



**ISLE OF MAN
FINANCIAL SERVICES AUTHORITY**

Lught-Reill Shirveishyn Argidoil Ellan Vannin

GENERAL INSURANCE INTERMEDIARIES

Consultation Paper

CP17-07/T08

July 2017

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 to reflect progress made across the various work streams established under the project.

This consultation paper builds on the feedback received in response to the Authority’s initial discussion paper on the work stream established to review developments in the supervision of insurance intermediaries (“DP16-07”), and sets out in more detail proposals for changes to the Authority’s regulatory framework for insurance intermediaries, including draft binding guidance and draft Regulations for further consideration.

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 CP17-07/T08

The closing date for comments is **6 October 2017**.

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Glossary of Terms

Term	Meaning in this document
Act	Insurance Act 2008
Authority	The Isle of Man Financial Services Authority
Bill	Insurance (Amendment) Bill 2017
CTP	Common Trading Practices within the 1999 Regulations
Draft Code	The draft General Insurance Intermediaries (Conduct of Business) Code
Draft Regulations	The draft Insurance Intermediaries (General Business) Regulations 2017
FCA	UK Financial Conduct Authority
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 (taken from the Insurance (Amendment) Bill 2017)
IAIS	International Association of Insurance Supervisors
ICPs	Insurance Core Principles (of the IAIS)
IDD	EU Insurance Distribution Directive
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
PII	Professional Indemnity 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
TOBA	Terms of Business Agreement

Executive Summary

Having reviewed the feedback to its discussion paper DP16-07, the Authority issues for consultation CP17-07/T08 which sets out the Authority's expectations for developments and enhancements to its existing regulatory framework in relation to the general insurance intermediary sector, principally through a Draft Code focussing on conduct of business requirements and Draft Regulations.

CP17-07/T08 also sets out the Authority's initial views on changes to certain existing exemptions from registration and the future treatment of overseas intermediaries providing cross border services.

This paper focuses solely on the intermediation of general insurance business and pure protection business, and proposes developments to existing insurance regulation set out under the Act and the 1999 Regulations.

The proposed developments and enhancements to the Island's existing regulatory framework discussed in the paper include:

1. enhancements to conduct of business requirements which are set out in a draft General Insurance Intermediaries (Conduct of Business) Code ("the Draft Code"); and,
2. proposals to enhance requirements for the treatment of clients' money and financial resources within Draft Regulations.

Throughout the document consideration is given to requirements and developments in other jurisdictions, in line with international standards, and to achieving a proportionate approach for general insurance intermediaries.

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.

1 Introduction

The Authority recognises the need to assess the effectiveness of its framework relevant to general insurance intermediation in line with developing industry practice and regulatory standards and, where necessary, update the framework to ensure it:

- provides for an appropriate level of customer protection;
- promotes professional standards; and,
- maintains confidence in the Island's insurance sector.

The activities of intermediaries operating in or from the Island are currently regulated under two separate sets of legislation, with intermediation of investment business covered by the Financial Services Act 2008 and intermediation of general insurance business covered by the requirements set out under the Insurance Act 2008 and the 1999 Regulations. There is no proposal to change the current framework of regulation which segregates the intermediaries in this way and this paper focuses solely on requirements for insurance intermediaries.

In order to ensure that the Island's regulatory framework remains effective in securing an appropriate standard of advice for consumers in the distribution of general insurance products in or from the Island, the Authority has identified areas where enhancements to the existing regulatory framework are likely to be needed and these were set out in DP16-07, which was issued by the Authority in October 2016.

The feedback to DP16-07 was wide-ranging and different groups of respondents clearly have varying views on the Authority's initial proposals. As a result, the Authority has taken a balanced view when drafting the legislation to implement changes and sets out its rationale for its views within this consultation paper.

As a result of the feedback received, the Authority considers it appropriate to split the review into 3 sections to be progressed separately:

1. Enhancement of the general business and conduct of business requirements for registered insurance intermediaries;
2. Introduction of corporate governance requirements for registered insurance intermediaries; and
3. Consideration of the exemptions and allowances for cross border services for intermediaries that are not currently registered.

This paper focuses on the first of these work streams, but it also covers the Authority's initial views in relation to the third work stream because the Authority acknowledges that raising the standards within the industry without addressing the issues within the current framework

relating to the exemptions and allowances for cross border services may encourage regulatory arbitrage or lead to an unacceptable level of risk for consumers.

The Authority is continuing to consider the application of the Corporate Governance Code of Practice for Regulated Insurance Entities to intermediaries but, as a result of the feedback, is also considering developing a separate Corporate Governance Code for intermediaries that is based on the corporate governance requirements within the Rule Book. This acknowledges the fact that some intermediaries also hold a Class 2 financial services licence and have to abide by the rules within the Rule Book. As these rules will already be familiar to those regulated entities, this approach may reduce the regulatory burden for those entities. It is likely that the Corporate Governance Code for intermediaries will be consulted upon early in 2018.

2 Background to the ICPs and application of the requirements

2.1 ICP 18

The supervisory oversight and conduct of insurance intermediaries is dealt with specifically in ICP18. The definition of insurance intermediary within the ICPs would include general insurance intermediaries, reinsurance brokers and Independent Financial Advisors (“IFA”) (intermediaries advising on insurance contracts with an investment element that would be regulated under the Financial Services Act 2008).

The IAIS suggest that the supervisor may wish to consider the advantages of a risk based approach in which greater attention is focused on areas which may be of higher risk. To some extent this occurs naturally by virtue of the Authority’s legislative framework, which distinguishes between the intermediation of long term insurance with an investment element which is regulated as Class 2 activity under the Financial Services Act 2008 and intermediation of general insurance business and any other long term insurance (such as pure protection business) which is regulated under the Insurance Act 2008.

When considering the ICPs for discussion within this paper, the Authority’s intention has been to apply requirements in a way that is proportionate to the business of general insurance intermediaries.

2.2 Application of the enhanced requirements to reinsurance brokers

The ICP that focuses on Conduct of Business (ICP 19) highlights retail customers as being of particular importance when considering requirements to achieve the fair treatment of customers, recognising the potential vulnerabilities of this customer segment. In this regard, the Authority is of the view that reinsurance brokers present less of a risk to the Authority’s regulatory objective of protecting policyholders than general insurance intermediaries

because the intermediation is carried out business to business; therefore, the Authority proposes not to require reinsurance brokers to comply with the Draft Code.

Reinsurance brokers will continue to be required to register with the Authority as an insurance intermediary and to comply with the requirements set out within the Draft Regulations. This will capture requirements including financial resources, the treatment of client money and professional indemnity insurance (“PII”), which covers the risks posed by reinsurance brokers to the Authority’s regulatory objective of maintaining confidence in the Island’s financial sector and the main risk to policyholders, namely the safety of any funds paid to it by the ceding insurer for premiums due to reinsurers under reinsurance contracts.

Q1 – Do you have any comments on the Authority’s proposal that reinsurance brokers will be exempt from the requirements of the Draft Code?

3 Enhancing requirements in the Island’s regulatory framework for general insurance intermediaries

In developing its proposals in this paper, the Authority has given consideration to the ICP framework, developments in other jurisdictions as well as the Authority’s view of different activities and risk profiles within the Isle of Man’s insurance and financial services sector.

The Authority continues to consider the risk profile of the general insurance intermediary sector to be generally lower than the other sectors supervised by the Authority and in the context of that view this section highlights possible enhancements to the Island’s regulatory framework that the Authority considers appropriate to ensure that its framework remains up to date, proportionate and where appropriate consistent with standards adopted internationally in other reputable jurisdictions.

3.1 Exemptions and cross border services

3.1.1 Exemptions

Any person that, in the course of a business carried on in or from the Isle of Man, acts as or holds itself out as an insurance intermediary will be required under the amended Act to be registered by the Authority. This captures any person with a business on the Island or any person coming to the Island acting by way of business as an insurance intermediary.

The current regulatory framework exempts the following categories of intermediary from being registered:

1. those only acting as an intermediary in respect of long term insurance that falls within the definition of “investment” business (those persons would hold a Class 2 financial services licence);
2. those arranging insurance that covers the risk of loss or damage to goods or services provided by that person, where the principal business is not that of an insurance intermediary;
3. an insurance intermediary regulated by the UK Financial Conduct Authority (“FCA”) not ordinarily resident on the Isle of Man; and
4. intermediaries that advise on pure protection products and that hold a Class 2 financial services licence; the exemption is in respect of certain regulations only such as the requirement to register as an Insurance Intermediary with the Authority. However, the requirements to effect professional indemnity insurance and to comply with the Common Trading Practices in relation to the pure protection products remain.

DP16-07 requested feedback on this position. There was no feedback in relation to exemption (1); therefore, the Authority considers it appropriate that this exemption remains within the legislation.

The feedback indicated that the sector has some concerns over the operation of exemption (2) which it feels encourages regulatory arbitrage, and the responses were mixed in relation to exemption (3). These exemptions are covered in more detail at 3.1.3 and 3.1.4 below.

3.1.2 IFAs offering pure protection products

There was no feedback in relation to exemption 4; however, the Authority is of the view that this exemption should be removed to require registration of such intermediaries. This exemption was introduced in 2012 to avoid unnecessary regulatory duplication. Since the IPA and the FSC have now merged into one organisation this duplication will be reduced, and in any areas where this is not yet the case appropriate exemptions will be provided, for example, payment of an additional fee for registration, the need for key staff to be vetted under both the Insurance Act 2008 and the Financial Services Act 2008 and the requirement to submit an annual regulatory return.

The Authority believes it is appropriate for such intermediaries to be captured on the register of insurance intermediaries in order that:

1. the general public are aware that those intermediaries are regulated for the pure protection products being sold;

2. the Authority is aware of the extent of the pure protection business being carried out in this manner and can allocate its resources in relation to the supervision of this business accordingly; and
3. the Authority is able to use the full supervisory and enforcement powers laid down in the Insurance Act 2008 to deal with any malpractice or serious breaches in relation to the selling of pure protection products.

As noted above, these intermediaries are currently required to effect professional indemnity insurance and to comply with the Common Trading Practices; and the enhancements proposed in this paper (in terms of the Draft Code) will also apply.

Q2 – Do you have any comments on the proposed approach for intermediaries that advise on pure protection products and that hold a Class 2 financial services licence?

3.1.3 Ancillary insurance business

Given the concerns expressed over the exemption from registration for ancillary businesses, the Authority is undertaking further research into the underlying risk profile of businesses that are known to currently utilise the exemption, as well as reviewing the approach adopted in other jurisdictions. Particular consideration is being given to the provision of travel insurance which, as noted within DP16-07, is a relatively specialised insurance product and is considered to present a higher risk of inappropriate advice than the other types of insurance caught within this exemption. The ongoing appropriateness and scope of the current exemption for ancillary business will therefore be the subject of a future consultation and any necessary amendments to the Draft Regulations will be made after that consultation.

3.1.4 FCA regulated intermediaries

The feedback to DP16-07 in relation to this exemption was diverse, with comments made for and against removal of the exemption. The exemption available within the 1999 Regulations for an FCA regulated insurance intermediary not establishing a presence in the Island was historically developed in conjunction with the local insurance market to facilitate the provision of specialist insurance advice from the UK, and also recognises the level of regulatory oversight under the FCA framework and reduces the risk of regulatory arbitrage.

The Authority is of the view that it should not be primarily responsible for the supervisory oversight of FCA regulated intermediaries but as host regulator it can, and does, liaise with the FCA to mitigate the risks if issues come to the attention of the Authority. Isle of Man customers of an FCA registered intermediary would have the protection of the UK Financial Ombudsman Service (which covers both individuals and small businesses) and recourse to the FCA.

Following review of the feedback, the Authority has come to the view that further consideration of withdrawing this exemption will not be pursued as we do not wish to restrict access to specialist advice and a wider range of products for Island residents; however, consideration is being given to implementing a notification requirement on the exemption so that the Authority is made aware of those persons utilising the exemption. When we receive a notification, we would be able to undertake any required due diligence, including contacting the FCA on an inter-regulatory basis to assess the risk that an incoming firm presents to the Authority's regulatory objectives.

This revised exemption is reflected in regulation 5(1)(b) and (2) of the Draft Regulations. It contains conditions that the UK FCA regulated intermediary must give certain information to the Authority, which the Authority will hold on a public register. Additionally, the Authority will require the intermediary to update it on the level and type of business undertaken during the year on an annual basis. The provision for the Authority to require such a return is set out under regulation 5(2)(c). A template for the return will be published on the Authority's website.

Q3 – The Authority welcomes comments on its proposal that intermediaries taking advantage of the exemption should be required to notify the Authority in advance.

3.1.5 Cross border services

Currently, intermediaries operating on a cross-border basis from outside the Isle of Man are not required to be registered under the Act as they would not be considered to be operating 'in or from the Isle of Man'. Intermediaries marketing into the Island would not be covered under this provision, or the 'holding out' provision, unless the intermediary did not make it clear that its business was being conducted other than in or from the Island. A change to primary legislation would be required in order to change the scope of the Act.

In light of developing business practices, and in particular online services, the Authority is giving consideration to progressing a change to primary legislation that will require an overseas intermediary that is actively marketing on the Isle of Man to fall within the definition of an insurance intermediary and thus be required to go through a registration process with the Authority. This would allow the Authority to have an inter-regulatory dialogue with the intermediary's home regulator to assess the risks, as described above. As you will be aware, the Authority is currently in the process of amending the Insurance Act and this process will have to be completed before any further changes can be accommodated.

Such a change would be subject to further public consultation and the Authority will seek to ensure that all relevant stakeholders have sufficient opportunity to consider this change and provide their feedback in due course.

3.2 Registration process and requirements

3.2.1 Registration process

There were very few responses to this section of the discussion paper. The Draft Regulations do not set out the details to be supplied with applications for registration as this will be required by guidance which will be made publically available on the Authority's website. Consultation is not required on guidance; therefore, the Authority will give further consideration to this in line with the proposals set out in DP16-07 and any changes to the information required as part of the registration process will be published on the Authority's website in due course.

Within DP16-07, the Authority highlighted that it was considering identifying the types of policy the intermediary is considered competent to advise upon at the registration stage and restricting the registration accordingly. However, as there was no support and few benefits identified for this requirement the Authority now intends not to restrict the intermediary registration in future.

3.2.2 Financial resources

Within DP16-07 the Authority advocated an approach under which intermediaries would be required to maintain adequate capital and other financial resources appropriate to the business and risks to which they are exposed.

The feedback to this point was generally supportive and it was noted that a minimum level of financial resources would ensure policyholders are protected in the event of the failure of a regulated firm and would provide confidence in the local market.

The Draft Regulations include at regulation 18 a minimum capital requirement for intermediaries, similar to the approach operated in other jurisdictions, to ensure the ongoing continuity and quality of service to customers, even in adverse scenarios. An intermediary should be in a position to meet its financial obligations in full as they fall due, and the minimum capital requirement would be expected to cover the risk of any operational losses. The minimum capital requirement proposed is £10,000 or 125% of an intermediary's professional indemnity insurance deductible or excess.

It is proposed that this requirement is not applied to –

- banks licensed under the Financial Services Act 2008, on the basis that they have to complete an Internal Capital Adequacy Assessment Process and comply with much larger capital resource requirements within the Rule Book, or
- insurance intermediaries that are also IFAs, on the basis that they have to comply with the financial resource requirements under the Rule Book, which

include a minimum share capital requirement, a minimum net tangible asset requirement (£10,000) and a liquid capital requirement.

Q4 – The Authority welcomes feedback on its proposed capital requirement.

3.2.3 Renewal of registration

As noted, the current requirement for an insurance intermediary to apply annually for re-registration is to be removed and replaced with an annual regulatory return (“ARR”).

A draft ARR is included at Appendix 3 to this consultation paper. The Authority plans to publish the finalised document on its website.

Readers will note that the first sentence of the confirmation to be completed by the intermediary on the first page of the ARR asks whether the intermediary has conducted its business in accordance with the relevant legislation, with the exception of any material breaches already notified to the Authority. Although it is not currently a requirement for intermediaries to notify breaches to the Authority, the Authority expects that as part of a regulated entity’s obligation for open and honest communication with its regulator an intermediary would notify the Authority of any significant issues. The Authority anticipates that a formal requirement for notification will be captured within the draft Corporate Governance Code.

Q5 – do you have any comments on the questions within the ARR?

3.3 Professional knowledge and experience

The Authority’s view in this area is that formal competency requirements for intermediaries would be beneficial to raise the standard and perception of the industry and to mitigate a key risk of poor or unsuitable advice being given to policyholders. The ICPs state that intermediation services should be provided by competent employees and so a key consideration is whether the individuals giving face to face advice should be required to have a minimum level of qualification.

Within DP16-07, the Authority outlined a possible approach whereby one of an intermediary firm’s management team (who must be appropriately qualified) would take on the role of ‘responsible member’. The feedback to DP16-07 suggested that because the ‘responsible member’ approach differs from what is seen in other jurisdictions intermediaries would generally favour an individual approach. The responses were split between those that did not agree that formal qualifications are required and those that stated that qualifications would be a sensible approach for all client facing staff or a percentage of client facing staff.

The Authority considers it important that individuals working as insurance intermediaries have adequate professional knowledge to carry out their responsibilities. Professional knowledge can be gained from experience, education and training. In order to be able to demonstrate that professional knowledge has been achieved, it is preferable that this is supported by the attainment of relevant professional qualifications.

Any qualifications should be supported by in-house training and experience in order that the knowledge gained is applied correctly and that individuals' experience is appropriate for the type of intermediation being carried out.

Therefore, the Authority proposes through this consultation to introduce a requirement that anyone providing advice on **personal lines business should be required to hold at least the Chartered Insurance Institute's Certificate in Insurance ("Cert CII")** and anyone providing advice to **commercial clients should be required to hold the Diploma in Insurance ("Dip CII")** including relevant non-personal lines modules.

Once competence has been demonstrated through the attainment of professional qualifications, it is important that individuals who continue to work as insurance intermediaries keep their professional knowledge up to date. To date the Authority has not recommended any specified minimum amount of time that must be spent on continuous professional development ("CPD"), although the Authority expects that intermediaries who are members of professional bodies will have a requirement for a minimum amount of CPD to be undertaken in line with this.

Despite the approach outlined above, the Authority remains of the opinion that there should be a senior person within an intermediary firm that is responsible for the advice given by the firm and for overseeing the training needs of client facing staff.

A transitional period would be given, following implementation of the legislation, to allow those needing to gain additional qualifications sufficient time to do so. A 2 year transitional period has been suggested.

These requirements have not been reflected in the legislation attached. The Authority would like to receive further feedback before reflecting any requirements in the draft Corporate Governance Code to be consulted on in due course.

Q6 – How many of your staff members would this affect?

Q7 – Do you agree that a 2 year transitional period is appropriate?

3.4 Conduct of business

3.4.1 Disclosure of information on insurance products to customers

Feedback on this point was again mixed, with some of the market stating that current practice is sufficient and some stating that point of sale disclosures are made based on UK requirements, as these are viewed as best practice.

In terms of the comments that current practice is sufficient, it appears that current market practice exceeds requirements currently set out in the CTP as information is generally provided to customers in a documented form. The Authority supports this best practice and is therefore of the view that it would be appropriate for it to be formalised in the legislation. It is important that the provision of information to customers is effective in informing rather than overloading them with detail. The emphasis should be on the quality rather than the quantity of information to be provided.

Feedback suggested that it would be beneficial to prescribe within the Draft Code the product information to be provided in writing before a customer enters into a contract. A number of respondents to DP16-07 stated that disclosures made to customers are in line with the UK's requirements. The Authority is supportive of introducing requirements that are consistent with disclosure requirements in the UK. The Authority also considers it important that the disclosures are consistent with those recently consulted upon for non-life insurers on the Island. This will ensure that any information provided by IOM and UK insurers is consistent with the requirement for intermediaries.

Similarly, the Authority has been monitoring the progress of the EU's Insurance Distribution Directive ("IDD"). The FCA has recently issued a consultation on the implementation of the IDD and another is due later in 2017.

Paragraph 9(2) of the Draft Code outlines a list of information that is consistent with the content of the Insurance Product Information Document as outlined within the IDD, along with other information that the Authority considers important to disclose to customers at outset. If a summary of cover document is provided by the insurer, any additional information could be included within a covering letter or similar document. The Authority will continue to monitor the implementation of the IDD (which is required by 23 February 2018) to ensure that, where appropriate, its Draft Code remains consistent with the UK requirements. This will also require an update to the draft Conduct of Business Code for Isle of Man non-life insurers to ensure consistency.

3.4.1.1 Telephone sales

If business is done via telephone, the Draft Code allows for the disclosure of information to be provided immediately after the conclusion of the contract. The Authority considers that for any business done on a website or by email the customer could still be provided with such information in a downloadable format prior to entering the contract.

Q8 – The Authority welcomes feedback on:

- (i) the information to be provided to customers, and
- (ii) the timing of this information.

3.4.2 Fair treatment of customers

Paragraphs 5 and 6 of the Draft Code establish the principles central to the fair treatment of an intermediary's customer. These paragraphs build on the concept of conducting business in good faith and with integrity from the existing CTP and develop it further so that considerations around the fair treatment of customers are also included in the areas of business culture, internal controls, independence and performance management and reward.

Q9 – do you have any comments on paragraphs 5 and 6 of the Draft Code?

3.4.3 Pre-sales process

Intermediaries currently have a requirement to explain the insurance contract to customers under paragraph 2 (ii) of the CTP, including explaining all the essential provisions of the cover and drawing attention to any restrictions or exclusions. This requirement has been retained in paragraph 7 of the Draft Code, which covers general sales principles.

As noted within DP16-07, the Authority considers that, as well as drawing customers' attention to such exclusions verbally when discussing any contract, an intermediary should also point out any restrictions or exclusions in writing. This is captured within the product information to be disclosed at paragraph 9 of the Draft Code.

The overriding principle here is that any information provided to customers whether documented or verbal should be clear, fair and not misleading. This is now required under paragraph 6 of the Draft Code.

Q10 – do you have any comments on paragraph 7 of the Draft Code?

3.4.4 Suitability and appropriateness of advice

Advice goes beyond the provision of product information and relates to the provision of a recommendation on the appropriateness of a product to the customer's disclosed demands and needs. Currently, the CTP do not allow for products to be taken up on a "no advice" basis because there is a requirement that an intermediary must ensure, as far as possible, that the policy proposed is suitable to the needs and resources of the prospective policyholder. This is in line with the IDD which requires firms to identify the customer's demands and needs and match them to the available products, and state the customer's insurance demands and needs to assist them in making an informed decision.

Within DP16-07 the Authority stated that the basis for any recommendation should be documented and the documentation should be provided to the customer. Feedback to this point was received which stated that this would be impracticable due to the nature of many general insurance lines which require contracts to be issued quickly. Some respondents also commented that current practice in this area is sufficient. The Authority anticipates that it will retain the requirement that an intermediary must ensure that the policy proposed is suitable to the needs and resources of the prospective policyholder but further feedback is encouraged from the sector including examples of sound practice adopted currently.

Q11 – Feedback is encouraged on the procedures that intermediaries currently have in place to demonstrate that the policies proposed for clients are suitable to their needs and resources.

Additionally, the feedback received to the discussion paper indicated that in some cases intermediaries are using the concept of “no advice”, which while being an option under UK regulation is not allowable under the Isle of Man’s current legislation. Therefore, given the apparent variation in the level of current compliance with this requirement intermediaries are urged to review current business models to ensure that they are in line with the CTP and thus will be in compliance with the Draft Code going forward.

Within the previous discussion paper, emphasis was given to the promotion of quality advice through ongoing training and monitoring of those staff that are directly involved in the provision of advice. It is envisaged that this requirement will be reflected in the Corporate Governance Code for intermediaries, and this will be consulted upon later in the year. However, the Draft Code retains the current requirement from the CTP that an intermediary must only advise on insurance matters in which he is knowledgeable.

A question was raised in the feedback to the discussion paper about insurers providing advice on products and whether specific oversight of the advice being provided by insurers should be introduced.

The Authority is of the view that if a customer has selected an insurer for an insurance product, that customer will have chosen the insurer based on self-advice and is likely to want a particular product. The insurer may answer questions and provide factual information on its products without requiring to be registered as an intermediary.

Additionally, insurers are subject to the Corporate Governance Code of Practice for Regulated Insurance Entities which includes requirements for them to:

1. assess a policyholder’s needs before giving advice or concluding a contract when dealing directly with its policyholders, and

2. ensure that all reasonable steps are taken in a timely manner to enable its policyholders to take suitably informed decisions by providing adequate and appropriate information to the policyholder.

3.4.5 Managing conflicts of interest

For the majority of general insurance intermediaries, the payment of commission in various forms remains the overriding basis by which intermediaries are remunerated for the advice and services provided to customers ahead of a contract being established.

The Authority does not view the payment of commission, within reasonable industry standard levels commensurate with the services being provided, as necessarily presenting an unacceptable level of risk of customer detriment in all situations; however, the Authority recognises the risk of a conflict of interest arising where financial benefit can be obtained as part of the conclusion of an insurance contract.

The feedback to DP16-07 showed that generally the market considers the disclosure of commission on request as appropriate and feels that the existing system for this works well. Currently, a general insurance intermediary must disclose his commission on request under paragraph 2 of the CTP but there is no requirement to make the customer aware of his/her right to make such a request.

The Authority is of the view that mandatory disclosure of commission is not necessary for general insurance products, where the risk is perceived to be lower, as long as customers are made aware of the right to request disclosure to ensure any conflicts of interest are adequately managed. Consequently, the Draft Code includes an obligation to make the customer aware of his or her right to do this within the requirement for a terms of business agreement ("TOBA") under paragraph 8 of the Draft Code.

Other principles within the Draft Code (paragraphs 5(6) and 11) also oblige an intermediary to consider to what extent gifts, benefits and other inducements received affect its ability to act with independence in the best interests of the customer. These factors will need to be managed as part of an intermediary's conflicts of interest and thought needs to be given to how the intermediary's provision of services is represented to customers in any communication (paragraphs 5(5) and 8(2)), for example if the intermediary only offers policies for one insurer for each line of business this should be made clear to customers in order that they know that it may be beneficial to get another quote.

Performance and reward strategies for staff may also contribute to a culture which does not always put customer outcome first and could result in another conflict of interest for the business. Recruitment, training and ongoing performance management of staff should ensure high standards of ethics and integrity. In order to embed the principle of fair treatment of customers, it is important that any performance and reward strategies are aligned with the

principle of fair treatment of customers and do not result in unfair policyholder outcomes. This requirement is contained with paragraph 5 of the Draft Code.

It is likely that a further principle relating to the management of conflicts of interests will be contained within the Corporate Governance Code for intermediaries, to be consulted upon further in due course.

3.4.6 Provision of information on the intermediary to customers

A TOBA is a commonly adopted method by which an intermediary can provide important information to a customer and satisfy regulatory disclosure requirements. ICP guidance states that intermediaries should be expected to provide information on terms of business to customers and to do so prior to an insurance policy being entered into. Currently this is not required within the legislation for intermediaries.

The feedback in relation to TOBAs was around the Authority's best practice suggestion for a copy of the TOBA to be signed by the customer and retained by the intermediary as part of its records. It was acknowledged by the Authority that there are cases where insurance cover needs to be arranged immediately or where insurance is arranged over the phone where this method will not be possible. In such situations it may be appropriate to provide the information verbally and follow this up in writing within a reasonable period of time. It was stated within the feedback that this would not be practical for an insurance intermediary. In light of feedback the Authority has decided not to formalise the requirement for signed customer acknowledgement of the TOBA within the Draft Code, however intermediaries will need to consider other means by which the requirement to provide a TOBA to customers can be evidenced.

Few comments were received in relation to the content of a TOBA and so the Authority has set out its expectations in paragraph 8 of the Draft Code.

Q12 – do you have any comments on the contents of the TOBA as set out within the Draft Code?

3.5 Clients' Money

In the course of carrying on its business, an insurance intermediary may receive money from a client for the payment of premiums to an insurer and may receive monies from an insurer in respect of claims or refunded premiums for onward payment to a client.

The protection of client money is considered a key element of meeting the Authority's objective of protecting policyholders, members and customers. The Authority therefore considers it essential that intermediaries have proper policies and procedures in place to limit the potential for loss to clients by theft, misappropriation of funds or bankruptcy of the intermediary. In this regard, it is important that the clients' money is not held on the

intermediary's balance sheet and that client accounts are set up in such a manner that they are segregated from intermediary's own accounts.

Feedback was received suggesting that the majority of money held by insurance intermediaries is held at the risk of the insurer. Where money is held by an intermediary that has a risk transfer agreement with the insurer, then the intermediary's clients will be adequately protected to the extent that the premiums which it receives are treated as being received by the insurer when they are received by the intermediary, and claims money and premium refunds will only be treated as received by the client when they are actually paid over. In order for this to be the case, the intermediary must have an agency agreement in place with the insurer conferring contractual authority to commit the insurer to risk, to settle claims or handle premium refunds. Where this is the case, the money would not be classed as client money for the purpose of the Draft Regulations and this has therefore been clarified in the Draft Regulations.

The current requirements within the CTP in relation to the segregation of this money and the maintenance of proper accounts of the transactions appear sufficient for such arrangements.

However, in the circumstance where there is no risk transfer agreement in place with an insurer and hence the money is held at the risk of the client (and referred to as "clients' money"), the Authority expects the intermediary to have adequate policies and procedures in place for the safeguarding of such funds in the interests of its customers. Although it was acknowledged within the responses received that some client money is held by intermediaries, none of the responses informed the Authority of the materiality and frequency with which clients' money is held. The Authority requested further information as part of the registration renewal process. Following this, the Authority has developed client money requirements within the Draft Regulations that it considers to be proportionate.

Regulation 9 sets out that client money should be held by the intermediary on trust for the client in a designated client account at a bank licensed on the Isle of Man and regulations 13 and 16 includes further detail on how the money is to be held on trust. Regulations 10 and 11 include provisions for the operation and reconciliation of a client account that are consistent with the requirements in the Rule Book. Regulation 12 deals with how interest on client money should be treated. Regulations 14 and 15 set out how the client money is to be treated in the case of a default of the bank at which the money is held or of the intermediary.

Q13 – do the client money requirements cause any difficulties? If so – how, and what alternatives would you suggest?

3.6 Professional Indemnity Insurance

It was noted within DP16-07 that insurance intermediaries should be best placed to determine the level of PII cover appropriate for the risk of the intermediaries' business, however, feedback received demonstrated a split in the market between wanting the minimum level to be removed and ensuring that a minimum level is set that is proportionate to the type and level of business transacted.

The Authority has decided to include a requirement that an intermediary must effect and maintain a PII policy that is appropriate to the nature and scale of its business notwithstanding the regulatory minimum. This is reflected at paragraph 6 of the Draft Regulations. The regulatory minimum and policy coverage requirements will remain in the Schedule to the Draft Regulations. The Schedule is similar to the current Schedule 2 to the 1999 Regulations. It should be noted that banks offering intermediary services will not be required to maintain PII, but should make appropriate provision for the risks in their ICAAP calculations.

Regulation 6 of the Draft Regulations also includes a requirement for the rationale of the level of indemnity maintained to be documented and available for supervisory review.

Another consideration in relation to PII, for groups and for IFAs, is the level of cover required to meet varying obligations (e.g. obligations for individual group companies under a group policy, or obligations under the Rule Book and under the Draft Regulations). For regulated entities that are covered by a group policy, the intermediary would need to ensure that the amount and nature of the cover is appropriate for the entity and the group. For regulated entities that are both registered as a general insurance intermediary and licensed under the FSA08, the intermediary would need to determine the scope of its policy by considering the requirements of the Draft Regulations and the Rulebook. The Authority would expect that these considerations are taken into account when an intermediary is deciding on the level of PII appropriate to the nature and scale of its business.

The maximum policy excess requirement has been removed from the Schedule as the requirement for this to be capable of being met by the insured is now captured within the new requirement for the intermediary to hold adequate financial resources.

Q14 – do you agree with our proposal to put the responsibility onto the intermediary to calculate its own PII requirement, whilst retaining a minimum PII requirement and coverage?

3.7 Other

3.7.1 Cancellation of registration requirements have been formalised and enhanced within regulation 7 of the Draft Regulations. This will be supplemented by guidance on what will be expected within a winding up plan.

3.7.2 A new requirement for notifying the Authority of changes in control has been included within the Draft Regulations. The Authority is made aware of the controllers of an intermediary at the time of registration and of any new controller by virtue of section 29 of the Act. This requirement is intended to make the Authority aware if there are any significant changes to the levels of controlling interest of the existing controllers. This is a requirement of the ICPs and is similar to a requirement within the Rule Book.

4 Summary of questions

For ease of reference, the questions raised throughout this paper are repeated here:

Question 1

Do you have any comments on the Authority's proposal that reinsurance brokers will be exempt from the requirements of the Draft Code?

Question 2

Do you have any comments on the proposed approach for intermediaries that advise on pure protection products and that hold a Class 2 financial services licence?

Question 3

The Authority welcomes comments on its proposal that intermediaries taking advantage of the exemption should be required to notify the Authority in advance.

Question 4

The Authority welcomes feedback on its proposed capital requirement.

Question 5

Do you have any comments on the questions within the ARR?

Question 6

How many of your staff members would this affect?

Question 7

Do you agree that a 2 year transitional period is appropriate?

Question 8

The Authority welcomes feedback on:

- (i) the information to be provided to customers, and
- (ii) the timing of this information.

Question 9

Do you have any comments on paragraphs 5 and 6 of the Draft Code?

Question 10

Do you have any comments on paragraph 8 of the Draft Code?

Question 11

Feedback is encouraged on how intermediaries currently demonstrate that the policies proposed for their clients are suitable to the needs and resources of the prospective policyholder.

Question 12

Do you have any comments on the contents of the TOBA as set out within the Draft Code?

Question 13

Do the client money requirements cause any difficulties? If so – how, and what alternatives would you suggest?

Question 14

Do you agree with our proposal to put the responsibility onto the intermediary to calculate its own PII requirement, whilst retaining a minimum PII requirement and coverage?

Feedback on these questions along with any other feedback to this document or comments on the Draft Regulations and Draft Conduct of Business Code, including whether transitional periods will be required to enable persons to obtain compliance with any of the particular sections of the legislation, should be provided by email, by 6 October 2017, to:

Mrs Nicola Igoea
Manager – ICP Project
Email: nicola.igoea@iomfsa.im

Appendix 1

DRAFT GENERAL INSURANCE INTERMEDIARIES (CONDUCT OF BUSINESS) CODE 2017

Laid before Tynwald:

Coming into Operation:

The Isle of Man Financial Services Authority makes the following Guidance Notes under section 51 of the Insurance Act 2008 as binding guidance.

1 Title

These Guidance Notes are the General Insurance Intermediaries (Conduct of Business) Code 2017.

2 Commencement

These Guidance Notes come into operation on xx.

3 Interpretation

In these Guidance Notes –

“**Act**” means the Insurance Act 2008;

“**advertisement**” includes every form of advertising in printed form and by means of broadcasting sound or images;

“**durable medium**” means any instrument which enables the recipient to store information in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

“**intermediary**” means an insurance intermediary registered under section 24 of the Act, but does not include a reinsurance intermediary;

“**policyholders**” means the intermediary’s customers and includes prospective policyholders;

“**reinsurance intermediary**” means a person who for remuneration brings together, either directly or through the agency of a third party, with a view to the reinsurance of risks, persons seeking reinsurance and reinsurers; and

“**senior management**” means, in relation to an intermediary, any person whose appointment is required to be notified to the Authority under the Act, excluding its –

- (a) non-executive directors;
- (b) external auditor; and
- (c) controller where such a controller is not a person whose appointment is required to be notified to the Authority under the Act other than as a controller.

4 Action likely to bring Island into disrepute

An intermediary must not carry on business of such a kind or in such a way as may be likely to bring the Island into disrepute or damage its standing as a financial centre.

5 Fair treatment of policyholders – general principles

- (1) In paying due regard to its policyholders and treating them fairly, an intermediary must –
 - (a) establish and implement policies and procedures for the fair treatment of policyholders as an integral part of its business and culture; and
 - (b) ensure that its policies and procedures for the fair treatment of policyholders are set out in writing and are provided to all relevant staff.
- (2) The policies and procedures at (1) should include a consideration of how an intermediary –
 - (a) develops and markets its products in a way that pays due regard to the interests of policyholders;
 - (b) ensures policyholders are provided with clear information before, during and after the point of sale;
 - (c) deals with policyholder complaints and disputes in a fair and transparent manner;
 - (d) monitors the intermediary's performance with respect to the fair treatment of policyholders;
 - (e) ensures that its employees are aware of their obligations in relation to the fair treatment of policyholders including through regular training; and
 - (f) ensures that any performance and reward strategies for an intermediary's employees are aligned with the principles of the fair treatment of policyholders and do not result in unfair policyholder outcomes.
- (3) The responsibility for the design, implementation and monitoring of adherence to the policies and procedures in (1) rests with the board and senior management of the intermediary.
- (4) An intermediary must regularly review, and update where necessary, the policies and procedures in (1) to ensure that they remain valid and up to date.
- (5) An intermediary must –
 - (a) not claim that it is independent or impartial if it is not; and

- (b) ensure that any claim it makes as to its independence or impartiality adequately includes any limitation which there may be on either.

6 Fair and reasonable behaviour

- (1) An intermediary must have procedures for requiring those seeking to obtain business on its behalf to -
 - (a) conduct business in good faith and with integrity;
 - (b) do so in a way which is clear, fair and not misleading, and all information given to policyholders (whether verbal or in writing) must be in line with this requirement;
 - (c) avoid any undue pressure;
 - (d) make clear the purpose or purposes of the contact at the initial point of communication; and
 - (e) identify themselves and the intermediary that they represent to policyholders by providing contact information in writing.
- (2) An intermediary must –
 - (a) not communicate at an unsocial hour; and
 - (b) have controls requiring those seeking to obtain business on its behalf not to communicate with a person at an social hour;unless the person has previously agreed to such a communication.
- (3) For the purposes of (2), “unsocial hour” means-
 - (a) any time on a Sunday, Good Friday or Christmas Day;
 - (b) before 9.00 am or after 9.00 pm on any other day
 - (c) any other day or other time –
 - (i) where the intermediary, or those seeking to obtain business on its behalf, knows that the person concerned does not wish to be called on that day or at that time; or
 - (ii) where the intermediary, or those seeking to obtain business in its behalf, has reason to believe that the person concerned would not wish to be called on that day or at that time (for example, because of religious observation or working patterns).
- (4) An intermediary must not –
 - a) make inaccurate, unsubstantiated or unfair criticism of any insurer;
 - b) make comparisons with other types of policy unless he makes clear the differing characteristics of each policy.

7 General sales principles

- (1) An intermediary must –

- (a) give advice only on insurance matters in which he or she is knowledgeable;
- (b) ensure that the policy recommended is suitable to the needs and resources of the policyholder;
- (c) explain all the essential provisions of the cover afforded by the policy, or policies, which he is recommending, so as to ensure as far as possible that the policyholder understands what he is buying;
- (d) draw attention to any restrictions and exclusions applying to the policy;
- (e) if necessary, obtain from the insurance company specialist advice in relation to (c) and (d);
- (f) explain to the policyholder the duty to disclose all circumstances material to a policy and what needs to be disclosed, and explain the consequences of any failure to make such a disclosure;
- (g) in obtaining the completion of the proposal form, or any other material, avoid influencing the policyholder and make it clear that all answers or statements are the policyholder's responsibility;
- (h) explain that the policyholder has an obligation to monitor his or her own cover to ensure it remains adequate;
- (i) not impose any charge in addition to the premium required by the insurance company without disclosing the amount and purpose of such charge;
- (j) disclose his or her commission on request; and
- (k) execute policyholders' instructions promptly and in a timely fashion.

8 Terms of business

- (1) An intermediary must provide a policyholder with a written terms of business.
- (2) The terms of business must –
 - (a) Set out the basis on which the intermediary is to provide its services, including whether –
 - (i) products are offered from the whole of the market, from a limited range of insurers or from a single insurer in relation to each types of insurance offered; and
 - (ii) whether the intermediary acts as an agent, working on behalf of an insurance company, or as a broker, acting on behalf of the policyholder;
 - (b) Provide information on the nature of the remuneration received by intermediary, for example, whether it works on the basis of a fee paid directly by the policyholder, on the basis of commission or both;

- (c) State that the policyholder may request details of the amount of remuneration being received by the intermediary as a result of its relationship with or transactions for the policyholder;
- (d) State that the intermediary is registered with the Authority;
- (e) Provide information on the intermediary's complaints process, including a contact for complaints and that complaints may subsequently be referred to the Isle of Man Financial Services Ombudsman Scheme;
- (f) Provide information on the intermediary's arrangements in relation to client money, including how interest received is to be dealt with and the arrangements for crediting interest to the client bank account;
- (g) State that the intermediary will treat all information supplied by the policyholder as completely confidential to himself and to the insurer to which the business is being offered; and
- (h) If the intermediary will deal with claims, the contact details for notifying a claim.

9 Product information

- (1) An intermediary must ensure that a policyholder is given appropriate information about a product in good time so that the policyholder can make an informed decision about the product. In considering what constitutes "in good time" an intermediary should include a consideration of the time necessary for a policyholder to understand the information, based on the type and complexity of the product and its terms.
- (2) Subject to (3), the following information should be provided to a policyholder in a durable medium before he or she enters into a contract —
 - (a) the name of the insurer providing the product;
 - (b) information about the type of insurance;
 - (c) a summary of the insurance cover, including the main risks insured, the insured sum and a summary of the excluded risks;
 - (d) the level of premium and the date it is due to be paid;
 - (e) the level of any excess payable;
 - (f) any additional fees and charges associated with the product;
 - (g) main exclusions where claims cannot be made;
 - (h) obligations at the start of the contract
 - (i) obligations during the term of the contract;
 - (j) obligations in the event that a claim is made;
 - (k) the term of the contract including start and end dates of the contract;
 - (l) the means of terminating the contract;

- (m) existence and duration of the right of cancellation;
 - (n) contact details for notifying a claim;
 - (o) how to complain to the intermediary, including that complaints may subsequently be referred to the Isle of Man Financial Services Ombudsman Scheme; and
 - (p) whether or not there is any compensation scheme or policyholder protection scheme applicable to the product.
- (3) An intermediary may provide the information under (2) immediately after the conclusion of a contract, if the contract has been concluded over the telephone at the policyholder's request.

10 Documentation

An intermediary must not withhold from the policyholder any written evidence or documentation relating to the contract of insurance.

11 Gifts and other benefits

An intermediary must not –

- (a) offer or receive;
- (b) or permit any employee to offer or receive;

any gift or other direct or indirect benefit, if to do so might adversely influence the giving of advice by, or the exercise of discretion on the part of, the intermediary or its employee.

12 Advertising

An intermediary must –

- (1) establish and implement procedures to ensure that it promotes its products and services in a manner that is clear, fair and not misleading; and
- (2) make clear to those with whom it has communications in the course of its business, or prospective business, its name and the fact that it is regulated by the Financial Services Authority.

13 Claims

- (1) If a policyholder advises the intermediary of an incident which might give rise to a claim, the intermediary must inform the relevant insurer without delay, and in any event within three working days, and thereafter give prompt advice to the policyholder of the insurer's requirements concerning the claim, including the provision as soon as possible of information required to establish the nature and extent of the loss.
- (2) Any information received from the policyholder must be passed to the insurer without delay.

Appendix 2

DRAFT INSURANCE INTERMEDIARIES (GENERAL BUSINESS) REGULATIONS 2017

Laid before Tynwald:

Coming into Operation:

The Isle of Man Financial Services Authority makes the following Regulations under sections 28, 48 and 50 of, and Schedule 7 to, the Insurance Act 2008 after carrying out all necessary consultations.

1 Title

These Regulations are the Insurance Intermediaries (General Business) Regulations 2017.

2 Commencement

These Regulations come into operation on xx.

3 Interpretation

In these Regulations –

“the Act” means the Insurance Act 2008;

“**client money**” means money that is held or received by a registered insurance intermediary –

- (a) from a policyholder to be transferred to an insurer in relation to the payment of a premium; or
- (b) from an insurer in relation to claims money or refunded premiums for onward payment to a policyholder;

but does not include money held at the risk of insurers;

“**long-term insurance**” has the same meaning as in the Regulated Activities Order 2011, as amended;

“**money held at the risk of insurers**” means money that is held or received by a registered insurance intermediary which is subject to written agreement between a registered insurance intermediary and an insurer whereby –

- (a) the registered insurance intermediary holds the money as agent for the insurer to the extent that such money is treated as being received by the insurer when it has been received by the registered insurance intermediary, and
- (b) claims and premium refunds are only treated as being received by the policyholder when they are paid to the policyholder; and

“policyholder” means the registered insurance intermediary’s customers and includes prospective policyholders.

4 **Register of general insurance intermediaries**

The register of insurance intermediaries required to be kept under section 48 of the Act must contain the following information –

- (a) the name of the intermediary;
- (b) the address of the intermediary’s registered office;
- (c) the place of business in the Isle of Man (if different to sub-paragraph (b));
- (d) the date of the initial registration;
- (e) the name of the senior representative resident in the Island responsible for the good conduct of the business;
- (f) date and details of amendments to the register;
- (g) registration number;
- (h) status of the intermediary’s registration.

5 **Exemptions**

- (1) The following classes of insurance intermediary are exempt from the requirement to register under section 24 of the Act –

- (a) persons acting as an intermediary only in respect of long-term insurance;
- (b) an insurance intermediary that –
 - (i) is registered with and regulated by the Financial Conduct Authority under the terms of the Financial Services and Markets Act 2000 (of Parliament); and
 - (ii) is not ordinarily resident in the Island;

subject to the conditions specified in sub-paragraph (2).

- (2) The conditions referred to in (1)(b) are that -

- (a) the intermediary gives notice to the Authority, in the form specified by the Authority, containing the following information –
 - (i) its name;
 - (ii) its address;
 - (iii) details of its UK Financial Conduct Authority authorisation; and
 - (iv) the expected level and type of business to be undertaken on the Island.

- (b) the information in sub-paragraphs (2)(a)(i) – (iii) will be held on a register of exempt persons until the intermediary informs the Authority it is no longer utilising the exemption; and
 - (c) annually on the date of first entry in the register mentioned in (b), the intermediary makes a return to the Authority containing the information specified by the Authority.
- (3) A person acting as an intermediary –
- (a) only in respect of pure protection business; and
 - (b) if the person is the holder of a licence issued under section 7 of the Financial Services Act 2008 which permits it to conduct regulated activities falling within Class 2 sub-classes (3) and (7) of Schedule 1 to the Regulated Activities Order 2011²;
- is exempted from –
- (c) regulations 17, 18, 19 and 20; and
 - (d) sections 27A(3), 27B, 29(1) and 30 of the Act;
- on the condition that any equivalent provisions under the Financial Services Act 2008 and Financial Services Rule Book 2016³ are complied with.

6 Professional indemnity insurance

- (1) Despite the regulatory minimum set out within the Schedule, a registered insurance intermediary that is not also the holder of a licence issued under section 7 of the Financial Services Act 2008 which permits it to undertake Class 1 regulated activities must effect and maintain continuous professional indemnity insurance which is appropriate to the nature and scale of its business, with an insurer of good standing.
- (2) The rationale for the level of professional indemnity insurance maintained must be documented.
- (3) The professional indemnity insurance must comply with the requirements of the Schedule.
- (4) A registered insurance intermediary must notify the Authority of any circumstances which give rise to or may give rise to the cancellation or termination of the professional indemnity insurance policy effected.
- (5) A registered insurance intermediary must notify the Authority as soon as practicable of any claim exceeding £10,000 on its professional indemnity insurance.

² SD0884/11

³ SD0264/16

7 Cancellation of registration

- (1) A registered insurance intermediary may cancel its registration by notice in writing served upon the Authority.
- (2) Any notice in writing under (1) must include a winding-up plan.
- (3) A cancellation of a registration is not effective unless written consent to the cancellation has been obtained from the Authority.
- (4) A cancellation shall take effect on receipt of written consent from the Authority or on another date proposed by the registered insurance intermediary and agreed by the Authority.
- (5) The Authority may refuse its consent to the cancellation of a registration –
 - (a) if the Authority deems that the winding-up plan is not satisfactory, or
 - (b) if the Authority believes that the cancellation would not be in the best interests of the public, the intermediary's policyholders or the reputation of the Isle of Man as a finance centre, or
 - (c) if the insurance intermediary is still required to be registered for any other reason under the Insurance Act 2008.
- (6) Where the Authority does not consent to the cancellation of a registration, the Authority must provide written notice of its decision.
- (7) Where a registration is cancelled, the insurance intermediary must preserve its records for at least six years beginning with the date of cancellation and must notify the Authority of the method of storage and location of such records at least 20 days prior to the cancellation of its registration.
- (8) For the purpose of (7), "records" is defined as books, accounts and documents appropriate to the entity's business, that provide legible accurate, verifiable, timely, complete and comprehensible information.

8 Money held at the risk of insurers

A registered insurance intermediary that holds money at the risk of an insurer must –

- (a) hold that money in an account which is clearly distinguishable from the intermediary's own bank accounts and from any designated client account;
- (b) keep proper records of such money received, paid or held by the intermediary;
- (c) account properly and promptly for money held at the risk of insurers; and
- (d) remit any monies collected in strict conformity with the agreement in place.

9 Client money

- (1) A registered insurance intermediary that holds client money must –
 - (a) hold that money in a designated client account which is clearly distinguishable from the intermediary's own bank accounts and from money held at the risk of insurers;
 - (b) hold that money on trust for the policyholder entitled to it;
 - (c) keep proper records of client money received, paid or held by it;
 - (d) account properly and promptly for client money, including ensuring that –
 - (i) client money and other money do not become intermingled;
 - (ii) it can at all times be sure how much client money stands to the credit of each policyholder;
 - (iii) money belonging to one policyholder is not used for another; and
 - (iv) client money is not included within the registered insurance intermediary's Statement of Financial Position.
- (2) The client account must –
 - (a) be held at bank licensed by the Authority to carry on a regulated activity falling within Class 1(1) or 1(2);
 - (b) be created by the intermediary for the specific purpose of holding client money;
 - (c) be segregated from any account holding money which is not client money;
 - (d) not be combined with any other account in the event of a failure of the registered insurance intermediary; and
 - (e) include in its title the words "client account".

10 Operation of client account

- (1) Subject to paragraph (2), a registered insurance intermediary must not pay money which is not client money, or permit such money to be paid, into a client bank account unless it is required –
 - (a) to open or maintain the account; or
 - (b) to restore an amount withdrawn in error from the account.
- (2) If money paid to the registered insurance intermediary contains both client money and money which is not client money, the registered insurance intermediary must –
 - (a) pay the money into a client bank account; and
 - (b) as soon as the funds are cleared and the amount which is not client money is ascertained, withdraw that amount from the account.

- (3) The registered insurance intermediary must not withdraw money from a client bank account unless –
 - (a) it is not client money;
 - (b) it is properly required for payment to or on behalf of a policyholder; or
 - (c) it is properly transferred to another client bank account, or into a bank account in the policyholder's own name.
- (4) The registered insurance intermediary must not withdraw for its own account any interest earned on a client bank account which is due to a policyholder.
- (5) The registered insurance intermediary must not withdraw money for or towards payment of its own fees or commission unless –
 - (a) the withdrawal is in accordance with the terms of a relevant agreement; or
 - (b) the amount is agreed by the policyholder or finally determined by a court or arbitrator.
- (6) The operation of all client bank accounts must be subject to dual signatures.

11 Reconciliation of client account

- (1) A registered insurance intermediary must reconcile the balances of each client bank account with its records at least monthly.
- (2) For the avoidance of doubt, in respect of (1) –
 - (a) the reconciliation must be between the intermediary's records and the banks' statements;
 - (b) all reconciliations must be as at the same date;
 - (c) the reconciliation must be completed within 20 business days;
 - (d) the reconciliation must be checked promptly by a different individual;
 - (e) the reconciler and checker must evidence their work;
 - (f) any discrepancies discovered must be corrected within 5 business days, unless they result solely from normal timing differences;
 - (g) there must be a minimum of 15 business days between each reconciliation;
 - (h) the Authority must be notified promptly if the reconciliation has not been undertaken as prescribed; and
 - (i) the Authority must be notified within 5 business days of discovering that a reconciliation cannot be corrected.
- (3) As at the same date and in the same manner as (2), the registered insurance intermediary must reconcile the balances in its records for each policyholder with the total balances held in client bank accounts.

12 Interest on client money

A registered insurance intermediary must pay interest on money held in a client money bank account in accordance with the terms set out in its terms of business with

its policyholder. If no interest is to be paid, or if negative interest applies and is to be deducted, this must be clearly set out in the terms of business.

13 Client money held on trust

Client money held by a registered insurance intermediary is held on trust —

- (a) on the terms and for the purposes set out in these Regulations and, subject thereto, *pari passu* for the respective policyholder for whom it is received or held;
- (b) subject to sub-paragraph (a), *pari passu* in meeting any shortfall in valid claims by policyholders to client money; and
- (c) after all valid claims under sub-paragraphs (a) and (b) have been met, for the registered insurance intermediary itself.

14 Pooling

- (1) For the purpose of regulation 13(a), in determining the entitlement of policyholders to client money, all client money of any currency, even though held in more than one client bank account, shall be treated as pooled in a single pool.
- (2) Where, at the time at which a default occurs, a cheque or other payable order has been paid into a client bank account but has not been cleared, the amount of the order shall, when it is cleared, be pooled.
- (3) For the purpose of this regulation a licenceholder or bank is in default where —
 - (a) a liquidator, receiver, administrator or trustee in bankruptcy has been appointed in respect of it; or
 - (b) the Authority has directed that it shall be treated as in default for the purpose of these Regulations.
- (4) Where a profit or loss is made in the conversion of foreign currency the profit or loss shall be attributed to the pool, rather than the individual policyholders affected.
- (5) Where monies are received from any compensation scheme in relation to a default, those monies must be treated in accordance with any entitlement of the compensation scheme in force at that time.
- (6) Where monies are received from a liquidator in relation to a default, those monies must be treated as pooled for the purposes of this regulation and applied to the benefit of all policyholders affected by the default.

15 No withdrawal in case of default

- (1) In the case of default by —
 - (a) a registered insurance intermediary; or
 - (b) a bank at which a client bank account of the registered insurance intermediary is held,

no money may be withdrawn from any client bank account of the registered insurance intermediary without the consent of the Authority.

- (2) In the case of default by a bank, paragraph (1) does not apply to withdrawals from a client bank account, where no such account is held at the bank which is in default.
- (3) Paragraph (1) does not apply to any step taken by the licenceholder in good faith which it reasonably believes will preserve or enhance the fund of client money available despite the default.

16 Displacement of general law

The duties of a registered insurance intermediary under these Regulations in relation to client money shall take the place of the corresponding duties which would be owed by it as a trustee under the general law, but without prejudice to the remedies available to policyholders.

17 Change in control

- (1) A registered insurance intermediary must notify the Authority of –
 - (a) any change of 5% or more to an existing controlling interest in the entity; and
 - (b) any change in the ownership structure between the registered insurance intermediary and its ultimate parent or any material change in its ultimate ownership.
- (2) A notification under paragraph (1) must be made –
 - (a) where the shares are quoted on an exchange, within five business days after the intermediary becomes aware of the transfer;
 - (b) in all other cases, 20 business days before the transfer is registered.

18 Financial resources

- (1) A registered insurance intermediary that is not also the holder of a licence issued under section 7 of the Financial Services Act 2008 which permits it to undertake Class 1 regulated activities must at all times maintain capital resources in excess of £10,000 or 125% of its professional indemnity insurance deductible or excess, whichever is higher.
- (2) The formula to be used to calculate capital resources is total assets minus the total liabilities of the registered insurance intermediary.

19 Annual accounts

- (1) The annual accounts provided to the Authority under section 27A(4) of the Act must be in accordance with Generally Accepted Accounting Principles (“GAAP”).

- (2) The annual accounts must be accompanied by an auditor's management letter or a letter confirming that no management letter has been or will be issued.

20 Annual regulatory return

- (1) A registered insurance intermediary must make a return (an "Annual Regulatory Return") to the Authority at the same time as its annual accounts are submitted.
- (2) The return must contain the information specified by the Authority.

DRAFT

SCHEDULE

PROFESSIONAL INDEMNITY INSURANCE

- (1) The policy must indemnify the insured against –
 - (a) losses arising from claims made against the insured –
 - (i) for breach of duty in connection with the business by reason of any negligent act, error or omission;
 - (ii) in respect of libel or slander, committed in the conduct of the business by the insured, any employee or former employee of the insured, and where the business is or was carried on in partnership, any partner or former partner of the insured; and
 - (iii) by reason of any dishonest or fraudulent act or omission committed or made in the conduct of the business by any employee (other than a director of a body corporate) or former employee (other than a director of a body corporate) of the insured;
 - (b) awards of the Ombudsman made against the insured; and
 - (c) claims in connection with the business in respect of legal liability incurred by reason of loss of documents for which the insured is responsible and costs and expenses incurred in replacing or restoring such documents.
- (2) The policy must at inception and at each renewal date provide –
 - (a) subject to (b), a minimum limit of indemnity in respect of each and every loss and aggregate per year of £1,000,000 in respect of the covers required under (1); and
 - (b) legal defence costs in addition to the limits of indemnity referred to in (a) as appropriate to the nature and size of the business undertaken by the insured.
- (3) In this Schedule –

“**award**” means any financial award and the cost of taking any steps that the insured is required by the Ombudsman to take in relation to a complainant;

“**business**” means the business of the insured;

“**insured**” means the registered insurance intermediary;

“**Ombudsman**” means the Isle of Man Financial Services Ombudsman Scheme and any other equivalent ombudsman service whose awards, if made against the insured, the insured would be obliged to pay; and

“**policy**” means the contract of professional indemnity insurance.

Appendix 3

DRAFT ANNUAL REGULATORY RETURN

NAME OF INTERMEDIARY

Reporting Date

I confirm that, with the exception of any material breaches previously notified to the Authority in writing, during the period covered by this return, the business of the intermediary has been conducted in accordance with:-

- the Insurance Act 2008 ("IA");
- all relevant legislation issued under the IA;
- any directions issued by the Authority; and
- the Anti Money Laundering and Countering the Financing of Terrorism Code 2015.

yes / no

yes / no

yes / no

yes / no

If the answer to the above statements is "no", further details should be provided below.

Under section 52 of the Insurance Act 2008 a person commits an offence if he knowingly or recklessly gives any information to the Authority which is false or misleading in a material particular or, without reasonable excuse, fails to furnish information which that person is required to furnish to the Authority, and is liable:-

- (a) on summary conviction, to a fine not exceeding £5,000 or to a term of custody not exceeding 6 months, or to both;
- (b) on conviction on information, to a fine or to a term of custody not exceeding 2 years, or to both.

Signature:

Name:

Date:

STATISTICAL INFORMATION FORMING PART OF THIS RETURN

*If the response will not fit into the response box, please use a separate sheet,
ensuring that the response is cross-referenced to the question number.*

1. STAFF

- 1.1 State the total number of staff directly employed by the intermediary.
- 1.2 State the total number of staff not directly employed by the intermediary but contracted through a service agreement etc.
- 1.3 Please provide a copy of the management and staff structure chart showing job titles.

2. COMPLAINTS

- 2.1 State the number of complaints received during the year.
- 2.2 State the number of complaints referred to the Financial Services Ombudsman during the year.

3. ADDITIONAL FINANCIAL INFORMATION

- 3.1 In respect of the most recent audited annual accounts of the Company, an analysis of turnover of the Company analysed between:
- Intermediation of general insurance business - split between private, commercial and professional business;
 - Intermediation of long term insurance business (pure protection cover);
 - Intermediation of investment related business;
 - Other (please specify the nature of the activity where turnover in this category exceeds 5% of total turnover of the Company).
- 3.2 In respect of each of the three financial years immediately following the most recent audited annual accounts of the Company, an analysis of future projections of turnover of the Company analysed between:
- Intermediation of general insurance business;
 - Intermediation of long term insurance business (pure protection cover);
 - Intermediation of investment related business;
 - Other (please specify the nature of the activity where turnover in this category exceeds 5% of total turnover of the Company).

4. PROFESSIONAL INDEMNITY INSURANCE ("PII")

- 4.1 Provide the name of your PI Insurer.

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- 4.2 State the limit(s) of indemnity provided by your PII policy and the rationale for those limits being in place.

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- 4.3 State the excess on the policy.

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- 4.4 Confirm that the policy complies with the requirements of the Schedule to the Insurance Intermediaries (General Business) Regulations 2017.

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- 4.5 Has the intermediary made any notifications to its PI Insurer in relation to any circumstances that might result in a claim. If yes, please provide details.

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5. CLIENT MONEY

- 5.1 Does the intermediary receive or hold money from its customers in the course of business?

--

- 5.2 Does the intermediary hold the money as client money, under a written risk transfer agreement, or both?

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- 5.3 Confirm that the client money has been held in accordance with the requirements of the Insurance Intermediaries (General Business) Regulations 2017.

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- 5.4 Please state the average balance in the client account(s) over the previous 12 month period.

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