Board Meetings



CGF – Elements & Principles

Role of Corporate Secretary

- ▶ Every Board should appoint a Corporate Secretary (CS) with a clear Terms of Reference (TOR) to execute critical administrative and governance functions on its behalf, which demand a high degree of compliance and ethical conduct.
- ▶ There is a need to separate the roles of Legal Officer and Corporate Secretary in large organizations/large operations.
- ▶ Corporate Secretary is responsible for induction/orientation and the coordination of Board Evaluation exercises.

CGF- Elements & Principles

Role and Authority of Ex-Officio Officers

- ▶ Ex-Officio Officers should have the same duties, responsibilities, rights and privileges as do all appointed Board members, including the right to vote.
- ▶ Permanent Secretaries should not be appointed to Boards under their portfolio responsibility

CGF – Elements & Principles

Board Composition

- ▶ Every business is unique and should likewise be matched with the appropriate set of skills and competencies to enable it to carry out its functions effectively, efficiently and productively.
- ▶ Upon the change of a Minister, the existing Board should offer its resignation which would not take effect until a new Board is duly appointed – a maximum period of **60 days** is recommended.
- ▶ MOFP & Permanent Secretaries should develop a competency profile for each Board which identifies the knowledge, experience, discipline and personal attributes required for the effective oversight of the Public Body

CGF – Elements & Principles

Board Diversity & Equality Issues

- ▶ The Board should be composed of persons with diverse skills, knowledge, qualifications, experience, gender and age to assist the Public Body in achieving its objectives and perform its functions to add optimal value to the Public Body.

CGF – Elements & Principles

Board Selection and Appointment

- ▶ The responsible Minister, or other authority, should appoint Board members based on merit, against objective criteria with due regard for diversity and commitment to the policy objectives of the Government
- ▶ Directors being considered to serve on the Boards of Public Bodies should have the appropriate skills and experience and the ability to commit adequate time to serve
- ▶ Directors should be subject to Fit and Proper test for specified entities or a due diligence for others

CGF – Elements & Principles

Board Performance Evaluation

- ▶ Requires the establishment of a performance appraisal process for Boards of Public Bodies which would evaluate the performance of the Board, its committees and individual Directors.
- ▶ The evaluation should address whether the objectives of the Board and committees are being met in an effective and efficient manner
- ▶ The MOFP with support from the Cabinet Office will develop an effective evaluation system for Boards.

CGF – Elements & Principles

Role and Independence of Audit and Internal Control Functions

- ▶ The Board should ensure that the Public Body has effective internal control systems which are critical to the Corporate Governance regime of the Public Body, and include Internal Audit and Procurement for which Board Committees should be assigned responsibility.
- ▶ Every Board should establish an Audit Committee, consisting of persons with suitable qualifications, skills and experience and be independent non-executive directors.

CGF – Elements & Principles

Role of the Board in Enterprise Risk Management

- ▶ Every Board should put in place a formal Enterprise Risk Management (ERM) framework to manage risk across all functional areas and business units of the Public Body.
- ▶ The risk profile of a Public body includes: operational, business, regulatory, market, credit, economic, capital and HR related risks.
- ▶ The Board must ensure that an ERM framework is designed to identify, assess, prioritise, monitor and manage risks to the Public Body. The Board should ensure that the Framework is implemented, monitored and controlled.

CGF – Elements & Principles

Monitoring Arrangements of Ministries

The Permanent Secretaries, as chief advisors to the Ministers, should monitor performance against expected results, manage risks and advise/inform the Minister accordingly.

The PS should also know what is happening in the Public Bodies in order to assess whether the strategic objectives of the Ministry are being met.

PS should have input in corp plans/budgets Monthly reports to PS and MOFP

CGF – Elements & Principles

Role of the Ministry of Finance & Planning

- ▶ The MOFP as custodian of the PBMA Act should provide an overarching governance framework to the Public Bodies, to ensure they operate in such a manner as to bring sustainable economic and social benefits to the country.

CGF – Elements & Principles

Board Information & Disclosure

- ▶ The Ministry of Finance and Planning in collaboration with Cabinet and Portfolio Ministry is responsible for developing a 'Board Information & Disclosure Policy' which should include the types of information to be disclosed and the time for it to be disclosed.
- ▶ Boards may seek exemption under Access to Information Act when dealing with sensitive matters. The Act provides basis for exemption.
- ▶ The Board should, in applying the policy, give due consideration to the risk of disclosure of information in the particular circumstance.

CGF – Elements & Principles

Managing Stakeholders' Communication & Relationships

The Public Body should ensure it has a clear and coherent understanding of its key stakeholders, their information needs and the most effective means of communicating with them.

Every Board should ensure that its PB has a procedure and strategy for responding to stakeholder concerns on a continual basis in a proactive and transparent manner.

MOFP will develop a communication protocol:

- ▶ Policy – Minister; Operations- Chairman/CEO

CGF – Elements & Principles

Code of Ethics

- ▶ Each Board should observe the Code of Ethics developed by the MOFP as part of its Corporate Governance regime. However, each Board may enhance aspects of the Code where necessary, based on its particular operations, in keeping with guidelines established by the MOFP.
- ▶ Boards should be mindful and guard against ‘Conflicts of Interest’. The Code will articulate the mechanism to identify, disclose & manage them.

CGF – Elements & Principles

The Way Forward

FY 2014/15

- ▶ Competency Profile Instrument being developed
- ▶ Code of Conduct being finalised

FY 2015/16

- ▶ Enterprise Risk Management
- ▶ Board Performance Evaluation
- ▶ Corporate Social Responsibility
- ▶ Selection, nomination, appointment, termination of Directors

Corporate Governance Framework

The Framework is accessible at
www.mof.gov.jm

Thank You