

7 December 2021

Dear Stakeholders,

Re: Consultation Paper: Conduct of Business Regulatory Regime: Revisions to the Insurance Code of Conduct

The Bermuda Monetary Authority (Authority or BMA) would like to thank stakeholders for their continued engagement as the Authority enhances its framework for supervising entities subject to the Insurance Code of Conduct (the Code). The Authority appreciates the feedback received and is committed to ensuring Bermuda's regulatory regime remains effective and aligned with evolving international standards as well as protecting financial services customers.

The Authority sought feedback on a conduct of business supervisory regime through a Consultation Paper (the Paper) proposing enhancements to the Code by the inclusion of conduct principles, in particular for those firms undertaking retail business.

RESPONSE TO INDUSTRY FEEDBACK

The Authority received feedback from several stakeholders and the response to the **key substantive comments** received on the Code are outlined below.

Code of Conduct: Definition of Retail Business

Clarification was sought regarding the expansion of the term 'retail business' to include small and medium-sized enterprises (SMEs), and in keeping with the proportionality principle of the Code, as applying to SMEs for only those types of insurance products that individual retail consumers would also buy or products that are primarily targeted to SMEs.

Clarification was sought that the conduct provisions only apply to domestic retail businesses and will not be applied extra-territorially to businesses outside of Bermuda.

Response: The Authority recognises that SMEs are not currently within the scope of the definition of 'retail business' in the Insurance Act 1978 (the Act), and indeed are not currently separately defined within the legislative framework. This is something that the Authority will look to explore in the future if necessary. The existing definition of 'retail business' within the Act, as applying to insurance products bought by an individual, remains unchanged.

The Code will only apply to Bermuda licensed insurers, not affiliates or group members regulated elsewhere and operating outside of Bermuda.

There is no change in the Code applicability. If an entity were previously not subject to the Code, it would not become applicable solely due to the conduct of business changes in Section 8. If a business is located outside of Bermuda and the Code does not currently apply, then it will not suddenly apply due to these changes.

As stated in the Code, Section 8.2 onwards only applies to those individual insurance entities writing domestic retail business.

Code of Conduct: Conflicts of Interest

Clarification was sought on the applicability of the conflicts provision in Section 8.1.2. of the Code, where there is no legal duty to protect or promote their counterparty's best interests and are commercially adverse (such as a reinsurance transaction where both parties are equally sophisticated and have the same bargaining power).

Response: The conflicts provision recognises that conflicts of interest may arise in the normal course of business and insurers would therefore be expected to have policies and procedures to identify and manage any such conflicts. The policies and procedures would assist insurers in determining if there was a potential for conflict and how to deal with it. It will be up to individual insurers to manage any conflicts they have, and if it is determined that no conflict exists due to the nature of the transaction, then no further action is needed.

Code of Conduct: Fair Treatment of Policyholders

Section 8.2.1 of the Code (paras. 62 and 63) addresses the fair treatment of policyholders and the need for policies and procedures to be approved by the Board. It was suggested that whilst policies will usually be approved by the Board, normally procedures are working-level documents and unlikely to be signed off at the Board level. Clarification was sought on this point.

Additionally, clarification was also sought on the use of the term 'authorised sales representatives' and whether this would include third-party brokers and intermediaries who may be contracted to sell the insurer's products?

Response: Section 8.2.1 will be amended to clarify that only policies will need to be approved by the Board, but procedures, while not requiring Board sign off, will need to be in place and approved by the relevant senior management committee/representatives in accordance with the firm's existing control structure.

'Authorised Sales representatives' is not a new term within the Code and has the same meaning as it previously did. It would normally include third-party brokers and intermediaries who are contracted to sell the insurer's products.

Code of Conduct: Product Suitability

Section 8.2.5 of the Code (paras. 70 to 73) refers to product suitability, where the insurer is responsible for providing advice or exercising discretion for or in relation to policyholders. However, the specific wording regarding where the insurer is responsible for providing advice, etc., is only included in para. 70. It was suggested that the wording should clearly state the responsibilities for both insurers and third parties who are responsible for giving advice.

Response: Both the insurers themselves and any third parties they contract have various obligations and responsibilities for the suitability of the advice they give. We believe this is reflected within the Code.

Code of Conduct: Authorised Intermediaries

Section 8.2.10 of the Code relates to the insurer's responsibilities where it appoints authorised intermediaries to act on its behalf. Clarification was sought about those responsibilities where an independent intermediary is appointed as opposed to tied agents. In the case of an independent intermediary, it is suggested that it is the independent intermediary who is responsible for any advice given to the policyholder, not the insurer.

Clarification was also sought regarding the use of wording in paragraph 84(a) – in particular not breaching any legal obligations, and whether a 'comply with all laws' covenant within an agreement would suffice?

Response: As above, both insurers and any third parties they contract, such as authorised intermediaries and tied agents have various responsibilities when providing advice or selling policies. The Authority would expect normal due diligence to have been carried out whenever third parties are appointed to act on an insurer's behalf and for the insurer to make third parties aware of the provisions of the Code which may apply.

Regarding the wording around 'legal obligation' for the authorised intermediary, a 'comply with all laws' covenant will be sufficient.

Code of Conduct: Terms of Business

Section 8.3.5 of the Code sets out requirements for insurers to maintain and provide "terms of business" to policyholders. A stakeholder stated that in the context of the life insurance business, the contractual terms and conditions of the coverage are clearly established in the life insurance policy that is issued to a policyholder. Prior to and as part of the sales and application process, the broker would have presented the proposed policyholder with customary explanatory materials and disclosures (prepared by the insurer) about the life insurance coverage being requested. Stakeholders believe this would satisfy the "terms of business" obligation but sought any comment or clarification from the Authority.

Response: It is acknowledged that in most cases, the terms of business will be expressly disclosed in the insurance contract, and the Authority will therefore modify the wording to reflect this.

Next Steps

When taking an outcomes-based approach to designing the Code, the Authority's goal was to hold insurers accountable for the impact of their actions on consumers while removing the need to be overly prescriptive on processes, which may necessarily differ depending on the circumstances of the insurer and consumer involved. If insurers remain unclear regarding their responsibilities pursuant to the Code once issued, they are encouraged to reach out to their usual Authority contact.

The Authority intends to finalise the Code based on the feedback received. Amendments to the Bermuda Monetary Authority Act 1969 to amend the Authority's principle objects to provide a clear regulatory mandate over the conduct of business are expected to be made in the near future. Once this amendment is made and the forthcoming consultation on other updates to the Code is concluded, the Authority will issue the final Code. A suitable transition period will be recommended at that time and communicated to all insurers to allow them to come into compliance with the new provisions.

The Authority would like to thank stakeholders for their feedback and remains committed to working with financial institutions and other interested parties to ensure optimal protection for customers of such institutions. Any stakeholder who wishes further clarification or additional information on these matters should contact the Authority directly at **conduct@bma.bm**.