

Corporate Governance in Insurance: A Primer on the Corporate Governance Annual Disclosure Model Act



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At its core, corporate governance provides the framework for insurers to shape their business plans and operations among the company's shareholders, board of directors, and management in an environment defined by the corporate charter, bylaws, formal policies, and rules of law. Historically, corporate governance is necessary to address decision-making functions within a legal prism of accountability and various fiduciary duties. These include a duty of good faith, appropriate transparency, fair dealing, and loyalty to the company.

The last few years have brought with them significant changes in insurance company and holding group corporate governance requirements. Pressed by emerging international developments, heightened federal scrutiny, and informed by a number of failed insurers in liquidation,

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state insurance regulators have carefully studied a number of enterprise risk management issues that affect the companies they regulate, from large globally active entities to single state startups.

Additionally, in response to the 2008 financial crisis, growing regulatory needs, and various international developments, the National Association of Insurance Commissioners (NAIC) completed a comprehensive study of existing corporate governance statutory requirements, regulatory initiatives, and reviewed practices of the state insurance departments and the insurance industry. As a result of the study, the NAIC concluded that insurance departments needed to collect additional information from insurers regarding their corporate governance practices. To address the need, the NAIC developed the Corporate Governance Annual Disclosure (CGAD) Model Act (#305)

(the Model Act) and the CGAD Model Regulation (#306) (the Model Regulation) setting forth granular requirements insurers will need to implement and disclose.

The Model Act and Model Regulation give insurance regulators a mechanism to comprehensively review an insurer's or insurance group's organizational structure, policies, and practices. They are tools that regulators can use to confirm that insurance company boards of directors and upper management are more directly engaged in the important operational issues that insurers have to address. Specifically, the Model Act and Model Regulation require an insurer or insurance group to provide a confidential CGAD regarding the company's or group's corporate governance practices to the insurance company's lead state and/or domestic regulator each year by June 1.

The Model Act and Model Regulation do not prescribe new governance standards, but rather require the insurer to report on existing governance practices. Given the different structures of U.S. insurers, they are afforded discretion over the format of the filing and the level of the company within the holding company structure responsible for the filing. The determination of the reporting entity will be based on where: (i) risk appetite is determined; (ii) the earnings, capital, liquidity, operations, and reputation of the insurer are overseen; or (iii) liability for failures in corporate governance will be placed. This decision requires measured analysis and any changes in reporting will have to be adequately explained in later filings.

Currently, 19 states (CA, CT, DE, FL, ID, IN, IA, KS, LA, ME, MT, NE, NV, NH, OH, OR, RI, VT, VA) have adopted the Model Act and 15 states (CA, CT, DE, FL, ID¹, IN, IA, LA, MT, NE, OH, OR, RI, VT, VA) have adopted the Model Regulation. While not a current NAIC accreditation requirement, many expect universal adoption of both the CGAD Model Act and Model Regulation.

¹ The Idaho Department of Insurance adopted the Model Regulation in the October 4, 2017 Idaho Administrative Bulletin, which is now pending legislative approval.



The Model Act generally requires that the CGAD provide sufficient information for the insurance commissioner to understand the insurer or insurance group's corporate governance structure, policies, and practices. However, Section 5 of the Model Regulation contains more specific requirements. At a minimum, the CGAD is required to address:

- The insurer's corporate governance framework and structure;
- The policies and practices of its board of directors and significant committees;
- The policies and practices directing senior management; and
- The processes by which the board of directors, its committees and senior management ensure an appropriate level of oversight over the critical risk areas impacting the insurer's business activities.

Those states that have adopted both the Model Act and the Model Regulation have required that the CGAD be consistent with the Model Regulation and contain the information listed in Section 5 thereof. For example, Connecticut, Florida, and Louisiana generally require that the CGAD contain: (i) a description of the insurer's or insurance group's corporate governance framework and structure; (ii) a description of the policies and practices of the board and each significant committee thereof;

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(iii) a description of the board's processes to evaluate its performance and the performance of its committees and any recent measures taken to improve performance, including any board or committee training programs that have been put in place; (iv) a description of the insurer's or insurance group's policies and practices for directing senior management; and (v) a description of the insurer's or insurance group's processes by which the board, each significant committee thereof, and senior management ensure an appropriate amount of oversight of the critical risk areas impacting the insurer's or insurance group's business activities.

Other states, like Kansas and Maine, which have adopted Model Act but have not adopted the Model Regulation, generally require that the CGAD provide sufficient information for the insurance commissioner to understand the insurer or insurance group's corporate governance structure, policies, and practices.



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Some states have already begun collecting CGADs from insurers and insurer groups. Connecticut's CGAD law, which became effective Jan. 1, 2017, provides that, not later than June 1, 2017, an annually thereafter, each domestic insurer or the insurance group of which such insurer is a member must submit to the Connecticut Insurance Department. Florida's CGAD law went into effect on Oct. 1, 2016 and requires that an insurer, or insurer member of an insurance group, of which the Florida Office of Insurance Regulation (OIR) is the lead state regulator shall submit a CGAD to OIR by June 1 of each calendar year. However, unlike Connecticut's CGAD law, which only gave insurers and insurance groups a six-month window within which to submit a CGAD, Florida's CGAD law requires that insurers and insurance group's file their first CGAD's with OIR by Dec. 31, 2018.

Regardless of whether they are currently required to do so, insurers and insurer groups should assess their internal corporate governance structures and processes and determine whether they are prepared to file a CGAD once the Model Act, Model Regulation, or both are adopted by their lead states. Boards should educate themselves on the Model Act and Model Regulation and consider whether their governance structures and policies are adequate. Has the organization formed committees to assist the board in carrying out its functions? Has the board assessed whether it possesses the necessary skill sets to fulfill its responsibilities? If an organization is not prepared to make a CGAD filing or is concerned that its governance structures or processes may need to be augmented, now is the time to strategize and implement appropriate governance mechanisms.

Demotech and Greenberg Traurig will continue to offer a series of articles and webinars in the coming months regarding developments related to Corporate Governance in Insurance. Past articles have focused on issues such as Key Regulatory Considerations Related to Corporate Governance, Insurance Company Audit Committee Member Independence, Creating Effective Corporate Governance Mechanisms to Address Cybersecurity Threats, and Adopting a Bottom Up Approach to Managing Risk.

If you would like to request copies of past articles in the Corporate Governance in Insurance series, please contact Laurie Drew at drewl@gtlaw.com or Mitzi Smith at msmith@demotech.com. 

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