AIDA Questionnaire on the Corporate Governance of Insurers
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I. General

1. **In your jurisdiction, what corporate governance models are available to insurance companies? In case multiple models are available, describe the main differences and the allocation of management and monitoring powers among the relevant bodies/committees and which model is generally or ideally adopted by insurance companies.**

Broadly speaking, there is in practice little choice of corporate governance model available to UK insurers.

(a) The Companies Act 2006 reserves some matters to the shareholders, eg changes to the company's articles of association, share issues, schemes of arrangement, winding–up etc. but most matters are left by the Act to be determined by the company's articles of association.

However:

(b) For companies with Premium Listing on the London Stock Exchange (LSE) the UK Corporate Governance Code, made by the Financial Reporting Council (FRC) under delegated statutory powers, is applicable on a "comply or explain" basis, setting out standards of good practice in relation to board leadership and effectiveness, remuneration, accountability and shareholder relations. It states[1] that "[e]very company should be headed by an effective board which is collectively responsible for the success of the company". This is to include setting the company's strategic aims, ensuring that the necessary financial and human resources are in place and reviewing management performance; and setting the company's values and standards and ensuring that obligations to shareholders and others are understood and met.[2] Under the Code at least half the board members are to be independent non-executive directors.

(c) As regards insurers, rules made by the Prudential Regulation Authority (PRA) (currently the Bank of England) and rules and guidance made by the Financial Conduct Authority (FCA) under the Financial Services and Markets Act 2000 (FSMA) require insurers to maintain effective systems of governance and risk management. Insurers need to be authorised under FSMA by the PRA but they are also "dual regulated" by both the PRA and the FCA: the PRA has as its objectives the safety and soundness of PRA-authorised persons and an appropriate degree of

[1] CGC Main Principles, Section A, https://www.frc.org.uk/directors/corporate-governance-and-stewardship/uk-corporate-governance-code

[2] Ibid., A.1

protection for those who are or may become policyholders; and the FCA has as its objectives ensuring that the financial markets and markets for regulated financial services (including insurance) function well, securing an appropriate degree of protection for consumers, protecting and enhancing the integrity of the UK financial system, and promoting effective competition in the interests of consumers. For insurers covered by the EU Solvency II Directive[3] ("UK Solvency II firms") there are detailed rules designed to ensure a common approach within the EEA to how insurers are expected to manage, and supervisors to supervise, insurance businesses. These rules include Directive requirements on effective governance (including fit and proper persons) and risk management systems,[4] transposed into rules made by the UK regulators under FSMA (with very detailed guidance from EIOPA), and detailed directly applicable provisions of the EU Commission Delegated Regulation EU 2015/35. Rules made by the UK regulators for other insurers ("large non-directive insurers" and "small insurers") are less detailed and exigent.

(d) Furthermore, for UK Solvency II firms and large non-directive insurers the PRA has also made rules (the Senior Insurance Managers Regime, or SIMR) requiring its prior approval[5] of the appointment of individuals to specified "senior insurance management functions". FCA prior approval is also required for appointment to similar "significant influence functions", which is automatic where they correspond directly to a senior insurance management function for which the candidate has been approved by the PRA. Insurers are required to identify what they consider to be the "key functions" within the firm[6] (some of which are specified by the PRA)[7] and must allocate to an individual approved by the PRA to exercise a "senior insurance management function"[8] each of certain specified management responsibilities,[9] including the responsibility for ensuring that persons exercising key functions are fit and proper to do so. An insurer must maintain a "governance map" listing all the key functions identified, the persons who effectively run the insurer or are responsible for other key functions, summarising the significant responsibilities (including any of the prescribed responsibilities) allocated to each such person, showing the reporting lines and lines of responsibility, and showing how the insurer's management and reporting lines fit together with those of any corporate group of which it is a member.[10] The SIMR is in December 2018 to be renamed the Senior Management and Certification Regime (SM&CR) and intensified and expanded in scope so as to accord more closely with the more

[3] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance.
[4] Directive articles 41-50
[5] Under FSMA s.59
[6] PRA Rulebook SII firms: Insurance - Allocation of Responsibilities, rule 4.1
[7] PRA Rulebook: Glossary. These are the risk management, compliance, internal audit and actuarial functions, the function of effectively running the firm and any other function which is of specific importance to the sound and prudent management of the firm.
[8] Or by the FCA to exercise a relevant significant influence function.
[9] PRA Rulebook SII firms: Insurance - Allocation of Responsibilities, rule 3.1
[10] PRA Rulebook SII firms: Insurance – Allocation of Responsibilities, rule 5.1

stringent regime for authorized banks.[11]

(e) As regards corporate groups the PRA can under FSMA object[12] to the acquisition or increase in control (as defined) of a UK authorized insurer or impose conditions.[13] The PRA can also give a direction to the parent undertaking of a UK authorized insurer if the parent is incorporated in or has a place of business in the UK.[14]

2. **What are the main sources of regulation addressing corporate governance of companies (and in particular of insurance companies)? *e.g.*, statutes, regulations, other rules/recommendations issued by national and supranational supervisors/regulators, self-regulation, codes of best practice, codes of ethics.**

The main sources are: the Companies Act 2006; the EU Solvency II regime (including EIOPA guidance[15] applicable to EEA member states on a "comply or explain" basis) as transposed into UK legislation, primarily under FSMA, or directly applicable as EU "delegated acts";[16] the governance and risk management rules made by the PRA and FCA for Non-Solvency II insurers; the SIMR and SM&CR of the PRA and FCA described in 1 above; the PRA supervisory statement SS 5/16 *Corporate governance: Board responsibilities*;[17] and the FRC's UK Corporate Governance Code,[18] the April 2016 version of which applies to accounting periods beginning on or after 17 June 2016. The FRC has also issued "Guidance on Risk Management, Internal Control and Related Financial and Business Reporting".[19] The UK insurers' trade body, the Association of British Insurers (ABI) has issued a report *Improving corporate governance and shareholder engagement* (July 2013).

3. **In your jurisdiction, are you aware of any insolvency or distress of an insurer directly attributable to poor corporate governance standards or practices or failure to adequately implement and apply such principles? If so, please identify the main triggers of the insolvency.**

(a) The Equitable Life Assurance Society was closed to new business in December

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[11] Consultation Paper | CP14/17 *Strengthening individual accountability in insurance: extension of Senior Managers & Certification Regime to insurers* https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation- *paper/2017/cp1417.pdf?la=en&hash=73F2C442B0EAF0BDACB9974BB2BB2074AA4D0483*
[12] FSMA s.191A
[13] ibid. s.187
[14] ibid. s.192C
[15] EIOPA Guidelines on system of governance, EIOPA-BoS-14-253
[16] Delegated Regulation 2015/35
[17] https://www.bankofengland.co.uk/prudential-regulation/publication/2016/corporate-governance-board-responsibilities-ss
[18] https://www.frc.org.uk/directors/corporate-governance-and-stewardship/uk-corporate-governance-code
[19] https://www.frc.org.uk/getattachment/d672c107-b1fb-4051-84b0-f5b83a1b93f6/Guidance-on-Risk-Management-Internal-Control-and-Related-Reporting.pdf

2001. A high proportion of its with-profits policyholders had guaranteed annuity rates (GAR) on the maturity of their policies, regardless of the prevailing market rate at that date. The guarantees were written at a time of high nominal interest rates. The company had a policy of annual distribution of "full and fair distribution of each year's investment returns" and so was left at a time of declining investment returns with insufficient free assets to meet the GAR liabilities. As a mutual it was restricted in raising additional capital. Its attempt to reduce the terminal bonuses to those members with GARs was defeated in court, resulting in near breach of the minimum solvency ratio and unsuccessful attempts to sell the business. The Penrose report,[20] commissioned in August 2001 by HM Treasury (at that time the insurance regulator), found that the insurer had paid out over-generous bonuses and that "critical responsibilities for valuing liabilities, assessing the liability implications of new products and identifying and monitoring risk were discharged by a discrete part of the organization that was not subject to scrutiny or challenge". The board's information was too fragmented, their collective skills were inadequate to the task, and there were no effective arrangements for ensuring detailed examination of, and reporting to the board of, actuary's reports.[21]

(b) The Independent Insurance Company Ltd, a general insurer, failed in 2001. Founded in 1987 it grew very quickly and failed because of expansion into riskier commercial lines, and fraud which concealed poor underwriting results from fellow directors, professional advisers and investors. A first and final dividend of 14.47% was announced in April 2017. The chairman and two other directors were imprisoned in 2007 for periods ranging from three to seven years.

4. In your jurisdiction, is corporate governance regulation applied according to the nature, scale and complexity of an insurer's business? If yes, please describe any significant differences and rationale for the differences.

The PRA Rulebook distinguishes between "Solvency II firms" and "Non-Solvency II firms" (either "large non-directive insurers" or "small non-directive insurers") which have separate sections of the rulebook. All three categories are subject to the "threshold conditions" for authorisation and the "fundamental rules". The specific governance and fitness and propriety requirements are more detailed and demanding the larger the insurer – the rationale is that it would be disproportionate to apply to apply to small insurers or friendly societies the full extent of the Solvency II regime. For example, although small non-directive insurers are required to establish and maintain adequate internal controls, to have in place an adequate risk management system, to have an effective internal audit function, they do not, unlike large non-directive firms, have to maintain written policies in respect of them, subject to the prior approval of the governing body, and approved annually.

[20] HC 290 2004, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235298/0290.pdf

[21] Penrose Report ch 20, para 50.

5. **Please provide specific examples of corporate governance structures and practices that are better implemented through self-regulation rather than through legal or supervisory requirements.**

   Executive remuneration may be a matter better dealt with by self-regulation (as well as adequate disclosure in corporate accounts). This is a matter of opinion, which varies. Solvency II[22] requires deferral for a period of not less than three years of a substantial proportion of any "variable remuneration component" for "Solvency II staff",ie "persons who effectively run the undertaking or have other key functions and other categories of staff whose professional activities have a material impact on the undertaking's risk profile".

6. **In case your jurisdiction was recently requested to implement domestically certain corporate governance principles set forth by supranational regulations, describe the main obstacles and problems (if any) that resulted from such process.**

   The Solvency II corporate governance principles applying in the UK were derived from the ICAS (individual capital adequacy standards) regime previously applicable in the UK, which "gold-plated" the EC "Solvency I" regime first established in the 1970s and subsequently developed. The problems in implementing Solvency II in the UK lay rather in the capital assessment and the reporting requirements, widely regarded as unduly onerous. Industry criticisms of Solvency II have not been concerned with governance requirements.

7. **Are there any significant differences between general corporate governance rules and the specific rules governing insurance companies?**

   See the detailed replies to question 1 above. A significant feature of the Solvency II governance regime is the requirement on each insurer to conduct regularly, and without delay after any significant change in the insurer's risk profile, an own risk and solvency assessment (ORSA). This is to be made an integral part of the insurer's business strategy and is taken into account on an ongoing basis in its strategic decisions.[23]

II. Fitness and Propriety of Board Directors

[22] Solvency II Regulation, arts 275(1)(c), (2); PRA Supervisory Statement | SS10/16 Solvency II: Remuneration Requirements, August 2016

[23] PRA Rulebook S II Firms: Conditions Governing Business - Risk Management, rules 3.8-3.10

1. **Are there any laws or regulations already adopted or any proposals in your jurisdiction, relating to the qualification and composition of board directors in an insurance company? If so, please explain.**

These matters are primarily governed by the fitness and propriety requirements transposed into the PRA Rulebook from the Solvency II Directive and elaborated by the senior insurance managers (SIMR) regime adapted from banking legislation (see I.1 (c) and (d) above).

2. **In your opinion, what factors, conditions, or incentives might weaken the independence of the board of directors or individual members of the board?**

The absence of proper management information, including audited financial information, and of an independent remuneration committee. The personal dominance of a powerful chairman or CEO.

3. **How does an insurance company ensure that individual board members and the board collectively have enough knowledge to monitor and oversee the activities of the insurer appropriately, particularly where specific expertise is needed?**

The board, and in particular the nominations committee, needs to have a sufficient mixture of skills and experience to enable it to do so. The experience of the non-executives will be crucial. The necessary mix will change according to the circumstances. The input of the PRA in approving/assessing the individual directors and senior managers is valuable.

4. **Are there significant differences in terms of requirements and duties between executive and non-executive members of the board of directors of an insurer?**

The UK Corporate Governance Code states[24] that at least half of the board members, excluding the chairman, should be non-executive directors ("NEDs") determined by the board to be independent[25] from management. NEDs, together with the executive directors, set the company's strategy and supervise its implementation, but they monitor the performance of the executive directors and only NEDs should be members of the remuneration and audit committees and should be a majority of the nomination committee. They should have access to outside professional advice and to internal information from the company. The PRA expects NEDs to engage with executive management to test the robustness and prudence of the assumptions in the business plan and strategic initiatives, the

[24] B.1.2

[25] In accordance with the criteria specified in B.1.1

adequacy and integrity of controls, and the consistency of implementation of the board's decisions; and to be ready to have an open exchange of views with the PRA on the performance of the management.[26] The chairman, senior independent director and the chairmen of the audit, remuneration and risk committees have to be pre-approved by the PRA; and the chairman of the nomination committee by the FCA. Other NEDs are assessed by the insurer and the regulators for their fitness and propriety.

5. **In your jurisdiction are there any black letter rules or general principles that enable directors to rely upon external opinions when addressing issues or aspects where specific expertise in needed?**

There is no statutory rule but where directors reasonably rely on experts such as lawyers they may defeat claims for breach of duty of care under s.174 of the Companies Act 2006.[27]

6. **Describe the extent and scope of supervisors'/regulators' intervention with reference to the qualifications and to the activities of the board of an insurer.**

Under the new PRA Senior Insurance Managers Regime individuals have to be approved by the PRA to perform "key functions"[28] that are specified by the PRA as "senior insurance management functions" (SIMFs), not all of which are necessarily executive directorships.[29] They must be assessed for fitness and propriety,[30] and specific "SIMR prescribed responsibilities" are allocated to them.[31] An insurer must ensure on a continuing basis that all persons who perform key functions, whether or not senior insurance management functions, are at all times fit and proper.[32]

Moreover, the extension[33] in December 2018 to "large firm" insurers of the current "certification regime" for banks will require that no "key function holders" (who are not senior insurance managers or NEDs) or other employees whose involvement in aspects of the affairs of the insurer relating to a regulated activity of the insurer might involve a risk of significant harm to the insurer or to one of its customers (a "significant harm function") should be permitted to perform their functions unless issued by the insurer concerned with a certificate on an annual

[26] PRA, March 2016: *The Prudential Regulation Authority's approach to insurance supervision.* Paras 91, 92, 94 *https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/approach/insurance-approach-2016.pdf?la=en&hash=0A45EA5347C60D2204C4140BDF7E786EEED42229*
[27] See *Green* v *Walkling* [2007] EWHC 3251 Ch.
[28] See I.1.(d) above.
[29] PRA Rulebook SII Firms: Insurance –Senior Insurance Management Functions, rules 2-10
[30] Ibid., Insurance – Fitness and Propriety
[31] Ibid., Insurance – Allocation of Responsibilities
[32] Ibid., Insurance – Fitness and Propriety
[33] Under FSMA s.63F

basis that they are fit and proper to do so.

Each key function holder must also have a ‘scope of responsibilities’’ statement (to be renamed ‘statement of responsibilities’ in December 2018 to bring it into line with the terminology in FSMA) which is a short document that sets out the detail of the individual’s responsibilities in the organisation. Insurers must also produce ‘governance maps’ (to be renamed ‘management responsibilities maps’) which set out their governance structures in terms of roles and responsibilities and this will show how key functions are arranged in the organisation with lines of responsibility and reporting.

The PRA has imposed “conduct standards” (with disciplinary sanctions for breach) directly on individuals approved to perform senior insurance management functions and on insurers’ NEDs, and insurers are required to impose the standards on others performing key functions.[34] These require that all persons performing a key function must act with ‘integrity’, and ‘due skill, care and diligence’ and are ‘open and cooperative’ in their dealings with the regulator(s). The FCA ‘conduct rules’ are similar to the PRA conduct standards but also include a requirement to ‘pay due regard to the interests of customers and treat them fairly’ and to ‘observe proper standards of market conduct’. Both the FCA and PRA have additional conduct standards/for key function holders. In December 2018 the enforceable conduct rules will be extended in scope as regards both employees and activities covered. Insurers will also be required to notify the regulators where they take any disciplinary action against an individual relating to breach of a conduct rule or of the opinion that there are grounds on which the regulator’s approval of an individual could be withdrawn.

Furthermore, a ‘duty of responsibility’ has been established by amendment of FSMA,[35] extending the grounds of misconduct to enable the PRA and FCA to take disciplinary action where a person has at any time been a senior manager, the firm has contravened a regulatory requirement in relation to any of the firm’s affairs which the individual was responsible for managing and the individual did not take such steps as could reasonably be expected to prevent such contravention occurring.

7. Are there any special rules and regimes applicable to the governance of subsidiaries belonging to an insurance group, also in terms of information flows?

The EU Solvency II Directive[36] (transposed into the PRA rulebook[37]) provides for supervision both at solo and at group level where an insurer is part of a group. The system of governance requirements for individual insurers also apply *mutatis mutandis* at group level.[38] Group supervision is the more important. Although the group insurance holding or participating company has to set appropriate internal

[34] PRA Rulebook SII Firms: Insurance – Conduct Standards
[35] FSMA s.66B(5)
[36] Solvency II Directive, article 213
[37] PRA Rulebook SII Firms: Group Supervision
[38] Ibid. article 246

governance requirements across the group this is not to impair the responsibilities of the board of each insurer within the group.[39] The group internal control system is to include at least adequate group solvency mechanisms to identify and measure all material risks incurred and to relate eligible own funds appropriately to them, and sound reporting and accounting measures to monitor intra-group transactions and risk concentration. The EIOPA guidelines (reflected in the PRA rulebook) require the group risk management system to include: strategic risk management decisions and policies at group level; definition of the group's risk appetite; the identification, measurement, management and monitoring of risks at group level.[40] Core key functions have to be established at group as well as solo level and ORSAs (see I.1.7 above) maintained at group and solo level. The group insurance holding or participating company must have in place adequate reporting lines within the group and effective systems for insuring information flows within the group upwards and downwards.[41]

III. Risk Management

1. **In your opinion, what is the biggest risk challenge (e.g. regulation, capital standard, pricing, interest rate, cyber, terrorism, etc.) facing the insurance industry today in your jurisdiction?**

   The uncertain outcome of Brexit negotiations.

2. **What specific laws or regulations, actual or pending in your jurisdiction, will present significant implementation risk challenge toward the insurance industry?**

   Loss of EEA passporting rights for insurers, ie the current entitlement to establish branches in other EEA member states and to conduct cross-border business, including the payment of claims on existing policies.

IV. Ethics and Corporate Social Responsibility

1. **Please provide any concrete examples where business ethical standards and/or corporate social responsibility standards have been applied and have changed the behaviors of the insurance company.**

[39] EIOPA Guidelines on system of governance, guideline 65
[40] ibid, guideline 17.,
[41] Ibid, guideline 66

The Association of British Insurers (ABI) and 29 of its members are signatories of the Women and Finance Charter[42] with targets to support the representation of women in management. The ABI's Future Leaders programme provides a development opportunity for up and coming leaders and ensures there is a good gender balance among intake.[43]

2. **In your jurisdiction, are there any specific laws or regulations already adopted or any proposals, or any arrangements in place in the governance system, relating to the protection of policyholders' and/or financial consumers' interests?**

The statutory objectives of the Financial Conduct Authority, the UK conduct supervisor, include securing an appropriate degree of protection for consumers and promoting effective competition in the interests of consumers.[44] The FCA Handbook's Conduct of Business Sourcebook (COBS), for investment business and life insurance, and Insurance: Conduct of Business Sourcebook (ICOBS), for non-life insurance, are largely devoted to business standards and apply both to insurers and intermediaries. They contain rules enforceable ultimately by disciplinary sanctions. These handbooks transpose into UK legislation EU Directives governing

(a) investment intermediaries and their provisionof services to clients concerning financial instruments – MiFID,[45] with effect from November 2007, and, with effect from 1 January 2018, MiFID II;[46] and

b) the sale of non-investment insurance products other than "large risks" and reinsurance – IMD, Insurance Mediation Directive,[47] from 15 January 2005, already heavily "gold plated" on implementation by the UK and to be replaced by the more stringent IDD, Insurance Distribution Directive,[48] applicable both to intermediaries and to insurers selling insurance directly, with effect from 1 October 2018.

In addition to the promulgation and enforcement of such specific rules and guidance the FCA has relied on its principle 6 of its Principles for Businesses – "A firm must pay due regard to the interests of its customers and treat them fairly" and, more recently, on requiring firms supervised by it to assess the risk that their

[42] https://www.abi.org.uk/about-the-abi/abi-diversity-hub/women-in-finance-charter/
[43] https://www.abi.org.uk/about-the-abi/abi-diversity-hub/future-leaders/
[44] FSMA ss.1(3)(a),(c); 1C; 1E.
[45] Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments
[46] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments; together with the directly applicable Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012
[47] Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation
[48] Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast)

conduct might result in the unfair treatment of customers “conduct risk”, a forward-looking approach.

The PRA has as one of its statutory objectives the “insurance objective”: “contributing to the securing of an appropriate degree of protection for those who are or may become policyholders”.[49] The prudential rules for insurers are designed to achieve that end, as well as the “general objective”: “promoting the safety and soundness of PRA-authorised persons”.[50]

The Financial Services Compensation Scheme administers a policyholder protection scheme in accordance with rules made by the PRA under FSMA.[51] The scheme is funded by authorized insurers and, where an authorized insurer is in “financial difficulty” and in default under a policy, may pay compensation to “eligible claimants” (who do not, except in the case of compulsory insurances, include bodies corporate or partnerships other than small businesses) or secure the continuation of long-term contracts of insurance.

3. **In your jurisdiction, is an insurance company required to produce an annual Corporate Social Responsibility (CSR) report or a Global Sustainability Initiative (GSI) report? If so, what context needed to be disclosed in these reports?**

The directors of a UK registered company, other than an exempt small company, are required by the UK Companies Act 2006 annually to prepare a “strategic report” for the financial year,[52] and if appropriate a “group strategic report”, and to circulate it to shareholders, debentureholders and certain others, to file it with the companies registrar, and in the case of quoted companies to publish it on the company website. An authorized insurance company must,[53] subject to certain exemptions, include in that report a non-financial statement containing information, to the extent necessary for an understanding of the company’s development, performance and position and the impact of its activity, relating to, as a minimum: (a) environmental matters (including the impact of the company’s business on the environment), (b) the company’s employees, (c) social matters, (d) respect for human rights, and (e) anti-corruption and anti-bribery matters.[54] Further, large companies are required to disclose in their annual accounts and reports information about the employment and training of disabled people, information about “employee involvement” in the company, ie provision of information and participation in employee share schemes, and companies whose shares are admitted to trading on a recognized market in the EU are required to disclose their greenhouse gas emissions.[55]

[49] FSMA s.2C(2)
[50] Ibid. s. 2B(2)
[51] PRA Rulebook S II Firms: Policyholder Protection; Non-S II Firms: Policyholder Protection.
,[52] Companies Act 2006, ss.414A-414D
[53] Ibid. s.414CA(1)(c), implementing Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings,
[54] Ibid. s.414CB(1)
[55] Large and Medium-sized Companies and Groups (Reports and Accounts) Regulations 2008, Sch 7

V. Disclosure

1. In your opinion, what mechanisms shall be in place or considered in an insurance company to ensure the transparency of its governance structure? (e.g., the articles of association, the organization chart, any existing committees, the major shareholders, the ethical standard, corporate social responsibility, etc.)

UK companies are required to maintain a register, open to the public, of every person, natural or corporate, able to exercise "significant influence or control" over the company's business.[56] Listed companies are required by the FCA disclosure and transparency rules (DTR) in the FCA Handbook, the FCA Listing Rules and the UK Corporate Governance Code to publish information in the annual report about the corporate governance structures.

Insurers that are Solvency II firms or large non-directive insurers are required to have and maintain governance maps (see I.1.(d) above) and provide them to the PRA. Solvency II firms must prepare and publish annually a solvency and financial condition report (SFCR), which must contain *inter alia* a description of the system of governance of the insurer and an assessment of its adequacy for the insurer's risk profile.[57]

2. Are there any governance practices that, in your opinion, can best be achieved through disclosure rather than through specific supervisory requirements? Which governance practices should be mandatory for an insurance company?

Many commentators prefer comply or explain transparency rather than trying to regulate, given the different feature, sizes, and complexity of companies. Given the failures of 2008, the Solvency II governance regime, as supplemented by the current SIMR regime outlined above, probably gets the balance about right. It is arguable that the move from SIMR into the more exacting SM&CR is in some

[56] Companies Act 2006, s.790A ff and, for companies whose shares are traded on a market in the EEA, FCA Handbook DTR 5.1

[57] PRA Rulebook S II firms: Public Disclosure: Solvency and Financial Condition Report 3.1, 3.3(2), transposing art 51(1) of the Solvency II Directive.

respects unduly onerous.

3. **What is the interplay between market abuse regulations and other disclosure/transparency rules applicable to listed insurers and industry specific rules applicable only to insurance companies?**

   The Market Abuse Regulation (MAR)[58] is not specifically targeted at insurers but has implications for insurers. Obligations under MAR are aimed at protecting the securities markets from insider dealing and market manipulation whereas reporting requirements applicable specifically to insurers are aimed at publishing information about them that other people (including their policyholders) need to know. Insurers typically manage or outsource the management of assets covering their technical provisions. This process must be carried out consistently with MAR. An insurer might face enforcement, for instance, if it allowed a rogue trader to trade irresponsibly in managing its assets.

   The Market Abuse Regime does not apply only to listed companies (see article 2(1) of MAR).

   Disclosures by an insurer must be consistent with MAR. An insurer would have to exercise care in disclosing when it is in breach of its Solvency Capital Requirement or Minimum Capital Requirement. Historically, unscrupulous insurers have sometimes overvalued their assets, undervalued their required technical provisions or entered into fraudulent financial reinsurance transactions in order to appear to be more financially healthy than they really are, e.g. The Independent Insurance Company Ltd (see I.3(b) above) . This can, among other things, distort the market.

VI. Outlook

In respect of the corporate governance of insurers, please describe your criticisms on the system in your jurisdiction, any recommendations for the future, and/or the

[58]Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse

main challenges which insurance undertakings encountered.

Where do corporate governance and governance provisions between them fail fully to meet perceived needs or afford necessary safeguards?

On the whole, the UK rules are pretty comprehensive. One problem is that insurer X may be authorised in EU state A where it has its head office (the "home state"). At the same time, it will be carrying on business in other member states (the "host states"). Under the EU Solvency II Directive supervision of governance is the responsibility of the home state. Those host states may, however, take the view that the home state supervisor in state A is very ineffective at applying governance standards. The UK FCA takes the view that it can apply its governance standards (and approve those responsible for the standards) to matters which are its responsibility as host state (e.g. money laundering and conduct requirements). However, it is doubtful whether that is the correct view. Under the Solvency II Directive the better view is probably that all aspects of governance are the responsibility of the home state supervisor, except where the firm's head office is a sham, established for the purpose of avoiding more stringent requirements in the state where its true head office ought to be.

One issue which tends to be outside the interest of the financial regulator is the issue of the health, including the mental health, of senior management. The largest and best-organised insurers are requiring their senior staff to undergo health screening. People with serious health problems are unlikely to be fit and proper but there is nothing to indicate that the FCA or the PRA have any focus on this issue. This is despite the fact that personnel who have caused serious problems have often been addicted to alcohol and/or drugs (e.g. Nick Leeson at Barings and Paul Flowers at the Co-operative Bank). Here the financial sector could learn lessons from the governance standards applied within the National Health Service.