**Launch of Trinidad and Tobago’s**

**Code of Corporate Governance – Address**

Senator the Honorable Larry Howai, Minister of Finance and the Economy, other ministry representatives, business leaders, dignitaries, distinguished guests and all protocols having been observed.

Good evening and let me begin by expressing my heartiest congratulations to the Republic of Trinidad and Tobago on achieving this very important milestone which we are here to celebrate this evening, namely the launch of your inaugural Code of Corporate Governance, but also to say what a profound privilege and honour it is for me to have been invited to address you this evening.

Whenever I am invited to address audiences at functions such as this, I am reminded of the three cardinal rules of public speaking, namely:-

1. Stand up – so you can be seen;
2. Speak up – so you can be heard; and
3. Shut up – so you can be enjoyed.

It naturally follows therefore that the secret of a good speech is to have a good beginning and a good ending – and to have the two as close together as possible.

Accordingly and as Henry VIII said to each of his wives – *“I shan’t keep you long”.*

The publication of the Trinidad and Tobago Code of Corporate Governance represents a significant milestone in the evolution of corporate governance, not only in this country, but indeed the entire Caribbean region and brings with it significant opportunities for organisations that embrace its principles.

Taking this leap of faith, which Trinidad and Tobago has clearly demonstrated by the adoption of the Code this evening requires a combination of vision, courage, fortitude, moral conviction and an unwavering belief that free enterprise prospers in an environment of good and balanced corporate governance.

However, this is not an easy task or a big bang approach, but rather a journey towards realising that sound governance practices in business and therefore the economy offer numerous practical benefits and that organisations should embrace and integrate such practices into their operational processes.

Globally and in the face of increasing corporate scandals, declining natural resources, spiralling bribery and corruption and increasing political and economic uncertainty lies the growing realisation that principles of corporate governance – however well-meaning or elegantly argued – will see relatively little success without the support of an informed and pro-active investor base. This is largely focussed on the doctrine or concept of inclusivity, specifically the central role of the stakeholder.

Corporate governance in its original conception has been understood to be the system and processes by which organisations are directed and controlled in order to ensure the protection of the interests of the shareholders. The defining purpose of corporate governance was that it should promote the stewardship of companies by ensuring accountability of management towards shareholders. This framework of accountability explores the crucial questions – what are boards for? and what are they meant to do – or not?

In more recent times the role of corporate governance has been expanded by not only guiding companies to be accountable to their internal missions, but also to the broader stakeholder community. Corporate governance needs to take into consideration the environment in which the company is operating. In order for the company to be successful in the long-term, it needs to consider both society and the environment as part of its long-term licence to operate. This is an extremely important part of what business leaders in South Africa have termed social reality namely that companies should be accountable, well governed and function effectively – that after all is what corporate governance is meant to achieve.

At the core of a well governed and functioning company is its board of directors. The leadership of an organisation, including its directors, boards and committees will have to review the corporate values that drive their behaviour to ensure that they and the organisation reflect societal norms and accepted governance guidelines. To this end, leaders will be expected to support and understand the full implications of the stakeholder inclusive model, which I am pleased to report your new Code emphasises.

Leaders will also have to give due consideration to the full range of material economic, social and environmental dimensions and impacts that their companies and their processes have on the community in which they operate, when developing corporate strategy.

What is important to remember is that companies do not operate in a vacuum. A licence to operate, afforded by a multitude of stakeholders is based on trust, integrity and a solid track record of taking into account a balanced approach to legitimate stakeholder issues.

Accordingly good governance is essentially about good leadership – that is effective and responsible leadership. Responsible leadership is based on an ethical foundation and realising the ethical relationship that you have with society and your impact on society.

Personally I like to view good corporate governance as meaning good common sense and I believe your Code goes a long way towards achieving the same.

If I could turn my attentions towards your Code, what stands out for me and makes your Code unique is that in many respects it has been developed around contemporary and leading global best practices, yet at the same time retained and been tailored to fit the specific business, social and environmental exigencies of the region.

Similar to the third King Report on Corporate Governance for South Africa, the Trinidad and Tobago Code of Corporate Governance has:-

* Adopted the voluntary basis for governance compliance rather than a rule or legislated basis for governance compliance. I maintain that a principle based approach will always lead the way. While one will inevitably see an interplay between principles and legislation, developments in governance move at a far greater pace than changes to the law. Such corporate governance developments drive legislation and should continue to do so.

As a lawyer of many years I can assure you that it is easy to get around the law – but it’s not so easy to get around a principle. A principle based approach is dependent on moral persuasion which more often than not is impossible to legislate for.

Furthermore it is common cause that in those countries which have sought to adopt a rules based approach to governance such as in the USA (Sarbanes Oxley) this has come with an exceptionally high cost of compliance with little associated benefit to the organisation relative to the cost.

To this extent an undervalued aspect of the Trinidad and Tobago Code will undoubtedly be the “apply or explain” approach which it has adopted, where companies may consider the applicability of the Code to its own situation with the opportunity to explain to its stakeholders why they have chosen a different approach.

I will hasten to add however, that while good behaviour will always exist without the codification of principles, an appropriate combination of principles and legislation will always be necessary to be able to enforce, where necessary, minimum standards of acceptable behaviour. I would submit that this will become an area of future focus for Trinidad and Tobago as legislation seeks to re-enforce some of the key corporate governance principles rather than to undermine them;

* Secondly, the Trinidad and Tobago Code is at its core, aspirational, namely progressive, yet not impossible to realise.

As we are all aware, human development takes place by way of striving for something wholesome. You actually achieve a great deal, even as a corporation, by setting stretch goals. If you just got descriptive (rather than progressive) you would remain mired in mediocrity and that would not address the pre-requisite developments that commercial concerns have to strive for, even in terms of setting profit goals. The Trinidad and Tobago Code had to be idealistic;

* Thirdly, many of the principles set out in the Trinidad and Tobago Code are progressive and are generally recognised as being aligned with international benchmarks for good corporate governance. What will undoubtedly benefit the business community in Trinidad and Tobago and indeed the entire region are the detailed, yet customised supplementary guidelines which the Code provides in supporting the principles and promoting motivation and integration of sustainability aspects as central to good governance.

However, a set of good principles on their own does not automatically translate into well governed companies or a responsible state. Questions therefore are bound to arise as to how this Code will or should apply in practice, including the anticipated challenges which inevitably arise when seeking to in a sense codify responsible and ethical business practices.

I would hasten to add that these challenges are not unique to Trinidad and Tobago, having been similarly experienced in the USA, UK, Europe and South Africa. Instead they should be viewed as opportunities to take corporate governance within the region to the next level of maturity and development.

* I mentioned earlier that while any corporate governance code should be principle rather than rule based, a combination of principles and legislation is inevitable and indeed encouraged in order to realise the full benefit of any corporate governance framework. In time, this will evolve in Trinidad and Tobago to the point where both local corporate and other laws, plus regulations governing, among others, the stock exchanges in the region, are going to need to keep pace with developments in corporate governance which tend to follow global rather than only regional trends. This interplay will not be without its tensions, and compromises and alignment will become the order of the day. What will be critical to guard against is the creation of a compliance mind set within corporations and the risk of associated costs which will flow therefrom especially for the smaller corporates. Ideally the law needs to become “the what” while the governance principles are “the how”.

This will therefore necessitate the fostering of a good governance mind set among both the public and private sectors and between government and the business community, which is not predicated on a compliance mind set.

Such a change will mean shifting away from and displacing the role of legal and compliance departments to a move towards ownership of governance from a board level through the day-to-day running of the company. Central to this approach will be to ensure that it is meaningful and integrated so that the risk management process is not just imposed on the company, but becomes the very essence of the company. Only then will you gain true value from this approach.

Even in those countries which have mature and progressive corporate governance regimes, one hears the concern being raised that boards today may be spending too much time on governance compliance and not enough time on material issues such as strategy and risk management. Companies which have fallen into this tick-box mind set do not fully understand the primary intention of the principles of good governance;

**PAUSE**

* Changing the way boards think requires an enormous amount of courage and courageous leadership. The shift to sustainable thinking is going to be key. Management across the globe continues to remain by and large incentivised in the short-term and until incentive structures are vociferously challenged and changed, can we really change this way we think about governance? Good leadership needs to be pioneering to deal with the dis-incentives and the short-termism inherent in companies. Incentivising the right behaviour is going to be critical to the success of governance, not only within the Caribbean, but globally.

The bottom line is that sound corporate governance asks you to apply yourself in leadership and that’s broader than the financial bottom line. Governance should just be part of your business process. It shouldn’t be something that you do because it is required to be done – but there should be some business sense in following these principles as a part of your corporate DNA. How you do it and adapt it to your business is a leadership choice, but be transparent about the choices you make. Be courageous about your choices and if you believe you don’t want to apply aspects of the Code, well that’s absolutely fine!

**PAUSE**

* Keep it simple and get the existing frameworks to work. At the early stage of any journey such as yours, you need not only the right aspirations, but also the right behaviours. Trinidad and Tobago is very much in the aspirational or vision state of its corporate governance journey. What is going to be vital in the short-term is to close the gap between how you want to behave and how you actually behave. Furthermore, getting the existing framework to work for Trinidad and Tobago should not be focussed purely on creating further principles and rules, but rather engaging in wider dialogue across all sectors in terms of what isn’t working and how to make it work. Regulation too, can only play a role to a certain point. Taking corporate governance to the next level is going to require engagement with a number of critical role players in this discussion. These will include, among others, institutional investors, pension funds, regulators, employees and the media;
* Following closely on my prior point is the need for real shareholder activism to develop within the region. Good companies will continue to implement good corporate governance and investor activism should raise the standard of expectation for those companies that don’t. True shareholder activism calls for public transparency and much broader engagement beyond a handful of shareholder activists campaigning for more responsible leadership. In due course, the investor community should be seeking to complement and support the Code through the implementation of its own type of UN PRI and similar Codes;
* A question often raised is whether or not good corporate governance translates into good company performance. Measured in purely financial returns, the results are mixed, although many global studies have shown a strong correlation between good corporate governance and financial profits - not to mention an enhanced corporate reputation translating into a more attractive investment proposition and a higher share price.

As Judge Mervyn King, the convenor of the King Committee responsible for drafting South Africa’s third King Report on Corporate Governance remarked:

*“There is a high correlation between good honest common sense corporate governance and good numbers”.*

* On-going director education and creating awareness around the governance principles contained within the Trinidad and Tobago Code is going to be imperative. Ultimately the responsibility lies with the boards to understand, internalise and apply what corporate governance applies to their companies. Such a task is going to require an understanding of a range of issues beyond directors' duties as a compliance issue and to appreciate and make wise decisions on aspects as diverse as employee safety and environmental stewardship. Bodies such as the Caribbean Corporate Governance Institute, The Trinidad & Tobago Stock Exchange, The Chamber of Industry & Commerce and tertiary institutions such as Universities and Technikons are all going to have to play a pivotal role in this regard. Ultimately the message which is going to have to be institutionalised and embraced is that organisations should find commercial success in terms of positive lasting benefits for the company, society and the environment.

In conclusion I understand that the Trinidad and Tobago economy is the most diversified and industrialised in the English speaking Caribbean and that it extracts and produces substantial gas and oil each year.

I trust that my address this evening has in some small measure managed to strike oil for each of you present here and if not then it is time for me to stop boring now.

Once again, my congratulation to all who have been involved in the development and launch of this Code and I will be watching with keen interest Trinidad and Tobago going from strength to strength from a governance perspective.

Thank you.

*Reference: Interview Summary Report: J Schulschenk 2012*