# REPORT

## ON THE MEETINGS WITH THE MALDIVIAN COMPANIES REGARDING THE IMPLEMENTATION OF THE CMDA'S CODE OF CORPORATE GOVERNANCE


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*(Interviewer)*


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## I. INTRODUCTION

Several meetings were held with Maldivian companies regarding their understanding and implementation of the CMDA Code of Corporate Governance. The meetings were conducted with the members of the Boards and/or executive managers, including corporate secretaries, of certain companies at their own establishments.

The companies interviewed included both public (MSE listed) and non-listed companies, mainly state-owned enterprises: the STO, the Bank of Maldives, the Health Organization, MTCC, Amana Insurance and STELCO.

The interview was based on five core questions:

1. *Do you understand the role and purpose of the CMDA Code of Corporate Governance?*
2. *Do you comply with the provisions of the Code: if not, why not?*
3. *Are there any specific provisions of the Code which are well comprehended or adequately understood?*
4. *What other problems of compliance with the Code has your company experienced?*
5. *What would you recommend regarding a future revision of the provisions of the Code?*

## II. FINDINGS

The answers given are classified broadly as follows:

**Question 1.**

All MSE listed companies stated they have a good understanding of the role of corporate governance and the significance of the Code, and expressed their willingness to do all is necessary to comply with it. However, there was no explicit mentioning of any intention to protect minority shareholder rights, in particular, nor expressed any intention at self-compliance. Almost all public companies seem to believe that corporate governance is mainly about the board, specially board structure and composition, and all other governance issues are less significant, including shareholder rights. None of the public companies mentioned anything regarding any wider stakeholder-like initiave to improve the public image of the corporation: any such action was deemed just not important one, even though in practice some relevant activities are indeed undertaken.

Public or public-to-be companies that are directly or indirectly related with off-shore companies (parents, branches or subsidiaries) seem to be more familiar with corporate governance provisions and the need to abide by good governance standards.

On the other hand, all non-listed companies expressed a certain knowledge of the role of the Code but mainly doubts in the usefulness of and difficulties in complying with the Code, even in understanding of it. These doubts and difficulties are grounded on a rather firm board belief that the Code is not suitable for them, as it (is perceived to) applies to listed companies alone, implying moreover that there is no real need/urgency to comply with the Code's such provisions. The lack of understanding seems to result from both the board members' basic inability to grasp the significance of corporate governance issues in the modern world, and/or their judgment that any such compliance to the Code doesn't add much value to their role.

This comes as no surprise both by reference to international experience and by virtue of the fact that certain domestic non-listed companies are facing more fundamental problems, such as a lack of basic legal incorporation status, being unable (or unwilling) to secure even the most fundamental of shareholder rights: the right to secure ownership. Obviously such a situation makes such companies to be, at best, indifferent towards complying with the Code.

**Question 2.**

All MSE listed companies stated they complied with the Code, and expressed their certainty in doing so with a high degree of compliance. Again, no voluntary compliance was ever emphasized. Some listed companies (i.e. Bank of Maldives) mentioned that they comply to both the CMDA code and their own internal code of ethics.

Some listed companies mentioned that they have difficulties in complying specifically with financial reporting requirements for the following three reasons: (a) they have been unaccustomed to such rigorous requirements due to the different traditional practices of the Maldivian business world (implying, but nor of course stating, that the power of custom tends to overcome the rule of law); (b) they find difficult to account for and integrate financial and business activities of their scattered subsidiary companies (thus implying weakness in the organization and oversight of their production and business network); and (c) the external audit profession cannot supposedly keep up with the demands to timely produce audited financial accounts due to their small number and capacity due to unspecified reasons: for example, It was pointed out that some auditors are not experienced enough and many times they need to refer to senior auditors back at headquarters for getting advise in handling with certain accounting issues, thus further delaying the audit process. Further, some listed companies faced certain problems relating to the capacity of their IT/MIS systems to properly record transactions, which were deemed as contributing to financial reporting delays.

Non-listed companies boards expressed views such that they do not see much value to the Code for them (implicitly inferred, not explicitly stated) and thus non-applicability does not entail any compliance problems. Such views rather stem from those boards' relative ignorance at a personal level that participation in a board entails rights, duties and responsibilities to be understood and properly exercised. This ignorance seems to result mainly from two reasons: (a) the lack of an adequately developed company law that applies

to all companies which would have created over-time a corporate culture of compliance, and (b) the lack of an adequate awareness of what participating in a company board means, given that the overwhelming majority of such board members are nominated and appointed by the Government by simple procedures as some sort of reward for their political affiliation. Non-listed SOEs use as their main argument for non-compliance with the Code that since they are government controlled and "governed", any basic requirement pertaining to incorporation (i.e. production and dissemination of audited financial accounts) constitute public 'secret' which needs to be kept in order to avoid its becoming an 'object of political dispute'. Obviously, with such views on board, compliance with the Code should not be envisaged, but to a bare minimum level.

**Question 3.**

All MSE listed companies stated they experience certain compliance problems. Some of those problems relate, they insist, to the lack of clarity of the provisions of the Code, mainly those referring to the definition of director 'independence': it is not clear (for them) to what point and in what content, independence is established or not, particularly as regards the Chairman. However, the companies expressed their willingness, some explicitly some not, to comply with the director independence provisions because they consider them important. Some other problems relate to a perception by companies of an overlapping of authority over monitoring compliance with the Code between the CMDA and the MSE, particularly as regards the listing rules. It is perceived that the overall disclosure regime is not very clear per se as well as in terms of its monitoring and supervision authority. Some companies have an issue with the requirement of the two executive members of the board at max, which causes problems of compliance. Some companies find it difficult to reconcile the provisions of their articles of association to those of the Code: however, they seem to realize the need to change any such bylaws. Some companies do not understand how to devise procedures for preventing or disclosing conflicts of interest or how to devise procedures for self-evaluation of the Board, pointing to the need for getting relevant guidance from the CMDA. Most companies show discomfort with the obligation to disclose remuneration packages: board members and mainly senior managers need some reassurance that such disclosure will not only bring 'personal' information out to public scrutiny but also bring some improvements in the way they do business (freedom to act, more reward for success).

Non-listed companies find it almost impractical to comply with the Code for reasons mentioned before under Q.2.

**Question 4.**

Some MSE listed companies (i.e. BoM) expressed serious concerns as regards their compliance with the Code because of overlapping authority among banking law provisions, company law provisions and the provisions of the Code, focusing mainly on the very strict provisions regarding the convening of board meetings and the AGM. They expressed serious concern in meeting all overlapping requirements at once: government appointed directors, meeting 'independence' requirements, while respecting banking rules. The problem of authority overlapping extends too to the issue of dividend payout (indirectly regulated by MMA) and its direct impact upon finalizing financial accounts: unless the MMA decides upon certain issues relating to credit provisions that affect the dividend payout policy, financial accounts cannot be completed. Moreover, several incompatibilities and

irrationalities with Custodian regulations make compliance not only difficult but very costly too.

Some companies mentioned that complying fully with the Code puts them indirectly in an (implicit) public image disadvantage since they are perceived by other listed companies as 'breakers' of the informal business world truce for 'bare minimum' compliance. Instead of feeling good because they did comply with the Code they instead tend to fear that this may impact negatively upon their 'reputation' among their business associates.

Some companies expressed serious concern over double sanctioning for non-compliance by both the MSE and the CMDA. Double fines were perceived to be excessive and perhaps illegitimate.

Non-listed companies find it difficult to comply because of sufficient lack of proper awareness and experience about the importance and practical implementation of governance provisions. A basic problem is undue interference of the board into day-to-day management resulting mainly from the luck of a proper distinction between exec and non-exec duties and responsibilities in articles of association and personal board member unawareness and negligence. Moreover, there is no broad and adequate understanding of the role and content of conflicts of interest within the board and the need to deal with them effectively.

**Question 5.**

MSE listed companies expressed their concern over compliance with the Code in reference to the different historical business traditions of the Maldives and the small population, out of which it would be (for them) difficult to meet the higher board membership standards. Some companies believe that the CMDA must become a pioneer (rather than a mere strong supporter) of capital market development, including not only undertaking of awareness initiatives but also of promoting primary markets. Not such vision was expressed for the MSE itself, as if it doesn't matter in the process. The issue of awareness on corporate governance matters has been raised by all listed companies. However, some companies implied that members of boards and senior managers are aware of the compliance requirements but they do not, at present, feel urgently compelled to comply fully with them all.

Non-listed companies find it important to have the Code for listed companies, but they express far more basic concerns relating to fundamental company law issues, such basic rights, role and function of boards, and proper distinction of authority among its members.

## III. CONCLUSIONS

The following basic conclusions emerge out of the interviews:

- There is an urgent need for raising public awareness on a national level of both the importance of corporate governance in both listed and non-listed companies (largely stemming from the lack of a relevant corporate compliance culture) and the role of the Code in promoting good governance of companies
- Special attention needs to be paid to non-listed SOEs for they face formidable governance problems ranging from basic incorporation troubles to broader governance inefficiencies.

- There is a need for clarification of some provisions of the existing Code of Corporate Governance and addition of provisions to deal with answered questions.
- There has to be some concerted effort in improving the content of certain items and structures of incorporation (i.e. articles of association) as a means for effectuating corporate governance in practice.
- There is a perceived need for further coordination among regulatory authorities in the financial services sector and between this sector and the government to clarify authority and avoid overlapping of intervention.
- There is a perceived need for more rigorous enforcement of the various aspects of corporate governance measures by the different regulators