

“Good Governance and increased transparency brought about through the  
Companies Act and the role of Internal Auditors”

A very good evening and warm welcome to you all. I am deeply honoured to have been invited to a part of today's events. I was an accountant before I became a politician and I will be an accountant after as well. In fact, I like to think that being an accountant has made me a better politician than I would have been otherwise. It has certainly made me an attentive one- that I can say for sure.

In the past decade or so, the world has been caught up in what has seemed like a constant barrage of economic woes. Global finance mismanagement paired with simple unfortunate circumstance, whether natural or man made have accumulated to place unbearable tension on the world economy. Nations have had to undergo considerable reforms and seek out novel alternatives to address these issues.

Our country has been no exception. Thankfully, with tremendous effort, revolutionary fiscal policies and sheer will, our nation has come through much of its struggles with a stronger, more sustainable economy. There are several ways in which this has been accomplished but for today I shall touch on only one element, which is actually rather fresh, having only been in force for a few months. The theme that I have been invited to speak on is “Good Governance and increased transparency brought about through the Companies Act and the role of Internal Auditors”.

The new Companies Act has been described as a ‘one stop shop’ for business related legislation in Fiji by compiling the areas of Companies, business names, Unit trusts and securities. Any law which seeks to regulate the affairs of our citizens is in essence a fine balancing act performed between the interests of the individuals most affected and the interests of the public as a whole; the sphere of ‘doing business’ being so much more sensitive. The initiative was thus a highly ambitious one, but one that has since been met with optimism and widespread acceptance.

The old legislation was outdated and archaic, and required significant adjustments to bring the laws in Fiji in line with international best practice and standards. The process began much earlier, with consultants brought in from the larger, international community to assist with the process that would have culminated in the passing of a decree sometime around 2013. However, the

government saw fit to lengthen the process and engage the community in more detailed and fulfilling dialogue. The Justice, Law and Human Rights Committee received a great deal of submissions from entities such as the Fiji Hotel and Tourism Association, Reserve Bank of Fiji, National Council for small and medium enterprises, Fiji Law Society and the Fiji Institute of Accountants to name a few.

Building further upon an already strong core, the advice and consultation provided by these entities allowed for the emergence of a piece of legislation that is now comprehensive and realistic to the circumstances of Fiji.

The Act embodies internationally accepted principles of good governance and has been lauded as the South Pacific's most complete and encompassing law on the issue. I shall now proceed to dissect the elements of the Act which best illustrate the core principles of good governance *generally* before highlighting the specific ways in which internal auditors have been or may be affected.

### **Principles of good governance in the Companies Act, 2015**

The most significant step taken in the new Act has been the establishment of a wider range of duties for Directors and Office Holders. Under the old Act Directors' duties were isolated to basically only two grounds; a duty to not trade when a company is insolvent and a duty to disclose conflicts of interest. The new Act, however, establishes the following 7 duties:

1. duty to act within powers, under section 103;
2. duty to promote the success of the company, under section 104;
3. duty to exercise independent judgment, under section 105;
4. duty to exercise reasonable care, skill and diligence, under section 106;
5. duty to avoid conflicts of interest, under section 107;
6. duty not to accept benefits from third parties, under section 108; and
7. duty to declare interest in proposed transaction or arrangement, under section 109.

By setting out these duties, in a clear and succinct way, the Companies Act promotes principals of good governance.

The first way it does this is by ensuring that there is accountability; a core principal of good governance. Directors are held to a higher standard via legislation and if they fall below the expected standard, they may be held liable to a prison term of up to 5 years.

Furthermore, the very duties themselves express elements of good governance. Directors are obligated to exercise reasonable care, diligence and thus must strive to remain competent at all material times. They are also expected to exercise independent judgement and not accept benefits from third parties; ensuring that they are fair, independent and impartial in the carrying out of their roles. Finally, Directors must avoid conflicts of interest and declare the interests they may have in proposed transactions or arrangements; duties which highlight the need for transparency in all activities.

On the note of transparency, the Companies Act also makes necessary the disclosure of financials to be lodged with the Registrar. The Registrar has the discretion to make pro forma accounts lodged by Medium private companies or full audited accounts prepared by large companies. The exercise of this discretion and the public nature of accounts provides for greater transparency in the private sector. These initiatives were encouraged and welcomed by wider regulatory institutions in the country such as the Reserve Bank of Fiji which stated that such provisions “contribute to the culture of corporate discipline”.

The new Act also allows for efficiency and greater ease of doing business. The measures taken to remove the Memorandum of Association by way of incorporation into the Articles of Association allows for a realistic and more streamlined system. This can also be said for the change in the number of members for both private and public companies. In the previous legislation company incorporation required more than 2 members, which was an additional requirement for foreign investors. The new Act enables a simpler and more efficient business and investment environment.

I shall now address the effect of the new Act on auditors, specifically.

### **The role of Auditors**

An integral pillar of good governance is a strong commitment to integrity and ethical values. The IIA Code of ethics is a good marker for an analysis in this regards. The principles are clearly outlined there, emphasising the need for;

1. Integrity- consisting of honesty, diligence and responsibility which lays the foundation for trust and thus enables reliance on quality assessments
2. Objectivity- which allows for fair and unbiased assessments

3. Confidentiality- which cements the relationship of trust between parties and enables full disclosure; and
4. Competency- which is the required and necessary skill standard to be attained.

The Companies Act ensures that these are maintained in the following ways:

### **Integrity, Objectivity and Competency**

Section 396(1) of the Act provides that “an Auditor who audits the financial statements for a financial year must prepare a report to Members on whether the auditor is of the opinion that the financial statements have been prepared in accordance in all material prospects, including :

- a. Whether the auditor has been given all information, explanation and assistance necessary for the conduct of the Audit;
- b. whether the Company, Managed Investment Scheme or consolidated entity has kept Financial Records sufficient to enable the Financial Statements to be prepared and audited; and
- c. in any of these cases, if the Auditor is not of that opinion, the financial statements must say why.

To perform these responsibilities section 397 provides that “the auditor:

- a. has a right of access at all reasonable times to the books of the company or Managed Investment Scheme; and
- b. may require any officer to give the Auditor information, explanations or other assistance for the purposes of the audit review”

In the process, under section 398, the auditor is expected to report to the Registrar if he/she suspects on reasonable grounds that there has been:

- a. a material contravention on the provisions for Financial reporting
- b. an attempt by any person to unduly influence, coerce, manipulate or mislead a person involved in the conduct of the audit; or
- c. an attempt by any person to otherwise interfere with the proper conduct of the audit

If the auditor fails to do so within 28 days of becoming aware of these attempts at interference, the auditor may be liable to a \$500 fine under the general offences provision of the Act in section 626 (c) (ii).

In regards to standards, subsection 2 of Section 397 states:

- (2) The report must include any statement or disclosure required by the Auditing Standards and must specify the date on which it is made".

Reference to these auditing standards are not present in the former Act. They are defined in the interpretation section of the new Act as "the auditing standards issued or recommended by the Fiji Institute of Accountants under the Fiji Institute of Accountants Act (Cap. 259) and subsidiary rules from time to time, or a provision of those standards"- a definition which seems to allow for more flexibility in the setting of those standards.

I have brought your attention to these sections of the Companies Act so as to familiarise you all with the legal framework under which Auditors perform.

The objectives of these provisions can be understood to strongly project the principles of the IIA code of ethics. Sections 396 and 397 ensure the fluid and competent exercising of the auditor's roles and section 398 clearly emphasizes the need for Integrity, in the sense that auditors must be honest and forthcoming with their work, even to the point where even *suspected* interference is reported; Objectivity, in the sense that auditors must be completely independent and resist all attempts made to influence them, carrying out their roles without fear or favour; and competence, as auditors are expected to maintain a high performance standard.

Furthermore, accountability is a vivid part of the provisions catering to auditors. As mentioned earlier, an auditor may become liable to a fine not exceeding \$500 if said auditor fails to report any attempts made to interfere with the proper functioning of his or her role. This has an added effect of placing an onus upon auditors to remain vigilant.

Accountability is also reflected in the regulatory role of the Registrar. Similar to the regulation of legal practitioners, though not exactly the same, the Registrar shall regulate the registration of auditors, rather than leaving auditors to decide internally over who constitutes a fit and proper person. Legal Practice once regulated themselves and they system as a whole can be described to have been misguided. With the transfer of regulatory powers to the Independent Legal Services Commission there has been an improvement in policing and thus in accountability. Their example adequately reflects the need for a truly

independent regulatory body. While the Registrar will not take on as many roles as the ILSC, this still allows for an accountable and transparent approach.

## Conclusion

The Companies Act, as illustrated here today, is a document that addresses age old problems in Fiji and has been, to many, a necessary step for our country and economy. It is a revolutionary law document that emphasizes the principals of good governance. It promotes accountability, transparency, diligence and efficiency by introducing new duties, responsibilities and regulatory mechanisms to relevant stakeholders.

Thank you again for inviting me to preside over the proceedings as chief guest.

God bless.