



Insurance Non-Executive Directors

**PRIMER**  
**FOR INSURANCE**  
**NON-EXECUTIVE**  
**DIRECTORS**  
**IN THE UK**



The Worshipful  
Company of  
Insurers



# THE WORSHIPFUL COMPANY OF INSURERS



The Worshipful  
Company of  
Insurers

## OMNIUM DEFENSOR

### Philanthropy • Education • Fellowship

#### Foundation and Grant of Royal Charter

The Worshipful Company of Insurers (WCI) was founded as a Livery Company in the City of London in October 1979 and incorporated by Royal Charter in September 2015. The WCI is number 92 in the order of precedence of Livery Companies.

#### Mission

The WCI's mission is to be the City Livery Company for leading individuals in insurance.

#### Aims

- To promote insurance as a force for economic and public benefit
- To encourage excellence in insurance education and practice
- To raise funds for, and be involved in, charitable work
- To foster fellowship and discussion among WCI Members
- To support the City of London and its Mayoralty

#### Philanthropy

The City of London has a proud tradition of philanthropy, dating back to the Middle Ages, led by Livery Companies and the Mayoralty. Collectively, they work to inspire, support and amplify philanthropy: donating money, time, skills or assets. More than £50 million is given annually to a wide range of charities by Livery Companies. In the past decade, the WCI has donated over £1.2 million, and many thousands of volunteer hours, to over 180 charities.

#### Education

As a "modern" Livery Company, the WCI has, increasingly, focused on professional education and related activities in the insurance sector. During the past ten years, the WCI has launched three initiatives in support of its educational objectives:

##### **iNED: insurance Non-Executive Directors initiative**

Providing invaluable information for aspiring iNEDs, compliance staff, company secretaries and all those interested in corporate governance. In support of its successful programme of forums and workshops, the **iNED Primer** offers help to those in a non-executive capacity on insurance boards of directors.

##### **iWIN: insurance Women's Inclusivity Network**

Providing support to the learning and development for aspiring young female professionals in insurance and to deliver networking opportunities with senior market practitioners that the WCI is able to offer.

##### **iENGAGE**

The WCI's initiative to engage younger professionals in the insurance market. Under the direction of its leadership committee iENGAGE has developed a programme of events to help young professionals develop their careers in the insurance sector.

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**Authorship**

As indicated in “Acknowledgements”, the author of the iNED Primer is WCI Liveryman, Terry Hayday, inaugural iNED Committee Chair (2013 to 2018), with valued contributions by the expert reviewers mentioned along with members of the iNED Committee.

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# INTRODUCTION

Today's regulators in the UK financial services sector place considerable and increasing demands and expectations upon **insurance Non-Executive Directors (iNEDs)**.

Constantly developing regulations, rule-books, codes of corporate governance and best practice manuals abound, but few exist in one place to offer iNEDs information that will help them to fulfil their onerous duties.

The Worshipful Company of Insurers (WCI) first addressed this issue in 2014, via its online **iNED Information Bank**, designed for existing or potential iNEDs across the UK insurance sector.

With a change of format, the iNED Information Bank has been rebranded as the **iNED Primer** and updated. It has been streamlined, reduced in length and is easier to navigate. All references to insurance are equally applicable to reinsurance organisations.

The iNED Primer places greater emphasis on providing basic information for new iNEDs or for those contemplating becoming an iNED. It will still add value and be of interest to existing iNEDs as it still offers an opportunity to refresh current thinking or to provide a stimulus to reflection.

The iNED Primer continues to place great emphasis on providing practical help to aspiring iNEDs and has retained its **Question and Answer** approach.

The iNED Primer draws attention to the key requirements of being an iNED, beginning with an understanding of the role.

A series of questions follow which should be addressed before joining a board.

The iNED Primer then concentrates on responsibilities during time spent as an iNED and concludes with the types of problems that might arise after an iNED has been appointed.

## Electronic links to external source materials

The re-branded iNED Primer places greater emphasis on electronic links to websites containing the original source materials or to authoritative commentaries. They appear in the format:

### On the Web

Subject:

[Weblink](#)

**The iNED Primer complements the iNED Forums that are arranged each year by the WCI's iNED Committee.**

### On the Web

The WCI's iNED Forum Programme:

<https://wci-ined-information-bank.co.uk/forums-and-workshops>



Much has changed since the iNED Information Bank was first published. There is now intense focus on acceptable behaviour in the office. Gender equality issues have promoted more women to senior positions in companies and, in insurance in particular, there has been a marked demand for women to be appointed as iNEDs.

Social media has changed the dynamics of reputational risk and more explicit regulations have been introduced to promote improved corporate cultures across the financial sector.

Perhaps most significantly, the demand to address both gender and ethnic diversity on boards and in companies has become a much more important topic as well as a regulatory priority\*.

The COVID-19 pandemic introduced new ways of working; from home, in hybrid arrangements or from remote locations outside of traditional offices. It has also changed the importance of health and safety practices in the workplace.

Boards have had to come to terms with new communications and procedures employing technology such as Microsoft Teams, Zoom Video Communications or similar video-telephony software. It is not possible, with absolute accuracy, to determine how future working patterns will emerge, or revert to previous models, but iNEDs will certainly have to adapt their behaviours to accommodate future methods of managing insurance organisations from a senior level.

The recent changes and challenges mentioned above are recognised and addressed, but the iNED Primer time-line is still organised into five sections, similar to the original iNED Information Bank, each posing questions, but now with a particular view to informing aspiring iNEDs.

## **1. Understanding the role**

- 1.1 What does the role involve?
- 1.2 What is the iNED taking on?
- 1.3 What are an iNED's legal responsibilities?

## **2. Before becoming an iNED**

- 2.1 So you want to be an iNED?
- 2.2 Why would anybody wish to become an iNED?
- 2.3 What are the qualities that a good iNED should possess?
- 2.4 Have you got the requisite skills?

## **3. Making sure**

- 3.1 I have had an approach. What due diligence should I undertake?
- 3.2 What should an iNED ask for?
- 3.3 How are iNEDs authorised?
- 3.4 What material items should be in the iNED's service contract?

## **4. The board in action**

- 4.1 I'm on the board. What should I be looking for?
- 4.2 What constitutes good corporate governance?
- 4.3 What are the basic technical knowledge requirements?
- 4.4 How should a board develop an appropriate culture and values?

\* In accordance with WCI policy, its iNED Committee is both gender-balanced and ethnically diverse by design. iNED multiple presenter events do not entertain single gender speaker lists or panels.



**5. Problems**

- 5.1 I have a problem. What should I do?
- 5.2 What are the penalties for non-compliance or failure?
- 5.3 What help can an iNED obtain?

Content may, occasionally, be repeated so that each section can be viewed in isolation if required; especially as part of personal research, training or as an induction exercise. Each section concludes with a short Learning Summary, specifically designed to assist those who are accessing the iNED Primer within the context of unstructured study as part of the Chartered Insurance Institute's continuing professional development requirement (CII CPD\*).

\* The WCI's iNED Forums programme is accredited by the CII for CPD purposes.

# 1. UNDERSTANDING THE ROLE

## 1.1 What does the role involve?

A number of very similar definitions of Non-Executive Directors (NEDs) exist. The Institute of Directors (IoD) sums up the role succinctly:

“Essentially, the Non-Executive Director’s role is to provide a creative contribution to the board by providing independent oversight and constructive challenge to the executive directors.”

### On the Web

IoD Homepage:

<https://www.iod.com>



As members of a unitary and balanced board, iNEDs should constructively challenge and help develop proposals on strategy for organisations involved with insurance. In particular, iNEDs should:

- Scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;
- Be satisfied with the integrity of financial information and ensure that financial controls and systems of risk management are robust and defensible; and
- Focus on board matters and not cross the line into areas of “executive action”. This role can be difficult, at times, and may require skills that new iNEDs have to learn or modifications to former patterns of behaviour among those iNEDs who have previously held executive positions.

Providing an independent view of the company, that is separate from the day-to-day running of an insurance enterprise, is an important function that iNEDs provide. Accordingly, iNEDs are specifically appointed to bring to an insurance board the following attributes:

- Independence\*
- Impartiality
- Special knowledge
- Personal qualities or expertise

The IoD indicates that executive management should use their NEDs to provide general counsel and a different perspective on matters of concern. Executive management in insurance operations may also seek iNEDs’ guidance on particular issues before they are raised at board meetings. Some of the main specialist roles of an iNED will be carried out in a committee of the board.

\* Such independence may be compromised by alignment to a particular interest e.g. that of a group or holding company. In that case, the iNED cannot normally be construed as independent. On certain issues such iNEDs may need to recuse themselves from debate. However, on many issues there will be no conflict and the presence of such iNEDs may provide group insights and experience which is to the benefit of the subsidiary board. Non-independent status, in itself, does not invalidate an iNED’s role, but it does take on a particular characteristic, in that the iNED in question may seek to introduce checks and balances from, say, a parent company, or exercise a degree of oversight from a specific perspective.

## The key roles and responsibilities of iNEDs

### Strategic direction

As an “outsider”, the iNED may have a clearer, or wider, view of external factors affecting an insurance company and its business environment than the executive directors. A typical role of the iNED in formulating strategy is to provide a creative and informed contribution and to act as a constructive critic in reviewing the objectives and plans devised by the CEO and his or her executive team.

### Monitoring performance

iNEDs should take responsibility for monitoring the performance of executive management, especially with regard to the progress made towards achieving the agreed company strategy and objectives. iNEDs are also responsible for determining appropriate levels of remuneration and related incentive arrangements for executive directors and senior managers, and they have a prime role in appointing members of the board, and, where necessary, removing directors who are not performing satisfactorily.

### Communication

A board’s effectiveness, along with the enterprise itself, can benefit from outside contacts and opinions. According to the IoD, an important function for NEDs (or NXDs as they sometimes describe the role) can be to help connect the business and board with outside networks of potentially useful people and organisations. In some cases, iNEDs may be called upon to represent the insurance organisation externally.

### Risk and financial integrity

All iNEDs must satisfy themselves on the integrity of insurance financial information and ensure that financial controls and systems of risk management are robust and defensible, including those that extend to conduct, regulatory and operational risks. It is the duty of the entire board to ensure that the company accounts properly to its shareholders, or capital providers, by presenting a true and fair view of its actions and financial performance. As part of that process, the necessary internal control systems must be in place and monitored regularly and rigorously.

In this “agent-principal relationship”, an iNED has an important role to play in fulfilling this responsibility. The most common manner in which this function is performed in an insurance entity is through an Audit committee, usually composed exclusively of iNEDs, who may call upon external auditors or management within the company, as required.

### Plurality

It is not uncommon for iNEDs to hold, simultaneously, more than one non-executive role with different insurance organisations. Such appointments are often referred to as iNED-X, indicating that the individual concerned has “gone plural” or has developed a portfolio career by holding two or more iNED appointments simultaneously.

Hence, it is quite acceptable for an iNED to serve on more than one regulated board, provided there is no conflict in their doing so. While there are limitations under anti-trust rules as to what information executives in regulated firms can share, the plural iNED does obtain insights as to how

different companies conduct themselves. He or she may, therefore, be in a position to add value by, for example, commenting on observed best practices, useful MI formats, different approaches to the handling of common industry challenges and the like, provided they are not divulging commercially sensitive or confidential information.

### Generic role summary

Executive search firm, **Per Ardua Associates**, has provided a succinct synopsis of the Generic Role of the iNED, which appears in the **Appendices**.

## 1.2 What is the iNED taking on?

iNEDs in the UK insurance sector are members of boards that are highly regulated. Not only do their companies have to comply with the Companies Act 2006, but as iNEDs on the boards of insurers or intermediaries, their companies will fall within the remit of the current UK financial services regulators.

Sometimes others, such as the Corporation of Lloyd's, or regulators in overseas jurisdictions may also exercise influence over the conduct of iNEDs.

### Financial services regulation in the UK

The UK regulators of insurance are the Bank of England's Prudential Regulation Authority (PRA) and the independent Financial Conduct Authority (FCA). Both bodies have statutory powers and obligations.

Other regulatory bodies such as the Information Commissioner's Office (ICO) and the Competition Markets Authority (CMA) also have the potential to impact insurance sector firms to a significant degree.

iNEDs on the boards of Lloyd's managing agents are also required to comply with the byelaws that underpin the Corporation of Lloyd's governance of its market.

Some iNEDs may also be subject to rules and regulations that cover conduct or professional behaviour required by chartered professional bodies such as the Chartered Insurance Institute, the Chartered Institute of Loss Adjusters, the Institute of Risk Management, the Institute and Faculty of Actuaries, the Law Society of England and Wales, the Institute of Chartered Accountants in England and Wales and other similar bodies.

### Electronic links to the PRA, FCA and other UK regulatory / comparable bodies

#### On the Web

PRA homepage:  
<https://www.bankofengland.co.uk/prudential-regulation>



FCA homepage:  
<https://www.fca.org.uk>



ICO homepage:  
<https://ico.org.uk>



CMA homepage:  
<https://www.gov.uk/government/organisations/competition-and-markets-authority>

Lloyd's homepage:  
<https://www.lloyds.com/>



## PRA's Statutory Objectives

- to promote the safety and soundness of the firms it regulates; and
- to contribute to ensuring that policyholders are appropriately protected (an objective specific to insurance firms).

## The FCA's Statutory Objectives

fall into the following categories:

- its strategic objective of ensuring that relevant financial markets function well;
- its operational objectives;
- the consumer protection objective;
- the integrity objective; and
- the competition objective.

## PRA's Senior Managers' Regime

The PRA's current Senior Managers' Regime replaced the former Approved Persons (APER) regime. Authorised insurance firms are required to ensure that individuals seeking to perform one or more of the PRA designated Senior Management Functions (SMFs) seek its approval before taking up their position. Conduct Rules apply to SMFs specified by the PRA or the FCA for employees performing a certification function and for particular directors, including iNEDs.

### On the Web

PRA Senior Managers Regime:  
<https://www.bankofengland.co.uk/prudential-regulation/authorisations>



## FCA's Senior Managers' and Certification Regime

The FCA's subsequent **Senior Managers' and Certification Regime (SM&CR)** replaced their Approved Persons Regime (APER).

The SM&CR aims to reduce harm to consumers and strengthen market integrity by making individuals fully accountable for their conduct and competence.

### On the Web

FCA Senior Managers and Certification Regime:  
<https://www.fca.org.uk/firms/senior-managers-certification-regime>



FCA The Senior Managers and Certification Regime Guide for Insurers:  
<https://www.fca.org.uk/publication/policy/guide-for-insurers.pdf>



Insurers can be dual-regulated. This means that applications from dual regulated firms will be considered by both the PRA and the FCA. For dual-regulated firms, the PRA leads the assessment of applications for the approval of the PRA designated SMFs.

The authorisation of an individual to carry on PRA regulated activities, including iNEDs, will not be granted unless both the PRA and the FCA are satisfied that the applicant meets the required standards.

### Fitness and propriety

Both the PRA and the FCA will have regard to a number of personal factors when assessing the fitness and propriety of an individual to perform a particular Controlled Function, especially:

- Honesty, integrity and reputation;
- Competence and capability; and
- Financial soundness (as an individual).

#### On the Web

FCA Assessing fitness and propriety:

<https://www.handbook.fca.org.uk/handbook/FIT/1/3.html>



The FCA requires firms to make sure anyone performing a Senior Management Function is fit and proper for their role. The UK regulators' fitness and propriety rules apply to all iNEDs.

### Reports and codes

Since the early 1990s, a number of reports have been published seeking to codify and comment upon corporate governance and the requirements and behaviour of boards, including the role of NEDs. The most notable codes were:

- Cadbury Report 1992
- Turnbull Report 1999
- Higgs Report on Non-Executive Directors 2003
- Walker Review 2009

Much of today's rules and regulations affecting iNEDs have been shaped by these codes.

### Financial Reporting Council (FRC):UK Corporate Governance Code

While the foregoing reports and codes are of interest and inform today's thinking on governance, all directors, including iNEDs, should be familiar with the UK Corporate Governance Code, published by the Financial Reporting Council (FRC). This code sets out standards of good practice in relation to board leadership and effectiveness, remuneration, accountability and relations with shareholders.

#### On the Web

FRC UK Corporate Governance Code:

<https://www.frc.org.uk/directors/corporate-governance-and-stewardship/uk-corporate-governance-code>



## 1.3 What are the iNED's legal responsibilities?

iNEDs have exactly the same status under the law as, and share unlimited liability with, their fellow insurance executive directors. These responsibilities and duties for all directors are defined in the Companies Act 2006.

### On the Web

Companies Act 2006:

<https://www.legislation.gov.uk/ukpga/2006/46/contents>



To quote the Chartered Institute of Personnel and Development: “there’s no legal distinction between non-executive directors and executive directors.”

In practice, in insurance, iNEDs are fundamentally “outsiders”, detached from day-to-day operations and valued for their objective insight. This relationship creates a very different dynamic within their role to that of an executive director and means they can offer a unique perspective towards corporate governance, strategy, risk management and succession planning. An insurer or insurance broker must ensure that its iNEDs complement the balance of skills, experience and perspectives of the board.

As with insurance executive directors, iNEDs are liable to disqualification under the Company Directors Disqualification Act 1986. If an insurer’s board is investigated for “wrong doing”, such an investigation will include the actions or omissions of iNEDs. In general, any director can be disqualified for general misconduct in connection with companies or for being unfit to act as company director.

A 2010 consultation paper issued by the then Financial Services Authority (FSA), within the Walker Review, stated that: “NEDs have a pivotal role to play in the active governance of firms.”

### On the Web

CIPD: The Non-Executive Director role:

<https://www.cipd.co.uk/knowledge/strategy/governance/non-executive-directors-factsheet#gref>



Directors in the insurance industry who do not comply with relevant regulations may also face personal sanctions. Individual directors, including iNEDs, can be fined or banned from holding positions on boards.

Companies may also be fined or banned by the PRA, the FCA and quasi-regulators like Lloyd’s for breaking their rules, which may lead to further actions by shareholders, depending upon individual circumstances.

At the very least, reputational damage will normally be suffered; often at both the corporate and personal level. Fines and penalties imposed by UK regulators cover a wide range of unacceptable practices; including such matters as failure to meet minimum regulatory standards, breaching sanctions regulations, proven bribery by intermediaries and mis-selling of insurance products as well the oversight of companies in which conduct is found to be wanting.

Non-financial misconduct or inappropriate misbehaviour can also be the focus of the UK's regulators. Occasional articles in the press and regulatory bulletins highlight such matters. The following example of historical misconduct and its subsequent punishment by the FCA is offered by way of illustration.

**On the Web**

FCA bans former bank chair from the financial services industry:

<https://www.fca.org.uk/news/press-releases/fca-bans-former-co-operative-bank-chair-paul-flowers-financial-services-industry>

**Learning summary**

Aspiring or new iNEDs should now have a clear understanding of the definition, role and status of those who serve in a non-executive capacity on the boards of insurance entities.

They should also be aware of an iNED's onerous legal responsibilities and the penalties for regulatory failure or misconduct.



## 2. BEFORE BECOMING A NON-EXECUTIVE DIRECTOR

### 2.1 So you want to be an iNED?

iNEDs, particularly in the regulated financial services sector, have become more prominent by comparison with the past. Regulatory bodies have, increasingly, come to regard NEDs as critical in exercising checks and balances upon their executive colleagues on the board.

Although it has been the subject of regulatory review, it must be understood that all NEDs have exactly the same status under the law as, and share unlimited liability with, their fellow executive directors, even though it is all but impossible for them to have the same level and depth of familiarity with the business as their full time executive colleagues. If they are genuinely independent, NEDs normally receive far less remuneration than their executive colleagues. Independent iNEDs in the insurance sector are remunerated solely by fees. Time commitments can also be fairly onerous if board participation is allied to serving on board committees.

It is almost inevitable that iNEDs will also be asked to attend, in addition to the formal board and its nominated committee meetings, ad hoc meetings at the request of the executive management. Such requests can embrace all manner of topics. For example, from independent board evaluations, meetings with underwriting team leaders, discussions with consultants and assistance or offering advice with personnel issues.

In particular, the significance of personal risk should not be underestimated. In the event of failure, it is commonly held that there will be a “presumption of guilt of negligence” among all board members, and not just the executives, unless it can be proved to the contrary.

### 2.2 Why would anybody wish to become an iNED?

Given the onerous responsibilities, why would anybody wish to become an iNED? A variety of reasons exist, but the more common ones in the insurance industry are:

- Towards the end of their careers, or at the beginning of retirement, those with managerial experience wish to remain involved with the corporate world;
- Some find that becoming an iNED provides an opportunity “to give something back” to the industry or to the insurance market in which they have built their career;
- Appointment as an iNED may supplement income or provide financial resources to enable the pursuit of other non-corporate activities;
- The iNED role can be very satisfying and rewarding from an intellectual perspective;
- Some may argue that the appointment enhances self-esteem;
- Others will confirm that they derive considerable satisfaction from contributing to the success of a commercial enterprise;
- Improving the work / life balance and establishing more control over event timing; and
- Some people construct portfolios of iNED appointments that, in total, can be quite stimulating and challenging, providing diverse interest across a range of businesses. The risk of “overboarding” (sitting on too many boards) has, however, to be recognised.

Emphasis today, tends to be more on continuing as a professional within the insurance industry, albeit part time, rather than on simply “giving something back”. The role of being an iNED in the regulated sector should not be construed as a retirement hobby.

Nevertheless, after a successful career, many insurance executives will be familiar with the feeling of not being entirely in control of their time. As senior executives, they may have been constantly in demand, at least five days a week, rarely having authentic time for themselves or their families. By contrast, most iNEDs only work a couple of days a week, on average.

Most insurance firms plan their board and committee meetings a full year in advance so, normally, during the third or fourth quarter of a given year an iNED will usually have the schedule of time commitments for the next twelve months. iNEDs can, therefore, plan for busy periods; for example, around quarterly financial results or specific regulatory reporting deadlines. It follows that a major personal advantage for the iNED is that they will generally know, precisely, when their services will not be needed so that holidays, short-breaks, long weekends, leisure activities, sporting or physical exercise and the like can be planned with some degree of accuracy.

For aspiring iNEDs thinking of doing it “for the money”, they need to be aware that iNED remuneration is normally only by way of a fixed annual fee, although some firms supplement this with “per meeting” attendance fees. Chairing the board or a board committee or simply sitting as an “ordinary” iNED on multiple committees usually attracts a higher fee.

While a portfolio of two or three iNED appointments may generate a total remuneration well in excess of £100,000, it will rarely reach the annual salary level, with bonuses, of a very senior executive in the insurance sector.

Additionally, it has to be recognised that for independent iNEDs, their remuneration will not involve any incentive compensation, stock awards or benefits such as health insurance and pension contributions.

While prospective iNEDs may be motivated by the ability to earn additional income to supplement, or postpone, pension provision, they should not be wholly dependent, financially, on their iNED role. It is very important to an iNED’s independence that he or she should be able to walk away from the role should a circumstance arise that may require such decisive and serious action.

It also has to be acknowledged that not all senior people who have the career background to become an iNED necessarily possess the requisite personality, gravitas, attributes, skills, energy or levels of commitment required.

For those wishing to become an iNED, the next question should be the starting point.

## 2.3 What are the qualities and abilities that a good iNED should possess?

An iNED will need to have extensive technical and managerial experience. iNEDs will often possess a particular expertise, say, as a former (or existing) underwriter, broker, actuary, accountant, lawyer, claims expert, risk manager, chief operations officer (COO) or experienced chief executive officer (CEO) / managing director (MD).

The recommended experience also needs to be kept under review by boards. For example, as operational resilience, cyber security and associated risks become ever more prominent on the regulatory radar, the role of the COO has become increasingly important. An iNED possessing the skills to be found in a former COO may add considerable value to an insurance board in today's increasingly technological environment.

No aspiring iNED should, however, feel that their particular specialist skill rules them out of consideration; especially if they have had experience in a successful insurance organisation competing in today's market.

Sometimes, recognised success in other fields of commercial enterprise or, say, the political or academic world, may qualify for inclusion on a board as an iNED.

It should be appreciated that each executive director and iNED brings expertise to the board table in his or her particular field. iNEDs are not expected to be an expert on every topic, although they do need to be well versed in insurance matters, be properly informed and participate in regular in-house or online training sessions and attend appropriate CPD events.\*

The chair will usually seek to have a balanced board, i.e. a good mix of complementary skills and executive experience around the board table.

It is not unusual for iNEDs to be appointed on behalf of specific interests, most notably holding companies of subsidiaries or group shareholders, but those iNEDs cannot be considered genuinely independent.

iNEDs will certainly need to be aware of all the duties and responsibilities placed upon them by a variety of regulators or quasi-regulators, such as Lloyd's. They will, undoubtedly, need to be considered "fit and proper" by the regulatory bodies that approve their appointments.

It is now becoming increasingly common for firms appointing iNEDs to request a copy of a candidate's appropriate CPD record, which needs to be updated each year. The CII's CPD requirement is 35 hours per year, comprising both structured (with a minimum of 21 hours) and unstructured components. Appropriate educational events need to be recorded by those to whom the CII's rules apply.

\* Such as the educational events (e.g. iNED Forums) arranged by the WCI's iNED Committee that qualify for the CII's CPD scheme, or, for example, by the major firms of accountants or lawyers in the UK that provide a comprehensive array of appropriate CPD for iNEDs.

Ideally, the type of attributes identified below should be present. Specifically, iNEDs should be competent in:

- Helping to provide leadership of the insurance enterprise within a framework of prudent and effective controls which enables risk to be properly assessed and managed;
- Scrutinising the performance of executive management in meeting agreed goals and objectives and monitoring the reporting of performance;
- Supporting and encouraging the executive directors in their management of the business of the company;
- Being satisfied with the integrity of financial information and ensuring that financial controls and systems of risk management are robust and defensible;
- Ensuring that an appropriate governance structure is in place to manage the business of the company;
- Contributing to the development of appropriate cultural values and standards that will be communicated to all employees of the company;
- Being involved in setting business strategy, and providing constructive challenge thereon;
- Promoting and seeking high levels of compliance with all regulatory requirements;
- Approving and continually monitoring the risk management framework, including the company's risk appetite and supporting risk policies;
- Receiving and understanding appropriate reports from the various board committees;
- Ensuring that the board reports, as appropriate, to key stakeholders\*;
- Ensuring that the necessary financial and non-financial resources are in place for the company to meet its objectives;
- Being a member of the designated board committees, according to their particular expertise, and fulfilling the responsibilities as set out in their individual terms of reference; and
- At all times, upholding the highest standards of integrity and acting in the best interests of the company.

In short, iNEDs should possess a range of recognisable business qualities that will enable them to add value to a board as an individual, while, at the same, contributing to the collective success of the leadership team of an insurance enterprise.

## 2.4 Have you got the requisite skills?

In addition to the qualities and abilities already identified, a competent iNED should possess the following skills and abilities:

- Be a good listener;
- Be capable of offering sound advice, based on experience;
- Be articulate and able to defend opinions;
- Be a good communicator;

\* Key stakeholders are usually regarded as shareholders and capital providers or other investors, as well as customers. However, iNEDs have a duty of care to a wider definition of stakeholders, which would include staff and their representatives, brokers (for insurers or underwriters), insurers or underwriters (for brokers), agents and other intermediaries, regulators, franchisors (e.g. the Corporation of Lloyd's) and other members of recognisable markets and professional bodies. Under certain circumstances, local communities could be included, especially when it comes to matters such as corporate social responsibility. A formal duty is also owed, today, to society at large under ESG considerations such as climate change mitigation or the development of a low carbon economy in support of the "green agenda".

- Be receptive to alternative views in debate;
- Be able to challenge ideas, strategies and proposals robustly;
- Be able to challenge all fellow directors robustly;
- Be able to speak out, even when in the minority on a board;
- Be able to behave in a manner that avoids antagonism and threats;
- Be constructive and supportive; and
- Be able to manage conflicts.

The Institute of Directors suggests that all directors should also possess the following attributes, which complement the list shown above:

- Strategic perception;
- Decision-making ability;
- An ability to analyse and use information;
- Communication skills;
- An ability to interact with others; and
- An ability to achieve results.

All of these skills pre-suppose that the iNED will be well prepared for all meetings and that he or she will have read all relevant documents, preparatory papers and appropriate materials.

Good time management skills are also important, as new iNEDs may have only limited personal administrative support; especially if they have just left a structured organisation.

Different skill sets may be required for executive management, for independent iNEDs, for affiliated iNEDs and for the person who chairs the board. In particular, the board's chairperson (hereinafter referred to as "chair"), who is increasingly a non-executive appointment, should have the appropriate skills to ensure that meetings are run efficiently and to time.

Some argue that it is the prime responsibility of the chair to run the board, while the chief executive runs the company. Different management skills will be required to perform these distinctive functions well, but this interpretation of the role of the chair does indicate that the board's composition (subject to regulatory requirements), performance and agendas are primarily the responsibility of the chair, often carried out in conjunction with the company secretary.

Those who chair board meetings will need a range of skills that are appropriate to such a function. According to the UK Corporate Governance Code (as set down by the FRC primarily for listed companies), the chair is responsible for setting the board's agenda, for ensuring that all directors receive accurate, timely and clear information and that all decisions are properly debated and recorded.

A good chair of an insurance board will meet the iNEDs individually, and collectively, to discuss personal performance and board effectiveness. He or she will mediate where there may be differences of opinion on the board.

Naturally, an ability to work well and closely with the company secretary is a desirable skill.

The PRA succinctly sets out its expectations of board members: "The board should have a mix and balance of skills so that collectively it can understand the breadth of the business". The PRA also expects many on an insurer's board to have expertise in financial services, though this is not a prerequisite for all board members.

The PRA expects all board members, either at the outset, or after a set period of time, to develop an understanding of the different areas of the business and the main prudential risks and controls, and so be able to engage in an informed conversation with the PRA.

The PRA expects more than one independent director to understand major lines of business and risk controls, in order to avoid undue reliance on executive individuals by the board as a whole.

#### On the Web

PRA's Approach to insurance supervision:

<https://www.bankofengland.co.uk/prudential-regulation/publication/pras-approach-to-supervision-of-the-banking-and-insurance-sectors>



iNEDs should always make themselves available to talk to the regulators directly upon request.

### Learning summary

Aspiring or new iNEDs should now have a clear appreciation of the experience and the quite wide-ranging types of skills, competencies and attributes required of those who are looking to serve in a non-executive capacity on the boards of insurance entities.

They should also be aware of the diverse range of stakeholders in whose interests they should act in an appropriate manner.

## 3. MAKING SURE

### 3.1 I have had an approach. What due diligence should I undertake?

#### Before an approach

In today's regulated environment, a company seeking to appoint an iNED in the UK insurance sector must have satisfied itself as to the attributes and appropriateness of the appointee or candidate before an offer is made. Before considering an approach from the appointee iNED's perspective (i.e. before answering the question above), it is worth looking at how companies recruit and appoint iNEDs to their boards.

In practice, recruitment may take many forms. Positions may be advertised; recruitment specialists ("head-hunters") may be employed; individuals may be targeted and approached, sometimes based upon existing relationships or sometimes in conjunction with bodies such as consultants, trade associations or the professions, particularly accountants, auditors, actuaries or law firms.

Networking is clearly valuable, but "cronyism" is to be avoided, especially as clones of existing management are unlikely to exhibit all the qualities required of iNEDs when it comes to independence, robust challenge and constructive criticism.

In many instances, companies are likely to have taken soundings from others, including regulators or quasi-regulators, like Lloyd's, as to whether their iNED candidate would be appropriate and pass muster. This represents a form of "reverse due diligence" as far as the actual individual is concerned. Indeed, as far as entirely new firms are concerned, the FCA has indicated that it is in favour of a pre-application process, which would naturally include the authorisation of new iNED appointments.

A very considerable number of recruitment agencies offer their services in sourcing iNEDs. Most, but not all, iNEDs will be drawn from the ranks of those who are nearing retirement or who are recently retired from conventional full-time employment, often in senior positions. A significantly large number of former accountants, lawyers, actuaries, management consultants and underwriting or broking executives, not surprisingly, take up iNED positions. Equally, those recently retired from prominent positions in market organisations or from government or regulatory bodies will often be sought for their expertise or prominence.

All recruitment firms are not, however, created equal. There are relatively few which are really expert at recruiting iNEDs, because most "head-hunters" have not invested the time and effort required to properly understand how the UK's insurance regulatory environment works and the role and responsibilities of the iNED within it. Few have really understood the attributes and characteristics of a good iNED, even when taking the technical skills and experience required as a given. iNEDs seeking appointments should take soundings and advice from serving iNEDs as to the recruitment agencies with which they should engage. Ideally, it is recommended that aspiring iNEDs meet recruitment agents in person. They should discuss the vacancy or appointment and their own aspirations in detail. Only then should they provide their valued CV or business résumé in person.

## Self-promotion

A key consideration for aspiring iNEDs is that they should make it known that they are seeking such an appointment. It is important to publicise their aspirations and career plans and to speak to as many appropriate people as possible. They should utilise their networks and business contacts in order that they can “get on the iNED radar”.

As indicated below, those in markets or recognised insurance communities should not be reluctant to promote their own aspirations, including via, for example, local CII institutes, organisations like the WCI and even market associations.

## Career transition

Equally, towards the end of an insurance executive’s career it is not unusual for such people to be approached to develop an iNED role; especially if they are part of a recognised market or relatively close-knit insurance community.

Such a transition to an iNED career can often be undertaken in conjunction with the executive’s existing employer; for example, by being granted permission to hold one, specific non-conflicting iNED position for a limited period while still carrying out, but winding down, executive duties. Such a transition may be subject to a renegotiation of employment terms extending to remuneration and time commitments.

Value may be created for all parties by securing beneficial relationships while enabling the new or aspiring iNED to continue to develop appropriate responsibilities and career opportunities in the insurance sector.

Established iNEDs with portfolios of existing appointments may also be considered for vacancies, based upon successful reputations as iNEDs or valued connections. However, care has to be taken over possible conflicts of interest and time commitment considerations, including overboarding.

Naturally, companies will wish to scrutinise CVs (in the form of a curriculum vitae or résumé) and a series of interviews is to be expected with existing members of the board and with the regulators; especially if a new board is being formed.

The final decision should be made by an Appointments or Nominations committee, except in the case of a start-up company where the founding directors may be responsible for making the initial appointments. Interviews with the appropriate regulators may still form part of the process before any final offers can be made, or before authorised permissions to conduct business are granted.

Listed insurance companies (PLCs) may also have specific rules in place that require all directors, including iNEDs, to be the subject of a vote by the shareholders at the Annual General Meeting (AGM).

## After an approach

It follows, therefore, that the individual iNED should satisfy himself or herself, that it would be the correct decision to join the board of the insurance enterprise in question by carrying out appropriate due diligence. In this context, the term due diligence means the care a reasonable person should take before entering into an agreement or contract with another party.



The risk factors will be different as between established insurance operations, with existing track-records of performance, and new or start-up firms, where the future may be less certain or more difficult to assess based on a lack of past data.

## 3.2 What should an iNED ask for?

While no list can be totally comprehensive or exhaustive, because each case should be considered on its merits, there are a number of common types of questions that can be asked and several documents that can be requested, which fall under the generic description of basic corporate data. Much of the data sought is in the public domain; especially via the internet.

### Corporate data

To help the potential iNED make sure that they can reach an informed decision, they should, as part of their due diligence, request sight of, or discuss, the following items in respect of the company they are being invited to join. Such data might be described as falling into two categories: 1) that which is “public domain” information and 2) “private information” to be requested.

Information in the public domain represents data which the firm will expect the prospective iNED to have researched, in particular:

- Corporate website;
- Relevant social media;
- Memorandum and Articles of Association;
- Solvency & Financial Condition Report (SFCR)\*; and
- Published Report and Accounts.

Private information to be requested, often subject to a non-disclosure agreement (NDA), will include the types of items shown below. For insurers, the ORSA (Own Risk & Solvency Assessment) represents essential reading along with the relevant Regular Supervisory Reports (RSR) \*\*. In the case of Lloyd’s managing agencies, the most recent SBF (Syndicate Business Forecast) should be sought.

An understanding of the relationship with the regulators is absolutely crucial and appropriate information on this matter should always be requested.

Where appropriate, the Corporation of Lloyd’s should be regarded in a regulatory capacity. Accordingly, information as to whether or not a syndicate run by the prospective iNED’s managing agency is “light touch” and whether, or not, Lloyd’s has rejected submitted growth plans, or mandated changes to plans, are equally important matters for discussion.

The following items, therefore, represent the type of documents or information that should be obtained and understood by the aspiring iNED during their due diligence process.

\* The Solvency and Financial Condition Report (SFCR) provides the general public with an overview of the insurance company’s solvency and financial condition covering business performance, systems of governance and the adequacy of its risk profile along with a description of its capital management.

\*\* The Regular Supervisory Report (RSR), including both qualitative and quantitative information, is a private report to the supervisor and is not disclosed publicly. Firms submit this report to the local National Competent Authority in full at least every three years and in summary every year.

## Memorandum and Articles of Association

Bespoke memorandum and articles of association, based on established models, will be drawn up for all incorporated companies in the UK and they are a matter of public record.

The two parts form the company's constitution:

- The memorandum of association determines the company's name, country and location of its registered office and clearly identifies what the company may do (the "objects clause"); and
- The articles set out the rules for the operation of the company and the holding of its shares.

The articles, in particular, will provide the iNED with valuable information about the way in which the insurance entity will conduct itself within a formal management framework.

## Corporate structure

- The composition of the existing, or future, board of directors and the company secretary;
- The structure of the company, including its relationship to others in a group, if applicable;
- The company's governance structure, identifying the internal and board committees and how they inter-link;
- Governance maps, as required by regulators;
- Key functions or departments with the roles and names of executives and managers at each level or tier of management together with reporting lines;
- An organogram or organisation chart; and
- A list of advisors, bankers, accountants, corporate lawyers and auditors, especially as they will normally feature in a company's annual accounts.

## Strategic plan

- An indication of the company's **short and medium term** strategy;
- A company's corporate vision or mission statement, if they exist; and
- Current business plans and forecasts.

## Company specific questions

By way of example only, an iNED may wish to ask the company seeking an iNED the following types of questions, depending on the type of commercial activity.

### General questions

- What are you looking to achieve in the next, say, five years of development?
- Who are your capital backers or major shareholders?
- What is your business model?
- How will you grow your book of business?
- What are your key performance objectives? E.g. return on capital or equity; a return over, say, a risk free rate, or specified ratios such as a combined loss ratio (for insurers).
- What has been your track record? Recent reports and accounts should provide the answer.
- What are your views of current market conditions?
- What economic factors will affect your business in the short term?
- Are you planning any mergers, acquisitions or take-overs of any books of business?
- What are the succession plans for key personnel?

- What is your remuneration policy?
- How do you attract and retain high quality talent for key positions?
- How would you characterise your relationship with the PRA and the FCA?
- Are you subject to any supervisory or enforcement action? Examples could include a Section 166 Skilled Person's Review, or a FCA/PRA enforcement investigation.
- What does the latest risk report contain? Are its controls effective?
- How would you define, and how are you developing, your corporate culture?
- Have you experienced any staff misconduct issues?

## Insurer

- What is your planned mix of business next year, by class, by size, by premium income?
- What will be your planned mix of business next year, by insurance, direct, facultative or delegated underwriting authority and by territory?
- Will you have a reinsurance component to your portfolio?
- Who are your major producers of business?
- Who are your major competitors?
- What is the split of the business between retail and wholesale?
- How do you address ESG\* issues, especially climate change, in your approach to underwriting or investing assets?

## On the Web

Lloyd's market guidance and best practice for establishing an ESG framework:

<https://www.lloyds.com/news-and-insights/news/lloyds-provides-market-guidance-and-best-practice-for-establishing-an-esg-framework>



## Broker / Intermediary

- How wide is the spread of customers or is the firm very dependent on a few?
- What is the customer retention level?
- What is the split of income between commission and fees?
- What range of markets is used?
- What is the company's E&O claims experience / record?
- What are the details of the company's professional indemnity (PI) policy?
- What is the firm's cash and debt position?
- What does the most recent client money calculation look like?

Again, this list is by no means exhaustive, but is offered as an indication only of the type of questions that may form part of a due diligence dialogue. Enquiries of this nature clearly need to be specific and selective, depending upon the type of company (e.g. insurer or intermediary).

## Board procedures

- The aspiring iNED may seek or discuss examples of existing agendas and recent board meeting minutes.
- Methods of reporting and their content may form part of this due diligence along with an indication of the type of management information (MI) that is regularly supplied to the board.

\* ESG: Environmental, Social and Governance factors. Lloyd's is instructive on this subject.

## Leadership

- The iNED to be appointed may enquire about behavioural issues, such as the style of leadership within the company and how, for example, the “tone from top” is set by the board and communicated within the company.
- Other issues of this type, such as the company’s ethical standards policy, how the company’s culture is determined, developed and communicated or even how relationships are fostered with customers, clients or shareholders might be areas worthy of discussion.
- The company’s ESG philosophy, how it is reducing its own carbon footprint and the company’s approach to inclusion and diversity may also form the basis of enquiry.

## Culture

- The board’s role is to set “the tone from the top” with regard to the culture, ethics and values of the business. Both the PRA and the FCA will expect this form of leadership to reflect and be seen to determine the firm’s conduct and regulatory behaviour. This topic is addressed more fully in the section “The board in action”, but iNEDs can be highly effective and influential in ensuring that insurance entities develop an appropriate set of corporate cultural values that underpin effective leadership.
- Aspiring iNEDs may wish to investigate the manner in which an appropriate corporate culture is communicated, developed and made visible within an insurance firm. Enquiries may also be made as to how culture is measured. The type of metrics or reports that may be in place to monitor the way in which desired culture and associated values are maintained could form the basis of legitimate enquiry.

## Financial health

- Information should be sought about the company’s finances. In addition to its most recent annual report and accounts, its track record of performance, anticipated profits, expense budgets and other relevant financial projections should be requested or discussed.
- In an underwriting context, information may also be sought regarding claims reserves and how they have performed along with other aspects of financial soundness such as bad debt, investment performance and capital ratios.
- For intermediaries, information may be sought regarding cash flow, credit control, client money controls, funding levels and profit margin levels across the broking business.

## Compliance

- It would be legitimate to enquire about the company’s compliance regime, its relationship with its regulators and the results of past risk assessment visits, or themed reviews, or similar visits from regulators.
- Also, enquiries should be made as to whether there has been any material recent correspondence with its regulators. If any risk mitigation programmes (RMPs) have been required or are in progress, including any attestations by the firm to its regulators, these, too, should be disclosed.
- For Lloyd’s managing agents, enquiries should be made as to whether the Corporation of Lloyd’s has requested remediation plans for any classes of business (CoBs); whether capital loadings have been sought and the extent to which Lloyd’s has agreed or pushed back on Syndicate Business Forecasts (SBF) or underwriting plans.

## Risk management

- The aspiring iNED may wish to enquire about the company's attitude to risk and how risks are managed, including those associated with ESG requirements.
- Discussions may take place on the company's risk appetite; its risk register; its risk log; mitigation, including its lines of defence and whether any form of enterprise risk management (ERM) is in place.
- Under the current Solvency II regime, sight of the company's latest ORSA (Own Risk & Solvency Assessment) is an essential requirement.

## D&O / E&O liability insurance

- Information should be forthcoming about the company's Directors' and Officers' liability (D&O) insurance policy; including limits, security and the intermediary.
- Deeds of Indemnity, if they exist to protect the iNED, should be provided.
- Details of any Errors and Omissions (E&O) or Professional Indemnity policies should also be sought.

## Remuneration

- At an appropriate stage, the iNED's fee, terms and conditions, including time commitments will need to be discussed along with participation on the board itself and any of its committees.

## Other forms of due diligence

Under most circumstances, it would be quite legitimate to seek information about the company that is making an offer from other parties. However, this due diligence should ideally be conducted with the company's permission in order to maintain confidentiality. Any enquiries of this nature should be made in strict confidence, but appropriate conversations with recognised experts, close, trusted associates or market figures of renown can help to answer questions about corporate reputations and the wisdom of joining such a company's board.

Becoming an iNED in today's highly regulated world is not to be taken lightly. Prospective appointees should make sure, as far as is reasonably possible, that a decision to accept an offer to join a particular board is only taken once all the material facts have been considered. Such a determination will also entail a demonstrably clear understanding of both the PRA's and the FCA's regulatory agenda and expectations, along with that of "quasi-regulators" such as the Corporation of Lloyd's, where appropriate.

## 3.3 How are iNEDs authorised?

All directors on insurance boards, including iNEDs, have to be authorised, as individuals, by regulators before they can serve on boards of firms undertaking regulated activities.

### Prior approval

Only the chair of the board, the senior independent director (SID), the chairs of the Risk, Audit and Remuneration committees require prior approval from the regulators, which can take up to 90 days to be granted from regulatory confirmation of receipt of a completed application.

These particular committees of the board usually operate with authority delegated by the board to the committee itself, and, in terms of corporate governance best practice, often at the insistence of regulators, should be chaired by an independent iNED.

Formal, documented handover procedures need to be followed for all prior-approved iNED roles under the FCA's SM&CR regime.

Other iNEDs whose roles do not fall into these categories are what are termed "notifiable appointments" which can be made without prior approval, though they still require subsequent regulatory approval.

## Procedures

A series of interviews is to be expected with existing members of the board of the company that the iNED is joining and quite possibly with the relevant regulators.

As part of the authorisation process, forms supplied by the appropriate regulatory body have to be completed, submitted and approved. The application to approve an individual is made by the firm itself (termed "the applicant" by the PRA / FCA), but is countersigned by the individual (termed "the candidate" by the PRA / FCA).

## Disclosure of information

The applicant should ensure that sufficient information is provided in the application to satisfy the regulator that the candidate is fit and proper. This application should include details of the due diligence undertaken, the recruitment, interview and appointment process and details of the rationale the firm has used to conclude that the candidate is fit and proper to perform the role for which approval is sought.

## Regulators' application forms

UK candidates seeking approval to become iNEDs have to submit, via their prospective firm, the appropriate application forms to the relevant regulators.

### On the Web



PRA Authorisations:

<https://www.bankofengland.co.uk/prudential-regulation/authorisations>

FCA Approved persons:

<https://www.fca.org.uk/firms/approved-persons#:~:text=An%20'approved%20person'%20is%20an,%20%2D%20for%20an%20authorised%20firm.>



## PRA and FCA interviews

Because the iNED role is what is termed a "Controlled Function" (CF), and because iNEDs perform duties that are considered to be "Significant Influence Functions" (SIF), they should expect to be interviewed by both the PRA and the FCA or by them separately, depending on the type of authorised firm. The Corporation of Lloyd's may also attend such sessions when future directors of Lloyd's managing agencies are being interviewed.

In the case of a new firm applying to be authorised by the PRA and/or the FCA, the entire board of directors can expect to be interviewed individually. All directors should prepare fully for such an interview, particularly because it is an ideal opportunity for those directors to show how cooperative they can be in dealing with their regulator(s).

It is not possible to be prescriptive about the content of such interviews, but, collectively, directors should be well informed about strategy, compliance and risk management issues, systems sustainability and operational resilience, customer focus and corporate culture as well as to how, individually, they will be able to contribute to the success of the enterprise. Hypothetically, iNEDs may, typically, be asked questions about the following:

**Non-executive chair, also questions for an Appointments committee**

- Business strategy
- Corporate governance
- Fitness and propriety
- Succession planning
- Balance of the Board, including diversity as regards gender and ethnicity.

**Independent iNED, also on the Risk and/or Capital & Reserving committees**

- Capital
- Stress testing
- Solvency II
- Risk appetite
- Reserving
- Emerging risks.

**Independent iNED, also on the Audit, Remuneration and Investment committees**

- Regulatory framework
- Compliance
- Conduct Risk, especially Treating Customers Fairly (TCF)
- Remuneration philosophy
- Investment procedures
- Socio-political conditions
- ESG policy.

**Group iNED, also on the Risk & Capital and Reinsurance committees**

- Group strategy
- Roles and responsibilities
- Conflicts of interest
- Reinsurance purchasing
- Risk Register.

The foregoing list of committees is most representative of an insurer. For a broker, the committees on which iNEDs tend to sit are Appointments, Audit, Remuneration, Risk or Compliance and Treasury.

## 3.4 What material items should be in the iNED's service contract?

When all the due diligence has been performed by all parties, when the iNED has been approved by the regulators, but before the appointment is finalised, the iNED will need to agree terms with the company in question and embody those terms in a contract. It is possible, of course, depending on timing, to make the appointment subject to regulatory approval.

As always, these legally binding documents will be tailor-made to suit the company and the iNED and they do vary across the insurance sector.

### The iNED's contract for services

Most contracts for iNEDs are explicitly not contracts of employment. Rather, they are contracts for services. There is a commonality to most contracts of this nature, which should, as a minimum, cover the following mutually agreed issues:

- Appointment to the board
- Requirement to serve on specified board committees
- Definition of iNED role: duties and responsibilities
- Term of the appointment, with start date and duration
- Notice period
- Retirement and termination
- Requirement to perform satisfactorily
- Time commitment (often specified as a minimum number of days)
- Timing of meetings (e.g. quarterly) and dates for both the board and its committees
- Venue of meetings
- Alternative forms of meeting in accordance with the articles of association
- Accepting additional commitments
- Fees: amount and when paid
- Expense reimbursement
- Declared outside interests
- Conflicts of interest
- Confidential nature of the company's data
- Disclosure of price sensitive information
- Data protection and GDPR
- Induction arrangements
- Review process: board collectively and individual directors
- D&O liability insurance
- Independent professional advice
- Administrative support
- Board and board committee terms of reference
- Third party rights
- English law, or as appropriate
- Signatories and acceptance procedure.

### Duration of appointment

Most iNEDs will be appointed for specific terms. Currently, three years seems to be the norm, with the expectation that at least two will be served, along with, perhaps, a renewal provision. An



extension to seven or eight years can be considered, particularly if the iNED has taken the chair during the period. However, once nine years is reached, the regulator will expect execution of succession planning to be nearing completion.

Various schools of thought exist, but the IoD and today's regulators would expect any term or continuous service much beyond six years to be subject to a particularly rigorous review, which should take into account the need for progressive refreshing of the composition of the board. Notwithstanding delicate, but pragmatic, matters such as age, which cannot be used for discriminatory purposes, lengthy service as an iNED can bring into question matters of genuine independence and impartiality.

There is a regulatory perception that iNEDs run the risk of "going native" if they serve on boards for too long or that their objectivity might be compromised by familiarity bred of long service. This is commonly understood to mean the "nine year rule". The notion originates with the FRC's UK Corporate Governance Code which states that: "Non-executive directors who have served for longer than nine years should be subject to annual re-election".

### Time commitments

Contracts of employment should specify the number of days for which the iNED's services are engaged. A minimum number of days may also be indicated. Such time commitments should include attendance at all meetings; preparation time and time spent in communicating with the company through a variety of media.

Such matters presuppose a degree of time and diary management by the iNED, a commitment to attend meetings (thereby organising other affairs accordingly) and an ability to arrange the iNED's corporate life efficiently and without compromise if a portfolio of iNED appointments exists. Today, it would not be at all unusual when asking an iNED to attend for a day at a board meeting to double that time to allow for adequate preparation. As a minimum, a commitment of 15 to 20 days a year would be quite normal with, perhaps, additional days added for iNED participation on a number of designated board committees.

The PRA has published a PDF on the subject of Board Responsibilities, which complements that of the FRC's UK Corporate Governance Code.

#### On the Web

PRA Corporate Governance: Board Responsibilities:

<https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2018/ss516update.pdf?la=en&hash>



FRC's UK Corporate Governance Code:

<https://www.frc.org.uk/getattachment/ca7e94c4-b9a9-49e2-a824-ad76a322873c/UK-Corporate-Governance-Code-April-2016.pdf>



### Directors' fees

It is not possible to offer absolute guidance about the level of iNED fees, as they vary considerably across the insurance sector. The greatest differences exist as between the publicly quoted (PLC) and private companies. Also, the role of non-executive chair tends to carry, justifiably, a higher level of remuneration than that of other iNEDs.

Remuneration is normally by way of a fixed annual fee, although some firms supplement this with “per meeting” attendance fees.

While a portfolio of two or more non-executive directorships may involve remuneration running into considerable amounts in the aggregate, it will rarely reach the annual salary level, with bonuses, of a very senior executive in insurance.

For independent iNEDs, their remuneration will not involve any incentive compensation, stock awards or benefits such as health insurance and pension contributions. It must, therefore, be understood and emphasised that the independent iNED only receives a fee for their services.

Rising levels of payment to iNEDs have been a reflection of the increased responsibilities they are expected to take. Additional time commitments, increased reputational risk and the expectation of regulators have all contributed to a general increase in fees paid to iNEDs for both board participation and for sitting on specific board committees.

As insurance regulators place increasing emphasis on the critical corporate governance role played by iNEDs and look to meet and question them from time to time, iNEDs are concerned that they should be properly remunerated for the increasingly onerous responsibilities they carry.

Each case must be looked at individually and a somewhat lower amount may be justified in specific circumstances. On the other hand, significantly higher fees for iNEDs in the larger insurers and Lloyd’s managing agents would not be unusual.

Today, it is common to pay the prior-approval iNEDs a supplement, and not just the chair. Risk is typically regarded as the hardest working board committee and its chair may be paid a higher supplement than, say, the chair of the Audit or Remuneration committee.

As indicated, a time commitment of 20 to 30 days per year is to be expected, which should include meeting preparation time and an allowance for the almost inevitable ad-hoc meeting attendance. In addition to the “basic fee” (however defined), there should be an allowance within the service contract for pro-rata additional daily payments if, for unanticipated reasons, the demand on the iNED’s time goes beyond the days contracted.

Today, iNED fees are normally paid under PAYE via the firm’s payroll. In the past, it was not uncommon to have fees paid into a personal services company (PSC) but IR35 has all but eliminated PSCs for this purpose, although, as with most UK taxation matters, the situation should be kept under review.

#### **On the Web**

UK Government: Understanding off payroll working:

<https://www.gov.uk/guidance/understanding-off-payroll-working-ir35>



## Levels of iNED remuneration in 2022

The executive search specialists, Per Ardua Associates, indicate the following current levels of iNED remuneration:

	Annual Fee £	
<b>FTSE 100</b>		
iNED	100,000 – 200,000	
iNED Committee / Chair	15,000 – 20,000	(Chair: 20,000 – 25,000)
iNED Board / Chair	400,000 – 650,000	
<b>FTSE 250</b>		
iNED	60,000 – 150,000	
iNED Committee / Chair	10,000 – 15,000	(Chair: 15,000 – 20,000)
iNED Board / Chair	150,000 – 350,000	
<b>Subsidiary / Non FTSE Company</b>		
iNED	60,000 – 100,000	
iNED Committee / Chair	10,000 – 15,000	(Chair: 10,000 – 15,000)
iNED Board / Chair	100,000 – 250,000	

### Note:

- Committee participation might also be paid separately: £10,000 – £15,000.
- Possibly increasing to £15,000 if chairing the committee.
- Committee participation may be remunerated on an hourly rate basis.
- Fees will always depend on expected days' involvement and this may differ considerably from board to board.
- The iNED fees quoted are largely for London based companies. Fees may be different in other parts of the UK, although the responsibilities will be the same.
- Subsidiary / Non FTSE company iNED fees will include London Market companies and Lloyd's managing agents.\*

### Learning summary

Aspiring iNEDs should now have a clear understanding of the importance of promoting their own availability for the role along with the questions they should ask and the documents or management information they should review before joining the board of an insurance enterprise in a non-executive capacity, especially if they have been approached to take on the role.

They should have developed insights into the authorisation process and the main features of their contract for services. They will also have gained an idea about the wide-ranging levels of iNED fees, depending on the role, the nature of the entity and its location.

\* The amount of the fee in the Lloyd's market is to some extent dependent on the size and complexity of the managing agency. For example, a well-established, very large (over £1.0 billion of premium income) global, multiclass, top quartile managing agency that experiences a "light touch" regulatory approach from Lloyd's would pay considerably higher fees than a smaller managing agent running a syndicate with a much lower premium income based on a simpler business model.

## 4. THE BOARD IN ACTION

### 4.1 I'm on the board. What should I be looking for?

The purpose of a board of directors in any commercial enterprise is to ensure the success of the firm by collectively directing and leading the company's affairs. The board is usually answerable to the company's shareholders, or capital providers, but it should also act responsibly on behalf of a wider number of stakeholders.

#### Role of the board

This section addresses the board in action by offering guidance as to what an iNED should expect to see, and be part of, in terms of corporate governance and board effectiveness. It also identifies the main workings of a board and its committees and comments upon the key technical issues that will confront an iNED across a variety of insurance boards.

The iNED Primer addresses members of boards in the regulated sector. They may be boards of PLC entities, of private companies, boards of holding companies, of subsidiaries or authorised and regulated managing or operating boards that run the actual businesses in the underwriting and broking sectors. Irrespective of their structure or nature, their iNEDs all share the responsibilities and rewards that are outlined in this section.

The IoD sees the board of directors of a commercial enterprise as facing a demanding set of sometimes paradoxical challenges. It must be simultaneously entrepreneurial and drive the business forward while maintaining prudent control.

The board must be knowledgeable about the affairs of the company while, at the same time, it must be sufficiently objective so as to retain and develop a long-term, strategic view.

The board must be cognisant of domestic and local market issues, particularly as they relate to economic conditions or regulations, while being informed about increasingly global challenges such as competition, climate change and geo-political considerations.

The board must focus upon commercial success while behaving responsibly towards its employees, customers, business partners and, in the case of the UK insurance sector, its regulators (or quasi-regulators, such as the Corporation of Lloyd's).

A board should also create, develop and sustain a culture that permeates its company. In carrying out its leadership role it should "set the tone from the top".

#### Induction

Before a director joins a board, or before a new board is formed, an essential aid to managing the affairs of the board will be the induction session. Induction can take many forms and there is no prescribed format. It may take a few hours, but for a new enterprise, it could be spread over a number of days. In any event, the chair and CEO, or company secretary or the head of compliance along with human resources (HR) experts, or a combination of all of them, should convene and facilitate a fully documented session (or sessions) that covers the fundamentals shown below.

## An Introduction to all board members

- All directors should have an opportunity to get to know each other
- Biographical details and career histories should be presented
- Particular areas of expertise should be identified
- Valued connections could be identified.

## General governance

The following might be tabled or provided by way of preparatory reading:

- Companies Act 2006: “Duties of Directors”
- PRA / FCA requirements
- Lloyd’s requirements (where appropriate)
- Minimum governance standards (external and internal)
- Memorandum and Articles of Association
- Terms of reference for board and board committees
- Specific reference to the role of iNEDs
- The company’s formal corporate governance policy.

## Corporate strategy

- The key aspects of strategy should be discussed in the short, medium and longer term
- Targets, objectives, performance criteria and goals should be identified
- Business plans should be provided along with a range of forecasts
- The means and resources employed in delivering that strategy should be clearly laid out
- A company’s corporate vision or mission statement might be presented.

## Expectations

- Expectations of the board as a whole should be discussed
- Roles of directors in their distinctive executive and iNED capacities should be identified
- Expectations of the firm in terms of its culture and values should be discussed
- Leadership issues, including potential challenges, should be surfaced
- The company’s role in a market or the wider society might be debated.

## Corporate structure

- The structure of the company, including group relationships if any, should be discussed
- Key functions or departments should be identified
- The names of executives and managers at each tier of management should be tabled
- Reporting lines should be made clear
- Organograms, organisation charts and governance maps should be produced
- A list of advisors, bankers, accountants, corporate lawyers and auditors might be provided.

## Generic data

- Existing or projected financial management information (MI) for accounting, including budgets, expenses, investment returns and projected profits should be discussed
- The company’s risk register and risk controls, with related MI, especially if contemplating a Risk committee role

- Projected dividends, returns to shareholders or returns on equity might be debated
- Other forms of MI for reporting risk management, compliance or HR issues such as “dashboards”, “RAG” charts or graphs might be produced.

### Insurer data

- Existing or projected MI for underwriting and claims might be presented, analysed by way of triangulated statistics, ratios, reserves, class of business codes or by territory
- Aggregate concentrations of risk and catastrophe exposures might be presented
- An outline of Solvency II, including internal models and the ORSA, should be presented
- Combined operating ratios are essential.

### Broker data

- Income / margin levels for individual divisions
- Spread of business by territory
- Spread of premium by market used
- EBITDA\* level
- Cash flow
- Customer retention levels.

### Logistics

- Terms of reference and matters reserved for the board should be made clear
- The frequency of board meetings and its committee dates should be clearly identified
- Time commitment and diary management issues should be aired
- Provision of MI, committee reporting, agendas and board packs should be discussed
- The provision of minutes, including their timeliness and form, should be discussed
- Reference should be made to future board effectiveness evaluations or appraisals.

## 4.2 What constitutes good corporate governance?

The attributes, skills and abilities of directors already identified underpin the effectiveness of a board of directors, but they all need to be brought together. The way in which directors behave, both collectively and individually, constitutes the essence of corporate governance.

Good corporate governance means that the system of rules, practices and procedures by which a company is directed and controlled are carried out well, to uniformly high standards. It involves balancing the interests of the many stakeholders in a company while providing and overseeing the framework for attaining a company’s objectives. Corporate governance encompasses practically every sphere of management from strategy to action plans and internal controls, from performance measurement to corporate disclosure, all of which are supported by strong and competent leadership qualities.

\* A measurement of a company’s operating profitability; equal to Earnings Before Interest, Tax, Depreciation and Amortization (EBITDA) divided by total revenue.

## Board effectiveness

To encapsulate the standards that a board should attain, documents should be produced which identify the manner in which a board should conduct its affairs. These might take the form of a “Corporate Governance Policy” and while there is no standard format for such a document, a typical version might encompass the matters shown below.

### Objective

- To formalise and document the corporate governance arrangements of the company. Its system of governance is designed to provide a transparent organisational structure with clearly delineated reporting lines.
- Detailed job specifications for the executive directors and terms of reference (ToR) for each board committee should be appended. Job specifications and ToR set out and allocate the specific responsibilities.

### Guiding principles

- One of the key factors of good corporate governance is proportionality. The corporate governance approach must fit the culture and organisation of the company and meet the requirements of the key stakeholders. In forming this policy, consideration must be given to the insurance organisation’s status as PRA/FCA regulated firm. As such, it will have to comply with the relevant PRA/FCA principles and regulations.
- As a publically quoted or private limited company it will observe the UK Corporate Governance Code.
- All board members, including iNEDs, will comply with the relevant UK legislation, including the Companies Act.
- A member of any insurance group and will be mindful of the high governance standards set by the parent company, which may not always be UK based.

### Approach to corporate governance

- The corporate governance policy of the company is to establish and follow a transparent and consistent governance strategy with clear and appropriate communication to all stakeholders. It operates in a framework of robust systems and controls, effective accountability and in a fair manner, practising good business ethics.
- Corporate governance should also encapsulate the board’s stance on the culture it seeks to engender within the business, its ethical stance and the leadership “tone from the top”.
- An important aspect of a board’s role today, and a current focus of the PRA and FCA, is to develop standards with regard to the culture, ethics and values of the business. This requirement is particularly important as regulators expect this form of leadership to reflect and be seen to determine the insurance firm’s conduct and regulatory behaviour.
- A much increased focus on behaviour in offices means that boards have to pay close attention to how employees conduct themselves at work. Zero tolerance for unacceptable patterns of behaviour or instances of harassment, bullying, sexual misconduct, inappropriate discrimination or unfair treatment of recognised minorities has to be upheld.
- Addressing issues relating to diversity and inclusion (D&I) are significant board matters which extend to closing gender pay gaps, the need for effective D&I management information (MI), as well as the development of recruitment policies and the firm’s ambitions and targets in this increasingly important area.

- All board members are held to account for ensuring that proper cultural values are promoted and maintained.
- The Lloyd's market has been prominent in facing up to these types of challenges and has, in particular, explicitly sought to promote diversity and inclusion. Diversity should be defined widely and extend to gender, ethnicity and other criteria such as disability.

### On the Web

Diversity and Inclusion at Lloyd's:

<https://www.lloyds.com/about-lloyds/diversity-and-inclusion>



## Effective board

- The board will act in accordance with a schedule of delegations agreed by the board, in accordance with specified matters reserved for the board and in accordance with its own terms of reference.
- The board will hold an annual review of its effectiveness, including an assessment of the information it receives. As part of the annual review each director will be invited to assess the performance of the chair and other board members. The output is shared with all the board members.
- On resignation, an iNED will be asked to provide a written statement to the chair for circulation to the board.
- At the end of each year, the board will agree its meeting schedule for the following year.
- The board meets formally at least once a quarter and with other ad hoc meetings convened as required.
- Only directors have a right to attend meetings. Others do so by invitation. Care must be taken to ensure that regular attendees do not, inadvertently, become unauthorised "shadow directors".
- Attendance records are maintained by the company secretarial department. The corporate secretariat function will provide a suitable individual to minute each meeting.
- Draft minutes are prepared for review by the chair of the meeting in a timely manner and then circulated to the other directors for comment.
- Draft minutes will be signed at the following meeting. The copy of the minutes that contains the actual signature is filed securely and a copy is stored in printed format or electronically.

## Clear division of responsibilities between the chair and the CEO

- The CEO has responsibility for apportionment and the allocation of responsibilities as required by the relevant regulator.
- The CEO will perform a regulated Controlled Function, authorised by the PRA / FCA.
- The board chair is usually an independent iNED performing a Controlled Function.
- The company maintains job-profiles for the chair and CEO that confirm the clear division of their responsibilities.

## Board balance and independence

- The insurance board includes an appropriate number of independent iNEDs.
- The board should ensure that there is no undue reliance on any one director.
- The board aims for an appropriate and diverse mix of experience and expertise.
- All iNEDs will meet at least once a year without the executive directors being present.
- Such private sessions may exclude both the executive directors and any group iNEDs.



## Board appointments

- The board considers that appointees, particularly the chair, have sufficient time available to fulfil their duties as directors.
- The CEO is responsible for ensuring there are sufficient directors both in number and experience in order to properly manage the company.
- The board's composition and the senior management structure are considered, together with succession planning, on a regular basis.
- All executive directors and iNEDs operate within a defined job specification.

## Information and professional development

- The board will maintain and follow an induction policy for newly appointed board members.
- The board will provide on-going director development and the updating of its skills when reviewing board effectiveness. It is also considered by the CEO as part of the process of apportionment and allocation of responsibilities.
- The board considers any request received from board members for access to independent professional advice at the company's expense.
- The board has adequate access to the advice and services of the corporate secretarial function and/or compliance officer.
- The board believes the corporate secretarial function and/or compliance officer are sufficiently available to advise the board either through the chair, or directly, on all corporate governance matters.
- The corporate secretarial function and/or compliance officer will undertake periodical assessments of the skills and experience of the board to ensure that it remains appropriate for the business of the company.

## Performance evaluation

The board holds and acts upon a formal annual performance evaluation of its own conduct and effectiveness. Such an evaluation could be managed internally or with the input from an external source, such as a consultant who specialises in such assessments.

## Financial reporting

- The company presents a balanced and understandable assessment of the company's position and prospects in its audited annual financial statements.
- Directors will explain in their annual report their responsibility for preparing the accounts and include a statement by the auditors, as appropriate, about their reporting responsibilities.
- The annual report should state that the business is a going concern and includes supporting assumptions or qualifications as necessary.

## Internal controls

- The company's risk management strategy, which addresses PRA/FCA defined risks and, where appropriate those identified by others such as Lloyd's, is reviewed annually by the board.
- A risk register is maintained to record individual risks.
- The risk management function facilitates and coordinates risk management activity across the entire organisation.
- The internal audit function continually reviews systems and processes on a thematic and specific basis.

- The risk management and compliance functions, along with the Audit committee, consider the results of internal audits.

## Accountability and audit

The Audit committee and the Risk and Capital committee review audit and risk matters on behalf of the company.

## Committees of the board

- The board has formally constituted committees which will be in place and operate in accordance with the board's approved terms of reference. These committees will manage, oversee and govern the activities of the insurance enterprise.
- The terms of reference for each of these committees are reviewed annually.
- The committee governance structure is usually set out in an appended schematic.
- Membership of board committees is agreed by the board and reviewed regularly.
- Only members have a right to attend the meetings, others do so by invitation.
- Beware that regular attendance by non-members can be construed as creating "shadow directorships" which are not permitted by law / the regulators.
- The company secretariat maintains records of meeting attendance.
- Committee minutes are circulated to the board to enable the directors to ask questions on the minutes at the following board meeting.
- At the end of each year, the committee agrees its meeting schedule for the following year.
- Draft agendas for committee meetings are prepared by the committee secretary and agreed by the chair of the particular committee.
- Draft minutes are prepared for review by the chair of the meeting in a timely manner after the meeting and then circulated to the other committee members for comment. The draft minutes are signed at the following meeting. When signed, the minutes are filed securely.
- The company will use written resolutions to support committee decisions.

## Operation of the board: what good looks like

By way of example only, the following text is taken from Lloyd's "Principles for Doing Business". Principle 10: Governance, Risk Management and Reporting states:

Managing agents, or by extension, other insurers should:

- Manage a suitable board and committee structure which enables well informed, timely and accountable decision making.
- Operate a strong risk and control environment which allows for appropriate challenge.
- Maintain appropriate oversight of operational processes for effective management of the business.
- Employ and develop people with appropriate skillsets and ensure that the business is appropriately resourced.
- Ensure decision making is supported by appropriate data and qualitative assessment.
- Maintain reporting, including all financial reporting, of a high quality and submit all reports in a timely, accurate and complete manner to Lloyd's and to applicable regulators.

**On the Web**

Market oversight at Lloyd's:

<https://www.lloyds.com/about-lloyds/culture/lloyds-market/market-oversight>



The UK Corporate Governance Code suggests that companies should state in their annual report how performance evaluations of the board, its committees and its individual directors have been conducted. Strong disclosures may include the following details:

- A full description of the appraisal process.
- Key categories considered, including board and committee structure, board dynamics, the conduct and frequency of board meetings and information provided to directors.
- Evaluation criteria linked to strategy and performance.
- Use of peer review between directors and management.
- Inclusion of major shareholder feedback.
- Achievement of KPIs (as specified).
- Outcomes of the evaluation and action plans.

**Board characteristics**

An aspiring, or new iNED's attention is drawn to the following board characteristics:

**Balance of the board**

A board in the regulated, insurance sector should comprise an appropriate balance of executive directors and iNEDs, of whom a number of iNEDs should be genuinely independent. The directors, collectively, should possess a range of appropriate skills, abilities and experience as well as being diverse, especially by gender and ethnicity. Group directors sitting as iNEDs on a subsidiary board should not be counted as truly independent within the board structure.

**Role of the senior independent director (SID)**

The Higgs Review, published in 2003 but still relevant today, recommended that boards of publicly listed companies should appoint a senior independent director ("SID") from among their independent NEDs. To qualify as "independent", NEDs need to have the necessary independence of character and judgement but also be free of any connections, financial or otherwise, that may lead to a conflict of interest.

Higgs felt that the role of the SID was important in the relationship between major shareholders and the board, stating that: "The senior independent director should be available to shareholders, if they have reason for concern that contact through the normal channels of chair or CEO has failed to resolve."

Not all boards, depending on their size and the nature of the enterprise or its corporate structure, will appoint a SID. Where they are appointed or designated, SIDs usually serve as a sounding board for the chair and act as an intermediary for all the other directors.

In the insurance sector, SIDs are often responsible for holding annual meetings with iNEDs, without the board chair being present, in order to appraise the chair's performance. SIDs would also be expected to meet with the other iNEDs on other such occasions when necessary.

If a board is undergoing a period of stress, the SID's role becomes vitally important. He or she is expected to work with the chair and the other directors, and/or shareholders, to resolve major issues. SIDs can be especially valuable in managing conflicts.

In summary, the SID's role in an insurance enterprise would usually involve:

- Working closely with the chair, acting as a sounding board and providing support.
- Acting as an intermediary for other directors as and when necessary.
- Being available to shareholders and other iNEDs to address any concerns or issues they feel have not been adequately dealt with through the usual channels of communication.
- Meeting annually with the other iNEDs to review the chair's performance and carrying out succession planning for the chair's role, in conjunction with executive management.
- Attending sufficient meetings with major shareholders to obtain a balanced understanding of any of their issues and concerns.

### **Managing conflicts**

There is no panacea for managing conflicts when they arise, although the SID, if appointed, can be a useful resource in resolving contentious issues. The following, non-exhaustive, list of considerations may be useful:

- Define, clearly, the role of each director.
- Identify potential areas of conflict before a board meeting.
- Identify responsibilities when defining projects (well-crafted terms of reference will assist).
- Separate personalities from the issues and avoid any "battle of wills".
- Avoid taking objective comments or arguments as personal criticism.
- Listen to all sides of an argument.
- Determine the reasons behind the conflict.
- Depending on the nature of the conflict, consider engaging third-party assistance or guidance.

A one page guide that succinctly outlines the **Duties of the Senior Independent Director** appears in the **Appendices**.

### **Decision making**

Proposals and correctly worded resolutions should always be debated fully in an informed manner. The chair will have an important role to play in ensuring that all directors contribute appropriately and he or she may have a casting vote. However, decisions do not have to be unanimous. Resolutions can be made by a majority decision or vote. Under those circumstances, dissenting views in an insurance enterprise should be minuted carefully with attribution to the director or iNED in question. Nevertheless, once a decision is reached then it is incumbent upon the whole board to support it, especially in public.

### **Terms of reference for boards**

Terms of reference (TORs) for boards do not need to follow a prescribed format. Rather, they need to be drawn up in a bespoke manner that is entirely appropriate for the company in question. They need not be lengthy either, and the example shown, based upon an insurance company, will reinforce this point, insofar as it covers typical, main headings. Many of the detailed points of reference cover management issues that already appear in this iNED Primer, but they are included for the sake of completeness.

## Composition

- Balance of skills, experience, independence and knowledge to enable it to discharge its duties and responsibilities effectively.
- Sufficient size; not to be so large as to be unwieldy.
- Balance of executive directors and iNEDs such that no individual or small group of individuals can dominate the board's decision-making.
- Ratio of executive directors to iNEDs and ratio of male to female directors.
- Appropriate ethnic and cultural diversity.
- Directors to be free from relationships or circumstances which are likely to affect their judgement.

## Meetings and quorum

- Boards should meet sufficiently regularly to discharge their duties effectively.
- There is no prescribed frequency for board meetings to be held. They are determined at the discretion of the company, according to its needs.
- Boards should meet with such frequency and at such times as they may determine.
- Executive directors are expected to discharge their responsibilities as directors of the company and not to act solely as the representative of the activity for which they bear executive responsibility.
- The quorum (minimum number of directors including executive director / iNED ratio) for meetings of the board must be specified.

## Objective

- The role of the board is to provide entrepreneurial leadership of the company within a framework of prudent and effective controls which enables risks to be assessed and managed.
- The board is collectively responsible for the long-term success of the company and delivery of sustainable value to shareholders.
- The board sets the strategy and risk appetite for the company and approves business and operating plans presented by management for the achievement of the strategic objectives it has set.

## Powers of the board

The board is responsible for managing the business of the company and, in doing so, may exercise all the powers of the company, subject to any relevant laws and regulations and to its Articles of Association.

## Matters reserved to the board

The board delegates the management and day-to-day running of the company to the departments (as defined) in accordance with such policies and directions as the board may from time to time determine with the exception of the following matters which require the approval of the board:

- Annual business plans, risk appetite and performance targets for the company;
- The establishment of effective procedures for monitoring and control of operations including internal procedures for audit, risk and compliance with regulations;
- The authority to approve (a) credit, (b) market risk limits, (c) an acquisition, disposal, investment, capital expenditure or realisation or creation of a new venture;
- Appointments to the board and senior management positions; and

- Any substantial change in the policies established from time to time by the board for underwriting, claims management, reserving, balance sheet management, including capital adequacy, credit and liquidity, classes of business underwritten or broked, assets and liabilities, investment rate risks and risk concentration geographically, by sector and for all global business.

### **Responsibilities of the board**

The board's responsibilities include, but are not limited to:

- The oversight of corporate governance;
  - Note: The board may oversee or delegate responsibility for the oversight of corporate governance to one or more committees of the board, as it sees fit;
  - Development and review of company policies and practices on corporate governance;
  - Reviewing and monitoring training and continuous professional development (CPD) of directors; and
  - Reviewing and monitoring company policies and practices on compliance with legal and regulatory requirements.
- Development, review and monitoring of the application of the company's values and business principles and the compliance manual applicable to employees.
- Review of the company's compliance with the UK Corporate Governance Code and any other corporate governance code that the board considers appropriate from time to time and the disclosures on corporate governance made in the annual report and accounts.
- The oversight of large-scale change and transformation programmes.

### **Powers of the board to delegate**

- The board may delegate and confer on any directors holding executive office any of its powers, authorities and discretions (including the power to sub-delegate) for such time and on such terms as it thinks fit.
- The board may delegate any of its powers, authorities and discretions (including the power to sub-delegate) for such time and on such terms as it thinks fit to any committee consisting of one or more directors and to one or more other persons, provided that where the committee consists of more than one member, not less than two members of such committee shall be directors, and no resolution of a committee shall be effective unless one of those present when it is passed is a director (or his/her alternate).
- The board will receive and consider appropriate reports and/or minutes from each of its designated committees.

### **Independent advice**

Directors may appoint, employ or retain such professional advisors as they may consider appropriate. Any such appointments are normally made on receipt of guidance from the chair, supported by the company secretary, who is usually responsible for the contractual arrangements and payment of fees by the company and not by the individual iNED.

### **Review of terms of reference**

The Board shall review annually the board's terms of reference and its own effectiveness.

## Inconsistency with articles of association

To the extent that there is any inconsistency between these Terms of Reference and the Articles, the Articles will prevail.

## Practical issues

### Matters reserved for the board

The items shown in the example TOR represent a purely hypothetical amalgam only of the type of matters that may be reserved for the board of an insurance enterprise. iNEDs should be aware that there are certain core functions that a board cannot or should not delegate. A board has, for example, to perform its own leadership function and must comply with the responsibilities with which it is specifically charged by regulatory bodies that mandate a number of functions, including approvals and the submissions of reports that can only be agreed by the board. Accordingly, each board's TOR will include, or append, a bespoke set of "matters reserved to the board".

### Chair's role

According to the UK Corporate Governance Code, the chair is responsible for setting the board's agenda, for ensuring that all directors receive accurate, timely and clear information and that all decisions are properly debated and recorded. In addition, the chair should be intimately involved with the annual review of the board's performance. The code makes particular reference to the chair "promoting a culture of openness and debate". The chair also has specific responsibilities for communicating with markets or stakeholders, although that role could be shared with, or delegated to, the SID. Those who chair listed (PLC) companies in the UK will normally need to be particularly adept at chairing public meetings such as the AGM (Annual General Meeting) of shareholders, especially if results have been poor.

While this iNED Primer cannot offer detailed guidance on such leadership skills, it would be fair to say that a chair would, as a minimum and in addition to the skills required of all directors, need to be highly adept at:

- Managing relationships with the executive team;
- Acting in a manner that enables and encourages that team;
- Exercising skills in the boardroom that facilitate discussion, engagement and decision making and encouraging contributions from all board members;
- Setting the tone from the top and engaging with developing a positive corporate culture;
- Exhibiting an appropriate personal balance between confidence and humility;
- Communicating well with all staff and stakeholders and presenting well to them both; and
- Being visible within the company.

A good insurance chair will meet the iNEDs individually and collectively to discuss personal performance and board effectiveness. He or she will mediate where there may be differences of opinion on the board. The UK Corporate Governance Code recommends that: "chairs are encouraged to report personally in their annual statements how the principles relating to the role and effectiveness of the board have been applied". The most informative disclosures will include details of the following:

- The key governance issues facing the business and their key governance targets.
- The company's governance framework and the corporate governance report.

- The key governance objectives and focus of the board for the next year.
- The importance of governance in running a successful business.
- The key features of governance as they see it.
- The significance of good governance in achieving business success, linked to what was written in the chair's statement on corporate governance in that section of the report.
- Board activities throughout the year.
- The company's approach to regulation and guidelines.
- The board's approach to remuneration.
- A statement of personal responsibility for the smooth running of the board.
- The results of board evaluation reviews and resultant actions, such as long-term succession planning or increased training.

### **Crossing the executive line**

The chair of an insurance enterprise, in particular, but this consideration applies to all iNEDs, should ensure that the iNED does not stray into the area of executive action; that function is the responsibility and duty of the insurance executive management team.

Objectivity, challenge and criticism, as well as encouragement, should be the guiding principles of the iNED. He or she does not need to get bogged down in too much detail (although iNEDs need to read, diligently, and understand all materials with which they are presented) and they should not "do the executives' job for them". This position, clearly, does not preclude the iNED from giving sound advice or guidance, but all iNEDs, especially those that have recently been executives themselves, should avoid falling into this trap.

The only notable exception to this rule might be during a take-over or merger when the executive team may, quite appropriately, be personally conflicted.

Under such circumstances the iNEDs may be asked to fulfil a more hands-on role, temporarily, or act in a more executive capacity, especially when it comes to taking decisions on behalf of all stakeholders whose interests may not align with those of the acquiring party.

Somewhat paradoxically, those same circumstances might require the iNEDs, collectively, to stand back even further from the day-to-day running of the company and exercise highly objective wisdom or judgement. All will depend upon the nature of the negotiations.

### **Conflicts of interest**

From time to time, directors may find themselves personally conflicted when certain issues arise or decisions are to be taken over a matter in which they have a personal interest. iNEDs with portfolios of positions on other boards may also find that they are conflicted if issues arise with other companies of whom they are a director. When this type of situation arises, directors must declare their interests and act accordingly. Ideally, they should abstain from decision making or voting on such issues. The phrase "a director recusing themselves" applies under such circumstances.

Annually, the company secretary or compliance function should compile a schedule of disclosable interests by directors, which should extend to members of their close family. A written policy governing conflicts of interests is a valuable aid for all directors and company secretaries. Minutes of board meetings should certainly record instances when a board member discloses that he or she has a conflict of interests. The minute should also indicate how the conflict was managed:



e.g. that there was a discussion on the matter, with or without the board member being present, and that a vote was taken or a decision made with the conflicted board member abstaining or recusing themselves.

Arguably, the most important aspect of managing conflicts of interest is for all directors to be alert for potential conflicts and immediately to declare their interests if conflicts arise. The best course of action may simply be to leave the boardroom altogether while the topic giving rise to the conflict is discussed.

### **Individual expertise and range of talent**

Each executive director and iNED brings expertise to the insurance board in his or her particular field. iNEDs are not expected to be an expert on every topic, although they do need to be well versed in company matters and to be properly informed.

The role of the chair should be sufficiently well honed to recognise this aspect of a board in action and the chair should encourage optimal debate, led by those with the most expertise. This must not, however, preclude others from contributing, questioning, challenging or offering objective views. The board will, however, remain collectively responsible for decisions it takes.

### **Annual board evaluation**

Insurance boards of directors should evaluate their own effectiveness and performance annually. The chair, company secretary and / or compliance function will generally lead the annual board assessment. Questionnaires or surveys will often suffice, with written summaries being made available to the whole board for discussion and follow-up action. Separately, iNEDs may also evaluate the performance of the chair, or be directed by the SID in such an evaluation.

It is increasingly common for third-parties such as accounting, legal or consulting firms to be engaged, from time-to time, but not necessarily every year, in board evaluations. They frequently bring greater objectivity to bear, tend to be effective in their approach, offer a structured approach and often facilitate candour and required action which home-produced evaluations may not.

External reviewers with experience in the insurance sector will normally attend and observe board and committee meetings and interview directors individually. They are well informed about current governance processes and procedures and can advise on best practice. High quality board performance can be a key factor in securing the success of insurance enterprises and an effective evaluation of how a board performs, and how it can improve, is a valuable component of good corporate governance.

### **Shareholder relationships**

Insurance boards of directors act, primarily, on behalf of shareholders or capital providers and they need to develop good working relationships with them. It is, therefore, common for the chair, who normally is an independent iNED, to be given specific responsibilities for communicating with markets or stakeholders. For example, those who chair listed (PLC) companies in the UK will normally be required to chair the AGM of shareholders or an EGM.

The UK Corporate Governance Code, under its “Main Principles”, suggests that there should be a dialogue with shareholders based on the mutual understanding of objectives. The board, as a whole, has responsibility for ensuring that a satisfactory dialogue with shareholders takes place.

It goes on to suggest that the chair should discuss governance and strategy with major shareholders or capital providers.

Specifically, the UK Corporate Governance Code maintains that the board should state in the company's annual report the steps it has taken to ensure that its members, and in particular its NEDs, have developed an understanding of the views of major shareholders or capital providers about the company.

Some FTSE 350 companies include separate sections on shareholder relations in their annual reports, with the best organisations referring to regular dialogue with their shareholders and the availability of NEDs to meet shareholders on a regular basis or as required.

Companies also need to communicate with their shareholders on a regular basis, often quarterly or half-yearly, and their boards have the responsibility of informing shareholders of results and dividends and allied matters, including increasing amounts of detail about how their companies are run.

Apart from detailing the results, along with a description of the principal activities of the company and a review of the business, the directors are obliged to identify the principal risks and uncertainties. For example, such risks would normally include the following for an insurance company:

- Insurance risk: underwriting, claims and reserving;
- Credit risk;
- Market risk;
- Liquidity risk;
- Operational risk;
- Regulatory risk; and
- Group risk (where applicable).

Also, other pertinent topics, such as Solvency II, might be reported to shareholders in the annual accounts, along with an indication of future developments.

Information that appears in insurance annual reports and accounts, whilst normally drawn up by the finance function, is the responsibility of the entire board. In addition, the data itself, as well as the reporting and disclosure requirements of annual accounts needs to have been reviewed by the Audit committee that is usually composed entirely of iNEDs.

The UK Corporate Governance Code suggests that: "the board should meet sufficiently regularly to discharge its duties effectively". There should be a formal schedule of matters specifically reserved for its decisions.

The annual report should include a statement of how the board operates, including a high level statement of which types of decisions are to be taken by the board and which are to be delegated to executive management.

The best disclosures include details such as:

- The board's governance practices and linkage to ethical practices.
- An established framework for management practice.
- Details of meetings of the board and its committees, including focus and remit.

- Demonstration of ethical leadership.
- Powers and authorities retained by the board and those delegated to management.
- Clearly defined reporting lines and monitoring structures across different levels.
- Information flows to the board.
- Consideration of governance arrangements.
- Performance culture creation and maintenance.
- Accountability (especially to investors).
- Roles of chair, CEO, executives and NEDs.
- Areas of strategic importance.
- Governance oversight practices.

### **Reporting audit activities, risk management and internal controls to shareholders**

The UK Corporate Governance Code suggests that the main role and responsibilities of the Audit committee should be set out in written terms of reference and should include: to monitor the integrity of the financial statements of the company and any formal announcements relating to the company's financial performance alongside reviewing significant financial reporting judgments contained within them.

Reporting on the appointment of external auditors is also a requirement, extending to such matters as the dates of appointment and tenure, tender frequency and selection processes, the assessment of the auditor's qualifications, contractual obligations and proposed dates of future tenders. FTSE 350 Companies are also expected to report on their risk management processes and systems of internal control. Their examples can be extended to non-PLC organisations by way replicating such requirements. Best disclosures in these two areas of control might include the following:

#### **Risk management**

- Those responsible for the risk management process.
- Lines of defence.
- How often risks are assessed and to whom risks are reported.
- Procedures to ensure compliance with external regulations.
- Evidence of a risk group or committee to monitor the process.
- Organisation structure and reporting lines.
- Procedures to learn from control failures.
- Corporate policies, procedures and training.
- Links to key business objectives or values.
- Examples of reviews of control activities and response resolution.

#### **Internal controls**

- Assurance of proper accounting.
- Nature of records.
- High level procedures to ensure compliance with external regulations.
- Organisation structure and reporting lines.
- Corporate policies, procedures and training.
- Financial controls.
- Fraud detection and prevention.
- Safeguarding assets.

## Management reporting: agendas, board packs and minutes

### Agendas

All board meetings will require formal agendas. Their purpose is to give notice of the meeting and to ensure that material items are addressed. There is no specified format, although good practice would suggest, and the regulatory bodies would expect to see, agendas for regular insurance industry board meetings containing the following types of items, which may vary according to the time of year, the frequency of board meetings and the type of organisation:

#### Heading

- Name of company
- Time, date and venue of meeting
- Those present / apologies for absence / non-board invitees
- Conflicts of interest.

#### Agenda items

- Minutes of previous meeting
- Matters arising / Action points
- CEO report / Strategy update
- Finance report
- Risk management report
- Compliance report
- Underwriting report or broking report
- Claims report
- Actuarial report
- IT report
- Internal audit report
- HR report
- Training & competence report
- Operations report
- Company secretary report
- Minutes and papers for noting
- Any other business (AOB)
- Time meeting ends
- Time, date and venue of next meeting.

Some agendas will specify the amount of time to be allocated to each item. Most should identify the lead or nominated director responsible for each item and usually reference will be made to relevant sections in the board pack or provide an indication as to whether a verbal report only is to be made. Items requiring decisions or agreements or those more for noting will usually be identified.

#### Board packs and management information (MI)

Insurance directors should receive board packs, or dossiers, along with the agenda at a designated time ahead of the meeting in question. The pack should contain all relevant information and identify each section with the numbered agenda. Due to the prescriptive nature of the matters to be discussed, insurance board packs can easily exceed 200 pages of content.

Current practice suggests that complete board and committee packs should be made available to directors not less than five full business days before a meeting. It is unreasonable to expect iNEDs to do their job properly if they do not have adequate time to study and annotate their board papers. Most board packs are now distributed in electronic format via proprietary software such as “Diligent Boards”, “Directors Desk” or similar online tools.

Good practice is to include longer documents (e.g. policies for approval or annual re-approval) in an appendix with a summary of their key points and/or changes in the main board pack.

Historically, board packs and MI were provided in paper formats. Today, as indicated above, there is an increasing trend to supply them electronically and for directors to attend board meetings with electronic tablets such as an iPad. There is no prescribed format, but, clearly, each section should follow the agenda precisely and be sufficiently comprehensive to inform the board of material matters; especially if decisions are to be taken. Ideally, each section should be preceded by a short summary with an indication as to whether the items are for noting; require a decision or need some other form of board attention or resolution.

The contents should be clear, relevant and not so intensive, voluminous or opaque so as to prevent the directors and, in particular the iNEDs, from being “able to see the wood for the trees”. MI techniques that highlight key issues are to be recommended such as “exception reporting methodologies”, “dashboards” and “traffic light” or “RAG” formats (red, amber and green) that immediately draw attention to items requiring attention.

Each section of a board pack should assist the board in performing its duties and constitute effective reporting that supports or manifests a management control or underpins a decision that is required. When dealing with items in the board pack, the nominated executive director should address the item by reference to any additional information or by seeking responses, often through the chair, from other board members. It is a waste of time simply to regurgitate or read out MI or text that has already been circulated in the board pack.

## Minutes

The purpose of all minutes is to provide an accurate record of proceedings. They also represent a valuable means of creating a “corporate history of events” for auditors, regulators and stakeholders. They may vary in style from a virtually verbatim report to a Hansard-style edited report of proceedings. They need not describe every syllable, but they should be sufficiently detailed to provide evidence of debate, challenge, clear decision making and any objections.

The PRA and FCA will expect to find recorded evidence of challenge, objections and formal dissent, notwithstanding the unitary nature of boards in the UK. Primarily, minutes should always describe the formal resolution of material issues.

Along with their insurance executive colleagues, iNEDs should read draft minutes carefully, ensure that they understand and agree with the text and check them for accuracy. They should point out any inaccuracies to the board secretary and ensure that corrections are made, either before, or during, the meeting at which the minutes are ratified and signed by the chair.

Minutes should be produced in a timely fashion (which may be specified in the board’s terms of reference or those of the company secretarial function) and they remain in draft until officially agreed by the board, usually at the next or a subsequent board meeting. Along with the use of electronic media for circulating agendas and board packs, some boards record their meetings

using audio equipment as an aid to true and accurate reporting. Board minutes are usually discoverable if legal process is instigated, for any reason, against the company.

### **Board committees**

Insurance boards of directors need to delegate to the day-to-day management of a firm, and an effective way to do so is via committees or sub-committees of the board, whose role is to perform specific functions and report to the board verbally or in writing.

Each will need its own terms of reference, which, in the insurance industry are regarded as essential by the regulators. They require formal agendas and minutes so that their decisions and executive actions can be correctly recorded. In so doing, they create an audit trail of their activities which supports the lines of reporting and control that need to run through and across regulated companies in the insurance sector.

As in many aspects of management, the terms of reference of committees or sub-committees will need to be drawn up to suit the individual organisation. There is no prescribed format, although, typically, such TORs will cover the following items (although not necessarily in the order shown):

- Authority to act on behalf of the board
- Role of the particular committee
- Responsibilities
- Reporting protocols
- Membership (sometimes a combination of executive management and iNEDs; sometimes executives only or iNEDs only)
- Quorum
- Frequency and notice of meetings.

### **Typical committees of the board in the insurance industry**

These comprise committees of the following types, shown in alphabetical order, although their nomenclature may vary:

- Appointments & Nominations (often composed of a majority of iNEDs and representatives only of executive management and HR)
- Audit (normally composed of independent iNEDs only)
- Capital Management
- Company Secretarial and Legal (may not be a committee, but matters need to be reported to the board. Can be part of the Operations Committee)
- Compliance or Regulatory
- Conduct Risk (as Product Oversight below)
- Executive (normally composed of executives only)
- Finance
- Investment
- Operations
- Product Oversight (as Conduct Risk above)
- Remuneration (normally composed of iNEDs only)
- Reinsurance Security
- Reserving
- Risk Management or Risk and Capital
- Underwriting (sometimes Underwriting and Claims)

In practice, essential and common board committees tend to be Audit, Risk and Compliance (separately or together), Remuneration and an Executive Committee. Depending on the size and nature of the company, other committees may be convened on a regular basis to focus specifically on subjects usually covered by the essential committees, but in more depth and detail, for example reserving and investment.

## 4.3 What are the basic technical knowledge requirements?

### Technical knowledge

iNEDs do not need to be experts in every aspect of a company's affairs, but they do need to possess or develop an adequate working knowledge of the matters with which the board will be concerned. A representative list of technical insurance subject areas and reporting requirements for board committees of non-life insurers and Lloyd's managing agents is offered for illustrative purposes only. They also offer aspiring iNEDs a flavour of the subject matter.

### Underwriting Committee

- Monitoring performance:
  - Key ratios: loss ratios per class gross and net of reinsurance;
  - Combined ratios; and
  - Key performance indicators (KPIs) and triangulated statistics.
- Pricing and rate movements.
- Retentions, aggregates, line sizes.
- Business generation and retention: new risks, renewed risks, declined risks, lost risks.
- Market conditions.
- Key catastrophe exposures.
- Aggregates (gross and net of reinsurance) / associated proprietary models.
- Realistic disaster scenarios (RDS).
- Exceedence probability data.
- Innovation or new products in development.
- ESG considerations, especially climate change mitigation and the "green agenda".
- Insurtech products, services or access to customers.
- TCF (treating customers fairly) requirements and confirmation.
- Underwriting authorities.
- Sanctions.
- Claims reporting: large individual claims / attritional developments / catastrophe losses.
- Managing the tail and reserves.
- Market wide claims issues (e.g. pandemic losses).

Most of the foregoing topics will also form the basis of the underwriting report to the board either in their entirety or in conjunction with claims and/or actuarial reports.

### Reinsurance Committee

- Reinsurance in place (i.e. current programme).
- Security and aggregates.
- Brokers and intermediaries who place the reinsurances.

- Actuarial models.
- Claims recoveries and credit control.
- Wordings, exclusions and restrictions.

### Reserving Committee

- Methodologies and techniques.
- Reserving data (claims reserves, IBNR, past movements).
- Reporting formats, including Solvency II / GAAP / IFRS17 as appropriate.
- Internal models.

Life and pensions companies, managing general agents (MGAs), members agents' at Lloyd's, independent financial advisers (IFAs), mortgage brokers and all other types of authorised insurance entities will each operate with specialist technical knowledge with which their iNEDs should be familiar. Such organisations, especially the larger personal finance companies, will also operate in a structure that includes specific board committees.

### Insurance Act 2015

Members of all insurance boards should possess a working knowledge of the Insurance Act 2015 which embodied far-reaching reforms to previous UK legislation and the contractual relationships between policyholders and their insurers.

## 4.4 How should a board develop an appropriate culture and values?

### Culture and values

An important aspect of a board's role is to set "the tone from the top" with regard to the culture, ethics and values of the business. This duty is particularly important as both the PRA and the FCA will expect this form of leadership to reflect and be seen to determine the firm's conduct and regulatory behaviour.

This aspect of leadership will be reflected in several ways. Perhaps the first indicator will be the amount of time allocated to board discussion on customer focused issues such as products, compliance, complaints, claims, conflicts of interest and remuneration. The board must place the welfare of its customers at the heart of the firm's business.

This stance should be reflected in all its dealings, including reporting down through the business, so that operationally all staff mirror the same customer-centric attitude. Regulators accept that profitability is fine and desired as long as it is not at the expense of customers. The board's culture should reflect this principle as the base point and not pay lip-service to customers' interests merely as a façade for thinly disguised commercialism.

All insurance directors will not only be expected to follow this mantra but be seen to influence the board and the business so that the required stance is maintained. Certain iNEDs may hold SMF functions under SM&CR, but all will need to meet the regulatory "Fit & Proper" requirements and comply with all Conduct Rules.



The executive board members should be challenged by iNEDs in all associated areas of discussion to ensure that the focus on customers' welfare is never lost.

## **FCA's Principle for Business**

The FCA states that a firm must conduct its business with integrity, encompassing the following at focus on customers:

### **Business model and future strategy**

Whilst reflecting viable commercial activity, business models should also reflect customers' interests. As part of the on-going monitoring of implementation and fulfilment, the board should also satisfy itself that customers' interests are maintained.

### **Treating customers fairly (TCF)**

TCF is a main plank of customer focus and this concept should feature regularly within board debate. There should also be management information supplied either separately or within a compliance report to gauge the firm's on-going behaviour towards customers.

The required TCF outcomes are:

- Consumers can be confident that they are dealing with firms where the fair treatment of customers is central to the corporate culture;
- Products and services marketed and sold in the retail market are designed to meet the needs of identified consumer groups and are targeted accordingly;
- Consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale;
- Where consumers receive advice, the advice is suitable and takes account of their circumstances;
- Consumers are provided with products that perform as firms have led them to expect, and the associated service is of an acceptable standard and as they have been led to expect; and
- Consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim or make a complaint.

Where the firm does not have direct dealings with the ultimate retail customer, the regulator will expect the firm to be mindful of the intermediary chain. Prudent action should be taken to support the principle of TCF by passing on appropriate information such as product detail and explanations, particularly where it is perceived that the quality of the chain may be lacking in some respect. The firm will be expected to have an interest in customer facing issues such as contract certainty, complaints handling and conflicts of interest.

### **Consumer duty:**

This duty incorporates a central consumer principle that a business "must act to deliver good outcomes for the retail consumers of its products". Achieving good outcomes is intended to be a clear step up from treating customers fairly. A key focus of the FCA is to require insurance firms to concentrate on supporting and empowering their retail customers to make good financial decisions and to avoid foreseeable harm at every stage of the customer relationship.

iNEDs at board level, or in the context of board committees such as “Product Oversight”, should be aware that firms will have to provide consumers with information they can understand, offer products and service that are fit for purpose and provide helpful customer service.

### On the Web

FCA Consumer duty:

<https://www.fca.org.uk/news/press-releases/fca-introduce-new-consumer-duty-drive-fundamental-shift-industry-mindset>



## Conduct risk

As an example of the FCA’s increasing focus on conduct supervision in the insurance sector, proposals on conduct risk affecting policyholders were introduced at the beginning of 2015, which have been strengthened by the consumer duty requirements.

The FCA expects regulated entities to:

- Have a properly implemented customer-centric strategy;
- Develop a board-led culture which supports that strategy with good consumer outcomes;
- Create products that operate in the interests of customers, and use behavioural techniques to ensure that customers understand them; and
- Adopt a prospective view on the products that are sold, stress-testing and ensuring that products are appropriate for customers.

Boards will be held liable by the FCA to ensure that their organisations comply with the following types of conduct risk issues:

- Fair treatment of customers.
- Role of the board and staff in adopting an appropriate culture that is customer focussed.
- Creation of product oversight groups.
- Effective and proportionate product controls.
- Assessing and recording product risk.
- Product design: for both “general” and “high product” risks.
- Obtaining assurance from others.
- Product sales.
- Product service: general.
- Product service: handling and determining claims.
- Product service: complaints.
- Conduct management information.
- Product review.
- Distributor appointment, review and audit.
- Third party administrators (TPAs).
- Training.

## Conflicts of interest with customers

The FCA requires a firm to manage conflicts fairly, both between itself and customers and between a customer and another client.

Examples of conflicts that may have an impact upon customers are the firm’s remuneration policy whereby some staff may be incentivised on quantity and not quality. Additionally, intermediary

commission earnings may determine the product offered, or carrier used, rather than identifying and addressing the customer's genuine product needs.

## Remuneration structures

Remuneration structures should not encourage poor customer behaviours. The amount of commission earned should not override specific customer needs. Firms should not pursue premium turnover at the expense of customer satisfaction and service.

An insurance firm's Remuneration committee (frequently composed exclusively of iNEDs) should be mindful of such potential conflicts and put customer considerations at the heart of their thinking. Remuneration committees are increasingly involved in the sometimes "sensitive" task of working with major shareholders or institutional investors when it comes to agreeing levels of executive pay and allied packages. They may be required to "sell" packages to investors and in the publically quoted sector, in particular, may have to face criticism or adverse comment from the press for the decisions they support.

Remuneration committees should always be guided by fairness and proportionality in a spirit of openness. The views of regulators should always be acknowledged and care taken not to reward "failure". The correct financial relationship between senior staff and those at lower levels within insurance operations always needs to be addressed carefully.

Similarly, contractual obligations must be adhered to, along with the operation of appropriate bonus schemes that should only be seen to reward successful performance.

## Complaints

Complaints should be dealt with promptly and fairly. Lessons should be learned from the experience and other potential complaints that have yet to be discovered should be identified, considered and addressed.

## Delegated underwriting: binding authorities, line-slips or covers

Customer fairness must be considered at all times regardless of issues such as loss ratios, profitability, contingent earnings and whether an intermediary becomes an agent of the insurer when exercising such delegated authority and throughout each stage of the distribution chain.

## Control functions

The three designated control functions (compliance, risk management and internal audit) should all be reporting to the board at regular intervals. In particular, the firm's attitude towards customers and relevant controls should be robustly reflected within all these areas and their reports to the board.

## Operational resilience

Operational resilience is the ability of firms, financial market infrastructures and the financial sector as a whole to prevent, adapt and respond to, recover and learn from operational disruption.

Regulators are very concerned to ensure that any form of operational disruption is kept to a minimum in order to protect the interests of customers and markets.

Operational resilience represents an increasing focus of regulators in the UK. The FCA, in particular, expects boards in the authorised financial sector to be aware of, and responsible for, activities such as risk identification and assessment, risk mitigation (including the implementation of controls) and ongoing monitoring work to minimise operational disruptions and their effects.

#### On the Web

FCA Building operational resilience:

<https://www.fca.org.uk/publications/policy-statements/ps21-3-building-operational-resilience>



### Client money (as an intermediary)

There are very prescriptive rules for the protection of client money under the FCA's CASS5 section. CASS rules refer to the "Client Assets Sourcebook". Each firm must have a robust system of client money controls with designated individuals specifically responsible for the process. Such procedures and their nominated individuals fall within the SM&CR rules as a significant management function (SMF). Holding client money is a regulatory "Prescribed Responsibility".

#### On the Web

FCA Client money and assets:

<https://www.fca.org.uk/firms/client-money-assets>



### Learning summary

Aspiring or new iNEDs should now have a clear understanding of how boards of insurance entities should conduct themselves, extending to how they are organised and best practice corporate governance standards.

They should also recognise the types of knowledge and technical expertise expected alongside the principal duties of all directors in today's highly regulated insurance sector, with particular reference to customers' interests, consumer duty, corporate culture and operational resilience.

## 5. PROBLEMS

### 5.1 I have a problem. What should I do?

Insurance boards are rarely perfect and problems will surface from time to time. Issues such as: “they are not listening to me”; “key decisions are taken outside the boardroom”; “the chair is autocratic” or “the regulator is unhappy with us” are not uncommon.

Living up to the high standards required by regulators, or seeking to achieve some of the aspirational levels that boards set as their objectives, can be extremely demanding. Matters will not always run smoothly or as planned.

The answer to the question will depend upon the nature of the dissatisfaction or the problem and what may be termed its “seriousness”. Varying “grades of escalation” might be required, depending on the circumstance; e.g. from the iNED verbally airing grievances in the boardroom to taking legal advice.

The duties placed upon iNEDs are onerous, but quite specific, and a framework should exist to address problems when they arise.

#### Communication

The most obvious way to address an individual problem is to air it appropriately. After all, iNEDs are appointed for their ability to challenge and be robust, and they should not shy away from being critical of their colleagues if they feel that a genuine problem should be addressed.

There are specific channels that exist to facilitate such a dialogue. The chair should meet the CEO and iNEDs regularly to discuss board matters. iNEDs can also meet independently of executives to discuss company issues, including the behaviour and performance of fellow directors. In many companies, the designated senior independent director (SID) will be appointed to deal with problems that may arise in the conduct of a board. iNEDs should always have unfettered access to the chair. Recommendations as to how such matters may be resolved, and by whom, are contained in the UK Corporate Governance Code.

#### Annual board performance evaluation

Although they may be held too infrequently to address pressing problems, the annual exercise to evaluate the performance of a board may present an opportunity to be constructively critical and to suggest improvements that may be beneficial to the overall conduct of the board. A specific section assessing and commenting upon the abilities of the chair is a normal feature of such evaluations and may be particularly useful under certain circumstances.

#### Training and development

Allied to the annual performance review is the issue of ongoing training and development. It always makes sense to ensure that a board has all the appropriate qualities when it is formed and specific training, normally provided by external experts in this field, can reap benefits.

In addition, updating the board on its duties, responsibilities and competencies by way of CPD (continuing professional development) or specific training sessions at regular intervals may be a valuable way of ironing out any difficulties.

### Seeking advice within the terms of the iNED's service contract

More serious issues may form the subject matter of a need to consult a lawyer, accountant or auditor or some other type of specialist firm. Under the typical terms of an iNED's service contract, provision exists to seek independent professional advice at the company's expense in order to assist the iNED in the furtherance of his or her duty. Normally, a set of procedures covers such an eventuality that may require the iNED, for example, to give senior board colleagues prior notice of such an intention, to inform them of the name of the expert in question and to provide a summary of the issue under discussion. A financial cap on fees may also exist.

### Discussing or seeking advice from regulators or interested parties

Although it may be construed as akin to whistle-blowing, under very extreme circumstances (e.g. misfeasance or fraudulent behaviour that the company will not address) an iNED may seek advice from a regulator or a body such as the Corporation of Lloyd's. Such a move should never be taken lightly, and the consequences of such action should be considered very carefully. However, in extreme cases this type of behaviour might be appropriate.

### Regulatory issues

If regulators are dissatisfied following a visit or communication from the PRA or FCA as part of a themed review or a regular assessment, or if a matter for concern is brought to their attention, the regulatory body may require remedial action under Section 166 of the Financial Services and Markets Act (FSMA).

A Section 166 review and remedial action allows the regulators to appoint experts, at the regulated entity's expense, to correct any matters that cause the regulators concern. To quote the FCA, "a skilled person review is one of the regulatory tools the FCA can employ under FSMA as amended by the 2012 Act".

Historically, boards in the authorised sector have sought to avoid Section 166 reviews and their corrective action as they are regarded, publically, as a censure or black mark and may create some form of reputational damage. There are no options other than to work with the appointed expert in order to remedy the issues giving the regulator concern. If the company is shown to be non-compliant further, more serious penalties, or censures may ensue.

#### On the Web

FSA Section 166:

<https://www.fca.org.uk/about/supervision/skilled-persons-reviews>



PRA Supervision:

<https://www.bankofengland.co.uk/prudential-regulation/supervision>



## Resignation or dismissal

A final option is for an iNED to resign or to be dismissed. Under the former circumstances, written reasons may be required which could become a regulatory disclosure requirement.

On the other hand, if an iNED does not perform satisfactorily he or she may always be dismissed in accordance with their contract and its notice terms, or simply not be re-appointed when the contract term expires.

## 5.2 What are the penalties for non-compliance or failure?

The PRA has a variety of formal powers to take regulatory action under the Financial Services and Markets Act 2000 (FSMA, as amended by the 2012 Act) including:

- To vary a PRA-authorized person's permissions or to impose a requirement;
- To refuse to authorize a firm, approve an individual to carry out a Controlled Function, or to object to a change of control (or to approve it subject to conditions);
- To direct an unregulated parent undertaking;
- To investigate a matter under current regulatory rules; and
- To impose a penalty, a public censure, a suspension or restriction.

Equally, the FCA has the power to impose suspensions or restrictions and the power to impose penalties or public censures. In very extreme circumstances, removal of an authority to conduct business means that the business will be closed down with ensuing and collateral damage to all stakeholders, including shareholders and staff and, possibly, customers unless some form of "life-boat" is launched to protect customers' interests.

Policyholders may be protected by the Financial Services Compensation Scheme (FSCS), which is the compensation fund of last resort for customers of authorized financial services firms that fail. Such matters are clearly to be avoided if at all possible, given that they carry implied severe reputational damage for any iNED that sits upon a board of an insurance entity that is censured or has sanctions imposed upon it by any regulatory body.

Enforcement can, again, take the form of a Section 166 review. Whilst that would not necessarily constitute a penalty, sanction or public censure, it may reflect less than well upon a board of directors or be perceived as some form of management failure. Section 166 reviews can also be very expensive, given the nature of the experts who are appointed. Such reviews should redress the inadequacies, normally by way of some form of risk mitigation and subsequent improvement in performance, procedure or protocol.

## 5.3 What help can an iNED obtain?

iNEDs may, under the terms of their service contract, formally request or seek advice from a lawyer, accountant or auditor or some other type of specialist firm, including a management consultant.

Some form of change management or risk mitigation programme may be required which, by definition, companies may have to undertake by reference to, or with assistance from, an external source. INEDs can often be a valuable resource in suggesting such types of assistance, or recommending particular firms of experts, based upon their previous managerial experience.

There is of course, no substitute for “getting it right from the start” and induction training or high quality board performance education for new companies is essential. For existing organisations, regular competence reviews of Controlled Functions and professional development sessions for all directors can add value.

## Dealing with UK regulators

The PRA advances its objectives using two key tools: firstly, through regulation, it sets standards or policies that it expects firms to meet. Secondly, through supervision, it assesses the risks that firms pose to the PRA’s objectives and, where necessary, takes action to reduce them. The PRA’s approach to regulation and supervision has the following characteristics:

- A judgement-based approach: The PRA uses judgement in determining whether financial firms are safe and sound, whether insurers provide appropriate protection for policyholders and whether firms continue to meet their “threshold conditions”.
- A forward-looking approach: The PRA assesses firms not just against current risks, but also against those that could plausibly arise in the future. Where the PRA judges it necessary to intervene, it generally aims to do so at an early stage.
- A focused approach: The PRA focuses on those issues and those firms that pose the greatest risk to the stability of the UK financial system and policyholders. The PRA approach to supervision does not seek to operate a “zero-failure” regime. Rather, the PRA seeks to ensure that a financial firm which fails does so in a way that avoids significant disruption to the supply of critical financial services.

Similarly, the FCA’s objectives indicate that they want consumers to use financial services with confidence and have products made available to them that meet their needs, provided by firms and individuals they can trust. To achieve this objective, the FCA regulates firms and financial advisers so that markets and financial systems remain sound, stable and resilient.

The FCA’s overriding aim is to help firms put the interests of their customers and the integrity of the market at the core of what they do, and they encourage transparent pricing that is easy for everyone to understand. Recent experience during the Coronavirus pandemic would suggest that the FCA is as much focussed on the issue of fairness to the consumer as it is on a strictly legal interpretation of insurance policy documents.

### On the Web



PRA Prudential Regulation:

<https://www.bankofengland.co.uk/prudential-regulation>

FCA “About us”:

<https://www.fca.org.uk/about>



At the heart of the relationship between an authorised firm and the regulators is their assertion that: “A firm must deal with its regulators in an open and cooperative way, and must disclose to the regulator appropriately anything relating to the firm of which that regulator would reasonably expect notice”. In addition, through the compliance function, or by other appropriate means,



companies are well advised to establish a regular and constructive dialogue with their nominated supervisor in their main regulatory body (e.g. the PRA, FCA or Lloyd's, where appropriate).

Under the current regulatory regime for insurance, both the PRA and FCA have become much more actively focused on the role and responsibility of iNEDs who may routinely be asked to perform, for example, the following types of task:

- Leading remedial action, if required, following some form of regulatory review;
- Justifying the range and relevance of management information (MI) received; and
- Attending one-on-one interviews with the regulators.

The PRA is on record in asserting that it: “Welcomes feedback from, and liaison with, insurance NEDs who provide an unvarnished view of compliance and regulatory conduct not filtered by executives.”

By working closely and positively with the grain of regulation, companies in the authorised sector can not only avoid or anticipate potential problems, but they can benefit from being attuned to and emulating regulatory best practice. Appropriate reporting to an insurance board by those responsible for compliance can assist the iNEDs by helping them become better attuned to regulatory issues. Such a procedure may be construed as a form of “self-help” for an iNED, whose guiding principle should always be to act in a commercial manner, but also in a controlled, compliant and prudent way.

### Learning Summary

Aspiring or new iNEDs should now have a clear understanding of what to expect if problems arise, along with their remedies. They will also have been introduced to the various types of wide-ranging penalties that they might incur if they are not compliant when they serve as iNEDs on the boards of regulated insurance entities.

## CONCLUDING OBSERVATIONS

All financial services in the UK, especially insurance with its wide-ranging types of risk transfer organisations (stock companies, mutuals and Lloyd's syndicates) or intermediary operations are regulated by the PRA and the FCA. All iNEDs who serve on insurance boards fall within the scope of their increasingly demanding and detailed regulations.

As indicated in the introductory section, few facilities exist, in one place, to offer potential iNEDs the opportunity to learn about the numerous regulations, rule-books, codes of corporate governance and recognised best practice with which iNEDs are expected to be familiar and against which they will be judged.

The purpose of the iNED Primer is to bring these key demanding features together to help those to whom it is specifically addressed: aspiring or new iNEDs.

An additional key objective is to assist all iNEDs to perform their non-executive directorial duties to the best of their abilities.

The interrogatory format is designed to answer the type of questions that all those who are considering becoming iNEDs should ask themselves, with an emphasis on issues of a practical nature. The iNED Primer may also, therefore, appeal to more seasoned iNEDs by way of a refresher or as an aid to reflection, or simply as a matter of interest. Alternatively, it might just reinforce or question observations based on the iNED's own experience.

In serving on insurance boards, iNEDs are acting on behalf of shareholders alongside a wide range of stakeholders, ideally within a well-structured corporate governance framework that is compliant with regulations, customer focussed and commercially successful. For all iNEDs, rising to that challenge, along with its attendant responsibilities and duties, represents an increasingly important and demanding, but potentially highly satisfying and rewarding, balancing act.

# ACKNOWLEDGEMENTS

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## On the Web

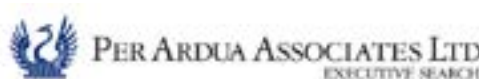


Grant Thornton UK LLP:

<https://www.grantthornton.co.uk/>

Per Ardua Associates Limited:

<https://www.per-ardua.com/>



Members of the iNED Committee have reviewed and contributed materially to the updated and reformatted iNED Primer, in particular, its current Chair, Tim Carroll, and member, Heather Thomas.

On behalf of The Worshipful Company of Insurers, the author has accessed information in the public domain from the websites of the Prudential Regulation Authority (PRA), the Financial Conduct Authority (FCA), the Financial Reporting Council (FRC), the Institute of Directors (IOD), the Information Commissioner's Office (ICO), the Competition Markets Authority (CMA), the Chartered Insurance Institute (CII), the Chartered Institute of Personnel and Development (CIPD), the Corporation of Lloyd's and the UK Government.

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<https://www.wci.org.uk>

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# APPENDICES

## Generic Role of the iNED



### 1. Purpose of the role

- iNEDs owe the same legal responsibilities to the company as any other director. The board as a whole is collectively responsible for promoting the success of the company by directing the company's affairs. As members of the board, all directors are required to:
- Provide entrepreneurial leadership of the company within a framework of prudent and effective controls which enable risk to be assessed and managed;
- Set the company's strategic aims, ensure that the necessary financial and human resources are in place for the company to meet its objectives, and review management performance; and
- Set the company's values and standards and ensure that its obligations to its shareholders and others are understood and met.
- An iNED is required to bring independence and objectivity to the board. Specifically, an iNED will not have any operational responsibilities but will use their expertise and experience to:
- Contribute to the development of strategy;
- Constructively challenge executive management and question recommendations to satisfy themselves that appropriate due diligence has been undertaken;
- Participate in the decision-making process of the board; and
- Monitor the performance of management to ensure that the company delivers its strategic plan.

An iNED may be asked to serve on one or more of the board committees to provide oversight of specialist activities. If appointed to a board committee, iNEDs should be advised of the committee terms of reference, and any specific additional responsibilities involved.

### 2. Key accountabilities

- The role of the iNED has the following key elements:
- Strategy: iNEDs should constructively challenge and help develop proposals on strategy.
- Performance: iNEDs should scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance.
- Risk: iNEDs should satisfy themselves on the integrity of financial information and that financial controls and systems of risk management are robust and defensible.
- People: iNEDs are responsible for determining appropriate levels of remuneration of executive directors, and have a prime role in appointing, and where necessary removing, executive directors and in succession planning.
- In order to fulfil their role, iNEDs should:
- Meet as a group from time to time without executive directors being present;
- Meet as a group at least once a year without the chair being present to consider the chair's performance, such meeting to be chaired by the senior independent director (SID);
- Seek to understand the views of major investors both directly and through the chair and the SID; and
- Be entitled to seek independent professional advice, at the company's expense, in the furtherance of their duties.

### 3. Time commitment

All directors must be able to allocate sufficient time to the company to perform their responsibilities effectively. iNEDs should be required to:

- Undertake that they will be able to allocate sufficient time to meet the expectations of the role, as set out in their letter of appointment, or as agreed from time to time;
- Disclose their other significant commitments to the board before appointment, with a broad indication of the time involved;
- Inform the board of any subsequent changes.
- An iNED should seek the agreement of the board, via the chair, before accepting additional commitments that might either:
  - Impact the time that he or she has available to devote to their duties as an iNED, or
  - Give rise to an actual or potential conflict of interest.

### 4. Independence

A wholly independent iNED (as distinct from group or aligned iNEDs) must be, and remain, independent. Factors that will be taken into account in determining independence are: the nature of any relationships - including previous business relationships - and/or circumstances which are likely to affect, or could appear to affect, the iNED's judgement; cross directorships and/or significant links with other directors or businesses and any significant shareholdings in other companies. Another consideration is the character of the iNED, including whether the iNED is demonstrably independent in their outlook and views.

## Duties of the Senior Independent Director (SID)

The board will appoint one of the independent non-executive directors to be the senior independent director (SID), to provide a sounding board for the chair and to serve as an intermediary for the other directors where necessary.

The SID, in common with all non-executive directors, has the same general legal responsibilities to the Company as any other director. The board as a whole is collectively responsible for promoting the success of the company by directing the Company's affairs.

In addition, the SID will have the following duties:

### 1. Duties relating to shareholders

Be available to shareholders if they have concerns which contact through the normal channels of chair or CEO has failed to resolve or for which such contact is inappropriate.

### 2. Duties relating to the chair

- Act as a sounding board for the chair and CEO on board and shareholder matters and serve as an intermediary for the other directors and, if necessary, shareholders.
- Chair the Nominations Committee when it is considering succession to the role of chair of the board.
- Be a conduit, as required, for other directors, as and when necessary, and take the initiative in discussion with the chair, or other board members, if it should seem that the board is not functioning effectively.
- Conduct the chair's annual performance appraisal and lead a discussion with the other non-executive directors at least once a year to appraise the chair's performance and on such other occasions as are deemed appropriate.
- Consider the initial fee proposals for the chair for the board to consider and approve.
- Be the focal point for board members for any concerns regarding the chair or the relationship between the chair and the CEO.

### 3. Duties relating to the board

- Act as a trusted intermediary for non-executive directors where this is required to help them to challenge and contribute effectively.
- Take the initiative in discussion with the chair or other board members if it should seem that the board is not functioning effectively.

*These duties are based upon those defined by a major global reinsurance company for its subsidiary managing agent in the Lloyd's market.*



**iNED**

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