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University Road, Kolhapur - 416 004, Maharashtra, India

Contact: 91-231-2535706/07 Fax: 91-231-2535708 Website: www.siberindia.co.in

Email: sajmr@siberindia.co.in. sibersajmr@gmail.com

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C O N T E N T

A Critical Assessment of the Degree of Enshrinement of the Principles of Corporate Governance in the Securities Sector of Mauritius

Bhavna Mahadew
University of Technology, Mauritius

ABSTRACT: This article analyses the enshrinement of the principles of corporate governance as provided by the 2016 Code of Corporate Governance of Mauritius in the legal and normative framework governing the securities sector. The rationale is that the 2016 Code is non binding in nature and it is important that the corporate governance principles be given legal force. Therefore, the legal framework on the securities sector in Mauritius, consisting of the Securities Act and the listings rules of the Stock Exchange of Mauritius is critically assessed to examine the degree of enshrinement of the principles of corporate governance. This is important because it is only after these principles are enshrined that the good health of companies can be assured with an effective adherence to these principles. It has been observed that only part of these principles are enshrined in the law which does not complete the picture to the detriment of companies operating in the securities sector.

KEYWORDS: Mauritius, corporate governance, securities sector, listings rules, Securities Act.

Introduction

The securities sector of Mauritius has been hailed as one of the most vivacious and promising sector of the Mauritian economy. An equity and debt market which is very dynamic is provided by the country which positions itself as the second largest market in Africa. The sector bestows investors with world class trading facilities. Fixed interest securities and equity are traded through intermediaries who are regulated as investment dealers. Since its inception in 1989, the Stock Exchange of Mauritius (SEM) is one of the pioneers in sustainability in the African region (Economic Development Board, 2019).

A formal stock exchange was formed in Mauritius by the Stock Exchange Act of 1988. It is run and managed by the private limited business Stock Exchange of Mauritius Limited (SEM), whose goal is to administer and promote an effective, liquid, fair, and transparent securities market. The Financial Services Development Act of 2001 grants the Financial Services Commissions (FSC) authority to manage and oversee stock exchange activities. The Stock Exchange runs two markets: the Over-The-Counter Market, which is unregulated and where shares of 80 businesses are quoted, and the Official Market, a regulated market where securities of about 40 listed companies are traded. The Mauritian stock market has developed over the past few decades into one of the top small markets on the African continent from a regulatory, technical and operational perspective. In 1989, it was a pre-emerging market with ten listed businesses, a market capitalisation of USD 254.7 million, and a turnover of USD 5.9 million.

There are 11 stockbroking firms that have been granted Financial Services Commission (FSC) licenses, and they are the primary players on the stock market. Brokers and their dealers are required to pass a qualifying exam and meet the requirements for eligibility set forth by the Exchange. Other requirements must be met, including the imposition of a minimum paid up capital and personal guarantee right away after receiving a license. The Stock Exchange's rules and a code of conduct that governs how stockbroking firms should conduct their business must be followed by all stockbrokers. The SEMDEX and SEM-7 are the two primary indices that follow the price development of securities listed on the Official Market. The SEMDEX is a price index for all listed equities that is weighted based on each stock's percentage of the overall market capitalisation. The SEM introduced the SEM-7 in March 1998. This index, which includes the

seven largest qualifying shares on the Official List, is based on market capitalisation, liquidity, and investability. For both domestic and international market participants, the SEM-7 has been intended to adhere to international standards and serve as an investable benchmark. SEMTRI, a Total Return Index, was introduced in October 2002 to allow investors to profit from dividends and capital gains paid out by listed firms.

With around 95 companies listed on the SEM and directly involved with the securities sector of Mauritius, it is essential that principles of corporate governance be incorporated in the legal framework regulating the securities sector which consist mainly of the Securities Act and the listing rules of the SEM. In this way, listed companies would be legally bound to conduct business in a way that is aligned with the spirit of corporate governance as dictated by the legal framework on securities. This is more relevant to Mauritius since, so far, the need for companies to operate within the parameters of corporate governance is only voluntary based on the 2016 Code of Corporate Governance (2016 Code). It is therefore imperative that the bindingness of these principles be enhanced by their incorporation in the legal framework governing the securities sector of Mauritius.

Against this backdrop, this article begins by introducing the 2016 Code of Mauritius discussing particularly its legal effects and bindingness. It is also briefly contrasted with its predecessor which is the 2004 Code to highlight the major differences between them. A brief literature review on the importance of corporate governance in general on businesses is then presented in the ensuing section. It then embarks on a critical assessment of the Securities Act of Mauritius and the listing rules of the SEM which, as stated above, form the legal backbone of the securities sector. This critical assessment is conducted using the 8 principles of the 2016 Code which are governance structure, the structure of the Board and its committees, director appointment procedures, directors duties, remuneration and performance, risk governance and internal control, reporting with integrity, Audit and relations with shareholder and other key stakeholders.

The 2016 Code of Corporate Governance of Mauritius

A significant development in Mauritius' corporate governance framework can be attributed to the updating of the 2004 Code of Corporate Governance in 2016. A review of the 2003 Code of Corporate Governance was necessary due to the expansion of the financial services industry. The 2003 law requires modifications, according to the majority of respondents in a 2014 National Committee of Corporate Governance (NCCG) study (NCCG 2016, p. 5). The NCCG also outlines the following reasons for updating the 2003 Code: the requirement to conform the new Code to any new laws or regulations that apply in Mauritius, such as the Bank of Mauritius Guidelines; the need to learn important governance lessons from the 2008 global financial crisis as well as from local failures like the BAI and the Bramer Bank; and the need to identify and implement global best practices in corporate governance (2, 3). It is clear that these improvements have been made to strengthen the 2016 Code's efficacy and guarantee that businesses are required to abide by its ideals.

Debating the bindingness of the 2016 Code from a critical point of view.

The substantial literature on the subject has exhaustively shown the non-binding character of corporate governance codes. Haskovec contends that the authors of corporate governance rules never intended to create a legally binding rule or law. According to him, the objective was to establish a "over-arching, flexible, and principle-based" framework that would enable businesses to adhere to pertinent regulations or to provide justifications for their non-compliance in certain situations (2012, p. 8). According to Ringlet et al. (2004, p.51–65), the voluntary nature of corporate governance codes lends legitimacy to the code issuer. Seidi elaborates on this claim by stating that since the individuals issuing the codes are not democratically elected, as would be the case with a government passing legislation for its citizens, they prefer to issue a voluntary code, with the issuance being justified by the idea that "anyone can issue rules as long as they are not

binding" (2006, p. 4). The corporate governance code is viewed by Snyder (1993, p. 2) as "rules of conduct which, in theory, have no legally binding force but which nevertheless may have practical effects." Since a "soft law" cannot be enforced by a court, Cini writes (2001, p. 207), "implementation must rely solely on the goodwill of those agreeing to and affected by it."

A case has been made in Mauritius that the 2016 Code is enforceable due to some changes made to the country's laws and regulations. The Financial Reporting Act of 2004's Section 79 has formed the crux of this debate. It stipulates that the Financial Reporting Council may issue a warning or a notice if a public interest business has disobeyed any financial reporting or accounting standard as required by, among other things, the 2016 Code. It also states that the entity will commit an offence and be subject to a punishment of up to one million rupees if corrective measures are not taken within 30 days of the notice. The 2016 Code is said to be binding if this clause is improperly understood to suggest that. First, because only public interest entities are covered by the law, and second, because the fine imposed only relates to the requirements for financial reporting and accounting. The Financial Reporting Act's specific requirements are the only way the law effectively enforces Principle 6 of the 2016 Code, "Reporting with Integrity." Additionally, the clause only applies to public interest entities and is not applicable to "other companies" as defined in the NCCG Report 2016 (p. 11).

The 2016 Code cannot be regarded as binding in light of the aforementioned.The goal of the Financial Services Commission's Circular Letter (CL280218), which was released on February 28th, 2018, is to inform licensees of their responsibilities under the 2016 Code. The Financial Reporting Act of 2004's Section 46(2) grants the Financial Services Commission (FSC) the authority to order licensees to abide by the Code and to impose regulatory sanctions "where non-compliance with the Code amounts to a breach of the relevant Acts or licensing conditions" (p. 4). This is how the FSC describes its role. These clauses once more serve to emphasise the 2016 Code's non-binding character. This is due to the fact that the FSC would only impose regulatory consequences if a violation of one of the Code's eight guiding principles led to a violation of further laws or licensing requirements. In other words, there is no penalty if a firm violates a principle but does not break the law. This justification can be used to underline the 2016 Code's continued non-binding status. Additionally, a Corporate Governance Act rather than a Code would have been created if the nation's lawmakers had wanted to make the Code legally binding.

The 2016 Code alone does not have legal force. When dealing with situations where businesses have not complied with corporate governance standards, for example, no court of law in the nation at this time can enforce any of the eight principles of the 2016 Code. The primary question raised by the paper is whether or not the eight principles have been indirectly incorporated into the various legal frameworks that govern the securities sectors. The Code itself has been criticized for being purely optional and lacking any sort of binding authority. It's possible that some of the principles match to or are comparable to already-existing laws included in parliamentary acts or regulations. Despite its demarcation and upgrade, the 2016 Code itself is not made enforceable. Having said that, there are numerous methods in which corporate governance and its principles can be effectively improved, utilized, and implemented in the Mauritian corporate structure. One approach would be to formally transform the 2016 Code into a lawful act of Parliament. However, taking such a step appears to be impractical, if not impossible, as it would face strong opposition from the business community for a number of reasons. A different approach is to evaluate whether or not the various 2016 Code principles have already been incorporated into the current legislative and normative framework that governs the securities business.

A brief overview of the 2004 Code

A Committee on Corporate Governance was established in Mauritius in September 2004. The main objective of the aforementioned committee was to spread awareness of corporate governance among businesses and organisations in both the public and private sectors. Transparency,

accountability, meritocracy, fairness, management principles, and the fight against corruption were the major working criteria of the committee (NCCG, 2019). In response to the World Bank's Report on the Observance of Standards and Codes for Corporate Governance from October 2002, which recommended the adoption of a Code of Corporate Governance for Mauritius, the committee's work resulted in the creation of a Code of Corporate Governance for Mauritius. Mervyn King, the author of the King Reports on Corporate Governance for South Africa, participated in the publication of the first Code for Mauritius in October 2003 following national consultations with diverse stakeholders (Mauritius Times, 2012).

The 'comply or explain' approach served as the foundation for the 2004 Code. In essence, this concept states that an alternative to the Code may be approved or put into practice as long as it results in excellent corporate governance and transparency. The following were some of the Code's salient characteristics: (1) The CEO's and Chair's roles must be distinct; (2) There must be at least two independent and two executive directors; (3) An Audit Committee and a Corporate Governance Committee are necessary; (4) Communication and disclosure are stressed; and (5) Independent auditors. The level of application among the 2004 Code's supporters appeared to be the main issue. The need for the Code to be revised has been fuelled by the 2008 global financial crisis and the several company failures in Mauritius, including the BAI and the Bramer Bank. The 2016 Code's key characteristics are detailed below.

An overview of the 2016 Code

At the outset, it must be noted that the 2016 Code has, by large, retained the main idea and core principles of the 2004 Code. The 2016 Code consists of eight principles namely Governance Structure, Structure of the Board and its Committee, Directors appointment's procedures, Directors' duties, remuneration and performance, Risk Governance and Internal control, Reporting with integrity, Audit and Relations with shareholders and other key stakeholders. The new Code 2016 is thought to be a part of a bigger set of regulations that also includes (1) Mauritius laws like the Companies Act, (2) regulations, and (3) listing guidelines like the one for the Mauritius Stock Exchange. (4) standards, best practices codes, and directives (5) Official company documentation, such as the board charter (National Code of Corporate Governance 2016, p. 5). Undoubtedly, the 2016 Code has a few noteworthy characteristics that set it apart.

Public interest entities, public sector organisations, and other enterprises are the three categories of businesses that are subject to the 2016 Code. The Financial Reporting Act of 2004 defines public interest entities and includes a list of public sector organisations that are designated as such in its first Schedule. While the Code does not define other companies, it does state that they are encouraged to follow its guidelines as much as they can (NCCG 2016, p. 11). The Board of Directors of a firm is in charge of making sure the principles are followed and put into action. The 2016 Code stipulates that proof of the same must be presented through annual reports and company websites, which should also provide explanations for any instances where the principles are not applicable and lead to the adoption of a substitute good practice. The emphasis has also been placed on the requirement to provide examples of how the principles have been used rather than simply repeating them in annual reports or on websites. The 2016 Code has supplied templates and wordings for how this reflection must be expressed in annual reports and websites (NCCG 2016, p. 11–12).

The 2016 Code is explicit on the structure and content of the reporting exercise, but it is silent on any type of follow-up method. There is no comprehensive process in place to oversee circumstances where a corporation does not submit reports as needed. This could be viewed as a crucial flaw in the 2016 Code. It should be emphasised that auditors are obliged to determine areas of non-compliance with the Code, report on those areas, and determine whether the arguments and explanations provided are adequate. The method to be followed if the auditors are not satisfied is not specified in the Code, though. According to the Financial Reporting Act and General Notice

1016 (2013), companies must also submit a statement of conformity to the Financial Reporting Council. The aforementioned Council is thereafter mandated to routinely "monitor" the application and reporting of the Code. It is suggested that the term "monitor" does not have a clear enough definition because it is not obvious if it simply refers to ensuring that processes have been followed or whether the Council will conduct a thorough evaluation of the implementation and application of the 2016 Code.

The 2016 Code chooses to use an annual reporting exercise, meaning that businesses must report on the implementation and application of the eight principles each year. It is argued that ongoing and year-round encouragement of this reporting was necessary. Companies' websites might have been used to report on any of the principles, collectively or separately, to improve adherence to the Code. In the sense that one would not have to wait a full year to learn what corporate challenges are emerging as a result of non-compliance with the Code, this would have further improved the culture of corporate rescue.

Highlighting the major differences between the two Codes

The 'apply and explain' approach to corporate governance is one of the most important contrasts between it and its predecessor. It indicates that all involved businesses must implement all eight 2016 Code principles and document how they did so in their annual reports or websites. It should be mentioned that Mauritius is one of the first nations to have used this strategy. It has disassociated and set itself apart from the "comply-or-explain" strategy advocated by the UK's Cadbury Report in 1992, as well as the "apply-or-explain" strategy advocated by South Africa's King III Report in 2009 and the Dutch Tabaksblat Code of Corporate Governance in 2004. Additionally, this is in contrast to the 2004 Code of Mauritius, which used the "comply-or-explain" policy. Due to the 2016 Code's newly adopted approach, businesses are now required to follow all eight of its principles without the option of an alternative, and in certain circumstances, to explain and defend non-compliance.

Lack of templates is one of the challenges in ensuring the adoption and implementation of corporate governance principles. The 2016 Code makes an effort to address this issue by offering templates. For instance, the 2016 Code offers templates for the Audit Committee and Remuneration Committee in addition to templates for the Charter. This might improve the uniformity and standardisation of how the Code is applied and implemented. The 2016 Code also promotes the efficient use of businesses' websites as a channel for disseminating crucial information about the application and implementation of the Code. The website can be used to report on a variety of topics, making it simple for all shareholders and stakeholders to access this information. It may be argued that its predecessor had fallen short in maximising the use of company websites as a tool for corporate governance.

Literature Review

Without a doubt, corporate governance has grown to play a crucial role in modern business. According to Sjafjell (2010), corporate governance affects how economies evolve globally and how effectively societal goals can be attained. Famous corporate failures like Parmalat, Enron, and similar situations have, in fact, confirmed the value of having strong corporate governance structures in businesses (Vinten 2002, p. 4). In response to catastrophes like Parmalat and Enron, many nations created strong normative frameworks for corporate governance to prevent such economic catastrophes at the domestic level. For instance, the UK produced the Higgs Report and the Smith Report in 2003, while the USA passed the Sarbanes-Oxley Act in 2002 (Pass 2006, p.467).

Internationally coordinated efforts have been made to promote ethical business conduct and avert corporate failures through effective governance. Internationally recognized corporate governance

norms have been created by organizations like the Organisation for Economic Development (OECD) (Solomon 2007, p.1). The OECD Principles of Corporate Governance, according to Jesover and Kirkpatrick (2005, p.127), have received "worldwide recognition as an international benchmark for sound corporate governance" since their establishment in 1999. They go on to say that stakeholders, governments, regulators, and investors in both OECD and non-OECD nations actively employ these concepts. They have also been accepted as a crucial Standard for Sound Financial Systems by the Financial Stability Forum. Following a thorough review process, the 1999 OECD Principles were updated in 2004 (Jesover and Kirkpatrick 2005, p.129). Six areas of corporate governance are covered by the OECD Principles: ensuring the foundation for an efficient corporate governance framework; shareholder rights; equitable treatment of shareholders; stakeholder participation in corporate governance; disclosure and transparency; and board responsibilities (OECD Principles, 2004).

The following phrases are used to further explain the first area: The structure for corporate governance should support resource allocation that is both effective and transparent. It should facilitate efficient supervision and enforcement and be consistent with the rule of law (OECD Principles 2004, p. 13). The following rights of shareholders have been added: The corporate governance structure should ensure the fair treatment of all shareholders, including minority and foreign shareholders, as well as the protection and facilitation of the exercise of shareholders' rights. In the event that their rights are violated, all shareholders should be able to seek effective remedies (OECD Principles 2004, p. 19). The corporate governance framework must support institutional investors, stock markets, and other intermediaries by offering sound incentives across the investment chain and ensuring that stock markets operate in a way that supports good corporate governance (OECD Principles 2004, p. 31).

The OECD Principles (2004), on page 37, state that the corporate governance framework should recognize the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises. The corporate governance framework should make sure that timely and accurate disclosure is made on all significant matters pertaining to the corporation, including the financial situation, performance, ownership, and governance of the company, according to the OECD Principles on disclosure and transparency (2004, p. 41). In terms of the duties of the board, the corporate governance framework should ensure that the organization is strategically guided, that the board effectively monitors management, and that the board is accountable to the organization and the shareholders (OECD Principles 2004, p. 51).

According to Haxbi and Aguilera (2015), over 90 countries have so far adopted their own national codes of corporate governance to control the business world. The main criticism of using codes to promote ethical business conduct centers on the fact that they are not legally binding. Contrary to strict regulations like the Sarbanes-Oxley Act of 2002 in the USA, it is argued that codes do not have the same level of legal force in terms of compliance (Haxbi and Aguilera 2015). Cuervo (2002, p. 84) also draws attention to the issue of the weak enforcement of corporate governance codes as a restriction on the applicability of such codes. On the other hand, German research indicates that there is strong pressure to embrace the Code regulation and that financial markets have considered the requirements in the German Corporate Governance Code to be meaningful (Goncharov, Werner, and Zimmermann 2006, p.432). Additionally, according to Cuervo-Cazurra and Aguilera (2004), the adoption of corporate governance codes is frequently prompted by pressures on businesses to increase efficiency and legitimize their actions. Therefore, it is evident that even a non-binding code of corporate governance can be effective if there is the right political will or market will.

The creation of the Financial Services Sector has significantly altered the economic climate in Mauritius. In the past, companies have been an idea since the beginning of the colonial era. 'La Compagnie des Indes', for instance, was in charge of running Mauritius itself (Report on Corporate

Governance for Mauritius, 2003, p. 5). It should be noted that until the country's introduction of the Companies Act in 1984 and the founding of the Stock Exchange of Mauritius (SEM) in 1989, there had not been any significant developments. The biggest phase of change started in 2001 when a number of policies were put in place. These included the adoption of the International Accounting Standard, new listing requirements for companies listed on the SEM, the introduction of the new Companies Act of 2001, and the creation of a National Committee on Corporate Governance (Report on Corporate Governance for Mauritius 2003, p. 5). The National Code of Corporate Governance (NCCG) for Mauritius was decided upon by the Committee on Corporate Governance in 2002. The establishment of a voluntary code was advocated for in 2002's Reports on Observance of Standards and Codes, which highlighted several corporate failures in the private sector (Mahadeo and Soobaroyen 2012, p. 236).

A survey of the literature reveals a paucity of studies on the relationship between corporate governance and the securities industry in Mauritius. the requirement to apply corporate governance concepts to the insurance industry as of the turn of the millennium. According to Vittas, corporate governance, internal controls, and risk management all had significant flaws. Additionally, he pointed out that there was a lack of current risk-based capital requirements and that solvency ratios fell short of international standards (2003, p.1). Vittas also emphasized that although the Financial Services Commission's establishment tightened oversight and improved the regulatory environment, there were still some issues. He stated that laws governing risk management, internal controls, and corporate governance needed to be updated to reflect new international standards (2003, p. 14). He said that new regulations on corporate governance and the responsibilities of directors, on internal control and risk management systems, and on the obligations of actuaries and auditors would be introduced with the introduction of the draft Insurance Bill 2004 (2003:, p. 16).

The current literature review demonstrates that while the concept of code of corporate governance has been thoroughly researched upon from various angles such as the non-binding nature of it, there is no direct literature on how the new Code of 2016 of Mauritius applies to the financial services sector domestically. No academic work has been carried out in a comprehensive way on the degree to which the principles have been enshrined in the legal and regulatory framework of the securities sector nor in the overarching legislation that regulates companies in Mauritius.

The legal and regulatory framework on securities sector in Mauritius

The primary piece of legislation governing organizations engaged in the securities industry is the Securities Act (SA) 2005. It is intended to offer a framework that enables businesses to function completely transparently. It also stipulates that rules and guidelines for disclosure must be followed, along with criteria, demands, and prudential principles. In the securities industry, the FSC is also essential. It issues licenses to Investment Fund Intermediaries, Clearing and Settlement Facilities, Securities Exchanges, and Securities Trading Systems. Additionally, it registers reporting issuers and investment clubs. In accordance with FSC approval, an investment fund may get a license under section 97 of the SA 2005 as a corporation, trust, limited partnership, foundation, or protected cell.

The SA 2005's Section 23 established the Stock Exchange of Mauritius (SME), which is in charge of overseeing the securities industry. To that end, it has a set of guidelines and rules. There are the Listing Rules, the Securities (Purchase of Own Shares) Rules 2008, Guidance Notes 1 and 2 on Business Plans and 3 on Interaction with Investment Analysts and Media Personnels. The FSC's rules add to the aforementioned framework. The Securities (Licensing) Rules from 2007, the Securities (Public Officers) Rules from 2007, the Securities (Disclosure Obligations of Reporting Issuers) Rules from 2007, the Securities (Brokerage Fee for Government of Mauritius Securities and Bank of Mauritius Securities) Rules from 2011, the Securities (Brokerage Fees for Exchange Traded Funds on Foreign Underlying) Rules from 2013, and the Securities (Preferential Offer) Rules from 2017 are a few examples.

The FSC also has rules that go beyond the securities industry's regulatory framework. The Securities (Instruments) Regulations of 2013, the Securities (Acquisition of Shares of Dissenting Shareholders during Takeovers) (Revocation) Regulations of 2011, the Securities (Acquisition of Shares of Dissenting Shareholders during Takeovers) Regulations of 2010, the Stock Exchange (Prescribed Securities) Regulations of 2002, the Stock Exchange (Brokerage Fee for Debentures) Regulations of 1999, the Stock Exchange (Brokerage) Regulations of 1989, The Guidance Note on Securities Token Offerings is another document.

The degree of enshrinement of the eight principles of the 2016 Code in the legal and regulatory framework on securities sector

The method used here is a critical examination of the aforementioned legal framework to determine how deeply ingrained the 2016 Code's eight guiding principles are. It should be emphasised that while the Securities Act of 2005, its implementing regulations, and the SEM's Listing Rules comprise the framework for securities that is legally binding, the FSC rules and regulations on securities are considered to be soft laws.

Principle 1 – Governance Structure

It is pertinent to note that there are no explicit legal provisions in the SA 2005 that regulate the issue of governance structure. The SEM Listing Rules, which provide that the issuer must notify the SEM of the convening of any board meeting for deciding on dividend payment or for announcing profit or loss of any year, treat this problem seriously. In accordance with articles 11.31 and 11.32, it further stipulates that the SEM must be informed of any board decision. The Listing Rules specifically provide that the title, function, and position of the Chairperson should be distinct from those of the CEO (paragraph 11.42A) with regard to corporate governance. The requirement of a board charter and code of ethics is not provided for under the current legal system. For a high-risk industry like the securities business, it is stated that (Whitelaw, 2000). In comparison to the Hong Kong Stock Exchange requirements (HKEX, 2019), which are legally obligatory listing requirements, the provisions on governance structure are far less detailed.

Principle 2 – The structure of the board and its committees

At least one-third of the directors of a securities business must be independent and have relevant experience, according to Section 18 of the SA 2005. Directors are also required by the same clause to work in the best interests of investors and give precedence to their interests in the event of a disagreement. According to Section 11.42A of the SEM Listing Rules, an issuer (business) is required to maintain an Audit Committee that is made up only of board members. The basic legal and regulatory framework does not, however, include board diversity with regard to women. It should be highlighted that the crucial issue of board diversity in terms of gender parity and representation is not covered by the legal framework on board structure. According to research, stock markets with reasonable gender representation have increased investment returns (UNEP FI, 2017).

Principle 3 – Director Appointment Procedures

One of the requirements for the granting of a license is that the officials of the applicant be fit and proper individuals, according to Section 12(d) of the SA 2005. Neither the SA 2005 nor the SEM Listing Rules contain any further substantive rules regarding the appointment methods and processes. The pertinent soft laws do not address this aspect of Principle 3 either.

It is emphasized that the Companies Act of 2001 partially regulates the appointment of directors and related processes. The SA 2005, a special binding regulation that governs the securities industry, is somewhat lax when it comes to the nomination of directors. According to Wei (2005),

the process of appointing directors has a significant impact on the success and growth of the Chinese stocks market. The law does not address important concerns like election, induction and orientation, professional growth, and succession planning.

Principle 4 – Directors duties, remuneration and performance

The SA 2005's Section 12 addresses the subject of conflict of interest. It states that a license can be denied if the applicant lacks the necessary policies or procedures to deal with conflicts between business interests and the fair, open, and orderly operation of the market. Additionally, section 13(2) (e) gives businesses the option to implement rules for the management of conflicts of interest. Insider interests are likewise governed by the SA 2005, which stipulates that they must be declared in writing in accordance with section 90. However, the legal framework is completely silent regarding the responsibilities of directors, a crucial element of Principle 4.

According to the FSC Guidance Note on Securities Token Offerings (STOs), anyone who asks another person to engage in a transaction involving securities is required to conduct due diligence on the STOs. It implies that if the directors carry out this activity, it counts as one of their legal obligations. Regarding director compensation, the SEM Listing Rules state that an issuer must include information about the salary paid and perks in kind granted to directors in the text of its application to be listed.

Directors' responsibilities are included in FSC and SEM administrative directives, recommendations, and guidelines; nonetheless, the SA 2005 does not specifically include any binding rules on the legal responsibilities of directors. It should be highlighted that this element is covered by case law and the general provisions of the firms Act 2001 as general laws applying to firms. To increase the level of accountability and answerability of directors, the SA 2005 must specifically state the unique legal obligations of directors in the securities sector. In fact, directors of securities firms have been named as defendants in lawsuits pertaining to particular matters pertaining to their duties (Brochet & Srinivasan, 2014).

Principle 5 – Risk governance and internal control

Licenses can be refused if the FSC is not convinced that the operational rules and processes of the applicant are guaranteeing a fair, transparent, and orderly operation of the market, according to Section 12 of the SA 2005, which regulates matters required for award of licenses. Additionally, section 20 of the SA 2005 mandates that an audited report on risk management practices and how they are being used must be included in a clearing and settlement facility's annual report. The FSC may also establish regulations governing the capital and liquidity needs of dealers and advisers under Section 50 of the SA 2005.

In order to effectively and efficiently supervise all of the actions of the CIS management and the workers, it is required by the Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008 that internal control be established by the CIS manager through written regulations. It should be underlined that the current regulatory framework governing the securities industry sufficiently provides for risk governance and internal control.

Principle 6 – Reporting with integrity

Companies engaged in the securities industry are required under Section 20 of the SA 2005 to submit yearly reports describing their corporate governance practices to the FSC. Section 13(2) (a) of the SA 2005 emphasizes the idea of financial integrity because it gives entities the option to create their own securities exchange standards regarding financial integrity and business ethics. A CIS manager must maintain books and records in accordance with the Securities (Collective Investment Schemes and Closed-end Funds) Regulations of 2008. According to Section 44(2) of

the aforementioned regulations, the CIS manager must also maintain accurate accounting records that are reported. Section 47 (1) (b) of the SA 2005 mandates that auditors of CIS must report on any major flaw in the company's financial records or internal control systems.

According to the SEM Listing Rules, a company must acknowledge the presence of an internal audit function that communicates regularly with the Audit Committee and make its Annual Report available on its website. More importantly, the Annual Report needs to state how much the 2016 Code is being followed. The legislative structure outlined above is commendable in terms of reporting with integrity. Only the Act's usage of the term "business ethics" is legally binding. Additionally, it demonstrates how the 2016 Code and the securities industry are related.

Principle 7 – Audit

According to section 20 of the SA 2005, businesses engaged in the securities industry are required by law to submit audited financial statements prepared in accordance with IFRS to the FSC. The requirement that audited reports adhere to International Standards of Auditing is stated expressly in the same section. The SA 2005's section 55 states that investment dealers and advisers must adhere to the same standard.

Principle 8 – Relations with the shareholders and other key stakeholders

According to section 17(1)(b) of the SA 2005, businesses engaged in the securities industry are required to publish averages, indices, and period statistics to ensure investors' equity and transparency. According to section 32 of the SA 2005, investment dealers and advisers also have responsibility for the behavior of their representatives, especially if a client relies on them to act in good faith while making an investment. A fine not to exceed MUR 100 000 will be imposed on dealers who fail to provide clients for whom they have completed a security transaction with a confirmation of that transaction and a statement of account without delay. Section 56 of the SA 2005 also regulates dealings with clients. Section 68 of the SA 2005 mandates the use of a prospectus in order to act in the best interests of clients when offering securities to the general public.

Clients must be able to evaluate the financial status, obligations, assets, and profits and losses of the company issuing securities, in accordance with section 71 of the same Act. Defective prospectuses are subject to both criminal and civil penalties under Sections 80 and 82, respectively. According to sections 87 and 88 of the SA 2005, reporting issuers are also required by law to promptly inform the public of any major change that has taken place and has the potential to impact the value of the securities. Additionally, according to sections 111, 112, 113, 114, 115, and 116 of the Act, market abuses like insider trading, disgorgement, fraudulent trading in securities, market rigging, fraud in relation to securities, and false or misleading conduct in relation to securities are all prohibited. The SEM Listing Rules' paragraph 3.9 (a), which allows for the suspension or removal of a firm from its official list in the event that such action is required to protect investors, provides additional investor protection.

Conclusion

While Principles 1, 2, 3, and 4 may not be sufficiently covered by the binding legal framework, Principles 5, 6, and 7 and 8 are adequately enshrined, according to a review of the legal and regulatory framework on the securities sector. The latter ideas have been integrated in tandem with the SA 2005 and the SEM Listing Rules. The SA 2005 should be updated to include the board's charter, code of ethics, and the idea of effectiveness. It is also advised to include a general section to explain how the governance structure and the board's responsibilities are related. In addition to the SA 2005's beneficial provisions regarding independent directors, it must be amended to reflect the idea of gender representation in the direction of board diversity. It is advised that the SA 2005

be changed to include detailed rules for the appointment of directors and their selection processes. The SA 2005 also needs to specify what constitutes a suitable and proper person in the context of the securities industry, which may differ from other financial services industries. The SA 2005 should be changed to clearly address the moral and legal obligations of directors of securities companies. More specifically, the SA 2005 should explicitly recognise the ethical principles that directors must follow.

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