



The **Energy Chamber**  
of Trinidad & Tobago  
[www.energy.tt](http://www.energy.tt)



## Corporate Governance Maturity Framework Guide



# CONTENTS

<b>Background</b>	<b>7</b>
Improving Corporate Governance	7
The Corporate Governance Maturity Framework	8
<b>How to Use this Guide</b>	<b>10</b>
<b>I. Roles</b>	<b>13</b>
1. DIVISION OF ROLES	15
2. DUTY OF CARE	17
3. DUTY OF LOYALTY	19
<b>II. Board Composition</b>	<b>21</b>
4. APPROPRIATE BOARD COMPOSITION	23
5. CHOOSING DIRECTORS	25
6. INDEPENDENCE FOR OVERSIGHT	27
7. NUMBER OF DIRECTORS	29
<b>III. Board Tasks</b>	<b>31</b>
8. DIRECTING, DELEGATING & MONITORING	33
9. RISK OVERSIGHT & AUDIT COMMITTEE	35
10. INTERNAL AUDIT	37
11. CONFLICT OF INTEREST	39
12. COMPLIANCE FUNCTION	41
13. WHISTLE-BLOWER POLICY	43
<b>IV. Board Process</b>	<b>45</b>
14. SEPARATION OF CHAIRMAN AND CEO	47
15. FREQUENCY OF MEETINGS	49
16. INDUCTION	51
17. BOARD CHARTER & COMMITTEE TERMS OF REFERENCE	53
18. CODE OF ETHICS	55
19. EVALUATION	57
<b>V. Disclosure and Transparency</b>	<b>59</b>
20. DISCLOSURE	61
21. ACCOUNTING STANDARD	63
22. AUDITING STANDARD	65
<b>VI. Shareholders</b>	<b>67</b>
23. ONE-SHARE-ONE-VOTE	69
24. ANNUAL GENERAL MEETING	71
<b>References</b>	<b>72</b>
<b>Appendix 1</b>	
<b>Highlights of Corporate Governance Best Practice Guides</b>	<b>74</b>



## LIST OF ACRONYMS

<b>CA</b>	Companies Act Chapter 81:01	<b>ISA</b>	International Standards of Auditing
<b>CCGI</b>	Caribbean Corporate Governance Institute	<b>IFC</b>	International Finance Corporation
<b>CHC</b>	Closely Held Company	<b>LC</b>	Listed Company
<b>ECTT</b>	Energy Chamber of Trinidad and Tobago	<b>OECD</b>	Organization of Economic Co-operation and Development
<b>ECODA</b>	European Confederation of Directors' Associations	<b>PSOJ</b>	Private Sector Organization of Jamaica
<b>FCPA</b>	Foreign Corrupt Practices Act	<b>SEPM</b>	State Enterprises Performance Monitoring Manual
<b>GCGF</b>	Global Corporate Governance Forum	<b>SOE</b>	State Owned Enterprises
<b>ICGN</b>	International Corporate Governance Network	<b>TTCCG</b>	Trinidad and Tobago Corporate Governance Code
<b>IPLA</b>	Integrity in Public Life Act	<b>TTSE</b>	Trinidad and Tobago Stock Exchange
<b>IFRS</b>	International Financial Reporting Standards	<b>UNCTAD</b>	United Nations Conference on Trade and Development

## LEGISLATIVE REFERENCES

### Corporate Governance

The Companies Act Chapter 81:01  
 Integrity in Public Life Act Chapter 22:01 (persons in public life)  
 The Prevention of Corruption Act Chapter 11:11  
 The Proceeds of Crime Act Chapter 11:27 (the Financial Regulations Obligations)  
 The Equal Opportunity Act 2001  
 The Financial Institutions Act Chapter 79:09  
 The Partnership Act Chapter 81:02  
 Unfair Contract Terms Act Chapter 82:37

### Finance

The Insurance Act Chapter 84:01 (as amended)  
 The Income Tax Act Chapter 75:01  
 The Corporation Tax Act Chapter 75:02  
 The Value Added Tax Act Chapter 75:02  
 The National Insurance Act Chapter 32:01  
 The Securities and Industry Act No. 17 of 2012  
 The Central Bank (Amendment) Act 1994  
 The Central Tenders Board (Amendment) Act No. 39 of 1991  
 The Exchange Control Act Chapter 79:50  
 The Finance Act (Various)

### Compliance and Regulatory

The Financial Intelligence Unit of Trinidad and Tobago Act Chapter 72:01  
 The Anti-Dumping and Countervailing Act No. 11 of 1992

The Adverse Trade Practices Order 2000  
 The Customs Act Chapter 78:01  
 The Data Protection Act No. 13 of 2011  
 The Financial Unit of Trinidad and Tobago Regulations 2011  
 The Economic Sanctions Act No. 15 of 1994  
 The Fair Trading Act No. 13 of 2006  
 The Negotiable Instruments (Dishonoured Cheques) Act No. 9 of 1998  
 The Moneylenders Act Chapter 84:04  
 The Regulated Industries Commission Act No. 26 of 1998  
 The Town and Country Planning Act Chapter 35:01

### Health, Safety, Environment

The Occupational Health and Safety (Amendment) Act 2006  
 The Consumer Protection and Safety Act Chapter 82:34  
 The Environmental Management Act Chapter 35:05

### Labour

The Industrial Relations Act Chapter 88:01  
 The Retrenchment and Severance Benefit Act Chapter 88:13  
 The Minimum Wages Act Chapter 88:04  
 The Trade Unions Act Chapter 88:02  
 The Workmen's Compensation Act Chapter 88:05

### Investments

The Foreign Enterprises Act Chapter 19:08  
 The Foreign Investment Act 70:07

### International Laws

**USA:** The Foreign Corrupt Practices Act (FCPA) and Foreign Account Tax Compliance Act (FATCA)

**Canada:** Corruption of Foreign Public Officials Act (CFPOA)

**United Kingdom:** Bribery Act 2010 (UKBA)



# Background

## Improving Corporate Governance

In 2011 The Energy Chamber of Trinidad and Tobago (ECTT) 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 practice references include the OECD Principles of Corporate Governance, the OECD Guidelines on 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 (in press). See Appendix 1.

The **ECTT Corporate Governance Maturity Framework** was developed to provide this guidance in Corporate Governance practices firstly to member companies of the Energy Chamber of Trinidad and Tobago and secondly to the business community of Trinidad and Tobago.

Following the OECD Principles of Corporate Governance, 2nd Edition, 2004 (p.11) we adopt the definition:

*“Corporate governance involves a set of relationships between a company’s management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined. Good corporate governance should provide proper incentives for the board and management to pursue objectives that are in the interests of the company and its shareholders and should facilitate effective monitoring.”*

In its Principles of Corporate Governance, The OECD has stated:

*“Together with guiding corporate strategy, the board is chiefly responsible for monitoring managerial performance and achieving an adequate return for shareholders, while preventing conflicts of interest and balancing competing demands on the corporation.”*

The maturity framework, grounded in international best practice and customized for the Trinidad and Tobago context addresses the specific corporate governance practices relevant to three (3) types of organizations:

1. Closely Held Company<sup>1</sup>(CHC),
2. Listed Company<sup>2</sup> (LC) or
3. State Owned Enterprise<sup>3</sup> (SOE).

This **Corporate Governance Maturity Framework** will provide the essential guidance for the Directors, Board Members, CEOs and Senior Managers of these organizations as they work towards a higher level of best practice maturity in corporate governance.

### OTHER GUIDES IN THIS SERIES INCLUDE:

- ☒ Orientation guide for new directors
- ☒ Corporate governance - frequently asked questions
- ☒ Corporate governance – legislative guide

- 1 Private: Majority of shares are held by one or a few owners.
- 2 Companies listed on a stock exchange.
- 3 Organizations where the Government of the Republic of Trinidad and Tobago has controlling interest.



## The Corporate Governance Maturity Framework

The Corporate Governance Maturity Framework (see Figure 1) provides an understanding of your performance on the following **six (6) key areas** of corporate governance based on applicable legislation and most widely accepted international principles.

- I. Board Roles
- II. Board Composition
- III. Board Tasks
- IV. Board Processes
- V. Disclosure and Transparency
- VI. Relations with Shareholders

Each key area is further defined by **twenty four (24) corporate governance indicators**. The framework is customised for three ownership structures i.e. Closely Held Companies, Listed Companies and State Owned Enterprise.

Each of the 24 indicators is structured at four (4) levels of maturity providing a clear path for Chairmen, Directors and CEO's to move from basic compliance with legal requirements (Level 1) to advanced governance practices (Level 4).

The maturity levels are defined as follows:

### **LEVEL 1: Complying with legal baseline.**

This level speaks to legal requirements related to the specific indicator (within the jurisdiction of Trinidad and Tobago).

### **LEVEL 2: Understanding needs to professionalise corporate governance.**

At this level an organization has understood the benefits associated with this governance dimension and has developed a formal procedure to address it.

### **LEVEL 3: Significant concrete steps.**

At this level there is evidence that the organization has acted on or implemented the formalised governance procedures of Level 2

### **LEVEL 4: Advanced governance practice.**

At this level the organization has mastered the corporate governance practices.

The Corporate Governance Self- Assessment Tool (go to [www.energy.tt](http://www.energy.tt)) uses this framework to provide companies with a clear understanding of current maturity levels, while this guide can be used to better understand the factors involved in moving to the next level.

**FIGURE 1 Corporate Governance Maturity Framework**



## **I. Roles**

1. Division of Roles
2. Duty of Care
3. Duty of Loyalty



## **II. Board Composition**

4. Appropriate Composition
5. Choosing Directors
6. Independence of Oversight
7. Number of Directors



## **III. Board Tasks**

8. Directing, Delegating, & Monitoring
9. Risk Oversight & Audit Committee
10. Internal Audit
11. Conflict of Interest
12. Compliance Function
13. Whistle-Blower Policy



## **IV. Board Processes**

14. Separation of Chairman and CEO
15. Frequency of Meetings
16. Induction
17. Board Charter & Committee TOR
18. Code of Ethics
19. Evaluation



## **V. Disclosure and Transparency**

20. Disclosure
21. Accounting Standard
22. Auditing Standard



## **VI. Shareholders**

23. One-Share-One-Vote
24. Annual General Meeting

# How to Use this Guide

This framework guide is designed primarily for Chairmen, Directors and CEO's of Closely Held Companies, Listed Companies or State Owned Enterprise who are interested in moving their organization towards best practice in corporate governance.

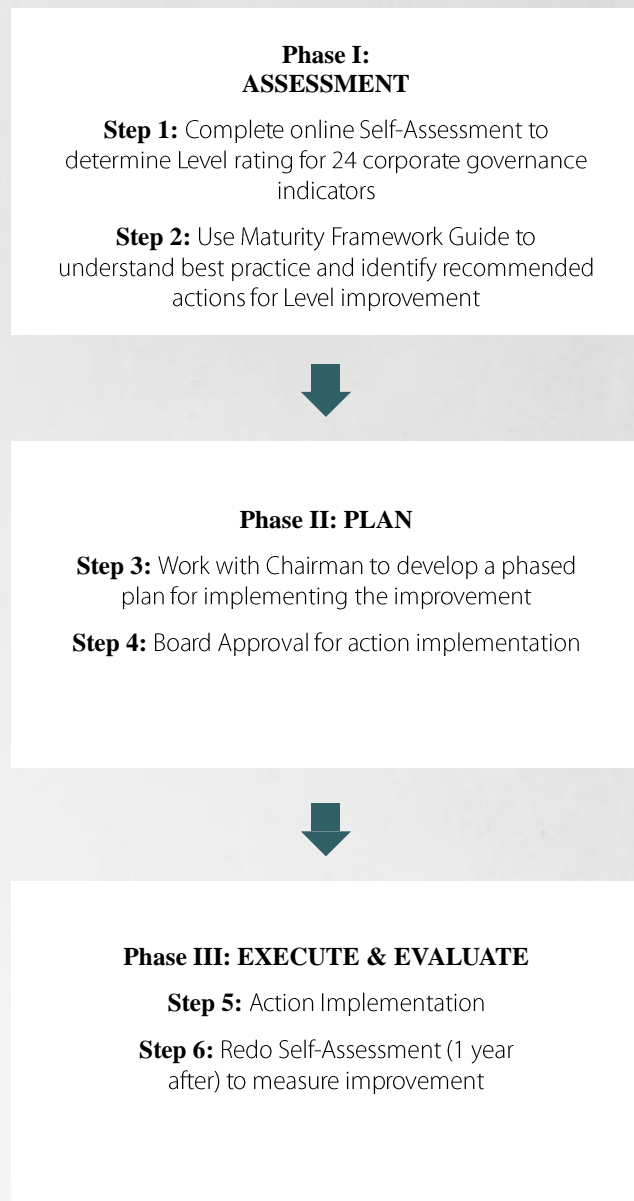
For Closely Held Companies this guide assumes that these companies are mature companies and already make a distinction between the roles of owners, managers and directors.

The guide is organised around the 24 indicators of the six key corporate governance areas and is designed to provide support as you engage in the **three (3) phase process** (Figure 2) of building your corporate governance practices.

In Phase I users complete the Corporate Governance Self-Assessment and receive a report on their performance on the 24 corporate governance indicators rated at Level, 1, 2, 3 or 4. With this guide the user can identify specific indicators that they need to improve in the short term ( $\leq 18$  months) and long term (3 years).

In Phase II, once areas for development are identified a plan should be designed under the Chairman's leadership and presented to the Board for their discussion and final approval.

In Phase III, with board approval, the proposed plan should be actioned and an evaluation can be conducted at the end of the designated period in the form of an updated assessment using the Corporate Governance Self-Assessment Tool.



**FIGURE 2 Corporate Governance Practice Development Process**

Each of the 24 indicators is presented on two pages as shown below.

**PAGE 1**  
CORPORATE GOVERNANCE INDICATOR DETAILS

**PAGE 2**  
CORPORATE GOVERNANCE INDICATOR OVERVIEW

Maturity Levels 1, 2, 3 and 4 requirements

**Indicator 1 – Division of Roles**

TYPE	L1: Legal baseline	L2: Understanding need to professionalize	L3: Significant concrete steps	L4: Advanced governance practice
<b>Closely Held Company</b>	At least 2 Directors have been appointed.	The company has a formal schedule of matters reserved for board decisions	A formal governance mechanism is established (e.g. family council, separate shareholder agreement, or other written arrangements).	The Board publishes a statement of its corporate governance practices in accordance with National or International Corporate Governance guidelines.
<b>Listed Company</b>	At least 3 Directors have been appointed.	The company has a formal schedule of matters reserved for board decisions	There board has developed a Charter and all committees have terms of references.	Disclosure of corporate governance practices as per National or International Corporate Governance Code or Guidelines.
<b>State Owned Enterprises</b>	At least 3 Directors have been appointed.	The company has a formal schedule of matters reserved for board decisions	There is a written charter that defines the roles and responsibilities of the Minister, the Permanent Secretary, the Board and the CEO as well as terms of reference for all Board committees.	All of these conditions are fulfilled: <ul style="list-style-type: none"> <li>there is a publicly disclosed formal schedule of specific areas and type of decisions that the ownership coordinating entity is competent give instructions;</li> <li>board members are not guided by any unwritten political concerns or unwritten policy when carrying out</li> </ul>

Different types of organizations

Description of Indicator & Best Practice

Indicator Specific Legal and Best Practice References

Key Area Colour Code

**2. DUTY OF CARE**

The 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.

To be "fully informed" the board needs high quality information on which it can base its decisions. The information must also be complete and provided on a timely basis. Information needs to be uncensored by management. The board makes important decisions that are founded upon the best possible available information, as well as informed, rigorous and open debate. An absence of good information leads to a weak decision making processes.

**Best Practice** - Acting with "due diligence" means that directors need to responsibly apply the skills they reasonably can be expected to possess based on their collective experience, knowledge, skills and qualifications.

**CA Section 99(1)(b)** directs the director and officer of the company to act honestly and in good faith and exercising the care, diligence and skill of a reasonably prudent person. OECD VIAD, IFLA Chapter 22:61

**Defined in Articles & Charters**

The duty of care is embodied in law and frequently also in the company's articles, bye-laws and board charter. The bye-laws, charter or other founding and guiding documents describe the information to which the board has a right.

**Skills of Board Members**

Need to ensure that all members of the Board have the required foundational skills and that the board contains the right range and variety of specialized knowledge for analysis and decision making. It is expected that board members engage in continuous professional development in order to remain current with their skills and knowledge.

**Right to Information**

The board has the right to all information about the company and must have access to high quality unbiased information required for decision making including professional advice to them paid by the company. It is good practice for the board to specify the specific information that they would like to have presented by management instead of just letting the CEO

Required information usually relates to answering these questions:

- Are the results that the board directed management to achieve for the owners being achieved?
- To what extent is the management's strategy working?
- What are the risks that can endanger achievement of results?
- To what extent are the operations compliant with regulations set by the board?

**Time Investment**

Directors need to invest sufficient time to fulfill the role with sufficient care. There is no single right figure for what constitutes enough time, but directors can assume that 2-4 days per month is an ideally amount of time that needs to be invested.

**Individual and Collective Responsibility**

Factors to Consider for moving to the next Maturity Level



# I. Roles



## Indicator 1 – Division of Roles

	<b>L1: Legal baseline</b>	<b>L2: Understanding need to professionalise</b>	<b>L3: Significant concrete steps</b>	<b>L4: Advanced governance practice</b>
<b>Closely Held Company</b>	At least 2 Directors have been appointed	The company has a formal schedule of matters reserved for board decisions	A formal governance mechanism is established (E.g. family council, separate shareholder agreement, or other written arrangements)	The Board publishes a statement on its corporate governance practices in accordance with National or International Corporate Governance guidelines
<b>Listed Company</b>	At least 3 Directors have been appointed	Same as CHC	There board has developed a charter and all committees have terms of references	Disclosure of corporate governance practices as per National or International Corporate Governance Code or Guidelines
<b>State Owned Enterprises</b>	Same as LC	Same as CHC	There is a written charter that defines the roles and responsibilities of the Minister, the Permanent Secretary, the Board and the CEO as well as terms of reference for all Board committees	<p>All of these conditions are fulfilled:</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> there is a publicly disclosed formal schedule of specific areas and types of decisions that the ownership or coordinating entity is competent to give instructions;</li> <li><input checked="" type="checkbox"/> board members are not guided by any unwritten political concerns, or unwritten policy when carrying out their board duties; and</li> <li><input checked="" type="checkbox"/> disclosure of corporate governance practices as per National or International Corporate Governance Code or Guidelines for SOE</li> </ul>

## 1. DIVISION OF ROLES

The core functions of the board are to communicate with the owners, to guide executives, and to monitor the performance of the company. The board adds value by determining what results are to be achieved; testing the assumptions and strategies that management develops for achieving these results, monitoring and reporting to owners and communicating with other major stakeholders while offering its advice to the executive on high level strategic issues.

**Best Practice** – The board and management have distinct roles. There is a clear distinction between the decisions taken by the board and the running of the business. Best practice boards do not become involved in management or micro-manage decisions.

CA Sections 60(b) (duty of directors to manage company), 64(1) (number of directors), 84.(1) (delegation of powers)

ECODA 2; ECODA 9; ECODA 9.4; ECODA 10; SOE.II.B; SOE.II.C

SEPMM Section 2

### Appointment of Directors

The appointment of directors is a legal necessity that makes the division of roles possible. For closely held companies a minimum of two directors are required, while three are required for listed companies and state owned enterprises.

### Formal Schedule of Matters

A formal schedule of matters defines the board's decision making powers and those powers delegated to management. Management must understand that it answers to the board, and that the board is there to give expertise and value-adding input.

### Formal Governance Mechanisms

For a closely held or family business, a clear distinction in governance status must be made between the family and the formal governance structures of the company. This means having a family constitution or protocol outlining the business objectives of the family, with defined roles for family governance bodies, and their relationship with the board of directors and key family policies relating to family members' employment, transfer of shares, and CEO succession. The role of the board, shareholder meetings, etc., needs to be fully understood by family members.

For listed companies and state owned enterprises written policies and procedures should exist for all matters covering the governance of the enterprise including charters, by-laws, and documentation for committees where they exist.

For SOEs these written policies clearly outline the powers and responsibilities of the state in setting the larger strategic outcomes and the board's relation with management. SOE boards are not merely conduits for instructions from the state but in effect exercise a role that is effectively identical to a best practice private sector board and are able to exercise their own judgment in decision making. The State Enterprises Performance Monitoring manual (SEPMM) Section 2 outlines the reporting relationships and functions of the related bodies.

### Disclosure

Best practice involves disclosure of the firm's corporate governance details, including members of the board and management enabling relevant parties e.g. shareholders, government, the public and other stakeholders, to form an opinion about how the firm's corporate governance compares to a consensus standard (national and international).

Shareholders and stakeholders are then confident that their interests are protected and their voice is heard on important issues.



## Indicator 2 – Duty of Care

	<b>L1: Legal baseline</b>	<b>L2: Understanding need to professionalise</b>	<b>L3: Significant concrete steps</b>	<b>L4: Advanced governance practice</b>
<b>Closely Held Company</b>	The duty of care is embodied in the company’s articles or charter, and or the board articles or charter	Not specified	The board makes it clear to management what information is needed for its decision making. There is a formal schedule on what information the board ought to get and that is provided	<p>All of these conditions are fulfilled:</p> <ul style="list-style-type: none"> <li>- Board decisions are subject to full debate and open discussion</li> <li>- The chair recognizes his/her responsibility for fully informing the board and takes the obligation seriously by proactively providing relevant information</li> <li>- All board decisions are laid out in advance in the meeting agenda with specific questions that need to be answered with all necessary supporting materials. Such information is provided with sufficient time in advance to allow for study and consideration</li> <li>- Requests by board members for additional information are respected</li> </ul>
<b>Listed Company</b>	Same as CHC	Same as CHC	Same as CHC	Same as CHC
<b>State Owned Enterprises</b>	Same as CHC	Same as CHC	Same as CHC. The board demonstrates its duty of care by demanding information beyond the minima	Same as CHC

## 2. DUTY OF CARE

The 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.

To be “fully informed” the board needs high quality information on which it can base its decisions. The information must also be complete, provided on a timely basis and uncensored by management. The board makes important decisions that are founded upon the best possible available information, as well as informed, rigorous and open debate. An absence of good information leads to weak decision making processes.

**Best Practice** – Acting with “due diligence” means that directors need to responsibly apply the skills they reasonably can be expected to possess based on their collective experience, knowledge, skills and qualifications.

CA Section 99(1) (b) directs the director and officer of the company to act honestly and in good faith and exercising the care, diligence and skill of a reasonably prudent person.

OECD VI.A.0, IPLA Chapter 22:01

### Defined in Articles & Charters

The duty of care is embodied in law and frequently also in the company’s articles, by-laws and board charter. The by-laws, charter or other founding and guiding documents describe the information to which the board has a right.

### Skills of Board Members

Ensure that all members of the Board have the required foundational skills and that the board contains the right range and variety of specialized knowledge for analysis and decision making. It is expected that board members engage in continuous professional development in order to remain current with their skills and knowledge.

### Right to Information

The board has the right to all information about the company and must have access to high quality unbiased information required for decision making (including professional advice to them paid for by the company). It is good practice for the board to specify the specific information that they would like to have presented by management instead of just letting the CEO decide what is shared with the board. Requests from the Board must be targeted to ensure that unnecessary time and effort is not invested in gathering data that is not used by the Board.

Information is requested by board members through the Chairman, who then requests it from the CEO.

Required information usually relates to answering these questions:

1. Are the results that the board directed management to achieve for the owners being achieved?
2. To what extent is the management’s strategy working?
3. What are the risks that can endanger achievement of results?
4. To what extent are the operations compliant with regulations set by the board?

### Time Investment

Directors need to invest sufficient time to fulfill the role with sufficient care. There is no single right figure for what constitutes ‘enough time’, but directors can assume that 2-4 days per month is an ideal the amount of time that needs to be invested.

### Individual and Collective Responsibility

All directors need to decide for themselves, carefully taking into consider all available information, when they vote on board decisions.

### Indicator 3 – Duty of Loyalty

	<b>L1: Legal baseline</b>	<b>L2: Understanding need to professionalise</b>	<b>L3: Significant concrete steps</b>	<b>L4: Advanced governance practice</b>
<b>Closely Held Company</b>	The duty of loyalty is embodied in the company's articles or charter, and or the board articles or charter	Board members have been informed of, and are aware of, their legal and fiduciary duties under the Companies Act. The board focuses explicitly on the best interests of the company above all other interests when making decisions	There have been proactive steps. There is a written policy for related party transactions and dealing with conflict of interest	There have been proactive steps taken to monitor and ensure compliance with board policies ensuring loyalty to the company is practiced and preserved
<b>Listed Company</b>	Same as CHC	Same as CHC	Same as CHC	Same as CHC
<b>State Owned Enterprises</b>	Same as CHC	Same as CHC	Same as CHC	There are no examples of the SOE being forced to provide products or services that goes against the interest of the SOE, without fair compensation

### 3. DUTY OF LOYALTY

The duty of loyalty means that directors act exclusively in the interest of the company and its shareholders and do not allow their personal, or any other singular, interests to prevail.

Sometimes referred to as a directors “fiduciary duty” this responsibility assumes the director takes the role of a representative acting on the company’s behalf and an agent who controls the company assets.

**Best Practice** – The “duty of loyalty” requires directors to take decisions objectively and in the exclusive interest of the company. Any possibility of conflicts of interest are avoided by first declaring any interest that could conflict with that of the company, and then not taking part in the decision involving the conflicting interests.

CA Section 99(1) (a) directs the director and officer of the company to act honestly and in good faith with a view to the best interests of the company; Section 99(2) In determining what

are the best interests of a company, a director shall have regard to the interests of the company’s shareholders. A director shall also have regard to the interests of employees to the extent that they impact the interest of the company.

OECD VI.A.0; ECODA.2, SEPMM 2.2.6.2 (v)

#### Awareness

Board members must be informed, and aware of, their legal and fiduciary duties under the Companies Act.

For State-owned enterprises, the State, represented by the sitting government through the office of Corporation Sole, exercises ownership rights and should allow the board to exercise its responsibilities and respect its independence. Both the board and the line Ministry (as the representative of the owner), understand that board members have a duty of loyalty to the company (SOE). When the interests of the Company (SOE) conflict with any other interests, for instance, those of the sitting government or a political party, the board understands that the interests of the company must take precedence. Board members understand that they are legally bound to act in the best interests of the company.

Board members must actively comply with their legal duty of loyalty. They must be willing and able to confront managers and/or other board members when decisions are potentially in the interest of individuals contrary to the interest of the company.

#### Transparency

All related party transactions should occur transparently and at conditions considered at “arm’s length”, i.e. independent, fair, and avoiding possible conflicts of interest. Minutes should show evidence that board decisions are informed by, but not constrained by, any single interest (including government or majority shareholder).

#### Monitoring Mechanisms

Systems and controls should be in place to safeguard the assets and other interest of the company. These mechanisms allow for a structured, transparent and fair resolution of any conflicts between the board and the company, and in particular any conflicts of interest and related party transactions.

For SOE’s this would be demonstrated by either an independent regulatory authority, or contractual agreements to provide certain products or services at agreed upon and fair prices. Annual reviews should be done on related party transactions policy, and the systems that ensure the detection of abusive related party transactions.

#### Disclosure

Declarations of interest by board directors ensure duty of loyalty is maintained. For listed companies and state owned enterprises public disclosure of related policies, transactions and declarations should be made available.

#### CORPORATION SOLE

By Act no. 5 of 1973 (Chapter 69:03), the Minister of Finance was incorporated as a Corporation Sole. This is a corporation constituted in a single person who, based on the office or function of that person, is given corporate status. As Corporation Sole, the Minister of Finance has the same characteristics, rights, obligations, privileges and liabilities of a corporate body.



# II. Board Composition



## Indicator 4 – Appropriate Composition

	<b>L1: Legal baseline</b>	<b>L2: Understanding need to professionalise</b>	<b>L3: Significant concrete steps</b>	<b>L4: Advanced governance practice</b>
<b>Closely Held Company</b>	Not specified	The owners and the board recognize that the board needs appropriate skills and experience to best fulfill its responsibilities	The board has conducted a gap analysis of the skills it needs. Independent or non-family members with professional expertise or industry knowledge are on the board (or in case of smaller companies there is an advisory board)	The board has developed a board profile identifying the skills it needs and engages in a proactive and systematic process for recruiting directors
<b>Listed Company</b>	Not specified	Not specified	<p>The board has conducted a gap analysis of the skills it needs. It has identified the specific skills or experience it needs and has begun to staff itself with professionals in the needed areas.</p> <p>There are some independent board members. There are some members with financial/accounting/audit expertise</p>	<p>The board has a system for identifying its skills needs.</p> <p>The majority of board members are independent. The board profile, independence and qualifications of directors are publicly disclosed in printed literature or on the company's website</p>
<b>State Owned Enterprises</b>	Not specified	Not specified	The board comprises individuals who meet specific skill, experience, and competence requirements and are not merely political patronage or ex-officio appointees. The SOE has individuals with private sector backgrounds	Same as LC

## 4. APPROPRIATE COMPOSITION

Boards will require different skill sets, experience, perspectives and personalities to properly fulfill their roles. Board composition should be adapted over time to the evolving needs of the company. The aim is to maintain an appropriate balance of skills and experience, executive, non-executive directors, and independent directors on the board.

**Best Practice** – The skills and experience of board members are appropriate to the requirements of the business.

The CA is silent on the composition of the board and the skills and experience of board members although, having regard to the directors' duties at Sections 60(b) and 99(1) (a) and (b) of CA it appears implicit 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.

ECODA 3 and ECODA 11

### Skill Requirements

Owners and the board must make an effort to staff the board with skilled and experienced directors. The board must monitor the skills that it needs, identify gaps, and put in place an active search for the right skills and experience. Such an analysis and search should be done regularly and systematically.

Director Skills, Experience and Attributes for consideration:

- Financial expertise, including finance, accounting and audit procedures
- Relevant industry experience
- Legal expertise
- Representatives of key stakeholders
- International experience (if applicable)
- Honesty and integrity
- Gender distribution
- Age and tenure distribution

In addition, for state owned enterprises, a majority of board members should have private sector backgrounds. The statutes governing some SOEs may specify required skills/experience of Directors.

### Independent Board Members

An independent director, characterized as being independent in character and judgment, has no material relationship with the company beyond their directorships. The owners and board should make an effort to staff the board with directors who are independent and have particular skills and experience. For closely held and family owned businesses, this means directors who are not just family members. For state owned enterprises ideally there should be no, or only a small minority, of government officials on the board. A minimum of one (1) non-executive board member should have a financial/ accounting/audit background.

### Non-Executive Directors

A non-executive director does not hold an executive/ operational position in the company; they may or may not be independent.

The larger unlisted enterprises (or unlisted enterprises working towards a public listing on a regulated market) should aim to add non-executive directors and preferably independent directors to boards until they represent a significant proportion of board seats (although the exact proportion will be a matter for the judgment of individual boards).

### Disclosure

The CVs of board members should be publicly disclosed and available, for example on the company website.



## Indicator 5 – Choosing Directors

	<b>L1: Legal baseline</b>	<b>L2: Understanding need to professionalise</b>	<b>L3: Significant concrete steps</b>	<b>L4: Advanced governance practice</b>
<b>Closely Held Company</b>	Not specified	The appointment process considers not just family members, but people who contribute an outside perspective	Appropriately qualified family or company's outsiders are on the board	Formal written processes have been developed to ensure that board member selection is based upon merit
<b>Listed Company</b>	Not specified	There is a board profile defining knowledge, skills and experience required on the board	The nomination process ensures that proposed directors meet the criteria for serving on the board	Formal written processes have been developed to ensure that board member selection is based upon merit
<b>State Owned Enterprises</b>	Not specified	Board members are appointed in accordance with defined board requirements	Same as LC	Board members are selected on the basis of merit according to explicit specific requirements and not just according to political affiliation

## 5. CHOOSING DIRECTORS

Board members should be appointed based upon qualities that they bring to the board and the company to help them achieve company goals. Qualities can be technical such as financial skills, industry knowledge, legal expertise, or marketing expertise, but can also be soft skills like leadership and motivation for serving.

**Best Practice** – The board member nominations process is formal, documented and transparent. Board members are appointed based exclusively on merit.

CA (Section 64.1): in public companies at least two directors need to be non-executive.

### Director Profile

Considerations for Individual Directors Evaluation are:

- Knowledge: *Governance, Finance, Strategy*
- Competence: *Critical thinking and analysis, decision making, interpersonal skills, communication skills*
- Behaviours / Attributes: *Commitment, motivation, responsibility, respect, honesty, integrity, independence*

### Skills Required

See Indicator 4 - Appropriate Composition

### Selection and Appointment Process

The board appointment process should be designed to find qualified individuals. Formal written processes ensure that the board member selection yields qualified individuals. The process should be based exclusively upon merit and followed in practice. A good selection process means the company is able to attract the best possible talent to its board.

### Board Evaluation

An effective board should regularly review its composition. Boards should conduct an assessment of their strengths and weaknesses, identify their needs, and devise a board improvement plan to fill gaps as board seats become available.

Director Selection and Appointment using best practice involves:

- ✓ Identification of board capability gap – identification of the knowledge, competencies and expertise the board lacks;
- ✓ Develop person specification - identify knowledge, skills and personal attributes that a person needs to close the gap
- ✓ Develop a search plan
- ✓ Interview candidates
- ✓ Select best-qualified candidate and recommend for election
- ✓ Election process

### Nominations Committee

Nominations are the responsibility of the nomination's committee of the board, or of an independent committee. The process may also have the involvement of independent headhunters and professional Corporate Governance organizations such as the Caribbean Corporate Governance Institute (CCGI).

In Trinidad and Tobago a good application for maintaining independence within the nominations process would be for State Owned Enterprises to limit their selection from a shortlist of candidates proposed by independent individuals, committees or organizations.

Nomination Committees may be constituted temporarily. It is most important to follow a rigorous and transparent process so as to ensure the best possible Directors are invited to join the Board.

## Indicator 6 – Independence for Oversight

	<b>L1: Legal baseline</b>	<b>L2: Understanding need to professionalise</b>	<b>L3: Significant concrete steps</b>	<b>L4: Advanced governance practice</b>
<b>Closely Held Company</b>	Not specified	Not specified	There are independent or non-family members on the board	A significant number of directors are independent and independent views are actively sought
<b>Listed Company</b>	A minimum of two directors must be independent non-executive directors	Not specified	There are independent members on the board that actively contribute a biased and objective view	Majority of board members are non-executive, independent directors. These members are active contributors and, in fact, are the driving force behind the direction of the board
<b>State Owned Enterprises</b>	Same as LC	Not specified	Same as LC	Same as LC

## 6. INDEPENDENCE FOR OVERSIGHT

Independence is a quality that permits the board to make unbiased decisions in the interest of the company. Such independence requires a sufficient number of independent board members. This ensures that no individual or small group of individuals can dominate the board's decision making process.

**Best Practice** – The board has sufficient independence to allow it to exercise unbiased oversight of the company.

The CA proceeds on the basis that the shareholders appoints the directors; the CA only specifies in Section 64(1) that 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. There is no further differentiation of types of directors; all directors are fixed with the same statutory obligations and responsibilities.

OECD VI.E.0 and SOE VI.C; ECODA 11.1; TTCGC

### Independent Board Members

An independent director has no material relationship with the company beyond their directorships; characterized as being independent in character and judgment. For closely held and family owned businesses, this means directors who are not just family members. The board should actively seek to have independent directors on the board. Companies with more advanced corporate governance practices may have an independent chairman as well.

### Open Discussion

The board should facilitate the open and objective discussion of issues. Potential biases and conflicts of interest need to be resolved in the interest of the company and not merely in the interests of individuals, other related companies or stakeholders.

### Non-Executive Directors

A non-executive director does not have an executive/operational position in the company and may or may not be independent. Non-executive directors can contribute greater impartiality in their judgments.

### Definition of Independence

Independent director definitions vary among countries. Relationships or circumstances that may influence a director's judgment may include:

- Former employment with the company or group within the last 5 years
- Has or has had within the last 3 years, a material business relationship with the company either directly, or as a partner, shareowner, director, or senior employee of a body that has such a relationship with the company
- Has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance-related pay scheme, or is a member of the company's pension scheme;
- Has close family ties with any of the company's advisers, directors or senior employees
- Holds cross-directorships or has significant links with other directors through involvement in other companies or bodies
- Represents a significant shareholder
- Has served on the board for more than nine years

## Indicator 7 – Number of Directors

	<b>L1: Legal baseline</b>	<b>L2: Understanding need to professionalise</b>	<b>L3: Significant concrete steps</b>	<b>L4: Advanced governance practice</b>
<b>Closely Held Company</b>	Two (2) Directors appointed	A decision on board size has been made and is contained in minutes	Decision on appropriate board size has been acted upon and movement in the right direction has begun	The appropriate board size has been achieved and is being maintained
<b>Listed Company</b>	Three (3) Directors appointed	Same as CHC	Same as CHC	The board has at least 6 members and does not exceed 12 members
<b>State Owned Enterprises</b>	Same as LC	Same as CHC	Same as CHC	Same as LC

## 7. NUMBER OF DIRECTORS

A typical range of board size would be from 5 to 10 members. Excessively small boards have insufficient manpower and skills. Excessively large boards have cumbersome decision making processes and may lead to some directors seldom making contributions and therefore being non-effective.

**Best Practice** – The board size is appropriate for the requirements of the business. There is no single optimal board size as the correct board size depends upon the circumstances of the company.

Section 64(1) of CA prescribes a minimum of 2 directors and in respect of public companies not less than 3; while the CA is silent on the maximum number of directors, Companies Registry generally restricts the number of directors to 10

ECODA 3

### Legal Baseline

The number of directors should be guided by legal requirements. For Limited Liability companies this means at least two (2) Directors who direct the business and affairs of company and for a State Owned Enterprise a minimum of three (3) Directors is required.

### Optimum Board Size

The board size should facilitate its ability to:

- i. engage in productive, constructive decision making,
- ii. make timely rational decisions and
- iii. effectively organise the board’s work – including the avoidance of possible conflicts of interest.

An optimal board size should be defined by the board in response to the needs of the company and the board. Small boards of up to 6 members are better suited for closely held and family enterprises.

### Average Number of Directors

Closely Held Companies	6
Listed Companies	8
State Owned Enterprises	8

**Table 1 ECTT Improving Corporate Governance in Trinidad and Tobago, D1 Analytical Report, February 2013**

### Number and Size of Committees

Board committees facilitate the effective handling of a greater number of issues by allowing experts to focus on specific areas and provide recommendations to the board, as well as the avoidance of possible conflicts of interest. These committees allow for subject-specific expertise on the company’s operations and enhance the objectivity and independence of the board’s judgment.

The three principal committees are i. Audit, ii. Remuneration and iii. Corporate Governance and Nominations.

The size of the board can also be influenced by the number and size of committees that are required for effective board management since the committee structure should be proportionate to the needs of the company. However, most large unlisted enterprises are likely to require a nomination committee, remuneration committee, and audit committee. Other committees may be established if required in particular circumstances.

### Skill Requirements

There must be a balance between the skills required for board effectiveness and the board size. For smaller companies this may mean resourcing the board with multi-talented board directors.



# III. Board Tasks





## Indicator 8 – Directing, Delegating and Monitoring

<b>Director Responsibilities w.r.t. Directing, Delegating and Monitoring</b>	<b>L2: Understanding need to professionalise</b>	<b>L3: Significant concrete steps</b>	<b>L4: Advanced governance practice</b>
Reviews and guides corporate strategy as proposed by management	Responsibility formally specified in an adopted document	Board minutes reflect these responsibilities being actively fulfilled	Optimizing company performance drives formal board decisions
Reviews and guides major plans of action including annual budgets and/or business plans			
Agrees and sets performance objectives with management and monitors management’s implementation of plans			
Evaluates, selects and dismisses the CEO			
Oversees the setting of remuneration practices and approves remuneration plans			
Oversees major capital expenditures			
Monitors the effectiveness of the company’s governance practices			

## 8. DIRECTING, DELEGATING & MONITORING

Boards have a variety of responsibilities related to the monitoring, guiding and directing of management and the enterprise. Some of the key responsibilities of the board are to:

- ☑ Review and guide corporate strategy as proposed by management
- ☑ Review and guide major plans of action including annual budgets and/or business plans
- ☑ Agree and set performance objectives with management and monitor management's implementation of plans
- ☑ Evaluate, select and dismiss the CEO
- ☑ Oversee the setting of remuneration practices and approve remuneration plans
- ☑ Oversee major capital expenditures
- ☑ Monitor the effectiveness of the company's governance practices

**Best Practice** – The board fulfills certain expected responsibilities: establishing an effective link with owners, directing management, and assuring that the executive adheres to board policies through monitoring.

The CA in Section 60 says that "Subject to the articles and any unanimous shareholder agreement, the directors of a company shall – sub-section (b): direct the management of the business and affairs of the company".

OECD VI.D (responsibilities of the Board).  
ECODA 2

### Board Charter

A detailed Board Charter should outline the **Duties and Powers of the Board** including:

- i. General duties and powers;
- ii. Duties regarding the supervisor of management;
- iii. Duties regarding the members and the performance of the board
- iv. Agrees and sets performance objectives with management supervision of financial reporting
- v. Duties regarding nominations and assessment of external auditor;
- vi. Compensation of management board members and
- vii. Relations with shareholders

### Schedule of Matters

There should be a written Schedule of Matters which outlines matters specifically reserved for Board decisions. These include matters related to:

- ✓ Regulatory/Legal Requirements
- ✓ Board and senior executive appointments, training and evaluation,
- ✓ Disclosure and Transparency,
- ✓ Strategic Oversight
- ✓ Transactions above a certain materiality
- ✓ Guarantees/Indemnities/Securities
- ✓ Subsidiaries/Associates/Joint Ventures
- ✓ Share Capital and Financing

### Decision Making within Board

The Board Charter should also include the decision making process for members, i.e. voting process, adoption at meetings and documentation procedure.

## Indicator 9 – Risk Oversight and Board Audit

	<b>L1: Legal baseline</b>	<b>L2: Understanding need to professionalise</b>	<b>L3: Significant concrete steps</b>	<b>L4: Advanced governance practice</b>
<b>Closely Held Company</b>	Company has internal controls and risk oversight	Risk oversight function by board formally part of schedule of board responsibilities	The board has an audit committee. Some of the members of the audit committee are independent. The chairman of the audit committee is independent	All of these conditions are fulfilled: The board has an audit committee. All of the members of the audit committee are independent. The audit committee is staffed with financially literate individuals. The committee has formal written policies. It meets with sufficient frequency to fulfill the responsibilities of a modern committee including oversight of the external audit, internal audit, and assuring itself that appropriate systems of control and risk management are in place. The internal auditor has a direct reporting relationship to the audit committee. The external auditor has a direct reporting relationship to the audit committee
<b>Listed Company</b>	Same as CHC	The audit committee has written Terms of Reference	Majority audit committee members are not only non-executive but also independent	All of these conditions are fulfilled: The audit committee charter and the identity of audit committee members are disclosed  Same as CHC
<b>State Owned Enterprises</b>	Audit Committee appointed with a minimum of two (2) non-executive members	Same as LC	Same as LC	Same as LC

## 9. RISK OVERSIGHT & AUDIT COMMITTEE

An area which is closely related to corporate strategy is risk policy. This involves specifying the types and degree of risk that a company is willing to accept in pursuit of its goals. It is thus a crucial task for management to manage risks to meet the company's desired risk profile.

Of all of the committees of the board, the audit committee is the most important as it has the responsibility for overseeing the control and reporting environment of the company. The Audit Committee is not a legal requirement, but for SOEs and LCs it is a regulatory requirement, and for CHCs risk oversight is implicitly required.

**Best Practice** – The board ensures that all business risks are identified, evaluated, and suitably managed. The board has established an audit committee, and in the case of smaller, CHC or family businesses, an internal control and risk oversight function is set up and working.

### Internal Control and Risk Oversight Function

Many smaller closely held and family owned business will not find it possible to establish audit committees, but the risk oversight function should be established.

### Appoint Audit Committee:

The board must ensure that the audit committee:

- Has a clear mandate/terms of reference and that the committee's duties are well defined
- Is supported by the board in fulfilling its charter, especially its activities, and in the tone it sets for the company
- Is comprised of the "right" individuals, with appropriate experience and expertise, capable of providing efficient and effective oversight
- Provides appropriate reports on its activities and recommendations to the board

For SOEs the SEPMM explicitly states that the Chairman cannot be a member of the Audit Committee of the Company.

### Role of Audit Committee

Ideally the Audit Committee members are independent directors (for SOE's a minimum of two (2) non-executive directors is required).

The CA underscores the role of the audit committee in Section 157 (1) where it says that: a public company shall, and any other company may, have an audit committee composed of not less than three directors of the company, a majority of whom are not officers or employees of the company or any of its affiliates. For all companies, including unlisted, the duty of care, as described in Section 99(1) of CA which requires directors to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, and Section 99(2) which stipulates that Directors must always work to the best interest of the company, implicitly risk oversight by the Board.

OECD VI.E.2; OECD VI.D. 7 ECODA 6.3; ECODA 12.2; SEPMM 2.2.6.1/2.2.6.3

The Audit Committee:

- Oversees the company's internal audit and internal control activities
- Monitors the overall relationship with the external auditor and external audit activities
- Reviews and reports to the board the most critical accounting policies, which are the basis for financial reports
- Monitors and ensures systems' reliability. The committee focuses on the process used in preparing accounts and the validity of the accounting methods rather than actually preparing or going into the accounts' details, which fall under management's responsibility.

### Number of Members on Audit Committee

The minimum number of members is usually three for large listed companies and two members on smaller listed and large unlisted companies. For SOEs a minimum of two (2) non-executive members must be appointed to the audit committee.

## Indicator 10 – Internal Audit

	<b>L1: Legal baseline</b>	<b>L2: Understanding need to professionalise</b>	<b>L3: Significant concrete steps</b>	<b>L4: Advanced governance practice</b>
<b>Closely Held Company</b>	Not specified	Risks are being documented (e.g. a risk matrix)	The company has an independent audit function. Professional advisors are engaged to advise on risk and systems of internal controls	The company has an internal auditor. The internal auditor has an unfettered direct reporting relationship to the audit committee that is fully staffed by independent directors all of whom have significant financial expertise
<b>Listed Company</b>	Not specified	Not specified	Not Specified	Same as CHC
<b>State Owned Enterprises</b>	Not specified	Not specified	Not Specified	Same as CHC

## 10. INTERNAL AUDIT

Internal audit is an independent, objective assurance and consulting activity designed to add value and improve an organizations operations. It brings a systematic approach to improving the effectiveness of risk management, control, and governance processes.

**Best Practice** – The company has an internal audit function. The internal auditor has a direct reporting relationship to the audit committee of the board.

CA Section 99(1)(b) (See Duty of Care)  
SOE.V.B; OECD VI.D. 7 and ECODA 6.3,

### Internal Control and Internal Audit

The board must understand the difference between internal controls and internal audit. They must consider whether an internal audit function is necessary and justifiable in view of the size and sophistication of the company.

### Relationship with Audit Committee

Internal control is broadly defined as a process, affected by an entity’s board of directors, management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

- Effectiveness and efficiency of operations
- Reliability of financial reporting
- Compliance with applicable laws and regulations

The internal audit is traditionally subject to dual-reporting responsibilities; in principle reporting to management administratively and to the board functionally.

The audit committee should, at a minimum, approve the internal audit mandate, ensure that it has adequate resources, and develop a good relationship with the internal audit function (including meetings between the chairman of the audit committee and the internal auditor, between audit committee meetings).

The audit committee should ensure that the directors of internal audit have direct, open communication with both the board and the external auditor.

Median Loss Based on Whether Organization had Internal Audits

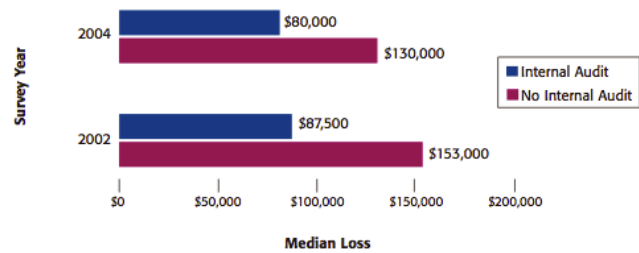


Figure 3 2004 Report to the Nation on Occupational Fraud and Abuse; Association of Certified Examiners

### Risk Management Process

The steps in developing a risk-management plan usually involve the board:

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

TABLE 1: Typical Types of Business Risks

	INTERNAL	EXTERNAL
Financial risks	Liquidity Cash-flow	Interest rate Exchange rate Credit
Strategic risks	Research and development Merger and acquisition	Intellectual capital Competition Customer changes Industry changes
Operational risks	IT systems Accounting controls Supply chain	Regulations
Hazard risks	Employees Properties	Natural events Suppliers Environment Contracts

SOURCE: UK Risk Management Standard (London: IRM, Alarm and AIRMIC, 2002.)

## Indicator 11– Conflict of Interest

	<b>L1: Legal baseline</b>	<b>L2: Understanding need to professionalise</b>	<b>L3: Significant concrete steps</b>	<b>L4: Advanced governance practice</b>
<b>Closely Held Company</b>	Where there is a possible or perceived conflict of interest directors are understood to disqualify themselves from those decisions	Written conflict of interest policy exists (for board and organization)	Active check on conflict of interest is a routine board practice and this fact is recorded in minutes	Monitoring and enforcement of potential and real conflict of interest policies by independent board members
<b>Listed Company</b>	Same as CHC	Same as CHC	Same as CHC	Monitoring, enforcing, and disclosing of conflicts of interest and related party transactions
<b>State Owned Enterprises</b>	Same as CHC	Written conflict of interest policy exists (for board and organization). In addition, the company has established a written internal process for operationalising the Code of Conduct in the Integrity in Public Life Act within their own organization	Same as CHC	Same as LC

## 11. CONFLICT OF INTEREST

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

**Best Practice** – The board has systems in place for monitoring against conflicts of interest, misuse of company assets, and related party transactions.

### Conflict of Interest Policy

The company should have a written conflict of interest policy. Such a policy covers related party transactions and outlines how the company will monitor and resolve conflicts of interest. Such a policy may be found in the by-laws, an internal code of ethics, board charter or in a corporate governance code. The IPLA and SEPMM both provide guidance for SOEs.

The board enforces its conflict of interest policy, in particular through disclosure, monitoring potential conflicts of interest of the board and executives and through formal approval of, and recusal from, related party transactions.

### Related Party Transaction

There should be a written policy with respect to related party transactions. A related party may include:

- Board members of the company, its parent, affiliated or sister companies, and associates
- A parent, subsidiary, or affiliated company (except 100 percent or wholly owned subsidiaries and parent companies)

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

For state owned enterprises (SOEs) persons in public life are required to comply with the conflict of interest provisions at Section 29 of the Integrity in Public Life Act Chapter 22:01.

Directors of SOEs, being persons in public life, must therefore comply with the Code of Conduct in this Act (Sections 23-31). Further, by Section 269 of the CA no person may be appointed as trustee if there is material conflict of interest between his role as trustee and his role in any other capacity; similarly Section 303 of the CA defines insider trading and the prohibition against insider trading is referable to both public companies and SOEs.

OECD VI.D. 6; OECD VI.D. 7, ECODA 6.3, SEPMM 3.1.5, IPLA Section 29(1)

- The CEO, general manager, or key officers, including anyone who directly reports to the board or the CEO
- Any significant shareowner having the ability to control, or exercise a significant influence on, the outcome of resolutions voted on by shareowners or directors of the company, its parent, affiliated or associated companies
- The father, mother, sons, daughters, husband, or wife of any of the natural persons listed above
- Any business, and the directors, CEO, and key officers of any business, in which the natural persons listed above own jointly or severally at least 20 percent of the voting rights.
- Any person whose judgment or decisions could be influenced as a consequence of an arrangement or relationship between or involving themselves and any of the above persons

See Indicator 20: Disclosure for more information.



## Indicator 12 – Compliance Function

	<b>L1: Legal baseline</b>	<b>L2: Understanding need to professionalise</b>	<b>L3: Significant concrete steps</b>	<b>L4: Advanced governance practice</b>
<b>Closely Held Company</b>	Not specified	The company has written compliance manual/policies	Monitoring reports submitted by management to the board make reference to the compliance function in relation to the management of risk	The board actively reviews the performance of the compliance function and conclusions are recorded in minutes
<b>Listed Company</b>	Not specified	Not specified	Same as CHC	Same as CHC
<b>State Owned Enterprises</b>	Not specified	Not specified	Same as CHC	Same as CHC

## 12. COMPLIANCE FUNCTION

The compliance function is designed to protect the company from the risk of failure in processes and losses and fines from regulatory inspection. The compliance function assesses the conformity of internal codes of conduct, policies or internal procedures with legal obligations and best practices applicable to its business. The compliance function ensures that the legal rights of stakeholders are respected.

**Best Practice** – The company has a compliance function or systems that are able to ensure that the company complies with laws and regulations.

OECD VI.D. 7; ECODA 6.3; ICGN.9

### Compliance Function

The board should ensure that the company has a functioning system and staff to conduct the compliance function. In small Closely Held Companies it is not necessary for a separate compliance function employee; instead the role can be assigned to someone with other duties as well.

The Audit Committee in some organizations may be charged with oversight of the compliance function.

Specific compliance function duties include:

- Understanding the ramifications of changes to the legal and regulatory framework on the company's controls;
- Ensuring compliance with internal policies and procedures;
- Monitoring operation of the company's whistleblower arrangement.

### Compliance Framework

A documented compliance manual should be updated at least annually and include best practice guidelines and template examples. This needs to be a user-friendly, plain language document that covers at least the following:

- Risk identification process
- Compliance risk management plan development and implementation
- Monitoring plan and methods of monitoring
- Reporting on non-compliance, i.e. forums and templates and reporting lines

- Escalation of non-compliance issues
- Special projects
- Relationships built with regulators, industry bodies, other governance functions such as internal audit.

### Relationship with Internal Audit

The recommended practical relationship between internal audit and compliance can be described as follows:

- Internal audit should be performing periodic audits on the compliance function and adherence to the compliance framework, an end-to-end compliance process, and applicable legislation.
- Internal audit provides feedback in an audit report of non-compliance with specific legislation, action plans and target dates to correct this.
- The results of these audits are communicated to management, the risk committee and the audit committee.
- Where a non-compliance issue is of significant concern, this is escalated to the appropriate board committee.
- Actions to resolve identified audit issues should be reported to the risk committee as part of the ERM framework, until the issue is resolved.

Internal audit cannot perform compliance monitoring. It is only positioned to provide assurance on the compliance process for a specified period. Compliance monitoring can only be effective if the implementation thereof is continuous. In an ideal world, internal audit should review the compliance function annually and provide an opinion on whether or not the compliance is functioning properly.

## Indicator 13 – Whistle-Blower Policy

	<b>L1: Legal baseline</b>	<b>L2: Understanding need to professionalise</b>	<b>L3: Significant concrete steps</b>	<b>L4: Advanced governance practice</b>
<b>Closely Held Company</b>	Not specified	The company has a written whistle-blower policy in place	The whistle blower policy ensures that whistleblowers are protected from retribution and that they remain confidential	The board oversees the whistleblower policy and the systems in place to collect information and protect whistleblowers. The whistleblower policy permits divulgence of unethical or illegal practices to an outside body
<b>Listed Company</b>	Not specified	Same as CHC	Same as CHC	Same as CHC
<b>State Owned Enterprises</b>	Integrity in Public Life declaration provisions met	Same as CHC	Same as CHC	Same as CHC

## 13. WHISTLE-BLOWER POLICY

A whistle blower policy allows the board to be informed of illegal or unethical practices and protects the whistle blower from reprisal. Such a system allows for any violation of government regulations or company policies to be easily identified and managed, helping to minimize any losses from damage to the company's reputation or from a decline in its competitiveness and in the productivity of its employees.

**Best Practice** – The board has put in place a whistle-blower policy to communicate illegal or unethical practices to the board. In addition, the board ensures the protection of the whistle-blower's identity and their rights.

By CA Sections 32(1) on Complaints and 35(1) on Protection of Information of the Integrity in Public Life Act Chapter 22:01 a whistle blower's identity is protected but he is not offered immunity.

OECD.IVE; IPLA 32(1) & 35(1)

### Policy Considerations

A proper whistle blower policy must consider:

- The interests of the person/s who is/are the subject of the complaint
- The interests of the whistleblower
- Responses and investigatory procedures that are complete, thorough, and non-threatening

### Independent Oversight

Oversight of the whistle-blower policy is conducted exclusively by independent non-executive members of the board. In some cases the audit committee is responsible for reviewing arrangements by which the company's staff may in confidence raise concerns about possible improprieties in matters of financial reporting or other matters. In such cases, the audit committee's objective should be to ensure that the arrangements are in place for the proportionate, independent investigation of such matters and for appropriate follow-up action.

When issues are reported to the audit committee through whistle-blowing mechanisms, the actions it may take include:

- Investigating and documenting the issues and its findings
- Accessing and checking with legal advisers regarding appropriate action

- Reporting on its findings in a report from the audit committee to the board and to relevant senior members of management
- Ensuring management has taken appropriate action

### Protection of Whistle-Blowers

Employees should feel safe in reporting ethics violations without fear of retribution from the accused. The identity of a whistle-blower should never be disclosed if they want to remain anonymous. The implementation of whistleblower protection policies is one of the strongest deterrents against such reprisal tactics. Businesses should have a firm company-wide zero tolerance policy for acts of retribution against whistleblowers. It is also essential for such policies to be clearly communicated throughout the organization.

***“A 2004 study by the Association of Certified Fraud Examiners (ACFE) of US organizations reported that organizations without proper mechanisms for reporting fraud and unethical behaviour suffered fraud related losses that were almost twice as high as those with such mechanisms. It also found that about 40% of frauds are initially detected through whistle-blowing, compared to 24% for internal audits, 21% by accident, 18% through internal controls and 11% through external audits.”***

Ref. Global Corporate Governance Forum, Whistle-blowing: Recent Developments and Implementation Issues, Private Sector Opinion, Issue 5 (Washington, DC: Global Corporate Governance Forum, 2007). Available at: [www.gcgf.org](http://www.gcgf.org)



# IV. Board Process



## INDICATOR 14 – Separation of Chairman and CEO

	<b>L1: Legal baseline</b>	<b>L2: Understanding need to professionalise</b>	<b>L3: Significant concrete steps</b>	<b>L4: Advanced governance practice</b>
<b>Closely Held Company</b>	Not specified	The separation of roles has been considered	The roles of the chair and the executive are separated	Not specified
<b>Listed Company</b>	Not specified	Same as CHC	Same as CHC	The company has clearly established a relationship of accountability of the CEO to the Board, led by an independent chairman or the lead independent director
<b>State Owned Enterprises</b>	Not specified	Same as CHC	Same as CHC	Same as LC

## 14. SEPARATION OF CHAIRMAN AND CEO

In some countries the positions of Board Chairman and the CEO have traditionally been occupied by the same person. However, most recently enacted corporate governance codes call for a separation of the role of Chairman and CEO, i.e. these roles are not exercised by the same individual.

The chairman's main responsibility is to ensure that the board is effective in linking with the owners, setting the company's direction and conditions for achieving the desired results, as well as monitoring the performance of the company. The CEO's key role is to assume the lead in putting the long-term strategy into operation so as to achieve the results within the conditions specified by the Board.

**Best Practice** – The roles of the chairman and the CEO are separated in order to create a clear distinction between the oversight role of the chair and the executive role of management. Some closely held and family-owned businesses might find the separation useful.

The CA is silent on the respective roles of the Chairman and the CEO and the issue of executive and non-executive directors and chairpersons; the relationship and dynamic between these offices, however, are crystallized in Section 60(b) of CA which mandates the board and therefore the Chairman to direct the management (and therefore the CEO) of the company.

ECODA 10.1

### Rationale for Separation

Reasons for the separation of roles include:

- The roles of the chairman and the CEO are fundamentally different; while the CEO runs the business, the chairman leads the board.
- If the positions of chairman and CEO are combined, then board oversight of the executive — and by the chairman- CEO in particular — becomes difficult due to the inherent conflict. The separation of the two positions is therefore valuable to ensure the board's independence.
- A non-executive chairman is likely to be more active in guiding the board in fulfilling its main functions, particularly strategic oversight.
- A non-executive chairman is ideally placed to counter the (potential) short-term focus of the CEO with an outside, long-term perspective
- Combining the roles can lead to difficulties in succession planning. If a combined CEO-chairman were to resign, be dismissed, or become incapacitated, the board must deal with two key vacant roles.

### Alternative Solutions

Sometimes this separation of roles is not possible or practical in small closely held companies and the Board should take measures to enhance the balance of power.

Strategies could include:

- ✓ Having a lead independent director to balance the powers of the chair
- ✓ Having committees that do not involve the Chairman/ CEO
- ✓ Strong presence of other independent or non-executive directors
- ✓ Selecting board members with the required skills and experience who can challenge when necessary.



## Indicator 15 – Frequency of Meetings

	<b>L1: Legal baseline</b>	<b>L2: Understanding need to professionalise</b>	<b>L3: Significant concrete steps</b>	<b>L4: Advanced governance practice</b>
<b>Closely Held Company</b>	Board meetings are held as prescribed in the company's Bye-Laws	Board meets a minimum of 4 times per year. It does not meet more frequently than monthly	The length of board meetings is such that all issues are covered in appropriate detail	Meetings are regular and according to a predictable schedule
<b>Listed Company</b>	Same as CHC	Same as CHC	Same as CHC	Same as CHC
<b>State Owned Enterprises</b>	Same as CHC	Same as CHC	Same as CHC	Same as CHC

## 15. FREQUENCY OF MEETINGS

Board meetings should be held regularly. In line with best practice six to ten meetings are likely to be appropriate per year. At a minimum four board meetings per year with a maximum interval of four months between meetings is possible. More than monthly meetings would be considered excessive. Some committees, in particular the audit committee of listed companies and SOEs, tend to meet with greater frequency, sometimes on a monthly basis.

Too few board meetings mean work is not being done or the board does not understand its role. Too many board meetings could mean that the board is overly involved in management and may also stem from a misunderstanding of the role of the board.

**Best Practice** – The board meets with sufficient regularity to properly discharge its duties.

By Section 80(1) of CA the board is permitted to have as many meetings as are necessary to conduct its business or as specified in the company’s bye-laws.

ECODA 4

### Directors’ Time Commitment

In keeping with their duty of care directors should always evaluate the demand on their time before allowing themselves to be considered for an appointment. Time considerations include time for board meetings and the associated preparation, time for strategy retreats, travel, reading, attendance at ad hoc and committee meetings. Directors ideally should spend between 2 - 4 days per month for a single, non-executive director position.

### Factors Determining Meeting Frequency

The board must meet with sufficient frequency to ensure that business at hand is completed at the expected quality level and with sufficient time.

### Board Meeting Duration

The duration of meetings should be a reflection of the issues requiring board consideration. Ideally meetings should last no more than four (4) hours. Separate dedicated meetings can be held for lengthy strategic discussions e.g. strategic retreats.

### Agenda Annual Calendar

In order that the “peaks” and “troughs” of a board’s business are kept within reasonable limits, many boards develop an agenda annual calendar. This allows specific issues to be allocated sufficient time throughout the year’s meetings.

Certain items will need to be fixed in association with the financial reporting cycle, but other topics are less time-specific and can be included on the board agendas when there are fewer items to discuss.

TABLE 2: Frequency of Board Meetings in the UK

NUMBER OF MEETINGS PER YEAR	% OF BOARDS
0-4	6%
5-8	22%
9-12	66%
More than 12	6%

SOURCE: Patrick Dunne, *Running Board Meetings: How to Get the Most from Them* (London: Kogan Page Ltd., 2005), p. 20.

### Meeting Agenda

The board agenda determines the issues under discussion and is the responsibility of the Chairman. It is generally put together by the chairman and the corporate secretary with input from the CEO. Any director can request that the chairman include a matter on the board agenda. It is the chairman’s obligation to offer directors the opportunity to suggest items, which cannot be reasonably denied. In the end, it is each director’s responsibility to ensure that the right matters are tabled.

## Indicator 16 – Induction

	<b>L1: Legal baseline</b>	<b>L2: Understanding need to professionalise</b>	<b>L3: Significant concrete steps</b>	<b>L4: Advanced governance practice</b>
<b>Closely Held Company</b>	Implied in Duty of Care (Section 99 of Companies Act)	The company provides basic background information for board members to step into their new roles and begin to operate immediately	Induction is formalized with a package of key information required for new board members to step into their new role	Induction training covers the basic information on the company, its structure and business, financial history, strategic challenges, main future goals and projects, and so on. New board members should have the ability to interview executives, staff and key functions such as the internal and external audit at their discretion and in the absence of management. Information requests of new board members are complied with
<b>Listed Company</b>	Same as CHC	Same as CHC	Same as CHC	Same as CHC
<b>State Owned Enterprises</b>	Same as CHC	Same as CHC	Same as CHC	Same as CHC

## 16. INDUCTION

Director induction involves introducing new directors to the people with whom they will be working and explaining how the board operates. It involves building trust, rapport and credibility amongst directors.

New board members need to receive sufficient training and background information to function appropriately. Preparing a board member for effective board contribution is referred to as induction training.

**Best Practice** – New board members receive induction training. The level of training reflects the size and complexity of the company.

CA Section 99 (see Duty of Care)

ECODA 8: All directors should receive induction on joining the board and should regularly update and refresh their skills and knowledge.

### Induction

The Chairman is responsible for ensuring Induction takes place. The rigour and formality of the induction should reflect the size and complexity of the enterprise.

New board members should have the ability to interview executives, staff and key functions such as the internal and external audit at their discretion and in the absence of management.

### Essential Information (before 1<sup>st</sup> Board Meeting)

Regarding director's duties and activities:

- Outline of the role of a director; a summary of his/her responsibilities regarding legislation, regulation and best practice
- Details of the company procedures regarding director share dealings and the disclosure of price sensitive information
- The company's policies on:
  - » Delegated authority
  - » Authority of the main board
  - » Issues reserved for the board
- All board policies and procedures, such as a policy for obtaining independent professional advice for directors;
- Protocol, procedures and dress code for board meetings, general meetings, formal dinners, staff social events, site visits
- Procedures for accounts sign off: and,
- Expenses policy and method of reimbursement.

Regarding the business of the company:

- Diagram/chart and list of the group structure including joint ventures

- Company organization chart
- Current business plan, market analysis and budgets
- Latest annual report and accounts
- Explanation of key performance indicators
- The company's major risks and risk management strategy
- Corporate brochure including the mission statement and vision and a summary of the main events such as mergers, divestment etc
- Key goals and strategies
- Summary of insurance policies, including Directors and Officers liability insurance
- Details of any major litigation (both current and potential) undertaken by the company or against the company
- Treasury issues
- Funding position
- Dividend policy

Regarding board issues:

- Copy of the updated company's Memorandum and Articles of Association/ Constitution, with a summary of the most important provisions
- Minutes of the last six board meetings
- Board's meeting schedule and board committee meeting schedule
- Description of board procedures (i.e. when papers are sent out, usual location of meetings and their duration)
- Brief biographical and contact details of directors, company secretary and key executives
- Details of board subcommittees and their terms of reference

### Continuous Development

The chairman should ensure that the directors continually update their skills, and obtain the knowledge and familiarity with the company required to fulfill their role on the board.

## Indicator 17 – Board Charter and Committee Terms of Reference

	<b>L1: Legal baseline</b>	<b>L2: Understanding need to professionalise</b>	<b>L3: Significant concrete steps</b>	<b>L4: Advanced governance practice</b>
<b>Closely Held Company</b>	Not specified	The board has policies and procedures. In some cases there are basic charters, however, not all policies and procedures are always formalized	Basic policies and procedures are embodied in board charters and committee terms of reference. Related party transaction policies, board ethics codes, and so on are in place	Systems are in place to ensure that the policies and procedures are respected. A corporate secretary is tasked with actively making sure that charters are compliant with the law and up to date. Systems are in place to ensure that policies, such as board ethics code, are complied with
<b>Listed Company</b>	Not specified	Same as CHC	Same as CHC	Same as CHC
<b>State Owned Enterprises</b>	Not specified	Same as CHC	Same as CHC	Same as CHC

## 17. BOARD CHARTER & COMMITTEE TERMS OF REFERENCE

Written policies and procedures are necessary to formalize the company's governance. The board should define in writing the terms of reference of the various committees, explaining their role and the advisory authority delegated to them by the board. These terms of reference should be reviewed by the board on a periodic basis.

The board relies on corporate secretaries and internal and external auditors to provide assurances regarding the quality of the documentation and the systems for implementation.

**Best Practice** – The board has a charter, committee terms of reference, and other documentation that define its roles, responsibilities and procedures.

The CA is silent on a code of conduct for directors save for the specific prohibitions and obligations contained inter alia in Section 60(b) (Duty of Directors to Manage Company) and 99 (i) (a) and (b) (Duty of Care); in respect of SOEs there is a code of conduct for directors (being persons in public life) in the Integrity in Public Life Act (Sections. 23-31)

### Board Charter

A charter typically includes:

- ✓ **Board responsibilities** - Major responsibilities, including those carried out by the board and its committees, and those that are management's responsibility.
- ✓ **Board composition** - Board size, the proportion of independent directors, the proportion of management directors, directorship term limits, director retirement age, and any limits on the number of directors.
- ✓ **Director selection** - Director selection criteria, including: skill sets, diversity, and experience; director recruitment process; and, orientation.
- ✓ **Board leadership** - Selection process for the board chairman, separation of the chairman and chief executive roles (Trinidad and Tobago law does not prevent joint Chairman and CEO roles but it is best practice to have these roles separated), the appointment of a "lead" outside director, and the selection process for committee chairs.
- ✓ **Director remuneration** - Composition and amount of director remuneration (stock, options, cash), the basis for determining remuneration, and expense reimbursement.
- ✓ **Board meeting procedures** - Frequency and duration of meetings, the expectations of director attendance, procedures for setting meeting agendas, procedures for advanced distribution of board meeting materials, executive sessions of independent directors, and attendance by non-directors.
- ✓ **Board performance** - Assessment of the board's and committees' effectiveness, assessment of individual director performance, limitations on continuing board membership (retirement, etc.), and addressing conflicts of interest.
- ✓ **Committees** - Specific committees formed, committee membership requirements, selection and rotation of members and chairs, and committee meeting processes and agendas.
- ✓ **Board relationships** - Interaction with the chief executive, contact with investors, media, and customers

### Typical Terms of Reference for a Committee outlines:

- ✓ Membership
- ✓ Attendance at Meetings
- ✓ Frequency at meetings
- ✓ Authority (authorized by)
- ✓ Responsibilities
- ✓ Reporting Procedures

## Indicator 18 – Code of Ethics

	<b>L1: Legal baseline</b>	<b>L2: Understanding need to professionalise</b>	<b>L3: Significant concrete steps</b>	<b>L4: Advanced governance practice</b>
<b>Closely Held Company</b>	Not specified	The company has an ethics code that applies to both staff and board	The company actively enforces its ethics code. Enforcement is monitored by the board	The company has a strong ethics culture. The board annually reviews its ethics code and compliance mechanisms to enforce ethical behavior
<b>Listed Company</b>	Not specified	Same as CHC	Same as CHC	Same as CHC
<b>State Owned Enterprises</b>	Complying with the provisions in the Integrity in Public Life Act (IPLA) Code of Conduct (Sections 23-30)	The company has an ethics code that expands the IPLA Code of Conduct in more customized ways so as to be of maximum use to the company	Same as CHC	Same as CHC

## 18. CODE OF ETHICS

An organization's ethics are the established values and principles it uses to inform and conduct its activities. These describe the moral and ethical climate within which the company wishes to operate. A code of ethics should be sufficiently detailed to give clear guidance, accompanied by a training program and widely communicated.

In addition to the code of ethics for the board itself, companies are expected to have a written ethics code for staff and connected parties (suppliers, consultants, agents) and systems to ensure that the precepts of the ethics code are understood, agreed to, and being followed. The Board needs to ensure that this done.

**Best Practice** – The board contributes to and ensures that a company code of ethics exists and is implemented.

The Code of Conduct specified in the Integrity in Public Life Act (sections 23-31) applies to a person in public life and to all persons exercising public functions (thereby the entire SOE organization and not only the Board).  
OECD VI.C.0 and SOE.IV.C, IPLA 23-31

### Purpose of Code of Ethics

The purpose of the code of ethics is to reduce risk and increase performance by:

- ✓ Demonstrating the company's commitment to the highest standards of ethical behaviour,
- ✓ Encouraging proper ethical conduct and sanction misconduct within the company and its connected parties, and
- ✓ Developing an ethical culture implementation system based on such standards and conduct, led by the company's directors, and management, and followed by employees and connected parties

### Content and Process

Implementing a Code of Ethics involves the development of the actual code and its implementation in the organization. The development of a code is done in the context of a clear strategic vision of the company and an analysis of its business ethics risks in relation to different activities and stakeholders (internal and external).

Once the code development process is complete the company must have the requisite structure and resourcing for implementation. The required staff, systems and processes must be in place to operationalise training, communication and management of the business ethics process. Every person should sign that they have understood what the code says and that they are able and willing to abide by the code.

A standard Code of Ethics will include:

- ✓ The Company's Values
- ✓ The Company's Ethical Principles
- ✓ Ethical Standards for the Company's Relationship with its Stakeholders i.e. Employees and Officers, Customers, Business Partners, Government and Community, Society and Environment
- ✓ Implementation Description i.e. Processes and Responsibility, Means to Obtain Advice, Training Programme

### Third Party Compliance

In order to minimize T&T Companies exposure as well as be compliant with their international partners' due diligence processes, Directors should ensure that:

- i. Partner Relationships are transparent and based on demonstrated capabilities and compliance programmes;
- ii. Roles, contracts, and payments are documented;
- iii. Reciprocate & ask for reciprocation of assurance programmes.



## Indicator 19 – Evaluation

	<b>L1: Legal baseline</b>	<b>L2: Understanding need to professionalise</b>	<b>L3: Significant concrete steps</b>	<b>L4: Advanced governance practice</b>
<b>Closely Held Company</b>	Not specified	The board has had explicit deliberation on the importance of Corporate Governance	Board minutes reflect deliberation of what to undertake as a result of corporate governance evaluation	The evaluation/plan has become an annual process. Minutes reflect the board's deliberation in relation to its formal evaluation of governance at least annually
<b>Listed Company</b>	Not specified	Same as CHC	Same as CHC	Same as CHC
<b>State Owned Enterprises</b>	Not specified	Same as CHC	Same as CHC	Same as CHC

## 19. EVALUATION

Evaluations of the board's and the company's governance practices are typically considered a first step to improving governance. Evaluations can be self-evaluations or externally assisted. An evaluation should lead to a governance improvement plan, which is implemented under board supervision.

Evaluations must be used for two specific reasons: assess performance, and ensure that director skill sets bolster corporate strategic objectives and guard against possible risks.

**Best Practice** – The board conducts continuous informal discussions and assessments of effectiveness, and a formal annual evaluation of the company's governance practices.

The CA is silent on the process of evaluation or performance measurements.

SOE.VI.F; ECODA 13 The board should undertake a periodic appraisal of its own performance and that of each individual director.

### Evaluation / Performance Improvement Plan

A plan for the formal evaluation of the Board's governance practices (either self-evaluation or assisted evaluation) should be an item on the board agenda. The results should be discussed and a plan to remedy defects put in place.

### Evaluation Terms of Reference

An evaluation should have clear terms of reference so as to include the Board, individual director performance, Committees, the CEO and Chairman in the process.

The TOR should also state the reason why the evaluation is being undertaken e.g. identification of board weaknesses and providing opportunity to take action and improve itself or assessing the value of the board to the company and the efficiency of its internal functioning.

### Evaluation Process

A typical evaluation process is led by the chairman, but frequently outside experts provide assistance. The process comprises:

- An evaluation instrument e.g. The Corporate Governance Self-Assessment Tool
- A board presentation involving a description of the process
- A questionnaire which directors complete individually

and privately

- One-on-one confidential interviews
- Data collection and analysis
- A presentation and board discussion involving the development of a plan to remedy any identified deficiencies

Characteristics of successful evaluations include:

- The purpose, objectives, process, and outcomes have been fully explained and discussed with all concerned parties
- Strict confidentiality is maintained at all times
- The chairman and the CEO play a key role in developing and approving the process
- Regular, annual review
- Benchmarks of board, committee, executive, and company effectiveness should be used as performance indicators
- A written format that is discussed by all concerned parties
- The chairman should provide the full board with a report
- The process itself should be evaluated for improvements to be undertaken in the following year



# V. Disclosure and Transparency



## Indicator 20 – Disclosure

Disclosure Factors of Relevance	CHC	LC	SOE
1. Financial and operating results		x	x
2. Company objectives			
3. Major share ownership and voting rights			
4. Remuneration policy for key executives			
5. Identity and qualifications of board members			
6. Selection process of board members			
7. Potential conflicts of interest of board members and executives			
8. Which board members are independent			
9. Related party transactions		x	x
10. Risk factors			
11. Stakeholder issues			
12. Governance policies and structures			
13. Capital structures or other arrangements allowing disproportionate control of the company			
14. Any public service obligations that SOE is required to undertake beyond generally accepted norm			
15. Financial assistance received including from the State and commitments made on behalf of SOE			

x Indicates legal requirements

	Level 1	Level 2	Level 3	Level 4
<b>Closely Held Companies</b>	Not applicable	Disclosure to applicable regulatory guidance	Not applicable	Responsive to issues of importance of stakeholders
<b>Listed Companies</b>	L1. Legal Requirements [Items 1 & 9]	Not only minimal legal requirements but according to regulatory guidance [Items 2]	Meeting International Standards of Accounting & Reporting (ISAR) guidelines [All items]	Not only best practice but responsive to issues of importance of stakeholders
<b>State Owned Enterprises</b>	L1. Legal Requirements [Items 1&9]	Not applicable	Meeting Organization for Economic Cooperation and Development (OECD) Guidelines [All items]	Not only best practice but responsive to issues of importance of stakeholders

## 20. 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.

**Best Practice** – All material information is disclosed to relevant stakeholders. The benchmark of good practices in corporate governance disclosure developed by the Intergovernmental Working Group of Experts on International Standards of Accounting Reporting (ISAR) consists of over fifty disclosure items covering five subject areas.

### Legal Requirements

All the companies in Trinidad and Tobago must comply with the Companies Act (Chapter 81:01, No. 35 of 1995). This law mandates companies to disclose to shareholders comparative financial statements, reports of the auditor if any, and any other information relating to the financial position of the company or operating results required by the articles of the company, its by-laws, or any unanimous shareholder agreement.

Companies are also mandated to disclose any material interests by directors as defined in Section 93(6). Corporate governance disclosure mandated by this Act is found in Section 113(1) and relates to the notice of meetings that must be given to shareholders, directors and auditors. Companies are also required to disclose in their Annual Returns filed in the Companies Registry any changes in the types of shares issued, the shareholding, the execution of mortgages and bills of sale that bind the company's assets and any other encumbrances to the company's assets

Disclosure requirements for Listed Companies in Trinidad and Tobago 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,
- 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

For SOE the SEPMM 3.1.5, Section IX Ethical Procurement Standards states that related party interest "any director, officer and employee..... shall be required to disclose such interest... and shall not take part in the consideration or discussion of the offer, not vote on any consideration concerning such offer."

OECD.VA; SOE.I.C; SOE.IV.B; SOE.V.E.4, ECODA 4.e

### Information Disclosure Policy

Best practice suggests that the board develop or approve an information disclosure policy that addresses:

- Authorized persons
- Disclosure rules
- Public information
- Information provided to shareholders
- Confidential information
- Insider information

## Indicator 21 – Accounting Standards

	<b>L1: Legal baseline</b>	<b>L2: Understanding need to professionalise</b>	<b>L3: Significant concrete steps</b>	<b>L4: Advanced governance practice</b>
<b>Closely Held Company</b>	Company complies with national standards and is able to produce annual statements on a timely basis	The board and or audit committee have considered appropriate accounting standards	Proper systems are in place for compiling IFRS statements as well as trained staff. Financial reports are compiled according to IFRS	Financial reports are compiled according to IFRS. The audit does not have any qualified opinions
<b>Listed Company</b>	Not specified	Not Specified	Same as CHC	Same as CHC
<b>State Owned Enterprises</b>	Not specified	Not Specified	Same as CHC	Same as CHC

## 21. ACCOUNTING STANDARD

The board's financial oversight of company's activities is required to ensure financial stewardship and provide users with the appropriate information to make decisions.

IFRS is the internationally accepted accounting standard. Closely held companies, listed companies and SOEs are all expected to be able to comply with IFRS disclosure.

**Best Practice** – Compliance with the reporting standard which is International Financial Reporting Standards (IFRS)

CA does not expressly treat with accounting standards although implicit in its provisions is best practice adherence.

OECD.V and VI relate to the board's financial stewardship responsibilities, including financial oversight and reporting.

### Director Responsibilities

Company law or its equivalent, and other statutory and reporting requirements hold directors responsible for a broad range of matters, including:

- Maintenance of proper accounting records, including the review, approval, and monitoring of capital and management budgets and performance
- Disclosure of the company's financial position, changes in that position, and performance, and the publication of financial statements on at least an annual basis and more often if required
- Establishing and monitoring proper internal controls
- Assurance that appropriate external controls and audit are in place and operating
- The directors' role is to ensure conformance and compliance with shareowners' expectations and regulatory requirements

### Accounting Policies

A company should apply consistent accounting policies to similar transactions from period to period. Therefore, there should be few changes in accounting policies unless there is a new standard applied, or new types of transactions or events are undertaken by the company, or if there is a correction of an error from previous practices.

### Inadequate Financial Information

If adequate financial information is not available, especially to the board and management, to regulators, investors, and company stakeholders, the consequences are serious and may include:

- Delisting or suspension of a listed entity
- Restatement of inadequate financial statements in case of incorrect information
- Shareholders and investors seeking the return of their investment or being reluctant to invest
- Difficulty or incapacity of obtaining appropriate levels of funding
- Inappropriate board and management decisions
- Legal proceedings against directors, such as for negligence



## Indicator 22 – Auditing Standards

	<b>L1: Legal baseline</b>	<b>L2: Understanding need to professionalise</b>	<b>L3: Significant concrete steps</b>	<b>L4: Advanced governance practice</b>
<b>Closely Held Company</b>	Not specified	Financial reports are audited according to ISA. The audit is conducted annually	Audit conducted by well-known and respected auditor	Audit conducted under independent auspices of audit committee
<b>Listed Company</b>	Not specified	Same as CHC	Same as CHC	Same as CHC
<b>State Owned Enterprises</b>	Not specified	Same as CHC	Same as CHC	Same as CHC

## 22. AUDITING STANDARD

International Standards of Auditing are the internationally accepted standard for the audit of financial statements. Closely held companies, listed companies and SOEs are all expected to have their financial reports audited according to ISA.

OECD.V.B; OECD.V.C; OECD.V.D

**Best Practice** – The audit standard is International Standards of Auditing (ISA).

### Role of Audit Committee:

The audit should be conducted directly under the auspices of an audit committee that is largely independent, and is protected from undue influence from company executives, owners, or any other parties (such as the government).

### Selecting an Auditor

The audit committee should steer the selection of an auditor. A proposal for the election of the external auditor should be disclosed in the notice to the annual general meeting. The audit committee should communicate directly with the external auditor and meet with them without management's presence. The audit committee should reassure themselves that the external auditor is independent and must take actions to safeguard this independence.

### Best Practice in Relations with External Auditor

- Selecting an auditor through an open tender under conditions satisfactory to the majority of shareowners, including the audit firm's remuneration, internal quality control procedures, and impairments or perceived impairments to the audit firm's independence.
- Ensuring the auditor's independence, qualifications, expertise, resources, and effectiveness
- Having regular contact with the auditor before, during and after the audit.
- Evaluating the quality of auditor's work
- Inviting representatives of the auditor to the general assembly
- Adopting a constructive approach to mistakes the auditor identifies.
- Disclosing the audit report through an annual report or the company website
- Demanding that the external auditor issue a management letter

### Red Flags – Some Financial Crisis Indicators

Directors should proactively look for signals indicating that the company could be heading towards a financial crisis. Sound management reporting and directors' close contact with the company should alert them to potential danger.

Some indicative signs are:

- Delays in accounts payable
- An increase in stock levels compared to turnover
- Small net current assets or an increase of current liabilities over current assets
- Inadequate explanations for variances of actual to budget
- High gearing, illiquidity or an inability to meet the terms of loan agreements
- Negative cash flow
- Lack of financial controls
- Continuing trend of losses
- Major, unexpected losses
- Inadequate review and analysis of mistakes
- Boardroom turmoil and inability to make decisions
- Managerial and board self-indulgence
- Resistance to abandonment of a marginally profitable venture
- Over-trading with little cash, converting working capital primarily into stock and debt
- Absence of board committees when such committees are seemingly desirable
- Structural defects in senior management



# VI. Shareholders



## Indicator 23 – One Share One Vote

	<b>L1: Legal baseline</b>	<b>L2: Understanding need to professionalise</b>	<b>L3: Significant concrete steps</b>	<b>L4: Advanced governance practice</b>
<b>Closely Held Company</b>	All shareholders are given their right to explicitly vote in accordance with the Companies Act provisions	Not specified	The charter, governance or ethics code of the company or other policy has an explicit requirement that the board treat all shareholders in an equitable fashion. Control in the company is directly proportionate to number of shares held	Equitable treatment of all shareholders, including minority shareholders, is an explicit item in company Code of Ethics
<b>Listed Company</b>	Same as CHC	Not specified	Same as CHC	Same as CHC
<b>State Owned Enterprises</b>	Same as CHC	Not specified	Same as CHC	Same as CHC

## 23. ONE-SHARE-ONE-VOTE

The principle of one-share-one-vote, means that all shareholders are treated equally, on a proportional basis to ownership.

Where there are different shareholder groups, there is always the possibility that certain decisions may impact these groups differently. The board is therefore responsible to all shareholders equally and it is the board's duty to ensure that all shareholders are treated equitably.

**Best Practice** – The board ensures that the legal rights of different shareholder groups are respected and that different shareholders are treated equitably and fairly and that minority shareholders are protected from abusive action by controlling shareholders.

CA Section 107(1) defines who shareholders are and their rights with respect to meetings. Section 128 specifies that unless the articles of the company otherwise provide, on a show of hands a shareholder or proxy holder has one vote; and upon a ballot a shareholder or proxy holder has one vote for every share held.

See OECD VI.B.0; ICGN.3, UNCTAD

### Ownership Structure

Understanding a company's ownership and control structures is important to help understand corporate governance risks.

Information on the ownership structure tells us whether the company is widely or closely held. Governance risks associated with companies where there are many shareholders ("widely held") are different from those associated with a companies with a few shareholders ("closely held").

In closely held companies, minority shareholders may be exposed to governance risks associated with the actions of a dominant shareholder. In widely held companies, governance risks tend to be associated with strong managers and dispersed owners who would find it more difficult to monitor management closely and assert their rights and objectives.

### Control Structure

The control structure of an enterprise determines who has the decision making power. It is particularly important for investors to know who controls an enterprise in order to better assess the likely development of the business strategy and associated actions.

Usually each share is associated with one vote, but alternatives are possible. It is also important to know what the ownership structure is like if there is a nested set of companies involved.

### Shareholder Structure

Listed Companies and SOEs should publicly disclose their shareholder structure.

### Policy in Code of Ethics

The company's Code of Ethics should include a policy that states that the rights of owners of different types of shares, and minority shareholders are to be treated fairly and equally respected.

Directors need to ensure that the interests of minority shareholders are considered equitably in their decision making.

## Indicator 24 – Annual Shareholders Meeting

	<b>L1: Legal baseline</b>	<b>L2: Understanding need to professionalise</b>	<b>L3: Significant concrete steps</b>	<b>L4: Advanced governance practice</b>
<b>Closely Held Company</b>	AGMs are held within 15 months of each other	AGM is genuine forum for discussion and taking large decisions	AGM with timely information and proxy voting available	Not specified
<b>Listed Company</b>	Same as CHC	Same as CHC	Same as CHC	GSM is broadcast over the internet
<b>State Owned Enterprises</b>	Same as CHC	Same as CHC	Same as CHC	Same as LC

## 24. ANNUAL GENERAL MEETING

The Annual General Meeting (AGM), also referred to as the General Shareholders Meeting (GSM), is a meeting usually required by law and/or the articles.

An AGM is typically held annually to elect the board of directors and inform shareholders of previous and future activities. It is an opportunity for the shareholders to receive and approve the company's accounts for the past year, to hold the board to account, and ask questions regarding the directions the business will take in the future.

**Best Practice** – AGM held annually and processes allow for the effective participation of all shareholders.

CA Sections 30-59 identifies the rights and obligations of shareholders

CA Section 109 states 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;

CA Section 242 a shareholder has a remedy against corporate excesses by virtue of an oppression action

CA Sections 107-115 deals with shareholders meetings

OECD.II.A.3; OECD.II.A.5; OECD.II.C.1; OECD.II.C.2; OECD.III.A.5 and OECD.II.A.4 and II.C; ECODA 7

### Shareholder Participation

The GSM is not merely a legal or bureaucratic formality. It is a genuine forum for discussion and for taking large decisions (not day-to-day operational decisions), including the approval of the accounts, the approval of the auditor, approval of dividends, and the election of directors. Shareholders are able to vote to elect and remove members of the board. Proxy voting (in absentia) can facilitate shareholder participation.

### Notice and Related Information

Meeting notice and agenda, including shareholder proposals, are to be provided to all shareholders on a timely basis. Shareholders are allowed to ask questions at the GSM. All shareholders are able to obtain the material information to which they have a right on an equal basis (no selective disclosure or selective access to information).

### Procedure for holding AGM

The Company's Articles and By-Laws usually contain a prescription for how annual general meeting (AGM) or extraordinary general meeting (EGM) are to be organized. Procedural issues may also be communicated to shareholders

directly in the notification of the AGM or EGM. Information that is normally included is: who calls the meeting; who has a right to demand a meeting or put an item on the agenda; the length of notice that must be given to shareholders; quorums; proxy voting rules; and other procedural items.

### Availability and Accessibility of the Meeting Agenda

General meetings are the principal opportunity for shareholders to involve themselves in the decisions of the enterprise. The organization of a general meeting is thus an important element in the exercise of monitoring and control. Central to the organization of the meeting and shareholder participation is the meeting notice and the agenda. Both must be easily available to shareholders in order for them to participate effectively. The notice and agenda should describe the process for holding the meeting and voting, as well as any other information necessary for shareholders to make informed decisions on the items on the agenda. Notice of general meetings can be made by modern communications technologies such as by e-mail or posted on an enterprise's website, or by more traditional methods such as paper mail or publication in widely-read newspapers.



# References

- Caribbean Corporate Governance Institute (draft 2013) "Trinidad and Tobago Corporate Governance Code", developed in partnership with Trinidad & Tobago Chamber of Industry and Commerce, and Trinidad & Tobago Stock Exchange, Port of Spain. Available at: <http://www.caribbeangovernance.org/codes-guides/ttcgc>
- CBTT (2007), Corporate Governance Guidelines, Central Bank of Trinidad and Tobago, Port of Spain, Trinidad and Tobago. Revised May 2007. <http://www.central-bank.org.tt/pdf/Other/Corporate%20Governance.pdf> [accessed 24 September 2011]
- CBTT (2009) Credit Union Act Policy Proposal Document, Central Bank of Trinidad and Tobago, Port of Spain, Trinidad and Tobago. <http://www.central-bank.org.tt/sites/default/files/Credit%20Union%20Act%20Policy%20Proposal%20Document.pdf> [accessed 24 September 2011]
- CBTT (2011a) Draft Insurance Bill as at August 2011, Central Bank of Trinidad and Tobago, Port of Spain, Trinidad and Tobago. <http://www.central-bank.org.tt/sites/default/files/Draft%20Insurance%20Bill%20as%20at%20August%202011.pdf> [accessed 24 September 2011]
- Corporate Governance Board Leadership Training Resources Kit, Global Corporate Governance Forum and International Financial Corporation, 2008
- ECODA (2010) Corporate Governance Guidelines for Unlisted Companies, European Confederation of Directors' Associations, Brussels, Belgium. <http://www.ecoda.org/docs/Publications/CGguidanceandprinciplesforunlistedcompaniesinEurope-March2010.pdf> [accessed 8 November 2012]
- FRC (2010) The UK Corporate Governance Code, Financial Reporting Council, London, UK. [http://www.frc.org.uk/documents/pagemanager/Corporate\\_Governance/UK%20Corp%20Gov%20Code%20June%202010.pdf](http://www.frc.org.uk/documents/pagemanager/Corporate_Governance/UK%20Corp%20Gov%20Code%20June%202010.pdf) [accessed 24 September 2011]
- GRI (2006) Sustainability Reporting Guidelines v3, Global Reporting Initiative, Amsterdam, The Netherlands. See [www.globalreporting.org](http://www.globalreporting.org)
- ISO 26000 (2010). ISO 26000: Social Responsibility. International Organizations for Standardization, ISO Central Secretariat: Geneva.
- Laws of Trinidad & Tobago (1995) Companies Act, Chapter 81:01; Law 35 of 1995; Updated to December 31, 2009 [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/81.01.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/81.01.pdf) [accessed 20 September 2011]
- Laws of Trinidad & Tobago (1999) Constitution (Amendment), Act 29 of 1999, [www.ttparliament.org/2Flegislations%2Fa1999-29.pdf&rct=j&q=Act%2029%20of%201999%20trinidad&ei=BFp-To\\_TCoOfTgev-MBe&usg=AFQjCNErBROoKXyhuSElpZj5CHYHBao\\_4A&cad=rja](http://www.ttparliament.org/2Flegislations%2Fa1999-29.pdf&rct=j&q=Act%2029%20of%201999%20trinidad&ei=BFp-To_TCoOfTgev-MBe&usg=AFQjCNErBROoKXyhuSElpZj5CHYHBao_4A&cad=rja) [accessed 24 September 2011]
- Laws of Trinidad & Tobago (1995) Securities Industries Act, Chapter 83:02; Law 32 of 1995; Updated to December 31, 2007 [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/83.02.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/83.02.pdf) [accessed 20 September 2011]
- Laws of Trinidad & Tobago (1980) Insurance Act, Chapter 84:01, Act 6 of 1980, Updated to December 31, 2009, [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/84.01.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/84.01.pdf) [accessed 20 September 2011]
- Laws of Trinidad & Tobago (2000) Integrity in Public Life Act, Chapter 22:01, Act 83 of 2000, see [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/22.01.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/22.01.pdf) [accessed 2 October 2011]

- Laws of Trinidad & Tobago (2003), Freedom of Information (Exemption) Order 2003, Legal Notice No. 21, Legal Supplement Part B – Vol. 42, No.1 – 20<sup>th</sup> February, 2003. [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/22.02.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/22.02.pdf) [accessed 24 September 2011]
- Laws of Trinidad & Tobago (2008) Financial Institutions Act, Chapter 79:09, Act 26 of 2008, Updated to December 31, 2009 [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/79.09.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/79.09.pdf) [accessed 20 September 2011]
- Laws of Trinidad and Tobago (1999) The Freedom of Information Act (FOIA), Act 26 of 1999. Available at: <http://www.foia.gov.tt/about/publicauthoritieslist.asp> [accessed January 18, 2011].
- MOF (2011a), State Enterprises Performance Monitoring Manual, Ministry of Finance of the Republic of Trinidad and Tobago, July 2011. <http://www.finance.gov.tt/content/State-Enterprises-Performance-Monitoring-Manual-2011.pdf> [accessed 20 September 2011]
- MOF (2011b) “Good Governance: Beyond Compliance-Steering Organizations Safely Through Change and Creating Value”, Delivered by Minister of Finance, the Honourable Winston Dookeran, at Syntegra Change Architects Ltd launch of the “Board Leadership Training Series 2011”, in collaboration with the Private Sector Organizations of Jamaica (PSOJ), Port of Spain, Marriott Hotel, 24 January 2011 <http://www.finance.gov.tt/content/sp110125025431.pdf> [accessed 24 September 2011]
- OECD (2004) OECD Principles of Corporate Governance, Organization for Economic Co-Operation and Development (OECD), Paris, France <http://www.oecd.org/dataoecd/32/18/31557724.pdf> [accessed 24 September 2011]
- OECD (2005) OECD Guidelines on Corporate Governance of State-owned Enterprises, Organization for Economic Co-Operation and Development (OECD), Paris, France <http://www.oecd.org/dataoecd/46/51/34803211.pdf> [accessed 18 September 2012]
- PSOJ (2006) Jamaica Corporate Governance Guidelines, Private Sector Organization of Jamaica, Kingston, Jamaica.
- UNCTAD (2009) 2009 Review of the implementation status of corporate governance disclosures: an inventory of disclosure requirements in 24 emerging markets, United Nations Conference on Trade and Development (UNCTAD), October 2009, TD/B/C.II/ISAR/CRP.8, Geneva, Switzerland, see [http://www.unctad.org/en/docs/ciisarcrp8\\_en.pdf](http://www.unctad.org/en/docs/ciisarcrp8_en.pdf) [accessed 2 October 2011]
- UNCTAD (2010) 2010 Review of the Implementation Status of Corporate Governance Disclosures: An Inventory of Disclosure Requirements in 21 Frontier Markets, United Nations Conference on Trade and Development (UNCTAD), October 2010, TD/B/C.II/ISAR/CRP9, Geneva, Switzerland, see [http://www.unctad.org/en/docs/ciisarcrp9\\_en.pdf](http://www.unctad.org/en/docs/ciisarcrp9_en.pdf) [accessed 2 October 2011]
- Syntegra Change Architects “Corporate Governance Disclosure in Trinidad and Tobago”, Paper presented by Dr Axel Kravatzky to the United Nations Conference on Trade and Development (UNCTAD), Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR) 28th Session, 12-14 October 2011, Palais des Nations, Geneva, Friday 14 October 2011, Afternoon Session [available at [www.syntegrachange.com](http://www.syntegrachange.com) and [http://www.unctad.org/sections/wcmu/docs/ciisar\\_28th\\_KravatzkyPaper\\_en.pdf](http://www.unctad.org/sections/wcmu/docs/ciisar_28th_KravatzkyPaper_en.pdf)]
- World Bank (2010) Doing Business 2011, The World Bank, Washington DC, USA <http://www.doingbusiness.org/~media/FPDKM/Doing%20Business/Documents/Annual-Reports/English/DB11-FullReport.pdf> [accessed 25 September 2011]
- WEF (2011), Global Competitive Report, World Economic Forum, Geneva, Switzerland. [http://www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2010-11.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2010-11.pdf) [accessed 25 September 2011]

# APPENDIX 1

## Highlights of Corporate Governance Best Practice Guides

### Corporate Governance Guidance and Principles for Unlisted Companies in Europe (ecoDa)

The Corporate Governance Guidance and Principles for Unlisted Companies is a practical tool for unlisted companies and their stakeholders developed by the European Confederation of Directors' Associations (ecoDa), "the European voice of board directors". Fourteen principles of good governance are presented on the basis of a dynamic phased approach, taking into account the degree of openness, size, complexity and level of maturity of individual enterprises. Unlisted companies – such as founder and family-owned businesses - can extract from the stepwise approach useful guidelines to promote their sustainability, to bring external parties to their boards, to attract funds, and to solve issues between shareholders.

#### Corporate governance principles applicable to ALL unlisted companies

- i. Shareholders should establish an appropriate constitutional and governance framework for the company.
- ii. Every company should strive to establish an effective board, which is collectively responsible for the long-term success of the company, including the definition of the corporate strategy. However, an interim step on the road to an effective (and independent) board may be the creation of an advisory board.
- iii. The size and composition of the board should reflect the scale and complexity of the company's activities.
- iv. The board should meet sufficiently regularly to discharge its duties, and be supplied in a timely manner with appropriate information.
- v. Levels of remuneration should be sufficient to attract, retain, and motivate executives and nonexecutives of the quality required to run the company successfully.
- vi. The board is responsible for risk oversight and should maintain a sound system of internal control to safeguard shareholders' investment and the company's assets.
- vii. There should be a dialogue between the board and the shareholders based on the mutual understanding of objectives. The board as a whole has responsibility for ensuring that a satisfactory dialogue with shareholders takes place. The board should not forget that all shareholders have to be treated equally.
- viii. All directors should receive induction on joining the board and should regularly update and refresh their skills and knowledge.
- ix. Family-controlled companies should establish family governance mechanisms that promote coordination and mutual understanding amongst family members, as well as organise the relationship between family governance and corporate governance.

#### Corporate governance principles applicable to large and/or more complex unlisted companies

- x. There should be a clear division of responsibilities at the head of the company between the running of the board and the running of the company's business. No one individual should have unfettered powers of decision.
- xi. Board structures vary according to national regulatory requirements and business norms. However, all boards should contain directors with a sufficient mix of competencies and experiences. No single person (or small group of individuals) should dominate the board's decision-making.
- xii. The board should establish appropriate board committees in order to allow a more effective discharge of its duties.
- xiii. The board should undertake a periodic appraisal of its own performance and that of each individual director.
- xiv. The board should present a balanced and understandable assessment of the company's position and prospects for external stakeholders, and establish a suitable programme of stakeholder engagement.

# APPENDIX 1

## Highlights of Corporate Governance Best Practice Guides

### OECD Principles on Corporate Governance © OECD 2004

The Organization for Economic Co-operation and Development (OECD) Principles of Corporate Governance were endorsed by OECD Ministers in 1999 and have since become an international benchmark for policy makers, investors, corporations and other stakeholders world-wide. They have advanced the corporate governance agenda and provided specific guidance for legislative and regulatory initiatives in both OECD and non OECD countries.

The Principles are a living instrument offering non-binding standards and good practices as well as guidance on implementation, which can be adapted to the specific circumstances of individual countries and regions. The Principles are intended to assist OECD and non-OECD governments in their efforts to evaluate and improve the legal, institutional and regulatory framework for corporate governance in their countries and to provide guidance and suggestions for stock exchanges, investors, corporations, and other parties that have a role in the process of developing good corporate governance. These Principles focus on publicly traded companies, both financial and non-financial. However, to the extent they are deemed applicable, they might also be a useful tool to improve corporate governance in non-traded companies, for example, privately held and state-owned enterprises.

- i. **Ensuring the Basis for an Effective Corporate Governance Framework:** The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.
- ii. **The Rights of Shareholders and Key Ownership Functions:** The corporate governance framework should protect and facilitate the exercise of shareholders' rights.
- iii. **The Equitable Treatment of Shareholders:** The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.
- iv. **The Role of Stakeholders in Corporate Governance:** The corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.
- v. **Disclosure and Transparency:** The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.
- vi. **The Responsibilities of the Board:** The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders

# APPENDIX 1

## Highlights of Corporate Governance Best Practice Guides

### OECD Guidelines on Corporate Governance of State-Owned Enterprises © OECD 2005

The OECD Guidelines on Corporate Governance of State-Owned Enterprises were designed to complement the OECD Principles of Corporate Governance on which they are based and with which they are fully compatible. These guidelines take the perspective of the state as an owner, focusing on policies that would ensure good corporate governance. They are intended to provide general advice that will assist governments in improving the performance of SOEs and are primarily oriented to state-owned enterprises using a distinct legal form (i.e., separate from the public administration) and having a commercial activity, (i.e. with the bulk of their income coming from sales and fees), whether or not they pursue a public policy objective as well.

- i. **Ensuring an Effective Legal and Regulatory Framework for State-Owned Enterprises:** The legal and regulatory framework for state-owned enterprises should ensure a level- playing field in markets where state-owned enterprises and private sector companies compete in order to avoid market distortions. The framework should build on, and be fully compatible with, the OECD Principles of Corporate Governance.
- ii. **The State Acting as an Owner:** The state should act as an informed and active owner and establish a clear and consistent ownership policy, ensuring that the governance of state-owned enterprises is carried out in a transparent and accountable manner, with the necessary degree of professionalism and effectiveness.
- iii. **Equitable Treatment of Shareholders:** The state and state-owned enterprises should recognise the rights of all Shareholders, and in accordance with the OECD Principles of Corporate Governance ensure their equitable treatment and equal access to corporate information
- iv. **Relations with Stakeholders:** The state ownership policy should fully recognise the state-owned enterprises' responsibilities towards stakeholders and request that they report on their relations with stakeholders
- v. **Transparency and Disclosure:** State-owned enterprises should observe high standards of transparency in accordance with the OECD Principles of Corporate Governance.
- vi. **The Responsibilities of the Boards of State-Owned Enterprises:** The boards of state-owned enterprises should have the necessary authority competencies and objectivity to carry out their function of strategic guidance and monitoring of management. They should act with integrity and be held accountable for their actions.

# APPENDIX 1

## Highlights of Corporate Governance Best Practice Guides

### Trinidad and Tobago Corporate Governance Code (In Press)

The Trinidad and Tobago Corporate Governance Code is a national corporate governance code which will provide overall principles and standards for corporate governance with specific focus on application and best practices for companies in Trinidad and Tobago. The code was modeled after globally agreed best practice with specific consideration and customisation for the local economy and dynamics of the Trinidad and Tobago business society. The code consists of five principles that represent the highest and most fundamental elements of good corporate governance and is targeted towards companies with public accountability for adoption on an “apply or explain” basis. This includes publically listed companies, or those who report to a securities commission or other regulatory organization. It also includes companies who hold assets in a fiduciary capacity for a broad group of outsiders, such as financial institutions. The code, a publication of the Caribbean Corporate Governance Institute (CCGI), is being developed under the leadership for the CCGI, the Trinidad and Tobago Chamber of Industry and Commerce and the Trinidad and Tobago Stock Exchange.

i. **Establish a Framework for Effective Governance**

Every company should be headed by an effective board, which is collectively responsible for the long-term success of the company.

ii. **Strengthen the Composition and Performance of Board and Committees**

There should be a balance of independence and diversity of skills, knowledge, experience, perspectives and gender among directors so that the board works effectively.

iii. **Reinforce Loyalty and Independence**

All directors should act in the best interest of the company, ahead of other interests

iv. **Foster Accountability**

The Board should present an accurate, balanced and understandable assessment of the company's performance, position and prospects.

v. **Strengthen Relationships with Shareholders**

The Board should promote constructive relationships with all shareholders that facilitate the exercise of their ownership rights and encourage their engagement with the company.

### State Enterprises Performance Monitoring Manual © Ministry of Finance 2011

The State Enterprises Performance Monitoring Manual published by the Ministry of Finance, Government of Trinidad and Tobago's (GOVTT) outlines the framework within which State Enterprises and the Minister of Finance (Corporation Sole) interact. It defines the roles of the major interacting agencies involved in monitoring the State Enterprises, the Monitoring Mechanism, the Performance Monitoring Indicators applicable to the Sector, and the compliance as well as inputs for generating synergies within the Sector. The guidance provided is aimed at facilitating the GOVTT's thrust to enhance efficiency and effectiveness in the State Enterprise sector.

The **Energy Chamber** of Trinidad and Tobago

The Energy Chamber, Unit B2.03 Atlantic Plaza,  
Atlantic Avenue, Point Lisas, Trinidad & Tobago, W.I  
Tel: 868.6-ENERGY (636.3749) Fax: 868.679.4242  
Email: [execoffice@energy.tt](mailto:execoffice@energy.tt)

