

Corporate Governance

Opening speech by dr. E. Tromp of the Day of Directorate

Dear ladies en gentlemen,

I would like to welcome you and express my appreciation to Promes Van Doorne and the Galan Group for their initiative in organizing this "Day of Directorate" (Dag van Commissariaat) with the central theme "Governance at Work". I appreciate the opportunity to address you on this important subject, which I consider fundamental to further enhance the functioning of our economy, in general, and our local companies, in particular.

Subsequent to the Asian crisis, which shook the global financial system in the late 1990s, policymakers and regulators alike heard the rallying cry from around the world to establish and promote a system that would encourage better corporate governance for both businesses and governments. Since then, governments, policymakers and regulators around the globe have devoted significant time and resources to the development of legislation and policies related to corporate governance.

Corporate governance entails the way in which a company's board oversees the management of the company, and how the board members in turn are accountable to shareholders and the company. Corporate governance also provides the structure through which the objectives of the company are set and the means of attaining those objectives and monitoring performance are determined. Good corporate governance should provide proper incentives for the board and management to pursue objectives in the interests of the company and its stakeholders and should facilitate effective monitoring; thereby encouraging firms to use resources more efficiently. Good corporate governance is not simply about minimizing the risk of corporate failure and dealing with those guilty of fraud. It also is a fundamental prerequisite to improving economic performance, facilitating corporate access to capital, and improving the investment climate. Poor corporate governance, on the other hand, weakens a company's potential and may lead to financial difficulties and even fraud.

A company's supervisory board should play an important role in approving the objectives, strategy and business plans of the institution, monitoring the performance of its management and ensuring that the internal control and risk management systems of the institution are effective. The supervisory board also should ensure that the institution conducts its affairs with integrity and in accordance with high ethical standards. The supervisory board is part of the system of checks and balances that ensure that neither large shareholders nor management abuse their power and that decisions are made with the institution's best interests in mind. A competent supervisory board, free of conflicts of interest, can help protect shareholders, ensure compliance with laws and regulations, and provide useful guidance to management in areas of strategic concern.

The Bank van de Nederlandse Antillen has been very active in promoting sound corporate governance in the financial sector of the Netherlands Antilles. In August 1996, the Bank issued the Guidance Notes for the Board of Directors of Supervised Financial Institutions on Corporate Governance and a Summary of Best Practice Guidelines on Corporate Governance, both of which were revised in October 2001. The guidance notes describe the general responsibilities of institutional boards, the legal obligations of directors, and the role of auditors. The best practice guidelines contain a discussion and presentation of various systems, policies, and measures potentially effective in dealing with corporate governance issues in financial institutions. To encourage the practical implementation of the guidelines, the Bank requires that the board of directors of all supervised financial institutions provides the Bank annually with a "Statement of Compliance" with the Bank's Summary of Best Practice Guidelines, reviewed by an external accountant. The corporate governance issues addressed in the guidance notes and the best practice guidelines also are discussed with the institutions during our on-site examinations at these institutions.

We have observed that these guidelines have greatly increased the awareness of the importance of sound governance among the supervised financial institutions. As a result, we have noticed that governance practices amongst the supervised financial institutions have improved significantly over the last few years. This trend is not only reflected in the information provided in the Statement of Compliance submitted to the Bank by the supervised institutions, but also is reflected in the business conduct observed during our on-site examinations.

For example, significant progress has been made in the area of public disclosure. One of the board's responsibilities described in the guidance notes is to ensure timely and accurate disclosure on all material matters regarding the institution. This responsibility entails that financial institutions provide timely, accurate, relevant and sufficient public disclosures of qualitative and quantitative information that enables their stakeholders to properly assess the institutions' activities and the risks inherent in those activities. We have noticed over the last few years that financial institutions increasingly are publishing their financial statements, in whole or in part in the local newspapers.

Non-financial institutions as well as financial institutions face challenges in this new economy. In the constantly evolving environment in which institutions operate, they must be able to respond and adapt to the challenges they face. One of the many challenges financial and non-financial institutions face is the ability to maintain adequate pricing amid fierce competition from their competitors and the high cost demanded by technological changes. The last decades of the 19th century and the beginning of the 20th century witnessed remarkable advances in technological engineering and innovation, which make these times particularly interesting and challenging for directors. The pace of innovation is expected to increase further in the years to come as businesses increasingly integrate the use of new technologies into their operations. Hence, the implementation of sound governance is not only important for the proper management and supervision of businesses, but also is imperative for businesses to obtain and maintain a competitive position in the market.

As a response to the Asian crisis, the OECD (Organization of Economic and Cooperative Developments) issued on June 21, 1999, a set of corporate governance principles to help governments evaluate and improve the legal, institutional, and regulatory framework for corporate governance in their countries. These guidelines were also published to provide guidance and suggestions for stock exchanges, investors, corporations, and other parties with a role in the process of developing good corporate governance. Since 1999, the guidelines have been widely adopted as a benchmark for good practice in corporate governance. They have been endorsed by the Financial Stability Forum as one of its key standards for ensuring international financial stability and by the World Bank in its effort to improve corporate governance in emerging markets. A revised version of the OECD principles published on April 22, 2004, calls for a stronger role for shareholders, greater emphasis on preventing conflicts of interest and self dealing, controlling abuse of related companies, and promoting transparency and effective enforcement.

International organizations such as the Basel Committee, the International Organization of Securities Commission (IOSCO), and the International Association of Insurance Supervisors (IAIS) also have been active in drawing from the collective supervisory experience of their members and other supervisory authorities in issuing supervisory guidance to foster safe and sound policies related corporate governance.

The timing of this conference is, needless to say, very crucial. We are meeting at a time when the activities of corporations are being closely observed. The recent corporate scandals have focused the mind of governments, regulators, companies, investors, and the general public on weaknesses in corporate governance systems and the continued need to address these issues. These scandals highlighted the fact that the world's seemingly most successful companies in the world's most advanced economies can suffer from severe corporate governance failures that destroy substantial wealth for investors and employees. The integrity of businesses is central to the vitality and stability of our economy. Businesses should, therefore, at all times foster a corporate governance framework that promotes market integrity, the independence of the board from management, transparency, an effective risk management system, and a system of accountability.

Our government is also faced with governance challenges and issues in government-owned entities. One such challenge and issue that became evident in recent years relates to government policy relative to the privatization of government entities and their subsequent management. STIP was called into existence to guide and monitor the privatization process of government-owned entities. The government has also entrusted STIP with the operational management of the privatized entities. The dual role of STIP in the privatization process leads to conflicting governance issues vis-à-vis the government's policy relative to the privatization process. Professor Tinbergen (1952) has asserted, that the simultaneous attainment of a number of policy objectives requires the use of the same number of policy instruments. However, our government's current policy relative to the privatization of government-owned entities consists of one privatization instrument (STIP) being used to achieve two different objectives, namely privatization and operational management. According to the Tinbergen' rule, this is bound to lead to suboptimal results. The current discussion about the role and existence STIP should, therefore, not have come as a surprise to us.

A possible solution to this conflicting governance issue is to entrust another entity, for example a Holding company wholly-owned by the government, with the operational aspects related to the management of the government entities. In this suggested structure the shares of the government entities would be transferred to the Holding.

As a result, STIP would no longer have a controlling interest in the government entities and would be able to concentrate its efforts fully on guiding and monitoring of the privatization process. The Holding would have a Board of Supervisory Directors composed of for example the Commissioners of the Island Territory. The Board of Supervisory Directors would appoint the Management for the Holding and could issue guidelines to the management. The management would prescribe guidelines for the government entities and guarantee the implementation of these guidelines in accordance with rules of good governance. By implementing this suggested structure, the government's policy instruments would be properly matched with its policy objectives.

Ladies and gentlemen, as directors attempt to narrow the gap between their existing policies governing corporate governance and the necessary update required to keep pace with global developments in this area, I am sure you would agree with me that the tasks of directors have only become more challenging, not unmanageable. The size and complexity of the challenges always seem to grow at a faster rate than the resources available. Nonetheless, the supervisory and managing board should implement policies and practices that conform to the scope and complexity of their institution. To do so directors must have the right information to make the right choices in assessing the threats and challenges their respective organizations face and to keep abreast of the developments that are taking and will take place in their respective markets.

In this context, the Bank applauds the initiative of Promes Van Doorne and the Galan Group to establish a Centrum for Managing and Supervisory Directors in the Netherlands Antilles. This Centrum can serve as an excellent means to support the managing and supervisory directors in their efforts to strengthen corporate governance practices in their respective institutions. The Centrum also will help develop a culture of values for professional and ethical behavior on which well-functioning institutions must depend.

We also support the initiative to set up a Netherlands Antillean Registry of Supervisory Board Members and Supervisors. This registry could serve as a database that both local and international institutions can consult in their effort to appoint capable supervisory directors of high integrity residing in the Netherlands Antilles. The Registry also could serve as an excellent reference point for the registered supervisory directors. From it they can obtain contact information for their fellow colleagues, which will further promote the sharing of experiences, particularly on governance issues, among themselves.

Conclusion

To conclude, the corporate scandals of recent years have brought to fore the importance of good corporate governance practices. Managing and supervisory directors must constantly be on their guard to identify emerging problems and develop appropriate responses. Managing and supervisory directors should strive to promote a framework that emphasize sound corporate governance, effective risk management and a market discipline that encourages transparencies.

Thus, we welcome the initiative to establish a Centrum and a Registry in the Netherlands Antilles to further promote sound corporate governance practices in our jurisdiction. Sharing our best practice experiences, thereby learning from each other as we strive to improve and enhance our corporate governance practices in this jurisdiction, will be mutually beneficial. By working together, we can help bring about the corporate governance reforms that are needed in our jurisdiction, which will benefit everybody.

I hope that your experience at this conference will be fruitful and that by sharing your experiences you will shed further light on the subject of sound corporate governance and the role of supervisory and managing directors in promoting sound corporate governance practices. Once again I wish to thank Promes Van Doorne and the Galan Group for their initiative in hosting this conference.