Asia Pacific Insurance - Hong Kong

Guide for Directors and Senior Managers of Insurance Companies

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# Does the CEO, director or senior executives of an insurance company need to be registered or licensed by the insurance regulatory authority?

Approval from the Insurance Authority (IA) is required for the appointment of chief executives and directors of Hong Kong incorporated insurers. For insurers incorporated outside of Hong Kong, approval from the IA is required for appointment of the local chief executive in Hong Kong.

# Is approval from the regulator required for the appointment of a director/senior management of an insurance company? Is there any distinction between persons acting in an executive capacity and persons in a non-executive capacity?

Yes. Approval from the IA is required for the appointment of controllers (who are chief executives or managing directors) and directors by a Hong Kong-incorporated insurer. There is no distinction between an executive director and non-executive director (to the extent that it relates to the approval requirement). The Insurance Ordinance also requires key persons to be appointed for "control functions," which include risk management, financial control, compliance, internal audit and actuarial functions. The appointment of such key persons to control functions requires the IA's approval.

For directors, there is only a notification requirement. However, in practice, a submission to the OCI prior to the appointment of a director is highly recommended to ensure that the OCI has no objection to the fitness and propriety of the proposed candidate.

# Is there generally any distinction between EDs and NEDs?

There is no major distinction in Hong Kong except that non-executive directors should be independent. At least one-third of the board should be composed of independent non-executive directors.

# Is approval from the regulator required for the resignation or removal of a director/senior management of an insurance company? Is there any distinction between EDs and NEDs?

No. However, the IA must be notified of the resignation or removal of directors or the controller (who is the chief executive or managing director).

# Is there any nationality requirement for directors/senior management of an insurance company? If so, do any exemptions exist?

No. However, the insurer is expected to demonstrate to the IA that there is a locally based chief executive to oversee its Hong Kong operations. In relation to insurers incorporated outside Hong Kong, the chief executive should not also be responsible for the conduct of insurance business carried on by the insurer elsewhere.

# Is there a minimum qualification or minimum number of years of relevant experience applicable to directors/senior management of an insurance company?

The controllers, directors and key persons in control functions of the insurer are subject to fitness and propriety requirements, which take into account past relevant experience and qualifications. Where applicable, actuaries are subject to statutorily prescribed requirements relating to professional qualifications or memberships. Also, one-third of the directors must have relevant insurance experience.

# Are there any other fitness and propriety requirements that apply to directors of an insurance company? What are they?

Yes. Besides the requirements on education, qualification and experience, candidates must satisfy the criteria of competence, honesty, financial status and character, among others.

# Are there any other negative factors which will disqualify a candidate from becoming a director of an insurance company?

Yes. The following factors may disqualify a candidate: a past conviction relating to fraud or dishonesty or other criminal offenses, being an undischarged bankrupt, having been subject to a disciplinary action by any regulator, or having been a director of a body corporate that failed to comply with any legal or regulatory requirements. All these will be taken into account in determining the fitness and propriety of a candidate.

# Is there a residency requirement for directors/senior management of an insurance company (e.g., primary residence must be in each local jurisdiction)?

No. However, the insurer is expected to demonstrate to the IA that there is a locally based chief executive to oversee its Hong Kong operations. In relation to insurers incorporated outside Hong Kong, the chief executive should not also be responsible for the conduct of insurance business carried on by the insurer elsewhere.

# Does the insurance company need to evaluate its directors/senior management before appointing such persons? What certifications, if any, must the insurance company provide to the insurance regulatory authority in respect of its directors/senior management?

Yes. An insurance company is generally expected to ensure that all its appointed directors and controllers are fit and proper persons. There are no express requirements for the insurer to provide certification to the IA regarding the fitness and propriety of its directors/senior management. However, if the insurer fails to effectively evaluate the fitness and propriety of its directors and controllers, it may reflect adversely on the insurer's ability to maintain effective corporate governance. The IA also has residual power to take regulatory actions against the insurer if it is found that the insurer has furnished misleading or inaccurate information to the IA.

# Generally, are there any distinctions in the duties and responsibilities or the regulatory treatment for EDs and NEDs?

There is no distinction in regulatory treatment of executive directors and non-executive directors, but the INEDs are expected to provide
independent advice to the company. Generally, the board is collectively responsible for the operations of the insurance company.

# Are there any overarching duties and responsibilities for directors/senior management of insurance companies arising from insurance regulations (in addition to general corporate laws)?

Directors are responsible for the operations of the insurer, including compliance with applicable regulatory requirements and setting the
business objectives, strategies and policies of the insurer. The board and (where applicable) committees of the insurers are subject to specific corporate governance roles and responsibilities.

# Will directors/senior management be personally liable for breach of insurance regulations by the insurance company? What penalties are there, if any?

Yes. If the relevant breach is an offense and such offense is committed with the consent or connivance of, or because of neglect by, the relevant individual, he or she may become personally liable. Statutory penalties include fines and/or imprisonment and the quantum/length depends on the offenses committed.

# Are directors/senior management of an insurance company subject to any periodic filing/notification requirements? What are they?

Generally, no periodic filings apply to directors specifically. However, ad hoc filings may apply to resignation or cessation of appointment and notification of changes to information previously furnished to the IA. These notifications are generally filed by the insurance company.

# Is there a requirement on minimum number of the board of directors of an insurance company?

Yes. Depending on the size of the insurer, an insurer is expected to have at least three to five directors.

# Are there any rules around composition of the board of directors or equivalent (e.g., independence requirement or the number of executive- or management-level directors)?

Yes. At least one-third of the board of the insurer must be independent non-executive directors. For small insurers with less than five directors, there should be at least one independent non-executive director. Further, one-third of the board is also expected to possess sufficient industry knowledge and experience.

# Are there any mandatory requirements for setting up of other committees (e.g., audit, remuneration committees)? If so, briefly describe the responsibilities of these committees.

Yes. Generally, depending on its size, an insurance company is expected to establish an audit committee and (if appropriate) other specialized committees. The functions of these committees are as follows:

Audit committee (mandatory) – responsible for providing an independent review of the effectiveness of the financial reporting process and internal control system of the insurer

Risk committee (mandatory) – responsible for establishing and operating the risk management system of the insurer

Nomination committee – responsible for identifying candidates and reviewing nominations of directors and senior executives

Remuneration committee – responsible for recommending remuneration of senior management and other key personnel

Investment committee – responsible for setting the investment strategies and policies overseeing the investment portfolio of the insurer

# Are directors of an insurance company permitted to hold other passive business interests (e.g., non-executive directorships and investments/shareholdings in other corporations)? What disclosures, if any, need to be made to the relevant regulatory authorities? Are there restrictions on the number of positions board members can hold?

Yes, provided that there is no conflict of interest and subject to an independence rule where the director concerned is an independent non-executive director. The directorship information must be provided to the IA at the time of the application for approval, and the IA must be notified of subsequent changes.

# Is there any requirement or prohibition for an insurance company to make a payment to its directors/senior management?

No specific requirement or prohibition on remuneration to directors/senior management.

However, corporate governance rules apply in respect of remuneration of directors, senior management and other key personnel.

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