The Energy Chamber
of Trinidad & Tobago
www.energy.tt

Corporate Governance
Frequently Asked Questions

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List of Acronyms

AGM	Annual General Meeting
CA	Companies Act of Trinidad and Tobago
CCGI	Caribbean Corporate Governance Institute
CEO	Chief Executive Officer
CHC	Closely Held Companies
ECTT	Energy Chamber of Trinidad and Tobago
ECODA	European Confederation of Directors' Associations
FCPA	Foreign Corrupt Practices Act
GSM	General Shareholders Meeting
GCGF	Global Corporate Governance Forum
IADB	Inter-American Development Bank
ICGN	International Corporate Governance Network
IPLA	Integrity in Public Life Act
IFRS	International Financial Reporting Standards
ISA	International Standards of Auditing
IFC	International Finance Corporation
IOSCO	International Organization of Securities Commissions
LC	Listed Company
OECD	Organization of Economic Co-operation and Development
PSOJ	Private Sector Organization of Jamaica
SEPMM	State Enterprises Performance Monitoring Manual
SOE	State Owned Enterprises
TTSEC	Trinidad and Tobago Securities and Exchange Commission
TTSE	Trinidad and Tobago Stock Exchange
UNCTAD	United Nations Conference on Trade and Development

Introduction

In 2011 the Energy Chamber embarked on an Inter-American Development Bank (IADB) initiative aimed at "improving the practice of corporate governance in private and public companies in Trinidad and Tobago to facilitate the creation of an ethical, non-corrupt business environment that will reduce excessive levels of risk and promote a competitive and stable economy."

For companies to improve their corporate governance practices they must first assess their current corporate governance practices in relation to the legal requirements of Trinidad & Tobago and international best practice Best references include the OECD Principles of Corporate Governance, the OECD Guidelines for Corporate Governance of State Owned Enterprises, the Corporate Governance Guidelines and Principles for Unlisted Companies in Europe developed by the European Confederation of Directors Associations (ECODA), the Ministry of Finance State Enterprises Performance Monitoring Manual and the Trinidad and Tobago Corporate Governance Code.

As part of this initiative a series of four (4) guides on corporate governance were developed to provide the essential guidance for the Directors, Board Members, CEOs and Senior Managers as they work towards a higher level of best practice maturity in corporate governance.. These guides, grounded in international best practice and customized for the Trinidad and Tobago context address the specific corporate governance practices relevant to three (3) types of organizations:

1. Closely Held Company
2. Listed Company or
3. State Owned Enterprise

This **Frequently Asked Questions Guide** provides summary information on common issues and concerns within corporate governance. Other Guides within this series include: Orientation Guide for New Directors, Corporate Governance – Legislative Guide and the Corporate Governance Maturity Framework Guide.

1. Roles

1. ROLES

Division of Roles

Q1. What is the role of a Board?

The core functions of the Board are to communicate with the owners, to guide executives, and to monitor the performance of the company.

The Board of Directors, under the Companies Act 1995, directs the management of the business and affairs of the Company….However, the Board must not usurp the responsibilities of executive management by involving itself in day to day management issues. It is an organ of review, appraisal and appeal."[1]

The Organization for Economic Co-Operation and Development (OECD) in their work Principles of Corporate Governance has stated that 'together with guiding the corporate strategy, the Board is chiefly responsible for monitoring managerial performance and achieving an adequate return for shareholders".

A well-functioning Board of Directors acts as a top-level advisor to the organization and the role of the Board of Directors is:

- to direct the executive with regard to the mix of outcomes that constitute the vision (what mix in terms of quantity and quality of outcomes or impacts is to be achieved), and
- within what limits or constraints this is to be achieved (time, resources, values, relative priorities, operational policy, social, environmental, ethical constraints)

Q2. Who is an officer of the Company?

The definition of an officer varies depending on the circumstances. The term may cover Directors, the Secretary and in some instances, the company's auditors and senior members of management (with substantial executive power).

Locally, by Section 4 of the Companies Act of Trinidad and Tobago, an "Officer", in relation to a body corporate means—

i) the Chairman , Deputy Chairman , President or Vice-President of the Board of Directors;
ii) the Managing Director , General Manager, Comptroller, Secretary or Treasurer; or
iii) any other person who performs for the body corporate functions similar to those normally performed by the holder of any office specified in paragraph (a) or (b) and who is duly appointed to perform such functions

Q3. What is the role of the Chairman?

According to international governance experts at the Global Corporate Governance Forum, the Chairman's basic responsibility is to ensure that the Board is effective in setting the company's direction and strategy.

Generally, the Chairman has no authority over other Directors except in the management of the Board meeting and the procedures of the Board. However, the Chair has a key role in leadership which includes

[1] The State Enterprises Performance Monitoring Manual, Section 2.2.6, pg. 9.

ensuring that all Directors are involved in discussions and decisions and monitoring the contributions of individual Directors.

The Chairman has to ensure that the Board monitors the company's progress but does not slide into managing the business. In most countries, the chair is required to make statements to shareowners at the Annual General Meeting to indicate how the company is progressing.

Generally, the Chairman is tasked with:

a) Preparing for and chairing Board meetings and coordinating the timing and frequency of meetings
b) Ensuring that adequate policies and procedures are in place to govern the conduct of Directors and to ensure that the Board can function effectively. (This is usually done together with the Secretary).
c) Monitoring the Board's composition and structure by regularly reviewing the: Board's overall size; balance between Non-Executive and Executive Directors; balance of age, experience and personality.

Q4. WHAT IS THE ROLE OF THE CORPORATE SECRETARY?

By Section 61. (1) of the Companies Act, "Every company shall have a secretary and may have one or more assistant secretaries, who, or each of whom—

(a) shall be appointed by the Directors, or if provision is made in the Bye-laws of a company for the appointment, in accordance with that provision; and
(b) may be an individual, a body corporate or a firm."

The Corporate Secretary is a senior corporate officer, hired by the Board, with wide-ranging responsibilities, who serves as a focal point for communication with and between the Board of Directors and senior management. She/he has a key role in the administration of the Board and critical corporate matters, especially in the areas of compliance and corporate governance.

Typically, the Corporate Secretary:

a) Ensures that the Board follows correct procedures and that the Board complies with its legal and statutory obligations.
b) Assists the Chairman of the Board in organizing the Board's activities (including providing information, preparing an agenda, reporting of meetings, evaluations and training programs).
c) Acts as the custodian of the records of the Company including (but not limited to) legal and statutory documents, the minutes of the Board of Directors' and Board Committee meetings as well as the company's seal
d) The Corporate Secretary is secretary to the Board and its Committees and an officer of the Company.

To protect the ability of the corporate secretary to act in the interests of the Company and its stakeholders at all times, they must be shielded from undue influence from management and any other parties. The corporate secretary reports to the Chairman but is accountable to the entire Board.

Duty of Care

Q5. What are the duties of a Board?

The Global Corporate Governance Forum explains that Boards have a "Duty of Care" to its shareholder. This duty of care is an obligation imposed on the Board that they act on and take decisions on a fully-informed basis and with due diligence. Acting with "due diligence" means that Directors need to apply the skills they reasonably can be expected to possess based on their collective experience, knowledge, skills and qualifications.

As a Board member in Trinidad and Tobago, Directors are expected to comply with three (3) principal legal duties, often referred to, interchangeably, as fiduciary obligations:-

- To direct the management of the business and affairs of the company [section 60 (b) of the Companies Act Chapter 81:01];
- To act honestly and in good faith with a view to the best interests of the company [section 99(1)(a) of the Companies Act Chapter 81:01] ; and
- To exercise the care, diligence and skill of a reasonably prudent person [section 99 (1)(b) of the Companies Act Chapter 81:01].

Q6. What can happen to me if I am found to be negligent of my duties as a Director?

A breach by any Directors or Board of their fiduciary duties exposes both the individual Director as well as the Board to liability. The liability of a Board or of individual Directors would typically be determined by applicable legislature and/or a Court of Law

Duty of Loyalty

Q7. What does 'Duty of Loyalty' mean?

According to the international governance experts at the Global Corporate Governance Forum, a Director's "Duty of Loyalty" means that Directors act exclusively in the interest of the company and its shareholders and they do not allow their personal, or any other singular, interests to prevail.

They go on to explain that this duty is in relation to the degree of care, diligence and skill that a Director is required to exercise in order to not be considered to have undertaken their legitimate duties negligently. That is, a Director need not be an expert; they only need to display the skills they reasonable can be expected to possess.

2. Board Composition

2. BOARD COMPOSITION

Q8. WHAT IS THE TYPICAL/IDEAL COMPOSITION OF A BOARD?

While there is no general legislative requirements regarding the composition of a Board in relation the specific skills and experience required by a Director, Sections 60(b) and 99(1) (a) & (b) of the Companies Act, mandates that a Director have the appropriate competence and skill set to direct the management of the company in order to properly and effectively discharge their obligations.

Therefore, a Board's composition varies from another and is typically based on the size and type of company since each Board requires different skill sets, experience and personalities to properly fulfil their roles effectively however. Ideally, Boards should endeavour to ensure that there is an appropriate balance of skills and experience that matches the evolving needs of the company (ECODA 3 and ECODA 11). Ideally, a balanced Board should have:

- Executive and non-executive Directors
- Independent Directors
- Appropriate skills, experience and attributes

Q9. IS THERE A LIMITED PERIOD OF TIME/TERM THAT A DIRECTOR CAN SIT ON A BOARD?

In Trinidad and Tobago, by Sections 71. (2), (3), (5) and (6) of the Companies Act, Directors may hold office for a period of one to three years. The specific terms and conditions for Director Appointment are typically found in the company's Articles/ By-laws and may include stipulations in relation to retirement by rotation etc.

For State Owned Enterprises however, the governing legislation for each respective institution usually identifies the duration for Board appointments. This is usually between 2 – 5 years, with the option of being re-appointed.

Q10. HOW IS THE CHAIRMAN APPOINTED?

For CHC and Listed Companies, the Chairman is typically appointed by the Board of Directors. Regulations guiding such appointments are usually found in the company's Articles or By-Laws. In some instances, the internal policies of the company allow the Board of Director to determine their own method for choosing the Chairman.

For many SOE's however, the governing legislation typically provides the President of the Republic of Trinidad and Tobago with the authority and responsibility for the appointment of the Chair (usually based on the recommendation by the Government).

Selecting Directors

Q11. HOW SHOULD DIRECTORS BE SELECTED?

Best practices in Corporate Governance recommend that Directors be selected exclusively on merit. That is, Board members should be selected based upon the qualities that they bring to the Board and the companies, which will help to achieve the company's goals.

For privately held companies, Directors should be chosen by the shareholders. Shareholders should have a separate vote on the election of each Director, with each candidate approved by a simple majority of shares voted, and sufficient time and information to make a considered voting decision.

For Closely Held Companies, while it is typical to select family members as Directors, it is equally consideration should be given to persons who can contribute an outside perspective.

A formal, documented and transparent nomination and selection process for Directors should be in place.
The Global Corporate Governance Forum highlights a typical selection process which may involve the following activities:

a) Identification of a Board capability gap: the Board should identify the knowledge, competencies and expertise that the Board lacks
b) Development of a person Specification: the Board or the nominations committee should identify the knowledge, skills and personal attributes that a Director would need to possess to close this gap
c) Develop a search plan: the nomination committee should develop a search plan and lead the search process. This may involve the use of search consultants and the position may be advertises
d) Get to know the person: the nomination committee will need to interview candidates. The person's terms and conditions will need to be discussed
e) Select the best-qualifies candidate and recommend the candidate for election at the general assemble
f) Election process: shareholders have the right to elect and remove Directors. The Board should ensure that this right is respected and that all aspects of the nomination and selection process are transparent. The Board recommendations, in turn, are then voted upon by the shareholders at the AGM.

Q12. WHAT ARE DIFFERENT TYPES OF DIRECTORS?

There are several types of Board Directorships. In addition to the Executive or Managing Directors, who is delegated with the responsibility of managing the operational aspects of the company, other Board Directors include:

- **Non- Executive Director:** Refers to a Director without executive management responsibilities for the institution but who may have executive management responsibilities assigned to him or her within the Group. A non-executive Director is a Director who does not have a contract of service with the company and normally serves the company on a part time basis only.

  As a non-executive director, they do not have a management function in the running of the business other than assisting in the deliberations of the Board. Nonetheless the legal powers and duties are identical to

those of Executive Directors. While the duty of care is required by both the Non-executive and Executive Directors, the former will be intermittent and as a result, is not expected to give the same continuous attention to the company's affairs as that given by Executive Directors.

- **Independent Non-Executive Director:** A Non-Executive Director who satisfies the criteria for Director Independence. Director Independence is defined as the ability to exercise sound judgement and decision making independent of the view of management, political interests or inappropriate outside interests.

  The following criteria may be considered and given reasonable weight when determining if a Director is independent:
  - Any financial or other obligation the individual may have to the financial institute or its Directors
  - Whether the individual is or has been employed by the financial institution or a group company in the past and post so held
  - Whether the individual is or has been a provider of professional services to the financial institution in the recent past
  - Whether the individual represents a significant shareholder
  - Circumstances where the individual has acted as an independent non-executive Director of the financial institution for extended periods
  - Any additional remuneration received in addition to the Director's fee, related Directorships or shareholdings in the financial institution
  - Any close business or personal relationship with any of the company's Directors or senior employees

Q13. Can I be dismissed from the Board by shareholders?

Yes, shareholders have the authority, under Section 75 of the Companies Act′ to remove Directors from the Board by ordinary resolution at a special meeting. Specific stipulations regarding the dismissal of Directors are typically found in the company's Articles.

Independence for Oversight

Q14. Is the company required to have non-executive Directors?

There are no local legislative requirements regarding the composition of a Board and the skills and experience required by a Director. Best practice however encourages companies to appoint non-executive Directors to ensure transparency and oversight.

Number of Directors

Q15. How many Directors should be on a Board?

There is no consensus regarding optimal Board size. However, the number of Directors should be guided by legal requirements and the specific needs of the company and its shareowners.

In Trinidad and Tobago, Section 64.1 of the Companies Act indicates a minimum number of Directors required to sit on a Board. For closely held / family run companies the at least 2 Directors must be listed on the Board while the number for both Listed and SOEs is 3. However, the Companies Act is not explicit on the maximum

number of Directors required to sit on the Board (save for some SOEs where limitations regarding the minimum and maximum of Directors allowed to serve of a Board is indicated in the governing legislation) According to the Global Corporate Governance Forum companies should choose a Board size that will enable them to:

a) Hold productive, constructive discussions
b) Make prompt, rational decisions
c) Efficiently organize the committees' work

Generally, the typical range of Board size would be from 5 to 10 members. Excessively small Boards have insufficient manpower and skills. Small Board s of up to 6 members is better suited for closely held and family enterprises. Excessively large Board s have cumbersome decision making processes and may lead to some Directors seldom making contributions and therefore being non-effective.

3. Board Tasks

3. BOARD TASKS

Directing, Delegating and Monitoring

Q16. What do Directors do?

Directors help to shape the company's destiny, safeguard its interests, and ensure its profitable performance. Since Directors' powers are collective, individual Directors have no specific power to make decisions or take actions. However, Board s may delegate responsibility for certain activities to individual Directors or committees. The extent to which the responsibilities may be delegated should be set out in the Articles.

Risk, Oversight and Board Audit

Q17. How does Directors/Board execute their oversight function?

Generally, the Board has a major role in ensuring appropriate corporate governance and oversight of the company, its assets, and activities. According to the OECD, *Principles of Corporate Governance* (Paris: OECD, 2004 p. 25.), "the Board should fulfil certain key functions including: Ensuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards."

The Board is responsible for ensuring that all business risks are identified, evaluated, and suitably managed. Directors must decide, acting on management's advice, how much risk the company can accept—this is called "risk appetite." Risk appetite may vary over time and will be influenced by the company's financial condition and market position

The Global Corporate Governance Forum has highlighted several steps that Board may undertake in developing a risk-management plan:

- Identifying risks
  - Understanding the nature of the risks and evaluating their likelihood
  - Deciding on appropriate action
  - Monitoring the risks

Internal Audit

Q18. Why should the organization have an internal audit function?

Internal audit is an independent, objective assurance and consulting activity. It brings a systematic approach to improving the effectiveness of risk management, control, and governance processes. - SOE.V.B; OECD VI.D. 7 and ECODA 6.3, CA 99(1) b, 157

Q19. WHO SHOULD THE HEAD OF INTERNAL AUDIT REPORT TO?

The Global Corporate Governance Forum suggests that the internal audit is traditionally subject to dual-reporting responsibilities. In principle, the internal auditor should report to management administratively and to the Board Audit Committee/Board of Directors functionally.

If an Audit Committee if present, the lead internal auditor should have an unfettered direct reporting relationship to it. The Audit Committee should ensure that the lead of the internal audit function has direct, open communication with both the Board and the External Auditor.

Conflict of Interest

Q20. WHAT IS CONFLICT OF INTEREST AND HOW SHOULD IT BE ADDRESSED?

A conflict of interest occurs when an individual or organization has multiple interests, one of which could possibly corrupt their motivation in a transaction. Conflicts of interest commonly result from family interests, ownership of other companies, gifts from friends or business partners, multiple places of employment and self-dealing i.e. entering into a transaction with oneself or a related party.

For all companies Section 99 (1.a) of the Companies Act enjoins Directors to act honestly and in good faith with a view to the best interests of the company, and Section 99 (2) that says that in determining what are the best interests of a company, a Director shall have regard to the interests of the company's employees in general as well as to the interests of its shareholders. The Act implies that Directors ought to disqualify themselves from decisions where their own personal interest or that of relatives would be in conflict with those of the company's.

For SOEs specifically, all persons in public life are required to comply with the conflict of interest provisions at Section 29 of the Integrity in Public Life Act (IPLA) Chapter 22:01 and the Code of Conduct as articulated in Sections 23-31. The IPLA states that a conflict of interest is deemed to arise if a person in public life or any person exercising a public function were to make or participate in the making of a decision in the execution of his office and at the same time knows or ought reasonably to have known, that in the making of the decision, there is an opportunity either directly or indirectly to further his private interests or that of a member of his family or of any other person.

In addressing conflicts of interest, Boards should have a formal system in place for monitoring conflicts of interest, misuse of company assets, and related party transactions. A company should have a written conflict of interest policy which is enforced by the Board. Such a policy covers related party transactions and outlines how the company will monitor and resolve conflicts of interest. The policy should follow international best practice which suggests that monitoring and resolution should be conducted by independent Directors and that the Board require approval of related party transactions, or recusal on decision making from related party transactions.

Additionally, the Companies Act requires that conflicts of interest for Listed Companies and SOES (as well as related party transactions of Listed Companies) are publicly disclosed.

Q21. What is a Gift and entertainment policy?

Gifts and entertainment policies are increasingly important in the current business environment. The implementation of such policies helps prevent ambiguity and helps guide company officers and employees when they face potentially unethical and illegal conduct. A gift and entertainment policy need to reflect local laws and should take into consideration the business customs in each market a company operates in.

A comprehensive gift policy covers the following areas:

- gift limit (i.e. whether a company provides a limit on what a member of staff is permitted to accept or give)
- what types of gifts/entertainment a company employee is permitted to accept
- what gifts/entertainment a company employee is permitted give and not permitted to accept
- the approval and recording system for any gifts accepted or given
- how employees should comply with the policy
- the nature of support provided for clarification if required

Compliance Function

Q22. When do the Board /Directors become liable and what is the compliance function?

The liability of a Board or of individual Director is typically determined by applicable legislature and/or a Court of Law.

The compliance function within a company is established to monitor, review and guide the organization's adherence to various applicable local and international requirements. The compliance function is designed to protect the company from the risk of failure in processes and losses as well as fines from regulatory inspection. It ensures that the legal rights of stakeholders are respected.

The efficacy of the compliance function should be reviewed by the Board annually and conclusions regarding this are recorded in minutes.

Whistle Blower Policy

Q23. What is a whistle blower policy?

A whistle blower policy stipulates and guides the process which allows the Board to be informed of illegal or unethical practices occurring within the company. The policy should identify confidential means (which ensure that the whistle-blower's identity and their rights are protected) and mechanisms for communicating suspected/actual illegal or unethical practice as well as the process for investigating and actions (consequences) to be taken if there is a breach.

A typical whistle blower policy includes elements including:

- Investigating and documenting the issues and its findings
- Accessing and checking with legal advisers regarding appropriate action
- Reporting on its findings in a report from the audit committee to the Board and to relevant senior members of management
- Ensuring that management has taken appropriate action

Best practice recommends that oversight of the whistle-blower policy should be conducted exclusively by independent non-executive members of the Board. The Audit Committee's role should include a review and assessment of the policies and procedures applicable to whistle-blowers

4. Board Processes

4. BOARD PROCESSES

Separation of CEO and Chair

Q24. SHOULD THE CEO AND CHAIR FUNCTION BE SEPARATED?

Local legislation does not explicitly address the separation of and the role of the Chairman and CEO of a company. The relationship and dynamic between these offices, however, are crystallized in Section 60(b) of Companies Act which mandates the Board and therefore the Chairman to direct the management (and therefore the CEO) of the company.

Best practice suggests however that the roles of the Chairman and the CEO be separated in order to create a clear distinction between the oversight role of the chair and the executive role of management. Alternatively, it may be considered good practice to have a lead independent Director to balance the powers of the chair in the event that the roles of chair and CEO are combined (ECODA 10.1)

Frequency of Board Meetings

Q25. How often should the Board meet?

Legally, Section 80(1) of Companies Act permits a Board to have as many meetings as are necessary to conduct its business or as specified in the company's bye-laws. The generic by laws in Companies Act (Schedule 2, page 600) generally prescribe one meeting per month - ECODA 4

Typically, the Board should meet with sufficient regularity to properly discharge its duties. Too few Board meetings mean work is not being done or the Board does not understand its role. Too many Board meetings could mean that the Board is overly involved in management and may also stem from a misunderstanding of the role of the Board.

A minimum of 4 Board meetings per year can be used as a rule of thumb. More than monthly meetings may be considered excessive.

Q26. WHAT FUNCTIONS DO BOARD COMMITTEES FULFIL?

Since the Board in its entirety may not be able to fulfil its duties effectively, it may delegate some of its responsibilities to a committee. Board committees usually comprises of a small number of Directors who are charged with the responsibility of dealing significant/specific issues.

There is no local legal requirement regarding the number and type of committees that should be established by a Board, the rule of thumb is that any established committee should permit the Board to:

- Handle a greater number of issues more efficiently by allowing experts to focus on specific areas and provide Board recommendations

- Develop subject-specific expertise on the company's operations, such as financial reporting, risk management, and internal controls
- Enhance the objectivity and independence of the Board 's judgment, insulating it from potential undue influence of managers and controlling shareowners, in such key areas as remuneration, Director nomination, and oversight controls

While there are many different committees that a Board may adopt, the three most common committees that are established are:

- Audit Committee
- Remuneration Committee
- Corporate governance and nomination Committee

Each Board committee should have clear polices and/or terms of reference which outlines its power, role and responsibility.

The creation of a committee does not absolve the entire Board from responsibility but merely enables the relevant area to be dealt with more efficiently. If the Board delegates some of its responsibilities to a committee, the Board remains the ultimate decision making authority and retains responsibility for all Board decisions. As such, the committees should prepare and present Board reports outlining the work they have been doing and providing updates or recommendations of any pertinent issue under their purview.

Induction Process

Q27. WHAT IS THE PROCESS FOR INDUCTING A NEW DIRECTOR?

Director Induction

A Director induction process should be a formal and documented process and executed by the Board when a new Director joins the Board . Typically, Director Induction usually involves:

- Introducing new Directors to current Directors, officers of the company and other key senior management executives
- Explaining how the Board operates and carries out its functions
- Provision of collateral such as a copy of the Board charter, committee terms of reference, ethics policy etc.

It involves building up rapport, trust, and credibility with the other Directors so that the new Director is accepted by and can work with fellow Directors.

The Global Corporate Governance Forum provides a useful checklist under three main headings, of activities, documents, processes, policies and procedures associated with the induction process. These include:

- **Provision of information regarding Director's duties and activities –**role of a Director and a summary of Board and legal responsibilities, company/Board related procedures, the authority of the Board etc.
- **Information regarding the business of the company** – organizational/group structure, current strategic plans and annual reports etc.

- **Information regarding Board issues:** updated company's Memorandum and Articles of Association / Constitution, Minutes of the last six Board meetings, Board 's meeting schedule and Board committee meeting schedule, Description of Board procedures, Details of Board subcommittees and their terms of reference etc.

Board Policies and Procedures

Q28. WHAT ARE THE POLICIES AND PROCEDURES THAT ALLOW THE BOARD TO REGULATE/GOVERN ITSELF?

Every Board should have documented policies and procedures which allow it to govern the manner in which it fulfils its mandate. Examples of such documents include:

- Governing Legislation
- Board charter
- Committee Terms of Reference
- Communications Policy
- Code of Ethics Policy
- Corporate Governance Policy manual
- Rules governing its conduct
- By-Laws

Q29. HOW CAN THE BOARD DISMISS/DISCIPLINE A CEO?

The Chief Executive Officer is usually accountable to the Board of Directors. The assessment of the Chief Executive Officer's performance should be done through a formal evaluation process. Typically service contracts for CEOs outline the reasons and means by which a CEO may be disciplined or dismissed.

In instances where a Director /committee has concerns about the performance of the Chief Executive Officer, it should be addressed to the Chairman of the Board who should notify the Chief Executive Officer, giving the CEO an opportunity to address any specific areas of concern as well as respond to the Board .

Q30. WHAT RECORD IS KEPT OF BOARD MEETINGS?

For most items, there should be a summary of the matter discussed and the issues considered which should be reflected in the minutes taken at each Board or Committee meeting. Minutes should strike a balance between being a bare record of decisions and a full account of discussions. Final decisions taken at each meeting must be recorded clearly and concisely.

The minutes are important legal documents and also serve as important reminders of action to be taken between meetings. Attention to detail and accuracy is desirable to show that the Board has acted with due care and complied with any legal duties and obligations. Board members and the person drafting the minutes should always be mindful that, in extreme circumstances, the information could be used as evidence in litigation. Minutes are also not considered exempt under the Freedom of Information Act of Trinidad and Tobago.

In instances where a Director disagrees with any Board decision, they may ask to have their disagreement recorded in the minutes. This could be important to avoid future liability for any decision that involves a breach of law or misuse of the Board's powers.

If there is disagreement with the contents of the minutes, Directors should voice and have their objection recorded with the Chairman at the earliest convenience or at the next Board meeting when the minutes are being confirmed.

Code of Ethics

Q31. SHOULD THE BOARD CODE OF ETHICS BE SEPARATE FROM THE ORGANIZATION'S CODE OF ETHICS?

All limited liability companies should have a code of ethics which the Board subscribes to. Ethical business conduct provides strong organizational integrity, which should permeate its culture and drive its strategy, business goals, policies, and activities.

The Board should contribute to and ensures that a company code of ethics exists and is implemented. In addition to the Board code of ethics itself, companies as a whole are expected to have a written ethics code and systems to ensure that the precepts of the ethics code are being followed.

Best practice recommends that Boards write their own/separate code and to publish it internally and externally. All Directors should understand the standards of conduct under which they are evaluated and should use the Board code of ethics to inform the execution of their responsibilities. The code should be sufficiently detailed to give clear guidance and accompanied by a training program if necessary.

Board Evaluation

Q32. HOW SHOULD WE EVALUATE THE BOARD PERFORMANCE?

Best practices recommend that Board of Directors conduct a formal and rigorous annual evaluation of the company's governance practices and Board and committee effectiveness. Evaluations can be self-evaluations or externally assisted but the results of the evaluation should be discussed at the Board level.

Evaluation criteria should linked to Board and committee responsibilities and goals should be set forth in the Board charter and the governance policies. The evaluation process seeks to:

- Identify any Board weaknesses and providing the Board with an opportunity to take action to improve itself
- Allow the Board to assess the value it creates for the company and the efficiency of its internal functioning
- Act as an early warning system, which will allow changes to be implemented before problems set in
- Identify and overcome any differences among Board members

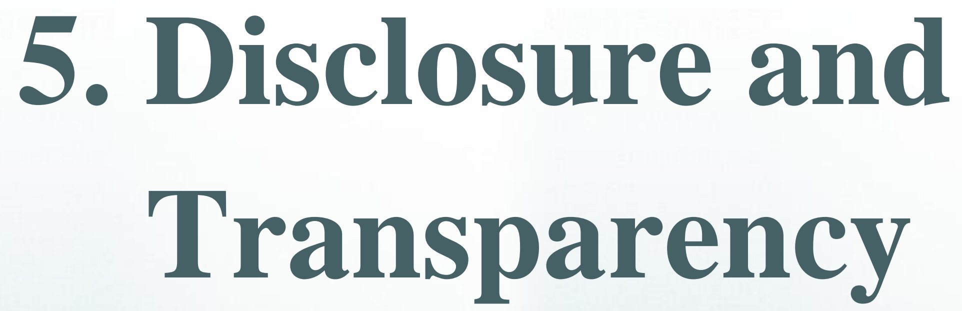
The Global Corporate Governance Forum recommends that an evaluation should have clear terms of reference for the:

- Board
- Individual Director performance

- CEO
- Chairman

A typical evaluation process is led by the Chairman, but outside experts may provide assistance. Typically the evaluation process comprises of the following steps:

1. An evaluation instrument
2. A Board presentation involving a description of the process
3. A questionnaire, which Directors complete individually and privately
4. One-on-one confidential interviews
5. Data collection and analysis
6. A presentation and Board discussion involving the development of a plan to remedy any identified deficiencies



5. Disclosure and Transparency

5. DISCLOSURE AND TRANSPARENCY

Disclosure

Q33. HOW DOES THE BOARD ENSURE DISCLOSURE AND TRANSPARENCY?

Disclosure refers to the availability of a firm's corporate governance details so as to enable relevant parties e.g. shareholders, government, the public and other stakeholders to form an opinion about how the firm's corporate governance compares to a consensus standard (national and international). This ensures that shareholders and stakeholders can monitor that their interests are protected and their voice is heard on important issues.

Disclosure requirements for Listed (private and public) Companies in Trinidad and Tobago are contained within the:

- Companies Act (Chapter 81:01, No. 35 of 1995) - E.g. *Availability and accessibility of meeting agenda as per Companies Act, Section 113(1); Material interests of senior executives and Board members as per TTSE - OECD.V.A; SOE.I.C*
- Trinidad and Tobago Stock Exchange (TTSE) disclosure rules of 2010 - E.g. *Financial and operating results as per Companies Act, Section 155; also TTSE Rule 600(4)*
- Trinidad and Tobago Securities Industries Act 1995 – E.g. *Nature, type and elements of related-party transactions as per Companies Act, Section 93(6) ;* Company objectives as per TTSEC

To ensure disclosure and transparency, the Board should by familiar with disclosure requirements are per the relevant legislation and should monitor and consider the following:

- Financial and operating results
- Company objectives
- Major share ownership and voting rights
- Remuneration policy for key executives
- Identity and qualifications of Board members
- Selection process of Board members
- Potential conflicts of interest of Board members and executives
- Which Board members are independent
- Related party transactions
- Risk factors
- Stakeholder issues
- Governance policies and structures
- Capital structures or other arrangements allowing disproportionate control of the company

Typically, Closely held and family business have lower disclosure requirements, however, some of them may find it in their interest to maintain a high level of transparency towards the public for better stakeholder relations and to increase their general level of accountability. Best practice for State Owned Enterprises is to disclose at the same level as Listed Companies. Transparency towards creditor may result in better credit terms.

Accounting Standard

Q34. How does the Board ensure compliance with international accounting standards?

OECD Principles of Corporate Governance states that "The Board should fulfil certain key functions including: …ensuring the integrity of the corporation's accounting and financial reporting systems."

Additionally, according the Global Corporate Governance Forum, the Board's financial oversight of its company's activities is required to ensure financial stewardship and provide users with the appropriate information to make decisions. While all Directors are not expected to be experts in the field of accounting and finance, the Board as a collective is responsible for the preparation, monitoring, reviewing and presentation of financial accounts.

Locally, the Companies Act does not expressly treat with accounting standards although implicit in its provisions is best practice adherence. However, the internationally accepted accounting standard for reporting is the International Financial Reporting Standards (IFRS). Closely held companies, listed companies and SOEs are all expected to be able to comply with IFRS disclosure and ensure that financial reports are compiled according to IFRS.

Typically, published financial reports are signed by the Chair and/or the CEO and Corporate Secretary. Thus, to ensure compliance with international accounting standards, all Directors should possess a broad understanding of the accounting responsibilities. In some instances, this topic may be placed as part of the curriculum for Director training to ensure that Directors who do not possess this knowledge receive the coaching or guidance on the matter. Ideally, the training should allow the entire Board to have sufficient, relevant, and current financial skills and experience so that each Director can:

a) Have a broad understanding of the accounting environment, understand accounting terminology and accounting standards, policies, and procedures, and when accounting judgments may have been applied by management
b) Know how a set of financial statements is developed, what they represent, and be able to review them
c) Know the relevant questions to ask and understand the answers given
d) Ensure the company is liquid/solvent, profitable, and performing
e) Ensure that proper and consistent accounting policies and recordkeeping processes are in place that should lead to the p provision of relevant, reliable financial information.
f) Request pertinent information from the management in a manner that is user-friendly and easily understandable.

Auditing Standard

Q35. How does the Board ensure compliance with international auditing standards?

The Companies Act does not expressly treat with auditing standards although implicit in its provisions is best practice adherence. The audit standard is International Standards of Auditing (ISA). ISA are the internationally accepted standard for the audit of financial statements. Closely held companies, listed companies and SOEs are all expected to have their financial reports audited according to ISA. (OECD.V.B; OECD.V.C; OECD.V.D).

The Global Corporate Governance Forum cites the OECD Principles of Corporate Governance and the International Organization of Securities Commissions (IOSCO) when addressing compliance with international auditing standards issues. Both parties recommend as best practice that the accountability for a company's control environment is through an independent audit committee.

The Audit Committee's attention and activities, normally encompasses:

- Business areas related to risk and the management of those risks through internal controls Internal audit functions
- External audit functions
- Review of financial statements and the annual report

To undertake its role effectively, the Audit Committee should consider how it keeps abreast of financial reporting, accounting, and other regulatory changes, and how it is assured that it is undertaking its activities in the "best" way.

To ensure compliance with international auditing standards the audit should be conducted under the independent auspices of the audit committee. While the entire Board is not required to be intimately knowledgeable about the auditing process, they should be familiar with the ISA and have general knowledge about the auditing process.

Q36. HOW CAN AUDIT INDEPENDENCE BE MAINTAINED?

According to John Plender, Columnist with the Financial Times, the "job of auditors to express an independent opinion on whether financial statements are reliable and credible. They report on the statements' compliance with the law and accounting standards". To ensure that the Audit function maintains independence, international best practice in relations to the external auditor involves:

- Selecting an auditor through an open tender under conditions satisfactory to the majority of shareowners, including the audit firm's remuneration, internal quality control procedures, and impairments or perceived impairments to the audit firm's independence
- Ensuring the auditor's independence, qualifications, expertise, resources, and effectiveness
- Having regular contact with the auditor:
    - Before the Audit to determine the scope and plan of the Audit
    - During the Audit, to consider significant issues arising
    - After the Audit, to discuss auditor recommendations and to work with the auditor to ensure constant improvement in controls, notably through the audit committee
- Evaluating the quality of auditor's work and troubleshooting any challenges
- Inviting representatives of the auditor to the general assembly
- Adopting a constructive approach to mistakes the auditor identifies.
- Disclosing the audit report through an annual report or the website
- Demanding that the external auditor issue a management letter

6. Shareholders

6. SHAREHOLDERS

One-share-one- vote

Q37. WHAT IS ONE-SHARE-ONE-VOTE?

The principle of one-share-one vote means that all shareholders are treated equally on a proportional basis to ownership. Where there are different shareholder groups, there is always the possibility that certain decisions may impact these different groups differently. The Board is responsible to all shareholders equally and it is the Board's duty to ensure that all shareholders are treated equitably.

Annual Shareholder's Meeting (AGM)

Q38. WHAT IS THE PURPOSE OF THE AGM?

The annual general meeting (AGM), also referred to as the General Shareholders Meeting (GSM), is a meeting usually required by law and/or the articles. In Trinidad and Tobago, Section 109 of the Companies Act mandates that "The Directors of a company— (a) shall call an annual meeting of shareholders not later than eighteen months after the company comes into existence, and subsequently not later than fifteen months after holding the last preceding annual meeting."

AGM should not merely be a legal formality. Rather, the meeting should be a genuine forum for discussion and for taking large decisions including the approval of the accounts, to hold the Board to account, the approval of the auditor, approval of dividends, election of Directors and enquiries regarding the directions the business will take in the future.

In general, the AGM should not be convened more than annually except under extraordinary circumstances and should not be used to make day-to-day operational decisions.

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