

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
DEFINITIONS			
1.	Arm’s length	<ul style="list-style-type: none"> • <u>Include a definition for “arm’s length basis”</u> (mentioned at 5.27(b), 5.29 and 5.30(g). 	<ul style="list-style-type: none"> • Included
2.	Board of Directors/ Board	<ul style="list-style-type: none"> • <u>Consider redraft: A governing body of persons appointed or elected by shareholders.</u> – Note: Fundamentally a Board represents the interest of the company first. 	<ul style="list-style-type: none"> • Amended
3.	Conflict of Interest	<ul style="list-style-type: none"> • The definition of “Conflict of Interest” is open ended and we suggest re-wording to include at the end of the sentence, the words, “or company from which he stands to benefit”. • Conflict of Interest - The term “member of family” should be expanded. Also, what is meant by “of any other person”. This should be confined to persons connected to the person making the decision since ultimately any decision made will further the interests of some ‘other person’. Alternatively, insert the words “connected to him” after the words “of any other person”. • Conflict of Interest – a review of the existing relevant legislation (Companies Act, FIA and the SIA) reveal that none currently contain a definition of conflict of interest. Given the potential for varying scenarios, 	<ul style="list-style-type: none"> • Amended. • Amended to add the words, “or company from which he stands to benefit” at the end of the sentence. • The Central Bank considers the inclusion of the definition necessary in this context. The term has also been defined in the Fit and Proper Guideline. It is also open to an institution to impose a stricter definition/interpretation in its

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
		<p>which may present as a conflict of interest, whether same is actual or perceived, and the jurisprudential interpretation of this, care should be taken in considering the inclusion of a definition (at all) in a guideline, which will impact its current interpretation by financial institutions and its use in other contexts in law. Once such instance would be where a financial institution, considering its size and profile, has implemented an interpretation that is, for all intents and purposes, stricter than that contained in the definition proposed. This, while maintaining high standards in Governance, could be challenged based on the definition contained in the draft Guideline. Our suggestion would be to remove the definition altogether and/or ensure that same is applied in accordance with its meaning in law.</p>	<p>own internal policy in keeping with its risk tolerance and appetite. In developing a conflict of interest policy the institution should also be guided by all relevant provisions in law and in guidelines and may in its discretion have a higher standard where so warranted.</p>
4.	Control Functions	<ul style="list-style-type: none"> • <u>Definition of Control functions</u> –_Consider redraft: Those functions that have a responsibility independent from business and operational functions to provide objective assessment, reporting and/or assurance. This includes the risk management function, the compliance function and the internal audit function. 	<ul style="list-style-type: none"> • Amended to replace the word “management” with the words “business and operational functions”

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

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5.	Duty of Care	<ul style="list-style-type: none"> • Duty of Care - This definition should include a reference to Section 99 of the Companies Act, Chap 81:01 as it recites same verbatim. • <u>Duty of Care and Duty of Loyalty (and Conflict of Interest)</u> – There appears to be some overlap with these definitions. It can be argued perhaps that conflicts of interest are already dealt with under the definition of duty of loyalty and that aspects of duty of loyalty are covered under the definition of the duty of care. (see use in section 3.3). Also we note that duty of care identified appears to be limited to just employees / shareholders and no other stakeholders. Along this vein, it appears that a duty of loyalty has been identified in relation to board members only. • <u>Definition of Duty of care</u> – Consider inclusion of highlighted area: Every director and officer of a company shall in exercising his powers and discharging his duties (a) act honestly and in good faith with a view to the best interests of the company; and (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. In determining what is in the best interest of a company, a director shall also have regard to the 	<ul style="list-style-type: none"> • This is not considered necessary. The definition will not be affected by the inclusion of a reference to the Companies Act. • It is agreed that there is some overlap however there is some nuance that is specific to the two definitions. In relation to the duty of care the body of the Guideline is directed to directors and management. While the Guideline specifically directs issues related to the duty of loyalty to the Board. This was reflected in the definition. • Amended to include the word “also” to clarify the interests of the company’s employees and shareholders are not the only relevant considerations.

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
		interests of the company’s employees in general as well as to the interests of its shareholders. Note: CRO, CCO are senior managers.	
6.	Duty of Loyalty	<ul style="list-style-type: none"> • Duty of Loyalty - This definition appears identical to the “duty of care”. It is unclear why this separate duty is being introduced and its intended effect. We also note it is only referenced in clause 3.3 along with the duty of care. • Further, the ‘duty of loyalty’ when commonly used in law is considered the distinguishing obligation of a trustee and the definition of the duty for trustees differs to the form included in these Guidelines. 	<ul style="list-style-type: none"> • There are differences between the two definitions, which the Central Bank considers necessary. The definition also aligns with international guidance from the OECD. • The definition aligns with international guidance from the OECD and has supervisory significance as opposed to a strictly legal intention applied in the narrow scope of the trustee relationship.
7.	Related Party	<ul style="list-style-type: none"> • To include a definition for related party. 	<ul style="list-style-type: none"> • The use of the term related party has been revised to refer to connected party in the Guideline. As such a definition of related party is not necessary and connected party is defined in applicable legislation.
8.	Risk Appetite	<ul style="list-style-type: none"> • In the definition of ‘risk appetite statement’, consider changing the reference to ‘money laundering’ to ‘financial crime’ which would include be broader and capture fraud, insider trading etc. 	<ul style="list-style-type: none"> • Amended

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

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9.	Senior Management	<ul style="list-style-type: none"> Who is being referred to as senior management, particularly for smaller/flatter organisations, which do not have an executive team layer? Would this be the CEO and any persons/officers/management level personnel reporting directly to the CEO? 	<ul style="list-style-type: none"> A senior manager is a person designated as such by the institution in accordance with its internal criteria. Typically, these would include persons such as the CEO, President, Chief Risk Officer, Chief Financial Officer, Chief Account, etc. that report directly to the CEO or persons that perform all the duties/ functions normally associated with such persons whether or not so titled.
10.	Systemically Important Financial Institution (SIFI)¹	<ul style="list-style-type: none"> What is the definition of or criteria for determining systemically important financial institutions? Without this information how would a company determine whether or not CBTT considers it to be systemically important and therefore whether the additional requirements for systemically important financial institutions would be applicable? 	<ul style="list-style-type: none"> A definition has been included in the Guideline. A systemically important financial institution or SIFI is an institution whose distress or disorderly failure because of its size, complexity and/or interconnectedness would threaten the smooth functioning of the financial system and the wider economy and, whose distress would place the financial system in danger of disruption, substantial damage, injury or impairment.
INTRODUCTION			
11.	1.3	<ul style="list-style-type: none"> It is recommended that the words “lack of” before “corporate values” in line 3 be inserted having regard to the context of the paragraph. 	<ul style="list-style-type: none"> The adjective “undesirable” applies to both behaviour and corporate values. The words “lack of” is not appropriate in this context as a company may have corporate values. The issue is those values may be inappropriate. The section has been amended accordingly.

¹ See Box 6 of the Central Bank’s 2018 Financial Stability Report.

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
12.	1.4	<ul style="list-style-type: none"> It is recommended that the words “averse” between “risk” and “culture” in line 5 be inserted as this may better fit the context of the paragraph. 	<ul style="list-style-type: none"> Risk culture means the attitudes and behaviours related to risk awareness, risk-taking and risk management, and controls that shape decisions on risks. In some scenarios, the institution may be risk averse and in others it may accept a certain amount of risk once proper controls are in place. Therefore, “risk averse culture” is not appropriate in this context.
13.	1.4	<ul style="list-style-type: none"> The first sentence “This Guideline represents an update to the May 2007 Corporate Governance Guideline” may be better placed as part of the concluding sentence in paragraph 1.5. 	<ul style="list-style-type: none"> The words “This Guideline represents an update to the May 2007 Corporate Governance Guideline” were placed in paragraph 1.4 as an introduction to the content of that clause which treats with the development that prompted the update to the Guideline.
PURPOSE AND SCOPE			
14.	2.1	<ul style="list-style-type: none"> There is no section 69(4) in the IA 2018. Perhaps you mean section 278 (b) which is similar to 10 (b) of the FIA? The section reference to the Central Bank Act i.e. 36(cc) is not applicable. 	<ul style="list-style-type: none"> Amended to section 278 of the IA. Section 36(cc) of the CBA is applicable as it relates to the Central Bank’s payment system supervisory functions. This Guideline will be applicable to payments systems.
15.	2.4	<ul style="list-style-type: none"> The language in this section suggest that the Guideline is intended to be mandatory in nature, in which case, consideration should be given to whether some of the provisions of the Guideline should be more aligned to 	<ul style="list-style-type: none"> Pursuant to sections 10 of the FIA and 278(1) of the IA Guidelines can be issued to, inter alia, give effect to the Act and enable the Central Bank to meet its objectives.

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
		<p>legislation. Where not aligned to the principal legislation, the mandatory nature of the provision should be changed.</p> <ul style="list-style-type: none"> • Additionally, the proposal of severe sanctions implemented by the CBTT such as the revocation of licenses of financial institutions should be limited to circumstances that are in contravention of substantive legislation rather than provisions of a Guideline, to the extent that those provisions are not included in the FIA. 	<ul style="list-style-type: none"> • Pursuant to sections 278 (3) of the IA and 12 of the FIA contravention of a Guideline although not an offence, shall not prevent the Central Bank or the Inspector from taking action under section 155 of the IA and section 86 of the FIA respectively.
16.	2.5	<ul style="list-style-type: none"> • This clause states that the Central Bank will review the Guideline “periodically”. Members are of the respectful view that this is vague and recommend that “periodically” should be clarified. 	<ul style="list-style-type: none"> • A review of the Guideline will be prompted by changes in international standards, legislative amendments as well as occurrences in the domestic financial system. Accordingly, a timeframe for the review will not be hardcoded in the Guideline. 2.5 to be deleted.
ROLE OF THE BOARD OF DIRECTORS			
<i>Responsibilities of the Board</i>			
17.	3.2	<ul style="list-style-type: none"> • We recommend that the Central Bank allows subsidiary Boards to ratify policies and other documents (which require Board approval) in cases where those documents are already approved by the parent company’s Board. 	<ul style="list-style-type: none"> • The Central Bank cannot agree to this as this would be contrary to section 7.4 of the Guideline which in accordance with good corporate practice requires subsidiary boards to, inter alia: <ul style="list-style-type: none"> ○ assess the compatibility of group policies with local legal and regulatory requirements and where appropriate, amend those policies;

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
			<ul style="list-style-type: none"> ○ make necessary adjustments where a group policy conflicts with an applicable legal or regulatory provision or prudential rule, or would be detrimental to the sound and prudent management of the subsidiary. In the circumstances where a financial institution proposes to “ratify” documents already approved by the parent company’s Board such ratification must encompass some localization, as well as, the elements in section 7.4 of the Guideline.
18.	3.2(b)(i)	<ul style="list-style-type: none"> • insert after the words terrorism financing the following “Counter Proliferation Financing” • Remove “AML/CFT and replace with “AML/CFT/CPF” or consider ‘collectively (“AML”)’ if repeated in the Guideline. 	<ul style="list-style-type: none"> • Amended • Amended
19.	3.2(b)(iii)	<ul style="list-style-type: none"> • This clause sets out the Board’s responsibility to approve the Company’s risk philosophy and risk limits. A definition for “risk philosophy” should be inserted in the Draft Guideline. Clarification is also being sought on the difference between Clause 3.2b (iii) and Clause 3.2d. 	<ul style="list-style-type: none"> • Changed from “risk philosophy” to “risk appetite” which is defined. Clause 3.2(b)(iii) deleted and subsumed in clause 3.2(d). Clause 3.2(b) iii has been deleted in the final Guideline.
20.	3.2(b)(vi)	<ul style="list-style-type: none"> • Can any of the following be delegated either to the Chairman of the Board or the CEO: <ul style="list-style-type: none"> ○ the selection of the CEO, 	<ul style="list-style-type: none"> • The requirement as worded in the Guideline is aligned to international best practice. Further, it is not considered best practice for one person to select/appoint the CEO or key members of staff.

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
		<ul style="list-style-type: none"> ○ key members of senior management and heads of the control functions; and the overseeing of their performance. ● We recommend that the executive or line manager conducts the review for the heads of the control functions. ● Consider inclusion of highlighted area: the selection of the CEO and receive relevant information regarding the selection of key members of senior management and heads of the control functions; and oversee their performance. 	<p>It should however be noted that as worded the Board may approve these matters and, as such, a nomination committee of the Board may select the CEO with the Board having the ultimate approval. Further, typically control functions (that is, Chief Internal Auditor, Chief Risk Officer and Chief Compliance Officer) have dual reporting responsibilities, to the Board/Board Committee and the CEO. Consequently, and in accordance with best practice, the incumbents in those functions should be selected, and overseen by the Board or a committee of the Board.</p> <ul style="list-style-type: none"> ● Same response. ● Same response.
21.	3.2(d)	<ul style="list-style-type: none"> ● Insert the words: “or equivalent officer, if applicable” after CRO; 	<ul style="list-style-type: none"> ● The Guideline has been amended at the first reference to the Chief Risk Officer at section 2.3 to address the issue of equivalent officers who may have different titles but perform the chief risk officer function. (See footnote 5).

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
22.	3.2(g)	<ul style="list-style-type: none"> • The words "and the industry" should be inserted after the words " and risk appetite". • Consider inclusion of highlighted area: Oversee the financial institution’s approach to compensation, including monitoring and reviewing the executive compensation framework and assessing whether it is aligned with the financial institution’s risk culture and risk appetite. 	<ul style="list-style-type: none"> • The Central Bank is of the view that the requirements provided for the determination of salary are sufficient for the purposes of the Guidelines. While it is understood that industry averages may be considered said averages must be considered in light of the risk appetite and risk culture of each institution. Further, the omission of the words does not negate the institution considering same in determining appropriate compensation levels. • The Central Bank is of the view that the clause is appropriately worded as it allows not just for a high-level review but a more granular approach as necessary.
23.	3.4	<ul style="list-style-type: none"> • This requirement is ambiguous and subjective. What frequency constitutes regular communication, what constitutes an effective relationship between insurer and regulator and what constitutes a material issue? 	<ul style="list-style-type: none"> • The requirement has been updated to include more details surrounding this issue. However, the frequency of communication etc. is aligned to the individual risks of each institution, which would vary depending on business model, size complexity and specific transactions being engaged in by the institution. It should be noted that this requirement is in addition to communication regularly scheduled by the Central Bank with the institution such as quarterly meetings.

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
		<ul style="list-style-type: none"> • The Board should ensure that the financial institution maintains an effective relationship with the Central Bank through regular communication, including timely notification of material issues and convening meetings when requested. “Timely notification” is subject to interpretation so consider specifying expectations. • We suggest that sub-section (d) be revised to read, “Other supervisory findings or expectations that the Central Bank <u>reasonably concludes</u> should be important to Board members <u>within the context of this Guideline</u>.” • Sections 3.4 and 3.5 both speak to meetings with the Central Bank for essentially similar reasons. Please clarify the rationale for separating these sections. We suggest that these sections be combined to avoid any ambiguity. 	<ul style="list-style-type: none"> • What is considered timely would vary depending on the nature of the business of the financial institution, size, complexity, its level of risk and any particular transaction proposed or engaged in by the institution. It would therefore not be appropriate to indicate a specific expectation and financial institutions would be expected to exercise good judgment in this regard. • This clause was amended to state “Other supervisory findings or expectations that <i>in the opinion of</i> the Central Bank should be important to Board members” which more accurately conveys the intention of the clause. • Sections 3.4 and 3.5 have been amended to clarify the expectations related to meetings between the Central Bank and the Boards of financial institutions.
24.	3.4(c)	<ul style="list-style-type: none"> • We are of the view that, while financial institutions have a duty to maintain effective communication with the CBTT on prescribed issues, the CBTT’s involvement in the appointment of directors and officers should be limited to its assessment of such 	<ul style="list-style-type: none"> • It is essential and in keeping with international best practice that the supervisor engages in open dialogue with financial institutions on the issues highlighted as they are important potential sources of risk to financial institutions and by extension the financial system. Further, the

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
		<p>individuals against its robust fit and proper criteria as authorized by the legislation. This section proposes to confer additional powers on the CBTT further to those created by the FIA by becoming involved in operational and management issues, succession planning, and compensation.</p> <ul style="list-style-type: none"> • Consider redraft: The financial institution’s culture, director and senior management succession planning and compensation and incentives frameworks; and • Note: In most companies, acceptable governance is that the Board approves the CEO and authority for hiring management and setting compensation resides with the CEO and head of HR. The Board approves and oversees the incentive and compensation frameworks versus individual pay 	<p>Central Bank already has a wide range of powers under the FIA. For example, pursuant to section 86 of the FIA, the Bank can issue compliance directions to a licensee, financial holding company, controlling or significant where, inter alia, it is committing, or is about to commit, an act, or is pursuing or is about to pursue a course of conduct, that may directly or indirectly be prejudicial to the interest of depositors. The compliance direction can require the person to cease and desist or take some action to minimize the prejudice.</p> <ul style="list-style-type: none"> • Amended to include the word “frameworks” • Noted. See 3.2 (b) (v) of the Guideline
25.	3.5	<ul style="list-style-type: none"> • The requirement for members of the Board to meet periodically with the Central Bank upon request seems excessive given that the Board’s discussions relating to strategic 	<ul style="list-style-type: none"> • Open dialogue on the matters highlighted is in keeping with international best practice and intended to supplement and clarify as necessary information that may be obtained in the usual

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
		<p>direction, performance, governance, risks, and risk management etc. are documented in the board packages and minutes of Board and Committee meetings, which are already reviewed by CBTT on a regular basis.</p> <ul style="list-style-type: none"> • In relation to periodic meetings between the Board and representatives of the Central Bank “on request”, members are of the respectful view that the frequency of such meetings should be specifically stated. Further, we seek clarification as to whether the meetings are to be scheduled on request of the Board or Central Bank. 	<p>review of minutes. This is standard supervisory practice and occurs at present. The Central Bank may request meetings with the full board or selected members of the board e.g. Audit or Risk Committees Chairs to discuss certain matters where warranted. Such meetings may be requested inter alia prior to, or after an on-site examination of the licensee, if there are matters of concern or as an aspect of heightened oversight for a systemically important financial institution. Additionally, the frequency of such meetings will vary depending on the size, complexity and risk profile of the financial institution.</p> <ul style="list-style-type: none"> • These are meetings generally scheduled at the behest of the Central Bank. It would not be possible to determine in advance for each financial institution to which this Guideline is applicable the frequency of these meetings. While indeed there may be a set schedule for particular institutions meetings may be required outside of these schedules if specific issues arise during the course of supervision of the entity. This is a standard supervisory practice. The Central Bank may request meetings with the full board or selected members of the board e.g. Audit or Risk Committees Chairs to discuss certain matters where warranted. Such meetings may be requested inter alia prior to or after an on-site examination of the licensee, if there are

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
		<ul style="list-style-type: none"> In addition to meetings convened by the Central Bank with the Board, consider allowing the Board to request meetings with the Central Bank. 	<p>matters of concern or as an aspect of heightened oversight for a systemically important financial institution.</p> <ul style="list-style-type: none"> The Guideline has been amended to clarify that meetings may be initiated by the Board in clause 3.5.
26.	3.6	<ul style="list-style-type: none"> We recommend high-level Board oversight and approval of the business continuity programme as well as the risk appetite relative to business disruptions. Highly specific approval of individual continuity and recovery plans may prove time-consuming. It is recommended that the Board’s role in BCP be oversight and approval of the BCP policy. The approval of the plans is considered more operational and can be delegated by Management. 	<ul style="list-style-type: none"> Amended to refer to the approval of the policy/framework by the Board.
<i>Corporate Culture and Values</i>			
27.	3.10	<ul style="list-style-type: none"> Include measures for the appointment of members who serve on numerous boards in particular where there are potential conflicts. In addition to defining acceptable and unacceptable behaviors and establishing an 	<ul style="list-style-type: none"> This is treated with in the fit and proper Guideline, which must be read in conjunction with this Guideline. This is addressed at clause 3.14 of the Guideline.

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
		<p>investigative process, the Board in setting the ‘tone at the top’ should ensure that senior management and employees are aware of the disciplinary and other actions that will be taken to address transgressions of codes and standards.</p>	
28.	3.10(c)	<ul style="list-style-type: none"> • Remove “Recognize”. • Also, consider greater emphasis on the need for whistle-blowing mechanisms / protections other than the reference to “with protection from reprisal” in paragraph 3.10 (c). 	<ul style="list-style-type: none"> • Amended. • Whistleblowing is more comprehensively addressed in the fit and proper Guideline..
29.	3.11	<ul style="list-style-type: none"> • Consider inclusion of highlighted area: The Board should oversee and approve how, and by whom, legitimate material concerns of misconduct should be investigated and addressed; whether by an objective independent internal or external body, senior management and/or the Board itself or external body, or senior management with reporting to the Board for guidance, direction or decision as appropriate. 	<ul style="list-style-type: none"> • The Central Bank considers that the clause as worded does not disallow reporting, guidance and decision by the Board as appropriate.
<i>Risk Appetite, Management and Control</i>			
30.	3.12	<ul style="list-style-type: none"> • The sentence is cumbersome with repetitive use of the word “and”. Suggestion to break up the sentence so that it reads: “The Board should approve an Enterprise-wide Risk 	<ul style="list-style-type: none"> • Amended

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
		<p>Framework that sets out basic goals, benchmarks and limits, with respect to the financial institution’s risk appetite. In doing so, they should ensure proper alignment with the financial institution’s strategic, capital and financial plans, as well as its compensation practices.”</p>	
31.	3.13	<ul style="list-style-type: none"> It is recommended that the description of the second line of defence from Institute of Internal Auditors (IIA) be utilized. The second line of defence facilitates and monitors the implementation of effective risk management practices by the first line and assists in defining the target risk exposure and reporting adequate risk-related information throughout the organization. The current description will not promote full ownership of risk management by the first line. 	<ul style="list-style-type: none"> Amended to include the IIA’s description of the 2nd line of defence.
32.	3.13(c)	<ul style="list-style-type: none"> Reposition the phrase in parenthesis towards the end of the sentence, consistent with referencing of other lines of defence at (a) and (b). 	<ul style="list-style-type: none"> Amended
33.	3.14	<ul style="list-style-type: none"> Suggested re-wording for better flow, as follows: “The risk governance framework should outline procedures for escalation and notification to the Board when stated risk 	<ul style="list-style-type: none"> The current wording adequately represents the intention of this clause.

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
		limits are breached, including disciplinary actions for excessive risk-taking.”	
34.	3.15	<ul style="list-style-type: none"> There is repetition of the word “management”. The suggestion is to amend the second reference to the word “management” and substitute the word “supervision” so that it reads: “The Board must ensure that management is held responsible and accountable for ongoing supervision of the financial institution’s risk. 	<ul style="list-style-type: none"> The word “management” is used as both a noun and a verb in this sentence with different meanings. The act of management vs supervision is intended as management involves a higher level of complexity and oversight. However, for clarity the first use of the word “management” has been changed to “managers”.
35.	3.16	<ul style="list-style-type: none"> We recommend that compliance policies that are not specific to AML/CFT and FATCA/CRS be approved by the Head of the respective business unit, and the Compliance Managers with approval from the Chief Compliance Officer since these compliance programs are already approved by the Board. 	<ul style="list-style-type: none"> Amended to reflect that the Board is to approve the compliance framework. Individual compliance polices, other than those that are under applicable legislation, which must be approved by the Board, can be approved by the head of the compliance function.
36.	3.16	<ul style="list-style-type: none"> Consider inclusion of highlighted area: The Board should approve compliance policies that are communicated to all staff. The compliance and/or internal audit function should assess the extent to which policies are observed and report to senior management and, as appropriate, to the Board on how the financial institution is managing its compliance risk. The function 	<ul style="list-style-type: none"> Amended

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
		<p>should also have sufficient authority, stature, independence, resources, and access to the Board. The compliance and/or internal audit function should, among other things, routinely monitor compliance with laws, corporate governance rules, regulations, codes, and policies to which the financial institution is subject.</p>	
<i>Oversight of Senior Management</i>			
37.	3.20	<ul style="list-style-type: none"> Consider whether this paragraph should emphasize that the Board should hold senior management accountable for their actions and articulate the consequences if actions are not in line with the institution’s values, risk appetite and culture. 	<ul style="list-style-type: none"> Amended
<i>Succession Planning</i>			
38.	3.22	<ul style="list-style-type: none"> Delete words in the last sentence after the word “appropriate” so that it reads: “The Board should actively engage in succession plans for the CEO and other key positions, as appropriate.” Succession planning practices refer to the nomination, orientation and training of new directors as well as persons identified as possible successors to senior management and for other critical functions 	<ul style="list-style-type: none"> Amended. Amended
39.	3.24	<ul style="list-style-type: none"> It is recommended to change to “The Board should ensure that management has a 	<ul style="list-style-type: none"> Amended. The requirement for periodic training is also addressed in clause 4.9 of the Guideline.

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
		suitable training program in place for identified senior management successors” as opposed to the BOD instituting such a training program. At the level of the BOD, the training should be directed to new directors with periodic training to keep members apprised.	
40.	3.25	<ul style="list-style-type: none"> Consider inclusion of highlighted area: Persons identified as potential successors to senior management should be familiar with the laws, regulations, codes and guidelines governing the institution’s operations. 	<ul style="list-style-type: none"> Amended
41.	3.27	<ul style="list-style-type: none"> Staggering terms of directors – Perhaps this should be a mandatory requirement. Please clarify what is meant by “staggering the terms of directors”. 	<ul style="list-style-type: none"> While considered good practice, this will be left to the discretion of the company. This means that all directors do not demit office at the same time but rather the terms of service for elected directors will vary. Elections for the directors of a staggered board will occur as terms expire.
BOARD QUALIFICATIONS AND COMPOSITION			
<i>Board Composition</i>			
42.	4.2	<ul style="list-style-type: none"> The Board should comprise a sufficient number of independent directors and the chair of the Board should be independent. The Central Bank should consider clarifying what is considered as a “sufficient number of independent directors” based on the size 	<ul style="list-style-type: none"> In accordance with clause 2.4 of the Guideline institutions should align their corporate governance policies and practices with this Guideline as far as practicable. This is in light of the recognition of differences in the size, complexity and risks of the institutions to which

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
		<p>and risk of the institution, as this can be subjective. Consider smaller institutions (e.g. brokers) and how they will comply with the requirements for independent directors and chair. Consider including that where the Chair holds executive duties, that mitigating measures for continued checks and balances be implemented such as having a larger number of independent directors on the board.</p> <ul style="list-style-type: none"> • Please provide clarity on what the Central Bank determines to be a “sufficient number”. • The clause, ‘majority of independent directors’ may lead to ambiguity when interpreting section 5.32, which uses the language ‘sufficient numbers on boards of directors’. Please provide clarity. • Will there be a transition period for licensees, which do not presently comply with Section 4.2 of the Guideline? • We recommend that the CBTT permit boards to determine the appropriate ratio of independent directors, adopting a principles based approach (as articulated in Section 2.4), subject to the provisions of the Financial Institutions Act. Such an approach 	<p>this Guideline applies. The Board of a financial institution should at all times, however, comprise a sufficient number of independent directors to meet all its obligations as contained in relevant legislation e.g. the audit committee. The Guideline has been amended to reflect this requirement.</p> <ul style="list-style-type: none"> • This will vary based on the size, risk and complexity of the financial institution and statutory requirements. • Section 4 has been amended to provide further clarity. • A grace period of one year will be granted for entities not currently meeting this requirement to transition. • A financial institution that is not a SIFI can, subject to legislative requirements, determine the number of independent directors required based on its size, complexity and risks of its business. Therefore, one structure is not proposed for all institutions. In the case of SIFIs

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
		<p>would address the underlying purpose of the provisions to ensure that boards operate effectively and independent of management. We do not believe that any one structure or process guarantees independence and the appropriateness of the board composition should take into account the particular circumstances of the company.</p> <ul style="list-style-type: none"> • Further, we believe the principles based approach and proportionality principle should apply to all financial institutions to which the Guideline applies, including those deemed systemically important financial institutions (“SIFI”). This position applies to Section 4.2 and the other provisions throughout the Guideline that suggest a higher threshold or requirement for SIFIs. • We agree with the emphasis placed throughout the Guideline on ensuring diverse and independent boards. The subsidiary board composition policies also emphasize the importance of diverse boards, requiring that, for operating subsidiaries, the board consists of a significant percentage of directors who are not involved in the day-to-day management of the company to provide outside perspective and independence of judgment. We believe meaningful independent judgement may be satisfied 	<p>while the majority of directors should comprise majority independent and non-executive directors, as with other financial institutions, the SIFI can determine the number of independent directors required once the number meets or exceeds the independent majority requirement.</p> <ul style="list-style-type: none"> • Proportionality and a principles based approach will be considered in assessing compliance of an institution with any aspect of the Guideline. However, where minimum requirements are stated financial institutions are expected to at least comply with these minimum requirements. • Noted. Independence will be determined in accordance with legislative criteria.

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
		<p>with directors affiliated with the company and licensee but from outside the primary business.</p> <ul style="list-style-type: none"> • We suggest that consideration should be had for the following important elements of the composition of the Board of a financial institution to be set out in the substantive legislation, which governs financial institutions: <ul style="list-style-type: none"> · The balance of independent vs non-independent Directors; · Not having the Chairman of a financial institution chair any sub-committees. 	<ul style="list-style-type: none"> • Noted. This will be considered during any amendment exercise of relevant substantive legislation.
<i>Board Member Selection and Qualifications</i>			
43.	4.6	<ul style="list-style-type: none"> • This section should align with the Fit and Proper Guideline i.e. having a conflicts of interest policy, disclosures etc. The F&P is clear that having a conflict of interest does not necessarily mean that a person cannot be considered suitable. 	<ul style="list-style-type: none"> • This is detailed at 5.30 of the Guideline. Additionally the Fit and proper Guideline should be read in conjunction with this Guideline.
44.	4.7	<ul style="list-style-type: none"> • To ensure that Board members acquire, maintain and enhance their knowledge and skills, and fulfil their responsibilities, the Board should ensure that members participate in induction programmes. This appears to be the Board ensuring that they themselves participate in training programmes. Perhaps consideration could 	<ul style="list-style-type: none"> • The Guideline includes the requirement for self-assessments by the board, which will address issues of this nature.

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
		be given to having an independent function such as audit assess this requirement on a periodic basis to ensure compliance.	
BOARD’S STRUCTURE AND PRACTICES			
<i>Organization and Assessment of the Board</i>			
45.	5.2	<ul style="list-style-type: none"> Delete the words “its structure” and substitute with the words “the structure of its meetings” so that it reads: “The Board should ensure that the structure of its meetings facilitate the time and means necessary to cover all subjects in sufficient depth and have robust discussion of issues.” 	<ul style="list-style-type: none"> This refers to both the structure of the board and the structure of the meetings. Amended to clarify accordingly.
46.	5.2	<ul style="list-style-type: none"> The Board should ensure that its structure facilitates the time and means necessary to cover all subjects in sufficient depth and have a robust discussion of issues <u>and maintain appropriate records of deliberations and decisions.</u> In addition, consider stating the Central Bank’s expectations regarding the frequency of Board meetings at least at a minimum, as some boards may choose to meet once a year. 	<ul style="list-style-type: none"> The maintenance of records of deliberations and decisions is addressed in clause 5.5. Amended to include that the frequency of meetings should be considered when determining coverage of all subjects in sufficient depth and discussion of issues. However, no minimum has been included in the Guidelines. This will be determined in accordance with the size and complexity of the business and typically embedded in the bye laws of the institution. The Central Bank will review

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
			the adequacy of the frequency of meetings as part of its supervisory assessment.
47.	5.3	<ul style="list-style-type: none"> Please define the term ‘organizational rules’ for clarity. 	<ul style="list-style-type: none"> “Organizational rules” is a synonym for Bye-Laws or other documents setting out the organizations, rights, responsibilities and key activities.
48.	5.4	<ul style="list-style-type: none"> The Board (may) should consider engaging external consultants or experts to assist in and lend objectivity to its Board evaluations. The Board should conduct regular self-assessments of the entire Board, its committees and individual board members, periodically review the effectiveness of its own governance practices and procedures, determine where improvements may be needed, and make any necessary changes. The Board may engage external consultants or experts to assist in and lend objectivity to its Board evaluations. For consideration: For this section, practice varies on conducting individual director assessments and there is literature against this. We suggest the Board” create an avenue to receive feedback on individual members.” 	<ul style="list-style-type: none"> The word “may” is appropriate. Amended to include other avenues to receive feedback on individual members as an option. The intention is to ensure that the Board has a means of evaluation of its performance, which can be achieved via self-assessment or other means of feedback.
49.	5.5	<ul style="list-style-type: none"> The Board should maintain appropriate records (e.g. meeting minutes or summaries 	<ul style="list-style-type: none"> “Upon request” and “when required” have the same effect.

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
		of matters reviewed, recommendations and resolutions made, decisions taken, and dissenting opinions) of its deliberations and decisions. These should be made available to the Central Bank upon request when required.	
<i>Chairperson’s Role</i>			
50.	5.6	<ul style="list-style-type: none"> Delete the words “with board” and substitute with the word “among” so that it reads: “The chair of the Board should provide leadership to the Board and is responsible for the effective overall functioning, including maintaining a relationship of trust among members” 	<ul style="list-style-type: none"> Amended
<i>Board Committees</i>			
51.	5.8	<ul style="list-style-type: none"> There is repetition. Consider re-wording to read: “Further, all systemically important financial institutions and Financial Holding Companies (FHCs) should establish a Risk Management Committee and a Nomination Committee”. It is suggested that the word “committee” be removed as follows “Examples of board committees include an Audit Committee, a Risk Management Committee, a 	<ul style="list-style-type: none"> These are two separate requirements. Both FHCs and SIFIs must establish a risk management committee. In the case of an FHC, this committee should be an Enterprise Risk Management Committee. The guideline has been amended to clarify this. However, nomination committees are only stated as a requirement for SIFIs. The word “Committee” was included as part of the name of the committees.

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
		<p>Nomination Committee and a Compensation Committee</p> <ul style="list-style-type: none"> • Perhaps further guidance should be provided to the smaller institutions such as the brokers whose structure/composition may not allow for the establishment of such committees. Some of these institutions may have 2-3 persons on the Board and there may not be sufficient independence to appoint persons to these ‘mandatory’ committees, especially an audit committee. In line with Basel, consider whether the Audit Committee should be mandatory for SIFIs in particular. • Similarly, with the appointment of a CRO (section 8.7). • We recommend that the Central Bank gives recognition to the establishment and execution of the committee functions at a group level and only require for the committees named in Section 5.8 to be established where they are absent at the group level. Accordingly, we recommend that section 5.8 be amended to read: <ul style="list-style-type: none"> ○ “A Board shall establish certain specialized board committees to increase efficiency and allow deeper focus in specific areas in the absence of similar 	<ul style="list-style-type: none"> • The Guideline is premised on clause 2.4, which recognizes that differences would apply depending on the size and complexity of each financial institution. Additionally, the word “should” is not mandatory. The guideline has been amended to emphasize this. Additionally, currently the Audit committee is required for all licensees and insurance companies. • See comment above. • Subsidiaries have individual governance responsibilities therefore sole reliance of these structures at the group level is not considered appropriate for financial institutions.

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
		<p><u>corporate governance committee at the group level</u>. Examples of board committees include”.</p>	
52.	5.8 (includes 5.16 and 5.20)	<ul style="list-style-type: none"> • We request that the Guideline be modified to confirm that the number and type of committees shall be determined by the board, systemically important or not, taking into account the size, nature and complexity of the company. It is our view that there may be circumstances where it is neither necessary nor appropriate for the company to have its own risk committee or nomination committee. Depending on the size, scope and complexity of the business of the company, the functions of these committees may be effectively performed by the full Board. • Further, in respect of the responsibilities of the nomination committee, we request that the CBTT clarify that, for wholly owned subsidiaries of a foreign financial institution, certain matters (including those pertaining to performance management and compensation and succession planning) may be appropriately addressed at the parent board level to limit duplication of board mandates in this regard. This further clarification would again enable boards to determine what board structures and 	<ul style="list-style-type: none"> • As worded, apart from the audit committee and the requirements for the risk / nomination committees in the case of SIFIs and FHCs, the number and size of committees can be determined by the Board, subject to applicable legislative requirements. The committees listed in the clause are examples of committees that might be appropriate as determined in accordance with the institution’s size and complexity. • See comment above. However, in the case of a SIFI, due to its risk profile or systemic importance or due to its size relative to the parent company, the Board is expected to take such further steps as are necessary to help the subsidiary meet its own corporate governance responsibilities and the legal and regulatory requirements that apply to it. The nomination and risk management committees are considered essential components of a SIFI’s corporate governance framework.

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
		reporting best contribute to an effective chain of oversight and acknowledging that boards of subsidiary financial institutions will not necessarily replicate all corporate governance activities of the parent. Depending on the size, scope and complexity of the subsidiary’s operations, in certain circumstances the parent may appropriately and effectively perform certain of the roles and responsibilities set out in the Guideline.	
53.	5.11	<ul style="list-style-type: none"> This clause recommends “occasional” rotation of members and of the Chair of Committees. We are of the respectful view that this is vague and recommend that it should be clarified. 	<ul style="list-style-type: none"> The Central Bank prefers to refrain from being too prescriptive in this regard. What is “occasional” would vary depending on the nature of the committee and the type of institution, and should be included in the financial institution’s Board charter.
54.	5.12	<ul style="list-style-type: none"> Board attendance and recusals are very important to be included in the minutes. 	<ul style="list-style-type: none"> Amended
<i>Audit Committee</i>			
55.	5.13	<ul style="list-style-type: none"> “Each financial institution should establish an Audit Committee chaired by an independent director and the majority of members must be independent. In establishing its Audit Committee, financial institutions are required to adhere to the requirements outlined in section 36 of the FIA, 2008 and section 68 of the IA.” For 	<ul style="list-style-type: none"> Amended to include reference to the role of the CEO and Chairman on the Audit Committee. With respect to the CEO, while they may be invited to the Audit Committee meeting for the specific purpose of answering questions or providing specific information, the independence of the committee is not to be impeded in this process.

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
		<p>consideration: CBTT may wish to add for guidance that CEO shall not be a member of the Audit Committee and the Chairman of the Board may be an ex-officio member.</p>	
56.	5.15(c)	<ul style="list-style-type: none"> Please clarify what is the scope of the oversight function of internal and external auditors 	<ul style="list-style-type: none"> With respect to external audits, this includes matters such as auditor selection and rotation policies, ensuring auditor independence during the audit, review of performance and retention of auditors and monitoring of audit findings and recommendations. With respect to internal audit this includes review or internal auditors' evaluation of the effectiveness of governance, risk management, and control processes and monitoring the compliance of the institution with the internal audit recommendations. The oversight function is at a high level and should ensure the existence of proper systems and allocation of responsibilities for the day to-day monitoring of financial controls with detail oriented work only becoming required where an intervention is necessary.
57.	5.15(d)	<ul style="list-style-type: none"> A similar statement as in Section 10.3 (e) should be repeated in this section. 	<ul style="list-style-type: none"> Amended to include “approving the appointment or termination of appointment of the head of internal audit, assessing their performance and ensuring that their primary reporting line is to the Board (or the Audit Committee).” as a function of the Audit Committee.

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
58.	5.15(f)	<ul style="list-style-type: none"> • In addition to audit reports, responsibilities should include receipt of inspection reports from the Central Bank and ensuring that corrective actions are being taken in a timely manner to address deficiencies. • Consider including the responsibility for developing and implementing a policy on the engagement of the external auditor to supply non-audit services, including approval of such services and how the auditor’s in-dependence and objectivity shall be preserved in such instances. 	<ul style="list-style-type: none"> • Amended to include examination reports. Now section 5.15 (g). • Restrictions on these additional services are contained in both the IA and FIA.
<i>Risk Management Committee</i>			
59.	5.18	<ul style="list-style-type: none"> • The Bank may have many policies which address various risks and each of which may have a different review frequency. Annually may be too soon for some of these policies. 	<ul style="list-style-type: none"> • The Guideline has been amended to clarify that the annual review relates to the risk framework. Once this is reviewed, a determination can be made on which individual policies require updating to bring them in line with identified changes.
60.	5.18(b)	<ul style="list-style-type: none"> • Reviewing the financial institution’s risk policies at least annually - This requirement can be onerous. Suggested review timeframe of 2 years or more frequently if there is a material change. 	<ul style="list-style-type: none"> • The Guideline has been amended to clarify that the annual review relates to the risk framework. Once this is reviewed a determination can be made on which individual policies require updating to bring them in line with identified changes.
<i>Nomination Committee</i>			

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

No.	Section / Clause	Comments	Response
61.	5.21	<ul style="list-style-type: none"> If the SIFI has to be restructured based on the intervention of the Regulator, the Regulator should recommend that the Nomination Committee be installed as part of the restructuring exercise. If however, based on the review of the governance structures, systems and internal controls in place at the SIFI, the Regulator is satisfied, a Nomination Committee should not be required. In any event, the Nomination Committee’s span of control should be limited to directors and not management to ensure there is sufficient independence and segregation and to avoid the concentration of power and degree of influence. 	<ul style="list-style-type: none"> The Central Bank considers that given the importance of the role of a nomination committee and the potential risk to the financial system posed by SIFIs it is essential that this committee exists in a SIFI Board structure. However, the Guideline has been amended to remove the purview of the committee over management personnel.
62.	5.22	<ul style="list-style-type: none"> Consider rewording to read: “The Nomination Committee should analyse the knowledge, experience and competence of nominees for suitability of a role on the Board and their ability to discharge responsibilities in accordance with the role.” 	<ul style="list-style-type: none"> Amended
Compensation Committee			
63.	5.24	<ul style="list-style-type: none"> The sentence is too long and contains five references to the word “and”. Suggested rewording as follows: “The Board may establish a Compensation Committee to oversee the remuneration system’s design and operation, while ensuring remuneration 	<ul style="list-style-type: none"> Amended to state: “The Board may establish a Compensation Committee to oversee the remuneration system’s design and operation. The Compensation Committee should ensure that remuneration is appropriate and consistent with the financial institution’s culture, long-

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

		<p>is appropriate and consistent with the financial institution’s culture, long-term business goals, risk appetite, performance control environment, as well as any legal or regulatory requirements.”</p> <ul style="list-style-type: none"> • To clarify the sentence: “No director should be involved in deciding their own remuneration outcome.” If the remuneration of directors will be overseen and determined by the Compensation Committee, then does the sentence need to be there at all? Suggestion to consider removing. 	<p>term business and risk appetite, performance and control environment, as well as, with any legal or regulatory requirements.”</p> <ul style="list-style-type: none"> • Amended. The sentence has been deleted.
<p>64.</p>	<p>5.26</p>	<ul style="list-style-type: none"> • Further guidance/clarification is required with regards to the issues that should be covered under the policies and procedures required for discharging the duties of the Compensation Committee/Board (in the absence of a Committee). • Clarification is also required about the review of remuneration on an annual basis. Is this meant to be a review of the remuneration system or the current remuneration structure (base salaries, salary bands, bonuses, other incentives and employee benefits)? What is this review meant to accomplish/cover? 	<ul style="list-style-type: none"> • Where there is no Compensation Committee, the entire board will be charged with the responsibility for determining appropriate compensation for officers and directors. There should be some remuneration policy guiding that decision making. • Amended to state: “The Board must also ensure that a formal process is in place to review the framework for remuneration plans, processes, and outcomes at least annually.”

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

		<ul style="list-style-type: none"> Consider inclusion of highlighted area: Where the Board chooses not to establish a Compensation Committee, the Board should establish and document policies and procedures to discharge its duties and responsibilities effectively in the absence of a Compensation Committee. The Board must also ensure that a formal process is in place to review remuneration framework at least annually. 	<ul style="list-style-type: none"> Clarity has been provided on the intention of the review by an amendment that states: “The Board must also ensure that a formal process is in place to review remuneration plans, processes and outcomes at least annually.
<i>Conflicts of Interest</i>			
65.	5.29	<ul style="list-style-type: none"> This section uses the defined words “conflict of interest” in the context of a group. The definition however appears to be drafted to address an individual and benefits to him/her specifically. In addition to reviewing the inclusion of the definition in its entirety, we suggest reviewing its use in this context. 	<ul style="list-style-type: none"> The definition of conflicts of interest has been amended to include a benefit to a company connected to a person. It has also been extended to include conflicts of duty that result from performing two or more roles that conflict with each other.
66.	5.30	<ul style="list-style-type: none"> The requirement for a formal written conflict of interest policy and compliance process for implementing the policy as outlined in this section seems to be specifically for the Board as opposed to officers and directors as per the Fit and Proper Guideline. If so, then is the expectation is for a company to have a separate approach for directors vs the rest of the company for conflict of interest? This appears to contradict the requirement outlined in the Fit and Proper Guideline. 	<ul style="list-style-type: none"> The Guideline must be read in conjunction with the Fit and Proper Guideline. The Central Bank considers that the two Guidelines complement each other rather than contradict each other. Therefore, the Conflicts of Interest Policy should be holistic and address ‘conflicts of interest’ at all levels of the organization. The Guideline has been amended to clarify this issue.

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

67.	5.30	<ul style="list-style-type: none"> Does this have to be a standalone policy or guidance can be captured within other bank policies, which are accessible to the board? 	<ul style="list-style-type: none"> The policy does not have to be a stand-alone policy. The policy must however specifically apply as intended in the Guideline both in terms of content and target.
68.	5.31	<ul style="list-style-type: none"> It is unclear what kind of public disclosure is expected/being referred to with respect to conflict of interest. Is it that the company is expected to disclose its policy on conflict of interest and that the Board is expected to determine the approach to implementing/executing this requirement e.g. content, medium etc.? Additional details/guidance is required for clarity. Once this is made clear then it would be easier to ensure that a board approved process is implemented, where necessary. The Board should oversee and be satisfied with the process by which appropriate public disclosure is made, and/or information is provided to the Central Bank, relating to the financial institution's policies on actual, potential and perceived conflicts of interest.(.)To remove extra full stop This section can also include that the Board is required to submit to the Central Bank a statement or certificate from the 	<ul style="list-style-type: none"> The board is expected to consider appropriate means of disclosure of its policy on conflicts of interest in accordance with applicable legislative criteria. The board may as part of this process also consider disclosing actual/perceived conflicts of interest in, for example, in its annual report. The Guideline has been amended to include a mandatory disclosure of conflicts of interest to the Central Bank. Amended Both the FIA and IA require the Board to submit an annual statement on the institution's internal controls and risk management. This

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

		Board/Corporate Secretary assuring that all steps were taken to ensure there is no conflict/potential conflict of interest.	requirement will capture issues related to conflicts of interest.
<i>Role of Independent Directors</i>			
69.	5.32	<ul style="list-style-type: none"> In the last sentence, should include ‘guaranteeing that the interest of all the shareholders and stakeholders will be taken into account...’ 	<ul style="list-style-type: none"> Amended to remove the word “shareholders” and replace it with the word “stakeholders”.
70.	5.32	<ul style="list-style-type: none"> Please provide clarity on what the Central Bank means by “genuinely independent”. 	<ul style="list-style-type: none"> An independent director is one that meets all independence requirements outlined in relevant legislation and Guidelines. Wording has been amended.
71.	5.33	<ul style="list-style-type: none"> This section requires independent directors to meet, in the absence of senior management, at least annually with the external auditor and the heads of the internal audit, compliance, and legal functions. Are these separate meetings or individual meetings with each of these heads? And who would be the senior management that should be absent from the meeting? CEO/COO/executive directors/other executive level persons? This needs to be clearly explained for avoidance of doubt and/or inconsistent application. 	<ul style="list-style-type: none"> The section has been amended to specify reference to the absence of the CEO, executive directors and other executive level personnel, which includes the COO. The reference to senior managers has been removed since it is understood that the heads of internal audit, compliance and legal are likely to be members of senior management.

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

<p>72.</p>	<p>5.34</p>	<ul style="list-style-type: none"> • Are there any specific timeframes within which the Board must, for an independent director who has notified the Board of a change in circumstances that may affect his/her status as an independent: <ul style="list-style-type: none"> · Review the designation of the independent director in light of the change · Notify the director in writing of its decision to affirm or change his/her designation · Notify CBTT of the change in status of an independent director, including the rationale for the decision <p>Can any guidance be provided concerning the approach and/or considerations that the Board should take/use in their deliberations?</p> • This clause requires the Company to notify the Central Bank where the status of an independent director has changed, however, no timeframe for such notification has been inserted. It is recommended that this should be done within 30 days of the change and the Draft Guideline should be amended accordingly. • Consider including examples of criteria that would be considered circumstances that may impair the status of an independent director e.g. becomes an employee of the 	<ul style="list-style-type: none"> • Independence is a question of fact in each case. However, both the FIA at section 36(6) and IA at section 68 (5) contain criteria to be applied in the determination of a director’s independence. • Amended to include a “20 business days” timeframe from the director’s disclosure for notification to the Central Bank. The financial institution’s internal process should therefore be such that the entire process from disclosure to notification to the Central Bank occurs with 20 business days. • Independence is a question of fact in each case. However, both the FIA at section 36(6) and IA at section 68 (5) contain criteria to be applied in the determination of a director’s independence
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CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

		<p>institution or group; has engaged in a material business relationship with the company either directly or as a shareholder, director or senior employee of a body that has such a relationship with the institution; is in receipt of additional remuneration from the institution other than the director’s fees; has close familial ties with directors or senior employees; cross-directorships; has become a significant shareholder.</p>	
ROLE OF SENIOR MANAGEMENT			
73.	6.4	<ul style="list-style-type: none"> This clause provides that senior management should keep the Board informed about material matters, including changes in business strategy or risk strategy or appetite. It is our recommendation that this should be reworded as changes to business strategy, risk strategy and appetite cannot be made without first obtaining Board approval. 	<ul style="list-style-type: none"> Amended to state that Senior Management must inform the board of “<i>proposed</i> changes in business strategy, risk strategy/risk appetite” in recognition of the fact that risk appetite and business strategy is a matter for the board.
GOVERNANCE OF CONGLOMERATES / CORPORATE GROUPS			
74.	7.0	<ul style="list-style-type: none"> This section, which deals with Governance of Conglomerates/Corporate Groups, does not clearly indicate the scope of coverage i.e. whether the parent companies referred to are solely licensees (with subsidiaries which may or may not also be licensees) or also to the non-financial parent companies of licensees. The latter is a much wider scope, which may be more difficult to 	<ul style="list-style-type: none"> For the purposes of the corporate governance principles in these Guidelines, the terms “parent company” and “group” signify a financial group. The Section has been amended to state “Governance of Financial Groups and Financial Holding Companies.”

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

		enforce as licensees cannot be held accountable for the decisions of their parent companies unless those parent companies are themselves licensees.	
<i>Parent Company Boards</i>			
75.	7.3(f)	<ul style="list-style-type: none"> At the end of the sentence, instead of“...and to ensure effective supervision of the group;” change ‘supervision’ to ‘oversight’ to distinguish from regulatory supervision. 	<ul style="list-style-type: none"> The intention of all these requirements is that the result is effective regulatory supervision. Therefore, no change is required.
RISK GOVERNANCE FRAMEWORK			
<i>Risk Management Function</i>			
76.	8.1	<ul style="list-style-type: none"> Sentence is long-winded and repetitious. Suggested re-wording as follows: “The risk management framework must enable the identification, measurement, and continuous monitoring of all relevant and material risks on a group and institution-wide basis. This should be supported by robust management information systems that facilitate the timely and reliable reporting of risks, as well as promotes the integration of information across the institution...” 	<ul style="list-style-type: none"> Amended
77.	8.3	<ul style="list-style-type: none"> This section indicates that “financial institutions should have an effective independent risk management function, under the direction of a CRO or equivalent officer, with sufficient stature, independence, resources and access to the Board”. More guidance is required to 	<ul style="list-style-type: none"> This clause refers to the risk management function separate and apart from the other control functions. All control functions are expected to have sufficient authority, stature, independence, resources, and access to the Board (see clause 3.16 and 3.17 of the

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

		<p>provide adequate clarification on the criteria to be used/the expectations of CBTT re stature, independence, resources and access to the Board. Most of these are impacted through reporting lines. Given that the guideline speaks to the risk management function, compliance function and internal audit function, is it that all three are expected to have the same types of reporting lines/arrangements? Or is it supposed to line up with the requirements outlined under Role of CRO (sections 8.7 to 8.11).</p>	<p>Guideline with further more specific details in sections 9 and 10 of the Guideline)..</p>
78.	8.5	<ul style="list-style-type: none"> Clarification is required on what is meant by “The risk management function should have a sufficient number of employees who possess the requisite experience and qualifications...” What minimal qualifications are required? What constitutes a sufficient number and what criteria should be used to scale that number up or down? Are there specific types of experience that would qualify besides specifically risk management experience? 	<ul style="list-style-type: none"> Prescriptive requirements with respect to qualifications would not be appropriate in this Guideline. Each financial institution should be aware of and be able to assess sufficiency of qualifications of its employees to perform a specific job function. Additionally, with respect to the number of required employees this would vary depending on the size, risk and complexity of business of the financial institution.
79.	8.6	<ul style="list-style-type: none"> Consider including specific requirement for the CRO to identify, monitor, control and report on new or emerging risks and Bribery and Corruption risk. To avoid conflicts of interest, risk managers should not be charged with overseeing 	<ul style="list-style-type: none"> Bribery and Corruption risk will be captured in the broad requirement at 8.5 for the CRO to identify and assess “<i>material individual, aggregate and emerging risks</i>”. Amended accordingly

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

		<p>activities for which they previously held line responsibility or participated in business decision-making or the approval process. For consideration: This seems a heavy restriction as many business managers acquire the experience to become skilled CROs. We suggest a redraft to address individual relationships e.g. risk managers should not be placed nor place themselves in a conflict of interest with regards to accounts, or relationships which they previously held line responsibility or participated in business decision making or the approval process.</p>	
<i>Role of the CRO</i>			
80.	8.11	<ul style="list-style-type: none"> • This section proposes to confer additional powers on the CBTT further to those created by the FIA by becoming involved in operational and management issues, succession planning, and compensation. As it relates to the CRO and compensation, such a role would be one among many, which forms part of a compensation structure. • Consider redraft: Oversight of appointment, dismissal and other changes to the CRO position should be approved by the Board or its Risk Management Committee. The CRO’s performance, compensation, and budget should be reviewed by the Risk Management Committee or the Board, and 	<ul style="list-style-type: none"> • The clause iterates international best practice for financial institutions with respect to the procedures around the independence, compensation and dismissal of the CRO the details of which reside with the Board or Risk Management Committee for determination and not the Central Bank. • The proposed amendment contains slight nuances, which may alter the intention of the clause. Therefore this proposed change has not been accepted.

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

		should not be linked to the performance of specific business lines of the financial institution.	
<i>Risk Identification, Monitoring and Controlling</i>			
81.	8.12 – 8.28	<ul style="list-style-type: none"> It is unclear, given that these sub sections follow the Role of CRO subheading (which appears to apply specifically to systemically important financial institutions, financial groups and large, complex, international and active financial institutions) whether these sections apply to all licensees or only those to which the Role of CRO subsection applies. 	<ul style="list-style-type: none"> These clauses apply to all financial institutions. Please note however the general statement contained in clause 2.4 of the Guideline regarding the recognition by the Central Bank of differences in the size and complexity of varying financial institutions and the Central Bank’s expectation for financial institutions to align their corporate governance practices with this Guideline <u>as far as practicable</u>. However, the Guideline has been amended to add further clarity to this issue.
82.	8.14	<ul style="list-style-type: none"> Are all financial institutions required to utilize stress tests and scenario analyses or only systemically important ones, financial groups and large, complex internationally active financial institutions? And with what frequency is it expected for these tests and analyses to be performed? 	<ul style="list-style-type: none"> This clause applies to all financial institutions. Please note however, the general statement contained in clause 2.4 of the Guideline regarding the recognition by the Central Bank of differences in the size and complexity of varying financial institutions and the Central Bank’s expectation for financial institutions to align their corporate governance practices with this Guideline <u>as far as practicable</u>. With respect to the frequency of these tests this must generally be determined by the financial institution as part of its risk framework and also in accordance with applicable legislative requirements. However, the Central Bank will

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

			issue frequency requirements in relation to specific areas, such as credit risk in other Guidelines.
<i>Risk Communication</i>			
83.	8.25 – 8.28	<ul style="list-style-type: none"> This section appears to focus on already identified risk categories rather than forward looking through the inclusion of new and emerging risks. There is general silence throughout the document around technology risk, which in this era should be of greater focus in strategies for risk identification and the impact on reputation, information security and privacy. 	<ul style="list-style-type: none"> Clauses 5.19 and 8.5 both treat with the need to address emerging risks. Technology risk will also be captured under operational risk, which is addressed in the risk appetite framework in Appendix I and as part of the risks to be considered by the Risk Committee.
COMPLIANCE			
84.	9.1	<ul style="list-style-type: none"> Additional guidance is required with respect to the policies and processes for identifying, assessing, monitoring, and reporting and advising on compliance risk, at least in terms of minimum content, at least for the compliance policy. Expectations with respect to the compliance function needs to be explained more explicitly. Consider redraft - The board is responsible for ensuring that a compliance function is established for the purpose of ensuring that the financial institution. 	<ul style="list-style-type: none"> The purpose of the compliance function is to assist the financial institution in managing its compliance risk, which can be defined as the risk of legal or regulatory sanctions, financial loss, or loss to reputation that a bank may suffer as a result of its failure to comply with all applicable laws, regulations, codes of conduct, and standards of good practice (together, "laws, rules and standards"). Amended.

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

85.	9.2	<ul style="list-style-type: none"> Consider reword of highlighted area: Senior Management is responsible for ensuring that a compliance policy is established and contains the basic principles and explains the main processes by which compliance risks are to be identified and managed through all levels of the institution. The compliance policy should be approved by the Board. 	<ul style="list-style-type: none"> Amended.
86.	9.3	<ul style="list-style-type: none"> As the second line of defence, an important role of the compliance function is to monitor legislative developments and keep the board and senior management apprised of impact on the institution’s operations as well as monitor the institution’s compliance with laws and regulations, regulatory guidelines and internal policies, and to assess the extent to which compliance is being observed and report to senior management and to the Board. 	<ul style="list-style-type: none"> Amended to include additional requirements.
INTERNAL AUDIT			
87.	10 – 10.3	<ul style="list-style-type: none"> This section, which speaks to the Internal Audit Function, does not address expectations or additional considerations for cases where the function is outsourced. 	<ul style="list-style-type: none"> Information on expectations in relation to outsourced functions such as the audit function will be published in the Central Bank’s Outsourcing Guidelines for Financial Institutions.
88.	10.0	<ul style="list-style-type: none"> In paragraphs (e) and (f), the terms “head of internal audit” and “chief auditor” are used 	<ul style="list-style-type: none"> Amended.

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

		to refer to the same position. We suggest that the Central Bank be consistent.	
89.	10.1	<ul style="list-style-type: none"> • This clause sets out the areas on which internal audit should report to the Board and senior management. It is our recommendation that compliance should also be included at this paragraph since from the following paragraphs, this appears to be intended. 	<ul style="list-style-type: none"> • Amended
90.	10.3	<p>Consider including:</p> <ul style="list-style-type: none"> • Requiring internal auditors to adhere to domestic and international professional standards • Providing the audit function with full access to all records, data, systems and processes. 	<ul style="list-style-type: none"> • Amended to include additional requirements.
91.	10.3(e)	<ul style="list-style-type: none"> • Consider inclusion of highlighted area: <ul style="list-style-type: none"> ○ Ensuring that the head of the internal audit’s primary reporting line is to the Board (or its Audit Committee), which is also responsible for oversight for the selection, oversight of the performance, and if necessary, dismissal of the head of this function... 	<ul style="list-style-type: none"> • The intention is adequately captured as currently worded.
92.	10.3(f)	<ul style="list-style-type: none"> • It is assumed that the context of this section is related solely to dismissal. If so, this should be made more explicit. Otherwise, it is noted that, being deemed an Officer in accordance with the provisions of the FIA, the Chief Internal Auditor must be approved 	<ul style="list-style-type: none"> • The clause is stated to treat with dismissal. Additionally, this Guideline is to be read in conjunction with the requirements in the Fit and Proper Guideline. However, the Guideline has been amended to provide some clarity on the notification process.

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

		by the CBTT through its Fit and Proper provisions.	
DISCLOSURE AND TRANSPARENCY			
93.	11.1, 11.4, 11.5	<ul style="list-style-type: none"> • The requirements outlined in Section 11.0 relating to disclosures and transparency seems to be requiring disclosures that are mandatory for publicly traded companies but not necessarily so for private companies. More clarity is required on the minimum requirements re disclosures and the methods by which these disclosures are made, particularly for areas such as governance, risk, major share ownership, voting rights, related party transactions, governance policy and structures etc. 	<ul style="list-style-type: none"> • The disclosures required are not specific to public companies and the mode and medium of disclosure can be tailored to suit the size and complexity of the financial institution as well as its legislative and financial reporting framework. Of importance is that relevant stakeholders are apprised of the institution’s governance framework and its compliance with same. In order to do so financial institutions should at minimum disclose annually the recruitment approach for board member selection and board composition, and whether it has board committees and how often key standing committees have met. Key points concerning its risk exposures and risk management strategies without breaching necessary confidentiality should be disclosed. For material and complex or non-transparent activities adequate information on their purpose, strategies, structures and related risks and controls should be disclosed. Disclosure should be accurate, clear and timely.
GENERAL COMMENTS			
94.	General	<ul style="list-style-type: none"> • Can the risk management and compliance functions can be combined into one unit? <ul style="list-style-type: none"> • If yes, what would be considered the minimal number of resources that would 	<ul style="list-style-type: none"> • The risk management and compliance functions should be separate. The Risk management function is responsible for overseeing the entity’s risk-taking activities

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

		<p>be considered adequate for the effective execution of this combined function?</p> <ul style="list-style-type: none"> • The guideline should clearly define “parent company” in relation to shareholding. It is currently not immediately clear whether the requirements for parent company boards under section 7.0 apply only to 100% shareholdings or to all controlling shareholders (50% shareholding or more) or to some other specific threshold of shareholding. 	<p>and assessing risks and issues independently from the business line. is expected to facilitate and monitor the implementation of effective risk management practices by operational risk management and assist risk owners in defining target risk exposure and reporting adequate risk related information throughout the organization.</p> <ul style="list-style-type: none"> • The compliance function is to assist the bank in managing its compliance risk, which can be defined as the risk of legal or regulatory sanctions, financial loss, or loss to reputation a bank may suffer as a result of its failure to comply with all applicable laws, regulations, codes of conduct and standards of good practice (together, "laws, rules and standards"). • The separation of the functions is necessary to ensure that compliance remains an independent function that is not intertwined with risk management. • The wording of section 7 has been clarified to indicate that it is relevant to financial holding companies and financial groups.
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CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

		<ul style="list-style-type: none"> • It is noted that the IA is defined as the Insurance Act 2018 and the footnote indicates “from the date of proclamation”. This suggests that the relevant provisions of the Draft Guideline, when it is enacted, that refer to the IA will only become operative after proclamation of the Act. Kindly confirm this is a correct interpretation. • The Draft Guideline recommends the appointment of a Chief Risk Officer. We seek guidance as to whether this role can be combined with another role within the Company, such as the Compliance Officer role for smaller companies. • In general, we are of the respectful view that the Draft Guideline is very heavily risk focused and note that corporate governance is much wider than risk as it also covers areas such as entrepreneurial leadership, ethical decision-making and the roles of the Chairman, Chief Executive Officer and Corporate Secretary, to name a few. 	<ul style="list-style-type: none"> • The IA has been proclaimed and therefor as defined is the applicable legislation. Clarification has also been made regarding applicability to those entities that remain under the Insurance Act 1980. • It is necessary to keep the role of Compliance Officer and Chief Risk Officer separate to avoid potential situations of conflict, a footnote has been included in the guideline to accommodate the combination of roles for small, non-complex institutions (see footnote 25). • We respectfully disagree. The Guideline deals heavily with issues of independence and the roles and responsibilities of the board and senior management. The Guideline is to be read in conjunction with the Fit and Proper Guideline which treats with issues of this nature
95.	General	<ul style="list-style-type: none"> • Consider referencing Basel as the Guideline draws heavily from Basel’s guidance e.g.: <ul style="list-style-type: none"> ○ ‘The Guideline draws from principles of corporate governance and guidance 	<ul style="list-style-type: none"> • This is captured at footnote 3 of the guideline.

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

		<p>published by Basel [and OECD and perhaps FSB?]'.</p> <ul style="list-style-type: none"> • Whilst the document addresses conflicts of interest, consider whether “conflicts of duty” should also be addressed. This arises when a person is required to fulfil two or more roles that may be in conflict with each other i.e. wearing of two hats as director and employee. • The document should be more aligned with the Second Schedule in the FIA 2008 in the following area i.e. business to be directed by at least two individuals. • Consider for foreign institutions or institutions with foreign directors whether mind and management should reside locally. 	<ul style="list-style-type: none"> • The definition of conflict of interest has been amended to include this area. It is noted that in fact in the Guideline conflicting duty is captured in areas such as conflicts that arise in a group setting. • Given the broad spectrum of persons to whom this Guideline will apply and the fact that this requirement is already included in both the IA (Schedule 5) and the FIA (second schedule) this change is not considered necessary. • While this is not explicitly stated, the expectation is that these persons will for the most part be locally sourced. However, the Central Bank takes into account the size, risk and complexity of institutions before determining whether to allow a director or officer to reside in a foreign jurisdiction. This is treated on a case by case basis and therefore a blanket statement on the issue will not be made in the Guideline.
<p>96.</p>	<p>General</p>	<ul style="list-style-type: none"> • This draft Guideline proposes significant amendments to the 2007 version and in many 	<ul style="list-style-type: none"> • The Central Bank will be issuing several risk specific guidelines within the next two years..

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

		<p>areas, expands the obligations of financial institutions in relation to not only governance, but operations. One example is the inclusion of extensive provisions to address the area of enterprise risk management. Given the increasing significance of this subject matter and its role in systemically important financial institutions, we query whether there should be provisions for it within a Risk specific guideline.</p> <ul style="list-style-type: none"> • Further, we suggest that consideration be given to whether some matters are better placed within governing legislation or whether the operational matters need to be placed with the scope of this guideline at all for a regulator. 	<ul style="list-style-type: none"> • The Central Bank considers the Guideline to be the appropriate medium for the current directives.
<p>97.</p>	<p>General</p>	<ul style="list-style-type: none"> • We note the change that the Chairmen of Financial Institutions must now not only be non-executive but also independent and we would be grateful to understand as soon as possible the timeline within which these appointments are expected to be made upon the issuance of this guideline. • Many of our comments relate to the role of the Board regarding the appointment and compensation of senior officers. We respectfully suggest that apart from the 	<ul style="list-style-type: none"> • The guideline at section 4.2 has been amended to indicate that the chairman must be either independent or non-executive. Also, a transition period of one year will be granted for entities to fulfil this requirement. • The requirement regarding appointment and compensation of senior officers is aligned to international best practice. Further, it is not best practice for one person to select/appoint the

CORPORATE GOVERNANCE GUIDELINE – MATRIX OF INDUSTRY COMMENTS AND CBTT RESPONSES

		<p>appointment of the CEO, the appointment and compensation for individual senior officers is often delegated to the CEO with the Board approving the framework where relevant, and maintaining oversight. Such delegations also fall within good corporate governance principles and maintains the Board’s oversight role in risk mitigation. This should in our view also be factored into the guideline.</p>	<p>CEO or key members of staff. It should however be noted that as worded the Board may approve these matters and, as such, it is open to a nomination committee of the Board to select the CEO with the Board having the ultimate approval. Similarly, with respect to the control functions, since these functions report directly to the Board best practice would be for the incumbents in those functions to be selected and overseen by the Board or a committee of the Board.</p>
98.	General	<ul style="list-style-type: none"> Some areas of these guidelines appear to be operationalizing the role of the Board of Directors, whereas they should more focus on providing guidance on the strategic direction of the institution. For example, the reach (via the Nominating Committee) into the day to day management of an institution. 	<ul style="list-style-type: none"> The guideline has been developed taking international best practices into account as well as observed business practices in the local environment. The areas that go into detail regarding the operational requirements are suitable addressed for our environment.