

INTERNATIONAL RESEARCH CENTER
OF BANKING & CORPORATE GOVERNANCE

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From: Prof. Alexander Kostyuk, Executive Director,
International Research Center of Banking & Corporate Governance,
Ukraine

Date: 26 May, 2010

To: Roberta Calarese
Director, Policy and Legal Services
DFSA
PO Box 75850
Dubai, UAE

Subject: Comments to the Consultative Paper “**ENHANCED CORPORATE GOVERNANCE REGIME FOR REPORTING ENTITIES**”

Dear Ms. Calarese

I enclose our comments to your Consultative Paper “**ENHANCED CORPORATE GOVERNANCE REGIME FOR REPORTING ENTITIES**”. These comments have been prepared by the team of researchers at the International Research Center of Banking & Corporate Governance at Ukrainian Academy of Banking of the National Bank of Ukraine (Ukraine) consisting of Prof. Alexander Kostyuk, Ms. Maria Oleschyuk and Mr. Oleg Ruban. We hope that the comments would be taken into consideration when approving the final Paper. Your feedback would be appreciated by us.

With the best regards,
Prof. Alexander Kostyuk

A handwritten signature in black ink, appearing to be 'A. Kostyuk', written over a horizontal line.

Analysing Consultation Paper №68 we would like to pay your attention to our proposals. It is a good idea to prescribe Key Principles by way of Offered Securities Rules instead of in the Markets Law. It would give the DFSA greater flexibility in amending Key Principles to respond to changes in the corporate governance around the world. But it's very difficult for Reporting Entities explain nonadaptive the best standards.

We would like to pay your attention for Key Principles. We partially agree with your proposals, but besides proposed six principles we also propose the next one:

- the director of a Reporting Entity should exercise his powers and discharge his duties in good faith and act honestly and in the best interests of the Reporting Entity and its shareholders;

- the directors of a Reporting Entity shall establish formal and transparent arrangements for considering how it should apply the financial reporting corporate governance principles;

- the directors of a Reporting Entity is responsible for effectiveness on all aspects of its role and setting its agenda. The directors of a Reporting Entity is also responsible for ensuring that the shareholders receive accurate, timely and clear information. The directors of a Reporting Entity should ensure effective communication with shareholders;

- the directors of a Reporting Entity should also facilitate the effective contribution of non-executive directors in particular and ensure constructive relations between executive and non-executive directors;

- the directors of a Reporting Entity should present a balanced and understandable assessment of the company's position for shareholders.

We also propose that the quarter reports (and also annual) of Reporting Entities that have issued certain equity securities and Listed Funds will require the disclosure of compliance with the practice standards. On our mind it would give the widely flexibility in amending Key Principles.

In the point 30 the DFSA proposes a few practice standards. It would be better to add the next:

Given the importance and particular nature of the chairman's role, it should in principle be separate from that of the chief executive. If the two roles are combined in one person, it represents a considerable concentration of power. There should be a clearly accepted division of responsibilities at the head of a company, which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision. Where the chairman is also the chief executive, it is essential that there should be a strong and independent element on the board.

Where the chairman is also the chief executive, it is essential that there should be a strong and independent element on the board, with a recognised senior member. If the chairman is also the chief executive, board members should look to a senior non-executive director, who might be the deputy chairman, as the person to whom they should address any concerns about the combined office of chairman/chief executive and its consequences for the effectiveness of the board.

We agree that the remuneration for non-executive directors should not include share options unless shareholder approval is sought in advance and any shares acquired by exercise of the options should be held until at least one year after the non-executive director leaves the Governing Body. But, DFSA should explain what NED's should do if they ever have shares before arrangement and entering in the Governing Body.

The remuneration committee should have a sufficient understanding of the company's approach to pay and employment conditions to ensure that it is adopting a coherent approach to remuneration in respect of all employees. The terms of reference of the remuneration committee should accordingly include responsibility for setting the over-arching principles and parameters of remuneration policy on a firm-wide basis.

We also propose to establish Risk Committee and majority of independent non-executive directors should comprise Audit Committee.

The Nomination Committee should have at least two independent nonexecutive directors.

The Remuneration Committee should comprise at least two independent non-executive directors. The chairman of the Governing Body while eligible to be a member should not chair the committee.

The Audit Committee should comprise a majority of independent non-executive directors and should have at least three independent nonexecutive directors of whom at least one should have financial expertise. Each member of the audit committee should be financially literate, as such qualification is interpreted by the Reporting Entity's board in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee. The chair of the Committee should be an independent non-executive director.

The Risk Committee should have at least six independent nonexecutive directors and should be chaired by an independent nonexecutive director.

Reporting Entities should have a majority of independent directors. A director is not independent if:

1) The director has been within the last three years an employee of the Reporting Entity, or an immediate family member has been within the last three years, an executive officer, 1 of the Reporting Entity.

2) The director has received, or has an immediate family member who has received, during any twelve-month period within the last three years, more than some direct compensation from the Reporting Entity, other than director and committee fees and pension or other forms of deferred compensation for prior service.

3) The director is a current partner or employee of Reporting Entity; the director has an immediate family member who is a current partner of such a Reporting Entity;

4) The director has an immediate family member who is a current employee of such a Reporting Entity and personally works on the Reporting Entity's audit; the director or an immediate family member was within the last three years a partner or

employee of such a Reporting Entity and personally worked on the Reporting Entity's audit within that time.

5) The director or an immediate family member is, or has been with the last three years, employed as an executive officer of another company where any of the Reporting Entity's present executive officers at the same time serves or served on that company's compensation committee.

6) The director is a current employee, or an immediate family member is a current executive officer, of a company that has made payments to, or received payments from, the Reporting Entity for property or services in an amount which, in any of the last three fiscal years, exceeds the greater of \$1 million, or 3% of such other company's consolidated gross revenues.

In general we agree with DFSA to prescribe Key Principles of Offered Securities Rules instead of DIFC in the Markets Law. We consider that standard which prescribes membership only by independent non-executive directors for all of the sub-committees not be unduly burdensome on Reporting Entities if DFSA will establish an efficient mechanism.