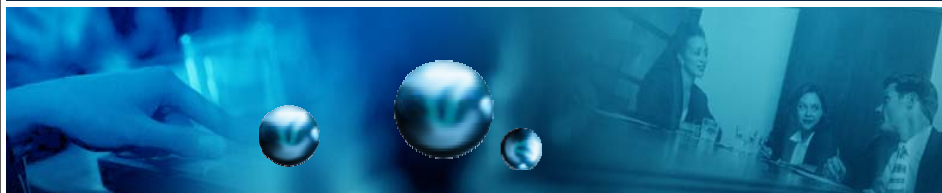
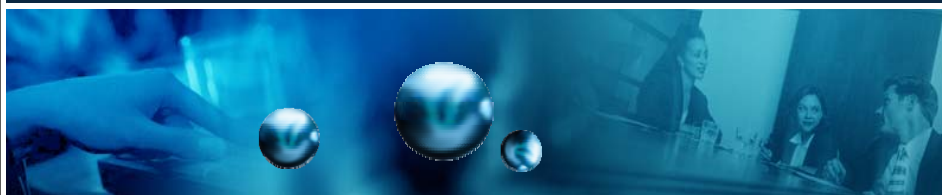


## **7<sup>th</sup> DFI Corporate Governance Group Meeting**



**6-7 February 2013  
Manila, Philippines**

## **Cooperation among Signatories**



**Martin Steindl**  
*Senior Corporate Governance Officer,  
FMO*



## The Reasons for Cooperating

- Knowledge exchange
  - Sharing resources
  - Becoming stronger on a topic which is part of the development impact we could achieve
- Look at our Colleagues from the E&S side
- Harmonized their internal approaches and exchange knowledge in joint deals
  - Reach-out to Non-DFI world



## As Promoters of Good Governance...

...we need to look at the governance of the DFI Framework Agreement first...




## The Governance of the Working Group

- Nine institutions currently form the DFI Working Group with the objective to facilitate and supervise the implementation of the 2011 Framework Agreement. Activities are, among others, to
  - Take lead in the organization of an annual conference
  - Pursue different projects such as 'Study project' on the Business Case for CG
  - Engage in bi-weekly calls

↓

How should the governance structure of the Working Group look like in the future?



## The Governance of the Working Group and beyond

- Need for a Chairperson (rotating)
- Need for a Charter signed by all Working Group Members/Signatories
  - Role and Authority of the Working Group
  - Membership





## New Initiatives

What could be new Initiatives for the Working Group or beyond?

- Topical groups which are lead/joined by a Working Group member but contain also Voluntary Representatives from other Signatories



## Possible Areas of Cooperation

- Knowledge Management System
- Sharing 'training resources and events'
- Support on 'Making the Business Case'
- Directorship Nomination and Selection Processes
- Role of the Director in Risk- and Crisis Management
- Engagement on the Implementation with other Signatories through 'Ambassadors'
- Conference Organization
- Governance Structure for the Signatories



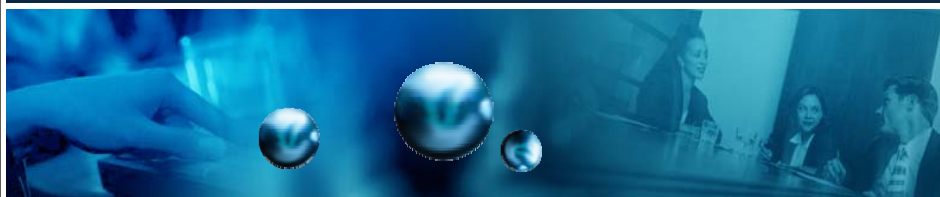


## What we want you to do now

- Pick a topic from the list of possible areas of cooperation
- Establish among your table what type of cooperation already exists
- Provide any ideas on the governance of the Signatories
- Discuss your chosen area of cooperation
  - What possibilities would exist?
  - What are the obstacles?



## Developing Competent Nominee and Independent Directors



**Martin Steindl / Vassilis Christakis**  
*FMO / BSTDB*

## The Two Paradigms For DFIs


**The Nominee Director is an extended arm of portfolio and de-facto represents the interests of the DFI**

- Focus on internal candidates with at times establishment of 'Chinese Wall', at times portfolio manager him-/ herself joining board
- Difficult to manage conflicts of interest
- Yet, easier to add value if Investee Client demands for DFI expertise in particular
- Easier to trouble-shoot

**The Nominee Director is as close to an independent director as possible and acts entirely in the interest of the Investee Client**

- Adding value to the client and improving its sustainability agenda is key goal of nomination
- Limited reporting back
- Portfolio needs to access information through other avenues
- In case of a conflict, interests of client prevail over interests of DFI (DFI often keeps right to withdraw Nominee)

With both approaches, question remains how the Nominee Director could more effectively contribute to the DFI's development agenda and improve the Investee Client's governance?



## Cooperation of Training Nominee Directors

➔ What does already exist?


- Annual gatherings of external and internal nominee directors (EBRD, IFC, FMO, etc.) to
  - provide the Nominee Directors with a possibility to exchange and network;
  - expose them to topical issues of corporate governance;
  - discuss their issues, in particular conflicts of interest.
- Dedicated training for Nominee Directors (organized by DEG in Cologne, open for other EDFIs)
  - 2.5 day course designed by Carpe Diem in cooperation with the UK Institute of Directors
  - obligatory training to become a nominee board member in the respective DFI's investee companies

➔ What else could be done?



## D&O Insurance

- **Directors and Officers Liability** Insurance (Part of Professional Risks Insurance Package)
- Covers: a) any **written demand** against an Insured based upon a specified Wrongful Act, seeking damages or other such relief as could be sought in legal proceedings, b) any **civil or arbitral** proceeding against an Insured, c) any **criminal prosecution** against an Insured, d) any formal **administrative or regulatory proceeding** commenced against an Insured based upon a specified Wrongful Act.
- Includes: a **Director or Officer of the Company** including the equivalent position in any other jurisdiction. The company submits prior to the issuance of the policy as part of the standard questionnaire a list with any Directors, Officers, or Employees that hold **any outside Board positions at the behest of the Company**, the position they hold and the entity they hold it in.
- Compensates: **The Company** (BSTDB) to the extent that it has already indemnified the Insured (as legal proceedings take long) or **the Insured directly**. The indemnification is what is permitted **under applicable law or agreements** (such as the employment contract of the Director/Officer/Employee with the Company).
- Relates to: **Errors and Omissions** and **not Gross Negligence or Willful Misconduct** (which are not covered by the law or an employment contract).
- Insures against: a) **damages, judgments, or settlements** for which an insured is legally liable in respect of a Claim, b) **legal representation expenses** during the investigation period, c) **defense costs** for legal fees, costs, and expenses, d) **aggravated, punitive, and exemplary damages** where insurable by law.
- Costs: Depending on size of organization and risk profile. **Not particularly expensive.**



## Further Food for Thought

- Cooperation on Nominee Directors could be a follow-up theme for DFIs on CG
- It is, however, much more difficult because practices vary and many institutions will find it difficult to forego the possibility of direct influence and information receipt through an internal board member for the 'sake' of good governance
- Yet, some possibilities are:
  - Creating a joint database for Nominee Directors (help solve issue with retirees)
  - Aligning approaches but more from a viewpoint of what the Nominee Director should achieve with the board seat
  - Agreeing on one joint (outside) candidate if several DFIs are involved with one client; could be limited to certain DFIs, certain types of investments, even certain sectors, e.g. MFIs



## Areas of Cooperation


Immediate possibilities for action

- Cooperation on training Nominee Directors
- DFI Exchange on Indemnification, D&O Insurance Providers and overall Best Practice

Further possibilities

- Joint DFI Database for Nominee Directors (in particular Retirees)
- Alignment of Approaches/Guidance
- One Nominee Director in joint investments

A New 'Project' for the Working Group and/or the Signatories of the Framework Agreement



## What we want you to do now

- Pick a topic from the list of possible areas of cooperation
- Establish among your table whether you use Nominee Directors and whether those are internal or external candidates
- Exchange on what type of training you offer for Nominee Director Candidates and whether you cooperate with other DFIs in this regard
- Discuss your chosen area of cooperation
  - What possibilities would exist?
  - What are the obstacles?

