

Hong Kong: New guidance note on the corporate governance of authorised insurers

On 7 October 2016, the OCI published a revised guidance note on the corporate governance of authorised insurers ("GN10").

Key changes from the previous guidance note are as follows:

1. With the exception of small authorised insurers, all insurers must have a Board level Risk Committee, to be distinct from the Audit Committee. This committee is responsible for independently overseeing the establishment and operation of the risk management system, together with the implementation of the risk appetite set by the Board. The majority of members of the Risk Committee should be independent non-executive directors ("INEDs").
2. The requirements regarding the independence of directors have been tightened. A director is no longer considered independent if (i) he has been an employee of the insurer or of one of its group companies within the last three years, or (ii) if he is a director or controller of a corporation that has significant financial interests in the insurer or one of its group companies, for instance, a major service provider.
3. A Chief Risk Officer may be appointed to carry out the operation of the risk management function. The CRO's role should be distinct from other executive functions, i.e. he or she should not report to the Chief Financial Officer or vice versa.
4. Insurers must have a prudent and effective remuneration policy which does not induce inappropriate or excessive risk taking. The scope of the policy has been extended to apply to all directors, senior management, key persons in control functions ("KPCFs") and material risk-taking employees. KPCFs include persons responsible for risk management, actuarial matters, financial control and compliance. The Remuneration Committee, which should be chaired by an INED, will be responsible for assessing the impacts of the policy. GN10 also provides guidance for the development of a good remuneration structure and appropriate criteria for performance measurement.
5. The Audit Committee should be chaired by an INED and preferably have an INED majority.
6. Each of the positions of Chairman, Chief Executive and appointed actuary should be held by different individuals.
7. At least one-third of the Board members must be INEDs, increased from the former requirement of one-fifth. Small authorised insurers with less than five directors should have at least one INED. An insurer must seek approval from the Insurance Authority where the number of INEDs is temporarily lower under exceptional circumstances.
8. Other revisions in relation to the Board:
 - a. The Board may delegate tasks to certain committees or groups, provided it is done under a clear mandate and in a manner which allows it to be effectively monitored.
 - b. The appointment and removal of Board members must be transparent and ideally be overseen by a Nomination Committee, which must now include at least one INED.
 - c. Where it is inevitable that conflicts of interest may arise, this should be managed by clear procedures such as disclosure to the Board, abstention or prior approval by the Board or shareholders.
9. Senior management is responsible for carrying out the day-to-day business of the insurer and implementing systems and controls in accordance with the business strategies and policies set by the Board. It may delegate some of its responsibilities to KPCFs provided that clear lines of accountability and reporting are established.

10. KPCFs should be 'fit and proper' and must report to the Board, Board committees or senior management.
11. Insurers should formulate a business continuity policy and business continuity plans. These should identify contingency measures that the insurer would take to restore the business in times of crisis as well as precautionary measures.
12. Proper policies and procedures should be implemented to guard against and manage cyber threats. These should be regularly reviewed and communicated to staff.

GN10 applies to Hong Kong incorporated insurers (with the exception of certain insurers in run-off) and overseas incorporated insurers which have over 50% annual gross premium income pertaining to their Hong Kong insurance business (reduced from 75% previously).

Captive insurers (insurance companies that are wholly owned and controlled by their insureds), who were previously exempt, are now encouraged to adopt the GN10 requirements.

The effective date for the changes to requirements for the minimum number of INEDs, the establishment of the Risk Committee and the remuneration policy is 1 January 2018.

The provisions applicable to Key Persons in Control Functions will take effect at Stage 2 of the commencement date of the Insurance Companies (Amendment) Ordinance 2015.

All other changes take effect from 1 January 2017.