



Republic of the Philippines  
Department of Finance  
**INSURANCE COMMISSION**  
1071 United Nations Avenue  
Manila



Circular Letter (CL) No.:	2018-36
Date:	26 June 2018
Supplements:	CL No. 2016-51 dated 06 September 2016 and CL No. 2014-15 dated 15 May 2014
Supersedes:	CL No. 2014-49 dated 11 December 2014

### CIRCULAR LETTER

- TO :** All Insurance/Reinsurance Companies, Insurance and Reinsurance Brokers, Mutual Benefit Associations, Pre-Need Companies, Health Maintenance Organizations and other Covered Entities
- SUBJECT :** Rules on Number of Seats, Qualifications and Term Limits of Independent Directors

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In order to promote board independence to ensure good governance, the following **Rules on Number of Seats, Qualifications and Term Limits of Independent Directors of Insurance Companies, Insurance Brokers, Mutual Benefit Associations, Pre-Need Companies and Health Maintenance Organizations** are hereby adopted and promulgated:

#### **A. Number of Seats of Independent Directors in the Board**

The Board of **insurance companies, insurance brokers, mutual benefit associations, pre-need companies and health maintenance organizations** must have at least two (2) independent directors or twenty percent (20%) of the members of the board, whichever is higher.

Any fractional result from applying the foregoing required minimum proportion shall be rounded off to the nearest whole number.

In case of failure to comply with the required seat number for independent directors, a formal written justification for non-compliance must be

submitted by such insurance company, insurance broker, mutual benefit association or health maintenance organization before the Insurance Commission for its consideration and/or approval.

## **B. Definition of Independent Director**

An independent director shall mean a person other than an officer or employee of the corporation, its parent or subsidiaries, or any other individual having any relationship with the corporation, which could interfere with the exercise of independent judgment in carrying out the responsibilities of a director. This means that apart from the director's fees and shareholdings, he should be independent of management and free from any business or other relationship that could materially interfere with the exercise of his independent judgment.

An independent director shall refer to a person who –

1. is not or was not a regular director, officer or employee of the covered entity, its subsidiaries, affiliates or related companies during the past three (3) years counted from the date of his election/appointment;
2. is not or was not a regular director, officer, or employee of the covered entity's substantial stockholders and their related companies during the past three (3) years counted from the date of his election/appointment;
3. is not an owner of more than two percent (2%) of the outstanding shares or a stockholder with shares of stock sufficient to elect one (1) seat in the board of directors of the covered entity, or in any of its related companies or of its majority corporate shareholders;
4. is not a relative by affinity or consanguinity within the fourth (4<sup>th</sup>) degree of a director, officer, or stockholder holding shares of stock sufficient to elect one (1) seat in the board of the covered entity or any of its related companies or of any of its substantial stockholders;
5. is not acting as a nominee or representative of any director or substantial shareholder of the covered entity, any of its related companies or any of its substantial shareholders;
6. is not or was not retained as professional adviser, auditor, consultant, agent or counsel of the covered entity, any of its related companies or any of its substantial shareholders, either in his personal capacity or through his firm during the past three (3) years counted from the date of his election/appointment;
7. is not a securities broker-dealer of listed companies and registered issuers of securities. "Securities broker-dealer" refers to any person holding any office of trust and responsibility in a broker-dealer firm, which includes, among others, a director, officer, principal stockholder,

nominee of the firm to the Exchange, an associated person or salesman, and an authorized clerk of the broker or dealer;

8. is independent of management and free from any business or other relationship, has not engaged and does not engage in any transaction with the covered entity or with any of its related companies or with any of its substantial shareholders, whether by himself or with other persons or through a firm of which he is a partner or a company of which he is a director or substantial shareholder, other than transactions which are conducted at arm's length and could not materially interfere with or influence the exercise of his judgment;
9. was not appointed in the covered entity, its subsidiaries, affiliates or related companies as Chairman "Emeritus", "Ex-Officio", Regular Directors, Officers or Members of any Advisory Board, or otherwise appointed in a capacity to assist the board of directors in the performance of its duties and responsibilities during the past three (3) years counted from the date of his election/appointment;
10. is not affiliated with any non-profit organization that receives significant funding from the covered entity or any of its related companies or substantial shareholders; and,
11. is not employed as an executive officer of another company where any of the covered entity's executives serve as regular directors.

Related company refers to (a) the covered entity's holding/parent company; (b) its subsidiary or affiliate; (c) subsidiaries of its holding/parent company; or (d) a corporation where a covered entity or its majority stockholder own such number of shares that will allow/enable such person or group to elect at least one (1) member of the board of directors or a partnership where such majority stockholder is a partner.

### **C. Minimum Qualifications of Independent Director**

An Independent Director shall have the following minimum qualifications:

1. He shall be at least a college graduate or he shall have been engaged or exposed to the business of the corporation for at least five (5) years; and,
2. He shall possess proven integrity, probity and independence.

#### **D. Term Limit of Independent Directors**

1. An Independent Director shall serve for a maximum cumulative term of nine (9) years.

As far as Insurance Companies are concerned, the foregoing term limit shall be reckoned from 02 January 2015 while the reckoning date for the Pre-Need Companies and Health Maintenance Organizations shall be from 21 September 2016.

For other covered entities, all previous terms served by existing Independent Directors prior to the effectivity of this Circular shall not be included in the application of the term limit prescribed in this item.

2. An Independent Director who served the maximum period shall be perpetually barred from any re-election in the same insurance company, insurance broker, mutual benefit association, pre-need company or health maintenance organization but may continue therein as a non-independent director.
3. However, if the same insurance company, insurance broker, mutual benefit association pre-need company or health maintenance organization desires to continue the services of an Independent Director who had already served his/her maximum term limit, said Independent Director, as an exception, may still continue to act as such provided that the insurance company, insurance broker, mutual benefit association, pre-need company or health maintenance organization's Board submits to this Commission a formal written justification and must, in addition thereto, acquire the majority of the shareholders' approval during its annual meeting.

#### **E. Penalty for Non-Compliance**

In case of failure of covered companies to comply with the foregoing requirements, this Commission may impose a penalty amounting to Two Hundred Thousand Pesos (PhP200,000.00) per calendar year of non-compliance.

Further, failure to comply with the minimum number of qualified Independent Directors or non-payment of the penalty imposed for violating this Circular Letter shall be taken into account in the renewal of the Certificate of Authority.

This Circular takes effect immediately.

All issuances inconsistent herewith are hereby revoked and superseded accordingly.

For strict compliance.



**DENNIS B. FUNA**  
Insurance Commissioner

