



# BERMUDA MONETARY AUTHORITY

## THE INSURANCE CODE OF CONDUCT

AUGUST 2022  
(Revised)

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## **1. INTRODUCTION**

1. This document outlines the Bermuda Monetary Authority's (Authority or BMA) Insurance Code of Conduct (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.
2. Limited purpose insurers shall include Class 1, Class 2, Class 3, Class Innovative Insurer General Business (IIGB), Special Purpose Insurer, Collateralized Insurer, Class A and Class B.

## **2. LEGISLATIVE AUTHORITY**

3. The Authority is issuing the Code pursuant to the powers under Section 2BA of the Insurance Act 1978 (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 the Authority considers in determining whether an insurer is meeting its obligation to conduct its business soundly and prudently.

## **3. PROPORTIONALITY PRINCIPLE**

4. The Authority appreciates that insurers have varying risk profiles arising from their business' nature, scale and complexity and that those insurers with higher risk profiles would require more comprehensive governance and risk management frameworks compared with those of a lower risk profile to conduct business soundly and prudently.
5. Accordingly, the Authority will assess the insurer's adherence to the Code proportionately 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 scale but write extremely complex business and, therefore, be required to maintain a sophisticated risk management framework). In defining these elements:
  - a) "Nature" includes the relationship between the policyholder and the insurer or characteristics of the business written;
  - b) "Scale" includes size aspects such as volume of the business written or size of the balance sheet in conjunction with materiality considerations (e.g., an assessment of the impact of insurer's failure); and
  - c) "Complexity" includes items such as organisational structures and ease of information transmission, multifaceted business or business lines, and skill level required to assess the risks of contractual provisions properly (e.g., the existence of options in business products).

6. In assessing the existence of sound and prudent business conduct, the Authority will regard both its prudential objectives and the appropriateness of the Code's provisions, taking into account the insurer's nature, scale and complexity.
7. The proportionality principle discussed above applies to all sections of the Code regardless of whether the principle is explicitly mentioned.
8. 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 6 in documenting their adherence to the Code.

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

9. 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 practices on effective corporate governance. Corporate governance includes principles of corporate discipline, accountability, responsibility, compliance and oversight.
10. The ultimate responsibility for sound and prudent governance and oversight of the insurer rests with its Board of directors (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 Board's efficient, objective and independent judgment and decision-making.
11. The Board must also have adequate powers and resources to discharge its duties fully and effectively. Adequate resources, such as sufficient funding, staff and facilities, should be allocated to the Board to enable the board members to carry out their respective roles and responsibilities efficiently and effectively. In addition, the Board should have access to services of external consultants or specialists where necessary or appropriate, subject to criteria (such as independence) and due procedures for appointment and dismissal of such consultants or specialists.

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

12. 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 and determining an acceptable level of risk. Therefore, the effectiveness of the insurer's Board is a basic tenet of the Authority's risk-based supervisory approach. Pragmatically, the Board will likely delegate tasks; however, the delegation of authority to board committees, chief and senior executives, employees or external parties does not absolve the Board from its ultimate responsibilities.

13. The Board must ensure that the business is effectively directed and managed and conducted with integrity, due care, and appropriate professional skills. Therefore, it is the Board's responsibility to ensure that processes exist to assess and document the fitness and propriety of its members, controllers, and officers.
14. To effectively discharge its duties, the Board must have an appropriate number and mix of directors to ensure that it has requisite experience, knowledge, skills, and expertise commensurate with the insurer's business's nature, scale, and complexity.
15. The Board should include an appropriate number of independent non-executive directors<sup>1</sup>, subject to the power of the Authority to review and require the addition of independent non-executive directors as it may deem appropriate. The Authority is of the view that independent non-executive directors play a valuable role in bringing external views, experience and perspective to an insurer by providing a challenge to the executive directors and other management in the running of the insurer's business.
16. The extent to which the Authority believes the directors of insurers need to be independent will be influenced by a number of factors, including the nature, size and complexity of the insurer's business, its business model and, if part of an insurance group, the degree of strategic and operational dependence between the insurer and the wider group. Other possible factors include the insurer's recovery and resolution plans and the need for the Board to have regard to the effect of its business decisions on existing, potential and future policyholders. The objective is to ensure that the governance of the insurer is effective and that its Board is capable of taking decisions in the interests of the safety and soundness of the insurer.
17. For an insurer that is a subsidiary of another Bermuda regulated insurer and/or Bermuda registered insurance group or that is a subsidiary of an entity which is not a Bermuda registered entity or group but is subject to prudential regulation<sup>2</sup> in a foreign country, the Board must have an appropriate number of non-executive directors<sup>3</sup>; however, these directors need not be independent. In determining the need for independent non-executive directors, the Authority will consider, among other factors, those detailed in paragraph 16 above. In this case, independent non-executive directors on the Board of the parent company or its other subsidiaries may also sit as independent non-executive directors on the Board of the insurer.

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<sup>1</sup> For the purposes of the Code, an independent non-executive director is a director who is free from any business or other association including those arising out of a current beneficial ownership, existing or past involvement in management of the insurer or as a customer, supplier or adviser that could materially interfere with the exercise of their independent judgement in the best interests of the insurer and its policyholders.

<sup>2</sup> Prudentially regulated institution should be interpreted as an institution that is subject to regulation and supervision of any applicable insurance regulatory authority.

<sup>3</sup> For the purpose of this Code, a reference to non-executive director is a director who is not a member of the insurer's management. Non-executive directors may include Board members or chief and senior executives of the parent company of the insurer or of the parent company's subsidiaries, but not executives of the insurer or its subsidiaries.

18. For an insurer that is registered in Bermuda and is a subsidiary of a parent company that is not a Bermuda-registered entity and is not prudentially regulated, the Board must have independent non-executive directors. Independent non-executive directors on the Board of the parent company or its other subsidiaries may also sit as independent non-executive directors on the Board of the insurer.
19. Individual members of the Board must:
  - a) Act in good faith, honestly and reasonably;
  - b) Exercise due care and diligence;
  - c) Act in the best interests of the insurer and policyholders;
  - d) Exercise independent judgment and objectivity in their decision making; and
  - e) Ensure appropriate policies and procedures exist to deal with conflicts of interest effectively.
20. The Board should have a board renewal policy which must provide details of how the Board intends to renew itself in order to ensure it remains open to new ideas and independent thinking while retaining adequate expertise. The policy must give consideration to whether directors have served on the Board for a period that could, or could reasonably be perceived to, materially interfere with their ability to act in the best interests of the insurer. The policy must include the process for appointing and removing directors, including the factors that will determine when an existing director will be re-appointed.
21. The board members should assess the Board's effectiveness no less frequently than every three years and upon a material change in the insurer's business activities or risk profile by:
  - a) Reviewing the board membership and its committees to ensure that the board members:
    - i. Continue to be fit and proper; and
    - ii. Ensure each of its committees, individually and collectively, have the requisite knowledge, skills, expertise, diversity, tenure and resources given the nature, scale and complexity of the insurer's operations.
  - b) Assessing the Board and how effectively the board members work together to achieve its objectives. Individual board member evaluation should demonstrate whether each director continues to contribute effectively.
22. The Board must establish and maintain, annually, policies and procedures that adequately address actual or potential conflicts of interest. 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.



## 4.2. Oversight Responsibilities of the Board

23. As the insurer's governing body, a key board responsibility is setting appropriate strategies and overseeing the implementation. This includes ensuring that chief and senior executives establish a transparent organisational structure and framework to implement the insurer's strategic business objectives.
24. The Board is also responsible for providing appropriate oversight of the insurer's governance, risk management and internal controls frameworks, including any activities and functions that are delegated or outsourced. A list of oversight responsibilities that the Board must consider when establishing and assessing the effectiveness of the corporate governance framework must include the existence of:
  - a) An operational framework, including risk management, internal audit and compliance, to ensure adequate oversight responsibilities so that sound corporate governance is effective;
  - b) Review and approval of significant policies and procedures, promoting effective corporate governance, including those for risk management and internal controls, internal audit, compliance and actuarial functions;
  - c) Adequate independence for the risk management, internal audit, actuarial and compliance functions to assist in oversight responsibilities and ensure these functions have a direct communication channel to the board and relevant committees;
  - d) Processes to assess and document the fitness and propriety of board members, controllers, the chief and senior executives, and third-party service providers, including insurance managers, auditors, actuaries, investment custodians/managers and the principal representative;
  - e) Board committees (where applicable) to provide oversight and ensure fitness and propriety of both key operational areas, including underwriting, finance and investments and key functions including risk management, internal audit, actuarial and compliance;
  - f) Clear documentation and regular review of processes regarding the roles and responsibilities of the Board and its committees, the chief and senior executives, and other key employees delegated corporate governance responsibilities, including appropriate succession planning and segregation of the oversight function from management responsibilities;
  - g) Policies and procedures to ensure adequate board oversight of the chief and senior executives, including processes for engagement and dismissal of chief and senior executives and third-party service providers;
  - h) Processes to ensure 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;
  - i) Clearly defined charters, roles and responsibilities for the Board, committees, chief and senior executives, and other key employees;
  - j) 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;
- k) Business and operational strategies, plans, budgets and significant policies and procedures, including those surrounding oversight;
  - l) 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 reviewing of the insurer's performance and risk exposures and the performance of the board committees and the chief and senior executives;
  - m) Policies and procedures to ensure there is a reliable, timely and accurate financial reporting process for both internal and external reporting purposes that is supported by clearly defined roles and responsibilities of the Board, chief and senior executives, and external service providers (e.g., external auditors);
  - n) Review procedures and processes regarding compliance with all relevant laws, regulations, codes of conduct, industry standards and guidance notes;
  - o) Appropriate information systems to support the organisation's business platform, including producing reliable information to the relevant business functions;
  - p) Maintenance of sufficient records as required by laws and regulations;
  - q) Policies and procedures to oversee the external audit process and safeguard and promote an effective relationship with the external auditor;
  - r) Oversee policies and procedures that assist the insurer, where appropriate, in meeting the conduct of business obligations set out under this Code.
  - s) Management of the insurer's market conduct, including confirming that policies on independence, conflicts of interest and disclosures to external stakeholders are documented and reviewed;
  - t) Adoption of a risk culture that encourages behaviour and conduct that aligns its risk appetite, including the development of governance mechanisms for measuring and monitoring risk culture effectiveness, including but not limited to conducting risk culture assessments on a regular basis. The frequency of the assessments should be commensurate to the insurer's nature, scale and complexity;
  - u) Contingency plans, including those surrounding natural disasters, pandemic and information recovery, to ensure the insurer's continual operation;
  - v) Proper safeguard of organisational assets and sensitive information, including employee and policyholder information;
  - w) Adoption and oversight of the remuneration policy's effective implementation, which does not induce excessive or inappropriate risk-taking, is in line with the objectives, strategies, 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 board members, the chief and senior executives, key persons in control functions and other employees whose actions may have a material impact on the insurer's risk exposure;
  - x) Systems and controls to ensure the promotion of appropriate, timely and effective communications with the Authority and relevant stakeholders on

- the insurer's operations; and
  - y) Processes to adequately capture sustainability or Environmental, Social and Governance (ESG) considerations and the associated risks in the business plans and strategies and when establishing risk appetites.
25. Where an insurer is part of a regulated insurance group and the group has centralised group policies or functions that the insurer utilises, the Board of the insurer must approve the use of group policies and functions and must ensure that these policies and functions give appropriate regard to the insurer's business and its specific requirements.

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

26. The Board must ensure that great care is taken in selecting the chief and senior executives, given the important role these play. In addition to supporting the Board, the chief and senior executives are also responsible for the prudent administration of the insurer. Such responsibilities include:
- a) Manage and execute the insurer's day-to-day operations, subject to the mandate established by the Board and the laws and regulations in the operating jurisdiction;
  - b) Assist the Board to develop and implement an appropriate control environment, including those around reporting and security systems;
  - c) Provide recommendations on strategic plans, objectives, key policies and procedures to the Board for evaluation and authorisation;
  - d) Provide the Board with adequate and timely information to enable it to carry out its duties and functions, including the monitoring and review of the insurer's performance and risk exposures;
  - e) Maintain adequate and orderly records of the insurer;
  - f) Support oversight of both internal functions (e.g., risk management, internal audit, compliance, actuarial) and external third-party services;
  - g) 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;
  - h) Ensure that external service providers, including the principal representative and insurance manager, have adequate resources and information to fulfil their role, including access to timely and accurate internal and outsourced records; and
  - i) Ensure the proper vetting of all staff.

Given the governance responsibilities, where requirements are imposed upon the insurer throughout the Code, the Authority will look to and expect the chief and senior executives, and ultimately the Board, to ensure adherence to the requirements of the Code.

#### **4.4. Cooperation with Regulatory Authorities**

27. The insurer, its Board and chief and senior executives are expected to deal openly and in a spirit of cooperation with the Authority and other relevant regulatory authorities.
28. The insurer should also ensure that any contracts or agreements it enters into do not intentionally or otherwise frustrate the Authority's ability to carry out its supervisory or regulatory obligations in relation to the insurer.

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

29. Where the insurer employs or appoints an insurance manager, the Board must ensure that the insurance manager's duties, responsibilities and authorities are clearly set out in a management or service agreement. For limited 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.
30. 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 discharge its responsibilities appropriately. In addition, the Board should have appropriate reporting and controls in place to provide effective oversight of the insurance manager's function.
31. 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 prudently.
32. 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 insurer's outsourced functions to the insurance manager.
33. The Authority expects insurers to obtain confirmation from the insurance manager that they are in compliance with the requirements of the Insurance Manager's Code of Conduct.

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

34. The Act requires every insurer to appoint a principal representative who must be resident in Bermuda. The appointed principal representative must be

knowledgeable in insurance and Bermuda laws and regulations.

35. The role of the approved principal representative is integral to the Authority's insurance supervisory and regulatory framework. While the Board and the chief and senior executives 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 with the Act on a continuous basis in accordance with Section 8A of the Act.
36. The approved principal representative would generally be a director or senior executive of the insurer who must be resident in Bermuda or a Bermuda registered insurance manager whose Bermuda office's chief and senior executives are sufficiently knowledgeable about the business of the insurer and have appropriate knowledge of relevant legislation, codes and guidance, to be able to act in the capacity of a principal representative. Under Section 8A of the Act, the approved principal representative has the duty to report certain events to the Authority.
37. The Board and chief and senior executives must make arrangements to enable the approved principal representative to undertake their duties pursuant to the Act on an efficient and effective basis, including providing access to relevant records.

## **5. RISK MANAGEMENT FRAMEWORK**

38. The Board and the chief and senior executives should adopt an effective risk management and internal controls framework. The framework should have regard for international best practices on risk management and internal controls. This includes ensuring the fitness and propriety of individuals responsible for the management and oversight of the framework.
39. Minimally, the risk management framework should:
  - a) Be embedded in both the organisational structure and strategic oversight process, supported by appropriate controls, policies and procedures;
  - b) Be supported by systems that appropriately capture underwriting and reserving, asset-liability matching, investments, liquidity and concentration risk management, reinsurance and other risk mitigation techniques, and operational risk management and provide relevant, accurate and timely information to the Board, chief and senior executives, and applicable business functions;
  - c) Allow for the identification, assessment, monitoring and reporting continuously 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). It should take into account the probability, potential impact and time horizons of risks;
  - d) 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;
- e) Include a clearly defined and well-documented risk management strategy, which includes clearly defined objectives, risk appetite and tolerance levels, and appropriate delegation of oversight, reporting and operating responsibilities across all functions;
  - f) Include reporting systems that are appropriate for the insurer, taking into consideration any outsourcing of responsibilities and safeguarding of assets;
  - g) Include documentation of significant policies and procedures; and
  - h) Include the review and approval of the significant policies and procedures by the Board and the chief and senior executives on a risk basis (see section 5.2).

40. A risk management framework requires each insurer to:

- a) Identify all material risks, including financial and non-financial, on and off-balance sheet items, and current, contingent and emerging exposures;
- b) 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;
- c) Include early warnings or triggers that allows timely consideration of and adequate response to material risks;
- d) Develop policies and strategies to manage, mitigate and report all material risks effectively; and
- e) Include a risk escalation process that would allow for reporting on risk issues within established reporting cycles and outside of them for matters of particular urgency.

41. Material risks to be addressed by the risk management framework include:

- a) Insurance underwriting risk;
- b) Investment, liquidity and concentration risk;
- c) Market risk;
- d) Credit risk;
- e) Systems, cyber and operations risk (operational risk);
- f) Group risk;
- g) Strategic risk including emerging risk;
- h) Systemic and reputational risk;
- i) Legal/litigation risk; and
- j) ESG risk.

Assessment of the materials risks should be reported to the Board and the chief and senior executives on a timely basis to monitor and ensure compliance with the established policies and strategies.

## 5.1. Material Risks

### 5.1.1. Insurance Underwriting Risk

42. The insurance underwriting risk component of the insurer's risk management framework should include:
  - a) Underwriting strategies that are aligned with the overall organisational strategy, including alignment to the appropriate investment strategy, risk appetite and risk tolerance levels;
  - b) Underwriting policies that are sufficiently detailed to allow appropriate management of insurance exposures;
  - c) Reserving techniques prescribed by jurisdictional laws and regulations and that adequately reflect the obligations to policyholders;
  - d) Management of policyholder claims, including those surrounding claims processing (reporting, validation of claims, timely settlement of payments, and capturing and storing claims data);
  - e) Methodologies to identify and evaluate risks arising from insurance policies and obligations, including the concentration of risks;
  - f) Measurement techniques to ensure compliance with risk appetite and tolerance levels and overall strategy;
  - g) Response techniques to ensure that unexpected exposures or deviations are mitigated, including those surrounding reserves, and that risk mitigation strategies are appropriately employed;
  - h) 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
  - i) The oversight of the Board and the chief and senior executives, including employing techniques such as benchmarking and stress and scenario testing to review, approve and assess strategies and tolerance limits.
43. Underwriting risks may be mitigated by way of reinsurance or other risk transfer techniques, which are appropriate to the nature, scale and complexity of the insurer's business. Risk mitigation techniques should be embedded into the insurer's underwriting and capital and liquidity management 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. Controls of the risk mitigation techniques should be part of the insurer's risk management framework.
44. The insurer should demonstrate the economic impact of the risk mitigation techniques originating from the reinsurance contracts.

### 5.1.2. Investment, Liquidity and Concentration Risk

45. The investment risk component of the insurer's risk management framework should include:
- a) Adopting the "prudent person" principle in relation to the investment of its assets;
  - b) Establishing strategies that align with the overall organisational strategy, especially those surrounding underwriting (including claims management) and capital requirements and capital adequacy;
  - c) Designing an investment policy, supporting established methods that:
    - i. 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;
    - ii. Governs the employment, valuation and effectiveness of off-balance-sheet hedging and derivative instruments;
    - iii. Aligns with the insurer's overall risk tolerance limits and exposures;
    - iv. Mitigates aggregations of exposure across the insurer's portfolio, having particular regard to concentrations of low security assets or those whose security is difficult to assess reliably;
    - v. Governs the selection and compensation of service providers, including those providing custodian and investment management services;
    - vi. Governs the reporting and data management of the investment portfolio; and
    - vii. Governs the oversight responsibilities of the Board and its established committees, internal functions and third-party service providers;
  - d) Establishing techniques to analyse performance results and identify current contingent and emerging exposures arising from the execution of a planned strategy or market development;
  - e) 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).
46. 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.



47. The liquidity risk component of the insurer's risk management framework should include:
- a) A clearly defined liquidity risk appetite that is owned and approved by the Board;
  - b) A liquidity risk management strategy and documented liquidity risk policy(ies) and processes consistent with the stated liquidity risk appetite;
  - c) Adopting sound liquidity management practices covering short, medium and long-term objectives that support the overall organisational strategy, including investment, underwriting and risk mitigation techniques and claims strategies;
  - d) Adopting practices to manage short-term liquidity requirements, including access to sufficient funds to meet its day-to-day obligations;
  - e) Adopting benchmarking and stress and scenario testing to assist in the identification and determination of unexpected adverse developments in the medium and long-term; and
  - f) Quantitative metrics and tools for measuring liquidity risk drivers and serving as early warning indicators.
48. 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**

49. The market risk component of the insurer's risk management framework should include:
- a) 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;
  - b) Detailed policies on concentration and allocation limits, including counterparty, assets and sectors;
  - c) Identification and quantification techniques related to both on and off-balance sheet exposures, including materiality, level and trend;
  - d) Performance measurement techniques, including benchmarking and stress and scenario testing to ensure compliance with the investment strategy;
  - e) Monitoring procedures to assess the insurer's tolerance to changes in the market; and
  - f) Mitigation techniques to ensure appropriate management of adverse developments.

#### **5.1.4. Credit Risk**

50. The credit risk component of the insurer's risk management framework should include:
- a) A credit risk policy that is aligned with the insurer's overall short-term and long-term strategic objectives;
  - b) Detailed exposure limits surrounding:
    - i. Individual counterparty or concentration of counterparties;
    - ii. Intra-group transactions;
    - iii. Assets and/or sectors;
    - iv. Off-balance sheet (e.g., guarantees and letters of credit); and
    - v. Zones or territories;
  - c) Identification and quantification techniques related to both on and off-balance sheet exposures, including materiality, level and trend;
  - d) Mitigation tools employed to manage adverse developments; and
  - e) 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)**

51. The systems and operations risk (operational risk) component of the risk management framework should include:
- a) 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;
  - b) Establishing a system to identify systems and operations exposures and to capture and track systems and operations near-miss data;
  - c) Establishing a system of effective internal reporting and operating controls (including information technology infrastructure) to manage and appropriately mitigate the systems, cyber<sup>4</sup> and operations risk;
  - d) Establishing measurement techniques, such as stress and scenario testing, to assess the vulnerability of the insurer; and
  - e) Establishing frequent reviews to ensure mitigation strategies, such as an early warning system, have been effectively deployed and the systems and operations risk is within a tolerable limit.

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<sup>4</sup> Insurers must comply with the Insurance Sector Operational Cyber Risk Management Code of Conduct, which establishes duties, requirements, standards, procedures and principles to be complied with in relation to operational cyber risk management.

### **5.1.6. Group Risk**

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

### **5.1.7. Strategic Risk (Including Emerging Risks)**

53. The strategic risk component of the insurer's risk management framework should include:
- a) Developing processes and procedures to ensure the execution of the insurer's overall organisational strategy; and
  - b) Developing techniques to measure, monitor, mitigate and respond to exposures and risks arising while implementing strategies.
54. 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. Systemic and Reputational Risk**

55. The reputational risk component of the insurer's risk management framework should include:
- a) Procedures to identify and monitor potential systemic and reputational risks; and
  - b) Methodologies to understand the impact of other material risks related to the insurer's reputation.

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

56. The insurer's risk management framework's legal/litigation risk component 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:
- a) Ensuring that the management of and access to records meet requirements

- established by laws and regulations;
- b) Complying with internationally recognised contract certainty standards and codes; and
- c) Maintaining appropriate documentation of all transactions such as documentation on investments, underwriting (including reinsurance and other risk mitigation techniques), claims management transactions and agreements (e.g., custodian, investment management, letters of credit, debt agreements).

#### **5.1.10. Environmental, Social and Governance Risk**

- 57. The ESG risk component of the insurer's risk management framework should include a consideration of the material risks from ESG aspects in the development of policies and risk management strategies.
- 58. The ESG risk component for climate risk, particularly, should include:
  - a) Processes to integrate climate-related risks into the scope of the risk management system. Insurers should ensure that a definition of risk appetite, identification and assessment is in place. Effective risk management and monitoring, risk escalation and reporting measures should be in place.
  - b) Consideration, in the risk management system, of the potential impact on its own business continuity due to climate-related events.
  - c) The insurer should consider and document how climate-related risks could materialise within each area in the risk management policies. Insurers should develop tools to collect reliable quantitative and qualitative data on climate-related risks;
  - d) Consideration of climate-related risks by control functions. The control functions should identify, measure and report on the insurer's risks, assess the effectiveness of the insurer's risk management and internal controls, and determine whether the insurer's operations, results and climate risk exposures are consistent with the risk appetite as approved by the Board; and
  - e) Control functions that take proper consideration of climate-related risks and have the appropriate resources and expertise to support the following:
    - i. The risk management function should monitor and provide necessary assistance to the business units to ensure proper identification, assessment and management of climate-related risks and that relevant policies are in place;
    - ii. The risk management function should use a range of quantitative and qualitative methods and metrics to monitor progress on climate-related risks against the insurer's overall business strategy and risk appetite;
    - iii. The compliance function should identify the compliance risks the insurer can face and the steps being taken to address them in light of climate change. This function should also ensure that internal

- policies align with stated ESG commitments or external standards and regulations;
- iv. The actuarial function should take into account climate-related risks; and
  - v. In line with its risk assessments, the internal audit function should review the risk management process and controls to ensure they are adequate and effective and whether all material risks have been assessed. As part of the review, it should assess whether all material risks, including climate risk that may have an impact on the insurer's resilience, are being considered and, where relevant, mitigated.

## **5.2. Policies and Procedures**

- 59. The insurer should clearly document significant policies and procedures for all its functions, including risk management and internal controls frameworks. In addition, the operating and oversight responsibilities should be clearly defined. The reporting of material deficiencies and fraud activities should be transparent, devoid of conflicts of interest, with proper attention being given to these reports and that persons making these reports are treated fairly and equitably.
- 60. The chief and senior executives should review significant policies and procedures 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.
- 61. 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:
  - a) Duties and responsibilities;
  - b) Decision-making authority and procedures;
  - c) Any outsourcing;
  - d) Segregation of duties; and
  - e) Internal monitoring and reporting.
- 62. 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.

### **5.3. Business Continuity and Disaster Recovery**

63. The insurer must document a business continuity and disaster recovery plan that addresses all of its key business processes and critical business functions. The effectiveness of the plan should be tested regularly. These documents must be available for the Authority's inspection as part of its supervisory process.

## **6. GOVERNANCE MECHANISM**

64. Conducting business prudently should also include the insurer establishing sound governance mechanisms. These should be embedded in the corporate governance framework, and its effectiveness must be 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**

65. 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 insurer's operational unit leaders. Regardless, there should be a mechanism to allow direct reporting to the Board or its established committees and ensure independence necessary to be effective.
66. The risk management function should include:
- a) Clearly defined and documented roles and responsibilities that are reviewed and approved by the Board on a frequent basis;
  - b) 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;
  - c) Establishing key policies (e.g., risk policy, cybersecurity policy, policies required under Bermuda's anti-money laundering/anti-terrorist financing legislation) and assessing effectiveness and compliance with established benchmarks, such as risk appetite, risk tolerance limits and strategies;
  - d) Employing measurement techniques such as benchmarking or stress and scenario testing; and
  - e) Reviewing regularly the risk management techniques employed in light of changing operational, regulatory and market developments to ensure continued effectiveness and adoption of the applicable best practices.
67. Risk management, risk identification, risk assessment, risk monitoring and risk reporting are critical for an effective risk management framework. As such, the insurer must implement these in an effective manner for the benefit of the

insurer's policyholders and stakeholders and to support its business objectives.

## **6.2. Internal Controls**

68. 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 executives should ensure that policies and procedures requiring direct reporting of internal control weaknesses to them are developed.

## **6.3. Internal Audit Function**

69. Insurers must implement the “three lines of defence” with the first line being risk-taking and the second being risk-control and compliance. The third critical line is the internal audit. The insurer must have an internal audit function. The insurer's internal audit function should:
- a) Be segregated and staffed by persons independent of operational functions, including risk management, compliance, underwriting, actuarial, claims, operations and finance;
  - b) Have clearly defined and documented charters, roles and responsibilities that are reviewed and approved by the Board regularly and that demonstrate the independence and separation of the function;
  - c) Document material policies and procedures to be reviewed and approved by the Board (see section 5.2);
  - d) Prepare an internal audit plan to ensure assessment of governance and controls of key risk areas at an appropriate interval, taking into consideration the insurer's nature, scale and complexity. The internal audit plan should be reviewed at least annually and approved by the Board or the audit committee of the Board;
  - e) Have unrestricted access to all areas of the organisation, including access to any records held by third-party service providers;
  - f) Examine operational practices to ensure the adequacy and effectiveness of governance, risk management, policies, procedures and controls;
  - g) Report governance and control deficiencies directly to the Board or a committee appointed by the Board;
  - h) Establish a robust mechanism to monitor deficiencies until remediation efforts are completed and report remedial progress to the Board at regular intervals taking into consideration the level of risks involved;
  - i) 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;
  - j) Have sufficient resources and fit and proper staff to carry out duties and responsibilities;
  - k) Have sufficient knowledge and experience to employ methodologies

- designed to assist the insurer in identifying key risks; and
- l) Assist the Board in identifying areas for improvement.

#### **6.4. Compliance Function**

70. Regulatory and other requirements (such as internal policies and procedures) are imposed to protect the insurer itself, its policyholders and stakeholders more widely. Therefore, the establishment of a function focused on how well the insurer adheres to the various requirements in which it is legally bound is very important. The insurer must establish an effective compliance function to monitor and evaluate its compliance with jurisdictional laws and regulations and related internal policies and procedures. The compliance function should also promote and sustain a corporate culture of compliance and integrity.
71. The compliance function should have:
  - a) Policies, procedures and processes documenting the compliance with the risk management framework, legal and ethical conduct, applicable laws, rules and standards;
  - b) System of compliance monitoring, testing and reporting, including a plan to address any deficiencies or non-compliance that may be identified;
  - c) Sufficient resources and fit and proper staff to carry out duties and responsibilities; and
  - d) Training programmes for staff on compliance issues and a mechanism for staff to report confidentially concerns regarding compliance deficiencies and breaches.

#### **6.5. Actuarial Function**

72. 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.
73. Activities of the actuarial function include:
  - a) Performing or overseeing the estimation of policyholder obligations, including assessing the adequacy of methodologies and assumptions and the quality of underlying data;
  - b) 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;
  - c) 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);



- d) Performing analysis comparing the estimated policyholder obligations against actual policyholder obligations paid; and
  - e) Reporting to the Board and the chief and senior executives on the dependability and sufficiency of the estimates.
74. 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**

75. The insurer must have a comprehensive and integrated, forward-looking view of all material reasonably foreseeable risks that arise from its business model and interaction with the wider environment. This allows a more informed assessment of the appropriateness of its business strategy and enhances its ability to position itself for future success and sustainability. Therefore, the insurer must develop policies, processes, and procedures to assess all its material reasonably foreseeable risks over its planning horizon and self-determine its capital (both quality and quantity), liquidity and resourcing needs to inform its business strategy. The self-assessment must be performed at least annually and reported to the Authority as part of the year-end filing requirements. The insurer should be guided by the proportionality principle in establishing the self-assessment framework. Minimally, the assessment should:
- a) be an integral part of the group’s risk management framework, forward-looking, reflect the insurer’s risk tolerance and overall business strategy, link the risk tolerance to exposure limits and set forth the process through which breaches of exposure limits are addressed;
  - b) 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 and market developments;
  - c) Cover both all material reasonably foreseeable and emerging risks and a forward-looking time horizon deemed appropriate by the Board, having regard for the dynamics of the insurance business industry and wider relevant influences; and
  - d) Ensure an appropriate oversight process whereby material deficiencies are reported on a timely basis and suitable actions are taken.
76. The insurer must ensure the fitness and propriety of key individuals overseeing and performing the assessment; this includes third-party service providers, if applicable, assisting with the assessment process.

## **7. OUTSOURCING**

77. While the insurer may outsource certain important roles (including, but not limited to, asset management, custodial services, cybersecurity, compliance and

internal audit) to third parties or affiliates, such action does not remove the responsibility from the insurer to ensure that all requirements of the Act and related legislation are complied with, and this Code adhered to as if these roles were performed in-house.

78. Where the insurer outsources roles either externally to third parties or internally to other affiliated entities, the Board must ensure that there is oversight and clear accountability for all material outsourced roles 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. Agreements should not prohibit cooperation with the Authority and the Authority's access to data and records in a timely manner.
79. Where the Board has outsourced a role and/or is considering a role, the Board must assess the impact or potential impact on the insurer. The Board must not outsource a role that is reasonably expected to adversely affect the insurer's ability to operate prudently. These considerations include where outsourcing is reasonably expected to:
- a) Adversely affect the insurer's governance and risk management structures;
  - b) Unduly increase operational risk;
  - c) Affect the Authority's ability to effectively supervise and regulate the insurer; and
  - d) Adversely affect the policyholder's interests.
80. The Authority expects to see clear evidence of a risk evaluation process having been undertaken by the insurer before entering into a material outsourcing arrangement, clearly articulating the rationale as to why the outsourcing option was/is being pursued. This evaluation will need to set out the benefits of the outsourcing and how any risks arising from it are to be mitigated/managed.
81. An insurer considering a material outsourcing arrangement should undertake due diligence on the service provider under consideration. This due diligence should include, but not be limited to, evaluating that the service provider:
- a) Has the quantity and quality of staff with the requisite skills and experience to effectively deliver the outsourced activities, as well as having any authorisations required by law to perform the outsourced activity reliably and professionally throughout the life of the outsourcing;
  - b) Has the relevant technology, cyber security, operational infrastructure and financial capacity to undertake the outsourcing arrangement effectively and efficiently;
  - c) Has appropriate information and data security to protect any and all confidential information relating to the insurer and its clients;
  - d) Has an appropriate risk management framework and controls to ensure that the carrying out of the outsourced activity is properly supervised and any risks associated with the outsourcing are effectively managed;
  - e) Has appropriate business continuity plans and can demonstrate to the insurer

- a successful track record of these plans and their testing;
- f) Will provide access to all documents and data relating to the outsourced activity to the insurer, its auditors and its competent authority, as well as access to the business premises of the outsourcing service provider.

Contingency plan(s) should be considered in the event the service provider is unable to provide the outsourced activity for any reason.

82. The Authority expects the insurers to be able to demonstrate that it is monitoring all its material outsourcing arrangements through the use of management information, calls, meetings and visits to the service provider. The level of monitoring for each outsourcing activity should be proportionate to the risks to the insurer from that outsourcing arrangement.

## **8. CONDUCT OF BUSINESS**

### **8.1 An insurer shall conduct its business with integrity**

#### **8.1.1. Integrity**

83. An insurer shall always conduct its business with integrity. It shall exercise its duties prudently and competently, and it should administer each client's affairs in accordance with the law. It shall deal honestly, professionally and fairly with all clients and seek to ensure that they are not misled as to the services being provided and the duties and obligations of the service provider.

#### **8.1.2. Conflicts of interest**

84. The insurer shall have clearly documented and established policies and procedures to manage or avoid situations in which a conflict of interest arises between the insurer's business and that of its clients. Similarly, it should not enter transactions in which it has a material interest without first disclosing its interest to the relevant parties. Where conflicts of interest arise, the insurer shall always keep adequate records of such conflicts and act to ensure it does not place its own interests above those of its clients. All reasonable steps to manage conflicts and to prevent damage to clients' interests shall be taken.

**(The balance of this Code is applicable to insurers writing domestic retail business<sup>5</sup>)**

**8.2. An insurer shall have due regard for the interests of its policyholders**

**8.2.1. Fair treatment of policyholders**

85. The insurer shall ensure that its business is conducted in such a way as to treat its policyholders fairly. Fair treatment of policyholders should be an objective taken into consideration in the design of the business strategy, product design, product distribution and product performance.
86. Policies and procedures on the treatment of policyholders should be developed, with policies approved by the Board and procedures approved within appropriate governance structures. The policies should define acceptable and unacceptable behaviours and outline consequences for non-adherence. The policies and procedures should be communicated to all relevant staff and appropriate training should be provided to ensure adherence by personnel and any authorised sales representatives.

**8.2.2. Skill, care and diligence**

87. The insurer should always act with due care, skill and diligence in the conduct of its business and its dealings with policyholders.
88. Any information that a policyholder can reasonably expect to be kept confidential should be treated as such. Insurers should have controls in place, as well as policies and procedures for the protection and handling of confidential information on policyholders.
89. The insurer should transact its business (including the establishment, maintenance, transfer or closure of business relationships with its policyholders) in an expeditious manner.

**8.2.3. Staff competence and performance management**

90. All employees should be sufficiently qualified and experienced to discharge their duties properly.
91. The insurer should provide the necessary training to employees relative to their business function. Specifically, the insurer shall ensure that the relevant frontline staff are trained to provide guidance on products and services and to promptly and effectively deal with policyholder queries, complaints and disputes.

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<sup>5</sup> 'Retail business' means the business of selling insurance products that are designed for and bought by an individual. (s30JA(2) Insurance Act 1978)

#### **8.2.4. Product governance**

92. The policies implemented by insurers should address the fair treatment of policyholders throughout the product lifecycle and address how such is achieved for the duration of the provision of services. To this end, insurers should, inter alia, ensure such policies and procedures address the process for the development, review and approval of new products, activities, processes and systems, and material changes to existing products.

#### **8.2.5. Suitability**

93. Where the insurer is responsible for providing advice or exercising discretion for or in relation to policyholders, it shall seek from the policyholder such information about their circumstances and objectives as may be appropriate regarding the services to be provided. The insurer shall discuss various options with the policyholder to ascertain the optimal solution, given the policyholder's needs and circumstances. Likewise, when a new product is being developed, its suitability for policyholders should be determined, weighing both its benefits and any associated risks prior to it being made available.
94. The insurer shall assess the relevant features of products and services against the policyholder's information to determine the product's suitability before it is recommended or the policyholder invests in it.
95. The information provided should be sufficient to enable policyholders to understand the characteristics and any associated risks of the product they are buying and help them understand how it may meet their requirements to enable them to make an informed decision.
96. The insurer should retain sufficient documentation to demonstrate that the advice provided was appropriate, considering the policyholder's disclosed circumstances at the time the advice was provided.

#### **8.2.6. Vulnerable policyholders**

97. Insurers should take reasonable steps to identify vulnerable policyholders.
98. Broadly, a vulnerable policyholder is a natural person who:
- a) Has the capacity to make their own decisions but who, because of individual circumstances, may require assistance to do so (e.g., seniors, hearing impaired or visually impaired persons); or
  - b) Has limited capacity to make their own decisions and who requires assistance to do so (e.g., minors).
99. The insurer shall take steps to provide appropriate facilities and access to information and services for the use of vulnerable policyholders, including consideration of the appropriateness of channels<sup>6</sup> used to communicate

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<sup>6</sup> Appropriate communication channels may include publication on the insurer's website, in the local media, over the telephone, through the insurer's sales agents, in writing delivered to the customer's address on file, or

information.

100. The insurer should establish and implement policies and procedures to accommodate and afford reasonable care to a policyholder who is identified as vulnerable or who discloses these needs to the insurer.
101. This requirement does not preclude the insurer's ability to evaluate the attributes of a prospective policyholder, such as age, medical condition, pregnancy, physical or mental disability in the process of evaluating insurable risks and determining premiums.

#### **8.2.7. Cancelling a service or transferring service providers**

102. The insurer should not unduly, except as required by law or as provided by the policy wording, limit the policyholder's ability to cancel or transfer a product or service to another provider on the policyholder's reasonable notice.

#### **8.2.8. Sales practices**

103. The insurer should establish and comply with sales policies and procedures which prohibit and prevent misbehaviour such as misselling, misrepresentations, aggressive sales tactics and discrimination during the sales process.
104. Sales representatives should understand the products that they are selling and the risks that the products may pose to policyholders. To the best of their ability, they should present products in a truthful manner.

#### **8.2.9. Claims handling**

105. The insurer should implement policies which require it to address claims in a timely, fair and transparent manner and avoid any aggressive and coercive claims handling tactics and discrimination during the claims handling process. Such processes should include, but are not limited to measures:
  - a) Setting out the avoidance of conflicts of interest and ongoing training of relevant staff;
  - b) Appropriate for the insurance business conducted; and
  - c) Having the level of technical and legal expertise required in relation to the insurance policy and the claim.
106. Claims handling policies and procedures should also include all steps in the grievance process (i.e., from the notification of the claim to its settlement). Such documentation may include expected timeframes for completing each step in the process and when such steps may be extended or shortened in exceptional cases. Claimants should be informed about procedures and common timeframes for claims settlement. Throughout the course of the

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through the policyholder's relationship manager. This list is not exhaustive and appropriate channels should be used based on the type of product and policyholder in question.

process, claimants should be informed of the status of their claims in a timely manner.

107. The insurer should explain to claimants determining factors (i.e., depreciations, discounting or negligence) in deciding to pay a claim, whether in whole, in part or not at all.

#### **8.2.10. Authorised intermediaries**

108. The insurer is required to take responsibility for the appointment and activities of authorised intermediaries. In relation to its authorised intermediaries who are carrying on business in Bermuda, the insurer shall:
- a) Ensure they are registered with the Authority;
  - b) 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) on which the authorised intermediary is authorised to sell and provide advice on behalf of the insurer; and
  - c) 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.

#### **8.2.11. Dealing with authorised intermediaries to ensure fair treatment of policyholders**

109. Where the insurer grants terms of business to an authorised intermediary in respect of retail business, the insurer shall:
- a) Ensure that the terms of the 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
  - b) 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.

### **8.3. Communication requirements with policyholders**

#### **8.3.1. An insurer should ensure that communications with policyholders are fair, clear and not misleading**

110. The insurer shall supply the policyholder, or the potential policyholder, with adequate, up-to-date information and material for decision-making purposes.
111. As the insurer conducts business and fulfils its obligations to the policyholder, it shall consider the impact of their communication and interactions, or the lack

thereof, on the policyholder.

112. The insurer shall not disguise, omit, diminish or obscure material information, statements or warnings. The insurer shall consider whether omission of any relevant fact will result in the information being insufficient, unclear, unfair or misleading.
113. The insurer should ensure that information is presented in a way that is likely to be understood by the policyholder. The insurer should consider the impact of content and presentation of information by:
  - a) Positioning material information in a location such that it is obvious and apparent;
  - b) Simplifying language where possible; and
  - c) Considering the accessibility of the communication channel.
114. The insurer should be able to demonstrate that information is supplied to policyholders with reasonable timeliness, in a comprehensible form and through the appropriate channel.

### **8.3.2. Advertisements**

115. The insurer should promote products and services in a manner that is clear, fair and not misleading. The insurer should ensure that its advertisements:
  - a) Use clear and easy to understand language;
  - b) Do not contain a statement, promise or forecast that is untrue or misleading;
  - c) Are not designed in such a way as to distort or conceal any relevant subject material;
  - d) Are clearly recognisable as advertisements;
  - e) 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;
  - f) Include a statement of the related risks; and
  - g) Do not contain a statement relating to past performance unless:
    - i. The basis on which such performance is measured is clearly stated and the presentation is fair;
    - ii. It is accompanied by a warning that past performance is not necessarily a guide to future performance; and
    - iii. The past performance is relevant to the investment or the services offered by the investment provider.
116. 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 the early years, can be less than the total amount of premiums paid.



### **8.3.3. Disclosure prior to providing services**

117. When entering a contract of business with a policyholder, the insurer should communicate in writing as soon as possible:
- a) Relevant and meaningful information about the insurer and the product in a comprehensive manner;
  - b) Benefits and risks to the policyholder in a fair and balanced way;
  - c) Obligations of the parties involved, including those for the insurer, intermediaries and policyholders in a clear and understandable way, for the duration of the contract;
  - d) Existence, duration and conditions relating to the right to cancel;
  - e) Claims and complaints handling and other contractual arrangements, including the appropriate contact points to submit claims, complaints and dispute claims; and
  - f) Duty of policyholders to disclose material information.
118. 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 contract depends on the type of contractual arrangement.

### **8.3.4. Terms of business**

119. Where such terms are not already expressly established in the policy issued to the policyholder, the insurer shall document its terms of business and provide each policyholder with a copy upon any service being provided to that policyholder, except when it is impractical to do so, in which case the document shall be provided at the earliest available opportunity.
120. The terms of business shall include information on the actions or inactions of the policyholder, which will lead to the termination of the business relationship by the insurer.
121. Prior to the signing-off of an agreement, the appropriate policyholder service representative shall explain the key terms and conditions to the policyholder on request or where deemed necessary based on the policyholder's circumstances.

### **8.3.5. Policy servicing**

122. The insurer should service policies appropriately through to the point at which all obligations under the policy have been satisfied.
123. The insurer shall 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.
124. The insurer should provide evidence of cover (including policy inclusions and exclusions) promptly after the inception of a policy.

125. Where the insurer is providing products with an investment element, the following information should be provided to policyholders:
- a) Participation rights in surplus funds;
  - b) Basis of calculation and state of bonuses;
  - c) The current surrender value;
  - d) Premiums paid to date; and
  - e) For unit-linked life insurance, a report on the performance and investment strategy of each underlying investment fund and a statement of changes in the investments, including the number and value of the units and movements during the past year, administration fees, taxes, charges and current status of the portfolio of investments underlying the insurance contract.

#### **8.3.6. Notices to the policyholder**

126. The insurer shall notify the policyholder, in writing, within a reasonable time of any material change, such as:
- a) Changes in fees, charges and interest rates;
  - b) Material modification to products or services;
  - c) Discontinuation of products and services; or
  - d) Contractual changes to policy terms and conditions.
127. Where there are changes in terms and conditions, the insurer should notify the policyholder of their rights and obligations regarding such changes and obtain the policyholder's consent as appropriate.

### **8.4. Policyholder assets**

#### **8.4.1. An insurer shall ensure the protection of the policyholder's assets against loss, fraud and misuse**

128. Where the insurer has control of or is otherwise responsible for, assets belonging to a policyholder, the insurer should arrange appropriate controls and protection mechanisms for the protection of policyholders' investments and other similar financial assets, including against fraud, misappropriation or other misuses.
129. Protection can be by segregation and identification of those assets or otherwise, in accordance with the responsibility it has accepted. Such protection shall comply with the terms and conditions established in the contractual agreement and authorised by the policyholder.
130. Where the insurer is in control or is otherwise responsible for monies or assets belonging to the policyholder, the insurer shall have adequate systems and internal controls to identify and promptly remedy errors, fraud or other misuse by the insurer or its employees.

## **8.5. Complaint and error handling**

### **8.5.1. The insurer shall handle complaints and errors in a manner that is fair and expedient**

131. The insurer shall have procedures in place to promptly deal with policyholder complaints effectively through a fair and equitable process.
132. The insurer shall implement a complaints management framework that seeks to deal in a timely manner with any policyholder complaint. Where a complaint identifies a valid error, the insurer shall seek to resolve the error within a reasonable timeframe relative to the nature of the issue.
133. The policyholder should not be burdened with unreasonable costs when seeking to resolve a complaint.
134. The insurer shall document a complaint handling procedure which, at a minimum, includes processes for:
  - a) Making a complaint;
  - b) Handling complaints in a fair, timely and appropriate manner;
  - c) Acknowledging receipt of complaints;
  - d) Maintaining a complaint register containing details of complaints received and how they have been dealt with or resolved, including an indication of whether any action was required by the insurer; and
  - e) Analysing the patterns of complaints and errors received against themselves or intermediaries with respect to products that intermediaries may distribute on their behalf. Such information should be shared with the board or senior management, as appropriate.
135. Information on the complaint-handling procedures and the contact point for complaints shall be made publicly accessible (i.e., provided on the insurer's website and available upon request).

### **8.5.2. Claims disputes**

136. The insurer shall establish claims dispute resolution procedures that follow a balanced and impartial approach. Such procedures should:
  - a) Avoid being overly complicated, such as having burdensome paperwork requirements; and
  - b) Ensure that the staff handling claims disputes are experienced in claims handling and appropriately qualified.
137. Decisions should include the reasoning in clear language relating closely to the specific disputable issues.

## **8.6. Communication of the policyholder's responsibilities**

### **8.6.1. An insurer shall ensure that policyholders are aware of their responsibilities within the business relationship and have access to appropriate informational resources**

138. While policyholders maintain a level of accountability for their own choices and decisions, the insurer should appropriately remind policyholders of their responsibilities to:
- a) Read and understand the terms and conditions of products and services;
  - b) Disclose relevant information as it relates to the insurer's legal obligations, including but not limited to its Anti-Money Laundering and Anti-Terrorism Financing obligations, and inform the insurer of any changes to such required information;
  - c) Disclose relevant information to assist the insurer in managing the relationship and ensuring the suitability of its products and services for the policyholder;
  - d) Verify statements for correctness and inform the insurer of any suspected errors; and
  - e) Protect sensitive personal information used to access accounts or online policyholder dashboards.

### **8.6.2. Policyholder awareness**

139. Where appropriate to do so, the insurer should develop programmes and resources to assist policyholders with developing the knowledge and skills necessary to:
- a) Understand risks (including financial risks);
  - b) Make informed decisions and understand how their actions affect outcomes; and
  - c) Know when to access independent, competent and professional advice and assistance to help them make informed decisions.
140. The insurer should ensure such resources are available through an appropriate communication channel for the benefit of a policyholder.

## **9. IMPLEMENTATION**

141. The Code comes into force on 1 September 2022, and registrants are required to be compliant by 1 September 2023 for Sections 1 to 7 and 1 March 2023 for Section 8.