



BULLETIN FOR:

Corporate Governance for Insurance Intermediaries

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Corporate Governance for Insurance Intermediaries

LEGISLATIVE REFERENCE: Insurance Act, 2001 (the “Act”)
Insurance Regulations, 2001 (the “Insurance Regulations”)

1.0 INTRODUCTION

The Financial Services Commission (“FSC”) has a mandate to protect persons who purchase insurance products by promoting stability and public confidence in the operations of the insurance industry. A part of meeting this mandate necessitates ensuring that all Insurance Intermediaries¹ establish a sound code of good Corporate Governance² which underpins a system of accountability, transparency and efficiency.

2.0 BACKGROUND

- 2.1** Although insurance products and services are offered directly by insurance companies, members of the public may choose at any time to solicit the services of an insurance intermediary.
- 2.2** A weak or non-existent Corporate Governance system is often manifested in the form of poor leadership, lack of sound decision making, breakdown in internal control and procedures as well as unethical practices (for example, acts of nepotism and cronyism among others). These deficiencies can have a major negative impact not only on the entity and its customers but also the potential for catastrophic contagion effect on the insurance industry as a whole. Consistent with Insurance Core Principle (“ICP”) 7, this framework provides for sound, prudent management and oversight, which ultimately recognizes and protects the interest of policyholders. Thus, it becomes critical for an established Corporate Governance framework to guide the operations of all insurance intermediates.
- 2.3** The implementation of a comprehensive Corporate Governance Framework will not only promote stability as well as public understanding and confidence in insurance intermediaries, but will also support the FSC’s vision of supporting a robust financial services sector.

¹ An ‘insurance intermediary’ means an agent (including a managing general agent), broker (including facultative placement broker and reinsurance broker), sales representative, adjuster, insurance consultant, or such other persons carrying on any business connected with insurance as may be prescribed (Insurance Act, 2001).

² Corporate Governance refers to an established system of rules, practices and processes which acts as a benchmark against which an entity is directed and controlled whilst achieving its main business objective.

3.0 OBJECTIVE

3.1 The objective of this bulletin is to provide a general framework based on best practices and in some cases based on legislative provisions for the implementation of a robust and sustainable Corporate Governance by all insurance intermediaries.

3.2 Specifically, this general Corporate Governance framework is to facilitate the following:

- a) provide the Board of Insurance Intermediaries with the tools and / or point of reference for more effective management;
- b) outline and define the FSC's monitoring parameters for the operation of Insurance Intermediaries within the insurance sector; and
- c) promote public confidence through the strengthening of Insurance Intermediaries' accountability which will be manifested in more transparent business operations.

4.0 GENERAL CORPORATE GOVERNANCE FRAMEWORK

The following outlines a general corporate governance framework to be adopted by Insurance Intermediaries. It should be noted that depending on the Insurance Intermediary, not all aspects of the framework will be applicable and as such a combination may be employed as deemed appropriate.

4.1 Establishment of a Board of Directors

4.1.1 A robust Corporate Governance Framework is often only as effective as the Board of a company. Consequently, as the main functional medium of the company, a Board shall be constituted (or appointed) and shall have primary oversight for the effective management and strategic growth of the company.

4.1.2 In this regard, the following should be observed:

- a) Structure and Composition of the Board

A Chairman should be elected from the Board of Directors, with responsibility for ensuring that the affairs of the company are effectively and efficiently managed by the Board coupled with assuring public confidence of its policyholders.

The office of the Chairman shall be distinct from any other post within the company (for example, Chief Executive Officer) to avoid the concentration of authority in any one person. Similarly, each member of the Board shall have equal voting rights where the management and direction of the company is concerned.

ICP 7 requires that an appropriate number and mix of individuals be placed on the Board;³ therefore the size and quorum of the Board must be matched with the size of the company. Further it is recommended that at least one (1) member of the Board be an independent Director who does not represent any shareholding/business interest in the company.

NB. It is important that gender and age diversity be taken into account when considering the composition of the Board.

³ International Monetary Fund – Insurance Core Principles 7

b) Professional Qualification of Board Members

In the selection of the Board, the Insurance Intermediary shall give due consideration to the experience, qualification and knowledge which can redound to the benefit of the company.

Additionally, at the Board level, inclusion of persons with **professional qualifications**, preferably the Associate of the Chartered Insurance Institute (ACII) [(London)] or equivalent is desired.

c) Meeting of the Board

The Board should meet at least four (4) times per annum where its members are expected to attend a minimum of 75% of the meetings. Further, Minutes of all meetings must be properly documented and be easily accessible at the request of the FSC. A report of attendance shall also form a part of the documentation process.

4.2 Fit and Proper Requirement

4.2.1 Each of the persons managing or controlling⁴ the Insurance Intermediary must satisfy the FSC's **fit and proper**⁵ criteria at the initial stage of their appointment which is at the time of completion of the questionnaire available at www.fscjamaica.org.

4.2.2 Please also note that, for these referenced persons, the **original** Police Report must be submitted to the FSC.

4.2.3 Pursuant to Regulation 120 (5) of the Insurance Regulations, any changes to information provided in the application for registration or the Fit and Proper Questionnaire must be reported in writing, to the FSC within thirty (30) days of the change being made.

4.2.4 Pursuant to the previously issued bulletin on the New Requirements Related to Registration Processing and Fit and Proper Assessment (GEN-ADVI-10/01-001), Insurance Intermediaries are further asked to note that the assessment of fit and proper status is an on-going process beyond the application stage. Additionally, the FSC shall regard as being stale any Fit and Proper Document that is at least five (5) years old.

4.3 Code of Business Conduct – Employee Management

4.3.1 Employee Recruitment and Selection Procedure

(a) All Insurance Intermediaries shall endeavor to provide employment/career opportunities for suitable, experienced and qualified candidates at all levels.

(b) Pursuant to Section 73 (2) (d) of the Act, each person who is successfully hired by an Insurance Intermediary must meet the requirement of being **Fit and Proper**.

(c) The Insurance Intermediary shall seek to obtain and confirm at least two (2) appropriate references at the time of selection and acceptance.

⁴ Please refer to discussion paper on Ownership and Control (IR-CONSUL-10/07-007)

⁵ Please refer to Section (2) (3) (Insurance Act, 2001) for a clear and precise definition of who the FSC considers to be fit and proper.

- (d) The FSC requires that the Insurance Intermediary confirm all educational and professional qualification(s) at the time of selection and acceptance.

4.3.2 Employee Training and Development Policy

- a) The Board has the responsibility to approve and implement a Training and Development Policy for its employees. While the Board may delegate the implementation of this policy to its Senior Managers, this will not serve to abdicate the Board of its overall responsibility where any breach is concerned.
- b) The Board shall periodically review (as deemed necessary), the Training and Development Policy of the Insurance Intermediary and update it accordingly to keep abreast of the latest developments and strategic direction of the entity.
- c) The Insurance Intermediary has an obligation to ensure that on an on-going and frequent basis, an employee receives comprehensive and relevant training, namely but not limited to:
 - i. The employee's substantive post; and
 - ii. Matters as may be determined and required of the Insurance Intermediary by the FSC
- d) Training in Risk Management should be a continuous area of focus for all Insurance Intermediaries where Anti-Money Laundering (AML) and Counter Terrorism Financing (CTF) are concerned.
- e) The Insurance Intermediary shall implement and maintain an updated training log to record the type of training conducted, name of the employee, date of employment, the date the training was conducted and the competency level upon completion (if applicable).

4.4 Financial Management

- 4.4.1** An Insurance Intermediary must keep up-to-date and reasonably accurate accounting records, of the current financial position of the company in keeping with Regulations 36 of the Insurance Regulations.
- 4.4.2** The Insurance Intermediary should submit to the FSC, a copy of the Tax Compliance Certificate ("TCC") issued by the Ministry of Finance and the Public Service through Tax Administration Jamaica, as proof that payments of Income Tax and wage-related statutory deductions (PAYE, GCT, SCT, Ed Tax, NIS, NHT, and HEART) are up-to-date.
- 4.4.3** An Insurance Intermediary must submit to the FSC annually, confirmation of the continuation of Errors & Omissions and Fidelity Guarantee Insurances in keeping with Regulation 35 of Insurance Regulations.
- 4.4.4** Annual Returns must be filed with the FSC no later than ninety (90) days, after the end of each period, pursuant to Section 26 of the Act and Regulations 36(4) of the Insurance Regulations.
- 4.4.5** Half Yearly Returns must be files with the FSC no later than thirty (30) days, after each period, pursuant to previously issued bulletin on Filing Requirements Insurance Intermediaries (IR-GUID-04/06-007).
- 4.4.6** Pursuant to Section 37(1) of the Act, an Insurance Intermediary must immediately notify the FSC upon the appointment, resignation or removal of an auditor. The reasons for the removal or any reasons for the vacancy must also be provided.
- 4.4.7** In the event an Insurance Intermediary is unable to ensure that their auditor is also the auditor of their subsidiary companies, then pursuant to Section 37(4) of the Act, the Insurance Intermediary must immediately file a satisfactory explanation with the FSC.

- 4.4.8 Pursuant to Section 38(2) of the Insurance Act, 2001, if an auditor resigns during his/her appointment, a written explanation must be provided to the Intermediary and a copy immediately sent to the FSC and the new auditor.
- 4.4.9 Pursuant to Section 43 of the Insurance Act, 2001, if the directors or officers of an Intermediary become aware of facts that require a material adjustment to the financial statements, the statements must be amended and copies immediately delivered to the FSC and to the auditor.

4.5 Conflict of Interest

- 4.5.1 An Insurance Intermediary shall seek to avoid any conflict of interest that can arise during the normal course of interaction with a customer (prospective or contracted).
- 4.5.2 An Insurance Intermediary shall establish and maintain a conflict of interest policy approved by the Board. It is recommended that a risk assessment be conducted which will inform all the possible areas in which a conflict of interest can arise so that the recommended procedure to be followed can be clearly and effectively outlined.
- 4.5.3 A copy of the conflict of interest policy should be filed with the FSC within thirty (30) days of its implementation and/or following any amendment to the procedures.
- 4.5.4 In keeping with ICP 7.5, the FSC also requires that the Insurance Intermediary's Board of Directors provide oversight regarding the design and implementation of Risk Management and Internal Controls protocols to adequately address this concern/risk exposure.
- 4.5.5 An Insurance Intermediary shall not engage or recommend a transaction to a customer unless the insurance intermediary has taken all reasonable steps to advise the customer of the inherent risks associated with the transaction as well as the existence of potential conflicts of interest.
- 4.5.6 Where an Insurance Intermediary encounters a conflict of interest, they should seek to either:
- a) Exercise due care to allow for fair treatment of the customer (this includes full disclosure, adhering to the principle of confidentiality or declining to act); or
 - b) Act in a manner which a reasonably informed customer would anticipate once all relevant information is disclosed and the expectation is created such that the customer needs would be placed above the interest of the entity.
- 4.5.7 In keeping with maintaining a high ethical standard within the sector, it shall be required that all members of the Board and employees of an Insurance Intermediary, formally disclose to the Board and Shareholders the extent of their interest in any related entity⁶.

4.6 Internal Controls (Disciplinary Policies and Procedures)

- a) The Insurance Intermediary shall develop and implement a system (internal and operational controls) which includes policies and established procedures directly related to the core aspects of their business function and approved by its Board/Management.

⁶ A related entity may be an Insurance Broking Firm, Insurance or Reinsurance Company, Loss Adjusting Firm, Actuarial Firm, Legal Firm and Accounting/Taxation/Audit Firms.

- b) These policies and established procedures shall outline the precise manner in which all disciplinary actions, involving an employee, will be handled in a fair and unbiased manner.

4.7 Outsourced Functions

The Insurance Intermediary shall remain fully accountable for any operation being outsourced, which includes the proper oversight of such a function.

5.0 CONTACT DETAILS

Questions and comments regarding this Bulletin may be directed to:

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