

Securities Act 2001

CORPORATE GOVERNANCE RULES

IN EXERCISE of the powers conferred on it by *section 161(b)* of the Securities Act 2001, the Commission makes the following Rules--

CITATION AND COMMENCEMENT

1. This document may be cited as the Eastern Caribbean Securities Market Corporate Governance Rules and shall come into force on the date prescribed by the Commission.

INTERPRETATION

2. In these Rules:

“Associate”

when used to indicate relationship with a person means:

- a) an entity of which that person beneficially owns or controls directly or indirectly, either shares or securities currently convertible into shares, and carries 10 per cent or more of the voting rights
- b) within a partnership, the partner of the person who acts on behalf of the partnership
- c) a trust or estate, in which that person has significant beneficial interest or in respect of which he serves as a trustee, legal representative or in similar capacity; or
- d) a relative of that person

“Board”

means the board of directors of a company

“Commission”

means the Eastern Caribbean Securities Regulatory Commission;

“Conflict of interest”

means a real or apparent incompatibility between an entity’s or individuals private interests and its or his/her public or fiduciary duties;

“Control functions”

means the functions that have a responsibility independent from management to provide objective assessment, reporting, and/or assurance, which includes compliance and internal audit functions;

- “Corporate Governance”*** involves a set of relationships between a company’s management, its board, its shareholders and other stakeholders which provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance. It helps define the way authority and responsibility are allocated and how corporate decisions are made;
- “Corporate Instruments”*** means any statute, letters of patent, memorandum of association, certificate of incorporation, certificate of continuance, by-laws, regulations or other instrument by which a company is incorporated or continued or that governs or regulates the affairs of a company;
- “Currency Union”*** refers collectively to Anguilla, Antigua, and Barbuda, The Commonwealth of Dominica, Grenada, Montserrat, Saint Christopher and Nevis, Saint Lucia and Saint Vincent and the Grenadines which use the Eastern Caribbean currency as their official currency.
- “Executive”*** refers to an employee of a company having administrative and managerial responsibility for the company, and includes the Chief Executive, Executive Director, Managing Director, and President or their equivalent
- “ECSM”*** means the Eastern Caribbean Securities Market
- “Fiduciary duty”*** refers to the duty of the board to decide and act on an informed and prudent basis with respect to the company.
- “Internal control system”*** refers to a set of rules governing the company’s organizational and operational structure, including reporting processes, and functions for risk management, compliance and internal audit;
- “Independent director”*** means a non-executive director who is free of any business or other relationships that would significantly interfere with, or could reasonably be perceived to significantly interfere with, the exercise of his unfettered decision making or independent business judgment pertaining to the interests of the institution;
- “Management”*** refers to the chief executive officer and senior managers/officers of a reporting issuer

<i>“Material”</i>	means information relating to the business, operations or securities of an issuer that would reasonably be expected to significantly affect the value or market price of the issuer or a security of the issuer, or information which would be reasonably considered to be of significant importance to an investor in making an investment decision
<i>“Member countries”</i>	means the countries of the currency union
<i>“Non-executive director”</i>	means a director who does not participate directly in the management of the institution.
<i>“Public company”</i>	means a public company as defined in the member country’s Company’s Act
<i>“Reporting issuer”</i>	refers to reporting issuers as described in section 97 of the Securities Act 2001.
<i>“Shareholder”</i>	refers to a person who lawfully acquires shares in the capital of a company.
<i>“Stakeholder”</i>	includes a director, employee, creditor, customer, depositor, distributor, regulatory authority, supplier, tax authority and lender

PART I
PURPOSE AND APPLICATION

3. These Rules provide minimum standards on corporate governance to assist in promoting a fair, transparent and efficient securities market, while protecting shareholders’ rights.
4. This Rule shall apply to all public companies whose securities are listed on a securities exchange in the Currency Union and any issuer that has or is proposing to raise capital through the issuance of its own securities in the ECSM.

PART II
BOARD OF DIRECTORS

5. Every company shall be led by a Board, made up of directors who are:
- (i) elected by shareholders or appointed in accordance with any applicable legislation , corporate instrument or contractual agreement; and
 - (ii) suitably qualified to act as director having the skills, expertise, competence, knowledge and experience required for the effective performance of the role of a director.
6. A director shall act in the best interest of the company, consistent with the company's corporate instruments and shall be subject to the applicable laws in the relevant member territories
7. Every company shall ensure there is transparency in the selection of candidates for board membership.
8. **Composition of the Board**
- (i) The Board must be of a size sufficient to match the scale, complexity and scope of the company's operations and must be independent of management to enable it to carry out its oversight function in an objective and effective manner.
 - (ii) The majority of board members shall be non-executive directors and at least one of whom must be an independent director. Where the company limits the size of its board to a statutory minimum, two of the board members must be completely independent of the company.
 - (iii) Existing directors or nominee directors must immediately inform the Board of prospective appointments on and to other Boards, and any relationships or potential related party transactions that may affect their independence as a director.
 - (iv) For the avoidance of conflict of interest, confidentiality breaches, insider dealings and to secure board independence:
 - a. directors must not be on the Board of competing companies, or companies in the same industry.
 - b. the board must only contain a maximum of two immediate family members as directors at any one time.

- c. cross memberships on the boards of two or more companies must be avoided unless part of a commonly controlled group of companies

9. Responsibilities and Duties of the Board of Directors

- (i) The responsibilities and duties of the Board shall be established in the Company's corporate instruments and shall be evaluated and enhanced on a periodic basis. It shall ensure that the company is properly managed in order to protect and enhance shareholder value and to meet the company's obligations to its employees and other stakeholders.
- (ii) Directors shall:
 - a. encourage the reporting of unlawful/unethical behaviour to the relevant bodies and actively promote ethical behaviour and protection for those who report violations in good faith;
 - b. not disclose non-public information except where authorised by law;
 - c. not improperly use information acquired as directors and officers of the company;
 - d. keep confidential, information received in the course of the exercise of their duties unless the disclosure is authorized by the person providing the information, or the board, or where disclosure is required by law;
 - e. not take improper advantage of his position as Director or use the position for personal gain or to compete with the company;
 - f. not take advantage of company property or use such property for personal gain or to compete with the company;
 - g. not allow personal interests, or the interest of any associate to conflict with the interests of the company; and
 - h. not engage in conduct likely to bring discredit upon the company.
- (iii) In exercising the powers of the company, the Board shall ensure the effective performance of the company by:
 - a. directing the management and conduct of the affairs of the company
 - b. ensuring that the ethical standards of the company are maintained;

- c. defining the company's strategic goals and ensuring that its human and financial resources are effectively deployed towards achieving these goals;
 - d. defining a framework for the delegation of its authority or duties to Management specifying matters that may be delegated and those reserved for the Board;
 - e. formulating the company's policies on risk management, communication and information dissemination;
 - f. overseeing the effectiveness and adequacy of internal control systems, ensuring the integrity of the company's accounting and financial reporting systems, including the independent audit;
 - g. formulating the requisite Board procedures and rules to be followed for the scheduling and place of meetings, for the conduct of meetings and attendance of members, the term of board appointments, and the appointment, training, remuneration and the replacement of board members and senior executives;
 - h. formulating plans for Board succession, and devising mechanisms for effective communication with shareholders;
 - i. reviewing and approving financial reports; and
 - j. ensuring compliance with applicable regulations.
- (iv) Where the Board determines that certain of its powers, duties and responsibilities must be undertaken through committees, it shall ensure that each committee operates under the terms of reference approved by the Board.
- (v) The board shall :
- a. establish a code of conduct to guide the directors and the Chief Executive Officer and other key personnel within the company; and
 - b. monitor the company's compliance with the code of conduct by consistent review of the board's processes and the internal structure of the company to ensure that standards of accountability are met by management

10. Orientation and Training of Directors

(i) The Board shall:

- a. establish a formal orientation programme to familiarize new directors with the company's operations, strategic plan, senior management and its business environment, and to induct them in their fiduciary duties and responsibilities.
- b. require the participation of all directors in appropriate periodic professional continuing education programs to ensure that directors remain current in their skills and knowledge and with new developments in the company's business and operating environment.

11. Board Meetings and Attendance

- (i) Board members shall attend all Board meetings whether remotely or in person; and
- (ii) Except where the Chairman excuses an absence, attendance at board meetings shall be mandatory for every director.

12. Conflict of Interest

- (i) Every company shall adopt a policy to guide the Board, executive officers, auditors and other relevant parties on conflicts of interest situations and the type of disclosures that shall be made in these situations.
- (ii) Every director, officer and external auditor of a company shall make a written disclosure to the Board of all conflicts which arise or may arise, and such disclosures shall specify:
 - a. the value of every contract and payments made under such contract with the company of which he/she is a beneficiary; and
 - b. whether he is a director or an officer of any other company that is party to a contract or any proposed contract with the company that is party to a contract or any proposed material contract with the company.
- (iii) Disclosures under this section **shall** be made annually, however directors and officers shall disclose any conflict of interest as soon as it is discovered.

13. Remuneration

- (i) Except where the remuneration of a director is set out in legislation, or is subject to the company's corporate instruments or a contractual arrangement, the Board must develop a comprehensive policy on remuneration for the company directors, executives and senior management.
- (ii) The remuneration policy must define the criteria and mechanism for determining levels of remuneration and the frequency for review of such criteria and mechanism.
- (iii) The remuneration policy must specify how and to what extent the remuneration of an executive director is linked to corporate and individual performance.

14. Performance Evaluation of Board

- (i) The Board of every company to which these Rules apply must establish an annual performance review policy with respect to an annual evaluation of its own performance, the performance of its committees, the Chairman and individual directors.
- (ii) The Board may engage the services of external consultants to conduct the annual performance evaluation
- (iii) Following the annual performance evaluation, the Board shall review and discuss the overall results and where necessary an improvement plan be developed and progress reviewed at the next evaluation.
- (iv) The Chairman shall :
 - a. Provide each director with the results of his/her performance evaluation
 - b. Personally discuss such results with each director.

15. Chairman of the Board

- (i) The Chairman of the Board plays a critical role in the proper functioning of the board and shall:
 - a. lead the board and be ultimately responsible for its effective overall functioning.

- b. ensure that board decisions are taken on a sound and well-informed basis and shall encourage and promote critical discussions and ensure that there is freedom of expression and respect for varying views within the decision making process.
- c. dedicate adequate time for the effective performance of his/her responsibilities.

PART III **MANAGEMENT**

17. The primary role of management is to manage the company in a manner consistent with the business strategy, risk appetite, and other policies approved by the board. The board shall provide direction and oversight of senior management. Senior management consists of a core group of individuals responsible for the sound and prudent day-to day management of the company.

(i) An Executive shall:

- a. head the management team and shall be charged with the overall responsibility for the management team and all employees and the operations of the business.
- b. in the performance of his role foster a business culture that is a true representation of the company's own culture, values and norms and of the Board's standards.
- c. have the requisite experience and competence for the successful performance of his role and responsibilities.
- d. shall not be appointed as Chairman of the Board.

(ii) Members of the management team shall:

- a. have the necessary experience, competencies and integrity to manage the business and people under their supervision.
- b. establish a management structure that promotes accountability and transparency throughout the company.
- c. be consistent with the direction given by the board and shall implement business strategies to achieve business goals.

18. Management shall take measures to ensure company compliance with applicable laws regulations and internal policies.

PART IV
RELATIONSHIP WITH SHAREHOLDERS

19. Protection of Shareholder Rights

- (i) The Board shall ensure that:
- a. the statutory and general rights of shareholders are protected at all times;
 - b. all shareholders are treated equitably;
 - c. minority shareholders are treated fairly at all times and are sufficiently protected from abusive actions of majority shareholders; and
 - d. the company promptly and securely provides shareholders with documentary evidence of ownership interest in the company, including share certificates, dividend warrants and related instruments;
 - e. that all shareholders have access to the company's financials as per the applicable legislation and any other pertinent information.
 - f. Shareholders be informed that they may vote in person or by proxy

20. Shareholder Meetings

- (i) The Board shall establish and implement mechanisms and procedures for the scheduling of annual general meetings with shareholders;
- a. the procedures shall address the time, place and date of meetings;
 - b. it shall ensure that shareholders:
 - i. have access to all information necessary in preparation for the meetings; these include the notices and agendas;
 - ii. have secure methods of ownership registration;

- iii. can freely convey or transfer shares subject to applicable law;
- iv. obtain relevant and timely information on the company on a regular basis, subject to any laws or principles of confidentiality;
- v. participate and vote in general meetings of shareholders;
- vi. elect and remove members of the Board.

PART V
RISK MANAGEMENT AND INTERNAL CONTROLS

21. Risk Management

- (i) The Board shall determine the nature and extent of the risks which may have a significant effect on the company and ensure that thorough enterprise-wide risk assessment, which covers all aspects of the company's business is performed on an annual basis as determined by the Board
- (ii) The Board shall oversee the establishment of a management framework that defines the company's risk policy, risk appetite and risk limits.
- (iii) The management team is accountable to the Board and they shall establish a framework for implementing and monitoring the process of risk management, and integrating it into the day-to-day activities of the company.

22. Whistle-blowing Policy

- (i) The Board shall implement whistle-blowing policies and procedures and these shall be communicated to employees and stakeholders.

PART VI
AUDITS

23. Internal Audit Unit

- (i) The Board shall ensure that the company has an effective risk-based internal audit process, the parameters of which must be consistent with the

International Standard for the Professional Practice of Internal Auditing established by the Institute of Internal Auditors.

24. External Auditor

- (i) Every company to which these Rules apply shall appoint, during its annual meeting of shareholders, an external auditor who shall hold office until the next annual meeting of shareholders, and whose remuneration shall be determined by the Board.

25. Rotation of External Auditors

- (i) The Board shall “in accordance with applicable legislation” determine whether audit firms or the partners within an audit firm should be rotated and, in writing, state the reasons for its determination.

26. Audit Committee

- (i) Every company to which these Rules apply shall establish an audit committee whose responsibilities shall include:
 - a. Establishing an internal audit unit and ensuring that there are other means of obtaining sufficient assurance of regular review or appraisal of the system of internal control in the company
 - b. Oversight of the company’s internal audit unit and the role of external auditor
 - c. Overseeing management’s procedure for identifying significant fraud risks across the company and ensuring that adequate prevention, detection and reporting mechanisms are in place
 - d. Ensuring the implementation of adequate whistle-blower procedures and periodically reviewing such procedures
 - e. Oversee senior management’s activities to ensure that the organization is in compliance with all applicable laws, regulations, guidelines and supervisory requirements, accepted business practices and ethical standards
 - f. Have unfettered access to management. Have access to auditors (external and internal) without management present and have the right to seek

explanations and additional information from management and auditors where required.

PART VII
ACCOUNTABILITY AND REPORTING

27. Disclosure

- (i) The Board shall ensure that timely and accurate disclosure as per any applicable policies or legislations, is made on matters regarding the company, including the financial position, performance, ownership and governance of the company, consistent with the applicable legislation.

PART VIII
MISCELLANEOUS

28. Code of Ethics

- (i) Each company shall implement a Code of Ethics that covers the Board, management, employees and representatives. The code of ethics should cover a broad scope and be in line with applicable laws.
- (ii) All steps should be taken to ensure such code is adhered to in full.

Made by the Eastern Caribbean Securities Regulatory Commission this 27th day of March 2020.



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H. E. Arthur G. B. Thomas
DEPUTY CHAIRMAN
EASTERN CARIBBEAN SECURITIES REGULATORY COMMISSION