

LEGAL NOTICE NO. ...

THE INSURANCE ACT CAP 487

INSURANCE (GROUP-WIDE SUPERVISION) REGULATIONS

IN EXERCISE of the powers conferred by Section 180(1A) of the Insurance Act, the Cabinet Secretary, issues the following regulations-

INSURANCE (GROUP-WIDE SUPERVISION) REGULATIONS

PART I – PRELIMINARY

1. These regulations may be cited as the Insurance (Group-wide Supervision) Regulations.
2. In these regulations, unless the context otherwise requires:

“Financial Conglomerate” means any group of companies including insurance group under common control or dominant influence, comprised of any financial holding company, which conducts material financial activities in at least two of the regulated financial services sectors and may also include non-regulated entities.

“Head of the group” means the entity which controls or exerts dominant influence over the conglomerate and may be the ultimate parent or the head of a conglomerate that is a subset of the wider group.

“Unregulated entity” means entities that are not directly prudentially regulated by sectoral supervisors or the Group-level Supervisor.

“Wider group” means the broader group to which the financial conglomerate belongs including cases where the financial conglomerate is part of a larger diversified conglomerate with both financial and non-financial entities.

1. The purpose of this regulation is to:
 - (a) Close regulatory gaps, eliminate supervisory challenges and ensure effective supervision of risks arising from group related activities; and
 - (b) Ensure that supervision has proper regard to all entities which may affect the overall risk profile and/or financial position of the group as a whole and/or the individual entities within the group.

PART II- GENERAL REQUIREMENTS

2. A financial conglomerate shall establish and maintain organizational, governance and communications structures at the group level that facilitate achievement of the objectives of entities regulated under the Act.
3. An entity regulated under the Act shall facilitate and ensure compliance by the group with these regulations.
4. The parent board may delegate certain duties to an appropriately constituted committee of the parent board, the board of a subsidiary or affiliate of the parent company.
5. The senior management of the parent company may be delegate certain duties to appropriate senior management of a subsidiary or affiliate of the parent company.

Citation.

Interpretation.

PART III- GOVERNANCE STRUCTURES

6. A financial conglomerate shall establish a comprehensive and consistent governance framework across the group that addresses the sound governance of the conglomerate, including unregulated entities.
7. A financial conglomerate shall develop a framework that ensures resources are available for constituent entities to meet both the group and their own entity's governance standards.
8. The board of the parent company shall ultimately be responsible for the sound and prudent management of a financial conglomerate.
9. A financial conglomerate shall put in place a corporate governance framework which shall:
 - (a) appropriately balance the diverging interests of the constituent entities and the conglomerate as a whole;
 - (b) take into consideration the interests of policyholders, other recognized stakeholders of the conglomerate and the financial soundness of entities in the conglomerate;
 - (c) include adequate policies and processes that enable potential intra-group conflicts of interest to be avoided, and actual conflicts of interest to be identified and managed;
 - (d) include a strong risk management framework, a robust internal control system, effective internal audit and compliance functions, and ensure that the group conducts its affairs with appropriate independence and a high degree of integrity;

Objectives.

- (e) include a code of ethical conduct; and
- (f) address the following issues:
 - (i) alignment to the structure of the conglomerate;
 - (ii) financial soundness of the significant owners;
 - (iii) suitability of board members, senior management and key persons in control functions including their ability to make reasonable and impartial business judgments;
 - (iv) fiduciary responsibilities of the boards of directors and senior management of the head company and material subsidiaries; and
 - (v) management of conflicts of interest, in particular at the intra-group level and remuneration policies and practices within the conglomerate.
- 10. Where the local corporate governance requirements applicable to any particular material entity in the conglomerate are below the group standards, the more stringent group corporate governance standards should apply, except where this would lead to a violation of local law.
- 11. A financial conglomerate shall put in place policies focused on identifying and managing potential intra-group conflicts of interest, including those that may result from intra-group transactions, charges, up streaming dividends and risk-shifting.
- 12. The policies in regulation 11 shall:
 - (a) be approved by the board of the head of the conglomerate and be effectively implemented throughout the group;
 - (b) recognize the long-term interest of the financial conglomerate as a whole, policyholders, significant entities of the conglomerate, the stakeholders within the financial conglomerate, and all applicable laws and regulations;

STRUCTURE OF THE FINANCIAL CONGLOMERATE

- 13. A financial conglomerate shall have a transparent organizational and managerial structure, which is consistent with its overall strategy and risk profile.
- 14. The board and senior management of the head of a financial conglomerates that is part of a wider group shall put in place governance arrangements to enable relevant supervisory authorities identify and appropriately assess risks arising from the wider group.

15. A financial conglomerate shall have a framework governing information flows within the group.
16. A financial conglomerates shall ensure that each entity has a distinct operation framework including premises.

SUITABILITY OF BOARD MEMBERS, MANAGEMENT AND HEAD OF KEY CONTROL FUNCTIONS

17. The significant owners, board members, members of senior management and key persons in control functions of a financial conglomerates shall meet fit and proper requirements under the Act.
18. A financial conglomerate shall have satisfactory processes for periodically assessing suitability of significant owner, board members, senior managers and key persons in control functions.

RESPONSIBILITY OF THE BOARD OF THE HEAD OF FINANCIAL CONGLOMERATE

19. The board of the head of the financial conglomerate shall:
 - (a) exercise adequate oversight of subsidiaries, both regulated and unregulated, while respecting independent legal and governance responsibilities;
 - (b) appropriately define the strategy and risk appetite of the financial conglomerate and ensure the strategy is implemented in the various entities;
 - (c) provide sufficient and quality information on the strategy, risk appetite and corporate governance framework of the financial conglomerate.
 - (d) have in place a framework for monitoring compliance with the strategy and risk appetite across the financial conglomerate.
 - (e) set up an adequate corporate governance framework to ensure that the strategy is implemented and monitored throughout the financial conglomerate and reviewed at least once in three years.

REMUNERATION IN A FINANCIAL CONGLOMERATE

20. A financial conglomerate shall develop and implement an appropriate remuneration policy whose oversight shall rest with the head of the group.

21. A financial conglomerate shall ensure that the risks associated with remuneration arrangements are reflected in the financial conglomerate's broader risk management framework.

INTRA- GROUP TRANSACTIONS

22. A financial conglomerate shall:
- (a) develop and implement a policy on related party transaction;
 - (b) ensure that related party transactions are at arm's length; and
 - (c) ensure integrity and transparency of related party transactions.
23. Where the entity regulated under the Act uses shared services at the group level, such an entity shall satisfy the Authority that the head of the function at the holding company meets the criteria set by the Authority.

PART IV- CAPITAL ADEQUACY AND LIQUIDITY

24. The board of the head of the financial conglomerate shall develop and implement prudent and robust capital management policy.
25. The policy shall take into account additional risks associated with unregulated activities and complexities related to cross-sectoral activities.
26. A financial conglomerate shall:
- (a) maintain adequate capital on a group-wide basis to act as a buffer against the risks associated with the group's activities;
 - (b) consider and assess the group-wide risk profile when undertaking capital management;
 - (c) manage its capital through a documented process to ensure it maintains adequate capital within the group and its constituent entities;
 - (d) consider double gearing or multiple gearing when conducting capital adequacy assessment;
 - (e) address excessive leverage and situations where a parent issues debt and down-streams the proceeds in the form of equity to a subsidiary;
 - (f) ensure the capital adequacy measurement techniques consider the potential for undue pressure to service a parent's debt;

- (g) ensure that funds treated as available and included in the group-wide capital assessment should be legitimately movable within the group where necessary;
- (h) ensure that the regulatory capital in a subsidiary and the corresponding capital requirements are calculated according to the rules applicable to the financial sector and jurisdiction in question.

LIQUIDITY

- 27. The head of the group shall develop and maintain liquidity management processes and funding programs;

RISK MANAGEMENT

- 28. A financial conglomerate shall:
 - (a) establish and document an appropriate risk management framework that is consistent across all entities;
 - (b) establish a risk management function which is independent from the business units and has a direct reporting line to the board and senior management ;
 - (c) establish an enterprise-wide risk management process for reviewing the effectiveness of the group-wide risk management framework and ensuring appropriate aggregation of risks.
- 29. The board of the head of the group shall be responsible for the financial conglomerate's group-wide risk management, internal control mechanism, internal audit and compliance functions.

RISK CONCENTRATIONS AND INTRA-GROUP TRANSACTIONS

- 30. A financial conglomerate shall put in place effective systems and processes to manage and report group-wide risk concentrations and intra-group transactions and exposures.

Issued thisday of2018

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Henry Rotich
Cabinet Secretary National Treasury

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