

*Corporate Governance Principles for Caribbean
Countries*

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Preamble

The Core principles are aimed at improving the legal, institutional and regulatory framework for corporate governance in the Caribbean and facilitating the development of national and/or sector specific codes.

The principles represent a common basis that countries in the Caribbean consider essential for the development of good governance practices.

Like the OECD Principles, the principles focus on publicly held companies. However they are also intended to serve as guiding principles to improve corporate governance in privately held, family owned and state owned enterprises as well as overall public sector governance. They also articulate the role of all stakeholders including customers, employees, pensioners and the public in the governance process.

Consistent with the OECD principles of Corporate Governance, the Principles reflect international best practices. They seek to provide a basis for the development and implementation of sector specific and/or national codes of Corporate Governance appropriate to the developmental context of the Caribbean and supportive of the integration movement within CARICOM.

For countries in the Caribbean that are trying to attract financial capital, corporate governance is essential in bolstering the confidence and commitment of potential investors and contributing to corporate competitiveness. Therefore the principles are expected to facilitate long-term economic development of the countries

including the strengthening of market discipline, improved business transparency through enhanced disclosure, effective regulation and corporate social responsibility. Effective corporate reporting will also assist governments and regulators to monitor markets, identify risks and impose appropriate regulations that encourage growth and fair competition.

Corporate Governance principles should be cognisant of the importance of public sector governance and/or governance within State-Owned Enterprises as the public sector is a major employer of human capital and economic resources. Accordingly, Governments as policy makers must set the tone for the movement towards good governance nationally, through transparency and accountability, by ensuring that good corporate governance standards are employed within the public sector, and the governance structures of state-owned enterprises.

1. Accordingly these principles also offer broad guidance for Governments and regulators in reviewing their governance frameworks. Policymakers are encouraged to develop their governance frameworks with a view to the impact on overall economic performance, market integrity, efficiency and transparency and the incentives it creates for market participants.

The Principles are consistent with emerging global principles of corporate governance while taking into consideration the unique economic, social, legal and cultural circumstances of the region. They are non-binding and non-prescriptive so that they retain relevance in varying legal, economic and social contexts. However they are intended to serve as a reference tool in the development of national and/or sector specific codes and in the further development of national legal and regulatory frameworks.

CORPORATE GOVERNANCE PRINCIPLES

Principle I – Overall Objective

The corporate governance framework within the Caribbean should encourage the development of transparent and efficient markets, have its basis in the rule of law and ethical business practices and foster the division of responsibilities among supervisory, regulatory, and enforcement bodies.

- A. The corporate governance framework should be cognizant of the economic peculiarities of the countries of the region, promote market integrity and growth, and underscore market transparency and efficiency and serve the public interest.
- B. Corporate governance practices should be embedded in the legal and regulatory systems and based on the rule of law.
- C. Responsibilities among authorities should be clearly delineated.
- D.** Professionalism and objectivity should be the cornerstone of the decision-making processes and other activities of supervisory, regulatory and enforcement bodies, including professional and industry associations. Such bodies should have the requisite authority and resources to fulfill their mandates. Decisions should be timely, transparent and just.

Principle II – Shareholder Rights

The Corporate Governance framework should protect and facilitate the exercise of shareholders rights.

A. Basic shareholder rights should include the right to:

- 1) secure methods of ownership registration;
- 2) freely convey or transfer shares subject to applicable law;
- 3) obtain relevant and material information on the entity on a timely and regular basis, subject to any laws or principles of confidentiality;
- 4) participate and vote in general meetings of shareholders;
- 5) elect and remove members of the Board; and
- 6) share in the profits of the entity.

B. Shareholders should have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental/material corporate changes such as:

- 1) amendments to the statutes and/or articles of incorporation or other governing documents of the entity;
- 2) the authorisation of additional shares; and
- 3) extraordinary transactions, including the transfer of all or substantially all assets, that in effect result in the sale of the company.

2. **C.** All shareholders should have the opportunity to participate effectively and vote in meetings of shareholders and should be informed of the rules, including voting procedures that govern shareholder meetings; Shareholders should be able to make their views known on the remuneration policy for Board members and key executives and the equity component of compensation schemes for Board members and employees should be subject to shareholder approval.

D. Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.

E. Markets for corporate control should be allowed to function in an efficient and transparent manner. The rules and procedures governing the acquisition of corporate control in the capital markets, and extraordinary transactions such as mergers, and sales of substantial portions of corporate assets, should be clearly articulated and disclosed so that investors understand their rights and are provided recourse. Transactions should occur at transparent prices and under fair conditions that protect the rights of all shareholders according to their class.

F. The exercise of ownership rights by all shareholders, including institutional investors, should be facilitated and institutional investors should be encouraged to participate actively in the governance of the entity.

Principle III – Equal Treatment of Shareholders

The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.

A. All shareholders of the same series of a class should be treated equally.

1. Within any series of a class, all shares should carry the same rights. All investors should be able to obtain information about the rights attached to all series and classes of shares prior to purchase. Any changes in voting rights should be subject to approval by those classes of shares, which are negatively affected.

2. Minority shareholders should be protected from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly, and should have effective means of redress.

3. Minority shareholders should be encouraged to seek professional advice before participating in key decisions with respect to corporate governance, corporate restructuring, capital restructuring or asset transfers;

4. The forms of redress available should be made known to all shareholders;

5. Votes should be cast by custodians or nominees in a manner agreed upon with the beneficial owner of the shares;

6. Cross border voting should be facilitated;

7. Processes and procedures for shareholder meetings should allow for equitable treatment of all shareholders. Procedures should not make it difficult or expensive to cast votes.

B. Insider trading and abusive self-dealing should be prohibited.

C. Members of the Board and key executives should be required to disclose to the Board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the entity.

D. Procedures for dealing with conflicts should be established.

Principle IV – Rights of other Stakeholders

The corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between entities, including family owned businesses and state-owned/controlled enterprises, and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.

A. Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.

B. Performance-enhancing policies for employee participation including employee share ownership and option plans, pension funds and other profit sharing mechanisms should be permitted to develop.

C. Stakeholders should have access to relevant, sufficient and reliable information on a timely and regular basis.

D. Procedures and safe-harbours should be established for complaints by employees, either personally or through their representative bodies, and others outside the company, concerning illegal and unethical behavior should be established.

E. The corporate governance framework should be complemented by an effective and efficient insolvency framework and by effective enforcement of creditor rights.

F. Principles for public sector accountability and governance should be recognised and implemented;

G. Public Accounts Committees should play an active role in the governance of state owned/controlled enterprises.

H. An effective system for monitoring and reporting poor governance practices should be instituted within the public and private sectors.

I. The development of capacity within stakeholder groups should be facilitated. The development of business associations, shareholder advocacy groups and organised lobbying efforts should be encouraged.

Principle V – Disclosure and Transparency

The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters relating to the entity, including its financial situation, performance, ownership, and governance.

A. All material information in relation to the company should be disclosed subject to considerations of confidentiality;

Disclosure should include but not be limited to the following:

1. The financial and operating results of the company;
2. Company objectives;
3. Major share ownership and voting rights;
4. Remuneration policy for members of the Board and key executives;
5. Information about members of the Board, including biographical data, qualifications, shareholding in the entity, other company directorships and whether they are regarded as independent by the Board;
6. Related party transactions;
7. Existing and foreseeable risk factors; and
8. Issues regarding employees and other stakeholders likely to materially affect the performance of the entity.

B. The Board of Directors should prominently and clearly disclose its approach to corporate governance, including analysing the entity's governance issues. The Board should also disclose the processes it employs to ensure an effective system of corporate governance.

C. Information should be prepared and disclosed in accordance with legal and regulatory requirements for accounting, financial and non-financial disclosure. Such disclosures should seek to meet international standards where applicable.

1. Accounting and auditing professions should work to close the gap between accepted international standards and actual practices;

2. The development and implementation of both accounting and auditing standards should be overseen by effective bodies acting in the public's interest;

3. The relevant accounting standards used to prepare the financial statements and reports should be disclosed;

4. The annual reports of companies should contain a Corporate Governance Statement detailing the company's governance structures and/or policies;

5. The Board should ensure that adequate risk management and internal control procedures/processes are in place.

D. An annual audit should be conducted by an independent, competent and qualified auditor, appointed by the shareholders, in order to provide an external and objective assurance to the Board and shareholders that the financial statements fairly represent the financial position and performance of the company in all material respects.

E. External auditors should be accountable to the shareholders and owe a duty to the company to exercise due professional care in the conduct of the audit. External auditors should be independent in fact and appearance.

F. Channels for disseminating information should provide for equal, timely and cost efficient access to relevant information by users.

G. The corporate governance framework should be complemented by the provision of analysis or advice by analysts, brokers, rating agencies and others, that is relevant to investors and free from material conflicts of interest that might compromise the integrity of such analysis or advice.

H. Auditors should not provide non-audit services to the entity unless expressly approved by the Board. Where auditors provide non-audit services, the audit committee should maintain full records of such services in an effort to maintain auditor objectivity.

Principle VI – Board Responsibilities

The corporate governance framework should ensure the strategic guidance of the entity, the effective monitoring of management by the Board, and the Board’s accountability to the entity and to stakeholders.

A. Every company should be headed by an effective Board whose principal focus should be on optimising shareholder value. The Board should be the focal point of the corporate governance system and is ultimately accountable and responsible for the performance and affairs of the company;

B. The Board of Directors of every entity should meet regularly;

C. Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the entity and the stakeholders.

D. Where Board decisions may affect different shareholder groups differently, the Board should treat all shareholders fairly.

E. The Board should seek to codify ethical conduct. At a minimum, the ethical code should seek to set clear limits on the pursuit of private interests, including dealings in the shares of the entity and define conflicts of interest and independence. An overall framework for ethical behavior goes beyond compliance with the law, which should always be a fundamental requirement, and includes consideration of the interests of stakeholders.

F. Board training and certification should be encouraged;

G. The Board should fulfill certain key functions, including:

1. Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; developing management policies and overseeing major capital expenditures, acquisitions and divestitures;

2. Monitoring the effectiveness of the company's governance practices and making changes as needed;

3. Selecting, developing, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning;

4. Aligning key executive and Board remuneration with the longer-term interests of the company and its shareholders;

5. Ensuring a formal and transparent Board nomination and election process;

6. Monitoring and managing potential conflicts of interest of management, Board members and shareholders, including misuse of corporate assets and abuse in related party transactions;

7. Ensuring the integrity of the company's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards;

8. Overseeing the process of disclosure and communications;

H. The Board should be able to exercise objective independent judgment on corporate affairs.

1. Boards should consider assigning a sufficient number of non-executive Board members capable of exercising independent judgment to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are ensuring the integrity of financial and non-financial reporting, the review of related party transactions, nomination of Board members and key executives, and Board remuneration;

2. The establishment of Board committees should be encouraged, in particular, the use of audit committees should be mandated. The committees' mandate, composition and working procedures should be well defined and disclosed by the Board;

3. Board members should be able to commit themselves effectively to their responsibilities by being familiar with the industry or industries in which the company operates.

I. In order to fulfill their responsibilities, Board members should have access to accurate, relevant and timely information.

J. The Board should institute mechanisms for direct interface with regulators on a regular basis.

K. Board appointments should be made through a well managed and efficient process that provides for a mix of proficient directors, each of whom is able to add value and to bring independent judgment to bear on the decision making process.

L. Performance evaluation and peer reviews of Board members should be instituted.

M. The Board should maintain a system of internal controls to safeguard shareholders' investment and the corporation's assets. The Board should also seek to publicly disclose assessments of the effectiveness of internal controls within the company.

N. Members of the Board and key executives should be required to disclose to the Board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the company.