



**ISLE OF MAN
FINANCIAL SERVICES AUTHORITY**

Lught-Reill Shirveishyn Argidoil Ellan Vannin

REGULATORY FRAMEWORK FOR GENERAL INSURANCE INTERMEDIARIES

Consultation Paper

CP19-09/T08

4th December 2019

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 within the Roadmap is enhancements to the regulatory framework for general insurance intermediation. Following feedback given in response to DP16-07, CP17-07/T08, CP18-02/T08 and CP18-08/T08 in relation to the Authority’s proposals to enhance requirements for general insurance intermediaries, the purpose of this consultation is to obtain views on the final draft legislation.

The Authority considers engagement with stakeholders as essential in developing its proposals and greatly appreciates comments on the proposals in this document. However, please note that your comments may not always result in a change to the proposals.

Who is affected by it?

Consistent with the previous consultation papers, 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

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>

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.

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

Responding to CP19-09/T08

The closing date for comments is 28th February 2020.

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/FSA	The Isle of Man Financial Services Authority
CP17-07/T08	General Insurance Intermediaries Consultation Paper
CP18-02/T08	Insurance Intermediaries – exemptions from registration and cross border business
CP18-08/T08	Corporate Governance Requirements for Insurance Intermediaries
CTP	Common Trading Practices within the 1999 Regulations
Draft Governance Code	The draft Insurance Intermediaries (Corporate Governance) (General Business) Code 2020
Draft Conduct Code	The draft Insurance Intermediaries (Conduct of Business) (General Business) Code 2020
Draft Regulations	The draft Insurance Intermediaries (General Business) Regulations 2020
FCA	The Financial Conduct Authority
GDPR	EU General Data Protection Regulation
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

Intermediary	General insurance intermediary
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
T&C Framework	The Authority's Training and Competency Framework

1. Executive Summary

In 2016 the Authority commenced its review of the Island's regulatory framework for general insurance intermediaries which lead to the publication of a number of discussion and consultation papers. The Authority's aim is to introduce requirements which are proportionate to the general insurance intermediary industry on the Island and which also address the ICP requirements.

This consultation paper brings together the proposals of the previous consultations and sets out the legislative changes for the insurance intermediation framework required to bring those proposals into effect. It highlights where changes have been made following the previous consultation exercises.

The Authority welcomes feedback on the final draft legislation and associated guidance.

2. Introduction

As part of the regulatory development work outlined in the “Roadmap for updating the Isle of Man’s regulatory framework for insurance business” the Authority has identified that more detailed requirements are needed to complement or replace (where appropriate) the Island’s existing regulatory framework, in order that it remains up to date, appropriate to the characteristics of the sector, and consistent with international market developments and standards.

The enhanced requirements have been consulted upon previously and the Authority has considered all of the feedback received to those consultations. The Authority remains of the view, as stated in previous consultation papers, that the risk profile of the general insurance intermediary sector is generally lower than the other sectors supervised by the Authority. As part of the Authority’s risk based supervisory approach this risk assessment is kept under review and the Authority has drawn upon its supervisory experiences over the period of consultation in informing its final draft proposals.

The paper includes four draft pieces of legislation for comment:

- Insurance Intermediaries (General Business) Regulations 2020
- Insurance Intermediaries (Conduct of Business) (General Business) Code 2020
- Insurance Intermediaries (Corporate Governance) (General Business) Code 2020
- Insurance Intermediaries (Restriction on Advertising) Regulations 2020

The legislation can be found within the appendices to this consultation paper and have also been published on the Isle of Man Government’s Consultation Hub.

2.1 Insurance Intermediaries (General Business) Regulations 2020

These draft Regulations include the exemptions from registration; requirements for financial resources, clients’ money, and PII; details of the annual regulatory return to be made to the Authority (once the requirement for annual re-registration has been removed); and information on cancellation of registration.

2.2 Insurance Intermediaries (Conduct of Business) (General Business) Code 2020

The draft Conduct Code includes principles in relation to the fair treatment of policyholders, general sales principles and requirements in relation to terms of business and provision of product information.

2.3 Insurance Intermediaries (Corporate Governance) (General Business) Code 2020

The draft Governance Code sets out the corporate governance requirements and has been developed by drawing upon governance requirements from the Corporate Governance Code of Practice for Regulated Insurance Entities and the Rule Book.

2.4 Insurance Intermediaries (Restriction on Advertising) Regulations

These Regulations set out the restrictions on advertising consulted upon in CP18-02/T08, which will restrict intermediaries not operating in or from the Isle of Man from advertising for new business using a medium that specifically targets Isle of Man persons. The restrictions would not preclude those intermediaries from making products available to IOM persons if they are approached.

3. Background to the ICPs and application of the requirements

The Authority has developed its proposals having regard to its regulatory objectives and the risk profile of the sector, in particular with regard to protecting the interests of customers of general insurance intermediaries.

In line with objectives published in the Roadmap the Authority has drawn up standards and guidance set out in ICPs.

3.1 ICP18 – Intermediaries

The main ICP relevant to insurance intermediaries is ICP18:

The supervisor sets and enforces requirements for the conduct of insurance intermediaries, in order that they conduct business in a professional and transparent manner.

It includes standards in relation to the conduct of insurance intermediaries, and specifically covers requirements around:

- registration or licensing of intermediaries,
- levels of professional knowledge and experience, integrity and competence,
- corporate governance,
- disclosures to customers, and
- safeguards for client money.

When considering the application of the ICPs, the Authority's intention is to apply supervisory requirements in a way that is proportionate to the business of general insurance intermediaries. The following sections set out the Authority's final proposals, addressing the above requirements.

In addition to ICP 18, there are other ICPs that contain principles that are of relevance to intermediaries, such as:

3.2 ICP 19 - Conduct of Business

ICP 19 states:

The supervisor sets requirements for the conduct of business of insurance to ensure that customers are treated fairly, both before a contract is entered into and through to the point at which all obligations under a contract have been established.

Applicable conduct of business considerations from the standards underlying this principle are included within the draft Conduct and draft Governance Codes including requirements in relation to:

- establishing and implementing policies and procedures on the fair treatment of customers;
- avoiding or properly managing any potential conflicts of interest;
- promoting products and services in a manner that is clear, fair and not misleading;
- providing timely, clear and adequate pre-contractual and contractual information to customers; and
- handling complaints.

3.3 ICP 21 - Fraud

ICP 21 states:

The supervisor requires that insurers and intermediaries take effective measures to deter prevent, detect, report and remedy fraud in insurance.

Under this, intermediary firms would be expected to assess what parts of its business could be targeted by those conducting fraudulent activities, which products, services and distribution channels are vulnerable and to what degree.

The draft Governance Code includes a requirement for regulated entities to put in place effective policies, procedures and internal controls for fraud prevention.

3.4 ICP 22 - Anti-money Laundering and Countering the Financing of Terrorism

ICP 22 states:

The supervisor requires insurers and intermediaries to take effective measures to combat money laundering and the financing of terrorism. In addition, the supervisor takes effective measures to combat money laundering and the financing of terrorism.

The standards underlying this are broad and relate to the supervisor ensuring that there is an effective legislative framework in place to ensure that money laundering and financing terrorism risks to which intermediaries are exposed are covered and that this framework is consistent with the FATF recommendations.

The Island's current anti-money laundering requirements are detailed in the Proceeds of Crime Act 2008 ("POCA"). Section 157 of POCA requires the Department of Home Affairs to publish a Code for the purposes of preventing and detecting money laundering. The Authority has consulted separately on updating the AML/CFT framework in February 2019, with revised requirements coming into operation in July 2019; therefore, AML/CFT will not be considered within this consultation.

4. Insurance Intermediaries (General Business) Regulations 2020

The Authority issued its consultation paper (CP17-07/T08) in July 2017, which included draft Regulations for consideration. An overview of responses and the Authority's proposed direction of travel were signposted within the summary of responses (CR18-02/T08).

4.1 Client money

The requirements in relation to client money are more detailed than the current requirements; the Authority believes that the current requirements require strengthening in line with international standards and to ensure the safety of clients' money. The underlying principles are –

- clients' money must be held in a separate client account with the words "client account" in the title;
- only clients' money or insurers' money (if the money is due to an insurer or if the money is held for a client under a risk transfer agreement with an insurer, and the insurer has acknowledged that, in a liquidation situation, its interests would come after the intermediaries' clients' interests) should be held in the client account;
- one client's money should not be used for another client;
- the account must be operated using a 4-eyes principle;
- a monthly reconciliation must be carried out of all client accounts on the same day, and completed and checked promptly by another individual; and
- clients should know whether or not interest is to be applied to the money held.

The Authority recognises the benefits of establishing requirements that are consistent across different types of regulated entity and as such the proposed requirements for client money have been drawn from the Rule Book, with necessary amendments to suit the business of insurance intermediation, as appropriate. Several respondents to CP17-07/T08 mentioned that the operation of clients' accounts are audited. Currently, this is not a requirement within the proposed intermediaries' framework being consulted on here, but it is a requirement under the Rulebook, with licenceholders being required to complete a clients' assets report ('CAR'). The Authority is not proposing to introduce the requirement for an audit or a CAR for intermediaries at this stage, although this will be kept under review in line with the Authority's risk based supervisory approach.

This consultation paper includes revised draft Regulations (at appendix 1), including the following key changes:

4.1.1 The draft Regulations have been amended, at regulation 9, to clarify that money held for clients under risk transfer agreements with insurers and clients' money not held under such agreements can be held in the same account, as long as it is held to the higher standard and the insurer acknowledges that, in a liquidation situation, its interest would come after the

Intermediaries' clients' interests. The Authority expects that the insurer would sign up to this arrangement as part of its agreement with the intermediary. If the insurer will not sign up to this arrangement then money held for clients under risk transfer agreements with insurers and clients' money not held under such agreements should be held separately.

4.1.2 An addition has been made to regulation 10(2) to allow a non-FSA regulated bank to be used to hold clients' money, subject to the Authority's agreement, in cases where an intermediary is unable to open an account for its business with an FSA regulated bank.

4.1.3 An additional regulation has been added for consistency with the Rule Book. Regulation 10(3), which requires the bank to acknowledge the client money arrangements to the intermediary and for a copy of that acknowledgement letter to be provided to the Authority, removes the risk that the bank would seek to set off client account balances against debts due to the bank from the intermediary. Such a letter also helps to prevent any attempt by a liquidator of the intermediary to use client funds to pay general creditors.

4.2 Other changes

The following amendments have also been marked up within the draft Regulations:

1. The commencement section reflects the implementation plan (see section 8 of this consultation paper);
2. The exemptions from registration and the exemption from certain requirements for IFAs that also offer pure protection products, as consulted upon in the previous consultation papers, have been written into the draft Regulations;
3. The disapplication from the majority of the requirements of the Regulations has been included for banks that offer insurance as part of a packaged bank account, with a substituting requirement that the bank applies relevant sections of the Rule Book to the provision of the insurance. This has been added to clarify the position for those banks that have determined that they need to be registered as an insurance intermediary for the activities carried on as part of a packaged bank account;
4. An additional notification has been added to regulation 7 (Professional Indemnity Insurance) that requires an insurance intermediary to notify the authority if its PII policy has been modified or contains exclusions;
5. Regulation 7 (PII) also includes an additional paragraph to clarify that the Authority may require an insurance intermediary that intends to cancel its registration to hold "run- off" PII in respect of claims arising from past acts or omissions. This is included and expanded upon within the winding up plan guidance.
6. The name of the senior representative resident in the Island responsible for the good conduct of the business has been removed from the register of insurance intermediaries. This will no longer be a specified role under the new framework as a

result of the introduction of the draft Governance Code which puts the responsibility on the board of the intermediary.

4.3 Additional guidance

Clarification was sought in response to previous consultation papers in the following areas:

1. The draft Regulations require a winding up plan to be submitted as part of a cancellation of registration. The Authority already has guidance which is issued on request to intermediaries seeking to cancel registration. It is proposed that the Authority publish this guidance and a draft is included at appendix 2;
2. The annual regulatory return requests a split of financial information to be provided. Feedback to the consultation requested further clarification in relation to the proposed split of business and explanatory text has been added to the return (see draft at appendix 3); and
3. The wording of the ancillary exemption for travel agents was queried in relation to whether it would allow travel agents to sell annual policies given that, if a client has more than one trip booked or will be booking more travel during the year, it would not be in the client's best interest to sell them a single trip policy. The wording used within the Regulations does not preclude the sale of an annual travel insurance policy, as long as it is purchased with a holiday. The Authority agrees that, in certain cases, this would be in the best interests of the client and, as long as the travel agent is able to document that the sale was made in the best interests of the clients than this would be acceptable. However, the Authority does not consider that renewal of an annual policy would remain exempt where the renewal is not associated with another service being provided, in this case the provision of travel.

5. Insurance Intermediaries (Conduct of Business) (General Business) Code

The Authority issued its consultation paper (CP17-07/T08) in July 2017 including a draft Conduct Code for consideration. An overview of responses and the Authority's proposed direction of travel were signposted within the summary of responses (CR18-02/T08).

This consultation paper includes a revised draft Conduct Code (at appendix 4), including the following key changes:

5.1 Product information – The Authority set out proposed product information requirements within CP17-07/T08. There were some concerns within the feedback received to that consultation that the proposed timing of the requirements for supplying information to customers would not be practical or workable and that it was overly prescriptive. Given the feedback, the Authority has engaged with the Financial Planners and Insurance Brokers

Association to review the detail of the requirements to identify where any changes may be made, whilst retaining the desired outcome that consumers receive appropriate information at point of sale.

The Authority was also asked to review Guernsey and Jersey's requirements to more closely align standards with the Channel Islands. Previously (in response to the initial discussion paper), a number of firms stated that they make disclosures based on UK requirements and so the Authority had taken account of the UK's requirements when developing the proposals within the consultation paper. Since CP17-07/T08 was published, revised requirements for UK insurers have come into force as a result of the EU's Insurance Distribution Directive and these require insurers to produce an Insurance Product Information Document ('IPID') for intermediaries to provide to a customer pre-sale.

The revised list of information to be provided pre-sale under the draft Conduct Code has been aligned with the IPID in order that these documents (from UK and EU insurers) can be passed directly to the customer in compliance with the requirement. Isle of Man insurers are also required to provide the information in a durable medium to customers pre-sale and, therefore, the Authority believes that, in the main, the information should be easily available to intermediaries pre-sale.

Some of the original proposed requirements have been removed from the revised list of information to be provided pre-sale. In the main, the Authority believes that these will be adequately covered by the high level principles elsewhere within the draft Conduct Code, with the exception of the requirement to disclose "the level of excess payable". As levels of excess are thought to be a key factor in influencing a customer's decision to buy a product and the fact that there may be several policy excesses, the general sales principles within the draft Conduct of Business Code have been enhanced with the addition of a requirement to "draw attention to any policy excesses and direct the policyholder to documentation that would outline the detail of these".

The Authority has reviewed standards in the Channel Islands as well as the UK's updates to the Insurance Conduct of Business Sourcebook and has proposed revised requirements within the draft Conduct Code. While the requirements are detailed in relation to what should be provided and when it should be disclosed, the Authority is of the view that this is proportionate and should result in the policyholder being given appropriate disclosure through written confirmation of the details of the insurance pre-sale with confirmation of cover and full policy documentation following shortly after. There is also clarity given in relation to how information requirements differ at renewal.

The amendments are reflected at sections 8 and 10 – 12 of the draft Conduct Code at appendix 4.

5.2 General sales principles

The following changes have been made to the general sales principles:

- The wording at 1(b) has been changed from “needs and resources” to “demands and needs”; this is more typical, standard terminology (used in Guernsey and the UK) and reflects the requirement to identify and specify customer demands and needs, ensuring that products offered are consistent with those. The customers’ demands and needs are more relevant to their insurance requirements than their resources. A guidance note on the proportionate application of suitability for different types of business has been drafted in conjunction with the Financial Planner and Insurance Brokers Association and is included for information at appendix 5; and
- There has been a change to (1)(f) to avoid any conflict with the updated consumer’s duty for UK insurance contracts under the Consumer Insurance (Disclosure and Representations) Act 2012 to “take reasonable care not to make a misrepresentation” rather than the duty under legislation governing insurance contracts in other jurisdictions to disclose all necessary information.

5.3 Other changes

The following amendments have also been marked up:

- the application section shows the exemption for reinsurance brokers and an extension to this for introducing brokers that provide services to large corporate clients via agreements with UK FCA regulated brokers which was agreed as a result of previous feedback;
- the application section shows an additional exemption from the requirements of the Code which has been included for banks that offer insurance as part of a packaged bank account on the condition that the bank applies relevant sections of the Rule Book to the provision of the insurance;
- explicit clarification has been added to the section on fair treatment of customers to acknowledge that the policies and procedures should be appropriate to the nature and scale of the business;
- the removal of the section on communication at an unsocial hour; and
- the requirement to state that information will be held confidentiality within the terms of business has been removed as this has been superseded by updates to the data protection legislation as a result of GDPR.

6. Insurance Intermediaries (Corporate Governance) (General Business) Code 2020

The draft Governance Code was consulted upon in November 2018. There was very little feedback received to this consultation and, as a result, few changes have been made. The majority of changes reflected in the revised draft at appendix 6 are legislative drafting points except for:

- the application section which shows an additional exemption from the requirements of the Code that has been included for banks that offer insurance as part of a packaged bank account on the condition that the bank applies relevant sections of the Rule Book to the provision of the insurance; and
- paragraph 11 has been removed as it was noted to duplicate paragraph 13 of the draft Conduct Code.

Within CP17-07/T08 the Authority considered requirements in relation to professional knowledge and experience. Taking account of the feedback to that consultation, the Authority revised its proposals so that the detailed qualification requirements would be contained within binding guidance, which would allow intermediaries to adopt a proportionate approach for their business.

The draft Governance Code contains high level requirements on the Board of an intermediary to:

- ensure that there is sufficient staff, at all levels, with adequate qualifications and experience for the business;
- take responsibility for ensuring that its client facing staff are competent on an on-going basis and trained adequately and appropriately;
- document the basis upon which competency has been assessed (for example, using a training needs analysis); and
- ensure that its client facing staff undertake a minimum number of hours of relevant CPD per annum.

Additionally, the Authority's Training and Competency Framework ('T&C Framework') provides information on the Authority's expectations of the competence (including levels of experience and, in certain cases, qualifications) of individuals in various roles.

Currently the Authority has not set out specific qualifications as expectations or guidance within the core competency table for R21 (senior manager with responsibility for persons providing insurance advice) or R21B² (individual providing insurance advice to clients). It is

²Set out within the [Regulatory Guidance – Fitness and Propriety](#)

proposed that the T&C Framework will be updated to include, as guidance, that the client facing staff of an insurance intermediary should undertake the following insurance specific qualifications, as part of a development programme:

- Front facing staff for personal lines - Cert CII
- More experienced staff and front facing staff for commercial business - Dip CII
- Management/person responsible for overseeing advice given - ACII

However, an intermediary firm may be able to demonstrate to the Authority's satisfaction that its front facing staff meet the competencies of the T&C Framework for its business in an alternative manner; for example through experience, the intermediary firm's training process or, for staff learning the role, through allocating responsibility on a staged basis and with appropriate induction and mentoring.

7. Insurance Intermediaries (Restriction on Advertising) Regulations

The Authority does not propose to make fundamental changes to the approach proposed within the previous consultation.

The Restriction on Advertising Regulations are at appendix 7 and set out that insurance intermediaries operating from outside the Isle of Man must not advertise for business in a way that targets Isle of Man persons.

As part of its gap analysis of ICP requirements, the Authority identified that its policy was not fully transparent and accordingly overseas intermediaries have typically contacted the Authority to clarify requirements. Additionally, it has been noted that there has been increased advertising activity on the Island from off-Island financial services companies (that are not restricted by the Financial Services legislation). Whilst these companies may state in advertisements that they are regulated by an overseas regulator (and therefore not holding out as operating being on the Island), it is the Authority's view that customers may be unclear on the degree to which the customer is afforded protection under Isle of Man legislation.

These Regulations aim to limit the risk of unsuitable advice from overseas intermediaries not fully understanding IOM specific jurisdictional issues and associated risks arising from consumers not understanding that overseas intermediaries do not have a local presence.

The wording of the Regulations aims to restrict advertising in local newspapers, magazines, the telephone directory, on local radio stations or on local buses.

Importantly, the Restriction on Advertising Regulations do not preclude local residents from purchasing products from off-Island insurers or intermediaries and, for any off-Island firms

that are currently advertising for business in a way that targets Isle of Man persons, does not affect existing business.

The Authority does not consider it appropriate to try to stop advertising through websites or applications. The internet is 'borderless' in nature and may be accessed by Isle of Man persons whether or not the persons controlling it have taken the decision to specifically target IOM persons.

The Authority also does not consider it appropriate to try to stop motorsport sponsorship that is for a short specified period and is designed to raise brand awareness with motorbike enthusiasts.

The ICPs advocate that supervisors should ensure that arrangements are transparent so that consumers understand the basis on which the intermediary is operating and can therefore make an informed decision. The Authority continues to engage in raising consumer awareness³ and plans to continue this through the issue of a consumer awareness leaflet outlining the ways in which insurance can be purchased and the possible risks of purchasing insurance from other jurisdictions.

8. Next steps and Implementation

Following this consultation the Authority will review and consider the feedback received. Subject to the nature and volume of responses, we anticipate finalising the legislation within the first quarter of 2020 with implementation on 31 October 2020.

Additional legislative changes will be required⁴ to remove the provision for annual re-registration. All intermediaries will have submitted their annual renewal of registration for 2020 by 31 October 2020. New annual regulatory returns will apply to those due to be submitted after 31 October 2020 for year ends from 30 Jun 2020 onwards.

³ See the consumer awareness section of the IOMFSA.im website - <https://www.iomfsa.im/consumer-material/consumer-awareness/>

⁴ An Appointed Day Order will be required to bring in the section of the Insurance Amendment Bill which will remove section 26(7) of the Insurance Act 2008 and revised Insurance (Fees) Regulations will be required to specify an annual fee.

Appendix 1 – Draft Insurance Intermediaries (General Business) Regulations 2020



INSURANCE INTERMEDIARIES (GENERAL BUSINESS) REGULATIONS 2020

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Statutory Document No. 20XX/XXXX

*Insurance Act 2008*

INSURANCE INTERMEDIARIES (GENERAL BUSINESS) REGULATIONS 2020

*Laid before Tynwald:**Coming into Operation:*

The Isle of Man Financial Services Authority makes the following Regulations under sections 27A, 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 2020.

2 Commencement

These Regulations come into operation on 31 October 2020.

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 an insurer.

“**general insurance**” means insurance business which is neither a pure protection contract or long term insurance;

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

“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;

“packaged bank account” means an arrangement under which a person provides a bank account for a customer as part of a package which includes access to other goods and services;

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

“pure protection contract” has the same meaning as in the Regulated Activities Order 2011.

4 Application

These Regulations apply to insurance intermediaries registered under section 25 of the Act.

5 Register of insurance intermediaries

- (1) The register of current insurance intermediaries required to be kept under section 48 of the Act must contain the following particulars –
 - (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) date and details of amendments to the register;
 - (f) registration number.
- (2) The register of former insurance intermediaries required to be kept under section 48 of the Act must contain the same particulars as specified in paragraph (1) as at the date the registration was cancelled and include the date that the registration was cancelled.

6 Exemption from the requirement to register

- (1) The following classes of insurance intermediary are exempt from the requirement to register under section 25 of the Act –

- (a) persons acting as an intermediary only in respect of long-term insurance;
 - (b) persons arranging insurance that covers the risk of –
 - (i) breakdown, loss of or damage to goods or services provided by the provider and other associated risks, excluding compulsory vehicle insurance under the Road Traffic Act 1985;
 - (ii) the non-use of services provided by the provider; or
 - (iii) damage to or loss of baggage and other risks linked to the travel booked with the provider;where the principle business of the provider is not that of an insurance intermediary;
 - (c) persons acting as an insurance intermediary that –
 - (i) are authorised under the Financial Services and Markets Act 2000 (of Parliament); and
 - (ii) are not ordinarily resident in the Island,subject to the conditions specified in sub-paragraph (2).
- (2) The conditions referred to in paragraph (1)(c) 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.

7 Exemption from certain requirements

- (1) A person acting as an insurance intermediary is exempted from –
- (a) regulations 18, 19, 20 and 21; and
 - (b) sections 27A(3), 27B, 29(1) and 30 of the Act;
- if the person –

- (i) is licensed under section 7 of the Financial Services Act 2008 to carry on regulated activities falling within Class 2(3) and (7);
 - (ii) does not act as an insurance intermediary for general insurance business; and
 - (iii) complies with the provisions applicable to it under the Financial Services Act 2008 and Financial Services Rule Book 2016¹.
- (2) Subject to paragraph (3) a person acting as an intermediary in relation to insurance provided as part of a packaged bank account is exempt from regulations 8, 10 – 18, 20, 21 and 22 if the person is licensed under section 7 of the Financial Services Act 2008 to carry on regulated activities falling within Class 1(1).
- (3) In acting as an insurance intermediary in relation to insurance provided as part of a packaged bank account a person at (2) must comply with the requirements set out at Schedule 2.

8 Professional indemnity insurance

- (1) Despite the regulatory minimum set out within Schedule 1, a registered insurance intermediary that is not also licensed under section 7 of the Financial Services Act 2008 to carry on regulated activities falling within Class 1(1) 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 Schedule 1.
- (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.
- (6) A registered insurance intermediary must notify the Authority of any modifications or exclusions to its professional indemnity insurance.
- (7) The Authority may require an insurance intermediary that intends to cancel its registration or sell or otherwise transfer the business of the company to a third party to hold “run-off” professional indemnity insurance cover in respect of claims arising for past acts or omissions.

¹ SD0264/16

9 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 will 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 if —
 - (a) the Authority deems that the winding-up plan is not satisfactory, or
 - (b) 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, or
 - (c) the insurance intermediary is still required to be registered for any other reason under the Act.
- (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 paragraph (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

10 Money held at the risk of an insurer

- (1) 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, unless the money is to be treated as client money in accordance with paragraph (2);
 - (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.
- (2) Despite paragraph (1) and regulations 10(1)(a) and 10(2)(c), money held at the risk of insurers may be treated as client money in accordance with regulations 10 – 14 if the insurer has agreed in writing that the registered insurance intermediary may treat such monies as client money and has consented to its interests in trust under regulation 14 being subordinated to the interests of the intermediary's other clients.

11 Client money

- (1) A registered insurance intermediary that holds client money must—
 - (a) hold that money in a designated client bank 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 or insurance company 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 bank account must —
 - (a) be held at a bank licensed by the Authority to carry on a regulated activity falling within Class 1(1) or 1(2), unless otherwise agreed by the Authority in writing;
 - (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" or suitable abbreviation.

- (3) The registered insurance intermediary must obtain from the bank at which the account is held an acknowledgement in writing that –
- (a) it understands that all money standing to the credit of all client bank accounts maintained by the intermediary is held by the intermediary as trustee and that the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any debt owed to it by the intermediary;
 - (b) interest earned on each such account will be credited to the account or to an account of the same type;
 - (c) the title of each such account –
 - (i) is in the form requested by the intermediary; and
 - (ii) sufficiently distinguishes the account from any other account containing money belonging to the intermediary,
- and the intermediary must supply, or arrange for the bank to supply, the Authority with a copy of the acknowledgment.

12 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.
- (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.

13 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 of the date of reconciliation;
 - (d) the reconciliation must be checked promptly by an individual who did not carry out the reconciliation ("the checker");
 - (e) the individual that carried out the reconciliation and the 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.

14 Interest on client money

A registered insurance intermediary must pay interest on money held in a client 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.

15 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;
- (c) after all valid claims in (b) have been met, *pari passu* in meeting any shortfall in valid claims by insurers for whom that money is held; and
- (d) after all valid claims under sub-paragraphs (a), (b) and (c) have been met, for the registered insurance intermediary itself.

16 Pooling

- (1) For the purpose of Regulation 15(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 registered insurance intermediary 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.

17 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 registered insurance intermediary in good faith which it reasonably believes will preserve or enhance the fund of client money available despite the default.

18 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.

19 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.

20 Financial resources

- (1) A registered insurance intermediary that is not licensed under section 7 of the Financial Services Act 2008 to carry on a regulated activity falling within Class 1(1) or Class 2(3) and (7) must at all times maintain capital resources of at least £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.

21 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.
- (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.

22 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.
- (3) For the avoidance of doubt, these Regulations apply to Annual Regulatory Returns submitted after 31 October 2020, in respect of a financial year ending on 30 June 2020 or later.

23 Revocation

The Insurance Intermediaries (General Business) Regulations 1999 are revoked.

MADE ON XXX

KAREN BADGEROW

Chief Executive of the Isle of Man Financial Services Authority

LILLIAN BOYLE

Member of the Isle of Man Financial Services Authority

SCHEDULE 1

[Regulation 8]

PROFESSIONAL INDEMNITY INSURANCE

- (1) The policy must indemnify the insured against –
- (a) losses arising from claims made against the insured –
 - (b) for breach of duty in connection with the business by reason of any negligent act, error or omission;
 - (c) 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
 - (d) 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;
 - (e) awards of the Ombudsman made against the insured; and
 - (f) 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.

- (1) 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.

SCHEDULE 2

[Regulation 7]

PERSONS ARRANGING INSURANCE THROUGH PACKAGED BANK ACCOUNTS

- (1) An insurance intermediary must act with due skill, care and diligence.
- (2) An insurance intermediary must have procedures for ensuring that its business as an insurance intermediary activity is carried on —
 - (a) openly and fairly;
 - (b) in compliance with any applicable legislation relating to that activity in the country or territory in which it is carried on;
 - (c) so far as possible, in a way that avoids any conflict of interest; and
 - (d) with disclosure of any unavoidable conflict of interest to any client concerned. This applies whether any such conflict relates to the insurance intermediary, its officers or employees.
- (3) A insurance intermediary must —
 - (a) take all reasonable steps to enable its clients to take informed decisions relating to their business with the insurance intermediary; and
 - (b) avoid misleading or deceptive representations or practices.
- (4) An insurance intermediary must —
 - (a) organise and control its internal affairs in a responsible manner; and
 - (b) promote high ethical standards in the conduct of its regulated activities.
- (5) An insurance intermediary must establish and maintain appropriate internal and operational controls, systems, policies and procedures relating to all aspects of its business to ensure —
 - (a) effective communication between the insurance intermediary and its policyholders;
 - (b) appropriate segregation of key duties and functions;
 - (c) the fair treatment of policyholders;
 - (d) the safeguarding of assets belonging to policyholders for which the insurance intermediary is responsible. For the avoidance of doubt, in this paragraph “assets” includes money, property and investments;
 - (e) effective maintenance of accounting and other records and the reliability of this information;

(f) appropriate safeguards to prevent and detect any abuse of the insurance intermediary's services for money laundering, financial crime, the financing of terrorism, or the proliferation of weapons of mass destruction;

(g) appropriate safeguards to prevent and detect market manipulation or market abuse;

(h) appropriate safeguards to protect data from loss or misuse; and

(i) effective systems and controls and depth of resources to adequately deal with the risk profile of all clients especially those connected with a higher risk jurisdiction or where structures are established for clients in those higher risk jurisdictions.

An insurance intermediary must review the controls required by this paragraph annually, or more frequently if appropriate. These reviews should be documented.

(6) Where the insurance intermediary employs staff it must —

(a) make adequate arrangements to ensure that those persons are suitable, adequately trained, properly supervised;

(b) document the roles and responsibilities of, or limitations placed on, such persons; and

An insurance intermediary must ensure that the persons to whom this paragraph applies carry out their duties in a diligent and proper manner in accordance with the systems, controls, policies and procedures referred to in paragraph (5).

(7) The persons to whom paragraph (6) applies are —

(a) the insurance intermediary's connected persons under section 29 of the Insurance Act 2008; and

(b) any other individual, whether or not employed by the insurance intermediary, who carries on, or holds out as carrying on, insurance intermediation in or from the Island in the course of employment, or under any contract, with the insurance intermediary.

*EXPLANATORY NOTE**(This note is not part of the Regulations)*

These Regulations include a range of requirements applicable to general insurance intermediaries including in the areas of client money, financial resources and reporting to the Authority. They also set out exemptions from the requirement to register and exemptions from certain requirements.

The Regulations replace the Insurance Intermediaries (General Business) Regulations 1999.

DRAFT

Appendix 2 – Draft Guidance on the winding up plan for cancellation of registration



Guidance on the winding up plan for cancellation of registration as a general insurance intermediary

This guidance is issued in consideration of the requirements of the Insurance Intermediaries Regulations 2019 (“the Regulations”) and sets out the Financial Services Authority’s (“the Authority”) expectations in respect of the winding up plan to be submitted when an insurance intermediary wishes to cancel its registration.

The Authority issues guidance for various purposes, including to illustrate best practice, to assist regulated entities to comply with legislation and to provide examples or illustrations. This guidance is, by its nature, not law, however it is persuasive. Where a person follows guidance this would tend to indicate compliance with the legislative provisions, and vice versa.

When an insurance intermediary is intending to cancel its registration, the Authority requires the following information and declaration to be provided as part of a winding up plan in order to satisfy itself that the insurance intermediary is not undertaking activity that requires it to maintain its registration with the Authority.

The winding-up plan should provide information about the arrangements the insurance intermediary proposes to make to dispose of its business including:

- (1) An outline of the steps taken by the intermediary to advise its general insurance clients of the intention to cease providing intermediation activities and the advice that has been given to them as to how they can make alternative arrangements (or what alternative arrangements have been made in relation to their policies)
- (2) Details of any unresolved or undischarged complaints against the intermediary, and if applicable, details of the steps taken under the intermediary’s complaints procedures and an explanation of the arrangements made for the future consideration of any such complaints.
- (3) Confirmation as to whether the intermediary has taken the precaution of triggering the automatic extended reporting period in relation to its professional indemnity insurance arrangements¹ or to purchase “run off” professional indemnity insurance, and if this has not been done, the rationale behind the decision for not doing so.
- (4) Details of the arrangements which have been made for the safeguarding of clients’ records. There is a requirement to continue to hold records for at least 6 years;

¹ After considering the intermediary’s winding up plan and rationale for not extending its professional indemnity insurance arrangement, the Authority may require an insurance intermediary to hold “run-off” professional indemnity insurance cover in respect of claims arising from past acts or omissions.

however, it is acknowledged that some firms may need to hold these for longer to deal with long tail business. Records in electronic format would be acceptable as long as they provide legible accurate, verifiable, timely, complete and comprehensible information.

- (5) Confirmation as to whether the company will be dissolved after its registration is cancelled, if not, confirmation of the change of name of the company to remove any implication that the company will be undertaking intermediation, if applicable.

The winding up plan should be accompanied by the following documents:

- (6) Satisfactory audited financial statements, unless the Authority has confirmed otherwise
- (7) A copy of the notification issued to insurers (for whom the intermediary acted) setting out its intention to cancel the registration.
- (8) A copy of the notification issued to the intermediary's general insurance clients advising them of its intention to cease providing services and how they can make alternative arrangements
- (9) A declaration of the directors of the intermediary and the senior person in the Isle of Man in the format below:

The wording of the formal declaration is as follows:

Declaration of the Directors of [state name of intermediary] to the Authority

We, the undersigned, being the Directors of, and the senior person in the Isle of Man responsible for the good conduct of [state name of intermediary] (herein "the Company") hereby declare that:-

- 1. Having made full enquiry into the affairs of the Company, have formed the opinion that the Company is no longer carrying on any activity which would require it to be registered under Section 25 of the Insurance Act 2008.*
- 2. All insurers for whom the Company acts have been notified of the Company's intention to cancel its registration as a general insurance intermediary under the Insurance Act 2008;*
- 3. The Company has notified all current policyholders of the intention to cease the provision of intermediation activities and advised those policyholders of any alternative arrangements put in place (if applicable).*
- 4. There are no unresolved or undischarged complaints against the company from policyholders for whom intermediation services have been provided (or alternative wording if such complaints do exist).*

5. *The Company's professional indemnity insurers have agreed to extend the reporting period for the notification of claims under the expiring professional indemnity insurance arrangements for **XX** years. **OR***
5. *The Company has purchased a run off professional indemnity insurance policy for **XX** years. **(OR, omit if such a precaution has not been taken but include in a covering note the reasons as to why the company has not chosen to trigger the extension).***

(To be signed by **all** the Directors of the Company)

Appendix 3 – Draft Annual Regulatory Return

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 2019.

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:
<input type="text"/>	<input type="text"/>	<input type="text"/>

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 business (to include private motor and household etc.),
 - Commercial business (to include commercial property, motor fleet, motor trade, business interruption, employer's liability etc.); and
 - professional business (to include professional indemnity and D&O insurance);
- 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.

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

--

- 4.3 State the excess on the policy.

--

- 4.4 Confirm that the policy complies with the requirements of the Schedule to the Insurance Intermediaries (General Business) Regulations 2020.

--

- 4.5 Has the intermediary made any claims on its professional indemnity insurance? If yes, please provide details.

--

- 4.6 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.

--

5. CLIENT MONEY

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

--

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

--

- 5.3 Confirm that the client money has been held in accordance with the requirements of the Insurance Intermediaries (General Business) Regulations 2020.

--

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

--

- Appendix 4 – Draft Insurance Intermediaries (Conduct of Business) (General Business)
Code 2020



INSURANCE INTERMEDIARIES (CONDUCT OF BUSINESS) (GENERAL BUSINESS) CODE 2020

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Statutory Document No. 20XX/XXXX



Insurance Act 2008

INSURANCE INTERMEDIARIES (CONDUCT OF BUSINESS) (GENERAL BUSINESS) CODE 2020

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, after carrying out the consultations required by section 51(6) of that Act.

1 Title

These Guidance Notes are the Insurance Intermediaries (Conduct of Business) (General Business) Code 2020.

2 Commencement

These Guidance Notes come into operation on 31 October 2020.

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, telecommunications or any electronic media;

“**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 25 of the Act, but does not include a reinsurance intermediary;

“**large corporate client**” means a client that is incorporated and has any 2 of the following characteristics:

- (a) a turnover of £10.2 million or more;
- (b) £5.1 million or more on its balance sheet;

- (c) 50 employees or more;

“packaged bank account” means an arrangement under which a person provides a bank account for a customer as part of a package which includes access to other goods and services;

“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 Application

These Guidance Notes apply to an intermediary except—

- (a) a reinsurance intermediary; and
- (b) an intermediary (“producing broker”) when —
 - (i) it is acting on behalf of a large corporate client;
 - (ii) the business is being placed by an insurance intermediary (“placing broker”) that is subject to regulation by the UK Financial Conduct Authority; and
 - (iii) the client is made aware of the relationship between the producing broker and the placing broker within the producing broker’s terms of business; and
- (c) a person acting as an intermediary in relation to insurance provided as part of a packaged bank account if the person—
 - (i) is licensed under section 7 of the Financial Services Act 2008 to carry on regulated activities falling within Class 1(1); and
 - (ii) complies with the requirements set out in the Schedule to these Guidance Notes in relation to the provision of insurance within the packaged bank account.

5 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.

6 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 be appropriate to the nature and scale of the business and 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.

7 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) conduct business 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 exerting 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 not—
 - a) make inaccurate, unsubstantiated or unfair criticism of any insurer;
 - b) make comparisons with other types of policy unless it makes clear the differing characteristics of each policy.

8 General sales principles

An intermediary must—

- (a) give advice only on insurance matters in which he or she is knowledgeable;
- (b) ensure that the policy offered is suitable for the demands and needs of the policyholder;
- (c) explain the main provisions of the cover afforded by the policy, or policies, so as to ensure, as far as possible, that the policyholder understands what he or she is buying;
- (d) draw attention to the main restrictions and exclusions applying to the policy;
- (e) draw attention to any policy excesses and direct the policyholder to documentation that would outline the detail of these;
- (f) unless the contract is subject to the Consumer Insurance (Disclosure and Representations) Act 2012¹ (an Act of Parliament), explain to the policyholder the duty to disclose all circumstances

¹ 2012 c.6

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 in a timely fashion.

9 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 type of insurance offered; and
 - (ii) 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 the 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; and

- (g) if the intermediary will deal with claims, the contact details for notifying a claim or, if the intermediary does not deal with claims, advise the policyholder of that fact and direct the policyholder to the document that will set out the contact details for notifying a claim.

10 Product information – pre-inception

- (1) An intermediary must ensure that a policyholder is given written confirmation of the details of the insurance that is going to be put in place on their behalf prior to inception of the contract.
- (2) The details referred to in subparagraph (1) should, at a minimum, include—
 - (a) the name of the insurer or lead 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 means of payment of premium and the duration of payments;
 - (e) any additional fees and charges associated with the product;
 - (f) main exclusions where claims cannot be made;
 - (g) obligations at the start of the contract
 - (h) obligations during the term of the contract;
 - (i) obligations in the event that a claim is made;
 - (j) the term of the contract including start and end dates of the contract;
 - (k) the means of terminating the contract; and
 - (l) for personal lines contracts, the existence and duration of the right of cancellation.
- (3) An intermediary may provide the written confirmation required under subparagraph (1) as soon as reasonably possible after the conclusion of a contract, if the contract has been concluded over the telephone at the policyholder's request.
- (4) Where possible, an intermediary must provide a copy of the policy wording to the policyholder pre-inception. If not possible, this should be provided as soon as reasonably possible post-inception, and in any event, in sufficient time to exercise any option to cancel or withdraw from the contract.

11 Documentation

- (1) Where confirmation of cover cannot be provided pre-inception, an intermediary must provide this as soon as reasonably possible and in any

event, in sufficient time to exercise any option to cancel or withdraw from the contract.

- (2) An intermediary must —
 - (a) forward full policy documentation to the policyholder as soon as reasonably possible where this has not been included with confirmation of cover; and
 - (b) not withhold from the policyholder any documentation relating to the contract of insurance.

12 Renewals

At renewal, an intermediary must abide by the requirements of this Code to the extent that they are relevant and, in particular —

- (a) provide the policyholder with renewal terms in a reasonable timeframe for the policyholder to consider whether they wish to proceed with the renewal offer; and
- (b) confirm to the policyholder his or her existing cover, prior year premium and any significant changes in cover or terms.

13 Gifts and other benefits

An intermediary must not—

- (a) offer or receive; or
- (b) 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.

14 Advertising

An intermediary must—

- (a) establish and implement procedures to ensure that it promotes its products and services in a manner that is clear, fair and not misleading; and
- (b) 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 Authority.

15 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) All appropriate and relevant information received from the policyholder must be passed to the insurer without delay.

MADE ON XXX

KAREN BADGEROW

Chief Executive of the Isle of Man Financial Services Authority

LILLIAN BOYLE

Member of the Isle of Man Financial Services Authority

SCHEDULE

PERSONS ARRANGING INSURANCE THROUGH PACKAGED BANK ACCOUNTS

- (1) An insurance intermediary must act with due skill, care and diligence.
- (2) An insurance intermediary must have procedures for ensuring that its business as an insurance intermediary activity is carried on—
 - (a) openly and fairly;
 - (b) in compliance with any applicable legislation relating to that activity in the country or territory in which it is carried on;
 - (c) so far as possible, in a way that avoids any conflict of interest; and
 - (d) with disclosure of any unavoidable conflict of interest to any client concerned. This applies whether any such conflict relates to the insurance intermediary, its officers or employees.
- (3) A insurance intermediary must —
 - (a) take all reasonable steps to enable its clients to take informed decisions relating to their business with the insurance intermediary; and
 - (b) avoid misleading or deceptive representations or practices.
- (4) An insurance intermediary must —
 - (a) organise and control its internal affairs in a responsible manner; and
 - (b) promote high ethical standards in the conduct of its regulated activities.
- (5) An insurance intermediary must establish and maintain appropriate internal and operational controls, systems, policies and procedures relating to all aspects of its business to ensure —
 - (a) effective communication between the insurance intermediary and its policyholders;
 - (b) appropriate segregation of key duties and functions;
 - (c) the fair treatment of policyholders;
 - (d) the safeguarding of assets belonging to policyholders for which the insurance intermediary is responsible. For the avoidance of doubt, in this paragraph “assets” includes money, property and investments;
 - (e) effective maintenance of accounting and other records and the reliability of this information;
 - (f) appropriate safeguards to prevent and detect any abuse of the insurance intermediary’s services for money laundering, financial crime, the financing of terrorism, or the proliferation of weapons of mass destruction;

(g) appropriate safeguards to prevent and detect market manipulation or market abuse;

(h) appropriate safeguards to protect data from loss or misuse; and

(i) effective systems and controls and depth of resources to adequately deal with the risk profile of all clients especially those connected with a higher risk jurisdiction or where structures are established for clients in those higher risk jurisdictions.

An insurance intermediary must review the controls required by this paragraph annually, or more frequently if appropriate. These reviews should be documented.

(6) Where the insurance intermediary employs staff it must —

(a) make adequate arrangements to ensure that those persons are suitable, adequately trained, properly supervised;

(b) document the roles and responsibilities of, or limitations placed on, such persons; and

An insurance intermediary must ensure that the persons to whom this paragraph applies carry out their duties in a diligent and proper manner in accordance with the systems, controls, policies and procedures referred to in paragraph (5).

(7) The persons to whom paragraph (6) applies are —

(a) the insurance intermediary's connected persons under section 29 of the Insurance Act 2008; and

(b) any other individual, whether or not employed by the insurance intermediary, who carries on, or holds out as carrying on, insurance intermediation in or from the Island in the course of employment, or under any contract, with the insurance intermediary.

EXPLANATORY NOTE

(This note is not part of the Guidance Notes)

These Guidance Notes include principles in relation to the fair treatment of policyholders, general sales principles and requirements in relation to terms of business and provision of product information.

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Appendix 5 – Draft Guidance on suitability of an insurance contract under the Insurance
Intermediary (General Business)(Conduct of Business) Code 2020



Guidance on suitability of an insurance contract under the Insurance Intermediary (General Business)(Conduct of Business) Code 2020

This guidance is issued in consideration of the requirements of the Insurance Intermediary (General Business)(Conduct of Business) Code 2020 (“the Code”) and sets out the Financial Services Authority’s (“the Authority”) expectations in respect of the requirement to ensure that all contracts proposed must be suitable for a client's demands and needs.

The Authority issues guidance for various purposes, including to illustrate best practice, to assist regulated entities to comply with legislation and to provide examples or illustrations. This guidance is, by its nature, not law, however it is persuasive. Where a person follows guidance this would tend to indicate compliance with the legislative provisions, and vice versa.

The Authority is aware that there is a wide variation in sales practices within the sector. This guidance is set out to help insurance intermediaries interpret the requirements of the Code in a proportionate manner for differing types of insurance products, although in considering proportionality, it is important to note that there is no distinction between advised and non-advised sales within the Code.

In order to fulfil the requirement that the policy offered is suitable for the demands and needs of the client, the Authority expects that insurance intermediaries will take an active role in understanding the client’s demands and needs. This can be done by using readily available information as well as by obtaining information from the client, for example, by asking questions in person, on the telephone or by way of a questionnaire prior to any contract of insurance being proposed.

Once the client's demands and needs have been identified these should be matched to available products, taking into account factors such as the product’s level of cover and cost, and relevant exclusions, excesses, limitations and conditions.

It is for the insurance intermediary to determine the process necessary to ensure that the contract proposed is suitable. The Authority is aware that it will differ between providers and between lines of business; for example, it might be that a more detailed advice process is required for a small business owner that doesn’t understand its insurance needs when compared to a personal lines client or a corporate client that has a clearer understand of its insurance needs.

This process of identifying, and then matching products to, the client’s demands and needs, is not explicitly required to be documented or provided to the client under the Code. However, the Authority would suggest that insurance intermediaries should consider how they would be in a position to demonstrate compliance with this requirement, or handle any



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complaint arising from a sale, where it is suggested that the policy offered was not suitable for the demands and needs of the client.

In considering suitability, an intermediary should take all reasonable steps to ensure that a customer only buys a policy under which they are eligible to claim benefits.

If an insurance intermediary cannot match a client's demands and needs to a suitable product, or where a client may only be able to partially claim against benefits under the contract, the client should be made aware of any demands and needs that are not being met by any product offered and the customer should be advised that they may be able to get a product that would fulfil all of their demands and needs elsewhere.

The process of completing a statement of demands and needs and the extent of information gathered will vary according to the client's level of sophistication, the client's understanding of its insurance needs, the complexity of the client's needs and the complexity of the contract of insurance to be offered. The Authority has outlined example processes below for commercial lines and personal lines business.

Commercial lines

For commercial lines business it would ordinarily be appropriate for the intermediary to carry out a detailed statement of demands and needs, based on meetings held with the client, to ensure that it has a good understanding of the client's business and the risks faced by that business before offering bespoke advice about the risks that could and should be mitigated by way of a suitable insurance policy which may be covering a suite of insurance products. This would be appropriate for small businesses as well as corporate client but the intermediary should be mindful of the level of sophistication of the client (and its understanding of its insurance needs) and tailor the process according to the nature, scale and complexity of the client and its needs.

If the intermediary is asked to quote for a specific type of insurance only, the statement of demands and needs could take account of the client's specific demands in this circumstance. However, it would be best practice for the intermediary to ask about other insurance needs, to ensure that the client is aware of these. The insurance policy offered would need to be suitable for the demands and needs identified by the client.

Personal lines business

It is acknowledged that there are some classes of insurance, primarily personal lines, which are transactional in nature and offerings across different insurers may be standardised with typical covers, where a full advice process resulting in a recommendation is not necessarily appropriate in every case.

In many cases, personal lines customers are likely to ask an intermediary to quote for a specific type of insurance and so advice around the type of cover is not necessary. However, personal lines customers are likely to be less sophisticated in their understanding of



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insurance and may not fully understand how their specific needs may or may not be covered by an insurance policy.

In these circumstances the statement of demands and needs for personal lines business should focus on the customer's needs in relation to the type of insurance required. The Authority would expect the intermediary to ask the customer questions in order to establish their needs, to offer products that meet those specified needs and to focus on ensuring that the customer understands how the insurance product sold is suitable for their needs.

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Appendix 6 – Insurance Intermediaries (Corporate Governance) (General Business) Code 2020



INSURANCE INTERMEDIARIES (CORPORATE GOVERNANCE) (GENERAL BUSINESS) CODE 2020

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Statutory Document No. 20XX/XXXX



Insurance Act 2008

INSURANCE INTERMEDIARIES (CORPORATE GOVERNANCE) (GENERAL BUSINESS) CODE 2020

*Laid before Tynwald:
Coming into Operation: xxxx*

The Isle of Man Financial Services Authority makes and issues the following Guidance Notes under section 51(1) of the Insurance Act 2008 as binding guidance, after carrying out the consultations required by section 51(6) of that Act.

1 Title

These Guidance Notes are the Insurance Intermediaries (Corporate Governance) (General Business) Code 2020.

2 Commencement

These Guidance Notes come into operation on xxxx.

3 Application

- (1) Subject to paragraph (2), these Guidance Notes apply to persons registered under section 25 of the Act.
- (2) A person acting as an intermediary in relation to insurance provided as part of a packaged bank account is exempt from these Guidance Notes if the person—
 - (a) is licensed under section 7 of the Financial Services Act 2008 to carry on regulated activities falling within Class 1(1); and
 - (b) complies with the requirements of the Schedule to these Guidance Notes.

4 Introduction

Corporate governance, in relation to an intermediary, is the system of rules, practices and processes by which those responsible for the intermediary direct, manage and control its affairs and the means by which they are held accountable for their performance and actions. Corporate governance encompasses all aspects relating to the intermediary's organisation and business, including its

constitutional structures and rules, its corporate values, culture and environment, as well as its business objectives, strategies, policies, procedures, internal controls and decision-making processes.

5 These Guidance Notes in operation

These Guidance Notes are not intended to be, and should not be interpreted as being, exhaustive. They should be viewed as a component part of an intermediary's means of having in place and demonstrating adequate and effective corporate governance appropriate to its circumstances. These Guidance Notes do not limit, and therefore should be read in conjunction with, other legal and regulatory requirements applicable to the intermediary. These Guidance Notes should not be used as a substitute for legal advice.

6 Corporate Governance

Pursuant to section 27D of the Act, the board and senior management of an intermediary must establish, implement and maintain adequate, appropriate and effective measures that meet the requirements of these Guidance Notes in a way that is proportionate to the nature, scale and complexity of the intermediary and its activities and the risks to which it is or may be exposed.

7 Skill, care and diligence

An intermediary must act with due skill, care and diligence in carrying on its general intermediation business for which it is registered under section 25 of the Act.

8 Compliance

An intermediary has an obligation to identify and comply with its regulatory requirements and must take all reasonable steps to do so.

9 Responsible behaviour in dealings

An intermediary must have procedures for ensuring that its business is carried on openly and fairly.

10 Conflicts of interest

- (1) An intermediary must establish, implement and maintain an adequate and effective conflicts of interest policy which must be —
 - (a) in writing; and
 - (b) appropriate to its size and organisation.
- (2) The policy must —
 - (a) identify, with reference to the specific activities of the intermediary, the circumstances which constitute or may give rise to conflicts of

interest entailing a material risk of damage to the interests of one or more of its policyholders; and

- (b) specify procedures to be followed and measures to be adopted in order to manage such conflicts.
- (3) The procedures referred to in sub-paragraph (2)(b) should ensure that an intermediary's business is carried out so far as possible in a way that avoids any conflict of interest, and that any unavoidable conflict of interest is disclosed to any policyholder concerned. This applies whether any such conflict relates to the intermediary, its officers or employees.

11 Financial management

Without prejudice to regulation 19 of the Insurance Intermediaries (General Business) Regulations 2018, an intermediary must manage its capital and other financial resources prudently. Accordingly, it must —

- (a) maintain adequate capital and other financial resources to meet its liabilities that might reasonably be expected to arise out of the risks to which it is or may be exposed; and
- (b) maintain sufficient asset liquidity to meet its liabilities as they fall due.

12 Business continuity

An intermediary must —

- (a) take all reasonable steps to reduce the likelihood, impact and possible duration of disruption to the continuity of its operations; and
- (b) establish, implement and maintain adequate, appropriate and effective arrangements

to ensure that it can continue to function effectively and comply with its regulatory requirements (as identified in accordance with paragraph 8) in the event of anticipated or unforeseen disruption.

13 Systems and controls for record keeping

- (1) An intermediary must establish, implement and maintain procedures to ensure that sufficient information is recorded and retained about the conduct of its business and its compliance with the regulatory requirements.
- (2) An intermediary must establish, implement and maintain adequate, appropriate and effective systems and controls over its general records.
- (3) The systems and controls referred to in paragraph (2) must be —
 - (a) such as to enable the intermediary to comply with the regulatory requirements; and

- (b) adequately and correctly documented.
- (4) An intermediary must —
 - (a) maintain records relating to its business transactions, financial position, internal organisation and risk management systems such as to demonstrate to the Authority that it complies with the regulatory requirements;
 - (b) maintain those records in a manner that is orderly and readily accessible in or from the Isle of Man and available for inspection and investigation by or on behalf of the Authority; and
 - (c) keep those records for at least 6 years after it ceases to be registered under section 25 of the Act.

14 Governance system documentation

An intermediary must establish, implement and maintain adequate, appropriate and effective documentation of its significant systems of governance and their operation.

15 Policyholders' records

- (1) An intermediary must keep and maintain proper records to show and explain transactions effected by it on behalf of its policyholders.
- (2) Those records must be —
 - (a) kept in English;
 - (b) kept up-to-date;
 - (c) in such a form as to demonstrate compliance with the regulatory requirements; and
 - (d) kept for at least 6 years after the transaction.

16 Board composition

The board of an intermediary must include an adequate number of directors with an appropriate overall combined level of knowledge, skills, experience and commitment such that it can properly and objectively discharge its duties and responsibilities and carry out its functions in relation to the intermediary.

17 Directors

- (1) An intermediary must have at least 2 directors.
- (2) All directors of an intermediary must be natural persons.
- (3) At least two directors of an intermediary must be resident in the Isle of Man.

18 Powers and resources of the board

- (1) The board of an intermediary must have adequate and appropriate powers and resources to properly discharge its duties and responsibilities and carry out its functions in relation to the intermediary.
- (2) For the purpose of sub-paragraph (1) the board must, amongst other things, be able to —
 - (a) obtain timely, accurate, relevant and sufficiently comprehensive information and analyses relating to the intermediary, its management and external environment;
 - (b) delegate activities and functions as appropriate, identifying and keeping under review those matters that are reserved to the board; and
 - (c) obtain external expertise where necessary and as appropriate.

19 Frequency of board meetings

The board of an intermediary must meet with sufficient regularity so it can properly discharge its duties and responsibilities and carry out its functions in relation to the intermediary.

20 Board meeting documents

The board of an intermediary must where practicable and appropriate ensure that, in respect of each meeting of the board, the following are circulated to its directors in advance of the meeting to allow directors adequate time to consider their content —

- (a) suitably detailed agenda of the items to be considered at the meeting;
- (b) minutes from the previous meeting of the board; and
- (c) adequate and appropriate information in support of the matters to be considered at the meeting.

21 Minutes of board and board committee meetings

- (1) The board of an intermediary must ensure that the intermediary keeps minutes and associated documents of all of its board and board committee meetings.
- (2) Those minutes and documents must provide an adequate and appropriate record of corresponding proceedings including—
 - (a) which directors attended, which alternate directors attended as an alternate (and for whom) and which directors did not attend for any reason;

- (b) sufficient detail to evidence what board-level attention was given at the meeting to matters being considered at the meeting and the substance of discussions had at the meeting;
 - (c) all material considerations, decisions and actions (including actions taken and points for further action, as applicable);
 - (d) any conflicts of interest arising in relation to the matters being considered at the meeting and how they were managed; and
 - (e) any dissensions or negative votes recorded in terms acceptable to the dissenting person or negative voter (for the avoidance of doubt, this is without prejudice to any situation where a director feels he should resign).
- (3) Those minutes must—
- (a) without undue delay after the meeting to which they relate, be written up and distributed in final draft to all persons entitled to receive a copy; and
 - (b) within a reasonable timeframe, be accepted by the board (or, if a committee meeting, the committee) and signed as a formal record of the meeting by a duly authorised person.

22 Key responsibilities of directors

A director of an intermediary must —

- (a) act on a well-informed basis;
- (b) act in good faith, honestly and reasonably;
- (c) exercise due care, skill and diligence;
- (d) act in the best interests of the intermediary and its policyholders, putting those interests ahead of his or her own interests;
- (e) exercise objectivity in decision-making, taking due account of the interests of the intermediary and its policyholders;
- (f) identify and either avoid or promptly disclose to the board of the intermediary any conflicts of duty or interest he or she have or may have in relation to the intermediary;
- (g) not use his or her position to gain undue personal advantage or cause any detriment to the intermediary;
- (h) ensure he or she has the appropriate integrity, competence, experience, qualifications and commitment so that he or she can carry out his or her functions in relation to the intermediary; and
- (i) properly discharge his or her duties and responsibilities and carry out his or her functions in relation to the intermediary.

23 Management controls

- (1) An intermediary must —

- (a) organise and control its internal affairs in a responsible manner; and
 - (b) promote high ethical standards in the conduct of its business.
- (2) The board of an intermediary must establish, implement and maintain adequate, appropriate and effective internal and operational controls, systems, policies and procedures relating to all aspects of its business to ensure —
 - (a) effective communication between the intermediary and its policyholders;
 - (b) appropriate segregation of key duties, activities and functions;
 - (c) the fair treatment of policyholders;
 - (d) the safeguarding of assets belonging to policyholders for which the intermediary is responsible;
 - (e) effective maintenance of accounting and other records and the reliability of this information;
 - (f) appropriate safeguards to protect data from loss or misuse; and
 - (g) adequate and competent staffing and resources.
- (3) An intermediary must review the controls required under sub-paragraph (2) annually, or more frequently if appropriate, and document that review.
- (4) Where the intermediary employs staff or is responsible for activities conducted by others it must ensure that —
 - (a) there are sufficient staff, at all levels;
 - (b) staff are suitable with adequate qualifications and experience for the business;
 - (c) there are adequate arrangements in place such that —
 - (i) its client facing staff are competent on an ongoing basis and trained adequately and appropriately;
 - (ii) the basis on which competency has been assessed is documented; and
 - (iii) its client facing staff undertake a minimum number of hours of relevant continuous professional development per annum.
- (5) An intermediary must have an appropriate level of management, with appropriate competence and integrity for their individual and collective roles in relation to the intermediary, that provides for the intermediary's sound and prudent management.

24 Culture

The board of an intermediary must promote and sustain a corporate culture in respect of, and throughout, the intermediary that supports the implementation of this Code.

25 Risk management

- (1) The board of an intermediary must —
 - (a) establish, implement and maintain comprehensive policies, appropriate to the nature and scale of its business and, where appropriate, its position in any group to which it may belong, for managing the risks specified in sub-paragraph (2); and
 - (b) review those policies annually and evidence that review.
- (2) The risks referred to in sub-paragraph 1(a) are all of the reasonably foreseeable, relevant and material risks to which the intermediary is or may be exposed, including financial, legal, regulatory and operational risks, as well as risks arising from any group of companies to which the intermediary belongs and risks arising from any activity of the intermediary for which it is not required to be registered under section 25 of the Act.
- (3) The intermediary must —
 - (a) ensure that the policies referred to in sub-paragraph (1)(a) are complied with;
 - (b) maintain appropriate procedures and controls for the purpose of monitoring its compliance with those policies; and
 - (c) monitor the risks specified in sub-paragraph (2) on a frequent and timely basis.

26 Business plan

- (1) An intermediary must have a documented business plan.
- (2) An intermediary must operate in accordance with its business plan.
- (3) An intermediary must notify the Authority as soon as is practicable of any material changes to its business plan.

27 Remuneration policy

- (1) An intermediary must establish, implement and maintain an effective remuneration policy which must be in writing.
- (2) The policy must —
 - (a) address the risk of inappropriate remuneration undermining the interests of policyholders;

- (b) avoid conflicts of interest caused by the misalignment of incentives; and
 - (c) contain measures for the proper management of incentive schemes so as to avoid the encouragement of improper or imprudent behaviour.
- (3) An intermediary must —
 - (a) ensure that the policy is complied with; and
 - (b) maintain adequate, appropriate and effective procedures and controls for the purpose of monitoring its compliance with the policy.

28 Relations with regulators

An intermediary must —

- (a) co-operate in an open and honest manner with the Authority and any other regulatory body to which it is accountable; and
- (b) keep them promptly informed of anything relating to the intermediary which is relevant to the exercise of their respective regulatory functions.

29 Outsourced significant activities and functions

Where a significant activity or function of an intermediary has been outsourced, the intermediary must ensure that —

- (a) it retains at least the same degree of oversight of, and accountability for, the outsourced activity or function as would apply if the outsourced activity or function was not outsourced;
- (b) where the outsourced provider is required to have any regulatory consents in order to carry out the outsourced activity or function, those consents have been obtained and remain in force;
- (c) the outsourced provider has the appropriate integrity, competence, experience and qualifications to carry out the outsourced activity or function;
- (d) the outsourced provider has the capacity to carry out the outsourced activity or function taking into account the size and timing of corresponding workloads;
- (e) its use of the outsourced provider is consistent with the —
 - (i) ongoing and effective risk management, financial management and compliance of the intermediary, including not unreasonably increasing its operational risk;

- (ii) standard of control that would apply if the outsourced activity or function was carried out internally by the intermediary;
 - (iii) fair treatment of the intermediary's stakeholders (as applicable);
 - (iv) effective operation of the external audit of the intermediary; and
 - (v) ongoing, open, honest and timely communication with the Authority in relation to the activities of the intermediary, and not unreasonably impairing the Authority's ability to monitor the intermediary's compliance with its legal and regulatory obligations; and
- (f) a written agreement is in place with the outsourced provider, the terms and conditions of which the board of the intermediary understands and authorises, and which —
 - (i) is binding on both parties;
 - (ii) sets out clearly the rights, expectations and obligations of both parties;
 - (iii) provides for the termination and orderly winding up of the outsourced arrangement; and
 - (iv) includes the means by which the outsourced provider is monitored and held accountable to the intermediary in relation to the outsourced activity or function.

30 Fraud prevention

An intermediary must ensure that high standards of integrity apply to all aspects of its business, and must—

- (a) establish, implement and maintain adequate, appropriate and effective policies, procedures and internal controls, and allocate adequate and appropriate resources to—
 - (i) deter, prevent, detect, record and as required promptly report any fraud it becomes aware of to the appropriate authorities; and
 - (ii) ensure that any fraud identified is remedied in a manner appropriate to the circumstances (including having regard to any relevant guidance provided by the police or other relevant authority); and
- (b) ensure that the intermediary's policies, procedures and internal controls form an integral part of the intermediary's risk management system.

31 Whistleblowing policy

- (1) An intermediary must establish, implement and maintain an adequate and effective whistleblowing policy to encourage the reporting of any improper or unlawful behaviour.
- (2) The policy must—
 - (a) be in writing;
 - (b) be appropriate to the intermediary's size and organisation and the nature, scale and complexity of its business; and
 - (c) adequately and appropriately protect the whistleblower from any negative repercussions arising from reporting in good faith their concerns, including, but not limited to ensuring confidentiality and be communicated effectively to all persons to whom it applies.
- (3) An intermediary must —
 - (a) ensure that the policy is complied with; and
 - (b) maintain appropriate procedures and controls for the purpose of monitoring its compliance with the policy.

32 Requirement for a compliance function

An intermediary must have an ongoing and effective compliance function that is adequate and appropriate to the nature, scale and complexity of the intermediary, its activities and the risks to which it is or may be exposed. This includes the compliance function having adequate and appropriate expertise, resources and authority to carry out its activities effectively.

33 Nature and location of a compliance function

The compliance function of an intermediary —

- (a) may be carried out internally by the intermediary or by a suitable external party or a combination of both; and
- (b) must be ultimately controlled in or from the Isle of Man.

For the avoidance of doubt, this paragraph does not restrict an intermediary from obtaining advice from outside of the Isle of Man as appropriate to its activities.

34 Reporting of compliance function

The compliance function of an intermediary must report at appropriate intervals, and at least annually, to the intermediary's board on compliance matters in accordance with its role in relation to the intermediary.

35 External audit – general

An intermediary must —

- (a) take all reasonable steps to ensure it affords its external auditor all of the rights and entitlements applicable to the position of external auditor; and
- (b) permit and not deter its external auditor from providing to the Authority such information and confirmations as the Authority requests for the purposes of carrying out its functions.

36 External audit – engagement letter

Prior to commencement of its audit, an intermediary must obtain from its external auditor a letter of engagement which –

- (a) contains an undertaking of the external auditor to provide to the intermediary, and upon request to the Authority, the governance communications referred to in paragraph 37;
- (b) defines clearly the extent of the rights and duties of the external auditor; and
- (c) is signed and accepted in writing by both parties.

37 Governance communication

- (1) An intermediary must at the same time as its annual accounts are submitted to the Authority –
 - (a) provide to the Authority a copy of any management letter (or equivalent) which the intermediary receives from its auditor in respect of the audit of its financial statements which contains any recommendations to the intermediary to remedy any weaknesses in its systems and internal controls;
 - (b) inform the Authority whether the intermediary has –
 - (i) implemented, or is in the process of implementing, the recommendations; or
 - (ii) addressed, or is in the process of addressing, the weaknesses identified (if any) in that communication;
 - (c) if the intermediary has not met the requirements of (b) (i) and (ii), it must provide its reasons for not doing so to the Authority;
 - (d) where the intermediary receives no management letter, or equivalent, from its auditor, it must provide the Authority with a copy of its external auditor's confirmation that no such communication has been, or is anticipated to be, issued.
- (2) An intermediary must, without undue delay, provide to the Authority a copy of any other formal communication it receives from its external auditor that identifies any material weakness relating to the

intermediary's internal controls, procedures or other systems of governance.

38 Interpretation

In these Guidance Notes—

“the Act” means the Insurance Act 2008, as amended;

“compliance function” is the means applied by the intermediary to —

- (a) identify and understand its regulatory requirements; and
- (b) establish, implement and maintain compliance strategies, policies, procedures and training,

in order to ensure that the intermediary complies with its regulatory requirements;

“implement” in relation to a requirement, does not limit appropriate delegation in relation to that requirement;

“intermediary” means a person registered under section 25 of the Act;

“packaged bank account” means an arrangement under which a person provides a bank account for a customer as part of a package which includes access to other goods and services;

“policyholder” means the intermediary's customers in respect of which it is required to be registered under section 25 of the Act, and includes prospective policyholders; and

“regulatory requirements” in relation to an intermediary means its legal and regulatory obligations.

MADE ON XXX

Chief Executive of the Isle of Man Financial Services Authority

Member of the Isle of Man Financial Services Authority

SCHEDULE

PERSONS ARRANGING INSURANCE THROUGH PACKAGED BANK ACCOUNTS

- (1) An insurance intermediary must act with due skill, care and diligence.
- (2) An insurance intermediary must have procedures for ensuring that its business as an insurance intermediary activity is carried on —
 - (a) openly and fairly;
 - (b) in compliance with any applicable legislation relating to that activity in the country or territory in which it is carried on;
 - (c) so far as possible, in a way that avoids any conflict of interest; and
 - (d) with disclosure of any unavoidable conflict of interest to any client concerned. This applies whether any such conflict relates to the insurance intermediary, its officers or employees.
- (3) A insurance intermediary must —
 - (a) take all reasonable steps to enable its clients to take informed decisions relating to their business with the insurance intermediary; and
 - (b) avoid misleading or deceptive representations or practices.
- (4) An insurance intermediary must —
 - (a) organise and control its internal affairs in a responsible manner; and
 - (b) promote high ethical standards in the conduct of its regulated activities.
- (5) An insurance intermediary must establish and maintain appropriate internal and operational controls, systems, policies and procedures relating to all aspects of its business to ensure —
 - (a) effective communication between the insurance intermediary and its policyholders;
 - (b) appropriate segregation of key duties and functions;
 - (c) the fair treatment of policyholders;
 - (d) the safeguarding of assets belonging to policyholders for which the insurance intermediary is responsible. For the avoidance of doubt, in this paragraph “assets” includes money, property and investments;
 - (e) effective maintenance of accounting and other records and the reliability of this information;
 - (f) appropriate safeguards to prevent and detect any abuse of the insurance intermediary’s services for money laundering, financial crime,

the financing of terrorism, or the proliferation of weapons of mass destruction;

(g) appropriate safeguards to prevent and detect market manipulation or market abuse;

(h) appropriate safeguards to protect data from loss or misuse; and

(i) effective systems and controls and depth of resources to adequately deal with the risk profile of all clients especially those connected with a higher risk jurisdiction or where structures are established for clients in those higher risk jurisdictions.

An insurance intermediary must review the controls required by this paragraph annually, or more frequently if appropriate. These reviews should be documented.

(6) Where the insurance intermediary employs staff it must —

(a) make adequate arrangements to ensure that those persons are suitable, adequately trained, properly supervised;

(b) document the roles and responsibilities of, or limitations placed on, such persons; and

An insurance intermediary must ensure that the persons to whom this paragraph applies carry out their duties in a diligent and proper manner in accordance with the systems, controls, policies and procedures referred to in paragraph (5).

(7) The persons to whom paragraph (6) applies are —

(a) the insurance intermediary's connected persons under section 29 of the Insurance Act 2008; and

(b) any other individual, whether or not employed by the insurance intermediary, who carries on, or holds out as carrying on, insurance intermediation in or from the Island in the course of employment, or under any contract, with the insurance intermediary.

Appendix 7 – Draft Insurance Intermediaries (Restriction on Advertising) Regulations 2020

Statutory Document No. 20XX/XXXX



Insurance Act 2008

INSURANCE INTERMEDIARIES (RESTRICTION ON ADVERTISING) REGULATIONS 2020

Laid before Tynwald:

Coming into Operation:

The Isle of Man Financial Services Authority makes the following Regulations under section 50 of and Schedule 7 to the Insurance Act 2008.

1 Title

These Regulations are the Insurance Intermediaries (Restriction on Advertising) Regulations 2020.

2 Commencement

These Regulations come into operation on 31 October 2020.

3 Interpretation

In these Regulations —

“**overseas person**” means a person who —

- (a) does not act as an insurance intermediary operating from a permanent place of business maintained in the Island; and
- (b) is not —
 - (i) a company incorporated in the Island under the Companies Acts 1931 to 2004 or the Companies Act 2006; or
 - (ii) a company incorporated outside the Island which is registered under Part XI of the Companies Act 1931; or
 - (iii) a limited partnership registered in the Island under Part II of the Partnership Act 1909; or
 - (iv) a foundation established in the Island under the Foundations Act 2001.

4 Restriction of specified business practices

An overseas person that is acting as, or holding itself out to be, an insurance intermediary must not solicit business by means of an advertisement which is —

- (a) targeted at Isle of Man persons, or
- (b) disseminated by a medium which is targeted at Isle of Man persons.

MADE ON XXX

KAREN BADGEROW

Chief Executive of the Financial Services Authority

LILLIAN BOYLE

Member of the Isle of Man Financial Services Authority

*EXPLANATORY NOTE**(This note is not part of the Regulations)*

These Regulations prohibit insurance intermediaries located outside of the Isle of Man from advertising for business in a way that targets Isle of Man persons. However, the Regulations do not do not preclude Isle of Man persons from purchasing products from off-Island insurers or intermediaries.

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