



Code Compliance Monitoring Committee

Submission to the review of the Code of Banking Practice

Governance issues arising under the Constitution of the Code Compliance Monitoring Committee Association

The Code Compliance Monitoring Committee's Overview to its submission (Annexure A) outlined that:

- The Committee was set up under the authority of Clause 34 of the Code of Banking Practice 2004 to monitor bank compliance under the Code.
- The composition, function and authority of the Committee are provided for in the Code;
- The Committee was established under the constitution of the Code Compliance Monitoring Committee Association ("CCMCA").
- The constitution sets out powers and obligations for the Committee;
- The constitution imposes some qualification and restrictions on the actions of the Committee, and
- The Committee considers that the constitution should be replaced with a charter.

The Committee's firm view is that the constitution is problematic. The Committee has never met with the members of the CCMCA, its chair or the BFSO chair and to the Committee's knowledge, the CCMCA has only met once to approve the constitution and agree the appointment of the Committee chair. The Committee notes that to the best of its knowledge, the constitution has never been made public despite its apparently intended impact of the provisions of the Code, which was itself subject of very wide public consultation.

The constitution provides the BFSO Chair and the CCMCA Chair with oversight powers. Specifically, the Chairman of the BFSO and of the CCMCA:

- Must give prior approval for the Committee and each Committee member to make public statements on behalf of the Committee except as contained in the annual report. (Clause 10.7)
- Jointly determine, at their sole discretion, the Committee's funding, budget and remuneration for Committee members. (Clause 13)

In the Committee's view these powers are inappropriate and inconsistent with the Committee's independent role. They do not reflect the current working practices of the Committee, and are, in the opinion of the Committee, unworkable in practice.

In order for the Committee to be publicly accountable and accessible it must be able to engage freely with stakeholders and to communicate broadly about the Code and its role. On the recommendation of a review of the Committee (taken in 2005 in accordance with Clause 34 of the Code) the Committee has a website and produces quarterly electronic bulletins updating stakeholders on the Committee's work.

Whilst the Committee appreciates the need for fiscal accountability, it must be able to set its own budget within reasonable limits. The Code makes quite specific provision in this regard. The constitutional requirement for involvement of the CCMCA chair in setting and approving the Committee's funding and remuneration has given rise to concerns that the Committee is not independent from bank subscribers. This perceived or technical, lack of independence has been suggested as a reason why the BFSO is unable to share information with the Committee.

The Committee also notes that Clause 11 of the constitution purports to limit the manner in which the Committee can use its power to name a bank when guilty of serious on-going non compliance with the Code. The constitution states that the Committee may name a bank in its annual report. Such a limitation would seem unreasonable, having regard to the broader wording of Clause 34(i) of the Code. Also, any such limitation would not be, in the Committee's view, in the best interests of the self regulatory scheme the Code seeks to achieve, or of the subscribing banks as a whole.

As its annual report has generally had low distribution levels (in keeping with the Committee's conservative budget) and is only published once a year, such a limitation would effectively diminish the Committee's power to name. The Committee considers that as provided in the Code to make that provision in any way effective, it should have the power to name a bank in its annual report, through its website or other outlets.

It is the Committee's view that the constitution should be replaced with a document, such as a charter, which provides an appropriate governance structure for the Committee. Such a structure should re-establish and revalidate the Committee, enabling it to continue to work as it has been working. The Committee would be pleased to discuss how good governance and accountability can be assured without compromising Committee independence or limiting the powers provided to the Committee under the Code.