
New principles of corporate governance applicable to financial institutions in Brazil

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Abstract:

The National Monetary Council incorporates into the financial regulation principles new rules on Corporate Governance established by the Basel Committee.

The National Monetary Council (CMN) approved, on April 27, 2017, Resolution No 4.567, which modifies the rules already in force regarding the corporate governance applicable to financial institutions.

According to the new rules, institutions shall provide a channel for communicating evidence of unlawful incidences at the institution to its employees, contributors, customers, users, partners, or suppliers, and designate a body responsible for receiving the communications which shall be confidential, independent, impartial, and privileged.

Furthermore, Resolution No 4.567 provides for the obligation to communicate to the Central Bank of Brazil (BACEN), within 10 business days after having knowledge of or access to information of any event that may affect the reputation (i) of the controllers and holders within the company; and (ii) members of the statutory and contractual bodies.

The introduction of the new regulations takes a further step towards ensuring the existence of adequate compliance procedures and bodies in financial institutions and other institutions authorized to operate by BACEN, including securities brokerage companies, securities distributing companies, foreign exchange brokerage companies, and payment institutions.

In this day and age of witch-hunting, Resolution No 4.567 adds on to the current normative principles and criteria already established by the Basel Committee, in order to create a clear example of an inspection mechanism, whereby individuals are under the obligation to contribute to the surveillance of the State, regarding the occurrence of any illegal acts. This newly imposed legal obligation exceeds the usual obligation to merely abstain from illegal acts.

Consequently, in addition to the administrative liability established by the previous legislation, administrators and officials of institutions subject to BACEN's audit power must also pay attention to the potential criminal liability created by the new regulations, insofar as the administrative rules now become a reference for the specific prudential duties, to which the acting agents of financial institutions are subject to.

Almeida Advogados has a team specialized in corporate law, qualified to clarify any doubts that may arise from this text.