

Information Bulletin



Corporate Governance Requirements for Insurance Companies

This bulletin applies to all companies registered to conduct insurance business in Jamaica.

The *Insurance Act* and the insurance supervisory framework in Jamaica is one that emphasizes strong corporate governance and places significant responsibility on company Board of Director members, senior officers and company advisors including auditors and actuaries. Most supervisory agencies including the Financial Services Commission “FSC” are moving toward a supervisory approach that relies on strong corporate governance because it is thought to be the most efficient approach to the supervision of financial institutions. It is recognized that company directors and senior officers are far more knowledgeable than the supervisory agency with respect to the specific risks facing a company. Furthermore, financial institution supervisors can more effectively utilize their resources by examining high level strategic issues rather than examining all the detailed aspects of company operations.

Although a supervisory approach which relies on strong corporate governance can provide significant benefits, it requires that Directors and senior officers of insurance companies be fully aware of their responsibilities and undertake these responsibilities in a suitable manner. The purpose of this bulletin is to summarize the key legislative provisions related to corporate governance responsibilities and suggest other sound corporate governance practices that can be adopted by companies registered to conduct insurance business in Jamaica.

This bulletin is intended to be a guide for companies rather than a strict legal interpretation of the *Insurance Act* and regulations. Where there are discrepancies between this bulletin and the *Insurance Act* and regulations, the *Act* and regulations take precedence.

1. Key Legislative Requirements

(a) Overall Duty of Directors and Senior Officers

Section 36 of the *Insurance Act* succinctly states the obligation that is imposed on directors and senior officers of an insurance company. It states: “*For the purpose of discharging his duty to act honestly and in good faith with a view to the best interests of an insurance company, a director or senior officer thereof shall take into account the interest of the company’s policy holders.*” Section 36 makes it clear that directors and senior officers, as part of their duty of care to the company, must take into account the interests of policy holders.

(b) Formation of Committees and Appointment of Professional Advisers

The supervisory framework in Jamaica requires each company to establish three committees and to appoint two professional advisors.

- Section 37 of the *Insurance Act* requires each company to appoint an auditor.
- Section 44 of the *Insurance Act* requires each company to appoint an actuary.
- Regulation 73 requires the Directors of each company, at their first meeting following each Annual General Meeting, to appoint an Audit Committee.
- Regulation 74 requires the Directors of each company to elect from among themselves, a Conduct Review Committee.
- Regulation 75 requires the Directors of each company, at their first meeting following each Annual General Meeting, to establish an Investment and Loan Committee.

(c) Audit Committee

Regulation 73 requires the directors of an insurance company, at their first meeting following the company's annual general meeting, to appoint an Audit Committee of at least three persons. The majority of committee members must not be officers or employees of the insurance company or an associated company. A meeting of the Audit Committee can be convened at the request of any member of the committee, any member of the Board of Directors or the company's external auditor.

The duties of the Audit Committee as per Regulation 73(3) include the following:

- Review all returns that the company is required to file with the FSC;
- Review all reports made by the Auditor under the *Insurance Act* or *Companies Act*;
- Review all financial statements or returns that are required to be approved by the Board of Directors;
- Satisfy itself and prepare a written statement to be submitted to the FSC that actuarial duties will be performed in an independent manner in the event that a company requests the temporary appointment of its chief financial officer as the company's actuary (Regulation 76(5)(a)); and,
- Review any other reports, transactions or matters as determined by the FSC.

The FSC has yet to prescribe or determine any additional matters for review by the Audit Committee. However, the FSC is of the opinion that the Audit Committee could perform a number of other functions including:

- The review of the annual internal audit plan for the company;
- The review of the progress of internal audit work in relation to the annual plan;
- The review of all internal audit reports to ensure that all appropriate recommendations are adopted by the company;
- Approve the appointment of external auditor and appointed actuary;
- Approve the appointment of chief internal auditor
- The review of the appropriateness of accounting standards and actuarial reserving assumptions;
- The review of any management letter received by the company from the auditor to ensure that an appropriate response is made by the company;

- The review of any management letter received by the company from the actuary (Section 44(10)(a) of the *Insurance Act*) to ensure that an appropriate response is made by the company; and,
- The review of any examination report or other directions received by the company from the FSC to ensure that an appropriate response is made by the company.

(d) Conduct Review Committee

Regulation 74 requires the directors of an insurance company to elect from among themselves, a Conduct Review Committee consisting of at least three directors. The duties of the Conduct Review Committee include the following two functions.

- Regulation 74 requires the Conduct Review Committee to establish written procedures for the company which identify potential conflict of interest situations and prevent such conflicts. Regulation 81 requires that these procedures be established within 30 days of the formation of the Committee and filed with the FSC.
- Regulation 84 requires the Conduct Review Committee to review and provide written approvals for transactions between the company and any related party. Before it can approve transactions, the Conduct Review Committee must be satisfied that the transaction is at fair market value, consistent with the normal business activities of the company, in the best interest of the company and not contrary to the prohibitions set out in Regulations 82 to 86.

Regulations 81 through 86 provide significant guidance with respect to the operation of the Conduct Review Committee and the type of transactions that can be approved by the Committee. It is recommended that all members of the Conduct Review Committee closely examine these provisions.

(e) Investment and Loan Committee

Regulation 75 requires the directors of an insurance company, at their first meeting following the company's Annual General Meeting, to establish an Investment and Loan Committee with at least three members. At least one member of the committee must be an officer of the company, but the majority of committee members may not be company officers or employees or officers and employees of an associated company..

Regulation 104 requires the Investment and Loan Committee to prepare a written investment and lending policy for Board of Director approval and to ensure that the policy is reviewed by the Board of Directors on at least an annual basis. The investment and lending policy approved by the Board of Directors must be filed with the FSC.

The FSC recommends that members of the Investment and Loan Committee carefully review Regulations 38 to 72 which deal with investments that are permitted under the *Insurance Act* and Regulation 104 which deals with policy requirements before preparing their investment and lending policy.

2. Sound Corporate Governance Practices

The Board of Directors has the ultimate responsibility for the overall management of an insurance company and is required to make decisions based on fully informed and meaningful discussion.

- The Board of Directors is responsible for setting the strategic direction for the company and should approve a written strategic plan, an annual business plan and an annual budget.
- The Board of Directors should approve written policies with respect to the company's Investment and Lending Policy, the company's reinsurance program and the company's internal control standards, risk management policies and compliance policies.
- The Board of Directors should approve all new products of the company.
- The Board of Directors should monitor and ensure adherence to company policies and continuously monitor the financial results of the company.
- The Board of Directors should appoint the Chief Executive Officer of the company and regularly assess the performance of the Chief Executive Officer and the company's management team.
- The Board of Directors should ensure that appropriate remuneration is set for the management team and that succession planning is mandated for all key positions.

It is the view of the FSC that corporate governance can benefit from the appointment of two or more independent directors in the sense that these directors do not have an ownership or employment relationship with the company, the parent company or any affiliated company. Such directors are particularly effective as members of the Conduct Review Committee because of their objectivity in the assessment of related party transactions.

3. Financial Services Commission Contact Person

Questions that companies may have regarding this bulletin can be addressed to:

Mr. Leon Anderson
Senior Director Insurance
Financial Services Commission
39-43 Barbados Avenue
P.O. Box 325
Kingston 5, Jamaica W.I.
Telephone (876) 906-3010