



CORPORATE GOVERNANCE GUIDELINE

**GENERAL RESPONSES TO COMMENTS
RECEIVED THROUGH CONSULTATION**

**Registrants/Licencees should note that the Corporate Governance Guideline
is issued January 3, 2023.**

The Commission will however, continue to engage in dialogue with registrants and licensees regarding these standards, their application and implementation.

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1. GENERAL RESPONSES TO SECTION 1 (PURPOSE AND SCOPE)

- 2.1 Financial institutions are reminded that the Guideline No. 2 - Corporate Governance does not supersede, codify or amend any existing legislation or regulations. Amending legislation is a separate process that takes place with consideration of recommendations from the Commission. This is inherently a lengthy process, and by virtue of that fact, is not able to keep pace with ever-evolving international standards and best practices, or local and global financial market concerns and trends.
- 2.2 Guidelines are issued subject to the authority conferred by Section 53 of the Financial Services Commission Act, which allows the Commission to issue Guidelines to, among others:

- a) Establish codes of conduct to govern the financial services sector;
 - b) Modernise the financial services sector; and
 - c) Promote international standards and best practices.
- 2.3 The Commission will, in due course, issue Guideline No. 3 – Fitness and Propriety, which should be read in conjunction with this Guideline. In the interim, reference can be made to the Commission’s Circular on Fitness and Propriety and Fitness and Propriety FAQs, which can be downloaded from the Commission’s website.

2. GENERAL RESPONSES TO SECTION 2 (DEFINITIONS)

- 2.1 The following definitions are amended as follows:

2.6 ***Financial Institution***

An institution or a business governed by any of the specified enactments set out in the Second Schedule of the Financial Services Commission Act, 2010, or a credit union governed by the Co-operative Societies Act, Cap. 378A of the Laws of Barbados.

2.7 ***Independent Non-Executive Board Member or Director***

As defined under Section 6.6 of this Guideline.

2.8 ***Lead Independent Director***

The Lead Independent Director should be appointed where the Board Chair is not independent (required in some instances by some financial institutions), and is responsible for coordinating the activities of the other independent Directors and performing such other duties and responsibilities as the Board of Directors may determine.

2.9 ***Non-executive Board Member or Director***

A member of the Board of Directors who does not hold an executive office and is not involved in the day-to-day operations of the financial institution.

2.10 ***Public Company***

Means public company as defined by the Securities Act, Cap. 318A.

2.11 ***Senior Management***

The individuals or body responsible for managing a financial institution on a day-to-day basis in accordance with strategies, policies and procedures set out by the Board, e.g., Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Technical Officer.

2.2 Section 2 of the Guideline will be amended to include the below as follows:

Material Relationship

A familial, financial, employment, professional or other relationship that could reasonably be expected to (or by its nature) affect or impair the objective judgment of a Board member in executing Board duties.

GENERAL APPLICATION SECTION

This section applies to all financial institutions regulated by the Commission except where expressly stated otherwise.

3. GENERAL RESPONSES TO SECTION 3 (CORPORATE GOVERNANCE FRAMEWORK)

- 3.1 Transparency and accountability are at the heart of any corporate governance framework, since corporate governance itself encompasses the processes and structures through which the objectives of the financial institution are met, how they are attained and how performance is monitored. This in turn defines how authority and responsibility are allocated within the financial institution and determines how corporate decisions are made.
- 3.2 Therefore, the requirement for each financial institution to adopt a corporate governance framework that specifically defines roles and responsibilities of persons and the circumstances under which they are empowered to act is indispensable. A failure to specify who can exercise legitimate authority on behalf of the financial institution under what circumstances is indicative of weak corporate governance which increases the risk of improper exercise of power and instability in decision making structures. This lack of accountability and stability can in turn create an environment that fosters corruption, negligence, and fraud, undermining the strategic objectives of the financial institution.
- 3.3 This requirement is also essential if Board members, executive management and other key personnel are to fully understand and appreciate their role and responsibilities within the financial institution. It also forms a basis upon which the performance of these actors can be objectively and comprehensively evaluated.
- 3.4 Section 3.4 of the Guideline is amended as follows:

3.4 *The Board must review corporate governance policies and implementation at least on a periodic basis (at least biennially) to ensure they are being properly implemented and that they remain appropriate given any material changes in the organisational structure, activities, strategy of the institution, and any regulatory or external factors. More frequent reviews should be undertaken under special circumstances, for example, when the financial institution is embarking on a significant new business venture like a merger or acquisition, or after the occurrence of a significant internal or external event.*

4. GENERAL RESPONSES TO SECTION 4 (THE ROLE OF THE BOARD OF DIRECTORS)

4.1 It takes contributions from a wide range of different resource providers to achieve ultimate long-term success of a financial institution. It is therefore in the long-term interests of financial institutions to foster co-operation among stakeholders which in turn enhances their contribution to the long-term success of the institution.

4.2 Such stakeholders may include, among others:

- | | |
|--------------|------------------------|
| a) Employees | f) Regulators |
| b) Investors | g) Government entities |
| c) Creditors | h) Banks |
| d) Customers | i) Trade unions |
| e) Suppliers | j) Community groups |

4.3 The Commission encourages financial institutions to first identify and prioritise key stakeholders that are important given the nature and circumstances of the business, and the wider economic and social environment.

4.4 After identifying key stakeholders, the Board is encouraged to develop an engagement strategy based on issues that are most important to the long-term success of the financial institution. Dialogue with those identified stakeholders can help Boards to understand significant changes in the landscape, predict future developments and trends more accurately so that strategies can be re-aligned as necessary.

4.5 An effective Board ensures that stakeholder feedback is taken into account in the Board's decision-making. Where Board decisions result in a material disadvantage to a group of stakeholders, Board members should be able to explain their decisions, including how impacts on affected stakeholders were considered and any plans for mitigation.

- 4.6 The duty of care owed by Board members requires them to act on a fully informed basis, in good faith and with due diligence. This means Board members should be satisfied that key corporate information and compliance systems are fundamentally sound and underpin the key monitoring role of the Board.
- 4.7 The duty of loyalty owed by Board members refers to the requirement that Board members act in the best interests of the financial institution first and foremost. It is also a key principle for Board members who are working within the structure of a group of companies: even though a financial institution may be controlled by another institution, the duty of loyalty for a Board member relates to the financial institution and its shareholders, and not to the controlling company of the group.
- 4.8 Section 4.6 of the Guideline is amended as follows:
- 4.6 *In carrying out their responsibilities, Board members should exercise appropriate “duty of care” and “duty of loyalty” to the financial institution, and ethically carry out fiduciary responsibilities to investors, and customers. Board members should take a “prudent person approach” to decision making. Accordingly, in addition to roles and responsibilities set out in relevant legislation, the Board should understand the types of risks to which the financial institution may be exposed, and the techniques used to quantify and manage those risks. This includes an understanding of operating structures, such as, special purpose vehicles or corporate trusts used as part of the financial institution’s extended business operations.*
- 4.9 Section 4.12 of the Guideline is amended as follows:
- 4.12 *The Board must effectively oversee senior management, beginning with determining the right mix of backgrounds, experience, competencies and qualifications required to carry out the strategic mandate of the Board, and then selecting the CEO and other key senior management personnel according to those criteria.*
- 4.7 Section 4.15 of the Guideline is amended as follows:
- 4.15 *The Board must continually review the internal structure of the financial institution to ensure there are clear lines of accountability throughout the organisation.*

5. GENERAL RESPONSES TO SECTION 5 (STRUCTURE AND COMPOSITION OF THE BOARD)

5.1 With regard to Board diversity, Board members should have a range of knowledge and experience in relevant areas and have varied backgrounds to promote a healthy diversity of views. The usual relevant areas of competence include:

- | | |
|--|--|
| a) Capital markets | h) Regulation |
| b) Financial analysis | i) Corporate governance |
| c) Financial stability issues | j) Operational Management |
| d) Financial reporting | |
| e) Strategic planning and implementation | k) Technical competence in the relevant sector's knowledge areas and risk. |
| f) Risk management | |
| g) Remuneration | |

5.2 In terms of diversity of personal characteristics, financial institutions are encouraged to decide which aspects of diversity are important in the context of the business and its needs. This might cover a range of different aspects of diversity including age, disability, ethnicity, gender and social background.

5.3 Section 5.8 of the Guideline does not prohibit Board members serving on multiple Boards simultaneously, but requires them to only serve on as many Boards as would allow them to adequately fulfil their duties given the respective time commitments. The disclosure requirement regarding other Board memberships or work undertaken on behalf of other Boards does not require a level of detail or specificity that would constitute a breach of confidentiality on that member's part.

5.4 Section 5.10 of the Guideline is amended as follows:

5.10 The Board must dedicate sufficient resources for continual training of the Board in relevant areas, utilising both internal and external expertise. This includes an effective induction and board assessment program.

6. GENERAL RESPONSES TO SECTION 6 (INDEPENDENCE OF THE BOARD AND CONFLICTS OF INTEREST)

6.1 The Commission encourages the separation of the Board Chair and CEO to better regulate the balance of power between the executive and the Board and maintain the independence of the Board. This separation affords clear distinguishment between the oversight role of the Board and the executive functions of management. It also facilitates more objective performance evaluation of the CEO and the executive team, and minimises conflict in areas

of compensation and recruitment. Another benefit is that the CEO is allowed to focus completely on the operations of the financial institution and issues of executing corporate strategy.

6.2 Section 6.3 of the Guideline is amended as follows:

6.3 *The roles of CEO and Board Chair should be separate. This enhances the independence and objectivity of the Board and helps to achieve an appropriate balance of power, increasing accountability and improving the Board's capacity for decision-making independent of management. Where the Board Chair is not independent, the financial institution should appoint a Lead Independent Director to improve the balance of power and enhance the independence of the Board. . This is not generally applicable for small institution, low risk and Class 1 insurance companies. The Commission will issue further guidance on how these guidelines may be adapted. Section 6.6(i) of the Guideline is amended as follows:*

i) has not served on the Board or any elected committee for more than 10 (ten) years previous to this Guideline.

6.4 Section 6.7 of the Guideline is amended as follows:

6.7 An independent Board member must disclose to the Board within 48 hours of an event any change in their circumstances that may affect their independent status to ensure compliance. In such cases, the Board must review the individual's designation as an independent director and notify the director in writing of its decision to affirm or change his/her designation. The Board must notify the Commission of the change in status of an independent director, including the rationale for the decision.

6.5 It is permissible for the required Conflict of Interest Policy to be encapsulated within a broader Code of Conduct as long as its provisions are compliant with the Guideline.

6.6 Section 6.9 of the Guideline is amended as follows:

6.9 Where a Board member discloses a material interest in any transaction or other matter relating to the financial institution, that Board member must not be involved in any decision-making processes regarding that matter, and must not participate in that portion of any Board meetings or in any Committee votes that relate to that interest. The Board member must instead recuse him or herself from the relevant part of the meeting until after the discussion and voting has been completed. This recusal must also be recorded in the minutes of the meeting.

6.7 Section 6.10 of the Guideline is amended as follows:

6.10 *The financial institution must conduct related party transactions at arm's length, and those involving Board members or senior management must be subject to special approval by the Board, who must ensure that such transactions are not characterised by preferential or prejudicial terms, but are on par with normal market rates, standards and conduct. Board members with conflicts of interest must be excluded from any approval process for granting and managing related party transactions. For other related party transactions, the Conflict of Interest Policy of the financial institution must provide for a transparent review and approval process, with adequate oversight by the Board to ensure implementation. This provision (6.10) is generally not applicable to Class 1 insurance companies and groups.*

7. GENERAL RESPONSES TO SECTION 7 (BOARD NOMINATION AND APPOINTMENT)

- 7.1 Independent Board members are appointed in the same manner as other Board members. The nomination process (whether facilitated through a Nomination Committee or otherwise) must therefore specify criteria that allows the suitable ratio of independent Board members to be appointed.
- 7.2 Under the Barbados Companies Act Cap. 308, eligible shareholders are permitted to participate in the nomination of Board members. Financial institutions must therefore protect and facilitate the exercise of this shareholder right by removing undue barriers to shareholder attendance and voting at general meetings. This may involve, for example, providing adequate notice of the date, location and agenda of general meetings and facilitating proxy voting where eligible.
- 7.3 The Barbados Company Act Cap. 308 also makes term limits for Board membership a function of company by-laws, except where governed by other relevant legislation.

8. GENERAL RESPONSES TO SECTION 8 (DELEGATION AND BOARD COMMITTEES)

- 8.1 Some provisions in Section 8 describe best practices regarding delegation of Board duties, and are not strict requirements. As such, financial institutions are encouraged to adopt these best practices where possible, and if not, adopt delegation practices suitable to their size, complexity, structure, and risk profile (with the exception of NB-SIFIs and financial institutions with assets equal to or exceeding BDS\$40 million which have some

compulsory delegation requirements) Insurance companies with Class 1 licences should adopt the delegation practices suitable for this type of organisation.

8.2 Section 8.4 of the Guideline is amended as follows:

8.4 *The Terms of Reference should be reviewed at least on a biennial basis, or more frequently if there has been a material change warranting an earlier review.*

9. GENERAL RESPONSES TO SECTION 10 (THE ROLE OF SENIOR MANAGEMENT)

9.1 Transparency in recruitment of senior management refers to the criteria for selection and related procedures being clearly identified and documented so that the process is capable of being overseen and assessed, both internally and externally. This is to ensure the bases upon which senior managers are recruited are demonstrably fair (i.e., free from undue influences or personal biases), and confers legitimacy upon the entire recruitment process.

10. GENERAL RESPONSES TO SECTION 11 (SHAREHOLDER RIGHTS AND INTERESTS)

10.1 Section 11.2 is included in the Guideline as follows:

11.2 *Shareholders should be informed in a timely manner (at least 20 working days) of the date, location and agenda of general meetings, and be provided with information related to the issues up for discussion at the meeting. This provision (11.2) does not apply to Credit Unions.*

11. GENERAL RESPONSES TO SECTION 12 (DISCLOSURES)

11.1 Section 12 of the Guideline is amended as follows:

12. *Financial institutions that are:*

- a) credit unions;*
- b) public companies; and*
- c) securities companies that exercise fiduciary responsibilities;*

must disclose their corporate governance framework to members, customers and investors. Mutual fund administrators must disclose the corporate governance

framework for mutual funds that they administer to fund-holders and prospective fund-holders.

12. GENERAL RESPONSES TO SECTION 13 (RELATIONSHIP WITH THE COMMISSION)

- 12.1 The Commission encourages frank and open communication with financial institutions so that material issues can be identified, mitigated against, or otherwise resolved at the earliest possible stage, rather than at later stages where negative outcomes are imminent, or have already manifested. This allows for a much more proactive approach to financial services regulation and more responsive risk management for the industry on a whole.
- 12.2 Relevant legislation and other Guidelines issued by the Commission may provide for specific disclosures that must be made to the Commission within specified timelines, but do not prevent nor discourage more frequent communication with the Commission.

SPECIAL APPLICATION SECTION

This section contains special provisions that apply to specific sectors or persons

13. GENERAL RESPONSES TO SECTION 14 (CREDIT UNIONS)

- 13.1 Where a credit union is required to establish an Audit Committee (either by virtue of its designation as a NB-SIFI or because its assets equal or exceed BDS\$40 million), the Audit Committee does not replace the Supervisory or Credit Committees, and its mandate must not overlap with or duplicate the functions of those Committees.

14. GENERAL RESPONSES TO SECTION 15 (INSURANCE ENTITIES)

- 14.1 Section 15.2 of the Guideline is amended as follows:

15.2 Insurers and insurance intermediaries are encouraged to ensure they establish policies and procedures that are commensurate with the IAIS Insurance Core Principles and Common Framework for the Supervision of Internationally Active Insurance Groups to the extent compatible with relevant local legislation.

15. GENERAL RESPONSES TO SECTION 16 (MUTUAL FUND ADMINISTRATORS)

15.1 Section 16.1 of the Guideline is amended as follows:

16.1 Mutual Fund Administrators are encouraged to ensure that they establish policies and procedures that are commensurate with the IOSCO Principles related to Collective Investment Schemes to the extent compatible with relevant local legislation.

16. GENERAL RESPONSES TO SECTION 17 (NON-BANK SYSTEMICALLY IMPORTANT FINANCIAL INSTITUTIONS)

16.1 For NB-SIFIs, the appointment of a Lead Independent Director (LID) is only required where the Board Chair is not independent.

17. GENERAL RESPONSES TO SECTION 18 (GROUPS)

17.1 Financial institutions that are part of a group must be able to demonstrate that either on an individual or group-wide basis, they have in place a corporate governance framework that is compliant with this Guideline as appropriate, given the group's legal and organisational structure.

17.2 The Commission does not aim to directly regulate parent companies operating businesses not governed by the relevant legislation. However, if such a parent company has, as a subsidiary, a financial institution regulated by the Commission, the corporate governance framework adopted in relation to that subsidiary must be suitably compliant with this Guideline.

18. GENERAL RESPONSES TO SECTION 19 (FINTECH ENTITIES)

18.1 Cyber security is a sub-category of IT security, and is exclusively concerned with defending computers, servers, mobile devices, electronic systems, networks, and data (including sensitive personal customer information) from malicious attacks in the digital sphere. It is chiefly concerned with how securely data is obtained and stored, to where and by what means it is transmitted, and how secure that data remains during transmission. By contrast, IT security is an umbrella term that encompasses all practices and applications of data security, both physical and digital.

18.2 Given that Fintech companies regularly collect and store sensitive customer data, and in light of the ubiquitous threat of data breaches through various attacks such as malware and phishing, Fintech companies are encouraged to make cyber security an important part of their organisational structure, and not to rely solely on IT security which is less specialised.

19. GENERAL RESPONSES TO GENERAL COMMENTS

- 19.1 The Commission cooperates with the Central Bank of Barbados regarding the supervision of corporate governance policies and practices, including memoranda of understanding, supervisory colleges and periodic meetings. Banking and non-banking financial institutions (whether forming part of a group or not) are expected to comply with Guidelines issued by both regulators as appropriate according to the relevant legislation governing that institution.