THE INSURANCE COMMISSION
OF THE BAHAMAS

Guidance Note on Independent Directors

June 2014

I. Statement of Objective

The objective of this document is to provide guidance to insurance companies with respect to the role and responsibilities of Independent directors. This Guidance Note is based on International Best Practices, including the standards set out by the International Association of Insurance Supervisors' (IAIS) Insurance Core Principle (ICP) 7 on Corporate Governance.

II. Application

This Guidance Note applies to all domestic insurance companies. In accordance with the Insurance Commission of The Bahamas' (the Commission) Branch Operations Statement of Principles, the Commission will maintain relationships with the home regulators of foreign branches in order to monitor and assess the effectiveness of the company's Board of Directors. In addition, the Principal Representative of foreign branches is responsible for overseeing the management of the branch, as well as executing other corporate governance functions outlined in the Commission's Guidance Note on The Role of the Principal Representative.

III. Introduction

This Guidance Note should be read in conjunction with the Commission's Corporate Governance and Oversight Assessment Criteria, which outlines the criteria for the Board of Directors. Good corporate governance is crucial to the safety and soundness of insurers. Therefore, a significant element of the Commission's supervisory framework is focused on the effectiveness of the Board of Directors and the company's overall governance structure. This Guidance Note considers the role that independent directors play in cultivating an effective Board, supporting good corporate governance policies and practices, and protecting the interest of policyholders, minority shareholders and other absent stakeholders.

IV. What constitutes Independence

In accordance with Regulation 20(1), at least one third of the insurer's Board must be independent. An independent director is a member of a company's Board of Directors who does not have a material or pecuniary relationship with the company or its affiliates. This means that an independent director should be free of material relationships with a company's management, controllers, or others that might reasonably be expected to hinder the independent and impartial exercise of his/her best judgment for the exclusive interest of the company, policyholders and its minority shareholders and other absent stakeholders. The Insurance (General) Regulations, 2010 (the Regulations) defines affiliation of natural persons in detail (see Regulation 4); such persons are not considered independent.

V. Independence Criteria

The Board should establish clear and objective independence criteria, which should be met by a sufficient number of members of the Board to promote objectivity in decision making by the Board. For this purpose, the independence criteria should also take account of group structures and other applicable factors. Other applicable factors may include:

- Board Composition - Among the independent directors there must be an appropriate mix of individuals to ensure that there is an overall adequate level of knowledge and expertise for independent directors to effectively carry out their role and functions vis-à-vis the Board and its committees.
- Tenure of Board members – An independent director who has served on a company's Board for a long time may lose his/her ability to be objective. The company should consider limiting an independent director's service to no more than ten years. However, the company may reconsider the independent director after an adequate cooling-off period.
- Number of directorships – The number of directorships held by an independent director should be appropriately limited, so as not to diminish the quality of the director's oversight of the insurance company. This includes, but is not limited to, his/her ability to adequately prepare for and participate in Board meetings.

VI. Board Governance

The Board must have appropriate internal governance practices and procedures to support its work in a manner that promotes efficient, objective and independent judgement and decision making. The Board must also have adequate powers and resources to be able to discharge its duties fully and effectively. With respect to independent directors the Boards policies and practices should consider:

- Separating the role Chairman of the Board and Chief Executive Officer – Having an independent director as Chairman of the Board will help improve corporate governance and the overall functioning of the Board.

- Induction training – It is important to have a formal induction program for independent directors, so that they understand the risks and issues which challenge the insurance company. The induction program should at a minimum inform the directors on the company's business model and strategy, the insurance industry, legal and regulatory compliance issues, and financial position of the company. Additionally, there should also be adequate ongoing training for directors.
- Succession Planning – There must be adequate succession plans in place to mitigate the effects of losing independent directors, as these individuals are more difficult to replace than executive and other affiliated directors.

VII. Role of Independent Directors

The purpose of identifying and appointing independent directors is to ensure that the board includes directors who can effectively and objectively exercise their best judgment for the benefit of the company and its policyholders. Objectivity means that an independent directors' judgment should not be clouded by real or perceived conflicts of interest. The test of true independence will be the director's willingness and ability to challenge management and non-independent directors and ask the important questions. It may be difficult for a single independent director to influence change by him/her self. However, as a group, independent directors should be able to add value and combine their energies to focus the Board in the right direction.

Independent directors should provide input to all key decisions affecting the company. They should act with due care, diligence and in good faith. Additionally, independent directors have a duty to:

i. Objectively evaluate the Board's and management decisions, with a view to ensuring that they are well thought out and are in the interest of the company and its policyholders.

ii. Serve on key committees including, but not limited to the Audit, Investment, Conduct Review, and Remuneration Committees.
   a. In accordance with the Regulations 23 and 24, the Audit and Conduct Review Committees must consist of at least three directors the majority of who must be independent directors.
   b. The Investment Committee should also be comprised of an adequate number of independent directors.

iii. Prepare themselves thoroughly for board meetings and engage in meaningful and constructive debate. In order to be effective independent directors must:
   a. Learn about the business and environment in which the insurer operates and the issues it faces.

b. Seek information from within and, if required, outside the company to keep abreast of industry developments.
c. Be informed on laws and regulations that influence the insurance company and understand their functions as independent directors.

iv. Scrutinize the performance of management in meeting agreed goals and objectives. This includes monitoring:
   a. Progress in executing strategic and operational plans.
   b. Compliance with regulatory requirements including maintaining solvency, and rectifying regulatory deficiencies.

v. Advise the Commission of matters that constrain the director's ability to effectively carry out his/her duties. As a part of its overall supervisory process, the Commission may meet with independent directors periodically.

An independent director should advise the Commission in writing of his/her intention to and reasons for resigning from the Board of an insurance company. The Commission may meet with independent directors who have resigned or have not been reappointed to the Board.

VIII. Managing Conflicts of Interest

Independent directors must promptly disclose to the Board any situation which could reasonably be considered as a conflict of interest with service as a director, or having the appearance of such. Both the existence and nature of the interest (e.g., financial, family relationship, professional) should be disclosed.

IX. Assessing the Board

Independent directors play a crucial role in evaluating the performance of the Board and management. A self-assessment of the Board, the various board committees, and each individual director should be done on an annual basis. This would assist the Board to evaluate the levels of skill and experience on the Board as a whole. Further this exercise allows the Board to identify training and skill development needs, as well as to evaluate the composition of the Board and the respective committees. Re-appointment of Board members, including independent members should not be an automatic process. Rather, it should be based on the director's contribution to the Board and relevant committees.