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Insurance Bureau of Canada
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Submitted via email: David.Maxwell@fsrao.ca

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Re: IBC response to FSRA consultation on Corporate Governance and Operational Risk and Resilience Guidance

On behalf of its member property and casualty (“P&C”) insurers, Insurance Bureau of Canada (“IBC”) thanks the Financial Services Regulatory Authority of Ontario (“FSRA”) for the opportunity to provide comment on its Consultation on Corporate Governance and Operational Risk and Resilience Guidance (“Consultation”), which was released on April 17, 2024. IBC is very grateful that FSRA confirmed on June 12, 2024 that it could accommodate IBC’s requested extension to respond by July 2, 2024.

IBC is the national industry association representing Canada’s private home, auto, and business insurers. Our member companies make up a vast majority of the P&C insurance market in Canada. Since 1964, IBC has worked with governments and regulators across the country to help make affordable home, auto, and business insurance available for all Canadians.

The P&C insurance industry plays an important role in underwriting economic and financial risks for Canadians and businesses. Insurance is an enabling sector that supports new ventures that innovate and contribute to the country’s prosperity. It should be noted that more than 196 private P&C insurers of various size and complexity actively compete in Canada. Accordingly, in order to continue to foster a diverse and competitive P&C insurance industry, regulation that applies to all financial institutions should set out clear principles and desired outcomes that individual organizations can achieve through different means based on their business model and risk profile. Further, to simplify and promote ease of compliance, overlap of compliance obligations across multiple jurisdictions, regulations or guidelines should be avoided.

The P&C insurance industry therefore welcomes the opportunity to provide comments on our perspective of the impacts of certain proposed expectations in the two draft guidelines.

We understand that the Consultation is comprised of one proposed draft guidance on Corporate Governance for Ontario-incorporated Insurance Companies and Reciprocal Exchanges and another proposed draft guidance on Operational Risk and Resilience for Ontario-incorporated Insurance Companies and Reciprocal Exchanges.



Comments

IBC will first provide general comments applicable to both draft guidance documents and then more specific comments on each draft guidance below.

I. General comments

IBC agrees with FSRA's stated principles-based and risk-based approach to regulatory oversight, which recognizes the importance of ensuring flexibility to achieve the outcomes in a manner that is suitable for the size and nature of a business. Such an approach allows for the balancing of safeguards and consumer protections with regulatory oversight which allows the financial sector to take reasonable risks and compete effectively. It follows that rules that affect insurers' operations without added value to the protection of the public and consumers should be avoided.

Recommendation 1: It is imperative that any potential new regulatory guidance is well-coordinated and consistent with similar guidance issued by a similar regulator, such as the federal Office of the Superintendent of Insurance (OSFI) and by the Autorité des marchés financiers' ("AMF") in Quebec, in order to ensure consistency and avoid creating an uneven playing field in the industry. Harmonizing regulatory expectations across Canada will promote fairness and uniformity of consumer experience across the sector.

II. Corporate Governance Guidance

Principle 2: Board independence and composition

Under this principle, the draft guidance references sections of the *Corporations Act*, and states that "no more than two-thirds of the directors of an incorporated insurer can be affiliated with the Insurer for the purposes of Part II.2 of the *Act*." The draft guidance then proceeds to state "FSRA interprets the Independence Requirement to mean that, to effectively discharge its responsibilities, the Board must be independent from Senior Management who are responsible for the day-to-day operations of the Insurer."

It should be noted that it is common practice in many businesses, including insurance companies, for the CEO and other executives to serve as a member of the Board. While this practice is clearly permitted by the *Corporations Act* provided that these individuals make up no more than two-thirds of the Board, during a recent information session, FSRA suggested that it is up to FSRA to determine if the CEO should sit on an insurer's Board of Directors based on factors such as board independence. However, as stated in OSFI's Corporate Governance Guideline, the Board's ability to act independently of senior management can be demonstrated through practices such as regularly scheduled Board and Board committee meetings that include sessions without Senior Management present.

Recommendation 2: Given that it is common practice, permitted by law, and there are other mechanisms to demonstrate Board independence, FSRA should not prohibit an insurer's CEO from serving as a Board member provided that the total number of directors affiliated with the insurer is no more than two-thirds of the board.



The draft guidance states “The Board of an Insurer, with support from relevant Board committees, should develop and update the nomination, onboarding, and training plans to guide the appointment and replacement of the CEO, Board directors, and the Board chair.” We note that, unlike OSFI’s Corporate Governance Guideline, this draft guidance does not include diversity as a factor in Board composition or succession planning.

Recommendation 3: Explicitly reference diversity as a factor to consider in Board composition and Board succession or Board renewal plans.

Principle 4: Integrity in reporting and disclosure

Under this principle, the draft guidance states “It is FSRA’s view that, to comply with these Review Provisions, the Board must oversee, review and, if required, verify or approve timely and reliable corporate disclosures for members, subscribers, policy holders, regulators and other relevant stakeholders relating to the Insurer’s financial position, business model, strategy, performance, and long-term prospects.” However, during a recent information session, FSRA suggested that it may ask to review board packages in advance of distribution to the board. In our view, this suggestion is not practical and would undermine the independence and effectiveness of the board.

Recommendation 4: FSRA should only ask to review relevant portions of board packages after the Directors have had a chance to review and approve the materials.

III. Operational Risk and Resilience Guidance

Public confidence in the Canadian financial system is a priority for P&C insurance companies. Accordingly, the P&C insurance industry understands that operational resilience is a crucial aspect of effective operational risk management.

Principle 3: Operational risk management

Under this principle, the draft guidance states “An effective operational risk management framework enables a stable operational environment for the Insurer’s businesses, reduces the probability of disruption, and minimizes the risk of loss to policyholders.” IBC disagrees with FSRA’s proposed statement that operational risk management should enable the minimization of risk of loss to policyholders. Operational risk is inherent in all products, activities, processes, and systems. FSRA should align with the approach taken in OSFI’s draft Guideline E-21, Operational Resilience and Operational Risk Management, which expects an insurer set a risk appetite for operational risks, articulating the nature and types of operational risks that the insurer is willing to accept within business-as-usual circumstances and include a measurable component with limits/thresholds for risk acceptance.

Recommendation 5: Remove the expectation to minimize risk of loss to policyholders and replace with an expectation to set risk appetite and measurable limits and thresholds for risk acceptance.



Principle 4: Resilience

Under this principle, the draft guidance states “Upon operational risk materialization, the Insurer responds and adapts by taking feasible and timely actions and leveraging pre-determined processes and protocols to facilitate streamlined and effective recovery.” IBC disagrees with the suggestion in FSRA’s proposed statement that resilience is equal to recovery, which is an unrealistic standard. Instead, FSRA should align with the approach taken in OSFI’s Guideline E-21 (referenced above) which expects insurers to be prepared to deliver critical operations through severe but plausible circumstances within established tolerances for disruption.

Recommendation 6: Replace expectation for recovery with an expectation to identify critical operations, establish tolerances for disruption of critical operations and testing of critical operations to gauge its ability to operation within established tolerances for disruption across a range of severe but plausible operational risk events.

Conclusion

We thank FSRA for the opportunity to provide feedback on the Consultation. It is important to insurers that there be a level playing field for Ontario-incorporated insurers and insurers incorporated in other Canadian jurisdictions. Accordingly, a harmonized cross-Canada and principles-based approach to regulatory expectations is recommended. To this end, rules and regulatory oversight that diverge from existing regulatory expectations in other Canadian jurisdictions without adding value to the protection of the public and consumers should be avoided.

We welcome all opportunities for further discussion with FSRA. Please reach out to me at adean@ibc.ca should you have any questions.

Sincerely,

Amanda Dean
Vice President, Ontario & Atlantic