

**AIDA Questionnaire on the Corporate Governance of Insurers  
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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.**

Best Corporate Governance practices are instituted in each country based on its specific social, economic, corporate and regulatory environment.

In the past decades the Brazilian economy has undergone major changes such as macroeconomic stability; achievement of investment grade status for the debt of the government and many individual firms; strong economic growth; and development of pension funds, which became major investors in public company shares.

As known the Governance systems models have been adopted in a large scale by developed markets, which serve as a benchmark for other countries.

The Brazilian Corporate Governance model is closer to the Insider System where there is a predominance of concentrated ownership, the debt market plays a major role, there are a large number of family and state-owned companies and the system is more focused on stakeholders (particularly because of applicable legislation).<sup>1</sup>

In 2000, in response to concern about weak protection for minority shareholders (including extensive use of non-voting shares, few outside directors, and low levels of disclosure), the São Paulo Stock Exchange (BM&FBovespa) created three high-governance markets (Novo Mercado, Level I and Level II). This contributed to a surge in initial public offerings, which had been nearly nonexistent until 2004; a leveling off in the number of listed companies, which had been shrinking; and sharply rising trading volume and liquidity.

Notwithstanding, the insurance industry in Brazil is regulated by SUSEP – Superintendence of Private Insurance.

According to the official description SUSEP can be defined as an “autarchy created by the Decree-law 73/66 directly linked to Ministry of Finance. It is the executive body of the politics delineated by the CNSP and is also the insurance commissioner, responsible for the supervision and control of the insurance, open private pension funds and capitalization markets in Brazil. Aiming **towards the consonance with international standards, the strengthening of the public’s confidence in the system**

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<sup>1</sup> <http://www.ibgc.org.br/index.php/en/governance/origins-of-corporate-governance>

**and the development of a sound insurance market**, SUSEP has been engaged in the modernization of supervisory and **regulatory procedures**.

SUSEP is managed by a Managing Council formed by the Superintendent, appointed by the Minister of Finance, and four Directors. This Council, whose chairman is the Superintendent, has authority to establish SUSEP's general policies for the regulation and compliance with CNSP's resolutions by enacting rules within its area of competence.

However, SUSEP's supervisory authority does not cover all segments of the insurance, reinsurance, private pension and capitalization industry: the [ANS - National Agency of Supplementary Health](#) is the supervisory authority for the health insurance and the [PREVIC – National Superintendence of Complementary Pensions](#) supervises the closed private pension funds.”<sup>2</sup>

Therefore, SUSEP is responsible for implementing the and controlling the insurance market by its regulations and international guidelines on the insurance matters.

The following answer will describe in details what kind of legislation is adopted by insurance companies.

**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.**

As mentioned before SUSEP is an autarchy created by the Decree-law 73/66 directly linked to Ministry of Finance. The main goal of SUSEP is regulate and develop the insurance market in Brazil. In order to accomplish its duties, SUSEP passed several number of regulations on Corporate Governance and Compliance.

Below there is a list of regulations by SUSEP on Compliance and Corporate Governance:

CORPORATE GOVERNANCE AND INTERNAL CONTROLS	
Circular SUSEP # 234/2003 <b>Modified by the Circular SUSEP # 292/2005</b>	Accountability of the directors (insurers, capitalization companies and open private pension funds)

<sup>2</sup> <http://www.susep.gov.br/english-susep/index>

Carta-Circular DECON SUSEP # 005/2006	Appointment of the insurer's responsible director before SUSEP
Circular SUSEP # 249/2004	Internal Controls
Resolution CNSP # 118/2004	External auditors' services
Circular SUSEP # 280/2004 <b>Modified by the Carta Circular SUSEP DECON # 002/2006</b>	Internal controls and compliance audit reports requirements
Circular SUSEP # 272/2004	Actuarial report's minimum requirements
Circular SUSEP # 344/2007	Fraud prevention specific internal controls
Resolution CNSP # 163/2007	Establishes rules for the remittance of the technical note of the insurance plans portfolio

Moreover, in 2013 Brazil has passed a Federal Law called *Brazilian Anti-corruption Act (Law No. 12.846)*, which has been regulated by Decree No. 8.420/2015. The law holds companies responsible for the corrupt acts of their employees and introduces strict liability for those offences, meaning a company can be liable without a finding of fault. The Act provides strict civil and administrative penalties but no criminal penalties for companies. However, the Criminal Code establishes domestic criminal offences.

In addition, it is important to mention that it is not only the regulations provided by the Brazilian Law and SUSEP that regulates insurance and private pension companies in Brazil. Most international companies operating in Brazil and those local companies who aim to operate domestically and internationally must follow, in certain cases, the OECD guidelines, The Committee of Sponsoring Organizations of the Treadway Commission (COSO), Control Objectives for Information and Related Technologies (COBIT), The Sarbanes–Oxley Act of 2002 (SOX), The Foreign Corrupt Practices Act of 1977 (FCPA), The UK Bribery Act 2010, among other legislations applied in certain countries.

- 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.**

Much of the bankruptcy and insolvency cases involving Brazilian companies are not related to insurance market.

However, in October 2016 The Superintendence of Private Insurance - SUSEP has declared the insolvency of Nobre Insurance Company. Nobre is a company based in São Paulo that had been in the market since 1992.

The company had been presenting recurring losses in its operations and had not adopted any solution for the definitive recovering.

More specifically, the situation had persisted even during the Fiscal Management Regime decreed by SUSEP on March 31, 2016. The company reported a drop of almost 15% in its shareholders' equity in 2015, compared to The Adjusted Shareholders' Equity (PLA), which, according to the company, represented an insufficiency of R\$ 14 million in relation to the level required by SUSEP.

One of the solutions presented by Nobre was a reduction in regulatory capital despite having reversed in 2015 the negative results of the previous year, when it had losses of R\$ 2.2 million. The results of 2015 were severely affected by a dispute over reinsurance contracts with IRB Brazil Re.

Thus, in February 2016 Nobre announced that it was adopting several measures to fix the problem, including expenses cuts, new asset allocation policies, and the waiver of interest on capital.

However, The Company's precarious situation prompted SUSEP to enact the end of its operations and to start the insolvency contingency plan.

The insolvency process faced by Nobre insurer, determined by SUSEP in 2016, reinforces the importance of the managers role in companies and also the degree of complexity issues faced by them.

Notwithstanding, a similar situation happened with *Confiança Cia de Seguros* in December 2014. *Confiança* was facing serious insolvency problems, which led SUSEP to start an investigatory process to identify the main reasons.

Another insolvency insurer was Edel, headquartered in *Rio Grande do Sul*. The company was declared insolvent in July 2012. SUSEP had identified several operations regarding grant of rights and assets, purchase of real estate, with reckless management.

**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.**

In Brazil, the preference for good practices has proven to be more dynamic upon privatizations and the domestic market which was opened in the 1990's. Meanwhile, in 1995, the Brazilian Institute of Administration Members (IBCA) was set-up, which as of 1999 was later named Brazilian Institute of Corporate Governance (IBGC), aimed at influencing the key players in our society in adopting transparent,

accountable and unbiased practices to manage organizations. Yet in 1999 IBGC released its first Code of Best Corporate Governance Practices.

International discussions were strengthened by the initiatives of the Organization for Cooperation and Economic Development (OCDE) which set up a forum to specifically deal with the subject, the Business Sector Advisory Group on Corporate Governance. International guidelines and principles were now considered to adapt laws, in the conduct of regulatory agencies and to devise recommendations.

Throughout time, investors were noticed to be willing to pay higher sums for companies which adopted Good Corporate Governance Practices and that such practices not only benefit their owners' interests, but also the long-term operations of the companies.

In the insurance market, in addition to the explanations provided in the prior answers, we should state that SUSEP, agency in charge of regulating and inspecting the insurance companies, also aimed at adopting the market of standards on the matter. The key regulatory landmarks are dated 2004 and 2008 and recently CNSP Resolution no. 330/ 2015 was edited which, overall, approaches each of the aspects the insurance companies are to comply with as to the constitution, authorization for operation, control changes, corporate restructuring and conditions to exercise positions in statutory or contractual agencies of the entities.

The foundations guiding such regulation are: capital allocation, internal controls and transparent, objective oversight, as well as administrative transparency. These are general provisions and no exceptions are provided for, or differentiated standards due to complex business.

In compliance with such standard, each insurance company, due to their capital structure, commercial goals and business strategies, draft the best corporate governance practices.

Thus, there is no large or significant differences between Brazilian insurance companies' programs, since all of them are aimed at optimized administration, to benefit their customers and shareholders. Eventual differences may be found due to the capital characteristics of the insurance companies (publicly or closely-held).

As to the program results, these may occur but they are related to performance, technical efficiency and productivity of each insurer.

The Corporate Governance issue is relevant and concerning for all companies, since it is directly related to the impact its adoption may impose upon the organization's economic value and long-term operations, protection of their shareholders' and consumers' rights, also leveraging the country development.

**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.**

Reflection on self-regulation is an equally important subject in Brazil and has been subject to continuous studies, aimed at searching for better performance in the

insurance market. The discussion goes through not only ideological factors, but also as a solution to correct the failures of our regulatory system and the own market agents.

And most of the governments, multilateral institutions and private organizations somewhat related to the financial and capitals markets have been focused on such attempt to find the faults and settle them.

Regulation and self-regulation are complementary, since it makes no sense for the Government and the self-regulatory entities to strive to replicate their operations. The main reason for complementary performance is, in our opinion, in the different vocations of the public and private agents.

The market may have increased efficiency with self-regulation by finding solutions to specific problems, besides being a reducing factor in the intensity of state intervention.

On the other hand, entities such as the National Federation of Private Insurance and Capitalization Companies (FENASEG) facilitate the self-regulation in the insurance market by the preexistence of an organized environment for the discussion of problems and solutions.

Also for the State, the benefits of self-regulation are advantageous. When the self-regulated agent himself seeks to solve problems, the reduction of State intervention in the market is beneficial and brings savings.

The current dynamic of economic relations no longer admits an overly intervening state and which imposes detailed rules of conduct.

The performance of the market players should be stimulated so that they can implement their own solutions, observing more flexible rules adapted to the new reality.

In the Brazilian insurance market, among the Corporate Governance practices, it's worth mentioning as a good example of self-regulation, the creation of collective ombudsman's offices and the prohibition of misleading advertising, since they aim to improve the image of the group of economic players and the market.

Instruments to reduce the need for state intervention in general, such as codes of ethics and good practices, employee certification programs and minimum internal control kits are other examples to be implemented in a company.

The mediation can also be cited as another example of self-regulation, a quick solution in which the mediator seeks to bring the parties together before arbitration or appeal to the judiciary. It should also be remembered that there is a very strong social demand for ethics and that consumer protection movements are springing up. The Brazilian civil legislation embodied principles such as ethics and operability, which are easily incorporated by the self-regulation. Ethical standards are established as generic standards of conduct, which could be more easily adapted to the market movements and can speed up the processes.

But, it is a complex issue, without a single formula or a preferable solution to other regulation and self-regulation models.

The result will undoubtedly depend on the cultural, legal and historical context of

each country.

Our conclusion, after analyzing the current stage of Brazilian regulation and self-regulation, is that self-regulation, in Brazil, can continue playing an important role, it will be an auxiliary, but never an exclusionary role of state supervision.

**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.**

The systemic risks derived from the increase of globalization have generated the need for greater regulation of the international financial market. Following the decisions of the international committees, the Brazilian market sought to provide the internal market with its own rules.

Indeed, this is a relatively recent subject in the Brazilian insurance market, since the first rules regulating the compliance and internal controls functions have as the starting date the year 2004.

Undoubtedly the Compliance and Internal Controls accompany the Corporate Governance and are inherent to good administrative techniques.

However, with the advent of Law 12.846 / 13 (Anti-Corruption Law), Brazilian and foreign companies operating in the country have faced the need to revisit their compliance programs and to reshape all internal integrity mechanisms. In fact, all companies began to reflect on the need to make internal adjustments to obtain constant surveillance over their actions, their executives and employees.

Although the watchwords today are Compliance and Corporate Governance, we still find obstacles for the improvement of these processes.

We can list that there is still a shortage of trained professionals, as well as, we do not have a large number of technical books and sufficient training courses for the insurance market.

The fact is that, it is not enough that companies design excellent governance programs, when the mindset of governance agents never changes and are not implemented tools that allow their effectiveness and efficiency.

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

In each country and due to corporate peculiarities, Corporate Governance practices are established according to their social, economic, corporate and regulatory environment.

It is observed that the governance systems practiced and adopted in the most developed markets are divided into two main categories: Outsider System and Insider System.

The Brazilian Corporate Governance model is closer to the Insider System, with a predominance of concentrated ownership, a relevant role of the debt market, a

strong presence of family and State-owned companies, and more stakeholders oriented (including by legal provisions).

Regarding Brazilian insurance companies, the Corporate Governance rules follow the general guiding principles contained in the SUSEP (Superintendence of Private Insurance) regulations, but, depending on the business characteristics, each one of them designs their own programs with the purpose of preserving and optimizing the economic value of the organization, facilitating and contributing to the management quality, longevity and common good.

To illustrate that there are few model differences among the Brazilian insurers, we have taken comments on Corporate Governance programs on the website of some of them, as follows:

### **HDI Governance**

HDI has strict standards, following the determinations of the insurance market and others that directly influence the company (Compliance), especially our Code of Ethics, which guides HDI's relationship with its clients, brokers, suppliers and employees.

The interaction with all these publics is of vital importance so that the good practices of market are effectively valid and, therefore, we have created various open communication channels to listen to our clients and stakeholders.

In addition to the Contact Us, we also hired an independent Ombudsman. We provide a Tip Line, where an anonymously report about fraud, corruption, breach of company rules, abuse of power and other acts repudiated by HDI and the public can be made. Just call 0800 770 47 17. In addition to the national channel, the German headquarter has created the [complaint BKMs®](#), which can also be used.

### **ICATU SEGUROS**

#### **Corporate Governance**

The Corporate Governance is a set of procedures for managing the resources of a company according to the interests of its various financiers. The Corporate Governance practices of **Icatu Seguros** allow an optimized administration, for the benefit of its shareholders and clients, generating many advantages, such as:

- Minimizing risks through efficient control mechanisms;
- Maximizing efficiency, with continuous monitoring of performance measurements;
- Efficient and accurate management of pension plans and life insurance, in accordance with the interests of our clients and their beneficiaries and also of our shareholders;
- Structuring of control mechanisms that promote efficient and transparent accounting practices;
- Contribution to the positive performance of pension plans and life insurance;

Appropriate compliance mechanisms, in accordance with administrative policies and their respective legal requirements.

### **LIBERTY SEGUROS**

#### **Corporate Governance**

**Liberty Seguros'** management model is based on best practices in the insurance market in the Country, and is part of the global principle of the Group of "doing the right thing". In order to reinforce this guideline, the Compliance area is dedicated to promoting strict compliance and transparency policies in all company's management processes. For this purpose, Liberty Seguros has a well-structured Compliance Program, which comprises a number of training and internal communication pieces to disseminate the principles of compliance among all employees.

## **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.**

In the Brazilian legal system, the Brazilian Corporation Law (Law 6.404/76) has detailed, in its article 138, of the management of corporations, prescribing on its article 142 on the competence of the board of directors, highlighting the following:

- determine the general guidance of the company's businesses
- elect and dismiss company's directors and establish their attributions, subject to the provisions of the articles of incorporation
- supervise the management of the directors, reviewing, whenever necessary, books and documents of the company, require information on contracts signed or due to be signed, and any other acts;
- call the general members meeting when deemed appropriate
- express an opinion on the management report and the management accounts;
- express a previous opinion on acts or contracts; when the articles of incorporation so requires;
- resolve, when authorized by the articles of incorporation, on stock issue or subscription warrants;
- authorize, if the articles of incorporation do not provide otherwise, the sale of fixed assets, the constitution of encumbrance of property and the provision of guarantees to third parties obligations;
- choose and dismiss the independent auditors, if any.

On the other hand, Susep, the supervisory and regulatory body of the insurance companies, in a complementary way, addresses in its own rulemaking specific conditions for statutory positions.

The requirements and conditions for appointment, approval, investiture and exercise of positions in statutory or contractual bodies in insurance and reinsurance companies are provided in the CNSP Resolution No. 330/2015.

The indication must be previously approved by SUSEP and the conditions to exercise the functions are:

- to have an unblemished reputation
- to be a resident in the country, except for the members of the board of directors or audit committee.
- not be impeded by special law, or condemned for bankruptcy crime, tax evasion, malfeasance, bribery, graft, embezzlement, crime against the popular economy, public faith or property, financing system or any criminal punishment that prevents, even if temporarily, access to public office.
- not be declared disqualified or suspended for the exercise of statutory or contractual positions in the entities referred to in art. 1, or in entities authorized to operate by the Central Bank of Brazil, National Superintendence of Pension Funds - Previc, National Supplementary Health Agency (ANS), other regulatory agencies and publicly-held companies or entities subject to the supervision of the Securities and Exchange Commission;
- not be liable for, nor any company of which he is a controller or manager, protest of titles, judicial collections, issuance of not-sufficient-funds checks, nonpayment of obligations and other similar occurrences or circumstances;
- not be declared insolvent or bankrupt;
- not having controlled or administered, in the three years prior to the election or appointment, a firm or company object of insolvency proceedings, extrajudicial liquidation, intervention, special temporary administration regime or bankruptcy.

The requirements and conditions imposed by the regulatory body may be added by others of interest to the organizations.

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

Currently, the Board of Directors plays an important role in corporations, being an essential instrument of governance. Historically, the board members were considered to be less active in the companies and only used to ratify the decisions made by the executive officers and managers, limiting themselves to complying with legal obligations. The scenario has changed. The introduction of numerous codes and best practices has transformed the structures and composition of boards.

In Brazilian organizations the power of the directors is subject to:

- the personal influence of the one who chose them and how, since that, the closer and connected to the controlling shareholder, more influence they will exert in the company's business.
- personal ability to expose strategies, resulting from academic qualification, specialization or knowledge and experiences lived in the sector of activity of the companies they worked.

- effective participation in the selection of the chief administrator
- ability to monitor the progress made by managers.

Each of the aspects described above can result in greater or lesser power and independence of their members, both individually and in the board as a whole.

It can be concluded that the board of directors of Brazilian companies has become more active at some times and inactive at others, especially when the concentration of capital is higher in some companies than in others.

The tendency of the council is to privilege the role of the control in detriment of the strategic or the institutional role, although the strategic role is the most important for the work of the directors.

The independence, however, is an essential attribute for the performance of the members of the board of directors, and it is incumbent upon the directors to perform without the influence of any personal, professional relationships or to the benefit of the stakeholder that has nominated them for the position.

### **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?**

As the main decision-making, strategic steering and management oversight body, the role of the board members is key to promoting the sustainable performance of organizations.

It's increasing the understanding on the relevance of the boards and their ability to lead organizations as a result of globalization, complexity and evolution of the business environment.

In general terms and in accordance with the provisions of the statutes of insurance companies, the appointment of the individual members of the board is the responsibility of its shareholders. Brazilian corporate law does not establish any mandatory modality for voting. It is always sought to find names capable of presenting technical capacity, knowledge of the business, experience, in short, people who will certainly contribute to the good performance of the company.

But there is no way to ensure that insurance companies will choose the best names to monitor and supervise all their activities.

Seeking to endow the councils with the best technical capacity, the supervisory body, the Resolution CNSP 330/2015, imposes requirements and conditions for those indicated for statutory bodies, as provided in its Article 5:

In addition to the basic conditions referred to in the art. 2 of this Regulation, those appointed for positions in statutory or contractual bodies of insurance companies, local reinsurers, representative offices, capitalization companies, open private pension entities and reinsurance brokers shall have technical training compatible with the assignment of positions for which they shall be elected or appointed to, and the members of the audit committee shall be graduated in higher education or equivalent, attended in the country or abroad, or have exercised for a minimum

period of three years, a position of business administrator or as a member of the fiscal committee.

§1. The technical training referred to in the caput must be proven based on academic qualification, professional experience or other relevant issues, through documents and statement signed by the entities referred to in art. 1, submitted to SUSEP evaluation, concurrently with the documentation provided for in art. 4.

§2. The declaration referred to in paragraph 1 is waived in the cases of reappointment, re-election or election of occupant of positions in statutory or contractual bodies in another entity supervised by Susep which is part of the respective conglomerate.

It should also be added that the responsibility of the directors is very large, and all members are legally bound by the consequences of the decisions they approve. There are cases of directors being judicially prosecuted, by decisions approved by the respective councils and subsequently characterized as injurious actions raised by the shareholders.

The directors, besides being subject to the image risks, are legally liable for decisions that harm suppliers, clients and shareholders. The consequences affect both those who have acted in bad faith and those who have been omitted in some way.

There are reports that in the United States there has already been a decline in the participation of big business names on boards of directors because of the inherent burden of responsibility and innumerable cases of directors involved in lengthy legal proceedings.

In spite of these considerations what can be verified is that the trajectory of the organizations goes to the direction of looking for committed professionals to integrate their boards having, as an objective, the improvement of Corporate Governance.

#### **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?**

SUSEP specific normative (Circular 234/2003) provides that, each insurer is responsible for assigning the responsibility to its managers per area of its activity and that it can be exercised cumulatively with other executive assignment.

In the aforementioned normative, we can see that the executive members of the insurers shall have the following assignments:

- the director designated as responsible for relations with SUSEP shall be responsible for the relationship with the Autarchy, providing, alone or jointly with other directors, the information required by it;
- the director designated as the technical responsible will supervise the technical activities, including the development of products, their regulations, the general conditions and technical notes, as well as the calculations that allow the adequate constitution of provisions, reserves and funds;

- the director appointed as the administrative and financial responsible shall supervise the administrative and economic and financial activities, including the compliance with all corporate legislation and that applicable to the achievement of the respective social objectives; and
- the director designated as responsible for the compliance with the provisions of Law No. 9.613 of March 3, 1998, shall be responsible for ensuring the compliance with the respective regulations.
- the directors of insurance companies, capitalization companies and open supplementary pension entities may accumulate at most 02 (two) of the functions established in Art. 1 of this Circular.

The normative in question adds:

- the roles provided for in the regulations may be exercised cumulatively with other assignments and executive roles.
- the roles provided for in the regulations in force regarding management of an executive or operational nature, may be exercised by the same statutory director.
- the roles provided for in the regulations in force regarding the governance of a supervisory or control nature, may be exercised by the same statutory director.
- it is forbidden to accumulate, by the same statutory director, any of the roles provided for in the second paragraph, with any of the roles provided for in the third paragraph, except for limited companies or the EIRELI.
- If the executive board changes its composition or its specific roles assigned to the officers, all positions and roles shall be ratified, in the respective corporate act.

In relation to the Management Board, there is no specific provision of the regulatory agency ruling the activity of its members.

It shall be noted, however that, among the best Corporate Governance practices, it is recommended that the existence of internal directors be avoided in the face of potential conflicts of interests, as well as the different assignments and responsibilities between members of the management board and the executives of a company.

The accumulation of these roles shall be avoided so that there is no concentration of power to the detriment of the duty of supervision of the board in relation to 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 is needed?**

As a responsible for the business management, the executive board plays a central role in the organization operation and management, as it is responsible, among other assignments, for implementing the strategy set by the board of directors, as well as mechanisms, processes, programs, controls and systems to ensure the compliance with the risk limits and guidelines approved by the board of directors.

As a rule, the Corporation law points out the following basic duties of the managers:

**Duty of Diligence:** the administrator has the duty to administer the corporation with the care, competence, and necessary diligence that every active and honest man, with intact character, employs in the administration of his own affairs.

**Purpose of Assignments and Power Misuse:** the administrator who performs his assignments— assigned by law and by the statute - is required to have an ethical and social duty to achieve the ends and in the interest of the company, after satisfying the requirements of the public good and the social role of the company. Such rule also applies to the administrator elected by group or class of shareholders; he/she cannot abstain from these duties even if in defense of the interest of those who elected him/her. The administrator is prohibited from practicing any act of freedom at the expense of the company; take funds or assets of the company on loan without prior authorization from the shareholders' meeting; use, for the benefit of a company in which is interested, or a third party's, its goods, services or credits; receive from third parties - without statutory authorization or from the general meeting - any direct or indirect personal advantage due to his/her position, and any amounts that may be received in violation to this provision shall belong to the company.

**Duty of Loyalty:** expresses the loyalty to the company, keeping reservation on the business, when the administrator is forbidden from: using, for his/her benefit or of others, with or without prejudice to the company, the business opportunities of which he or she is aware because of his or her position; omitting, at the exercise or protection of the company's rights or, in order to obtain advantages for himself or herself or others, refrain from using business opportunities of the company's interest; acquire, to resell with profit, good or right that he/she knows is necessary to the company, or that it intends to acquire. The administrator of the publicly-held company shall keep confidential the information that has not been disclosed to the market, obtained by virtue of the position and that may have a significant influence on the price of the securities; and he/she is also forbidden from using the information to obtain advantages for himself/herself or for others, by selling or buying securities.

**Conflict of Interests:** the law prohibits any intervention of the manager in a social operation, in which he/she has conflicting interests with those of the company, as well as in the resolution to which the other managers take, when he/she shall make them aware of his/her impediment and record in the Board of Directors or the Executive Board minutes, the nature and extent of his/her interest.

**Duty of disclosure:** the publicly-held company administrator must, at the time of taking office, declare the number of shares, subscription bonus, stock purchase options and convertible bonds issued by the company and its subsidiaries or of the same group, to which is the holder.

In this order of ideas, the Brazilian legislation does not contain an express rule prohibiting the managers of companies from taking external opinions.

In fact, the business dynamics require administrators to surround and seek out specialized professionals to give them specific technical support. Specialists help and bring significant contributions to the governing body, giving greater security in the

decision making.

**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 minimum requirements for holding the statutory positions have been duly described in the answer given to question 4.

However, it should be added here that the regulatory agency may intervene both in the appointment and in the vacation of its members.

At any time, finding the noncompliance, supervening, or not revealed in the previous query, election or appointment, may imply, according to the conditions of each specific real case, the revocation of the approval of the query, election or appointment, and the institution of an administrative sanctioning process, without prejudice to the other applicable legal procedures.

Insurers are also required to immediately remove the occupants from statutory or contractual positions, whenever it is found that a noncompliance with requirements or the framework in impediments to the exercise of position, in their statutory or contractual agencies.

**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?**

In the Brazilian model, there are no specific rules applicable to governance for 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?**

The insurance industry will face many challenges, not only in Brazil, but in the world.

A specific topic that has been scaring everyone is about cyber risks. It shall be noted here that Wanna Cry cyber-attack held in May of this year began in China and spread out wildly through a Windows flaw, bringing losses and damaging large corporations and public services in about 150 countries. In Spain, the invasion was in the Telefónica company and the insurer Mapfre, which had their data hijacked by hackers. Brazilian public agencies (Court of Justice of São Paulo, Public Prosecution Office of São Paulo) faced the same problem.

And for all victims, cybercriminals demanded redemption payments in bitcoins. Experts point out that digital threats rapidly grow into increasingly sophisticated attacks that challenge monitoring and defense systems. And if the threats were only oriented toward financial institutions, it turns out that criminals are appointing another target: health care.

In researches carried out by major Brazilian brokerages, the cyber risk is considered the fifth concern of public and private sector managers, behind the risks of regulatory changes, increased competition, economic slowdown and reputation damage.

In the world market, the insurance for cyber risk is already a reality and is not limited to protection in the digital environment. It is a comprehensive solution for managing a company's cyber exposure, and provides an approach across the process, from risk analysis and prevention to coverage itself.

In Brazil, discussions on the subject are already part of the routine agenda of the insurance market. In fact, the issue is a concern not only in the technology sectors but also in the executive boards and board of Directors of the organizations. On the other hand, the lack of knowledge about the size of the impact of cybernetic risks is still a barrier to the study and advancement of products.

To date, Brazil has no specific legislation, but the insurance market is moving towards developing a culture of risk understanding, as well as developing a better risk management, so that clients understand how the insurance solution can help them protect their operations in case of an attack.

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

Technology has become the mainspring of productive processes, and the companies in general, need planning for the digital transformation of their business.

The insurance market does not escape from this reality and the client, day after day, looks for fast solutions that can be made by a cell phone, without bureaucracy and formalities. The order is to innovate.

These requirements have ruled the behavior of several markets, including the security market, requiring interaction and technological innovation. Today's lifestyles are dynamic, and new needs call for quick and secure solutions.

In this regard, we have news that American companies promise simple health insurance, with partnerships with hospitals and quality doctors. It is possible to speak with medical professionals or ask for home care at any time by the app.

It is already possible, also, to contract an insurance based on telemetry: the less the insured drives, the less he pays. Other factors such as age and gender can be used to measure the price.

With the slogan "forget everything you know about insurance," the company

Lemonade promises that the insurance be done in 90 seconds and that at least 25% of claims be paid in 3 minutes. Quotation is done by a mobile app using artificial intelligence.

The Spanish company Sharenjoy is focused on the client's experience. Someone buys a ticket to the dreamed festival, but for some reason is unable to attend. Hiring an insurance for tickets, it is possible to be reimbursed. The big difference is that the compensation is not made in cash, but in tickets to other festivals.

Anyway, the scenario above is already a reality, but the question that remains is how to rule and regulate these new ones to give them protection. (?)

The Brazilian legislation is still freezed and there is no regulation. The regulation agency SUSEP will be responsible for flexibilizing and creating new rules to meet this growing consumer demand.

#### **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.**

Brazilian insurers, in general, are adopting a Code of Conduct with the purpose of promoting their values and ethical principles, reflecting their organizational identity and culture.

The rules are based on responsibility, respect and ethics, but are not limited to these principles, since they also address social and environmental considerations.

Behavioral changes are producing important results in corporate environments and, for example, we can mention the development of complaint channels in order to receive criticisms, questions, complaints and denunciations. It is an instrument that, in addition to contributing to the fight against fraud and corruption, promotes effectiveness and transparency in communication, and in the company's relationship with stakeholders. In addition, it rules internal and external relations of the company, expressing the expected commitment of its directors, officers, shareholders, employees, suppliers and stakeholders, with the adoption of appropriate standards of conduct.

The denunciation channel is endowed with independence, autonomy and impartiality, operating guidelines set by the executive board and approved by the board of directors.

The management sector is responsible for setting an example in complying with the code of conduct, and the board of directors is the custodian of the principles and values of the company.

The major purpose of such a practice is to incorporate standards of conduct at all

levels of the company.

**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?**

Since 1990, the Brazilian legislation has had the Consumer Protection Code (Law No. 8078), which established standards of protection and consumer protection, of public order and social interest, in accordance with the provisions of the Constitution.

It is a special law that brought great transformation to the domestic market and established quality in private relations, especially in protecting the most vulnerable in economic relations.

The above-mentioned law also reached the matter of insurance, taking care of the provision of consumer service.

The Consumer Protection Code is now an instrument adopted by insurance companies in their compliance and Corporate Governance programs.

In a complementary way, agencies and supervisory authorities edit their own and specific regulations, with the objective of granting protection to the consumer.

But it is the insurance market over the years that has been dedicated to promoting the dissemination of the insurance culture, providing consumers with simple content of simple understanding.

Clarity, transparency and good service have guided the work of insurance companies in consumer relations, in order to strengthen their main audience.

At the same time, the institutional representation of the Brazilian insurers carried out by the federations and especially by the National Confederation of General Insurance Companies, Private Pension and Life, Supplementary Health and Capitalization - CNSG has carried out, in particular, annual consumer protection conferences as a continuous program of insurance education, aiming to strengthen and consolidate consumer protection actions.

**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?**

In Brazil, the Corporate Social Responsibility movement started to gain momentum

starting in the 1990s, by submitting at the same time a significant evolution, with the requirement of ethics and transparency in business.

We can point out that the movement is from some factors that mark the current time: (i) the technological revolution (eliminated distances and promoted the exchange of information). (ii) the globalization, (iii) the educational revolution (a consequence of the increasing number of people attending schools and wanting more information), and (iv) the civic revolution (represented by millions of organized people from around the world gathered in associations and non-governmental organizations (NGOs), defending their rights and interests, such as social promotion and environmental protection)

In Brazil, social responsibility is a voluntary practice and is not confused by compulsory actions imposed by the government or by any external incentives (such as tax). The concept involves the benefit of the collectivity, whether it is related to the internal audience (employees, shareholders etc.) or external players (community, [environment](#) etc.).

In the long run, the conception has gained other forms. New concepts and new vision have motivated companies, especially large-sized companies, with concerns related to the business environment, employees, quality of life and well-being, not only to the internal audience of the company, but in the reduction of negative impacts of the exercise of its activity in the community and environment. Most of the time these actions are accompanied by the adoption of behavioral and management change, involving transparency, ethics and values in the relationship with consumers, partners and service providers.

Similarly, insurers are not required to produce GRI-based sustainability reports, but since 2009, some of them have begun to disclose their initiatives related to the Global Compact, the Millennium Development Goals and the Equator Principles, as well as to align themselves with sustainability of the New York (DJSI) and London (FTSE4good) Stock Exchange.

It shall also be noted that in Brazil, companies began to align the GRI reports with different initiatives, such as the Bovespa Corporate Sustainability Index (ISE), the Ethos Institute self-assessment indicators, the best practices proposed by the Brazilian Institute of Corporate Governance (IBGC), among others.

The insurance industry, with its global insurers, has been working on principles for sustainability, establishing partnerships with the Financial initiative of the United Nations Environment Program - UNEP - FI, aiming to establish a framework of commitments to integrate environmental, social and governance.

The Sustainability Report of the insurance market was completely reformulated as of the 2015 edition, aiming to bring the sector closer to society, showing the strength

and importance of the activity, not only in the country's economic context, but also in contributing to socially fair and environmentally sustainable development.

This work was carried out by the National Insurance Confederation and was based on the guidelines of the Global Reporting Initiative (GRI), which favors the organization of content and the comparison of the indicators of the sector, with the indicators of each member company and also with the indicators of other sectors of the economy.

## **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.)**

There are several mechanisms that can be implemented to ensure the transparency of the governance structure and we will start to comment on some of them.

### **AUTID COMMITTEE**

It is important that the company has an independent and qualified audit committee, constituting a relevant advisory authority to the management board, since it can assist in the monitoring, control and quality of financial statements, internal controls, risk management and compliance, because it confers integrity to the information.

It is recommended that its constitution be composed of independent members and coordinated by an independent adviser.

### **INTERNAL AUDIT**

Another important mechanism is the internal auditing, when organizations must structure it in a way compatible with the size, complexity and risks of their business.

In turn, it will be the responsibility of the board of directors to ensure the qualification and independence of the internal audit team professionals, in relation to the executive board.

The internal audit is responsible for monitoring, evaluating and making recommendations on the company's internal controls, in accordance with the risk management policy and other applicable standards and procedures established by the board of directors.

The company must have an internal audit area directly linked to the executive board.

It is recommended, in the event of outsourcing this activity, that internal audit services shall not be performed by the same company that provides audit services of the financial statements. The company shall not hire for internal auditing anyone who has performed independent auditing services for the company for less than three years.

## **POLICY ON CONTRIBUTIONS AND DONATIONS**

Companies must develop a policy of contributions and donations and ensure that managers and their employees understand clearly and objectively the principles and rules on contributions and donations of amounts or assets to philanthropic, cultural, social, environmental or activities policies.

The promotion and financing of philanthropic, cultural, social and environmental projects or activities resulting from political activities are permitted, if they are explicitly/directly related to the company's business or if they contribute in an easily identifiable way to their amount.

It is recommended that the policy provides for the Executive Board to be the authority responsible for approving all disbursements related to political activities. Another important consideration is that the policy on voluntary contributions of state-controlled companies or that have repeated, and relevant business relations with the government shall prohibit contributions or donations to political parties or persons linked to them, even if permitted by law.

### **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 new social media has the power to reach and mobilize different public stakeholders of the companies. It allows, in real time, the interaction between the company and its stakeholders, and between the company and the general audience, through praise, comments, statements and criticisms.

Because of the speed and power to disseminate information about the company, they demand special attention and continuous monitoring by the management.

Social media is also an important tool for meeting transparency objectives, helping to attract, engage and inform all stakeholders about important issues, as well as ensuring the protection of the corporate reputation and corporate business.

It is a tool largely used, and Brazil is a great user of the most relevant social media such as Facebook, Twitter, Google and YouTube.

We do not have specific legislation on the use of social media by companies, but there is guidance from the Securities and Exchange Commission (CVM) that does not allow that relevant information be disclosed in social media without first or simultaneously using the mandatory channels of disclosure.

The board of directors will undoubtedly be responsible for advising the executive board on the adoption of policies and procedures to monitor what happens in the social media, acting correctly and timely, face to potential crises that endanger the company's reputation.

We understand that the indication of mandatory practices for the company have no effect, if they are not effectively observed and monitored.

The company may have perfect written and neat written policies and programs produced by senior compliance and governance professionals when, in practice, nothing is observed.

### **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?**

In Brazil, antitrust arises as a repression to the abuse of economic power, having as the interest constitutionally protected, the population's and the consumer's interest. The first legal standards that are about competition were motivated by the defense of the popular economy.

The need for legal standards on the issue gained strength in the 1930s as a result of the industrialization process, when on November 18, 1938, Decree Law No. 869 was published, the first Brazilian law to repress practices that threaten free competition. Following to this rule were the other legal laws. It is worth noting that Law 4137 was issued in 1962, which created the Administrative Council for Economic Defense (CADE), in order to investigate and repress abuses of economic power.

The structure that Brazil was used to was an intervening government and companies of restricted competition, due to the closed economy, which did not allow one to think of free competition.

Based on the Constitution of 1988, Law No. 8.884 of June 11, 1994 (Antitrust Law or Competition Law) was enacted. Throughout history, it has been observed that the Brazilian government undergoes an important process: an intervener, operating directly in the economy, including as an entrepreneur and price-setter, as a regulator and as a guarantor of competition for the benefit of the consumer. In this way, the Government seeks to guarantee better living conditions for the disadvantaged, also correcting the blind functioning of market forces.

But today, it is indispensable to say that the current Law and the antitrust practice in Brazil, in general, does not leave much to be desired in relation to the practices in other countries. According to Article 173, fourth paragraph of the Constitution, "the law shall repress the abuse of economic power aimed at dominating markets, eliminating competition and arbitrarily increasing profits".

The Brazilian System for the Defense of Competition (SBDC) is made up of the Secretariat of Economic Monitoring (SEAE) of the Ministry of Finance, the Secretariat of Economic Law (SDE) of the Ministry of Justice and the Administrative Council for Economic Defense (CADE) to the Ministry of Justice, which act in light of Law No. 8.884/94 (Antitrust Law).

In relation to the insurers, recognizing the insufficiency of police power in the

organization of the economic relations of their agents, the Government adopted a regulatory profile.

This regulation works as a requirement for the adequate provision of insurance, imposing the observance of principles of economic order, with the purpose of avoiding that the market dynamics generate economic and social imbalances. Since insurers are subject to strict control, this aspect is decisive for the way they operate, and is subject to the legal limitations that end up entailing a market concentration. This is, in some ways, an obstacle to the advancement of the competitive issue.

The competitive aspect for the insurance market is very limited and the insurance activity itself offers no room for major price changes, which are also limited by the indexes that measure claims and premiums received.

## **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 found.**

A specific criticism that can be made to Corporate Governance of insurers' concerns the effectiveness of their programs.

It is common to come across programs, designed to order, by great professionals and specialists in the field, addressing and highlighting in detail the best practices of governance. However, what often happens is that, these programs are only on paper, because they are not applied and observed by the managers of the companies. In short, its execution is not promoted.

Not only insurers, but companies in general, have the greatest challenge of having a sustainable governance model.

Following the specialists in Corporate Governance, we can mention as recommendations:

- Develop an action plan
- Design sustainable strategy and deployment in the business model
- Promote continuous evaluation of the organization's maturity
- Understand the fundamental reasons and the central issues that are at the origin and support the Corporate Governance system.
- To assimilate the requirements for structuring the Governance model.
- To study the institutional requirements of Corporate Governance: essential aspects of corporate law, regulatory frameworks and codes of good practices.
- Develop control system and evaluation of program performance.
- Promote trainings with employees.

We can mention some recommendations, but there is no single recipe for program success. Each company has its own philosophy and features that shall inform its

programs. Process errors are common and the best tool for its effectiveness will be the performance measurement.

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