



BERMUDA MONETARY AUTHORITY

**THE INSURANCE BROKERS AND INSURANCE AGENTS
CODE OF CONDUCT**

CONSULTATION PAPER

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A. THE INSURANCE BROKERS AND INSURANCE AGENTS CODE OF CONDUCT

Introduction

1. This document outlines the Bermuda Monetary Authority's (the Authority's) proposed Insurance Brokers and Insurance Agents Code of Conduct (the Code). The purpose of the Code is to assist the Authority in providing appropriate, effective and efficient supervision and regulation of Insurance Brokers and Insurance Agents. For the purpose of the Code, Insurance Broker has the meaning given in section 1(1) of the Insurance Act 1978 (the Act) and an Insurance Agent has the meaning given in section 1(1) of the Act.
2. Insurance Brokers and Insurance Agents play a vital role in providing prospective clients and policyholders with relevant information about the insurance marketplace and assessing insurance needs. Insurance Brokers and Insurance Agents can facilitate the purchase of insurance, and provide services to insurance companies and policyholders that complement the insurance placement process.
3. The views of the insurance industry and of other interested persons on the proposals set out in this paper are invited. Comments should be sent to the Authority, addressed to policy@bma.bm no later than 7 September 2018.

Authorisation

4. The Authority is issuing this Code pursuant to the powers under section 2BA of the Act. The Code establishes duties, requirements and standards to be complied with by registered Insurance Brokers and Insurance Agents including the procedures and practices to be observed by such persons. In assessing whether the Insurance Broker or Insurance Agent is conducting its business in a sound and prudent manner, the Authority will have regard for the application of provisions of the Code taking into account its nature, scale, complexity and the Authority's prudential objectives.
5. The Code has been developed taking into consideration the international standards as set out by the International Association of Insurance Supervisors (IAIS). Whilst Insurance Core Principle (ICP) 18 is specific to the supervision of intermediaries, including Insurance Brokers and Insurance Agents, other ICPs that apply include ICP 19 on the Conduct of Business, ICP 21 on Countering Fraud in Insurance, and ICP 22 on Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT).

Proportionality principle

6. The Authority appreciates that Insurance Brokers and Insurance Agents have varying risk profiles depending on their operating model, services offered, and the nature, scale, and complexity of their business, and that those with higher risk profiles require a more

comprehensive governance, operational model, controls and risk management framework to ensure they conduct business in a sound and prudent manner.

7. The Authority will assess compliance with the Code in a proportionate manner relative to an Insurance Broker or Insurance Agent's nature, scale, and complexity. These factors will be considered collectively, rather than individually (e.g. an Insurance Broker or an Insurance Agent could be relatively small in scale, but carry out extremely complex business and therefore would be required to maintain an appropriate internal control and/or risk management framework):
 - a) Nature includes the relationship between the Insurance Broker or the Insurance Agent and the client and/or insurer and the characteristics of the services provided;
 - b) Scale includes size aspects such as volume of business conducted in conjunction with materiality considerations; and
 - c) Complexity includes organisational and insurance structures.
8. The proportionality principle, discussed above, is applicable to all sections of the Code regardless of whether the principle is explicitly mentioned.

Controllers and officers to be fit and proper persons

9. Every person who is or is to be a controller or officer of an Insurance Broker or Insurance Agent must meet the fit and proper person criteria as set out in the Act. Controllers and officers must have the relevant knowledge and experience, sufficient skills and capability, and soundness of judgment to undertake and fulfil their particular duties and responsibilities. The controllers and officers must also be of high integrity. In considering whether to appoint a person to an officer or director role, an Insurance Broker or Insurance Agent must take into consideration the fitness of that person to the specific duties that they are being appointed to perform. In that regard, the Insurance Broker or Insurance Agent should take into consideration the person's qualifications and references, their previous experience with similar responsibilities, and their record of achievement and performance.
10. Controllers and officers must carry out their duties in a prudent manner, avoiding actions, or a failure to act, or apathy toward a duty that would cause damage to the Insurance Broker or Insurance Agent's reputation, damage to their clients or threaten the public interest. The Insurance Broker or Insurance Agent must ensure that there are effective controls in place to mitigate against reputational damage and against threats to the public interest.
11. The Insurance Broker or Insurance Agent must notify the Authority immediately if it becomes aware of any material concerns regarding the appropriateness or professionalism of a controller or officer. Additionally, the Insurance Broker or Insurance Agent must advise the Authority of remediation actions, either planned or taken, following an issue notified involving a controller or officer.

Corporate governance

12. The Insurance Broker or Insurance Agent must implement a documented corporate governance framework which includes manuals, guides, charters, policies and processes, and controls which the Authority considers appropriate given the nature, scale, complexity and risk profile of the Insurance Broker or Insurance Agent.
13. The Insurance Broker or Insurance Agent must appoint qualified individuals to its board of directors (board) who have the appropriate experience and expertise to be able to provide informed and sound judgment, and decision making to the governance of the Insurance Broker or Insurance Agent.

B. PRINCIPLES OF INSURANCE BROKER OR INSURANCE AGENT BUSINESS

Business to be conducted in a prudent manner

14. It is the responsibility of the board and senior management of an Insurance Broker or Insurance Agent to ensure that their business is conducted in a sound and prudent manner. Board members and senior management must arrange for the identification and documentation of the fundamental risks in their business, and ensure the establishment of an appropriate operational and control environment. More specifically, the Insurance Broker or Insurance Agent's board must be able to demonstrate that the controls and operational model is appropriate and effective for the nature, scale and complexity of its business including the following:
 - a) Governance, management structures and operation, such as the composition of, and level and type of control exercised by, the board;
 - b) Strategy, objectives and planning arrangements;
 - c) Controls, policies and procedures;
 - d) Pre-vetting processes and policies designed to address the risks inherent in introducing new entities and individuals to Bermuda's corporate environment;
 - e) Accounting policies, receivable collections and a bad debt policy; and
 - f) Staff selection, vetting and training; and
 - g) Appropriate physical presence in Bermuda for Insurance Agents and Insurance Brokers
15. The board of the Insurance Broker or Insurance Agent is ultimately responsible for its overall risk and control framework. The board is also responsible for ensuring that the Insurance Broker or Insurance Agent has developed and implemented effective risk-related internal controls. Effectiveness and appropriateness assessments should be performed periodically by the senior management and the board.
16. An Insurance Broker or Insurance Agent must have an adequate number of staff who are trained and competent to discharge their duties effectively. It should ensure that the responsibilities and authority of each staff member is clearly defined, and appropriate for his or her qualifications and experience. Staff should receive the necessary training appropriate for their roles, and possess appropriate knowledge and skill in insurance

relevant to the role they perform and services they provide. The Insurance Broker or Insurance Agent must ensure that it has in place systems, controls, documented policies and procedures, to ensure employees perform their duties in a diligent and proper manner. It is important that staff understand and comply with the established systems, policies and procedures, including those dealing with new client or business onboarding and financial transactions.

17. The Insurance Broker or Insurance Agent must have appropriate policies and procedures to prevent and detect fraud and criminal activity, and to ensure compliance with all legal and regulatory requirements including anti-money laundering and anti-terrorist financing regulations, and the international sanctions regime. The Insurance Broker or Insurance Agent must comply with applicable laws and regulations both locally and in any foreign jurisdictions in which the Insurance Broker or Insurance Agent operate.
18. The Insurance Broker or Insurance Agent must ensure prudential filings and regulatory applications are timely and completed accurately. They are also expected to be proactive and use best endeavours in its dealings with clients, counterparties, regulators and government.
19. There are a significant number of risks that can potentially impact the Insurance Broker or Insurance Agent's operations. The Act requires the Insurance Broker or Insurance Agent to hold adequate insurance coverage including professional liability insurance appropriate to the nature and scale of its operations, and the risks it faces as it conducts its business.
20. In judging the type and level of insurance protection to purchase, the Insurance Broker or Insurance Agent must consider the nature, scale and complexity of the insurance cover required, and the ability of the insurance to provide adequate protection for legal actions or damages to ensure the Insurance Broker or Insurance Agent can continue to trade in the event of a lawsuit or legal action for damages. The Insurance Broker or Insurance Agent's board and management must assess the level of risk that an Insurance Broker or Insurance Agent faces, and purchase insurance coverage appropriate for the business.
21. An Insurance Agent registered under section 9(1) of the Act can only place insurance business with an Insurer(s) registered in Bermuda or as required and as permitted by its Certificate of Registration. An Insurance Agent will not be permitted to place insurance business with another Insurance Agent without the prior approval of the Authority.

Adequate accounting, record keeping systems and reporting requirements

22. An Insurance Broker or Insurance Agent shall ensure it has adequate financial systems and controls, and books and records which are maintained and subject to an appropriate control framework.
23. The Insurance Broker or Insurance Agent must keep and preserve appropriate records in Bermuda which will at least include such records that are appropriate for its operations

and functions, client records, insurance policies and financial records, as required by any applicable laws.

24. The Insurance Broker or Insurance Agent must have a record keeping system that will enable the provision of relevant information to persons entitled to receive the information on a timely basis. This should include the identity of shareholders, directors and officers. In addition, records of account and client records must be maintained in accordance with best practice and the applicable laws.

Client relationships

25. The Insurance Broker or Insurance Agent must observe high standards of integrity and fair dealing in the conduct of its business.
26. The Insurance Broker or Insurance Agent is required to have sufficient safeguards in place to protect client funds. Such safeguards shall include having adequate controls, policies and procedures in place for the safeguarding of "client monies", and separate client trust accounts distinguishable from the Insurance Broker or Insurance Agent's own bank accounts.
27. The Insurance Broker or Insurance Agent must act with due skill, care and diligence in the conduct of its business, and in its dealings with clients, policyholders, potential policyholders and insurers. An Insurance Broker or Insurance Agent must not recommend a transaction to a client unless it has taken reasonable steps to make the client aware of the risks involved, including any conflicts of interest.
28. The Insurance Broker or Insurance Agent must have a documented fee structure which must be disclosed to each client as it provides brokering, placement or insurance services. This also applies to any subsequent changes to fees under such an agreement and includes ensuring that adequate notice is given to the client before any change in the service or fee structure is introduced.
29. To ensure clients are dealt with fairly and are kept informed, the Insurance Broker or Insurance Agent should discuss and agree to the terms of business with each prospective client. These terms should be provided in writing to the client in the form of an agreement, including evidence of the respective client's agreement to those terms and conditions. That agreement should include, but not be limited to, the following provisions:
 - a) A clear description of the services to be provided, fees to be charged and the manner or payment arrangement by which fees are expected to be deducted or paid;
 - b) A description of the manner how, and the persons who can, make requests for actions and or give directions under the agreement;
 - c) The terms under which the agreement can be terminated and the consequences of termination; and

- d) A statement that the Insurance Broker or Insurance Agent is licensed by the Authority including the type of license issued.
30. Information relating to a client(s) or insurer(s) must be kept confidential. The Insurance Broker or Insurance Agent shall document and implement controls, policies and procedures designed to ensure that such information is kept confidential and secure. These policies and procedures shall include:
- a) Employees' undertakings to maintain confidentiality, as part of their contracts of employment;
 - b) Employees' access to information and the level of access;
 - c) Mechanisms that effectively restrict access to confidential information to appropriate employees;
 - d) Systems designed to safeguard the integrity of any electronic record or transaction recording system; and
 - e) An appropriate retention policy prescribing how long client records should be kept once the client relationship is terminated.

Disclosures

31. The Insurance Broker or Insurance Agent shall provide clients with adequate information about the Insurance Broker or Insurance Agent's business including their registered business address and telephone number.
32. When providing advice to, or arranging contracts of insurance for the client, an Insurance Broker or an Insurance Agent shall make full and adequate disclosure of all facts necessary for its clients to make an informed decision.
33. Minimally, an Insurance Broker or Insurance Agent should give the client the following information before the conclusion of the insurance contract:
- a) Name, address and the domicile of the insurer underwriting the risk;
 - b) Type of insurance and coverage;
 - c) Significant features and benefits of the insurance contract;
 - d) The premium to be paid by the client for the insurance product (or, if an exact price cannot be indicated, the basis for calculation of the price);
 - e) Notice of any taxes or other costs in respect of the insurance contract;
 - f) The existence of the right of cancellation and, where applicable, the duration of the cancellation notice period and the conditions for exercising the right to cancel, including information on penalties that may arise thereon; and the consequences of cancelling the policy after the expiration of the cancellation period;
 - g) Method of reporting a claim, including the address, contact information where a claim may be notified; and
 - h) Any other information as may be required upon request.

Complaint handling

34. The Insurance Broker or Insurance Agent shall have documented complaint handling procedures. The complaint handling procedure shall be communicated to every policyholder, potential policyholder, client or insurer. The procedure shall include at a minimum the processes for:
- a) Making a complaint;
 - b) Handling complaints in a fair, timely and appropriate manner;
 - c) Maintaining independence and resolving conflicts when dealing with complaints;
 - d) Acknowledging receipt of complaints; and
 - e) Maintaining a complaint register containing details of complaints received, and how they have been dealt with and resolved.

Business continuity and disaster recovery

35. The Insurance Broker or Insurance Agent must document a business continuity and disaster recovery plan which addresses all of its key business processes and critical business functions.

Conflicts of interest

36. The Insurance Broker or Insurance Agent must have documented policies and procedures for dealing with conflicts of interest and where possible avoid them. Where one arises the Insurance Broker or Insurance Agent shall disclose it to the client and decline to act if the conflict cannot be satisfactorily mitigated.

Fraud

37. The Insurance Broker or an Insurance Agent shall have documented policies and procedures in place for dealing with fraud including the necessary measures to prevent, detect and remedy fraud.

Client due diligence

38. The Insurance Broker or Insurance Agent must have procedures in place to ensure that client due diligence is carried out before a decision is made to act for any new client. At a minimum, Insurance Brokers or Insurance Agents need to be able to comply with The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008, The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 and the Anti-Terrorism (Financial and Other

Measures) Act 2004, as they are applicable to the Insurance Broker or Insurance Agent's business and international sanctions, together with any other relevant legislation that may come into force from time to time.

39. To ensure compliance with these AML/ATF requirements, the Insurance Broker or Insurance Agent must have adequate policies and procedures in place to confirm that they know on an ongoing basis the identity of each director or officer, and to the fullest extent possible, the identity of the owner or beneficial owners of the entities they act for.
40. The Insurance Broker or Insurance Agent must take all reasonable efforts to keep up to date with any international sanctions and legal requirements under which Bermuda is bound.

Outsourcing

41. Where the Insurance Broker or Insurance Agent outsources any of its services or functions, it must perform due diligence checks and ongoing monitoring on the outsourced service provider to ensure that outsourced operations are performed to the same level as if the work had been performed in-house, and comply with Bermuda's legal and regulatory requirements.
42. The Insurance Broker or Insurance Agent retains the ultimate responsibility for the appropriate delivery of any function or service that is outsourced.

Reputation of Bermuda

43. Insurance Brokers or Insurance Agents should not bring the reputation of Bermuda into disrepute. The matter will need to be evaluated for each Insurance Broker or Insurance Agent on a case-by-case basis. Clearly, this is an area where a risk-based approach may be justified; however, it needs to be emphasised that the Authority would view any failure in this obligation with the utmost gravity.
44. The board of the Insurance Broker or Insurance Agent must develop and implement documented policies, procedures and controls to address these obligations for the mitigation of reputational risk, money laundering and terrorist financing risk, etc. The Insurance Broker or Insurance Agent must also ensure that documented policies, procedures and controls that are established will also take into consideration any risks that the jurisdiction may face arising from its clients.

Cooperation with regulatory authorities

45. The Insurance Broker or Insurance Agent must deal openly, and cooperate with the

Authority and any other relevant regulatory authorities. An Insurance Broker or Insurance Agent should notify the Authority of any proposed material changes to its business plan, and should also alert the Authority to any significant developments relevant to its operations, its staffing or to its systems and controls environment.

46. The Insurance Broker or Insurance Agent must give written notice and details to the Authority where it has reason to believe that:

- a) It will be unable to comply, or be unable to demonstrate compliance with, the requirements of the Code, legislation or regulations;
- b) A director or employee has been engaged in activities involving fraud or other dishonesty;
- c) There is any change to its indemnity cover; or
- d) If there has been any attempted or successful material cyber breach.

C. Implementation

47. The Code will come into effect immediately when published and the established deadline for compliance is **30 June 2019**.
