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Corporate Governance Code

Final Report

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- Voting

Abstract

USAID/Jordan and the Jordan Securities Commission (JSC) requested the AMIR Program to draft a code of corporate governance. In response to this request, the AMIR Program asked NASD, which provides financial regulatory services, to assist the JSC in drafting a corporate governance code for listed companies. This code could ultimately serve as the foundation for a regulation to be issued by the JSC and/or listing rules to be issued by the Amman Stock Exchange (ASE). The NASD team conducted an assessment of the regulatory framework for corporate governance in Jordan. The team found that important progress has already been made in this area. The JSC and ASE have played an active role in initiating awareness on corporate governance in Jordan together with the Organization for Economic Cooperation and Development (OECD). In addition, the JSC and the ASE have promoted significant improvements in corporate disclosure practices. Still, to improve corporate governance practices in Jordan, the NASD team drafted a proposed code. This report presents the draft code and includes a general commentary on each provision.

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Executive Summary

USAID/Jordan and the Jordan Securities Commission (JSC) requested the AMIR Program to draft a code of corporate governance. In response to this request, the AMIR Program asked NASD, which provides financial regulatory services, to assist the JSC in drafting a corporate governance code for listed companies. This code could ultimately serve as the foundation for a regulation to be issued by the JSC and/or listing rules to be issued by the Amman Stock Exchange (ASE). The NASD team conducted an assessment of the regulatory framework for corporate governance in Jordan. The team found that important progress has already been made in this area. The JSC and ASE have played an active role in initiating awareness on corporate governance in Jordan together with the Organization for Economic Cooperation and Development (OECD). In addition, the JSC and the ASE have promoted significant improvements in corporate disclosure practices.

Nonetheless, more can be accomplished to improve corporate governance practices in Jordan. The team noted that the large number of family or closely held businesses, the close-knit nature of the business community, the lack of familiarity with the role of the board of directors to oversee company management on behalf of shareholders, and the potential for divided loyalties with respect to government representatives on company boards may present obstacles to the continued development of a strong corporate governance culture in Jordan. In particular, there is concern that the concentrated nature of company holdings in Jordan could lead to the abusive treatment of shareholders or corporate actions that disadvantage minority shareholders.

A key point of guidance the team received was the desire, expressed by the Commissioners, for an enforceable code. “Enforceable” in this context does not mean that each element of the code must be captured in law or regulation with accompanying sanctions. Rather, the proposed code is designed to operate within a “comply or explain” framework; that is, companies can comply with the code or, if they chose not to comply with one or more specific provisions of the code, explain in a disclosure statement why they made this decision. This comply or explain requirement could be enforced, for example, by the JSC or the ASE.

One of the consequences of utilizing this approach is that the resulting code must be structured to facilitate “bright line” tests for compliance. That is, the measure of compliance should be objective, to the maximum degree possible. This, however, poses a challenge in incorporating in the code many of the chief board responsibilities -- e.g., providing effective oversight of management -- since “compliance” with these responsibilities is inherently subject to interpretation.

The proposed Code addresses these challenges. The Code contains sections on the board of directors, shareholder rights, and disclosure and transparency. NASD’s proposed Code also contains an obligation for listed companies’ boards to have two charters, one for the board as a whole and one for the audit committee. Thus, the “bright-line” comply or explain obligation on the listed companies is to have a board with charters that address the content specified in the Code. NASD also believes that such charters will play a useful educational role for board members.

Beyond the issue of using charters as a tool for creating an enforceable Code, NASD also chose to focus the Code's provision in those areas that would be of most value in promoting effective governance in the Jordanian context. In particular, NASD focused on incorporating measures in the Code that would guard against self-dealing and protect minority shareholders. Given the closely held nature of most Jordanian companies, the utility of devoting extensive provisions to promote shareholder voice was less significant, since the controlling shareholders would simply outvote minority shareholders.

I. Background

USAID/Jordan and the Jordan Securities Commission (JSC) requested the AMIR Program to draft a code of corporate governance. In response to this request, the AMIR Program asked NASD, which provides financial regulatory services, to assist the JSC in drafting a corporate governance code for listed companies. This code could ultimately serve as the foundation for a regulation to be issued by the JSC and/or listing rules to be issued by the Amman Stock Exchange (ASE). For this assignment, NASD assembled a three-person team with extensive experience in corporate governance. The NASD team consisted of Sara Nelson Bloom, a Corporate Governance Specialist who has extensive experience in corporate governance, including drafting NASDAQ's corporate governance requirements; William Harter, a Securities Attorney with over 15 years' experience at NASD and the SEC, who currently serves as the NASD International Affairs and Services department's Corporate Governance Specialist; and Steven Polansky, Senior Director in NASD's International Affairs and Services Department, who has represented NASD at various Corporate Governance forums.

The NASD team conducted an assessment of the regulatory framework for corporate governance in Jordan. The team found that important progress has already been made in this area. The JSC and ASE have played an active role in initiating awareness on corporate governance in Jordan together with the Organization for Economic Cooperation and Development (OECD). In addition, the JSC and the ASE have promoted significant improvements in corporate disclosure practices.

Nonetheless, more can be accomplished to improve corporate governance practices in Jordan. The team noted that the large number of family or closely held businesses, the close-knit nature of the business community, the lack of familiarity with the role of the board of directors to oversee company management on behalf of shareholders, and the potential for divided loyalties with respect to government representatives on company boards may present obstacles to the continued development of a strong corporate governance culture in Jordan. In particular, there is concern that the concentrated nature of company holdings in Jordan could lead to the abusive treatment of shareholders or corporate actions that disadvantage minority shareholders.

In developing its recommendations regarding the structure and elements of the corporate governance code, the team drew upon the following key reference sources:

- Input from the JSC Commissioners;
- Input from the Amman Stock Exchange;
- Input from interviewees in the Jordanian corporate sector;
- The OECD Principles of Corporate Governance; and
- The team members' own experience in this area.

A key point of guidance the team received was the desire, expressed by the Commissioners, for an enforceable code. "Enforceable" in this context does not mean that each element of the code must be captured in law or regulation with accompanying sanctions. Rather, the proposed code is designed to operate within a "comply or explain" framework; that is, companies can comply with the code or, if they chose not to comply with one or more specific provisions of the code, explain in a disclosure statement why they made this decision. This comply or explain requirement could be enforced by, for example, the JSC or the ASE.

The comply or explain approach is well suited to Jordan's market for several reasons. First, it facilitates an effective balancing of costs and benefits. Drafters of any code must balance potentially very real burdens placed on listed companies with the benefits that may accrue to shareholders and the investing public. On the one hand, codes that place excessively burdensome obligations on companies may discourage them from accessing the public capital market (or may encourage them to leave, e.g., through "going private" transactions where this is permissible). On the other hand, codes that do not address fundamental corporate governance issues may serve little or no useful purpose. The comply or explain approach creates real obligations for companies, but does so in a way that allows them to opt out of one or more specific provisions of the code. The opt-out, however, must be accompanied by an explanation that investors -- or potential investors -- can review and assess.

Second, the benefit of the comply or explain approach for investors (both current and potential shareholders) is that it provides them with information upon which to make investment decisions. If a company decides not to comply with elements of the code and provides a sound rationale for its decision, investors may choose to continue to hold (or purchase) shares in the company. If, however, a company provides an unconvincing explanation for its non-compliance, investors may choose to shed (or avoid) investments in the company.

Third, the benefit of the comply or explain approach for companies is flexibility. Listed companies in Jordan, as in many other countries, are in various stages of maturity. This approach affords greater flexibility to less mature companies that might not be able to fully comply immediately with all of the provisions of the proposed code. So for these less mature companies, or for other companies -- regardless of the nature of those companies -- if provisions of the code are impractical to fulfill, a company can explain the reasons for its not fulfilling such provisions in a disclosure statement. Again, it is then for investors to decide whether they accept the company's rationale or if they decide that they would prefer to sell -- or not buy -- the company's stock, if the company chooses not to comply. In the NASD's assessment, the comply or explain is approach is best suited for Jordan.

One of the consequences of utilizing this approach is that the resulting code must be structured to facilitate "bright line" tests for compliance. That is, the measure of compliance should be objective, to the maximum degree possible. This, however, poses a challenge in incorporating in the code many of the chief board responsibilities -- e.g., providing effective oversight of management -- since "compliance" with these responsibilities is inherently subject to interpretation.

To address this challenge, NASD's proposed Code contains an obligation for listed companies' boards to have two charters, one for the board as a whole and one for the audit committee. The specific points to be addressed in the charters are part of the Code. Thus, the "bright-line" comply or explain obligation on the listed companies is to have a board with charters that address the content specified in the Code. (As will be discussed herein, NASD also believes that such charters will play a useful educational role for board members.)

Beyond the issue of using charters as a tool for creating an enforceable Code, NASD also chose to focus the Code's provision in those areas that would be of most value in promoting effective governance in the Jordanian context. As a consequence, not all of the six areas articulated in the OECD's 2004 Principles of Corporate Governance receive equal treatment in the draft Code that NASD has prepared.[1]

In particular, NASD focused on incorporating measures in the Code that would guard against self-dealing and protect minority shareholders. Given the closely held nature of most Jordanian companies, the utility of devoting extensive provisions to promote shareholder voice was less significant, since the controlling shareholders would simply outvote minority shareholders.

II. Introduction

As part of its assessment, the NASD team closely reviewed and analyzed Jordanian laws and regulations, currently in place, that provide a foundation for corporate governance. In this regard, the NASD team examined the English translations of the Companies Law No. 22 of 1997, the Securities Law No. 76 of 2002, the JSC's Instructions for Disclosure, Accounting and Auditing Standards of Issuing Companies of 2004 (JSC Instructions), and the Amman Stock Exchange's Listing Securities Directives. The NASD team also reviewed the 2004 Principles of Corporate Governance set forth by the OECD and the June 2004 Report on the Observance of Standards and Codes (ROSC), completed by a joint World Bank-International Monetary Fund program. In addition, the NASD team

[1] Specifically, the OECD divides its Principles into six sections: Ensuring the Basis for an Effective Corporate Governance Framework, The Rights of Shareholders and Key Ownership Functions, The Equitable Treatment of Shareholders, The Role of Stakeholders in Corporate Governance, Disclosure and Transparency, and The Responsibilities of the Board. The first section focuses primarily on how a country should structure its corporate governance framework. Although the comments here provide such guidance, the NASD team did not feel that such advice belongs in a code that, such as the one here, is directed to the actions of the companies themselves. The code here does have the sections similar to the OECD sections on the shareholder rights, disclosure and transparency, and board responsibilities. The three sections of this code also encompass what the NASD believes are the more important aspects of the OECD sections on the equitable treatment of shareholders and the role of stakeholders.

participated in informative discussions with many representatives of the Jordanian financial markets.

The NASD team has observed that the Jordan capital markets have attracted both domestic and foreign investors. Yet further development and expansion of the markets are essential to develop greater confidence of these domestic and foreign investors, which could result in increased investment and financing opportunities. In conducting our work, the NASD team has considered provisions concerning shareholder participation, proxy voting, timely disclosure, related party transactions, and the process for removing directors.

III. Draft Corporate Governance Code

(The Draft Corporate Governance Code, in both annotated and "plain" versions is in the Appendix.)

IV. Other Recommendations

During the NASD team review, it learned of other important issues that do not belong in the proposed Corporate Governance Code, but that are, nonetheless, important enough to warrant further discussion. The recommendations discussed below could further strengthen corporate governance practices in Jordan.

A. Insider trading

The issue of insider trading remains a pressing concern. In particular, the team heard reports of insider trading, in the context of company management trading in advance of the announcement of a company dividend. Already, the Jordanian law on insider trading is clear in Article (166) of the Companies Law, which prohibits insider trading, and the team has no recommendations as to changing the law. However, the NASD team urges the JSC aggressively to pursue appropriate enforcement action in this area.

Beyond more stringent enforcement, however, another remedy may be helpful. In many countries, each listed company must, as part of those countries' corporate governance codes, adopt codes of ethics. Such a code of ethics governs the conduct of all board members and company employees. This code often establishes an information disclosure policy designed to prevent insider trading, including rules establishing times when trades by insiders with access to privileged information are expressly forbidden. The team does not feel, at this time, that the nature and size of Jordanian companies requires a full-blown code of ethics; still, the team recommends that the JSC and ASE require each listed company to adopt an information disclosure policy with the purpose of preventing insider trading, including a protocol that would establish the times that trades by insiders with access to privileged information are prohibited.

B. Enforcement of disclosure requirements

In regard to overall disclosure provisions, as the team noted above, the Jordanian law is clear and comprehensive and the JSC has taken enforcement actions to promote compliance with the law. The team urges the JSC to continue to review the issue of timeliness and completeness of reporting from an enforcement perspective.

C. General jurisdictional issues

The team notes that there is overlapping jurisdiction with respect to oversight of corporations generally -- and corporate governance, in particular -- in Jordan and that this overlap could undermine effective and efficient oversight. Many areas of overlap have been discussed above.

The issue of overlapping jurisdiction and blurred lines of authority is not uncommon. Indeed, the importance of clarity in jurisdictional responsibilities is recognized in the OECD Principles. Principle I C. states, "(t)he division of responsibilities among different authorities in a jurisdiction should be clearly articulated and ensure that the public interest is served."

In implementing a corporate governance code, the NASD team urges Jordanian authorities to work to clarify jurisdictional responsibilities.

D. Share ownership requirements

The NASD team also observed that Jordanian law places a share ownership requirement on directors.[2] The ROSC recommended ending the share ownership requirement, but the NASD team believes that share ownership may benefit a company in reinforcing an alignment of board members and shareholders. In addition, the team saw no abuse of the share ownership requirement in Jordan. Nevertheless, a company should not establish a particularly high share ownership requirement. Such a minimum ownership requirement conceivably could place a barrier on board service.

E. Introduction of the proposed Corporate Governance Code

After the JSC and ASE review and comment on the NASD team's proposed Code, the team understands that a task force that includes participants from the private sector will also review the code and provide input. The JSC and ASE would review and discuss any suggestions, and then adopt a final, working version of the Code. The NASD team endorses this approach. Once the definitive Code is adopted, the JSC and/or ASE could then introduce the Code to representatives from listed companies at a workshop.

[2] Article (133) of the Companies Law, entitled "Shares whose Ownership is Necessary for the Nomination for the Board Membership" sets forth the concept that a person or entity nominated for the board must own a certain number of shares. Article (133)(a) states that the company Memorandum of Association must specify the number of shares to be held to qualify for membership on the board.

F. Director training

The NASD team recommends that the JSC require directors of listed companies participate in corporate governance training, to learn about the Code in general and their responsibilities as directors in particular. The NASD team found general agreement that, in some instances, directors were not clear as to their roles and responsibilities as directors. Training could help improve directors' knowledge and professionalism and, thus, improve the quality of governance in Jordan.

V. Conclusion

The NASD team believes that adoption of the foregoing proposed Code will be an important step. The Code encompasses the vital elements of improved corporate governance in Jordan, in setting of board responsibilities, shareholder rights, and transparency and disclosure requirements. Finally, the comply or explain approach is well suited for Jordanian listed companies allowing for an enforceable regulatory framework as well as appropriate flexibility.

Appendix I -- Annotated Code

(Note on presentation format: The Code is presented in two formats below. In this Appendix, Appendix I, the actual provisions of the code are highlighted in yellow and are followed by two or three sub-sections: "Commentary," "Rationale for Code and Commentary Provisions," and, where appropriate, "Legislative Recommendation." NASD recommends that the code provisions be read in conjunction with, at a minimum, the "Commentary" provisions, which provide important, additional context for understanding the code. Appendix II presents the code, by itself, without any commentary.)

I. THE BOARD OF DIRECTORS

A. Composition of the Board of Directors

1. The board of directors shall consist of two or more independent directors. The term "independent director" is explained below, in Section 1.B.2.

Commentary: Independent directors play an important rule in fostering investor confidence that a company's board of directors will exercise independent judgment in the best interest of the company's shareholders, in order to maximize long-term shareholder value. Independent directors are crucial to the board's responsibility for overseeing, and holding accountable, company management, and guarding against conflicts of interest. For larger, more mature companies it may be feasible to increase the number of independent directors to more than two. However, the explicit requirement that at least two directors be independent of management -- in regard to employment, financial, or family interests -- should enhance investor confidence.

Moreover, as described below in Section I.D, the board must appoint from its members at least two persons to be on the company audit committee, and all audit committee members must be independent directors, as defined in Section I.B.2.

Rationale for Code and Commentary Provisions

The independence of the audit committee members, as well as the independence of the directors even when they are not explicitly serving audit committee functions, is essential for effective corporate governance. Therefore, the proposed Corporate Governance Code requires a minimum of two independent directors. This requirement flows from a later Code provision (Section I.D below) that the audit committee consist entirely of independent members. The proposed Code also explains the independent director concept in Section I.B.2 below.

At this time, Jordanian law does not require any directors to be independent.[3] Article (132) of the Companies Code simply introduces the concept that the board manages the company, but refers to no independence requirement. But the presence on the board of a minimum of two independent directors can help maximize shareholder value and prevent conflicts of interest, an issue that this Code explicitly assigns to the audit committee with respect to oversight of related party transactions.

Legislative Recommendation

In accordance with this proposed Code provision, the law should be changed to require two independent persons to serve on the board of directors.

2. Only a natural person shall serve as a director.

Commentary: A requirement that a natural person act as director helps assure accountability, a key aspect of sound corporate governance. This requirement is designed to address issues that arise when major public shareholders, including government entities, rotate board members, from meeting to meeting. This practice undermines a board member's accountability. Second, a person who attends only one or a few meetings to represent an entity does not have in-depth knowledge of the company and its business, and thus, is less able to make sound and well-reasoned decisions that promote long-tem shareholder value. Third, the perpetual introduction of new board members could disrupt the effective functioning of the board as a cohesive body. Under this Code requirement, a public legal entity that is represented on the board of directors would designate a natural person to serve on the board, similar to the way that a private corporate body appoints a natural person to represent it on the board. If the board position held by a government or public corporation later becomes vacant, and likewise, if any board member position is vacant, another natural person must serve until the next Annual General Meeting.

Rationale for Code and Commentary Provisions

NASD recommends that only a natural person serve as a director. This requirement will help assure accountability, a key aspect of sound corporate governance. Therefore, a legal entity, even where it is a government or public corporate body that is represented on the board of directors, should designate a natural person to exercise its functions on the board.

[3] Article (17) of the JSC Instructions requires that audit committee members be non-executives. The NASD team notes that this requirement is not tantamount to an independence requirement, in its discussion of the audit committee independence requirement, as part of Code Section I.D.

This would require a change to current law. In particular, under Article (135) of the Companies Law, where the government or any official public corporation or public corporate body is represented on the board, there is no requirement for the represented entity to name a natural person to represent it on the board.[4] On the other hand, Article (136) -- in regard to a corporate body other than those government or public corporate bodies that are the subject of Article (135) -- is different. Article (136) does require a non-public corporate body that is a shareholder to appoint a natural person. Specifically, the law states that a corporate body may be "nominated for a number of seats in the Board of Directors in proportion to its shareholding in the Company capital." Then, "in event of its election it shall name a natural person to represent it in the Board of Directors within ten days of the date of its election, provided that the appointee holds the membership conditions and qualifications stipulated in this Law with the exception to his ownership of the Board of Directors' qualifying shares." The proposed Corporate Governance Code will require that a natural person represent each shareholder, regardless of the type of shareholder.

The important issue then arises as to whether a natural person can be properly held accountable for his actions, if he is not indeed the real board member. Where the natural person is merely a stand-in for an entity he is representing, he might have no real vested interest in any actions that he takes on behalf of that entity at a meeting. Consequently, the related important issue arises as to whether that natural person can be individually sued for allegedly wrongful conduct.

In the context of natural persons who are now serving as board members, Jordanian law already sufficiently provides for liability for negligence or wrongdoing. In this regard, the controller, the company, or any shareholder has the right to file a legal action concerning violations. Specifically, Article (157) of the Companies Law provides for liability of the chairman and other board members to the company and shareholders for violations of the law, the Company Memorandum of Association, or for "any error in the management of the Company." Similarly, Article (159) provides that the chairman and other board members shall be jointly and severally responsible to shareholders for any default or negligence in company management.

[4] Article (135) states:

Should the Government or any official public corporation or any public corporate body subscribe in a Public Shareholding Company, then they shall be represented on its Board of Directors, by a number in proportion to their subscription proportion in the Company capital if that proportion entitles it for one or more memberships in the Board, and in this case it shall not participate in the election of other Board members.

Legislative Recommendation

In accordance with the above recommended Code provision that will help assure board members' accountability for negligence and wrongdoing, and to encourage appropriate board member decision-making, we recommend that the law explicitly require the represented government or public entity to name a natural person to represent it on the board of directors. Already, of course, the law requires representation of a corporate body by a natural person, so that no change in the law in that regard is necessary.

The NASD team also advocates limited changes in the law, with regard to limited liability. The ROSC recommended the introduction of a business judgment rule to assure that board members could not be held liable for decisions that they have made in good faith (as opposed to having made those decisions willfully or recklessly). A business judgment rule would afford reasonable protection to board members and avoid discouraging board service. At this time, pursuant to Article (161) of the Companies Law, the General Assembly can discharge the board from responsibility. The NASD team recommends, instead, that Jordan adopt a business judgment rule to replace Article (161), to establish that such discharge from liability may occur only in the context of good faith business decisions.

3. A person shall not serve as a director on the boards of competing companies.

Commentary: This requirement is designed to avoid conflicts of interest that may arise in situations where a board member has a fiduciary duty to companies with competing interests. For example, a board member could learn confidential information while on the board of one company that could present a difficult dilemma when his duty as a board member ostensibly would require him to do what he could to maximize the interests of both companies -- an irreconcilable conflict. Likewise, if a person is on the boards of two companies that are both competing for the same contract, it would be virtually impossible for that person to act fairly on behalf of both companies.

Therefore, a member of a company's board should not be a member of the board of another company that carries out businesses similar to those of the company on which he already serves as a board member, or business that have identical objectives, or that are actual competitors.

Rationale for Code and Commentary Provisions

NASD recommends that the Code prohibit directors from serving on boards of competing companies. While the adoption of this overt requirement is fairly uncommon in other jurisdictions, because persons serving on one board would generally not be nominated for service on a competitor's board, this situation can arise in Jordan, where government or public corporate body representatives may be appointed for board service. This situation compromises both the ability of the director to function without conflicts of interest and the ability of the board to have frank and unguarded conversations about the company.

Article (148)(b) of the Companies Law already is generally consistent with the recommended Code section. The law restricts a member of a company's board or its general manager from being a member of the board of another company "that carries out businesses similar to the businesses of the company on which he is a board member, has identical objectives, or is a competitor thereof." However, at this point, Article (148)(b) uses the term "member of a company's board." The law does not categorically apply to representatives of government or public entities or private corporate entities. Thus, these representatives may be considered as merely representatives of the board members, and not as the actual board members, so that Article (148)(b) would not apply to them.

Legislative Recommendation

The NASD team recommends that the law be amended to state definitively that no member of one company board of directors shall serve on the board of a competing company, and that the term "member" apply to any natural person who is serving on behalf of a government or public entity or a corporate entity.

4. A person shall serve on no more than three boards.

Commentary: Consistent with the duties of loyalty, good faith, and due care, particularly where a person is representing the interests of a government entity, a person should not serve on more than three boards of listed companies. Board members should be able to commit themselves effectively to their responsibilities. The board should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders. Even where a government or public or private corporate entity appoints a natural person to represent it, that natural person must still act solely in the best interest of the company and the shareholders.

Rationale for Code and Commentary Provisions

NASD recommends that the Code prohibit directors from serving on more than three boards, in order to assure that they can devote sufficient time and energy to fulfill their responsibilities.

This limitation is partially reflected in Jordanian law. Article (146)(a) of the Companies Law states that a person in his personal capacity can serve on a maximum of three boards. However, the law also provides, "In all events, the said person is not entitled to be a member of the Board of Directors of more than five Public Shareholding Companies in his personal capacity in some, and as a representative of a corporate body in the others." This provision recognizes that a person might be acting as members of several boards -- some in a personal capacity and some as merely a representative of an entity that appointed him. But the law will become obsolete with the adoption of this proposed Code, which will allow directors to serve on just three boards, only natural persons to be directors, and no persons to serve on boards as merely representatives of the government, public, or corporate entities.

Legislative Recommendation

The NASD team recommended above, in regard to proposed Code Section I.A.2, an amendment to the law to state that only natural persons may serve on boards. In conjunction with that amendment, the portion of Article (146)(a) that allows a board member to serve on up to five boards will be inconsistent with the draft code.

5. Each elected member of the board of directors shall be subject to election at least every three years.

Commentary: Subjecting board members to reelection at least every three years will assure appropriate accountability and shareholder voice in the company.

Rationale for Code and Commentary Provisions

A requirement that board members be subject to reelection at least every three years increases board member accountability by affording shareholders a more frequent opportunity to vote for or against board nominees than under current law. This requirement should not be construed to prohibit directors from being reelected to serve multiple terms.

Article (132) of the Companies Law provides for boards consisting of three to 13 members. In addition, Article (132) requires the board to manage the company for four years from the date of its election. NASD, however, proposes that the Corporate Governance Code limit director terms to three years. In addition, in Jordan, there are many family or closely held companies. It would be impractical to prohibit board members from serving multiple terms. Still, the shareholders should have the important opportunity to exercise their voice through the election of board members.

Legislative Recommendation

Concomitant with the recommended Code provision of three-year director terms, the law should be amended to state that the board oversees management of the company for three years from the date of its election.

B. Requirements for Independent Directors

1. The full company board of directors shall make an affirmative determination that each of the independent directors has no material relationship with the listed company.

2. The following persons shall not be considered independent directors[5]

   a. A director who is, or at any time during the past three years was, employed by the company or any of its affiliates.

   b. A director who is a family member of an individual who is, or at any time during the past three years was, employed by the company or any of its affiliates as an executive officer. A "family member" includes a person's spouse, parents, children, and siblings -- whether by blood, marriage, or adoption -- or anyone residing in such person's home.

   c. A director who accepted, or has a family member who accepted, any payments from the company or any of its affiliates in excess of JD 20,000 during any period of twelve consecutive months within the three years preceding the determination of independence.

   d. A director who is -- or has a family member who is -- a partner in, or a controlling shareholder or an executive officer of, any organization to which the company made, or from which the company received, payments for property or services in the current or any of the past three fiscal years that exceed five percent of the recipient's consolidated gross revenues for that year, or JD 60,000, whichever is more.

[5] This definition is largely based on the NASDAQ and NYSE definitions of independent directors,

e. A director who is, or who has a family member who is, a current partner of the company's external auditor, or was a partner or employee of the company's external auditor who worked on the company's audit at any time during the past three years.

Commentary: All directors have the duty to act independently, in the best interests of the company and the shareholders. But the independent directors have an even more significant role, in furthering corporate governance. The audit committee, described further in proposed Code Section I.D, has an even more specialized role to act independently to ensure that the interests of the shareholders are protected in the areas of financial reporting and internal control. Hence, each member of the audit committee must be, by definition, independent.

Rationale for Code and Commentary Provisions

NASD recommends that the Code use an objective standard for "independence," and to define it as presented above. One of the major areas of focus for the Code proposed by NASD is protection of shareholder interests in Jordan, in particular, from abuse of position. A major thrust of this approach is the requirement for an audit committee made up of independent members, and the definition of "independence" is thus vital. The definition proposed here attempts to balance the need for independent directors with the practical constraints of finding qualified directors in a relatively small country.

It bears emphasis that, currently, Article (46) of the Securities Law and Article (17) of the JSC Instructions state that the Audit Committee should consist of "non-executive" board members. However, although this "non-executive" proviso is a good approach, it is not equivalent to the independence requirement in the proposed Code. A person on the board, and on the audit committee, could indeed be a non-executive of the company, and very well not be independent. For example, he could be a family member of someone in the company or be engaging in significant transactions with the company. In either event, any actions or decisions as a board member might not always -- as would be required of an independent board -- benefit the company and the shareholders.

Legislative Recommendation

In accordance with this proposed Code provision, as stated above, the law should set forth an objective definition of independence, for all directors. As a related matter, the JSC Instructions as to the audit committee should also be correspondingly amended.

C. Duties and Responsibilities of the Board of Directors

1. The company shall certify that its Board has adopted a formal written board of directors charter. The board of directors shall annually review, reassess the adequacy of, and approve the charter. The charter shall confirm the board's basic responsibilities to oversee management and to fulfill its fiduciary duties to shareholders. The charter shall state the purposes of the board of directors and the scope of the board's responsibilities, and how it executes those responsibilities. The charter shall specify the matters that are the responsibility of the board and the matters that the board delegates to management. Specifically, the charter shall refer to:

    a. An annual review of the effectiveness and efficiency of internal structure and controls of the company to ensure clear lines of accountability for management and to monitor the effectiveness of the company's governance practices, making any necessary changes.

    b. The establishment of corporate strategy, risk policy, annual budgets and business plans, monitoring corporate performance, and a process of disclosure and communications.

    c. Oversight of major capital expenditures, acquisitions, and divestitures.

    d. Development of a remuneration policy statement covering board members and management, in accordance with the long-term interests of the company and its shareholders.

    Commentary: The purpose of the board charter is to help ensure a proper corporate governance framework. Setting forth the division of responsibilities will clarify the accountability of both the board and management. The above items to which the charter shall refer are the most significant responsibilities of the board or management, however, the charter ultimately specifies such responsibilities. How the company structures the delineation of responsibilities and accountability is necessarily dependent on the size, history, functions, complexity, traditions, and structure of the company.

    The board charter also will help focus the directors' attention on their roles and responsibilities, and on how they intend to execute them. In this regard, the company should provide all new directors, prior to their becoming board members, full and focused guidance and training, including a detailed explanation of the board charter's description of the duties and responsibilities of the board.

Rationale for Code and Commentary Provisions

NASD recommends that the Code set forth the requirement that boards adopt a charter as well as the specific provisions of the charter. NASD proposes the board charter for several reasons. First, as noted earlier, the proposed code is intended to be enforceable through a comply or explain regime. The presence, or absence, of a charter that has been approved by the board is one of the key "bright line" tests in the code, with which the company must comply or explain. Second, NASD found in its interviews that there was general concern about the degree to which board members understood their roles and responsibilities. NASD views the charter as a potentially useful vehicle (although certainly not the only one) for educating directors and focusing their attention on their roles and responsibilities. Third, mandating the board to formally adopt the Charter will help imbue directors with a greater sense of responsibility for their action as board members.

Legislative Recommendation

The JSC should, in the Securities Law, or in implementing instructions, require each listed company to adopt a board charter. Alternatively, the ASE could amend its rules to require listed companies to have board charters.

2. The board shall meet at least six times a year.

Commentary: The board should meet frequently enough so as to ensure the efficient and effective execution of the directors' duties and responsibilities. The agenda for each board meeting should, at a minimum, include a description of the items that the board will discuss. The board meeting minutes should be clear and complete, and include notations as to voting abstentions due to conflicts of interest. In this regard, a director must recuse himself from discussions on -- or from voting on -- any issues in which he potential conflict or interest. The board should formally approve all minutes.

Rationale for Code and Commentary Provisions

For the board to function properly it must meet regularly. Otherwise, the board members would be unable to adequately fulfill their considerable duties and responsibilities. The meeting agendas will serve as a guide for the board members, and the minutes will provide a history as to meeting events and decisions that the board has made. The NASD team also emphasizes with the Commentary that directors must avoid conflicts of interest at meetings by appropriately recusing themselves from discussions and votes of items in which they have potential conflicts or interests.

Already, Jordanian law now requires a board to meet at least six times a year. See Article (155) of the Companies Law. Therefore, the NASD team has no legislative recommendations.

3. The board shall elect by a secret ballot from among the board members a chairman.

Commentary: A board chairman provides leadership to the board in the discharge of its responsibilities. The chairman should preside over board and shareholder meetings, and establish the annual calendar of board meetings. The chairman should coordinate board activities and the interests of the company and shareholders, organize and coordinate the meeting agendas, and coordinate and supervise the activities of the other directors, and assign responsibilities and deadlines. He also should call special board meetings when necessary, after consultation with other directors, and, if necessary, with the participation of the general manager and other senior executive management.

Rationale for Code and Commentary Provisions

This Code and Commentary here focus on the election of the chairman. Also, the Commentary specifies the significant roles of the chairman.

Jordanian law already addresses election of a board chairman. Specifically, Article (137) of the Companies Law provides for the election of the chairman of the board. Article 152(b) of the Companies Law restricts the chairman from being the full time chairman of the board or the general manager of another public shareholding company. This restriction is appropriate in that it furthers the duty of loyalty and recognizes plausible limitations on the real level of time and effort that one person can devote to two influential positions. The Companies Law does not, however, require that the election of the chairman occur by secret ballot. A secret ballot is essential, as it would allow board members to freely express their views without the fear of embarrassment or retribution from others.

Legislative Recommendation

The law should be amended to require the election by secret ballot of the chairman of the board of directors.

D. Independent audit committee

1. Qualifications

a. The board shall elect an audit committee that consists of two or more persons, each of whom is an independent director (as defined above in Section I.B.2).

Commentary: It is critical that the audit committee members be independent, so that they can exercise independent judgment in protecting shareholders from abuse, for example, from imprudent related party transactions. Moreover, the audit committee, as a representative of the full board, can be an effective and efficient means for focusing the company on issues concerning the protection of the integrity of the company's financial reporting.

Rationale for Code and Commentary Provisions

The audit committee is instrumental for the company in the context of integrity, independence, and financial reporting. Members of the audit committee are critical in helping to protect the interests of the shareholders from potentially abusive related party transactions.

Article (46) of the Securities Law states that the audit committee shall consist of three non-executive board members. The JSC's Instructions include a robust framework for audit committees. Article (17)(A) of the Instructions requires that three of the audit committee members be "non-executive board members who are natural persons." Article (17)(B) states that a board member is considered as "non-executive" if the "member is neither an employee of the Company nor receiving a salary therefrom."

The "non-executive" requirement is sound, but the Code that the NASD team proposes requires greater adherence to a strict principle of independence for audit committee members. As explained above in the general description of independence, the current "non-executive" proviso is not the same as the independence requirement in the proposed Code. Requiring an objective standard for independence could eliminate very real concerns relating to potential business, family, or contractual conflicts of interest.

Moreover, in regard to the requirement in Article (46) of the Securities Law and Article (17)(A) of the JSC Instructions that **three** audit committee members be "non-executive" (or independent under the proposed new configuration), it might be difficult for each company to appoint three persons to its audit committee who would all come within the proposed definition of independence. Therefore, the NASD team proposes in the Corporate Governance Code that only two independent directors need serve on the audit committee. If the board desires to appoint more than two independent directors to the audit committee, that naturally still would be permissible.

Legislative Recommendation

The NASD team recommends amendments to Article (46) of the Securities Law and Article (17) of the JSC Instructions to reflect the objective definition in the proposed Code as to the required independence for audit committees.

In addition, Article (46) of the Securities Law and Article (17) of the Instructions should be changed to state that the audit committee should be composed of a minimum of two independent directors, rather than the three "non-executives" to which the Instruction now refers.

b. Each audit committee member shall be able to interpret fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement.

Commentary: The audit committee must be able to properly fulfill its duties and responsibilities. Therefore, each member must have the ability to interpret the company's financial statements, so as to be able to fulfill his duty to help assure the integrity of the company's financial reporting and to oversee the activities of the external auditor.

Rationale for Code and Commentary Provisions

Because of the crucial role that the audit committee plays in providing detailed analysis of financial statements, monitoring financial accountability and supervision, and ascertaining adherence to sound internal controls, and assuring the integrity of financial reporting, there is a real need for financial literacy on the part of each audit committee member. The NASD team learned that many audit committee members in Jordanian companies were not sure of their exact roles and responsibilities. And at this time, there are no specific qualifications for audit committee members in the JSC Instructions. A strong familiarity with basic accounting principles would enhance the ability of audit committee members to perform their roles and responsibilities.

Legislative Recommendation

The JSC should amend Article (17) of its Instructions to include a requirement that each audit committee member be able to interpret fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement.

c. At least one member of the audit committee shall have previous employment in finance or accounting, a professional certification in accounting, or other similar experience or background.

Commentary: It is essential that at least one audit committee member have financial or accounting experience, a professional certification in accounting, or other similar experience or background. Sound corporate governance requires that the company apply strong financial reporting and internal control principles and procedures. Where at least one person on the audit committee has understanding of these principles and procedures, the company can ensure adherence to sound corporate governance principles and procedures, including the monitoring of the preparation of financial statements and oversight of the external auditor. The experience can include serving as general manager, chief financial officer, or other senior executive management with financial oversight responsibilities.

Rationale for Code and Commentary Provisions

As stated above, the audit committee plays a central role in monitoring financial reporting, reviewing and approving potentially abusive third party transactions, and maximizing shareholder value. Therefore, at least **one** audit committee member must have financial experience, sufficient to be able to guide the other audit committee member or members. The JSC Instruction, however, does not mandate that any audit committee members have any particular financial expertise or sophistication.

Legislative Recommendation

The JSC should amend Article (17) of its Instructions to parallel the proposed Corporate Governance Code provision, to require that one audit committee member have previous employment in finance or accounting, a professional certification in accounting, or other similar experience or background.

2. Duties of the Audit Committee

a. Audit Committee Charter: The company shall certify that it has adopted a formal written audit committee charter. The audit committee shall annually review, reassess the adequacy of, and approve the charter. The charter shall state the purposes of the audit committee and the scope of the audit committee’s responsibilities, and how it executes those responsibilities, including:

i. Nominating an independent, competent, and qualified external auditor, reviewing his activities so as to ensure independence and accuracy.

ii. Meeting at least once a year with the external auditor to discuss results of audit work.

iii. Reviewing and approving related party transactions.

iv. Overseeing the company's accounting and financial reporting processes and the audit of the financial statements.

v. Examining the company's annual and semi-annual reports prior to their presentation to the Board of Directors and submitting any pertinent recommendations.

vi. Examining and evaluating the internal control procedures and making recommendations to the board related to internal audit procedures.

vii. Monitoring compliance with the company's code of conduct.

Commentary: The purpose of the audit committee charter is to describe the responsibilities of the audit committee members. Similar to the role of the board charter for board members, the audit committee charter also will assist in focusing the audit committee members' attention on their roles and responsibilities, and on how they intend to execute them. The charter should govern the operations of the audit committee and fully address the primary duties and responsibilities of the audit committee.

Rationale for Code and Commentary Provisions

The rationale for the proposed audit committee charter is similar to that for the board charter, namely, to promote increased understanding among audit committee members of their responsibilities and, to the extent possible, to imbue them with a sense of accountability in that regard. Further, the charter is consistent with the goal of creating a code that is enforceable under a comply or explain regime.

The JSC Instructions do not require the adoption of an audit committee charter. But Article (17) of the Instructions sets forth a very good framework as to audit committee roles and responsibilities. The responsibilities in the charter that the NASD team recommends in the proposed Code hence are based largely on Article (17), except that the Jordanian law does not expressly compel the audit committee to meet at least once a year with the external auditor.

Legislative Recommendation

The team recommends that the JSC add to Article (17) of its Instructions a requirement that the company adopt an audit committee charter, to explicitly specify the duties and responsibilities. In addition, Article (17) should include an express obligation that the audit committee meet at least once a year with the external auditor.

b. The audit committee shall nominate an independent, competent, and qualified external auditor.

Commentary: It is essential that the audit committee nominate, subject to approval by the shareholders, an effective external auditor. The external auditor must be able to independently monitor company operations, audit the company in accordance with recognized auditing rules and auditing profession principles, and ensure the accuracy of financial statements.

Rationale for Code and Commentary Provisions

Section I.C.2.a.i of the proposed Code already states that one of the audit committee's chief responsibilities the nomination of an external auditor. But the NASD team believes that it is important for this function to be a separate provision of the Code, to highlight this paramount function, and to ensure that it remains vested with the Audit Committee.

Article (192) of the Companies Law refers to the requirement that the General Assembly select one or more licensed auditors "for one renewable year." According to Article (193) of the Companies Law, the auditor's duties include monitoring the company operations; auditing the company's account in accordance with recognized auditing rules, auditing profession principles, and scientific and technical standards; and verifying the company assets and its ownership thereof and ascertaining the legality and correctness of company obligations.

The NASD team concludes that the language of Articles (192) and (193) of the Companies Law are already appropriate, and it makes no legislative recommendations.

c. The audit committee shall meet at least once a year with the external auditor, without the presence of the company's management.

Commentary: The audit committee should at least annually meet with external auditor to discuss the results of its audit work. This meeting should occur without having management present, to assure the full disclosure of all details and to ensure the confidentiality of the items discussed at such meeting.

As a related matter, the audit committee should also meet annually with the board, the general manager, and other senior executive management. Management should provide the audit committee: timely and periodical reviews of the financial statements prior to their disclosure; presentations concerning changes in accounting principles and criteria; the accounting treatment adopted for the main operations, and significant variations between budgeted values and actual values; information relating to any second opinions obtained by management from an independent auditor regarding the accounting treatment given to a certain event or operation; and any exchange of correspondence between the internal audit department and the external auditor. The audit committee must also meet at least once a year with the external auditor to discuss his work.

Rationale for Code and Commentary Provisions

The audit committee charter, in proposed Code Section I.D.2.a, will already provide for the audit committee to meet with the external auditor. But it is important to separately emphasize here that foremost function of the audit committee. In addition, the NASD team learned that in some companies the audit committee had not met with the external auditor. Hence, the Code requires a private meeting between the audit committee and the external auditor.

Jordanian law, in Article 17(D) of the Instructions, refers extensively to the dynamic between the audit committee and the external auditor, but no express provision requires an actual meeting, at least annually, between the audit committee and the external auditor.

Legislative Recommendation

The JSC should amend Article (17)(D) of the Instructions to require that the audit committee and the external auditor meet at least once a year. In addition, Article (17) should require a meeting between the audit committee and the external auditor that does not also include company management.

d. The audit committee shall review and approve all related party transactions before the company, or any of its affiliates, enters into any such transactions. Related party transactions are any transactions, exceeding JD 20,000, between the company or its affiliates and: any company director or member of senior executive management, any nominee for election as director, any security holder owning greater than five percent of the company's voting stock, or an immediate family member of any of the foregoing. Related party transactions also include loans exceeding JD 20,000 by the company or its affiliates to any company director or member of senior executive management. Related party transactions also may arise in situations in which a company director is also, in regard to a second company, a member of senior executive management or an owner of greater than ten percent of that second company. If, in these situations, there are payments for property or services between the two companies (regardless of whether the first company makes payments to the second company, or the second company makes payments to the first company) and the payments exceed five percent of the consolidated gross revenues for the previous fiscal year of either company, the payments would constitute related party transactions that the audit committee shall review and approve.[6] As a related matter, members of the board and senior executive management shall disclose to the board whether they, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the company.

Commentary: All actions of the company must benefit the shareholders. The company must prevent any potential conflicts of interest, so as to avoid the inappropriate use of company assets. Thus, when the company executes transactions with related parties, it must ascertain that these transactions do not benefit the related parties at the cost of the company. The audit committee is the appropriate entity to review and approve all related party transactions exceeding the threshold of JD 20,000, that is, those transactions involving the company and directors, director-nominees, senior executive managers, or family members of these persons. Similarly, the audit committee must review and approve certain transactions involving company directors or director-nominees where such persons also work as part of senior executive management of another company, or own more than ten percent of the stock of another company. If the transactions amount to five percent of the gross consolidated revenues of either company, during the prior fiscal year, the audit committee must review and approve the transactions. At the same time, this Code does not preclude the company from entering into transactions with related parties, so long as there is appropriate review and approval by the audit committee.

Rationale for Code and Commentary Provisions

The NASD team recognizes that the audit committee charter, in proposed Code Section 1.D.2.a, will also address the audit committee's role in reviewing and approving related party transactions. But it is reasonable also to emphasize here that serious role.

[6] The definition of related party transactions here is derived from Regulation S-K, Item 404, under the U.S. Securities Exchange Act of 1934.

Review by the independent directors of the audit committee will provide a safeguard against self-dealing. To this end, the code requires the audit committee to review and approve any related party transactions, exceeding certain thresholds. As described above, the threshold would be JD 20,000 (for the previous fiscal year) where these transactions are between the company and a director, a nominee to be a director, a member of senior executive management, or a family member of any of these persons. In addition, there would be a different threshold in regard to transactions between the company and a second company, where a director or director-nominee of the company is also associated with the second company. If that director or director-nominee is a member of senior executive management or is a greater than ten percent owner of the second company, there must be review and approval by the audit committee where the transactions between the companies during the prior fiscal year exceed five percent of the consolidated gross revenues of either company.

The proposed code is consistent with, but offers a different approach from, current Jordanian law regarding related party transactions. Specifically, Article (148)(c) of the Companies Law prohibits the chairman, other board members, the general manager, or any employees from having a direct or indirect interest in “the contracts, projects, and relationships which are concluded with the Company or for its account.” But Article 148(d) exempts from this prohibition any construction operations, undertakings, and public tenders, in which all competitors have an equal opportunity to submit their offers. And if the best offer is submitted by a person mentioned in subsection (c) (meaning the chairman, other board members, the general manager or any employees), a two-thirds majority approval of the board members must be obtained, so long as affected board members will not have the right to attend the session at which the offer is discussed. If the board does give such approval, under Article (148)(d), the board must review the approval annually if the contracts or undertakings are of a renewable and periodic nature. Under the proposed Code, however, there will a different framework in regard to the approval of related party transactions. Rather than prohibiting all such transactions (except where there is equal competition), the Code will not prohibit any transactions that do not fit within the above-described thresholds. And rather than requiring two-thirds board approval, the Code will require review and approval, by the independent audit committee, of only transactions meeting the above-described thresholds.

Hence, in view of the audit committee’s involvement in reviewing and approving related party transactions, the blanket prohibition set forth in Article (148)(c), together with the exemptions in Article (148)(d), is no longer necessary.

Legislative Recommendation

The law should be changed to provide a specific definition of related party transactions, in line with the language in the proposed Code, and to mandate that the audit committee review and approve all such transactions.

II. THE RIGHTS OF SHAREHOLDERS

A. Shareholder approval is required for the following:

1. Election and removal of board members.

2. The appointment of the external auditor.

3. Amendments to the articles of incorporation or by-laws of the company.

4. The issuance of common stock equal to or greater than 20 percent of the stock outstanding before the issuance of such stock at a price less than market value.

5. Mergers, acquisitions, transfers of all or substantially all company assets, or liquidation.

Commentary: Shareholders should have an active role in all of these decisions, which fundamentally affect the company and shareholder value. While management handles daily corporate tasks and decisions, these are items in which it is crucial that shareholders have a voice.

Rationale for Code and Commentary Provisions

Shareholders, of course, have the right under Jordan law to elect board members. According to Articles (132) and (171) of the Companies Law, the General Assembly elects the board by a secret ballot. And according to Article (175) of the Companies Law, at an Extraordinary Meeting, the shareholders can discuss, consider, and decide on: amending the company Articles and Memorandum of Association; the merging, liquidation, or dissolution of the company; dismissal of the board or a board member; sale of the company or complete acquisition of another company; increase or decrease of the company's authorized capital; issuance of corporate bonds convertible to shares; company employees' ownership of the company capital shares; or company purchase of its shares or "selling of same."

As noted above, in the discussion of Article (135)(a)(1), on board representation for government and public corporate shareholders, there is no direct election by the other shareholders of these representative board members. Instead, board representation is simply proportional to ownership. Yet in regard to board representation by a non-public corporate body, as described above, the shareholders do elect the corporate body, and then within ten days the corporate body names a natural person to represent it.

Concerning removal, shareholders are not allowed to remove board members representing the shares of the government or any public corporate body. Article (165) (a) of the Companies Law. But a basic corporate governance principle, and part of the proposed Code here, is that shareholders have the right to remove board members. This principle should hold true regardless of whom the board member represents.

As a related matter, the removal of any director, including the chairman, is difficult, in that it requires an extraordinary shareholders meeting. Shareholders representing at least 30 percent of shareholders must request this meeting, according to Article (165) of the Companies Law. Any decision at the extraordinary meeting must be made by 75% of the total shares represented at that meeting, according to Article (175)(b) of the Companies Law. The NASD team notes that, in some jurisdictions, the law allows removal of a board member by simply a majority of the shares that are required to elect a board member.

Legislative Recommendation

The law should be changed to permit shareholders to remove all board members, even those natural persons representing the government or public corporate entities.

In regard to the removal of directors, at an extraordinary meeting, NASD recommends a change in the law to permit a threshold of a simple majority for removal in Jordan.

B. Shareholders shall be able to vote in person or in absentia, whether by mail or by proxy.

Commentary: Shareholders should be permitted to vote by mail or proxy to facilitate voting and greater shareholder voice, if they are unable to attend meetings. If a shareholder votes by mail, he should have a notary public provide notarization that his signature is valid in the domicile of the shareholder.

Rationale for Code and Commentary Provisions

The NASD team discussed the proxy process with representatives of Jordan's corporate sector. The proxy now must be in writing, on a special form prepared by the board with the approval of the Controller. A shareholder may also give a proxy to another person, if that person is not a shareholder, but the shareholder must first obtain a judicial power of attorney. We learned that this could be a complicated process in Jordan.

Article (179) of the Companies Law indeed permits a shareholder to give his proxy to another shareholder, but as emphasized above, this can be unduly burdensome.

In addition to using proxies, shareholders should be able to vote by mail. This could facilitate shareholder participation, and, particularly, participation by foreign shareholders. Voting by mail will be easier in the future, once the SDC has a greater number of shareholders in its registry.[7] For now, the Commentary above specifies that when voting by mail, a shareholder must obtain the notarization of a notary public. The NASD team recognizes that voting by mail in Jordan is a new idea, and that some parties may want to require such notarization in the first few years, so as to make people comfortable with the concept of authenticating the ballots.

The team also encourages the use of electronic voting, including permitting voters to vote in absentia using secure electronic voting, when appropriate.

Legislative Recommendations

The law should be amended to permit shareholder voting by mail.

C. Shareholder meetings

1. The company shall provide shareholders a minimum of 30 days of advance notice as to the date and time, location, and agenda of the General Assembly and any extraordinary meetings, setting forth the matters upon which the shareholders will vote. The notice shall specify that the shareholders have the right to vote by proxy or by mail.

[7] All records are of the direct owners of shares, as Jordan does not permit beneficial ownership. However, while the SDC had authenticated shares representing 93% of the market capitalization as of June 2005, it had not authenticated approximately 60% of the shareholders. Still, the SDC advised us that it is gradually authenticating the shares, and that it is registering approximately 300 individual shareholders daily.

2. The notice of the General Assembly shall include detailed information about any nominee for board member; the information shall be sufficient to enable the shareholders to assess the qualifications of each nominee. Specifically, the notice shall describe the nominee's educational background, qualifications, and employment experience. The notice shall specify the nominee's principal occupations and employment during the past five years, the name and principal business of any corporation or other organization in which such occupations and employment were carried on; and whether such corporation or organization is a parent, subsidiary, or other affiliate of the registrant.

3. The notice of the General Assembly shall include a fixed agenda.

Commentary: Shareholders must have a minimum of 30 days notice as to the date and time, location, and agenda of shareholder meetings. In addition, the notice of any meeting shall include detailed information about the meeting. Finally, it is a fundamental principle of corporate governance that there be discussion at a shareholder meeting on only items on the agenda. Limiting the discussion to items only on the agenda will prevent any shareholders at the meeting from proposing new items upon which the persons not attending the meeting will otherwise lose the opportunity to assert their views. In this regard, the company should adopt a mechanism to permit shareholders the opportunity to suggest items for the General Assembly agenda, not less than sixty days before the meeting.

Rationale for Code and Commentary Provisions

The NASD team observed that Article (144) of the Companies Law requires the board to mail the notice of the General Assembly to each shareholder at least 14 days before the date of the meeting. The notice must include the agenda of the General Assembly meeting, the board report, the annual balance sheet, the external auditor's report, and the explanatory statements. The NASD team concluded, however, that, together with the provision recommended above allowing voting by mail, the company should be required to send out the meeting notice at least thirty days before the General Assembly.

In regard to what the shareholders discuss at the annual meeting, Article (171)(a)(9) of the Companies Law permits the General Assembly to consider, discuss, and decide "any other matter which the General Assembly proposes to include in the agenda, and are within the work scope of the General Assembly in its ordinary meetings, provided that such a proposal is approved by shareholders representing not less than 10 percent of the shares represented in the meeting." But as noted in this Commentary, it is fundamental to good corporate governance to allow the shareholders to discuss only what is on the agenda. The NASD team did not identify any problems concerning discussion of issues that were not on the agenda, but having a fixed meeting agenda is simply an important matter of best practice.

Legislative Recommendation

The law should be amended to require the company to send the General Assembly notice at least 30 days before the date set for the meeting.

Moreover, Article (171)(a)(9), permitting the discussion of other matters, regardless of whether the shareholders present at the General Assembly request such voting, should be eliminated.

D. Each shareholder shall have the right to participate and vote in shareholder meetings, in accordance with his share in the company's capital.

Commentary: Voting is an important means of oversight of a company.

Rationale for Code and Commentary Provisions

A shareholder's right to vote is his most fundamental right. Article (178) of the Companies Law provides "Every shareholder in the Company who was registered in the company three days prior to the date set for any meeting of the General Assembly shall have the right to participate in discussing issues presented thereto and to vote on the decisions adopted by the Assembly regarding these issues, each according to the number of shares he represents in person and by proxy." Jordan thus has a one-share/one vote requirement, and the NASD team has no legislative recommendation.

III. DISCLOSURE AND TRANSPARENCY

A. The company shall establish a written policy concerning disclosure and transparency to help ensure compliance with the Companies Law and the Securities Law, as well as implementing regulations.

Commentary: The company must make all required information accessible to all shareholders and the public, as soon as available, and in accordance with Jordanian law. A written policy will assist the company with compliance with the law. The company policy must be designed to ensure that it timely states company announcements in a clear and objective manner so as to allow shareholders and investors to assess the impact of the information when they are making investment decisions.

The company's annual report, as required by both the Companies Law and the Securities Law, is an important and comprehensive source of company information. The report must include audited financial statements of the company, together with the external auditor's opinion. The financial statements in the annual report must comply with internationally accepted accounting standards. The board must approve the annual report and distribute it to the shareholders a reasonable period of time before the General Assembly. Management must recommend its acceptance or rejection by the General Assembly.

The annual report should include an opening statement prepared by the chairman or the general manager, and state the company objectives and foreseeable risk factors. The annual report should specify the shareholdings and voting rights of the directors, officers, and major shareholders, on an individual basis, and describe changes in their shareholdings over the year. The report should also state the remuneration policy for members of the board and senior executive management, as well as its impact on results. The annual report should provide information about board members, including their qualifications, the selection process, other company directorships, and whether they are regarded as independent by the board. Finally, the annual report should state the company's corporate governance practices and the content of the company board charter and the audit committee charter, as well as the process by which the company implemented these.

The company should use the Internet and other technologies, to the greatest degree possible, to improve the speed and breadth of information disclosure..

Rationale for Code and Commentary Provisions

Information disclosure is indispensable to sound corporate governance. Companies should provide investors sufficient, non-confidential information so that they can decide whether to invest in companies, or to maintain their investments in the companies in which they already own shares.

Jordan already has comprehensive disclosure requirements. Pursuant to Article (43) of the Securities Law, each listed company must file, among other items, with the JSC, in accordance with any JSC instructions:

- An annual report, including financial statements certified by an auditor, within 90 days of the end of its fiscal year.
- A semi-annual report within 30 days of the end of its semi-annual fiscal year.

Similarly, under Article (140) of the Companies Law, within three months of the end of the company's fiscal year, the board must present to the General Assembly the annual balance sheet of the company, its profit and loss statement, and cash flows statements, duly certified by the external auditor.

The NASD team notes, however, that Article (142) of the Companies Law requires that the company must provide the Controller with a semi-annual report within 60 days. There is thus a discrepancy with the 30-day requirement for semi-annual reports described above in Article (43) of the Securities Law.

In Article (16) of the 2004 Instructions, the JSC adopted, for all companies subject to its control, the international accounting standards issued by the Board of International Accounting Standards. Likewise, Article (184) of the Companies Law requires public shareholding companies comply with the recognized international accounting and auditing standards. Both of these requirements place Jordan firmly in the mainstream of financial disclosure.

Legislative Recommendation

The NASD team recommends that Article (142) of the Companies Law and Article (43) of the Securities Law be reconciled to assure that they are consistent as to the timing of the filing of semi-annual reports.

B. The company shall disclose in the annual report any related party transactions (as described in Section 1.D.2.d) along with a statement as to whether the Audit Committee approved the transaction.

Commentary: Of particular interest to shareholders and investors are transactions that the company has entered with related parties, as defined above. Such transactions may involve self-dealing or have a material effect on operating results and the financial position of the company. In the absence of disclosure, there is also a potential for distorted or misleading financial statements.

Rationale for Code and Commentary Provisions

It is essential in the proper corporate governance framework to require the reporting of related party transactions. Already, of course, pursuant to the Code that the NASD team proposes, the company audit committee must review and approve all related party transactions. It is important that the company disclose such transactions to investors. Jordan law does not currently require any disclosure of such transactions.

Legislative Recommendation

Jordanian law should be amended to require the disclosure of related party transactions.

C. The company shall disclose in the annual report the structure and objectives of its remuneration policy, as the policy relates to company performance, and the compensation that it has paid to all board members and senior executive management.

Commentary: The purpose for disclosing compensation is that the shareholders and investors must know how much the company is paying board members and senior executive management for their work. Shareholders must understand whether the company is truly acting in their best interests in regard to its remuneration policy and the actual compensation that it is paying to the board and to executives.

Rationale for Code and Commentary Provisions

An important aspect of disclosure is compensation that the company is paying to its board, and its senior executive management. Disclosure of compensation can help shareholders and investors to understand exactly if they are receiving value for the monies that the company is paying.

This disclosure is already required by the JSC. Article (6)(B)(18) of the JSC's Instructions provides that the annual report shall include the benefits and remuneration (including "fees, salaries, bonuses, and otherwise" and travel expenses), that the company has paid during the fiscal year to the chairman, the other board members, and senior executive management. The NASD team has no legislative recommendation.

D. The company shall immediately disclose all material information that would reasonably be expected to affect the value of its securities or influence investors' decisions, unless the information is maintained as confidential and its disclosure would compromise the company's ability to pursue its legitimate corporate objectives.

Commentary: It is imperative for the company to disclose immediately to shareholders and to the investing public any material information. This is a matter of fundamental fairness to all investors in the capital markets, so as to assure a level playing field.

Rationale for Code and Commentary Provisions

A company must disclose material information to investors immediately. For the markets to be fair, a company must act quickly to disclose any information that could affect a decision as to whether to invest in that company.

Jordanian law already focuses on the disclosure of material events. Article (43) of the Securities Law requires each issuer company to publish and file with the JSC any "material facts upon recognizing such." The 2004 Instructions, Article (10), also require the company to immediately notify the JSC of "any emerging material fact." Article (10) contains a very comprehensive description of what constitute material facts. Article (11) of the 2004 Instructions requires the company to provide the JSC with a detailed report of any material fact, with a copy of the public statement (defined as "a paid announcement or a declaration to be published in at least one daily newspaper"), within a week from the occurrence. The NASD team notes that there is no specific definition of the term "material" in the Securities Law. There are certainly circumstances under which there need not be immediate disclosure, such as where there are trade secrets or other proprietary information that the company should not be required to disclose to the public, for legitimate purposes. Likewise, the company would not have to disclose incomplete negotiations, that is, preliminary negotiations the disclosure of which would possibly have an injurious effect on such negotiations or the company's financial standing if prematurely disclosed.

There is no need to define materiality in the law, however. In light of the Jordanian legal provisions on the disclosure of material events, the NASD team has no legislative recommendations.

E. The company shall report in the annual report all changes in the company shareholdings of directors, senior executive management, and major shareholders over the previous fiscal year.

Commentary: Investors and shareholders should be able to monitor and evaluate directors, senior executive management, and major shareholders investment activities in a company's stock, to inform their own investment decisions.

Rationale for Code and Commentary Provisions

There should be disclosure by the company in its annual report as to all changes in the holdings of directors, senior executive management, and major shareholders over the previous fiscal year.

While Articles (3)(a)(6) and (7) of the JSC Instructions require disclosure of the shareholdings of the board members, senior executive management, and their relatives, as well as the names of shareholders who own more than five percent of the issued securities, there is no current requirement for specific disclosure of any changes from year to year.

Legislative Recommendation

The law should be amended to require the annual disclosure of all changes in the shareholdings of directors, executive management, and major shareholders over the previous fiscal year.

Appendix II – Code Without Annotation

I. THE BOARD OF DIRECTORS

A. Composition of the Board of Directors

1. The board of directors shall consist of two or more independent directors. The term "independent director" is explained below, in Section 1.B.2.

2. Only a natural person shall serve as a director.

3. A person shall not serve as a director on the boards of competing companies.

4. A person shall serve on no more than three boards.

5. Each elected member of the board of directors shall be subject to election at least every three years.

B. Requirements for Independent Directors

1. The full company board of directors shall make an affirmative determination that each of the independent directors has no material relationship with the listed company.

2. The following persons shall not be considered independent directors[8]

   a. A director who is, or at any time during the past three years was, employed by the company or any of its affiliates.

   b. A director who is a family member of an individual who is, or at any time during the past three years was, employed by the company or any of its affiliates as an executive officer. A "family member" includes a person's spouse, parents, children, and siblings -- whether by blood, marriage, or adoption -- or anyone residing in such person's home.

   c. A director who accepted, or has a family member who accepted, any payments from the company or any of its affiliates in excess of JD 20,000 during any period of twelve consecutive months within the three years preceding the determination of independence.

[8] This definition is largely based on the NASDAQ and NYSE definitions of independent directors,

d. A director who is -- or has a family member who is -- a partner in, or a controlling shareholder or an executive officer of, any organization to which the company made, or from which the company received, payments for property or services in the current or any of the past three fiscal years that exceed five percent of the recipient's consolidated gross revenues for that year, or JD 60,000, whichever is more.

e. A director who is, or who has a family member who is, a current partner of the company's external auditor, or was a partner or employee of the company's external auditor who worked on the company's audit at any time during the past three years.

C. Duties and Responsibilities of the Board of Directors

1. The company shall certify that its Board has adopted a formal written board of directors charter. The board of directors shall annually review, reassess the adequacy of, and approve the charter. The charter shall confirm the board's basic responsibilities to oversee management and to fulfill its fiduciary duties to shareholders. The charter shall state the purposes of the board of directors and the scope of the board's responsibilities, and how it executes those responsibilities. The charter shall specify the matters that are the responsibility of the board and the matters that the board delegates to management. Specifically, the charter shall refer to:

   a. An annual review of the effectiveness and efficiency of internal structure and controls of the company to ensure clear lines of accountability for management and to monitor the effectiveness of the company's governance practices, making any necessary changes.

   b. The establishment of corporate strategy, risk policy, annual budgets and business plans, monitoring corporate performance, and a process of disclosure and communications.

   c. Oversight of major capital expenditures, acquisitions, and divestitures.

   d. Development of a remuneration policy statement covering board members and management, in accordance with the long-term interests of the company and its shareholders.

2. The board shall meet at least six times a year.

3. The board shall elect by a secret ballot from among the board members a chairman.

D. Independent audit committee

1. Qualifications

c. The board shall elect an audit committee that consists of two or more persons, each of whom is an independent director (as defined above in Section I.B.2).

d. Each audit committee member shall be able to interpret fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement.

e. At least one member of the audit committee shall have previous employment in finance or accounting, a professional certification in accounting, or other similar experience or background.

2. Duties of the Audit Committee

a. Audit Committee Charter: The company shall certify that it has adopted a formal written audit committee charter. The audit committee shall annually review, reassess the adequacy of, and approve the charter. The charter shall state the purposes of the audit committee and the scope of the audit committee's responsibilities, and how it executes those responsibilities, including:

i. Nominating an independent, competent, and qualified external auditor, reviewing his activities so as to ensure independence and accuracy.

ii. Meeting at least once a year with the external auditor to discuss results of audit work.

iii. Reviewing and approving related party transactions.

iv. Overseeing the company's accounting and financial reporting processes and the audit of the financial statements.

v. Examining the company's annual and semi-annual reports prior to their presentation to the Board of Directors and submitting any pertinent recommendations.

vi. Examining and evaluating the internal control procedures and making recommendations to the board related to internal audit procedures.

vii. Monitoring compliance with the company's code of conduct.

b. The audit committee shall nominate an independent, competent, and qualified external auditor.

c. The audit committee shall meet at least once a year with the external auditor, without the presence of the company's management.

d. The audit committee shall review and approve all related party transactions before the company, or any of its affiliates, enters into any such transactions. Related party transactions are any transactions, exceeding JD 20,000, between the company or its affiliates and: any company director or member of senior executive management, any nominee for election as director, any security holder owning greater than five percent of the company's voting stock, or an immediate family member of any of the foregoing. Related party transactions also include loans exceeding JD 20,000 by the company or its affiliates to any company director or member of senior executive management. Related party transactions also may arise in situations in which a company director is also, in regard to a second company, a member of senior executive management or an owner of greater than ten percent of that second company. If, in these situations, there are payments for property or services between the two companies (regardless of whether the first company makes payments to the second company, or the second company makes payments to the first company) and the payments exceed five percent of the consolidated gross revenues for the previous fiscal year of either company, the payments would constitute related party transactions that the audit committee shall review and approve.[9] As a related matter, members of the board and senior executive management shall disclose to the board whether they, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the company.

II. THE RIGHTS OF SHAREHOLDERS

A. Shareholder approval is required for the following:

1. Election and removal of board members.

2. The appointment of the external auditor.

3. Amendments to the articles of incorporation or by-laws of the company.

[9] The definition of related party transactions here is derived from Regulation S-K, Item 404, under the U.S. Securities Exchange Act of 1934.

4. The issuance of common stock equal to or greater than 20 percent of the stock outstanding before the issuance of such stock at a price less than market value.

5. Mergers, acquisitions, transfers of all or substantially all company assets, or liquidation.

B. Shareholders shall be able to vote in person or in absentia, whether by mail or by proxy.

C. Shareholder meetings

1. The company shall provide shareholders a minimum of 30 days of advance notice as to the date and time, location, and agenda of the General Assembly and any extraordinary meetings, setting forth the matters upon which the shareholders will vote. The notice shall specify that the shareholders have the right to vote by proxy or by mail.

2. The notice of the General Assembly shall include detailed information about any nominee for board member; the information shall be sufficient to enable the shareholders to assess the qualifications of each nominee. Specifically, the notice shall describe the nominee's educational background, qualifications, and employment experience. The notice shall specify the nominee's principal occupations and employment during the past five years, the name and principal business of any corporation or other organization in which such occupations and employment were carried on; and whether such corporation or organization is a parent, subsidiary, or other affiliate of the registrant.

3. The notice of the General Assembly shall include a fixed agenda.

D. Each shareholder shall have the right to participate and vote in shareholder meetings, in accordance with his share in the company's capital.

III. DISCLOSURE AND TRANSPARENCY

A. The company shall establish a written policy concerning disclosure and transparency to help ensure compliance with the Companies Law and the Securities Law, as well as implementing regulations.

B. The company shall disclose in the annual report any related party transactions (as described in Section 1.D.2.d) along with a statement as to whether the Audit Committee approved the transaction.

C. The company shall disclose in the annual report the structure and objectives of its remuneration policy, as the policy relates to company performance, and the compensation that it has paid to all board members and senior executive management.

D. The company shall immediately disclose all material information that would reasonably be expected to affect the value of its securities or influence investors' decisions, unless the information is maintained as confidential and its disclosure would compromise the company's ability to pursue its legitimate corporate objectives.

E. The company shall report in the annual report all changes in the company shareholdings of directors, senior executive management, and major shareholders over the previous fiscal year.