

The Bahamas: Central Bank of the Bahamas Corporate Governance Guidelines

Following the inclusion of the Bahamas on the Financial Action Task Force list of non-cooperative jurisdictions in the summer of 2000, the Bahamas government has undertaken a comprehensive overhaul of its financial legislation. As a result, at least ten pieces of legislation were either amended or enacted by December 2000.

The changes have significantly enhanced requirements relating to anti-money laundering controls and know your customer ("KYC") requirements as well as the legislative and regulatory framework of the country as a whole. Consequently the Bahamas now ranks amongst the better-regulated offshore financial centres around the world.

Further Change in the Regulatory Landscape

While many practitioners within the financial services industry are just coming to terms with these changes, there is yet another new development on the regulatory landscape, which represents a paradigm shift in supervisory requirements.

CBOB Guidelines

In December 2001, the Central Bank of the Bahamas ("CBOB") issued its guidelines on corporate governance for its licensees (banks and trust companies). These guidelines, generally based on internationally accepted standards such as those issued by the OECD, seek to bring a new level of corporate discipline to entities supervised by the CBOB.

The CBOB indicated in its document that the guidelines represent minimum standards that should be present within each of its licensees. Whilst not prescriptive, failure to adhere to

the basic principles may call into question whether the licensee continues to satisfy the criteria necessary for the retention of its licence.

The Guidelines

Some major themes of the guidelines include:

- the role and responsibilities of the board of directors ("the Board"), the operations of the Board and the duties of directors;
- the composition of the Board relative to executive and non-executive members and their ability to act independently;
- effective communication of the corporate governance process to appropriate internal and external stakeholders;
- the ability of the licensee to demonstrate proactive identification and understanding of significant risks faced and their effective management thereof; and
- the development and implementation of risk management systems, commensurate with the scope of the licensee's activities, under the supervision of the Board.

Risk Management

The guidelines have placed significant emphasis on risks and risk management. The document appears to have effectively married the concepts of corporate governance with that of best practice banking standards supported by the Basel Committee on Bank Supervision, focusing the Board and management on the risk issues critical to the operation of a financial institution.

The guidelines are strongly rooted in principle and may therefore need more specific detail guidance, especially for smaller licensees. Guidance is also provided with respect to the key committees that are expected to be present within licensees, whilst recognising limiting factors such as size and

complexity of the business and the ownership structure.

Reporting

The CBOB guidelines dictate that at least annually the board must assess the effectiveness of its corporate governance processes and systems. Further, from 31 December 2003, the Board must report annually to CBOB on the results of its assessment, together with engaging their external auditor to review the methodology applied by the Board in its assessment of the institution's corporate governance and risk management systems. The external auditor will be required to report directly to the Board and The CBOB on whether their findings are consistent with those of the Board.

Conclusion

This focus on corporate governance is consistent with worldwide developments; regulators are increasingly paying closer attention to the corporate governance process of financial institutions that they regulate. Given the fast approaching deadline of December 31, financial institutions should undertake a serious analysis of their current position relative to the CBOB's requirements and chart a comprehensive plan to ensure full compliance. With non-renewal of licences a distinct possibility, it is imperative that the Board and senior management of a financial institution put themselves in the best position, early, to be able to affirm compliance with the guidelines.

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