

## CAYMAN ISLANDS



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## **RULE CORPORATE GOVERNANCE FOR INSURERS**



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## **Rule**

### **Corporate Governance for Insurers**

#### **1 Statement of Objectives**

- 1.1 To set out the Cayman Islands Monetary Authority's (the "Authority") rule on Corporate Governance for insurers (each of the sub-paragraphs of section 5 below referred to as a "Rule," and collectively, the "Rules"), pursuant to the Monetary Authority Law ("MAL"), section 8(2)(g) of the Insurance Law, 2010, and section 28(D)(h) of the Insurance (Amendment) Law, 2013.

#### **2 Statutory Authority**

- 2.1 Section 34 of the MAL provides that the Authority:

*(1) After private sector consultation and with the approval of the Governor, the Authority may –*

*(a) issue or amend rules or statements of principle or guidance concerning the conduct of licensees and their officers and employees;*

- 2.2 This document establishes the Rule on Corporate Governance for Insurers and should be read in conjunction with the Rule on Risk Management for Insurers, Rule on Internal Controls – Insurance and Statement of Guidance ("SOG") on Internal Controls.

#### **3 Scope of Application**

- 3.1 These Rules apply to all insurers regulated by the Authority under the Insurance Law ("insurer"). Certain Rules may only be relevant to the specific type of license category identified.
- 3.2 The established corporate governance framework of an insurer should be commensurate with the size, nature and complexity of its business.
- 3.3 Insurance Groups should ensure that the corporate governance framework is appropriate to the structure, business and risks of the insurance group. Where an insurer is part of a group, it may rely on the Group Corporate Governance framework provided that the insurer's Governing Body is satisfied, following a gap analysis between the Group framework and the Authority's Rules, that the framework is appropriate to the specific circumstances of the insurer, including the insurer's structure, business, risks and legal requirements in the Cayman Islands. The Group Corporate Governance framework must include policies, processes and controls that address risks across the insurance group. Where gaps are identified, a tailored corporate governance framework that complies with the legal requirements in the Cayman Islands is required.



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## **4 Definitions**

- 4.1 The "Governing Body" of an insurer is the board of Directors of the insurer.
- 4.2 "Insurer" means all insurers regulated under the Insurance Law, including Portfolio Insurance Companies ("PIC") and except Class "A" External insurers.
- 4.3 "Insurance Group" has the same meaning as in the Insurance Law.
- 4.4 "Control Functions" mean properly authorized functions, whether in the form of a person, unit or department, serving a control or checks and balances function from a governance standpoint and which carry out specific activities including risk management, compliance, actuarial matters, internal audit and similar functions<sup>1</sup>. For Class B and Class C insurers, the insurance manager may serve in the capacity of a Control Function.
- 4.5 "Director" means a member of the Governing Body, and any person who fulfills the function of a Director, by whatever name called.
- 4.6 "Non-Executive Director" means a Director of the insurer who does not perform day-to-day management functions for the insurer or a similar function in an insurer's subsidiaries, holding company or companies related to the insurer through common ownership or control.
- 4.7 "Senior Management" refers to senior level employees of the insurer that actively participate in the daily planning, supervision, administration and execution of insurer's objectives and strategies.

## **5 Rules**

### **5.1 The Corporate Governance Framework**

- 5.1.1 An insurer must establish, implement, and maintain a corporate governance framework which provides for sound and prudent management and oversight of the insurer's business and adequately recognizes and protects the interests of policyholders.
- 5.1.2 At minimum, the framework must address:
- a. The objectives and strategies of the insurer;
  - b. Appropriate allocation of oversight and management responsibilities;
  - c. Structure and governance of the Governing Body;
  - d. Independence and Objectivity;
  - e. Collective duties of the Governing Body;
  - f. Duties of individual members of the Governing Body;
  - g. Appointments to the Governing Body;

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<sup>1</sup> IAIS Glossary



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- h. Delegation;
- i. Conflicts of interest;
- j. Risk management and internal control systems (pursuant to the Rule on Risk Management for Insurers, Rule on Internal Controls – Insurance and SOG on Internal Controls);
- k. Remuneration policy and practices;
- l. Reliable and transparent financial reporting;
- m. Transparency and communications; and
- n. Duties of senior management.

### **5.2 Objectives and Strategies of the Insurer**

- 5.2.1 The insurer's Governing Body must set and oversee the implementation of the insurer's corporate culture, business objectives and strategies for achieving those objectives, in line with the insurer's long term interests and viability, and the legitimate interests of its stakeholders, including fair treatment of policyholders.
- 5.2.2 These objectives and strategies must be adequately documented and properly communicated to its senior management, including staff in charge of Control Functions and all other relevant staff of the insurer as appropriate.

### **5.3 Appropriate Allocation of Oversight and Management Responsibilities**

- 5.3.1 An insurer must clearly define and document the roles and responsibilities allocated to the Governing Body, senior management and Control Functions, where applicable, so as to promote an appropriate separation of the oversight function from management responsibilities.
- 5.3.2 The Governing Body must oversee senior management, including the appointment and dismissal of senior managers, set appropriate performance standards for senior management and ensure that senior management is managing the affairs of the insurer in accordance with the strategies and policies set by the Governing Body.
- 5.3.3 The insurer's Governing Body must provide oversight in respect of the design and implementation of sound risk management and internal control systems and functions. Please refer to the Rule on Risk Management and the Rule and SOG on Internal Controls.

### **5.4 Structure and Governance of the Governing Body**

- 5.4.1 The Governing Body must have, on an on-going basis:
  - a. an appropriate number and mix of individuals to ensure that there is an overall adequate level of competence at the Governing Body level;
  - b. appropriate internal governance practices and procedures to support the work of the Governing Body in a manner that promotes the efficient, objective and independent



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- judgment and decision making by the Governing Body;
- c. adequate powers and resources to be able to discharge its duties fully and effectively;
- d. high standards of business conduct and ethical behaviour for Directors and senior management, including policies on private transactions, self-dealing and preferential treatment of favoured internal and external entities;
- e. a requirement for Directors and senior management to declare any actual or potential conflicts of interests as and when these arise;
- f. an appropriate succession plan for Directors and senior management;
- g. nomination and appointment procedures for Directors; and
- h. where applicable, defined and documented responsibilities of committees of the Governing Body to ensure that no single person has unfettered control of the business.

### **5.5 Independence and Objectivity**

- 5.5.1 With respect to all insurers insuring third party risks, with the exception of those holding Class B (i) and Class C licenses (unless otherwise required by the Authority), the Governing Body must establish clear and objective independence criteria which should be met by a sufficient number of members of the Governing Body to promote objectivity in decision making by the Governing Body.

### **5.6 Collective Duties of the Governing Body**

- 5.6.1 The Governing Body, on an ongoing basis, shall:
  - a. ensure that regulators are promptly notified of substantive issues affecting the insurer;
  - b. enquire into the affairs of the insurer and request information from management or service providers, including their presence at board meetings where necessary; and
  - c. ensure that the business of the insurer is conducted in compliance with the laws and other requirements in force in the Cayman Islands and in any country in which the insurer does business.
- 5.6.2 The Governing Body shall regularly, at a minimum of once per year:
  - a. review the strategic objectives and policies of the insurer and either amend or readopt them as appropriate;
  - b. evaluate the progress made towards achieving the strategic objectives;



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- c. review the composition of the Governing Body to ensure that collectively it has sufficient knowledge, skills, experience, commitment and independence to oversee the insurer effectively, taking into account the size, nature and complexity of the business of the insurer. For this purpose, the Board should collectively and individually have, and continue to maintain, including through training, necessary skills, knowledge and understanding of the insurer's business to be able to fulfill its role. In particular, the Governing Body should have, or have access to, knowledge and understanding of areas such as the lines of insurance underwritten by the insurer, actuarial and underwriting risks, finance, accounting, the role of Control Functions, investment analysis and portfolio management and obligations relating to policyholders. Depending on the size and complexity of an insurer, a Governing Body may sometimes rely on the advice of external experts on one or more of these areas. In that case, the Governing Body should nevertheless collectively have the skills and experience necessary to understand and, where appropriate, question and challenge the advice of such external expertise. In addition, at all times the Governing Body must effectively manage any outsourced operations including outsourced insurance management functions;
- d. undertake self-assessments of its performance and governance practices, and remedy any deficiencies identified;
- e. review the implementation of the risk assessment and risk management systems to ensure that all significant risks are being adequately measured, monitored and controlled;
- f. review the implementation of internal controls, ensure they are operating effectively and that any deficiencies are adequately addressed;
- g. where applicable, review the remuneration policy for senior management;
- h. with respect to Class B and Class C insurers, ensure that the appointed insurance manager possesses integrity and adequate knowledge, experience, skill and competence for its role; and
- i. review the policy on outsourcing (this could be as simple as stating that the policy is that no functions will be outsourced or listing the functions that have been agreed will and can be outsourced).

### **5.7 Duties of individual Directors of the Governing Body**

- 5.7.1 Each member of the Governing Body shall devote sufficient time to the role of Director and associated responsibilities. The Governing Body shall indicate a time commitment expected from non-executive Directors in letters of appointment. The Governing Body shall confirm to the non-executive Directors on an annual basis, at the beginning of each financial year, the on-going time commitment expected from that Director.
- 5.7.2 In the case of a PIC, the Governing Body must assess, at least every two (2) years, whether its relationship with the Segregated Portfolio Company ("SPC"), including in



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relation to the insurance manager, management structure or governance, is in the best interests of the policyholders of the PIC. If the majority of Directors and senior managers of the PIC are the same as those of the SPC, this assessment must be carried out in writing on an annual basis.

- 5.7.3 The individual Directors of the Governing Body must act in good faith, honestly and reasonably.
- 5.7.4 The individual Directors of the Governing Body must exercise due care and diligence.
- 5.7.5 Each Director of the Governing Body should maintain knowledge and understanding of the insurer's business and update his/her knowledge periodically, consistent with changes in industry, regulatory landscape or business of the insurer.
- 5.7.6 Each Director must make enquiries where issues are raised and satisfy him or herself that an appropriate and timely course of action is taken to address the concern.
- 5.7.7 The Directors of the Governing Body must act in the best interests of the insurer and policyholders, putting those interests of the insurer and policyholders ahead of his/her own interests.
- 5.7.8 Each individual Director of the Governing Body must understand the limitations of services and reports provided by service providers.
- 5.7.9 An individual Director must exercise independent judgment and objectivity in decision making, taking due account of the interests of the insurer and policyholders.
- 5.7.10 An individual Director must not use his/her position to gain undue personal advantage or cause any detriment to the insurer.

## **5.8 Appointments of the Governing Body**

- 5.8.1 The Governing Body must ensure that an actuary appointed under the Insurance Law is granted direct access to the Governing Body and to all relevant information.
- 5.8.2 The Governing Body must have in place an appropriate compliance committee or person who should report directly and regularly to the Governing Body on all compliance matters (the nature, scale and complexity of the insurers business can be used as a guide as to whether an appropriate compliance committee or person is most suitable).

## **5.9 Delegation**

- 5.9.1 The Governing Body may delegate authority to act on behalf of the Governing Body in respect of certain matters but, where the Governing Body does so, it shall have mechanisms in place for documenting the delegation and monitoring the exercise of delegated functions. The Governing Body cannot abrogate its responsibility for functions delegated. In particular, it must retain overall responsibility for internal control, internal audit, risk management and actuarial matters.



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## **5.10 Conflicts of Interest**

- 5.10.1 Directors and senior management shall declare conflicts of interest.
- 5.10.2 The Governing Body shall establish a documented 'conflicts of interest' policy for its members and where conflicts of interest arise, the Governing Body shall ensure that they are noted in the minutes of the meeting to which the subject matter of the conflict relates.
- 5.10.3 Directors and senior management must confirm to the Governing Body in writing, via an annual declaration, that any conflicts of interest have been declared throughout the year and must communicate changes to the declaration throughout the year.

## **5.11 Remuneration Policy and Practices**

- 5.11.1 An insurer's Governing Body must adopt and oversee the effective implementation of a written remuneration policy, which does not induce excessive or inappropriate risk taking, is in line with corporate culture, objectives, strategies, the identified risk appetite and long term interests of the insurer, and has proper regard to the interests of its policyholders and other stakeholders.
- 5.11.2 The remuneration policy, at a minimum, must cover those individuals who are members of the Governing Body, and where an insurer has its own employees, senior management, employees in charge of Control Functions and other employees whose actions may have a material impact on the risk exposures of the insurer (major risk-taking staff).

## **5.12 Reliable and Transparent Financial Reporting**

- 5.12.1 The Governing Body must ensure there is a reliable financial reporting process for both public and supervisory purposes that is supported by clearly defined roles and responsibilities of the Governing Body, senior management and the external auditor.
- 5.12.2 The Governing Body, or its Audit Committee, must ensure adequate governance and oversight of the external audit process. This oversight includes approving the appointment of the external auditor, monitoring the expertise and independence of the external auditor, monitoring the effectiveness of the external audit process and investigating the circumstances surrounding the removal or resignation of the external auditor.

## **5.13 Transparency and Communications**

- 5.13.1 The Governing Body must have access to accurate, relevant and timely information regarding the insurer.
- 5.13.2 The Governing Body must approve systems and controls to ensure the promotion of appropriate, timely and effective communications with the Authority on the governance of the insurer.





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- 5.13.3 The Governing Body must hold regular board meetings, not less than annually.
- 5.13.4 A detailed agenda should be circulated sufficiently in advance of any meeting of the Governing Body to allow each Director to apprise him or herself of the matters to be discussed.
- 5.13.5 Detailed minutes of all Governing Body meetings shall be prepared with all decisions, discussions and points for further actions being documented. The minutes should include, at a minimum:
- a. Attendance of each member;
  - b. Dissensions or negative votes;
  - c. Conflicts of interest declared; and
  - d. The substance of matters considered.
- 5.13.6 The minutes of meetings shall provide sufficient detail to evidence appropriate Governing Body attention, the substance of discussions and their outcome, where appropriate, and shall be approved at the subsequent Governing Body meeting.

### **5.14 Duties of Senior Management**

- 5.14.1 The Governing Body must ensure it is not subject to undue influence from Senior Management or other parties and that it has access to all relevant information about the insurer.
- 5.14.2 The insurer's Governing Body must approve appropriate policies and procedures to ensure that Senior Management:
- a. is sufficiently accountable to the Governing Body;
  - b. carries out the day-to-day operations of the insurer effectively and in accordance with the insurer's corporate culture, business objectives, and strategies, in line with the insurer's long term interests and viability;
  - c. promotes sound risk management, compliance and fair treatment of policyholders;
  - d. provides the Governing Body adequate and timely information to enable the Governing Body to carry out its duties and functions including the monitoring and review of the performance and risk exposures of the insurer, and the performance of Senior Management; and
  - e. maintains adequate and orderly records of the internal organization that can be easily accessed.

### **5.15 Supervisory review**

- 5.15.1 The insurer must, as required by the Authority, demonstrate the adequacy and effectiveness of its corporate governance framework.



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## **6 Enforcement**

- 6.1 Whenever there has been a breach of the Rules, the Authority's policies and procedures as contained in its Enforcement Manual will apply, in addition to any other powers provided in the Insurance Law and the MAL.