

Revising Corporate Governance Rules Applicable to Entities Listed on the Colombo Stock Exchange

The Voluntary Code of Best Practice on Corporate Governance was introduced over a decade ago having been prepared by the Securities and Exchange Commission of Sri Lanka (SEC) and the Institute of Chartered Accountants of Sri Lanka (CA Sri Lanka).

The mandatory compliance requirements pertaining to Corporate Governance of the listed entities are contained in the Listing Rules of the Colombo Stock Exchange (CSE). Corporate Governance Rules were originally introduced to the Listing Rules in 2007 and has been amended from time to time.

In order to ensure that the Corporate Governance of listed entities cater to the present day requirements, discussions were held over a long period of time between stakeholders including eminent personalities representing listed entities, representatives of Sri Lanka Institute of Directors, President and Council members of CA Sri Lanka, Former Chairman, Current Chairman and members of Corporate Governance Committee of CA Sri Lanka, representatives of CFA Society Sri Lanka, members of Audit Firms, representatives from Sri Lanka Accounting and Auditing Standards Monitoring Board, Insurance Regulatory Commission of Sri Lanka, Central Bank of Sri Lanka, CSE, and representatives of the SEC.

The revisions that were proposed during these discussions have now been incorporated and a draft set of rules have been prepared to be introduced to the Listing Rules of the CSE.

In this regard, the SEC considers it important to engage in a process of public consultation prior to finalizing the said draft Corporate Governance framework. As such the SEC hereby invites proposals from all interested parties and the general public with regard to the draft Corporate Governance Framework.

For full details, please refer the Consultation Paper 2021/01 captioned “Revising Corporate Governance Rules Applicable to Entities Listed on the Colombo Stock Exchange” hosted on the SEC website <http://www.sec.gov.lk/>.

Proposals received:

Proposals received may be publicly available and will not be treated as confidential unless a special request is made in that respect.

The SEC invites proposals from the public to reach on or before 15th of May 2021 as provided in the aforesaid Consultation Paper

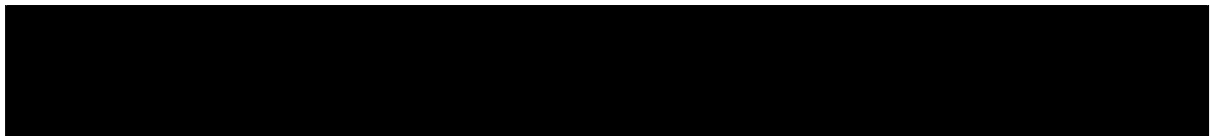
**The Director General
Securities and Exchange Commission of Sri Lanka
Level 29, East Tower, World Trade Centre
Echelon Square,
Colombo 1
Website: www.sec.gov.lk**



Consultation Paper 2021/01

Public Consultation on Revising Corporate Governance Rules Applicable to Entities Listed on the Colombo Stock Exchange

29th March 2021



THE SECURITIES AND EXCHANGE COMMISSION OF SRI LANKA

- 1) Listed entity shall ensure that the entity has following policies at minimum relating to Corporate Governance. The entity shall disclose in the annual report on the availability of such policies.
- 2) The contents of the proposals are organized as follows:

Section A : Policies
Section B : Board and Conduct
Section C : Board Subcommittees
Section D : Relations with Shareholders and Investors
Section E : Disclosures in the Annual Report

A. POLICIES

The listed entities shall have following policies and disclose the fact of existence of such policies in the Annual Report.

A.1 POLICY ON MAINTENANCE OF BOARD BALANCE

The Board shall disclose policies relating to balance of representation between Executive and Non-Executive Directors. Such policies at minimum to cover board composition, Chairman and Chief Executive Officer (CEO), Board balance, Appraisal of board performance and Appraisal of CEO etc.

A.2 POLICY ON BOARD SUB-COMMITTEES

A listed entity shall ensure that the following board sub-committees are in place at a minimum and are functioning effectively. The said policies at minimum shall cover/ include;

- i. Nomination Committee
- ii. Remuneration Committee
- iii. Audit Committee
- iv. Related Party Transactions Review Committee

A.3 POLICY ON NOMINATION AND RE-ELECTION

The listed entity shall have a formal procedure for the appointment of new Directors and re-election of Directors to the Board.

Such policy to recognize that:

- Diversity in board composition is an important element of a board's effectiveness.
- Board diversity in the range of experience, skills, competence, age, gender is an essential factor for effective board performance.
- Board candidates should not be identified based on the current board members' prejudices and preferences.

A.4 POLICY ON REMUNERATION

Listed entities shall establish a formal and transparent procedure for developing policy on executive directors' remuneration and for fixing the remuneration packages of individual Directors. No Director should be involved in deciding his/her own remuneration.

A.5 POLICY ON CODE OF BUSINESS CONDUCT & ETHICS

Listed entities must have a Code of Business Conduct & Ethics for all employees of the listed entity. Any waivers from having to comply with the Code or exemptions granted shall also be disclosed including the extent of applicability to parties contracted by the listed entity.

A.6 POLICY ON RISK MANAGEMENT AND INTERNAL CONTROL

The listed entity shall have a policy relating to risk management and internal controls to safeguard listed entity's assets and the shareholders' investments.

A.7 POLICY ON RELATIONS WITH SHAREHOLDERS AND INVESTORS

The listed entities shall disclose the policy relating to relations with shareholders and investors.

B. BOARD AND CONDUCT

B.1 THE BOARD

Policies and processes relating to Board of Directors shall at minimum contain,

- B.1.1** The listed entity shall have a policy on frequency of meetings and due to requirements on interim financials to be disclosed quarterly, such policy should elaborate whether at least quarterly meetings are to be held.
- B.1.2** The policy shall elaborate on obtaining required reports which at a minimum will include a report on non-compliance with Listing rules' requirements.
- B.1.3** If the articles do not specifically provide, then the listed entity to have a shareholder approved policy on the maximum number of directors and Key Management Personnel (KMPs) in their boards.
- B.1.4** Listed entity shall have a policy on how many meetings at minimum (a number and percentage) a director shall attend to avoid the position become vacant.
- B.1.5** Company to have a policy regarding following conduct of directors on matters that may have a bearing on their positions as directors.
 - a) To have a policy and disclose the fact of having a policy on trading on securities of the listed entity and group companies where applicable.

- b) To have a policy and disclose the fact of having a policy on maximum number of public listed company directorships a director can have.

B.1.6 Participation for Board and Subcommittee Meetings via teleconferencing and video conferencing are to be allowed and could be taken into account when deciding the quorum.

B.2 CHAIRMAN AND CEO

B.2.1 Chairman and the CEO cannot be the same person. Further the Chairman is to be an Independent Non-Executive Director.

B.2.2 However, in following circumstances, procedure sets out B.2.3 onwards shall be applicable:

- i. the Chairman and the CEO is the same person;
- ii. the Chairman and the CEO are immediate family members;
- iii. the Chairman is part of the management team; or
- iv. the Chairman is not an Independent Director.

B.2.3 The listed entity shall explain the reason for non-compliance with B.2.1 and the Board shall appoint one of the Independent Non- Executive Directors to be the “Senior Independent Director” (SID) and disclose this appointment in the Annual Report. The entity shall make an immediate announcement to the market via the Colombo Stock Exchange (CSE) on such appointment.

B.2.4 Led by the SID, the Independent Directors shall meet at least once a year without the presence of the other directors, and the SID should provide feedback to the Chairman after such meetings. Further, led by the Senior Independent Director, the Non-Executive Directors should meet without the presence of Chairman at least annually to appraise the Chairman's performance and on such other occasions as are deemed appropriate.

B.2.5 The Chairman shall hold meetings with the Non-Executive Directors without the Executives presence.

B.2.6 SID will have the casting vote.

B.2.7 To have a report by SID on specific measures to address the issues that may arise due to absence of segregation.

B.3 BOARD BALANCE

B.3.1 Non- Executive Directors

- a. The Board of Directors of a Listed Entity shall include at least,
 - Two Non-Executive Directors; or
 - Such number of Non-Executive Directors equivalent to one third of the total number of directors whichever is higher.

- b. The total number of directors is to be calculated based on the number as at the conclusion of the immediately preceding Annual General Meeting.
- c. Any change occurring to this ratio shall be rectified within ninety(90) days from the date of the change.

B.3.2 Where the constitution of the Board of Directors includes only two Non-Executive Directors in terms of Rule B.3.1.a above, both such Non-Executive Directors shall be 'independent'. In all other instances two or 1/3 of Non-Executive Directors appointed to the Board of Directors, whichever is higher shall be 'independent'.

B.3.3 The Board shall require each Non-Executive Director to submit a signed and dated affidavit or declaration annually of his/her independence or non-independence against the specified criteria. CSE to provide a minimum content as an annexure.

B.3.4 The Board shall make a determination annually as to the independence or non-independence of each Non-Executive Director based on such declaration and other information available to the board and shall set out in the Annual Report the names of directors determined to be 'independent'.

In the event the Board determines that independence of an existing Independent Director has impaired according to any of the criteria set out in B.3.6, the company shall make an immediate market announcement.

However, if the Board determines that an existing Director is nevertheless 'independent' taking into account the existence of relationships or circumstances which indicate the contrary, the Board should set out in the Annual Report;

- i. the names of such Directors determined to be 'independent'
- ii. Effective date of such determination together with
- iii. The basis for its determination.

B.3.5 Upon appointment of a new director to its board, the Entity shall forthwith provide to the Exchange a brief resume of such director for dissemination to the public. Such resume shall include information on the mode of engagement such as Executives, Non - Executives and Independent Directors.

Listed Entity to disclose the policy on maximum number of directorships allowed to its board members. (e.g.: 10 Directors, if more than 10, the basis to exceed the maximum to be disclosed.)

B.3.6 Criteria for Defining 'Independence' :

A Non-Executive Director shall not be considered independent if he/she:

- i. has been employed by the Listed Entity during the period of two years immediately preceding appointment as a Director;
- ii. currently has/had during the period of two (2) years immediately preceding appointment as a Director, a Material Business Relationship with the Listed Entity, whether directly or indirectly;

- iii. currently has/had during preceding financial year, a Close Family Member who is a Director, Chief Executive Officer (and/or an equivalent position) in the Listed Entity;
- iv. has a Significant Shareholding in the Listed Entity;
- v. has served on the board of the Listed Entity continuously for a period exceeding nine (9) years from the date of the first appointment unless approved by the shareholders; provided however, if such director is re-appointed after a period of two (2) years from the date of completion of the preceding nine (9) year period, he will be considered as 'independent' for the purposes of this Section.
- vi. is employed in another company or business,
 - a. in which a majority of the other directors of the Listed Entity are employed or are directors; or
 - b. in which a majority of the other directors of the Listed Entity have a Significant Shareholding or Material Business Relationship; or
 - c. that has a Significant Shareholding in the Listed Entity or with which the Listed Entity has a Business Connection;
- vii. is a director of another company,
 - a. in which a majority of the other directors of the Listed Entity are employed or are directors; or
 - b. that has a Business Connection in the Listed Entity or a Significant Shareholding;
- viii. has a Material Business Relationship or a Significant Shareholding in another company or business,
 - a. in which a majority of the other directors of the Listed Entity are employed or are directors; and/or
 - b. which has a Business Connection with the Listed Entity or Significant Shareholding in the same.
- ix. For a Director who is determined as 'nevertheless independent', such Director should be independent of management and free of any business or other relationship that could interfere with the exercise of their unfettered and independent judgment.

For the purposes of Rule B.3.6;

- Close Family Member shall mean and include the director's spouse, parents, grandparents, children, brothers, sisters, grandchildren and any person who is financially dependent on and/or acting in concert with such director.

'Financially dependent' individuals include any person who received more than half of their support for the most recent fiscal year from a director and/or his or her spouse, or a representative

- Listed Entity shall mean the Listed Entity to the board of which the director is appointed, its parent and/or subsidiary company, and a subsidiary of the parent company.
- Material Business Relationship shall mean a relationship resulting in income/non-cash benefits equivalent to 20% of the director's annual income.
- Business Connection shall mean a relationship resulting in transaction value equivalent to 10% of the turnover of that company or business.
- Significant Shareholding shall mean a shareholding carrying not less than 10% of the voting rights of a company.

B.3.7 Alternate Directors

B.3.7.1 If an Alternate Director is appointed by a Non-Executive Director such Alternate Director should not be an executive of the Listed Entity. If an Alternate Director is appointed by an Independent Director, the person who is appointed also should meet the criteria of independence and the provision on minimum number of Independent Directors also should be satisfied.

B.3.7.2 Alternate Directors shall only be appointed for limited periods in exceptional cases. If a person is proposed to be appointed as an Alternate Director to an Independent Director, the Nomination Committee and the Board should review and conclude that the person would similarly qualify as an Independent Director, before his appointment as an Alternate Director.

B.3.7.3 In the event an Alternative Director is appointed as set out above, the Listed Entity shall make an immediate announcement to the market via the CSE regarding same and such announcement shall inter alia contain the exceptional circumstances leading to such appointment, information on the mode of engagement such as Executives, Non - Executives and Independent Director.

B.4 APPRAISAL OF BOARD PERFORMANCE

Listed Entity shall disclose the policy on periodical appraisal of their own performance in order to ensure that Board responsibilities are satisfactorily discharged. It is also required to disclose in the Annual Report whether the appraisal has been conducted or not.

B.5 DISCLOSURE OF INFORMATION IN RESPECT OF DIRECTORS

B.5.1 The Annual Report of the Listed Entity should set out the following information in relation to each Director:

- i. name, qualifications and brief profile;
- ii. the nature of his/her expertise in relevant functional areas;
- iii. whether either the director or immediate family members has any material business relationships with other Directors of the Listed Entity;
- iv. whether Executive, Non-Executive and/or independent Director;
- v. names of listed companies in Sri Lanka in which the Director concerned serves as a Director and serves as Key Management Personnel;

- vi. names of other companies in which the Director concerned serves as a Director, provided that where he/she holds directorships in companies within a Group of which the Listed Entity is a part, their names need not be disclosed; it is sufficient to state that he/she holds other directorships in such companies;
- vii. number of Board meetings of the Listed Entity attended during the year;
- viii. the total number of Board seats held by each Director indicating listed and unlisted Companies and whether in an executive or non-executive capacity;
- ix. names of Board Committees in which the Director serves as Chairman or a member;
- x. Number of committee meetings attended during the year.

B.6 APPRAISAL OF CEO

The listed entity shall provide a disclosure on whether an assessment of the performance of the CEO has been conducted during the year or a negative statement.

C. SUB-COMMITTEE REQUIREMENTS

A listed entity shall have following subcommittees:

- i. Nomination Committee
- ii. Remuneration Committee
- iii. Audit Committee
- iv. Related Party Transactions Review Committee

C.1 NOMINATION COMMITTEE

C.1.1 Nomination Committee shall be established to make recommendations to the Board on all new Board appointments. The Chairman and members of the Nomination Committee shall be identified in the Annual Report.

The Nomination Committee shall comprise; of a minimum of two Independent Non-Executive Directors (in instances where an entity has only two Directors on its Board); or of Non-Executive Directors a majority of whom shall be independent, whichever shall be higher. The Chairman of the Committee shall be an Independent Director. The Quorum of the Committee shall be a minimum of two (02) Independent Directors or majority should be Independent Directors.

In the event both the parent company (including the ultimate parent company) and the subsidiary are Listed Entities, the Nomination Committee of such parent company (or the ultimate parent company) may function as the Nomination Committee of the subsidiary, provided that the Chairman of the relevant committee is a Board member of the listed subsidiary.

C.1.2 The functions of Nomination Committee shall inter alia include evaluating the reasons for the reappointment of each of Independent Directors who have served on the Board beyond nine years from the date of their first appointment.

C.1.3 Upon the appointment of a new Director to the Board, the Listed Entity should forthwith disclose to shareholders;

- i. a brief resume of the Director (name, qualifications and brief profile);
- ii. the nature of his expertise in relevant functional areas
- iii. the names of companies in which the Director holds directorships or memberships in Board Committees;
- iv. whether such Director can be considered as Executives, Non Executives or 'Independent'.
- v. a statement that the Nomination policy had been adhered in the appointment process.

C.2 REMUNERATION COMMITTEE

C.2.1 DIRECTORS' REMUNERATION

C.2.1.1 The Remuneration Committee shall be comprised by a minimum of two Independent Non-Executive Directors (in instances where a Company has only two Directors on its Board) or exclusively by Non-Executive Directors a majority of whom shall be independent, whichever is higher.

In the event both the parent company (including the ultimate parent company) and the subsidiary are Listed Entities, the Remuneration Committee of such parent company (or the ultimate parent company) may function as the Remuneration Committee of the subsidiary, provided that the Chairman of the relevant committee is a Board member of the listed subsidiary.

C.2.1.2 The Chairman of the Committee shall be an Independent Non-Executive Director and shall be appointed by the Board.

C.2.1.3 The Quorum of the Committee shall be a minimum of two (02) Independent Directors or majority should be Independent Directors.

C.3 AUDIT COMMITTEE

C.3.1 The audit committee shall comprise; of a minimum of two Independent Non-Executive Directors (in instances where an entity has only two Directors on its Board); or of Non-Executive Directors a majority of whom shall be independent, whichever shall be higher. The Quorum of the Committee shall be a minimum of two (02) Independent Directors or majority should be Independent Directors.

In the event both the parent company (including the ultimate parent company) and the subsidiary are Listed Entities, the Audit Committee of such parent company (or the ultimate parent company) may function as the Audit Committee of the subsidiary, provided that the Chairman of the relevant committee is a Board member of the listed subsidiary.

Unless otherwise determined by the Audit Committee, the Chief Executive Officer and the Chief Financial Officer of the Listed Entity shall attend audit committee meetings.

The Chairman or one member of the committee should be a member of a recognized professional accounting body.

- C.3.2** An Independent Director shall be appointed as Chairman of the Audit Committee by the Board of Directors.
- C.3.3** The duties of the Audit Committee shall include keeping under review the scope and results of the audit and its effectiveness, and the independence and objectivity of the auditors.
- C.3.4** The Audit Committee shall have a written Terms of Reference, dealing clearly with its authority and duties.
- C.3.5** Audit Committee may meet as often as required provided the committee compulsorily meets prior to recommending the financials to be released to the market.
- C.3.6** In addition to mentioned in elsewhere, functions of Audit Committee at minimum shall include,
- i. Overseeing of the preparation, presentation and adequacy of disclosures in the financial statements of a Listed Entity, in accordance with Sri Lanka Accounting Standards.
 - ii. Overseeing of the Entity's compliance with financial reporting requirements, information requirements of the Companies Act and other relevant financial reporting related regulations and requirements.
 - iii. Overseeing the processes to ensure that the Entity's internal controls and risk management, are adequate, to meet the requirements of the Sri Lanka Auditing Standards.
 - iv. Assessment of the independence and performance of the Entity's external auditors.
 - v. To make recommendations to the board pertaining to appointment, re-appointment and removal of external auditors and to approve the remuneration and terms of engagement of the external auditors.
 - vi. to develop and implement policy on the engagement of the external auditor to supply non-audit services at minimum, taking into account relevant ethical guidance regarding the provision of non-audit services by the external audit firm; and to report to the board, identifying any matters in respect of which it considers that action or improvement is needed and making recommendations as to the steps to be taken.
 - vii. If change of Auditor was recommended by the audit committee in an instant where the audit opinion of the immediately disclosed financial period or for any period where subsequent disclosure of audit opinion is pending and such opinion carries a modification or an emphasis of matter on going concern, then audit committee report to include the rational of the audit committee for recommending the removal of Auditor.

C.4 RELATED PARTY TRANSACTIONS REVIEW COMMITTEE

Existing rules in Section 9 will continue to apply (Refer Annexure 01).

In addition, following alteration to be introduced.

In the event both the parent company (including the ultimate parent company) and the subsidiary are Listed Entities, the Related Party Transactions Review Committee of such parent company (or the ultimate parent company) may function as the Related Party Transactions Review Committee of the subsidiary, provided that the Chairman of the relevant committee is a Board member of the listed subsidiary.

D. RELATIONS WITH SHAREHOLDERS AND INVESTORS

D.1 ADHERENCE TO PRINCIPLES OF DEMOCRACY IN THE ADOPTION OF MEETING PROCEDURES AND THE CONDUCT OF ALL GENERAL MEETINGS WITH SHAREHOLDERS

D.1.1 The Listed Entity shall notify the CSE regarding the following upon a resolution being considered at any general meeting of the entity:

- 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.

D.1.2 A Listed Entity shall maintain records of all resolutions and the information set out in D.1.1 above, and shall provide copies of same at the request of the CSE and/or the Securities and Exchange Commission of Sri Lanka (SEC).

D.2 COMMUNICATION WITH SHAREHOLDERS AND INVESTORS

D.2.1 Listed Entity shall have a policy on effective communication with shareholders and investors and disclose the existence of the same in the Annual Report and the website of the Company.

D.2.2 The Company shall disclose the contact person for such communication.

D.2.3 There shall be a policy and a process to make all Directors aware of major issues and concerns of shareholders, and this process has to be disclosed by the Company in the Annual Report and website of the Company.

E. DISCLOSURES IN THE ANNUAL REPORT

E.1 The Directors shall include in the Company's Annual Report a 'Corporate Governance Report' signed by the Chairman of the Board setting out the manner and extent to which the Company has complied with each of these rules. Further Corporate Governance Report' shall disclose;

- i. Process adopted by the Listed Entity regarding informing major issues in the company to Independent Directors.
- ii. training given to Directors on Corporate Governance, Listing Rules, securities market regulation and other applicable laws and regulations, or an appropriate negative statement

E.2 In addition to above, the Annual Report shall contain declarations by the Directors to the effect that:

- i. the Directors have declared all material interests in contracts involving the Company and whether they have refrained from voting on matters in which they were materially interested;
- ii. they have conducted a review of the internal controls, covering financial, operational and compliance controls and risk management and have obtained reasonable assurance of their effectiveness and successful adherence therewith, and, if it is unable to make any of these declarations, to explain why it is unable to do so.
- iii. They have made arrangements to make themselves aware of applicable laws, rules and regulations and aware of changes applicable particularly on changes to listing rules and applicable capital market provisions.

E.3 REPORT OF REMUNERATION COMMITTEE

Chairman and members of the Remuneration Committee shall be disclosed in the Remuneration Committee Report in the Annual Report each year.

The Listed Entity's Annual Report shall contain a Statement of Remuneration Policy and details of remuneration of the Board as a whole.

The Term "remuneration" shall make reference to cash and all non-cash benefits whatsoever received in consideration of employment with the Listed Entity (excluding statutory entitlements such as Employees Provident Fund and Employees Trust Fund).

The names of Directors (persons in the parent company's committee in the case of a group company) comprising the Remuneration Committee should be disclosed in the Annual Report.

E.4 REPORT OF AUDIT COMMITTEE

The Audit Committee Report shall contain a statement confirming that written assurance from the external auditors were obtained confirming that they are, and have been, independent throughout the conduct of the audit engagement in accordance with the terms of all relevant professional and regulatory requirements.

Audit Committee Report shall contain a statement confirming that the Committee has made a determination of the independence of the Auditors and should disclose the basis of such determination in the Audit Committee Report. Further, number of years the external auditor and audit partner were engaged shall also be disclosed. If the external auditor provides non-audit services, an explanation of how auditor objectivity and independence are safeguarded taking into consideration, fees paid for non-audit services provided by external auditor and affiliated parties shall be disclosed in the Annual Report.

The Annual Report should contain a report by the Audit Committee, setting out the manner of compliance by the Company, in relation to the above, during the period to which the Annual Report relates.

The Audit committee report shall disclose whether a formal audit charter is available.

E.5 REPORT OF NOMINATIONS COMMITTEE

The Annual report shall contain a report of the Nominations Committee signed by the Chairman of the Nominations Committee and at minimum shall contain;

- i. Names of the members of the committee
- ii. Date of appointment to the committee
- iii. whether a documented policy and process is in place, when nominating directors and key management persons
- iv. whether committee has reviewed nominations forwarded by public shareholders for independent directors.
- v. whether all directors shall be required to submit themselves for re-election at regular intervals and at least once in every three years

E.6 DISCLOSURE REQUIREMENTS ON RE-ELECTION

Key information regarding board sub-committees served on (as a member or chairman), date of first appointment as a director, date of last re-appointment as a Director, Directorships or Chairmanships both present and those held over the preceding three years in other Listed Entities, and other principal commitments, shall be disclosed in the company's Annual Report. The names of the directors submitted for appointment or re-appointment shall also be accompanied by details and information to enable shareholders to make informed decisions. Such information, which shall also accompany the relevant resolution, would include:

- i. any relationships including immediate family relationships between the candidate and the directors, the listed entity or its 10% shareholders; and
- ii. a separate list of all current directorships in other listed entities

E.7 APPLICABLE TO AUDIT COMMITTEE, RELATED PARTY TRANSACTIONS REVIEW COMMITTEE, NOMINATIONS COMMITTEE, REMUNERATION COMMITTEE

- i. Listed Parent's / ultimate parent's respective committees can act as the committee of the Listed Entity, provided the chairman of the committee is a member of the board of the Listed Entity; if so,
- ii. Details of attendance by the members of the Committees shall be disclosed (i.e. how many meetings held Vs. how many attended).
- iii. No Alternate Director's presence is counted for the quorum of the Committee. However an Alternate director's presence is allowed for the purpose of meeting the composition of the committee.

F. OTHER

- F.1** Commercial Banks and Licensed Specialized Banks are required to comply with CSE Listing Rules (No exemptions).
- F.2** A Listed Entity shall make an immediate announcement to the market via CSE regarding any changes to the composition of the subcommittees (Remuneration Committee, Audit Committee, Related Party Transactions Review Committee and Nominations Committee) containing following information at minimum;
- a) Details of changes together with
 - b) Effective dates of such changes.

Note:

- 1) Companies Listed on Empower Board
 - c) These proposals will only be applicable for the Main Board and Diri Savi Board Companies. Companies listed on Empower Board are exempted from these requirements & existing Empower Board rules will continue to apply. Existing Empower Board rules will prevail to address overlaps (if any).
 - d) To apply the enforcement rules, if No of shareholders are more than 200 and /or public shareholders are more than 10% without awaiting. Otherwise to apply the CA Sri Lanka's '*AGuide to Corporate Governance in Small and Medium Enterprises*'.
- 2) Applicability of Enforcement Actions to Proposed Corporate Governance Requirements
 - i) Main Board and Diri Savi Board Companies

The present enforcement procedure set out in Rule 7.10.7 of CSE Listing Rules will continue to be applied for not meeting the composition requirements of;

 - (a) Board
 - (b) Subcommittee
 - (i) Nomination Committee
 - (ii) Remuneration Committee
 - (iii) Audit Committee
 - (iv) Related Party Transactions Review Committee
 - (c) Independence of the Chairman of the Remuneration Committee
 - (d) Independence of the Chairman of the Audit Committee

- ii) Empower Board

Empower Board Enforcement rules will continue to apply.

HOW TO SUBMIT COMMENTS

In order to revise the Corporate Governance of entities listed on the CSE and to introduce new requirements in the future, the SEC is pleased to invite the public and all stakeholders to submit *written comments*.

Please indicate your current level of engagement with capital market (e.g.: retail investor, public investor, non-public investor, local institutional investor, foreign institutional investor, listed company, stockbroker, stock dealer, Unit trust, IPO Manager, Research report provider etc).

Please submit your written comments to reach the SEC **on or before 15th of May 2021**, under the title **“Public Consultation on Revising Corporate Governance Rules Applicable to Entities Listed on the Colombo Stock Exchange”**.

Written comments may be sent by any one of the following methods:

E-mail	:	dg@sec.gov.lk
		Copy to: CG@sec.gov.lk
By Registered Post	:	The Director General The Securities and Exchange Commission of Sri Lanka Level 28 & 29, East Tower, World Trade Centre, Echelon Square, Colombo 01

Your comments should be submitted in an envelope marked **“Public Consultation on Revising Corporate Governance Rules Applicable to Entities Listed on the Colombo Stock Exchange”** on the top left-hand corner of the envelope.

If you wish to provide comments in the capacity of representative of an organization, you should specify the name of the organization whose views you represent. Participants submitting comments should include their personal/ company particulars including their name, correspondence address, contact number and email address, on the cover page of their submissions.

SECTION 9

RELATED PARTY TRANSACTIONS

GENERAL

The objective of these Rules pertaining to Related Party Transactions is to ensure that the interests of shareholders as a whole are taken into account by a Listed Entity when entering into Related Party Transactions. The Rules set out in this Section further provide certain measures to prevent Directors, Chief Executive Officers or Substantial Shareholders taking advantage of their positions.

The Rules contained in this Section do not apply to a Listed Entity which proposes to enter into a transaction with a Related Party, where the shares of such Listed Entity have not been listed on the Exchange.

COMPLIANCE

A Listed Entity shall comply with these Rules pertaining to Related Party Transactions with effect from 01st January 2016. Compliance with these Rules is voluntary for a period of two (02) years with effect from 01st January 2014.

In the event a Listed Entity decides to comply with these Rules pertaining to Related Party Transactions with effect from 01st January 2014, such Entity;

- shall make immediate disclosures in terms of Rule 9.3.1 of these Rules in compliance with Section 8 of these Rules;
- shall make disclosures in the Annual Report in terms of Rule 9.3.2 of these Rules; and,
- is exempted from complying with Rule 7.6(xvi) and item 29 of Appendix 8A of these Rules.

Rule 7.6(xvi) and item 29 of Appendix 8A of these Rules shall be repealed on 01st January 2016.

In applying these Rules pertaining to Related Party Transactions, the objective and the economic and commercial substance of the Related Party Transactions should take precedence over the legal form and technicality.

DEFINITIONS

For the purposes of this Section;

“Related Party Transactions” shall have the same meaning as defined in the Sri Lanka Accounting Standards.

[Note: as at 01st January 2014, LKAS 24 – ‘Related Party Disclosures’ defines the ‘related party transactions’ as follows;

“A related party transaction is a transfer of resources, services or obligations between related parties, regardless of whether a price is charged”].

“Related Party” shall have the same meaning as defined in the Sri Lanka Accounting Standards.

[Note: as at 01st January 2014, LKAS 24 – ‘Related Party Disclosures’ defines the ‘related party’ as follows;

“A related party is a person or entity that is related to the entity that is preparing its financial statements (in this Standard referred to as the ‘reporting entity’).

- (a) *A person or a close member of that person's family is related to a reporting entity if that person:*
- (i) has control or joint control over the reporting entity;*
 - (ii) has significant influence over the reporting entity; or*
 - (iii) is a member of the key management personnel of the reporting entity or of a parent of the reporting entity.*
- (b) *An entity is related to a reporting entity if any of the following conditions applies:*
- (i) The entity and the reporting entity are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others).*
 - (ii) One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member).*
 - (iii) Both entities are joint ventures of the same third party.*
 - (iv) One entity is a joint venture of a third entity and the other entity is an associate of the third entity.*
 - (v) The entity is a post-employment benefit plan for the benefit of employees of either the reporting entity or an entity related to the reporting entity. If the reporting entity is itself such a plan, the sponsoring employers are also related to the reporting entity.*
 - (vi) The entity is controlled or jointly controlled by a person identified in (a).*
 - (vii) A person identified in (a)(i) has significant influence over the entity or is a member of the key management personnel of the entity (or of a parent of the entity)".*

For the purposes of these Rules, the following person/entity falls within the scope of the definition of a Related Party;

- (a) a person or an entity is a related party of the Listed Entity if that person or the entity was a related party of the Listed Entity at any time during the preceding six (6) months from the date of the transaction or if a transaction is expected to extend over a period of time, from the commencement date of the transaction;
- (b) a person or an entity is a related party of a Listed Entity if the Listed Entity believes or has reasonable grounds to believe that such person or entity is likely to become a related party of the Listed Entity at any time during the subsequent six (6) months from the date of the transaction or if a transaction is expected to extend over a period of time, from the last date of the transaction.

"Total Assets" shall mean the aggregate value of both current assets and non-current assets of the Listed Entity excluding any intangible assets. In the case of a group entity, consolidated total assets are considered.

"Equity" shall mean net assets of the Listed Entity excluding redeemable and/or non-convertible preference shares issued by the Listed Entity. In the case of a group entity, consolidated net assets excluding the minority interest is considered.

"Recurrent Related Party Transactions" shall mean Related Party Transactions involving the provision of goods and services or financial assistance, which are carried out on a continuing basis. Recurring business are expected to extend over a period of time. Such transactions are usually transactions in the ordinary and usual course of business of the Listed Entity.

“Same Related Party Transactions” shall mean transactions between the Listed Entity or its fully owned subsidiaries and the related parties who are members of the same group.

9.1 SHAREHOLDER APPROVAL

The Listed Entity shall obtain shareholder approval by way of a Special Resolution for the following Related Party Transactions:

9.1.1 In the event of non-recurrent transactions;

- (a) Any Related Party Transaction of a value equal to, or more than:
 - (i) 1/3 of the Total Assets of the Entity as per the latest Audited Financial Statements of the Entity; OR
 - (ii) 1/3 of the Total Assets of the Entity as per the latest Audited Financial Statements of the Entity, when aggregated with other non-recurrent transactions entered into with the same Related Party during the same financial year.
- (b) If the Listed Entity acquires a substantial asset from, or disposes of a substantial asset to, any Related Party of the Entity or its associates, the shareholder approval should be obtained as required by Rule 9.4.1.

9.1.2 In the event of recurrent transactions;

- (a) Any recurrent Related Party Transaction of a value equal to, or more than:
 - (i) 1/3 of the gross revenue (or equivalent term for revenue in the Income Statement) and in the case of group entity consolidated group revenue of the Entity as per the latest Audited Financial Statements of the entity; OR
 - (ii) 1/3 of the gross revenue (or equivalent term for revenue in the Income Statement) and in the case of group entity consolidated group revenue of the Entity as per the latest Audited Financial Statements of the entity, when aggregated with other recurrent transactions entered into with the same Related Party during the same financial year.

AND

- (iii) the transactions are not in the ordinary course of business and in the opinion of the Related Party Transactions Review Committee, are on terms favorable to the Related Party than those generally available to the public.

9.1.3 In relation Rules 9.1.1(a)(ii) and 9.1.2(a)(ii) above, a transaction which has been approved by shareholders, or is the subject of aggregation with another transaction

that has been approved by shareholders, need not be included in any subsequent aggregation.

- 9.1.4** If a transaction requires shareholder approval as set out in Rules above, it must be obtained either prior to the transaction being entered into or, if the transaction is expressed to be conditional on such approval, prior to the completion of the transaction.

9.2 RELATED PARTY TRANSACTIONS REVIEW COMMITTEE

- 9.2.1** Except for transactions set out in Rule 9.5, all other Related Party Transactions should be reviewed by the “Related Party Transactions Review Committee” (the Committee) as required in terms of the provisions set out in Appendix 9A of these Rules, either prior to the transaction being entered into or, if the transaction is expressed to be conditional on such review, prior to the completion of the transaction.

- 9.2.2** The Committee should comprise a combination of non-executive directors and independent non-executive directors. The composition of the Committee may also include executive directors, at the option of the Listed Entity. One independent non-executive director shall be appointed as Chairman of the Committee.

Criterion for defining ‘independence’ is the same criteria as set out in Rule 7.10.4 of these Rules.

- 9.2.3** In a situation where both the parent company and the subsidiary are Listed Entities, the Related Party Transactions Review Committee of the parent company may be permitted to function as the Related Party Transactions Review Committee of the subsidiary.

However, if the parent company is not a Listed Entity, then the Related Party Transactions Review Committee of the parent company is not permitted to act as the Related Party Transactions Review Committee of the subsidiary. The subsidiary shall have a separate Related Party Transactions Review Committee.

- 9.2.4** The Committee shall meet at least once a calendar quarter. The Committee shall ensure that the minutes of all meetings are properly documented and communicated to the Board of Directors.
- 9.2.5** Directors of the Committee should ensure that they have, or have access to, enough knowledge or expertise to assess all aspects of proposed Related Party Transactions, and where necessary, they should obtain appropriate professional and expert advice from an appropriately qualified person.
- 9.2.6** Where necessary, the Committee shall request the Board of Directors to approve the Related Party Transactions, which are under review by the Committee. In such instances, the approval of the Board of Directors should be obtained prior to entering in to the relevant Related Party Transaction.

9.2.7 If a director of the Listed Entity has a material personal interest in a matter being considered at a directors' meeting to approve a Related Party Transaction as required in Rule 9.2.6 above, such director shall not:

- (a) be present while the matter is being considered at the meeting, and;
- (b) Vote on the matter.

9.3 DISCLOSURES

9.3.1 Immediate Disclosures

- (a) (i) A Listed Entity shall make an immediate announcement to the Exchange;
 - of any non-recurrent Related Party Transaction with a value exceeding 10% of the Equity or 5% of the Total Assets whichever is lower, of the Entity as per the latest Audited Financial Statements.

OR

- of the latest transaction, if the aggregate value of all non-recurrent Related Party Transactions entered into with the same Related Party during the same financial year amounts to 10% of the Equity or 5% of the Total Assets whichever is lower, of the Entity as per the latest Audited Financial Statements.
- (ii) Listed Entity shall disclose subsequent non-recurrent transactions which exceed 5% of the Equity of the Entity, entered into with the same Related Party during the financial year.
- (b) The announcement to the Exchange shall include:
 - (i) Date of the transaction or the period where applicable
 - (ii) Name of the relevant Related Party
 - (iii) Relationship between the Entity and the Related Party
 - (iv) Details of the transaction including the amount, relevant terms of the transaction and the basis on which the terms were arrived at
 - (v) Rationale for entering into the transaction
 - (vi) The following statement:

"The Related Party Transactions Review Committee of the Entity is of the view that the transaction/s is/are on normal commercial terms, and is/are not prejudicial to the interests of the Entity and its minority shareholders and the Related Party Transaction Review Committee is/is not (delete as applicable) obtaining an opinion from an independent expert prior to forming its view on the transaction."
 - (vii) The aggregate value of the Related Party Transactions for the financial year with the particular Related Party whose transaction is the subject of the announcement and the aggregate value of all Related Party Transactions for the same financial year.

9.3.2 Disclosures in the Annual Report

- (a) In the case of **Non-recurrent Related Party Transactions**, if aggregate value of the non-recurrent Related Party Transactions exceeds 10% of the Equity or 5% of the Total Assets, whichever is lower, of the Listed Entity as per the latest Audited Financial Statements the following information must be presented in the Annual Report:

Name of the Related Party	Relationship	Value of the Related Party Transactions entered into during the financial year	Value of Related Party Transactions as a % of Equity and as a % of Total Assets	Terms and Conditions of the Related Party Transactions	The rationale for entering into the transactions

- (b) In the case of **Recurrent Related Party Transactions**, if the aggregate value of the recurrent Related Party Transactions exceeds 10% of the gross revenue/income (or equivalent term in the Income Statement and in the case of group entity consolidated revenue) as per the latest Audited Financial Statements, the Listed Entity must disclose the aggregate value of recurrent Related Party Transactions entered into during the financial year in its Annual Report. The name of the Related Party and the corresponding aggregate value of the Related Party Transactions entered into with the same Related Party must be presented in the following format:

Name of the Related Party	Relationship	Nature of the Transaction	Aggregate value of Related Party Transactions entered into during the financial year	Aggregate value of Related Party Transactions as a % of Net Revenue/Income	Terms and Conditions of the Related Party Transactions

- (c) Annual Report shall contain a report by the Related Party Transactions Review Committee, setting out the following:

- Names of the Directors comprising the Committee;
- A statement to the effect that the Committee has reviewed the Related Party Transactions during the financial year and has communicated the comments/observations to the Board of Directors.
- The policies and procedures adopted by the Committee for reviewing the Related Party Transactions.
- The number of times the Committee has met during the Financial Year

- (d) A declaration by the Board of Directors in the Annual Report as an affirmative statement of the compliance with these Rules pertaining to Related Party Transactions or a negative statement in the event the Entity has not entered into any Related Party Transaction/s.

9.4 ACQUISITION AND DISPOSAL OF ASSETS FROM/TO RELATED PARTIES

- 9.4.1** Except for transactions set out in Rule 9.5, a Listed Entity shall ensure that neither the Listed Entity nor any of its subsidiaries, acquires a substantial asset from, or disposes of a substantial asset to, any Related Party of the Entity without obtaining the approval of the shareholders of the Entity by way of a Special Resolution.

An asset is substantial if its value or the value of the consideration relating to such asset exceeds 1/3 of the Total Assets of the Entity as per the latest Audited Financial Statements.

- 9.4.2** In the event a transaction requires shareholder approval as set out in Rule 9.4.1 above, such approval shall be obtained either prior to the transaction being entered into or, if the transaction is expressed to be conditional on such approval, prior to the completion of the transaction.

- 9.4.3** Rule 9.4.1 does not apply to:

- a transaction between the Listed Entity and a wholly owned subsidiary.
- a transaction between wholly owned subsidiaries of the Listed Entity.
- a takeover offer made by the Listed Entity in accordance with Takeovers and Mergers Code 1995 (as amended).
- any transaction entered into by the Listed Entity with a Bank as principal, on arms length terms and in the ordinary course of its banking business.

- 9.4.4** The members of the Related Party Transactions Review Committee should obtain 'competent independent advice' from independent professional experts with regard to the value of the substantial assets of the Related Party Transaction under consideration. A person who is in the same group of the Listed Entity or who has a Significant Interest in or Financial Connection with the Listed Entity or the relevant Related Party shall not be eligible to give such advice.

For the purpose of this Rule;

'Significant Interest' means a shareholding carrying not less than 10% of the voting rights of the Listed Entity.

'Financial Connection' means a relationship resulting in transaction value equivalent to 10% of the turnover of the Listed Entity or business.

9.4.5 The competent independent advice obtained in terms of Rule 9.4.4 above should be circulated with the notice of meeting to obtain the shareholder approval as set out in Rule 9.4.1 above.

9.4.6 The competent independent advice required in terms of Rule 9.4.4 shall include:

- (a) the key assumptions, conditions or restrictions that impact the estimate value;
- (b) the different valuation methodologies considered and employed in valuation the subject asset/s and justification for adopting one or more of them in the valuation;
- (c) the sources of information relied upon for the valuation;
- (d) the identity of individuals participating in the valuation assignment and their qualifications;
- (e) statement confirming the independence of the parties participating in the advice;
- (f) a statement as to whether the transaction is on usual commercial terms, in the ordinary and usual course of business, fair and reasonable and in the interests of the Listed Entity and its shareholders as a whole.

9.5 EXEMPTED RELATED PARTY TRANSACTIONS

The following Related Party Transactions shall not fall within the ambit of these Rules:

- (a) Subject to Rule 9.3.2(b) of these Rules, transactions with Related Parties which are recurrent, of revenue or trading nature and which is necessary for day-to-day operations of a Listed Entity or its subsidiaries and, in the opinion of the Related Party Transactions Review Committee, terms are not favorable to the Related Party than those generally available to the public.
- (b) The payment of dividend, issue of Securities by the Listed Entity by way of a capitalization of reserves or for cash including the exercise of Rights, options or warrants (subject to Rules contained in Section 5 of these Rules), subdivision of shares or consolidation of shares.
- (c) The grant of options, and the issue of Securities pursuant to the exercise of options, under an employee share option scheme/employees share purchase scheme (subject to Rule 5.6 of these Rules).
- (d) A transaction in marketable securities carried out in the open market where the counterparty's identity is unknown to the Listed Entity at the time of the transaction.
- (e) The provision or receipt of financial assistance or services, upon usual commercial terms and in the ordinary course of business, from a company whose activities are regulated by any written law relating to licensed banks, finance companies or insurance companies or are subject to supervision by the Central Bank of Sri Lanka or Insurance Board of Sri Lanka.
- (f) Directors fees and remuneration, and employment remuneration.

9.6 STATEMENT OF NON-COMPLIANCE TO THE EXCHANGE

- 9.6.1** In the event a Listed Entity fails to comply with the requirements contained in Rule 9.2.2 of these Rules, such Entity shall submit a Non-Compliance Statement to the Exchange, which specifies the extent of the non-compliance with Rule 9.2.2 of these Rules, for dissemination to the Market, at the time of submitting the Interim Financial Statements to the Exchange.
- 9.6.2** The Non-compliance Statement shall be prepared in conformity with Appendix 9B of these Rules.

APPENDIX 9A

REVIEW OF RELATED PARTY TRANSACTIONS BY THE RELATED PARTY TRANSACTIONS REVIEW COMMITTEE

1. Subject to the exemptions given in terms of Rule 9.5 of these Rules, the Related Party Transactions Review Committee ("the Committee") shall review in advance all proposed Related Party Transactions.
2. At each subsequent scheduled Committee meeting, the senior management shall update the Committee as to any proposed material changes in any previously reviewed Related Party Transactions and seek approval of the Committee for such proposed material changes prior to the completion of the transaction.
3. When seeking the views of the Committee pertaining to a Related Party Transaction, the senior management shall provide the Committee with the facts and circumstances of the proposed Related Party Transaction, including where applicable:
 - i. the Related Party's relationship to the Listed Entity and interest in the transaction;
 - ii. the material facts of the proposed Related Party Transaction, including the proposed aggregate value of such transaction;
 - iii. the benefits to the Listed Entity of the proposed Related Party Transaction;
 - iv. the availability of other sources of comparable products or services; and
 - v. an assessment of whether the proposed Related Party Transaction is on terms that are comparable to the terms generally available to an unaffiliated third party under the same or similar circumstances, or to employees generally.
4. In determining whether to obtain the approval of the Board of Directors for a Related Party Transaction, the Committee shall take into account, among other factors it deemed appropriate:
 - i. the facts and circumstances provided by the senior management as set out above,
 - ii. upon consultation with the Chairman of the Board of Directors and the Chairman of the Nomination and/or Audit Committee, the impact of the proposed Related Party Transaction on a director's independence (in the event the related party is a director, an immediate family member of a director or an entity in which a director is a partner, shareholder or executive officer), and
 - iii. whether the Related Party Transaction requires immediate market disclosure, as set out in Rule 9.3.1 of these Rules.
5. No director shall participate in any discussion of a proposed Related Party Transaction for which he or she is a Related Party, except that the director, at the request of the Committee, may participate in discussions for the express purpose of providing information concerning the Related Party Transaction to the Committee. Where deemed necessary considering the issues of potential conflict, which were presented to the Committee, the Committee may recommend the creation of a special committee to review and approve the proposed Related Party Transaction.

6. In the event a Related Party Transaction will be ongoing (a Recurrent Related Party Transaction), the Related Party Transactions Review Committee may establish guidelines for the senior management to follow in its ongoing dealings with the Related Party. Thereafter, the Committee, on an annual basis, shall review and assess ongoing relationships with the Related Party to determine whether they are in compliance with the Committee's guidelines and that the Related Party Transaction remains appropriate.

APPENDIX 9 B

(On the Letter head of the Entity)

To: Colombo Stock Exchange
#04-01, West Block
World Trade Center
Echelon Square
Colombo 01

STATEMENT OF NON - COMPLIANCE

(Please indicate the non-compliance in the table provided below, as applicable)

Indicate the number of directors forming the composition of the Related Party Transaction Review Committee

Details of non-compliance	Minimum number of directors as per Listing Rule	Current status (number of directors)
Non-Executive Independent Directors		
Executive/ Non-Executive Directors		

Note: Indicate whether the Chairman is an independent non-executive director

Declaration

[.....Name of Listed Entity.....] hereby declares that the Entity has failed to comply with the Related Party Transactions Review Committee requirements set out in Rule 9.2.2 of the CSE Listing Rules to the extent disclosed above.

Signed for and on behalf of [.....Name of Listed Entity.....]:

.....
Name and signature of the authorised signatory

Date: