

# 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.
  - There is no fixed Corporate Governance structure under Chilean law.
  - Law Nr. 18.046 states that insurance companies are “sociedades anónimas especiales”, meaning norms for “sociedades anónimas abiertas” (listed public companies) are applicable to them despite of their stock structure or ownership.
  - “Sociedades Anónimas Abiertas” (SAA) must be managed by a board of at least five directors.
  - Companies whose listed equity is over USD 60MM (aprox)<sup>1</sup>, must have at least one independent director, and a specific Committee of directors must be established.
  - The financial statements of any listed company must be audited by an external audit firm.
  - Regarding internal control, most common structure consider specific areas of Internal Audit, Risk Management and Legal Departments. Compliance function are often under any of the aforementioned.
  - Other corporate governance rules (although of general application) may be found in law 20.393 which establishes criminal responsibility for legal entities in money laundry, financing of terrorism and bribery crimes. In order to avoid criminal responsibility, such law establishes that companies must have crime prevention model, as well as an autonomous person in charge of crime prevention, with sufficient budget and powers in order to carry out his work, among other obligations.
  
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.

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<sup>1</sup> and at least 12.5% of its shares issued with the right to vote, are in possession of shareholders who individually own less of 10% of such shares.

- DFL 251: Main Law of Insurance. It states among other topics: solvency margin for insurance companies, maximum debts limits, technical reserves, investments rules.
- Law 18.045: Stock Market Law.
- Law 18.046: Corporations Law.
- Rules of general application (“Normas de Carácter General”), issued by the regulator of the insurance industry “Superintendencia de Valores y Seguros” (SVS):

NCG 309 SVS, June 2011 (amended by NCG 408, March 2016): It sets principles of corporate governance, risk management and internal control.

There are specific guidelines for insurance companies regarding Corporate Governance matters in NCG 309, issued by the SVS on a Comply or Explain basis.

For instance, it refers to the following Committees for an insurance Company to have implemented having directors and members of the high management as regular participants:

- Audit committee
- Remuneration Committee
- Ethics and / or Compliance Committee
- Risk Management Committee
- Investment Committee or ALM
- Technical Committee (including reinsurance)
- Communications committee
- Governance Committee
- Human Resources Committee
- Strategic Development Committee

In accordance with the principles of "risk-based supervision" implemented by the SVS, NCG 408 requires insurers to fulfill a self-evaluation questionnaire on several Corporate Governance topics every two years. First delivery deadline was September 30<sup>th</sup> 2016 for all companies.

- Statutes.
  - Self-regulation rules submitted by the Self-regulation Council, which are mandatory for members of the Association of insurers of Chile (AACH).
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.
- 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.
  - No. Corporate governance rules are linked to the nature of the insurance activity in general.
- 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.
  - Establishment of Committees: specific structures of Corporate Governance must be drafted in consideration of each single Company elements, according to the nature of its main businesses, its size and its risk appetite. Therefore, having the guidelines of the regulator, it is up to each Company how to better determine its own Corporate Governance system.
- 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.
  - In general, Chile's insurance regulator has been proactive in the incorporation of international standards to the local regulation, hence such difficulties have not risen or the have been minimum.
- 7. Are there any significant differences between general corporate governance rules and the specific rules governing insurance companies?
  - Given the fact that, as stated above, corporate rules applicable to insurance companies are those of listed public companies, there are no significant differences between corporate governance rules applicable to such companies and insurers.

## **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.
  - There are not specific regulation relating qualification nor composition of insurer's boards of Directors in the law.

Nevertheless, NCG 309 states, minimal technical and moral qualifications should be considered in the appointment of directors, in order to have the necessary experience to be able to understand complex technical issues related to the insurance business and properly assess the level of risk exposure of the company and the quality of its management systems.

Also, DFL 251 establish certain specific requirements and prohibitions for directors such as (i) not having criminal records; (ii) not having

incurred in practices that may have put into hazard the financial stability of the company; (iii) not having participated in acts or contracts contrary to the law and safe banking practices; (iv) bankrupt persons, not being rehabilitated cannot act as directors, among others.

2. In your opinion, what factors, conditions, or incentives might weaken the independence of the board of directors or individual members of the board?
  - The lack of mandatory independent directors.
  - Also, most insurance companies are controlled by a sole shareholder and employees of its parent company. This affects the possibility of having broad and different views within 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?
  - NCG 309 sets principles for the Corporate Governance of insurance companies. By proposing to establish Committees where directors and high management are permanent members, fluid channels of communication are guaranteed.
  - It is also a common practice, to develop strong and detailed induction programs for both new directors and news managers.
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?
  - Informally there are some, based on the fact that executive members of the board get themselves committed to specific roles of control related to the functions and scope of the Committees they form part of.
  - Notwithstanding the above mentioned, the law does not make differences between executive and non-executive members of the board of 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 in needed?
  - NCG 309 suggests boards of directors to have external expert opinions when needed in consideration to complexity or relevance of a specific matter. But it is not mandatory to do so.
  - Law 18046 also establishes that committee of directors (having a committee of directors is mandatory for companies having a capital of more tha aprox. USD60,5MM or having at least a 12,5% of its shares being owned by shareholders which individually own less than 10% of such percentage) must have budget allocated yearly for its expenses,

which includes the hiring of advisors.

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 qualification and, to a lesser extent, the activity of the Board is within the scope of the SVS. An example of this is the fact that they recently sent a corporate governance questionnaire to all insurance companies and they have currently been demanding information and activities to cover the gaps insurers identified when they submitted their answers.
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 are no particular rules or regimes in place for insurance companies. General rules established under Corporations Act (law 18.046) and Stock Markets Act (law 18.045) apply.

### **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 (very demanding)
  - Interest rate
  - New Technologies
  - Capital Standard for life insurance companies due to the nature of the Chilean pension system and capital standard in general according to NCG 309.
  - Market concentration.
2. What specific laws or regulations, actual or pending in your jurisdiction, will present significant implementation risk challenge toward the insurance industry?
  - More attributions to sanction for the national consumers agency (Sernac).
  - New regulation on Data treatment
  - Meeting new Conduct of Market standards
  - New structure of insurance supervisory agency (nueva comisión para el Mercado Financiero)

### **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.
  - Recent scandals regarding: competition issues in Chile (on chicken meat, tissue papers) and criminal elusive activities related to tax payments, have created a strong commitment to empower compliance areas within insurance companies, tendency observed the

past two years to be consistently increasing.

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?
  - As mentioned above, there is currently a bill in congress granting higher powers to Chile's Consumers Protection Agency. Among others, it will grant it the power to directly sanction companies infringing consumer protection act (currently such agency has to file a suit at small claims courts).
  - There is also a bill in place in order to adapt Chile's data protection scheme to that of the OECD and EU, overhauling existing rights and creating an independent enforcement authority, among other changes.
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?
  - Not mandatory so far.

## **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.)
  - All of the above are useful means in order to ensure transparency of its governance structure. Given the general structure of corporate governance set out in the previous answers, which, although it ensures high transparency levels, it doesn't take charge of the peculiarities of the insurance markets, together with the fact that the stock ownership of insurance companies is usually concentrated in one shareholder, we believe that having a high ethical and corporate social responsibility standard may provide the tools needed for insurers to fill such gaps.
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?
  - The existence of a mandatory independent director may help to increase transparency levels in the industry, by adding an independent voice within the companies' boards.
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?

- As a first consideration, since listed and unlisted insurance companies are subject to the same corporate governance rules (as stated above, insurance companies are a special type of corporation, subject to most regulations of listed companies), there is no relevant separation of rules applicable under both scenarios.
- Having said this, , there are some specific rules which scope might be difficult to define, not being completely clear whether they apply only to listed companies or its application must be understood widely. Is the case for instance, of General Rule 30 issued by the SVS, which regulate among other subjects, the content of the financial annual reports. In order to avoid such uncertainty, insurance companies have been gradually fulfilling the highest standards of compliance.

## **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.

Criticism: There is a Gap between modern trends in the insurance industry, local practices and regulation. Although our regulation has welcomed foreign standards with regards to corporate governance (such as the OECD Guidelines mentioned above), it has been proven slow to add flexibility and to gather changes occurred in a everyday more dynamic insurance markets. An example of this situation are micro insurance, which are ought to be offered exclusively by insurers or brokers, yet are widely offered by retail, banking and other businesses, situation that has been tolerated by the regulator.

This implies the existence of regulatory risks for the whole market, which may have an impact on companies' corporate governance structure.

Main challenges:

Together with the need of achieving a more modern and flexible regulation which safeguards common interest but, at the same time allows market development, there is the need of having a definitive cultural change. Companies must convince themselves of the need to promote an adequate governance, which implies a solid body of governance, with transversal focus and application, with sufficient internal and external structures, understanding that taking Corporate Governance seriously is a duty to all stakeholders whom relate in any way to the company. Related with the above, there is also a challenge for the supervisory authority, because its requirements are still too formalistically focused. There is still too much bureaucratic attrition meeting the requirements of authorities, although SVS's turn into Risk Based Supervision must be acknowledged. In fact, it has been its main focus last years.