

LEGAL NOTICE NO.....

THE INSURANCE ACT

(Cap. 487)

INSURANCE (CORPORATE GOVERNANCE) GUIDELINES, 2018

IN EXERCISE of the powers conferred by section 3A(a), (b) and (g) of the Insurance Act, the Insurance Regulatory Authority issues the following guidelines—

GUIDELINES ON CORPORATE GOVERNANCE, 2018

1. These guidelines may be cited as the Insurance (Corporate Governance) Guidelines, 2018. Citation.

2. In these guidelines, unless the context otherwise requires— Interpretation.

“**Board**” refers to the Board of Directors of the regulated entity;

“**Corporate governance**” refers to systems, structures, policies and processes through which a regulated entity is managed and controlled.

“**Management staff**” refers to the principal officer and the direct reports.

“**Non- Executive Director**” means a member of a board of an entity who are not involved in the day to day management of the entity.

“**Independent Director**” means a member of a board of directors who does not have a direct or indirect pecuniary relationship with the entity or related persons except sitting allowances;

“Fit and proper” refers to a person who is essentially of good character, competent, honest, financially sound, reputable, reliable and discharges or is likely to discharge his or her responsibility fairly.

3. These guidelines **provide for principles** to promote good governance and prudent management of regulated entities in Kenya Introduction
4. The objective of these guidelines is to set minimum standards of good corporate governance practices by the entities.
5. An entity shall develop a corporate governance framework with the aim of:
 - (a) promoting the development, implementation and effective oversight of policies that clearly define and support the objectives of the entity;
 - (b) defining the roles and responsibilities of persons accountable for the management and oversight of an entity;
 - (c) setting requirements relating to how decisions and actions are taken;
 - (d) providing for communication, as appropriate, on matters relating to the management, conduct and oversight of the entity to stakeholders; and
 - (e) providing for corrective actions to be taken for non-compliance or weak oversight, controls or management.
6. These guideline shall apply to all entities registered under the Act where appropriate.

7. The board shall be ultimately accountable and responsible for the corporate governance framework of the entity. Objective
8. An entity shall have an effective board that is accountable and responsible for the performance and conduct of the entity's business. Scope
General principles
9. Where the board delegates its functions to board committees or management, it does not in any way absolve the board of its responsibilities.
10. The board shall ensure that the management and board functions are clearly separated to enable the board to exercise its oversight function over management.
11. An entity shall ensure that the corporate governance framework recognizes the expectations of all stakeholders.
12. A member of the entity's management except the Principal Officer shall not be a member of the board.
13. An entity shall have an adequate number of board members that enable it to carry out its functions effectively and efficiently.
14. Where the constitutive documents of the entity allow for the appointment of an alternate director, such an appointment shall be subject to approval by the Authority.
15. An entity shall ensure that two thirds of the board members are independent directors who shall not hold office for more than six years. Governance structure of the Board
16. The Independent Directors shall be professionals who are free from any business relations or other associations, including those arising out of involvement in past management or as a supplier

or adviser that could materially interfere with the exercise of their independent judgment.

17. An independent director shall be a person who:
 - (a) has not been employed by the entity within the preceding five (5) years;
 - (b) is not associated to an adviser or consultant to the entity or a member of the entity's management staff or a significant customer or supplier of the entity or with an organization that receives significant contributions from the entity or within the preceding five (5) years, has not had any business relationship with the entity;
 - (c) has no personal service contract(s) with the entity or a member of the entity's employees;
 - (d) is not a member of the immediate family of any person described above; or
 - (e) has not had any of the relationships described above with any affiliate of the entity.
18. The Principal Officer shall be an ex-officio member of the board with no right to vote at the board meetings.
19. The board shall be composed of individuals with a balance of skills, diversity and expertise, who collectively possess the necessary qualifications commensurate with the size, complexity and risk profile of the entity.
20. All board members shall train on corporate governance with an institution recognised by the Authority.
21. The board of an entity shall have and maintain the necessary skills, knowledge and understanding of the entity's business to be able to fulfil their roles.
22. The board of an entity shall establish and periodically review a board charter which defines the respective roles, responsibilities and functions of the board.
24. The board of an entity shall be charged with the following responsibilities;

- (1) Setting the entity's strategic objectives, the means of attaining the objectives and the procedures for monitoring and evaluating the progress made towards achievement of the objectives;
- (2) Selection, monitoring and where necessary replacement of key executives and overseeing succession planning;
- (3) Developing and implementing human resource policies including a remuneration policy that is reviewed periodically which does not induce excessive or inappropriate risk taking;
- (4) Overall direction of the business of the entity, including capital management, revenue streams, expenses and profitability;
- (5) Aligning the corporate culture, corporate activities and behaviour with the expectation that the entity will operate in a safe and sound manner, with integrity and in compliance with applicable laws, regulations and guidelines.
- (6) Ensuring that the entity 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.
- (7) Setting out the nomination and appointment procedures, structure, function, re-election, removal and balance the board composition depending on the nature, scale and complexity of the entity.
- Responsibility of board

- (8) Setting the entity’s values and standards, including ethical standards and ensuring that obligations to policyholders and other stakeholders are understood and met;
 - (9) Devising policies to govern related party transactions;
 - (10) Establishing a policy on declaration of dividends to shareholders and participating policyholders if applicable.
 - (11) Setting out policies regarding conflict of interest, fair treatment of customers and information disclosure;
 - (12) Preparation of financial statements and accounts; and
 - (13) Setting the tone on risk management from the top and inculcating an appropriate risk culture throughout the entity.
25. The directors of an entity shall meet the “fit and proper” criteria as set out in the guidelines for suitability of persons. Fit and proper criteria
26. The Chairman of the board shall be an independent director who shall have the role of providing leadership to the Board for its proper and effective functioning. Role of the Chairman
27. The board shall establish board committees, depending on the nature, scale and complexity of the entity, to assist in discharging its duties and responsibilities. Board Committees
28. The board committees shall have clearly defined mandates, authority to carry out their respective functions and the degree of independence and objectivity as appropriate to the role of the committee.
29. The board committees shall be composed of at least three members at any one time and the chair of the board shall not be a member of any board committee.
30. Where a committee performs more than one function, the board shall ensure such a combination does not compromise the integrity or effectiveness of the combined functions.
31. The board shall be responsible for monitoring and oversight of its sub-committees and external service providers.

32. The board shall form such number of committees as necessary for the performance of functions including but not limited to:
- (1) Audit;
 - (2) Risk Management;
 - (3) Policyholder Protection;
 - (4) Finance & Investments;
 - (5) Ethics and compliance; and
 - (6) Nomination and Remuneration;
33. The chairman of the committee in charge of the Audit function shall be an independent director of the board with accounting, finance or audit knowledge and experience.
34. The Principal Officer of an entity shall not be a member of the Audit Committee.
35. The committee in charge of the audit function shall perform Audit function among others the following responsibilities;
- (1) To provide an independent review of the effectiveness of the financial reporting process and internal control systems;
 - (2) To review the effectiveness of the internal audit function; and
 - (3) To make recommendations to the board on proposals to shareholders for the appointment, re-appointment, removal, remuneration and terms of engagement of the external auditors and actuaries.
36. The committee of the board in charge of the risk management function shall ensure that the management maintains a sound risk management system and internal controls to safeguard policyholder's interest and the entity's assets.
37. The committee shall determine the nature and extent of the significant risk which the board is willing to take in achieving its strategic objectives.

38. The committee shall maintain a group-wide and aggregated view on the risk profile of the entity in addition to the individual risk profile. Risk Management
39. The committee in charge of policyholder protection shall develop a mechanism of keeping the policyholders well informed and educated about insurance products, claims and complaint-handling procedures and in particular shall; Policyholder protection
- (1) Set out a policy on fair treatment of customer and monitor its implementation;
 - (2) Put in place proper procedures and effective mechanism to address complaints and grievances of policyholders; and
 - (3) Have fully documented internal procedures for resolving disputes between the client and the entity or any other person acting on behalf of the entity.
40. Board's responsibilities in respect to the Ethics functions shall include: Ethics function
- (1) Establishing and embedding corporate ethical values, the ethics policy and code and ensuring and monitoring ethical business practices;
 - (2) Setting out a policy on anti-fraud and anti-corruption and monitor its implementation
 - (3) Supervising and monitoring matters reported using the entity's whistle blowing or other confidential mechanisms for employees and others to report ethical and compliance concerns or potential breaches or violations;
 - (4) Approving compliance framework, reviewing their effectiveness on a regular basis and signing off on any material compliance issues or matters.
41. The committee in charge of nomination and remuneration function shall set up a policy on nomination, remuneration and performance of the board, Principal Officer, management and persons in key control functions of the entity. Nomination and remuneration function

42. Management staff shall oversee the operations of the entity and provide direction on a day-to-day basis, subject to the objectives and policies set out by the board of directors, as well as other legal requirements. Board Performance Evaluation
43. Management staff shall provide the board with comprehensive, relevant and timely information to enable the review of business objectives, business strategy and policies, and to hold Management staff accountable for performance. Responsibilities of the Management staff
44. The board shall;
- (1) Determine the board performance evaluation criteria
 - (2) Undertake an annual evaluation of board performance
45. The evaluation shall cover the board as a whole, board committees, individual members, the chairman, the Chief Executive Officer and the Company Secretary.
46. The principal officer shall be the Chief Executive Officer or Managing Director and shall be the link between the board and management of the entity. Role of the Principal Officer
47. The Principal Officer shall be responsible to the Board for the day to day running of the entity.
48. The Principal Officer shall;
- (1) Ensure that the policies spelt out by the Board in the entity's overall corporate strategy of the institution are implemented
 - (2) Establish and maintain efficient and adequate internal control systems;
 - (3) Design and manage the necessary management information system in order to facilitate efficient and effective communication within the institution;
49. An insurer shall have a company secretary. Company Secretary

50. The company secretary shall provide guidance to the board on their duties and responsibilities and on matters of governance.

51. Where the Authority determines non-compliance with the provisions of these guidelines, it may take any intervention prescribed in the Act.

Enforcement

52. Where the Authority determines that the regulated entity has not met the requirements of these guidelines, the Authority may impose any or all of the administrative sanctions to correct the situation in accordance with the provisions of the Insurance Act. The Authority shall therefore take appropriate action to rectify the situation where the entity violates the provisions of these guidelines, including but not limited to;

Administrative
sanction

- (1) Direct the regulated entity to take appropriate remedial action.
- (2) Withdraw, suspend or revoke the sale of the insurance product;
- (3) Impose additional reporting requirements and monitoring activities;
- (4) Withdraw or impose conditions on the business license taking into account the nature of the breach and;
- (5) Monetary penalties not exceeding Kenya Shillings One Million.

53. The Authority shall use some, or all of the intervention measures mentioned, and may also take steps that are not explicitly provided for in these guidelines.

Issued on the 2018.

ABDIRAHIN H ABDI
*Chairman,
Insurance
Insurance Regulatory Authority.*

GODFREY K. KIPTUM
*Ag. CEO & Commissioner of
Insurance Regulatory Authority*

