

PRIVATE ENTERPRISE FOUNDATION

REPORT ON

THE ROUNDTABLE DISCUSSION ON

THE COMPANIES CODE

DATE 29<sup>TH</sup> APRIL 2003

VENUE: M-PLAZA HOTEL

SPONSOR: UNDP

## **INTRODUCTION**

The Companies Code was enacted and promulgated in 1963 (Act 179), and has ever since been in force. Since it was drafted by the famous Professor L. C. B. Gower and promulgated, forty (40) years have elapsed – Ghana and the world have moved on in directions that could not have been anticipated by Gower.

The Companies Code lists the guidelines and regulations on how companies are formed and governed, as well as define the tone of relationship between the state and companies. A good Companies Code emphasizing good corporate governance as well as a clear regulatory framework and acceptable burdens of corporate compliance is a driving force for investment flows.

After four decades, a new code has been drafted and will soon be submitted for the consideration of Parliament. To discuss this and make informed inputs to the review process, the Private Enterprise Foundation (PEF) in collaboration with the United Nations Development Programme (UNDP) contracted the services of a consultant, Dr. Sam Mensah – CEO of SEM Financial Group Limited, to do a study on the proposed bill with respect to the policy issues that affect the private sector.

A roundtable discussion organized by PEF on 29<sup>th</sup> April 2003 at M-plaza Hotel, brought together a spectrum of experts, policy analysts, private sector operators and other stakeholders to discuss the draft *Companies Code*, using submissions from Dr. Sam Mensah, the lead discussant, as basis. Yeboa-Kodie Asare II chaired the discussion. For details of participants, see attached list.

## **OBJECTIVE**

The objective of the roundtable discussion was to give stakeholders the opportunity to discuss policy issues that influence the private sector and assist PEF to

- Identify key policy issues of concern to the private sector for further study, and make concrete inputs into the new law.
- Generate a report on observations and comments of the private sector which will be submitted to parliament.
- Forge a national consensus on the important policy issues, to inform the review process, so that the drafters can then ensure that such policy positions are appropriately incorporated in the bill.

## **WELCOME ADDRESS BY DIRECTOR-GENERAL OF PEF**

Welcoming participants, the Director-General of the Private Enterprise Foundation, Dr. Osei Boeh-Ocansey noted that an enabling legal environment for effective development is a prerequisite through research and discussion, to provide sound basis for moving the

Private sector forward. He was very grateful to the UNDP for their collaborative support in such endeavors as the roundtable discussion on the Companies Code. Referring to a number of bills yet to be discussed in parliament, Dr. Boeh-Ocansey said the perspective and input of the private sector cannot be overlooked.

Acknowledging Professor Gower's pioneering work, which culminated in the 1963 document known as the Companies Code of Ghana, Dr. Boeh-Ocansey reiterated that after 40 years, Ghanaians now concede that a lot of changes have taken place and these do not reflect the economics, the logic, the discipline and the law of today's business. He added that laws must not only be relevant to society, but must also relate to the realities on the ground, since just laws make good business possible.

### **STATEMENT BY THE RESIDENT DIRECTOR OF UNDP**

In a speech read for him by Mrs. Christy Banya, the Resident Representative of UNDP noted that the current legal reforms on procurement and the companies code are all geared at revitalizing the Ghanaian business environment to take cognizance of the emerging global trends and creating the requisite framework for engendering national competitiveness in a global economy with growing uncertainties.

He underscored the need for the roundtable discussion to come out with fresh views of the Companies Code covering registration, governance, administration, bankruptcy, regulation and all other complexities that impact on business operations. He also added that these were issues that need critical assessment. He urged participants to come out with recommendations that should influence the creation of an enabling legal framework and provide a formidable business climate for the attainment of the proclaimed era of the Golden Age of Business in Ghana.

### **PRESENTATION**

The discussion was led by Dr. Sam Mensah, Managing Consultant of SEM International Associates Limited and CEO of SEM Financial Group Limited.

According to the lead discussant, new ways have emerged globally to facilitate business and finance, and securities and markets have advanced to electronic trading and paperless holdings, and the governance of companies has assumed new, standardized dimensions such as tough new obligations on company directors, management and auditors. Any review process of the Companies Code has to take full cognizance of Ghana's reality and today's global best practices noting that only a sound public policy framework can help establish important normative principles such as

- The Institutional framework for Business regulation as well as an institutional framework for implementing, enforcing and updating the law

- The development of a regulatory and legislative framework that is consistent, flexible, adaptable and cost effective as well as addressing the needs of small businesses
- An appropriate balance between government regulations and self-regulation - to Cater for Corporate Governance
- The use of electronic technologies

He emphasized that core public policies must drive the revision of the Companies Code, looking as far as possible into the future to ensure that it does not become quickly outdated.

#### SUBMISSIONS

The following submissions were noted in the presentation:

- The review process has been reduced to a legal exercise with inadequate input from other experts whose input will be critical. The revision appears to be taking place within a very limited mandate and so a much broader mandate was needed from the government to effectively and efficiently carry out the process to achieve important public policy objectives. The process should be informed by best practices elsewhere in the world such as Australia, Ireland, and the UK. What was obvious from the Australia, Ireland and UK examples was that?
  1. The review started with extensive consultations to identify key policy Issues.
  2. Establishment of a national policy framework.
  3. The legal drafting then came in at the end of the policy review to translate the agreed policies into law.

The current process in Ghana lays initial emphasis on drafting with an ad-hoc consultation process. There was the need to allow a much wider and finalized consultative process to function.

- There was a complete lack of well-structured policy framework for reviewing the code. Apart from obviously needed revisions such as consolidating previous amendments, simplifying the language and updating monetary values, the country has not even started a meaningful national policy debate on the important principles of business regulation which should inform the revised or even a new companies code.
- The process of consultation with the business community, which has the best experience with respect to how the companies code affects their business operations, is inadequate.
- The review of the Companies Code was separated from institutional mechanisms for implementation, enforcement and ongoing modernization.

- Most of the company laws have been designed around the needs of large companies. Core company law provisions must be aimed at the needs of small enterprises.
- Corporate governance was inadequately addressed.
- Training of directors was an issue as most directors were not fully cognizant of the existence of a statutory standard of conduct.
- A broad based committee/commission should be appointed by the President, perhaps a Commission on Company Law Reform under article 278 of the Constitution, or a National Steering Committee on Company Law Reform, with a clearly defined mandate to strictly develop proposals for the Company Law Reform to complement the work of the Standing Committee on Legal reform. This is key to facilitating the declared Golden Age of Business.
- Composition of such a Committee/Commission could include the following institutions
  - A. institute of Directors
  - b. Private Enterprise Foundation
  - c. Ghana National Chamber of Commerce and Industry (GNCCI)
  - d. Association of Ghana Industries.
  - e. Securities and Exchange Commission.
  - f. Small Business Groups.
  - g. The legal Profession.
  - h. The Accounting Profession.
  - i. Labour Union.
- The Commission/Committee should be properly and adequately resourced with a technical secretariat to tap expert knowledge from around the world on important Issues.
- The new law should amend the definition of debenture to allow electronic recording of indebtedness of the company to suffice as a debenture, and thus dispense with the requirement for a written document to be issued. It should specify that the registration of members and debenture holders can be kept in electronic form.
- A further review and a long period of at least six months to a year, was necessary for a comprehensive public policy review to be done. There was much to be done in the policy arena, with respect to the Companies Code.

## DISCUSSION

The discussion was centered on the following issues

- Tradeoffs between cost and benefits of compliance, especially for SMEs
- Whether compliance agreement should be the same for both large companies and SMEs
- Global trends and standards in governance
- The use and impact of electronic technology on business, such as how annual reports can be posted on the website in satisfaction of the requirement of the code, how AGMs and EGMs can be held electronically? Electronic share certificate too? And what at all was the electronic share?
- How Ghana's code could contribute to any competitive disadvantage available
- The development of a regulatory and legislative framework that is consistent, flexible, adaptable, and cost effective

## GENERAL COMMENTS AND RECOMMENDATIONS

- Concerning the examples from other countries, participants noted that though lessons could be learned from other countries, what has worked for those countries would not necessarily work for Ghana. It was therefore stated that there was the need for Ghana to tailor the Companies Code to fit our situation.
- On Institutional framework, suggestions were made to have a Registrar of Companies (probably under the Ministry of Trade and Industry or Ministry of Private Sector Development) distinct from the Registrar General's Department (RGD) to specifically address the issues of registration and access to information. Participants however noted that this is not very crucial since the exercise of sectorial authority over the RGD was. Not much of a problem. What was essential for management of an effective code was adequate access to the requisite capacity and financial endowment. The Companies Code cannot be more effective if it were under MoTI or MPSD if the right funding is not available.
- More focus on trade and business issues to facilitate appropriate drafting was important.
- Participants mentioned that the fact that the code treats all companies as equal, irrespective of size, may retard the growth of SMEs but it was agreed that core Company law provisions must not necessarily be aimed at the needs of small enterprises.
- Any review process should not be provisional, but must look into the future, as far as possible, to anticipate the evolving nature of electronic technologies and to be able to accommodate new and more efficient technology.

- It was suggested that since training of directors was unlikely to be resolved by the law, statutory powers could be given to independent external bodies such as the Securities and Exchange Commission to establish and monitor standards for directors of listed companies.
- The recommendation on the inclusion of the use of electronic technologies was commendable
- The Private Enterprise Foundation was requested to conduct a study into the cost of doing business in Ghana so that further input could be made to the review process

## **CONCLUSION**

Participants commented adequately on the policy review items and also presented new ideas for consideration. The responses were encouraging. Participants however resolved that more funding should be sought from UNDP to organize another session and also ensure that copies of the 370 page draft bill are made available to them.

9<sup>th</sup> May 2003