

CAYMAN ISLANDS MONETARY AUTHORITY

PRIVATE SECTOR CONSULTATION



DRAFT RULE - CORPORATE GOVERNANCE FOR INSURERS

A. Introduction

1. Section 34(1)(a) of the Monetary Authority Law (2013 Revision) (as amended) ("MAL") states that –

After private sector consultation and consultation with the Financial Secretary, the Authority may –

- (a) *issue or amend rules or statements of principle or guidance concerning the conduct of licensees and their officers and employees, and any other persons to whom and to the extent that the regulatory laws may apply;*
2. Requirements specific to the private sector consultation are outlined in section 4(1) of the MAL as follows:

When this Law requires private sector consultation in relation to a proposed measure –

- (a) *the Authority shall give to each private sector association a draft of the proposed measure, together with –*
 - i. *an explanation of the purpose of the proposed measure;*
 - ii. *an explanation of the Authority's reasons for believing that the proposed measure is compatible with the Authority's functions and duties under section 6;*
 - iii. *an explanation of the extent to which a corresponding measure has been adopted in a country or territory outside the Islands;*
 - iv. *an estimate of any significant costs of the proposed measure, together with an analysis of the benefits that will arise if the proposed measure is adopted; and*
 - v. *notice that representations about the proposed measure may be made to the Authority within a period specified in the notice (not being less than thirty days or such shorter period as may be permitted by subsection (3));and*
 - (b) *before proceeding with the proposed measure, the Authority shall have regard to any representations made by the private sector associations, and shall give a written response, which shall be copied to all the private sector associations.*
3. This paper proposes amended measures to provide transparency, certainty and enhanced guidance to insurers.

4. The Cayman Islands Monetary Authority (“Authority” or “CIMA”) seeks consultation and comment from the private sector associations concerning the following:
 - a) Draft Rule Corporate Governance for Insurers.

B. Background

5. At the CIMA Board meeting held on 7 May 2014, it was resolved that actions be taken to resolve deficiencies relating to core principles established by international bodies.
6. The Cayman Islands Monetary Authority is seeking to issue a new Rule relating to corporate governance for the insurance sector due to changes in the Insurance Core Principles (ICP). ICP 7, upon which these measures have been based was updated in 2011, post the financial crisis.
7. Secondly, the Insurance Division has observed several issues with corporate governance in relation to captives. A new measure is needed to direct licensees on how to engage in better corporate governance practices and to assist the Insurance Division to more effectively supervise the industry.
8. The current Statement of Guidance (“SOG”) on corporate governance was issued in 2003. It does not incorporate new regulatory standards in corporate governance that emerged post the 2007 global financial crisis nor is it compliant with the International Association of Insurance Supervisors (“IAIS”) core principles (“ICP”).

C. Purpose of proposed Rule

9. The Insurance Law, 2010 Revision currently provides in section 8 (2) (g) that an insurer shall “maintain an effective system of governance as approved by the Authority”. However, the Authority has not indicated what it considers to be an appropriate and effective system of governance.
10. ICP 7 requires that supervisors have the ability to require insurers to establish and implement a corporate governance framework which provides for sound and prudent management and oversight of the insurer’s business and adequately recognizes and protects the interests of policyholders.
11. Unlike many core principles promulgated by IOSCO and the Basel Committee on Banking Supervision, the ICPs require enforceability. Therefore a rule is needed for compliance. A self-assessment was conducted by the Insurance Division and the Policy and Development Division in 2012 to determine whether there were any gaps between the existing regulatory regime and the new ICPs. During the ICP self-assessment several issues resulted in the Authority grading itself as partly observed with respect to ICP7.
12. The new Rule will be applicable to all insurers except for Class A External insurers and proposes:
 - a) An enforceable corporate governance standard;
 - b) Clearly defined roles and responsibilities allocated to the board, senior management and key persons in control functions in order to promote an appropriate separation of the oversight function from the management responsibilities;

- c) Appropriate structure and governance frameworks of the boards, in relation to number and mix of people, skill and expertise commensurate with the governance structure and the nature, scale and complexity of the insurers business;
- d) A code of conduct for individual members of the board, for example to act in good faith, exercise independent judgment, not to use position to gain undue personal advantage, etc.;
- e) Oversight in respect of the design and implementation of the sound risk management and internal controls systems;
- f) Adoption and oversight of an effective remuneration policy that covers at minimum the board, senior management and key persons in control functions;
- g) Reliable and transparent financial reporting processes for insurers;
- h) Systems and controls promoting regular transparent communications between the licensee and the Authority and other relevant stakeholders of the corporate governance of the insurer;
- i) A framework outlining the duties of senior management; and
- j) A duty for the insurer to demonstrate the adequacy and effectiveness of its corporate governance framework to the supervisor.

13. The above proposals are aimed to satisfy the Authority's regulatory functions as stipulated in section 6 (3) (a) of the Monetary authority Law.

14. Section 6(3) the MAL states that

In performing its regulatory functions and its co-operative functions, the Authority shall, in addition to complying with the requirements of subsection (2):

(a) endeavour to promote and enhance market confidence, consumer protection and the reputation of the Islands as a financial centre;

D. Implementation in Other Jurisdictions

15. Table 1 shows compares whether the elements of the proposed Rule are practiced in other jurisdictions. All elements are present in other jurisdictions except for the prohibition or allocation of adversely classified assets because this element is uniquely designed to address certain issues relevant to the Cayman Islands.

Table 1: Comparison of Elements of Proposed Rules by Jurisdiction

ELEMENT	DRAFT RULE	BERMUDA¹	IRELAND ²	GUERNSEY³	CANADA⁴
Definitions	✓		✓	✓	✓
Description of Corporate governance framework	✓	✓	✓	✓	✓
Objectives and strategies of the insurer	✓		✓	✓	✓
Appropriate allocation of oversight and management responsibilities	✓	✓	✓	✓	✓
Structure and governance of the Board	✓	✓	✓	✓	✓
Independence and Objectivity	✓			✓	✓
Collective Duties of Board members	✓		✓	✓	✓
Duties of individual Board members	✓			✓	
Appointment of an Actuary	✓			✓	
Delegation	✓		✓	✓	✓
Conflicts of Interest	✓		✓		
Risk management and internal control systems and functions	✓		✓	✓	✓
Remuneration policy and practices	✓			✓	✓
Reliable and transparent financial reporting	✓			✓	✓
Transparency and communications	✓	✓	✓	✓	✓
Duties of Senior Management	✓	✓		✓	✓
Supervisory review	✓	✓	✓	✓	✓

E. Estimation of significant costs and benefits

16. Table 2 shows the costs and benefits of the proposed Rule.

¹ Bermuda Monetary Authority Insurance Department, Guidance note #12 - Corporate governance, March 2005

² Central Bank of Ireland, Corporate Governance Code for Captive Insurance and Captive Reinsurance Undertakings, 2011

³ Guernsey Financial Services Commission, Licensed Insurer's Corporate Governance Code, March 2008 and Guernsey FSC Draft corporate governance rules

⁴ Office of Superintendent of Financial Institutions Canada, Corporate Governance Guideline, January 2013

Table 2: Estimate of Costs and Benefits

	Costs	Benefits
Authority	<ol style="list-style-type: none"> 1. Gazette and publication of new measure 2. Amend supervisory manuals 3. Training of Insurance Division staff 	<ol style="list-style-type: none"> 1. Enhance and support regulatory processes, in particular on-site inspection 2. Increases compliance with insurance core principles 3. Requires licensees to formalise or adopt safe practices, therefore increasing safety and decreasing probability of failure 4. Improved communication between the insurer and the Authority 5. Better documentation of board decisions, which facilitates the onsite inspection process
Cayman	None	<ol style="list-style-type: none"> 1. Improved governance of insurers in the Cayman Islands by requiring insurers to have a comprehensive framework that should in turn reduce the negative financial effect of adverse exposure to mismanagement and operational risk. 2. Enhancement of the reputation of the Cayman Islands as a leading financial services centre overall with prudent and progressive regulation 3. Increased protection for policyholders due to the reduced risk of failure 4. Reduced risk of self-dealing and preferential treatment of persons or entities connected to the licensee 5. Improved remuneration policies reduce imprudent risk taking
Licensees	<ol style="list-style-type: none"> 1. Implementing an annual declaration of conflicts of interest 2. Implementation of policies and procedures required by the Rule. 3. Potential changes to board manuals or procedures 4. Potential increased difficulty in finding directors 	<ol style="list-style-type: none"> 1. Better protection for policyholders as a result of the more robust management of risks to which their insurance companies are exposed. 2. Provides information on the Authority's approach and sound business practice with regard to corporate governance, which in turn increases the reputation of the industry when conducting business with insurers outside the jurisdiction.

	<p>to ensure board composition meets requirements of Rule and due to increased responsibilities</p> <p>5. Longer or more frequent board meetings</p>	<p>3. Assists licensees in developing comprehensive corporate governance framework and increase awareness of risks facing licensee.</p> <p>4. More effective decision making by the Board</p>
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G. Comments and Consultation

17. The Authority seeks consultation through written comments and representations from the private sector associations concerning the Draft Rule - Corporate Governance for Insurers.

18. The Authority must receive representations by 5:00PM, 14 September 2015.

19. Comments and representations must be addressed to

The Managing Director
 Cayman Islands Monetary Authority
 P.O. Box 10052
 80e Shedden Road
 Elizabethan Square
 Grand Cayman KY1-1001
 Cayman Islands
 Tel: 345-949-7089
 Fax: 345-946-5611
 Email:

Consultation@cimoney.com.ky with a copy to s.francis@cimoney.com.ky

20. The Authority shall have due regard to any representation made by the private sector associations and industry stakeholders. The Authority shall provide a written response collating the feedback received and the Authority’s position on this feedback. This response shall be copied to all relevant private sector associations only.