



BERMUDA MONETARY AUTHORITY

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THE INSURANCE MANAGER CODE OF CONDUCT

AUGUST 2016

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INTRODUCTION

This document outlines the Bermuda Monetary Authority's (the Authority) Insurance Manager Code of Conduct (the Code).

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 Insurance Managers (IM) registered under Section 10 of the Insurance Act 1978, including the procedures and 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 in determining whether an IM is conducting its business in a sound and prudent manner, as required by paragraph 4 of the minimum criteria. IM's are expected to comply with both the letter and spirit of the Code.

The Code comes into immediate effect; however the Authority will provide a transition period until 31st December 2016 for insurance managers to implement the Code.

PROPORTIONALITY PRINCIPLE

1. The Authority appreciates that IMs have varying risk profiles depending on their operating model, services offered and range of entities managed arising from the nature, scale, and complexity of their business, and that those IMs with higher risk profiles require a more comprehensive governance and risk management framework to ensure they conduct business in a sound and prudent manner.

2. Accordingly, the Authority will assess the IM's compliance with the Code in a proportionate manner relative to their nature, scale, and complexity. These factors will be considered collectively, rather than individually (e.g. an IM could be relatively small in scale, but carry out extremely complex business and therefore would still be required to maintain an appropriate risk management framework).

- (a) Nature includes the relationship between the client entity and the IM or the characteristics of the service provided (e.g. full service offering for a Commercial Insurer vs only payroll and HR services, etc.);
 - (b) Scale includes size and volume of the business conducted in conjunction with materiality considerations; and,
 - (c) Complexity includes organisational structures, the types of insurers that an IM manages and ease of information transmission between the IM, its clients and the Authority.
3. In assessing whether the IM is conducting its business in a sound and prudent manner the Authority will have regard for the application of provisions of the Code to a particular IM taking into account the IM's nature, scale, and complexity and the Authority's prudential objectives.
4. The proportionality principle, discussed above, is applicable to all sections of the Code regardless of whether the principle is explicitly mentioned.

CONTROLLERS AND OFFICERS, TO BE FIT AND PROPER PERSONS

- 5. Every person who is or is to be a controller or officer of an IM must meet the fit and proper person criteria as set out in the Act. Controllers and officers must have the relevant knowledge and experience, sufficient skills and capability, and soundness of judgment to undertake and fulfil their particular duties and responsibilities. The controllers and officers must also be of high integrity. In considering whether to appoint a person to an officer or director role, an IM must take into consideration the fitness of that person to the specific duties that they are being appointed to perform. In that regard the IM should take into consideration the persons qualifications and references, their previous experience with similar responsibilities, and their record of performance in that role.
- 6. Controllers and officers must carry out their duties in a prudent manner, avoiding actions, or a failure to act, or apathy toward a duty that would cause damage to the IM's

reputation, damage to their clients or threaten the public interest. The IM must ensure that there are effective controller and officer controls in place to mitigate against reputational damage and against threats to the public interest.

7. The IM must notify the Authority immediately if it becomes aware of any material concerns regarding the appropriateness or professionalism of a controller or officer. Additionally, the IM must further advise the Authority of their remediation actions planned or taken following an issue notified involving a controller or officer.

CORPORATE GOVERNANCE

8. The IM must implement a documented corporate governance framework which includes policies and processes, and controls which the Authority considers appropriate given the nature, scale, complexity and risk profile of the IM.
9. An IM must appoint qualified individuals to its board of directors who have the appropriate experience and expertise to be able to provide informed and independent judgment and decision making to the overall governance of the IM.
10. The IM's board should include such number (if any) of non-executive directors, as the Authority considers appropriate. The number will depend on the nature, size, complexity and risk profile of the IM.
11. The Authority is of the view that non-executive directors can play a valuable role in bringing external views, experience and perspective to an IM by providing challenge to the executive directors and other management to the running of the business operations of the IM. The Authority also views non-executive directors as adding particular value for large and more complex IM governance frameworks.
12. Where IMs are part of the same groups as the producing brokers, insurers or reinsurance brokers, appropriate procedures should be in place to ensure that any conflicts of interest

are appropriately managed. Similarly, where an IM represents competing insurers and/or insurers that are party to the same transaction, the IM must ensure that the conflict of interest is appropriately managed, including establishing and implementing policies and procedures related to appropriate disclosure and segregation of duties.

13. The Board of Directors of IMs should clearly document their obligations in respect of the entities that they are managing. They must ensure that management agreements are in place reflecting the segregation of responsibilities of the IM and those of the managed client's management and governance structures. These agreements must also clearly document the obligations of all parties.

BUSINESS TO BE CONDUCTED IN A PRUDENT MANNER

14. It is the overall responsibility of the board and senior management of an IM to ensure that their business is conducted in a sound and prudent manner. Board members and senior management must identify and document the fundamental risks in their business and establish an appropriate operational and control environment. More specifically, the IM's board must be able to demonstrate that their controls and operational model is appropriate for the nature, scale and complexity of its business including the following:
 - (a) Governance and management structures and operation (such as the composition of the board of directors and the board's overall control and direction of the institution);
 - (b) General strategy, objectives, and planning arrangements;
 - (c) Controls, policies and procedures;
 - (d) Anti-money laundering/anti-terrorist financing policies and procedures;
 - (e) pre-vetting processes and policies designed to address the risks inherent in introducing new or changes to existing entities and individuals to Bermuda's corporate environment
 - (f) Accounting policies, receivable collections and a bad debt policy

(g) Staff selection, staff vetting and training to ensure that the IM has adequate resources, experienced and skilled staff in order to carry out the operations of the IM in a prudent manner.

15. The IM must have appropriate procedures to prevent and detect fraud and criminal activity.
16. The IM must have appropriate policies and procedures to ensure compliance with money laundering and anti-terrorist financing, as well as all legal and regulatory requirements.
17. The IM must comply with applicable laws both locally and in foreign jurisdictions in which the IM or its subsidiaries, or an affiliate where it exerts control operate, and the IM must have appropriate policies and procedures to enable it to comply with international sanctions in force in Bermuda.
18. The IM should ensure filings and regulatory applications are timely and completed accurately. The IM is also expected to be proactive and use best endeavors in its dealings with clients, counterparties, regulators and government.
19. There are a significant number of financial risks that potentially could impact an IM, many of which are relatively remote. Rather than requiring IMs to hold capital against all these risks, the Act requires IMs to hold adequate professional liability insurance cover. An IM must maintain insurance cover that is appropriate to the nature and scale of its operations. At minimum IMs must have professional indemnity insurance.
20. In judging the type and level of insurance protection to purchase, the IM must consider the nature, scale and complexity of the insurance cover required and the ability of the insurance to provide adequate protection for legal actions or damages to ensure the IM can continue to trade in the event of a law suit or legal action for damages. The IM's

board and management must assess the level of risk that an IM faces and purchase insurance coverage appropriate for their business.

INTERNAL MANAGEMENT CONTROLS

21. The Authority is of the view that an effective risk management function, compliance function, an internal audit function and internal controls, are essential components required to support an effective IM corporate governance framework. IMs are required to have such functions.
22. The IM's internal control policies and procedures should be separate and segregated from the controls of the entities they manage. In some cases the same controls may fulfil the internal control requirements for both. Where this is the case there must be transparency in the documentation of the controls in the overall governance and risk management of the IM and the managed entities.
23. A IMs compliance function will oversee its operations, including its compliance with laws, regulations, and outsourced functions.
24. An IM must deal effectively and in a timely manner with all client or counterparty requests or complaints. This includes situations where the IM is required to get input from those persons to whom the IM is responsible and accountable or situations where consents or approvals may be necessary.
25. An IM must have an effective operating model, management structure and systems that are commensurate with the nature, scale and complexity of the business it undertakes. It must also have appropriate management resources to review and monitor, and where relevant control, the affairs of the managed entities, including ensuring compliance with all legal obligations and standards under the Code.
26. The board of directors of an IM are responsible for the proper exercise of their powers. They may delegate the administration of the IM's duties to directors, officers,

employees or committees as they deem appropriate. Where this is the case all decisions should align with the authorisation and signing powers of the board as outlined in their policies and procedures.

27. Particular care should be taken when delegating duties and/or granting delegated powers and the IM should have regard to its client's legal structures, mandates, services agreement, applicable laws and any internal procedures as appropriate.

ADEQUATE ACCOUNTING, RECORD-KEEPING SYSTEMS AND REPORTING REQUIREMENTS

28. IMs must keep and preserve appropriate records in Bermuda which will at least include such records that are appropriate for their functions, client records, insurance policies and financial records, as required by any applicable laws. IMs must have a record keeping system that will enable the provision of relevant information to persons entitled to receive the information on a timely basis. This should include the identity of shareholders, directors, and officers. In addition, records of account must be maintained in line with the laws applicable to each client's structure as well as for the IM itself in accordance with the laws applicable to it.
29. An IM must have available suitable numbers of staff who are appropriately trained and competent to discharge its duties effectively. It should ensure that the responsibilities and authority of each staff member are clear and appropriate for his or her qualifications and experience, and that staff receive the necessary training appropriate for their roles.
30. An IM must ensure that it has in place systems, controls, policies and procedures, to ensure employees perform their duties in a diligent and proper manner. It is important that staff understand and comply with the established systems, policies and procedures including those dealing with new business on-boarding, financial transactions, and staff training. The IM must also have in place a documented business continuity and disaster recovery plan which addresses all of its key business processes and critical functions.

31. IMs must have a documented and transparent fee structure with each client in advance of accepting and contracting for an insurance management appointment. This also applies to any subsequent changes to fees under such an agreement and includes ensuring that adequate notice is given before any material change in the fee structure is introduced.

32. To ensure clients are dealt with fairly and are kept informed, IMs should discuss and agree terms of business with each prospective client. These terms should be provided in writing to the client in the form of an agreement, including evidence of the client's agreement to those terms. That agreement should include, but not be limited to, the following provisions:

- (a) a clear description of the services to be provided, fees to be charged and the manner or payment arrangement by which fees are expected to be deducted or paid;
- (b) a description of the manner how, and the persons who can make requests for actions and or give directions under the agreement;
- (c) the terms under which the agreement can be terminated and the consequences of termination; and
- (d) a statement that the IM is licensed by the Authority including the type of license issued.

33. An IM should ensure that client complaints are properly handled and dealt with in a timely manner. A written record which should include the details of the complaint, the IM's response and any action taken as a result should be maintained in the IMs office.

34. An IM's records and systems must enable its business to be prudently managed and the IM to be able to comply with the duties imposed on it by the Act. The records and systems must be such that the IM is able to fulfil the various other elements of the prudent conduct criterion and to assist in the identification of threats to the public interest. The systems should also be sufficient to enable the IM to comply with all notification and reporting requirements under the Act. Delays in providing information

or inaccuracies in the information provided may be interpreted as a failure to comply or to fulfil the duty imposed under the Act. The systems for client records must be sufficient to enable the IM to maintain the books and records of clients in the manner required under the Act or other relevant legislation.

35. The nature and scope of the particular records and systems which an IM maintains must be commensurate with its needs and particular circumstances, so that its business can be conducted without damaging its clients.

INTEGRITY, SKILL AND ETHICS

36. The Authority's interest in the manner in which the business of the IM is conducted is distinct from the issue of the fitness and propriety of its controllers and officers. The IM's business must be conducted in an ethical and honest manner and staff employed by the IM must have the skills and knowledge appropriate to the nature and scale of the IM.
37. An IM must conduct its business with integrity at all times and must always act with due care, skill and diligence. It cannot contract out its responsibilities under this Code and must exercise its duties prudently and competently and administer each client's affairs in accordance with law and regulations. The IM must deal fairly with all clients and ensure that they are not misled as to the service being provided and its duties and obligations to the clients.
38. The IM should have the professional skills to effectively conduct its business relative to all of its responsibilities including establishing and operating systems of internal controls, and ensuring compliance with legal and supervisory requirements. The level of skills and experience required will vary according to the individual IM, depending on the nature and scale of its activities. IM employees, directors and officers should be in compliance with professional standards and any continued professional development requirements for their respective professional body or industry associations.

39. IMs must have sufficient staff to carry out the range and scale of tasks and processes needed to effectively operate its business. In determining its staffing needs, the IM may take into account the human resources that the IM may draw upon through other arrangements, e.g. outsourcing, secondments, or other similar arrangements as well as the methods of recruitment or sourcing to ensure that it has an adequate number of persons who are fit and proper to perform the duties for which they are employed.
40. An IM must have appropriate resources in place commensurate with the nature and scale of its activities. The requirement for staff to be suitably qualified and experienced for their role and responsibilities extends to key roles where IM staff act as officers of client companies. Staff must understand their duties under the laws of the jurisdiction in which those clients operate or are incorporated and carry out their duties in a diligent and proper manner in accordance with all policies and procedures including conflict of interest policies.
41. Staff must be provided with appropriate training on the IM's internal policies, procedures and internal controls. The IM should ensure that adequate training is provided specific to the roles and responsibilities that staff members perform. Such training should be provided on an ongoing basis, including training on its AML/ATF responsibilities.
42. An IM must establish procedures to ensure the adequate supervision of staff in their dealings with clients and the management of clients. Appropriate records relating to the training, experience and qualifications of staff must be maintained.
43. Generally the IM should avoid situations in which a conflict of interest arises between its business and that of its clients. Similarly and unless authorised to do so, it must not enter into transactions in which it has a material interest without first disclosing it to the relevant parties. Where conflicts of interest arise the IM must ensure that the circumstances are properly disclosed to those affected and must act at all times to ensure it does not unfairly place its own interests above those of its clients.

OUTSOURCING

44. Where the IM outsources IM-related functions either externally to third parties or internally to other affiliated entities, the IM's board must ensure that there is oversight and clear accountability for these outsourced functions as if these tasks and functions were performed internally and subject to the IM's own standards on governance and internal controls. The board must also ensure that a service agreement or contract governs the outsource arrangement, and that that agreement includes terms on compliance roles and responsibilities, adherence with jurisdictional laws and regulations, cooperation with the Authority, and access to data and records in a timely manner.
45. Where the board has outsourced an IM-related function and/or is considering outsourcing such a function, the board must assess the impact on the IM. The board should not outsource a function which may adversely affect the IM's ability to operate in a prudent manner. These considerations include:
 - (a) Where outsourcing may adversely affect the IM's governance and risk management structures;
 - (b) Where outsourcing has materially increased operational risk;
 - (c) Where outsourcing may affect the Authority's ability to effectively supervise the IM; and
 - (d) Where outsourcing adversely affects the IM's client's interests, or policyholders of those clients.

PRINCIPAL REPRESENTATIVE

46. Where an IM assumes the role of a Principal Representative (PR) for a given insurer, the IM must ensure that it is sufficiently knowledgeable about the business of that insurer, and has adequate capacity, including sufficient skills, staffing levels and knowledge of relevant legislation, codes and guidance, to monitor the insurer's compliance with the Act and regulations on a continuous basis and perform an "early warning" role for the Authority in accordance with the Act.
47. The IM must take all reasonable steps to ensure they fulfil its PR responsibilities, including implementing appropriate systems, policies, procedures and controls, and ensuring that it has access to an insurer's management information and personnel that would enable the IM to satisfy itself that there are no reportable events.
48. The IM must establish an effective communication mechanism to be able to detect and promptly communicate reportable events to the Authority in accordance with the Act. Where an IM, acting as a PR, does not have access to sufficient information about an insurer to effectively fulfil its PR responsibilities then the IM should notify the Authority accordingly. Where a PR is to be replaced the outgoing PR should remain responsible until a new PR has accepted the appointment and been approved by the Authority.

FRAUD, ANTI MONEY LAUNDERING (AML) AND/OR ANTI FINANCING OF TERRORISM (ATF)

49. The IM must appoint a suitably qualified and experienced AML/ATF Money Laundering Officer, and ensure that all staff regularly undertakes AML training.
50. The IM must have in place appropriate procedures in respect of AML and ATF.

51. IMs must have in place the necessary measures to prevent, detect and remedy fraud in respect of its own business and that of the entities it manages.

CLIENT DUE DILIGENCE

52. IMs must have procedures in place to ensure that proper due diligence is carried out before a decision is made to act for any new client. At a minimum, IMs need to be able to comply with The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008, The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 and the Anti-Terrorism (Financial and Other Measures) Act 2004, together with any other relevant legislation that may come into force from time to time. To ensure compliance with these requirements, IMs should have adequate policies and procedures in place to confirm that they know on an ongoing basis the current identity of each director or officer and to the fullest extent possible the current identity of the beneficial owners of the entities under administration.

53. IMs must operate an appropriate customer due diligence process which allows them to gain detailed knowledge on their customers, their business, and their financial transactions and commitments. The IM should also carry out appropriate due diligence checks on the owner(s), directors and officers of its clients at the start of the relationship and should repeat these checks on an appropriate on-going basis.

DISCLOSURE OF INFORMATION

54. IMs should observe any obligation of confidentiality that may apply to information communicated by persons concerned with clients (e.g. shareholders, directors, officers, senior executive, controller, and accountants) unless the IM is given relevant consent to disclose information, is required by applicable law to disclose information, gives information in accordance with the terms of the client constitutional documents or in the ordinary course of the administration of the client's structure. In maintaining the confidentiality of those persons to whom the IM has responsibility, the IM must not mislead entitled third parties about the beneficial ownership of its client entities.

55. Employees, officers, directors and other persons who have access to confidential information of the IM and the clients it administers should be advised in writing upon their employment or engagement and reminded periodically thereafter by the IM of confidentiality issues.

REPUTATION OF BERMUDA

56. It is not possible to identify with any precision the kind of activity or kind of person who is liable to bring the reputation of Bermuda into disrepute. The matter will need to be evaluated by each IM on a case by case basis. Clearly this is an area where a risk-based approach may be justified; however, it needs to be emphasised that the Authority would view any failure in this obligation with the utmost gravity. The board of the IM is ultimately responsible for its overall risk management framework. IMs should engage, appoint or designate at a management level an individual or individuals that are qualified and skilled at assisting the board in managing risk. This individual or individuals must demonstrate a sound understanding of risk and be able to exercise sound judgment. In so doing this person or persons would be responsible for ensuring that the IM has developed and implemented effective risk-related internal controls. Effectiveness assessments should be periodic but ongoing and reported to senior management and the board. IMs must develop and implement policies and procedures to address these obligations; for instance the mitigation of reputational risk, anti-money laundering and anti-terrorist financing risk, etc. The board and senior management must ensure that policies and procedures, and controls, are established to manage the IM's risks, and also risks that the jurisdiction faces arising from the IM's clients, and that a culture of compliance is created ensuring staff adhere to these policies, procedures and controls.

COOPERATION WITH REGULATORY AUTHORITIES

57. An IM must deal openly with and cooperate with the Authority and any other relevant regulatory authorities. IMs should notify the Authority to any proposed material change to their business plan including undertaking non-IM business. IMs should also alert the Authority to any significant developments relevant to its operations, its staffing or to its systems and controls environment.

IMPLEMENTATION

58. The IM Code will come into effect immediately when published and the established deadline for compliance is **31st December 2016**.