



MEMORANDUM

DATE: August 28, 2017
TO: CLLAS Advisory Board
FROM: Patrick Mahoney
COPY:
RE: Related Party Transaction Policy
Outsourcing Policy

The Alberta Superintendent of Insurance (“ASOI”) has adopted OSFI guidelines which, among other things, require regulated entities to implement policies in the following areas:

- related party transactions, and
- outsourcing.

Both the OSFI guidelines and the Alberta *Insurance Act* (the “Act”) provide some guidance on the requirements for these policies. For example, the Act requires a regulated entity to define “minor or general expenditure” and to establish written review and approval procedures for related party transactions. Some time ago, I met with Laurie Balfour to discuss a generic version (i.e. not specific to CLLAS) of the Related Party Transaction Policy.

Attached for consideration by the Board are draft CLLAS policies. I believe that these policies address the various technical requirements while remaining practical and workable from CLLAS’ perspective. The policies will be discussed at the September Board meeting. Once these policies have been adopted, I believe that we will have addressed all the items noted in the Solvency, Compliance and Governance Examination report issued by the ASOI in January 2014.

I look forward to discussing the attached drafts at the up-coming Board meeting.

Sincerely,



CANADIAN LAWYERS LIABILITY ASSURANCE SOCIETY

Related Party Transaction Policy

Last Updated
September 6, 2017

DRAFT



RELATED PARTY TRANSACTION POLICY

Effective date: [DATE]

1. Purpose and Scope

The purpose of this policy is to ensure the proper approval and disclosure of related party transactions. This policy documents the following:

- The definition of related party;
- Prohibited and permitted related party transactions under this policy;
- Required disclosures and procedures; and
- Roles and responsibilities with regards to related party transactions.

This policy applies to all activities, functions, processes and operations of the Reciprocal and should be read in conjunction with CLLAS's Outsourcing Policy and Part 2, Subpart 12 of the Alberta Insurance Act (the "Act") on transactions with related parties.

2. Definition of Related Party

Related parties include the following¹:

- A CLLAS Subscriber or an entity controlled by a CLLAS Subscriber;
- An entity that controls CLLAS;
- A board member or senior official of CLLAS, or of an entity that controls CLLAS;
- A spouse, partner, child less than 18 years of age of a board member or senior official of CLLAS, or of an entity that controls CLLAS; and
- An entity designated by the regulator as a related party.

The regulator may designate² any person as a related party if it is of the opinion that there is an interest or relationship between the person and CLLAS that might reasonably be expected to affect the exercise by CLLAS of its best judgment with respect to a transaction.

3. Definition of Minor or General Expenditure

A minor or general expenditure is either an expenditure which has been included in the annual budget approved by CLLAS or an expenditure which meets the following criteria:

- It does not involve a material outsourcing arrangement as defined in Section 3 of CLLAS' Outsourcing Policy;

¹ The full definition of related party is set out in Section 434(1) of the Act.

² The full list of reasons a person may be designated by the regulator is set out in Section 435 of the Act.



- The consideration for the goods or services supplied by the related party must be reasonable and at or below fair market rate; and
- The value of the transaction, together with all transactions with the same related party in the previous 12 months, must not exceed \$100,000.

4. Related Party Transactions³

CLLAS may enter into a transaction with a related party if:

- It is a minor or general expenditure;
- It is not a minor or general expenditure, but the consideration for the goods or services supplied by the related party is determined by the Board to be reasonable and at or below fair market rate, and the transaction is reviewed and approved in accordance with Section 5; or
- It is approved by the Minister in accordance with Section 443 of the Act.

Except as otherwise permitted under the policy:

- CLLAS may not, directly or indirectly, enter into any transaction with a related party;
- A related party may not, directly or indirectly, enter into any transaction with CLLAS; and
- CLLAS may not, directly or indirectly, make an investment in any securities of a related party.

Nothing in this policy will operate to prevent:

- The management and payment of claims under insurance policies issued by CLLAS;
- The determination and collection of premiums or assessments pursuant to CLLAS' Rate Setting Policy and/or Surplus Management Policy;
- The distribution of surplus by means of premium credit or otherwise in accordance with CLLAS' Rate Setting Policy and/or Surplus Management Policy;
- Remuneration paid to a senior officer of CLLAS included in the annual budget approved by CLLAS; or
- Indemnification payments mandated under CLLAS' Subscribers Agreement⁴.

5. Procedures for Review and Approval

Following are the review and approval procedures to be followed by CLLAS when considering a related party transaction:

1. The specific nature of the related party interest should be documented.
 - If CLLAS knows or has reason to believe that a party is a related party, CLLAS must take all reasonable steps to obtain from the other party full disclosure in writing of the nature and extent of their interest in or relationship with CLLAS.

³ In accordance with Section 439 of the Act.

⁴ In accordance with Section 438(a) of the Act.



- A related party must forthwith disclose the nature and extent of any potential conflict of interest in writing to CLLAS or request to have such entered in the meeting minutes.
 - CLLAS must not enter into the transaction until it has satisfied itself that it has received appropriate disclosure in respect of a proposed transaction.
2. A formal written contract between CLLAS and the related party must be prepared.
 3. A contract with a related party can only be approved, modified or terminated (other than by natural expiry) in writing on resolution approved by the Board. A related party must not vote or attempt in any way to influence the voting on any such resolution or be present while the vote is being conducted⁵.

Within 12 months of the adoption of this policy, CLLAS will review all existing transactions to confirm compliance with the policy.

6. Responsibilities

The Board is responsible for the following:

- Periodically approving the related party transaction policy;
- Periodically reviewing the criteria for what constitutes minor or general expenditures;
- Approving related party transactions.
- Reviewing the related party transaction policy at least once every five years or more frequently if circumstances dictate.

The General Manager is responsible for the following:

- Implementing the related party transaction policy and any associated procedures;
- Monitoring related party transactions and communicating any significant risks to the Board.

7. Authority

The Board has the authority to make revisions to this policy and to approve related party transactions.

8. History of Modifications

The rate setting policy was first approved by CLLAS on [DATE].

⁵ Section 355(1) of the Act outlines certain exceptional circumstance in which a conflicted director may vote.



CANADIAN LAWYERS LIABILITY ASSURANCE SOCIETY

Outsourcing Policy

Last Updated
September 6, 2017

DRAFT



OUTSOURCING POLICY

Effective date: [DATE]

1. Purpose and Scope

An outsourcing arrangement is an agreement between CLLAS and a service provider, whereby the service provider performs a business activity, function or process that could be undertaken by CLLAS itself. CLLAS ultimately retains the responsibility for all outsourced activities.

The purpose of this policy is to document the following:

- The outsourcing philosophy;
- The procedures and processes to manage outsourcing risk;
- The due diligence process in the selection of service providers; and
- The roles and responsibilities with regards to outsourced activities.

This policy applies to all activities, functions or processes outsourced to external service providers. The robustness of outsourcing risk management should be commensurate with the materiality of the arrangement.

2. Outsourcing Philosophy

CLLAS does not have employees and therefore outsources all its operations. This allows CLLAS to reduce its operating costs, leverage the expertise of external service providers, and continue to offer competitively-priced insurance coverage to its members.

Outsourcing risk is the risk that outsourced functions will not be appropriately fulfilled and will negatively impact CLLAS' operations, reputation or financial position. CLLAS minimizes this risk through building long-term relationships based on a careful selection process and monitoring of its service providers. In selecting its service providers, CLLAS strives to achieve a balance between expertise, service and reasonable cost.

A list of all outsourced operations is contained in Appendix 1 to this policy. All operations are overseen and managed by the office of the General Manager, which itself is overseen by the Chair of CLLAS. All outsourced functions are ultimately under the responsibility and oversight of the Board.

3. Materiality Assessment for Outsourcing Arrangements

The materiality of an outsourcing arrangement refers to the extent to which it has the potential to have an important influence on the operations of CLLAS. CLLAS would consider the following in assessing the materiality of its outsourcing arrangements:



- The impact of the outsourcing arrangement on the finances, reputation and operations of CLLAS;
- The ability of CLLAS to maintain appropriate internal controls and meet regulatory requirements;
- The cost of the outsourcing arrangement; and
- The degree of difficulty and time required to find an alternative service provider or to “in-source” the activity.

4. Policies and Procedures to Manage Risks Associated with Material Outsourcing Arrangements

The selection of service providers should be subject to due diligence, which may include examining service providers in light of the following factors:

- Experience and technical competence to implement and support the outsourced activity;
- Compatibility between CLLAS management and personnel of service provider;
- Financial strength;
- Business reputation, complaints, compliance and pending litigation;
- Internal controls, reporting and monitoring environment;
- Business continuity and contingency measures;
- Reliance on sub-contractors;
- Insurance coverage; and
- Service philosophy and business culture.

The due diligence process should also include an assessment of the strengths, weaknesses, opportunities and threats associated with the outsourcing arrangement. CLLAS should ensure that records necessary to sustain business operations and meet statutory obligations (e.g., subscribers’ agreement, audited financial statements) are readily available. Risk mitigation, including the due diligence process, should vary with the nature of the outsourcing arrangement.

5. Outsourcing Arrangements

The terms of each material outsourcing arrangement entered into by CLLAS should be documented in a written contract that addresses all elements of the arrangement. Appendix 2 outlines the key contractual provisions that should be considered for each outsourcing arrangement.

6. Monitoring and Oversight of Material Outsourcing Arrangements

CLLAS periodically monitors all material outsourcing arrangements to ensure that the service is being delivered in the manner expected and in accordance with the terms of the outsourcing contract and CLLAS’s outsourcing policy. The scope of the review is commensurate with the nature of the outsourcing arrangement.



7. Prohibited Outsourcing Arrangements

CLLAS will not outsource the following activities to its external auditor:

- Any actuarial service, with the exception of the external review of the appointed actuary's work in accordance with OSFI Guideline E-15 where the peer reviewer may be an actuary working in the company's external auditor firm.
- Any internal audit service related to the internal accounting controls, financial systems or financial statements of CLLAS, unless it is reasonable to conclude that the results of the service will not be subject to audit procedures during an audit of CLLAS's financial statements.

8. Responsibility for Outsourcing Arrangements

The Board is responsible for the following:

- Approving policies and procedures for the outsourcing of business activities, including the materiality criteria;
- Ensuring that the outsourcing of material business activities is carried out in accordance with risk management policies and practices of CLLAS;
- Approving the outsourcing agreements;
- Monitoring the performance of outsourced activities based on established performance targets;
- Reviewing the policies and agreements for sufficiency and relevance on an annual basis, or more frequently if circumstances warrant.

The General Manager is responsible for the following:

- Developing an outsourcing policy for Board approval;
- Implementing the outsourcing policy and any associated procedures;
- Communicating significant outsourcing risks to the Board;
- Maintaining a centralized list of all material outsourced business arrangements;
- Monitoring the material outsourcing arrangements on a regular basis and reporting to the Board on their effectiveness;
- Monitoring service providers, at least annually, on their ability to continue to provide the degree of service as stated in the outsourcing arrangement.

The external service providers are responsible for the following:

- Managing the day-to-day requirements as outlined in the service agreement;
- Achieving performance targets established by CLLAS, if any;
- Reporting to the General Manager as established in the service agreement, or more frequently if matters related to non-compliance or emerging risks are discovered.



9. Authority

The Board has the authority to make revisions to this policy and to engage or terminate a service provider.

10. History of Modifications

The outsourcing policy was first approved by CLLAS on [DATE].

APPENDIX 1

CENTRALIZED LIST OF OUTSOURCING ARRANGEMENTS

Description of Outsourcing Arrangement	Service Provider Name	Main Contact(s)	Type of Arrangement	Expiry or Renewal Date of Contract	Arrangement Deemed Material	Contract in Place
General Management including brokerage, claims, financial accounting, regulatory, underwriting	Axxima Insurance Services	Patrick Mahoney Norma Ibbetson Ryan Durrell	Third Party	On-going	Yes	Yes
Actuarial Services	Axxima Inc.	Julie-Linda Laforce	Third Party	Annual Appointment	Yes	No
Audit Services	Deloitte LLP	Elaine Hultzer	Third Party	Annual Appointment	Yes	Yes
Investment Management	Martin, Lucas & Seagram Ltd.	Rowland Bell	Third Party	On-going	Yes	Yes
Reinsurance Brokerage	Miller Insurance Services	Mark Popple Graeme Lynch	Third Party	On-going	Yes	Yes



APPENDIX 2

KEY CONTRACTUAL PROVISIONS

Outsourcing contracts should address all issues applicable to managing the risks associated with each outsourcing arrangement, including as appropriate such items as the following:

- Nature and scope of the service being provided: This includes provisions that address the frequency, physical location, and content of the service being provided.
- Performance measures: This allows each party to determine if the commitments in the contract are being realized and may be tied to the service provider's compensation.
- Reporting requirements: These are to be included and must specify the type and frequency of information received from the service provider.
- Resolution of differences: A protocol for resolving differences is to be part of the contract, including provisions for the continuation of work while dealing with the dispute, time periods for resolution, rules under which the dispute will be dealt with and legal jurisdiction.
- Defaults and termination: The contract should specify what constitutes a default, identify remedies and, where appropriate, allow for the opportunity to cure the default in advance of terminating the agreement. The contract should define the termination provisions on behalf of both parties and their resultant obligations to minimize the likelihood of disruption to the business of CLLAS.
- Ownership and access: Ownership of all assets, both physical and intellectual property/data, related to the outsourcing arrangements should be clearly stated. Default should be ownership by CLLAS. Access rights to any data generated by the service provider on behalf of CLLAS should be clearly stipulated.
- Contingency planning: The service provider's arrangements to continue to provide the service in the event of problems that may affect the service provider's operations should be documented.
- Audit rights: Audit rights for CLLAS should be stated. CLLAS should have the right to evaluate, or have an independent auditor evaluate, the service provider.
- Subcontracting: The contract should set out any rules/limitations on subcontracting.
- Confidentiality, security and separation of property: These requirements should be set out in the contract, including which party has responsibility for protection mechanisms, the scope of the information to be protected, the powers of each party to change security procedures and requirements, which party may be liable for any losses that might result from a security breach, and notification requirements if there is a breach of security.
- Pricing: The pricing and terms of payment should be fully described.
- Insurance: The service provider should be required to disclose general terms and conditions of applicable insurance coverage and to notify CLLAS about significant changes in coverage. If appropriate, approval by CLLAS of material changes should be required.