



# **BERMUDA MONETARY AUTHORITY**

## **THE INSURANCE CODE OF CONDUCT**

**JULY 2015**  
**(Revised)**

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## **1. INTRODUCTION**

1. This document outlines the Bermuda Monetary Authority’s (“the Authority”) Insurance Code of Conduct (“the Code”). In this Code, the term “insurer” includes “reinsurer”, “insurance” includes “reinsurance”, and “policyholder” or “policyholders” include current and past policyholders, third party claimants and beneficiaries to whom the insurer is contractually obligated to fulfil its insurance obligations.

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**2. LEGISLATIVE AUTHORITY**

2. The Authority is issuing the Code pursuant to the powers under Section 2BA of the Insurance Act 1978 (“the Act”). The Code establishes duties, requirements, and standards to be complied with by insurers registered under Section 4 of the Act, including the procedures and sound principles to be observed by such persons. Failure to comply with provisions set out in the Code will be a factor taken into account by the Authority in determining whether an insurer is meeting its obligation to conduct its business in a sound and prudent manner.

**3. PROPORTIONALITY PRINCIPLE**

3. The Authority appreciates that insurers have varying risk profiles arising from the nature, scale, and complexity of their business. Insurers with higher risk profiles would require more comprehensive governance and risk management frameworks compared with those of a lower risk profile.
4. Accordingly, the Authority will assess the insurer’s compliance with the Code in a proportionate manner relative to its nature, scale, and complexity. These elements will be considered collectively, rather than individually (e.g. an insurer could be relatively small in relation to scale, but write extremely complex business and would therefore require a sophisticated risk management framework).
  - “Nature” includes the relationship between the policyholder and the insurer or characteristics of the business written;
  - “Scale” includes size aspects such as volume of business written or size of the balance sheet in conjunction with materiality considerations; and
  - “Complexity” includes organisational structures and ease of information transmission, multifaceted business or business lines, and/or skill level required to properly assess the risks of contractual provisions (e.g. existence of options etc., in business products).

5. In assessing the existence of sound and prudent business conduct, the Authority will have regard for the appropriateness of provisions of the Code in relation to their application to a particular insurer taking into account the Authority's prudential objective underpinning the provision being effectively met. The proportionality principle is applicable to all sections of the Code regardless of whether the principle is explicitly mentioned.
6. Limited purpose insurers, in particular, should be mindful of the proportionality principle in establishing a sound corporate governance, risk management, and internal controls framework and complying with provisions of the Code, and should be guided by paragraph 5 in documenting their compliance with the Code.

#### **4. CORPORATE GOVERNANCE**

7. Every insurer must establish and maintain a sound corporate governance framework, which provides for appropriate oversight of the insurer's business and adequately recognises and protects the interests of policyholders. The framework should have regard for international best practice on effective corporate governance. Corporate governance includes principles on corporate discipline, accountability, responsibility, compliance, and oversight.
8. The ultimate responsibility for sound and prudent governance and oversight of the insurer rests with its board of directors ("the board"). In this regard, the board is responsible for ensuring corporate governance policies and practices are developed and applied in a prudent manner that promotes the efficient, objective and independent judgment and decision making by the board. The board must also have adequate powers and resources to be able to discharge its duties fully and effectively. Delegation of authority to board committees, chief and senior executives, or external parties does not absolve the board from its ultimate responsibilities.

##### **4.1. The Board**

9. The Authority recognises that the board plays a critical role in the successful operation of an insurer. The board is chiefly responsible for setting corporate strategy, reviewing and monitoring managerial performance at an acceptable level of risk. Therefore, the effectiveness of the board of an insurer is a basic tenet of the Authority's risk-based supervisory approach. Delegation of authority to board committees, chief and senior executives, or external parties does not absolve the board from its ultimate responsibilities.

10. The board must ensure that the business is effectively directed and managed, and conducted with integrity, due care, and the professional skills that are appropriate. Therefore, it is the responsibility of the board to ensure that processes to assess and document the fitness and propriety of its members, controllers, and officers are in place. The board must also take into account the fact that conflicts, or potential conflicts of interest, may on occasion preclude the involvement of specific individual members on particular issues or decisions.
11. The board should have an appropriate number and mix of directors to ensure that there is an appropriate level of experience, knowledge, skills and expertise commensurate with the nature, scale and complexity of the insurer's business.
12. The individual members of the Board should:
  - act in good faith, honestly and reasonably;
  - exercise due care and diligence;
  - ensure the interests of policyholders are protected;
  - exercise independent judgment and objectivity in his/her decision making,; and
  - ensure appropriate policies and procedures to effectively deal with conflicts of interest..

#### **4.2. Oversight Responsibilities of the Board**

13. The board is responsible for setting appropriate strategies and the oversight of the implementation of these strategies. The board is also responsible for ensuring that senior management establishes a framework to implement the insurer's strategic business objectives.
14. The board is responsible for providing suitable prudential oversight of the insurer's risk management and internal controls framework, including any activities and functions which are delegated or outsourced. A list of oversight responsibilities that the board should consider when establishing and assessing the effectiveness of the corporate governance framework include ensuring the existence of:

- An operational framework to ensure adequate oversight responsibilities toward ensuring sound corporate governance is effective throughout the organisation;
- Processes to assess and document the fitness and propriety of board members, controllers, officers, and third-party service providers, including insurance managers, auditors, actuaries, and the principal representative;
- Board committees are established to provide oversight on key operational areas including underwriting, finance and investments and key functions including risk management, internal audit, and compliance;
- Policies and procedures to ensure adequate board oversight of senior management;
- Processes regarding the engagement and dismissal of the services of the chief and senior executives and third-party service providers.
- Policies and procedures to manage and mitigate conflicts of interest;
- Processes to confirm that key employees are adequately skilled, to execute and discharge their duty and are compensated in a manner that encourages sound risk management and compliance;
- Clearly defined charters, roles and responsibilities allocated to the board, committees, chief and senior executives, and other key employees;
- Business and operational strategies, plans, budgets, and significant policies and procedures including those surrounding oversight;
- Review and approval of significant policies and procedures (see section 5.2), promoting effective corporate governance across the organisation, including those for risk management and internal controls, internal audit, compliance, and actuarial functions;
- Clear documentation and regular review of processes regarding the roles and responsibilities of the board, the chief and senior executives, and other key employees delegated corporate governance responsibilities (including appropriate segregation of the oversight function from management responsibilities);
- Functions, such as risk management, internal audit, actuarial, and compliance to assist in oversight responsibilities and have direct communication to the board and relevant committees;
- Processes to confirm that the board has appropriate access to accurate, relevant, and timely information to enable it to carry out its duties and functions, including the monitoring and review of the performance and risk exposures of the insurer and the performance of senior

management. This should also include relevant information available to stakeholders participating in the corporate governance process;

- Policies and procedures to ensure there is timely and accurate financial reporting process for both internal and external reporting.
- Management of the market conduct of the insurer, including confirming that policies on independence, conflicts of interest and disclosures to external stakeholders are documented and reviewed;
- Internal policies and procedures to address potential issues arising from the business conduct and unethical or fraudulent actions by board members, chief and senior executives, and employees;
- Review procedures and processes regarding compliance with all relevant laws, regulations, codes of conduct, industry standards, and guidance notes;
- Appropriate information systems to support the organisation's business platform, including producing reliable information to the relevant business functions;
- Maintenance of sufficient records as required by laws and regulations;
- Contingency plans, including those surrounding natural disasters and information recovery, to ensure the continual operation of the insurer; and
- Proper safeguard of sensitive information, including employee and policyholder information.
- Adoption and oversight of the effective implementation of a remuneration policy, which does not induce excessive or inappropriate risk taking, is in line with the identified risk appetite and long term interests of the insurer, and has proper regard to the interests of its stakeholders (such a remuneration policy, at a minimum, should cover those individuals who are members of the board, senior management, key persons in control functions and other employees whose actions may have a material impact on the risk exposure of the insurer);;
- Systems and controls to ensure the promotion of appropriate, timely and effective communications with the Authority and relevant stakeholders on the insurer's operations..

#### **4.3. Responsibility of the Chief and Senior Executives**

15. Supporting the board, the chief and senior executives are also responsible for the prudent administration of the insurer. Such responsibilities include:



- Manage and execute the day-to-day operations of the insurer, subject to the mandate established by the board and the laws and regulations in the operating jurisdiction;
- Assist the board to develop and implement an appropriate control environment including those around reporting systems;
- Provide recommendations on strategic plans, objectives, key policies, and procedures to the board for evaluation and authorisation;
- Assist the board with its oversight responsibilities by ensuring that the board has accurate and timely information, allowing the board to conduct robust and candid discussions on operational performance, strategy, and major policies, and to appraise the performance of management;
- Support oversight of internal functions including risk management, internal audit, compliance, actuarial, and external third-party services;
- Ensure that key functions assigned corporate governance responsibilities are supported with adequate resources to execute and discharge their duties including independent functions having direct access to the board and relevant committees; and
- Ensure that external service providers, including the principal representative, insurance manager, and approved auditors have adequate resources and information to fulfil their role, including access to timely and accurate internal and outsourced records.

#### **4.4. Relationship between the Insurer (including the board and the chief and senior executives) and the Authority**

16. The insurer, its board, and chief and senior executives, should communicate with the Authority in an open and cooperative manner.

#### **4.5. Insurance Managers**

17. Where the insurer employs an insurance manager, the board must ensure that the duties, responsibilities, and authorities of the insurance manager are clearly set out in a management agreement. For Class 1, Class 2, Class 3, Class A, Class B and Special Purpose insurers, the management agreement may outsource the chief and senior executives' responsibilities to the insurance manager, and the board shall ensure that the insurance manager is fit and proper to execute these functions. The board shall also ensure that the provisions relating to the chief and senior executives throughout the Code would be applicable to the insurance manager, and that the corporate

governance structure continues to remain appropriate to provide oversight of these outsourced functions.

18. The board should assess the fitness and propriety of the insurance manager including ensuring that the insurance manager has a strong risk management and internal controls framework and is sufficiently knowledgeable about jurisdictional laws and regulations to appropriately discharge its responsibilities. The board should have appropriate reporting and controls in place to provide effective oversight of the insurance manager's function.
19. In determining whether it is appropriate for the insurance manager to take on a senior executive role, regard must be given to whether the insurance manager has the capacity and resources to be effective and ensure that the insurer operates in a prudent manner.
20. The management agreement should include terms obliging full cooperation with the Authority. This includes producing documents relating to the insurer upon request or assisting the Authority with its on-site assessment of the insurance manager's corporate governance and risk management framework.

#### **4.6. Principal Representative**

21. The role of the approved principal representative is integral to the Bermuda insurance supervisory framework. While the board and the chief and senior executives of the insurer have primary responsibility for the conduct and performance of the insurer, the approved principal representative acts in an "early warning" role and monitors the insurer's compliance in accordance with Section 8A of the Act on a continuous basis.
22. The Act requires every insurer to appoint a principal representative resident in Bermuda and to maintain a principal office in Bermuda. The appointed principal representative must be knowledgeable in insurance and Bermuda laws and regulations.
23. The approved principal representative would generally be a director or senior executive of the insurer normally resident in Bermuda, or a Bermuda registered insurance management company. Under Section 8A of the Act, the approved principal representative has the legislated duty to report certain events to the Authority.

24. The insurer must make arrangements to enable the approved principal representative to undertake its duties pursuant to the Act in an efficient and effective basis, including access to relevant records.

## **5. RISK MANAGEMENT**

25. The board and the chief and senior executives should, based on their judgment, adopt an effective risk management and internal controls framework. The framework should have regard for international best practice on risk management and internal controls. This includes ensuring the fitness and propriety of individuals responsible for the management and oversight of the framework.
26. Minimally, the risk management framework should:
- Be embedded in both the organisational structure and strategic oversight process, supported by appropriate controls, policies and procedures;
  - Be supported by systems that appropriately capture underwriting, investment, and operational data and provide relevant, accurate, and timely information to the board, senior management and applicable business functions;
  - Include techniques necessary to identify, measure, respond to, monitor, and report, on a continuous basis and both on an individual and aggregate level, all material risks (e.g. financial and non-financial, on and off-balance sheet items, current and contingent exposures, etc.);
  - Include regular reviews of the operating environment to ensure material risks are continuously assessed and monitored, and appropriate actions are taken to manage exposures, identified issues and potential adverse developments;
  - Include objectives, risk appetite and tolerance levels, and appropriate delegation of oversight, reporting, and operating responsibilities across all functions;
  - Include reporting systems that are appropriate for the insurer taking into consideration any outsourcing of responsibilities and safeguarding of assets;
  - Include documentation of significant policies and procedures; and
  - Include the review and approval of these policies and procedures by the board and the chief and senior executives, on a risk basis (see section 5.2).

27. A risk management framework requires each insurer to:
- Identify all material risks, including financial and non-financial, on and off-balance sheet items, and current and contingent exposures;
  - Assess the potential impact of all material risks, including material risks affecting capital requirements and capital management, short-term and long-term liquidity requirements, policyholder obligations, and operational strategies and objectives; and
  - Develop policies and strategies to manage, mitigate, and report all material risks effectively.
28. Material risks to be addressed by the risk management framework include:
- Insurance underwriting risk;
  - Investment, liquidity, and concentration risk;
  - Market risk;
  - Credit risk;
  - Systems and operations risk (operational risk);
  - Group risk;
  - Strategic risk;
  - Reputational risk; and
  - Legal / litigation risk.

## **5.1. Material Risks**

### **5.1.1. Insurance Underwriting Risk**

29. The insurance underwriting risk component of the insurer's risk management framework should include:
- Underwriting strategies that are aligned with the overall organisational strategy, including alignment to the appropriate investment strategy, risk appetite and risk tolerance levels;
  - Underwriting policies that are sufficiently detailed to allow appropriate management of insurance exposures.
  - Reserving techniques prescribed by jurisdictional laws and regulations and that adequately reflect the obligations to policyholders;

- Management of policyholder claims including those surrounding claims processing (reporting, validation of claims, timely settlement of payments, and capturing and storing claims data);
  - Methodologies to identify and evaluate risks arising from insurance policies and obligations, including concentration of risks;
  - Measurement techniques to ensure compliance with risk appetite and tolerance levels and overall strategy;
  - Response techniques to ensure that unexpected exposures or deviations are mitigated, including those surrounding reserves, and that risk mitigation strategies are appropriately employed;
  - Systems to capture, maintain, and analyse underwriting data and policies and procedures to ensure relevant and accurate data is used to price underwriting contracts, establish adequate reserves, appropriately settle claims, and establish strategies and objectives; and
  - Board and the chief and senior executives' oversight, including employing techniques such as benchmarking and stress and scenario testing to review, approve, and assess strategies and tolerance limits.
30. Underwriting risks may be mitigated by way of reinsurance or other risk transfer techniques. Risk mitigation techniques should be embedded into the insurer's underwriting strategies. The insurer should develop processes and procedures to approve, evaluate, and assess the effectiveness of the risk mitigation techniques employed in light of the insurer's risk appetite and tolerances, underwriting results, and investment strategies. This includes identifying and monitoring potential material risks that may arise while executing the strategy.

### **5.1.2. Investment, Liquidity, and Concentration Risk**

31. The investment risk component of the insurer's risk management framework should include:
- Adopting the "prudent person" principle in relation to the investment of its assets;
  - Establishing strategies that align with the overall organisational strategy, especially those surrounding underwriting (including claims management) and capital requirements and capital adequacy;
  - Designing an investment policy, supporting established strategies, that:
    - Governs the selection and composition of the investment portfolio, including detailed composition and allocation limits,

to allow appropriate execution of the investment policy and strategies and future assessment of compliance;

- Governs the employment, valuation, and effectiveness of off-balance sheet hedging and derivative instruments;
  - Aligns with the insurer's overall risk tolerance limits and exposures;
  - Governs the selection and compensation of service providers including those providing custodian and investment management services;
  - Governs the reporting and data management of the investment portfolio; and
  - Governs the oversight responsibilities of board sub-committees, internal functions, and third-party service providers;
- Establishing techniques to analyse performance results and identify current and contingent exposures arising from execution of a planned strategy or market development;
  - Establishing techniques to regularly assess and monitor the adequacy of capital to support the current strategy and the effectiveness of the management of assets and liabilities including the effectiveness of hedging strategies, the development of contingent exposures, and the impact of embedded options in long-term products (Long-term insurers); and
  - Reporting of investment results to the board and the chief and senior executives on a timely basis for monitoring and for ensuring compliance with the established investment policy.
32. The “prudent person” principle requires that an individual entrusted with the management of a client’s funds may only invest in instruments that any reasonable individual with objectives of capital preservation and return on investment would own. In relation to the insurer, this principle requires that the insurer, in determining the appropriate investment strategy and policy, may only assume investment risks that it can properly identify, measure, respond to, monitor, control, and report while taking into consideration its capital requirements and adequacy, short-term and long-term liquidity requirements, and policyholder obligations. Further, the insurer must ensure that investment decisions have been executed in the best interest of its policyholders.
33. The liquidity risk component of the insurer’s risk management framework should include:

- Adopting sound liquidity management practices covering short, medium, and long-term objectives that support the overall organisational strategy, including investment, underwriting, and claims strategies;
  - Adopting practices to manage short-term liquidity requirements, including access to sufficient funds to meet its day-to-day obligations; and
  - Adopting benchmarking and stress and scenario testing to assist in the identification and determination of unexpected adverse developments in the medium and long-term.
34. The concentration risk component of the insurer's risk management framework should include developing strategies and policies to identify, measure, respond to, monitor, mitigate, and report credit risk arising from an individual risk exposure or from a combination of risk exposures such as credit, market, underwriting, and liquidity.

### **5.1.3. Market Risk**

35. The market risk component of the insurer's risk management framework should include:
- An investment strategy that is aligned with the insurer's overall short-term and long-term strategic objectives, including those surrounding the management of assets and liabilities;
  - Detailed policies on concentration and allocation limits, including counterparty, assets, and sectors;
  - Identification and quantification techniques related to both on and off-balance sheet exposures, including materiality, level, and trend;
  - Performance measurement techniques, including benchmarking and stress and scenario testing to ensure compliance with the investment strategy;
  - Monitoring procedures to assess the insurer's tolerance to changes in the market; and
  - Mitigation techniques to ensure appropriate management of adverse developments.

### **5.1.4. Credit Risk**

36. The credit risk component of the insurer's risk management framework should include:
- A credit risk policy that is aligned with the insurer's overall short-term and long-term strategic objectives;
  - Detailed exposure limits surrounding:
    - Individual counterparty or concentration of counterparties;
    - Intra-group transactions;
    - Assets and / or sectors;
    - Off-balance sheet (e.g. guarantees and letters of credit); and
    - Zones or territories;
  - Identification and quantification techniques related to both on and off-balance sheet exposures, including materiality, level, and trend;
  - Mitigation tools employed to manage adverse developments; and
  - Measurement techniques to assess the risk exposures and effectiveness of the mitigation tools used, including stress and scenario testing.

#### **5.1.5. Systems and Operations Risk (Operational risk)**

37. The systems and operations risk (operational risk) component of the risk management framework should include:
- Defining the systems and operations risk and establishing risk appetite and tolerance limits for each material risk area, which may include business process risk, business continuity risk, compliance risk, information systems risk, distribution channels risk, fraud risk, human resources risk, and outsourcing risk;
  - Establishing a system to identify systems and operations exposures, and to capture and track systems and operations near-miss data;
  - Establishing a system of effective internal reporting and operating controls (including IT infrastructure) to manage and appropriately mitigate the systems and operations risk;
  - Establishing measurement techniques, such as stress and scenario testing, to assess the vulnerability of the insurer; and
  - Establishing frequent reviews to ensure mitigation strategies, such as an early warning system, has been effectively deployed and the systems and operations risk is within a tolerable limit.



### **5.1.6. Group Risk**

38. The group risk component of the insurer's risk management framework should include:
- Identifying the group governance, structure and interrelationships, including ownership and management structure;
  - Identifying and measuring material intra-group transactions and exposures, including intra-group guarantees and contagion risks; and
  - Evaluating and executing strategies to mitigate group risk and ensure that the insurer is operating within its tolerance levels, as established by the board and the chief and senior executives.

### **5.1.7. Strategic Risk**

39. The strategic risk component of the insurer's risk management framework should include:
- Developing processes and procedures to ensure the execution of the insurer's overall organisational strategy; and
  - Developing techniques to measure, monitor, mitigate and respond to exposures and risks arising while implementing strategies.
40. The insurer should pay particular attention to the resources that will be needed to accomplish the strategic objectives including internal and external resources, and tangible and intangible resources.

### **5.1.8. Reputational Risk**

41. The reputational risk component of the insurer's risk management framework should include:
- Procedures to identify and monitor potential reputational risks; and
  - Methodologies to understand the impact of other material risks as they relate to the insurer's reputation.

### **5.1.9. Legal / Litigation Risk**

42. The legal / litigation risk component of the insurer's risk management framework should include developing mitigation and monitoring techniques to

ensure compliance with internal policies and procedures, laws and regulations; safeguarding of policyholder and organisational assets; market discipline; and financial or public reporting. This includes:

- Ensuring that the management of and access to records meet requirements established by laws and regulations;
- Complying with internationally recognised contract certainty standards and codes; and
- Maintaining appropriate documentation of all transactions such as documentation on investments, underwriting, and claims management transactions, and agreements (e.g. custodian, investment management, letters of credit, debt agreements, etc.).

## **5.2. Policies and Procedures**

43. The insurer should clearly document significant policies and procedures for all its functions, including its risk management and internal controls frameworks. The operating and oversight responsibilities should be clearly defined and the reporting of material deficiencies and fraud activities should be transparent, devoid of conflicts of interest, proper attention be given to these reports and that persons making these reports are treated fairly and equitably.
44. Significant policies and procedures should be reviewed at least annually to ensure that they continue to support the overall operational strategy. Where appropriate, an insurer may take a risk-based approach to its review spanning over several annual periods.
45. The design and effectiveness of the risk management and internal controls framework should be regularly assessed and reported to the board and the chief and senior executives to ensure amendments are incorporated as appropriate. Internal controls should facilitate effective and efficient operations and should address the organisational structure, in particular:
  - Duties and responsibilities;
  - Decision-making authority and procedures;
  - Any outsourcing;
  - Segregation of duties; and
  - Internal monitoring and reporting.
46. Further, the insurer should establish sound accounting and financial reporting procedures and practices. The accounting and supporting records should

provide a timely, complete, and accurate representation of the insurer's financial position.

## **6. GOVERNANCE MECHANISM**

47. Conducting business in a prudent manner should also include the insurer establishing sound governance mechanisms. These should be embedded in the corporate governance framework and its effectiveness assessed frequently. Functions assisting the board with its oversight responsibilities may be internally developed, or outsourced to third-party service providers, as appropriate, given the insurer's risk profile.

### **6.1. Risk Management Function**

48. The insurer must establish a function to assist it with the oversight responsibility of the organisation's risk management framework. Depending on its risk profile, the function may be headed by a Chief Risk Officer or the responsibilities assigned to or shared amongst the operational unit leaders at the insurer. Regardless, there should be a mechanism to allow direct reporting to the board or its established committees. The board should ensure the fitness and propriety of the individual(s) entrusted with the responsibility.

49. The risk management function should include:
- Clearly defined and documented roles and responsibilities that are reviewed and approved by the board on a frequent basis;
  - A sound and effective risk management framework including developing (with the support of operational unit leaders) policies, procedures, and internal controls promoting the identification, assessment, monitoring, and reporting of material risks in a timely manner;
  - Assessing the effectiveness of policies, procedures, and controls and compliance with established policies (e.g. investment, underwriting, etc.), risk appetite, risk tolerance limits, and strategies;
  - Employing measurement techniques such as benchmarking or stress and scenario testing; and
  - Reviewing on a regular basis the risk management techniques employed in light of changing operational, regulatory, and market developments to ensure continued effectiveness and adoption of international best practice.

This function may be delegated to third-party service providers.

## **6.2. Internal Controls**

50. The board and the chief and senior executives should review and assess the effectiveness of the internal reporting and operating controls. Any material deficiencies should be documented and resolution measures should be implemented in a timely manner. The board and the chief and senior management should ensure that policies and procedures requiring direct reporting of internal control weaknesses to them are developed.

## **6.3. Internal Audit Function**

51. The insurer's internal audit function should:
- Be segregated and staffed by persons independent of operational functions including risk management, compliance, underwriting, claims, operations and finance;
  - Have clearly defined and documented charters, roles and responsibilities that are reviewed and approved by the board on a regular basis and that demonstrate the independence and separation of the function ;
  - Document material policies and procedures to be reviewed and approved by the board (see section 5.2);
  - Have unrestricted access to all areas of the organisation, including access to any records held by third-party service providers;
  - Examine operational practices to ensure the adequacy and effectiveness of governance, risk management, policies, procedures, and controls;
  - Have appropriate authority within the organisation to ensure management addresses any internal audit findings and recommendations with respect to the adequacy and effectiveness of governance, risk management, policies, procedures and controls;
  - Have sufficient resources and fit and proper staff to carry out duties and responsibilities;
  - Have sufficient knowledge and experience to employ methodologies designed to assist the insurer in identifying key risks; and
  - Assist the board to identify areas for improvement.

This function may be delegated to third-party service providers.

## 6.4. Compliance Function

52. The insurer must develop a function to assist it to monitor and evaluate its compliance with jurisdictional laws and regulations, internal controls, policies, and procedures. The compliance function should also promote and sustain a corporate culture of compliance and integrity. This function may be delegated to third-party service providers.
53. The compliance function should include:
- Policies, procedures and processes documenting the compliance risk management framework, including those related to legal and ethical conduct and compliance with applicable laws, rules and standards including contract certainty standards;
  - System of compliance monitoring and testing, including a plan to address any deficiencies or non-compliance that may be identified;
  - Training program for staff on compliance risk management framework and provide a mechanism for staff to report confidentially concerns regarding compliance deficiencies and breaches.

## 6.5. Actuarial Function

54. The insurer must establish an effective actuarial function based on the nature, scale, complexity, and profile of risks to which the insurer is exposed. The function may be outsourced to third-party service providers; however, it may be performed by the approved loss reserve specialist (general business insurers) or approved actuary (long-term insurers) in addition to their respective responsibilities to the Authority.
55. Activities of the actuarial function include:
- Performing or overseeing the estimation of policyholder obligations, including assessing the adequacy of methodologies and assumptions and the quality of underlying data;
  - Assisting in the execution of the risk management framework particularly as it relates to modelling techniques used to estimate loss reserves, policyholder obligations, potential exposures, and capital requirements;
  - Assisting with the underwriting process, including those surrounding pricing and writing of underwriting contracts and risk transfer mechanisms (e.g. ceding reinsurance, derivative instruments, catastrophe bonds, etc.);

- Performing analysis comparing the estimated policyholder obligations against actual policyholder obligations paid;
- Reporting to the board and the chief and senior executives on the dependability and sufficiency of the estimates;

This function may be delegated to third-party service providers.

56. The insurer should ensure the fitness and propriety of the individuals performing the actuarial function. This includes retaining individuals with the appropriate qualification in actuarial science or mathematics, and knowledge and experience in the industry.

## **6.6. Self-Assessment**

57. The insurer must develop policies, processes, and procedures to assess its material risks and self-determine the capital requirement it would need to support its operations, at least annually. The insurer should be guided by the proportionality principle in establishing the framework. Minimally, the assessment should:
  - Be an integral part of the insurer's risk management framework;
  - Be clearly documented, reviewed, and evaluated regularly by the board and the chief and senior executives to ensure continual advancement in light of changes in the strategic direction, risk management framework, and market developments; and
  - Ensure an appropriate oversight process whereby material deficiencies are reported on a timely basis and suitable actions taken.
58. The insurer should ensure the fitness and propriety of key individuals overseeing and performing the assessment; this includes third-party service providers assisting with assessment procedures.
59. Upon implementation of the Commercial Insurer Solvency Assessment framework, insurers must follow standards, guidance, and requirements established in place of the self-assessment noted above.

## 7. OUTSOURCING

60. Where the insurer outsources functions either externally to third parties or internally to other affiliated entities, the board should ensure that there is oversight and clear accountability for all outsourced functions as if these functions were performed internally and subject to the insurer's own standards on governance and internal controls. The board should also ensure that the service agreement includes terms on compliance with jurisdictional laws and regulations, cooperation with the Authority, and access to data and records in a timely manner.
61. Where the board has outsourced a function and/or is considering outsourcing a function, the board must assess the impact on the insurer. The board should not outsource a function which may adversely affect the insurer's ability to operate in a prudent manner. These considerations include:
- Where outsourcing may adversely affect the insurer's governance and risk management structures;
  - Where outsourcing has increased operational risk;
  - Where outsourcing may affect the Authority's ability to effectively supervise the insurer; and
  - Where outsourcing adversely affects policyholder's interests.

## 8. MARKET DISCIPLINE AND DISCLOSURE

(Applicable to Insurers Writing Domestic Retail Business)

### 8.1. Retail Business

62. If the insurer conducts retail business, it must establish and maintain properly documented systems, controls, and procedures to enable on-going monitoring of compliance with the market conduct requirements as outlined in this section. A policy statement on the treatment of policyholders should be developed and approved by the board. This policy statement should be communicated to all relevant staff and appropriate training should be provided to ensure compliance by personnel and any authorised sales representatives.
63. Where the insurer grants terms of business to an authorised intermediary (see paragraph 72) in respect of retail business, the insurer must:
- Ensure that the terms of business agreement have been completed and signed by the authorised intermediary to require the authorised

intermediary to warrant that the agreement does not breach any legal obligations, and that the authorised intermediary will clearly explain the risks inherent in the product to policyholders or prospective policyholders; and

- Take measures to monitor the performance of the authorised intermediary, including the reporting and handling of complaints made against the authorised intermediary with respect to advice or sales made by the authorised intermediary on behalf of the insurer.

## **8.2. Responsibility to Policyholders**

64. The insurer must ensure that its business is conducted in such a way as to treat its policyholders fairly, both before the inception of the contract and through to the point at which all obligations under a contract have been satisfied., Insurers should establish and implement policies and procedures to ensure the fair treatment of policyholders.

## **8.3. Integrity and Fair Dealing**

65. The insurer should observe high standards of integrity and fair dealing in the conduct of its business. The insurer must avoid misleading and deceptive acts or representations. It should not seek to exclude or restrict any duty or liability to a policyholder unless the liability is clearly excluded from the policy. Additionally, it should not seek to rely unreasonably on any provision of a contract seeking to exclude or restrict any such duty or liability.
66. The insurer should either avoid any conflict of interest arising or, where a conflict arises, should ensure fair treatment to affected policyholders through disclosure, internal rules on confidentiality, declining to act, or otherwise, as appropriate. The insurer must not unfairly place its interests above those of its policyholders.

## **8.4. Skill, Care and Diligence**

67. The insurer should act with skill, care, and diligence in the conduct of its business and in its dealings with customers<sup>1</sup>. Where the insurer is responsible for providing advice or exercising discretion for, or in relation to customers, it

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<sup>1</sup> Customers would include policyholders, potential applicants for insurance and persons making general enquiries.



must be able to demonstrate that the advice is appropriate for the policyholder. The insurer should seek from the customer such information about their circumstances and objectives as may be appropriate with regard to the services requested. Any information that a customer can reasonably expect to be kept confidential should be treated as such.

68. The insurer should transact its business (including the establishment, maintenance, transfer, or closure of business relationships with its policyholders) in an expeditious manner.

### **8.5. Disclosure and Information**

69. The insurer should take reasonable steps to give policyholders, in a comprehensible and timely way, information to assist their decision making while avoiding misleading or deceptive representations or practices. The insurer should communicate in writing:
- Relevant and meaningful information about the insurer and the product in a timely and comprehensive manner before entering into a contract;
  - Benefits and risks to the policyholder in a fair and balanced way;
  - Obligations of the parties involved, including those for insurers, intermediaries, policyholders in a clear and understandable way, for the duration of the contract;
  - Claims and complaints handling and other contractual arrangements; and
  - Duty of policyholders to disclose material information.
70. The insurer should be prepared to provide a policyholder with a full and fair account of the fulfilment of its responsibilities. The frequency with which additional information is to be disclosed during the course of the contract depends on the type of contractual arrangement. Reasonable care should be taken to ensure that the information disclosed is accurate, not misleading, comprehensible, and available in writing or through appropriate electronic means.
71. Insurers should have controls in place, as well as, policies and procedures for the protection and handling of confidential information on policyholders.

### **8.6. Policyholder Assets**

72. Where the insurer has control of, or is otherwise responsible for, assets belonging to a policyholder, the insurer must arrange appropriate protection. Protection can be by way of segregation and identification of those assets or otherwise, in accordance with the responsibility it has accepted. Such protection must be in compliance with the terms and conditions established in the contractual agreement and authorised by the policyholder.

### **8.7. Authorised Intermediaries**

73. The insurer is required to take responsibility for the appointment and activities of authorised intermediaries. In this respect, the insurer must, in relation to its authorised intermediaries who are carrying on business in Bermuda:
- Ensure they are registered with the Authority; and
  - Ensure that they provide policyholders and prospective policyholders with the name of the insurer represented by the authorised intermediary and the types of product(s) the authorised intermediary is authorised to sell and/or provide advice on, on behalf of the insurer. Have a written contract in place with each intermediary setting out the products, services, commissions, premium payment and responsibilities of each party, particularly in relation to policyholder communication and dealings with the insurer.

### **8.8. Advertisements**

74. The insurer should promote products and services in a manner that is clear, fair and not misleading. The insurer should ensure that its advertisements:
- Do not contain a statement, promise or forecast that is untrue or misleading;
  - Are not designed in such a way as to distort or conceal any relevant subject material;
  - Are clearly recognisable as advertisements;
  - Do not contain a statement relating to taxation benefits unless it contains appropriate qualifications to show what it means in practice and to whom such benefits apply;
  - Include a statement of the related risks; and
  - Do not contain a statement relating to past performance unless:
    - The basis on which such performance is measured is clearly stated and the presentation is fair;

- It is accompanied by a warning that past performance is not necessarily a guide to future performance; and
  - The past performance is relevant to the investment or the services offered by the investment provider.
75. If the insurer undertakes long-term business, the insurer in its promotional material should endeavour to impress upon policyholders that the policy is intended to be a long-term contract and that surrender values, especially in early years, can be less than the total amount of premiums paid.

### **8.9. Policy Servicing**

76. Insurers should:
- service policies appropriately through to the point at which all obligations under the policy have been satisfied;
  - ensure timely and effective disclosure to the policyholder of information on any contractual changes during the life of the contract; and
  - disclose to the policyholder further relevant information depending on the type of insurance product.
77. Insurers should have policies and processes in place to handle claims in a timely and fair manner.

### **8.10. Complaints Procedure**

78. The insurer must have procedures in place to promptly deal with policyholder complaints effectively and fairly through a fair and equitable process. These procedures should contain the process of complaints handling, the necessary forms and documentation required and be accessible to policyholders and other third parties. A documented record of the details of the complaint, the insurer's response and any action taken as a result, must also be made and retained.

## **9. IMPLEMENTATION**

79. The Code will come into immediate effect once published in July 2015.