



**ISLE OF MAN
FINANCIAL SERVICES AUTHORITY**

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**CORPORATE GOVERNANCE
REQUIREMENTS FOR
GENERAL INSURANCE INTERMEDIARIES**

Consultation Paper

CP18-08/T08

9 November 2018

This Consultation Paper is issued by the Isle of Man Financial Services Authority (“the Authority”), the regulatory authority responsible for the supervision of the financial services, insurance and pensions sectors in the Isle of Man.

What is it for?

In June 2013 the Insurance and Pensions Authority¹ published its ‘Roadmap for updating the Isle of Man’s regulatory framework for insurance business’ and through that document set out the objective to establish a project to enhance the Island’s regulatory framework to ensure that it remains up to date, proportionate and where appropriate consistent with the updated and revised Insurance Core Principles. Since its issue the Roadmap has been updated annually and more recently every six months to reflect progress made across the various work streams established under the project.

One of the work streams is enhancements to the regulatory framework for general insurance intermediation and consultation papers have already been issued in relation to conduct of business, clients’ money, professional knowledge and experience (CP17-07/T08) and exemptions from registration and cross-border business (CP18-02/T08). This consultation deals specifically with corporate governance requirements for general insurance intermediaries.

Who is affected by it?

This document will be of direct interest to general insurance intermediaries and reinsurance brokers carrying on business in or from the Isle of Man as well as to existing and prospective insurance companies distributing insurance through such intermediaries. In particular, the paper is intended to be relevant to those with responsibility for the management and oversight of governance functions within those companies.

Other parties with an interest in the Isle of Man insurance sector, including the legal and auditing professions, companies carrying on insurance intermediation that are currently exempt from registration, and intermediaries not regulated by the Authority (those regulated in other jurisdictions), may also find this discussion paper and the issues raised of interest.

¹ With effect from 1st November 2015 the functions of the Insurance and Pensions Authority were transferred into the Isle of Man Financial Services Authority
<http://www.iomfsa.im/ViewNews.gov?page=lib/news/iomfsa/transferooffuncti.xml&menuid=11570>

Responding to CP18-07/T08

The closing date for comments is 31 January 2019.

Please send comments in writing and preferably by email to:

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Glossary of Terms

Term	Meaning in this document
Act	Insurance Act 2008
Authority	The Isle of Man Financial Services Authority
CTP	Common Trading Practices within the 1999 Regulations
Draft Governance Code	The draft Insurance Intermediaries (General Business) (Corporate Governance) Code
Draft Conduct Code	The draft General Insurance Intermediaries (Conduct of Business) Code
Draft Regulations	The draft Insurance Intermediaries (General Business) Regulations
General insurance business	Insurance business that does not fit within the definition of investment as outlined within the Regulated Activities Order 2011 (as amended)
General insurance intermediary	A person who for remuneration brings together, either directly or through the agency of a third party, with a view to the insurance of risks, persons seeking insurance and insurers and carries out work preparatory to the conclusion of contracts of general insurance
IAIS	International Association of Insurance Supervisors
ICPs	Insurance Core Principles (of the IAIS)
IFA	Independent Financial Advisors – intermediaries doing business that would fall under the Financial Services Act 2008
Insurance business	The business of effecting or carrying out contracts of insurance
1999 Regulations	Insurance Intermediaries (General Business) Regulations 1999, as amended
Roadmap	Roadmap for updating the Isle of Man’s regulatory framework for insurance business
Rule Book	Financial Services Rule Book 2016

Executive Summary

The Authority issues for consultation CP18-08/T08 which sets out the Authority's expectations for enhancements to its existing regulatory framework in relation to corporate governance requirements for general insurance intermediaries ("intermediaries"), including a draft Governance Code.

This paper focuses solely on the intermediation of general insurance business and pure protection business.

Although intermediaries are subject to company law requirements and the CTP of the 1999 Regulations, for the most part specific corporate governance requirements are a new development for this sector.

In drafting the requirements, account has been taken of both the Corporate Governance Code of Practice for Regulated Entities ("CGC") and the governance requirements in the Rule Book issued under the Financial Services Act 2008 which already apply to IFAs licensed under that Act.

The Authority considers open dialogue with stakeholders as essential in developing its proposals and greatly appreciates comments on the proposals in this document. The purpose of this consultation is to gather views and evidence, from which an informed decision may be made on the content of proposed legislation. However, please note that your comments may not always result in a change to the proposals.

Introduction

When the CGC was implemented in 2010 a decision was taken to apply it only to insurers and insurance managers, with the intention being to apply it, with any necessary modifications, to intermediaries in due course.

When the ICPs were reviewed and compared to the existing regulatory framework, a gap in relation to corporate governance requirements for intermediaries was noted and it was agreed that this would need to be addressed as part of the ICP Project.

The Authority's aim is to introduce governance requirements which are proportionate to the general insurance intermediary industry on the Island and which also address the ICP requirements. In fact, guidance to the ICPs encourages supervisors to adopt an approach which has due regard to the varying profiles of intermediaries, including their size and the complexity of the products offered, and the Authority has taken account of this guidance in drafting its proposals.

Existing governance requirements in the CGC and the Rule Book have been reviewed and, on balance, it has been agreed that the most user-friendly way of presenting the new requirements is to develop a separate Code for intermediaries, drawing on those existing requirements as appropriate.

Background to the ICPs and application of the requirements

Corporate governance requirements for intermediaries are dealt with in ICP18 and specifically in standard 18.4 which states the following –

The supervisor requires that insurance intermediaries apply appropriate governance.

Guidance notes provide further advice on the form of “appropriate governance” in practice.

ICP18 recognises that governance frameworks may vary, depending on the nature and scale of the intermediary and the complexity of its business, however there is an overriding requirement that the governance framework should be sufficient for sound and prudent management of the business and to support the fair treatment of customers. It is suggested that guidance should be provided on the Authority's expectations in a number of areas as follows –

- ensuring that those responsible for the intermediary organisation's governance have the competence and integrity to fulfil their respective roles;

- ensuring appropriate standards for conduct of business, including the establishment of policies and procedures on the fair treatment of customers that are an integral part of an intermediary's business culture;
- ensuring there is regular monitoring of consumer outcomes;
- ensuring that the making of key decisions is subject to sufficient discussion at Board level or with key persons in control functions as appropriate;
- ensuring adequate human resources to conduct the business;
- ensuring an appropriate level of internal controls of the business;
- ensuring appropriate disciplinary policies and procedures for wrongdoing are in place;
- maintaining adequate files and records and ensuring their availability for inspection;
- maintaining appropriate controls over outsourced functions; and
- compliance with all relevant legislation, including non-insurance legislation such as in respect of anti-money laundering, fraud, etc.

The following section sets out the Authority's proposals, including how the above requirements may be addressed.

Corporate Governance requirements for general insurance intermediaries

Overall governance framework for sound and prudent management of the intermediary

With effect from 30 June 2018, the Insurance Act 2008 was amended to include at section 27D an overriding provision in respect of corporate governance as follows -

Every registered insurance manager and insurance intermediary must establish, implement and maintain an appropriate and effective corporate governance framework, which ensures that the insurance manager or intermediary is soundly and prudently managed (which includes being soundly and prudently overseen by its board of directors or, if it has no board of directors, its equivalent governing body).

This is supplemented by more detailed requirements in the draft Governance Code.

Competence and integrity of those responsible for governance

The directors of an intermediary are already subject to the fit and proper requirements of section 29 of the Act which include an assessment of both competence and integrity. The Authority's expectations in this respect are further clarified in the draft Governance Code, with requirements regarding the composition of the intermediary's board, the key responsibilities of directors and management controls to ensure that management has the appropriate competence and integrity for their individual and collective roles.

The above is covered under paragraphs 17, 23 and 24 of the draft Governance Code.

Appropriate standards for conduct of business and monitoring of consumer outcomes

Many of the proposed governance requirements support the fair treatment of policyholders, however, a specific draft Conduct Code for intermediaries has already been consulted on in July 2017 (CP17-07/T08). This addresses conduct of business requirements, including the need for fair treatment of policyholders to be embedded in an intermediary's business culture and the requirement for monitoring of the intermediary's performance with respect to the fair treatment of policyholders.

Decision-making

A number of proposals are included in the draft Governance Code in respect of the operation of the Board and the key responsibilities of directors, aimed at ensuring that the Board properly discharges its duties including that of decision-making.

The above is covered under paragraphs 19 to 23 of the draft Governance Code.

Human resources

There are a number of proposed requirements in respect of management controls including the need for sufficient staff at all levels with adequate qualifications and experience, and particular reference is also made to the need for an appropriate level of management.

The above is covered under paragraph 24(4) of the Governance Code.

Internal controls / disciplinary policies and procedures

The draft Governance Code includes the requirement for internal and operational controls, systems, policies and procedures relating to all aspects of its business.

There is also the requirement for an ongoing and effective compliance function appropriate to the nature, scale and complexity of the intermediary, and for appropriate and comprehensive risk management policies and procedures.

The above is covered under paragraphs 13, 24, 26, 28, 31 and 32 to 35 of the draft Governance Code.

There is a specific paragraph in relation to conflicts of interest policy and procedures to be implemented at all levels within the intermediary (paragraph 10).

Record keeping

There are specific requirements around systems and controls for record keeping which enable the intermediary to comply with all regulatory requirements. Such records must be kept in an

orderly way and be readily accessible and available for inspection and investigation by the Authority.

The above is covered under paragraphs 14 and 16 of the draft Governance Code.

Outsourced functions

Provisions for outsourced functions make it clear that the intermediary remains accountable for the operation and oversight of the outsourced function.

The above is covered under paragraph 30 of the draft Governance Code.

Compliance with all relevant legislation

The draft Governance Code includes an obligation for an intermediary to identify and comply with its legal and regulatory obligations.

The above is covered under paragraph 8 of the draft Governance Code.

Additional requirements

In addition to the above, in the context of sound and prudent management, the Authority also proposes the following requirements.

An intermediary must –

- act with due skill, care and diligence (paragraph 7)
- have procedures for ensuring that its business is carried on openly and fairly (paragraph 9);
- disclose its name and regulatory status in business communications (paragraph 11);
- manage its financial resources prudently (paragraph 12);
- document its systems of governance and their operation (paragraph 15);
- promote and sustain a corporate culture that supports compliance with regulatory requirements and the intermediary's policies and procedures (paragraph 25);
- have a business plan and operate in accordance with that plan (paragraph 27);
- deal with the Authority in an open and honest manner (paragraph 29); and
- deal appropriately with external auditors and provide the Authority with copies of correspondence from the auditor in relation to management letters (paragraphs 36 to 38).

Implementation

A number of points were raised in response to consultation CP17-07/T08 which were discussed with the industry and a feedback statement was published in April 2018. Subject to the nature and volume of responses to this current consultation, we anticipate finalising the Governance Code early in the second quarter of 2019, whereupon we will issue a final consultation which will include the requirements proposed as part of CP17-07/T08 as well as the corporate governance requirements. This is likely to be around mid-2019 for implementation towards the end of 2019.