iTHEMBA

GOVERNANCE AND STATUTORY SOLUTIONS (PTY) LTD

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Client Survey

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Product Focus

When do companies need a Risk Committee?

Ivan Choi wrote on 19 March 2013 in a Global Corporate Governance Forum Publication (issue 31) that "Risk management is simply a matter of acting explicitly in advance to prevent a risk event from happening or to diminish its consequences when it does." We are briefly going to look at Ivan Choi's article.

It is important to note that risk management forms part of the board's corporate governance functions. According to Ivan Choi, the board's main role in risk management is to provide oversight. Board committees are there to assist directors of a company in this regard.

The Risk Committee is intended to assist the board and not to pre-empt any board responsibilities in making any decisions relating to risk management.

Why not use the Audit Committee to deal with risks?

Many companies use their Audit Committees to address risk management of the company. Not all Audit Committees have the required skills to manage risk. The other concern surrounding Audit Committees dealing with risk management is that most of their time is spend on financial issues and little time is spend on risks. However if your company has a strong and mature Audit Committee, the Committee could possibly take on the additional risk management responsibilities.

What are the main characteristics of Audit and Risk Committees?

There are several similarities between an Audit Committee and Risk Committee. However, the main characteristics of an Audit Committees are supposed to be analytical, quantitative and financial expertise. On the other hand, the main characteristics of a Risk Committees should be analytical, creative, qualitative and broader experience. Generally, Audit Committees do not spend much time on risk assessment, risk management and risk reporting.

What you should know and do if you have a separate Audit and Risk Committee?

Terms of reference

It you are considering having separate Risk and Audit Committees then proper terms of reference should be drafted. The terms of reference must clearly state the responsibilities of each committee. This is to avoid conflicts that may arise from overlapping risk responsibilities.

Efficient communication

It is inevitable that some risks will be looked at by more than one committee. The danger is that some of the risks are not looked at by any of the committees. Proper communication between the committees is thus required to ensure that all risks are addressed and reported to the board.

Role clarity

It is important to emphasise to senior management and the heads of divisions, departments and business units that the Risk Committee is there to assist the board with their oversight role. The accountability for and managing of risk still remains with management.

What are some of the challenges in having a separate Risk Committee?

Too many committees

Committee meetings take time and commitment from each member of the committee. Management's attention and support is usually also required at committee meetings. The addition of another committee is therefore a time consuming exercise.

Not enough directors

Most small to medium size companies do not have many independent non-executive directors. For a Risk Committee, not only independent non-executive directors are required, but independent non-executive directors with the necessary skills. Each committee therefore requires different skills and establishing these committees could be a challenge considering the composition of the board.

Does a separate Risk Committee make sense for my company?

You should ask yourself the following questions when considering a separate Risk Committee:

• **Is our industry exposed to more unusual risks than other?**
• *If yes, will a dedicated Risk Committee strengthen the governance of risk?*
• **Have the current board and committees been effective in managing risks?**
• *If no, will a dedicated Risk Committee improve effectiveness and inculcate the risk-management culture within the board?*
• **Will the introduction of a Risk Committee increase the complexity of risk governance?**

It is important for a company to recognise risk governance as a board responsibility and have systems in place to manage this very important aspect of the business. At the end of the day, the functions and substance of risk governance outweigh the form.

Click Here for the full article by Ivan Choi published on 19 March 2013 in a Global Corporate Governance Forum Publication (issue 31).

Meet the Team

Claire Middlemis has just joined the team at iThemba and will be focussing on training and consulting, specifically regarding compliance in line with King Report III and the JSE Listings requirements for large corporates.

Claire is a qualified Company Secretary and a member of the Institute of Chartered Secretaries and Administrators of South Africa, having achieved Fellowship status in 2004. Claire served her articles at Waterman's Auditors from 1999 to 2002, where she was involved in accounting, taxation and Company Secretarial services.
She moved to Rand Merchant Bank in 2002 as Company Secretary of listed entity "Emira Property Fund" gaining experience in the commercial property field. In 2007, Claire joined Murray & Roberts, construction & engineering, as Assistant Company Secretary. In 2009 she was employed by Australian Oil & Gas Company, Neon Energy Limited and was based in Perth for two years, gaining international corporate governance experience. Claire returned to South Africa in November 2010 and joined Altech as Company Secretary of operations, which entailed responsibility for all 35 of Altech's national and international companies.

Now in 2013, Claire has joined iThemba as an Associate specialising in Corporate Governance and Company Secretarial Training and Consulting, allowing her to utilise her 14 years of experience gained in the various corporate fields, to provide individual, specialised attention to various corporates throughout South Africa. Claire is also a member of IODSA (Institute of Directors South Africa).

Our Tip for the month

The Companies Act of 1973 only required public companies and their subsidiaries to submit annual financial statements to CIPC. The new Companies Act of 2008 however requires all companies that have to audit their annual financial statements, either in terms of the Act or its Regulations, to submit annual financial statements to CIPC. It is important for companies to note this requirement.

When must I audit my company's financial statements?

Are you a:

- **public company;**
- **state-owned company;**
- **profit/non-profit company that holds an excess of R5 million in a fiduciary capacity for a person not related to the company;**
- **company directly/indirectly incorporated by the state;**
- **company that performs a statutory or regulatory function;**
- **a company with a public interest score of 350 or more?**

If you answered **YES** to any of the above questions then you **MUST** audit your financial statements in terms of the Companies Act and its Regulations.

In terms of CIPC – what does this mean?

When you file your annual return you must also file a copy of the latest approved audited financial statements.

How do you know if your public interest score is 350 or more?

The public interest score must be calculated at the end of each financial year, as the sum of the following:

- **a number of points equal to the average number of employees of the company during the financial year;**
- **1 (one) point for every R 1 million (or portion thereof) in third party liability of the company, at the financial year end;**
- **1 (one) point for every R 1 million (or portion thereof) in turnover during the financial year; and**
- **1 (one) point for every individual who, at the end of the financial year, is known by the company:**

- in the case of a profit company, to directly or indirectly have a beneficial interest in any of the company's issued securities; or
- in the case of a non-profit company, to be a member of the company, or a member of an association that is a member of the company.

If you need assistance, please do not hesitate to visit http://www.ithembaonline.co.za where you will find a public interest score calculator or contact us on 086 111 1010 for assistance.

All non-public companies (i.e. private companies and non-profit companies) are urged to ensure that their public interest score is calculated annually and that the calculations and results are formally recorded. A suggestion is to include the public interest score in the directors' report which forms part of the annual financial statements.

Interesting Article

Click here to read an interesting article from a Global Corporate Governance Forum Publication written by Ivan Choi.

Keeping you up to Date

- **CIPC upgrades:** CIPC is undergoing a series of updates and the electronic lodgements of everything is affected. The Annual return system has thus been taken off the website due to the glitches experienced during the upgrades. There was a press release stating that the system will be off for the month until end of July.
- The processing of the CoR39 (change of directors) and the CoR15.2 (amendment to the MoI) will take approximately a month to process due to the volume of documents received for lodgement. Please see attached the press release from CIPC. clients must please bear in mind that although the delay is only stated as a month, it might take longer.
- The two year timeframe for lodging the new MoI's for free has now lapsed on 30 April 2013, but Companies can still lodge the new MoI's with the Commission, the only difference now is that CIPC will now start charging a filing fee of R250.00.
- **11th October: iThemba Ladies Lunch date**

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