



For Public Consultation:

DRAFT SECURITIES INDUSTRY (CORPORATE GOVERNANCE) RULES, 2018

Summary

The Securities Industry (Corporate Governance) Rules, 2018 (the Rules) were drafted to create a legislative framework that is compliant with international standards enunciated in the OECD principles on Corporate Governance and Guidelines on Corporate Governance of State-Owned Enterprises. These Rules address gaps in the companies' legislative regime and require Public Issuers to implement corporate governance principles and procedures in the operation of their companies under Part XI section 106 of the Securities Industry Act, 2011.

The Rules:

- Introduce new terms that will apply; and
- Ensure that the new corporate governance principles complement existing company law.

The Rules principally address the –

- composition, appointment, qualification, duties, training and remuneration of the Board;
- company's relationship with shareholders and how shareholders' rights, specifically minority shareholder rights, are to be protected;
- company's obligations to implement a risk management and internal control protocol; and
- accountability and reporting obligations of the Board.

Scope

The Rules apply to public issuers, state-owned enterprises, and any private company seeking to raise funds in the capital markets or seeking listing by introduction.

Consultation Period:

The consultation period commences on **29 October 2018** and ends on **30 November 2018**, during which time the Commission invites the public to share comments with regard to the draft Rules. Comments may be submitted via email to Siaconsultation@scb.gov.bs.

Alternatively, comments may be submitted to:

The Executive Director

Securities Commission of The Bahamas
3rd Floor, Charlotte House
P. O. Box N-8347
Nassau, The Bahamas
Tel: (242) 397-4100
Fax: (242) 356-7300

Issued 29 October 2018

The Securities Industry (Corporate Governance) Rules, 2018

(section 106)

PART I
Preliminary

Citation

1. (1) These Rules may be cited as the Securities Industry (Corporate Governance) Rules, 2018.

(2) These Rules shall enter into force upon publication.

Interpretation

2. (1) For the purposes of these Rules –

“Act” means the Securities Industry Act¹;

“Bank” means the Central Bank of The Bahamas;

“Board” means the Board of Directors of a company;

“Chairman” means the chairman of a Board;

“Commission” means the Securities Commission of The Bahamas;

“company” or “companies” shall mean public issuers;

“Compliance Officer” means the person appointed pursuant to regulation 40(2) of the Securities Industry Regulations²;

“constitutive documents” is as defined in section 2 of the Investment Funds Act;

“Executive” means an employee of a company having administrative and managerial responsibility for the company, and includes the Chief Executive, Executive Director, Managing Director and President;

“Non-executive Director” means a person appointed to as a Board member who is not an executive of the company and does not participate in the day-to-day management of the company.

“officer” is as defined in section 2 of the Companies Act.

“parent company” is as defined in s. 2 of the Companies Act

“public company” is as defined in section 2 of the Companies Act, Ch. 308 and includes a public issuer.

¹ Ch. 369 Statute Laws of The Bahamas

² S.I. No. 1 of 2012

“related party” means entities, including shareholders that control the company or are under common control of a parent company or significant shareholders including family members and key management personnel;

“Rules” means the Securities Industry Corporate Governance Rules, 2018;

“shareholder” means a person who lawfully acquires shares in the capital of a company;

“stakeholder” includes directors, employees, creditors, customers, depositors, distributors, regulatory authorities, and the host community;

“state-owned enterprises” or “SOE” means an entity, whose shares may or not be publically traded, –

- (a) in which the Government of The Bahamas –
 - (i) exercises ownership or control whether as a majority or minority shareholder; or
 - (ii) is the ultimate beneficial owner of the entity’s economic activities; and
- (b) where the purpose or part of its activities are of an economic nature.

(2) All other terms and expression used but not defined in these Rules shall have the same meaning as are assigned to them in the Act.

Application

3. (1) These Rules shall apply to all –

- (a) public companies whose securities are listed on a recognized securities exchange in The Bahamas;
- (b) state-owned enterprises; and
- (c) any private company either proposing to raise funds from the capital markets through the issuance of its own securities, or seeking listing by introduction.

(2) Every company to whom these Rules apply shall disclose its compliance with these Rules in a separate corporate governance statement in its annual report.

Part II The Board of Directors

Board of Directors

4. (1) Every company to whom these Rules apply shall be led by a Board made up of directors who are –

- (a) either –
 - (i) elected by the shareholders or members; or
 - (ii) in the case of an SOE, appointed consistent with the provision of any applicable legislation; and
- (b) suitably qualified to act as director having the requisite range of skills, competence, knowledge and experience for the role of director.

(2) Directors shall act in the best interest of the company consistent with the company’s constitutive documents and in compliance with the laws of The Bahamas.

Composition of the Board

5. (1) The Board shall consist of executive and non-executive directors, including independent directors and those representing minority interests.

(2) Where the company is an SOE, the composition of the Board shall comply with any legislation addressing the constitution of Board of Directors and the Director shall have autonomy to achieve the defined objectives of the company.

Board Responsibilities and Duties

6. (1) The Board 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.

(2) Directors shall –

- (a) encourage the reporting of unlawful/unethical behaviour and actively promote ethical behaviour and protection for those who report violations in good faith;
- (b)
- (c) have an ethical duty to not make improper use of information acquired as directors and officers of the company;
- (d) not disclose non-public information except where disclosure is authorised or required by law;
- (e) keep confidential, information received in the course of the exercise of their duties unless disclosure is required by law or has been authorised by the person from whom the information is provided;
- (f) not take improper advantage of the position of Director or use the position for personal gain or to compete with the company;
- (g) not take advantage of company property or use such property for personal gain or to compete with the company;
- (h) not allow personal interests, or the interest of any associated person, to conflict with the interests of the company; and
- (i) not engage in conduct likely to bring discredit upon the company.

(3) In exercising the powers of the company, the Board shall ensure the effective performance of the company consistent with the company's Memorandum and Articles of Association, any unanimous shareholder agreement, or in the case of an SOE, the legislation establishing the SOE, company to–

- (a) direct the management and conduct of the affairs of the company ensuring that ethical standards are maintained;
- (b) define the company's strategic goals and ensure that its human and financial resources are effectively deployed towards attaining those goals;
- (c) define a framework for the delegation of its authority or duties to Management specifying matters that may be delegated and those reserved for the Board;
- (d) formulate the company's policies on risk management, and communication and information dissemination;
- (e) oversee the effectiveness and adequacy of internal control systems, ensuring the integrity of the company's accounting and financial reporting systems, including the independent audit;
- (f) formulate 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 replacement of board members and senior executives;
- (g) formulate plans for Board succession, and effective communication with shareholders;

- (h) shall ensure the integrity of financial reports; and,
- (i) ensure compliance with these Rules.

(4) Unless the power has been delegated by the Board, or specifically restricted by the Articles of Association or any unanimous shareholder agreement, the Board shall appoint individuals to be officers of the company, and two or more offices may be held by the same person.

(5) Where the Board determines that certain of its powers, duties and responsibilities must be undertaken through committees, the **Second Schedule** to these Rules shall be relevant.

(6) The Board shall establish the number and composition of committees with the goal of improving the Board's effectiveness and with an awareness that it is the Board's responsibility to facilitate the effective discharge of the duties and responsibilities of committees.

(7) The Board shall –

- (a) establish a code of conduct to guide the directors and Chief Executive Officer and other key persons within the company;
- (b) monitor the company's compliance with governance 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;
- (c) perform self-assessments of its performance as well as the performance of key persons within the company's governance requirements, and make the necessary changes to those requirements based on the results of such assessments.

Constitution of the Board

6. (1) Each company's Board must be of a sufficient size relative to the scale and complexity of the company's operations and must be independent of Management to enable it carry out its oversight function in an objective and effective manner.

(2) The Board, led by a Chairman, shall be composed in such a way as to ensure diversity of experience and competence, and include both non-Executive and Executive Directors, or, in the case of an SOE, in compliance with the legislation establishing the SOE.

(3) Public companies shall ensure that the majority of its board's directors are non-executive directors, at least one of whom must be an independent director; and, where a public company limits the size of its board to the statutory minimum, two of those board members must be completely independent of the company.

(4) To avoid conflict of interest, breach of confidentiality, insider dealing and to safeguard the independence of the Board –

- (a) directors must not be members of Boards of companies in the same industry or of competing companies;
- (b) the Board of a public company must not include more than two members of the same family as directors at the same time; and
- (d) cross memberships on the boards of two or more companies must be avoided.

(5) Serving and nominee directors must promptly notify the Board through the Chairman of prospective appointments on and to other Boards, and any relationships or potential related party transactions that may affect the independence of the director or nominee director.

(6) For the purpose of this Rule, “independence” with respect to the role of directors means that a director is neither an officer nor an employee of the company or its affiliates, nor has any material relationship with the company, either directly or as a partner, shareholder or officer of another company which has a relationship with the company.

(7) The roles of Board members and officers shall be as set out in the **First Schedule** hereto.

Appointment to the Board

7. (1) All individuals selected as Board members must have the relevant and necessary knowledge and experience in relation to the requirements of the company, and must be able to commit sufficient time to the role of being a member.

(2) To ensure that there is sufficient transparency in the selection of potential candidates, companies must consider establishing a nominating committee; although, in the case of public companies, nominating committees shall be established by the Board and must operate consistent with a written, clearly defined, formal and transparent procedure not only for the Committee’s selection but for election of Directors by shareholders at the company’s annual meeting as well.

Multiple Directorships

8. (1) A prospective nominee to the Board of a company must disclose memberships on other Boards. Where there is a recommendation for a prospective nominee, the number of other directorships held by such a prospective nominee shall be a valid consideration by the Nominating Committee in determining whether the prospective nominee can contribute effectively to the performance of the Board and the discharge of its responsibilities.

Conflicts of Interest

9. (1) Companies must adopt a policy to guide the Board and individual directors on conflict of interest situations.

(2) A director or officer shall make written disclosure to the company all conflicts which arise or may arise, including all material contracts with the company of which he is a beneficiary, and whether he is a director or an officer of any other company that is party to a material contract or a proposed material contract with the company.

Orientation and Training of Directors

10. (a) The Board must 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) Participation in periodic, relevant, professional continuing education programmes must be mandatory for all directors to ensure that their knowledge and skills are up to date, and that they are informed of new developments in the company’s business and operating environment.

Meetings of the Board

11. (1) To effectively perform its oversight function and monitor management’s performance, the Board must meet at least once every quarter but may meet as often as necessary to perform its duties.

(2) Directors meetings may be held within or outside of The Bahamas and where all of the directors consent, a director may participate by means of telephone or other communication facility.

(3) Every director must attend at least two-thirds of all Board meetings, except where he is excused by the chairman for cogent reasons.

Remuneration

12. (1) Except where remuneration of Directors is dictated by legislation, the Board must develop a comprehensive policy on remuneration for directors and senior management subject to the company's Articles of Association, and must approve the remuneration of each executive director including the CEO individually, taking into consideration the direct relevance of skill and experience to the company at that time.

(2) The remuneration policy must –

- (a) define the criteria and mechanism for determining levels of remuneration and the frequency for review of such criteria and mechanism;
- (b) define a process, if necessary with the assistance of external advisers, for determining executive and non-executive directors' compensation; and
- (c) stipulate how and to what extent executive directors' remuneration must be linked to corporate and individual performance.

(3) The Board must undertake a periodic "peer review" of its compensation and remuneration levels to ensure that the company remains competitive and the company's remuneration policy and all material benefits and compensation paid to directors must be published in the company's annual report.

Performance Evaluation of the Board

13. (1) Whether a company is a public company or not, the Board must establish a system to undertake a formal and rigorous annual evaluation of its own performance, and the performance of its committees, the Chairman and individual directors.

(2) For the purpose of the annual evaluation, the Board may engage the services of external consultants and the result of the Board performance evaluation must be communicated and discussed by the Board as a whole, while those of individual directors must be communicated and discussed with them by the Chairman..

(3) The evaluation system must include the criteria and key performance indicators and targets for the Board, its committees, the Chairman and each individual committee member.

PART III RELATIONSHIP WITH SHAREHOLDERS

Protection of Shareholder Rights

14. (1) The Board must ensure that shareholders statutory and general rights are protected at all times.

(2) The Board must ensure that all shareholders are treated equally and that no shareholder, however large his shareholding, and whether institutional or otherwise, is given preferential treatment or superior access to information or other materials.

(3) The Board shall ensure that minority shareholders are treated fairly at all times and are adequately protected from abusive actions of majority shareholders.

(4) The Board must ensure that the company promptly and securely renders to shareholders, documentary evidence of ownership interest in the company such as share certificates, dividend warrants and related instruments.

(5) Where the Articles of Association provides for shareholders to be represented on the Board, such representation must be proportionate to the size of shareholding.

(6) In the case of a non-SOE company, the company's constitutive documents must stipulate that shareholders holding more than a specified ratio of the total issued capital of the company must have a representative on the Board unless there are cogent reasons that make that impracticable.

Shareholder Meetings

15. (1) The Board shall establish proper mechanisms and procedures for the scheduling of annual general meetings with the shareholders and the procedures shall address the time, place and date of meetings, the process to be followed in the issue meeting notices to shareholders, and the right of shareholders to participate by proxy.

(2) The Board shall ensure that shareholders attending an annual general meeting are provided with the relevant information and material, including the agenda for the meeting, in advance of the scheduled date of the meeting.

(3) The Board must ensure that sufficient time elapses between the notice of and the scheduling of a meeting to enable shareholders to participate fully, to contribute effectively at the meetings, and to be heard on matters of the nomination and election of board members and the company's annual financial report.

(3) The Board shall not seek to restrict the shareholders' proxy right, including the right to have the proxy speak on a shareholder's behalf, and no stipulation shall be placed on who may act as proxy for a shareholder.

Institutional Shareholders

16. (1) Where the shareholders of a public company includes institutional shareholders, a representative of the institutional shareholder shall be entitled to attend and participate in all general meetings and such representative shall exercise all of the rights of that shareholder.

(2) The Board shall ensure that institutional shareholders and other shareholders with large holdings are provided with explanations with respect to the company's compliance with these Rules, and in this regard the institutional shareholder acting in a fiduciary capacity must disclose its own corporate governance policy and how it manages conflicts of interest.

PART IV RISK MANAGEMENT AND INTERNAL CONTROL

Risk Management

17. (1) The Board shall determine the nature and extent of the risks which may have a significant effect on the company and ensure that a thorough risk assessment covering all aspects of the company's business is performed annually.

(2) The Board must oversee the establishment of a management framework that defines the company's risk policy, risk appetite and risk limits and must –

- (a) formally approve the framework for its integration into the day-to-day operations of the Business; and
- (b) provide guidelines and standards for administering the on-going management of key risks such as operational, reputational, financial, market, technology and compliance risk.

(3) Management shall be accountable to the Board for implementing and monitoring the process of risk management and integrating it into the day-to-day activities of the company.

(4) The results of the risk assessment must be used to update the risk management framework of the company and the Board must ensure that the company's risk management policies and practices are disclosed in the annual report.

Whistle-blowing Policy

18. Where an internal audit unit has been established in a company, the Board shall implement a whistle-blowing policy establishing a whistle-blowing mechanism which must be communicated to employees, stakeholders such as contractors, shareholders, job applicants, and the general public.

PART V AUDITS

Internal Audit Function

19. (1) The Board must ensure that the company has an effective risk-based internal audit function, the parameters of which must be consistent with the definition of internal auditing by the Institute of Internal Auditors (IIA).

(2) The Board, or where applicable, the audit committee, must approve an audit charter clearly defining the purpose, authority and responsibility of the internal auditing activity.

(3) The internal audit unit must be headed by a senior management staff and must be adequately resourced with staff and an appropriate budget to enable it effectively discharge its responsibilities.

(4) The head of the internal audit unit must –

- (a) report directly to the audit committee and have unrestricted access to the chairman of the audit committee, the Board's Chairman and the Chief Executive Officer; and
- (b) must report at least once every quarter at the audit committee meetings on the adequacy and effectiveness of management's governance, risk and control environment, deficiencies observed and the mitigation plans by management.

(5) An annual risk-based internal audit plan must be developed by the audit committee based on a risk-based methodology which must –

- (a) address the broad rank of risks facing the company;
- (b) identify the audit priority areas and the risk profile of each area;

- (c) identify how the requisite assurance will be provided on the company's risk management process; and
- (d) indicate the resources and skills required to implement the plan.

(6) The internal audit plan which must be approved by the Board must identify audit priority areas and determine the frequency of audits as well as the required resources and skills for the audit unit.

(7) The evaluation of controls by the internal audit function must encompass the following –

- (a) the information systems environment;
- (b) the reliability and integrity of financial and operational information;
- (c) the effectiveness and efficiency of operations;
- (d) safeguarding of assets; and
- (e) compliance with laws and regulations.

(8) There must be an external assessment of the effectiveness of the internal audit function at least once every three years by a qualified, independent reviewer as defined by the Institute of Internal Auditors, or by an external review team.

The External Auditor

20. (1) Every public company and SOE shall appoint an external auditor in its annual general meeting to hold office until the next annual general meeting of the company, and whose remuneration shall be determined by the Board.

(2) The auditor shall be professionally qualified or licensed under the Public Accountants Act and shall be independent of the company, its affiliated companies and of its directors and officers of the company.

(3) The Board shall ensure that the company's auditor, who shall attend every meeting of the company, has unrestricted access to the books and accounts of the company, and shall provide the auditor with such information and explanation as may be necessary for the performance of the duties of the auditor specifically with respect to preparing the auditor's report.

(4) As required by the law, the Board shall submit the approved auditor's report, along with the comparative financial statements for the immediate preceding financial year and any other information relating to the company's financial position to the company's shareholders during the annual general meeting.

21. Rotation of External Auditors

(1) The Board shall ensure that the audit firms and audit partners are rotated in order to safeguard the integrity of the external audit process and guarantee the independence of the external auditors.

(2) The Board shall require that external audit firms –

- (a) rotate audit partners assigned to undertake the external audit of the company to guarantee independence; and
- (b) change audit personnel regularly without compromising continuity of the external audit process;

(3) External audit firms may be retained for no longer than ten (10) years continuously and external Audit firms disengaged after continuous service to company of ten (10) years may only be reappointed after another seven (7) years has elapsed since their disengagement.

The Audit Committee

22. (1) All public companies shall establish an audit committee who shall be responsible for the appointment of the auditor.

(2) The audit committee members shall mainly be non-executive directors of the company, and the Board shall ensure that at least one committee member is financially literate, and, whenever necessary, the committee may obtain external professional advice.

(3) The audit committee shall be entitled to meet with the auditor independently of the rest of the board, and whenever necessary, may obtain external professional advice.

(4) The audit committee's functions and responsibilities shall include –

- (a) assisting in the oversight of the integrity of the company's financial statements, compliance with legal and other regulatory requirements, assessment of qualifications and independence of external auditor;
- (b) conducting the company's internal audit function as well as that of external auditors;
- (c) establishing an internal audit function and ensure there are other means of obtaining sufficient assurance of regular review or appraisal of the system of internal controls in the company;
- (d) ensuring the development of a comprehensive internal control framework for the company for which a report must be made annually in the financial report on the operating effectiveness of the company's internal control framework;
- (e) overseeing management's process for the identification of significant fraud risks across the company and ensuring that adequate prevention, detection and reporting mechanisms are in place;
- (f) obtaining and reviewing on an annual basis, a report by the internal auditor describing the strength and quality of internal controls including any issues or recommendations for improvement, raised by the most recent internal control review of the company;
- (g) meeting with management and external auditors to discuss the annual audited financial statements and half yearly unaudited statements, and the policies and strategies with respect to risk assessment and management;
- (h) meeting separately and periodically with management, internal auditors and external auditors;
- (i) reviewing and ensuring that adequate whistle-blowing procedures are in place;
- (j) Preparing a summary of issues reported for submission to the chairman;

- (k) reviewing with the external auditor, any audit scope limitations or problems encountered and management's responses to same;
- (l) reviewing the independence of the external auditors and ensure that where non-audit services are provided by the external auditors, there is no conflict of interest;
- (m) preserving auditor independence, by setting clear hiring policies for employees or former employees of independent auditors;
- (n) considering any related party transactions that may arise within the company or group;
- (o) exercising its authority to investigate any matter within its terms of reference utilising where necessary the company's resources utilised by the internal auditors to perform its function, including any external advice; and
- (p) reporting regularly to the Board.

PART VI ACCOUNTABILITY AND REPORTING

Disclosures

22. (1) The Board, Chairman and the Head of Finance of every public company must certify in a written statement to the Board that the financial statements present a true and fair view of the affairs of the company.

(2) The Board must ensure that the company's annual report contains information on the company's capital structure as follows –

- (i) details of issuance of share capital during the year;
- (ii) borrowings and maturity dates;
- (iii) details and reasons for share buybacks during the year; and
- (iv) details of directors' and substantial shareholders' interests in the company and subsidiaries or associated companies.

(4) The Board must ensure that the company's annual report includes a corporate governance report that conveys clear information on the strength of the company's governance structures, policies and practices to stakeholders, and the report must include the following –

- (i) composition of Board of directors as set out in Part II of these Rules stating names of chairman, the Chief Executive Officer, executive and non-executive directors as well as independent directors;
- (ii) the roles and responsibilities of the Board setting out matters which are reserved for the board and those delegated to management;
- (iii) board appointment process including induction and training of board members;

- (iv) evaluation process and summary of evaluation results for the board as whole, its committees and each individual director;
- (v) directors standing for re-election and their biographical details to enable shareholders make informed decisions about their re-election;
- (vi) composition of board committees including names of chairmen and members of each committee;
- (vii) description of the roles and responsibilities of the board committees and how the committees have discharged those responsibilities;
- (viii) the number of meetings of the board and the committees held during the year and the attendance of individual directors at those meetings;
- (ix) disclosure of the Rules of business conduct and ethics, if any, for directors and employees; and
- (x) human resource policies, internal management structure, relations with employees, employee share- ownership schemes and other workplace development initiatives.

(5) The board of every public company must ensure that the company's annual report makes sufficient disclosure on accounting and risk management issues, particularly disclosing in the annual report –

- (i) a statement of the directors' responsibilities in connection with the preparation of the financial statements;
- (ii) details of accounting policies utilised and reasons for changes in accounting policies;
- (iii) where the accounting policies applied do not conform to standard practice, the external auditor must express an opinion on whether they agreed with the departure and the reasons for such departure;
- (iv) a statement from the directors that the business is a going concern, with supporting assumptions or qualifications where necessary;
- (v) executive directors' remuneration and share options;
- (vi) non-executive directors' fees and allowances and share options, if any; and
- (vii) risk management as outlined in Part IV of these Rules indicating the board's responsibility for the total process of risk management as well as its opinion on the effectiveness of the process.

(6) The Chairman's statement in the annual report must provide a balanced and readable summary of the company's performance for the period under review and future prospects and must reflect the collective view of the Board.

(7) The annual report must contain a statement from the Board with regards to the company's degree of compliance with the provisions of these Rules. In particular, it must provide –

- (i) assurances that effective internal audit function exists in the company and that risk management control and compliance system are operating efficiently and effectively in all respects;
- (ii) justification where the Board does not accept the audit committee's recommendation on the appointment, reappointment or removal of an external auditor; explaining the recommendation and the reasons for the Board decision; and
- (iii) related party transactions and the nature of the related party relationships and transactions as well as information about the transactions necessary to understand the potential effect of the relationship on the financial statements.

(8) All public companies must disclose details of its directors' interest in contracts either directly or indirectly with the company or its subsidiaries or holding companies, including details on the name of the director, the nature and details of the contract and the director's interest therein.

(9) All public companies must disclose any service contracts and other significant contracts with controlling shareholder(s).

FIRST SCHEDULE

Key Corporate Governance Roles

I. Directors

A. The Chairman

The Chairman, who shall be a non-executive director of the company selected by the company's directors, shall provide overall leadership and direction for the Board and the company, ensuring the effective operation of the Board so that it works towards achieving the company's strategic objectives. In leading the Board, the Chairman's functions must include –

- i. setting and controlling the annual board plan and agenda for board meetings in conjunction with the CEO and the Company Secretary;
- ii. guiding the Board and its committees to ensure that members possess the relevant skills, competencies and desired experience;
- iii. ensuring that Board meetings are properly conducted sitting of chair at each such meeting, and that the Board is effective and functions in a cohesive manner;
- iv. ensuring that board members receive accurate and clear information in a timely manner about the affairs of the company to enable directors take sound decisions, including ensuring that Board papers are available to members;
- v. acting as the main link between the Board and the Chief Executive Officer as well as advising the Chief Executive Officer in the effective discharge of his duties;
- vi. ensuring that all members focus on their key responsibilities and play constructive role in the affairs of the company;
- vii. ensuring that induction programmes are conducted for new directors and continuing education programmes is in place for all directors;
- viii. ensuring effective communication and relations with company's institutional shareholders and strategic stakeholders;
- ix. taking a lead role in the assessment, improvement and development of the Board; and
- x. presiding over general meetings of shareholders.

B. Non-Executive Directors

Non-executive directors must be key members of the Board bringing independent judgment as well as necessary scrutiny to the proposals and actions of the company's management and executive directors especially on issues of policy, strategy, performance evaluation and key appointments.

C. Independent Directors

Every public company must have at least two independent directors on its Board who must be a non-executive director having no previous relationship with the company, its advisers, directors or senior employees. The independent director shall act as trustee for shareholders and is obligated in this role to be aware of and question the conduct of the company on certain issue.

D. Executive Directors

Executive Directors must be responsible for the day-to-day operations and management of the company. As such they are answerable to the Board through the Chief Executive Officer. Generally, Executive Directors must possess knowledge and qualifications relevant to the areas of the company's activities for which they have responsibility. In no event must Executive Directors be involved in the determination of their remuneration.

II. Company Officers

A. Company Secretary

The company Secretary must be appointed through a rigorous selection process that is applicable for appointment of new directors and his appointment and termination must be tabled and ratified by the Board. The company Secretary shall report directly to the Chief Executive Officer but shall also have a direct channel of communication to the Chairman. Secretarial duties shall include –

- (a) primarily assisting the Board and management in implementing these Rules and developing good corporate governance practices and culture, providing the Board and directors individually, with detailed guidance as to how their responsibilities must be properly discharged in the best interest of the company;
- (b) coordinating the orientation and training of new directors;
- (c) assisting the Chairman and Chief Executive Officer to determine the annual Board plan and with the administration of other strategic issues at the Board level;
- (d) compiling Board papers and ensuring that the Board's discussions and decisions are clearly and properly recorded and communicated to the relevant persons;
- (e) notifying the Board members of matters that warrant their attention; and
- (f) providing a central source of guidance and advice to the Board and the company, on matters of ethics, conflict of interest and good corporate governance.

B. The Chief Executive Officer

The Chief Executive Officer must be the head of the management team answerable to the Board, having responsibility for the day-to-day management of the company, and the implementation of the Board's decisions and policies.

SECOND SCHEDULE

Board Committees

1. Audit Committee

(1) The Board shall establish an Audit Committee to meet its statutory obligations under the Securities Industry Act.

2. Nominating Committee

Members of the Nominating Committee must ascertain whether nominees for the position of directors are fit and proper and are not disqualified from being directors. Shareholders must be provided with biographical information of proposed directors including –

- (a) Name, age, qualification and country of principal residence;
- (b) whether the appointment is executive, non-executive or independent and any proposed specific area of responsibility;
- (c) work experience and occupation in preceding ten years;
- (d) current directorships and appointments with statutory or regulatory authorities in the preceding five years;
- (e) shareholding in the company and its subsidiaries; and
- (f) any real or potential conflict of interest, including whether he is an interlock director.

A section of the company's annual report must state the processes used in relation to all Board appointments.

3. The Risk Management Committee

(a) The Board may establish a Risk Management Committee to assist it in its oversight of the risk profile, risk management framework and the risk-reward strategy determined by the Board.

b) The functions of the Committee must be guided by a written terms of reference or a charter and must include the following –

- (i) review and approval of the company's risk management policy including risk appetite and risk strategy;
- (ii) review the adequacy and effectiveness of risk management and controls;
- (iii) oversight of management's process for the identification of significant risks across the company and the adequacy of prevention, detection and reporting mechanisms;
- (iv) review of the company's compliance level with applicable laws and regulatory requirements that may impact the company's risk profile;
- (v) periodic review of changes in the economic and business environment, including emerging trends and other factors relevant to the company's risk profile; and
- (vi) review and recommend for approval of the Board risk management procedures and controls for new products and services.

(c) To enhance the risk management function, a senior management staff must be detailed to perform the function and attend the meetings of the Risk Management Committee.

(d) The Chief Executive Officer, executive directors and the head of the internal audit unit must attend the meetings of the Risk Management Committee.

4. The Governance/Remuneration Committee

(a) The Board may establish a Governance/Remuneration committee which must be made up solely of non-executive directors.

(b). The functions of the Governance/remuneration committee must be guided by a written terms of reference or charter and must include the following –

(c) establish the criteria for board and board committee memberships, review candidates' qualifications and any potential conflict of interest, assess the contribution of current directors in connection with their re-nomination and make recommendations to the Board;

(d) prepare a job specification for the Chairman's position, including an assessment of time commitment required of the candidate;

(e) periodically evaluate the skills, knowledge and experience required on the Board;

(f) make recommendations on experience required by Board committee members, committee appointments and removal, operating structure, reporting and other committee operational matters;

(g) make recommendations on compensation structure for executive directors;

(h) provide input to the annual report of the company in respect of director compensation;

(i) ensure that a succession policy and plan exist for the positions of Chairman, Chief Executive Officer, the executive directors and the subsidiary managing directors for Group companies;

(j) ensure that the Board conducts a Board evaluation on an annual basis;

(k) review the performance and effectiveness of the subsidiary company Boards on an annual basis where applicable; and

(l) review and make recommendations to the Board for approval of the company's organisational structure and any proposed amendments.