

Arthur Lok Jack Global School of Business:

No legal obligation for State enterprise directors to resign

DIRECTORS serving on the boards of State enterprises are under no legal obligation to resign following a change in government, despite a widely held public perception to the contrary, according to a release from The UWI-Arthur Lok Jack Global School of Business (ALJGSB).

'The management of SOE (State-owned enterprise) boards should not be dictated by changes in political leadership. Directors, particularly in companies governed by the Companies Act, are legally bound to serve the interests of the entity and its shareholders, not the party in power. While statutory bodies may involve direct ministerial appointments, even these should aim for professionalism and continuity,' the release stated.

'To improve State enterprises' performance and public trust, Trinidad and Tobago must strive to move away from political patronage in board appointments. Instead, it should foster governance models that prioritise skill, integrity, and strategic alignment. It's not about who put you there, but whether you're the right person for the job-and whether you are delivering results that serve the national interest,' it stated.

The ALJGSB stated that the changing of directors is frequently clouded by 'emotion, misinformation, and political expectations, rather than a clear understanding of the legal and governance framework that regulates State enterprises.'

It stated that the State Enterprise Manual, which guides the operation of these boards, is also silent on whether directors should resign when a government changes.

According to ALJGSB, State enterprises generally fall into two broad categories: statutory corporations such as the Water and Sewerage Authority (WASA), and companies incorporated under the Companies Act such as Angostura.

'For companies governed by the Companies Act, directors are appointed and removed per the company's bylaws, typically at an Annual General Meeting (AGM). Under S 91 of the Companies Act, directors have a duty of care to act in the best interest of the company and to report to the shareholders in the Annual General Meeting. Legally, neither the government nor a government minister has the legal authority under the act to direct the actions of a director, or demand their resignation. If urgent, changes can be made via a Special General Meeting (SGM) or Extraordinary General Meeting (EGM) convened by shareholders,' it stated.

'In statutory corporations, however, ministers often have the authority to appoint or remove directors under the specific enabling legislation.

'This distinction is often misunderstood, leading to legal challenges when new governments sue directors appointed by the previous administration for decisions taken during their tenure. Directors are bound by fiduciary duties, not political affiliations. Indeed, the Companies Act makes no reference to political party membership as a criterion for board service,' it stated.

Regulatory oversight

ALJGSB stated that publicly listed entities are subject to additional regulatory oversight by the Trinidad and Tobago Stock Exchange (TTSE) and the Securities and Exchange Commission (SEC).

The TTSEC yesterday published the material change notice announcing the resignation of the board of Angostura Holdings Ltd on June 3.

'These boards operate under principles of good corporate governance and should not be expected to change with every change in government. Changes, if necessary, should occur at the AGM, ensuring transparency and continuity. These are profit-driven entities, and frequent board turnover due to political shifts can disrupt operations and reduce investor confidence. Angostura, Plipdeco, National Enterprises Ltd, First Citizens and Republic, amongst others, fall into this category. During the last administration, the attempt to insert two new directors on the board of One Caribbean Media (OCM) was defeated at a general meeting of the shareholders,' it stated.

The ALJGSB stated that there are suggestions that Cabinet minutes or legislative amendments could address any ambiguity.

'While possible, this should be approached cautiously to avoid politicising corporate governance in SOEs further. What's needed is not just rules but a culture shift towards professionalism, meritocracy, and accountability across all state boards. If SOEs are to be used to implement public policy, then a law should be devised to reflect this purpose with clear lines of accountability to Parliament as was done in New Zealand,' it stated.

Speaking at the post-Cabinet news conference last week, Prime Minister Kamla Persad-Bissessar slammed State board members who refused to resign, calling it a 'the most shameful