



**Communication to Members who are licensed Insurance Managers**

**in relation to the**

**Rule – Corporate Governance for Insurers of April 2016**

**Communication date: 29 September, 2016**

This communication is addressed to Managers, and not to Insurers. It should not be provided to licensed clients of Insurance Managers. IMAC offers this communication to highlight practices that Managers may wish to consider when assisting their licensed clients in complying with the Rule (alternately referred to as the Rules).

***Disclaimer: This communication merely offers general guidance to Managers and is not a substitute for taking appropriate professional advice. It should not be relied upon in respect of points of law. IMAC assumes no responsibility to any Manager, Insurer or other party who may rely upon the guidance provided.***

Comments regarding how this general guidance may be enhanced should be addressed to:

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## **Introduction**

The Rules are applicable to all Classes of Insurer (except for Class A *External Insurers*). Certain Rules may only be relevant to the specific type of license category identified. Such identification is made in the following clauses:

- 4.4 For Class B and C insurers, the Insurance Manager may serve in the capacity of a control function.
- 5.5.1 Independence criteria for directors of insurers insuring third party risks are not required for Class B(i) and Class C insurers (unless otherwise required by the Authority).
- 5.6.2(h) Class B and C insurers must ensure that their appointed Insurance Manager has the appropriate credentials for their role.
- 5.7.2 There are specific requirements for directors of SPC's and PIC's.

The Rules are prefaced with the statement (in 3.2): The established corporate governance framework of an insurer should be commensurate with the size, nature and complexity of its business.

## **Insurance Core Principles (ICP)**

The ICP issued by the IAIS for insurance regulators have been supplemented by an Application Paper on the Regulation and Supervision of Captive Insurers, which states that insurance regulators should determine an appropriate and proportionate supervisory approach, depending upon the type of captive, and that the following factors may be taken into account:

- Ownership and structure
- Business underwritten
- Policyholders and beneficiaries

The Application Paper provides guidance to insurance regulators on the application of ICP 7 Corporate Governance in Section 4 of the paper. Noteworthy points made in Section 4 about a captive's corporate governance framework include the following:

65. Corporate governance issues specifically relevant to captives may include unrelated party issues, related party transactions or perceived and actual conflicts of interest.

68. The following are specific guidelines relating to the corporate governance of captives that supervisors may wish to consider:

- Operational control and access to books and records are within the jurisdiction of supervision.
- When approving non-executive directors, satisfying themselves that such directors must be able to exercise independent judgement and objectivity in making decisions and able to challenge sensibly the views of directors appointed by the parent group.
- Satisfying themselves with the composition of the board of directors.

69. Supervisors may wish to be satisfied that the board of directors:

- Has balance such that no one individual has unfettered powers of decision.
- Has transparent, effective ways to identify, manage and deal with conflicts of interest.
- Takes into account the interests of stakeholders.
- Has skills and experience to manage outsourced operations.
- Has clearly defined and agreed the responsibilities of the Insurance Manager.
- Has adequate controls in place over payments and charges over assets initiated by the owner such as dividends, loans etc.
- (70) Considers its responsibilities to multiple owners (eg association, group, reinsurance captives).

### **IMAC suggestions**

Taking all of the above into consideration, Insurance Managers may wish to consider the suggestions set out on the following pages in assisting their licensed insurer clients to adopt a written corporate governance framework which *must* (5.1.2 of the Rule) address the listed headings.

### **Conclusion**

In summary, most of the Rules refer to practices that most captives follow. What is new is the requirement to describe the captive's corporate governance in a Corporate Governance Framework document, which should be reviewed by the captive board annually along with its business plan, risk management framework, financial statements and other informational reports from service providers. The captive board should amend this framework as and when appropriate, and annually confirm that their Corporate Governance Framework is fit for purpose.

5.1.2	Heading	Consideration
A	The objectives and strategy of the insurer	For captives this is largely addressed by their CIMA approved business plan, which ideally should be reviewed in an annual board meeting and declared still fit for purpose or amended as appropriate.
B	Appropriate allocation of oversight and management responsibilities	<p>Captive boards generally require of those charged with control functions that they provide frequent reports to the board for their review in annual meetings, and that they be available to the board for interview.</p> <p>Review of the captive's Risk Management Framework at annual board meetings.</p>
C	Structure and governance of the governing body	<p>For captive owners that consider it appropriate to appoint non-executive directors (ie directors that do not form day-to-day functions of the captive OR its owner/affiliates), the selection process and remuneration should be documented, with consideration having been given to independence of judgement and objectivity.</p> <p>Captives should consider including in their corporate governance framework the rationale for the target composition of the board.</p> <p>All captive boards should adopt a policy to ensure disclosure of dual interests (ie multiple but not necessarily conflicting interests) and conflicts of interests by directors, including an annual declaration by each director.</p> <p>Voting rights for directors and committee members should be documented in the Articles of Association or Committee Charters and should ensure that no single person has unfettered control of business.</p>
D	Independence and objectivity	Criteria must be documented, except for Class B(i) and Class C insurers, unless CIMA requests otherwise. This appears to apply to other than non-executive directors, and may be addressed in the captive's board composition rationale in their corporate governance framework.
E	Collective duties of the governing body	<p>Provided the board of directors keeps the captive's Insurance Manager, and its legal advisor as appropriate, apprised of intended actions by the captive, and the Insurance Manager, and legal advisor, attend board meetings, then the Insurance Manager should be able to confirm to the board that the captive is in regulatory compliance.</p> <p>Insurance Managers are also licensed under the Insurance Law of the Cayman Islands and have an obligation to report non-compliance by any licensed client to CIMA.</p> <p>Regarding review of strategic objectives (and policies) and progress towards these, in practice this is covered by annual review of the business plan at board meetings, together with review of the insurance program and renewal terms, financial statements and funding requirements. In most cases this should satisfy self-assessment of the board's performance.</p> <p>Similarly, annual review of the Risk Management Framework, including internal controls, out-sourcing decisions and service provider selections, should satisfy the Rules in this regard.</p>

		<p>Review of the composition of the governing body and reliance on external experts may be addressed in the captive's board composition rationale in their corporate governance framework. All such reviews should be recorded or minuted.</p> <p>Regarding outsourcing, the board should be satisfied as to the disaster recovery and business continuity of key service providers. Regarding selection of Insurance Manager, the experience of the Insurance Manager is particularly important in the case of specialist insurers such as Life &amp; Annuity Insurers and Insurance Linked Securities.</p>
<b>F</b>	Duties of individual members of the governing body	<p>The selection process and remuneration of non-executive directors should be documented.</p> <p>Note the special requirements in 5.7.2 for directors of SPC's and PIC's. The remainder of this section may be satisfied by routine refreshers on the fiduciary duties of directors in the Cayman Islands, which the Insurance Manager, or legal advisor, can be asked to arrange, as well as reports from and interviews with service providers at the time of annual board meetings.</p>
<b>G</b>	Appointments to the governing body	<p>There is a requirement for a compliance committee, which for most captives will constitute the entire board, who will ask that their Insurance Manager, and legal advisor as appropriate, report on regulatory compliance at board meetings. For Insurers of Long Term business, however, 5.8.1 and 5.8.2 are important.</p>
<b>H</b>	Delegation	<p>Delegation of authority by the board must be formally documented.</p>
<b>I</b>	Conflicts of interest	<p>All captive boards should adopt a policy to ensure disclosure of dual interests (ie multiple but not necessarily conflicting interests) and conflicts of interests by directors, including an annual declaration by each director. Captive boards should consider whether it is appropriate to have certain service providers make conflict of interest disclosures.</p>
<b>J</b>	Risk management and internal control systems	<p>Addressed in the captive's Risk Management Framework.</p>
<b>K</b>	Remuneration policies and practices	<p>Where applicable, these must be documented and must not induce excessive or inappropriate risk-taking.</p>
<b>L</b>	Reliable and transparent financial reporting	<p>Financial reports, both unaudited and audited, are a staple agenda item for captive board meetings. If financial reporting is insufficient, infrequent or absent, this is a matter of regulatory compliance, addressed in E.</p>
<b>M</b>	Transparency and communications	<p>This Rule states that captive boards <i>must</i> hold regular meetings, <i>not less than annually</i>. Should it not be possible to hold a meeting in a particular calendar year, it is advisable to let CIMA know this and the reason. Meetings should be appropriately noticed and minuted, a matter that is typically addressed in the captive's Memo and Arts. Insurance Managers should report to the captive board on all CIMA communications made and received on the captive's behalf, including routine filings.</p>
<b>N</b>	Senior management duties	<p>Not applicable to captives unless they have employees.</p>