



**ISLE OF MAN
FINANCIAL SERVICES AUTHORITY**

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Consultation Paper

**Amendment to the Insurance (Conduct of
Business)(Long-Term Business) Code 2018**

CP20-05/T06

Issue Date: 4 December 2020

Closing Date: 15 January 2021

Consultation Paper – CP20-05/T06

This Consultation Paper is issued by the Isle of Man Financial Services Authority, which is the regulatory body for financial services in the Isle of Man.

The purpose of the consultation is to obtain views in relation to the proposed replacement of the Insurance (Conduct of Business)(Long-Term Business) Code 2018 with the Insurance (Conduct of Business)(Long-Term Business) Code 2021 which includes amendments to the exemptions within the code. The consultation is relevant to all insurers authorised to provide long-term insurance. It may also be of more general relevance to other parties with an interest in the Isle of Man insurance sector, including the legal profession.

The closing date for comments is **15 January 2021**.

Please send comments in writing and preferably by email to:

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The information you send may be published in full or in a summary of responses. All information in responses, including personal data, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2015 and the Data Protection Act 2018). If you want your response to remain confidential, you should explain why confidentiality is necessary. Your request will be acceded to only if it is appropriate in the circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding. The Authority is registered with the Information Commissioner as a data controller under Isle of Man data protection legislation. It collects and processes personal data to carry out its functions under relevant legislation and may share personal data with other parties where there is a legal basis for doing so. Further information on how the Authority collects and processes personal data can be found in the Privacy Policy on the Authority's website: <https://www.iomfsa.im/terms-conditions/privacy-policy/>.

If you have a query in relation to how this consultation has been carried out, please contact the ICP Project Team Authority's Policy and Authorisations Division by email at info@iomfsa.im or by telephone on +44 (0) 1624 646000.

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Glossary

Authorised long term business insurer	An insurer authorised under section 8 of the Insurance Act 2008 to carry on class 1 and 2 insurance business
Authority	Isle of Man Financial Services Authority
KID	Key Information Document
IA	Insurance Authority of the United Arab Emirates
UAE	United Arab Emirates

1. Executive Summary

1.1 Overview

The Insurance (Conduct of Business)(Long Term Business) Code (“the Code”) came into effect on 1 January 2019 (with paragraphs 7 to 14 coming into effect on 1 July 2019).

Within the Code there are jurisdictional exemptions for certain aspects of the code, including the requirement to produce a Key Information Document (a “KID”), which is the document provided by an insurer at the point of sale, through which, amongst other key product information, the level and form of commission payable to intermediaries is disclosed.

It was agreed when the Code was launched that it would be reviewed on a regular basis to determine whether the exemptions remain appropriate and if any new exemptions are required. This review is now due.

1.2 What is the purpose of this Consultation Paper?

This consultation paper intends to seek industry’s views on proposed amendments to the jurisdictional exemptions within the Code. To make these amendments the Insurance (Conduct of Business)(Long-Term Business) Code 2018 will be replaced by the Insurance (Conduct of Business)(Long-Term Business) Code 2021, a draft of which is attached to this consultation paper.

1.3 Who may be affected by this Consultation Paper?

This consultation is relevant to all authorised long term business insurers. It may also be of more general relevance to other parties with an interest in the Isle of Man insurance sector, including the legal profession.

2. Consultation Process

2.1 The Authority’s regulatory objectives

The Authority’s regulatory objectives are set out in section 2(2) of the FSA08 as —

- securing an appropriate degree of protection for policyholders, members of retirement benefits schemes and the customers of persons carrying on a regulated activity;
- the reduction of financial crime; and
- the maintenance of confidence in the Island’s financial services, insurance and pensions industries through effective regulation, thereby supporting the Island’s economy and its development as an international financial centre.

The Authority is required to give consideration to certain factors when discharging its functions in accordance with paragraph 3 of Schedule 1 to the FSA08. The most relevant factors for this consultation are considered as follows:

Factor	Information
The desirability of implementing and applying recognised international standards.	The primary purpose of the ICP Project was to update the Island's insurance regulatory framework in a manner that is appropriate to the Island's insurance sector and consistent with international standards. The Code was one aspect of this.
The international character of the financial services, insurance and pensions industries and their markets and the desirability of maintaining the competitive position of the Island.	The update to the Island's insurance regulatory framework is part of the Island maintaining its position as a reputable and responsible international financial centre.

2.2 Responding to the Consultation Paper

Open dialogue with stakeholders is an essential element for successful development of the Authority's proposals and constructive feedback will help the Authority reach an informed decision on the content of the proposals and manner of implementation.

As responses to the consultation may be subject to publication or disclosure in accordance with access to information regimes, respondents should state if they wish their response to remain confidential and, if so, the reasons for this.

Submissions received by the closing date of the consultation will be considered but may not necessarily result in a change to the proposals following a review of all responses received.

Professional bodies, trade associations and other representative groups are asked to provide a summary of the people and organisations that they represent when responding to a consultation as well as the methodology used to gain members' input.

The Authority requests that submissions are not made anonymously as they will not be considered or included in the Consultation Response.

This Consultation Paper has been published on the Authority's website and the Isle of Man Government's Consultation Hub¹. A list of specific representative groups to which this Consultation Paper has been sent is shown in Appendix A.

¹ <https://consult.gov.im/>

3. Proposed Amendments

3.1 Exemption 25(9) – UAE

At the time the code was implemented insurers offering products in the United Arab Emirates (“UAE”) were provided with a transitional exemption from the requirement to provide KIDs due to the imminent introduction of similar requirements in the UAE. This exemption was universal to the UAE and did not relate to how the insurer was authorised in the UAE. The exemption was to remain in force until such a time as the IA’s conduct regulations were made.

The IA’s conduct regulations proposed commission caps on lump sum and fixed term plans, as well as guidelines on selling insurance and investment products to safeguard the interests of customers. The proposed regulations met the Authority’s ‘comparable’ regulatory requirements and consideration was given as to an exemption to the KID, however, the IA kept deferring the implementation of the regulations, which was why a transitional exemption was granted (transitional in the sense of the evolving UAE landscape).

The application of the exemption was universal to the UAE. The regulatory landscape in the UAE is somewhat fragmented with insurance business being sold both ‘onshore’ and in ‘free zones’, which are considered under UAE law as distinct jurisdictions. The onshore business is regulated by the IA and the most relevant free zone is the Dubai International Financial Centre (the “DFIC”) which is regulated by the Dubai FSA. The IA’s conduct regulations only apply to onshore business with there being no equivalent conduct requirements in the free zones.

The Authority agreed in 2018 that a broad jurisdiction wide approach to application of the Code was appropriate to avoid creating regulatory arbitrage between the Isle of Man insurers operating in the UAE until such a time as the IA’s conduct regulations were implemented.

The IA’s conduct regulations came into force on 15th October 2020 and the Authority considers it is now appropriate to amend the exemption to only apply to insurers who are licensed by the IA to carry on insurance business.

The current exemption is:

The Isle of Man Financial Services Authority’s Insurance (Conduct of Business) (Long Term Business) Code 2018 requires Isle of Man authorised Insurers to put in place measures to ensure the fair treatment of its customers, including providing you with information about this insurance product to help you understand the nature, risks and cost of this product. As this product is being sold to you through your intermediary in the United Arab Emirates, the insurer is not obliged under local regulations to provide you with the same information.

If you have any questions about the information that has been provided to you in deciding to purchase this product, you should raise them with your adviser. In the event of any issues or concerns regarding the sale of the product, recourse for complaints will be to your adviser.

The proposed amended exemption to apply from 30 April 2021 is:

A regulated entity is exempt from paragraph 7 to 14 of the Guidance Notes in relation to a product that is to be distributed in the UAE, if it is licenced by the Insurance Authority of the United Arab Emirates to carry on insurance business and is in compliance with the Insurance Authority Board of Directors' Decision No.(49) of 2019 Concerning Instruction for Life Insurance and Family Takaful Insurance issued by the Insurance Authority.

This will mean that from 30 April 2021 insurers who operate within the free zones, and who are not licenced by the IA will be required to produce KIDs for the products they distribute.

Insurer's who are licenced by the IA will not be required to issue KIDs for products they distribute on-shore, as they are required to comply instead with the IA's conduct requirements including commission capping.

The current regulatory landscape in the UAE results in an unlevel playing field, with on-shore business being subject to commission capping and free zone business having no commission caps. The Authority considers that this is a matter for the regulatory Authorities in the UAE and where IA conduct requirements don't apply KIDs are required. We understand that there is some consideration of the merging of regulatory frameworks in the UAE that may result in a more consistent regulatory framework for long-term insurance policies issued by Isle of Man insurers in the UAE.

3.2 Exemption 25(8) – Regulated Branches

Paragraph 25(8) of the Code states that a regulated entity is exempt from paragraphs 7 to 14 of the Guidance Notes (i.e. the requirement to issue a KID) where the regulated entity has been formally admitted, permitted or licensed by a recognised regulator and has established a fixed place of business to carry on insurance business in a country or territory outside the Island, subject to them including the disclosure below in the information issued to the Policyholder before the contract is bound:

“...

The Isle of Man Financial Services Authority's Insurance (Conduct of Business) (Long Term Business) Code 2018 requires Isle of Man authorised insurers to put in place measures to ensure the fair treatment of its customers, including providing you with information about this insurance product to help you understand the nature, risks and cost of this product. [Regulated Entity] is not obliged under local regulations to provide you with the same information.

If you have any questions about the information that has been provided, you should raise them with your adviser. In the event of any issues or concerns regarding the sale of the product, recourse for complaints will be to your adviser or the [Recognised Regulator].”

The intent of the red highlighted text was to inform policyholders that the information they are receiving regarding the product they are being sold may not be in compliance with the Isle of Man’s conduct requirements as the insurer instead meets the requirements of the local jurisdiction. Whilst it doesn’t specifically state so, a significant purpose of the statement is to make policyholders aware there is no requirement for commission disclosure/capping in that jurisdiction.

Since the launch of the Code the Authority has received feedback that insurers are finding it difficult to use this disclosure in jurisdictions where there are strong conduct requirements in place, but which don’t meet all of the requirements for a jurisdictional exemption from aspects of the code (such as producing a KID).

Upon further consideration, the Authority has determined that the current wording could be construed as inaccurate and misleading to policyholders in jurisdictions such as these. Therefore we are proposing an amendment the wording of the disclosure required by paragraph 25(8) so that it maintains the same intent as the original wording, but takes into account that the other jurisdiction may have its own requirements for providing policyholders with information on the nature, risks and costs of the product which may differ to those required by the Code. The proposed amended wording to apply from 30 April 2021 is as follows:

*The Isle of Man Financial Services Authority’s Insurance (Conduct of Business) (Long Term Business) Code 2021 requires an Isle of Man authorised insurer to put in place measures to ensure the fair treatment of its customers. As part of these conduct requirements {Insert name of Regulated Entity} is required to provide you with information about this product to help you understand the nature, risks and costs of this product, **including commission paid to third parties**. {Insert name of Regulated Entity} is not obliged under local regulations to provide you with the specific information required under the Isle of Man legal and regulatory framework.*

4. Impact Assessment

4.1 Exemption 25(8) – UAE

The intent of the Code was to reduce complaints from policyholders in the following areas:

- conflicts of interest around remuneration paid to intermediaries;
- the legality and quality of advice provided by intermediaries; and
- the suitability of products offered to consumers by insurance companies.

The Authority considers that applying the exemption to IA regulated insurers only, will improve the likelihood of positive customer outcomes for insurers who are operating in the free zones, as well as continuing to reduce complaints received.

At the time the original exemption was agreed it was made clear that it would be temporary until such a time as the IA's conduct regulations came into force, therefore it should not come as a surprise. Given this lead in time, including a further 15 months whilst the exemption has been in force, we expect impacted firms should have anticipated and prepared for having to produce and issue KIDs therefore it is expected they should be on a path towards compliance. We request insurer's contact us if they have any issues in this respect.

4.2 Exemption 25(8) – Regulated Branches

The proposed amended disclosure wording will require all insurers who currently use the exemption to amend the disclosure wording in their policy documentation. Where an insurer has large batches of printed documentation that includes the existing wording, we will allow the use of the old wording until such a time as the affected literature is exhausted. This should give insurers sufficient time to implement the proposed change.

5. Questions

The Authority invites general feedback on the proposals set out in this consultation paper.

6. Next Steps

Following closure of the consultation period, the Authority will review the responses received and publish a Consultation Response document on the Authority's website and the Isle of Man Government's Consultation Hub.

Subject to those responses, the Authority will proceed to make the Insurance (Conduct of Business)(Long Term Business) Code 2021 for implementation on 30 April 2021.