

AIDA Questionnaire on the Corporate Governance of Insurers World Congress, Rio, 2018

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I. General

1. In your jurisdiction, what corporate governance models are available to insurance companies? In case multiple models are available, describe the main differences and the allocation of management and monitoring powers among the relevant bodies/committees and which model is generally or ideally adopted by insurance companies.

Insurance companies are generally established as joint-stock corporations (*società per azioni*). Under Italian company law, corporations may opt for one of following three corporate governance systems:

(i) the so-called traditional system, in which alongside the board of directors there exists a separate board of statutory auditors (*collegio sindacale*) with audit and monitoring functions;

(ii) the two-tier system, whereby the members of the management board are appointed by a supervisory board (appointed, in turn, by the shareholders), which, among other things, performs audit and monitoring functions and approves the financials;

(iii) the single-tier system, whereby audit and monitoring functions are exercised by an audit committee composed by independent members within the board of directors.

Although special insurance regulation (art. 70 of the Private Insurance Code) makes available all three systems, the vast majority of insurance companies adopt the traditional model.

2. What are the main sources of regulation addressing corporate governance of companies (and in particular of insurance companies)? *e.g.*, statutes, regulations, other rules/recommendations issued by national and supranational supervisors/regulators, self-regulation, codes of best practice, codes of ethics.

The general framework of regulation on corporate governance is provided by the Italian Civil Code.

Within this framework, special regulations by IVASS (Italian insurance regulator and supervisor) set forth additional rules, particularly on internal control systems, relationships and information flows among the internal functions, strategic role of the board and risk management (*e.g.*, Regulation 20/2008, Regulation 38/2011). A new IVASS draft regulation on corporate governance (mainly aimed at implementing the EIOPA guidelines within the Solvency II principles) is currently under consultation and will amend/adapt, among other things, certain existing rules under Regulation 20/2008.

Insurance companies whose shares are listed on a stock exchange are also subject to the special rules of the Consolidated Financial Act (TUF d.lgs. 58/1998) and can adopt

– on a voluntary basis (according to the “*comply or explain*” principle) – a code of best practice developed and updated by the Corporate Governance Commission of the Italian Stock Exchange.

3. In your jurisdiction, are you aware of any insolvency or distress of an insurer directly attributable to poor corporate governance standards or practices or failure to adequately implement and apply such principles? If so, please identify the main triggers of the insolvency.

One of the most serious situations of potential distress of a large Italian insurance company (Fondiarria SAI) – ultimately solved through a combination/merger with another large insurance company (i.e., Unipol) – was largely due to the failure to properly apply existing governance principles and remedies. A number of derivative lawsuits against former directors and controlling shareholders (allegedly charged with misappropriation) have been filed and criminal proceedings are currently pending.

3. In your jurisdiction, is corporate governance regulation applied according to the nature, scale and complexity of an insurer’s business? If yes, please describe any significant differences and rationale for the differences.

The proportionality principle is not explicitly stated in the current regulation but, in order to address the needs of medium/small size insurance companies, the IVASS regulation on governance (currently under consultation) will arguably introduce such mechanisms. However IVASS while exercising its supervision/monitoring prerogatives on the governance of insurance companies takes into account – when assessing the adequacy of the existing measures – also the nature, complexity and size of the relevant insurer.

4. Please provide specific examples of corporate governance structures and practices that are better implemented through self-regulation rather than through legal or supervisory requirements.

The experience and widespread adoption of the code of best practice developed and updated by the Corporate Governance Commission of the Italian Stock Exchange seems to suggest that certain improved standards – at least among large listed insurance companies – are better implemented through self-regulation. Nevertheless adequate monitoring on the actual effectiveness of good governance measures is necessary (so as to avoid that voluntary adoption of higher standards turns into a mere window-dressing)

5. In case your jurisdiction was recently requested to implement domestically certain corporate governance principles set forth by supranational regulations, describe the main obstacles and problems (if any) that resulted from such process.

Not specifically applicable. However the process of implementation of Solvency II principles is still pending in many ways (see IVASS regulation on governance) and represents a rather difficult challenge, particularly for small and medium size insurance companies (both in terms of costs and available resources).

6. Are there any significant differences between general corporate governance

rules and the specific rules governing insurance companies?

Special IVASS regulation is much more detailed and extremely analytic in terms of duties, actions and conducts expected from directors and internal monitoring (see article 30 of the Private Insurance Code, Regulation 20/2008 and its pending amendments) compared to the general corporate governance rules, which very often rely on broad principles as commonly interpreted and applied by courts. As a matter of example the Private Insurance Code and IVASS Regulation identifies the board of directors as the ultimate corporate governance body, in charge of defining strategies, providing guidelines, approving the organizational structure of the company, regularly evaluating and assessing the efficiency of the governance system. IVASS Regulation sets forth a vast number of compliance tasks and duties to put in practice such general mandate.

II. Fitness and Propriety of Board Directors

1. Are there any laws or regulations already adopted or any proposals in your jurisdiction, relating to the qualification and composition of board directors in an insurance company? If so, please explain.

Yes, persons in charge of administration, management and control functions in insurance companies must meet professional, good repute and independence requirements, graded according to the principle of proportionality and taking into account of importance and complexity of the role played, as better identified in the implementation regulation (currently under adoption of new fit&proper rules). Absence or loss of such requirements entails disqualification.

2. In your opinion, what factors, conditions, or incentives might weaken the independence of the board of directors or individual members of the board?

Absence of adequate professional standards/expertise and lack of independence of judgment.

3. How does an insurance company ensure that individual board members and the board collectively have enough knowledge to monitor and oversee the activities of the insurer appropriately, particularly where specific expertise is needed?

Upon appointment, statements by the relevant candidates and periodical self-assessment by the board of directors (see Regulation 20/2008 as amended).

4. Are there significant differences in terms of requirements and duties between executive and non-executive members of the board of directors of an insurer?

On this particular aspect general corporate law principles apply and no special regulation for the insurance industry. Certain monitoring roles (e.g., internal control, remuneration, actuarial) are or may be carried out by non-executive directors.

5. In your jurisdiction are there any black letter rules or general principles that enable directors to rely upon external opinions when addressing issues or aspects where specific expertise is needed?

Not applicable as there is no black letter rule on directors' reliance upon external

opinions (unlike the English Companies' Act). However among scholars (and in certain case-law) this general principle is accepted and applied.

6. Describe the extent and scope of supervisors'/regulators' intervention with reference to the qualifications and to the activities of the board of an insurer.

Ex-post remedies and supervision. IVASS can impose fines and exercise the right to remove persons in charge of management and control functions (see article 76 and 188 of the Private Insurance Code).

7. Are there any special rules and regimes applicable to the governance of subsidiaries belonging to an insurance group, also in terms of information flows?

Yes. Article 26 of IVASS Regulation 20/2008 describes the role of parent companies. The parent has strategic control over the evolution of the various group activities, management over the economic, financial and equity balance of the insurance group and the companies, and an operational/technical monitoring over the risks that individual subsidiaries can bring to the group. As to information, Article 27 of Regulation 20/2008, provides for information coordination procedures for all activities between the parent company and the companies belonging to the insurance group. Periodic information flows to allow verification of the strategic objectives and compliance with regulations.

III. Risk Management

1. In your opinion, what is the biggest risk challenge (e.g. regulation, capital standard, pricing, interest rate, cyber, terrorism, etc.) facing the insurance industry today in your jurisdiction?

Among the various governance related challenges, management of interest rates (in life insurance/index-unit linked products) and costs and implication of the new prudential regulation appear to be the most critical.

2. What specific laws or regulations, actual or pending in your jurisdiction, will present significant implementation risk challenge toward the insurance industry?

Arguably the new generation of AML rules (anti money laundering) and prudential regulation (i.e., Solvency II implementation process). This comment leaves aside the separate challenges regarding revised distribution rules (IDD and MiFID II) which nevertheless may have an impact on internal organization/governance of insurance companies.

IV. Ethics and Corporate Social Responsibility

1. Please provide any concrete examples where business ethical standards and/or corporate social responsibility standards have been applied and have changed the behaviors of the insurance company.

Reale Mutua Assicurazioni adopted a voluntary ADR system for disputes among company and its clients (which are also members of the company, since Reale is

established as a so-called “*Mutua*”) which requires a specific report to the annual members meeting. Many large insurance companies in Italy have in place CSR/sustainability programs.

2. In your jurisdiction, are there any specific laws or regulations already adopted or any proposals, or any arrangements in place in the governance system, relating to the protection of policyholders’ and/or financial consumers’ interests?

Not at governance level. Policyholder protection is safeguarded in different (and more traditional ways) such as transparency, anti-fraud rules, liquidation process and rules of conduct in product distribution.

3. In your jurisdiction, is an insurance company required to produce an annual Corporate Social Responsibility (CSR) report or a Global Sustainability Initiative (GSI) report? If so, what context needed to be disclosed in these reports?

No special regulation for the insurance industry. Large insurance companies above the CSR Directive thresholds are however subject to the relevant non-financial disclosure obligations.

V. Disclosure

1. In your opinion, what mechanisms shall be in place or considered in an insurance company to ensure the transparency of its governance structure? (e.g., the articles of association, the organization chart, any existing committees, the major shareholders, the ethical standard, corporate social responsibility, etc.)

More effective disclosure (in terms of quality of information rather than quantity), proper expertise at board level and, possibly, reasonable and progressive adoption of certain corporate social responsibility principles

2. Are there any governance practices that, in your opinion, can best be achieved through disclosure rather than through specific supervisory requirements?

Ethical standards

3. Which governance practices should be mandatory for an insurance company?

Possibly CSR and greater disclosure of potential areas of conflict interest and unusual risk exposures.

4. What is the interplay between market abuse regulations and other disclosure/transparency rules applicable to listed insurers and industry specific rules applicable only to insurance companies?

There are no special rules applicable to the insurance industry. The interplay between MAR and transparency is regulated by general rules applicable to all listed companies.

5. In respect of the corporate governance of insurers, please describe your criticisms on the system in your jurisdiction, any recommendations for

the future, and/or the main challenges which insurance undertakings encountered.

There are no apparent weaknesses affecting specifically the insurance industry. However – more in general but particularly in the insurance/financial sectors – internal control, role and duties of non-executive directors and information flow between executive directors and the board is crucial. Effectiveness and monitoring of fit & proper requirements should also be strengthened.