

AIDA Questionnaire on the Corporate Governance of Insurers

World Congress, Rio, 2018

General reporter: Professor JJ Lin (AIDA Taiwan)

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.**

Since, as detailed below, the regulatory framework applicable to insurance activity in Argentina does not provide guidance on corporate governance, companies have adopted the models applied by their parent companies; in the event that it's associated is a foreign company, or international principles, there being no homogeneity in this respect or widespread practice.

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.**

In Argentina, the regulatory framework applicable for insurance activity is provided by Insurance Law No. 17,418, which establishes the general guidelines applicable to insurance contracts, Law 20,091 of Insurance Companies that sets forth the regime applicable to the activity, and the regulation of the latter, given by Resolution 38,708 (General Regulation of Insurance Activity), issued by the *Superintendencia de Seguros de la Nación*, the controller authority or regulator, responsible for issuing general resolutions and supervising the conduct of insurance companies and producers, among others.

In general, there are no guidelines in this regulatory framework that refer to or guarantee good practices in corporate governance.

The General Regulation of the Insurance Activity requires that at the time of requesting authorization to operate, the entities must submit a report containing the administrative and functional organization of the company, a projected organizational chart with a description of functions, main policies, established guidelines for care provided to the insured, risk management and other elements related to the government system, detail of accounting, administrative, communication and risk monitoring systems, money laundering prevention and financing of terrorism, as well as software and hardware to be used (Article 7.1.1 Resolution 38,708).

When the applicant is part of a group, the regulation requires an explanation of group's structure, identifying all the companies that are members of the group (including insurers and other regulated entities or not), as well

as information on the type of transactions with related parties and relationships between the companies in the group (such as consolidated financial statements).

Although the aforementioned information is requested, the regulation does not provide guidelines in this respect.

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.**

No, we are not 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.

4. **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.**

As it has been mentioned above, there is no widespread practice in the field.

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

Not applicable.

6. **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 applicable.

7. **Are there any significant differences between general corporate governance rules and the specific rules governing insurance companies?**

Not applicable.

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.**

The General Corporations Law 19,550 sets forth that the following persons cannot be directors or managers of corporations: those who cannot exert the commerce; those convicted for fraudulent bankruptcy for up to ten years after their rehabilitation, those who filed for bankruptcy for up to five years after their rehabilitation; the directors and managers of a company whose conduct is considered guilty or fraudulent, up to ten years after their rehabilitation; those convicted with an accessory of disqualification from holding public office; those convicted of theft, robbery, defrauding, bribery, issuing of bad checks and crimes against the public faith; those convicted of crimes committed in the constitution,

operation and liquidation of companies. In all cases until ten years after the sentence has been served; public administration officials whose performance is related to the purpose of the company, up to two years from the end of their functions.

Law 20,091 stipulates that those convicted of offenses committed for the purpose of profit or for crimes against property or property may not be promoters, founders, directors, trustees, members of the supervisory board, liquidators, managers, administrators or representatives of insurers. public faith or common crimes, excluding delinquent crimes with penalties involving deprivation of liberty or disqualification, as long as no other time has elapsed equal to twice the sentence, and those who are subject to pre-trial detention for these same crimes until their final dismissal; the insolvent or insolvent debtors or debtors of the entity; those disqualified from using checking bank accounts and checking checks, up to one year after their rehabilitation; those who have been sanctioned as directors, managers or managers of a company declared bankrupt or declared responsible for the liquidation of an insurance entity or disqualified for application for violation of obligations set forth in Law 20,091 (Law 20,091, article 9).

Law 20,091 also provides that the regulator shall keep an updated personal record of the conditions of responsibility and seriousness of the promoters, founders, directors, advisers, trustees or members of the supervisory board, liquidators, managers, and representatives of the insurers, being empowered to request such reports as it deems necessary to any authority or body, national, provincial or municipal; and also a register of unauthorized professionals to act in that capacity before the *Superintendencia de Seguros* (Law 20,091, article 67).

Resolution 38,708 (article 7.1.3) establishes that the directors must be persons with suitability for the exercise of the function, which will be evaluated on the basis of their precedents of performance in the insurance activity, financial entities or similar functions of responsibility in other public or private entities of dimensions and requirements similar to the entity to which the appointment refers and / or their professional qualities and trajectory in the public or private function in matters or areas that are relevant for the commercial profile of the entity.

It also provides that at least two-thirds of all directors must prove experience in the insurance activity, whether public or private, in the country or abroad.

It determines that the General Manager and other managers, who have resolving powers regarding decisions directly related to the insurance activity, must prove the suitability and previous experience in those activities.

Finally, it establishes that in those cases where the assessment of suitability and experience related to the insurance activity corresponds, the respective precedents will be weighted taking into account the level of professional specialization and technical knowledge that allows him to

carry out the activities in a manner appropriate. Likewise, the lack of sanctions by the Unidad de Información Financiera (UIF) will be especially valued.

It adds that the level of probity and moral integrity of the person will be weighed, taking into consideration whether he has been subject to sanctions by the UIF, whether he has violated norms or was associated with dishonest commercial practices, or if he has been convicted of crimes of money laundering and / or terrorist financing and / or is on the lists of terrorists and terrorist associations issued by the United Nations Security Council.

The members of the Management and Supervisory Bodies, managers and representatives, must maintain the conditions of suitability and probity, assuming, the entity; the commitment to report to the *Superintendencia de Seguros* any circumstance, fact or act that modifies them.

In addition to the provisions set forth in the foregoing paragraphs, the following cannot be shareholders, nor integrate the administrative or supervisory bodies, nor the general management: those who have been of such character in the last two previous fiscal years, counted from the resolution that ordered the revocation of the authorization to operate, in insurance and reinsurance entities that are in the process of forced liquidation. This impediment shall also include those who have held such positions as long as the administrative act is not final, provided that the recall has been judicially confirmed.

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

In the Argentine Republic, as in other countries, the Board of Directors is composed of executive directors and independent directors. Global companies are increasing the number of independent directors in their Boards. In our opinion, the lack of independent non-executive directors can weaken the independence of the Board.

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?

By assessing their professional precedents and experience related to the insurance activity.

Also, some global companies have established a system of evaluation of their Boards of Directors, so as to monitor the performance at group and individual level.

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?

There aren't significant differences from the legal point of view.

The slight difference appears in the practical area, since those who do not have executive functions do not execute the decisions nor participate in those that are not treated by the Board.

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?**

The applicable regulation does not require it; this is a derivation of the duty of diligence required of the administrators.

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.**

The regulator authorizes the appointment of members of the board of directors, for which it assesses the level of professionalism and suitability for the exercise of the function.

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?**

There aren't special rules applicable to the governance of subsidiaries belonging to an insurance group.

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?**

Regulation: At this moment the Regulator is embarked on a modernization project that will require the updating of certain regulations and will bring about the modernization of the market.

Capital standard: a process of change towards a risk based capital system (RBK) is expected.

Pricing: at certain risks high competition causes prices to fall and fees to increase, which generates technical losses (car insurance).

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

Recently certain statutory insurance has been created by law, which must necessarily be regulated by law, as well as the one already in force for civil liability for the use of vehicles.

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.**

In Argentina we can highlight an example of self-regulation in the figure of the Defender of the Insured, which operates in the context of the Argentine Association of Insurance Companies (AACS) and could be related to what was raised.

It is a figure that solves conflicts between insured and insurers to which insurers voluntarily adhere and accept its decisions as definitive.
This has influenced the conduct of insurers in order to improve the service to the insured.

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?**

Yes, Insurance Companies Law no. 20,091, Resolution 38,708 and Consumer Protection Law No 24,240.

The Regulator provides that insurance companies must have a Service of Attention to the Insured that will attend the consultations and claims presented by policyholders, insured, beneficiaries and / or beneficiaries, and will process them within a maximum period of thirty days skillful since its introduction.

If the term has not been resolved, or has been denied admission or dismissal, in whole or in part, the claimant may go to the Department of Orientation and Assistance of the Insured, run by the Regulator.

Also in the Civil and Commercial Code of the Nation there are rules that protect the insured when the contract is entered into in the context of a consumer relationship, in clear conformity with the specials of Law 24,240.

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?**

It is not required by the regulatory framework applicable to insurance activity in Argentina.

However most insurers have their CSR area and generate annual reports. Especially the global operators that in some case channel them through their foundations.

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.)**

In our opinion, the mechanisms of implementation of independent directors and modernization by networking all information improves transparency.

We also believe that self-regulatory standards of good practice would be an important step forward at this point.

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

insurance company?

As we have previously answered, there are no mandatory general rules, only those particular rules set by each company. We believe that in many cases these practices are more stringent than those established by the supervisor and exceed them in effectiveness.

3. 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?

We can Highlight 3 important regulations which approach the issue.

Firstly the antitrust law (25.156), secondly the capital markets regulation (26.831) and finally the Insurance control law (20.091).

In every case the regulation creates a control organism: Anti-trust Commission, Stock exchange commission and the insurance supervisor.

In those cases the state supervisors work together and interplay in this subject.

VI. Outlook

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.

As we explained in the previous answers, it would be advisable to issue rules that unify corporate governance criteria. It would also be important for the insurers themselves to set forth regulatory rules regarding good practices in different areas.

On the other hand, the modernization and improvement projects of the solvency systems would give greater strength to the market.

Esteban Gramblicka (egramblicka@ebullo.com.ar)

Maria Forte (mforte@ebullo.com.ar)

Carlos A. Estebenet (carlosestebenet@ebullo.com.ar)