BERMUDA MONETARY AUTHORITY

CORPORATE GOVERNANCE POLICY

FOR CORPORATE SERVICE PROVIDER BUSINESS ACT 2012

FEBRUARY 2016

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I. Introduction

1. This corporate governance policy paper (the Policy) is applicable to entities licensed under the Corporate Service Provider Business Act 2012 (the Act). The Policy sets out eight principles and related guidance which reinforce key elements of corporate governance.

2. The Authority will assess the corporate service provider's compliance with the Policy in a proportionate manner relative to its nature, scale and complexity. These elements will be considered collectively, rather than individually.
   a) Nature includes the relationship between the client entity and the corporate service provider or characteristics of the service provided (e.g. non-executive director versus fully managed office including the provision of directors and officers, whether the corporate service provider holds a limited or unlimited licence, etc.);
   b) Scale includes aspects such as volume of business conducted, the number of client entities serviced or the size of the balance sheet in conjunction with materiality considerations; and
   c) Complexity includes organisational structures and ease of information transmission.

3. The Organisation for Economic Cooperation and Development (OECD) describes corporate governance as "a set of relationships between a company's management, its board, its shareholders, and other stakeholders". Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined. Good corporate governance should provide proper incentives for the board and management to pursue objectives that are in the interests of the company and its shareholders and should facilitate effective monitoring. The presence of an effective corporate governance system, within an individual company or group and across an economy as a whole, helps to provide a degree of confidence that is necessary for the proper functioning of a market economy."[1]

[1] OECD Principles of Corporate Governance, revised April 2004, originally issued June 1999, available at www.oecd.org/dataoecd/32/18/31557724.pdf.

4. All institutions licensed under the Act are required, as a statutory minimum licensing criterion, to implement corporate governance policies and procedures. The Authority will take into consideration compliance with the Policy when assessing whether a licensee meets the criterion. It should be noted that this Policy does not replace or reduce any existing statutory requirements.

5. The Policy consists of principles and underlying guidance. The principles are the core of the Policy and the Authority expects institutions to comply with the principles. The guidance in this Policy and the attached appendix is provided for the use of licence holders in formulating a strategy to meet the principles. The guidance is not intended to be viewed as a list of requirements for licence holders to follow, as there may be other ways in which the principles can be met.

6. Accordingly, there is a degree of discretion afforded to institutions in how they comply with the Policy. In assessing compliance, the Authority will adopt a proportional approach that reflects the nature, scale and complexity of an institution's business and recognises that approaches to corporate governance among different institutions may vary. It is recognised that in some cases the nature and scale of the business might mean that a licence holder cannot reasonably meet some or all aspects of a particular principle and these situations will be considered on a case by case basis by the Authority.

7. Notwithstanding the application of the general principle of proportionality, to assist institutions the Authority has tailored its implementation guidance, where applicable, to reflect the importance of individual principles to institutions of varying legal structures and scale of business. Smaller institutions, however, are not precluded from applying guidance intended for larger institutions and must adapt where appropriate, and this is expected for holders of unlimited licences due to the significance of the gatekeeper role that they perform in serving the broader interests of the public and the jurisdiction.

Unincorporated Licence Holders

8. The Policy has been drafted from the perspective of a company, the most common structure employed by licence holders; however, the licensing of partnerships or

individuals is not precluded under the Act. In general, the principles should be applied to all licence holders with references to the board of directors substituted with references to the partners or owners as applicable. Principles which seek to address the alignment of ownership, oversight, and management may not be applicable to such unincorporated licence holders and generally guidance relating to small, less complex institutions will be relevant. If a licence holder is uncertain as to the application of this Policy to their business they are encouraged to contact the Authority for clarification.

Group Governance

9. In general, the board of a Bermuda licensed subsidiary should adhere to the corporate values and governance principles espoused by its parent company and the subsidiary may place reliance on group oversight and control functions. However, in doing so, the parent board should take into account the nature of the business of the subsidiary and the specific legal requirements that are applicable, and make appropriate adjustments to its corporate governance practices.

10. Where the parent company is not a Bermuda licensed entity, the board of a Bermuda licensed subsidiary should evaluate any group level decisions or practices to ensure that they do not put the regulated subsidiary in breach of Bermuda laws and regulations or in a position that contravenes the Policy. In such cases, the composition of the subsidiary board should be such as to allow independent evaluation.

II. PRINCIPLES AND GUIDANCE

a. Overarching Principle

Principle 1: Every institution should have an effective corporate governance framework in place that is appropriate to its nature, scale, complexity and risk profile. This framework should establish a structure through which the objectives of the institution can be set, monitored and achieved and which provides incentives to align the interests of owners, directors and management while, in the case of unlimited licence holders, reflecting the importance of the Gatekeeper role being performed.

Gatekeeper Role

11. Within the context of the above overarching principle, the Authority recognises that the corporate service provider holding an unlimited licence serves in the role of Gatekeeper as well as being in the business of serving the interests of their clients. Gatekeepers serve the broader interests of the public and are instrumental in promoting the jurisdiction. The Gatekeeper's ability to act independently and objectively is paramount in ensuring that it will carry on its corporate service provider activities in a manner that will satisfy the responsibility to not bring the reputation of Bermuda as a first-class international financial centre into disrepute.

b. Board Practices

Principle 2: Institutions should be governed by an effective board of directors.

Role of the Board

12. The board has ultimate responsibility for the institution's business, risk strategy, and financial soundness, as well as for how the institution organises and governs itself. The board is responsible for setting strategy and adopting a formal business plan designed to achieve the institution's objectives. The board is responsible for approving all key policies including those relating to risk management, internal controls and compliance.

13. The board remains responsible for the oversight of all material functions of the business, even where such functions may be outsourced.

14. The Authority expects that a licensee's board will be composed solely of individuals; corporate directors will not be considered to be appropriate.

Role of the Chairperson

15. The chairperson of the board plays a crucial role in the proper functioning of the board. He or she provides leadership to the board and is responsible for the board's effective overall functioning. The chairperson should possess the requisite experience, competencies and personal qualities in order to fulfil these responsibilities.

16. In a smaller, owner-managed institution, a single person may fulfil the roles of both chairperson and chief executive. However, the person holding both roles should remember that the responsibilities of chairperson and chief executive are distinct, and should be viewed separately.[2] In cases in which the role of chairperson and chief executive are vested in the same person, the Authority expects that appropriate additional checks will be built into the board structure.

Board Committees

17. The board may delegate authority to board committees subject to full board oversight and ratification of key decisions that materially impact the institution's operations.

Board Meetings

18. The board should meet regularly to discharge its duties effectively.

19. Each meeting should have a structured agenda and should be minuted.

20. Board meetings should be distinguished from management meetings, even in owner-managed institutions.

Principle 3: The size and composition of the board should reflect the nature, scale and complexity of the institution's activities.

21. Ideally the board should comprise members with a range of experience and expertise appropriate to the institution's activities. The composition of the board should allow it to collectively discharge its duties and responsibilities effectively and to reduce the risk of dominance by any one individual or group of individuals.

[2] Guidance on the role of senior management is given under Principle 5.

22. The boards of smaller, owner-managed institutions may be composed of a small number of executive directors; however, the appointment of appropriately qualified non-executive directors is encouraged. Non-executive directors may introduce particular skills and experience not otherwise available amongst the executive directors.

23. A greater degree of consideration should be given to the appointment of non-executive and independent board representation for larger, institutions or those holding unlimited licences.

Principle 4: Directors should be, and remain, qualified, including through training for their positions. They should have a clear understanding of their role in corporate governance and be able to exercise sound and objective judgment about the affairs of the institution.

Duty to the Institution

24. Directors have a duty to the institutions they serve and, taking into consideration the general responsibilities as gatekeeper, in exercising their powers and discharging their duties should:

a) act honestly and in good faith with a view to the best interests of the institution; and

b) exercise the care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances.

Director Qualification

25. It is a statutory minimum criterion of licensing that a director should be a fit and proper person to fill that position. Directors should be of high integrity and have relevant experience, sufficient skills, knowledge, and soundness of judgment to properly undertake and fulfil their duties and responsibilities.[3]

Training and Development

[3] Fitness and propriety is interpreted further in the applicable Statement of Principles, issued pursuant to the Act.

26. All directors should regularly update and refresh their skills and knowledge. Directors should receive appropriate induction upon joining the board. All directors should be aware of their legal duties and regulatory responsibilities.

Commitment

27. All board appointees should have sufficient available time to effectively discharge their duties. Other significant commitments should be disclosed to the board before appointment and the board should be informed of subsequent changes.

Performance Evaluation

28. The board should carry out periodic assessments of both the board as a whole, and of individual board members as well as its governance practices, and take any corrective actions or make any improvements deemed necessary or appropriate to increase the effectiveness of its actions.

Conflicts of Interest

29. Directors have a duty to avoid, manage or minimise conflicts of interest and should, wherever possible, arrange their personal and business affairs so as to avoid direct and indirect conflicts of interest.

30. The board should establish, implement, document and maintain an effective conflicts of interest policy for both itself and the management and staff of the institution, which sets out the standards of expected behaviour including, amongst other matters, the treatment of any non-compliance with the policy.

c. Senior Management

Principle 5: Under the direction of the board, senior management should ensure that the institution's activities are consistent with the business strategy, risk appetite and policies approved by the board.

Senior Management Responsibilities

31. Senior management is responsible and should be held accountable by the board for overseeing the day-to-day management of the institution. Delegation of the management function does not absolve the board from its overall responsibility for the sound governance of the institution.

Senior Management Qualification

32. Senior management should have the necessary experience, competencies and integrity to manage the businesses under their supervision. It should be noted that it is a statutory minimum criterion of licensing that a member of senior management, in their role as an officer or controller of the institution, should be a fit and proper person to fill that position.[4]

Management Structure

33. The management structure adopted should be appropriate to the nature, scale and complexity of an individual institution. In the case of smaller institutions, the board and senior management may overlap, but the responsibilities of the board and senior management are distinct and should be viewed separately.

34. In the case of a company, partnership or unincorporated association of persons, wherever possible, at least two individuals must effectively direct the business of the institution.

d. Risk Management

Principle 6: The board is responsible for risk oversight and should establish and maintain a sound mechanism to identify and address the risks which are relevant to the institution. The board should ensure that the institution has an effective system of internal controls.

Risk Appetite

[4] Fitness and propriety is interpreted further in the applicable Statement of Principles issued pursuant to the Act.

35. The board should understand the risks to which the institution is exposed and establish a risk appetite, i.e. the level of aggregate risk that the institution's board is willing to assume and manage in the pursuit of the institution's objectives.

Policies and Procedures

36. The board is responsible for ensuring that appropriate policies and procedures are in place to identify, measure, monitor, control, mitigate, and report all material risks of the business.

Internal Control System

37. Internal controls are designed, among other things, to ensure that each key risk has an accompanying policy, process or other measure, as well as a system of control to ensure that such policy, process, or other measure is being applied and works as intended. Internal controls help provide comfort that financial and management information is reliable, timely and complete and that the institution is in compliance with its various obligations, including applicable laws and regulations. In order to avoid actions beyond the authority of the individual, or even fraud, internal controls also place reasonable checks on managerial and employee discretion.

38. The scale, structure and nature of the business should be considered in the design of a control framework relevant to the institution.

Internal Control Review

39. The board should approve the internal control framework and review its appropriateness at least annually.

Risk Management Function

40. An institution's approach to risk management should be commensurate with the nature, scale and complexity of the business. In the case of a small institution, a dedicated risk management function may not be necessary, in which case the function would be directly addressed by the board and management. However, the risk appetite, risk policy and procedures should be documented and, at a minimum, a risk register should be maintained identifying the material risks.

41. Larger institutions, particularly those holding unlimited licences, would be expected to put in place a formal risk management function. This function should be adequately resourced by appropriately qualified personnel, sufficiently independent of the institution's revenue-generating business units and take account of the Gatekeeper function being performed.

42. While the risk management function may report to the chief executive or other senior management, it should also report or, at a minimum, have direct access, to the board or the appropriate board committee.

Risk Review

43. The board should, at least annually, assess the effectiveness of the institution's risk management framework and make any necessary changes.

Contingency Planning and Testing

44. Institutions should have in place appropriate business continuity and contingency plans to safeguard against disruption of their operations and services and to mitigate risk. The board should review these plans at least annually.

Principle 7: The board should ensure remuneration arrangements are consistent with effective risk management and the long-term interests of the business.

45. The board should ensure remuneration arrangements are consistent with effective risk management and avoid creating incentives that encourage inappropriate risk-taking inconsistent with the risk appetite established by the board.

e. Reporting

Principle 8: The board should ensure that an appropriate reporting framework is in place for both internal and external stakeholders.

Board Reporting

46. The board should ensure that it receives information in a timely manner in a form and of a quality appropriate to enable the discharge of its duties, facilitate decision-making and allow for effective monitoring and management of company performance.

Statutory and Regulatory Reporting

47. The board should ensure that all applicable statutory disclosure and regulatory reporting requirements are met.

Disclosure to Stakeholders

48. Shareholders should be provided with sufficient information to enable them to assess the effectiveness of the board and senior management in governing the institution.

49. Institutions should have an appropriate mechanism for reporting to relevant stakeholders who are not directors or shareholders.

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Appendix 1

The purpose of this appendix is to acknowledge that the Authority recognises there are a number of different structures within the corporate service provider (CSP) business sector; therefore extra guidance on the application of the corporate governance principles would be helpful. In particular, the Authority is aware that the nature, scale and complexity of certain types of licensees may influence their ability to meet all of the principles.

Public companies

Companies whose shares are held by members of the public will present different corporate governance challenges than those whose shares are not held by members of the public. The Authority expects that this will be reflected in the corporate governance framework of such companies.

CSPs as subsidiaries or members of larger groups

It is expected that a licensed CSP which is a subsidiary of another institution or a member of a larger group[5] will retain its own corporate governance responsibilities. This is the Authority's expectation whether or not the parent company or group is subject to any other regulatory supervision, either in Bermuda or abroad. Any group-level decisions and practices should be evaluated to ensure that they are appropriate for the CSP subsidiary and do not put the subsidiary in breach of the applicable legislation or regulatory provisions.

Licensed Individuals

The Authority understands that not all CSPs will be company or partnership structures. Where a licensee is an individual they will be expected to have in place a reasonable framework for the running of the business. The Authority will have regard for the unique structure and particular services offered by each CSP when examining these structures.

[5] For the purposes of this Policy, "group" means:
"Consisting of a parent undertaking, its subsidiaries, affiliates, and any entities in which the parent undertaking or its subsidiaries hold shares".