

DUTIES AND RESPONSIBILITIES OF CAPTIVE BOARD

Presented by:

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AGENDA

- Background
- Legal Duties
- Regulatory Duties
- Financial, Tax and Reporting Duties
- Responsibilities
- Practical/Miscellaneous



BACKGROUND

- **“Captive” vs “Insurer” vs “Reinsurer”**
- **Board delegated responsibility from shareholders to:**
 - transact the day-to-day business of the company
 - achieve its objects
 - ensure it carries out its activities as prescribed by its business plan
- **Memorandum of Association**
- **Articles of Association**
- **Business Plan**
- **Statutory / Regulatory**

LEGAL DUTIES

Statutory Duties

- **Companies Law**
 - Maintain registers
 - Reporting obligations
 - Maintain books of account
 - Maintain a Cayman registered office
- **Insurance Law**
 - Appoint insurance manager
 - Not to deviate from business plan (or seek approval to do so)
 - Capital requirements
 - Audit and reporting obligations



LEGAL DUTIES

Fiduciary Duties

- Duty to act in the best interests of the Company
- Duty to exercise powers for the purposes conferred
- Duty of trusteeship of the Company's assets
- Duty to avoid conflicts of interest and duty
- Duty to disclose personal interests in contracts involving the Company
- Duty not to make secret profits
- Duty to act with skill, care and diligence



LEGAL DUTIES

Standard of Skill and Care

- Objective test
- Delegation of duties

Directors' Liability

- Generally not personally liable for the debts, liabilities or obligations save in cases of dishonesty, wilful default or fraud
- Negligence (even gross negligence) can be covered by an indemnity
- Director Services Agreement / D&O

REGULATORY DUTIES

BUSINESS CONDUCT

- Establish, implement and maintain Corporate Governance Framework
- Set and review objectives and strategies
- Appropriate allocation of oversight and management responsibilities
- Outsourcing
- Nature, accessibility and retention of records
- Reinsurance arrangements
- Internal controls
- Directors devoting sufficient time to the role of director
- Board meetings
- Business continuity management
- Succession plan for directors and senior management
- Professional indemnity insurance
- Use of the internet
- Marketing policies

REGULATORY DUTIES CONTINUED

PRUDENTIAL STANDARDS

- Risk management
- Undertake self-assessments of performance and governance practices
- Remuneration policy
- Asset management and investment strategy
- Capital adequacy
- Trust funds – approved external insurers

REPORTING

- Anti-money laundering and combatting the financing of terrorism

FINANCIAL, TAX AND REPORTING DUTIES

- **No income, corporation, capital gains taxation in the Cayman Islands**
- **20-Year tax exemption**
- **Annual return and fee to the Registrar of Companies**
- **Certain changes to be filed with the Registrar:**
 - Memorandum or Articles of Association
 - Registered office
 - Directors and Officers
 - Name of the company
 - Increases in authorised capital
- **Annual return and audited financials to CIMA**

RESPONSIBILITIES

- Approving premium
- Approving insurance/ reinsurance arrangements
- Approving reserves
- Reviewing financial and investment performance
- Approving business plan, budget and operating policies
- Engaging consultants and evaluating their performance
- Setting strategic direction



PRACTICAL/MISCELLANEOUS

- Insurance manager to have access to full and proper records
- Proxy meetings (at least two proxies)
- Board / committee minutes
- Outsourcing and outsourced functions
- Independence and objectivity / conflicts
- Composition of the board and time commitment
- MLRO/AML

QUESTIONS?

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THANK YOU



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2018