

**ABRAAJ'S HOLISTIC COMPLIANCE  
AND  
GOVERNANCE FRAMEWORK**



## Foreword

In June 2007, the Abraaj group of companies ("Abraaj" or the "group") agreed to adopt a Holistic Compliance and Governance Framework (the "Framework") based upon the UK's Combined Code of Corporate Governance (the "Combined Code") – since replaced by the new UK Corporate Governance Code ("the Code" - published by the Financial Reporting Council<sup>1</sup> in June 2010).

It was further agreed that the Framework should have three main outputs – the first of which would be a principles-based Code of Governance - to be referred to as Abraaj's Principles of Governance ("The Principles"). It was decided that The Principles should make reference to the Code (on which it was based) and on the recommended guidelines and drafts published by the Institute of Chartered Secretaries and Administrators – because these two would provide the context of the Principles. It was further decided that the Principles should focus particularly on Board Matters, Committees, Procedures and Internal Controls. Since Abraaj Capital Limited ("ACLD") – a member of the Abraaj group of companies - is a licence-holding company<sup>2</sup>, The Principles take account of the particular regulatory and legal requirements to which ACLD is subject.

As a Licensee, ACLD is required to establish procedures, policies, systems and controls that are designed to promote compliance with the legislation and prudential regulations that govern the Company's licence holding status. All these have been produced in modular form and combine to form the Company's Compliance Compendium. As a composite unit, they represent the Company's Compliance Procedures. The Compliance Compendium is the second output of the Framework.

ACLD must demonstrate not only that it has appropriate procedures, policies, systems and controls but also that all members of staff have been made aware of them and of their obligations to comply with them. The third main output of the Framework is an automated declaration system that acts not only as a control mechanism to satisfy the regulatory requirement described above but also as a means of keeping these matters at the forefront of every employee's mind.

The Framework is summarised in the diagram that follows – and reflects the following:

- The Principles of Governance describe how the Abraaj group of companies conducts its business with the external world;
- The Principles reflect best practice (as described in the Code) and local regulatory requirements [arising from primary and secondary legislation applicable in the Dubai International Financial Centre ("DIFC")];
- The Abraaj group's external focus is based on the Principles and in turn the Principles are based on the Code and regulatory legislation;
- Abraaj's Compendium of Procedures describes the group's internal focus. The Compendium is based on best practice in respect of Board Matters, Committees, Procedures and Internal Controls (source – the Code) and the regulatory requirements arising from primary and secondary regulatory legislation in the DIFC;
- Matters that fall within the group's internal focus are subject to compliance testing and to regulatory oversight;

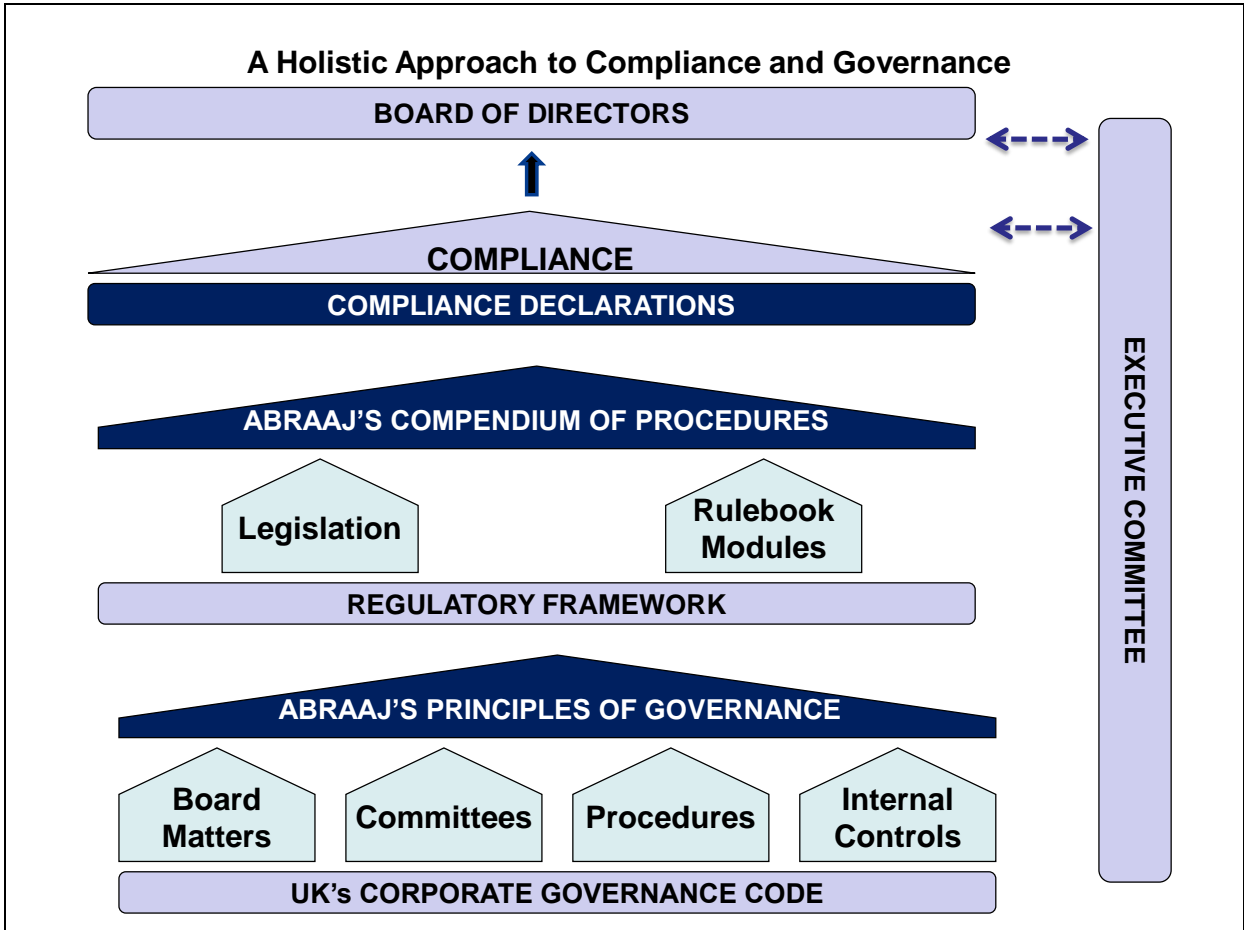
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<sup>1</sup> The Financial Reporting Council ("FRC") is responsible for Corporate Governance in the United Kingdom.

<sup>2</sup> ACLD is licensed by the Dubai Financial Services Authority (DFSA)

- The Board of Abraaj Capital Holdings Limited is ultimately responsible for controlling all the matters encapsulated in the Framework - and for managing the group's relationship with the external environment.

**The Abraaj Group's Holistic Compliance and Governance Framework**



PART ONE

## THE PRINCIPLES OF GOVERNANCE



## **1 Introduction**

Abraaj recognizes that its long-term corporate success depends not only upon the business in which it engages but also upon the manner in which it conducts that business. These matters are strategic in nature - and form part of the focus of Abraaj's Holistic Compliance and Governance Framework ("the Framework"). The Framework comprises:

### **1.1 The Principles of Governance**

The Framework is in three parts – the first of which is called The Principles of Governance ("the Principles"). The Principles represent Abraaj's Code of Good Practice (see Para 2.8 below) and accordingly, the document describes Abraaj's shared values, objectives, processes and procedures and has both an internal and an external dimension. Internally, the document will be used to promote common standards amongst members of staff<sup>3</sup>, and externally the Principles document is expected to provide comfort to stakeholders and thereby inspire the level of trust and confidence that the group needs to extend its success.

### **1.2 The Compliance Compendium**

ACL D is a wholly owned subsidiary and is a licence-holding company within the group. As such, ACL D must demonstrate that it has established policies, procedures, systems and controls to promote compliance with both the legislation and with the prudential regulations that govern its licence holding status.

The second part of the Framework is in fact a Compendium that collates all the group's Procedural Documents – and as such constitutes the group's Procedures Manual. Since these Documents include detailed descriptions of how Abraaj conducts its business operations, the Procedural Documents are for internal use.

### **1.3 Compliance Declarations**

The third part of the Framework serves two purposes. It is both a control mechanism and simultaneously, one of the ways that Abraaj keeps compliance and governance matters at the forefront of every employee's mind. This part of the Framework requires every member of staff to confirm (every 30 days) that (s)he is: (1) aware of, understands and agrees to adhere to the Company's Procedures as set out in the Compendium [as amended from time to time]; (2) aware of his/her obligations under the anti-money laundering rules and in particular that (s)he knows how to make a suspicious transaction report and (3) able to confirm that there is no information that might impinge upon that person's fit and proper status that ought to have been disclosed to Abraaj – but which has not been disclosed already. This latter is to satisfy the on-going need to ensure that staff members remain "fit and proper"<sup>4</sup>. If a member of staff is unable to respond positively to all three requests, an alert is sent to the Head of Compliance to enable immediate action.

## **2 Background**

### **2.1 The Abraaj "group" of Companies**

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<sup>3</sup> Members of staff means any person working within the Abraaj group ("the group" – see Para 2.1 below)

<sup>4</sup> The Factors that the DFSA consider in assessing whether an individual is "Fit and Proper" include: (a) integrity; (b) competence and capability; (c) financial soundness; (d) proposed role within the Authorised Firm; and (e) any other matters set out in the DFSA's Authorisation Module – App1.3

For the purposes of the Framework, the term "Abraaj group"<sup>5</sup> includes:

- Abraaj Capital Holdings Limited ("ACHL") – the group's holding company;
- Abraaj Investment Management Limited ("AIML") - formerly known as Abraaj Capital (Cayman) Limited. AIML is wholly owned by ACHL. AIML has a branch in Dubai;
- Some Special Purpose Vehicles ("SPVs") – which are also Cayman based and in which ACHL or AIML owns a controlling interest. Some of the SPVs act as the respective General Partner in a series of Collective Investment Fund<sup>6</sup> structures;
- Abraaj Capital Limited ("ACLD" – see Para 2.6 below) is incorporated in the Dubai International Financial Centre ("DIFC" – Para 2.4 below) and is licensed and regulated. Abraaj Capital Limited is a wholly owned subsidiary of Abraaj Investment Management Limited;

The group includes Abraaj's offices in Egypt, Jordan, Lebanon, Pakistan, Saudi Arabia and Turkey.

## 2.2 "Abraaj's Funds"

AIML has been appointed as Manager of certain Collective Investment Funds ("CIFs" or "Funds")<sup>7</sup>. These Funds are not owned by AIML - but for the purposes of the Principles - these Funds shall be referred to as "Abraaj's Funds". The Principles – and the Compliance Compendium - embrace all Funds managed by AIML.

## 2.3 Partner Companies

As part of their on-going business, Abraaj's Funds acquire certain companies (in whole or in part – "Partner Companies"). The Principles – and the Compliance Compendium – are appropriate for all Partner Companies in which the Funds managed by AIML (and ACLD as the case may be) invest from time to time. Ordinarily, senior members of Abraaj's staff are appointed as members of the Board of the Partner Companies – and in this capacity, such Board members will encourage Partner Companies to adopt and apply the Principles.

## 2.4 The Dubai International Financial Centre ("DIFC")

The DIFC is a Financial Free Zone that accommodates companies providing financial services. Firms established in the DIFC are eligible for certain benefits (e.g. zero tax rate on profit, 100% foreign ownership, range of double tax treaties, no foreign exchange restrictions, operational support and business continuity facilities). In order to qualify for the benefits available, financial services companies must be: (1) licensed, (2) must offer wholesale services and (3) must be physically located within the DIFC area.

Dubai Law (No 9 of 2004) established the DIFC, the DIFC Authority, the DIFC Registrar of Companies and the Dubai Financial Services Authority ("DFSA").<sup>8</sup>

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<sup>5</sup> The composition of the group may change from time to time

<sup>6</sup> These are pooled investment vehicles sometimes referred to as collective investment schemes or closed ended funds or "Funds"

<sup>7</sup> At the time of writing, the Funds are: (1) The ABRAAJ Buyout Fund LP; (2) The ABRAAJ Real Estate Fund LP; (3) The ABRAAJ Buyout Fund II LP; (4) The Infrastructure and Growth Capital Fund LP and (5) the ABRAAJ Buyout Fund IV LP

<sup>8</sup> DFSA Web-site; Legislation; Legal Framework

## 2.5 The Dubai Financial Services Authority ("DFSA")

The DFSA is the independent regulator of financial and ancillary services conducted in or from the DIFC, a purpose-built financial free-zone in Dubai (Annual Report; 2009; Pg 2). The DFSA's regulatory mandate inter alia covers asset management, banking and credit services, securities, collective investment funds, custody and trust services, commodities futures trading, Islamic finance, insurance, an international equities exchange and an international commodities derivatives exchange.

In discharging its regulatory mandate, the DFSA has a statutory obligation to pursue the following objectives:-

- to foster and maintain fairness, transparency and efficiency in the financial services industry (namely, the financial services and related activities carried on) in the DIFC;
- to foster and maintain confidence in the financial services industry in the DIFC;
- to foster and maintain the financial stability of the financial services industry in the DIFC, including the reduction of systemic risk;
- to prevent, detect and restrain conduct that causes or may cause damage to the reputation of the DIFC or the financial services industry in the DIFC, through appropriate means, including the imposition of sanctions and monetary penalties;
- to protect direct and indirect users and prospective users of the financial services industry in the DIFC;
- to promote public understanding of the regulation of the financial services industry in the DIFC; and
- to pursue any other objectives as the Ruler may, from time-to-time, set under DIFC Law.<sup>9</sup>

The DFSA carries out its obligations by way of functional teams that include: the Policy and Legal Service Division; the Supervision Division; the Enforcement Division; and the Markets Division.<sup>10</sup>

The most recently released statistics show that the DFSA has licensed 309 entities.<sup>11</sup> "...The principal focus of the DFSA is on the risks to its objectives that arise in respect of the regulated community...".<sup>12</sup>

## 2.6 Abraaj Capital Limited ("ACL")

On 20 March 2006, the DFSA granted a Category 3 Authorisation to ACL. This enables ACL to Deal in Investments as Agent, Manage Assets, Arrange Credit or Deals in Investments and Advise on Financial Products or Credit. The DFSA extended ACL's licence on 5 November 2006 to include the Provision of Fund Administration services<sup>13</sup> "...to any Fund established by the Firm or

<sup>9</sup> "DFSA In Action Vol 4; DFSA; June 2009

<sup>10</sup> "DFSA In Action Vol 6; DFSA; July 2010

<sup>11</sup> "DFSA In Action Vol 6; DFSA; July 2010

<sup>12</sup> Supervision Module; 1.6 Guidance (5)

<sup>13</sup> Processing dealing instructions including subscriptions, redemptions, stock transfers and arranging settlements; Valuing of assets and performing net asset value calculations; Maintaining the share register and Unit-holder registration details; Performing anti money laundering requirements; Undertaking transaction monitoring and reconciliation functions; Performing administrative activities in relation to banking, cash management, treasury and foreign exchange; Producing financial statements, other than as the Fund's registered auditor; or

members of its Group...". Under its authorisation, ACLD is entitled to market Abraaj's Funds in or from the DIFC – subject to the DFSA's marketing rules.

## 2.7 The Importance of Corporate Governance

While there are many facets to the 2009 global financial crisis, the view of the UK's Financial Reporting Council (responsible for the Code) is that it happened because of "...a massive failure of governance at every level. The failure of those governing to see the wood for the trees – or, if it was seen, to generate appropriate action – points to a need for reappraising governance at every level from first principles...".<sup>14</sup>

Abraaj recognises the importance of corporate governance and is committed to complying with all rules<sup>15</sup> to which group members are subject. In this respect, Abraaj believes that "...our corporate governance is of the highest importance in our success, now – and that it will continue to be so in the future...".<sup>16</sup>

In respect of Abraaj's Funds and its Partner companies, the Abraaj group is similarly committed – to the extent to which it is responsible for those entities – to comply with the relevant rules.

Further, the Abraaj group is committed to safeguarding the interests of its stakeholders - and recognises the importance of corporate governance in achieving this. Before their appointment, members of staff are obliged to satisfy the fit and proper criteria published by the Dubai Financial Services Authority. On an on-going basis thereafter, Abraaj takes certain measures to confirm that members of staff remain fit and proper (the focus of part three of the Framework as described above). Failure to satisfy the test at any time will lead to management intervention. Further, senior management is answerable to the DFSA as Regulator for any deficiencies in how the business of the licence holding company is conducted.

## 2.8 Abraaj's Corporate Governance Framework

Abraaj's corporate governance policies and procedures described in the Principles are founded on internationally accepted standards - including the UK Financial Reporting Council's new UK Corporate Governance Code ("the Code" - which succeeded the Combined Code of Corporate Governance). The Code recommends (inter alia) creation and adoption of a Code of Good Practice - because:

- The more integrated the Corporate Governance system, the less need there will be for detailed regulation;
- Effective Compliance requires no more than appropriate standards of corporate behaviour;
- The system is principles based not rules based;
- The key relationship is that between a company and its shareholders.

The Code affects (inter alia) the following four areas: (1) Board Matters; (2) Committees; (3) Procedures and (4) Internal Controls. The analysis that follows describes the manner and extent to which the Abraaj group has adopted the provisions of the Code in respect of each of these four areas.

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Communicating with participants, the Fund, the Operator, the fund managers, the prime brokers, the Regulators and any other parties in relation to the administration of the Fund

<sup>14</sup> "No Holds Barred"; Chartered Secretary; Pg 12; April 2009; reporting a speech by Sir Christopher Hogg at the ICSA Corporate Governance Conference on 18 March 2009

<sup>15</sup> Practices based on all primary and secondary legislation, rules, guidance and codes - howsoever described, that are applicable to Abraaj's licence holding company

<sup>16</sup> Annual Review, 2007, Pg 84

The Principles document represents the Abraaj group's Code of Good Practice.

### **3 Abraaj's Board of Directors**

In ACHL's Articles of Association, Article 113 provides that there shall be a Board of Directors – and that the business of the Company shall be managed by it (Art 114). The Board shall comprise the Chief Executive Officer ("CEO") and not less than 4 and not more than 16 other persons. There must be at least 1 Independent Director<sup>17</sup>. If there are 8 or more Directors (other than the CEO) the greater of 2 or one quarter of the total number (rounded down) must be Independent Directors.

Of the total number of Directors, 2 (the CEO and 1 other) shall be Executive Directors. If there are 8 or more Directors (other than the CEO) the greater of 2 or one quarter of the total number (rounded down) must be Executive Directors.

The Abraaj group endorses the Code's view that "...The board's role is to provide entrepreneurial leadership of the company within a Framework of prudent and effective controls which enables risk to be assessed and managed. The board should set the company's strategic aims, ensure that the necessary financial and human resources are in place for the company to meet its objectives and review management performance. The board should set the company's values and standards and ensure that its obligations to its shareholders and others are understood and met...".<sup>18</sup> In this respect, a Directors' Handbook has been prepared that shows how the Board of Directors of each company within the group responds to these matters.

#### **3.1 Matters Reserved for the Board**

The Abraaj group follows the Code's recommendation that "...There should be a formal schedule of matters specifically reserved for [the board's] decision...[and the annual report should contain a]...high level statement of which types of decisions are to be taken by the board and which are to be delegated to management...".<sup>19</sup>

Within the Abraaj group, the matters listed below are reserved for the Board (Art 117).

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<sup>17</sup> "...Independent Director means a Director: (a) who does not Control any Shares, unless: (i) such Shares represent no greater than 0.5% of the maximum number of votes that may be cast at a general meeting of the Company, and (ii) such person is otherwise approved as an "Independent Director" by the Board of Directors; (b) who is not, and who has not within the three year period preceding his appointment been, an employee of the Company or any of its subsidiaries; (c) none of whose immediate family members have been an executive officer or a director of Company or any of its subsidiaries within the three year period preceding his appointment; (d) who does not receive, and none of whose immediate family members receive, greater than \$US 100,000 per year in direct compensation from the Company or any of its subsidiaries, other than as director and committee fees, pension payments and other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service); (e) who is not affiliated with or employed by, and none of whose immediate family members are affiliated with or employed in a professional capacity by, a present or former internal or external auditor of the Company or any of its subsidiaries; and (f) who is not an executive officer or an employee, and none of whose immediate family members is an executive officer, of another company that makes payments to, or receives payments from, the Company for property or services in an amount which, in any single financial year of the Company, exceeds the greater of US\$1 million or 2 percent of such other company's consolidated gross revenues, and, for the purposes of this definition, references to "immediate family members" of a person shall mean the spouse(s), children, parents and siblings of such person..." (Article 1)

<sup>18</sup> The UK Corporate Governance Code; A1. The Role Of The Board; Supporting Principle A1; June 2010

<sup>19</sup> The UK Corporate Governance Code; Role Of The Board; Code Provisions A1.1; June 2010

Establishing strategic goals, objectives and appropriate organizational policies and approval of the business plan, strategy and business lines;	Ruling on any perceived, implied or explicit conflicts of interest as may arise during the course of the Company's business or in the formation or acquisition of any subsidiary;
Establishing at their discretion a Compensation Committee;	Promoting the Company, its programs and ideals to the community at large;
Performing such other functions as are prescribed by Statute or assigned to the Board of Directors;	Reviewing and approving material transactions not in the ordinary course of business;
Monitoring corporate performance against the strategic, financial and business plans, including overseeing the operating results on a regular basis to evaluate whether the business is being properly managed;	Reviewing and approving the Company's financial objectives, plans and actions including significant capital allocations and expenditures (i.e. capital expenditure, deal-related exposure, underwriting or guarantee commitments exceeding pre-determined amounts);
Reviewing and approving the Company management's strategic and business plans, including developing a depth of knowledge of the businesses of the Company, understanding and questioning the assumptions upon which such plans are made, and reaching an independent judgment as to the feasibility and reliability of such plans and objectives;	Approving establishment of, at their discretion, a community participation program ("CPP") for the purposes of contributing positively to the economic, social and environmental development of the communities in which the Company and its subsidiaries participate or may (as determined by the CEO) intend to participate.
Approving (i) investments by the Company or any subsidiary company, which require equity investment decisions in excess of US\$100,000,000, unless the Board of Directors, in a properly constituted board meeting, gives such authority to the CEO and such authority is properly minuted in the minutes of the board meeting that gave such authority; and (ii) investments which the CEO may determine, in his sole discretion, that, despite being within his authority limits, for strategic or size reasons need to be referred to the Board of Directors;	Ensuring ethical behaviour and compliance, in letter and spirit, with laws and regulations, auditing and accounting principles and the Company's own governing documents. In this respect each Director must sign a contract with the Company which shall include, but not be limited to, consent by such Director to adhere to the provisions of the Abraaj Directors' handbook ("Directors Handbook") currently in place;
Establishing at their discretion an Audit and Corporate Governance Committee.	

## 4 Committees

While Committees may be established (by the board or by management) for other purposes, the Code recommends that boards should establish: (4.1) an Audit Committee, (4.2) a Remuneration Committee and (4.3) a Nomination Committee.

In Abraaj, "...The Directors may establish any committees, ...[and]...the proceedings of any such committee...shall be governed by the Articles regulating the proceedings of Directors, so far as they are capable of applying...(Art 145). Further Article 176 provides that "...The Board of Directors may from time to time create such additional committees of directors, officers, employees or other persons designated by it (or any combination of such persons) for the purpose of advising the Board of Directors, the Executive Committee and the officers and employees of the Company in all such matters as the Board of Directors shall deem advisable and with such functions and duties as the Board of Directors shall by resolution prescribe...".

With respect to the powers of Committees, "...The Board of Directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit..." (Arts 118 and 144). Further, a Committee may elect a Chairman of its meetings (Art 119) and "...may meet and adjourn as it thinks proper..." (Art 120).

As to the modus operandi of Committees, Article 143 provides that "...the Directors shall cause minutes to be made in books kept for the purpose of all appointments of officers made by the Directors, all proceedings at meetings of...committees of Directors including the names of the Directors present at each meeting...". Article 175 provides that the Minutes should record all appointments of officers made by the Board, the names of those attending meetings and resolutions and proceedings at the meetings. Minutes should be signed by the Chairman (Art 175.3).

### 4.1 The Audit and Corporate Governance Committee

The Code states that: "The board should establish formal and transparent arrangements for considering how they should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the company's auditors".<sup>20</sup> The Code goes on to say that the main role and responsibilities of the Audit Committee should be "set out in written terms of reference."<sup>21</sup> The Code recommends a minimum of three independent non-executive directors (although two is permissible for smaller companies).<sup>22</sup> At least one member of the Committee must have recent and relevant financial experience. Other persons may be invited to assist the Committee from time to time, according to the particular items being considered and discussed. Although not a provision of the Code, the Higgs review, states in its Non-Code Recommendations, that as good practice, the company secretary (or their designee) should act as secretary to the Committee.<sup>23</sup> The Smith Report states that the company secretary should attend the Audit Committee. The secretary will ensure that the board and its Committees are properly constituted and advised. The Executive Director of Abraaj who serves as Secretary to the Board of ACHL serves as Secretary of the Audit and Corporate Governance Committee.

With respect to frequency of meetings, the Code provides that the Audit and Corporate Governance Committee should meet at least three times a year - many Audit Committees meet quarterly.

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<sup>20</sup> The UK Corporate Governance Code; Audit Committee and Auditors; Main Principle C3; June 2010

<sup>21</sup> The UK Corporate Governance Code; Audit Committee and Auditors; Code Provision C3.2; June 2010

<sup>22</sup> A smaller company is defined as one which is below the FTSE 350 throughout the year immediately before the reporting year

<sup>23</sup> Review Of The Role And Effectiveness Of Non-Executive Directors, Para 11.30; January 2003

In Abraaj, the Audit and Corporate Governance Committee is required to meet at least once per annum but in practice meets more often - as required.

The Code includes a provision that the terms of reference of the Audit Committee including its role and the authority delegated to it by the Board should be made available. The company's annual report should describe the work of the Committee in discharging those responsibilities.<sup>24</sup> Abraaj's Annual Review will include an appropriate insertion.

The Committee's terms of reference will be made available to shareholders on request. The Chairman of the Committee should attend the AGM prepared to respond to any questions that may be raised by shareholders on matters within the Committee's area of responsibility.<sup>25</sup>

Within Abraaj, ACHL's Article 117.2 authorises the Directors to establish "...at their discretion an Audit and Corporate Governance Committee of three non-executive Directors the composition of which shall be as agreed from time to time by the Board of Directors..." (Art 165). Abraaj has established an Audit and Corporate Governance Committee - which operates under its own written Terms of Reference.

ACHL's Article 167 provides that the Audit and Corporate Governance Committee's responsibilities shall include: "receiving the report of the auditors into the Company's systems and internal controls and making recommendations based thereon; continuously reviewing the Company's internal control processes, including financial and strategic approvals; advising the Board of Directors on ways to ensure that the Company continually assesses its performance against governance "Best Practices" and to enable the Board of Directors to strive to adhere to the highest standards of professionalism and performance; and maintaining the Company's continued adherence to the regulatory requirements of all authorities in jurisdictions from which the Company operates or provides services."

Article 166 provides that a quorum is not less than 2 member directors - plus attendance of the CEO, CFO and the Compliance Officer.

The Abraaj group comprises companies are in private ownership. Shareholders are on the board of Abraaj Capital Holdings Limited. Accordingly, the Chairman of the Audit and Corporate Governance Committee – who is also a member of the Board – meets ACHL's shareholders regularly.

#### 4.2 The Remuneration Committee

The Code requires that: "There should be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors".<sup>26</sup>

The Code recommends that the Committee should comprise at least three independent non-executive directors.<sup>27</sup> Further, while excluded from the Code, the Higgs Review considers it good practice (Non-Code Recommendations) for the Company Secretary to act as Secretary to the Committee<sup>28</sup>. The Secretary will ensure that: the Board and its Committees are properly constituted and advised; and that there is adequate co-ordination between the main Board and

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<sup>24</sup> The UK Corporate Governance Code; Risk Management & Internal Control; Code Provision C3.3; June 2010

<sup>25</sup> The UK Corporate Governance Code; Constructive Use Of The AGM; Code Provision E2.3; June 2010

<sup>26</sup> The UK Corporate Governance Code; Remuneration Procedure; Main Principle D2; June 2010

<sup>27</sup> The UK Corporate Governance Code; Remuneration Procedure; Code Provision D2.1; June 2010

<sup>28</sup> Review Of The Role And Effectiveness Of Non-Executive Directors, Para 11.3; January 2003

the various Committees. In this respect, the Company Secretary is well placed to achieve that coordination. Abraaj follows this style.

The Institute of Chartered Secretaries and Administrators (ICSA) has said that the Compensation Committee should meet close to the year end to review any remuneration recommendations that may have been prepared – but more meetings may be necessary. The Code states that the Chairman of the Committee should attend the AGM prepared to respond to any questions that may be raised by shareholders on matters within the Committee’s area of responsibility.<sup>29</sup>

The Code also requires that the terms of reference of the Remuneration Committee (describing its role and the authority delegated to it by the Board), should be made available on request and placed on the company’s website.<sup>30</sup>

The Articles of ACHL (Art 117.3) provide that the Directors may establish “...at their discretion a Compensation Committee of three Directors, two of whom shall be the Chairman and the CEO. The remaining member shall be a non-executive Director as agreed from time to time by the Board of Directors. The CEO shall abstain from discussing and voting on all matters relating to his own compensation package...”. In Abraaj, the Compensation Committee (“the Committee”) has been established and functions currently.

In Abraaj, ACHL’s Articles (Art 169) provide that the Committee shall meet at once each year. The quorum – which shall not be less than 2 directors, shall include the CEO - unless the business concerns approving the management compensation scheme for the CEO – in which case, the quorum shall exclude the CEO.

The Committee’s responsibilities shall include approving the CEO’s management compensation schemes (Art 171.1) and also (Art 171.2) “...advising, where appropriate, on other compensation matters (other than (i) the individual compensation and awards for the employees with director level designations which shall be decided by the CEO within the overall compensation guidelines provided by the Compensation Committee; and (ii) compensation schemes and individual awards for the management levels below the director level designations, which shall be fully decided by the CEO)...”.

Currently, members comprise the Chairman and the two Vice-Chairmen of the Board of ACHL.

As stated above, the Abraaj group comprises companies that are in private ownership. Shareholders are on the board of Abraaj Capital Holdings Limited. Accordingly, the Chairman of the Compensation Committee – who is also a member of the Board – is always available to meet ACHL’s shareholders.

#### 4.3 Nomination Committee

Abraaj does not need a Nomination Committee per se. This is because the functions of that Committee are collectively fulfilled by all the members of the Board.

#### 4.4 The Executive Committee

Article 153 of the Articles of Association of Abraaj Capital Holdings Limited (“ACHL” or “the Company”), gives the Chief Executive Officer authority to take all day-to-day decisions for running the operations of the Company including such authority and powers as are required or

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<sup>29</sup> The UK Corporate Governance Code; Constructive Use Of The AGM; Code Provision E2.3; June 2010

<sup>30</sup> The UK Corporate Governance Code; Remuneration Procedure; Code Provision D2.1; June 2010

necessary to execute its strategic, financial and business plans; and power to approve and take all investment decisions for Abraaj Funds up to the maximum limits permitted under the respective Abraaj Fund's mandate; and, for the Company or any subsidiary thereof, up to the maximum equity investment per transaction stated in the Articles.

Further, Article 156 provides for the creation of an Executive Committee ("ExCo") and empowers the CEO to form and select its members from amongst the Executive Directors and/or the employees of the Abraaj Group companies. In addition to certain powers granted to ExCo under the Company's Articles, the CEO may, at his discretion, delegate any or all of his powers mentioned under (a) and (b) above, to ExCo or annul such delegation.

The ExCo (whose remit extends to all Abraaj Group companies) has been established – with powers and responsibilities delegated to it by the Articles (mainly concerning the issue and transfer of Company shares). The CEO has expanded ExCo's powers and responsibilities under Article 156.

ExCo comprises the CEO (Chairman) and five Executive Directors or Senior Management of Abraaj Group as its voting members. The CEO may appoint and exclude members. A Vice Chairman may conduct meetings in the absence of the Chairman. The Chief Finance Officer (CFO) acts as Secretary. The Chief Compliance Officer (CCO) and the Chief Risk Officer (CRO) attend the meetings as observers (but have no voting rights).

ExCo meets at least four times a year (normally in Dubai) – or more frequently if necessary. Members may participate by telephone or video conference but they cannot give a proxy to any other member or person. Where a member is unable to participate in the meeting, he/she may communicate his/her views and vote on any item of the agenda by email to the Chairman.

Decisions are by a majority of votes of the members present, which majority shall always include the affirmative vote of the CEO. The quorum shall be not less than 2/3 of its members – but in the event of a deadlock, the CEO shall have the casting second vote. The quorum must include the CEO - who must be present in order for a meeting to be properly constituted. The CEO may waive this in which case, any decision taken must not be implemented until subsequently endorsed in writing by the CEO.

Where a member of the ExCo considers that he/she is or may be conflicted on any item on the agenda or any matter under discussion, the conflicted person should make an appropriate declaration, cease to take part in any further discussion and excuse himself/herself from any part of any meeting where the conflicted matter is under discussion. A declaration of conflict must be recorded in the minutes.

ExCo shall deal with, take decisions and fulfil its role in relation to Company shares issuance, calls, transfer, repurchase redemption and related matters as provided in the Articles. ExCo shall also approve divestments and exits from investments and take all significant decisions in relation to the implementation of strategic, financial and business plans of the Company including product development and approval of budgets for each business vertical. Further, ExCo will review performance of the Company and its Partner Companies and consider and take all significant decisions and approve all systems, policies and procedures related to: Investments and Exits Process; Funds and Funds Administration; Investor Coverage; Corporate Brand Management; Strategic Philanthropy; Finance and Accounting; Organization Structure and Operations; Risk Management; Corporate Governance and Compliance; Training, Development and Management of Human Resources including performance review of staff, its compensation, incentives, rewards, promotions and terminations; General Administration and Information Technology.

ExCo's Terms of Reference are made available to third parties with the CEO's approval.

#### 4.5 The Compliance And Risk Committee

The Abraaj group has (voluntarily) adopted certain "...components of good corporate practice..." set out as guidance in the Code. The Code states that "...The board should maintain a sound system of internal control to safeguard shareholders' investment and the company's assets..." Internal Control includes Compliance and Risk Management matters. Further, Abraaj Capital Limited (ultimately owned by Abraaj Capital Holdings Limited) and licensed by the Dubai Financial Services Authority ("DFSA") is required under its licence to adhere to certain prudential criteria – which include Compliance and Risk Management. The rules that apply to the Authorised company – are interpreted by the group to apply to all companies within the group.

The rules require Licensees to establish and maintain risk management systems and controls to enable it to identify, assess, mitigate, control and monitor its risks; to develop, implement and maintain policies and procedures to manage the risks to which the Authorised Person and where applicable, its customers or users, are exposed and to appoint an individual to advise its Governing Body and senior management of such risks. An Authorised Person which is part of a Group should be aware of the implications of any Group wide risk policy and systems and controls regime.

Abraaj has appointed a Chief Risk Officer - whose remit is set out in his job description (see Para 6.3.1 below). The Risk Officer is an Authorised Individual – as defined by the DFSA.

The DFSA has said that its principal focus is on the risks to its objectives that arise in respect of the regulated community.

In addition, the DFSA requires Authorised Firms to: establish and maintain compliance arrangements, including processes and procedures that ensure and evidence, as far as reasonably practicable, that the Authorised Firm complies with all legislation applicable; to document the organisation, responsibilities and procedures of the compliance function; to ensure that the Compliance Officer has access to sufficient resources, including an adequate number of competent staff, to perform his duties objectively and independently of operational and business functions; to ensure that the Compliance Officer has unrestricted access to relevant records and to the Authorised Firm's Governing Body and senior management; to establish and maintain monitoring and reporting processes and procedures to ensure that any compliance breaches are readily identified, reported and promptly acted upon; to document the monitoring and reporting processes and procedures as well as keep records of breaches of any of legislation applicable in the DIFC.

The risk management and compliance functions interact closely with all disciplines within the organisation to determine the risks to which the organisation is or may be exposed and to assess whether those risks are managed effectively by the procedures, systems and controls currently in place. Risk Management and Compliance are complementary functions that both seek to protect the organisation – but from different perspectives. Arguably, the focus of Risk Management is on the business conducted by the organisation while the focus of Compliance is on how the organisation conducts that business. This reflects the DFSA's risk model – which is based on two "High Level Risk Categories" – (1) Business & Operations and (2) Internal Controls and Compliance. The DFSA's two dimensional model embraces the possible impact of an adverse outcome and the probability of the risk occurring. The DFSA reviews Authorised firms' risks at least annually.

Group-wide controls and procedures have been established within Abraaj and are constantly reviewed and re-assessed in light of experience. On an on-going basis, Abraaj seeks to increase the effectiveness of its Risk Management Policy by creating general awareness of both the Policy and of the operational implications amongst all staff. Members of staff are made aware of the procedures to which they must adhere in carrying out their work.

Abraaj exercises central control over group exposure to risk – by using a formal and cohesive group-wide risk management control policy (tailored to meet specific risks where relevant) that conform to a common style. Investment decisions and material matters concerning portfolio companies are processed through the Executive Committee.

A Compliance Compendium (which collates all the Firm’s Procedural Documents – see Part Two below) has been prepared as part of the group’s Holistic Compliance and Governance Framework (“the Framework”). At the meeting of the Board of Abraaj Capital Holdings Limited (“ACHL”) on 18 March 2010, it was resolved to establish a Compliance and Risk Committee (“the Committee”) - whose remit will extend to all companies within the Abraaj group of companies – hereinafter referred to collectively as “Abraaj”.

The Committee (which shall meet twice per annum – or as otherwise agreed by members) shall comprise up to three members – a majority of whom shall be independent. The members of the Committee shall appoint one of their number to act as Chair of the Committee. The members of the Committee shall appoint a Secretary and a quorum shall be two members.

The Committee shall: focus on relevant matters in respect of compliance, regulation and risk in relation to any company in the Abraaj group of companies; consider all reports presented to members from time to time by the Chief Risk Officer (CRO”) and by the Chief Compliance Officer (“CCO”); consider and respond accordingly to any compliance or risk matter about which the CRO and/or the CCO has requested comments or views; assist the CRO in determining the risks to which the organisation is or may be exposed and provide comment on whether those risks are being managed effectively by the procedures, systems and controls currently in place; assist the CCO in considering the adequacy of the breadth and depth of the compliance policies, procedures, systems and controls currently in place; provide to the CRO and the CCO whatever insights members may have from time to time on matters described above; present its views and comments on risk and compliance matters to members of the board of Abraaj Capital Holdings Limited at a frequency to be determined by that board.

The Committee’s Terms of Reference describes the remit, structure and modus operandi of the Committee - and can be made available to third parties upon request.

## **5 Audit**

ACHL’s Article 192 authorises the Directors to appoint an Auditor and to fix the remuneration. Abraaj group’s statutory auditor is KPMG. This mandate was first issued to KPMG for the financial year ended 31 December 2002. The Auditor has an on-going right of access to the company’s financial records – and an entitlement to require the Directors to provide information and explanation to enable the audit to be completed (Art 193).

KPMG has been invited to attend all meetings of the Audit and Corporate Governance Committee where matters relating to the external audit are going to be discussed. KPMG will report its findings on its audit and/or review work to the Committee - which will approve KPMG’s audit plan on an annual basis and evaluate the performance of KPMG and its senior representatives. The Committee will issue recommendations to the Board regarding the appointment or replacement of the external auditor. KPMG will provide a report about its independence to the Committee

once a year. The group seeks to ensure not only that its external auditor has an appropriate degree of independence but that the scope of services that may be provided to the Abraaj group or its subsidiaries by the public accounting firm appointed as external auditor is limited to audit and other permissible types of non-audit services. KPMG will be required to periodically report to the Committee about the scope of services it has provided and its fees for the services it has performed to date.

Ernst & Young Middle East Dubai Branch (an independent member of Ernst & Young Global Limited and a member of Ernst & Young International Limited) has been appointed as the group’s internal auditor. The Partner responsible for the Internal Audit function reports to the Audit and Corporate Governance Committee.

Internal Audit will be responsible for carrying out the work as agreed with the Audit and Corporate Governance Committee from time to time. The services provided (to both the Abraaj group and to the portfolio companies) – will be provided in accordance with the standards issued by the Institute of Internal Auditors. In the event of a conflict of interest (where Ernst & Young is acting for another party, another firm will be appointed by Abraaj pro tem).

## 6 Internal Control

The Abraaj group is in full agreement with Main Principle C2 of the Code – which provides that “...The Board should maintain a sound system of internal control to safeguard shareholders’ investment and the company’s assets. Main Principle C3 provides that the Board should establish formal and transparent arrangements for considering the application of the internal control and financial reporting principles. The group’s systems of internal controls should be reviewed annually by the Board (Code Provisions C 2.1).

### 6.1 The COSO Framework

The Abraaj group identifies with the COSO Framework<sup>31</sup> - which defined internal control as “...a process effected by an entity’s board of directors, management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in three particular areas – viz: (1) The effectiveness and efficiency of operations; (2) The reliability of financial reporting and (3) Compliance with applicable laws and regulations...” The COSO Framework identified the following elements:

The Control Environment	Information and communication
Risk identification and assessment	Monitoring.
Control activities – internal controls.	

### 6.2 The Control Environment

The Board is responsible for ensuring that the company’s internal control system is effective. Management is responsible for giving effect to the board’s policies and staff members are required to operate within the controls. The success of these measures depends largely on the extent to which a culture of compliance exists within the organization. Abraaj aspires to continuously develop and enhance its compliance culture.

<sup>31</sup> Derives from a report entitled “Internal Control – Integrated Framework” published by the Committee of Sponsoring Organisations of the Treadway Commission (“COSO”), 1992

## 6.3 Risk Identification and Assessment

The Cadbury Committee defined Risk Management as "...the process by which executive management, under Board supervision, identifies the risk arising from business...and establishes the priorities for control and particular objectives...". The Group's Risk Management function contributes to the company's success by promoting a disciplined risk culture and creating risk transparency. It ensures that we adopt a prudent and intelligent approach to risk-taking that appropriately balances risk and return and optimizes the allocation of capital throughout the Group and the Funds it manages to the benefit of stakeholders. Dedicated human and technological resources within the group are focused on ensuring that Abraaj maintains leading risk management instruments, procedures and practices. Through its proactive risk management culture and the appropriate qualitative and quantitative tools, the group strives to minimize the potential for undesired risk exposures in its operations.

Prudent risk-taking is an integral part of Abraaj's business. The primary objectives of the group's risk management strategy are to protect the financial strength of our business and the portfolio companies of the Funds Abraaj manages and to safeguard the group's reputation. Abraaj's risk management Framework is therefore founded on the following principles, which apply universally across all such businesses and companies and risk categories.

- Protection of financial strength: Abraaj carefully monitors and controls risk in order to limit the impact of potentially adverse events on the group's capital and income streams. Abraaj's risk appetite must be consistent with the group's financial resources.
- Safeguarding of reputation: The value of Abraaj's franchise depends on the group's reputation. All Abraaj's employees are committed to maintaining the group's robust reputation.
- Risk transparency: Risk transparency is essential to ensure that all risks assumed are well understood by senior management and can be balanced against pursuit of the opportunities which are the object of Abraaj's business goals.
- Management accountability: Abraaj's various businesses own the comprehensive risks that are assumed in the execution of their operations. The leaders of the Investment Management teams are responsible for the active management of risk exposures and for ensuring the return generated on the basis of the risks that have been assumed.
- Independent oversight: Risk management is a structured process that is used to identify, measure, monitor and report risk. The compliance function operates independently of the Investment Management teams to ensure the integrity of risk and control processes. The Head of Compliance reports to the Board of Directors, through the Chief Executive Officer.

### 6.3.1 Risk Management Function

As Abraaj continues to grow - and as its operating environment was becoming not only more actively regulated but also increasingly complex, it was recognized that the Abraaj group of companies needed to embrace a risk-aware culture and to adopt a more formal and structured approach to identifying, assessing and dealing with the risks that it faces. The reputation of Abraaj's business has been built on (a) the people that constitute it and (b) the efficacy of processes and disciplines that it has evolved over the years. A key aspect of risk management is ensuring that the right stimulus is provided for people to continue to operate at the highest level of professionalism, diligence, integrity and commitment. Equally, it is critical that processes and governance standards are clearly documented and adhered to without exception and such adherence is explicitly demonstrable when subject to third party scrutiny. This is a description of Abraaj's approach to Risk Management and to the appointment of its Chief Risk Officer ("CRO") – who reports directly to the Group CEO. The CRO is responsible for maintaining this structured approach to risk management across all activities of ACHL and is mandated to monitor, highlight

and systematically ensure that the risks faced by the business are being addressed. The CRO's work forms part of Abraaj's comprehensive and holistic framework and reflects how the group embraces risk issues. The CRO's role is designed to help Abraaj to formalize its approach to managing risk and to flag unidentified/unaddressed risks or inadequate adherence to process. However, Abraaj does not consider risk to be the responsibility of the CRO alone. On the contrary, the primary risk management obligation continues to vest with every individual involved in managing the businesses.

#### 6.4 The Control Structure

The Basel Committee has said that <sup>32</sup> "...control activities should be an integral part of the daily activities (of an entity)...An effective internal control system requires that an appropriate control structure is set up with control activities defined at every business level. These should include: top level reviews; appropriate activity controls for different departments or divisions; physical controls; checking for compliance...a system of approvals and authorizations; and a system of verification and reconciliation...". The Abraaj group endorses the Basel Committee's statement. The control structure established by Abraaj includes:

#### 6.5 Top Level Reviews

The Group CEO is Executive Vice Chairman of Abraaj Capital Holdings Limited and serves on the Committees described elsewhere. All major decisions are processed through the Executive Committee and/or the Board of the relevant company as appropriate. The Group's Head of Compliance provides certain senior members of staff with a monthly analysis of compliance, governance and regulatory related matters.

#### 6.6 Appropriate Activity Controls for Different Departments or Divisions

There are a number of specialist functions within the group – which include: Investment Management, Corporate Communications, Investor Coverage (IC), Operations (including HR, IT and Finance) Risk and Compliance. Apart from Risk and Compliance (which disciplines report to the CEO direct), all functions report to a Director. Each functional area has its own operational procedures about which the respective Directors report to the CEO. Reporting is complemented by regular functional meetings and by way of off-site reviews and cross functional updates and analyses. All functions are required to operate under strict rules of confidentiality (which inter alia provide that all working papers and confidential documents must be shredded daily).

There are separate rules for IT which (inter alia) cover security of hardware (laptops, blackberries; USB memory sticks etc).

#### 6.7 Physical Controls

Physical controls are necessary in respect of assets belonging to the group. Access control and fire protection systems have been adopted to protect such assets – including the building and furniture and fittings the company owns. Appropriate insurance cover is in place. Companies within the group do not have possession of, or control assets belonging to customers. The IT Disaster Recovery and Emergency Management Plans that have been compiled and which are in place are regularly reviewed, updated and enhanced.

#### 6.8 Compliance - See section 9 below.

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<sup>32</sup> A report published by the Basel Committee on Banking Supervision on internal control systems – as quoted in The ICSA Corporate Governance Handbook; Brian Coyle; Pg 183

## 6.9 A System of Approvals/Authorizations/Verification and Reconciliation

Any activity that culminates in a payment by the company or that binds the company (such as an agreement to invest or to divest) is subject to controls. With respect to payments, authority is restricted to the Operations function (under the groups' Executive Director – Finance) in conjunction with counter signatures of senior colleagues (outside the Operations Function). Authorised signatories for bank accounts are listed in one of 3 panels (A to C) and an authority matrix shows who is authorised to sign what.

The Executive Committee ("ExCo") shall deal with, take decisions and fulfil its role in relation to Company shares issuance, calls, transfer, repurchase redemption and related matters as provided in the Articles. ExCo shall also approve divestments and exits from investments and take all significant decisions in relation to the implementation of strategic, financial and business plans of the Company including product development and approval of budgets for each business vertical. Further, ExCo will review performance of the Company and its Partner Companies and consider and take all significant decisions and approve all systems, policies and procedures related to: Investments and Exits Process; Funds and Funds Administration; Investor Coverage; Corporate Brand Management; Strategic Philanthropy; Finance and Accounting; Organization Structure and Operations; Risk Management; Corporate Governance and Compliance; Training, Development and Management of Human Resources including performance review of staff, its compensation, incentives, rewards, promotions and terminations; General Administration and Information Technology.

## 6.10 Information and Communication

The controls described above are all embodied in respective Procedural Documents issued (mainly) by the Compliance function. The Procedural Documents are combined in a Compliance Compendium (which forms part two of the Holistic Compliance and Governance Framework). Members of staff are made aware when a new Procedure is issued or when an existing Procedure is amended. Copies are posted in the Compliance area of the internal Portal. Copies of all Procedures are provided to the DFSA and a log is kept of when each document was first created, approved and subsequently amended.

On the first day of employment with the group, HR provides members of staff with a copy of the Employee Handbook and introduces new colleagues to those matters about which they need to be made aware immediately. These matters are described in the Induction Handbook. All employees are required to confirm that they have understood what they have been told and to sign off to confirm adherence to the group's confidentiality rules. Declarations of shares held personally are required on joining and thereafter, no shares may be bought or sold. Precise controls apply when a member of staff is in receipt of non-public information (which topic is the theme of the Insider Dealing and Market Abuse Procedural Document). Further compliance and governance training sessions are arranged during the year as necessary. These sessions focus on Governance in general and on Compliance in particular. Topics include: Anti-Money Laundering, Suspicious Transaction Reporting, Personal Account Transactions and Insider Dealing.

Quarterly reports are provided to each Fund's Limited Partners. Limited Partners meet annually at the Abraaj Investors' Conference – where detailed analyses are provided on all Funds. The group publishes an Annual Review document as at end December.

Frequent (quarterly and annually) prudential reports are submitted to ACLD's regulator – the Dubai Financial Services Authority. These cover capital, liquidity and marketing.

## 6.11 Monitoring

Abraaj recognizes that in the absence of feed-back, the value of a control system is limited. Accordingly, records are required for this purpose. Financial records are maintained for all operating entities within the group – including Partner companies and Funds. Records are compiled by Operations and are subject to review at the top level described above. Non-financial records cover a wide range of activities (e.g. the number of colour photocopies taken in a given period of time on the one hand to Board Papers on the other). The Company's Retention of Records Procedural Document specifies what must be kept, how it must be kept, the time for which it must be kept and the rules regarding how quickly it must be capable of being produced if required for regulatory purposes).

ACLD's regulator – the Dubai Financial Services Authority – conducts periodic visits to analyse and assess the company's activities and its conduct of business. Thus far, these visits include a pre-licencing meeting (March 2006), a High Level Meeting (September 2006) and three Risk Assessment Visits (March 2007, April 2008 and September 2009) and an Anti-Money Laundering and Combating the Financing of Terrorism Thematic Visit (February 2009). The DFSA also arranges meetings on an ad-hoc basis from time to time (last such was convened in May 2009).

## 7 Procedures

### 7.1 Regulatory Rules

Procedures and controls are strongly linked. The primary need for procedures arises because they are commercially expedient. However, there is a secondary need – which is that the regulatory rules require Authorised Firms to:<sup>33</sup>

- establish and maintain compliance arrangements, including processes and procedures that ensure and evidence, as far as reasonably practicable, that the Authorised Firm complies with all legislation applicable in the DIFC.
- document the organisation, responsibilities and procedures of the compliance function.
- ensure that the Compliance Officer has access to sufficient resources, including an adequate number of competent staff, to perform his duties objectively and independently of operational and business functions.
- ensure that the Compliance Officer has unrestricted access to relevant records and to the Authorised Firm's Governing Body and senior management.
- establish and maintain monitoring and reporting processes and procedures to ensure that any compliance breaches are readily identified, reported and promptly acted upon.
- document the monitoring and reporting processes and procedures as well as keep records of breaches of any of legislation applicable in the DIFC.

Accordingly, ACLD has established a number of Procedural Documents as described below. While in principle, the DFSA's requirements extend only to ACLD (as an Authorised Firm), the group voluntarily applies the standards required of the licence holding company to the whole group of companies (paras 2.2 and 2.3 above refer). The Procedural Documents are modular in nature – because this style allows maximum flexibility in expanding the range of documents as applicable from time to time. The Procedural Documents combine to form the group's Compliance Compendium – part two of the Framework.

## 8 Regulatory Matters Concerning ACLD

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<sup>33</sup> Source – General Module; Paras 5.3 (7-12). Note also, the term "Authorised Firm" means a Licensee

## 8.1 The Legislative Context

Dubai is a common law jurisdiction. With respect to regulatory matters, the Primary Legislation is the Regulatory Law (DIFC Law No.1 of 2004) made by the Ruler.<sup>34</sup> The legislation that most affects Abraaj's activity as a Licensee is the Regulatory Law 2004. It comprises ten parts – (1) General; (2) The DFSA; (3) Licences, Authorisation, Registration and Recognition; (4) General Regulation of Financial Services; (5) Powers of Supervision and Investigation; (6) Contraventions & Fines; (7) Enforcement; (8) Auditors; (9) Control of Financial Services Transfers and (10) Miscellaneous.

## 8.2 Primary Legislation

"...Primary legislation, other than Federal or Dubai Laws, consists of DIFC Laws administered by either the DFSA or the DIFCA<sup>35</sup>. Such Laws are enacted by the Ruler of Dubai and apply only in the DIFC..."

## 8.3 Secondary Legislation

Secondary Legislation includes a series of Modules.<sup>36</sup> Modules set out certain "regulatory requirements" imposed by the Regulator - which are referred to as Rules. "...Rules are legislation made by the DFSA under the Law and are binding in nature...".<sup>37</sup> DFSA's web-site says, "...a Rule is subsidiary legislation made under the Regulatory Law 2004 by the Board of Directors of the DFSA... The DFSA Rules may be viewed under DFSA rulebook modules. The Rulebook is made up of topic-area modules which specify their scope and the audience to whom they apply...". Matters that are not Rules, such as application forms and notices, are contained in the DFSA's sourcebook modules. The Sourcebook is made up of topic-area modules.

## 8.4 Regulations

Meanwhile, "...Regulations are subsidiary legislation made by the DFSA Board of Directors, DFSA Board of Directors or other DIFC body under any DIFC law...".<sup>38</sup> One example is the Companies Regulations made under and for the purposes of the Companies Law 2004. (These and other Regulations may be viewed on the DIFC's website [www.difc.ae/](http://www.difc.ae/) ).

## 8.5 Guidance

Lastly in this respect, Guidance is "...indicative and may comprise (i) Guidance made and issued by the Chief Executive under the Law; and (ii) any standard or code of practice issued by the DFSA Board of Directors which has not been incorporated into the Rules...".<sup>39</sup>

## 8.6 Regulatory Requirements With Respect To Audit

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<sup>34</sup> Article 2 (d); Schedule 1; Regulatory Law, DIFC Law No 1 of 2004

<sup>35</sup> The Dubai International Financial Centre Authority – which oversees the operation and administration of the DIFC

<sup>36</sup> General; Authorisation; Supervision; Enforcement; Conduct of Business; Prudential – Insurance Business; Prudential – Investment, Insurance Intermediation and Banking Business; Anti-Money Laundering; Islamic Financial Business; Ancillary Service Providers; Offered Securities Rules; Authorised Market Institutions; Recognition; Application Forms and Notices; Prudential Returns; Glossary; Price Stabilisation; Takeover Rules Collective Investment Rules Module; and the Data Protection Module

<sup>37</sup> Article 2 (e); Schedule 1; Regulatory Law, DIFC Law No 1 of 2004

<sup>38</sup> DFSA web-site; "Legislation"

<sup>39</sup> Regulatory Law – DIFC Law No 1 of 2004; Schedule 1; Section (2) (f)

The Regulatory Law (DIFC Law No 1 of 2004)<sup>40</sup> requires Authorised Firms to appoint an External Auditor. The DFSA is empowered to remove an Auditor. Meanwhile, the General Module<sup>41</sup> requires the establishment and maintenance of an internal audit function with responsibility for monitoring the appropriateness and effectiveness of its systems and controls. The Internal audit function must be independent from operational and business functions. (See Para 5.2 above).

## 8.7 Regulatory Requirements With Respect To Risk

DFSA's approach to risk is described in section 1.6 of the Supervision Module. Appendix 1 of that Module states that "...The DFSA has adopted a continuous risk management cycle. This comprises the identification, assessment, prioritisation and mitigation of risks arising from a range of areas within an Authorised Firm, including business, operations, internal controls and compliance arrangements. General factors that apply across the regulated community as a whole, or to particular sectors, are also be taken into consideration...".<sup>42</sup>

As an Authorised Firm, ACLD "...must establish and maintain risk management systems and controls to enable it to identify, assess, mitigate, control and monitor its risks...".<sup>43</sup> The DFSA also requires Licensees to "...develop, implement and maintain policies and procedures to manage the risks to which the Authorised Person and where applicable, its customers or users are exposed...".<sup>44</sup> The DFSA conducts annual Risk Assessment visits to ACLD (see para 6.11 above).

Further, DFSA requires that "...An Authorised Person must appoint an individual to advise its Governing Body and senior management of such risks...".<sup>45</sup> Within Abraaj, this is the responsibility of an Executive Director.

## 9 Compliance

### 9.1 Definition

Compliance might be described as the establishment of procedures (to achieve Policies), systems (to monitor variables) and controls (to prevent breaches). As a Licensee, ACLD is obliged to "...establish and to maintain compliance arrangements...".<sup>46</sup>

### 9.2 The Compliance Compendium

The Compendium includes all Procedural Documents in issue from time to time (see Part Two over).

### 9.3 Compliance And Risk Management – Complementary Disciplines

Compliance interacts closely with all disciplines within the organisation to understand the risks to which the organisation is or may be exposed and to assess whether those risks are managed effectively by the procedures, systems and controls currently in place. Compliance risk is within

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<sup>40</sup> See s 99 (2)

<sup>41</sup> General Module 5.3

<sup>42</sup> Supervisory Module 1.6 – Guidance

<sup>43</sup> General Module 5.3.4

<sup>44</sup> General Module 5.3.5

<sup>45</sup> General Module 5.3.6

<sup>46</sup> General Module – Chapter 5

the universe of risks to which the group may be exposed. Risk Management (see Paras 6.3 and 8.7 above) and Compliance are complementary functions that both seek to protect the organisation – but from different perspectives. The focus of Risk Management is on the business conducted by the organisation while the focus of Compliance is on how the organisation conducts that business. This corresponds to the approach taken in the DFSA’s risk model – which is based on two “High Level Risk Categories” – (1) Business & Operations and (2) Internal Controls and Compliance.

#### 9.4 Compliance Risk <sup>47</sup>

The DFSA has said that “...There are particular risk elements that may substantially affect an Authorised Firm’s overall risk classification. For example, compliance and management culture are risk elements which may be rated more highly than other elements. Inadequate compliance systems and controls as well as poor management culture directly affect most other risk elements therefore, may impact on an Authorised Firm’s minimum risk level...”.

“Compliance Risk” might be defined as the risk of legal or regulatory sanctions, material financial loss, or loss to reputation that Abraaj might suffer as a result of its failure to comply with laws, regulations, rules and codes of conduct applicable to its financial services.

#### 9.5 The Compliance Officer

The DFSA’s Rulebook<sup>48</sup> provides that “...the Compliance Officer function is carried out by an individual who is a Director, Partner or Senior Manager of an Authorised Firm who has responsibility for compliance matters in relation to the Authorised Firm’s Financial Services...”. In Abraaj, the Group’s Chief Compliance Officer – an Authorised Individual - reports direct to the Group CEO.

#### 9.6 Regulatory Requirements Relating to Compliance <sup>49</sup>

An Authorised Firm is required to establish and maintain compliance arrangements, including processes and procedures that ensure and evidence, as far as reasonably practicable, that the Authorised Firm complies with all legislation applicable in the DIFC.

#### 9.7 Anti-Money Laundering

The DFSA has said that “...Money Laundering may be another risk element which has the potential to substantially influence an Authorised Firm’s overall risk classification...”.<sup>50</sup> Accordingly, ACLD has established comprehensive (mandatory) training for staff, Procedural Documents and systems to protect itself in this particularly risky area – as described in the policy statement referred to below.

In this respect, the DFSA’s Rulebook says that “...an Authorised Firm should have a policy statement detailing the duties and obligations of its MLRO...”.<sup>51</sup> ACLD’s policy statement includes provisions regarding: the Appointee<sup>52</sup>, his/her back-up; general Responsibilities<sup>53</sup>;

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<sup>47</sup> “Compliance and the Compliance Function in Banks”; Basel Committee; Para 3; April 2005

<sup>48</sup> Authorisation Module - 10.2.2 (e)

<sup>49</sup> Source - General Module; Section 5 (3)

<sup>50</sup> Sup Module; 1.6 Guidance; Para 18)

<sup>51</sup> AML 3.1.1(2) Guidance

<sup>52</sup> AML 3.3.2

specific responsibilities; provision of periodic information and training; establishment of a system for bringing information to the attention of new Employees and ensuring it remains available to all Employees<sup>54</sup>; establishing procedures so that all Employees receive anti Money Laundering training<sup>55</sup>; conducting anti Money Laundering training sessions with sufficient frequency to ensure that within 12 months it is provided to all Employees<sup>56</sup>; establishing procedures so that all relevant details of the Authorised Firm's anti Money Laundering training are recorded<sup>57</sup>; providing sufficient Guidance to Employees to enable them to form a suspicion or to recognise when they have reasonable grounds to suspect that Money Laundering is taking place<sup>58</sup> and arranging for relevant information – including details of transactions, documentation and correspondence re verification to be kept – in the manner specified.

## **10 Conclusion**

In this Document the Abraaj group's approach to the conduct of business has been described in detail. The group believes that transparent disclosure of its corporate governance Framework and procedures, its organizational and management structure, and related matters all help stakeholders to assess the quality of the group and its management. Further, it is believed that this style will assist investors in making their investment decisions.

The group hopes that this transparent description of its culture and its attitude towards its business will continue to inspire the level of trust and confidence from stakeholders that the group has enjoyed thus far.

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<sup>53</sup> AML 3.3.3

<sup>54</sup> AML 3.9.2

<sup>55</sup> AML 3.9.3 (c)

<sup>56</sup> AML 3.9.4

<sup>57</sup> AML 3.9.4

<sup>58</sup> AML A2.3 Suspicious Transactions And Transaction Monitoring - AML A2.3 Guidance relating to AML Rule 3.7.3.

PART TWO

## THE COMPLIANCE COMPENDIUM



## An Introduction

The first part of this Document (“The Principles of Governance”) described the approach adopted by the group at the interface between it and its shareholders, directors, employees, its clients and all other parties with whom it engages. This second part of the Framework is for internal use only and comprises the group’s Compendium of Procedures.

The Compendium is made up of a series of Procedural Documents (“PDs”). These are modular in nature because this style allows maximum flexibility in expanding the range of procedures as applicable from time to time. The Compendium represents the Abraaj group’s Compliance Manual.

Breaches are by definition, serious events – but clearly, some breaches are more serious than others. Where a member of staff breaches the provisions of any Procedural Document, the group will consider the gravity of the breach - and having done so, will determine whether any disciplinary measures are necessary. Punitive action may include dismissal.

However, there are specific implications that concern the application of the rules for reporting suspicions (under the anti-money laundering and sanctions regulations) and the rules concerning insider dealing. With respect to reporting suspicious transactions, the policies and procedures that the DFSA requires Authorised Firms to establish include one that enables disciplinary action to be taken against any employee who in the ordinary course of employment fails to submit a suspicious transaction report where (s)he knows or suspects or has reasonable grounds for knowing or suspecting that a person is engaged in money laundering.<sup>59</sup> Under Anti-Money Laundering Module s 3.5.2, failure to submit an external suspicious transaction report may constitute a criminal offence.

Insider Dealing is prohibited both under UAE Federal law and under DIFC law.<sup>60</sup> Article 41 provides that a person who contravenes these prohibitions shall be liable to imprisonment for a term of between three months to three years and/or to a fine of between AED 100,000 to AED 1,000,000.

Where a member of staff breaches either of the two provisions described above, that person exposes him/herself to the possibility of external punitive measures and also to summary dismissal.

A hard copy of the detailed Procedural Documents that comprise the Compliance Compendium is available for each member of staff to retain. In addition, all Procedural Documents are replicated in full in the Compliance section of the Portal. The Table below summarises the content of the Compliance Compendium:

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<sup>59</sup> See Anti-Money Laundering Module s 3.5.1.

<sup>60</sup> See Articles 37 and 39 of UAE Federal Law No. 4 of 2001 and Article 42 of DIFC Law No. 12 of 2004.

## CONTENTS OF THE COMPLIANCE COMPENDIUM

No.	Document	Version
1	Advertising Procedural Document	19.08.2009
2	Anti Money Laundering and Combating the Financing of Terrorism (AMLCFT) Manual	25.11.2008
3	Client Verification Questionnaire	07.07.2008
4	Complaints Procedural Document	06.11.2008
5	Conflict of Interest Procedural Document	15.07.2009
6	Ethics and Standards Procedural Document	28.11.2007
7	Fit and Proper – ACLD – Procedural Document	06.08.2006
8	Fit and Proper – Individuals – Procedural Document	05.09.2006
9	Gifts Procedural Document	12.03.2008
10	Insider Dealing and Market Misconduct Procedural Document	26.04.2007
11	Marketing and Client Classification Procedural Document	07.07.2008
12	Personal Account Transactions Procedural Document	25.08.2009
13	Retention of Records Procedural Document	15.07.2009
14	Risk Management Procedural Document	25.08.2009
15	Risk Profile Form - AMLCFT	17.02.2009
16	Sanctions Procedural Document	15.07.2009
17	Security – Shredding – Procedural Document	12.07.2006
18	Security Issues – Procedural Document	09.05.2007
19	Suspicious Transaction Reporting Procedural Document	17.09.2006
20	HR Handbook	16.06.2010

PART THREE

THE COMPLIANCE DECLARATION  
SYSTEM



## The System Explained

As part of the group's Holistic Compliance and Governance programme, Abraaj has adopted a Compliance Declaration System – designed to achieve at least three purposes: (1) to remind members of staff regularly of the Procedural Documents; (2) to remind members of staff about their compliance obligations and (3) to ask everyone to provide certain confirmations.

The system works as follows. On the first Monday of the month that is a business day, IT Support sends an email to all members of staff – which says:

Dear Colleague

This email invites you to confirm that:

- 1 you are aware of, understand and agree to adhere to Abraaj Capital Limited's Procedures as set out in the Compendium of Procedures (as amended from time to time);
- 2 you are aware of your obligations under the anti-money laundering rules, and that you know how to make a suspicious transaction report – and to whom that report should be made;
- 3 there is no information that might affect your fit and proper status that ought to have been disclosed to Abraaj Capital Limited which has not been disclosed already.

If you can confirm that all these statements are true and accurate as at the date of this email, please click **YES** .

If you are unable to confirm that all these statements are true and accurate as at the date of this email, please click **NO** .

In order to make this process as efficient as possible and to avoid the waste of resources involved in sending reminders and follow up action, please respond to this email today. Please note that a log will be maintained for this purpose.

Members of staff can respond to the declaration made by clicking the appropriate button within the email. All members of staff (other than secondees) are included – irrespective of the location of the office for which they work. Members of staff who are travelling are also required to respond. All responses should be delivered within 24hrs of the time of the email. The system automatically produces a list of those people who have failed to respond within 48hrs of being prompted. Failure to respond impinges upon an individual's "fitness and propriety" and as such may have DFSA implications. Consequently, as a matter of course, a listing of those persons who have responded late or not at all is passed to the CEO for appropriate action.

If a member of staff clicks the "No" response, the Compliance Unit is alerted - and will follow up as required.