



Institut Luxembourgeois
des Administrateurs

DUTIES & RESPONSIBILITIES OF DIRECTORS OF LUXEMBOURG INSURANCE COMPANIES

A practical guide



Building a better
working world

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These guidelines aim at giving an overview of the duties and responsibilities that apply to Directors of a Luxembourg insurance or reinsurance company, whether based on the Luxembourg law on commercial companies (the **Companies Law**), the Luxembourg law on the insurance sector (the **Insurance Law**), applicable circulars issued by the Commissariat aux Assurances or otherwise. It also serves the purpose of giving practical insights on how to mitigate the liability risk of Directors and what to watch out for when exercising mandates.

Given that there is no specific treatment of Independent Directors under Luxembourg law, Independent Directors will be subject to the same obligations and liabilities as the other members of the Board of Directors of an insurance or reinsurance company.

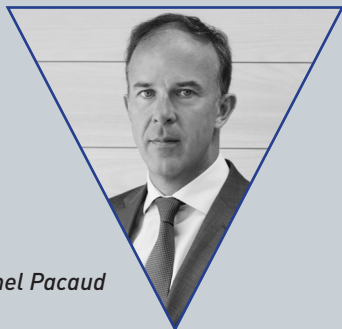
Whether independent, executive, or non-executive, these guidelines may be used by all Directors of Luxembourg insurance and reinsurance companies.

When reading the guidelines, one should keep in mind that the proportionality principle shall be applied, whether in relation with the size and complexity of the undertaking or in relation with the undertaking being a fully owned subsidiary of a group.

These guidelines reflect Luxembourg legislation in force on 30 September 2015 and are not meant to be exhaustive.

Those persons who contemplate to accept a mandate as a Director of an insurance or reinsurance company are strongly encouraged to conduct their own due diligence and keep up-to-date in respect of the expectations related to their mandates, as well as the strategies, rules, and regulations of the insurance or reinsurance company engaging them.

BIOGRAPHIES OF MAIN CONTRIBUTORS



Jean-Michel Pacaud

Jean-Michel has more than 28 years of professional experience in audit and advisory for financial services, specializing in banking and insurance. He is the Insurance Leader at EY Luxembourg and is chairing the Insurance Commission of the Institut Luxembourgeois des Administrateurs. He is a member of various committees of the financial services regulators (Commissariat aux Assurances) and of professional associations (ALFI). Jean-Michel is since 2012 the Chairman of the Luxembourg institute of certified public accountants (Institut des Réviseurs d'Entreprises). Jean-Michel, French national, graduated from the Ecole Supérieure des Sciences Economiques et Commerciales (ESSEC). He is a chartered accountant in France and a certified auditor in Luxembourg ("réviseur d'entreprises").



Carine Feipel

Carine is a Luxembourg attorney specialized in insurance law. She obtained the INSEAD IDP Certificate on Corporate Governance in 2014 and was admitted by ILA as a Certified Director during the same year. She sits on the Board of Directors of several insurance companies. She is also a member of the Board of Governors of the International School of Luxembourg. She was elected to the Board of Directors of ILA in 2014 and joined the Management Committee of ILA shortly thereafter. Within ILA, she further chairs the Certification Commission. Since 2010, Carine has been a member of various committees within the *Haut Comité pour la Place Financière*.



Robert Deed

With extensive company secretarial experience over 40 years, Robert first joined a Board in 1978, played a significant role in the stock market flotation of a major UK banking group in the 1980s and became a Director of a Luxembourg bank in 1990. He was Company Secretary of Lombard International Assurance from 1991 to 2009. He joined the Lombard Board in 2011, as Risk & Compliance Director. Since 2014, he has been an Associate of i-assure.eu, a life insurance consultancy. Robert has a number of company Board mandates. He is also a Board member at the International School Luxembourg (where he chairs the Governance and Risk Committees) and the British Chamber of Commerce for Luxembourg. He has recently gained IDP Certification at INSEAD.



Brice Bultot

Brice is a Director within EY Luxembourg with 12 years of professional experience dedicated to the insurance Sector. He is primarily in charge of the audit of a broad range of insurance companies including market leaders. He is also often involved in transactions and other advisory services for Luxembourg or foreign insurance companies. Brice is the EY representative in the Insurance task force of the Institut des Réviseurs d'entreprises. He is a certified auditor in Luxembourg (Réviseur d'Entreprises).

Have also contributed to this Guide:

Marc Lauer, CEO, Group Foyer, chairman of ACA
Claude Marx, CEO, Lombard International Assurances

1. GENERAL DUTIES OF A DIRECTOR

The Directors of Luxembourg insurance undertakings are appointed by the general meeting of shareholders for a specific period of time. They are organized as a Board and act collectively.

The Board of Directors is the body of the company which manages the company and represents the company towards third parties. It has the power to accomplish all acts which are necessary or useful for the realization of the corporate purpose of the company, except where such powers are reserved to the general meeting of shareholders by law or by the articles of association of the company.

The members of the Board of Directors of any Luxembourg commercial company must at all times act with the highest degree of honesty, loyalty and in the best interest of the company. They must perform their duties as a “*bon père de famille*”, following a standard of care which, among other duties, includes:

- A duty to act within the company's corporate object and to comply with applicable legislation, regulations, and the company's articles of incorporation
- A duty to preserve the continuity of the activity of the company (in particular in case of incidents or crisis events)
- A duty to manage the company in good faith, with reasonable care, in a competent and active manner
- A duty to stay informed
- A duty to generally act in the best interest of the undertaking itself (which may, in some instances, differ from the interest of its majority shareholder for instance)

- An obligation to disclose any potential conflict of interest (e.g. any personal, financial, direct or indirect interest that conflicts or may conflict with the interest of the company) and abstain from participating in any deliberations where such a conflict exists
- A duty of confidentiality.

In terms of specific duties, the Board of Directors is in charge of preparing the annual accounts and of submitting these to the general meeting of shareholders on an annual basis. The Board further must convene the general meeting of shareholders and prepare the agenda for such meeting. There is a duty for the Board to convene such a meeting within one month of a request by shareholders representing at least one tenth of the subscribed capital.

The Board of Directors must also convene a general meeting of shareholders whenever the company has lost one half of its subscribed capital. The purpose of such meeting is to decide whether or not the company shall be dissolved. If the company has lost three quarters of its subscribed capital, the same requirement applies, with the difference that the dissolution will occur unless at least three quarters of the shareholders present or represented at the meeting vote against the dissolution.

2. SPECIFIC DUTIES OF A BOARD OF DIRECTORS OF AN INSURANCE COMPANY AS PER THE LAW OF 6 DECEMBER 1991 ON THE INSURANCE SECTOR (CONSOLIDATED VERSION OF 12 JULY 2013)

The Board of Directors carries the global responsibility for insurance and reinsurance undertakings and shall oversee the conduct of the insurance operations and preserve the interests of the Company and its reputation through adequate administrative organization and internal control.

The Luxembourg regulator of the insurance and reinsurance sector, the "Commissariat aux Assurances" ("CAA") is particularly attentive to the reputation of Luxembourg as a major European insurance center.

CURRENT LEGAL FRAMEWORK

Under the current legal framework, it is expected that:

- Directors are and remain honorable. The appointment of any Director is subject to a non-objection by the CAA. Honorability is one of the criteria to receive and maintain the license to conduct insurance operations.
- Directors are bound by the insurance confidentiality rules at the same level expected from the personnel and management of the insurance company. Directors must ensure that no confidential information is transmitted to non-authorized parties (i.e. companies or individuals that are not Professionnels du Secteur de l'Assurance ("PSA"), Professionnels du Secteur Financier ("PSF") or authorized by virtue of a mandate signed by the policyholder).
- They are responsible for the internal control function.

The internal control function is defined as:

- a) An adequate system to identify, evaluate and manage significant risks, completed by procedures to keep own funds sufficient to cover those risks;
- b) Sound accounting and reporting procedures to identify, evaluate, monitor and control intragroup transactions and risk concentration.

OTHER REGULATORY REQUIREMENTS AND OBSERVED PRACTICES

Under the current regulatory framework it is also expected that:

- The Board of Directors is responsible for the investment strategy and specifically the use of derivatives. It is requested to approve and monitor the policy on the use of derivatives.
- The Board of Directors is considered responsible for the application of accounting principles and valuation policies in addition or complement to the requirements of the law and the Commissariat aux Assurances.
- Frequently observed cases are among others:
 - Consideration of permanent value adjustment on certain classes of assets;
 - Approval for the method used and amount to record for the provisions for losses incurred but not recorded (IBNR – usually based on actuarial experts' work and recommendations);
 - Criteria and measurement for other metrics (ex. embedded value).
- The Board of Directors is responsible for the anti-money laundering due diligence (Art 5 of CAA Regulation 13/01).
- The approval by the Board of Directors is expected for policies, procedures and controls to manage and reduce the exposure to money laundering and terrorism financing, including the appointment of a Money Laundering Reporting Officer.

The current legal and regulatory framework is addressing the core components of a sound oversight of an insurance company.

The same principle is maintained in the background of the Solvency 2 governance framework that is scheduled to apply as from 1 January 2016, while being more detailed and more precisely structured.

FOCUS ON THE SPECIALIZED COMMITTEES OF THE BOARD

Although there are currently no legal or regulatory requirements to have specialized sub-committees of the Board, it is increasingly considered as good corporate governance to establish such specialized committees to assist the Board in discharging its duties.

These committees would typically be organized around some or all of the following areas:

- Audit (both internal and external)
- Compliance
- Risk management
- Nomination & remuneration

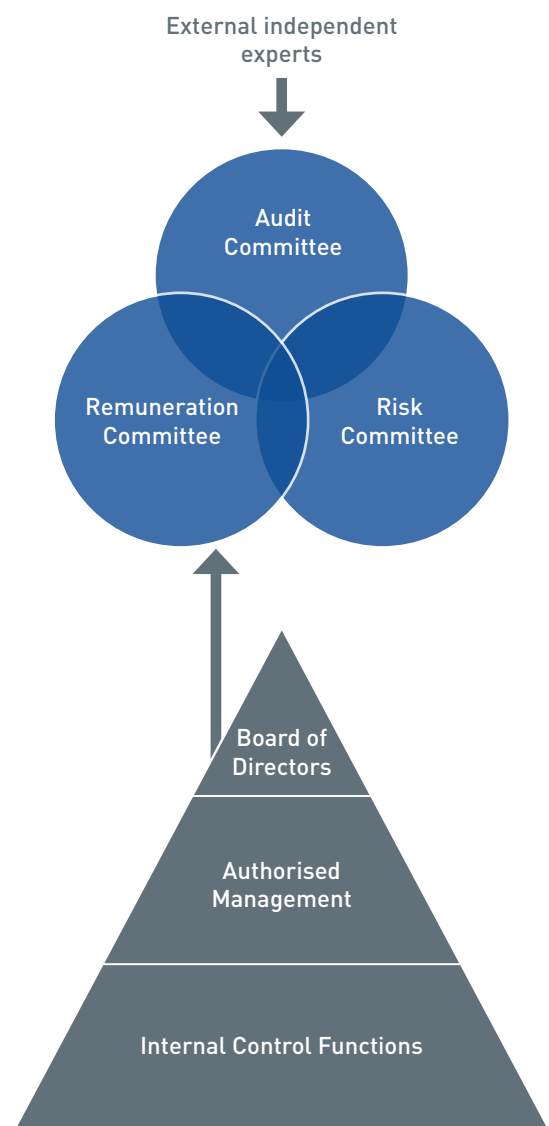
It is also considered good corporate governance practice to have one or several of these committees chaired by an independent

DELEGATION OF POWERS

Other tasks most commonly delegated by the Board of Directors of insurance undertakings include:

- The day-to-day management (to the authorized manager); and
- Signing authority in accordance with specific signing powers granted to given individuals.

While the signing authority and the implementation of specific decisions may be delegated, the responsibility linked to the exercise of management powers may not. The Board of Directors will retain overall responsibility for the acts of management and for the approval of the acts of execution, implementation etc. that result from a delegation of powers to a committee or individual.



3. FOCUS ON SOLVENCY 2

3.1 INTRODUCTION

The Solvency 2 project aims to review the current prudential regime for insurance and reinsurance undertakings established in the European Economic Area (EEA), setting out stronger risk management and capital adequacy requirements.

As of 1 January 2016, the new regime will implement:

- Quantitative (i.e. solvency margin or capital) requirements, via a standard formula or internal models;
- Requirements related to the system of governance and the Own Risk and Solvency Assessment (ORSA);
- Requirements on supervisory reporting and public disclosure of information.

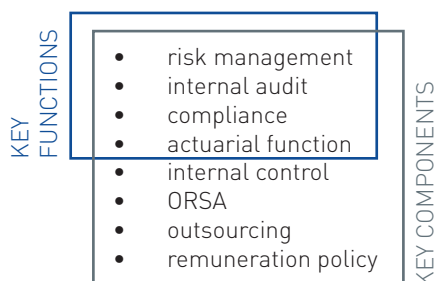
The new framework is set by both the Solvency 2¹ and Omnibus 2² Directives.

The Member States of the European Union will have to apply both Directives by 1 January 2016. In Luxembourg, the law transposing the Solvency 2 directive (projet de loi 6456) is expected to be passed by Parliament on before the end of 2015.

3.2 KEY FEATURES OF GOVERNANCE REQUIREMENTS

The Pillar 2 of Solvency 2 provides for both high level and detailed requirements in terms of (1) governance of insurance undertakings and (2) the Own Risk and Solvency Assessment (ORSA) process.

The main components of the governance system are:



For each of these components, the insurance undertaking must have defined and implemented written policies covering (1) goals, (2) detailed tasks, (3) communication process and procedures including towards the Management and the Board of Directors.

As a result of the above governance structure, Board members must have a sound knowledge and understanding of the policies defined and implemented by the undertaking, as well as of their role and responsibilities within the governance framework.

Crucially, Board members must be able to articulate the links between calculated capital requirements, the system of governance and risk management of the company.

3.3 KEY QUESTIONS REGARDING THE BOARD OF DIRECTORS

The following questions are part of the overall assessment of the existence and effectiveness of the Board of Directors in the context of the Pillar 2 of Solvency 2. While it must be acknowledged that not all these questions are specifically related to the insurance industry, they must be read in conjunction with certain specific duties of the Directors as described in paragraph 3.4 below.

Directors need to be fully aware of a range of policies, rules and procedures of the undertaking, what they are, how they are put in place, how they are implemented, monitored etc.:

- Rules that seek to ensure individual competency of its Directors, taking account of the respective duties allocated to them;
- Rules that seek to ensure that the Board collectively possesses appropriate qualification, experience and knowledge about at least insurance and financial markets, system of governance, financial and actuarial analysis, regulatory framework and requirements, business strategy and business model;
- Rules that seek to ensure Directors' honesty, including an assessment of their character, their personal behavior and business conduct and their financial soundness;
- Processes by which the Board of Directors establishes dedicated committees deemed necessary to assist it in its tasks;

¹ Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency 2)

² Directive 2014/51/EU amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Omnibus 2).

- What written procedures govern the interaction between these committees and the Board of Directors?
- What written procedures govern the interaction between persons who effectively manage the undertaking (“the Management”), and the Board of Directors?
- What written procedures govern the interaction between the persons in charge of the key functions described above, and the Board of Directors or its dedicated committees?
- What written procedures governing the Board of Directors or the Management foresee the 4-eyes principle for all significant decisions?
- What written procedures governing the Board of Directors or the Management foresee the documentation of the decisions taken, including the ones covering the way information coming from the risk management system has been taken into account?
- The policy and written procedures the Board of Directors has established regarding the approval of the system of governance, its regular assessment and the analysis of the conclusions of this assessment by the Board.

3.4 SPECIFIC DUTIES OF DIRECTORS IN RELATION TO SOLVENCY 2

RISK APPETITE

Strategies and main policies regarding risk management, risk appetite and tolerance limits must be defined by the Board of Directors and reviewed from time to time.

SIGNIFICANT AND OTHER SPECIFIC RISKS

Any identified risks deemed to be significant must be spontaneously reported to the Board of Directors. In addition, the Board of Directors may require any information on other specific risks.

INTERNAL AUDIT

The Internal Audit function must define an Audit Plan which is communicated at least annually to the Board of Directors, and must follow up on decisions taken by the Board of Directors as regards the implementation of recommendations issued by Internal Audit.

OWN RISK AND SOLVENCY ASSESSMENT (ORSA)

The Board of Directors approves the ORSA report on an annual basis.

The ORSA report must contain at least the following items:

- An assessment of the overall solvency requirement in quantitative terms complemented by a qualitative description of significant risks;
- A description of the link between (1) the risk profile of the insurance undertaking, (2) the approved limits in terms of risk appetite and (3) the overall solvency need;
- Requirements regarding stress tests and sensitivity analysis to be performed, including their frequency, in particular for the significant risks;
- Requirements regarding data quality and management.

The ORSA policy must be approved by the Board of Directors which ensures that it is respected. The ORSA policy must be documented and cover the following items:

- Process and procedures to be followed;
- Frequency of performance of the ORSA taking into consideration the risk profile and volatility of the solvency needs of the undertaking;
- The ORSA execution calendar;
- Circumstances requiring an “ad hoc” ORSA to address significant changes in the risk profile or activity of the company, which could require changes in capital requirements or risk management processes.
- A communication policy regarding the ORSA report.

4. LIABILITY OF DIRECTORS UNDER GENERAL LUXEMBOURG CORPORATE LAW

In principle, Directors do not contract any personal liability for the commitments of the company of which they are Directors. However, they can be held personally liable for damages caused by their wrongdoings in certain specific circumstances³:

4.1 As a general principle, according to the Companies Law, Directors are liable to the undertaking for the performance of their mandate and for any misconduct in the management of the undertaking's affairs. Such a claim can be made by (a) the company itself, (b) creditors of the insurance company where the latter fails to act ("*action oblique*") and (c) the liquidator of the insurance company.

In case of liquidation, the conduct of Directors can be investigated by the liquidator and possibly be reported to the public prosecutor.

The liability claim against the Director will only be successful to the extent that the plaintiff can prove clear misconduct ("*faute*") by the Director and/or the Board, the loss suffered and causation between the misconduct and the loss.

Examples of misconduct of management include (varying on a case-by-case basis):

- Entering into important contracts on terms detrimental to the insurance company;
- Not pursuing the payment of debts owed to the insurance company;
- Making important payments that are not (yet) due;
- Lack of diligence in the company's affairs;
- Excessive remuneration paid by the company.

4.2 Directors are jointly and severally liable both towards the undertaking and any third parties for damages resulting from the violation of the provisions of the Companies Law or the articles of association of the undertaking.

In order for the claim to be successful, the plaintiff will need to evidence the breach of the Companies Law or of the articles of association, the loss suffered and causation between the breach and the loss.

4.3 Directors are generally liable towards the company and third parties for damages resulting from the infringement of the general duty of care (article 1382 of the Civil Code).

Again, in order for the claim to be successful, the plaintiff will need to evidence the breach of the duty of care, the loss suffered and causation between the breach and the loss.

4.4 Under the Companies Law, criminal offences for which the Directors of an insurance company (classified as a commercial company) can be held liable include:

- Failure to ensure that mandatory publications are made;
- Distribution of fabricated dividends under certain conditions; and
- Misappropriation of the insurance company's assets.

³ In the events listed under items (i) and (ii), in case of a breach of which they are not a party, Directors may be discharged from the aforementioned liability. This is contingent on the Director reporting the detected misconduct at the shareholders' meeting immediately following such detection, assuming no misconduct is attributable to the Director in question. Furthermore, in the same liability instances, the annual meeting of shareholders may grant a discharge to the Directors for the due performance of their mandate, thus waiving its rights of a liability claim against the Directors.

5. SPECIFIC LIABILITY OF DIRECTORS OF INSURANCE COMPANIES

The Directors of Luxembourg insurance undertakings must be approved by the Commissariat aux Assurances to take on such a mandate. As such, the supervisory authority may withdraw its approval where it is no longer satisfied that the Director ensures a sound and prudent management of the insurance undertaking.

In addition, criminal sanctions may be imposed on Directors of insurance companies in limited circumstances, the most relevant being:

- Breach of the insurance confidentiality duty (see above);
- Money laundering and terrorist financing.

6. FOCUS ON INDEPENDENCE

There are currently no requirements under Luxembourg insurance laws and regulations⁴ to maintain a minimum number of Independent Directors at the Board of Directors of insurance and reinsurance undertakings. However, it should be noted that ILA recommends the appointment of Independent Directors to all company Boards, including insurance companies.

It is still unclear as of the date of issuance of these guidelines whether detailed implementation measures of Solvency 2 will impose such requirements.

INDEPENDENCE DEFINITION

What constitutes independence is a matter of both judgment and common sense.

Insurance and reinsurance undertakings should establish in writing their individual interpretation of independence, taking into consideration the national context and both the size and scope of the undertaking's activities.

INDEPENDENCE MEASUREMENT INDICATORS

Below are listed certain criteria which could be used to assess the independence of a Board member derived from the Corporate Governance principles of the Luxembourg Stock Exchange⁵. These criteria should be considered as mere indicators and re-assessed based on the specific context of each insurance and reinsurance undertaking.

AN INDEPENDENT DIRECTOR SHOULD NOT:

- Be an **Executive Director** of the insurance company or an associated company and should not have been in such a position within the previous five years;
- Be an employee of the insurance company or an **associated company** and should not have been in such a position within the previous three years;

- Receive nor have received **additional remuneration** within the last financial year from the insurance company or an associated company apart from a fee received as a non-executive or supervisory Director;
- Be or represent in any way a direct or indirect shareholder with a 10% or greater holding;
- Have had a significant **business relationship** with the insurance company or an associated company, either directly or as a partner, shareholder, Director or senior employee of a body having these relationships within the last financial year;
- Within the last three years, have been a partner or employee of the present or former external auditor of the insurance company or an associated company;
- Have significant economic links with the Executive Directors of the insurance company or an associated company due to positions held in other companies or bodies;
- Have served on the Board of Directors or supervisory Board of the insurance company as a non-executive (or supervisory) Director for more than twelve years; and
- Be a **close family member** of an Executive Director or of persons in the situations referred to in the points above.

INDEPENDENCE MEASUREMENT CHECKLIST EXAMPLE & GLOSSARY

DIRECTOR

Any member of the administrative, managerial, or supervisory bodies of an insurance company.

Example: Member of a Board of Directors.

EXECUTIVE DIRECTOR

Any member of the administrative body (unitary Board) who is engaged in the daily management of the insurance company.

Example: Authorized general manager of the insurance company ("*direction autorisée*")

⁴ However, the CSSF recommends to large banks ("grands établissements") to appoint one or more Independent Directors. According to CSSF Circular 12/552 an Independent Director is defined as a Director who does not have a conflict of interest based on a business, family or other link / relationship with such entities, a controlling shareholder or the management of any of them and which could alter his / her capacity of judgement.

⁵ Source: derived from "The X Principles of Corporate Governance of the Luxembourg Stock Exchange (3rd edition - revised version - May 2013 - Appendix D: Independence criteria (Recommendation 3.5.)

ADDITIONAL REMUNERATION

In particular, additional remuneration covers any participation in a share option or any other performance-related pay scheme; it also covers remuneration items foreseen by the remuneration policy in place within the relevant insurance undertaking.

It does, however, not cover the receipt of fixed amounts of compensation under a retirement plan, including deferred compensation, for prior service with the insurance company, provided that such compensation is not contingent in any way on continued service.

BUSINESS RELATIONSHIP

Business relationships include the situation of a significant supplier of goods or services (including financial, legal, advisory or consulting services), of a significant customer of the insurance company and of organisations that receive significant contributions from the insurance company or its subsidiaries.

ASSOCIATED COMPANY⁶:

An undertaking shall be presumed to exercise a significant influence over another undertaking where it has 20% or more of the shareholders' or members' voting rights in that undertaking.

CLOSE FAMILY MEMBER⁷:

Family members who may be expected to influence a person in their dealings with the entity include that person's:
(a) children and spouse or domestic partner;
(b) spouse or domestic partner's children, and
(c) dependants or dependants of that person's spouse or domestic partner.

INDEPENDENCE MEASUREMENT / SUGGESTED YEARLY CONFIRMATION⁸

As a Director of an insurance or reinsurance company, you may be asked to confirm upon request that throughout the fiscal year:

- In all circumstances, you maintained independence in your analysis, decision, and action;
- You did not seek or accept any unreasonable advantages that could be perceived as compromising your independence;
- You clearly expressed your opposition in the event that you thought a decision by the Board or supervisory Board would harm the insurance/reinsurance company; and
- You did not have serious reservations in respect of decisions taken by the Board of Directors during the year.

⁶ Source: unlike the banking law, the Article 92 of the Insurance Accounting Law of 1994 does not contain a definition of significant influence which refers to 20% of the voting rights. However the 20% threshold is retained for the purposes of this guide because it is consistent with the banking law and "The X Principles of Corporate Governance of the Luxembourg Stock Exchange (3rd edition - revised version - May 2013).

⁷ Source: IAS 24 "Related Party Disclosures".

⁸ Source: derived from "The X Principles of Corporate Governance of the Luxembourg Stock Exchange (3rd edition - revised version - May 2013 - Appendix D: Independence criteria (Recommendation 3.5.))

PRACTICAL EXAMPLES OF HOW TO CLASSIFY INDEPENDENT / DEPENDENT⁹ DIRECTORS

EXTERNAL DIRECTOR ¹⁰	QUALIFICATION
Group CEO of the Parent Company; Executive Director of a sister company of the institution; whatever employee of the mother company	Dependent
Head of a business line or a functional department; Representative of the Personnel; any employee of the institution	Dependent
Director awarded with a success fee related to the implementation of an efficient tax restructuring scheme at Group level	Dependent
Representative of a company having a participation (less than 10%) in the capital of the institution	Independent
Person who did not have, during the financial year, any important business relationship / remuneration / function with the institution (e .g. as an advisor, or any employee of the firm which might have maintained such a relationship) BUT did have such a relationship three years ago	Independent
Person who did have, during the last financial year, an important business relationship with the institution (e .g. as an advisor, or any employee of the firm which has maintained such a relationship)	Dependent
Former employee of the institution (more than three years ago)	Independent
Former employee of the institution (less than three years ago)	Dependent
Audit manager involved in the audit of an entity fully integrated in the consolidated financial statements of the institution two years ago	Independent
Significant sponsor of the Golf Club for which one of the authorized Director of the institution is the President	Independent
Daughter (or any member of the family) of the previous CEO of an associated company of the institution	Dependent
Former minister of the Grand-Duchy appointed as Board member of the Luxembourg subsidiary of a foreign bank or insurance/reinsurance company	Independent
Known member of the same political party as the Chairman of the Board of the institution	Independent
Two friends, being both members of several identical Boards	Independent
Advisor of an important client of the institution and of another company, both the client and the company having been previously - but not any more— members of the Board of the institution	Independent

⁹ Examples mentioned above are ILA's view only and should be tailored to concrete facts and circumstances.

¹⁰ "External" Director means in the context above a Director being not part of the authorized Management of the insurance or reinsurance undertaking.

7. BOARD OF DIRECTORS SCOPE OF SUPERVISION: PROPOSED BOARD MEETING AGENDA ITEMS

The attached document (the proposed Agenda) aims at providing Directors with an overview of matters that have been identified as reserved for consideration of the Board of Directors in application of Luxembourg laws and regulations (mainly the Insurance Law and the Companies Law) in force as of September 2015.

This document also includes items considered to be best practices that would normally be tabled at Board meetings of an insurance or reinsurance company.






This Agenda is for guidance purposes only. Any insurance or reinsurance company willing to use this Agenda should adapt it to reflect the nature, scale and complexity of its activities. In addition, if the insurance or reinsurance company is the parent company of a group falling under the provisions of the complementary supervision by the CAA, matters may need to be addressed, where applicable, both on a solo and group basis.

The Board may consider taking into account the size and complexity of the insurance or reinsurance company, the implementation of specialised committees to review specific matters and report to the Board.

Specialised committees may include an audit committee, a risk committee, a nominations / remuneration committee, a governance committee, an ethics or compliance committee.

Review items which may be delegated to specialised committees are highlighted in color in the following Agenda. These are for illustrative purposes only and may vary from one company to another. Any reference to "approval" in this agenda is to be understood as final approval by the Board (i.e. they cannot be delegated to specialised committees).

Legend / tips used in the document:

-  Items for which review may be delegated to a nominations & remuneration committee
-  Item for which review may be delegated to a risk committee
-  Item for which review may be delegated to an audit committee
-  Item has been added to reflect the contemplated adoption of the draft law implementing the Solvency 2 Directive.
-  Item to be included in the ORSA policy

AGENDA ITEM	GOVERNANCE EIOPA GUIDELINE #	PRACTICAL TIPS		REFERENCES		SUBMISSION TO THE CAA
		ACTION TYPE	SUGGESTED FREQUENCY OF SUBMISSION	LEGAL REFERENCE	BEST PRACTICE	
1	BOARD ADMINISTRATION	1				
1,1	Agenda		-	Each meeting		Best Practice
1,2	Minutes (setting out the items on the agenda and clearly stating the decisions made and agreed upon actions)		Document for approval	Each meeting		Best Practice
1,3	Matters arising / action list		Review	Each meeting		Best Practice
2	BOARD INTERNAL GOVERNANCE	6				
2,1	Internal regulations of the Board		Document for approval	On creation & Ad Hoc		Best Practice
2,2	Conflict of interest policy of the Board		Document for approval	On creation & Ad Hoc		Best Practice
2,3	Inception and continuous professional training programmes for new and existing members		Document for approval	On creation & Ad Hoc		Best Practice
2,4	(Annual) declaration of independence (for independent members)		Review	At least annual		Best Practice
2,5	(Annual) declaration of mandates held in other companies		Review	At least annual		Best Practice
2,6	(Annual) self-assessment		Assessment	At least annual		Best Practice
3	BOARD MEMBERSHIP AND OTHER APPOINTMENTS	Section 1				
3,1	Policy for selecting new members		Document for approval	On creation & Ad Hoc		Best Practice
3,2	Succession planning for the Board		Document for approval	On creation & Ad Hoc		Best Practice
3,3	Membership and chairmanship of Board-delegated committees		Approval	As required		Best Practice
3,4	Appointment or removal of the Authorised Management ("dirigeant agréé")		Approval	As required	Company Law & Insurance Law	Approval
3,5	Appointment or removal of the heads of key functions		Approval	As required		Best Practice
3,6	Succession planning for the Authorised Management and Heads of Key Functions		Document for approval	On creation & Ad Hoc		Best Practice
3,7	Appointment to the Boards of Directors of (significant) subsidiaries		Approval	As required	Company Law	
4	DELEGATION OF AUTHORITY	Section 11				
4,1	Approval of internal regulations (terms of reference) of Board-delegated committees		Document for approval	On creation & Ad Hoc		Best Practice
4,2	Approval of terms of reference of the executive / management committee		Document for approval	On creation & Ad Hoc		Best Practice
4,3	Receive and review reports from Board-delegated and other relevant executive committees on their activities		Review	Each meeting		Best Practice
4,4	(Annual) assessment of the Authorised Management		Assessment	At least annual		Best Practice
4,5	Review of (annual) self-assessment of the Board-delegated Committees		Review	At least annual		Best Practice

AGENDA ITEM	GOVERNANCE EIOPA GUIDELINE #	PRACTICAL TIPS		REFERENCES		SUBMISSION TO THE CAA
		ACTION TYPE	SUGGESTED FREQUENCY OF SUBMISSION	LEGAL REFERENCE	BEST PRACTICE	

5	INTERNAL GOVERNANCE	Section 8					
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5 INTERNAL GOVERNANCE Section 8							
	FRAMEWORK						
5,1	Definition & approval of long term objectives, strategy, organisation, internal control and risk management of the Company including:		Documents for approval	On creation & Ad Hoc			
	• Business strategy						
	• Risk appetite and general risk framework**				Insurance Law		
	• Capital and liquidity strategy**						
	• Sound organisational and operating structure				Insurance Law		Approval
	• Security of information systems						
	• Internal alert process						
	• Internal control framework				Insurance Law		Approval
	• Governance principles and corporate values				Insurance Law		Approval
	• Escalation, settlement and sanction of non-compliant behaviors						
	• Contingency and business continuity						Approval
	• Crisis management						
	• Administrative, information technology and accounting organisation				Insurance Law		Approval
	• Outsourcing				Insurance Law		Approval
	• Approval of new activities				Company Law & Insurance Law		Approval
	• Remuneration framework						
	• Nomination and succession of key individuals						Approval
	POLICIES						
5,2	Approval of policies as required by the Board and/or as applicable by law or regulation, such as (list not exhaustive):						
	• ORSA policy	Chapter 3	Document for approval	On creation & Ad Hoc	Insurance Law*		
	• Code of conduct		Document for approval	On creation & Ad Hoc		Best Practice	
	• Conflict of interest policy		Document for approval	On creation & Ad Hoc		Best Practice	
	• Internal alert (whistle blowing) policy		Document for approval	On creation & Ad Hoc		Best Practice	
	• Anti-bribery/corruption/fraud policy		Document for approval	On creation & Ad Hoc		Best Practice	
	• Remuneration policy		Document for approval	On creation & Ad Hoc		Best Practice	

AGENDA ITEM	GOVERNANCE EIOPA GUIDELINE #	PRACTICAL TIPS		REFERENCES		SUBMISSION TO THE CAA	
		ACTION TYPE	SUGGESTED FREQUENCY OF SUBMISSION	LEGAL REFERENCE	BEST PRACTICE		
• New products/new activities policy		Document for approval	On creation & Ad Hoc		Best Practice		
• Outsourcing policy		Document for approval	On creation & Ad Hoc	Insurance Law*			
• Crisis management policy		Document for approval	On creation & Ad Hoc		Best Practice		
• Contingency and business continuity policy		Document for approval	On creation & Ad Hoc		Best Practice		
ASSESSMENT							
5,3	(Annual) assessment of the effectiveness of the internal governance framework.	Assessment	At least annual		Best Practice		
5,4	(Annual) review of the Company's internal organizational structure (departments / branches etc.)	Review	At least annual		Best Practice		
5,5	(Annual) review of the group structure (if the Company is a parent company or holds participating interests)	Review	At least annual		Best Practice		
5,6	Review of the (annual) management report on Internal Governance	Document for approval	At least annual		Best Practice	Submission	
5,7	ORSA Report	Chapter 3	Document for approval	Annual	Insurance Law*	Submission	
6 CAPITAL AND FUNDING INSTRUMENTS 36; 37							
6,1	Approval of increase(s) or decrease(s) of the capital of the Company		Approval	As required	Company Law & Insurance Law	Information	
6,2	Approval of issuance(s) or changes in terms and conditions of subordinated loans or other funding instruments issued by the Company		Approval	As required	Company Law	Information / Approval	
6,3	Approval of capital market transactions involving shares of the Company		Approval	As required		Best Practice	Approval
6,4	Declaration of the interim dividend and recommendation of the final dividend to the General Meeting of Shareholders		Approval	As required	Company Law		
7 INVESTMENTS AND RELATED COMMITMENTS 27							
7,1	Approval of capital injection(s) into subsidiaries or affiliated companies or modification of the rights attached to the capital of subsidiaries or affiliated companies		Approval	As required		Best Practice	
7,2	Approval of new loan(s) or funding instrument(s) or changes in the terms or conditions of existing loans or funding instruments granted to subsidiaries or affiliated companies		Approval	As required		Best Practice	
7,3	Approval of financial commitments relative to investments and long-term contracts (exceeding certain thresholds as per the Company's Statement of Risk Policy defined by the Board)		Approval	As required		Best Practice	
7,4	Approval of issuance of unlimited guarantees, letters of comfort, and similar matters		Approval	As required		Best Practice	
7,5	Approval of acquisition and encumbrance of real property		Approval	As required		Best Practice	

AGENDA ITEM	GOVERNANCE EIOPA GUIDELINE #	PRACTICAL TIPS		REFERENCES		SUBMISSION TO THE CAA
		ACTION TYPE	SUGGESTED FREQUENCY OF SUBMISSION	LEGAL REFERENCE	BEST PRACTICE	
8 EXTENSION OF ACTIVITIES /ACQUISITIONS / DIVESTITURES		27; 28; 29				
8,1	Review and approval of extension of the activities into new business or geographic areas		Approval	As required	Company Law & Insurance Law	Notification
8,2	Decisions to cease to operate material activities		Approval	As required	Company Law & Insurance Law	Notification
8,3	Review and approval of mergers, acquisitions, portfolio transfers and creation or sale of subsidiaries		Approval	As required	Company Law & Insurance Law	Approval
9 INTERNAL AUDIT		Section 8				
9,1	Review and approval of the Internal Audit Charter		Document for approval	At least annual		Best Practice
9,2	Review and approval of the multiyear Internal Audit Plan		Document for approval	At least annual	Insurance Law	
9,3	Review of periodical Internal Audit activity reports, including (list not exhaustive)		Review	Each meeting		Best Practice
	• Audit risk assessment					
	• Key audit issues					
	• Status of outstanding audit issues and remediation actions					
9,4	Review of individual thematic Internal Audit reports ("rapports de mission")		Review	As required		Best Practice
9,5	Review and approval of the (annual) Internal Audit Report		Document for approval	At least annual	Insurance Law*	
9,6	(Annual) assessment of the Internal Audit Function		Assessment	At least annual	Insurance Law*	
10 EXTERNAL AUDIT REPORTS		Section 10; 55				
10,1	Review of the Management Letter(s) issued by the external auditors and remedial actions by management		Review	As required		Best Practice
10,2	Review of the auditors' report on the (annual / semi-annual) Financial Statements		Review	At least annual		Best Practice
10,3	Review that the filing of the Compte Rendu Annuel and Rapport Distinct has been done		Review	Annual		Best Practice
10,4	(Annual) assessment of the work performed by the external auditors		Assessment	At least annual		Best Practice
10,5	(Annual) review and approval of the external auditors' fees		Approval	At least annual		Best Practice
10,6	(Annual) review and approval of non-audit services performed by the external auditors		Approval	At least annual		Best Practice

AGENDA ITEM	GOVERNANCE EIOPA GUIDELINE #	PRACTICAL TIPS		REFERENCES		SUBMISSION TO THE CAA
		ACTION TYPE	SUGGESTED FREQUENCY OF SUBMISSION	LEGAL REFERENCE	BEST PRACTICE	

11	RISK MANAGEMENT AND MONITORING	Chapter 3					
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11,1	Review and approval of the risk appetite policy**	18	Document for approval	At least annual	Insurance Law*		
11,2	Review and approval of risk management and monitoring policies**		Document for approval		Insurance Law*		
11,3	Review and approval of risk limits**		Document for approval	At least annual	Insurance Law*		
11,4	Review and approval of (change in) transactions with related parties with potential material or adverse effect on the risk profile of the Company		Approval	As required		Best Practice	
11,5	Review of periodical risk activity reports, including (list not exhaustive):		Review	Each meeting		Best Practice	
	• Assessment of risk exposures vs. risk appetite						
	• Reporting on exposures vs. limits (internal limits and regulatory limits incl. stress testing)						
	• Exception reports						
	• Remediation measures						
11,6	Review and approval of liquidity planning		Document for approval	At least annual		Best Practice	
11,7	Review and approval of the (annual) Risk Report		Document for approval	At least annual		Best Practice	
11,8	(Annual) assessment of the Risk Function		Assessment	At least annual		Best Practice	

12	REGULATORY AND COMPLIANCE						
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12,1	Review and approval of the Compliance Charter		Document for approval	On creation & Ad Hoc		Best Practice	
12,2	Review of periodical compliance activity reports, including (list not exhaustive):		Review	Each meeting		Best Practice	
	• Assessment of the state of compliance of the Company						
	• Report on regulatory cases / investigations by the regulator (if applicable)						
	• Report on client's claims (if applicable)						
	• Report on clients' suspicious activities (as per Anti Money Laundering rules) (if applicable)						
	• Statistical information on higher risk clients including Politically Exposed Persons (PEPs) clients (if applicable)						
	• Exception reports						
	• Remediation measures						
12,3	Review and approval of the annual Compliance work plan		Document for approval	At least annual		Best Practice	
12,4	Review and approval of the (annual) Compliance Report		Document for approval	At least annual	Insurance Law*		
12,5	Changes in Laws and Regulations		Information	As required		Best Practice	

AGENDA ITEM	GOVERNANCE EIOPA GUIDELINE #	PRACTICAL TIPS		REFERENCES		SUBMISSION TO THE CAA	
		ACTION TYPE	SUGGESTED FREQUENCY OF SUBMISSION	LEGAL REFERENCE	BEST PRACTICE		
13 BUSINESS							
13,1	Approval of (annual) operating and capital expenditure budgets of the Company and any material change to them		Document for approval	At least annual		Best Practice	
13,2	Report from Management on the current course of business and of important activities of the Company		Information	Each meeting		Best Practice	
14 FINANCIAL AND REGULATORY REPORTING							
14,1	Periodical reporting on the Company's financial figures, including (list not exhaustive):		Information	Each meeting		Best Practice	
	• Actual figures vs. previous periods/years						
	• Actual figures vs. budget						
14,2	Review and approval of any significant changes in accounting policies or practices		Approval	As required		Best Practice	
14,3	Review and approval of capital planning		Document for approval	At least annual		Best Practice	
14,4	Review of periodical regulatory ratios (Solvency)		Review	Each meeting		Best Practice	Submission
15 FINANCIAL STATEMENTS							
15,1	Review of significant transactions and accounting estimates		Review	As required		Best Practice	
15,2	Review and approval of the Directors' Report ("Rapport de gestion") to the Financial statements		Document for approval	Annual	Company Law		
15,3	Review and approval of the (annual / semi-annual / quarterly) Financial Statements		Document for approval	Annual / As required	Company Law		Submission
16 LEGAL							
16,1	Decision to initiate (significant) lawsuits and other (significant) legal proceedings		Approval	As required		Best Practice	
16,2	Decision to withdraw from (significant) lawsuits and other (significant) proceedings		Approval	As required		Best Practice	
16,3	Decision to withdraw from and enter into (significant) out-of-court settlements		Approval	As required		Best Practice	
16,4	Review of pending (significant) litigations (if applicable)		Review	As required		Best Practice	
17 OPERATIONS AND INFORMATION SYSTEMS							
17,1	Review of periodical Operations and IT Activity Reports, including (list not exhaustive):		Review	Each meeting		Best Practice	
	• Assessment on the business continuity management and disaster recovery plans						
	• Assessment of effectiveness and / or efficiency of outsourced processes or systems						
	• Assessment on IT governance, data security, infrastructure and core applications						
	• Assessment on operations (back office, middle office)						
	• Report on operational losses						

AGENDA ITEM	GOVERNANCE EIOPA GUIDELINE #	PRACTICAL TIPS		REFERENCES		SUBMISSION TO THE CAA
		ACTION TYPE	SUGGESTED FREQUENCY OF SUBMISSION	LEGAL REFERENCE	BEST PRACTICE	
18 HUMAN RESOURCES						
18,1	Review and approval of the Company's authorised signatories (as per the internal delegation policy defined by the Board)		Approval	As required		Best Practice
18,2	Annual declaration of external business and politically relevant activities of authorized Management and Heads of Key Functions		Review	Annual		Best Practice
18,3	Proposal of remuneration to be paid to Board members	Section 2	Approval	Annual		Best Practice
18,4	Approval of remuneration paid to Authorised Management	Section 2	Approval	Annual		Best Practice
18,5	Approval of remuneration paid to Heads of Key Functions	Section 2	Approval	Annual		Best Practice
18,6	Approval of loans granted to Board members and the Authorised Management and their closely related individuals		Approval	As required		Best Practice
19 COMMUNICATIONS TO THE ASSEMBLY OF SHAREHOLDERS						
19,1	Review and approval of resolutions and corresponding documentation to be submitted to the shareholders at a general meeting including (list not exhaustive):		Approval	At least annual	Company Law	
	• Notice and agenda					
	• Submission of annual financial statements					
	• Submission of appropriation of net profit available for distribution, including recommendation of final dividend					
	• Submission of (amended) articles of association					
	• Proposal regarding dismissal and (re) appointment of Board Members					
20 OTHERS						
20,1	Review and approval of the overall level of insurance for the Company including Directors' and officers' liability insurance (and indemnification of Directors)		Approval	At least annual		Best Practice
20,2	Any other business		-	As required		

ILA Mission Statement

The mission of ILA is to promote the profession of Directors by developing its members into highly qualified, effective and respected Directors. In parallel, it will promote best practices in Luxembourg in the field of Corporate Governance of companies and institutions by actively engaging with and contributing to those institutions and trade associations charged with the introduction, application and oversight of those Corporate Governance rules and practices. It will achieve this through high quality training, forum discussion, research, publications and conferences.

ILA aims to be not only the premier interlocutor in Luxembourg on issues affecting Directors but also to play an important role at the European level.

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