Institute of Actuaries of India

G2-Whistleblowing

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Whistleblowing - Introduction

- Whistleblowing is the act of speaking up by an individual for any concern encountered in the workplace relating to a perceived wrongdoing.
- Raise concerns
  - About any potentially unlawful, unethical or improper activity.
- Report information to the relevant regulatory authority
  - behavior which they believe to be unlawful, unethical or improper to regulators or other relevant authorities.
  - any breach of the Actuaries' Code which appears to constitute misconduct.
- 'Good Faith' and 'Reasonable Grounds'
- At all times, actuaries must be guided both by the public interest and their own consciences to make use of permitted disclosures.

Whistleblowing - Issues to consider

- I may be sued or disciplined for breaches of confidentiality
  - As per Professional Conduct Standards (PCS), actuaries are required to maintain confidentiality unless disclosure is permitted by law and justified in the public interest.
  - So the duty of confidentiality is not absolute and may be overridden by other considerations in the public interest.
- I only need to whistleblow where I have a specific duty to do so
  - Whistleblowing is generally encouraged
- I can only whistleblow where I am certain of the facts.
  - 100% certainty is not always possible, so the duties extend to reasonable suspicion

Whistleblowing - Protection

- G20
  - Anti corruption working group
  - To protect from discriminatory and retaliatory actions whistleblowers who report in good faith suspected acts of corruption, G-20 countries will enact and implement whistleblower protection rules
- United Kingdom's Public Interest Disclosure Act (UK PIDA)
  - Protects whistleblowers from detrimental treatment by their employer
  - Includes private company employees
- Whistle Blower protection act (India)
  - Provides a mechanism to investigate alleged corruption and misuse of power by public servants
  - Protects anyone who exposes alleged wrongdoing in government bodies, projects and offices

Case Study – Scenario I

- *Consulting actuary engaged by a Lloyd's managing agent*
- Lloyd is an insurance market of members located in City of London.
- A Lloyd's syndicate is made up of one or more members that join together as a group to accept insurance risks. The members operate on an annual basis.
- Managing Agent is a company set up to manage one or more syndicates, on behalf of the members who provide the capital.
- The managing agent employs the underwriting staff and handles the day-to-day running of a syndicate's infrastructure and operations.

Role – Scenario I

- *Provide Statement of opinion to regulator on year end reserves*
- Each year for solvency purposes each Lloyd syndicate submit a Statement of Actuarial Opinion ("SAO") on their world-wide technical provisions, both gross and net of reinsurance.
- The SAO is intended solely for the purpose of complying with the Lloyd's Valuation of Liabilities Rules.
- The SAO is not intended to be used to support a calculation of Reinsurance To Close (RITC) for the syndicate, although the member may provide additional advice in this area.

Role –Scenario I (Cont)

- *To look at the reserves underlying the Reinsurance to close premium (RITC) but not to comment on the actual RITC number set by the managing agent*
- RITC is the payment of a reinsurance premium in respect of one year of account (the "closing" year), by the Lloyd's Members for that year of account (the "transferring" or "ceding" Lloyd's Members), to a reinsurance vehicle.
- This is normally carried out at a valuation date three years after the year of account begins, and the reinsurance vehicle is typically the subsequent ("open") year of account

Conflict I – Scenario I

- The managing agent sets an RITC at a level above what you think is justified. You have no problem in signing the opinion for the regulators — the reserves are greater than your best estimate. However, the RITC represents a transfer of money from the outgoing Names to the incoming Names— and in your opinion the former are losing money.
- What are the possible options for the actuary.

Understanding the laws-I

- The Core Principles Byelaw (Lloyd): “An agent should conduct the affairs of each of the members for whom it acts in a manner which does not unfairly prejudice the interest of any such member”.
- The Syndicate Accounting Byelaw (Lloyd): This Byelaw requires the syndicate auditor to opine that the profit and loss, as shown in the underwriting account of a closed year of account, is “true and fair”

Possible Roadmap I

- Understand the source of the difference:
  - Is it OS claims or IBNR or future premium or CHE or RI bad debt provision or a combination of these
- Understand other differences:
  - Different reserving basis: Eg. Prudent or best estimate
  - Discounting
  - Risk Margin
  - Investment income
- Who are the parties involved
  - Outgoing and incoming names
    - Are the members same, or
    - Under the same managing agent
  - Is the RITC to an external party outside the managing agent's control
- Sufficient data/reason for suspicion

Possible Roadmap I (Cont)

- Internal discussion with the managing agent
  – Understand the basis of the reserves
- Follow the corporate code of the consulting firm
  – What are the prescribed guidelines, if any
  – Speak to the peers without breaching confidentiality
- Follow the Professional Conduct Standards (PCS)
  – An obligation to serve public interest
- Inform the regulator
- Maintain sufficient records

Conflict II – Scenario I

- If the managing agency changes actuarial advisors next year, does the new actuary have to contact you, and what can you tell the new advisor?

Possible Roadmap II – Scenario I

- The new actuary should contact the previous actuary.
- *If whistleblowing was not done*
- As such the current actuary is not liable for RITC, so he is not answerable to any queries regarding RITC.
- But the actuary may share some of the RITC investigation results (subject to confidentiality).
  - The reasons of high reserves or pointers towards it.
- The SAO reserves are higher than the best estimate
  - So the actuary would need to provide sufficient reasoning to defend the level of prudence in SAO reserves.
- *If whistleblowing was done*
  - Share the appropriate results and issues faced

Scenario II

- You are an actuary employed by a Lloyd's managing agent. One of your roles is to provide a statement of opinion to the regulator on the year end reserves. In addition you report to the directors on the reserves underlying the Reinsurance to close premium (RITC).

- The managing agent sets an RITC at a level above what you think is justified. You have no problem in signing the opinion for the regulators — the reserves are greater than your best estimate. However, the RITC represents a transfer of money from the outgoing Names to the incoming Names — and in your opinion the former are losing money.

- What can you do?

- If the managing agency decides to get an external consultant to sign the statement of opinion next year, does the new actuary have to contact you, and what can you tell him or her?

Difference from Scenario I

- Formal role of reporting about RITC reserves to the directors (Scenario II) vs a look at the RITC reserves (Scenario I)
  - The reporting to director require a detailed analysis of RITC
  - The reporting role creates a direct responsibility/ownership of the RITC reserves
- Actuary employed (Scenario II) vs consulting actuary (Scenario I)
  - An employ need to abide by the company's law/code of conduct of managing agent
  - The consulting actuary is governed by his consulting firms law
  - The consulting firm may have specific guidelines for whistleblowing due to the specific nature of the work

Understanding the laws II

- Combined Code on Corporate Governance: The board of directors should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties.

Possible option – Scenario II

- As in scenario 1, understand the reason for the difference between the reserves.
  - As an employee it is easier to get internal information.
  - Confidentiality is less of an issue.
- Based on the discussion, give a qualified or unqualified recommendation to the board.
  - A qualified recommendation if the reserves are not considered to be appropriate.
  - For unqualified recommendation, mention the key points for the higher reserve in RITC.
- Advice the external consultant (actuary) appropriately sharing the required knowledge.

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