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CARIBBEAN REGIONAL COMPLIANCE ASSOCIATION

Does the Board Know What It Doesn't Know?

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Agenda



- **Corporate Governance**
- **Board Oversight**
- **Board Responsibilities & Accountability**
- **Fines & Settlements**
- **Compliance Access to Board**
- **Compliance Disclosure to Board**
- **Is the Board Told Enough?**
- **Directors Sued**
- **UK Warnings**
- **UK Proposed Regime**



- **Establishes the mechanisms for achieving accountability between the Board, Senior Management and shareholders, while protecting the interests of relevant stakeholders**
- **It also sets out the structure through which the division of power in the organisation is determined**



- **Board has overall responsibility for:**
 - Quality of governance
 - Approving and overseeing implementation of strategic objectives
 - Risk strategy
 - Corporate governance framework
 - Corporate values
- **Board is also responsible for providing oversight of Senior Management**



Board has an oversight role designed to ensure an institution:

- Is managed in a way that safeguards its safety and soundness
- Is in compliance with all relevant laws and regulations



The Board is expected to:

- **Oversee selection of competent Senior Management and determine their compensation;**
- **Define and document formally its role vis-à-vis that of management - what functions and authorisations have been delegated to management;**
- **Determine risk tolerance/appetite of the business;**
- **Assure itself that the structure lends itself to effective management and achievement of goals;**
- **Assess and approve the business objectives, corporate values and strategic direction;**
- **Understand risks, discuss and approve policies to mitigate these risks and obtain regular assurances from management that appropriate processes of risk assessment, management and internal controls are in place;**
- **Ensure that Senior Management implements the institution's strategy and ethical standards;**



The Board is expected to: (cont'd)

- Approve outsourcing arrangements and written service level agreements outlining the responsibilities of the respective parties;
- Receive and analyse reports prepared by management;
- Monitor performance against agreed benchmarks;
- Assure itself of the integrity of financial reporting;
- Receive, discuss and follow up on reports prepared by compliance, internal / external auditors and by regulators;
- Ensure that the governance system enables the institution's operations to be conducted within the framework of all relevant laws, regulations and guidelines; and
- Have adequate professional indemnity insurance in place for Directors when discharging their fiduciary duties in good faith.

Oversight of Senior Management



- Establish fit and proper standards for selecting Senior Management (SM)
- Monitor that SM's actions are consistent with approved strategy and policies, and risk tolerance/appetite
- Meet regularly with SM
- Question and critically review explanations and information provided by SM
- Set performance standards for SM consistent with the long-term objectives, strategy and financial soundness
- Ensure that SM's knowledge and expertise remain appropriate given the size, nature and complexity of the business

Board Accountability



- Board is ultimately responsible for all acts and omissions including compliance with legal and regulatory obligations

Fines & Settlements



Company	Fine / Settlement	Reason
JP Morgan Chase	>\$13 billion	Various
BNP Paribas	\$8.9 million	Sanctions violations
HSBC	\$1.9 billion	Sanctions violations
ING	\$619 million	Sanctions violations
Credit Suisse	\$536 million	Sanctions violations
Lloyds TSB Bank	\$350 million	Sanctions violations
Barclays	\$298 million	Wire stripping
Standard Chartered	\$227 million	Wire stripping
UBS	\$1.5 billion	Rigging Libor
Bank of America	\$17 billion	Mortgage practices
Citigroup	\$7 billion	Mortgage practices



- **As the Compliance Officer, you should regularly present to and/or speak directly with:**
 - The Board;
 - Audit Committee; or
 - Risk Committee.

Compliance Disclosure to Board



- **Board should be furnished with regular and fulsome compliance reports (eg. quarterly)**
- **How much detail do you report to the Board?**
- **Is it enough?**
- **Does it paint the true picture of risk and controls existing within your organization?**

Ponder this...



If there was an investigation of your organization tomorrow and the regulator or law enforcement made certain accusations to the Board, can the Directors rightfully claim,

“...but we were never informed by the Compliance Officer or Senior Management about xyz problem!”?



Is the Board Told Enough?

- **Are Board directors adequately informed of the full and true extent of existing or emerging risks, issues, breakdowns considering they are fully accountable?**
- **Has anyone ever asked you, as CO, to remove, restrict or defer what gets reported up to the Board or Audit/Risk Committees?**
- **Put yourself in their shoes – what else would you want to know about?**

Does the Board Know This?



In addition to compliance reporting, the compliance plan & priorities each year – do you tell them about:

- **Late or erroneous filings**
- **Gaps, risks, exceptions, issues and breakdowns**
- **Questions, questionnaires or requests from regulators**
- **Status of corrective actions for Audit & Compliance**
- **Lack of investment or resources from senior management for requests to enhance compliance, adhere to new requirements, or fix breakdowns**
- **Potential regulatory reviews or inspections**
- **Anecdotal information from your peers/sector regarding important regulatory activity**

Assess & Survey the Board



- **Do you regularly survey or assess the Board?**
- **Conduct a confidential self-assessment of the Board to determine how they feel they are meeting their duties**
- **As part of the self-assessment, ask what else the Board feels they need to know about**

Directors' Heads on the Block



- **89 HSBC directors to be sued for their role in the money laundering fiasco!**
- **2 of those directors announced that they are resigning**
- **UK's banking supervisor and financial regulator are proposing bringing in new rules to “aimed at improving individual responsibility and accountability in the banking sector”**

Warning From UK



- During a panel discussion on financial ethics, Mr. Carney (*Bank of England Governor*) made it clear he had no sympathy for board-level bankers who would not take personal responsibility for the actions of their organisations.
- He said:
 - “If you are the chairman or the head of the risk committee, you have a responsibility for the activities of that institution.
 - If you don’t think you can do it, you shouldn’t be on the board.”



Proposed UK Rule Changes

- **New regime to come out in early 2015, designed to make it easier to bring criminal charges in a future banking crisis**
- **Mr. Carney added: “It does focus the mind of directors and it should. I would like to think that the minds of directors are being focused. Some of them might not like it – that’s okay.”**
- **Proposes to, “Clarify the lines of responsibility at the top of banks, enhance the regulators’ ability to hold senior individuals in banks to account and require banks to regularly vet their senior managers for fitness and propriety”.**
- **Will we see similar rules in the Caribbean?**



- **Does the Board Know What It Doesn't Know?**
- **To be successful, it must be a combined effort of all of the following to ensure the Board knows what it needs to know:**
 - Each Board Member & Chairman
 - Senior Management
 - Compliance Officer
 - Others as applicable (risk officer, chief internal auditor, etc.)



Questions?



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