BERMUDA MONETARY AUTHORITY

CONSULTATION PAPER

REVISIONS TO THE INSURANCE CODE OF CONDUCT

December 2021

TABLE OF CONTENTS

APPENDICES:

I. INTRODUCTION

1. The Bermuda Monetary Authority (Authority or BMA) is committed to enhancing its regulatory framework to ensure that it remains effective and aligned with international standards. The Authority also aims to position the design of its regime to address emerging issues.
2. The Insurance Code of Conduct (Code) is being amended considering the international standards set out by the International Association of Insurance Supervisors.
3. This consultation paper puts forward proposed amendments to the Code, while Appendix I contains a redlined version of the amended Code. The proposed amendments aim to improve and enhance the Code and its application.
4. Additionally, there are housekeeping changes that are intended to simplify some areas by merging or separating paragraphs and re-positioning paragraphs for a more cohesive flow of the information presented.

II. PROPOSALS

5. The Authority will evaluate a (re) insurer's compliance with the Code proportionally with due regard for the specific nature, scale and complexity of a company's operations and does not propose to prescribe the exact manner in which (re)insurers shall demonstrate compliance with the Code. When applying the Code and developing an appropriate corporate governance and risk management framework, the Authority expects that individual (re)insurers will use their best judgment to determine what is proportional to their individual circumstances.

Brief Description of Proposed Changes

The substantive changes are as follows:

Introduction

6. The Authority has clarified the definition of "Limited Purpose Insurer" to include the new insurance classes, namely Collateralized Insurers and Class Innovative Insurer General Business (IIGB).

Corporate Governance

7. The Authority proposes that a (re) insurer's board of directors (board) must include an appropriate number of independent directors without executive responsibility to support its view of the valuable role that these directors play in the conduct of the insurer's operations. The Authority also provided additional guidance in relation to this proposal as it relates to subsidiaries that form part of a wider group.

8. The Code has been amended to reflect the requirement to assess the fitness and propriety of the board, its committees and the chief and senior executives no less than every three years.

9. The Authority seeks to clarify the requirement for a principal representative to be a Bermuda resident and, where a Bermuda registered insurance management company is appointed as a principal representative, it should maintain its head office in Bermuda.

10. The Authority proposes that the Code emphasise the board's role in adopting and promoting a sound risk culture. The Code has been amended to ensure that the insurer adopts a governance mechanism to measure and monitor risk culture effectiveness.

Reinsurance and Other Forms of Risk Transfer

11. The Authority seeks to provide clarity that the insurer should demonstrate the economic impact of the risk mitigation techniques originating from the reinsurance contracts. Additionally, the Code proposes to clarify that the insurer should maintain appropriate documentation on reinsurance contracts and other risk mitigation techniques.

Sustainability Risk

12. The Authority recognises that climate change continues to be a global threat and, thus, the increasing focus on Environmental, Social and Governance (ESG) risks. The Code outlines the requirement for the board to ensure that there are processes to capture the sustainability and ESG risks. Consequently, the Code has been amended to add "Sustainability Risk" as a material risk that should be considered in the development of policies and risk management strategies for all material risks.

Business Continuity and Disaster Recovery Plan

13. The Authority highlights the requirement to have a business continuity and disaster recovery plan that addresses all of its key business processes and critical business functions. The effectiveness of the plan should be tested regularly.

Outsourcing

14. The Code has also been amended to further enhance the requirements for outsourcing to ensure due diligence and risk evaluation process is undertaken prior to entering into an outsourcing arrangement. The Authority also proposes a contingency plan should the service provider be unable to provide the outsourced activity for any reason.

III. CONCLUSION

15. The Code will come into effect immediately when published. A suitable transition period will be recommended at that time and communicated to all insurers to allow them to come into compliance with the new provisions.

16. The Authority invites the insurance industry's views and other interested persons on the proposals set out in this paper specifically Section 1 to 7, in its entirety, of the Code. Comments should be sent to the Authority, addressed to riskanalytics@bma.bm no later than 31 January 2022.

BERMUDA MONETARY AUTHORITY

THE INSURANCE CODE OF CONDUCT

~~JULY 2015~~

February 2022
(Revised)

TABLE OF CONTENTS

1. INTRODUCTION

~~1.~~

1. This document outlines the Bermuda Monetary ~~Authority's ("the~~ Authority's (Authority~~"~~) or BMA) Insurance Code of Conduct ~~("the~~ (Code~~").~~). In this Code, the term ~~"~~"insurer~~"~~" includes ~~"~~"reinsurer~~",~~", "insurance" includes "reinsurance", and "policyholder" or "policyholders" include current and past policyholders, third~~-~~-party claimants and beneficiaries to whom the insurer is contractually obligated to fulfil its insurance obligations.

~~THE INSURANCE CODE OF CONDUCT~~
~~JULY 2015~~

2. Limited purpose insurers shall include Class 1, Class 2, Class 3, Class Innovative Insurer General Business (IIGB), Special Purpose Insurer, Collateralized Insurer, Class A and Class B.

2. LEGISLATIVE AUTHORITY

~~2.~~

2. The Authority is issuing the Code pursuant to the powers under Section 2BA of the Insurance Act 1978 ~~("the~~ (Act~~").~~). The Code establishes duties, requirements, and standards to be complied with by insurers registered under Section 4 of the Act, including the procedures and sound principles to be observed by such persons. Failure to comply with provisions set out in the Code will be a factor ~~taken into account by~~ the Authority considers in determining whether an insurer is meeting its obligation to conduct its business ~~in a sound~~soundly and ~~prudent manner.~~ prudently.

3. PROPORTIONALITY PRINCIPLE

3. The Authority appreciates that insurers have varying risk profiles arising from ~~the~~their business' nature, scale~~,~~ and complexity ~~of their business. Insurers~~and that those insurers with higher risk profiles would require more comprehensive

governance and risk management frameworks compared with those of a lower risk profile~~.~~ to conduct business soundly and prudently.

4. Accordingly, the Authority will assess the insurer's ~~compliance with~~ adherence to the Code ~~in a proportionate manner~~proportionately relative to its nature, scale~~,~~ and complexity. These elements will be considered collectively~~,~~ rather than individually (e.g~~.~~., an insurer could be relatively small in ~~relation to~~ scale~~,~~ but write extremely complex business and ~~would~~, therefore ~~require~~, be required to maintain a sophisticated risk management framework). In defining these elements:

a) "Nature" includes the relationship between the policyholder and the insurer or characteristics of the business written;

b) "Scale" includes size aspects such as volume of the business written or size of the balance sheet in conjunction with materiality considerations~~;~~ (e.g., an assessment of the impact of insurer's failure); and

c) "Complexity" includes items such as organisational structures and ease of information transmission, multifaceted business or business lines, and~~/or~~ skill level required to ~~properly~~ assess the risks of contractual provisions properly (e.g~~.~~., the existence of options ~~etc.,~~ in business products).

5. In assessing the existence of sound and prudent business conduct, the Authority will ~~have~~ regard ~~for~~both its prudential objectives and the appropriateness of the Code's provisions ~~of the Code in relation to their application to a particular insurer,~~ taking into account the ~~Authority's prudential objective underpinning the provision being effectively met.~~ insurer's nature, scale and complexity.

~~5.~~6. The proportionality principle ~~is applicable~~discussed above applies to all sections of the Code regardless of whether the principle is explicitly mentioned.

~~6.~~7. Limited purpose insurers, in particular, should be mindful of the proportionality principle in establishing a sound corporate governance, risk management~~,~~ and internal controls framework and complying with provisions of the Code, and should be guided by paragraph ~~5~~6 in documenting their ~~compliance with~~adherence to the Code.

4. CORPORATE GOVERNANCE

~~7.~~8. Every insurer must establish and maintain a sound corporate governance framework, which provides for appropriate oversight of the insurer's business and adequately recognises and protects the interests of policyholders. The framework should have regard for international best ~~practice~~practices on effective corporate governance. Corporate governance includes principles ~~on~~of corporate discipline, accountability, responsibility, compliance~~,~~ and oversight.

~~8.~~9. The ultimate responsibility for sound and prudent governance and oversight of the insurer rests with its ~~board~~Board of directors ~~("the board").~~ (Board). In this regard, the ~~board~~Board is responsible for ensuring corporate governance policies and practices are developed and applied in a prudent manner that promotes the Board's efficient, objective and independent judgment and decision-making~~ by the board. The board must also have adequate powers and resources to be able to discharge its duties fully and effectively. Delegation of authority to board committees, chief and senior executives, or external parties does not absolve the board from its ultimate responsibilities.~~ .

~~1.1. The Board~~

10. The Board must also have adequate powers and resources to discharge its duties fully and effectively. Adequate resources, such as sufficient funding, staff and facilities, should be allocated to the Board to enable the board members to carry out their respective roles and responsibilities efficiently and effectively. In addition, the Board should have access to services of external consultants or specialists where necessary or appropriate, subject to criteria (such as independence) and due procedures for appointment and dismissal of such consultants or specialists.

4.1. The Board

~~9.~~11. The Authority recognises that the ~~board~~Board plays a critical role in the successful operation of an insurer. The ~~board~~Board is chiefly responsible for setting corporate strategy, reviewing and monitoring managerial performance ~~at~~and determining an acceptable level of risk~~,~~. Therefore, the effectiveness of the ~~board of an insurer~~insurer's Board is a basic tenet of the Authority's risk-based supervisory approach. ~~Delegation~~Pragmatically, the Board will likely delegate tasks; however, the delegation of authority to board committees, chief and senior executives, employees or external parties does not absolve the ~~board~~Board from its ultimate responsibilities.

~~10.~~12. The ~~board~~Board must ensure that the business is effectively directed and managed~~,~~ and conducted with integrity, due care, and ~~the~~appropriate professional skills~~ that are appropriate.~~. Therefore, it is the Board's responsibility ~~of the board~~ to ensure that processes exist to assess and document the fitness and propriety of its members, controllers, and officers~~ are in place. The board must also take into account the fact that conflicts, or potential conflicts of interest, may on occasion preclude the involvement of specific individual members on particular issues or decisions.~~ .

13. ~~The board should~~To effectively discharge its duties, the Board must have an appropriate number and mix of directors to ensure that ~~there is an appropriate level of~~it has requisite experience, knowledge, skills, and expertise commensurate with the insurer's business's nature, scale, and complexity.

~~11.~~14. The Board must include an appropriate number of independent directors without executive responsibility for the business' management, subject to the power of the Authority to review and require the addition of independent directors as it may deem appropriate. The Authority is of the view that independent non-executive directors play a valuable role in bringing external views, experience and perspective to an insurer by providing a challenge to the executive directors and other management in the running of the insurer's business.

~~12. The individual members of the Board should:~~

15. The extent to which the Authority believes the directors of significant regulated subsidiaries need to be independent will be influenced by a number of factors, including the nature, size and complexity of the subsidiary's business, its business model and the degree of strategic and operational dependence between the subsidiary and the wider group. Other possible factors include the subsidiary's recovery and resolution plans and the need for the insurer's Board to have regard to the effect of its business decisions on existing, potential and future policyholders. The objective is to ensure that the governance of the subsidiary is effective and that its Board is capable of taking decisions in the interests of the safety and soundness of that subsidiary.

16. Individual members of the Board must:

- ~~➢~~a) act in good faith, honestly and reasonably;
- ~~➢~~b) exercise due care and diligence;
- ~~➢~~c) ~~ensure~~act in the best interests of the insurer and policyholders~~ are protected;~~ ;
- ~~➢~~d) exercise independent judgment and objectivity in ~~his/her~~their decision making~~,~~; and
- ~~➢~~e) ensure appropriate policies and procedures exist to ~~effectively~~ deal with conflicts of interest~~.~~ effectively.

17. The board members must review the board membership and its committees and the composition of the insurer's chief and senior executives no less frequently than every three years and upon a material change in the insurer's business activities or risk profile to ensure that:

a) the board members and the executives continue to be fit and proper; and

b) the board members and each of its committees, and the executive members individually and collectively, have the requisite knowledge, skills, expertise, diversity, tenure and resources given the nature, scale and complexity of the group's operations.

18. The Board must establish and maintain, annually, policies and procedures that address adequately actual or potential conflicts of interest. The Board must also take into account the fact that conflicts or potential conflicts of interest may, on occasion, preclude the involvement of specific individual members on particular issues or decisions.

~~4.1.~~4.2. Oversight Responsibilities of the Board

~~The~~

~~3.~~19. As the insurer's governing body, a key board responsibility is ~~responsible for~~ setting appropriate strategies and ~~the oversight of~~overseeing the implementation ~~of these strategies. The board is also responsible for~~. This includes ensuring that ~~senior management establishes a~~chief and senior executives establish a transparent organisational structure and framework to implement the insurer's strategic business objectives.

~~4.~~20. The ~~board~~Board is also responsible for providing ~~suitable prudential~~appropriate oversight of the insurer's governance, risk management and internal controls ~~framework~~frameworks, including any activities and functions ~~which~~that are delegated or outsourced. A list of oversight responsibilities that the ~~board should~~Board must consider when establishing and assessing the effectiveness of the corporate governance framework must include ~~ensuring~~ the existence of:

a) An operational framework, including risk management, internal audit and compliance, to ensure adequate oversight responsibilities ~~toward ensuring~~so that sound corporate governance is effective throughout the organisation;

b) Review and approval of significant policies and procedures, promoting effective corporate governance across the organisation, including those for risk management and internal controls, internal audit, compliance and actuarial functions;

c) Adequate independence for the risk management, internal audit, actuarial and compliance functions to assist in oversight responsibilities and ensure these functions have a direct communication channel to the board and relevant committees;

d) Processes to assess and document the fitness and propriety of board members, controllers, ~~officers~~the chief and senior executives, and third-party service providers, including insurance managers, auditors, actuaries, investment custodians/managers and the principal representative;

e) Board committees ~~are established~~(where applicable) to provide oversight ~~on~~and ensure fitness and propriety of both key operational areas, including underwriting, finance and investments and key functions including risk management, internal audit, actuarial and compliance;

f) Clear documentation and regular review of processes regarding the roles and responsibilities of the Board and its committees, the chief and senior executives, and other key employees delegated corporate governance responsibilities, including appropriate succession planning and segregation of the oversight function from management responsibilities;

g) Policies and procedures to ensure adequate board oversight of ~~senior management;~~ the chief and senior executives, including processes for engagement and dismissal of chief and senior executives;

h) Processes regarding the engagement and dismissal of the services of the chief and senior executives and third-party service providers~~.~~;

- ~~Policies and procedures to manage and mitigate conflicts of interest;~~

i) Processes to ~~confirm~~ensure that key employees are adequately skilled~~,~~ to execute and discharge their duty and are compensated in a manner that encourages sound risk management and compliance;

j) Clearly defined charters, roles and responsibilities ~~allocated to~~for the ~~board~~Board, committees, chief and senior executives, and other key employees;

- ~~Business and operational strategies, plans, budgets, and significant policies and procedures including those surrounding oversight;~~
- ~~Review and approval of significant policies and procedures (see section 5.2), promoting effective corporate governance across the organisation, including those for risk management and internal controls, internal audit, compliance, and actuarial functions;~~
- ~~Clear documentation and regular review of processes regarding the roles and responsibilities of the board, the chief and senior executives, and other key employees delegated corporate governance responsibilities (including appropriate segregation of the oversight function from management responsibilities);~~
- ~~Functions, such as risk management, internal audit, actuarial, and compliance to assist in oversight responsibilities and have direct communication to the board and relevant committees;~~

- ~~Processes to confirm that the board has appropriate access to accurate, relevant, and timely information to enable it to carry out its duties and functions, including the monitoring and review of the performance and risk exposures of the insurer and the performance of senior management. This should also include relevant information available to stakeholders participating in the corporate governance process;~~
- ~~Policies and procedures to ensure there is timely and accurate financial reporting process for both internal and external reporting.~~
- ~~Management of the market conduct of the insurer, including confirming that policies on independence, conflicts of interest and disclosures to external stakeholders are documented and reviewed;~~

~~b)~~k) Internal policies and procedures to address potential issues arising from the business conduct and unethical or fraudulent actions by board members, chief and senior executives, and employees;

l) Business and operational strategies, plans, budgets and significant policies and procedures, including those surrounding oversight;

m) Processes to confirm that the Board has appropriate access to accurate, relevant and timely information to enable it to carry out its duties and functions, including the monitoring and reviewing of the insurer's performance and risk exposures and the performance of the board committees and the chief and senior executives;

n) Policies and procedures to ensure there is a reliable, timely and accurate financial reporting process for both internal and external reporting purposes that is supported by clearly defined roles and responsibilities of the Board, chief and senior executives, and external service providers (e.g., external auditors);

~~c)~~o) Review procedures and processes regarding compliance with all relevant laws, regulations, codes of conduct, industry standards~~,~~ and guidance notes;

~~d)~~p) Appropriate information systems to support the organisation's business platform, including producing reliable information to the relevant business functions;

~~e)~~q) Maintenance of sufficient records as required by laws and regulations;

r) Policies and procedures to oversee the external audit process and safeguard and promote an effective relationship with the external auditor;

s) Management of the insurer's market conduct, including confirming that policies on independence, conflicts of interest and disclosures to external stakeholders are documented and reviewed;

t) Adoption of a risk culture that encourages behaviour and conduct that aligns its risk appetite, including the development of governance mechanisms for measuring and monitoring risk culture effectiveness, including but not limited to conducting risk culture assessments on a regular basis. The frequency of the assessments should be commensurate to the insurer's nature, scale and complexity;

u) Contingency plans, including those surrounding natural disasters, pandemic and information recovery, to ensure the insurer's continual operation ~~of the insurer; and~~ ;

v) Proper safeguard of organisational assets and sensitive information, including employee and policyholder information~~.~~ ;

w) Adoption and oversight of the remuneration policy's effective implementation ~~of a remuneration policy~~, which does not induce excessive or inappropriate risk-taking, is in line with the objectives, strategies, identified risk appetite and long-term interests of the insurer, and has proper regard to ~~the~~its interests ~~of its~~ stakeholders ~~(such~~. Such a remuneration policy, at a minimum, should cover those individuals who are board members ~~of~~, the ~~board,~~chief and senior ~~management~~executives, key persons in control functions and other employees whose actions may have a material impact on the insurer's risk exposure ~~of the insurer);;~~;

x) Systems and controls to ensure the promotion of appropriate, timely and effective communications with the Authority and relevant stakeholders on the insurer's operations~~.~~; and

y) Processes to adequately capture sustainability or Environmental, Social and Governance (ESG) risk in the business plans and strategies and when establishing risk appetites.

4.3. Responsibility of the Chief and Senior Executives

~~15. Supporting the board~~

21. The Board must ensure that great care is taken in selecting the chief and senior executives, given the important role these play. In addition to supporting the Board, the chief and senior executives are also responsible for the prudent administration of the insurer. Such responsibilities include:

a) Manage and execute the insurer's day-to-day operations ~~of the insurer~~, subject to the mandate established by the ~~board~~Board and the laws and regulations in the operating jurisdiction;

b) Assist the ~~board~~Board to develop and implement an appropriate control environment, including those around reporting and security systems;

c) Provide recommendations on strategic plans, objectives, key policies~~,~~ and procedures to the ~~board~~Board for evaluation and authorisation;

d) ~~Assist~~Provide the ~~board~~Board with ~~its oversight responsibilities by ensuring that the board has accurate~~adequate and timely information~~, allowing the~~

~~board~~ to ~~conduct robust~~enable it to carry out its duties and ~~candid discussions on operational~~functions, including the monitoring and review of the insurer's performance~~, strategy, and major policies,~~ and ~~to appraise~~risk exposures;

e) Maintain adequate and orderly records of the ~~performance of management;~~ insurer;

f) Support oversight of both internal functions ~~including~~(e.g., risk management, internal audit, compliance, actuarial~~,~~) and external third-party services;

g) Ensure that key functions assigned corporate governance responsibilities are supported with adequate resources to execute and discharge their duties, including independent functions having direct access to the board and relevant committees;~~ and~~

h) Ensure that external service providers, including the principal representative~~,~~ and insurance manager,~~ and approved auditors~~ have adequate resources and information to fulfil their role, including access to timely and accurate internal and outsourced records~~.~~; and

i) ~~Relationship between~~Ensure the ~~Insurer (including~~proper vetting of all staff.

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

~~**senior executives) and the Authority**~~

~~16.~~

4.4. Cooperation with Regulatory Authorities

22. The insurer, its ~~board,~~Board and chief and senior executives~~, should communicate~~ are expected to deal openly and in a spirit of cooperation with the Authority ~~in an open and cooperative manner.~~ and other relevant regulatory authorities.

23. The insurer should also ensure that any contracts or agreements it enters into do not intentionally or otherwise frustrate the Authority's ability to carry out its supervisory or regulatory obligations in relation to the insurer.

4.5. Insurance Managers

~~17.~~24. Where the insurer employs an insurance manager, the ~~board~~Board must ensure that the insurance manager's duties, responsibilities~~,~~ and authorities ~~of the insurance manager~~ are clearly set out in a management agreement. For ~~Class 1, Class 2, Class 3, Class A, Class B and Special Purpose~~limited purpose insurers, the management agreement may outsource the chief and senior executives' responsibilities to the insurance manager, and the ~~board~~Board shall ensure that the insurance manager is fit and proper to execute these functions. The ~~board~~Board shall also ensure that the provisions relating to the chief and senior executives throughout the Code would be applicable to the insurance manager~~,~~ and that the corporate governance structure continues to remain appropriate to provide oversight of these outsourced functions.

~~18.~~25. The ~~board~~Board should assess the fitness and propriety of the insurance manager, including ensuring that the insurance manager has a strong risk management and internal controls framework and is sufficiently knowledgeable about jurisdictional laws and regulations to ~~appropriately~~ discharge its responsibilities~~. The board~~ appropriately. In addition, the Board should have appropriate reporting and controls in place to provide effective oversight of the insurance manager's function.

~~19.~~26. In determining whether it is appropriate for the insurance manager to take on a senior executive role, regard must be given to whether the insurance manager has the capacity and resources to be effective and ensure that the insurer operates ~~in a prudent manner.~~ prudently.

~~20.~~27. The management agreement should include terms obliging full cooperation with the Authority. This includes producing documents relating to the insurer upon request or assisting the Authority with its on-site assessment of the ~~insurance manager's corporate governance and risk management framework.~~ insurer's outsourced functions to the insurance manager.

28. The Authority expects insurers to obtain confirmation from the insurance manager that they are in compliance with the requirements of the Insurance Manager's Code of Conduct.

4.6. Principal Representative

The Act requires every insurer to appoint a principal representative who must be resident in Bermuda. The appointed principal representative must be knowledgeable in insurance and Bermuda laws and regulations.

29.

~~21.~~30. The role of the approved principal representative is integral to the ~~Bermuda~~Authority's insurance supervisory and regulatory framework. While the ~~board~~Board and the chief and senior executives ~~of the insurer~~ have primary responsibility for the conduct and performance of the insurer, the approved principal representative acts in an "early warning" role and monitors the insurer's compliance with the Act on a continuous basis in accordance with Section 8A of the Act ~~on a continuous basis.~~ .

~~22. The Act requires every insurer to appoint a principal representative resident in Bermuda and to maintain a principal office in Bermuda. The appointed principal representative must be knowledgeable in insurance and Bermuda laws and regulations.~~

~~23.~~31. The approved principal representative would generally be a director or senior executive of the insurer ~~normally~~who must be resident in Bermuda~~,~~ or a Bermuda registered insurance management company~~.~~ maintaining a head office in Bermuda. Under Section 8A of the Act, the approved principal representative has the ~~legislated~~ duty to report certain events to the Authority.

~~24.~~32. The ~~insurer~~ Board and chief and senior executives must make arrangements to enable the approved principal representative to undertake ~~its~~their duties pursuant to the Act ~~in~~on an efficient and effective basis, including providing access to relevant records.

5. RISK MANAGEMENT FRAMEWORK

~~25.~~33. The ~~board~~Board and the chief and senior executives should~~, based on their judgment,~~ adopt an effective risk management and internal controls framework. The framework should have regard for international best ~~practice~~practices on risk management and internal controls. This includes ensuring the fitness and propriety of individuals responsible for the management and oversight of the framework.

~~26.~~34. Minimally, the risk management framework should:

- a) Be embedded in both the organisational structure and strategic oversight process, supported by appropriate controls, policies and procedures;
- b) Be supported by systems that appropriately capture underwriting~~, investment~~ and reserving, asset-liability matching, investments, liquidity and concentration risk management, reinsurance and other risk mitigation techniques, and operational ~~data~~risk management and provide relevant, accurate~~,~~ and timely information to the ~~board,~~ Board, chief and senior ~~management~~executives, and applicable business

functions;

- c) ~~Include techniques necessary to identify, measure, respond to, monitor, and report, on a continuous basis~~Allow for the identification, assessment, monitoring and reporting continuously and both on an individual and aggregate level, all material risks (e.g.~~.~~., financial and non-financial, on and off-balance sheet items, current and contingent exposures~~, etc.);~~). It should take into account the probability, potential impact and time horizons of risks;

- d) Include regular reviews of the operating environment to ensure material risks are continuously assessed and monitored, and appropriate actions are taken to manage exposures, identified issues and potential adverse developments;

- e) ~~Include~~Include a clearly defined and well-documented risk management strategy, which includes clearly defined objectives, risk appetite and tolerance levels, and appropriate delegation of oversight, reporting~~,~~ and operating responsibilities across all functions;

- f) Include reporting systems that are appropriate for the insurer, taking into consideration any outsourcing of responsibilities and safeguarding of assets;

- g) Include documentation of significant policies and procedures; and

- h) Include the review and approval of ~~these~~the significant policies and procedures by the ~~board~~Board and the chief and senior executives~~,~~ on a risk basis (see section 5.2).

~~27.~~35. A risk management framework requires each insurer to:

- a) Identify all material risks, including financial and non-financial, on and off-balance sheet items, and current~~ and~~, contingent and emerging exposures;

- b) Assess the potential impact of all material risks, including material risks affecting capital requirements and capital management, ~~shortterm~~short-term and long-term liquidity requirements, policyholder obligations, and operational strategies and objectives; ~~and~~

- c) Include early warnings or triggers that allows timely consideration of and adequate response to material risks;

- d) Develop policies and strategies to manage, mitigate~~,~~ and report all material risks effectively~~.~~; and

- e) Include a risk escalation process that would allow for reporting on risk issues within established reporting cycles and outside of them for matters of particular urgency.

~~28.~~36. Material risks to be addressed by the risk management framework include:

a) Insurance underwriting risk;

b) Investment, liquidity~~,~~ and concentration risk;

c) Market risk;

d) Credit risk;

e) Systems, cyber and operations risk (operational risk);

f) Group risk;

g) Strategic risk~~; Reputational~~ including emerging risk;

h) Systemic and reputational risk;

i) Legal~~/~~/litigation risk~~.~~; and

j) Sustainability risk.

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

5.1. Material Risks

5.1.1. Insurance Underwriting Risk

~~29.~~37. The insurance underwriting risk component of the insurer's risk management framework should include:

a) Underwriting strategies that are aligned with the overall organisational strategy, including alignment to the appropriate investment strategy, risk appetite and risk tolerance levels;

b) Underwriting policies that are sufficiently detailed to allow appropriate management of insurance exposures~~.~~;

c) Reserving techniques prescribed by jurisdictional laws and regulations and that adequately reflect the obligations to policyholders;

d) Management of policyholder claims, including those surrounding claims processing (reporting, validation of claims, timely settlement of payments, and capturing and storing claims data);

~~➢~~e) Methodologies to identify and evaluate risks arising from insurance policies and obligations, including the concentration of risks;

~~➢~~f) Measurement techniques to ensure compliance with risk appetite and tolerance levels and overall strategy;

~~➢~~g) Response techniques to ensure that unexpected exposures or deviations are mitigated, including those surrounding reserves, and that risk mitigation strategies are appropriately employed;

~~➢~~h) Systems to capture, maintain~~,~~ and analyse underwriting data and policies and procedures to ensure relevant and accurate data is used to price underwriting contracts, establish adequate reserves, appropriately settle claims, and establish strategies and objectives; and

~~➢~~i) The oversight of the Board and the chief and senior ~~executives' oversight~~executives, including employing techniques such as benchmarking and stress and scenario testing to review, approve~~,~~ and assess strategies and tolerance limits.

~~30.~~38. Underwriting risks may be mitigated by way of reinsurance or other risk transfer techniques~~.~~, which are appropriate to the nature, scale and complexity of the insurer's business. Risk mitigation techniques should be embedded into the insurer's underwriting and capital and liquidity management strategies. The insurer should develop processes and procedures to approve, evaluate~~,~~ and assess the effectiveness of the risk mitigation techniques employed in light of the insurer's risk appetite and tolerances, underwriting results~~,~~ and investment strategies. This includes identifying and monitoring potential material risks that may arise while executing the strategy. Controls of the risk mitigation techniques should be part of the insurer's risk management framework.

39. The insurer should demonstrate the economic impact of the risk mitigation techniques originating from the reinsurance contracts.

5.1.2. Investment, Liquidity~~,~~ and Concentration Risk

~~31.~~40. The investment risk component of the insurer's risk management framework should include:

~~➢~~a) Adopting the "prudent person" principle in relation to the investment of its assets;

~~➢~~b) Establishing strategies that align with the overall organisational strategy, especially those surrounding underwriting (including claims management) and capital requirements and capital adequacy;

~~➢~~c) Designing an investment policy, supporting established

~~strategies,~~methods that:

- ~~o~~ Governs the selection and composition of the investment portfolio, including detailed composition and allocation limits,

i. to allow appropriate execution of the investment policy and strategies and future assessment of compliance;

~~o~~ii. Governs the employment, valuation~~,~~ and effectiveness of ~~offbalance~~ off-balance-sheet hedging and derivative instruments;

~~o~~iii. Aligns with the insurer's overall risk tolerance limits and exposures;

iv. Mitigates aggregations of exposure across the insurer's portfolio, having particular regard to concentrations of low security assets or those whose security is difficult to assess reliably;

~~o~~v. Governs the selection and compensation of service providers, including those providing custodian and investment management services;

~~o~~vi. Governs the reporting and data management of the investment portfolio; and

~~o~~vii. Governs the oversight responsibilities of ~~board subcommittees~~the Board and its established committees, internal functions~~,~~ and third-party service providers;

d) Establishing techniques to analyse performance results and identify current ~~and~~ contingent and emerging exposures arising from the execution of a planned strategy or market development;

e) Establishing techniques to regularly assess and monitor the adequacy of capital to support the current strategy and the effectiveness of the management of assets and liabilities, including the effectiveness of hedging strategies, the development of contingent exposures~~,~~ and the impact of embedded options in long-term products (Long-term insurers~~); and~~).

- ~~Reporting of investment results to the board and the chief and senior executives on a timely basis for monitoring and for ensuring compliance with the established investment policy.~~

~~32.~~41. The "prudent person" principle requires that an individual entrusted with the management of a client's funds may only invest in instruments that any reasonable individual with objectives of capital preservation and return on investment would own. In relation to the insurer, this principle requires that the insurer, in determining the appropriate investment strategy and policy, may only assume investment risks that it can properly identify, measure, respond to, monitor, control~~,~~ and report while taking into consideration its capital requirements and adequacy, short-term and long-term liquidity requirements, and policyholder obligations. Further, the insurer must ensure that investment decisions have been executed in the best interest of its policyholders.

~~33.~~42. The liquidity risk component of the insurer's risk management framework should include:

a) A clearly defined liquidity risk appetite that is owned and approved by the Board;

b) A liquidity risk management strategy and documented liquidity risk policy(ies) and processes consistent with the stated liquidity risk appetite;

c) Adopting sound liquidity management practices covering short, medium~~,~~ and long-term objectives that support the overall organisational strategy, including investment, underwriting~~,~~ and risk mitigation techniques and claims strategies;

d) Adopting practices to manage short-term liquidity requirements, including access to sufficient funds to meet its day-to-day obligations; ~~and~~

e) Adopting benchmarking and stress and scenario testing to assist in the identification and determination of unexpected adverse developments in the medium and long-term~~.~~; and

f) Quantitative metrics and tools for measuring liquidity risk drivers and serving as early warning indicators.

~~34.~~43. The concentration risk component of the insurer's risk management framework should include developing strategies and policies to identify, measure, respond to, monitor, mitigate~~,~~ and report credit risk arising from an individual risk exposure or from a combination of risk exposures such as credit, market, underwriting~~,~~ and liquidity.

5.1.3. Market Risk

~~35.~~

44. The market risk component of the insurer's risk management framework should include:

a) An investment strategy that is aligned with the insurer's overall ~~shortterm~~short- term and long-term strategic objectives, including those surrounding the management of assets and liabilities;

b) Detailed policies on concentration and allocation limits, including counterparty, assets~~,~~ and sectors;

c) Identification and quantification techniques related to both on and ~~offbalance~~off-balance sheet exposures, including materiality, level~~,~~ and trend;

d) Performance measurement techniques, including benchmarking and stress and scenario testing to ensure compliance with the investment strategy;

e) Monitoring procedures to assess the insurer's tolerance to changes in the market; and

f) Mitigation techniques to ensure appropriate management of adverse developments.

5.1.4. Credit Risk

~~**36.**~~

45. The credit risk component of the insurer's risk management framework should include:

a) A credit risk policy that is aligned with the insurer's overall short-term and long-term strategic objectives;

b) Detailed exposure limits surrounding:

i. ~~o~~ Individual counterparty or concentration of counterparties; ~~o~~

ii. Intra-group transactions; ~~o~~

iii. Assets and ~~/~~ /or sectors; ~~o~~

iv. Off-balance sheet (e.g~~.~~., guarantees and letters of credit); and ~~o~~

v. Zones or territories;

c) Identification and quantification techniques related to both on and ~~offbalance~~off-balance sheet exposures, including materiality, level~~,~~ and trend;

d) Mitigation tools employed to manage adverse developments; and

e) Measurement techniques to assess the risk exposures and effectiveness of the mitigation tools used, including stress and scenario testing.

5.1.5. Systems and Operations Risk (Operational risk)

~~37.~~

46. The systems and operations risk (operational risk) component of the risk management framework should include:

a) Defining the systems and operations risk and establishing risk appetite and tolerance limits for each material risk area, which may include business process risk, business continuity risk, compliance risk, information systems risk, distribution channels risk, fraud risk, human resources risk~~,~~ and outsourcing risk;

b) Establishing a system to identify systems and operations exposures~~,~~ and to capture and track systems and operations near-miss data;

c) Establishing a system of effective internal reporting and operating controls (including ~~IT~~information technology infrastructure) to manage and appropriately mitigate the systems, cyber[1] and operations risk;

d) Establishing measurement techniques, such as stress and scenario testing, to assess the vulnerability of the insurer; and

e) Establishing frequent reviews to ensure mitigation strategies, such as an early warning system, ~~has~~have been effectively deployed and the systems and operations risk is within a tolerable limit.

5.1.6. Group Risk

~~38.~~

47. The group risk component of the insurer's risk management framework should include:

a) Identifying the group governance, structure and interrelationships, including ownership and management structure;

b) Identifying and measuring material intra-group transactions and exposures, including intra-group guarantees ~~and~~, contagion and concentration risks; and

c) Evaluating and executing strategies to mitigate group risk and ensure

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

that the insurer ~~is operating~~operates within its tolerance levels, as established by the ~~board~~Board and the chief and senior executives.

5.1.7. Strategic Risk (including emerging risks)

~~39.~~48. The strategic risk component of the insurer's risk management framework should include:

a) Developing processes and procedures to ensure the execution of the insurer's overall organisational strategy; and

b) Developing techniques to measure, monitor, mitigate and respond to exposures and risks arising while implementing strategies.

~~40.~~49. The insurer should pay particular attention to the resources that will be needed to accomplish the strategic objectives, including internal and external resources~~,~~ and tangible and intangible resources.

5.1.8. Systemic and Reputational Risk

~~41.~~

50. The reputational risk component of the insurer's risk management framework should include:

a) Procedures to identify and monitor potential systemic and reputational risks; and

b) Methodologies to understand the impact of other material risks ~~as they relate~~related to the insurer's reputation.

5.1.9. Legal~~ / ~~/Litigation Risk

~~42.~~

The insurer's risk management framework's legal~~ / ~~/litigation risk component ~~of the insurer's risk management framework~~ should include developing mitigation and monitoring techniques to

51. ensure compliance with internal policies and procedures, laws and regulations; safeguarding of policyholder and organisational assets; market discipline; and financial or public reporting. This includes:

a) Ensuring that the management of and access to records meet requirements established by laws and regulations;

b) Complying with internationally recognised contract certainty standards and codes; and

~~a)~~c) Maintaining appropriate documentation of all transactions such as documentation on investments, underwriting~~,~~ (including reinsurance and other risk mitigation techniques), claims management transactions~~,~~ and agreements (e.g~~.~~., custodian, investment management, letters of credit, debt agreements~~, etc.).~~).

5.1.10. Sustainability Risk

52. The sustainability risk component of the insurer's risk management framework should include a consideration of the sustainability risk in the development of policies and risk management strategies for all material risks.

53. The sustainability risk component for climate risk, particularly, should include:

a) Processes to integrate climate-related risks into the scope of the risk management system;

b) Consideration, in the risk management system, of the potential impact on business continuity due to climate-related events. The insurer should consider and document how climate-related risks could materialise within each area in the risk management policies. Insurers should develop tools to collect reliable quantitative and qualitative data on climate-related risks;

c) Consideration of climate-related risks by control functions. The control functions should identify, measure and report on the insurer's risks, assess the effectiveness of the insurer's risk management and internal controls, and determine whether the insurer's operations, results and climate risk exposures are consistent with the risk appetite as approved by the Board; and

d) Control functions that take proper consideration of climate-related risks and have the appropriate resources and expertise to support the following:

i. The risk management function should monitor and provide necessary resources to the business units to ensure proper identification, assessment and management of climate-related risks;

ii. The risk management function should use a range of quantitative and qualitative methods and metrics to monitor progress on climate-related risks against the insurer's overall business strategy and risk appetite;

iii. The compliance function should identify the compliance risks the insurer can face and the steps being taken to address them in light of climate change. This function should also ensure that internal policies align with stated ESG commitments;

iv. The actuarial function should take into account climate-related risks; and

v. The internal audit function should review the risk management process to ensure it is adequate and effective. As part of the review, it should assess whether all material risks, including climate risk that may have an impact on the insurer's resilience, are being considered and, where relevant, mitigated.

5.2 Policies and Procedures

~~43.~~54. The insurer should clearly document significant policies and procedures for all its functions, including ~~its~~ risk management and internal controls frameworks. ~~The~~In addition, the operating and oversight responsibilities should be clearly defined ~~and the~~. The reporting of material deficiencies and fraud activities should be transparent, devoid of conflicts of interest, with proper attention ~~be~~being given to these reports and that persons making these reports are treated fairly and equitably.

~~44.~~55. ~~Significant~~The chief and senior executives should review significant policies and procedures ~~should be reviewed~~ at least annually to ensure that they continue to support the overall operational strategy. Where appropriate, an insurer may take a risk-based approach to its review spanning over several annual periods.

~~45.~~56. The design and effectiveness of the risk management and internal controls framework should be regularly assessed and reported to the ~~board~~Board and the chief and senior executives to ensure amendments are incorporated as appropriate. Internal controls should facilitate effective and efficient operations and should address the organisational structure, in particular:

a) Duties and responsibilities;

b) Decision-making authority and procedures;

c) Any outsourcing;

d) Segregation of duties; and

e) Internal monitoring and reporting.

~~46.~~57. Further, the insurer should establish sound accounting and financial reporting procedures and practices. The accounting and supporting records should provide a timely, complete~~,~~ and accurate representation of the insurer's financial position.

5.3 Business Continuity and Disaster Recovery

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

6. GOVERNANCE MECHANISM

~~47.~~

59. Conducting business ~~in a prudent manner~~prudently should also include the insurer establishing sound governance mechanisms. These should be embedded in the corporate governance framework, and its effectiveness must be assessed frequently. Functions assisting the ~~board~~Board with its oversight responsibilities may be internally developed~~,~~ or outsourced to third-party service providers, as appropriate, given the insurer's risk profile.

6.1. Risk Management Function

~~48.~~60. The insurer must establish a function to assist it with the oversight responsibility of the organisation's risk management framework. Depending on its risk profile, the function may be headed by a ~~Chief Risk Officer~~chief risk officer or the responsibilities assigned to or shared amongst the insurer's operational unit leaders~~ at the insurer.~~. Regardless, there should be a mechanism to allow direct reporting to the ~~board~~Board or its established committees~~. The board should~~ and ensure ~~the fitness and propriety of the individual(s) entrusted with the responsibility.~~ independence necessary to be effective..

~~49.~~61. The risk management function should include:

- a) Clearly defined and documented roles and responsibilities that are reviewed and approved by the ~~board~~Board on a frequent basis;
- b) A sound and effective risk management framework, including developing (with the support of operational unit leaders) policies, procedures~~,~~ and internal controls promoting the identification, assessment, monitoring~~,~~ and reporting of material risks in a timely manner;
- c) ~~Assessing the~~Establishing key policies (e.g., risk policy, cybersecurity policy, policies required under Bermuda's anti-money laundering/anti-terrorist financing legislation) and assessing effectiveness ~~of policies,~~

~~procedures, and controls~~ and compliance with established ~~policies (e.g. investment, underwriting, etc.), risk~~ benchmarks, such as risk appetite, risk tolerance limits~~,~~ and strategies;

d) Employing measurement techniques such as benchmarking or stress and scenario testing; and

e) Reviewing ~~on a regular basis~~regularly the risk management techniques employed in light of changing operational, regulatory~~,~~ and market developments to ensure continued effectiveness and adoption of ~~international~~the applicable best ~~practice.~~ practices.

~~This function may be delegated to third-party service providers.~~

62. Risk management, risk identification, risk assessment, risk monitoring and risk reporting are critical for an effective risk management framework. As such, the insurer must implement these in an effective manner for the benefit of the insurer's policyholders and stakeholders and to support its business objectives.

6.2. Internal Controls

~~50.~~

63. The ~~board~~Board and the chief and senior executives should review and assess the effectiveness of the internal reporting and operating controls. Any material deficiencies should be documented, and resolution measures should be implemented in a timely manner. The ~~board~~Board and the chief and senior ~~management~~executives should ensure that policies and procedures requiring direct reporting of internal control weaknesses to them are developed.

6.3. Internal Audit Function

~~51.~~

64. Insurers must implement the “three lines of defence” with the first line being risk-taking and the second being risk-control and compliance. The third critical line is the internal audit. The insurer must have an internal audit function. The insurer’s internal audit function should:

a) Be segregated and staffed by persons independent of operational functions, including risk management, compliance, underwriting, actuarial, claims, operations and finance;

b) Have clearly defined and documented charters, roles and responsibilities that are reviewed and approved by the ~~board on a regular basis~~Board regularly and that demonstrate the independence and separation of the function~~;~~;

c) Document material policies and procedures to be reviewed and approved by the ~~board~~Board (see section 5.2);

d) Prepare an internal audit plan to ensure assessment of governance and controls of key risk areas at an appropriate interval, taking into consideration the insurer’s nature, scale and complexity. The internal audit plan should be reviewed at least annually and approved by the Board;

e) Have unrestricted access to all areas of the organisation, including access to any records held by third-party service providers;

f) Examine operational practices to ensure the adequacy and effectiveness of governance, risk management, policies, procedures~~,~~ and controls;

g) Report governance and control deficiencies directly to the Board or a committee appointed by the Board;

h) Establish a robust mechanism to monitor deficiencies until remediation efforts are completed and report remedial progress to the Board at regular intervals taking into consideration the level of risks involved;

i) Have appropriate authority within the organisation to ensure management addresses any internal audit findings and recommendations with respect to the adequacy and effectiveness of governance, risk management, policies, procedures and controls;

j) Have sufficient resources and fit and proper staff to carry out duties and responsibilities;

k) Have sufficient knowledge and experience to employ methodologies designed to assist the insurer in identifying key risks; and ~~➢ Assist the board to identify areas for improvement.~~

~~This function may be delegated to third-party service providers.~~

l) Assist the Board in identifying areas for improvement.

~~6.4.~~ 6.4. Compliance Function

~~52.~~65. Regulatory and other requirements (such as internal policies and procedures) are imposed to protect the insurer itself, its policyholders and stakeholders more widely. Therefore, the establishment of a function focused on how well the insurer adheres to the various requirements in which it is legally bound is very important. The insurer must ~~develop a~~establish an effective compliance function to ~~assist it to~~ monitor and evaluate its compliance with jurisdictional laws and regulations~~,~~ and related internal ~~controls,~~ policies~~,~~ and procedures. The compliance function should also promote and sustain a corporate culture of compliance and integrity. ~~This function may be delegated to third-party service providers.~~

~~53.~~66. The compliance function should ~~include:~~ have:

a) Policies, procedures and processes documenting the compliance with the risk management framework, ~~including those related to~~ legal and ethical conduct ~~and compliance with~~ , applicable laws, rules and standards ~~including contract certainty standards;~~ ;

b) System of compliance monitoring ~~and~~, testing and reporting, including a plan to address any deficiencies or non-compliance that may be identified;

c) Sufficient resources and fit and proper staff to carry out duties and responsibilities; and

d) Training ~~program~~programmes for staff on compliance ~~risk management framework and provide~~issues and a mechanism for staff to report confidentially concerns regarding compliance deficiencies and breaches.

6.5. Actuarial Function

~~54.~~67. The insurer must establish an effective actuarial function based on the nature, scale, complexity~~,~~ and profile of risks to which the insurer is exposed. The function may be outsourced to third-party service providers; however, it may be performed by the approved loss reserve specialist (general business insurers) or approved actuary (long-term insurers) in addition to their respective responsibilities to the Authority.

~~55.~~68. Activities of the actuarial function include:

a) Performing or overseeing the estimation of policyholder obligations, including assessing the adequacy of methodologies and assumptions and the quality of underlying data;

b) Assisting in the execution of the risk management framework, particularly as it relates to modelling techniques used to estimate loss reserves, policyholder obligations, potential exposures~~,~~ and capital requirements;

c) Assisting with the underwriting process, including those surrounding pricing and writing of underwriting contracts and risk transfer mechanisms (e.g.~~.~~, ceding reinsurance, derivative instruments, catastrophe bonds~~, etc.);~~);

d) Performing analysis comparing the estimated policyholder obligations against actual policyholder obligations paid; and

e) Reporting to the ~~board~~Board and the chief and senior executives on the dependability and sufficiency of the estimates~~;~~ .

~~This function may be delegated to third-party service providers.~~

~~56.~~69. The insurer should ensure the fitness and propriety of the individuals performing the actuarial function. This includes retaining individuals with the appropriate qualification in actuarial science or mathematics~~,~~ and knowledge and experience in the industry.

6.6. Self-Assessment

~~57.~~70. The insurer must have a comprehensive and integrated, forward-looking view of all material reasonably foreseeable risks that arise from its business model and interaction with the wider environment. This allows a more informed assessment of the appropriateness of its business strategy and enhances its ability to position itself for future success and sustainability. Therefore, the insurer must develop policies, processes, and procedures to assess all its material reasonably foreseeable risks over its planning horizon and self-determine ~~the~~its capital ~~requirement it would need to support its operations,~~(both quality and quantity), liquidity and resourcing needs to inform its business strategy. The self-assessment must be performed at least annually~~.~~ and reported to the Authority. The insurer should be guided by the proportionality principle in establishing the self-assessment framework. Minimally, the assessment should:

a) ~~Be~~be an integral part of the ~~insurer's~~group's risk management framework~~;~~ , forward-looking, reflect the insurer's risk tolerance and overall business strategy, link the risk tolerance to exposure limits and set forth the process through which breaches of exposure limits are addressed;

b) Be clearly documented, reviewed~~,~~ and evaluated regularly by the ~~board~~Board and the chief and senior executives to ensure continual advancement in light of changes in the strategic direction~~, risk management framework,~~ and market developments;~~ and~~

c) Cover both all material reasonably foreseeable and emerging risks and a forward-looking time horizon deemed appropriate by the Board, having regard for the dynamics of the insurance business industry and wider relevant influences; and

~~a)~~d) Ensure an appropriate oversight process whereby material deficiencies are reported on a timely basis and suitable actions are taken.

~~5.~~71. The insurer ~~should~~must ensure the fitness and propriety of key individuals overseeing and performing the assessment; this includes third-party service providers, if applicable, assisting with the assessment ~~procedures.~~ process.

~~Upon implementation of the Commercial Insurer Solvency Assessment framework, insurers must follow standards, guidance,~~

~~58.~~

7. OUTSOURCING

~~and requirements established in place of the self-assessment noted above.~~

72. While the insurer may outsource certain important roles (such as asset management, custodial services, cybersecurity, compliance and internal audit) to third parties or affiliates, such action does not remove the responsibility from the insurer to ensure that all requirements of the Act and related legislation are complied with, and this Code adhered to as if these roles were performed in-house.

~~**2. OUTSOURCING**~~

~~6.~~73. Where the insurer outsources ~~functions~~roles either externally to third parties or internally to other affiliated entities, the ~~board should~~Board must ensure that there is oversight and clear accountability for all outsourced ~~functions~~roles as if these functions were performed internally and subject to the insurer's own standards on governance and internal controls. The ~~board~~Board should also ensure that the service agreement includes terms on compliance with jurisdictional laws and regulations~~,~~. Agreements should not prohibit cooperation with the Authority~~,~~ and the Authority's access to data and records in a timely manner.

~~7.~~74. Where the ~~board~~Board has outsourced a ~~function~~role and/or is considering ~~outsourcing~~ a ~~function~~role, the ~~board~~Board must assess the impact or potential impact on the insurer. The ~~board should~~Board must not outsource a ~~function which may~~role that is reasonably expected to adversely affect the insurer's ability to operate ~~in a prudent manner.~~ prudently. These considerations include~~:~~ where outsourcing is reasonably expected to:

a) ~~Where outsourcing may adversely~~Adversely affect the insurer's governance and risk management structures;

b) ~~Where outsourcing has increased~~Unduly increase operational risk;

c) ~~Where outsourcing may affect~~Affect the Authority's ability to effectively supervise and regulate the insurer; and

d) ~~Where outsourcing adversely affects~~ Adversely affect the policyholder's interests.

75. The Authority expects to see clear evidence of a risk evaluation process having been undertaken by the insurer before entering into an outsourcing arrangement, clearly articulating the rationale as to why the outsourcing option was/is being pursued. This evaluation will need to set out the benefits of the outsourcing and how any risks arising from it are to be mitigated/managed.

76. An insurer considering an outsourcing arrangement should undertake due diligence on the service provider under consideration. This due diligence should include, but not be limited to, evaluating that the service provider:

a) Has the quantity and quality of staff with the requisite skills and experience to effectively deliver the outsourced activities, as well as having any authorisations required by law to perform the outsourced activity reliably and professionally throughout the life of the outsourcing;

b) Has the relevant technology, cyber security, operational infrastructure and financial capacity to undertake the outsourcing arrangement effectively and efficiently;

c) Has appropriate information and data security to protect any and all confidential information relating to the insurer and its clients;

d) Has an appropriate risk management framework and controls to ensure that the carrying out of the outsourced activity is properly supervised and any risks associated with the outsourcing are effectively managed;

e) Has appropriate business continuity plans and can demonstrate to the insurer a successful track record of these plans and their testing;

f) Will provide access to all documents and data relating to the outsourced activity to the insurer, its auditors and its competent authority, as well as access to the business premises of the outsourcing service provider.

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

77. The Authority expects the insurers to be able to demonstrate that it is monitoring all its outsourcing arrangements through the use of management information,

calls, meetings and visits to the service provider. The level of monitoring for each outsourcing activity should be proportionate to the risks to the insurer from that outsourcing arrangement.

8. MARKET DISCIPLINE AND DISCLOSURE

(Applicable to Insurers Writing Domestic Retail Business)

8.1 Retail Business

62. If the insurer conducts retail business, it must establish and maintain properly documented systems, controls, and procedures to enable on-going monitoring of compliance with the market conduct requirements as outlined in this section. A policy statement on the treatment of policyholders should be developed and approved by the board. This policy statement should be communicated to all relevant staff and appropriate training should be provided to ensure compliance by personnel and any authorised sales representatives.

63. Where the insurer grants terms of business to an authorised intermediary (see paragraph 72) in respect of retail business, the insurer must:

- Ensure that the terms of business agreement have been completed and signed by the authorised intermediary to require the authorised intermediary to warrant that the agreement does not breach any legal obligations, and that the authorised intermediary will clearly explain the risks inherent in the product to policyholders or prospective policyholders; and
- Take measures to monitor the performance of the authorised intermediary, including the reporting and handling of complaints made against the authorised intermediary with respect to advice or sales made by the authorised intermediary on behalf of the insurer.

8.2 Responsibility to Policyholders

64. The insurer must ensure that its business is conducted in such a way as to treat its policyholders fairly, both before the inception of the contract and through to the point at which all obligations under a contract have been satisfied., Insurers should establish and implement policies and procedures to ensure the fair treatment of policyholders.

8.3 Integrity and Fair Dealing

65. The insurer should observe high standards of integrity and fair dealing in the conduct of its business. The insurer must avoid misleading and deceptive acts or representations. It should not seek to exclude or restrict any duty or liability to a policyholder unless the liability is clearly excluded from the policy. Additionally, it should not seek to rely unreasonably on any provision of a contract seeking to exclude or restrict any such duty or liability.

66. The insurer should either avoid any conflict of interest arising or, where a conflict arises, should ensure fair treatment to affected policyholders through disclosure, internal rules on confidentiality, declining to act, or otherwise, as appropriate. The insurer must not unfairly place its interests above those of its policyholders.

8.4 Skill, Care and Diligence

67. The insurer should act with skill, care, and diligence in the conduct of its business and in its dealings with customers[2]. Where the insurer is responsible for providing advice or exercising discretion for, or in relation to customers, it

must be able to demonstrate that the advice is appropriate for the policyholder. The insurer should seek from the customer such information about their circumstances and objectives as may be appropriate with regard to the services requested. Any information that a customer can reasonably expect to be kept confidential should be treated as such.

68. The insurer should transact its business (including the establishment, maintenance, transfer, or closure of business relationships with its policyholders) in an expeditious manner.

[2] Customers would include policyholders, potential applicants for insurance and persons making general enquiries.

8.5 Disclosure and Information

69. The insurer should take reasonable steps to give policyholders, in a comprehensible and timely way, information to assist their decision making while avoiding misleading or deceptive representations or practices. The insurer should communicate in writing:

- Relevant and meaningful information about the insurer and the product in a timely and comprehensive manner before entering into a contract;
- Benefits and risks to the policyholder in a fair and balanced way;
- Obligations of the parties involved, including those for insurers, intermediaries, policyholders in a clear and understandable way, for the duration of the contract;
- Claims and complaints handling and other contractual arrangements; and
- Duty of policyholders to disclose material information.

70. The insurer should be prepared to provide a policyholder with a full and fair account of the fulfilment of its responsibilities. The frequency with which additional information is to be disclosed during the course of the contract depends on the type of contractual arrangement. Reasonable care should be taken to ensure that the information disclosed is accurate, not misleading, comprehensible, and available in writing or through appropriate electronic means.

71. Insurers should have controls in place, as well as, policies and procedures for the protection and handling of confidential information on policyholders.

8.6 Policyholder Assets

72. Where the insurer has control of, or is otherwise responsible for, assets belonging to a policyholder, the insurer must arrange appropriate protection. Protection can be by way of segregation and identification of those assets or otherwise, in accordance with the responsibility it has accepted. Such protection must be in compliance with the terms and conditions established in the contractual agreement and authorised by the policyholder.

8.7 Authorised Intermediaries

73. The insurer is required to take responsibility for the appointment and activities of authorised intermediaries. In this respect, the insurer must, in relation to its authorised intermediaries who are carrying on business in Bermuda:

- Ensure they are registered with the Authority; and

- Ensure that they provide policyholders and prospective policyholders with the name of the insurer represented by the authorised intermediary and the types of product(s) the authorised intermediary is authorised to sell and/or provide advice on, on behalf of the insurer.Have a written contract in place with each intermediary setting out the products, services, commissions, premium payment and responsibilities of each party, particularly in relation to policyholder communication and dealings with the insurer.

8.8 Advertisements

74. The insurer should promote products and services in a manner that is clear, fair and not misleading. The insurer should ensure that its advertisements:

- Do not contain a statement, promise or forecast that is untrue or misleading;
- Are not designed in such a way as to distort or conceal any relevant subject material;
- Are clearly recognisable as advertisements;
- Do not contain a statement relating to taxation benefits unless it contains appropriate qualifications to show what it means in practice and to whom such benefits apply;
- Include a statement of the related risks; and
- Do not contain a statement relating to past performance unless:
  - The basis on which such performance is measured is clearly stated and the presentation is fair;
  - It is accompanied by a warning that past performance is not necessarily a guide to future performance; and
  - The past performance is relevant to the investment or the services offered by the investment provider.

75. If the insurer undertakes long-term business, the insurer in its promotional material should endeavour to impress upon policyholders that the policy is intended to be a long-term contract and that surrender values, especially in early years, can be less than the total amount of premiums paid.

8.9 Policy Servicing

76. Insurers should:

- service policies appropriately through to the point at which all obligations under the policy have been satisfied;
- ensure timely and effective disclosure to the policyholder of information on any contractual changes during the life of the contract; and
- disclose to the policyholder further relevant information depending on the type of insurance product.

77. Insurers should have policies and processes in place to handle claims in a timely and fair manner.

8.10 Complaints Procedure

78. The insurer must have procedures in place to promptly deal with policyholder complaints effectively and fairly through a fair and equitable process. These procedures should contain the process of complaints handling, the necessary forms and documentation required and be accessible to policyholders and other third parties. A documented record of the details of the complaint, the insurer's response and any action taken as a result, must also be made and retained.

9. IMPLEMENTATION

~~79.~~

The Code will come into immediate effect once published in ~~July 2015.~~

64. XXX 2022.