



Lignum Vitae - "Tree of life"

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CENTRAL BANK OF THE BAHAMAS CORPORATE GOVERNANCE GUIDELINES

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Subsequent to being included on the Financial Action Task Force list of non-cooperative jurisdictions in the summer of 2000, the government of The Bahamas has undertaken a comprehensive overhaul of its financial legislation. Taken together, at least ten pieces of legislation were either amended or enacted between that point and December of the same year. The changes have significantly improved and enhanced requirements relating to anti-money laundering controls and “know your customers” requirements together with the legislative and regulatory framework of the country. Consequently, The Bahamas now ranks amongst the best-regulated offshore financial centers jurisdiction around the world.

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

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. While not being prescriptive, failure to adhere to the basic principles contained therein may call into question whether the licensee continues to satisfy the criteria necessary for continuation of licensing.

Some of the major themes of the guidelines are as follows:

- The composition of the board relative to executive and non-executive members and their ability to act independently of undue influence from both internal and external sources;
- Effective communication of the corporate governance process to appropriate internal and external stakeholders;
- The role and responsibilities of the board of directors, the operation of the board of directors (the Board) and duties of the directors



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- The ability of the licensee to demonstrate proactive identification and understanding of significant risks faced and the effective management thereof; and
- Significantly, the development and implementation of risk management systems, commensurate with the scope of the licensee's activities, under the supervision of the Board.

The guideline has placed a significant emphasis on risks and risk management. The document seems to have effectively married the concepts of corporate governance with that of best practice banking standards supported and promulgated by the Basel Committee on Bank Supervision, thereby focusing Boards and management on the risks issues that are critical to the operation of a financial institution. Notably though, the information is strongly rooted in principle and may need more specificity especially for smaller licensees and given the level of maturity, with regards to addressing risk, that currently exist in the financial services industry. Guidance is also provided with regards to the key committees that are expected, in general, to be present within the licensees while recognizing certain limiting factors with regards to size of business and ownership structure.

The CBOB guidelines mandate that at least annually the board utilizing the advice of management must assess the effectiveness of its corporate governance processes and systems. Further, beginning December 31 2003, on an annual basis, within 120 days of each calendar year the board must report to the CBOB on the result of its assessment together with engaging the external auditor of the institution to review the general methodology followed by the board in its assessment of corporate governance and risk management. The external auditor will be required to report directly to the Board and to the CBOB on whether his findings are consistent with that of the Board.

Conclusion

This position on corporate governance is consistent with worldwide developments. Supervisors are being encouraged to pay closer attention to the corporate governance process of financial institution that they regulate. Financial institutions must therefore undertake a serious analysis of where they stand relative to the requirements and chart a comprehensive plan to ensure full compliance.

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