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

Corporate Governance

Corporate Governance
Legislative Guide

Contents

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

Types of Corporate Entities

TYPES OF CORPORATE ENTITIES

There are four types of legal structures that for-profit businesses can take that can be registered in Trinidad and Tobago. They are Sole Proprietorships, Partnerships, Limited Liability Companies and Unlimited Companies ("Unlimited" or "Unltd").[1] Most business companies are Limited Liability Companies.

Accordingly, this guide has been developed primarily for Limited Liability Companies which are sub-categorized for our purposes as (i) closely-held companies (CHC) which are non-public, (ii) listed companies (LC) which are publicly traded or (iii) state-owned enterprises (SOEs).

Limited Liability Company

Limited liability Companies are the most popular form of corporate entity in Trinidad and Tobago. There are two forms of Limited Liability Company – a company limited by shares and a company limited by guarantee. Limited Liability Companies can also be public or non-public. All state-owned enterprises (as distinct from statutory boards or state agencies) are incorporated as limited liability companies.

Limited by Shares vs Limited by Guarantee

Where a company is limited by shares, the liability of its members or shareholders is limited to the unpaid amount on issued shares. In a company limited by guarantee, the liability of members is limited to the amount they have undertaken to pay if the company is wound up.

It is more common for companies to be limited by shares than by guarantee, unless it is a not-for-profit. A non-public company can also be unlimited, where there is no limit on the members' liabilities, although these are rare.

Private and Public Limited Liability Companies

A non-public company is any company that is not a public company. There are two major differences between public and non-public companies. A public company can offer its shares to the public. Public companies are not subject to any minimum number of shares but must have an issued share capital of at least TT$4million for the First Tier Market (2012, there were 29 companies with 32 securities listed), and at least TT$2million of the Second Tier Market (2012, there were 2 companies with 2 securities listed). There is no maximum number of shares.

A non-public limited liability company is the most common form of business entity in Trinidad and Tobago. Among the Energy Chamber of Trinidad & Tobago (ECTT) the largest proportion of member companies are Closely Held Companies (CHC). The shares in 244 of ECTT's 349 (70%) companies are held by only a few individuals and are not publicly traded. The second largest category of companies are the Listed Companies (60 which represents 17%, including those listed on foreign stock exchanges), and the third largest category are State Owned Enterprises (the majority here are from Trinidad & Tobago, while two are owned by foreign governments.

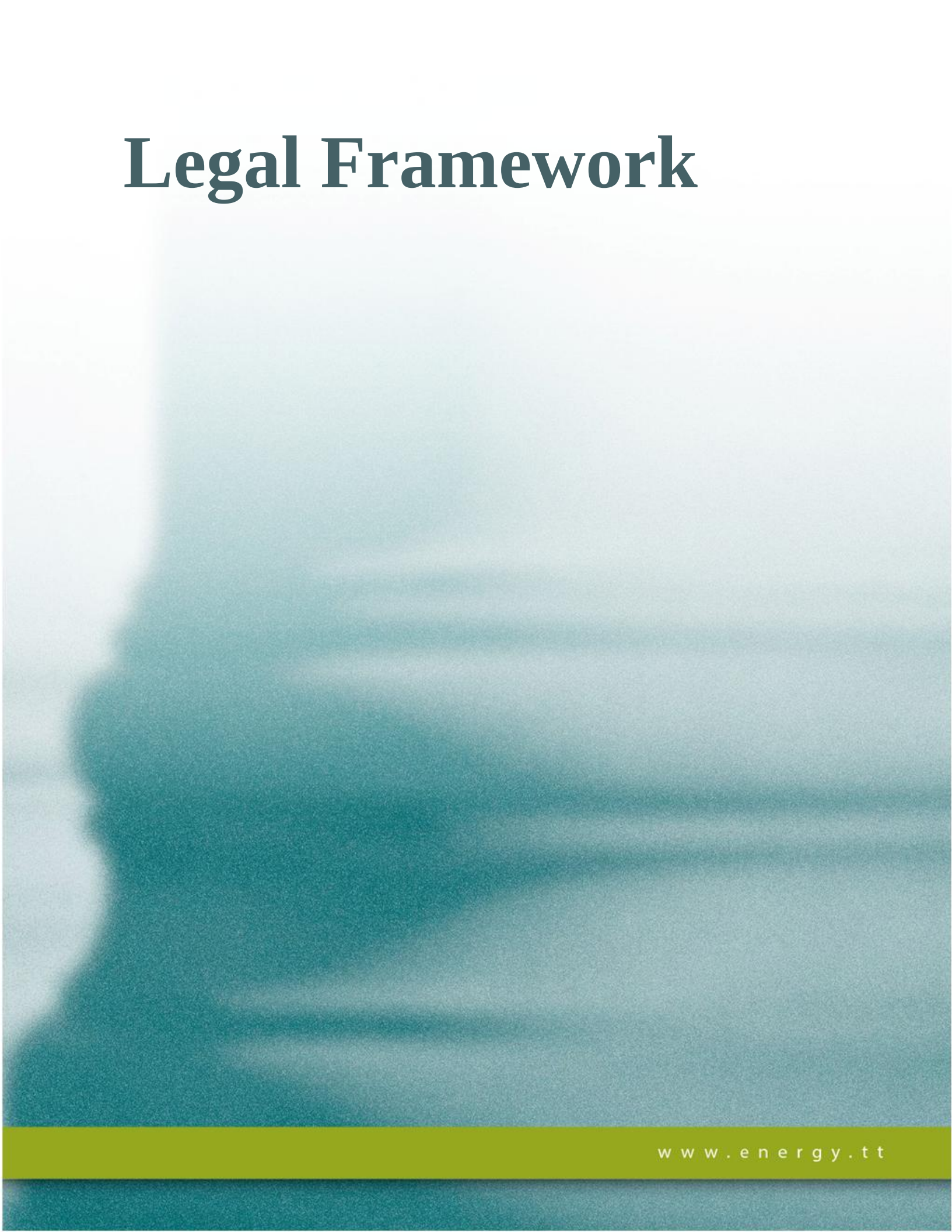
Non-public limited liability companies cannot offer their shares to the public, and must have at least one issued share, but there is no limit to the maximum number of shares a non-public company can issue.

In Trinidad and Tobago, all limited liability companies, whether public or non-public, must have a name that ends with "Limited" or "Ltd". In other jurisdictions, public liability companies may be required to have a name that ends with "Public Limited Company" or "Plc".

[1] http://www.ttconnect.gov.tt/gortt/portal/ttconnect/CitizenDetail/?WCM_GLOBAL_CONTEXT=/gortt/wcm/connect/GorTT%20Web%20Content/ttconnect/citizen/role/abusinessperson/startingabusiness/registering+a+business

http://www.investt.co.tt/doing-business/establishing-a-business

Legal Framework



LEGAL FRAMEWORK

The regulatory framework for corporate governance and directors' duties in Trinidad and Tobago comprises legislation, non-statutory rules, codes and guidelines published by the related regulatory bodies, the company's constitutional documents and case law.

Legislation

(The)Companies Act Chapter 81:01 of the Laws of Trinidad and Tobago (CA)[2]. This is the principal piece of legislation that applies to all companies incorporated in Trinidad and Tobago. Some of the provisions are equally applicable to non-Trinidad and Tobago incorporated companies that establish a place of business locally.

Securities Act, 2012[3]. This applies to companies (wherever incorporated) whose shares are listed on the Trinidad and Tobago Stock Exchange (TTSE).

Non-Statutory Rules, Codes and Guidelines

i. For Listed (Public) Companies

The Rules of the Trinidad and Tobago Stock Exchange[4] These are the rules promulgated by the TTSE for listed companies In addition to the Listing Rules, the TTSE has also issued, and may from time to time issue interpretations of the Listing Rules, practice notes and guidance materials on listing matters;

The Rules of the Trinidad and Tobago Central Depository[5]

Securities Trading Policy and Procedure Guidelines[6]

ii. For State Owned Enterprises

The State Enterprise Performance Monitoring Manual[7]

iii. Companies with a Public Accountability

Central Bank Corporate Governance Guidelines (2007)[8]

The Trinidad and Tobago National Corporate Governance Code[9] (recently launched by the Chamber of Industry and Commerce, the Trinidad and Tobago Stock Exchange and the Caribbean Corporate Governance Institute).

Company's Constitutional Documents

The Articles of Incorporation. These form the company's constitution and defines the kind of business to be undertaken (objects of the company), and the means by which the shareholders exert control over the board of directors. The Articles are a requirement for the establishment of a company under the laws of Trinidad and Tobago.

Company By-Laws. The written rules for conduct of a corporation, association, partnership or any organization should not be confused with the Articles of Incorporation which only state the basic outline of the company, including stock structure. By-laws generally provide for meetings, elections of a board of directors and officers, filling vacancies, notices, types and duties of officers, committees, assessments and other routine conduct. By-laws, are in effect a contract among members, and must be formally adopted and/or amended. More often than not, companies either do not execute or use a generic sample of the By-Laws and problems arise because of this.

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2 http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/81.01.pdf

3 http://www.ttsec.org.tt/content/The-Securities-Act,-2012.pdf

4 http://www.stockex.co.tt/website/uploads/file/TTSE%20%20Rules%20%28Updated%2006_06_11%29%283%29.pdf

5 http://www.stockex.co.tt/website/uploads/TTCD%20Rules.pdf

6 http://www.stockex.co.tt/website/uploads/Securities%20Trading%20Policy%20Guidelines.pdf

7 http://www.finance.gov.tt/content/State-Enterprises-Performance-Monitoring-Manual-2011.pdf

8 http://www.central-bank.org.tt/financial_stability/3062.pdf

9 http://www.caribbeangovernance.org/codes-guides/ttcgc/feedback

Board Composition and Remuneration of Directors

BOARD COMPOSITION AND REMUNERATION OF DIRECTORS

Structure

The laws of T&T are silent on the structure of boards. Most limited liability companies have a one-tiered or unitary board structure in place. Under the Companies Act 1995, the board directs the management of the business and affairs of the company, and directors are equally accountable for its performance. Each director has the same fiduciary duties and while responsibility for certain activities may be delegated to an individual director or a group of directors (board committees), ultimate accountability lies with the board as a whole.

Some companies, such as credit unions, typically have two-tiered or dual board structures. As per their articles and by-laws, these organizations have both a supervisory board and a management board. The management board is delegated the responsibility for the day-to-day management of the organization and is overseen by the supervisory board. The role of these boards is distinct and never overlapping. Thus, directors cannot serve on either board simultaneously. Nevertheless, as per the Companies Act, all the directors have the same obligations and fiduciary duties.

Directorships for CHC, SOE and Listed Companies vary. The appointment of directors usually has a direct correlation with the ownership of shares. Best practice recommends however, that these companies also appoint unconnected, independent non-executive directors to the board as well. The Companies Act specifies that public companies (Listed companies) are required to have at least two directors who are neither officers nor employees of the company or any of its affiliates, to serve on the board. In SOEs, directors are usually unconnected, and are appointed by the Government of Trinidad and Tobago through the Minister of Finance Corporation Sole, a statutory single person or corporate entity/office with perpetual life created by an Act of Parliament to hold the State's shares in companies.

Management

As per Section 60 (b) of the Companies Act, the board may directly or indirectly exercise the powers of the organization and shall 'direct the management of business and affairs of the company' on which they serve as a director. The parameters of board powers are usually stated in the organization's articles and/or by-laws

For companies with unitary board structures, the directors are accountable for the overall management of the organization while executives of the organization are delegated with the management of the day-today operations of the organizations. In the case of dual-tiered structures, the management board is responsible for the day-to-day operations and the supervisory board oversees their activities.

Board Members

Elected directors constitute the board. A chairman is elected from among the directors to chair meetings and ensure that the board is functioning effectively. The chair has no more power than any of the other directors, save in instances where the by-laws allow for him/her to have a casting vote on board decision in instances of deadlock.

Employee Representation

While not explicitly stated, Section 64 (1) [10] infers that companies may have directors who are employees of the company or any of its affiliates. Depending on the nature of the organization however, articles and/or by-law may stipulate whether employee representation on the board is allowed or not.

Number of Directors or Members

The Companies Act, the articles and specific governing legislature in the cases of some SOEs, make specific reference to the number of directors to serve on a board.

[10] ***Section 64. (1)*** *- A company shall have at least two directors but a public company shall have no fewer than three directors, at least two of whom are not officers or employees of the company or any of its affiliates - Companies Act Chapter 81:01*

By Section 64 (1) of the Companies Act, organizations must appoint/elect at least two directors while public companies must have a minimum of three directors. There is no legislative requirement with respect to the maximum number of directors who can serve on a board of non-public or closely held companies. For some SOEs however, the governing legislation for that particular organization may specify the maximum number of directors who can serve on a board.

Further, organizations can make specific reference to the number of directors for the respective organizations. By Section 9. (1) (e) of the Companies Act, the articles shall state the minimum and maximum number of directors. If however, the articles provide for cumulative voting, by Section 73 (a) the articles shall state the fixed number of directors required (and not a minimum/maximum number). A company's articles may increase the minimum number and may also set a maximum.

Age

The Companies Act makes reference to the minimum age requirements for directors to serve on a board. The Companies Act is silent on the maximum age limit of a director.

According to the Companies Act, section 8 (2) (a), no individual who is less than eighteen years of age is allowed to form or join in the formation of a company. Section 68 (1) and (2)[11] specify that persons excluded by Section 8 (2) may not become a director in an organization.

An organization's articles and/or by-laws can impose a minimum (higher than required by law) and maximum age restriction clause.

Nationality

There is no legislative restriction regarding the nationality of directors to serve on a board in T&T. Such restriction however, may be reflected in the organization's articles and/or by-laws.

[11] ***Section 68. (1)*** *- An individual who is prohibited by section 8(2) from forming or joining in the formation of a company shall not be a director of any company.*
(2) *When an individual is disqualified under section 69 from being a director of a company, that individual shall not, during that period of disqualification, be a director of any company*

Gender

No legislation is present which specifically discusses gender ratios of directors serving on a board. A company's articles and/or by-laws may make reference to this; however, and can impose a mandatory gender ratio for the board of directors.

Recognition of different type of Directors

Legally, the only differentiation between different types of Directors is made in the Companies Act Section 64 (1) which stipulates the presence of directors who are neither officers nor employees of the company or its affiliates, on the board of a public company, and in Section 157 (1) which stipulates that the Audit Committee must consist of not less than three Directors, the majority of which must not be officers or employees of the company or any of its affiliates.

The T&T Corporate Governance Code, directed primarily to companies with Public Accountabilities (e.g. listed companies) recognizes a difference and places great reliance on the separate role of independent, non-executive directors.

Board Composition

There are no local legislative requirements regarding the composition of a board or types of directors required to serve on a board of public limited liability companies. Sections 60(b) and 99(1) (a) and (b) the Companies Act however indicates that in order to properly and effectively discharge their obligations, a director must have the appropriate competence and skill set to direct the management of the company.

While the governing legislation for the Statutory Authorities does not make a distinction regarding the types of directors, it is not uncommon to find stipulations in the constituting legislation regarding the specific skills set and/or experience required (e.g. legal or financial background) for certain boards.

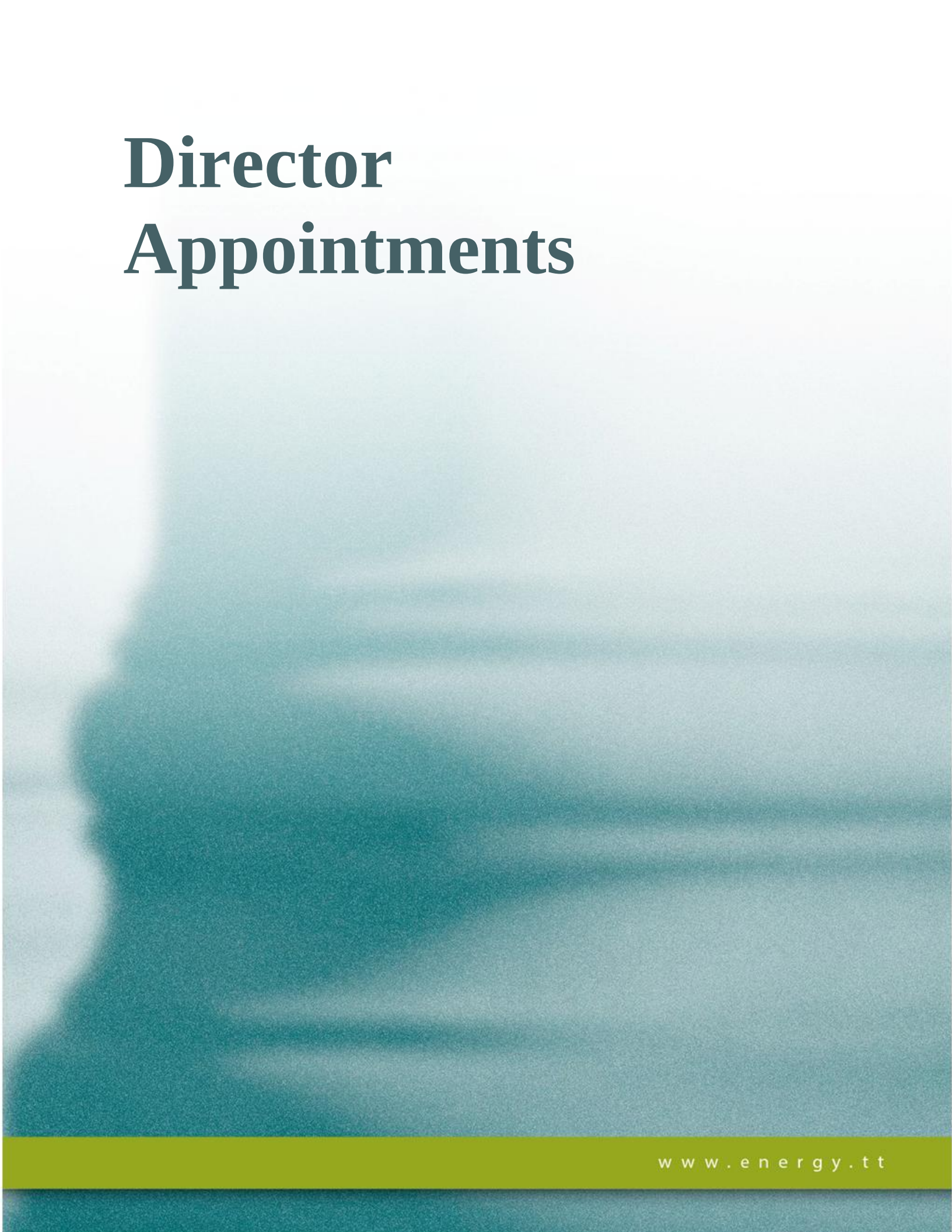
However, various sections of the Companies Act such as Section 157 (1) and 64 (1) stipulates the presence of directors who are neither officers or employees of the company or its affiliates, on the board of an organization and Rule - 106 (1) and (3) of the T&T Stock Exchange Rules makes

mention of Managing Director which suggests some level of differentiation.

Independence

The Governance Code states the board as a whole should decide whether a particular non-executive director is independent. The Governance Code indicates that a director's independence could potentially be affected by having links to the company or its advisers or employees, such as from employment, business dealings, remuneration (other than directors' fees), family, shareholder representation or long-term service as a director. If the board determines that a director is independent notwithstanding the above (or other relevant circumstances), it should state its reasons in the annual report.

Director Appointments



DIRECTOR APPOINTMENTS

Directors of a board are equally accountable under Section 60 (b) to 'direct the management of business and affairs of the company' and have the same (fiduciary) duties.

There is no legislative restriction regarding the roles of individual directors. However, since the board is equally accountable and liable and has the same (fiduciary) duties as specified in the Companies Act, the board speaks with one voice. That is, no individual director has authority to conduct any business, transaction or act on behalf of the board or organization. Authority is reflected in the minute decisions taken by the entire board whilst responsibilities to execute these decisions may be delegated to individual directors, board committees or executive management.

Additionally, international best practice recommends a division or roles between the chairman of the board and the chief executive officer (CEO), particularly in Listed Companies and SOEs. Thus, there should be a clear distinction between the responsibility of managing the board (which lies with the Chairman) and managing the day-to-day operations (which lies with the CEO) of the company.

Appointment of Directors

The Companies Act provides stipulations at the legal minimum, regarding the appointment of directors for public limited liability companies.

Sections 71, 72, 73, 75 and 77 of the Companies Act make specific reference to the appointment of directors to an organization. These are listed below:

- ***71****. (1) - At the time of delivering articles of incorporation of a company to the Registrar, the incorporators shall deliver, in the prescribed form, a notice of the names of the directors of the company; and the Registrar shall file the notice.*
- ***72.*** *(1) - A meeting of the shareholders of a company may, by ordinary resolution, elect a person to act as a director in the alternative to a director of the company, or may authorise the directors to appoint such alternative directors as are necessary for the proper discharge of the affairs of the company.*
- ***72*** *(2) - An alternate director shall have all the rights and powers of the director for whom he is elected or appointed in the alternative, except that he shall not be entitled to attend and vote at any meeting of the directors otherwise than in the absence of that other director.*
- ***72*** *(3) - Notwithstanding subsections (1) and (2), the Bye laws of a company, other than a public company, may, in relation to alternate directors, make provisions in addition to or in substitution for the provisions of subsection (1) or (2).*
- ***75*** *(3) - Subject to section 73(b) to (e), a vacancy created by the removal of a director may be filled at the meeting of the shareholders at which the director is removed, or, if the vacancy is not so filled, it may be filled pursuant to section 77.*
- ***77.*** *(1) - Subject to subsections (3) and (4), a quorum of directors of a company may fill a vacancy among the directors of the company, except a vacancy resulting from an increase in the number or minimum number of directors, or from a failure to elect the number or minimum number of directors required by the articles of the company.*
- ***77.*** *(2) - If there is no quorum of directors, or if there has been a failure to elect the number or minimum number of directors required by the articles, the directors then in office shall forthwith call a special meeting of shareholders to fill the vacancy and, if they fail to call a meeting, or if there are no directors then in office, the meeting may be called by any shareholder.*
- ***77.*** *(3) - Where the holders of any class or series of shares of a company have an exclusive right to elect one or more directors and a vacancy occurs among those directors—*
- *Then, subject to subsection (4), the remaining directors elected by that class or series may fill the vacancy except a vacancy resulting from an increase in the number or minimum number of directors for that class or series, or from a failure to elect the number or minimum number of directors for that class or series; or*
- *If there are no such remaining directors, any holder of shares of that class or series may call a meeting of the holders thereof for the purpose of filling the vacancy.*
- ***77.*** *(4) - The articles of a company may provide that a vacancy among the directors be filled only—*
    - *By a vote of the shareholders;*

  - *By a vote of the holders of any class or series of shares having an exclusive right to elect one or more directors, if the vacancy occurs among the directors elected by that class or series; or*
  - *By any other method.*
- ***71.** (4) - Directors of a company who are elected at a meeting of shareholders need not hold office for the same term.*
- ***71.** (7) - If a meeting of shareholders fails, by reason of the disqualification, incapacity or death of any candidates, to elect the number or the minimum number of directors required by the articles of the company, the directors elected at that meeting may exercise all the powers of the directors as if the number of directors so elected constituted a quorum.*
- ***71.** (8) - The articles of a company or an unanimous shareholder agreement may, for terms expiring not later than the close of the third annual meeting of the shareholders following the election, provide for the election or appointment of directors by the creditors or employees of the company or by any classes of these creditors or employees.*
- ***73.** (e)- If the number of candidates nominated for director exceeds the number of positions to be filled, the candidates who receive the least number of votes shall be eliminated until the number of candidates remaining equals the number of positions to be filled.*

For SOEs, the governing legislation for individual companies stipulates that directors be appointed by the President / Government of Trinidad and Tobago. Directors are typically elected by shareholders resolution or board decision (for filing of vacancies) for listed and closely held institutions and such provisions are usually stated in the company's articles / by-laws.

The articles / by-laws may also allow for the establishment of a Nominations committee with delegated responsibility to make recommendations for director election. It should be noted however that like all other board committees, the nomination committee does not have the authority to make decisions regarding the election of directors. This authority is reserved for the board to recommend and shareholders to decide.

Provisions are usually included in a company's articles and/or any shareholders' agreement for election of directors. Articles frequently specify that directors may be elected either by shareholder ordinary resolution or where vacancies occur, by board decision.

The Governance Code recommends that listed companies appoint a nomination committee to lead the process and make recommendations for board appointments.

Removal of Directors

Shareholders have the authority, under sections 73 – 76 of the Companies Act (shown below) to remove directors from the board by ordinary resolution at a special meeting:

- ***75.** (1) - Subject to section 73(g), the shareholders of a company may—*
  - *By ordinary resolution at a special meeting, remove any director from office; or*
  - *Where a director was elected for a term exceeding one year and is not up for re-election at an annual meeting, remove such director by ordinary resolution at that meeting.*
- ***75.** (2) - Where the holders of any class or series of shares of a company have an exclusive right to elect one or more directors, a director so elected may only be removed by an ordinary resolution at a meeting of the shareholders of that class or series of shares.*
- ***73.** (g) - a director may not be removed from office if the votes cast against his removal would be sufficient to elect him and those votes could be voted cumulatively at the election at which the same total number of votes were cast and the number of directors required by the articles were then being elected; and*
- ***76.** (f) - each director ceases to hold office at the close of the first annual meeting of shareholders following his election;*
- ***76.** (g) - a director may not be removed from office if the votes cast against his removal would be sufficient to elect him and those votes could be voted cumulatively at the election at which the same total number of votes were cast and the number of directors required by the articles were then being elected; and*
- ***76.** (h) - the number of directors required by the articles may not be decreased if the votes cast against the motion to decrease would be sufficient to elect a director and those votes could be voted cumulatively at an election at which the same total number of votes were cast and the*

number of directors required by the articles were then being elected.

- ***74.** (1) A director of a company ceases to hold office when—*
  - *he dies or resigns;*
  - *he is removed in accordance with section 75; or*
  - *he becomes disqualified under section 68 or 69.*
- ***74.** (2) The resignation of a director of a company becomes effective at the time his written resignation is served on the company or at the time specified in the resignation, whichever is later.*
- ***75.** (1) Subject to section 73(g), the shareholders of a company may—*
  - *by ordinary resolution at a special meeting, remove any director from office; or*
  - *where a director was elected for a term exceeding one year and is not up for re-election at an annual meeting, remove such director by ordinary resolution at that meeting.*
- ***75.** (2) - Where the holders of any class or series of shares of a company have an exclusive right to elect one or more directors, a director so elected may only be removed by an ordinary resolution at a meeting of the shareholders of that class or series of shares.*
- ***75.** (3) - Subject to section 73(b) to (e), a vacancy created by the removal of a director may be filled at the meeting of the shareholders at which the director is removed, or, if the vacancy is not so filled, it may be filled pursuant to section 77.*

As with the election of directors for SOEs, the removal of directors is stipulated in the respective governing legislation and reserved for the President / Government of Trinidad and Tobago.

Under the Companies Act, shareholders can remove a director by ordinary resolution although special notice (28 days) is required and the director is entitled to speak in his or her defense. A company's articles may stipulate more straightforward means of removal.

While the power to remove directors cannot be excluded, the Companies Act does not prevent the articles from granting enhanced voting rights to a director entitling him to defeat resolutions proposed to remove him.

Restrictions on Duration of Serving on a Board

By Section 71 (2), (3), (5) and (6) of the Companies Act[12], directors hold office for a period of one to three years. Supplemental to this, specific stipulations regarding the term of appointment may be found in a company's articles or by-laws such as mandatory retirement by rotation etc. For SOEs which are not Ltds., the governing legislation guides the term of appointment for directors.

The Companies Act is silent on a director's term of appointment. Instead, it is usual for restrictive provisions, such as retirement by rotation, to be included in a company's articles.

Retirement by rotation provisions is less common in Closely Held Company articles. However, larger companies typically include provisions which require initial (incorporation) board appointments to be approved by shareholders at the first annual general meeting (AGM) following the appointment and enable shareholders to

[12] ***71**. (2) - Each director named in the notice referred to in subsection (1) holds office as a director of the company from the issue of the certificate of incorporation of the company until the first meeting of the shareholders of the company.*
***71.** (3) - Subject to section 73(b), the shareholders of a company shall, by ordinary resolution at the first meeting of the company and at each following annual meeting at which an election of directors is required, elect directors to hold office for a term expiring not later than the close of the third annual meeting of the shareholders of the company following the election.*
***71.** (5) - A director who is not elected for an expressly stated term ceases to hold office at the close of the first annual meeting of shareholders following his election.*
***71.** (6) - Notwithstanding subsections (2), (3) and (5), if directors are not elected at a meeting of shareholders, the incumbent directors continue in office until their successors are elected.*
***315.** (1) The directors of a non-profit company may make Bye-laws, not being contrary to this Act or to the articles of the company, with respect to (h) the appointment, remuneration, functions, duties and removal of agents, officers and employees of the company, and the security, if any, to be given by them to the company; company, respecting*
***106.** Subject to its articles or Bye-laws or any unanimous shareholder agreement, the directors of a company may fix the remuneration of the officers and employees of the company and the shareholders in general meeting may fix the fees payable to the directors.*
***93.** (5) A director of a company who is referred to in subsection (1) shall not be present at, form part of a quorum or vote on any resolution to approve a contract in which he has an interest, unless the contract— b) is a contract that relates primarily to his remuneration as a director, officer, employee or agent of the company or an affiliate of the company*

vote on the directors' re-election when they retire by rotation, commonly every three years.

Directors employed by the Company

Local Legislation is silent on any requirements for directors to be employed by the company.

Shareholders' Inspection

The Companies Act requires that a company keep copies of every director's service contract (or, if no written contract, a memorandum of the terms) available for inspection by shareholders without charge.

Directors as Shareholders

Local legislation is silent regarding any restrictions of the owning of shares by directors of the organization.

Director's pay

Under the Companies Act, director remuneration is typically made via board decision or shareholder resolution (if stipulated in the company articles / by-laws).

When determined by the board, a Remuneration Committee may be delegated with the responsibility to recommend director remuneration. The authority to approve the director remuneration lies with the board (and typically, a director cannot vote on his/her own remuneration).

For SOEs, remuneration is guided by the State Enterprises Performance Monitoring Manual and governing legislature and approved by the President/Government of Trinidad and Tobago.

Disclosure

Transparent disclosure is one of the key elements of good corporate governance. Closely held and family business typically 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.

Listed companies are expected to disclose to relevant stakeholders and to comply with the disclosure requirements of securities regulators and stock exchanges. State Owned Enterprises are to disclose at the same level as Listed Companies.

Disclosure requirements for Listed Companies in T&T are within:

- Companies Act (Chapter 81:01, No. 35 of 1995),
- Trinidad and Tobago Stock Exchange (TTSE) disclosure rules of 2010,
- Trinidad and Tobago Securities Industries Act 1995,

Additional guidelines for SOEs are within:

- State Enterprises Performance Monitoring Manual (SEPMM) 2011

Financial and operating results as per:

- Companies Act, Section 151,155;
- TTSE Rule 600(4)

Nature, type and elements of related-party transactions as per Companies Act, Section 93(6)

Company objectives as per TTSEC

- Availability and accessibility of meeting agenda as per Companies Act, Section 113(1)
- Material interests of senior executives and board members as per TTSE

CA Section 99(4) Purpose for disclosure by director or officer of company

The benchmark of good practices in corporate governance disclosure for Public Companies was agreed to by the Inter-governmental Working Group of Experts on International Standards of Accounting Reporting (ISAR)[13] consists of fifty-one disclosure items[14] covering five subject areas.

Shareholder approval for Director Remuneration

Shareholder approval is required for director remuneration if stipulated in the articles or by-laws. For SOEs, shareholder approval is required – director remuneration must be approved by the President / Government of Trinidad and Tobago (the major shareholder).

[13] http://unctad.org/en/Pages/DIAE/ISAR/Corporate-Governance-Disclosure.aspx
[14] http://unctad.org/en/docs/iteteb20063_en.pdf

Functional Rules for Board of Directors Work

FUNCTIONAL RULES FOR BOARD OF DIRECTORS WORK

Directors' Powers

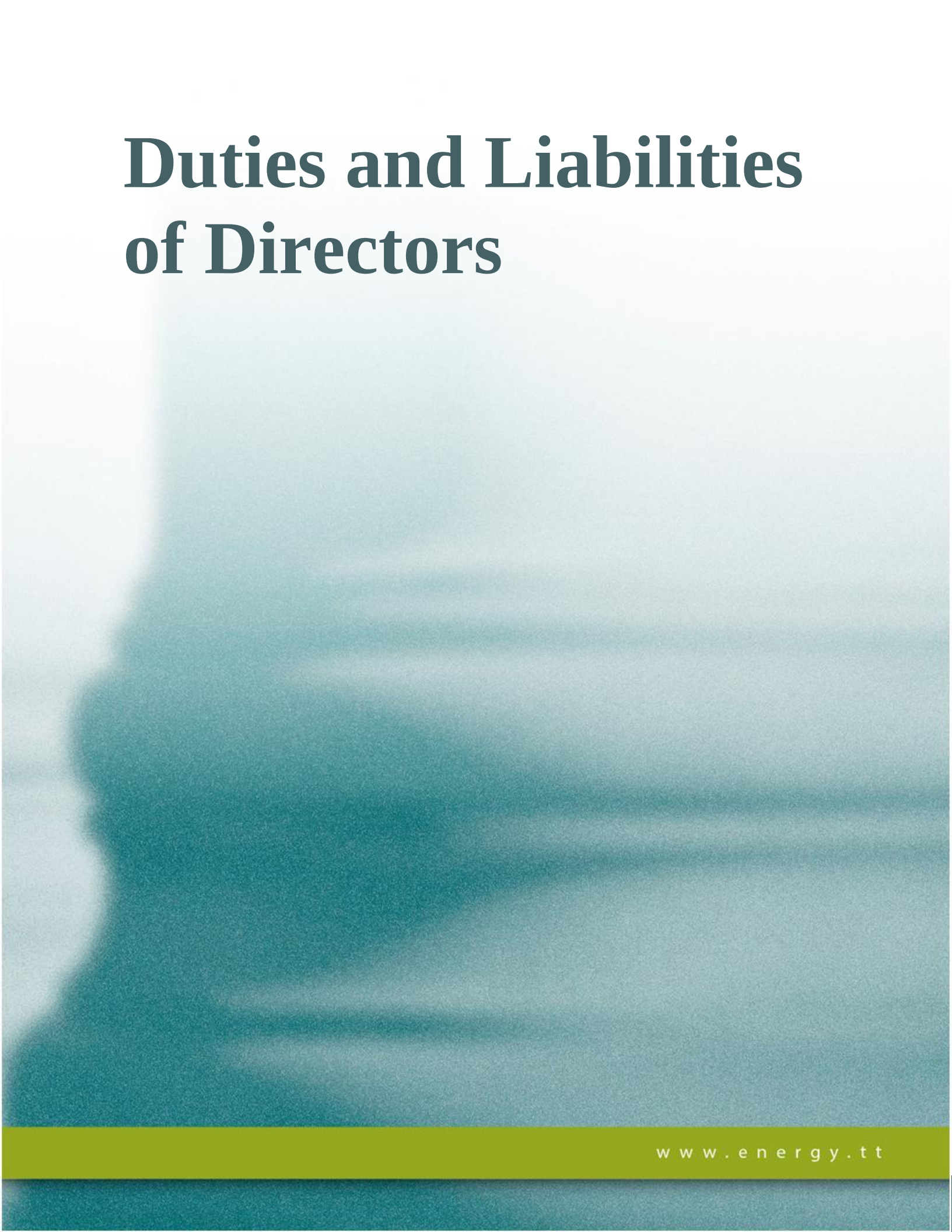
For all limited liability companies, directors may exercise all the powers of the company, unless restricted by shareholder agreements and company articles.

For institutions operating under the two-tiered system, the articles and/or by-laws typically identify the powers reserved for the management board and the powers reserved for the supervisory board.

Delegation of Responsibility

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, boards may delegate responsibility for certain activities to individual directors or committees, though they cannot delegate their ultimate responsibility. The extent to which the responsibilities may be delegated should be set out in the Articles.

Duties and Liabilities of Directors



DUTIES AND LIABILITIES OF DIRECTORS

General Duties

All directors, have three (3) principal legal duties which are often referred to, interchangeably, as fiduciary obligations:-

1. to direct the management of the business and affairs of the company [section 60 (b) of the Companies Act Chapter 81:01];
2. 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
3. to exercise the care, diligence and skill of a reasonably prudent person [section 99 (1)(b) of the Companies Act Chapter 81:01].

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.

A Director's "Duty of Loyalty" means that directors act exclusively in the interest of the company, which includes the interest of its employees as well as its shareholders and do not allow their personal, or any other singular interests to prevail. Further, this duty is in relation to the degree of care, diligence and skill that a company director is required to exercise in order not to be considered to have undertaken their legitimate duties negligently. A director need not be an expert; they only need to display the skills they reasonably can be expected to possess.

A breach of any of these duties exposes the individual Director as well as the Board to liability. The liability of a Board or of individual Directors would have to be determined by a Court of Law.

Directors of organizations registered as companies in T&T have duties to ensure that the organization is compliant with all laws of T&T. For example, directors must provide for the health, safety and welfare of their employees, customers and third parties. If a company commits a health and safety offence, an individual director may be criminally liable if the offence was committed with his consent or connivance (that is, he was aware of the circumstances but turned a blind eye), or attributable to his neglect.

Other Laws of T&T that relate to the duties and liabilities of Directors

Corporate Governance	Finance	Compliance and Regulatory
1. The Companies Act Chapter 81:01 2. Integrity in Public Life Act Chapter 22:01 (persons in public life) 3. The Prevention of Corruption Act Chapter 11:11 4. The Proceeds of Crime Act Chapter 11:27 (the Financial Regulations Obligations) 5. The Equal Opportunity Act 2001 6. The Financial Institutions Act Chapter 79:09 7. The Partnership Act Chapter 81:02 8. Unfair Contract Terms Act Chapter 82:37	1. The Insurance Act Chapter 84:01 (as amended) 2. The Income Tax Act Chapter 75:01 3. The Corporation Tax Act Chapter 75:02 4. The Value Added Tax Act Chapter 75:02 5. The National Insurance Act Chapter 32:01 6. The Securities and Industry Act No. 17 of 2012 7. The Central Bank (Amendment) Act 1994 8. The Central Tenders Board (Amendment) Act No. 39 of 1991 9. The Exchange Control Act Chapter 79:50 10. The Finance Act (Various)	1. The Financial Intelligence Unit of Trinidad and Tobago Act Chapter 72:01 2. The Anti Dumping and Countervailing Act No. 11 of 1992 3. The Adverse Trade Practices Order 2000 4. The Customs Act Chapter 78:01 5. The Data Protection Act No. 13 of 2011 6. The Financial Unit of Trinidad and Tobago Regulations 2011 7. The Economic Sanctions Act No. 15 of 1994 8. The Fair Trading Act No. 13 of 2006 9. The Negotiable Instruments (Dishonoured Cheques) Act No. 9 of 1998 10. The Moneylenders Act Chapter 84:04 11. The Regulated Industries Commission Act No. 26 of 1998 12. The Town and Country Planning Act Chapter 35:01
Health, Safety, Environment	**Labour**	**Investments**
1. The Occupational Health and Safety (Amendment) Act 2006 2. The Consumer Protection and Safety Act Chapter 82:34 3. The Environmental Management Act Chapter 35:05	1. The Industrial Relations Act Chapter 88:01 2. The Retrenchment and Severance Benefit Act Chapter 88:13 3. The Minimum Wages Act Chapter 88:04 4. The Trade Unions Act Chapter 88:02 5. The Workmen's Compensation Act Chapter 88:05	1. The Registration of Local Agents of Foreign Governments or Foreign Enterprises Act Chapter 19:08 2. The Foreign Investment Act 70:07

Limitations and Indemnification of Director Liabilities

A T&T company cannot exempt a director from liability to the company for breach of duty, negligence or other default, although shareholders may ratify such a breach.

The scope for a company to indemnify its directors is limited to[15]:

- The director's legal costs, and any court award against the director, in civil claims brought by a third party, even where the director loses.
- The director's costs in fighting civil proceedings brought by a regulator.
- The director's legal costs in criminal proceedings in which he is acquitted.

An indemnity cannot cover the following:

- Any liability the director has to the company itself.
- Legal costs in civil cases brought by the company where the final judgment goes against the director.
- Liability for fines for criminal conduct and civil fines imposed by a regulator.
- Legal costs in criminal proceedings where the director is convicted.

The purchase of indemnity and insurance for directors against negligence, default, breach of duty or breach of trust in relation to the company are permitted under the Companies Act[16] for limited liability companies. Further, both the T&T

[15] **101.** (1) Except in respect of an action by or on behalf of a company or body corporate to obtain a judgment in its favour, a company may indemnify—

(a) (b) (c) a director or officer of the company; a former director or officer of the company; or a person who acts or acted at the company's request as a director or officer of a body corporate of which the company is or was a shareholder or creditor, or his personal expenses (including an amount paid to settle an action or satisfy a judgment) reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being, or having been, a director or officer of that company or body corporate. (2) Subsection (1) does not apply unless the director or officer to be so indemnified—
(a) acted honestly and in good faith with a view to the best interests of the company; and *(b)* in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that his conduct was lawful.

102. A company may with the approval of the Court indemnify a person referred to in section 101 in respect of an action—
(a) by or on behalf of the company or body corporate to obtain a judgment in its favour; and
(b) to which he is made a party by reason of being or having been a director or an officer of the company or body corporate,
against all costs, charges and expenses reasonably incurred by him in connection with the action, if he fulfils the conditions set out in section 101(2).

103. Notwithstanding anything in section 101 or 102, a person described in section 101 is entitled to indemnity from the company in respect of all costs, charges and expenses reasonably incurred by him in connection with the defence of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being, or having been, a director or officer of the company or body corporate, if the person seeking indemnity—
(a) was substantially successful on the merits in his defence of the action or proceeding;
(b) fulfilstheconditionssetoutinsection101(2);and
(c) is fairly and reasonably entitled to indemnity.

104. A company may purchase and maintain insurance for the benefit of any person referred to in section 101 against any liability incurred by him—
(a) in his capacity as a director or officer of the company, except where the liability relates to his failure to act honestly and in good faith with a view to the best interests of the company; or
(b) in his capacity as a director or officer of another body corporate where he acts or acted in that capacity at the company's request, except where the liability relates to his failure to act honestly and in good faith with a view to the best interests of the company.

105. (1) A company or person referred to in section 101 may apply to the Court for an order approving an indemnity under section 102 or 103; and the Court may so order and make any further order it thinks fit.
(2) An applicant under subsection (1) shall give the Registrar notice of the application; and the Registrar may appear and be heard in person or by an Attorney-at-law.
(3) Upon an application under subsection (1), the Court may order notice to be given to any interested person; and that person may appear and be heard in person or by an Attorney-at-law.

[16] ***Section 104.*** *A company may purchase and maintain insurance for the benefit of any person referred to in section 101 against any liability incurred by him—*
in his capacity as a director or officer of the company, except where the liability relates to his failure to act honestly and in good faith with a view to the best interests of the company; or
in his capacity as a director or officer of another body corporate where he acts or acted in that capacity at the company's request, except where the liability relates to his failure to act honestly and in good faith with a view to the best interests of the company.

Stock Exchange Rules[17] and the T&T Central Depository Participant Agreement[18] make stipulations in this regard as well. Criminal and civil fines and penalties cannot be covered.

Liability of "de facto" Directors

The Companies Act contains no clear definition of the term "director", merely stating that it includes "any person occupying the position of a director, by whatever name called". The fundamental determinant of a director is not whether he has been duly elected but whether he assumes the status and functions of a director.

A *de facto* director is someone who acts as a director without having been duly elected or who continues to act after his appointment has ceased. The general duties of directors are owed by a *de facto* director in the same way as a properly elected director.

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[17] *Stock exchange **Rule - 109** Indemnity Insurance*
Every member shall to the satisfaction of the Exchange effect appropriate policies of insurance for the purpose of indemnifying itself against any liability that may be incurred as a result of any act or omission of any of its officers or employees.

[18] *T&T Central Depositary Participant Agreement: Rule 1.15.2 - Indemnity by Participant: Each Participant shall indemnify and hold harmless TTCD, and all other Participants, and their respective partners, directors, trustees, officers, employees and agents, from and against any loss, damage, cost, expense, liability or claim (including without limitation legal costs to advise on or defend against such claims) suffered or incurred by or made against it, them or any of them arising from.*
T&T Central Depositary Participant Agreement: Rule 1.15.3 Each Participant shall indemnify and hold harmless each indemnified person from and against any indemnified claim made against such indemnified Person by any Person if the indemnified claim relates to (i) Securities held by TTCD for the Participant or (ii) any action taken or omitted by TTCD with respect to Securities held for the Participant at the time such action is taken or omitted.

Transactions with Directors and Conflicts

TRANSACTIONS WITH DIRECTORS AND CONFLICTS

The **Companies Act,** the **State Enterprise Performance Monitoring Manual (SEPMM)** and the **Integrity in Public Life Act (IPLA)** all give guidance to Directors about how they need to deal with situations in which they are conflicted.

The **Companies Act** gives the following guidance:

93. (1) A director or officer of a company—

a. who is a party to a material contract or proposed material contract with the company; or
b. who is a director or an officer of any body, or has a material interest in any body, that is a party to a material contract or proposed material contract with the company, shall disclose in writing to the company or request to have entered in the minutes of meetings of directors the nature and extent of his interest.

(2) The disclosure required by subsection (1) shall be made, in the case of a director of a company—

a. at the meeting at which a proposed contract is first considered;
b. if the director was not then interested in a proposed contract, at the first meeting after he becomes so interested;
c. if the director becomes interested after a contract is made, at the first meeting after he becomes so interested; or
d. if a person who is interested in a contract later becomes a director of the company, at the first meeting after he becomes a director.

(3) The disclosure required by subsection (1) shall be made, in the case of an officer of a company who is not a director—

a. forthwith after he becomes aware that the contract or proposed contract is to be considered, or has been considered, at a meeting of directors of the company;
b. if the officer becomes interested after a contract is made, forthwith after he becomes so interested; or
c. if a person who is interested in a contract later becomes an officer of the company, forthwith after he becomes an officer.

(4) If a material contract or a proposed material contract is one that, in the ordinary course of the company's business, would not require approval by the directors or shareholders of the company, a director or officer of the company shall disclose in writing to the company, or request to have entered in the minutes of meetings of directors, the nature and extent of his interest forthwith after the director or officer becomes aware of the contract or proposed contract.

(5) A director of a company who is referred to in subsection (1) shall not be present at, form part of a quorum or vote on any resolution to approve a contract in which he has an interest, unless the contract—

a. is an arrangement by way of security for money loaned to, or obligations undertaken by him, for the benefit of the company or an affiliate of the company;
b. is a contract that relates primarily to his remuneration as a director, officer, employee or agent of the company or an affiliate of the company;
c. is a contract for indemnity or insurance under sections 101 to 105; or
d. is a contract with an affiliate of the company.

(6) Any contract referred to in subsection (1) together with all circumstances relevant thereto shall be reported to the shareholders not later than on the distribution of the next financial statements.

94. For the purposes of section 93, a general notice to the directors of a company by a director

or an officer of the company declaring that he is a director or officer of, or has a material interest in, another body, and is to be regarded as interested in any contract with that body is a sufficient declaration of interest in relation to any such contract.

95. A material contract between a company and one or more of its directors or officers, or between a company and another body of which a director or officer of the company is a director or officer, or in which he has a material interest, is neither void nor voidable—

a. by reason only of that relationship; or
b. by reason only that a director with an interest in the contract is present at, or is counted to determine the presence of a quorum at, a meeting of directors or a committee of directors that authorised the contract, if the director or officer disclosed his interest in accordance with section 93(2), (3) or (4) or section 94, as the case may be, and the contract was approved by the directors or the shareholders and was reasonable and fair to the company at the time it was approved.

96. When a director or officer of a company fails to disclose, in accordance with section 93 or 94, his interest in a material contract made by the company, the Court may, upon the application of the company or a shareholder of the company, set aside the contract on such terms as the Court thinks fit.

Securities Act: **97.** (1) The Commission may prescribe standards for
the conduct of a registrant in relation to a client or
investor to prevent—
(a) a conflict of interest; or
(b) any other conduct that would enable a registrant to treat a client or investor unfairly.

98. (1) A registrant under section 51 shall not recommend a trade in a security to any client unless—

a. he has reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry as to his investment objectives, financial situation and needs, or on any other information known to the registrant; and
b. he discloses in writing to any such person all conflicts of interest or potential conflicts of interest that he has, or may have, in respect of the security or the issuer of the security, including any conflict or potential conflict of interest arising from—
    i. his holding of securities of the issuer as beneficial owner;
    ii. any compensation arrangement with any person;
    iii. his acting as underwriter in any distribution of securities of the issuer in the three years immediately preceding; or
    iv. any direct or indirect financial or other interest in the security or the issuer of the security held by the registrant.

99. A person who contravenes section 91, 92, 93, 94, 95, 96 or 98 commits an offence and is liable on conviction on indictment to a fine of two million dollars and imprisonment for five years.

Restrictions on transactions between a Director and Company

56. (1) When circumstances prejudicial to the company exist, the company or any company with which it is affiliated shall not, directly or indirectly, give financial assistance by means of a loan, guarantee or otherwise—

- to a shareholder, director, officer or employee of the company or affiliated company, or to an associate of any such person for any purpose

The **State Enterprise Performance Monitoring Manual (SEPMM)** has given the following guidance:

b. Conflict of Interest. Any director, officer and employee of the Company who is a
Related Party to a person submitting an offer or has an interest in a company, firm or partnership or other body, or individual submitting an offer for the supply of Materials or Works and/or Services which is the subject of consideration by the Company shall be required to disclose such interest as specified in the State Enterprises Performance Monitoring Manual and Section 29 (1) of the Integrity in Public Life Act 2000, and shall not take part in the consideration or discussion of the offer, nor vote on any consideration concerning such offer.

Any director, officer and employee of the Company is prohibited from:

i. Directly or indirectly establishing an improper business relationship with any bidder for his/her own personal benefit or the benefit of the bidder or any other person;
ii. Directly or indirectly influencing or seeking to influence the tendering process to further his/her own interest and/or the interest of the bidder or any other person;
iii. The obligation not to take part in the consideration or discussion of neither offer, nor vote on any consideration concerning such offer shall be binding for a period of two (2) years from the date such director, officer or employee ceases to have an interest.

2.2.6.2 The Members of the Board. Refraining from participating in decisions where conflict of interest is involved. All interests of Directors must be disclosed on appointment to the Board;

The **IPLA** gives the following guidance:

Section 29. (1) For the purposes of this Act, 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/her 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/her private interests or that of a member of his/her family or of any other person.
(2) Where there is a possible or perceived conflict of interest, a person to whom this Part applies, shall disclose his/her interest in accordance with prescribed procedures and disqualify himself/herself from any decision-making process.

269. (1**)** No person may be appointed as trustee if there is a conflict of interest between his role as trustee and his role in any other capacity.

269. (2) For the purposes of subsection (1), there is a conflict of interest where a person is an officer or employee, or a shareholder of the company issuing the debentures. Within ninety days after a trustee becomes aware that a material conflict of interest exists in his case, the trustee shall—

- eliminate the conflict of interest; or
- resign from office.

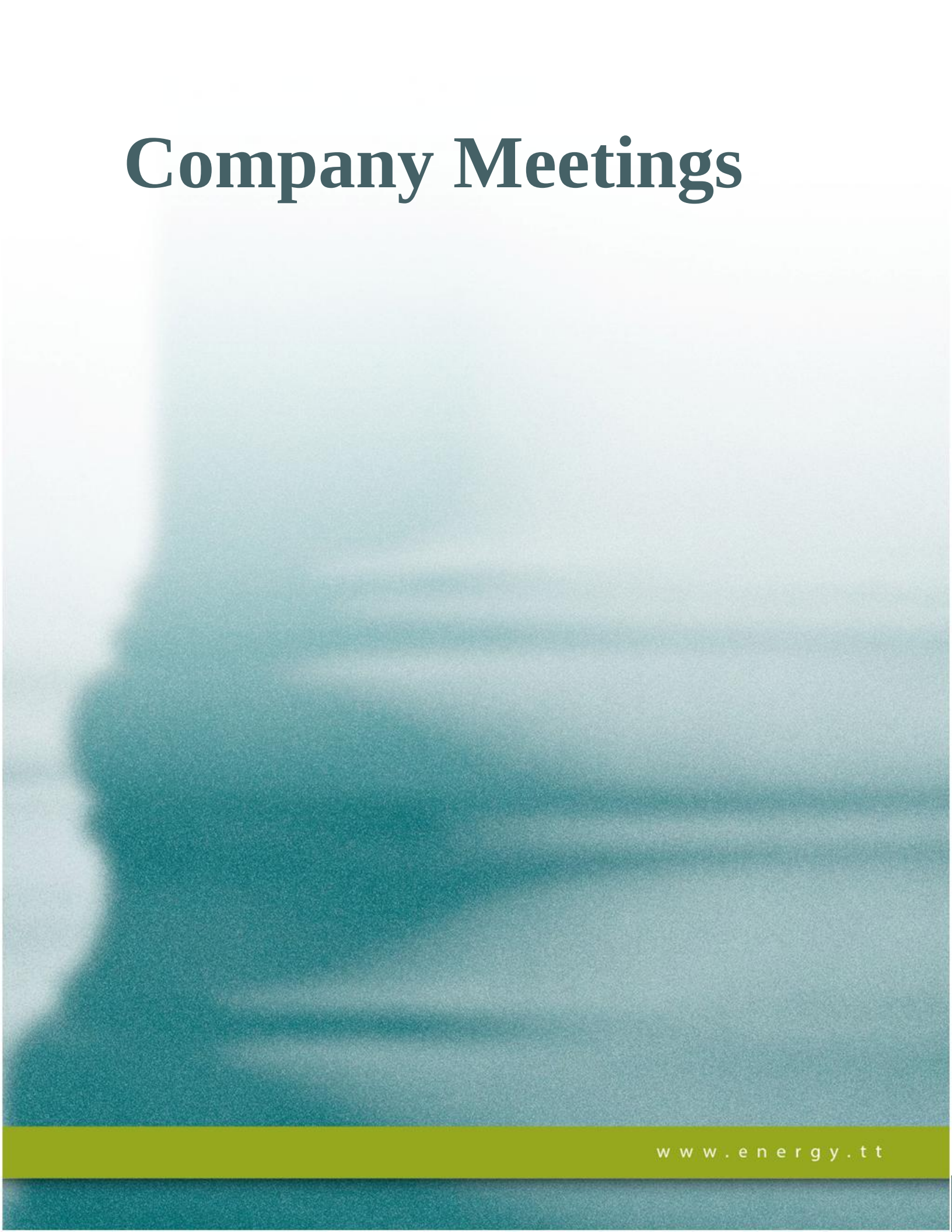
A trust deed, any debentures issued thereunder and a security interest effected thereby are valid notwithstanding a material conflict of interest of the trustee.
If the trustee is appointed contrary to subsection (1) or continues as a trustee contrary to subsection (3), any interested person may apply to the Court for an order that the trustee be replaced; and the Court may make an order on such terms as it thinks fit.

278. A trustee under a trust deed in exercising his powers and discharging his duties shall—

a. act honestly and in good faith with a view to the best interests of the holders of the debentures issued under the trust deed; and

b. exercise the care, diligence and skill of a reasonably prudent trustee.

Company Meetings



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COMPANY MEETINGS

The annual meeting (AM)/ Annual General Meeting (AGM), also referred to as the General Shareholders Meeting (GSM), is a meeting required by law and is usually provided for in the By-Laws. 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."

The AM 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 AM should not be convened more than annually except under extraordinary circumstances and should not be used to make day-to-day operational decisions.

Audit Requirements

AUDIT REQUIREMENTS

A company's annual accounts must be audited except in three cases, namely where:

- **All** the shareholders of a non-public company resolve to dispense with an auditor until its next Annual Meeting (Section 164). Public companies and a number of other entities (those with financial obligations (loans) and other regulated industry companies e.g. insurance, banks, oil & gas etc.) are excluded from this exemption.
- The company is dormant for the year, that is, it had no accounting transaction required to be entered in its accounting records.
- The company is a subsidiary company that fulfils certain criteria, including obtaining unanimous shareholder approval and a parent company guarantee of all its liabilities.

In the latter two cases, shareholders with at least 10% in nominal value of the company's shares can nonetheless require an audit.

Appointment of Auditors

Under the Companies Act[19], Auditors of CHCs and listed companies are typically appointed by the board of directors via a decision or an ordinary resolution at the Annual Meeting /special meeting, if required by the company's articles, for a period of 1 year.

State Enterprises are no longer required to appoint the Auditor General as their Auditor unless required under the relevant statute of incorporation or if so desired. Auditors are appointed at an AGM with prior approval of the Corporation Sole.

The Companies Act provides the following guidance with regards to the Appointment of Auditors:

- **157**. (4) The auditor of a company is entitled to receive notice of every meeting of the audit committee and, at the expense of the company, to attend and be heard thereat; and, if so requested by a member of the audit committee, shall attend every meeting of the committee held during the term of office of the auditor.
- **157**. (5) The auditor of a company or a member of the audit committee may call a meeting of the committee.
- **158.** (1) A person is eligible for appointment as auditor of a company only if he—
    a. is a practising member of a recognised supervisory body; and
    b. is eligible for the appointment under the rules of that body.
- **158**. (2) An individual or a firm may be appointed as auditor of a company, but a company or other body corporate shall not be so appointed, unless there is in force in relation to that company or body corporate a policy of insurance which covers liability in respect of professional negligence on terms and to an amount satisfactory to the Commission.
- **158**. (3) In this section, "recognised supervisory body" means the Institute of Chartered Accountants of Trinidad and Tobago and such other body as the President may, by Order, designate.
- **159.** (1) The Minister may, after consultation with the Institute of Chartered Accountants of Trinidad and Tobago, authorise, by instrument in writing, any person to be appointed as an auditor of companies, if that person is in the opinion of the Minister

[19] *67. (1) After the issue of a certificate of incorporation of a company, a meeting of the directors of the company shall be held at which the directors may—*
- *(e) unless a special meeting is called to pass a resolution pursuant to section 164, appoint an auditor to hold office until the first annual meeting of shareholders;*

163. (1) Subject to section 164, the shareholders of a company shall, by ordinary resolution, at the first annual meeting of shareholders and at each succeeding annual meeting, appoint an auditor to hold office until the close of the next annual meeting.
163. (2) An auditor appointed under section 67(1)(e) is eligible for appointment under subsection (1).
163. (3) Notwithstanding subsection (1), if an auditor is not appointed at a meeting of shareholders, the incumbent auditor continues in office until his successor is appointed.

suitably qualified for such an appointment by reason of his knowledge and experience, provided that such appointment shall not be for a period exceeding one year at a time.

- 159. (2) A person who was in practice in Trinidad and Tobago as an auditor on the commencement of this Act shall apply for an authorisation to be appointed as an auditor of companies under subsection (1) not later than twelve months after the commencement of this Act.
- **161.** (1) Subject to subsection (5), a person or a partnership is disqualified from being an auditor of a company if he or any of the partners, as the case may be, is not independent of the company, any of its affiliates, or the directors or officers of any such company or its affiliates.
- 161. (2) For the purposes of this section—
    a. independence is a question of fact; and
    b. a person is deemed not to be independent if he or his business partner—
        i. is a business partner, a director, an officer or an employee of the company, of any of its affiliates, or of any director, officer or employee of any such company or its affiliates;
        ii. beneficially owns or controls directly or indirectly a material interest in the shares or debentures of the company or any of its affiliates; or
        iii. has been a receiver, receiver-manager, liquidator or trustee in bankruptcy of the company or any of its affiliates within two years of his proposed appointment as auditor of the company.
- 161. (3) An auditor who becomes disqualified under this section shall, subject to subsection (5), resign forthwith after becoming aware of his disqualification.
- 161. (4) An interested person may apply to the Court for an order declaring an auditor to be disqualified under this section and the office of auditor to be vacant.
- 161. (5) An interested person may apply to the Court for an order exempting an auditor from disqualification under this section and the Court may, if it is satisfied that an exemption would not unfairly prejudice the shareholders, make an exemption order on such terms as it thinks fit, which order may have retrospective effect.
- **162.** (1) No person shall act as auditor of a company if he is disqualified from holding the office.
- 162. (2) If during his term of office an auditor of a company becomes disqualified from holding the office, he shall thereupon vacate office and shall forthwith give notice in writing to the company concerned that he has vacated it by reason of ineligibility.
- 162. (3) A person who acts as auditor of a company in contravention of subsection (1) or fails to give notice of vacating his office as required by subsection (2) is guilty of an offence.
- **163.** (4) The remuneration of an auditor may be fixed by ordinary resolution of the shareholders, or if not so fixed, it may be fixed by the directors.
- **164.** (1) The shareholders of a company, other than a company mentioned in section 156(1), may resolve not to appoint an auditor.
- **164.** (2) A resolution under subsection (1) is valid only until the next succeeding annual meeting of shareholders.
- **164.** (3) A resolution under subsection (1) is not valid unless it is consented to by all the shareholders, including shareholders not otherwise entitled to vote.
- **165.** (1) An auditor of a company ceases to hold office when—
    - he dies or resigns; or
    - he is removed pursuant to section 166.
- **165.** (2) A resignation of an auditor becomes effective at the time a written resignation is sent to the company, or at the time specified in the resignation, whichever is the later date.
- **166.** (1) The shareholders of a company may, by ordinary resolution at a special meeting, remove an auditor other than an auditor appointed by the Court under section 168.

- **166.** (2) A vacancy created by the removal of an auditor may be filled at any meeting at which the auditor is removed, or, if the vacancy is not so filled, it may be filled under section 167.
- **167.** (1) Subject to subsection (3), the directors shall forthwith fill a vacancy in the office of auditor.
- **167.** (2) If there is not a quorum of directors, the directors then in office shall, within twenty-one days after a vacancy in the office of auditor occurs, call a special meeting of shareholders to fill the vacancy; and if they fail to call a meeting, or if there are no directors, the meeting may be called by any shareholder.
- **167.** (3) The Bye-laws of a company may provide that a vacancy in the office of auditor be filled only by vote of the shareholders.
- **167.** (4) An auditor appointed to fill a vacancy holds office for the unexpired term of his predecessor.
- **168.** (1) If a company does not have an auditor, the Court may, upon the application of—
    a. a shareholder;
    b. the Commission, in the case of a public company; or
    c. the Registrar, in the case of any other company, appoint and fix the remuneration of an auditor, and the auditor holds office until an auditor is appointed by the shareholders.
- **168.** (2) Subsection (1) does not apply if the shareholders have resolved under section 164 not to appoint an auditor.
- **169.** The auditor of a company is entitled to receive a notice of every meeting of the shareholders of the company, and, at the expense of the company, to attend and be heard at the meeting on matters relating to his duties as auditor.
- **170.** (1) If a shareholder of a company, whether or not he is entitled to vote at the meeting, or a director of a company gives written notice to the auditor of the company or a former auditor who was engaged in the auditing of the financial statements to be considered at such meeting not less than ten days before a meeting of the shareholders of the company, to attend the meeting, the auditor or former auditor, as the case may be, shall attend the meeting at the expense of the company and answer questions relating to his duties as auditor or former auditor of the company.
- **170.** (2) A shareholder or director who sends a notice referred to in subsection (1) shall, concurrently, send a copy of the notice to the company.
- **170.** (3) An auditor or former auditor of a company who fails without reasonable cause to comply with subsection (1) is guilty of an offence.
- **171.** (1) An auditor who—
    a. resigns;
    b. receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing him from office;
    c. receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed to fill the office of auditor, whether because of the resignation or removal of the incumbent auditor or because his term of office has expired or is about to expire; or
    d. receives a notice or otherwise learns of a meeting of shareholders at which a resolution referred to in section 164 is to be proposed, may submit to the company a written statement giving the reasons for his resignation or the reasons why he opposes any proposed action or resolution.
- **171.** (2) When it receives a statement referred to in subsection (1), the company shall forthwith send a copy of the statement to every shareholder entitled to receive notice of any meeting referred to in section 169 and to the Registrar, unless the statement is included in, or attached to, a management proxy circular required by section 144.
- **171.** (3) No person shall accept an appointment or consent to be appointed as auditor of a company if he is replacing an auditor who has resigned, been removed or whose term of office has expired or is about to expire until he has requested and received from that auditor a written statement of the

circumstances and the reason why, in that auditor's opinion, he is to be replaced.

- **171.** (4) Notwithstanding subsection (3), a person otherwise qualified may accept an appointment or consent to be appointed as auditor of a company if, within fifteen days after making the request referred to in that subsection, he does not receive a reply.
- **171.** (5) Unless subsection (4) applies, an appointment as auditor of a company of a person who has not complied with subsection (3) is void.
- **172.** (1) An auditor of a company shall make the examination that is in his opinion necessary to enable him to report in the prescribed manner on the financial statements required by this Act to be placed before the shareholders, except such financial statements or parts thereof that relate to the immediately preceding financial year referred to in section 151(1)*(a)*(ii).
- **172.** (2) Notwithstanding section 173, an auditor of a company may reasonably rely upon the report of an auditor of a body corporate or an unincorporated business the accounts of which are included in whole or in part in the financial statements of the company.
- **172.** (3) For the purpose of subsection (2), reasonableness is a question of fact.
- **172.** (4) Subsection (2) applies whether or not the financial statements of the holding company reported upon by the auditor are in consolidated form.
- **173.** (1) Upon the demand of an auditor of a company, the present or former directors, officers, employees or agents of the company shall furnish to the auditor—
    a. such information and explanations; and
    b. such access to records, documents, books, accounts and vouchers of the company or any of its subsidiaries, as are, in the opinion of the auditor, necessary to enable him to make the examination and report required under section 172 and that the directors, officers, employees or agents are reasonably able to furnish.
- **173.** (2) Upon the demand of an auditor of a company, the directors of the company shall—
    a. obtain from the present or former directors, officers, employees or agents of any subsidiary of the company the information and explanations that the directors, officers, employees and agents are reasonably able to furnish, and that are, in the opinion of the auditor, necessary to enable him to make the examination and report required under section 172; and
    b. furnish the information and explanations so obtained to the auditor.
- **174.** (1) A director or an officer of a company shall forthwith notify the audit committee and the auditor of any error or misstatement of which he becomes aware in a financial statement that the auditor or a former auditor of the company has reported upon.
- **174.** (2) When the auditor or a former auditor of a company is notified or becomes aware of an error or misstatement in a financial statement upon which he has reported to the company and, in his opinion, the error or misstatement is material, he shall inform each director of the company accordingly.
- **174.** (3) When under subsection (2) the auditor or a former auditor of a company informs the directors of an error or misstatement in a financial statement of the company, the directors shall—
    a. prepare and issue revised financial statements; or
    b. Otherwise inform the shareholders of the error or misstatement, and, if the company is one that is required to comply with section 156, inform the Registrar and, in the case of a public company the Commission, of the error or misstatement in the same manner as the directors inform the shareholders of the error or misstatement.

The SEPMM provides the following guidance with regards to the Audit Committee of the Board:

2.2.6.3 The Audit Committee of the Board

Every State Enterprise is required to appoint an Audit Committee. It shall be composed of a minimum of two (2) non-executive directors and other independent Company professionals.
The Minister of Finance may appoint other independent professionals to the Committee.

2.2.6.1

The Chairman shall not be a member of the Audit Committee or Tenders Committee of the Company.
The Audit Committee is appointed by the Board to assist it in monitoring:

a. the periodic financial reports and other financial information provided by the Company to management, any governmental body or the public;
b. the Company's systems of internal controls regarding finance, accounting, legal, compliance and ethics that management and the Board have established; and
c. The Company's auditing, accounting and financial reporting processes generally.

The committee's primary duties and responsibilities are to:

a. Serve as an independent and objective party to monitor the Company's periodic financial reports and internal control system;
d. (ii) Review and appraise the audit efforts of the Company's Statutory Auditors and Internal Audit;
e. (iii) Provide an open avenue of communication among the Statutory Auditors, financial and senior management, the Internal Audit Department, and the Board of Directors and
f. (iv) To act in a consultative capacity to the Board in respect of those activities throughout the Company that give rise to credit, market and liquidity risks; to be fully apprised of these risks; to recommend general risk management strategies to govern these activities; to re-evaluate regularly the risk exposure to the Company, its risk tolerance and the established strategies to control risk exposure

In order to remove an Auditor prior to an AM/AGM, a Special Meeting of the shareholders must be called. The shareholders must be given twenty-one (21) days notice of this meeting and the notice must state the nature of the business to be discussed in sufficient details. A majority of the votes cast by the shareholders is sufficient to remove an Auditor. The Auditor is entitled to receive notice of every Meeting, which includes a Meeting to remove him / her as an Auditor

Company Secretary Role in Corporate Governance

COMPANY SECRETARY ROLE IN CORPORATE GOVERNANCE

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, and who has a key role in the administration of the Board and critical corporate matters. The Corporate Secretary is often a confidante and counselor to the Chief Executive Officer, members of the Board, and other members of senior management, especially on corporate governance matters.

Section 61. (1) of the Companies Act states that "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 By-laws of a company for the appointment, in accordance with that provision; and

b. may be an individual, a body corporate or a firm."

In addition to the parameters outlined in the Companies Act[20], general responsibilities of the corporate secretary usually include:

a. The Secretary sees to it that the board follows correct procedures and that the board complies with its legal and statutory obligations.
b. The Secretary 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. The Secretary is 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 Secretary is secretary to the Board and its Committees and an officer of the company.

A key responsibility of the Secretary is to ensure that Board members have the proper advice and resources for discharging their fiduciary and statutory duties under the law. A Secretary also is responsible for ensuring that the records of the Board's actions reflect the proper exercise of those fiduciary duties. The Secretary also provides advice on corporate governance issues and is responsible for the Company's corporate governance policies.

[20] ***61.*** *(2) If a company carries on business for more than one month without complying with subsection (1), the company and every officer of the company who is in default is guilty of an offence.*

62. *(1) Anything required or authorised to be done by or in relation to the secretary, may, if the office is vacant, or if for any other reason the secretary is unable to act, be done by or in relation to any assistant secretary or, if the assistant secretary or secretaries are unable to act, by or in relation to any officer of the company authorised generally or specially in that behalf by the director or directors of the company.*

62. *(2) A provision requiring or authorising a thing to be done by or in relation to a director and the secretary is not satisfied by its being done by or in relation to the same person acting both as director and as, or in the place of, the secretary.*

63. *(1) The directors of a public company shall take all reasonable steps to ensure that each secretary and assistant secretary of the company is a person who appears to the directors to have the requisite knowledge and experience to discharge the functions of a secretary of a public company.*

63. *(2) For the purpose of this section, a person—*

a. who, on the commencement date, held the office of secretary, assistant secretary or deputy secretary of a public company;

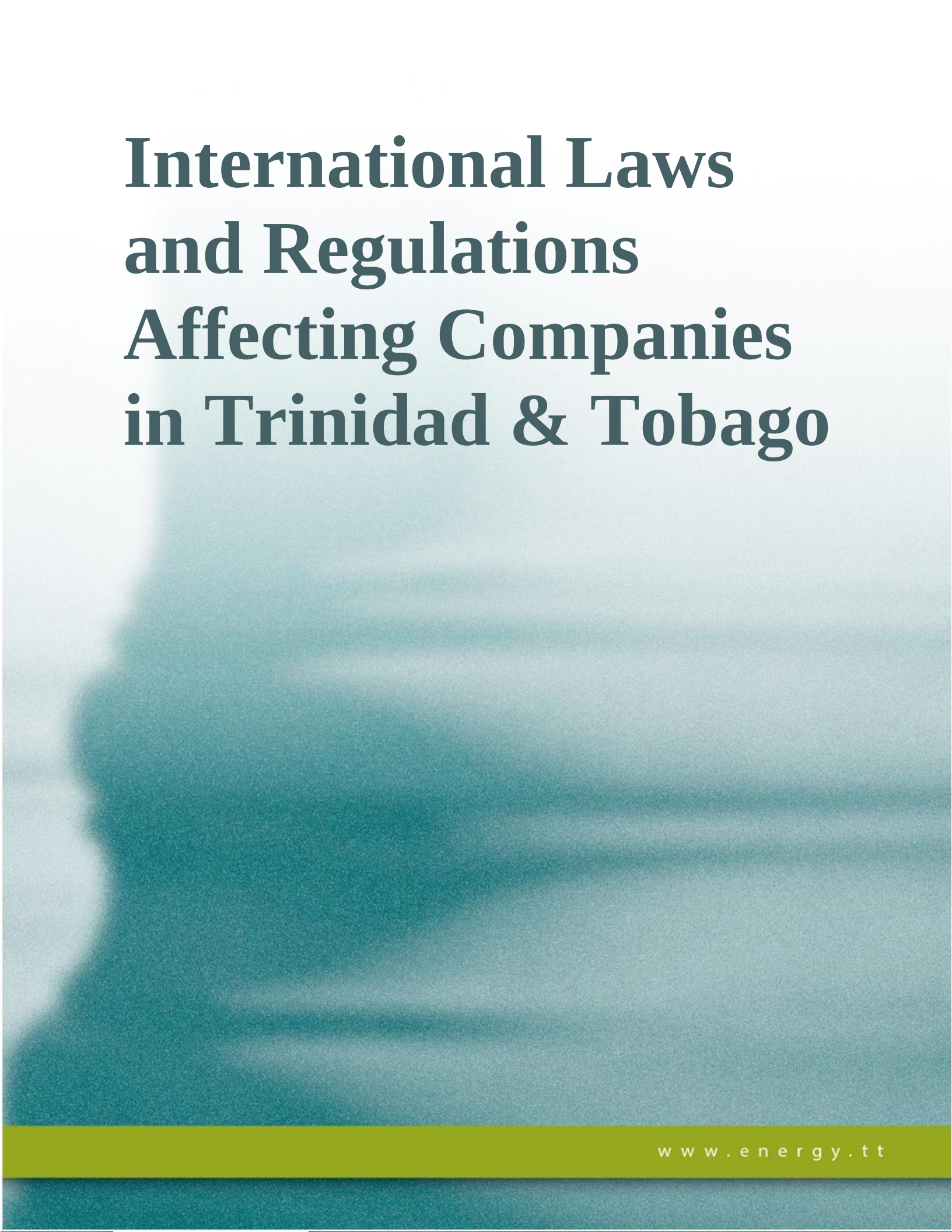
b. who, for at least three years of the five years immediately preceding his appointment as secretary, held the office of secretary of a public company;

c. who is a member in good standing of the Institute of Chartered Accountants of Trinidad and Tobago, the Association of Chartered Secretaries and Administrators of Trinidad and Tobago or the Chartered Institute of Public Finance and Accountancy;

d. who is an Attorney-at-law; or

e. who, by virtue of his holding or having held any other position or having been a member of any other body, appears to be capable of discharging the functions of a secretary of a public company, may be assumed by a director of a public company to have the requisite knowledge and experience to discharge the functions of a secretary or assistant secretary of a public company, if the director does not know otherwise.

International Laws and Regulations Affecting Companies in Trinidad & Tobago



www.energy.tt

INTERNATIONAL LAWS AND REGULATIONS AFFECTING COMPANIES IN T&T

Since companies in Trinidad & Tobago, particularly in the Energy Sector, work with companies that are registered or also doing business in the USA, Canada, and United Kingdom, it is important for Directors of Trinidad & Tobago companies to be aware of and knowledgeable about the implications of the three Anti-Bribery and/or Anti-Corruption legislations of those jurisdictions.

USA: The Foreign Corrupt Practices Act (FCPA):

- the actual Act is available here: http://www.justice.gov/criminal/fraud/fcpa/statutes/regulations.html
- Guidance published by the Department of Justice is available here: http://www.justice.gov/criminal/fraud/fcpa/guide.pdf

Canada: Corruption of Foreign Public Officials Act (CFPOA)

- The act is available here: http://laws-lois.justice.gc.ca/eng/acts/C-45.2/index.html
- Link to the Canadian Criminal Code: http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html

United Kingdom: Bribery Act 2010 (UKBA):

- The act is available here: http://www.legislation.gov.uk/ukpga/2010/23/contents

Three main questions regarding Foreign Anti-Bribery & Anti-Corruption Legislation

Q1: *To which companies or persons in T&T do these pieces of legislation apply?*

A: All foreign listed or registered companies, their local "third party" agents, consultants, distributors – or under UK legislation anyone who "performs a service" on behalf of an organization (including individuals).

Q2: *What causes an offence?*

A: Generally speaking giving bribes (directly or indirectly), under UK legislation also receiving a bribe.

Q3: *How is this relating to Corporate Governance for ECTT members or Companies in T&T more generally?*

A: Understanding own risks and that of partners, preparing proactively by being able to share information that would be required in Third Party Due Diligence process, and being prepared to ask same questions of your own partners. Also developing compliance programs and policies to mitigate risks.

A comparison of the different Anti-Corruption Legislation is provided in the following table.

Anti-Corruption Legislation Comparison

Provision	Foreign Corrupt Practices Act - United States (September 1977, amend 1998)	Corruption of Foreign Public Officials Act - Canada (July 2009)	UK Bribery Act - UK (April 2010, enforceable from 1 July 2011)
Who is being bribed	Only bribes paid or offered to foreign public officials are prohibited.	Only bribes paid or offered to foreign public officials are prohibited.	• Prohibits bribes paid to any person to induce them to act, including private individuals and companies • Prohibits payments intended to influence persons in their capacity as FPOs to obtain or retain business
Nature of Advantage obtained	Payments are made to "obtain or retain business".	Payments are made to "obtain or retain an advantage in the course of business"	Focus is on the improper action, rather than the business reason.
Nature of Bribe	Only the act of paying or offering to pay the bribe, rather than receipt/acceptance, is prohibited.	Only the act of paying or offering to pay the bribe, rather than receipt/acceptance, is prohibited.	Prohibits both the payment/offer to pay and/or receipt of bribes.
Fines and penalties	• Both Civil and Criminal proceedings; • Bribery: for individuals – up to 5 years imprisonment and fines up to $250,000; for entities – up to $2 million; • Books and records/internal control violations: individuals – up to 20 years imprisonment and fines up to $5 million; for entities – fines up to $25 million	• Criminal Proceedings only; • Imprisonment of up to 5 years, and unlimited potential fines.	• Criminal proceedings or civil settlement by negotiation with Serious Frauds Office; • For individuals, up to 10 years imprisonment and unlimited fines; for entities, potentially unlimited fines. • Companies banned from working with EU public entities

Personal Liability	Strict liability only under accounting provisions for public companies (failure to maintain adequate systems of internal controls). The FCPA gives authorities the jurisdiction to charge individuals.	Does not specifically address Personal Liability	• Strict liability of corporate offense for failure of a commercial organization to prevent bribery. • Directors and senior executives will be personally criminally liable if their organisation participated in bribery with their (implied or direct) consent.
Facilitating Payments	Provides exception to bribes for payment to a foreign official to expedite or secure the performance of a routine government action	Provides exception to bribes for payment to a foreign official to expedite or secure the performance of a routine government action	Does not provide for exceptions - Includes facilitation payments to speed up routine governmental actions
Jurisdiction	• U.S. companies and citizens; • Foreign companies listed on the U.S. stock exchange; and, • Any person acting while in the U.S.	Only applies when the bribery has a "real and substantial" connection to Canada (presence, action or effect in Canada) • The involvement of a Canadian parent or subsidiary is generally sufficient to trigger the application of the Act.	• Individuals who are UK nationals or are ordinarily resident in the UK; • Companies that are established in the UK (regardless of where the offense takes place) • Companies that conduct some part of their business in the UK • Foreign companies employing UK citizens.
Books and records provisions	Requires that companies "make and keep books, records and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer."	Does not address accounting issues.	The UK Companies Act legislation requires that companies maintain appropriate accounting records that would reveal corruption.

Summary of Major Differences Between FCPA, CFPOA, and UKBA

- There is an accounting provision in the FCPA that requires detailed accounting records be kept and an adequate system of internal accounting controls to be in place. There is no such provision in the UKBA as it is already covered by the UK Companies Act. There is also no such provision in the CFPOA.
- Under the FCPA and the CFPOA, a company can still be held liable for the wrong-doing of an employee even if there is a strong compliance program in place. However, such a program can influence how charges are handled (under the FCPA, for example, matters may be resolved through non prosecution agreement.) Under the UKBA, a strong compliance program can be used as a defense in the event that an associated person commits an offence.
- The UKBA covers all bribery, not just those that involve public officials.
- The UKBA makes no exception for facilitation payments ("grease payments") made to expedite routine governmental actions.
- The UKBA makes it a corporate offence to fail to prevent bribery.
- The UKBA makes it an offence not only to give but also to receive a bribe.

Implications for Corporate Governance by Directors of T&T Companies

- Companies that are acting as Third Parties to companies registered or doing business in USA, UK, or Canada should reduce their own risk and that of the companies for whom they are Third Parties.
- The Board of Directors of a company is accountable for ensuring that the organization is working in an ethical, lawful, and professional way. Directors must establish all the limits within which the organization must operate and ensure that anyone who does work for or on behalf of the company is compliant with the limits set by them.
- In order for a Board of Directors to be able to fulfill its function it must:

  (1) Understand its Role; (2) Be composed of the appropriate people; (3) undertake the appropriate activities in the appropriate kind of way; (4) disclose the appropriate matters to the right people; (5) and ensure that the owner's rights are respected.
- Even more practically, the BOD must ensure that the company knows it's partners and their relative risk profile well, that their own company documents their own processes – particularly in relation to contracts, qualifications, & payments – and that their own company is ready to reciprocate compliance programmes of their partners or that they ask their partners to reciprocate theirs.

Guidance on FCPA Due Diligence

Agents, consultants, distributers are all "Third Parties",

- Department of Justice and SEC found "Third Parties" to be commonly used to conceal the payment of bribes to foreign officials in international business transactions. Risk-based due diligence is particularly important with third parties and will also be considered by DOJ and SEC in assessing the effectiveness of a company's compliance program.
- T&T Directors need to understand what is involved and work together with their partners.

The following are the components of a Third Party Due Diligence assessment[21]

[21] Source: http://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf page 61

Partner Relationships

Qualifications & Red Flags

As part of risk-based due diligence, companies should **understand the qualifications** and **associations** of its third-party partners, including its business reputation, and relationship, if any, with foreign officials. The degree of scrutiny should increase as red flags surface.

Ongoing monitoring of relationship

Companies should undertake some form of ongoing monitoring of third-party relationships. Where appropriate, this may include updating compliance programs and due diligence periodically, exercising audit rights, providing periodic training, and requesting annual compliance certifications by the third party.

Document Specifics

Business Rationale – role, contract, payment

Companies should have an understanding of the business rationale for including the third party in the transaction. Among other things, the company should understand the role of and need for the third party and ensure that the contract terms specifically describe the services to be performed. Additional considerations include payment terms and how those payment terms compare to typical terms in that industry and country, as well as the timing of the third party's introduction to the business. Moreover, companies may want to confirm and document that the third party is actually performing the work for which it is being paid and that its compensation is commensurate with the work being provided.

Compliance Program

Reciprocal compliance program

In addition to considering a company's due diligence on third parties, DOJ and SEC also assess whether the company has informed third parties of the company's compliance program and commitment to ethical and lawful business practices and, where appropriate, whether it has sought assurances from third parties, through certifications and otherwise, of reciprocal commitments. These can be meaningful ways to mitigate third-party risk.

Guidance for Compliance Programmes[22]

- The Department of Commerce's International Trade Administration has published *Business Ethics: A Manual for Managing a Responsible Business Enterprise in Emerging Market Economies*, and the Department of State has published *Fighting Global Corruption: Business Risk Management*.

- Most notably, the OECD's 2009 Anti-Bribery Recommendation and its Annex II, *Good Practice Guidance on Internal Controls, Ethics, and Compliance*, published in February 2010, were drafted based on consultations with the private sector and civil society and set forth specific good practices for ensuring effective compliance programs and measures for preventing and detecting foreign bribery.

- In addition, businesses may wish to refer to the following resources:
    - Asia-Pacific Economic Cooperation—*Anti- Corruption Code of Conduct for Business*;
    - International Chamber of Commerce—*ICC Rules on Combating Corruption*;
    - Transparency International—*Business Principles for Countering Bribery*;
    - United Nations Global Compact—*The Ten Principles*;
    - World Bank—*Integrity Compliance Guidelines*; and
    - World Economic *Forum*—*Partnering Against Corruption–Principles for Countering Bribery*.

[22] Source: http://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf page 63

Appendix

Legal and Statutory Compliance Requirements for Companies

[All section references are to the Companies Act Chapter 81:01]

- By **Sections 8-19** you are required to inform the Registrar of changes in the Company's name, structure and Articles of Incorporation.

- By **Section 12** you are the Custodian of the Certificate of Incorporation/Continuance

- By **Section 28(1)** your Company may specifically empower you by a Power of Attorney to execute Deeds on its behalf.

- By **Section 29(1)** you are the Custodian of the Company Seal.

- By **Section 35(1)** you are required to ensure that the Company maintains a separate account called "a stated capital account" for each class and series of shares issued.

- By **Section 37 (4)** you are required to amend the Articles of Incorporation before a new share issue if this is different from what is prescribed in the Articles.

- By **Sections 37(4) and 52(2)** you are required to make changes in the Articles of Incorporation to permit new different share issues, types or amounts.

- By **Section 52(2)** if different shares are being issued from what is prescribed in the Articles you must obtain the Registrar's Certificate of Amendment to the Articles of Incorporation.

- By **Section 56(2)** you are required to ensure that no illicit loans are made by Company to Shareholders, Directors, Officers, Employees or associated person if circumstances prejudicial to the Company exist.

- By **Section 66(2)** you are required to ensure that any new or amended By Laws are submitted to the Shareholders at the next meeting for confirmation, amendment or rejection;

- By **Section 67(1)** you are required, after the issue of a Certificate of Incorporation, to have an organizational meeting of the Directors to:-

  - make by-laws
  - adopt share certificates
  - authorize issue of shares
  - appoint offices [by virtue of **Section 97**]
  - Appointment of Auditor
  - Banking Transactions

  It is generally agreed that this applies *mutatis mutandis* in respect of a Certificate of Continuance.

- By **Section 71(1)** you are required to deliver Notices of Changes of Directors to the Companies Registry.

- By **Section 80(1)** Directors should be advised:-

  - of the next meeting of the Board of Directors;

  - that they can delegate their function to the Managing Director or Committees provided it is approved by the Board and subject to the Company's By Laws except the following matters:-

    - Matters requiring approval of Shareholders.
    - Vacancy of Directors or Auditors
    - Issue of Shares/Purchasers
    - Dividends
    - Financial Statements
    - Amendments of By Laws

  - of the need to disclose their interest in Contracts (**Section 93(1)**) and when the disclosure should be made (**S.93(2)**) [at first meeting or as soon as he becomes interested].

  - To prepare a Declaration of Interest Form

- By **Section 81** if you are the "Incorporator" of the Company you are now entered as a *member* of the Company.

- By **Section 86(2)** you are required to keep all Resolutions of Directors and Shareholders together with Minutes of Board Meetings and Shareholder meetings.

- By **Section 93(1)** Directors who have a material interest in or is party to a Contract must disclose this in writing or it must be entered in the minutes.

- By **Section 113** notice must be provided to the Shareholders of the AM not less than 10 days and not more than 50 days prior to the AM.

- By **Section 125(1)** a list of Shareholders in alphabetical order is required.

- By **Section 126** shareholders are allowed to examine a list of Shareholders at the registered office of the Company or where the Register of Shareholders is kept.

- By **Section 138(1)** the sale, lease or exchange of Company property (other than in the course of ordinary business) requires Shareholder's approval.

- By **Section 153** the Financial Statements of the Company's subsidiaries, the accounts of which are consolidated with the Company's, are to be kept at the registered office.

- By **Section 157(1)** Minutes of the Audit Committee's Meetings to be kept.

- By **Section 169** Notices to the Audit Committee of its Meetings to be sent.

- By **Section 172** the Company must maintain at its registered office the following documents:-

  - Articles of Incorporation / Certificate of Continuance
  - By Laws
  - Shareholder's Agreement
  - Minutes of Meetings
  - Resolutions
  - Copies of various Notices
  - Register of Members, Directors & Shareholders
  - Record of Trustees

- By **Section 178(1)** a register of Directors and Secretaries to be maintained.

- By **Section 187(2)** Accounting records and Minutes to be maintained.

- By **Section 190** Directors and Shareholders to have access to the Company's records.

- By **Section 263** a copy of every instrument requiring registration as a Charge to be kept at the registered office.

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