Principles Underpinning Corporate Governance

Corporate governance has been on the agenda of policymakers and practitioners for quite a long time; particularly in the early 2000s, following a number of high-profile corporate failures, such as Enron and WorldCom, partially due to shortcomings in the governance of these entities. Kirkpatrick (2009) points out that the global financial crisis of 2007 - 2008 brought to light, some of the failures and weaknesses, in corporate governance arrangements. Such as:

- inadequate risk management systems;
- unsuitable metrics to monitor the implementation of strategies approved by the board;
- insufficient accounting standards and regulatory requirements; and
- unaligned renumeration systems to the company's strategy, risk appetite and long-term interests.

This article discusses some of the international benchmarks and theoretical concepts governing the implementation of corporate governance frameworks. It also highlights the relationship between the board and stakeholders and their individual responsibilities.

As a result of the global financial crisis, the Organization for Economic Co-operation and Development's (OECD) Principles of Corporate Governance (reviewed in 2014/15), have been strengthened to consider past experiences. These principles help policymakers in the evaluation and improvement of the legal, regulatory and institutional frameworks for corporate governance in order to promote economic efficiency, sustainable growth and financial stability. These principles also provide a robust and flexible reference to assist both policymakers and market participants in creating their own corporate governance frameworks.

The Cadbury Report (1992) provides the most commonly used definition of corporate governance, as the "system by which companies are directed and controlled". The OECD's Principles of Corporate Governance state that, "corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined" (OECD, 2015).

Good corporate governance practices lessen the probability of the principal-agent problem. The principal-agent problem occurs where the company's board or management (agent) does not act in the best interest of its stakeholders (principal). Investors' confidence is critical to the growth and proper functioning of the capital markets. While there is no 'one size fits all' corporate governance model, common elements of corporate governance policies can include, but are not limited to, the:

- Composition of board and its committees;
- Disclosure of information on finance and operations;
- Board meetings and operations;
- Executive renumeration; and
- Shareholders rights.

These common elements are underpinned in the G20/OECD's Corporate Governance Principles. Registered entities with the Trinidad and Tobago Securities and Exchange Commission (TTSEC) are encouraged to consider the following principles when devising and implementing their corporate governance framework. The six (6) G20/OECD's Corporate Governance Principles are listed as:

I. ***<u>Ensuring the basis for an effective corporate governance framework</u>*** **–** The corporate governance framework should encourage transparent and fair markets, and the efficient allocation of resources. It should embody ethical practices and be consistent with the legislation to aid in effective supervision and enforcement.

II. ***<u>The rights and equitable treatment of shareholders and key ownership functions</u>*** **–** The corporate governance framework should protect and facilitate shareholders to exercise their rights and ensure the equitable treatment of all shareholders, inclusive of minority and foreign shareholders. Where shareholders believe that their rights have been violated, they should be given the opportunity to obtain effective redress. The basic rights of shareholders include the following:

- accessibility to secure methods of ownership registration;
- conveyance and transfer of shares;
- attainment of relevant and material information of the company on a timely basis to make informed decisions;
- participation and ability to vote in general shareholder meetings on fundamental matters regarding the company;
- election and removal of members of the board; and
- share in the profits of the company.

This principle also reinforces the disclosure of conflict of interests.

III. ***Institutional investors, stock markets, and other intermediaries*** – The corporate governance framework should provide sound incentives throughout the investment chain and provide for stock markets to function in a way that contributes to good corporate governance.

IV. ***The role of stakeholders in corporate governance*** – The corporate governance framework should recognise the rights of stakeholders established by law, or through mutual agreements, and encourage active co-operation between corporations and stakeholders in the creation of wealth, jobs and the sustainability of financially sound businesses.

V. ***Disclosure and transparency*** – The corporate governance framework should ensure that timely and accurate disclosures are made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company. The Securities Act, 2012 and the Securities (General) By-laws, 2015 outline certain disclosure filings and statutory requirements of TTSEC's registered entities, which are required to be submitted to the TTSEC or the shareholders of the company, within specified timeframes.

VI. ***The responsibilities of the board*** – The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board and the board's accountability to the company and the shareholders. Board members are required to act in the best interest of shareholders. According to the G20/OECD's Corporate Governance Principles, the responsibilities of the board include:

- acting on a fully informed basis, in good faith and with due diligence and care;
- treating all shareholders fairly;
- practising high ethical standards and considering the interests of stakeholders;
- fulfilling key functions such as reviewing and guiding corporate strategies; risk management; succession planning; overseeing major capital expenditures, etc.;
- exercising objective independent judgment on corporate affairs, where required; and
- having the ability to access accurate, relevant and timely information.

Registered companies with the TTSEC are encouraged to maintain corporate governance policies and procedures. Investors are also encouraged to inquire about the corporate governance policies and practices adopted by organisations operating in the local securities market.

References:

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- OECD. 2015. "G20/OECD Principles of Corporate Governance." Accessed on February 10, 2021. https://www.complianceonline.com/downloads/OECD-Corporate-Governance-Principles.pdf.

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