



Corporate Governance and Conduct Review Committee Charter

Effective: As of and from 3 March 2018
Approved By: The Board of Directors

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1. THE COMMITTEE

1.1 Purpose

In accordance with paragraph 74 of the Insurance Regulations, 2001, and in service to IronRock Insurance Company Limited (the “Company”), the Corporate Governance Committee (the “Committee”) shall on behalf of the Board of Directors (the “Board”) monitor corporate governance standards throughout the Company and ensure compliance with current regulatory requirements pertaining to corporate governance.

1.2 Membership

The Committee shall consist of at least three (3) members, all of whom must be non-executive directors, and the majority of whom must be independent directors.

The Board shall, at their first meeting following each Annual General Meeting (“AGM”), appoint members of the Committee, and a Committee Chairperson who shall be an independent non-executive director. Any member who ceases to be a director of the Company, shall immediately cease to be a member of the Committee. In the absence of the Committee Chairperson, the remaining members present shall elect one of themselves to chair the meeting.

The Board shall keep under review the members of the Committee and shall ensure that all the committee members remain independent. At any time, any member of the Committee can be removed by the Board in its sole discretion. Appointments to the Committee shall be for a period of twelve (12) months, which may be extended by the Board. Members shall be appointed annually at the meeting of the Board immediately following the AGM of the Company.

Only members of the Committee have the right to attend Committee meetings. However, the Committee may invite other persons to attend meetings.

1.3 Meetings

The Committee shall meet as often as it determines appropriate, but shall meet at least twice each year. Further, the Committee shall meet upon the request of a Committee member.

Written notice of each meeting will be given to all members of the Committee and such notice shall include an agenda for the meeting in question and a copy of the minutes of the previous meeting. Any written material relating to the individual agenda items shall, to the extent possible, be forwarded to the members together with the notice convening the meeting.

Under special circumstances, a committee resolution may be passed over the phone or in writing.

1.4 Minutes

The Committee shall keep minutes of each meeting which shall be signed by the Chairperson of the Committee. Minutes of Committee meetings are to be circulated to all members of the Committee before the next meeting of the Committee.

1.5 Quorum

The quorum for a meeting is two (2) members.

A duly convened meeting of the Committee at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Committee.

1.6 Remuneration

Each member of the Committee shall receive a fixed annual remuneration to be determined by the Board.

1.7 Reporting

The Chairperson of the Committee shall report the findings of each Committee meeting at the following meeting of the Board, along with any key actions taken by the Committee or recommendations being made to the Board.

Material presented to or prepared by the Committee will be available to all members of the Board upon request.

1.8 Independent advisors

The Committee may engage independent advisors as it determines necessary to carry out its duties and shall have appropriate funding as determined necessary by the Committee for the fulfilment of its tasks and duties.

1.9 Charter evaluation

Once a year, the Committee shall review this charter to ensure that the charter's requirements are:

1. consistent with current laws and regulations; and
2. pertinent to the Company's strategic goals and objectives.

2. COMMITTEE RESPONSIBILITIES

2.1 Corporate governance

The Committee shall assist and guide the Board in monitoring the Company's corporate governance standards by accepting the responsibility to:-

1. monitor developments and advances in corporate governance and regulatory requirements and make recommendations for their adoption to the Board;
2. monitor and review the Company's overall corporate governance practices and submit recommendations to the Board for their improvement or amendment;
3. monitor the composition of the Board and its committees, ensuring that they comply with all regulatory requirements;
4. evaluate the adequacy of this charter and recommend any proposed changes to the Board; approve the Corporate Governance Statement for inclusion in the Company's Annual Report to its shareholders;
5. ensure that there is accurate, timely and full disclosure of all material information regarding the Company's operations to the Company's stakeholders and regulators;
6. develop a process for evaluating the structure, size, composition and performance of the Board and its committees and execute this review once a year – reporting the to the Board and making recommendations for improvement as appropriate;
7. ensure the suitability of the orientation seminar for new directors and recommending and arranging programs for continuing development and training of directors; and
8. ensure that directors with conflicts of interest do not attend and vote at meetings where they may potentially influence the vote on a resolution or transaction related to their conflict of interest.

2.2 Related parties

The Committee shall assist and guide the Board in monitoring related parties to the Company by accepting the responsibility to:-

1. be cognizant of the persons and entities that are related parties and ensure that connected individuals and entities are made known to the directors and senior management;
2. monitor the Company's fiduciary functions with a view to identifying situations which create potential conflicts of interest and help avoid such situations;
3. establish written procedures for the Company to proactively identify potential conflicts of interest and prevent such conflicts;
4. at least once a year, provide a written report to the Board on:
 - a. securities that were issued during the year by the Company or a connected party; and
 - b. securities held in trust or estate by the Company as a fiduciary during the immediately preceding financial year;

2.2 Related parties (cont'd)

5. monitor all related party transactions to ensure that such transactions are appropriate and in the best interest of policyholders;
6. review and provide written approvals for transactions between the Company and any related party, ensuring that these transactions are not contrary to the prohibitions set out in Regulations 82 to 86, and ensuring all approvals are recorded in the minutes and reported to the Board;
7. maintain a list of all parties that are related to the Company, including:
 - a. all directors and officers of the Company;
 - b. all affiliated entities, and any entities owned or controlled by affiliates;
 - c. all directors or officers of affiliated entities or entities owned by affiliates;
 - d. all shareholders owning 10% or more of the non-voting shares of the Company;
 - e. all parties owning or controlling, directly or indirectly, 10% or more of any class of voting shares of IronRock Insurance or any of its affiliates; and
 - f. spouses of individuals who are related to the Company, or any of its affiliates, who occupy the same house as the related party.

2.3 Preventing conflicts of interest

The Managing Director shall write to all directors and officers of fellow subsidiary and affiliated companies to advise them of their obligations to declare all transactions between themselves and the Company to the Committee.

All material transactions between the Company and any related party should be approved by the Committee.

All transactions between the Company and any related party should be, and be seen to be, transparent.

2.4 Evaluating related party transactions

The Committee in its duties shall be responsible for evaluating related party transactions in line with the below guidelines:-

1. the Managing Director or the Director of Finance is to submit a list of all prospective transactions involving related parties to the Committee for approval **before** the transaction is undertaken;
2. the Committee will then refer to the list of related parties to identify whether the party to the transaction is in fact a related party; and
3. the approval criteria stated below will be utilised in making the decision to approve the transaction.

2.5 Approving related party transactions

In approving a related party transaction, the Committee will consider the following questions:-

1. is the transaction being carried out in the normal course of the Company's business?
2. what is the implication of the transaction on the Company, is it in the best interest of the Company?
3. what is the value of the transaction?
4. is the transaction at fair market value?
5. is the transaction value significantly different from fair market value?
6. is the transaction permissible under the regulations of the Insurance Act 2001?
7. is the transaction in compliance with the Insurance Act and Regulations 2001 in all other respects?

3. APPENDIX – INSURANCE REGULATIONS

3.1 Paragraph 74

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THE INSURANCE REGULATIONS, 2001

case may be, to consider any matters which the auditor, member or director believes should be brought to the registered insurer's directors or members.

Establishment of
conduct review
committee.

74.—(1) The directors of a registered insurer shall elect from among themselves a committee consisting of at least three directors, to be known as the conduct review committee.

(2) The conduct review committee shall establish written procedures with a view to identifying situations which create potential conflicts of interest and preventing such conflicts.

Establishment of
loan committee.

75. The directors of a registered insurer shall, at their first investment and directors' meeting following each annual general meeting, establish a committee to be known as the investment and loan committee consisting of not less than three persons, at least one of whom shall be an officer of the company but the majority of the members shall not be officers or employees of the company or an associated company.

Qualifications of
actuary.

76.—(1) An actuary is qualified to be appointed in the office of actuary of a registered insurer if he is a fully qualified professional member of an actuarial body accredited by the International Actuarial Association and recognized by the Commission which shall publish an annual list of the Actuarial Associations recognized by it.

(2) Where an actuary is qualified only in respect of either life and health insurance business or general insurance business, he shall be qualified to hold the office of actuary only in respect of the business for which he is qualified.

(3) The chief executive officer or chief operating officer or a person performing like functions may not be appointed or hold the position of actuary of a company unless authorized in writing by the Commission.

(4) An authorization under paragraph (3) shall have effect for such period as is specified therein and shall cease to be in effect on the day so specified, being a date not later than six months after it is issued, and a person appointed or holding the position of actuary pursuant to the authorization shall not hold that position after that day.

(5) The chief financial officer or a person performing like functions may not be appointed as or hold the position of actuary of a company unless—

- (a) the audit committee of the company has provided the Commission with a written statement indicating that it is satisfied that the duties of both positions in the company will be adequately performed and that the actuarial duties will be performed in an independent manner; and
- (b) the appointment or holding of the position is authorized by the Commission, which may be granted subject to such limitations and

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(15) The Commission may appoint an actuary to value the matters referred to in paragraph (13), in relation to a company if the Commission is of the opinion that the appointment is necessary and a person so appointed shall not be an actuary of the company.

(16) The expenses incurred in carrying out a valuation under paragraph (13) are payable by the company on being approved in writing by the Commission.

(17) On the request of the actuary of a company, the present or former directors, officers, employees or representatives of the company shall, to the extent that they are reasonably able to do so—

- (a) permit access to such records as are held by the company; and
- (b) provide such information and explanations as are, in the opinion of the actuary, necessary to enable the actuary to perform the duties of actuary of the company.

(18) A person who in good faith makes an oral or written communication under paragraph (17) shall not be liable in any civil action arising from having made the communication.

Form of actuary's report.
Schedule 13.

77. The Actuary's Report shall be in the form set out in Schedule 13.

Actuarial Regulations

78. In performing his services, the Actuary shall adhere to and be guided by the Actuarial Regulations, 2001, and any Guidelines, Technical Papers and Bulletins issued by the Commission.

Qualifications of auditor.

79. An auditor is qualified to be appointed to the office of auditor of a registered insurer if he is a fellow in good standing of the Institute of Chartered Accountants of Jamaica.

Appointment of Auditor for subsidiary.

80. A registered insurer shall—

- (a) ensure that its auditor, or one of them if more than one, is also auditor of any of its subsidiaries; or
- (b) deliver to the Commission a written explanation to the satisfaction of the Commission of why it is unable to ensure that result.

Conduct Review Committee.

81. The Conduct Review Committee shall provide the Commission with a copy of the written procedures adopted pursuant to these Regulations within thirty days after the Committee is constituted.

Restrictions on Self-dealing as a fiduciary.

82.—(1) In this regulation—

“related party” means a person who—

- (a) is a director or officer of the insurance company or any of its affiliate;
- (b) is an employee of the insurance company or its affiliate and is a member of a prescribed class of employees;

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- (c) owns directly 10% or more of the non-voting shares in the entity, not counting any non-equity shares in the case of a credit union;
- (d) owns or controls, directly or indirectly, 10% or more of any class of voting shares in the company or in its affiliate, but is not an affiliate of the company;
- (e) is an affiliate of the company and—
 - (i) is not a wholly owned subsidiary corporation of the company; and
 - (ii) is not an insurance company or extra-territorial corporation that is a holding company that wholly owns the insurance business;
- (f) is a corporation in which the insurance business or its affiliate owns or controls, directly or indirectly, 10% or more of any class of voting shares;
- (g) owns or controls, directly or indirectly, a 10% or greater interest in a joint venture in which the insurance business or its affiliate also owns or controls, directly or indirectly, a 10% or greater interest;
- (h) owns or controls, directly or indirectly, a 10% or greater interest in a partnership in which the entity or its affiliate also owns or controls, directly or indirectly, a 10% or greater interest;
- (i) is a sole practitioner who is an auditor of the insurance company;
- (j) is actively engaged in auditing the insurance company and is a partner in a partnership that is an auditor of the insurance company;
- (k) is a director, officer or member of a prescribed class of employees of a corporation that is a related party under sub-paragraph (c) or (d);
- (l) is a spouse of an individual who is a related party under sub-paragraph (a), (b), (c) or (d) and occupies the same home as that person;
- (m) is a relative or an individual or the spouse of an individual who is a related party under sub-paragraph (a), (b), (c) or (d), and occupies the same home as that person;
- (n) is a corporation in which a person who is a related party under any of sub-paragraphs (a) to (h) and (k) to (m) or under paragraph (2) has or controls, directly or indirectly, more than 50% of the votes that are attached to the outstanding voting shares of the corporation and that may be cast in the election of the directors.

(2) A related party includes an individual who, having been a related party under sub-paragraph (1) (a), (b), (c), (d) or (e) of an insurance business ceases to be one under that paragraph, nevertheless continues for the purposes

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of this Part to be a related party of the insurance business for the twelve months commencing on the date the individual ceases to be a related party under sub-paragraph (1).

(3) Except as provided in this regulation, an insurance company that holds money as a fiduciary shall not—

- (a) invest that money in securities issued by the insurance company or by its related party; or
- (b) use that money in any transaction with any such related party.

(4) An insurance company may act as a fiduciary in one or more trusts or estates in which there are securities issued by the insurance company or its related party if the securities were—

- (a) acquired by the person for whom the financial institution acts as a fiduciary; or
- (b) held in the trust or estate before the insurance company assumed responsibility as a fiduciary.

(5) If an insurance company acts as a fiduciary in one or more trusts or estates in which securities are held that were issued by the insurance company or by its related party, the insurance company shall not sell or vote the securities or refuse an offer for them without first receiving the written approval of the conduct review committee which shall enter the reasons for the sale, vote or refusal in its minutes.

(6) The conduct review committee at least annually shall provide a written report to the directors of the insurance company on securities that have been—

- (a) issued by the insurance company or by its related party; and
- (b) held in a trust or estate by the insurance business as a fiduciary during its immediately preceding financial year; and the conduct review committee shall, in the report, give the reasons for any approvals given or denied under paragraph (5) during that financial year.

(7) Notwithstanding that paragraph (3) would otherwise prohibit it from doing so, an insurance company or its related party may carry out an express or a specific permission or a direction that is—

- (a) made by a court; or
- (b) contained in an instrument creating a fiduciary duty to purchase or sell securities of the insurance company or of the related party or to enter into a transaction with the insurance company or a related party of the insurance company, as the case may be—

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- (i) if the insurance company or related party does so as a fiduciary, to make an investment in a bond, note or other evidence of indebtedness that is issued by the insurance company or by the related party, as the case may be, and for which there is market recognized by the Commission; or
 - (ii) if the insurance company or related party does so as a fiduciary, to make an investment or enter into a transaction in which one or more co-fiduciaries of the insurance company or related party can direct and has or have directed that the investment or transaction be made without the agreement of the insurance company or related party.
- (8) An insurance company or subsidiary of an insurance company, shall not, directly or indirectly—
- (a) give insurance business to its related party by way of loan, guarantee, the provision of security or otherwise; or
 - (b) enter into any other transaction with any such related party, other than as permitted under regulation 83.
- (9) A related party of an insurance company shall not, directly or indirectly—
- (a) give insurance business to an insurance business by way of loan, guarantee, the provision of security or otherwise; or
 - (b) enter into or carry out a transaction with the insurance company or with its subsidiary.
- (10) An insurance company or its subsidiary shall not directly or indirectly—
- (a) enter into or carry out a specific transaction approved under regulation 84 by the conduct review committee of the insurance company for consideration that is materially greater or less than the fair market value specified in an approval given under that regulation by the conduct review committee; or
 - (b) enter into or carry out a transaction in a class of transactions approved under regulation 84 by the conduct review committee of the insurance company that is for a consideration materially greater or less than the fair market value.
- (11) Whether or not the transaction would otherwise be permitted under regulations 83 and 84 but subject to paragraph (12), an insurance company or its subsidiary, shall not, directly or indirectly, enter into insurance business with a related party of the insurance company that consist of accounts receivable, loans or security instruments including assets subject to an agreement to repurchase if, immediately following the transaction, the aggregate amount that is—

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- (a) outstanding under transactions described in paragraph (3) (a); and
- (b) due from the related parties to the financial institution, does not exceed 5% of the value of the assets of the insurance company and its subsidiary.

(12) Paragraph (6) does not apply in respect of a transaction described in that paragraph that, at the time it is entered into, is a specific transaction or a class of transactions, consented to in writing by the Commission.

(13) Whether or not the transaction would otherwise be permitted under regulations 83 or 84 but subject to paragraph (14), an insurance company or related party of an insurance company shall not, during any 12 month period, dispose of, to related parties of the insurance company, assets having an aggregate value in excess of 10% of the value of the assets of the insurance company, as shown in its most recently audited financial statements.

(14) Paragraph (13) does not apply in respect of a transaction described in that regulation that, at the time it is entered into, is a specific transaction or a class of transactions, consented to in writing by the Commission.

Certain related party transactions permitted.

83. When otherwise permitted to do so and not prohibited from doing so by regulation 82, an insurance business or its subsidiary may —

- (a) pay or confer a salary, fee, stock option, pension, benefit or incentive benefit to a director or officer of the insurance company, or to a person who is in the class of employees prescribed for the purpose of regulation 82 (1) (k);
- (b) provide to related parties of the insurance company, at not less than fair market value, services or products that the insurance company or the subsidiary also provides in the ordinary course of its business to the public or, in the case of a credit union, to its members;
- (c) if the aggregate amount outstanding under all loans to an insurance company will not exceed the prescribed amount, counting the amount of the intended loan, make a loan to an individual who is a related party of the insurance company under paragraph (1) of the definition of related party in regulation 82; or
- (d) buy from, or sell to, a related party of the insurance company, for a nominal amount, within the meaning of that regulation, property or services having a fair market value that does not exceed that nominal amount.

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84.—(1) When otherwise permitted to do so and not prohibited from doing so by regulation 82, a financial institution or a subsidiary of it may enter into a transaction with a related party of the insurance company if the transaction, at the time it is entered into, is —

Conduct review committee's power to approve other transactions.

- (a) a specific transaction; or
- (b) in a class of transactions,

approved in writing for the purpose of this regulation by the conduct review committee of the insurance company.

(2) Subject to paragraphs (3) and (4), the conduct review committee of an insurance company may give written approvals for the purpose of this regulation.

(3) The conduct review committee of an insurance company shall not approve a specific transaction or class of transactions for the purpose of this regulation unless the specific transaction or the class of transactions, as the case may be, meets each of the following requirements—

- (a) it is not within a class of restricted transactions prescribed for the purposes of this regulation;
- (b) it does not involve the purchase or sale of an interest in land other than—
 - (i) a leasehold interest; or
 - (ii) a prescribed interest;
- (c) it does not involve the transfer of a leasehold interest in land, if, on or after transfer any person having a right to occupy the land under the lease has that right for a term, or for successive renewal terms, in excess of 30 years;
- (d) it does not involve an exchange of one or more security instruments issued by the insurance company or its subsidiary for one or more security instruments issued by a related party of the insurance company at a time when any of the securities exchanged does not trade on a market recognized by the Commission;
- (e) it is consistent with, or reasonably ancillary to, the usual business of the insurance company or of its subsidiary, as the case may be;
- (f) it is in the best interests of the insurance company or, if entered into by its subsidiary, in the best interests of both the insurance company and the subsidiary.

85. The conduct review committee shall not approve a specific transaction for the purposes of this regulation unless satisfied on reasonable grounds—

Proper transaction.

- (a) that the transaction will be entered into and carried out for

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consideration—

- (i) paid by the insurance company or by its subsidiary that is not materially greater than the fair market value; or
 - (ii) received by the insurance company or by its subsidiary that is not materially less than the fair market value; and
- (b) in the case of a transaction involving a loan or loans by the financial institution or its subsidiary, that—
- (i) the loan or loans will be secured by a charge on property which property has fair market value that is not less than 100% of the principal amount of the loan or loans and, if a higher percentage than 100% prescribed for the purpose of this paragraph, is not less than that prescribed higher percentage of the principal amount of the loan or loans; and
 - (ii) the property charged as security for the loan or loans is not in the category of low quality assets as that category is defined by regulation,

and, if the conduct review committee is satisfied as to the matters set out in paragraph (a) or (b) or both, as applicable, it shall specify in the approval the amount that constitutes the fair market value for the purposes of paragraph (a) or (b) or both, as applicable.

Disclosure by
related parties.

86.—(1) A related party of an insurance company who, directly or indirectly, is interested in a transaction or proposed transaction with the insurance company or with its subsidiary for which, under the Act—

- (a) approval of the conduct review committee of the insurance company; or
- (b) the consent of the Commission,

is required, shall disclose in writing to the directors of the insurance company the nature and extent of the related party's interest in the transaction.

(2) Notwithstanding paragraph (1), if an individual (the “first individual”) is directly or indirectly interested in the transaction described in that paragraph and is a related party of the insurance company only because of being a relative of—

- (a) an individual (the “second individual”); or
- (b) the spouse of the second individual,

who is a related party under regulation 82 and who occupies the same home as the first individual, as set out in that regulation, then—

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- (i) paragraph (1) does not apply to the first individual; and
- (ii) the second individual must disclose in writing to the directors of the insurance company the nature and extent of the first individual's knowledge.

(3) A person who is a director or officer of a financial institution, and—

- (a) is also a director or officer of; or
- (b) owns or controls, directly or indirectly, 50% or more of the votes that are attached to the outstanding voting shares, in,

a corporation that is interested in a transaction or proposed transaction with the insurance company or with its subsidiary, shall disclose in writing to the directors of the insurance business that person's relationship with the interested corporation and the nature and extent of the interested corporation's interest in the transaction or proposed transaction.

(4) The disclosure to the directors of the insurance business that is required by paragraph (1), (2) or (3) shall be entered in the minutes of the directors of the insurance company.

(5) If the person who is required by paragraph (1), (2) or (3) to make a disclosure to the directors of the insurance company is a director of the insurance company or of a subsidiary of an insurance company—

- (a) that person shall make the disclosure at the first meeting of the directors of the insurance company after the matter requiring disclosure becomes known to that person;
- (b) if a meeting described in sub-paragraphs (i) to (iv) occurs at the same time as or after the matter requiring disclosure becomes known to that person, then—
 - (i) that person shall also make the disclosure at the meeting of the directors at which the transaction or proposed transaction is first considered;
 - (ii) if that person or the interested corporation of which that person is a director, was not, at that first meeting, interested in the proposed transaction, that person shall also make the disclosure at the first meeting of the directors after that person or corporation becomes interested;
 - (iii) if that person becomes interested, or becomes a director of an interested corporation after the transaction is proposed or entered into, that person shall also make the disclosure at the first meeting after becoming interested or become a director; or

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(iv) if a person who is interested or is a director of a corporation that is interested in the transaction or proposed transaction later becomes a director of the insurance company, that person shall also make the disclosure at the first meeting after becoming a director of the insurance company.

(6) If the person who is required under paragraph (1), (2) or (3) to make a disclosure to the directors of an insurance company is not a director of the insurance company or of its subsidiary, that person shall make the disclosure immediately after the interest requiring disclosure becomes known to that person, whether or not the insurance company has already proposed or entered into the transaction at that time.

(7) If a person who is interested in a transaction or proposed transaction becomes a related party of the insurance company after the transaction is proposed or entered into by the insurance business, that person shall make the disclosure required under paragraph (1), (2) or (3) immediately after the interest requiring disclosure becomes known to that person.

(8) A director required to make a disclosure under paragraph (1), (2) or (3) shall not—

- (a) take part in the discussion or vote on any resolution to approve a transaction in relation to which the disclosure is required;
- (b) be present at any meeting of the directors while the directors are dealing with the matter; or
- (c) influence or attempt in any way to influence the voting on any resolution to approve a transaction in relation to which the disclosure is required.

PART IX—*Aspect of the Standard Accounting Practice*

General Insurance Companies

Interpretation.

87. In these Regulations —

“time apportionment method” means a method whereby each premium is apportioned over the period that it covers whereby the unearned premiums reserve is the aggregate of the unearned premiums, calculated on a pro-rata basis, in respect of the unexpired periods of the respective insurance policies at the end of the financial period;

“1/24th method” means the method —

- (a) whereby unearned premium reserve at the end of the financial period is the aggregate of the unearned premiums calculated on a monthly pro-rata basis, in respect of the unexpired periods of the insurance policies at that date; and

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4. APPENDIX – IR-GUID-06/10-0008

4.1 Information Bulletin – Related Party Transactions and Conflict of Interest Procedures

IR-GUID-06/10-0008

Information Bulletin – Related Party Transactions and Conflict of Interest Procedures

This bulletin applies to all companies registered to conduct insurance business in Jamaica.

A. Background

Related party transactions are a complex issue for supervisory agencies. These transactions are troublesome because unlike normal transactions in the market place where two independent parties negotiate terms and prices to their satisfaction before a transaction is consummated; related party transactions do not involve independent parties. As a result, there is concern by supervisors of financial institutions that related party transactions have the potential to be consummated at prices other than fair value and may not be in the best interest of the supervised entity.

This is not merely a theoretical concern. World wide, supervisors of financial institutions have often seen financial entities, including insurance companies, raise funds from the public and then rather than wisely invest the funds, move them to a parent or associated company. From there, the funds are channeled into various entrepreneurial enterprises, many of which will not generate sufficient cash flow to repay the obligations of the financial institution. A significant proportion of financial institution failures have, in fact, been the result of inappropriate related party transactions. In fact, a study from the United States found that inappropriate related party transactions were a major factor in over one third of bank insolvencies.

The inappropriate movement of funds to related parties can take a number of forms including:

- Excessive dividend payments to the parent company relative to the income of the insurance company;
- Investments, loans or deposits to a parent company or other related party at less than market rates of return;
- The extension of credit to a parent company or other related party with no serious attempts to collect the outstanding receivables;
- Sales of assets or services to a parent company or other related party where the sales price is less than market value;

- Asset or service purchases from a parent company or other related party where the price of the asset or service is in excess of market value;
- Management agreements with the parent company or other related party where the management fees are greater than what a third party manager would charge for the same service;
- Rental agreements with the parent company or other related party where the rent paid (received) is greater (less) than fair market value;
- Joint ventures with the parent company or other related party that are structured such that the insurance company pays a high proportion of the costs, but receives a low proportion of the benefits; and
- Loan guarantees on behalf of the parent company or other related party with no guarantee fee being charged.

At the same time it is recognized that a number of insurance companies in Jamaica are members of groups of companies. In this context, it makes economic sense for these insurance companies to transact business with their associated companies. From an economic perspective, it is clear that an insurance company that requires deposit services would prefer to obtain those services from an affiliated company rather than that company's competitor. Similarly, it makes economic sense for an insurance company to market its products through an affiliated insurance agency or brokerage.

The key to the related party issue is to devise a system where related party transactions can be undertaken if they are at fair value, in the normal course of the insurance company's business and in the best interest of the insurance company. This is the purpose of Regulations 74, 81, 82, 83, 84, 85, and 86 of the Insurance Regulations.

The purpose of this bulletin is two fold. First, the bulletin attempts to summarize the most important related party provisions contained in the Insurance Regulations with the overall intent being to assist insurance companies in understanding their regulatory obligations pursuant to the Regulations. Second, the bulletin outlines the expectations of the FSC with respect to the Conflict of Interest Procedures that companies are required to file with the FSC.

B. Summary of Related Party Provisions

1. Establishment of Conduct Review Committee

Regulation 74(1) requires each insurance company to establish a Conduct Review Committee ("CRC"). The CRC is to consist of at least three **directors** who are **elected** by the full Board of Directors. Principles of good corporate governance suggest that the Chair of the CRC be an independent or unaffiliated director. It is expected that the

members of the CRC will change from time to time as a result of changes in a company's Board of Directors.

2. Conflict of Interest Procedures

Regulation 74(2) requires the CRC to establish "written procedures with a view to identifying situations which create potential conflicts of interest and preventing such conflicts." Regulation 81 requires these procedures to be filed with the FSC within thirty days of the establishment of the CRC. These procedures do not have to be approved by the company's full Board of Directors.

The CRC may wish to change its procedures from time to time. An opportune time to review the procedures occurs when a new member joins the Committee. Any changes in procedures must be filed with the FSC.

3. Identification of Related Parties

Regulation 82(1) outlines an extensive list of related parties to an insurance company. The list includes directors, officers, shareholders, affiliated companies and many other persons. The list is extensive and it is recommended that the CRC review this regulation closely. Regulation 82(2) indicates that for purposes of related party transactions a person continues to be a related party for one year after that person has actually terminated his relationship with the company and its associates.

4. Special Provisions for a Fiduciary

Regulations 82(3) to 82(7) apply to situations where an insurance company is acting as a trustee for a third party. In this case, the trust is prohibited from investing in the securities of the insurance company or undertaking transactions with the insurance company or any of its related parties unless ordered to do so by a court or unless there are explicit instructions to do so in the trust agreement.

In some instances, the trust will contain securities of the insurance company at the time the insurance company becomes the trustee. In such cases, the insurance company is not permitted to sell or vote the securities without first receiving the written approval of the company's CRC. The CRC must outline the reasons why permission is being granted. The CRC must also file an annual report to the Board of Directors regarding Trust holdings of insurance company securities and transactions that have occurred with respect to the securities held during the previous year.

5. Restrictions on Related Party Transactions

Related party transactions can take two forms. The first of these relates to operating transactions including the purchase and sale of goods and services between the insurance company and its related parties. The second of these relates to investment transactions

where investments are made, loans granted or credit extended (accounts receivable) to a related party by the insurance company or by a related party to an insurance company.

Regulations 82(8) and 82(9) prohibit these transactions unless the transactions are permissible transactions (see Section B.6 of this Bulletin) or unless the transactions have been approved by the Conduct Review Committee (see Section B.7 of this Bulletin).

6. Permitted Transactions

Three types of permitted transactions are outlined in Regulation 83.

- The payment of salaries and benefits to employees and directors of the insurance company is permitted without the review of the CRC on the grounds that these payments are clearly part of the normal course of any company's business.
- The provision of services normally provided by the company to a related party at fair value is permitted without the review of the CRC. An obvious example for an insurance company is the selling of insurance policies to company directors, company employees or affiliated companies on the same terms and conditions that are made available to all customers of the insurance company.
- The purchase (sale) of goods and services from (to) related parties where the fair value of the goods and services is a nominal amount is permitted without the review of the CRC on the grounds that such transactions are considered to be immaterial.

7. Transactions Which Require Conduct Review Committee Approval

With the exception of permitted transactions, all other company transactions with related parties must be approved by the company's CRC. Transactions must meet a number of requirements before CRC approval can be granted. All of the following criteria must be met for each transaction:

- The transaction must be for a consideration that is at fair value (Regulation 82(10) and Regulation 85);
- The transaction must not involve the purchase or sale of land (Regulation 84(3));
- The transaction must not involve the exchange of securities between the insurance company and a related party unless the securities are listed on a recognized stock exchange (Regulation 84(3));
- The transaction must be consistent with the usual business of the insurance company (Regulation 84(3)); and,

- The transaction must be in the best interest of the insurance company (Regulation 84(3)).

The CRC should provide approvals in writing and reasons for approval should be outlined in the minutes of CRC meetings.

In some cases, it is not necessary for the CRC to approve specific transactions. Regulation 84(1) allows for CRC approval for a class of transactions. For example, an insurance company may have entered into an agreement to pay its parent company management fees on a monthly basis. It is not necessary for the CRC to approve each payment on a monthly basis. Rather, the CRC should review the agreement before it is entered into. It can then approve all payments specified in the agreement provided that the agreement meets all the approval criteria.

8. Important Restrictions on the Authority of the Conduct Review Committee

There are two very important restrictions on the authority of the Conduct Review Committee.

Regulation 82(11) indicates that the CRC **cannot** approve any transaction if as a result of that transaction the **total** amount owing to the insurance company (including accounts receivable, loans, or other security instruments including assets subject to an agreement to repurchase) by all related parties, exceeds 5% of the total assets of the company. Regulation 82(12) requires that the insurance company obtain consent from the FSC before any such transaction can be approved.

Regulation 82(13) prohibits the CRC from approving a transaction or a series of transactions that would result in the disposal of in excess of 10% of the assets of the insurance company to related parties over a 12 month period. Regulation 82(14) requires that consent be granted by the FSC before such transactions can be approved by the CRC.

The FSC advises that consents under Regulations 82(11) and 82(13) will only be granted under exceptional circumstances.

9. Disclosure by Related Parties

Regulation 86 outlines disclosure requirements that related parties are to make when contemplating transactions with the insurance company. To meet the requirements of this Regulation the related party must disclose in writing to the company's Board of Directors the nature and extent of the related party's interest in the transaction. The Board of Directors is required to record this disclosure in the minutes of the Board of Directors meeting. In addition, the related party must not participate in any discussion on the transaction, must not be present when the company's directors are dealing with the transaction or must not in any way attempt to influence the company's decision with respect to the transaction.

C. Conflict of Interest Procedures

As indicated previously, the CRC is required to file its Conflict of Interest Procedures with the FSC (see Section B.2 of this bulletin).

Clearly, the CRC has the responsibility to develop procedures that meet its needs. Nevertheless, the FSC expects the Conflict of Interest Procedures to be consistent with the related party sections of the Regulations. In this regard, the FSC expects all Conflict of Interest Procedures to address the following issues.

- The procedures should outline a process to ensure that the CRC always has an up to date list of the specific related parties of the company. In some cases the number of such persons may be extremely large, for example subsidiaries and associates of large multi-national companies. In this situation the insurance company may list the parent company and major subsidiaries with a note advising that the lesser subsidiaries and associates are also included. (For example, ABC Conglomerate and Associates (then a list of major subsidiaries)). The FSC will from time to time be doing spot checks to ensure that an up to date list of a company's related parties is being maintained.
- It would be useful for the Conduct Review Committee to notify each of the company's related party and advise each of the related party disclosure requirements (see section B.9 of this bulletin).
- If the company is acting as a trustee, the procedures should outline the information the CRC requires before it approves the sale or voting the company's securities. It would be useful for the CRC to specify criteria for approval in advance and develop an approach to recording decisions.
- If the company is acting as a trustee, the procedures should outline how the company intends to monitor Trust holdings of company securities for purposes of preparing the annual report to the Board of Directors.
- The procedures should outline the information the CRC requires before making decisions to approve any related party transaction. It would be useful for the CRC to specify criteria for approval in advance and develop an approach to recording decisions.
- Outline a process to be used to monitor related party balances to ensure that the rule limiting amounts due to the insurance company to 5% of total assets (see section B.8 of this bulletin) is respected.

D. Conclusion

Related party transactions pose a significant challenge for all supervisory agencies including the FSC. Nevertheless, it is recognized that related party transactions are a fact

of life. The Insurance Regulations outline a process that allows insurance companies the flexibility to undertake these transactions provided that an advance determination is made that such transactions are at fair value, in the normal course of the company's business and in the best interests of the company.