



SUNAVAL Issues Rules Related to Good Corporate Governance in the Securities Market

By Tinoco Travieso Planchart & Nuñez

The National Superintendency of Securities (SUNAVAL) issued on Jan. 13, 2021, Ruling No. 001, hereinafter referred to as "The Ruling," in the *Official Gazette* No. 42,171 dated July 19, 2021, whereby the "Norms Related to the Good Corporate Governance of the Securities Market" were established.

Purpose: To guarantee the implementation of best practices of good corporate governance on behalf of entities regulated by SUNAVAL, as well as by other participants in the securities market. Corporate governance is understood as the set of principles and rules that regulate the corporate governance agencies, based on the principles of equitable treatment, transparency, control, responsibility and values.

Obligated Parties: Issuing companies, securities brokerage firms, brokers, investment advisors (legal entities), certified public accounting firms, collective investment entities and their management companies, securities clearinghouses, stock exchanges, securities exchanges and agricultural products, risk-rating entities and other persons that directly or indirectly participate in the Venezuelan securities market, as established by SUNAVAL.

Good Corporate Governance: Refers to globally recognized corporate governance best practices, including the equitable treatment shareholder principles, responsibilities and securities of the board of directors and other governmental, control environment and transparency agencies, which allow the resolution of conflicts of interest among an organization's stakeholders, understood as shareholders, management, employees, suppliers, customers, community and environment.

Corporate Governance Structures or Instances: The Ruling indicates that a good corporate governance structure must be led by the shareholders' or partners' meeting, the board of directors, supervisory agencies, the provisional common representative and the definitive common representative, establishing the respective powers for each of these agencies.

Shareholder Equitable Treatment Practices: The shareholders' meeting must guarantee and provide equitable treatment to shareholders, which includes, among other things:

- the establishment and dissolution of the company must be approved by the majority of the shareholders, considering the opinions of the minority shareholders
- meet regularly, at least once a year, ensuring the presence of the majority of the shareholders
- execute extraordinary sessions to deal with matters outside the regular or ordinary sessions
- ensure the presence of the majority of shareholders at each of the shareholders' meetings, with a particular emphasis on the presence of minority shareholders, as well as make extraordinary efforts to call meetings through digital media, publications on the company's websites or digital portals, electronic media, individual shareholder emails, telephone messages, social networks, telephone calls and others



- ensure equitable treatment of all shareholders
- appoint and revoke the board of directors or group of directors that will be in charge of the corporation's administration
- ensure that the appointed directors meet with the suitability, ethics, morals, personal skills, technical skills and professional trajectory to lead the company
- approve and guarantee the existence of policies for the fair distribution of dividends among all shareholders
- ensure that all discussions, decisions and approvals executed at ordinary and extraordinary shareholders' meetings are documented, recorded and traceable in an easily accessible public place
- ensure supervisory agencies' existence through the appointment of at least one statutory auditor to guarantee the validity and truthfulness of the financial statements. If the company is not required by law or its bylaws to have a statutory auditor, it may create an internal comptroller's office and process, independent of the board of directors or officers, to ensure the validity and accuracy of the financial statements before the shareholders' meeting approves them
- require and approve the appointment of external auditors in charge of the audit process, if applicable. If external auditing is not required by law or regulation, it shall be mandatory to require the constitution of a control environment, including risk assessment, compliance and internal auditing, reviewing the results periodically, as part of the board of directors' report to all shareholders.

Execution of Resolutions of Shareholders' Meetings: The companies regulated by these rules must equally execute the resolutions and orders established in the shareholders' meetings, as the highest instance of corporate governance and supervision of the company, listening and adhering to the resolutions, as well as the decisions and votes of all shareholders.

Resolution of Shareholder Requests: The companies regulated by this rule must implement and monitor the shareholders' requests through functioning institutions to equally resolve requests from all shareholders.

Chairman of the Board of Directors, Executive Chairman, General Manager or Chief Executive Officer: A chairman of the board of directors must be appointed from the boards of directors of the companies regulated by these rules, as well as an executive chairman, general manager, or chief executive officer.

Structure of Board of Directors: The board of directors may be constituted by directors who are shareholders, related or connected directors (part of management or related to the owners from a corporate or family point of view) and independent directors (not related to the shareholders, management or family members of the corporation). It is recommended that independent directors are also included. The number of members of the board of directors may not be less than three or more than nine.



Diversity of Members of Corporate Governance Bodies: The companies regulated by these standards must consider diversity, both among the members of the board of directors and among the corporate governance agencies in general, understanding by this concept: diversity of gender, religious beliefs, ethnicity, differentiated abilities and professionalism, which will confer a broader understanding and vision in the implementation of its corporate governance.

Adequate Control Environment: Regulated companies must ensure a fair control environment, guaranteeing the operational entities and government authorities to which they will delegate aspects related to integrated risk management, internal and external auditing (if applicable), and compliance in terms of control and administration of money laundering crimes, financing of terrorism, financing of the proliferation of weapons of mass destruction, as well as regulatory, normative, ethical and behavioral compliance.

Delegate Governance Bodies: In order to avoid centralization, bureaucracy and deferral in decision-making and management control, the board of directors should establish and promote delegate government agencies, called steering committees, with the power to make decisions on different matters on behalf of the board of directors, limited to specific issues and with administrative and operational autonomies that delimit the scope of decisions that can be carried out and executed by such agencies. According to their policies, they shall be established by the minimum and the adequate number of principal members of the board of directors and management members.

Executive Committees: Upon the invitation of the board of directors and management, the chairman, general manager or chief executive officer may create these committees. These executive committees shall have the power to make decisions and execute them on behalf of the management. They shall be constituted by the minimum and appropriate number of members of management.

Term of Office of Members of Board of Directors and Delegated Governing Bodies: They shall not hold office for a term of more than five years.

Adequate Control Environment: It is suggested that the implementation and execution of policies, rules, regulations and procedures related to regulatory compliance, comply with the ethics and conduct code, and internal and external auditing procedures.

Transparency: Regulated companies must include on the website, social networks or other means of communicating financial information: information related to the activities and business carried out by the company, products and services, capabilities, infrastructure and processes, geographic location, contact data and any other relevant information; of the corporate governance and its members, control environment and corporate social responsibility toward employees and the community in general, as well as digital attention spaces and contacts.

Mandatory Nature of Practices and Principles Established in Rules: The good corporate governance practices and principles will be mandatory as long as they are established and enforced in the Code of Commerce, securities market laws and regulations, laws and sector-specific regulations to which the companies are subject, as well as in any other applicable laws, rules and codes, and are not contrary to the principles outlined in the Constitution of the Bolivarian Republic of Venezuela. Any nonbinding laws, rules and codes should be implemented and, as such, will be considered when preparing risk ratings and when SUNAVAL requires authorizations and renewals.



Good Corporate Governance Report: The companies regulated by SUNAVAL must submit an annual report to SUNAVAL, including a diagnosis of their corporate governance structures and the degree of implementation and compliance with the principles. This report is mandatory, and its noncompliance will result in 1) warning and extension of the term by SUNAVAL, 2) initiation and substantiation of an administrative proceeding by SUNAVAL, and 3) temporary or definitive suspension of the activity authorized by SUNAVAL.

Transitory Provision: The companies regulated by these rules have six months to adapt to these rules, i.e., until Jan. 18, 2022.

Effective Date: The Ruling became effective as soon as it was published in the *Official Gazette*.

Learn more about our [Venezuela Focus Team](#).

Information contained in this newsletter is for the general education and knowledge of our readers. It is not designed to be, and should not be used as, the sole source of information when analyzing and resolving a legal problem, and it should not be substituted for legal advice, which relies on a specific factual analysis. Moreover, the laws of each jurisdiction are different and are constantly changing. This information is not intended to create, and receipt of it does not constitute, an attorney-client relationship. If you have specific questions regarding a particular fact situation, we urge you to consult the authors of this publication, your Holland & Knight representative or other competent legal counsel.
