ST. KITTS BRANCH Financial Services Regulatory Commission

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THE BOARD OF DIRECTORS

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The Board of Directors

A company's Board of Directors is a group of individuals who are elected as, or elected to act as, representatives of the shareholders to establish corporate governance and management policies and to make decisions on matters relating to the operations of the company.

Roles and Responsibilities of the Board of Directors

The Board of Directors' key purpose is to ensure the company's success by directing its affairs on behalf of the shareholders. Rather than directly managing a company, a Board of Directors should provide foresight, oversight and insight. Some important roles of the Board of Directors include:

1. Provide direction for the company. The Board has a strategic function in determining the vision, mission and goals of the company, as well as, providing the values and policies to be promoted throughout the company. This role also involves regularly monitoring the external operating environment to ensure that the company's strategic direction remains both appropriate and achievable.
2. The Board is responsible for formulating and implementing broad policies to govern the organization's activities from which all operational procedures should be developed.
3. Selecting, supporting and managing the Chief Executive Officer (CEO) and other executives. The Board is responsible for establishing policies to address the employment of the Chief Executive Officer/ General Manager and other executives and reviewing their performance. This responsibility also includes the development of a succession plan.
4. Setting up committees — the Board is responsible for putting in place particular committees to assist in carrying out its oversight function. Some of these committees include: Audit Committee; Investment Committee; Risk Management and Compliance Committee; and Human Resource Committee.
5. Providing proper fiscal accountability. This includes: securing sufficient resources to fulfill the company's objectives; monitoring spending; approving the annual budget; providing insurance to protect the company from liability; and employing mechanisms to minimize risk.
6. Overseeing the monitoring and control function of the company. The Board is responsible for engaging and hiring a suitable auditor. It is in charge of making sure that the audit is done in a timely manner each year. The Board also has to ensure that the company is compliant with the local legal and regulatory requirements.
7. Reviewing the Annual Audited Financial Statements and presenting an overview of the company's performance to the shareholders at the Annual General Meeting (AGM).

The Board of Directors' Role in Regards to AML/CFT

The Board of Directors has a vital role in ensuring that the company remains compliant with AML/CFT Laws and Regulations. The Board is responsible for setting the risk appetite of the company, approving the company's AML/CFT Manual (including revisions) and putting in place an Audit Committee to review internal and external audit reports.

Code of Conduct

Members of the Board of Directors should discharge their duties professionally, with due diligence and efficiency and to the best of their abilities. In discharging their duties to the company, members of the Board of Directors should, endeavour to:

a. act honestly, in good faith and in the best interests of the company;

b. exercise the care, diligence and skill that a reasonably prudent person would exercise;

c. comply with applicable laws and regulations and with the company's policies and guidelines;

d. avoid any situation which may give rise to a conflict of interest;

e. respect the obligation of confidentiality in respect of information received in the course of their duties and shall continue to be bound by this obligation after termination of their mandate; and

f. refrain from overstepping the powers conferred upon them.

Conflict of Interest

Section 76 of the Companies Act, Cap 21.03 clearly outlines that a Director of a company who has, directly or indirectly, an interest in a transaction entered into or proposed to be entered into by the company or by a subsidiary of the company which to a material extent conflicts or may conflict with the interests of the company and of which he or she is aware, should disclose to the company the nature and extent of his or her interest. This disclosure should be sufficiently made in writing.

The company can rightfully take legal actions against a Director who fails to disclose any conflict of interest.

Who Should Not Serve On A Board of Directors

In accordance with the Companies Act, a person should not serve as Director if he/she is:

- A minor (under the age of 18);
- An interdict;
- A body corporate;
- is disqualified from being a Director under the Act or any other enactment.

In addition, the Co-operative Societies Act, No. 31 of 2011, outlines that an individual can not serve as Director of a co-operative society if he/she:

- has been convicted by the court for fraud or dishonesty
- Is not in good financial standing with the co-operative society;
- Is of unsound mind and has been so found by a Court in the Federation; and
- Is already part of the management of another co-operative society.

Please refer to Section 56(4) of the Co-operative Societies Act for other restrictions. Note that these restrictions can also be applied to companies in general.

Appointment of Directors

For most companies, the appointment and removal of Directors is voted upon by the shareholders at the AGM through a proxy statement. The shareholders can also fix the minimum and maximum number of Directors. However, the Board can usually appoint (but not dismiss) a Director to his office as well.

How Many Persons Should Constitute A Board Of Directors

The shareholders of a company should decide on the size of the Board of Directors. The number decided upon should be conducive to effective group decisions. It is also ideal to have the Board be comprised of an odd number of members. This helps to avoid repeated tied votes on important issues.

How Often Should Board Meetings Be Held

The Board of Directors should conduct its meetings according to the rules and procedures contained in its governing documents. These procedures may allow the Board to conduct its business face to face, via conference call or other electronic means. They may also specify how a quorum is to be determined. However, Board meetings should at least be held bi-monthly to address issues facing the company.

Chairman Vs. CEO: What's the Difference?

For some companies, the Chairman and the CEO are two (2) separate individuals, while for others, the Chairman of the Board is also the CEO of the company. However, these two positions have very distinct roles and responsibilities.

The Chairman of a company is the head of its Board of Directors. The Chairman does not play an active role in the day-to-day operations of the company. He/she presides over all Board meetings, and consult frequently with the CEO.

On the other hand, the CEO is the most senior executive officer in a company to whom all other employees ultimately report to. The CEO serves as the bridge between the Board of Directors and the company. He/she reports directly to the Board of Directors. In most cases, the CEO prepares the company's operating plan and projected budget with the assistance of other executive members, which is then presented to the Board for approval. Additionally, the CEO handles all hiring and dismissals of employees.

Therefore, to reduce conflict and ensure transparency, these two (2) roles should be separated.

Legislative References:

- *Anti-Terrorism (Prevention of Terrorist Financing) Regulations (ATR), No. 47 of 2011.*
- *Anti-Money Laundering Regulations (AMLR), No. 46 of 2011.*
- *Companies Act, Cap 21.03*
- *Co-operative Societies Act, No. 31 of 2011*

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