2011

Guyana

Corporate Governance Code

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The basis for the Code on Corporate Governance

This Code on Corporate Governance has been developed by the private and public sector in Guyana working together to describe what is considered good business practice in Guyana. It was accepted by the Council of the Private Sector Commission of Guyana on April 7, 2011.

It is the first version of a Corporate Governance Code for Guyana and it is developed based on the principles of internationally accepted corporate governance codes.

The Code does not describe mandatory or enforceable principles but provides a list of the main principles of what is commonly agreed to be good corporate governance practice. The purpose of corporate governance is to facilitate prudent management which will ensure that the company is successful and continue to exist in the long run.

Companies are encouraged to report on how they apply relevant corporate governance principles in practice and also be responsible enough to give an explanation to the shareholders of the reason(s) if they deviate from the code. Companies shall furthermore provide information on their corporate governance policies and principles at the request of shareholders for further evaluation.

Whilst the code is more applicable to Public Companies, Private Companies and State Owed Corporations can also adopt this code.

The Code is subject to review at least every three years to incorporate new principles.

Section I. The Board of Directors

Principle 1: The Board

Every company should be led by an effective Board, which is collectively responsible for promoting the success of the company by directing and supervising the company's affairs through its Management.

1. The board members shall act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.

2. When the board decisions may affect different shareholder groups differently, the board is required to treat all shareholders fairly and equitably.

3. The board should apply high ethical standards.

4. The board shall fulfill certain key functions, including:

    I. Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures.
    II. Monitoring the effectiveness of the company's governance practices and making changes as needed.
    III. Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning.
    IV. Aligning key executive and board remuneration with the longer term interests of the company and its shareholders.
    V. Ensuring a formal and transparent board nomination and election process.
    VI. Monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions.
    VII. Ensuring the integrity of the company 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.
    VIII. Overseeing the process of disclosure and communications with shareholders.

5. The board should be able to exercise objective independent judgment on corporate affairs.

    I. 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.
    II. When committees of the board are established, their mandate, composition and working procedures should be well defined and disclosed by the board.
    III. Board members should commit themselves effectively to their responsibilities.

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

7. The board shall meet at least once per quarter to discharge its duties effectively. There shall be a formal schedule of matters specifically reserved for its decision. The annual report shall include a statement of how the board operates, including a high level statement of which types of decisions are to be taken by the board and which are to be delegated to management.

8. The annual report shall identify the chairman, the deputy chairman (where there is one), the chief executive, the senior independent director and the chairmen and members of the nomination, audit and remuneration committees. It shall also set out the number of meetings of the board and those committees and individual attendance by directors.

9. Where directors have concerns which cannot be resolved about the running of the company or a proposed action, they shall ensure that their concerns are recorded in the board minutes. On resignation, a director shall provide a written statement to the chairman, for circulation to the board, if they have any unresolved concerns.

10. The company shall arrange appropriate insurance cover in respect of legal action against its directors.

Principle 2: Chairman and Chief Executive

There shall be a clear division of responsibilities at the head of the company between the running of the board and the executive responsibility for the running of the company's business to ensure that no one individual shall have unfettered powers of decision.

1. The Chairman and Chief Executive Officer ("CEO") shall be separate persons, to ensure an appropriate balance of power, increased accountability and greater capacity of the Board for independent decision making. The division of responsibilities between the Chairman and CEO shall be clearly established, set out in writing and agreed by the Board.

2. The Chairman shall on appointment meet the independence criteria set out in this below. A former chief executive should not go on to be chairman of the same company. If exceptionally a Board decides that a former chief executive officer should become Chairman the Board shall:

   I. Ensure a period of three (3) years has elapsed
   II. notify shareholders twenty-one days in advance of the proposed appointments setting out its reasons
   III. justify the appointment in the next annual report

Principle 3: Board balance and independence

The board shall include a balance of executive and non-executive directors (and in particular independent non-executive directors) such that no individual or small group of individuals can dominate the board's decision taking.

1. The board shall identify in the annual report each non-executive director it considers to be independent. The board shall determine whether the director is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director's judgement. The board shall state its reasons if it determines that a director is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including if the director:

   I. has been an employee of the company or group within the last five years;

II. has, or has had within the last three years, a material business relationship with the company either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company;
III. has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance-related pay scheme, or is a member of the company's pension scheme;
IV. has close family ties with any of the company's advisers, directors or senior employees;
V. holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
VI. represents a significant shareholder; or
VII. Has served on the board for more than nine years from the date of their first election.

2. Except for private companies, at least half the board, excluding the chairman, shall comprise non-executive directors determined by the board to be independent. A private company shall have at least two independent non-executive directors.

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Principle 4: Appointments to the Board

There shall be a formal, rigorous and transparent procedure for the appointment of new directors to the board.

1. There shall be a nomination committee which shall lead the process for board appointments and make recommendations to the board. A majority of members of the nomination committee shall be independent non-executive directors. The chairman or an independent non-executive director shall chair the committee, but the chairman shall not chair the nomination committee when it is dealing with the appointment of a successor to the chairmanship. The nomination committee shall make available its terms of reference, explaining its role and the authority delegated to it by the board.

2. The nomination committee shall evaluate the balance of skills, knowledge and experience on the board and, in the light of this evaluation, prepare a description of the role and capabilities required for a particular appointment.

3. For the appointment of a chairman, the nomination committee shall prepare a job specification, including an assessment of the time commitment expected, recognising the

need for availability in the event of crises. A chairman's other significant commitments shall be disclosed to the board before appointment and included in the annual report. Changes to such commitments shall be reported to the Board as they arise, and their impact explained in the next annual report.

4. The terms and conditions of appointment of non-executive directors shall be made available for inspection. The letter of appointment shall set out the expected time commitment. Non-executive directors shall undertake that they will have sufficient time to meet what is expected of them. Their other significant commitments shall be disclosed to the board before appointment, with a broad indication of the time involved and the board shall be informed of subsequent changes.

5. The board shall not agree to a full time executive director taking on more than five non-executive directorships in companies or associations

6. A separate section of the annual report shall describe the work of the nomination committee, including the process it has used in relation to board appointments.

Principle 5: Information and professional development

The board shall be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties. All directors shall receive induction on joining the board and shall regularly update and refresh their skills and knowledge.

1. The chairman shall ensure that new directors receive a full, formal structured induction on joining the Board.

2. The board shall ensure that directors, especially non-executive directors, have access to independent professional advice at the company's expense where they judge it necessary to discharge their responsibilities as directors. Committees shall be provided with sufficient resources to undertake their duties.

3. All directors shall have access to the advice and services of the company secretary, who is responsible to the board for ensuring that board procedures are complied with.

Both the appointment and removal of the company secretary shall be a matter for the board as a whole.

Principle 6: Performance evaluation

The board shall undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors.

1. The board shall state in the annual report how performance evaluation of the board, its committees and its individual directors has been conducted.
2. Evaluation of the Board should be externally facilitated at least every three years.
3. Criteria that can be used in the evaluation process.

Principle 7: Re-election

All directors shall be submitted for re-election at regular intervals, subject to continued satisfactory performance. The board shall ensure planned and progressive refreshing of the board.

1. All directors shall be subject to election by shareholders at the first annual general meeting after their appointment, and to re-election thereafter at intervals of no more than three years. The names of directors submitted for election or re-election shall be accompanied by sufficient biographical details, other directorships held and any other relevant information to enable shareholders to take an informed decision on their election.

2. The board shall set out to shareholders in the papers accompanying a resolution to elect a non-executive director why they believe an individual shall be elected. The chairman shall confirm to shareholders when proposing re-election that, following formal performance evaluation, the individual's performance continues to be effective and to demonstrate commitment to the role. Non-executive directors may serve longer than nine years (e.g. three three-year terms), subject to annual re-election. Serving more than nine years could be relevant to the determination of a non-executive director's independence (as set out in principle 9. number 1).

Principle 8: The Level and Make-up of Remuneration

Levels of remuneration shall be sufficient to attract, retain and motivate directors of the quality required to run the company successfully, but a company shall avoid paying more than is necessary for this purpose. A significant proportion of executive directors' remuneration shall be structured so as to link rewards to corporate and individual performance.

1. The performance-related elements of remuneration shall form a significant proportion of the total remuneration package of executive directors and shall be designed to align their interests with those of shareholders and to give these directors keen incentives to perform at the highest levels.
2. Shares and share options shall not be offered to Directors at a discount.
3. Levels of remuneration for non-executive directors shall reflect the time commitment and responsibilities of the role.
4. The remuneration committee shall carefully consider what compensation commitments (including pension contributions and all other elements) the Executive Directors' terms of appointment would entail in the event of early termination. The aim shall be to avoid rewarding poor performance. They shall take a robust line on reducing compensation to reflect departing directors' obligations to mitigate loss.

6. Notice or contract periods shall be set at one year or less. If it is necessary to offer longer notice or contract periods to new directors recruited from outside, such periods shall reduce to one year or less after the initial period.

Principle 9: Procedure

There shall be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. No director shall be involved in deciding his or her own remuneration.

1. The board shall establish a remuneration committee comprised of independent non-executive directors. Executive member of staff can participate in these meetings in an advisory capacity. In addition the company chairman may also be a member of, but not

chair, the committee if he or she was considered independent on appointment as chairman.

2. The remuneration committee shall make available its terms of reference, explaining its role and the authority delegated to it by the board. Where remuneration consultants are appointed, a statement shall be made available of whether they have any other connection with the company.

2. The remuneration committee shall have delegated responsibility for setting remuneration for all executive directors and the chairman, including pension rights and any compensation payments. The committee shall also recommend and monitor the level and structure of remuneration for senior management. The definition of 'senior management' for this purpose shall be determined by the board but shall normally include the first layer of management below board level.

3. The board itself or, where required by the Articles of Association, the shareholders shall determine the remuneration of the non-executive directors within the limits set in the Articles of Association. Where permitted by the Articles, the board may however delegate this responsibility to a committee, which might include the Chief Executive.

Section II. Disclosure and Accountability

Principle 1: Financial Reporting

The board shall present a balanced and understandable assessment of the company's position and prospects.

1. The directors are responsible for the preparation of the financial statements in accordance with International Financial Reporting Standards (IFRS) and applicable legislation.

2. The auditor is responsible for conducting the audit of the financial statements in accordance with International Standards on Auditing.

Principle 2: Internal Control

The board shall maintain a sound system of internal control to safeguard shareholders' investment and the company's assets.

1. Companies shall have an effective internal audit function that is adequately resourced, competently staffed and follow the internationally recognized framework for internal auditing.

2. The internal audit shall have access to both the board of directors and management. Internal auditors shall have unrestricted access to the chairperson of the audit committee.

3. The board shall, at least annually, conduct a review of the effectiveness of the company's system of internal controls and shall report to shareholders that they have done so. The review shall cover all material controls, including financial, operational and compliance controls and risk management systems.

Principle 3: Audit Committee and Auditors

The board shall establish formal and transparent arrangements for considering how they shall apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the company's auditors.

1. The board shall establish an audit committee consisting of independent non-executive directors and who shall be named in the annual report. The board shall satisfy itself that at least one member of the audit committee has competencies in areas such as risk management, internal control, financial management and accounting.

2. The main role and responsibilities of the audit committee shall be set out in written terms of reference and shall include:

    i. to monitor the integrity of the financial statements of the company, and any formal announcements relating to the company's financial performance, reviewing significant financial reporting judgements contained in them;
    ii. to review the company's internal financial controls and risk management systems ;
    iii. to monitor and review the effectiveness of the company's internal audit function;
    iv. to make recommendations to the board, for it to put to the shareholders for their approval in general meeting, in relation to the appointment, re-appointment and removal of the external auditor;
    v. to approve the remuneration and terms of engagement of the external auditor;
    vi. to review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process;

3. The audit committee should have terms of reference, including its role and the authority delegated to it by the board. A separate section of the annual report shall describe the work of the committee in discharging those responsibilities.

4. The audit committee shall review arrangements by which staff of the company may, in confidence, raise concerns about possible improprieties in matters of financial reporting or other matters. The audit committee's objective shall be to ensure that arrangements are in place for the proportionate and independent investigation of such matters and for appropriate follow-up action.

    4. The audit committee shall monitor and review the effectiveness of the internal audit activities. Where there is no internal audit function, the audit committee shall consider annually whether there is a need for an internal audit function and make a recommendation to the board, and the reasons for the absence of such a function shall be explained in the relevant section of the annual report.

6. The audit committee shall have primary responsibility for making a recommendation on the appointment, reappointment and removal of the external auditors. If the board does not accept the audit committee’s recommendation, it shall include in the annual report, and in any papers recommending appointment or re-appointment, a statement from the audit committee explaining the recommendation and shall set out reasons why the board has taken a different position.

7. The annual report shall explain to shareholders how, if the auditor provides non-audit services, auditor objectivity and independence is safeguarded.

8. The company should provide the members of the audit committee with relevant training to enable to carry out their functions effectively.

Section III. The Relationship with Shareholders

Principle 1: Communication with shareholders

There shall be a dialogue with shareholders based on the mutual understanding of objectives. The board as a whole has responsibility for ensuring that a satisfactory dialogue with shareholders takes place. The Board is accountable to all shareholders.

1. The chairman shall ensure that the views of shareholders are communicated to the board as a whole. The chairman shall discuss governance and strategy with ALL shareholders. Non-executive directors shall attend all shareholders' meetings.

2. The board shall state in the annual report the steps they have taken to ensure that the members of the board, and in particular the non-executive directors, develop an understanding of the views of ALL shareholders about their company.

Principle 2: Constructive Use of the AGM

The Board shall use the Annual General Meeting (AGM) as the primary means of direct communication with shareholders.

1. At any general meeting, the company shall propose a separate resolution on each substantially separate issue, and shall in particular propose a resolution at the Annual General Meeting (AGM) relating to the report and accounts. For each resolution, proxy appointment forms shall provide shareholders with the option to direct their proxy to vote either for or against the resolution or to withhold their vote. The proxy form and any announcement of the results of a vote shall make it clear that a "vote withheld" is not a vote and will not be counted in the calculation of the proportion of the votes for and against the resolution.

2. The company shall ensure that all valid proxy appointments received for general meetings are properly recorded and counted. For each resolution, after a vote has been taken, except where taken on a poll, the company shall ensure that the following information is given at the meeting and made available as soon as reasonably practicable on a website which is maintained by or on behalf of the company:
    I. The number of shares in respect of which proxy appointments have been validly made;
    II. The number of votes for the resolution;

III. The number of votes against the resolution; and
IV. The number of shares in respect of which the vote was directed to be withheld.

3. The chairman shall arrange for all directors to attend and the chair of the board committees such as the audit, remuneration, and nomination committee to be available to answer questions at the AGM.

5. Boards of directors shall establish guidelines to involve all shareholders to take an active role at the AGM through pre-meeting question forms and question periods.

6. Maintain an effective communication policy that enables both the board and management to communicate effectively with shareholders.

Principle 3: Shareholder Voting

The Company shall develop a policy for acting as an institutional shareholder.

1. A company when acting as an institutional shareholder shall disclose their overall corporate governance and voting policies with respect to their investments, including the procedures that they have in place for deciding on the use of their voting rights.

2. The policy described in the previous paragraph, shall also provide that the company shall also disclose how they manage material conflicts of interest that may affect the exercise of key ownership rights regarding their shareholding.