

# Corporate Governance Recommendations for the Listed Companies on the Barbados Stock Exchange Inc.

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## Section 1.0 Introduction

### 1.1 Goals of the Recommendations

The qualities of corporate governance practices, as well as transparent disclosure practices of listed Companies, are increasingly important selection criteria for investors. From the perspective of investors, clearly defined corporate governance policies, procedures and practices that are consistent with international best practices are facilitating factors for Shareholders' reasoned investment decisions and for the public trust necessary to ensure efficient capital markets.

The corporate, accounting and securities markets laws, as well as the rules of the Barbados Stock Exchange Inc., contain regulations concerning the governance and disclosure practices of listed companies in Barbados. Regulations on the protection of minority Shareholders and the exercise of rights of ownership and possession are embedded in the **Companies Act CAP. 308** of the Laws of Barbados ("**Companies Act**"). In other words, the law includes detailed, compelling regulations on the right to vote, obtain information and submit proposals, as well as the scheduling of Shareholders Meetings.

The corporate governance of listed companies in Barbados is based primarily on compelling legislation and self-regulation; thus the Recommendations contained herein are designed to complement, and supplement as necessary, statutory guidelines.

The goals of the Recommendations are to (i) harmonise the practices of listed companies; (ii) improve transparency of their operations; (iii) provide a basis of consistency for information provided to Shareholders; (iv) improve the quality of disclosure; and (v) reinforce appropriate accountabilities. Accomplishing these goals will assist in increasing local and international investors' awareness of listed companies in Barbados, promote investor confidence, engender public trust in the functioning of the securities and capital markets and ensure that Corporate Governance Recommendations for listed companies on the Barbados Stock Exchange reflect a standard consistent with best practices.

### 1.2 Structure of the Recommendations

The goals, structure and scope of implementation of the Recommendations as a whole are presented in Section 1. The individual Recommendations are presented in Sections 2–11 and the specifics concerning entry into force are presented in Section 12.

The general principles of the main subject of each Section are presented in the respective introductions. The individual Recommendations are presented in bold text and marked

with consecutive numbers. An explanatory section, including the justifications for the Recommendation and some specifying aspects and guidance for companies in adopting and implementing the Recommendation, follow each Recommendation. The explanations also present examples of circumstances in which a Board, in its business judgment, may deem it reasonable to deviate from a relevant Recommendation, with the explanation for such deviation disclosed to Shareholders.

### **1.3 Implementation of the Recommendations**

The Recommendations are intended to be complied with by companies listed on the Barbados Stock Exchange, provided that doing so is not in conflict with the compelling regulations applicable in the domicile of the company, in which case such non-compliance and explanation should be disclosed. The term “company” is used in the Recommendations and explanatory sections and the terms “listed company” or “limited company” are used only where the context so requires.

Listed companies vary from each other in their ownership structure, the nature of their business and the extent of their operations. There are also significant differences in their administrative structures. The majority of companies listed in Barbados are medium or small-sized companies in international terms. It is, however, important that the Recommendations reflect the developments taking place in corporate governance, whilst reflecting the nature of the Barbados economy, its capital markets and the size and ownership patterns of companies listed in Barbados.

The Recommendations use the terms “describe,” “disclose” or “report” to represent the dissemination of information to Shareholders. Unless otherwise provided, the information should, in all such cases, be disclosed either in the Annual Report or on the Internet website of the company.

The Recommendations have been prepared in accordance with the “Comply or Explain” principle, as opposed to prescriptive rules, *i.e.*, the company should comply with the entire Recommendation, and if the Board, in its business judgment, wishes to deviate from a particular Recommendation, the company should provide an explanation for doing so. The company must provide information on compliance with these Recommendations, either in its Annual Report or on its website, as directed by the Barbados Stock Exchange Inc. via the *Notices to Listed Companies*.

## **Section 2.0 The General Meeting**

The General Meeting is the highest decision-making body of a limited company through which Shareholders participate in the supervision and control of the company through exercising their rights to vote. The company must summon one Annual General Meeting during each financial year; and, in addition, an extraordinary or special meeting is to be convened when necessary.

## **2.1 Recommendation 1 - Advance Information to Shareholders**

*Prior to the convening of a Shareholders' Meeting, adequate information of the matters to be dealt with at the Meeting should be made available to Shareholders.*

The advance information permits Shareholders to evaluate the necessity of attending the meeting, decide how they wish to vote and whether they wish to seek further information at the Meeting, and take decisions concerning their shareholdings.

## **2.2 Recommendation 2 - Organisation of the General Meeting**

*The Shareholders' Meeting should be organised in a manner that permits Shareholders to exercise their ownership rights effectively.*

When organising a Shareholders' Meeting, the company should strive to offer the Shareholders an opportunity to participate in the decision-making process of the Meeting in a meaningful and constructive manner, based on principles of transparency and accountability.

## **2.3 Recommendation 3 - Attendance of the Chairman, other Directors and the Managing Director/Chief Executive Officer at the Shareholders Meeting**

*A majority of the Directors including the Chairman of the Board, the Managing Director/Chief Executive Officer (CEO), Chief Financial Officer (CFO), the Chairman of the Audit Committee, and the External Auditor should attend the Shareholders' Meeting.*

The presence of the above parties is necessary to ensure interaction between the Shareholders and the Management of the company and to provide the opportunity for Shareholders to present questions and raise concerns.

By exercising their right to present questions, Shareholders can attain more detailed information about matters that may impact on the evaluation of the financial statements, the financial position of the company or other matters to be dealt with at the Meeting. Attendance of the Managing Director/CEO and the Directors at the Annual General Meeting is particularly important. In the case of an extraordinary/special Meeting, it may be sufficient, taking into account the nature of the issue to be dealt with, that the Chairman, Managing Director/CEO and only a portion of the Board attend the Meeting.

## **2.4 Recommendation 4 - Attendance of a Prospective Director in a General Meeting**

*A person being proposed for the first time as Director should attend the General Meeting that determines his/her election, unless there are well-founded reasons for his/her absence.*

A person proposed for the first time as Director should attend the Meeting that determines his/her election, in order to be introduced to the Shareholders.

### **Section 3.0 The Board of Directors**

The Board is responsible for the supervision of senior Management and overseeing the operations of the company in their fiduciary capacity of acting with a view to the best interests of the company. The Board should adopt a written Mandate in which it explicitly acknowledges responsibility for the stewardship of the company, including responsibility for:

- (a) The appointment, remuneration and dismissal of the Managing Director/Chief Executive Officer (“CEO”);
- (b) To the extent feasible, satisfying itself as to the integrity of the Managing Director/CEO and other executive Officers (*e.g.*, other Members of the executive Management team, as applicable) and that the Managing Director/CEO and other executive Officers create a culture of integrity throughout the company;
- (c) Succession planning, including policies for the Managing Director/CEO selection and performance review and succession in the event of an emergency or the retirement of the Managing Director/CEO;
- (d) Adopting a strategic planning process and approving, at least on an annual basis, a strategic plan and financial objectives which take into account, among other things, the opportunities and risks of the business;
- (e) The identification of the principal risks of the company’s business, and ensuring the implementation of appropriate systems to manage these risks;
- (f) Oversight of the design and effectiveness of internal controls and management information systems;
- (g) Adopting a communication policy for the company;
- (h) Adopting measures for receiving feedback from stakeholders;
- (i) Establishing Director expectations and responsibilities, including basic duties and responsibilities with respect to attendance at Board Meetings and advance review of meeting materials;
- (j) Establishing Director qualification standards (see Recommendation 13);
- (k) Addressing orientation and continuing education for Directors (see Recommendation 16);
- (l) Facilitating Director access to Management and, as necessary and appropriate, independent advisors;
- (m) Setting Director compensation, including principles for determining and reviewing the form and amount of Director compensation (see Recommendations 49-52); and
- (n) Undertaking an annual performance evaluation of the Board, Board Committees and individual Directors (see Recommendation 7, 26 and 21).

The Board must also ensure that the company has duly endorsed the corporate values applied to its operations, which are typically embodied within a company's Code of Business Conduct and Ethics (see Recommendation 33).

The duty of the Board is to promote the best interests of the company. The Directors do not represent solely the interests of the parties who may have proposed their election as Members of the Board.

### **3.1 Recommendation 5 - Mandate of the Board**

*The company should adopt a written Mandate for its work and describe its essential content. This Mandate should address items (a) through (n) immediately above within Section 3.0.*

Efficient operation of the Board requires that the essential duties and working principles of the Board be defined in a written Mandate. The information outlined in the Board Mandate permits Shareholders to evaluate the operation of the Board.

The Board should assume overall responsibility for developing the company's approach to corporate governance, as articulated within the written Mandate of the Board. Companies may wish to consider appointing a Corporate Governance Committee to consider these issues.

The written Board Mandate should be effective, *i.e.*, detailed, clear, complete and up-to-date.

The text of the Board's written Mandate should be disclosed and accessible to Shareholders. If the Board does not have a written Mandate, the company should describe how the Board delineates its role and responsibilities.

### **3.2 Recommendation 6 - Meetings of the Board and Board Committees and Director Attendance**

*The company should disclose the number of Board and Committee meetings held during the reporting year and a summary of each Director's attendance at Board and Committee Meetings of which the Director is a Member.*

The information on the number of Board and Committee Meetings and rate of attendance of each of the Directors permit Shareholders to evaluate the effectiveness and contribution of the Board, Board Committees and individual Directors.

Whilst the average attendance of Directors at Board and Committee Meetings can be presented in percentage terms, calculated on the basis of the Meetings held and the number of attending Directors, it is recommended that companies disclose the attendance record of each Director for all Board Meetings and Meetings of Committees of which the Director is a Member held since the beginning of the company's most recently completed financial year.

### **3.3 Recommendation 7 - Performance Evaluation of the Board and Disclosure of Performance Evaluation Processes**

*The Board should conduct an annual evaluation of its performance and working methods.*

To promote the effectiveness of the Board, its performance and working methods should be evaluated annually. This performance evaluation should consider the duties and responsibilities outlined within the Board's written Mandate. A performance evaluation may be conducted as an internal self-evaluation, *i.e.*, by the Board, or by the Board retaining an external evaluator.

The results of the Board's performance evaluation should be acted upon, *e.g.*, taking timely, corrective action if or when required. The company should disclose whether or not the Board, its Committees and individual Directors are regularly evaluated (Recommendations 7, 26 and 21, respectively) with respect to their effectiveness and contribution. If performance evaluations are regularly conducted, the company should describe the process used for the evaluations. If performance evaluations are not regularly conducted, the company should describe how the Board satisfies itself that the Board, its Committees, and its individual Directors are performing effectively.

### **3.4 Recommendation 8 - Election of the Directors**

*The General Meeting should elect the Directors of the company.*

As per **Section 66 (3)** of the **Companies Act**, the Shareholders at the General Meeting must elect the Directors. By electing the Directors, the Shareholders provide oversight of the Management and operations of the company.

### **3.5 Recommendation 9 - Number of Directors**

*The Board should be composed of at least five Directors.*

To ensure the effective implementation of the duties and responsibilities of the Board, the Board should be composed of at least five Directors.

The Board should consider, in its business judgment, its appropriate size, given the size and complexity of the company and the desire to facilitate effective decision-making.

### **3.6 Recommendation 10 - Term of the Directors**

The Directors should be elected for a term not exceeding three years.

To encourage the rotation of directors, a third of the Board should be subject to election on an annual basis. This affords shareholders an opportunity to regularly evaluate the

activities of the directors and to exercise effective ownership control. Directors if qualified should be eligible for re-election.

### **3.7 Recommendation 11 - Notification of Proposed Director Candidates to Shareholders**

*The prospective Director candidates notified to the Board should be disclosed in the invitation to the General Meeting, provided that the candidate has given his/her written consent to the election. Candidates proposed after the delivery of the invitation should be disclosed separately.*

Since the election of Directors is one of the most important decisions of the General Meeting, Shareholders must be informed of prospective Director candidates in a timely manner before the Meeting. Before disclosing the candidates, the company must ensure that the candidates have given their written consent to be elected to the Board.

### **3.8 Recommendation 12 - Special Order of Appointment of the Directors**

*If, according to the company's Articles or By-laws, Directors are to be appointed according to a special class of rights, the company should disclose such provisions in the invitation to the General Meeting.*

The Articles or By-laws may provide that Directors may be appointed following another procedure instead of election by the General Meeting. Any special appointment of Directors outside the normal scope should be disclosed in the invitation to the Meeting.

### **3.9 Recommendation 13 - Qualifications of the Directors**

*A person elected as Director should have the qualifications required to discharge Directors' duties and be able to devote sufficient time and commitment to the work of the Board and its Committees.*

The effectiveness of the Board will require an appropriate level of knowledge by the individuals comprising the Board of the company's strategy and operations and an understanding of the industry in which the company operates. It is imperative that the Board be composed of Directors with versatile and mutually complementing capabilities and competencies. The age mix and gender proportion should also be taken into account in shaping the composition of the Board to ensure that the necessary balance is achieved.

Every Director should render the necessary time, attention and level of engagement to matters of the company to fulfil the requirements of the role, vis-à-vis that of Management. Directors, in particular the Board Chairman and Committee Chairs, are often required to render significant input outside the formal schedule of regular Board and Committee Meetings. Factors such as the Director's main occupation, secondary occupations and simultaneous Board Memberships can impact on his/her ability to adequately fulfil the Director's obligations. Directors should promptly advise the Board on their inability to fulfil their role and responsibilities due to conflicts of interests or inadequate time due to existing or anticipated obligations.

### **3.10 Recommendation 14 - Position Descriptions for Chairman of the Board, Committee Chairs and the Managing Director/CEO**

*The Board should develop clear Position Descriptions for the Chairman of the Board and the Chair of each Board Committee.*

The roles and responsibilities of the Chairman of the Board and the Chair of each Board Committee (e.g., Audit, Governance and Compensation Committees) should be delineated in the form of a Position Description.

Position Descriptions should include details on setting agendas, ensuring appropriate information is available, marshaling resources and expertise, establishing performance expectations and oversight of Management, retaining outside advisors, chairing *in camera* or executive sessions, fulfilling Board Mandate or Committee Charter responsibilities, coordinating with other Committees, providing appropriate reporting and recommendations to the Board, and ensuring the effective assessment of the Board or respective Committee.

The written Position Descriptions should be effective, *i.e.*, detailed, clear, complete and up-to-date.

The company should disclose whether or not the Board has developed written Position Descriptions for the Chairman of the Board and the Chair of each Board Committee. If the Board has not developed written Position Descriptions for the Chairman of the Board and/or the Chair of each Board Committee, the company should briefly describe how the Board delineates the role and responsibilities of each such position.

### **3.11 Recommendation 15 - Right of Directors to Receive Information and the Role of the Company Secretary**

*The company should provide sufficient information of the operations of the company to its Directors. It is important that the Board and Board Committees be served by an effective Company Secretary to assist in fulfilling their duties and responsibilities.*

In order to discharge their duties, the Directors require information about the structure, strategy, risks, financial accounts and business operations and the industry in which the company operates that is of sufficient quality and quantity so as to enable Directors to fulfil their responsibilities effectively. A new Director must be introduced to the nature and operations of the company and the incumbent Directors must be provided with pertinent information on the operations of the company on an ongoing and timely basis.

The Board and Board Committees should receive other forms of necessary support in order to fulfill their obligations. This support may include administrative, logistical, informational and technical resources by the Company Secretary, who should provide quality agendas, minutes and papers, maintain a register of outstanding issues, and report (functionally) to the Chairman of the Board.

### **3.12 Recommendation 16 - Orientation and Continuing Education for Directors**

*Formal orientation and continuing education programs should be provided to new and incumbent Directors that address Directors' requirements and expectations.*

The Board should ensure that all new Directors receive a comprehensive orientation. All new Directors should fully understand the role of the Board and its Committees, as well as, the contribution individual Directors are expected to make (including, in particular, the commitment of time and resources that the company expects from its Directors).

Companies should briefly describe what measures the Board takes to orient new Directors regarding the role of the Board, its Committees and its Directors, and the nature and operation of the company's business.

In addition, the Board should provide continuing education and developmental opportunities for all incumbent Directors, so that individuals may maintain or enhance their skills and abilities as Directors, as well as to ensure their knowledge and understanding of the company's business remains current.

Companies should briefly describe what measures, if any, the Board takes to provide continuing education for its Directors. If the Board does not provide continuing education, the company should describe how the Board ensures that its Directors maintain the skill and knowledge necessary to meet their obligations as Directors.

DEFINITIONS for Recommendations 17 and 18:

In Recommendations 17 and 18 the following words shall have the following meaning:

(a) **“affiliated entity”**

“one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person; and if two bodies corporate are affiliated with the same body corporate body at the same time, they are affiliated with each other.”

(b) **“immediate family member”** means

“ a wife”, “a husband”, “daughter or stepdaughter”, “son or stepson”, “mother”, “father.”

(c) **“material relationship”** means

“a relationship to the company which has been deemed by the BSE Corporate Governance Recommendation 18 as non independent.”

(d) **“significant shareholdings”** means

“Ownership or control of 10% or more of any class of the issuer’s voting securities; (b) shareholdings which would enable the holder thereof to materially affect the control of the issuer, whether alone or by acting in concert with others.”

### **3.13 Recommendation 17 - Composition of the Board and Independence of Directors**

*The Board of Directors of every company should have a cadre of independent Directors. These directors should be independent of a significant shareholding of the company.*  
The duties of the Board consist of supervision and control of the executive Management of the company.

For further clarity, to be affirmatively determined to be independent by the company’s Board of Directors, a Director should also be independent of Management and free from any material interest and any business or other relationship which could, or could reasonably be perceived to, interfere with the Director’s ability to act with a view to the best interests of the company, other than interests arising from shareholding.

### **3.14 Recommendation 18 - Evaluation and Disclosure of Director Independence**

*The Board should evaluate the independence of the Directors and disclose (i) the identity of Directors whom the Board determines to be independent, (ii) the identity of Directors whom the Board determines not to be independent.*

Despite Recommendation 17, the following persons are considered to have a material relationship with the company, *i.e.*, such persons are not independent:

- (a) A person who is, or has been, an employee or Executive Officer of the company, unless the prescribed period has elapsed since the end of the service or employment;
- (b) A person whose immediate family member is, or has been, an Executive Officer of the company, unless the prescribed period has elapsed since the end of the service or employment;
- (c) A person who is, or has been, an affiliated entity of, a partner of, or employed by, a current or former Internal or External Auditor of the company, unless the prescribed period has elapsed since the person’s relationship with the Internal or External Auditor, or the auditing relationship, has ended;
- (d) A person whose immediate family member is, or has been, an affiliated entity of, a partner of, or employed in a professional capacity by, a current or former Internal or External Auditor of the company, unless the prescribed period has

elapsed since the person's relationship with the Internal or External Auditor, or the auditing relationship, has ended;

- (e) A person who has a relationship with the company (*e.g.*, with a member of its Operational Management team) pursuant to which the person may accept, directly or indirectly, any consulting, advisory or other significant compensatory fee for services or other advice, as the case may be, from the company or any subsidiary entity of the company, other than as remuneration for acting in his or her capacity as a Member of the Board of Directors or any Board Committee, or as a part-time Chair or Vice-Chair of the Board or any Board Committee, *e.g.*, if the Director works on consulting assignments for the company; or
- (f) A person who belongs, or has belonged, or whose immediate family member belongs, or has belonged, to the operational Management team of another company and the two companies have a customer, supplier or cooperative relationship significant to the other company unless the prescribed period has elapsed since the end of the service or employment;
- (g) A person who belongs, or has belonged, or whose immediate family member belongs, or has belonged, to the operational Management team of another company, whose Director is a Member of the operational Management in the first company (*i.e.*, interlocking control relationship), unless the prescribed period has elapsed since the end of the service or employment;
- (h) A person who is, or has been, or whose immediate family member is or has been, an Executive Officer of an entity if any of the company's current Executive Officers serve on the entity's compensation committee, unless the prescribed period has elapsed since the end of the service or employment; or
- (i) A person who is an affiliated entity of the company or any of its subsidiary entities.

In addition, the Board may, on the basis of its overall evaluation, determine that a Director is not independent of the company if:

- (j) The Director participates in a performance-based or share-related compensation system of the company. The financial significance of the compensation system should be taken into account; or
- (k) The company (including the Board) is aware of other factors that may compromise the independence of the Director or the Director's ability to be impartial.

For the purposes of subsections (a) – (h), the prescribed period is two years.

For the purposes of subsections (c) and (d), a partner does not include a fixed income partner whose interest in the Internal or External Auditor is limited to the receipt of fixed amounts of compensation (including deferred compensation) for prior service with an Internal or External auditor if the compensation is not contingent in any way on continued service.

For the purposes of subsection (e), compensatory fees and direct compensation do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the company if the compensation is not contingent in any way on continued service.

For the purposes of subsection (e), the indirect acceptance by a person of any consulting, advisory or other compensatory fee includes acceptance of a fee by

- (a) a person's spouse, minor child or stepchild, or a child or stepchild who shares the person's home; or
- (b) an entity in which such person is a partner, Member, an Officer such as a Managing Director occupying a comparable position or Executive Officer, or occupies a similar position (except limited partners, non-managing members and those occupying similar positions who, in each case, have no active role in providing services to the company) and which provides accounting, consulting, legal, investment banking or financial advisory services to the company or any subsidiary entity of the company.

Despite all of the above, a person will not be considered to have a material relationship with the company solely because he or she

- (a) Has previously acted as an interim Chief Executive Officer of the company, or
- (b) acts, or has previously acted, as a Chair or Vice-Chair of the Board of Directors or any Board Committee, other than on a full-time basis.

### **3.15 Recommendation 19 – Disclosure of the Background, Biographical Details, Compensation and Shareholdings of Directors**

*The company should disclose the following information on each Director:*

- (a) Name and photo;
- (b) Independence status of the Director, as affirmatively determined by the Board, including the basis for a determination that the Director is not independent<sup>(1)</sup> (see Recommendations 17 and 18);
- (c) Education and professional qualifications;
- (d) Primary occupation;
- (e) Career experiences that are relevant to the Board;
- (f) Date of commencement of Board membership;
- (g) Membership on Board Committees (including Chairship);
- (h) A summary of the Director's attendance at Board and Committee Meetings (see Recommendations 6 and 25);
- (i) Identification of interlocking Directorships<sup>(2)</sup>;
- (j) Other Directorships that involve major time commitments;
- (k) Details of aggregate fees and other benefits provided to Directors (see Recommendation 50);

- (l) Details of aggregate shareholdings in the company by the Directors (see Recommendations 51 and 53); and
- (m) Details of holdings and rights based on a share-related compensation system of the company (see Recommendations 52 and 53).

The above information may be conveniently displayed in a comprehensive chart format, on a Director-by-Director basis.

The information on the Board Members and their holdings permits Shareholders to evaluate their relationships to the company.

### **Reference Notes for Recommendation 19**

- (1) *If a Director is non-independent, a listing of the family, business or other relationships that he or she has with the company or Management should be provided.*
- (2) *If a Director is presently a Director of any other company that is a listed company (or the equivalent) in a jurisdiction or a foreign jurisdiction, the company should identify both the Director and the other company.*

### **3.16 Recommendation 20 – Director Obligation to Provide Information to the Board.**

*Each Director should provide the Board with full, clear and relevant information that will allow the Board to evaluate his or her independence and qualifications, and should notify the Board promptly of any changes in such information.*

The independence evaluations referred to in Recommendations 18 and 19 require that the company receive full, clear and relevant disclosure of the necessary information from Directors to support such evaluations. Each Director must also supply the background, biographical and ownership information required to be disclosed in each of the sub-sections of Recommendation 19. Directors must promptly inform the company of any material changes in the information supplied by them or third parties.

### **3.17 Recommendation 21 – Performance Evaluation of Individual Directors**

*Each individual Director should be regularly assessed regarding his/her effectiveness and contribution.*

To promote the effectiveness of individual Directors, each Director's performance and contribution should be evaluated annually. This performance evaluation should consider the role and responsibilities outlined within the applicable Position Description(s) for the Director, as well as the competencies and skills each individual Director is expected to bring to the Board. A performance evaluation may be conducted as an internal self-evaluation, *i.e.*, by the Director him/herself, or a "peer" evaluation, *i.e.*, by Directors assessing one another, or in another manner that the Board deems appropriate.

The results of the individual Director's performance evaluation should be acted upon, *e.g.*, taking timely, corrective action if or when required and reporting to Shareholders on the nature of this review process in sufficient detail so as to demonstrate its effectiveness.

## **Section 4.0 Committees of the Board**

Board oversight over the functioning of executive Management is essential to ensure the effective operation of a limited company. Establishing Committees comprised of independent Members of the Board serve to enhance the effectiveness of Board operations and oversight.

Directors working on the Committees have the opportunity to concentrate on matters allocated or delegated to them more extensively than the entire Board. Board Committees should be used effectively in order to support the workload of the Board (*e.g.*, the extent of the responsibilities the Board has allocated to Committees, reporting by Management to the Committees, reporting by Committee to the Board and spreading the Board's workload appropriately).

### **4.1 Recommendation 22 - Appointment of a Board Committee**

*Effective organisation of the duties and responsibilities of the Board are expected to require the appointment of Board Committees.*

*There are two principal standing Committees of a Board: (i) the Audit Committee (see Recommendations 29 – 32); (ii) the Governance Committee (see Recommendations 34 – 37).*

*Other standing or ad hoc Committees may be appointed, given the nature and circumstances of the company (*e.g.*, its industry, size, complexity, maturity, risk profile and appetite and strategy) or a particular transaction, issue, investigation or risk, with due consideration by the Board, *e.g.*, Environment, Health and Safety, Risk Management, Special Committee, etc.*

It may be necessary to appoint Board committees for the supervision of financial reporting and internal control systems, the nomination of directors and director succession planning and the oversight of executive Management and compensation systems of the company. In companies that have reasonably developed or extensive business operations, Board Committees serve to increase the effectiveness of Board work.

The Committees assist the Board by addressing issues, which, due to their complexity or potential conflicts of interests, require the necessary focus, independence and skills separate from the functioning of the Board. The entire Board remains responsible for the duties assigned to the Committees and, as the Committees have no autonomous decision-

making powers, *i.e.*, Committees must review, report and recommend for approval by the Board, the Board collectively makes the decisions pertaining to it. If necessary, the Board, in its business judgment, can also appoint other standing or ad hoc Committees in addition to those outlined below, combine tasks assigned to various Committees and determine that the entire Board should address a specific issue.

#### **4.2 Recommendation 23 - Reporting by the Committees to the Board**

*Each Committee should regularly report on their work to the Board.*

The reporting details and schedules required from the Committees should be determined by the Board. As a minimum, the report(s) should include a summary of the matters addressed and the measures undertaken or recommended by the Committee.

As Committees begin to develop their working methods, the Chair of each Committee should report to the Board in a timely, comprehensive, meaningful and focused manner. Committee Meeting minutes should be provided to Committee Members, other Directors if they so desire, and should be clear, accurate, consistent, complete, timely and include appropriate detail, *e.g.*, supporting materials and satisfactory diligence of the basis for the Committee's recommendation to the Board.

#### **4.3 Recommendation 24 - Charters of the Committees**

*The Board should approve a written Charter for each Committee's work and describe its essential content.*

A written charter helps to clarify the role of the Committee in the company.

Efficient operation of a Board Committee requires that the essential duties and working principles of the Committee be defined in a written Charter. The information outlined in a Committee Charter permits the Shareholders to evaluate the operation of the Committee.

To enable effective functioning of the Committee, a Charter should clearly establish the purpose, duties, responsibilities, structure and operations (including any authority to delegate to individual Members and subcommittees), Member qualifications, Member appointment and removal, manner of reporting to the Board and evaluation of the Committee's performance. In addition, Committees should be given authority to engage and compensate any outside advisor that it determines to be necessary to permit it to carry out its duties.

A Committee Charter should be detailed, clear, complete, up-to-date and accessible to Shareholders.

#### **4.4 Recommendation 25 - Committee Meetings and Director Attendance**

*The company should disclose the number of Committee Meetings held during the reporting year and a summary of each Director's attendance at Committee Meetings of which the Director is a Member.*

The information regarding the number of Meetings and the rate of attendance of each of the Members permit Shareholders to evaluate the effectiveness and contribution of the Committee and the Board as a whole and individual Committee Members.

See Recommendation 6 for additional commentary on the disclosure of attendance records of each Director for all Committee Meetings of which the Director is a Member.

#### **4.5 Recommendation 26 - Performance Evaluation of Committees of the Board**

*Each Committee should conduct an annual evaluation of its performance and working methods.*

To promote the effectiveness of each Committee, its performance and working methods should be evaluated annually. This performance evaluation should consider the duties and responsibilities outlined within the Committee's written Charter. A performance evaluation may be conducted as an internal self-evaluation, *i.e.*, by the Committee, reporting to the Board, by the Board evaluating the performance of the Committee as part of the broader Board evaluation, or by the Board or Committee retaining an external evaluator.

The results of the Committee's performance evaluation should be acted upon, *e.g.*, taking timely, corrective action if or when required and reporting to Shareholders, through the Board, on the nature of this review process in sufficient detail so as to demonstrate its effectiveness.

#### **4.6 Recommendation 27 - Appointment of Members to the Committees**

*The Board should appoint from amongst the Directors, the Members and the Chairmen of the Board Committees. If a Committee Chair is not appointed by the Board, the Committee Chair should be elected by Committee Members.*

Committees work to render assistance to the Board and prepare matters which fall under their purview thus, the Board should appoint the Members of the Committees from amongst the Directors.

The capabilities, competencies and skills of Board Members should be appropriately matched with the requirements of the relevant Board Committee, including the requirements necessary to Chair the Committee.

#### **4.7 Recommendation 28 - Composition of the Committees and Independence of Members**

*The company should report the composition of each Committee.*

Outlining the composition and objectives of the Committees permits Shareholders to evaluate the effectiveness of Committee work and the relationships of the Committee Members to the company.

## **Audit Committee**

### **4.8 Recommendation 29 - Establishment of the Audit Committee**

*An Audit Committee shall be established.*

The extent of the operations of the company may require some Directors to concentrate particularly on matters relating to financial reporting and control, thus requiring the establishment of an Audit Committee. The Audit Committee is therefore tasked with the role of addressing issues connected with the financial administration and control of the company enabled through oversight of External Auditors and the Internal Audit function.

### **4.9 Recommendation 30 - Appointment of the Members of the Audit Committee**

*The Board shall appoint an Audit Committee. The Audit Committee should be composed of a minimum of three Members, who should be financially literate.*

To ensure the effective implementation of the duties and responsibilities of the Audit Committee, it should comprise at minimum of three Members (except where the board is composed of five persons the minimum number of persons on the audit committee may be reduced to two) who should be financially literate. For the purpose of this Recommendation, an individual is financially literate if he or she has the ability to read and understand a set of financial statements.

### **4.10 Recommendation 31 - Duties and Responsibilities of the Audit Committee**

*The Board should define the duties and responsibilities of the Audit Committee.*

The duties and responsibilities of the Audit Committee should be defined in the Charter approved by the Board and tailored to the particular circumstances of the company. The duties and responsibilities of the Audit Committee include the following:

- (a) Reviewing the financial position of the company;
- (b) Assisting Board oversight of the integrity of the company's financial statements and financial reporting and public disclosure;<sup>(1)</sup>
- (c) Assisting Board oversight of risk assessment and management and the adequacy and appropriateness of internal controls;

- (d) Assessing and approving as appropriate Internal Audit function's plans and reports;
- (e) Assisting Board oversight of the company's compliance with legal and regulatory requirements;
- (f) Reviewing and recommending for approval by the Board the nomination and compensation of the External Auditor;<sup>(2)</sup>
- (g) Overseeing the External Auditor and Internal Audit function, and examining and approving as necessary Auditors' reports;<sup>(3)</sup>
- (h) Assisting Board oversight of the External Auditor's qualifications and independence;<sup>(4)</sup>
- (i) Assisting Board oversight of the performance of the company's External Auditors and Internal Audit function;
- (j) Evaluating and pre-approving all non-audit services provided by the External Auditor;<sup>(5)</sup>
- (k) Reviewing with the External Auditor any audit problems or difficulties and Management's response;
- (l) Reviewing and approving the company's hiring policies for partners, employees and former partners and employees of the present and former External Auditor of the company;
- (m) Meeting separately, regularly, and *in camera* with Management, with Head of Internal Audit (or other personnel responsible for the Internal Audit function) and with External Auditors;
- (n) Evaluating the Audit Committee's performance annually; and
- (o) Reporting regularly to the Board of Directors.

The duties and responsibilities of the Audit Committee should be disclosed in accordance with Recommendation 24 (Charters of Committees). For greater clarity, the Audit Committee must have a written Charter that sets out its mandate and responsibilities. The Audit Committee Charter must clearly establish the Committee's purpose, responsibilities, Member qualifications (see Recommendations 30), Member appointment and removal, structure and operations (including any authority to delegate to individual members and subcommittees), manner of reporting to the Board and evaluation of the Audit Committee's performance.

The Audit Committee must have the authority:

- (a) To engage independent counsel and other advisors as it determines necessary to carry out its duties,
- (b) To set and pay the compensation for any advisors employed by the Audit Committee; and

- (c) To communicate directly with the Internal and External Auditors.

The Audit Committee must establish procedures for:

- (a) The receipt, retention and treatment of complaints received by the company regarding accounting, internal accounting controls, or auditing matters; and
- (b) The confidential, anonymous submission by employees of the company of concerns regarding questionable accounting or auditing matters.

### **Reference Notes for Recommendation 31**

- (1) The Audit Committee must review the company's financial statements, Management Discussion and Analysis (or the equivalent) and annual and interim earnings press releases (if applicable) before the company publicly discloses this information.*

*The Audit Committee must be satisfied that adequate procedures are in place for the review of the company's public disclosure of financial information extracted or derived from the company's financial statements, other than the public disclosure referred to in the preceding paragraph, and must periodically assess the adequacy of those procedures.*

- (2) See Recommendation 60: Nomination and Compensation of the External Auditor.*
- (3) See Recommendation 57: Oversight of the Internal Audit Function by Audit Committee; and Recommendation 59: Oversight of the External Auditor by the Audit Committee.*
- (4) The Audit Committee must, at least annually, obtain and review a report by the External Auditor describing: the firm's internal quality-control procedures; any material issues raised by the most recent internal quality-control review, or peer review, of the firm, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years, respecting one or more independent audits carried out by the firm, and any steps taken to deal with any such issues; and (to assess the External Auditor's independence) all relationships between the External Auditor and the company;*
- (5) The Audit Committee must pre-approve all non-audit services to be provided to the company (or its subsidiary entities if applicable) by the company's External Auditor.*

*The Audit Committee satisfies this pre-approval requirement if:*

- (a) The aggregate amount of all the non-audit services that were not pre-approved is reasonably expected to constitute no more than ten per cent of the total amount of fees paid by the company (including its subsidiary*

*entities if applicable) to the company's External Auditor during the fiscal year in which the services are provided;*

- (b) The company (or the subsidiary entity of the company, as the case may be), did not recognize the services as non-audit services at the time of the engagement; and*
- (c) The services are promptly brought to the attention of the Audit Committee of the company and approved, prior to the completion of the audit, by the Audit Committee or by one or more of its Members to whom authority to grant such approvals has been delegated by the Audit Committee.*

*The Audit Committee may delegate to one or more independent Members the authority to pre-approve non-audit services in satisfaction of the above pre-approval requirement. The pre-approval of non-audit services by any Member to whom authority has been delegated must be presented to the Audit Committee at its first scheduled Meeting following such pre-approval.*

*The Audit Committee satisfies the above pre-approval requirement if it adopts specific policies and procedures for the engagement of the non-audit services, if:*

- (a) The pre-approval policies and procedures are detailed as to the particular service;*
- (b) The Audit Committee is informed of each non-audit service; and*
- (c) The procedures do not include delegation of the Audit Committee's responsibilities to Management.*

#### **4.11 Recommendation 32 – Disclosure of Audit Committee Information**

Every company must include in its Annual Report the following disclosure requirements:

The company must disclose the text of the Audit Committee's Charter on its website.

The company must disclose the name of each Audit Committee Member and state whether or not the Member is (i) independent and (ii) financially literate.

The company must describe the education and experience of each Audit Committee Member that is relevant to the performance of his or her responsibilities as an Audit Committee Member and, in particular, disclose any education or experience that would provide the Member with:

- (a) An understanding of the accounting principles used by the company to prepare its financial statements;*

- (b) The ability to assess the general application of such accounting principles in connection with the accounting for estimates, accruals and reserves;
- (c) The experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the company's financial statements, or experience actively supervising one or more persons engaged in such activities; and
- (d) An understanding of internal controls and procedures for financial reporting.

If, at any time since the commencement of the company's most recently completed financial year, a recommendation of the Audit Committee to nominate or compensate an External Auditor was not adopted by the Board of Directors, the company must state that fact and explain why.

If the Audit Committee has adopted specific policies and procedures for the engagement of non-audit services, the company must describe those policies and procedures.

See Recommendation 61: Disclosure of the External Auditor's Fees, Including Fees for Non-Audit Services.

#### **4.12 Recommendation 33 - Code of Business Conduct and Ethics and Disclosure**

The Board should adopt and disclose a written Code of Business Conduct and Ethics ("Code"). The Code should be applicable to Directors, the Managing Director/CEO and members of the Executive Management team and other employees of the company. The Code should constitute written standards that are reasonably designed to promote integrity and to deter wrongdoing. In particular, the Code should address the following issues:

- (a) Conflicts of interest, including transactions and agreements in respect of which a Director or Executive Officer (*e.g.* Managing Director/ CEO and other Members of the executive Management team, as applicable) has a material interest;<sup>(1)</sup>
- (b) Protection and proper use of corporate assets and opportunities;
- (c) Confidentiality of corporate information;
- (d) Fair dealing with the company's shareholders, customers, suppliers, competitors and employees;
- (e) Compliance with laws, rules and regulations (including insider trading laws); and

- (f) Encouraging the reporting of any illegal or unethical behaviour.

The Board should be responsible for monitoring compliance with the Code. Any waivers from the Code that are granted for the benefit of the company's Directors or executive Officers (*e.g.*, Managing Director/CEO and other Members of the executive Management team, as applicable) should be granted by the Board (or a Board Committee) only.

### **Reference Notes for Recommendation 33**

- (1) Although companies must exercise their own judgment in making materiality determinations, regulatory authorities may consider that conduct by a Director or executive Officer which constitutes a material departure from the Code will likely constitute a "material change" within the meaning of continuous disclosure obligations to which the company may be subject. Such obligations may require every material change report to include a full description of the material change. Where a material departure from the Code constitutes a material change to the company, the material change report should disclose, among other things: (i) the date of departure; (ii) the party(ies) involved in the departure(s); the reason why the Board has or has not sanctioned the departure(s); and (iv) any measures the Board has taken to address or remedy the departure(s).*

In addition, the company should disclose whether or not the Board has adopted a written Code for the Directors, Officers and employees. If the Board has adopted a written Code, the company should:

- (a) Disclose how a person may obtain a copy of the Code;
- (b) Describe how the Board monitors compliance with the Code, or if the Board does not monitor compliance, explain whether and how the Board satisfies itself regarding compliance with the Code; and
- (c) Provide a cross-reference to any material change report (or the equivalent, as applicable) filed since the beginning of the company's most recently completed financial year that pertains to any conduct of a Director or executive Officer that constitutes a departure from the Code.

The company should describe any steps the Board takes to ensure Directors exercise independent judgment in considering transactions and agreements in respect of which a Director or Executive Officer (*e.g.*, Managing Director/CEO and other Members of the executive Management team, as applicable) has a material interest.

The company should describe any other steps the Board takes to encourage and promote a culture of ethical business conduct.

## **Governance Committee**

### **4.13 Recommendation 34 - Establishment of the Governance Committee**

*The Board must establish a Governance Committee to improve the effective handling of matters relating to the governance of the board and the company.*

The Board may improve the effectiveness of Director nomination, appointment, election and succession planning through the establishment of a Governance Committee.

Identification of individuals suitable for Directorships and the analysis of the independence, competencies, skills, experience and expected level of commitment of candidate Directors prior to election are critical to ensure the balance of Board competencies and skills and an independent and engaged Board.

The Governance Committee thus promotes the transparency, rigour and systematic functioning of the election process.

### **4.14 Recommendation 35 - Composition of the Governance Committee**

The Board should appoint a Governance Committee composed entirely of independent Directors. The Managing Director/CEO and other Executive Directors should not be members of the Governance Committee.

To ensure the necessary independence and disclosure, and avoid potential conflicts of interest that may arise, the Managing Director/CEO and members of the executive Management team should not be members of the Governance Committee. Nor should the Managing Director/CEO be involved in the selection of the Directors who serve on the Governance Committee.

### **4.15 Recommendation 36 - Duties and Responsibilities of the Governance Committee**

*The Board should define the duties and responsibilities of the Governance Committee.*

The duties and responsibilities of the Governance Committee should be defined in the Charter approved by the Board and should reflect the requirements of the company. The duties and responsibilities of the Nomination Committee include the following:

- (a) Reviewing and advising the Board on the nomination and appointment of Directors;<sup>(1)</sup>
- (b) Recommending for approval by the Board a proposal for election of Directors to be presented to the General Meeting;<sup>(2)</sup>
- (c) Reviewing Directors' competencies and skills set;<sup>(3)</sup>
- (d) Succession planning of Directors;
- (e) Evaluating the Governance Committee's performance annually; and

- (f) Reporting regularly to the Board of Directors.

The duties and responsibilities of the Governance Committee must be in accordance with Recommendation 24 (Charters of Committees). For greater clarity, the Governance Committee should have a written Charter that clearly establishes the Committee's purpose, responsibilities, Member qualifications, Member appointment and removal, structure and operations (including any authority to delegate to individual Members and subcommittees), manner of reporting to the Board and evaluation of the Governance Committee's performance.

If a company is legally required by contract or otherwise to provide third parties with the right to nominate Directors, the selection and nomination of those Directors need not involve the approval of an independent Governance Committee.

### **Reference Notes for Recommendation 36**

- (1) Prior to nominating or appointing individuals as Directors, the Board should adopt a process involving the following steps:*

- (a) Consider what competencies and skills the Board, as a whole, should possess. In doing so, the Board should recognise that the particular competencies and skills required for one company may not be the same as those required for another; and*
- (b) Assess what competencies and skills each existing Director possesses. It is unlikely that any one Director will have all the competencies and skills required by the Board. Instead, the Board should be considered as a group, with each individual making his or her own contribution. Attention should also be paid to the personality and other qualities of each Director, as these may ultimately determine the boardroom dynamic.*

*In carrying out each of these functions, the Board should consider the advice and input of the Governance Committee.*

- (2) The Governance Committee should be responsible for identifying individuals qualified to become new Board Members and recommending to the Board the new Director nominees for the next General Meeting of Shareholders.*

- (3) In making its recommendations, the Governance Committee should consider:*

- (a) The competencies and skills that the Board considers to be necessary for the Board, as a whole, to possess;*
- (b) The competencies and skills that the Board considers each existing Director to possess; and*

- (c) *The competencies and skills each new nominee will bring to the Boardroom.*

*The Governance Committee should also consider whether or not each new nominee can devote sufficient time and resources to his or her duties as a Board Member.*

#### **4.16 Recommendation 37 – Disclosure of the Nomination Process for Directors**

The company should describe the process by which the Board identifies new candidates for Board nomination.

#### **Compensation Committee**

#### **4.17 Recommendation 38 - Establishment of the Compensation Committee**

*The Board may establish a Compensation Committee to improve the effective handling of matters relating to the appointment and compensation of the Managing Director/CEO and other executives of the company, as well as the handling of other employee compensation systems. Where no Compensation Committee is established the duties shall be performed by the Governance Committee.*

The Compensation Committee can provide the necessary focus on the development of compensation systems concerning the Managing Director/CEO and other company executives. The establishment of a Compensation Committee promotes the transparency, oversight and systematic functioning of the compensation systems of the company.

#### **4.18 Recommendation 39 - Composition of the Compensation Committee**

*The Board may appoint a Compensation Committee composed entirely of independent Directors. The Managing Director/CEO and other Executives should not be Members of the Compensation Committee.*

Due to the nature of the matters addressed by the Compensation Committee, neither the Managing Director/CEO nor other executive Directors should be Members of the Committee. Nor should the Managing Director/CEO be involved in the selection of the Directors who serve on the Compensation Committee.

#### **4.19 Recommendation 40 - Duties and Responsibilities of the Compensation Committee**

*The Board should define the duties and responsibilities of the Compensation Committee.*

The duties and responsibilities of the Compensation Committee should be defined in the Charter approved by the Board and should reflect the requirements of the company. The duties and responsibilities of the Compensation Committee include the following:

- (a) Reviewing and approving the corporate goals and objectives relevant to Managing Director/CEO compensation, evaluating the Managing Director/CEO's performance in light of those corporate goals and objectives, and determining (or making recommendations to the Board with respect to) the Managing Director/CEO's compensation level based on this evaluation;
- (b) Making recommendations to the Board with respect to non-Managing Director/CEO Officer (*e.g.*, other Members of the executive Management team, as applicable) and Director compensation, incentive-compensation plans and equity-based plans (as applicable, given the nature and circumstances of the company);
- (c) Reviewing and recommending for approval by the Board the appointment of the executive Management and the identification of successors (*e.g.*, the Managing Director/CEO and others, as appropriate);
- (d) Oversight of matters pertaining to the compensation systems of the company;
- (e) Evaluation of the Compensation Committee's performance annually; and
- (f) Reporting regularly to the Board of Directors.

The duties of the Compensation Committee must be in accordance with Recommendation 24 (Charters of Committees). For greater clarity, the Compensation Committee should have a written Charter that clearly establishes the Committee's purpose, responsibilities, Member qualifications, Member appointment and removal, structure and operations (including any authority to delegate to individual members and subcommittees), manner of reporting to the Board and evaluation of the Compensation Committee's performance.

In addition, the Compensation Committee should be given authority to engage and compensate any outside advisor that it determines to be necessary to permit it to carry out its duties.

#### **4.20 Recommendation 41 – Disclosure of Compensation Oversight Duties and Responsibilities**

The company should describe the process by which the Board determines the compensation for the company's Directors and Officers (*e.g.*, Managing Director/CEO, other Members of the executive Management team, as applicable).

If the Board has a Compensation Committee, the company should describe the responsibilities, powers and operation of the Compensation Committee.

As applicable, if a compensation consultant or advisor has, at any time since the beginning of the company's most recently completed financial year, been retained to assist in determining compensation for any of the company's Directors and Officers, the company should disclose the identity of the consultant or advisor and briefly summarize the mandate for which they have been retained. If the consultant or advisor has been

retained to perform any other work for the company, the company should state that fact and briefly describe the nature of the work.

#### **4.21 Recommendation 42 – Disclosure of Other Board Committees**

As applicable, if the Board has standing Committees other than the Audit and Compensation Committees, the company should identify the Committees and describe their function.

### **Section 5.0 Managing Director/Chief Executive Officer (CEO)**

#### **5.1 Recommendation 43 - Position Description for the Managing Director/CEO**

*The Board, together with the Managing Director /CEO, should develop a clear Position Description for the Managing Director/ CEO, which includes delineating Management’s responsibilities. The Board should also develop or approve the corporate goals and objectives that must be met by the Managing Director/CEO*

The written Position Description for the Managing Director/CEO should be effective, *i.e.*, detailed, clear, complete and up-to-date. In delineating Management’s responsibilities, the Managing Director/CEO is responsible for the day-to-day management of the company, in accordance with the instructions and direction provided by the Board. The Managing Director/CEO may undertake acts which, considering the scope and nature of the operations of the company, are unusual or extensive, only with the authorization of the Board.

The Managing Director/CEO must foster a climate of effective governance within the company through instilling a culture of accountability, transparency of business processes, quality financial reporting and compliance with the applicable laws governing the company’s operations. The level of integrity set by the Managing Director/CEO and other Members of the Executive Management Team must be high. In other words, Management maintains confidentiality, identifies, discloses and manages conflicts of interest, is honest, truthful and candid, acts in a manner that would withstand scrutiny, leads by example, and fosters responsible and ethical decision-making.

The company should disclose whether or not the Board and Managing Director/CEO have developed a written Position Description for the Managing Director/CEO. If the Board and Managing Director/CEO have not developed such a Position Description, the company should briefly describe how the Board delineates the role and responsibilities of the Managing Director/CEO.

#### **5.2 Recommendation 44 - Appointment of the Managing Director/CEO**

*The Board is responsible for appointing the Managing Director/CEO.*

The Board appoints the Managing Director/CEO of the company pursuant to the **Companies Act (Sections 58 (1) and 93)**. To ensure the essential role of the Managing Director/CEO and an effective implementation of ownership control, it is justified that the Board should appoint the Managing Director/CEO.

### **5.3 Recommendation 45 - Approval and Disclosure of the Managing Director/CEO's Service Contract**

*The Managing Director/CEO's service terms and conditions should be understood by the Compensation Committee, or the Board, as applicable, specified in writing in the CEO's service contract and approved by the Board.*

The position of the Managing Director/CEO in the company requires that terms and conditions of service are specified in writing in the form of an agreement that is understood and approved by the Board. .

In addition, the Compensation Committee (or the Board, as applicable) should fully understand, to a satisfactory level, in the Committee's (Board's) reasoned judgment, the long-term implications on contractual arrangements between the Managing Director/CEO and certain other Members of the Management Team (as applicable) and the company, and the limitations that such contracts might impose on the compensation mix.

For example, such contractual provisions may include, depending on the size and nature of the company, the following: a change-of-control agreement, deferred compensation plan, severance agreement, SERPs (Supplemental Executive Retirement Plan), benefit formulas, contractual terms or renewal provisions, as well as an understanding of key definitions or other provisions, *e.g.*, "cause," constructive termination, "good reason," change-of-control triggers, tax gross-up provisions, restrictive covenants and the company's contractual right to recover compensation in the event of certain behaviour or events, depending on the nature of the contract that the Member of Management has with the company. The advice of legal counsel is encouraged.

### **5.4 Recommendation 46 - Disclosure of Information on the Managing Director/CEO**

*The company should disclose the background, biographical details, and shareholdings of the Managing Director/CEO.*

Upon the appointment of the Managing Director/CEO, the company should disclose similar background, biographical details, and share ownership information as is the case for other Directors. See Recommendation 19: Disclosure of the Background, Biographical Details, Compensation and Shareholdings of Directors.

Disclosure of the shareholdings of the Managing Director/CEO should be disclosed to the Board prior to his/her appointment and annually thereafter.

## **5.5 Recommendation 47 - Separation and Disclosure of the Roles of Managing Director/CEO and Chairman of the Board**

*The Managing Director/CEO should not be elected Chairman of the Board. The Chairman of the Board should be an independent Director. Where this is not appropriate, an independent Director may be appointed to act as “Lead Director.” However, either the independent Chairman or independent Lead Director should act as the effective leader of the Board and ensure that the Board’s agenda will enable it to successfully carry out its duties.*

There should be a clear division of responsibilities between the role of the Chairman of the Board and that of the CEO to ensure the effective oversight and discharge of duties and responsibilities. No one individual should have unfettered powers of decision. The appointment of the Managing Director/CEO as Board Chairman has been restricted because the duty of the Board is to supervise the activities of the Managing Director/CEO and Executive Management Team.

The company should clearly define the areas of responsibility of the Managing Director/CEO and that of the Board Chairman, *i.e.*, Position Descriptions for both, at Recommendations 43 and 14, respectively, to ensure that all the decision-making powers of the company are in practice not vested in a single individual. Generally, this means that the Managing Director/CEO cannot be elected Board Chairman.

However, in some special circumstances, such as extensive international operations, the company’s special development phase or the ownership structure of the company, there may exist justification for the combining of these two positions.

If the company determines to appoint the same person as Managing Director/CEO and Board Chairman, it must explain its decision.

The company should disclose whether or not the Chairman of the Board is an independent Director. If the Board has a Chair or Lead Director who is an independent Director, the company should disclose the identity of the independent Chair or Lead Director, and describe his or her role and responsibilities. If the Board has neither a Chairman who is independent, nor a Lead Director who is independent, the company should describe what the Board does to provide leadership for its independent Directors.

## **Section 6.0 Other Management**

The Executive Management Team of the company is based on the management organisation adopted for the company. Certain Members of the Management team may have no official statutory position (*i.e.*, not be appointed as Officers), yet play a significant role in the senior management or financial reporting system of the company.

The organisation of Management is also an important reporting element of the corporate governance structure of the company.

The term “other Management” refers to the members of the Management team, other senior or financial management, or, if the company has no formal management structure, to the executives specified by the company. For example, other Management, depending on the size and complexity of the company, may include the following: President, General Manager, Chief Financial Officer (CFO), Chief Operating Officer, Management Accountant, Chief Risk Officer, Company Secretary, Legal Counsel, CIO, Tax Director, Treasurer, Controller, Vice Presidents and Divisional Heads, or their equivalents, as applicable.

### **6.1 Recommendation 48 - Organisation of Management**

*The company should describe the organisation of its Management Team.*

If the company has a Management Team, the company should describe the composition and duties of the Management Team and the areas of responsibility of its Members.

A description on the organisation of Management should detail the nature of the Management activities and reporting structures to supplement the statutory Management requirements of the company.

The Management Team refers to a corporate management group or another similar body that convenes regularly. The Management Team normally consists of executives of the functional areas and operational business divisions, whose principle duty is to assist the Managing Director/CEO in the achievement of company objectives.

### **6.2 Recommendation 49 - Disclosure of Information on the Management Team**

*The company should disclose the background, biographical details, and shareholdings of the five most senior Members of the Management Team, including the most senior financial officer. If the company has no formal management structure, the company should define the other executives whose background, biographical details, and shareholdings are subject to this disclosure obligation.*

The company should disclose similar background, biographical details, and share ownership information concerning the Members of the Management team as is the case for the Directors of the company and this should be reported to the Board on an annual basis. See Recommendation 19: Disclosure of the Background, Biographical Details, and Shareholdings of Directors.

## **Section 7.0 Disclosure of Director and Executive Compensation**

An effective compensation system is an essential tool for implementation of ownership control. The purpose of the compensation system is to increase the commitment of the Board, the Managing Director/CEO and other executives in promoting and aligning the interests of the company, its Shareholders and the Managing Director/CEO and other Members of the Management team. In addition to a basic salary, depending on the size and circumstances of the company and its services agreement with the Managing Director/CEO and other Members of the Management Team, compensation systems can encompass performance-related incentive schemes, pension schemes, awards in the form of shares, and other share-related compensation systems, *e.g.*, stock options.

### **Compensation of Directors**

#### **7.1 Recommendation 50 - Disclosure of Fees and Benefits Awarded to Directors**

*The company should describe how Directors are compensated and disclose the aggregate amount of each element of the Directors' compensation.*

The information on the fees and other benefits granted to the Directors permit Shareholders to evaluate the amount of compensation in relation to the contributions of the Board in promoting the interests of the company. This disclosure also facilitates comparison with the fees and other benefits paid by similar companies within the industry.

For example, companies should provide a fee schedule that includes, as applicable, the following (i) the annual Board retainer fee (ii) Committee retainer fees; (iii) Board and Committee Meeting attendance fees; (iv) Board Chair fee and Committee Chair fees; and (v) any other fees. The total fees paid to the Board as a whole should be disclosed.

The dollar value of benefits awarded to Directors should also be disclosed. Benefits awarded to Directors may include, as applicable, the following: (i) perquisites or other personal benefits; (ii) tax reimbursements; (iii) company share purchases (through deferral of fees or otherwise) at a discount from the market price; (iv) amounts paid or accrued to any Director pursuant to a plan or arrangement in connection with the resignation, retirement or any other termination of such Director or change in control of the company; (v) annual contributions to vested and unvested defined contribution plans; (vi) all consulting fees; (vii) awards under any Director charitable awards programs; (viii) the dollar value of any insurance premiums paid by, or on behalf of, the company for life insurance for the Director's benefit; (ix) the dollar value of any dividends or other earnings paid in stock or stock option awards when the dividend or earnings were not factored into the grant date fair value; and (x) any other type of benefit, incentive plan, pension enhancement or deferred compensation awarded to Directors not referred to above.

## **7.2 Recommendation 51 - Payment of Fees Awarded to Directors in Shares and/or Deferred Share Units**

*The Shareholdings of Directors can be increased by paying the fees or part of the fees for Board and Committee work in the form of shares of the company or Deferred Share Units (DSUs).\**

\* The company may have a deferred share unit plan, into which non-executive Directors may, or are required to, defer a portion of their annual retainer. Such deferrals are converted to Deferred Share Units (DSUs), each of which has a value equal to the value of one Common Share of the company. A Deferred Share Unit is an amount owed by the company to Directors, but is not paid out until such time as the Director leaves the Board, thereby providing an ongoing equity stake in the company throughout the Director's period of Board service. Upon retirement from the Board, the Director may receive payment of his or her Deferred Share Units in cash, Common Shares of the company purchased on the open market, or Common Shares issued by the company. The liability for Deferred Share Units is included in accrued payroll and related liabilities.

If Directors can choose to receive their compensation in cash and/or shares or DSUs, then the amount of each received by the Directors should be disclosed.

The provision of shares or DSUs to Directors is expected to align the interests of Directors with those of Shareholders to promote the effective oversight of the company. It is necessary however, to ensure that Director remuneration through share offerings and other share compensation schemes are in compliance with the necessary internal regulations governing the issuance of shares to company insiders.

If the company has share ownership guidelines for Directors, through which Directors are required to acquire shares or DSUs, these guidelines, as well as the level of holdings by each Director, should be disclosed. This disclosure should include the minimum, target amount of shareownership required by Directors, any time period for meeting the minimum, target amount and any other requirements (*e.g.*, Directors must take their compensation in shares or DSUs until the minimum, target amount is reached (*e.g.*, the "at risk" investment by the Director being the summation of Common Shares and DSUs); provisions for Directors who may not be able to attain the shareownership guideline; the portion of shareownership required to meet the minimum, target amount and the date by which they are to be met, for each Director; and year-over-year changes in share or DSU holdings for each Director).

## **7.3 Recommendation 52 - Participation by Directors in a Performance-Based, Share-Related Compensation System**

*It is not recommended that a non-executive Director should participate in a share-related, performance-based compensation system.*

The term “non-executive Director” refers to a person who has no employment relationship with, or position in, the company. Use of share-related, performance-based compensation systems (e.g., Director stock option plans) to remunerate non-executive Directors is in principle not justified from the perspective of the interests of Shareholders.

There may occur a mis-alignment of interests when Directors’ remuneration is based on short-term share price appreciation, as self interest by Directors may conflict with their fiduciary duty and duty of care. Both duties may be compromised, respectively, by (i) Directors not acting honestly and in good faith with a view to the best interests of the company and all of its Shareholders; and (ii) Directors not exercising the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

#### **7.4 Recommendation 53 - Disclosure of the Dollar Value(s) of Shares and Share-Related Rights Granted to Directors**

*The company should report dollar value of the number of shares and share-related rights granted to the Directors as compensation during the reporting year.*

The company must report the dollar value of the number of shares and Deferred Share Units (if applicable) granted to Directors as compensation, along with fees and the dollar value of benefits obtained in the execution of Directors’ duties. Please refer to Recommendations 50: Disclosure of Fees and Benefits Awarded to Directors and Recommendation 51: Payment of Fees Awarded to Directors in Shares and/or Share Units.

#### **7.5 Recommendation 54: Director Stock Options**

If a Director participates in a performance-based, share-related compensation scheme (e.g., Director stock option plans), any compensation granted on the basis of such systems should be reported. If applicable, the company should include details about the number of any options granted Directors, the terms of the options (e.g., date granted, expiry date, exercise price, vesting provisions, including any performance criterion, and holding provisions), the number of options that have vested, the number of options that were exercised during the year, the number of options that have not been exercised, the value of options held back at the end of the year and the current market price of the stock.

#### **Compensation of the Managing Director/CEO and Other Members of the Management Team**

#### **7.6 Recommendation 55 - Compensation System and the Related Decision-Making Procedure**

*The company should disclose the criteria and decision-making procedure concerning the compensation system of the Managing Director/CEO and other Members of the*

*Management team (e.g., the five most senior Members, including the Managing Director/CEO and most senior financial officer).*

Disclosure of such compensation systems should include the company describing the following in its Annual Report:

- (a) The objectives of the company's compensation system;
- (b) What the compensation system is designed to reward;
- (c) Each element of compensation;

As part of disclosing each element of compensation, the information to be disclosed includes the present dollar value of any and all forms of all components of Members of the Management team's compensation. This includes salary levels, incentive payments, share grants (real or phantom, *e.g.*, DSUs), share-related rights (*e.g.*, stock options), pensions (including all supplemental plans) and all other components of executive compensation, as applicable depending upon the nature of the company and its compensation system, granted to the Managing Director/CEO and other executives.

While the information to be disclosed within the above description will vary depending upon the facts and circumstances of each company, examples of such information may include, in a given case, among other things, the following:

- (a) The policies for allocating between long-term and currently paid out compensation;
- (b) The policies for allocating between cash and non-cash compensation, and among different forms of non-cash compensation;
- (c) For long-term compensation, the basis for allocating compensation to each different form of award (such as relationship of the award to the achievement of the company's long term goals, Management's exposure to downside equity performance risk, correlation between cost to the company and expected benefits to the company);
- (d) What specific items of corporate performance are taken into account in setting compensation policies and making compensation decisions; and
- (e) Whether the company engaged in any benchmarking of total compensation, or any material element of compensation, identifying the benchmark and, if applicable, its components (including component companies).

The company must specify the body that determines the compensation of the Managing Director/CEO and other executives (*e.g.*, the Compensation Committee recommending approval by the Board, or independent Directors of the Board, other). It is generally

appropriate that the body that appointed the individual to also determine the compensation. The preparation of compensation matters may be delegated to the Compensation Committee of the Board. (See Recommendations 38 – 41).

## **Section 8.0 Internal Controls, Risk Management and Internal Audit**

The purpose of quality financial reporting, effective internal controls and a comprehensive risk management system is to ensure the effective and successful operation of the company, the disclosure of reliable information and compliance with the relevant regulations and operating principles. Internal control helps improve the effective fulfilment of the Board's supervisory obligations.

### **8.1 Recommendation 56 - Oversight of Risk Management**

*The company should establish a sound system for risk oversight and risk management. As part of its oversight role, the Board is responsible for establishing the company's policy on risk, and developing and implementing its system of risk management and internal control. The Board should establish the risk profile of the company. It should set out the company's appetite for risk and have regard to the material business risks faced by the company as identified by the company's risk management system. The company's risk profile should be regularly updated and reviewed.*

Risk management is the culture, processes and structures that are directed towards taking advantage of potential opportunities while managing potential adverse effects. A risk management system should be designed to (i) identify, assess, monitor and manage risk; and (ii) identify material changes to the company's risk profile.

Risk management is part of the control function of the company. The purpose of risk management is to ensure that the material business risks (including financial reporting risks and others) related to the business operations of the company are identified and monitored. An effective system of risk management is enterprise-wide, robust, integrated into operations, continual, culturally embedded and responds to, identifies, evaluates, monitors, controls and mitigates material business risks to the company.

Effective risk management requires a defined risk management policy. The company's risk management policy must reflect its legal obligations, commercial prudence and the expectations of the company's stakeholders.

It is important to provide Shareholders with adequate information on the company's risk management policy.

### **8.2 Recommendation 57- Oversight of the Internal Audit Function by the Audit Committee**

*Companies must maintain an Internal Audit function to provide Management and the Audit Committee with ongoing assessments of the company's risk management processes and system(s) of internal control. A company may choose to outsource this function to a third party service provider other than its External Auditor. The Internal Audit function should report directly to the Audit Committee.*

The company should describe the manner in which the Internal Audit function of the company is organised. The description must include the organisation of the Internal Audit function and the essential guidelines applied to internal audits. The organisation and working methods of Internal Audit depend on the nature and scope of the company's operations, the number of personnel and other similar factors.

The quality of the Internal Audit reporting should add value to the financial reporting process, control environment and risk management process.

The Audit Committee should ensure that the assurance role of Internal Audit (*e.g.*, independent from Management and External Audit and objective reporting of factual findings) is not compromised. The Audit Committee should carefully monitor that assurance, by Internal Audit, on the company's risk management, internal compliance and control systems (*e.g.*, identifying risks and testing the design and effectiveness of controls to mitigate such risks) remains separate from Management functions or involvement. Internal Audit should not be engaged in operational duties or non-Internal Audit transactions or oversight. The Audit Committee should review and approve the Internal Audit Charter.

## **Section 9.0 Insider Administration**

The disclosure of the holdings of insiders and their trading activities promotes trust and transparency in the securities markets. An effective administration of insider matters in a listed company requires that the administration is systematically and reliably organised.

### **9.1 Recommendation 58 - Compliance with the Insider Trading Guidelines for Listed Companies on the Barbados Stock Exchange Inc.**

*The company should comply with the Insider Trading Guidelines for Listed Companies on the Barbados Stock Exchange Inc., and describe its essential insider administration procedures.*

Compliance with the *Insider Trading Guidelines for Listed Companies on the Barbados Stock Exchange Inc.* harmonizes and improves the administration of companies' insider matters. The information on the insider administration procedures permits Shareholders to evaluate the effectiveness of the insider administration of the company.

## **Section 10.0 External Audit**

The External Auditor plays an important role as a controlling body appointed by the Shareholders. The External Auditor provides Shareholders with an independent opinion of the financial performance of the company and the effectiveness of controls in monitoring this function.

The External Auditor should acknowledge that the Audit Committee is representing the Board, which reviews and approves the audit plan and engagement letter. The External Audit should clearly articulate the types and scope of matters to be reviewed, the External Auditor's responsibility to communicate with the Audit Committee, and specifically how and when all audit related matters should be reported to the Committee.

### **10.1 Recommendation 59 - Oversight of the External Auditor by the Audit Committee**

*Every company must require its External Auditor to report directly to the Audit Committee. An Audit Committee must be directly responsible for overseeing the work of the External Auditor engaged for the purpose of preparing or issuing an Auditor's report or performing other audit, review or attest services for the company, including the resolution of disagreements between Management and the External Auditor regarding financial reporting.*

As part of its oversight role, the Audit Committee may wish, from time to time, to conduct a comprehensive review of the External Auditor's performance, having regard to the following: whether the External Auditor understands the industry and has the budget, resources, access and cooperation from Management; the quality of assurance provided by the External Auditor, including the extent of control testing and the expertise of personnel and success in executing the audit plan; and the openness and transparency of the External Auditor in communicating with the Audit Committee and the Board as representatives of the Shareholders.

The Audit Committee should ensure that the External Auditor's scope or activities is not subject to undue Management influence (*e.g.*, by impeding timely access to any relevant information, system, process, explanation or personnel, supported by full, prompt, cooperation from all employees to any External Auditor enquiries; restrictions on the scope, nature, extent or timing of plans, evaluation, testing or the freedom to complete the work plan; or implying adverse effects upon the External Audit firm or any of its staff).

### **10.2 Recommendation 60 - Nomination and Compensation of the External Auditor**

*A proposal for the election of an External Auditor, prepared by the Board, or the Audit Committee recommending for approval by the Board, should be disclosed in the invitation to the General Meeting. . The preparation for the nomination and*

compensation of the External Auditor can be delegated by the Board to the Audit Committee.

The election of the External Auditor is one of the most important decisions of the General meeting and Shareholders must be notified of the appointee in a timely manner before the Meeting.

The Audit Committee must recommend to the Board of Directors:

- (a) The External Auditor to be nominated for the purpose of preparing or issuing an External Auditor's report or performing other audit, review or attest services for the company; and
- (b) The compensation of the External Auditor.

### **10.3 Recommendation 61 - Disclosure of the External Auditor's Fees, including Fees for Non-Audit Services**

*The company must disclose the fees of the External Auditor during the financial year. If the External Auditor has been paid fees for non-audit services, such fees should be pre-approved by the Audit Committee and reported separately.*

The information on the fees paid to the External Auditor permits Shareholders to evaluate the activities of the External Auditor. Since the External Auditor provides an external control function over the company on behalf of Shareholders, information on fees paid to the External Auditor for non-audit services should be disclosed.

For the purpose of disclosure, this Recommendation applies to companies associated within the same group of companies, who retain the same firm of External Auditors; other subsidiary companies owned by the same parent of companies, who retain the same firm of External Auditors; and other related companies who retain the same firm of External Auditor.

The company must disclose External Auditor service fees (by category):

- (a) Under the caption "Audit Fees," the aggregate fees billed by the company's External Auditor in each of the last two fiscal years for audit services;
- (b) Under the caption "Audit-Related Fees," the aggregate fees billed in each of the last two fiscal years for assurance and related services by the company's External Auditor that are reasonably related to the performance of the audit or review of the company's financial statements and are not reported under clause (a) above. The company must include a description of the nature of the services comprising the fees disclosed under this category;
- (c) Under the caption "Tax Fees," the aggregate fees billed in each of the last two fiscal years for professional services rendered by the company's External Auditor for tax compliance, tax advice, and tax planning. The company must

include a description of the nature of the services comprising the fees disclosed under this category; and

- (d) Under the caption “All Other Fees,” the aggregate fees billed in each of the last two fiscal years for products and services provided by the company’s External Auditor, other than the services reported under clauses (a), (b) and (c), above. The company must include a description of the nature of the services comprising the fees disclosed under this category.

## **Section 11.0 Communication and Disclosure**

Effective corporate governance of a listed company requires reliable, up-to-date, full and clear disclosure practices. This objective of enhanced disclosure supports well-founded price development of securities subject to public trade and promotes trust in the securities markets. The information communicated and published by the company permits Shareholders to evaluate the functioning of the corporate governance of the company and make reasoned and informed decisions concerning their holdings.

Both the content of information and the clarity of its presentation, coupled with electronic dissemination of information, promote transparency and increase Shareholders’ opportunities to obtain information.

### **11.1 Recommendation 62 - Disclosure of Information on Corporate Governance (*Corporate Governance Statement*)**

*The company should ensure that at least the following matters are presented within its Corporate Governance Statement on the website and in the Annual Report of the company:*

- (a) Information on compliance with Corporate Governance Recommendations contained herein as well as possible deviations and their explanations;*
- (b) Notice of General*
- (c) Articles and By-laws*
- (d) Board of Directors;*
- (e) CEO and other executives;*
- (f) External Auditor;*
- (g) Shares, share capital, principal shareholders (holders of 10% or more of the issued share capital of the company) Shareholder agreements to which the company is party.*
- (h) Annual Report; and*
- (i) Other circumstances to be reported in accordance with these Recommendations.*

Clear presentation of a company’s compliance with the Recommendations and corporate governance matters permits Shareholders to develop an overall picture of the operations of the company. An essential requirement is that the presentation of the company’s

corporate governance practices is clear, comprehensive and easy-to-find. It is recommended that the subject matters are described both on the website and in the Annual Report of the company. The presentation may include cross references to information presented elsewhere in the Annual Report or on the website of the company.

### **11.2 Recommendation 63 - Electronic Investor Information**

*The company should have an Internet website.*

The company can improve the effectiveness of its disclosure practice by means of the Internet. Use of Internet websites provides quick and easy access to Shareholders. Electronic information is easier to update than hard copy versions, permitting Shareholders to obtain the most recent information available about the company.

### **11.3 Recommendation 64 - Publication of Information on Internet Website**

*The company should disclose on its website all the information that has been published pursuant to the statutory obligation of listed companies to provide information.*

Publication of all investor information of the company in one place facilitates easy distribution of such information to Shareholders. When all listed company releases and other information on the company are made available on the Internet, Shareholders are provided with a detailed picture of the operations and financial position of the company.

## **Section 12.0 Effective Date**

These Recommendations come into force on the 1<sup>st</sup> of January, 2014. If the company so wishes, it may, however, implement the Recommendations immediately after publication.

Decisions that are required to be submitted to the General Meeting and the changes to the Articles and By-Laws that are deemed necessary in order to comply with these Recommendations may be made at the Annual General Meeting or a special meeting of shareholders.