MinterEllison LAWYERS

Alert - Report recommends significant changes to governance of UK banks and financial institutions

28 July 2009

On 16 July 2009, HM Treasury published Sir David Walker's consultative report (Report) of his review of corporate governance in UK banks and other financial institutions (BOFIs).

Commissioned by the Government in January 2009, the Report comes after several months of consultation with experts in London's financial sector examining the effectiveness of board practices, including board engagement with institutional shareholders.

The Report makes 39 recommendations which contemplate significant changes to the functioning of BOFI boards. The key recommendations are summarised below.

Board size, composition & qualifications

- Non-executive directors (NEDs) should materially increase the time committed to their roles. A minimum expected time commitment of 30 to 36 days per year in a major bank board should be expected and clearly indicated in letters of appointment.
- NEDs should receive regular training and support from the board regarding the business of the BOFI and their role as a director.
- The Financial Services Authority's (FSA's) supervisory process should give closer attention to the balance of the board, taking into account the relevant experience of the directors.
- The NED interview process should involve questioning by senior advisers, possibly engaged by the FSA for that purpose.

Functioning of the board & evaluation of performance.

- NEDs should be prepared and encouraged to challenge proposals put forward by executive directors.
- Chairpersons should commit more time to their role and should understand that the role of chairperson takes priority over any other business time commitment.
- A board should undertake a formal evaluation of its performance with external facilitation every two to three years. An evaluation statement should be included in the annual report.
- The chairperson should be proposed for election annually.

Role of institutional shareholders

- In the event of a substantial change in a short period in the share register of a BOFI, the FSA should be prepared to contact major selling shareholders to understand their motivation for selling, and to seek an indication from the BOFI board of whether and how it proposes to respond.
- The remit of the Financial Reporting Council should be extended to cover principles of best practice in stewardship by institutional investors and fund managers. This role should be clarified by separating the existing Combined Code on Corporate Governance into a 'Corporate Governance Code' and 'Principles for Stewardship'.
- The FSA should encourage commitment to the Principles of Stewardship on a 'comply or explain' basis as a matter of best practice by firms authorised to manage assets.
- Institutional investors should exercise their voting powers and publicly disclose their voting record and

voting policies.

Risk governance

- There should be more engagement at board level in monitoring risk and incorporating risk considerations into decision making.
- A BOFI board should establish a board risk committee, separate from the audit committee, with responsibility for overseeing and advising the board on current risks and possible risk management strategies. A board risk committee report should be included within the BOFI's annual report and accounts.
- Each board should have an independent chief risk officer who should participate in risk management and oversight at the highest level, report to the board risk committee and have direct access to the chairperson.

Remuneration

- A BOFI's remuneration committee should oversee the BOFI's remuneration policy and the remuneration packages of board members and all executives whose total annual remuneration is expected to exceed the median compensation of executive board members (Highly Paid Executives).
- The annual report of the remuneration committee should confirm that it is satisfied with the way in which the performance objectives of Highly Paid Executives are linked to their compensation structures, and should explain the principles underlying performance objectives and the related compensation structure if this is not in line with that for executive board members.
- There should be increased public disclosure of the remuneration packages of Highly Paid Executives.
- Executive board members and Highly Paid Executives should be expected to maintain a shareholding or retain vested awards in an amount at least equal to their total annual historic or expected compensation.
- The remuneration committee report should state whether any executive board member or senior executive has the opportunity to receive enhanced pension benefits beyond those already disclosed to the public.

Where to from here?

The review committee is accepting submissions until 1 October 2009. Sir David expects to issue a final version of the Report in November 2009. It will then be for the Government to determine which of the Report’s recommendations it will take forward.

Further information

Michael Whalley
T:+44 20 7448 4801
>email me

Nigel Clark
T:+44 20 7448 4807
>email me

Paul Boyle
T:+44 20 7448 4804
>email me

Patricia Ashman
T:+44 20 7448 4818

>email me

top

© Minter Ellison 2009

About Us | People | Expertise | Legal Insights | Careers | Community | International | eLibrary | oag |
Contact Us | Sitemap | Terms of Use | Privacy |