NOTICE NO. TIU/N-3/2017/7

NOTICE ON CORPORATE GOVERNANCE FOR INSURANCE COMPANIES AND TAKAFUL OPERATORS

1. INTRODUCTION

1.1. This Notice is issued pursuant to Section 88 of the Insurance Order, 2006 and section 90 of the Takaful Order, 2008 ("the Orders") to outline mandatory requirements and the Authority's expectations[1] with respect to the corporate governance of both registered insurance companies and takaful operators (except the branch operations of foreign insurance companies)[2]. The Notice describes the importance of a sound Corporate Governance Framework, with focus on the main components:

- Key Responsibilities of the Board of Directors
- Key Responsibilities of Senior Management
- Risk Management and Internal Controls
- Role of the Audit Committee.
- Transparency and Disclosure

1.2. This Notice shall be read in conjunction with the Insurance Order, 2006, the Takaful Order, 2008, the Code of Corporate Governance and the Companies (Corporate Governance) (Public Companies) Rules 2016 imposed as the case may be under the Companies Act (Cap. 39) as well as any other notices, directives or guidelines, which the Authority may issue from time to time.

1.3. This Notice shall take effect on 1 January 2018, except for clause 4.9.3 which shall take effect on 1 January 2019.

2. DEFINITIONS

2.1. For the purpose of this Notice:

2.1.1. "Board" means the Board of Directors of the company;

[1] In this Notice all items prefaced by the word 'shall' denote mandatory requirements for which the regulatory consequences under section 88 of the Insurance Order 2006 and section 90 of the Takaful Order, 2008 apply. For items prefaced with the word 'should' and all other items, the Authority expects insurers and takaful operators to adhere to on a 'comply or explain' basis

[2] Foreign insurance branches do not have Boards of Directors in Brunei and accordingly, it would be inappropriate to apply the specific provisions of this Notice to branch operations, although the legal entity would be subject to corporate governance requirements issued by its home supervisor. AMBD looks to the Principle Officer of a branch to oversee the management of the branch, including matters of corporate governance as outlined in this Notice.

2.1.2. “Control functions” includes oversight functions where Senior Management has delegated some of its responsibilities for providing oversight of operational management including the Internal Audit, Risk Management, Compliance and Actuarial Functions;

2.1.3. “Fit and proper person” means a person who fulfils the fit and proper criteria as provided in Guidelines on Fit and Proper Criteria for Key Responsible Persons in Insurance and Takaful;

2.1.4. “Independent director” means a director who is independent of Management and free from any business or other relationship which could interfere with the exercise of independent judgement or the ability to act in the best interests of the insurer.

2.1.5. “Insurer” means a registered insurance company under Insurance Order, 2006 and a registered takaful operator under Takaful Order, 2008;

2.1.6. “Key Persons in Control Function” means a person who has responsibility independent from business lines to provide objective assessment, reporting and assurance on the effectiveness of an insurer’s policies and operations, and its compliance with legal and regulatory obligations. This includes persons who head the Financial, Risk Management, Compliance, Internal Audit and Actuarial functions.

2.1.7. “Risk Appetite” is the aggregate level and types of risk an insurer is willing to assume, decided in advance and within its risk capacity, to achieve its business objectives and strategies.

2.1.8. “Senior Management” means persons having authority and responsibility for planning, directing and controlling the activities of the company as appointed by the Board, including the Principal Officer as defined in the Insurance Order, 2006 and Takaful Order, 2008.

3. CORPORATE GOVERNANCE FRAMEWORK

3.1. The Organisation for Economic and Development (OECD) defines corporate governance as “*a set of relationships between a company’s management, its Board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined. Good corporate governance shall provide proper incentives for the board and management to pursue objectives that are in the interests of the company and its shareholders and shall facilitate effective monitoring*.”

3.2. Effective corporate governance is critical to the proper functioning of the financial sector and the economy as a whole. Financial institutions perform a crucial role in the economy by intermediating funds activities that support enterprise and help drive economic growth. The safety and soundness of financial institutions are key to financial stability, and the manner in which they conduct their business, therefore, is central to economic health.

3.3. The insurer's Board and Senior Management are ultimately accountable for the insurer's safety and soundness and its compliance with governing legislation, including its corporate governance. The responsibilities of the Board and Senior Management include:-

3.3.1. The Board is responsible for providing stewardship, including direction setting and general oversight of the management and operations of the insurer.

3.3.2. Senior Management is accountable for implementing the Board's decisions and is responsible for directing and overseeing the operations of the insurer. Senior Management includes the Chief Executive Officer (CEO) or Managing Director (MD) and individuals who are directly accountable to the CEO/MD.

3.3.3. Senior Management may delegate some of its responsibilities to the insurer's Key Persons in Control Functions. The persons in the control functions are responsible for providing enterprise-wide oversight of operational management and may include the Chief Financial Officer (CFO), Chief Risk Officer (CRO), Chief Compliance Officer (CCO), Chief internal Auditor (CIO) and the Chief Actuary (CA).

3.4. The corporate governance framework of an insurer shall:

3.4.1. Promote the development, implementation and effective oversight of policies that clearly define and support the objectives of the insurer; define the roles and responsibilities of persons accountable for the management and oversight of an insurer by clarifying who possesses legal duties and powers to act on behalf of the insurer and under which circumstances;

3.4.2. Set requirements relating to how decisions and actions are taken including documentation of significant or material decisions, along with their rationale;

3.4.3. Provide sound remuneration practices which promote the alignment of remuneration policies with the long term interests of insurers to avoid excessive risk taking;

3.4.4. Provide for corrective actions to be taken for non-compliance or weak oversight, controls or management.

4. KEY RESPONSIBILITIES OF THE BOARD OF DIRECTORS

4.1. The Board of Directors (the Board) shall have a “Board Terms of Reference” that documents the mandate, responsibilities and procedures of the Board and the Board committees. It should also define the oversight function of Board on Senior Management.

4.2. The Board has the overall responsibility for promoting the sustainable growth and financial soundness of an insurer, and for ensuring reasonable market conduct standards of fair treatment of customers, without undue influence from any party. This includes consideration of long-term implications of the Board’s decisions on the company, its policyholders/participants, shareholders and other recognised stakeholders.

4.3. The Board should discharge, at a minimum, the following essential duties:

4.3.1. Approve the insurer’s:

a) Short-term and long-term enterprise-wide business objectives, strategy and plans (capital, financial, liquidity), including its risk appetite and risk limits;

b) Significant strategic initiatives or transactions, such as mergers and acquisitions;

c) Internal control framework;

d) Appointment, performance review and compensation of the CEO/MD and, where appropriate, other members of Senior Management, including the heads of the control functions;

e) Succession plans with respect to the Board, CEO/MD and where, appropriate, other members of Senior Management, including the heads of the control functions;

f) Mandate, resources and budgets for the control functions;

g) External audit plan, including audit fees and the scope of the audit engagement; and

h) Appointment of the actuary and scope of the actuarial review.

4.3.2. The Board should review and discuss the Insurer’s:

a) Significant operational and business policies;

b) Business and financial performance relative to the Board-approved strategy and risk appetite;

c) Compensation policy for all human resources;

d) Implementation of internal controls, including their effectiveness;

e) Organisational structure; and

f) Compliance with applicable laws, regulations and guidelines.

While these functions are the primary responsibility of Senior Management, through review and discussion, the Board has a critical role in providing high-level guidance to Senior Management on these matters.

4.4. For the Board of a takaful operator, the overall responsibility includes the responsibility to promote Syariah compliance in accordance with expectations set out in any Syariah governance requirements issued by the Authority and the Syariah Financial Services Board (SFSB). In this respect, the Board shall clearly define its relationship with the insurer's Syariah Advisory Committee. While the Syariah Committee has distinct responsibilities in relation to Syariah matters, the Board remains responsible for the direction and control of the takaful operator's business and risk strategies.

4.5. The Board's primary interface with Senior Management is through the CEO/Managing Director. The Board or individual Board members should meet regularly with the management of the business units and the control functions, with and without members of Senior Management present.

4.6. Both the Board and Senior Management are required to demonstrate that they are meeting the applicable corporate governance requirements on an on-going basis. The onus for demonstrating, to the satisfaction of the supervisor, that the corporate governance framework is effective and operates as intended, rests with the insurer.

4.7. While Senior Management should have regular interaction with regulators with respect to the overall operations of the insurer, the Board should ensure that regulators are promptly notified of substantive issues affecting the insurer.

4.8. **BOARD MEETINGS**

4.8.1. The Chair of the Board has the role of providing leadership to the Board for its proper and effective functioning. In fulfilling this role, the Chair shall:

a) Ensure that appropriate procedures are in place to govern the Board's operation;

b) Ensure that decisions are taken on a sound and well-informed basis, including by ensuring that all strategic and critical issues are considered by the Board, and that directors receive the relevant information on a timely basis;

c) Promote a culture of openness and debate by ensuring that dissenting views can be freely expressed and discussed; and

d) Lead efforts to address the Board’s developmental needs.

4.8.2. The Board shall meet as often as is appropriate to fulfil its responsibilities effectively and prudently, reflective of the nature, scale and complexity of the insurance/takaful business.

4.8.3. The Board should understand the decisions, plans and policies undertaken by Senior Management and their potential impact upon the insurer. This includes probing, questioning and seeking assurances from Senior Management that these are consistent with the Board-approved strategy, risk appetite, risk limits, and that the corresponding internal controls are sound and implemented in an effective manner.

4.8.4. A director shall devote sufficient time to prepare for and attend Board meetings, and maintain a sound understanding of the business of the insurer as well as relevant market and regulatory developments, including a commitment to on-going education and professional development.

4.8.5. A director shall attend at least 75% of the Board meetings held in each financial year, and shall not appoint another person to attend or participate in a Board meeting on his behalf.

4.8.6. Directors shall not participate in any decision making/discussion where a reasonably perceived potential conflict of interest exists. A director, whether already appointed or proposed to be appointed, who is, directly or indirectly, interested in a proposed decision by the Board shall disclose the nature of his interest at the first opportunity that the relevant facts have come to his knowledge.

4.8.7. The Board shall ensure that clear and accurate minutes of Board meetings are maintained to record the decisions of the Board, including the key deliberations, rationale for each decision made, and any significant concerns or dissenting views. The minutes shall indicate whether any director abstained from voting or excused himself from deliberating on a particular matter.

4.8.8. The Board should establish a documented ‘conflict of interest’ policy for its members and where conflicts of interest arise the Board shall ensure that they are noted in the minutes. Key aspects should include:

a) The individual member of the Board should exercise independent judgement and objectivity in his decision making, taking due account of the interests of the insurer and the policyholders/participants;

b) The individual member of the Board should act in the best interests of the insurer and the policyholders/participants, and not use his/her position to gain undue personal advantage or cause any detriment to the insurer;

c) If on-going conflicts of interest arise, consideration should be given to changing the membership of the Board.

4.8.9. The insurer shall provide the Board with access to advice from third party experts on any matter deliberated by the Board as and when required, and the cost of such advice shall be borne by the insurer.

4.9. COMPOSITION OF THE BOARD

4.9.1. Relevant financial industry and risk management expertise are competencies for the Board. There shall be reasonable representation of these skills at the Board and Board Committee levels.

4.9.2. The contribution of individual directors will vary based on their particular qualifications and experience. However, collectively, the Board shall bring a balance of expertise, skills, experience and perspectives, taking into consideration the insurer's strategy, risk profile and overall operations.

4.9.3. The composition of the Board shall be made up of at least one-third of independent directors.

4.9.4. An independent director shall immediately disclose to the Board any change in his circumstances that may affect his status as an independent director. In such a case, the board must review his designation as an independent director and notify the Authority in writing of its decision to affirm or change his designation.

4.9.5. The Board should ensure that the Board composes of an appropriate number and mix of individuals to ensure that there is an overall adequate level of competence at the Board level commensurate with the governance structure.

4.9.6. In considering and/or proposing director appointments, the Board should assess and document its consideration of possible conflicts of interest among its members, including, but not limited to personal relationships, business relationships and common directorships among its members or proposed members. No director shall hold any management or other position or have any business relationship with the company.

4.9.7. An insurer should ensure a majority of its directors are reasonably available to the Authority at short notice, if so required.

4.9.8. Each member of the Board shall have sufficient time to the role of director and associated responsibilities. The Board should indicate a time commitment expected from directors in letters of appointment.

4.9.9. Appointments should not proceed where possible conflicts of interest may emerge which are significant to the overall work of the Board.

4.10. **BOARD COMMITTEES**

4.10.1. The Board may as appropriate to the nature, scale and complexity of the insurer's business, delegate some of the activities or tasks associated with its own roles and responsibilities to a Board Committee.

4.10.2. To promote robust and open deliberations by the Board on matters referred by the Board committees, the Chair of the Board shall not chair any of the Board committees.

4.10.3. The Board remains fully accountable for any authority delegated to the Board committees.

4.10.4. The Board shall ensure that the mandate and operating procedures for each Board committee are set out in the Board Terms of Reference and clearly –

a) Delineate the areas of authority delegated to the Board committee; and

b) Define reporting arrangements for keeping the Board informed of the Board committee's work, key deliberations and decisions on delegated matters.

4.10.5. The insurer shall provide the Board committee with sufficient resources required to investigate any matter within their mandates.

5. KEY RESPONSIBILITIES OF SENIOR MANAGEMENT

5.1. The CEO/MD and other members of Senior Management are responsible for directing and overseeing the effective management of the insurer, within the authority delegated to them by the Board and in compliance with applicable legislation.

5.2. The responsibilities of Senior Management include –

5.2.1. implementing the business and risk strategies, remuneration and other policies in accordance with the direction given by the Board;

5.2.2. establishing a management structure that promotes accountability and transparency throughout the insurer's operations, and preserves the effectiveness and independence of control functions;

5.2.3. promoting, together with the Board, a sound corporate culture within the insurer which reinforces ethical, prudent and professional behaviour;

5.2.4. addressing actual or suspected breaches of regulatory requirements or internal policies in a timely and appropriate manners; and

5.2.5. regularly updating the Board with the material information the Board needs to carry out its oversight responsibilities, particularly on matters relating to –

a) The performance, financial position condition and operating environment of the financial institutions;

b) Internal control failures, including breaches of risk limits; and

c) Legal and regulatory obligations, including supervisory concerns and the remedial actions taken to address them.

5.3. Senior Management facilitates the Board's oversight role by providing relevant, accurate and timely information to the Board, enabling it to oversee the management and operations of the insurer, assess policies and determine whether the insurer is operating in an appropriate control environment.

6. RISK MANAGEMENT AND INTERNAL CONTROLS

6.1. It is the Board's responsibility to ensure that the insurer has appropriate systems and functions for risk management and internal controls, and to provide oversight to ensure that these systems and the functions that oversee them are operating effectively and as intended. The responsibilities of the Board are outlined further in International Association of Insurance Supervisors (IAIS) *Insurance Core Principle ICP 8 Risk Management and Internal Controls.*

6.2. An effective Board should have a sound understanding of the business strategy, nature of the business activities of the insurer and the associated risks. It should ensure that Senior Management has established an adequate risk management system to identify, measure, monitor, control and report those risks. The risk management system should be supported by a system of sound internal controls. However, it is recognized that risk management systems and practices will differ, depending on the scope and size of the insurer and the nature of its risk exposures.

6.3. For the purpose of managing the risks of the insurer, the responsibilities of the Board include, but are not limited to:

6.3.1. Promote and sustain a sound risk culture;

6.3.2. Approving the risk appetite framework, which should be comprehensive and actionable, and linked with the insurer's business strategy and strategic decision-making and integrated with associated internal processes such as underwriting, claims management, reinsurance/retakaful, asset-liability matching, investment, recovery and resolution planning and strategic planning;

6.3.3. Ensuring that senior management has established adequate risk management practices for material risks, such as credit, market, (investments) underwriting (and reinsurance/retakaful) interest rate risk, legal, compliance, fraud, reputational, regulatory and operational risks, on a regular basis;

6.3.4. Reviewing the current risk profile, risk tolerance level and risk strategy of the insurer;

6.3.5. Ensuring that it obtains a periodic independent assessment of the design and effectiveness of the insurer's risk governance framework on a regular basis;

6.3.6. Ensuring that the risk management function has adequate resources and is staffed by an appropriate number of experienced and qualified employees who are sufficiently independent to perform their duties objectively. The risk management function should have appropriate reporting lines that are independent of business lines;

6.3.7. Maintaining records of all its meetings, in particular records of discussions on key deliberations and decisions taken;

6.3.8. Satisfying itself that all key control functions are independent of business units, and have adequate resources and authority to operate effectively;

6.3.9. Ensuring that it receives timely, accurate and sufficiently detailed information from control functions;

6.3.10. Ensuring that it identifies risks to be addressed by contingency plans based on, inter-alia;

a) The areas where it considers the insurance/takaful business to be especially vulnerable;

b) The risk appetite of the insurer; and

c) The risk management system of the insurance/takaful business.

7. <u>ROLE OF AUDIT COMMITTEE</u>

7.1. Every insurer shall establish an Audit Committee comprised of 3 or more members of the Board (all independent directors).

7.2. The duties of the Audit Committee include:

7.2.1. Reviewing the skills, resources, fees and independence of the External Auditor and recommending appointment of, or change of External Auditor to the Board;

7.2.2. Establishing criteria for types of non-audit services to be provided by the External Auditor;

7.2.3. Reviewing the annual financial statements of the insurer and the appropriateness of the insurer's accounting and actuarial policies and practices;

7.2.4. Evaluating and approving Internal Control Procedures for the insurer

7.2.5. Meeting with the Actuary to discuss effectiveness of the internal controls and adequacy of reserving and reporting practices

7.2.6. Reviewing and approving the insurer's audit plans (internal and external) to ensure they are appropriate, risk-based and address all relevant activities over a measurable cycle

7.2.7. Supporting the Board in ensuring there is a reliable and transparent reporting process within the insurer.

7.2.8. Reviewing and updating the Board on all related party transactions.

7.2.9. Reviewing the accuracy and adequacy of the Chairman's statement in the director's report, corporate governance disclosures, interim financial reports and preliminary announcements in relation to the preparation of financial statements

7.3. The Audit Committee should discuss with Senior Management and the External Auditor the overall results of the audit, the annual and quarterly financial statements and related documents, the audit report, the quality of the financial statements and any related concerns raised by the external auditor. This should include, but not be limited to:

7.3.1. Key areas of risk for material misstatement of the financial statements, including critical accounting estimates or areas of measurement uncertainty;

7.3.2. Areas of significant auditor judgment, including accounting policies, accounting estimates and financial statement disclosures;

7.3.3. Whether the External Auditor considers estimates/models to be "aggressive" or "conservative" within an acceptable range and, specifically, where there are options, the rationale for the final valuation decision and if the option is consistent with industry practice;

7.3.4. Significant or unusual transactions (e.g., restatements);

7.3.5. Difficult or contentious matters noted during the audit or other audit matters that would typically be discussed with an engagement quality control reviewer;

7.3.6. Changes in the audit scope or strategy;

7.3.7. Internal control deficiencies identified during the course of the audit;

7.3.8. Areas of financial statement disclosures that could be improved.

7.4. The Audit Committee should probe, question and hold regular '*in camera'* meetings with the External Auditor, the Head of Internal Audit and the Actuary, to understand all of the relevant issues and how these issues have been resolved.

7.5. The Audit Committee should probe, question and seek assurances from the External Auditor that the financial statements present fairly the financial position, the results of operations and the cash flows of the insurer. Annually, the Audit Committee should report to the Board on the effectiveness of the external auditor.

8. TRANSPARENCY AND DISCLOSURE

8.1. The Board is responsible for overseeing the insurer's systems and controls to ensure that the financial reports of the insurer present a balanced and accurate assessment of the insurer's business and its general financial health and viability as a going concern.

8.2. An insurer shall publicly disclose information on the insurer's corporate governance framework, including

8.2.1. The information set out in **Appendix 1;**

8.2.2. The particulars of, and the reasons for, any gaps in relation to the requirements set out in this policy document; and

8.2.3. A description of the measure taken or that will be taken, to address the gaps.

8.2.4. Publish on its website the Articles of Association, Board Terms of Reference, and updated details on Board composition.

8.3. The Board shall ensure that the corporate governance disclosures are accurate, clear and presented in a manner that is easily understood by its shareholders, policyholders/participants and other relevant stakeholders.

8.4. An insurer shall disclose publicly the information in paragraph 8.2 on its official website[3] or by other electronic means as approved by the Authority. The insurer shall also make this information available for inspection by any policyholder/participant or member of the public at every branch of the insurer in Brunei Darussalam.

MANAGING DIRECTOR
AUTORITI MONETARI BRUNEI DARUSSALAM

Issue date: 18 Zulkaedah 1438 / 11 August 2017

[3] An insurer may, where applicable, choose to leverage on its head office or Group's existing website to make the requisite disclosures under this Notice so long as it is clear that these disclosures relate to the Brunei Darussalam operations rather than the Group as a whole, and shall not be required to create a separate official website for its Brunei Darussalam operations for the purposes of this Notice.

APPENDIX 1: CORPORATE GOVERNANCE DISCLOSURES

1. **Board of directors**
   a) *Composition*
      - Name and designation (i.e. independent, non-independent non-executive, executive, chairman) of each director
      - Key personal details and background of each director including relevant experience, any shareholding in the insurer and external professional commitments
      - Chairman and members of each Board committee
      - Appointments, resignations and removals of directors during the financial year
      - Description of trainings and education provided to the Board;
      - Number of meetings convened by the Board and each Board committee

   b) *Function and conduct*
      - Roles and responsibilities of the Board and the Board committees
      - Attendance of each director at Board and Board committee meetings during the financial year

2. **Internal control framework**
   a) *Overview*
      - Main features of the internal control framework, and the nature and frequency of any review and assessment conducted on the internal control framework
      - Key policies and procedures of the internal control framework, including any changes made to these policies and procedures during the financial year

3. **Remuneration**
   a) *Qualitative disclosure*
      - An overview of the key features and objectives of the remuneration policy
      - A description of the scope of the remuneration policy (such as by regions or business lines), including the extent to which it is applicable to foreign subsidiaries and branches
      - A description of the types of officers considered as senior officers and as other material risk takers, including the number of officers in each group
      - An overview of the findings, recommendations and actions taken with respect to any review and assessment conducted on the remuneration system during the financial year

   b) *Quantitative disclosure*
      - The total amount of remuneration awards for the CEO and directors for the financial year; and
      - Remuneration information in respect of Senior Management and management in control functions to show the breakdown of the total amount of remuneration awards in terms of fixed and variable remuneration.