CONSULTATION PAPER NO. 103

9 NOVEMBER 2015

PROPOSALS RELATING TO THE INSURANCE REGIME

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Part A: Introduction and Overview

Why are we issuing this paper?

1. The Dubai Financial Services Authority (the DFSA) proposes changes to the current regime for regulating insurance (the "insurance regime").[1] That regime covers the activities of:

   (a) effecting, or carrying out, contracts of insurance (Insurance Business);

   (b) advising on, or arranging, contracts of insurance (Insurance Intermediation);

   (c) underwriting and managing claims as an agent of an insurer (Insurance Management); and

   (d) advising on, or arranging, Long-Term Contracts of Insurance (regulated as Investment Business).[2]

2. We have not substantially reviewed the insurance regime since 2003. Since then, the insurance industry in the Dubai International Financial Centre ("DIFC") has grown significantly, becoming a substantial regional hub for reinsurance. This paper sets out our proposals to align our regime with developments in the insurance sector, while also ensuring that the regime operates as intended and caters to the needs of the DIFC.

Overview of the proposals

3. Our proposals are designed to provide greater clarity and flexibility to those undertaking insurance activities in the DIFC, whilst also providing a regulatory framework which is proportionate to the risks associated with their activities. We propose, among other things, to:

   (a) specify what activities can be undertaken by different types of insurance intermediaries;

   (b) make clearer where regulation is not required through clear exclusions;

   (c) refine the conduct of business requirements applicable to Insurers, Insurance Intermediaries and Insurance Managers to make our regime more risk-based; and

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[1] The current insurance regime is substantially contained in the General (GEN), Conduct of Business (COB), Prudential Insurance Business (PIN) and Prudential – Investment, Insurance Intermediation and Banking (PIB) modules of the DFSA Rulebook. RPP sourcebook contains the procedures and processes which the DFSA apply to Licensees undertaking insurance activities.

[2] Advising on financial products or credit, and Arranging credit or deals in Investments, apply to Long-Term Insurance.

(d) remain compliant with the Insurance Core Principles ("ICPs").[3]

4. We have also, where appropriate, proposed changes to reflect developments in the European Union (EU), particularly the adoption of the Insurance Distribution Directive.

Who should read this paper?

5. The proposals in this paper would be of interest to:

(a) Insurers;

(b) Insurance Intermediaries;

(c) Insurance Managers;

(d) foreign insurers conducting insurance activities in or from the DIFC through Insurance Intermediaries and Insurance Managers;

(e) applicants for Licences as Insurers, Insurance Intermediaries or Insurance Managers;

(f) those undertaking or proposing to undertake insurance intermediation activities relating to Long-Term Insurance;

(g) self-regulatory agencies of insurers and Insurance Intermediaries; and

(h) other industry participants, including the users of the services offered by persons referred to above.

Terminology in this paper

6. In the remainder of this paper, defined terms are identified by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in the Glossary Module (GLO) of the DFSA Rulebook. Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning. All references to Rules in Appendices 2-5 are references to proposed Rules.

How to provide comments?

7. All comments should be in writing and sent to the address or email specified below. If sending your comments by email, please use the Consultation Paper number in the subject line. Please also use the template Table at Appendix 6 to provide your comments. You may, if relevant, identify the organisation you represent in providing your comments. The DFSA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making comments.

[3] Insurance Core Principles are issued by the International Association of Insurance Supervisors ("IAIS"), which is the international standard setting body in the insurance sector.

Comments to be addressed or emailed to:

Consultation Paper No. 103
Policy & Strategy
DFSA
PO Box 75850
Dubai, UAE

Email: consultation@dfsa.ae

Tel: +971(0)4 3621500

What happens next?

8. The deadline for providing comments on this consultation is 11 February 2016. Once we receive your comments, we will consider if any further refinements are needed to these proposals. We will then proceed to make the relevant changes to the DFSA's Rulebook. You should not act on these proposals until the relevant changes to the DFSA Rulebook are made. We will issue a notice on our website telling you when this happens.

Structure of this paper

9. The proposals in this paper are structured as follows:

(a)	Part A:	Introduction and Overview;
(b)	Part B:	Background;
(c)	Part C:	Proposals relating to Insurers;
(d)	Part D:	Proposals relating to Insurance Intermediaries;
(e)	Part E:	Proposals relating to Insurance Managers;
(f)	Part F:	Miscellaneous enhancements;
(g)	Part G:	Transition;
(h)	Part H:	Other aspects;
(i)	Appendix 1:	Benchmarking;
(j)	Appendices 2-5:	Draft amendments to GEN, COB, GLO and PIB; and
(k)	Appendix 6:	Table for providing comments.

Part B: Background

10. The proposals in this paper result from a review of the insurance regime, as the insurance sector in the DIFC has grown significantly since 2003, and we have so far not undertaken any substantial review of the regime.[4]

11. Our regime has, until now, largely followed the UK regime as a proxy for the EU regime. We have done so, traditionally, because many firms in the Centre have their headquarters and home operations in the EU, although we note that this profile may be changing. The EU regime for insurance intermediation is itself undergoing changes, with the adoption of the Insurance Distribution Directive ("IDD"), which will replace the current Insurance Mediation Directive, when the IDD comes into force. We have considered what changes, if any, are needed to maintain our alignment with the IDD.

12. A key objective of the DFSA regime is to meet international standards set by international standard setting bodies. Such observance is important because the International Monetary Fund and the World Bank, in their Financial Sector Assessment Programme ("FSAP"), assess insurance regimes against the Insurance Core Principles (ICPs). Therefore, the proposals in this paper aim to maintain our continued compliance with the ICPs.

13. We have addressed some anomalies highlighted by public comments on our recent revamp of the Client Classification regime (CP97), as well as issues which we have identified through our supervisory experience.

(a) Issues out of scope of this paper

14. We have not undertaken a comprehensive review of the regime applicable to intermediation (such as giving advice) relating to Long-Term Insurance. This is because intermediation activities relating to Long-Term Insurance fall under the regime governing Investment Business. While we address some peripheral issues relating to Long-Term Insurance in this paper, so far as they closely relate to Insurance Intermediation, we expect to deal with any remaining issues in that area under a separate project in due course.

(b) Overview of the current insurance regime

15. There are four main Financial Services relevant to insurance. These are Effecting Contracts of Insurance, or Carrying Out Contracts of Insurance, as principal (i.e. Insurance Business), Insurance Intermediation and Insurance Management. A Person must have a DFSA Licence to be able to conduct these Financial Services in or from the DIFC.

16. Persons conducting Insurance Business themselves in or from the DIFC can be either a stand-alone Insurer, or a member of an international Group. An insurer outside the DIFC ('Non-DIFC insurer') wishing to carry on Insurance Business in the DIFC has the option of either establishing a Branch in the DIFC or establishing a subsidiary. DIFC Insurers are subject to two prohibitions; they are prohibited from underwriting risks in the UAE, unless it is in the DIFC or unless it is reinsurance. They are also prohibited

[4] We made some limited changes to the insurance regime in 2008, mainly for the purposes of opening the DIFC regime for retail financial services.

from being a composite insurer, i.e., conducting both Long-Term Insurance Business and General Insurance Business, unless the General Insurance Business is limited to sickness or accident.[5]

17. Insurers are subject to the prudential requirements in the PIN module, although Branches are generally exempted from the capital requirements applicable to an Insurer. We do so in reliance on the adequacy of capital requirements applicable to the legal entity in its home jurisdiction (i.e. the Non-DIFC insurer). Insurers are also subject to the conduct of business requirements in the COB module.

18. The activities of Insurance Intermediation and Insurance Management are activities carried on in the DIFC where a Person:

    (a) acts 'for or on behalf of' a DIFC-based (local) or a non-DIFC insurer as their agent; or

    (b) acts 'for or on behalf' of a policyholder; or

    (c) provides administration and underwriting services to a local or a non-DIFC insurer.

19. Insurance Intermediaries and Insurance Managers are classified as Category 4 firms, and are subject to the prudential requirements in the PIB module. They are also subject to the conduct of business requirements in the COB module.

20. Although Insurance Intermediaries and Insurance Managers can act as agents for both DFSA licensed insurers and non-DIFC insurers, so far these licensees act predominantly for the latter.

21. The DFSA regime has a feature which is not common in many jurisdictions against which we usually benchmark our regime (the UK regime (as a proxy for the EU), and the regimes in Hong Kong, Singapore and Australia). We permit Insurance Managers to 'underwrite' in or from the DIFC *as agents* of non-DIFC insurers. Insurers in many jurisdictions are, to varying degrees, permitted to outsource or delegate the underwriting function to third party service providers in the same jurisdiction. However, most jurisdictions do not generally permit insurers outside their jurisdiction to underwrite through local agents.

22. We allowed underwriting as agent of non-DIFC insurers by creating the Insurance Manager category to encourage insurance activities in the DIFC. In doing so, we looked to the US and Canadian regimes, which allow insurers to penetrate otherwise difficult to access markets or lines of business, or to obtain specialist underwriting skills not available to them, by appointing 'managing general agents'. These agents have vested underwriting authority to perform a wide range of functions which would ordinarily be performed only by insurers.

23. We now have over 40 firms with Insurance Management Licences (most of whom also hold Insurance Intermediation Licences). These firms act for non-DIFC insurers, who are not themselves subject to the DFSA's regulation as Insurers. Those non-DIFC

[5] See current COB Rule 7.2.3.

insurers are able to effect and carry out Contracts of Insurance in or from the DIFC through their appointed agents - Licensed Insurance Managers, who are subject to the DFSA's direct authorisation and supervision.

24. The proposals in this paper do not contain any fundamental changes to the current architecture of the insurance regime, as set out in paragraph 1. Instead, the proposals in this paper are designed to refine the regime, for the reasons set out in Part C onwards.

Part C: Proposals relating to Insurers

(a) Do we need any changes to the current definitions relating to Insurance Business?

25. Our current definitions of Effecting Contracts of Insurance and Carrying Out Contracts of Insurance are based on the UK regime and cover insurers conducting both Long-Term Insurance and General Insurance (although Insurers are prohibited from conducting both types of insurance as composite insurers – except to a limited extent as noted in paragraph 16).

26. In other jurisdictions, such as Hong Kong, Singapore and Australia, the two activities of effecting and carrying out contracts of insurance are treated as an integral part of an insurer's activities, and therefore do not require two authorisations.

27. We follow the UK approach as it allows regulatory separation between entering into new insurance contracts and continuing to service existing ones, in particular by paying claims. This means that when an Insurer stops accepting new business ("goes into run-off"), the Financial Service of Effecting Contracts of Insurance can be removed from its Licence (either voluntarily or otherwise), while it remains authorised to pay claims, and continues to be regulated for both solvency and conduct. As we have not encountered any practical issues with the current arrangement, we do not propose to make any changes to the current definitions applicable to Insurers.

Issue for consideration

Q1: Do you have any concerns relating to the DFSA's proposal not to make any changes to the current two categories of Financial Services relevant to Insurers? If so, what are they, and how should they be addressed?

(b) Should Insurers be permitted to give advice?

28. We have considered this issue particularly in light of the changes under the IDD which bring that activity under insurance distribution, regardless of whether it is conducted by an insurer or a third party intermediary, to ensure a similar level of regulation.

29. Insurers are arguably subject to an implicit prohibition against giving advice because:

(a) GEN Rule 2.2.5 prohibits Insurers to carry on any Financial Service other than Insurance Business; and

(b) although Insurers are permitted to carry on an activity which can be regarded as in direct connection with, or for the purposes of, their Insurance Business under COB Rule 7.2.5, giving advice is not expressly included in that Rule or under

Guidance as an incidental activity.[6]

30. We have considered three options relating to the activity of advising by Insurers:

    (a) The first option is to allow Insurers authorised to Effect Contracts of Insurance to give advice relating to their own products only, on the basis that giving advice is an activity in direct connection with, or for the purposes of, their Insurance Business. We would require Insurers to have appropriate skills, competencies and resources to give advice.

    (b) The second option is to allow Insurers Effecting Contracts of Insurance to give advice relating to their own products and those of Group members. These activities will then be regarded as carried on in connection with, or for the purposes of, conducting Insurance Business. Again, we would require Insurers to have appropriate skills, competencies and resources to give advice.

    (c) The third option is to allow Insurers to give advice as a stand-alone activity, provided they have an authorisation as an Insurance Intermediary. The assessment of appropriate skills and competencies to give advice can be undertaken explicitly as part of the authorisation process. An Insurer having an authorisation for Insurance Intermediation would be subject to appropriate conduct of business standards and would be able to recommend not only their products but also other insurer's products.

31. We propose the second option as it:

    (a) is consistent with the IDD approach, which requires both insurers and insurance intermediaries giving advice to have appropriate skills, competencies and resources to do so;

    (b) provides greater certainty to Insurers by expressly allowing them to give advice;

    (c) gives greater flexibility for an Insurer to choose whether to provide advice relating to its own products only, or relating to both its own products and its Group members, provided, in each case as is relevant, it can demonstrate to the DFSA that it has the necessary skills, competencies and resources to do so; and

    (d) does not require Insurers to obtain a separate authorisation, as would be required under the third option, to continue the current practice of giving advice on their own products.

    (See draft GEN Rule 2.15.1(2) in Appendix 2.)

32. If the second option were to be adopted, we will include, as part of our supervisory

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[6] An Insurer may generally be able to rely on the exclusion in GEN Rule 2.19.2 to the extent it undertakes any intermediation activities other than advice (such as any preparatory work to assist prospective policyholders to enter into contracts of insurance with it) through its Employees, as it would be entering into transactions in respect of Contracts of Insurance as principal in doing so. Given that this exclusion expressly excludes giving advice, it supports the view that an Insurer is not permitted to give advice, at least relating to its own insurance contracts, in reliance on COB Rule 7.2.5, on the basis that it is an activity in direct connection with, or for the purposes of, its Insurance Business.

process, appropriate measures to assess whether an Insurer proposing to advise (on its own products only or both on its own and those of its Group members' products), has appropriate skills, competencies and resources to be able to do so.

Issues for consideration

Q2: Do you have any concerns relating to the proposed approach? If so, what are they, and how should they be addressed?

Q3: Are there any other issues which we have not identified relating to Insurers undertaking the activity of advising? If so, what are they, and how should they be addressed?

(c) Are there any other issues relating to Insurers' distribution activities?

33. Although Insurers are prohibited from undertaking any Financial Services other than Insurance Business, that prohibition does not apply where they undertake certain Insurance Intermediation activities in relation to their own products. This is because of the exclusion under GEN Rule 2.19.2 which has the effect of not regarding a Person as carrying on certain Insurance Intermediation activities (e.g. arranging and acting as agent) where it enters into a Contract of Insurance as a principal. Insurers engaging in these activities through their own Employees have the benefit of that exclusion.

34. We have considered two options:

(a) the first option is to retain the current position where Insurers can, in reliance on GEN Rule 2.19.2, carry on certain intermediation activities (e.g. arranging and acting as agent) through their own Employees in relation to their own products; and

(b) the second option is to provide greater flexibility for Insurers so that they could undertake the excluded Insurance Intermediation activities in (a) in relation to either or both of their own products and those of their Group members.

35. We propose the second option,[7] as it gives Insurers more flexibility. This is also consistent with the proposed approach in relation to Insurers giving advice (see draft GEN Rule 2.15.1(2) in Appendix 2).

Issues for consideration

Q4: Do you have any concerns relating to the proposed approach? If so, what are they, and how should they be addressed?

Q5: Are there any other issues which we have not identified in respect of an Insurer undertaking the distribution activities of an Insurer? If so, what are they, and how should they be addressed?

[7] We propose a similar approach relating to arranging relating to Long-Term Insurance – see draft GEN Rule 2.2.5 in Appendix 2.

Part D: Proposals relating to Insurance Intermediation

(a) Are there any gaps in the regulation of Insurance Intermediation activities?

36. We considered whether the scope of our current regime for Insurance Intermediaries remains relevant to the DIFC markets, and in light of the changes under the IDD.

37. The definition of insurance distribution activities under the IDD covers the activities of '*advising on, proposing or carrying out other work preparatory for the conclusion of contracts of insurance, concluding contracts of insurance and assisting in the administration and performance of such contracts, in particular in the event of a claim*'.

38. The IDD:

    (a) expressly includes the activity of providing aggregation sites as a new type of distribution activity brought under regulation; and

    (b) provides a series of exclusions from regulation, which are not completely new.

39. While the activities included and excluded from regulation under the IDD roughly fall within the scope of our current definition of Insurance Intermediation (see GEN Rule 2.19.1), we found some areas that need to be addressed, both to achieve greater alignment with the IDD and to address DIFC specific needs, as discussed below.

Web-based distribution through insurance aggregation sites

40. Our current definition of Insurance Intermediation appears to be narrower than the IDD definition of 'insurance distribution' in relation to web-based selling of insurance using aggregation sites. The IDD expressly covers the provision of information on websites or other media relating to contracts of insurance where potential policyholders can, based on product ranking lists, price or product comparison, or discounts, directly or indirectly conclude contracts of insurance using a website or other media.

41. Aggregation sites are mainly a tool for accessing retail markets. Although the DFSA is predominantly a reinsurance market, we considered it appropriate to cover this gap as the DFSA regime permits retail activities. Therefore, we propose to expand our definition of Insurance Intermediation to cover operators[8] of aggregation sites (see draft GEN Rule 2.11.1(3) and 2.19.1(1)(d) and GLO definition of 'Insurance Aggregation Site', in Appendices 2 and 4).

Issues for consideration

Q6: Do you have any concerns relating to the proposed expansion of the current definition of Insurance Intermediation to cover distribution through aggregation sites? If so, what are they, and how should they be addressed?

Q7: Are there any other issues which we have not identified in respect of distribution through aggregation sites? If so, what are they, and how

[8] While the operator of the aggregation site (i.e. the Person responsible for the content of the information provided on the site) will be an Insurance Intermediary under the proposal, the facility provider itself will not be regarded as an Insurance Intermediary.

should they be addressed?

Exclusion for professionals

42. Under the current regime, a professional is not regarded as carrying on Insurance Intermediation if the intermediation activity:

(a) is carried on in the course of any professional business which does not otherwise consist of carrying on any Financial Service;

(b) can reasonably be regarded as a necessary part of any other service provided in the course of the relevant professional business; and

(c) is not separately remunerated from the other services provided (to the customer).[9]

43. Under the IDD, the provision of information on an incidental basis to a customer in the context of providing another professional activity is not regarded as insurance distribution *if the provider of the information does not take additional steps to assist in concluding or performing an insurance contract*.

44. The IDD exclusion seems more restrictive than ours because professionals cannot rely on the IDD exclusion for anything more than providing information on an incidental basis, whereas under our current exclusion professionals could undertake arranging activities (which include assisting in the conclusion of contracts, either as agent of an insurer, or as agent of a customer) or give advice to the customer. Our requirement that the intermediation activity must not be separately remunerated from the other services being provided does not preclude professionals from being able to obtain commissions and other benefits from insurers, whose contracts they arrange for their customers, or give advice on.[10]

45. This creates a risk, as professionals are able to give advice relating to insurance without being subject to any conduct requirements such as commission disclosure, or managing conflicts of interests, unlike other intermediaries.

46. To further narrow the scope available for professionals, we propose to add a criterion to the current exclusion – 'not assisting in the conclusion or performance of contracts of insurance' (see draft GEN Rules 2.9.7(d), and 2.19.3(d) in Appendix 2).

Issues for consideration

Q8: Do you have any concerns relating to the proposal? If so, what are they, and how should they be addressed?

Q9: Do you think that it is more appropriate to replace the current criterion of 'not remunerated separately from the other services' with the new criterion proposed? If so, why?

[9] See GEN Rule 2.19.3.

[10] As the prohibition is against being remunerated separately for the other services, any benefits derived from a source other than the customer will not generally be seen as preventing professionals to carry on intermediation as an incidental part of their ordinary professional business.

Exclusion for media advice

47. Under the current regime, any advice relating to contracts of insurance in the public media (such as newspapers, journals, broadcasts and similar communications) is not regarded as insurance intermediation where the principal purpose of the publication or service, taken as a whole, is not to give advice (as defined for the purposes of Insurance Intermediation) and it does not lead, or enable, Persons to buy insurance.[11]

48. While the IDD does not have a specific exclusion relating to advice in the public media, the UK regime contains such an exclusion. We propose to retain the existing exclusion so that there is clarity relating to advice in the media.

Issue for consideration

Q10: Do you have any concerns relating to our proposal? If so, what are they, and how should they be addressed?

Exclusion for communication channel providers

49. Under our current regime, a person is not regarded as undertaking the activity of 'arranging' under Insurance Intermediation 'merely by providing the means by which one party to the transaction is able to communicate with other parties'.[12] We propose to keep this exclusion as it is not inconsistent with the approach under the IDD and it provides clarity about the scope of regulation.

Issue for consideration

Q11: Do you have any concerns about our proposal? If so, what are your concerns, and how should they be addressed?

Exclusions for intermediation activities relating to Long-Term Insurance

50. The activities of advising and arranging relating to contracts of Long-Term Insurance are excluded from regulation as Insurance Intermediation when such activities are conducted by an Authorised Firm licensed to carry on the Financial Services of Advising on Financial Products or Credit, or Arranging Credit or Deals in Investments, as is relevant.[13]

51. This exclusion is based on the fact that Long-Term Contracts of Insurance are treated as "financial products" for the purposes of advice, and intended to be treated as "Investments" for the purposes of arranging.[14] This is consistent with the IDD approach where more tailored obligations apply to investment-linked insurance products.

52. We propose to keep these two exclusions as they avoid dual regulation of advising and arranging activities relating to Long-Term Insurance. However, we have identified

[11] See GEN Rule 2.19.4.
[12] See GEN Rule 2.19.5.
[13] See GEN Rules 2.19.6 and 2.19.7.
[14] See the anomaly addressed under paragraph 53.

a couple of issues.

53. The first is an unintended anomaly. Although there is an exclusion from Insurance Intermediation for the activities of arranging in respect of Long-Term Insurance, the definition of the Financial Service of 'Arranging credit or deals in Investments' in GEN Rule 2.9.1 does not cover the activity of arranging relating to Long-Term Insurance. The effect of this is that Investment related COB Rules would not apply to the conduct of this activity. We intend to address this anomaly by extending the current definition to cover the activity of arranging relating to Long-Term Insurance (see draft GEN Rule 2.9.1(4) in Appendix 2).

54. The other issue is whether an Insurer carrying on Insurance Business relating to Long-Term Insurance should be prohibited under GEN Rule 2.2.5 from carrying on advising or arranging Long-Term Insurance.

55. As we see no merit in maintaining such a prohibition, we propose to allow an Insurer to carry out advising and arranging activities in relation to its own Contracts of Insurance, and those of its Group members, which are Long-Term Insurance (see draft GEN Rule 2.15.1(2) in Appendix 2).

Issues for consideration

Q12: Do you have any concerns on our proposal in paragraph 53 to remove the anomaly? If so, what are they, and how should they be addressed?

Q13: Do you have any concerns about allowing Insurers to conduct intermediation activities relating to Long-Term Insurance? If so, what are they, and how should they be addressed?

Q14: Do you have any other concerns relating to our proposals regarding intermediation activities relating to Long-Term insurance? If so, what are they and how should they be addressed?

Exclusions for mere provision of data and information

56. Under the IDD, there are two express exclusions from insurance distribution available for:

(a) the mere provision of data and information on potential policyholders to insurers and insurance intermediaries – provided the provider of data or information does not take any additional steps to assist the conclusion of contracts of insurance; and

(b) the mere provision of information about insurance products, insurers or insurance intermediaries to potential policyholders – provided the provider of information does not take any additional steps to assist the conclusion of an insurance contract.

57. The current definition of Insurance Intermediation does not have similar exclusions, and it is unlikely that 'mere provision of information' referred to above would constitute Insurance Intermediation activities. Therefore, we do not propose to add any further exclusion.

Issue for consideration

Q15: Do you have any concerns relating to our proposal? If so, what are they, and how should they be addressed?

The scope of the exclusion for Group-based intermediation activities

58. There is an existing exclusion from the definitions of Financial Services where a Person is not considered to be conducting Insurance Intermediation activities 'by way of business' if the activities are carried out solely as principal with or for other Bodies Corporate within its Group (see GEN Rule 2.3.2(1)(b)(i)). As a result, a Group member giving advice to or arranging insurance for another Group member is not required to be Licensed as an Insurance Intermediary.

59. The above exclusion is not available to an Insurance Intermediary acting as an 'insurance agent' or 'insurance broker' involving policyholders or potential policyholders who are not its Group members. We do not propose to make any changes to this exclusion but propose to clarify its limited scope through an amendment (see draft GEN Rule 2.3.2(1)(b)(iv) in Appendix 2).

Issue for consideration

Q16: Do you have any concerns relating to our proposal to clarify the limited scope of excluded intra-group intermediation activities? If so, what are they, and how should they be addressed?

Exclusion for the ancillary activity of insurance intermediation

60. Under the IDD, an exclusion is available to Persons carrying on insurance distribution activities (for remuneration) as an ancillary activity to their principal professional activity. A Person other than a credit institution or investment firm can make use of this exclusion where it can meet all the following conditions:

(a) the principal professional activity of that Person must be an activity other than insurance distribution;

(b) the insurance product distributed must be complementary to a good or service; and

(c) the insurance product must not be life insurance or liability cover, unless it complements the product or service which the Person provides in its professional capacity.

61. We propose to include a similar exclusion so that service providers - such as travel agents and suppliers of goods in the DIFC - who sell insurance cover as complementary to their principal activities are not required to be regulated as Insurance Intermediaries (see GEN Rule 2.19.3A in Appendix 2).

Issues for consideration

Q17: Do you have any concerns relating to our proposal to include a new exclusion for ancillary insurance intermediaries? If so, what are they, and how should they be addressed?

A new exclusion to remove overlap of regulation

62. We found that there is a partial overlap of activities which can be carried on by an Insurance Intermediary and an Insurance Manager. For example, arranging for a Person to enter into a Contract of Insurance can be undertaken by either an Insurance Intermediary (as an agent of an insurer) or by an Insurance Manager, who does so for the relevant insurer.

63. To remove unnecessary dual regulation, we propose to include a new exclusion from Insurance Intermediation for any activities carried on as an integral part of the activities permitted under Insurance Management (see draft GEN Rule 2.19.8 in Appendix 2). This would remove the need for Insurance Managers to also hold an Insurance Intermediation authorisation for activities which can be undertaken under both types of Licences.

Issue for consideration

Q18: Do you have any concerns relating to our proposal to create a new exclusion? If so, what are they, and how should they be addressed?

New exclusions for management of claims, loss adjusting and claims assessment

64. While the definition of insurance distribution under the IDD includes 'assisting in the administration and performance of contracts of insurance, in particular, in the event of a claim', it also provides express carve outs for three types of activities:

(a) managing claims for insurers on a professional basis;

(b) loss adjusting; and

(c) expert appraisal of claims.

65. While the above activities are not likely to be covered under our current definition of Insurance Intermediation,[15] we have received queries on this and we think it would be helpful to provide greater certainty. Therefore, we propose to include similar exclusions as under the IDD (see draft GEN Rule 2.19.9 in Appendix 2).

Issue for consideration

Q19: Do you have any concerns relating to our proposal? If so, what are they, and how should they be addressed?

(b) Should there be greater clarity relating to the different roles of Insurance Intermediaries?

66. We have considered this issue because Insurance Intermediaries can act in different capacities and industry participants do not seem to appreciate fully the differences, particularly where it impacts on the level of protection available to policyholders or prospective policyholders.

[15] Some of these activities fall under the definition of Insurance Management, and are covered under the proposals in Part E – see paragraphs 109 – 111.

67. The current definition of Insurance Intermediation allows intermediaries to undertake the relevant activities in two capacities:

(a) as an 'insurance agent', that is as a Person acting for, or on behalf of, an insurer; or

(b) as an 'insurance broker', that is as a Person acting for, or on behalf of, a policyholder or prospective policyholder.

68. The different capacities, although implicitly recognised in the current definition, are not clearly stated under the current regime. For instance:

(a) 'advising on insurance' is an activity that can be undertaken by either an 'insurance agent', or by an 'insurance broker' (and, if the proposals in the previous parts of the paper are adopted, by an Insurer with an authorisation for Insurance Intermediation);

(b) 'acting as an agent' for another Person to sell insurance can only be undertaken by an 'insurance agent' acting for an insurer;

(c) 'acting as an agent' for another Person to buy insurance can only be undertaken by an 'insurance broker', as only brokers act as the agent of a policyholder in buying insurance; and

(d) 'arranging' for another Person to buy insurance can be undertaken by an insurance broker or by an insurance agent.

69. Our view is that definitions that differentiate the two capacities in which Insurance Intermediaries act would enable industry participants to clearly appreciate the differences in the capacity in which they act. This is particularly important because COB Rule 7.5.2(3) requires disclosure of the capacity in which an intermediary acts.

70. COB Rule 7.5.2(3) also refers to an intermediary acting 'independently' on behalf of Clients. While an insurance broker acts for Clients, and therefore is expected to be the Client's agent, how a broker could meet the requirement to act 'independently' is not made clear. Providing clarity relating to the criteria for independence would enhance compliance with this provision.

71. Therefore, we propose to define in GLO the terms Insurance Agents and Insurance Brokers, and include Guidance on how an insurance broker would be able to demonstrate 'independence' when acting for or on behalf of a policyholder (see the draft definition of Insurance Agents and Insurance Brokers in GLO and draft Guidance under COB Rule 7.5.3 in Appendix 3).

Issues for consideration

Q20: Do you have any concerns relating to the proposed inclusion of definitions of insurance agents and insurance brokers? If so, what are they, and how should they be addressed?

Q21: Do you agree with the proposed Guidance on independence? If not, what do you propose?

(c) Are the current COB requirements appropriate for reinsurance?

72. Currently, Insurance Intermediaries are subject to COB 7 requirements, which are designed to provide adequate protection to policyholders. These conduct requirements were last significantly revised as part of the introduction of the retail regime in the DIFC in 2008, and are largely based on the UK/EU regime.

73. We benchmarked the current COB regime against the IDD for reasons set out earlier in the paper, whilst also considering whether there are any gaps identified through our supervisory experience.

Application of the COB regime to reinsurance activities

74. The COB regime includes the client classification requirements. A number of commentators on our recent revamp of the client classification regime suggested that we remove the application of the client classification requirements for insurance intermediation activities relating to reinsurance, as such services are provided mainly on a Market Counterparty basis.

75. Under our current regime, reinsurers and reinsurance intermediaries are subject to the same requirements as Insurers and Insurance Intermediaries where they conduct Financial Services with ceding insurers.[16] As a result, reinsurers and reinsurance intermediaries, when dealing with ceding insurers, must undertake a client classification under COB chapter 2, and must also comply with the 'Core Rules – Insurance' in COB chapter 7, unless such ceding insurers agree to be classified as Market Counterparties.

76. In contrast, although the IDD applies to reinsurers and reinsurance intermediaries, the conduct requirements under it do not apply to reinsurers and reinsurance intermediaries. This is also the case under the UK regime (ICOB).

77. We believe there is merit in the argument that reinsurers and reinsurance intermediaries be excluded from the obligations to classify ceding insurers and to comply with most of the conduct requirements in COB. Therefore, we propose that reinsurers and reinsurance intermediaries, where they provide their Financial Services to ceding insurers, not be required to:

(a) classify ceding insurers under COB chapter 2 – instead such ceding insurers will be deemed as Market Counterparties (see draft COB Rules 2.3.1(5), 2.3.9(1)(a)(iii) & (b) in Appendix 3); and

(b) comply with the conduct requirements in COB chapter 7, except the requirements in COB Rule 7.3.1 (clear, fair and not misleading communications), COB Rule 7.5.1 (Authorised Firm's duty of disclosure), COB Rule 7.6.1 (disclosure of costs), COB Rule 7.9.1 (managing conflicts of interests), and COB sections 7.2 (restrictions), 7.10 (placement of insurance) and 7.12 (Insurance Monies) when dealing with ceding insurers as Market Counterparties.[17] (See

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[16] Ceding insurers transfer their insurance liabilities to other insurers for the payment of a reinsurance premium. Such insurers, being regulated firms, are 'deemed' Professional Clients.

[17] Insurance Monies are mainly premium and claims monies held by an Insurance Intermediary or an Insurance Manager – see COB Rule 7.12.2.

draft COB Rule 7.1.1(3) in Appendix 3.)

Issues for consideration

Q22: Do you have any concerns relating to our proposals on client classification and conduct of business requirements for firms undertaking reinsurance and reinsurance intermediation activities? If so, what are they, and how should they be addressed?

Q23: Are there any other conduct of business requirements that should apply to firms conducting reinsurance intermediation activities? If so, what are they, and why should they be applied?

(d) Are there other enhancements necessary or appropriate?

Conflicts of interests arising from ownership links

78. Under the IDD, there is a requirement that an insurance intermediary must, before concluding a contract of insurance, disclose to the client whether it has a direct or indirect holding of 10% or more of the voting rights or capital of the relevant insurer, or the relevant insurer has a similar direct or indirect holding in the insurance intermediary.

79. Under our regime, there is no specific requirement for an Insurance Intermediary to disclose to a Client whether it is a related-party of the insurer whose insurance products it sells, or advises on. However, under COB Rule 7.9.1 an Insurance Intermediary is required:

(a) to manage conflicts of interests in such a manner to ensure that Clients are fairly treated, and not prejudiced by such conflicts of interests;

(b) to disclose in writing any conflicts of interests either generally or in relation to specific transactions; and

(c) not to act where a conflict of interest cannot be properly managed.

80. We believe that a 10% or more ownership link between an insurer and Insurance Intermediary gives rise to a material conflict of interest that needs to be disclosed.

81. To ensure proper disclosure, we propose to add a new Rule to require disclosure of any ownership links of 10% or more of capital or voting rights between an Insurance Intermediary and any insurer whose products are distributed (advised on or arranged to be sold) by the intermediary (see draft COB Rule 7.5.2 in Appendix 3).

Issue for consideration

Q24: Do you have any concerns relating to our proposal for a new Rule? If so, what are they, and how should they be addressed?

Conflicts of interests when acting for both parties to a contract of reinsurance

82. A recent case[18] highlighted the potential for conflict of interests that can arise if an insurance intermediary were to act for both parties to a contract of reinsurance, i.e., for the reinsurer and the ceding insurer. While there is no express prohibition in our current regime that prevents this in relation to the same risk, we believe that such a situation is likely to create a difficult-to-manage conflict of interest.

83. While we do not propose to impose an outright prohibition relating to acting for both parties to a contract of insurance, we propose to give Guidance to provide greater clarity as to what firms are expected to do in such situations (see draft Guidance under Rule 7.9.1 in Appendix 3).

Issues for consideration

Q25: Do you agree with our approach not to impose an outright prohibition against acting for both parties, but instead to give Guidance? If you do not agree, what are your reasons, and what is your preferred approach?

Q26: Do you consider it more appropriate to prohibit acting for both parties to a contract of (direct) insurance, but allow flexibility in reinsurance markets? If so, what are your reasons?

(e) Is the current capital regime for Insurance Intermediaries appropriate?

84. We considered this issue because some Insurance Intermediaries in the Centre have raised concerns with us that the current capital regime is too onerous, not commensurate with the risks associated with insurance intermediation, and out of line with practice in other jurisdictions they operate in. Some international brokers in the Centre have told us that, although they wish to set up their regional headquarters in the DIFC, the current capital regime is acting as a disincentive.

85. Under the PIB regime, an Insurance Intermediary, as a Category 4 firm, is subject to a minimum capital requirement which is the higher of a base capital requirement of US$10,000 or an expenditure based capital minimum of 6 or 18 weeks of its annual audited expenditure, the former, if not handling Insurance Monies,[19] and the latter, if handling Insurance Monies.

86. The purpose of the capital requirement for such an intermediary is to seek to ensure that, if necessary, the firm can be wound down in an orderly manner. The presumption is that it will be more complex, and so more time-consuming, to wind down a firm that holds Insurance Monies, and so the capital requirement for such firms is greater.[20]

87. Under the current formula for calculating the capital requirement, operating expenses include not only the expense of insurance mediation business in the DIFC, but also the

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[18] Beazley v. Al Ahleia, a 2013 English Commercial Court case involving a Kuwaiti energy reinsurance risk.

[19] Under our current regime, if an insurance intermediary has in place risk transfer arrangements where the Insurance Monies are held at the risk of an insurer, such a firm does not hold Insurance Monies and does not face the COB requirements for holding Insurance Monies.

[20] All PIB Category 4 firms are subject to a capital requirement based on 6 or 18 weeks of its previous year's operational expenses, the lower if not holding client monies, and the higher if holding client monies.

expenses of managing other subsidiaries, branches and sister companies in the region, which is significantly higher than the former. While firms in the Centre favour the DIFC regime because of the legal certainty offered, the current capital requirement based on operating expenses, instead of solely the insurance mediation business, is claimed to create a barrier to their plans for expansion.

88. We undertook benchmarking against the UK regime, Singapore, Hong Kong and Australia. There is little uniformity relating to the capital requirements applicable to insurance intermediaries in these jurisdictions.

89. Under the UK regime, a firm carrying on insurance mediation activity which does not hold client money or assets is subject to a capital resources requirement which is the higher of £5,000 (approximately US$7,600) or 2.5% of the annual income from its insurance mediation activity. If a firm carrying on insurance mediation activity holds client money or other assets, it is subject to a capital resources requirement which is the higher of £10,000 (approximately US$15,200) or 5% of the annual income from its insurance mediation activity. In the case of holding Insurance Monies relating to reinsurance business, the capital requirement is the higher of £10,000 or 2.5%.

90. Singapore imposes a minimum equity capital requirement, depending on the type of insurance relating to which intermediary acts, which varies from S$300,000 to S$900,000 (i.e. roughly US$211,000 – US$844,000). Australia requires an insurance intermediary to have net assets that exceed its liabilities and, adequate financial resources to operate its business, including a cash resource requirement of 20% of 3 month's operating expenses (i.e. expenses for 18 days) plus adequate resources to cover contingencies. Hong Kong requires an insurance intermediary to have HK$100,000 (i.e. approximately US$13,000).

91. We have considered three options:

    (a) the first option is to use, instead of the current expenditure based formula, a percentage of the volume of insurance business, as under the UK regime;

    (b) the second option is to lower the capital requirement for Insurance Intermediaries holding Insurance Monies from the current 18 weeks of operational expenses to some shorter period, and retaining the current formula otherwise intact; or

    (c) the third is to make no change.

92. The first option would bring our capital regime in line with the UK regime, but it has some disadvantages. For example, it would fragment our current PIB capital regime which uses the same proxy based on 'operational expenses' for all intermediaries.

93. The second option would not result in fragmenting the current Category 4 capital regime with regard to the formula being used, whilst lowering the capital requirement for those holding Insurance Monies. However, the issue arises whether the other Category 4 firms carrying out investment business should also have an amended capital regime. Without an overall review of the regime applicable to the intermediary activities of advising and arranging relating to Investments and Credit, it is difficult to assess whether there is a case to lower the capital requirement for those intermediaries.

94. The third option can be justified because we have no actual experience of the length of time it takes to wind-up an insurance intermediary, whether or not they hold Insurance

Monies. We do not, therefore, have hard evidence of the period of time such an exercise would normally require and so the minimum capital that would be needed to enable the winding-up to take place in an efficient and effective manner.

95. We propose the second option - to lower the capital requirement applicable to Insurance Intermediaries handling Insurance Monies from the current 18 weeks of operational expenditure to 9 weeks of operational expenditure. This does not lead to an unnecessary fragmentation of the overall capital regime, and would leave our minimum capital requirements at a level above some other jurisdictions, which helps address the concern around our lack of practical experience of winding-up such firms (see draft PIB Rule 3.7.2(b) in Appendix 5).

96. We do not propose a similar change for firms undertaking intermediary activities (i.e. advising and arranging) relating to Investments and credit.

Issues for consideration

Q27: Do you agree with our proposal to lower the minimum capital requirement for Insurance intermediaries holding Insurance Monies? If not, why not, and what alternative would you prefer?

Q28: Do you consider it more appropriate to adopt the UK formula for capital for Insurance Intermediaries? If so, what are your reasons?

Q29: Do you consider it more appropriate not to alter the current capital regime for Insurance Intermediaries? If so, what are your reasons?

Q30: Do you consider any other capital formulae to be more appropriate? If so, what are those formulae, and what are your reasons for considering them appropriate?

Q31: Do you have any evidence on the length of time needed to wind-up an insurance intermediary, holding or not holding Insurance Monies, which would support one of the options discussed? If so, please provide that information.

Q32: Are there any other concerns relating to the capital resources requirements of Insurance Intermediaries that need to be addressed? What are they and how should they be addressed?

Part E: Issues relating to Insurance Management

(a) What regulatory concerns have arisen relating to Insurance Management?

97. We have considered whether any regulatory risks have arisen in relation to the current regime for Insurance Managers, especially in view of the greater flexibility available to non-DIFC insurers to underwrite in or from the DIFC using agents, which is a unique feature of the DIFC regime.

98. Under GEN Rule 2.20.1, Insurance Management is defined as providing 'management services' or exercising 'managerial functions' for an insurer. For the purposes of this definition:

(a) the terms 'management services' and 'managerial functions' are defined as including 'administration' and 'underwriting'; and

(b) the term 'insurer' is defined as a Person effecting or carrying out Contracts of Insurance.

99. While the definition permits an Insurance Manager to provide 'management services' and 'managerial functions' to any insurer, they mostly act for non-DIFC insurers. As such, non-DIFC insurers can access DIFC markets through Insurance Managers to:

(a) underwrite on their behalf – which includes negotiating contracts of insurance, settling premiums, negotiating commissions and stamping or countersigning contracts of insurance, and processing endorsements on behalf of an insurer and collecting premiums; and

(b) administer claims on their behalf – which includes functions, such as assessing claims, processing claims documentation and settling claims.

100. We have so far not encountered any significant regulatory concerns relating to the activities of Insurance Managers, particularly where they underwrite as agents for non-DIFC insurers. Therefore, at this stage, we have not explored other options we could have pursued, such as:

(a) not granting any new Insurance Management Licences;

(b) requiring existing Insurance Managers to migrate to Insurer status over a period of time; or

(c) limiting an Insurance Manager to act only for a captive insurer or its Group members.

101. However, we have identified some gaps in the current regime for Insurance Managers, in comparison to the regulation of a Branch of a non-DIFC insurer, because they are functionally more similar to Insurance Managers than stand-alone DIFC Insurers (although there are some differences).

102. The main differences between the regulation of an Insurance Manager and a Branch are as follows:

(a) a Branch accepts underwriting risks on its own behalf (as it is the same legal entity as the 'parent' non-DIFC insurer), whereas an Insurance Manager does not. This is reflected in the difference between the capital requirements applicable to a Branch and to an Insurance Manager.

(b) A Branch conducts mainly Insurance Business that would form part of the business of the parent non-DIFC insurer, while an Insurance Manager's activities can cover multiple insurers, including those with competing lines of business (raising the potential for conflicts of interests addressed through the COB requirements); and

(c) an Insurance Manager's business, depending on its scale and complexity, may be much more than just the sum total of business undertaken for each of the insurers for whom the manager acts – raising distinct operational risks.

103. Further, the DFSA has more direct control over a Branch of a non-DIFC insurer (as it is part of the same legal entity as the non-DIFC insurer), than over a non-DIFC insurer

acting through an Insurance Manager. In addition, the DFSA applies 'insurance-business' related requirements to a Branch, as opposed to the regime designed for an insurance intermediary.

104. We have identified two areas where regulation of an Insurance Manager can be seen as different to the regime applicable to a Branch of a non-DIFC insurer:

(a) The DFSA undertakes a due diligence assessment of the relevant non-DIFC insurer before allowing it to branch in to the DIFC, whereas there is no similar assessment of non-DIFC insurers for whom an Insurance Manager acts. As a result, an Insurance Manager could be instrumental in writing insurance cover for non-DIFC insurers which may be prudentially unsound or coming from jurisdictions that may not be acceptable to the DFSA.

(b) The DFSA obtains more prudential reporting from a Branch relating to its insurance activities – through annual and quarterly statements relating to its premiums and reinsurance expenses, claims, reinsurance and other recoveries, any movement in insurance reserves/provisioning, and underwriting performance and claims developments – none of which is required of an Insurance Manager.

The following section explores options for addressing these gaps.

Issues for consideration

Q33: Is there a need to address any other areas relating to regulation of Insurance Managers? If so, what are they, and how should they be addressed?

(b) Promoting parity between regulation of Insurance Managers and Branches where they conduct similar activities

Assessment of adequacy of regulation of non-DIFC insurers

105. We considered whether it is appropriate or necessary for the DFSA to undertake a due diligence assessment, similar to that which it undertakes for a non-DIFC insurer wishing to establish a Branch, in respect of non-DIFC insurers for whom an Insurance Manager acts. There is a risk that if an Insurance Manager underwrites for a non-DIFC insurer which is not subject to adequate regulation, or it is located in a jurisdiction which is not acceptable to the DFSA (due to AML or other reasons), it could tarnish the reputation of the DIFC markets.

106. To address this risk, we propose to:

(a) ask an applicant for an Insurance Management licence to provide to the DFSA a list of non-DIFC insurers for whom they propose to underwrite and the jurisdictions in which such insurers are located as part of the initial business plan included in their application; and

(b) require Insurance Managers to give a declaration in their annual return which states that:

(i) they have undertaken appropriate due diligence to assess whether any Non-DIFC insurers with whom they have placed insurance in the

previous year, and for whom they propose to act in the coming year (if different), are appropriately regulated;

(ii) there are no material concerns relating to the financial soundness of the Non-DIFC insurers referred to in (a); and

(iii) they are not aware of any regulatory action or other concerns which have arisen against such insurers.

Issues for consideration

Q34: Do you have any concerns relating to our proposals to undertake due diligence relating to non-DIFC insurers for whom Insurance Managers act? If so, what are those concerns, and how should they be addressed?

Q35: Do you think that it is more appropriate for the DFSA to apply the proposed enhancements only to those Insurance Managers who underwrite for non-DIFC direct insurers, rather than reinsurers? If so, what are your reasons?

Prudential reporting

107. The second aspect we considered is the prudential reporting applicable to an Insurance Manager with respect to insurance activities carried on by it. The fact that we do not capture certain information currently is a gap in our regime and, potentially, hinders our ability to supervise Insurance Managers and insurance activities in the Centre as a whole. To capture such information for regulatory purposes, we propose to impose on an Insurance Manager similar reporting obligations as are imposed on a Branch, which are annual and quarterly statements relating to:

(a) premiums and reinsurance expenses incurred;

(b) claims, reinsurance and other recoveries made;

(c) any movement in insurance reserves/provisioning relevant to policies it has underwritten;

(d) underwriting performance and claims developments; and

(e) insurers for whom it has acted during the relevant period.

108. Further, through our supervisory experience, we have identified a gap in the prudential reporting applicable to Insurers, including Branches. As the DIFC is a financial hub, we need to know the geographic location of insurance risks, and where such risk is insured/reinsured, in the same way as we capture information relating to the geographical location of the flow of deposits and loans. Therefore, we propose to apply a reporting requirement to Insurers, including Branches, and extend it to Insurance Managers which conduct underwriting activities.

Issue for consideration

Q36: Do you have any concerns relating to our proposals to enhance the reporting requirements for Insurance Managers? If so, what are those

concerns, and how should they be addressed?

Q37: Do you have any concerns relating to our proposals to enhance the reporting requirements for Insurers? If so, what are those concerns, and how should they be addressed?

(c) Promoting greater clarity relating to the activities undertaken by Insurance Managers

Providing greater clarity relating to the activities of an Insurance Manager

109. The current definition of Insurance Management (see paragraph 98) refers to the functions of 'underwriting' and 'administration', which are activities undertaken as an agent of an insurer. However, these terms are not defined for the purposes of Insurance Management. Industry participants coming from the EU and Asian jurisdictions are more familiar with the concept of underwriting as an activity of an insurer acting as principal, but not as an activity of an agent of an insurer (as the concept of Insurance Management is borrowed from the US/Canadian model).

110. To provide greater clarity relating to the activities that an Insurance Manager may undertake as an agent, we propose to define these terms in a non-exhaustive manner (see draft GEN Rule 2.20.1(2) in Appendix 2).

111. In addition, we also propose to provide greater clarity to the definition of Insurance Management by incorporating the 'agency' capacity in which such a manager acts for an insurer (see draft GEN Rule 2.20.1(1) in Appendix 2).

Issue for consideration

Q38: Do you agree with our proposals in paragraphs 110 and 111? If not, what are your reasons?

Introducing a definition of the term 'Non-DIFC insurer'

112. A number of changes we propose relating to Insurance Managers are based on considerations that, when such managers underwrite for Non-DIFC insurers, there should be appropriate recognition of that fact. We are of the view that it would increase clarity if we include a definition of the term 'Non-DIFC insurer', so that the distinction between the regulatory requirements applicable to domestic Insurers and Non-DIFC insurers underwriting through Insurance Managers can be clearly made (see draft GLO definition of Non-DIFC Insurer in Appendix 4).

Issue for consideration

Q39: Do you agree with our proposed inclusion of a definition of a 'Non-DIFC insurer'? If not, what are your reasons?

Exclusion for Employees of Insurance Managers

113. There are two current exclusions from the definition of Insurance Management, one for Insurers, and the other for Employees of insurers. We propose to retain these two exclusions, subject to the removal of a small anomaly relating to the second exclusion.

114. The exclusion for 'Employees of insurers' uses the term 'insurer' in the lower case. As a result, technically, a non-DIFC insurer would be able to locate its Employees in the DIFC and its insurance management activities would not be regulated. This is unintended. Therefore, we propose to limit that exclusion to Employees of 'Insurers', that is of a DFSA Licensed insurer (see draft GEN Rule 2.20.2 in Appendix 2).

Issue for consideration

Q40: Do you agree with our proposal? If not, what are your reasons?

Exclusions for specialist service providers

115. We have considered whether there are any other activities that merit exclusion from Insurance Management, particularly given the express exclusions under the IDD relating to insurance distribution, which cover the activities of 'management of claims for an insurer on a professional basis, loss adjusting and expert appraisal of claims'.

116. Under our regime, a third party service provider which undertakes the activities of managing claims for insurers on a professional basis in or from the DIFC conducts Insurance Management business. This being one of the two core activities of an Insurance Manager, we see no merit in excluding this activity from the scope of Insurance Management.

117. However, we are aware of third party service providers located in the DIFC, such as risk consultants, actuaries and loss adjusters, who provide consultancy services to DIFC-based and foreign insurers, as well as Insurance Intermediaries and Insurance Managers. The necessary expertise and resources to regulate such specialist service providers is generally not found within financial services regulators. Whether such third party service providers possess adequate skills, competencies and other resources is mainly a matter for the Persons obtaining their services. In other jurisdictions we have benchmarked, these activities are not regulated as financial services or ancillary services.

118. To provide greater certainty, we propose to exclude from Insurance Management the services of independent third party service providers who provide actuarial, insurance loss adjustment and risk related advice to regulated firms (see draft GEN Rule 2.20.4 in Appendix 2).

Issue for consideration

Q41: Do you agree with our proposal? If not, what are your reasons?

Exclusion for Group-based activities

119. Similar to the exclusion available to an Insurance Intermediary (discussed in paragraph 58), there is an existing exclusion from the definition of Insurance Management where a Person is not considered to be carrying on Insurance Management activities 'by way of business' if the activities are carried out solely as principal with or for other Bodies Corporate within its Group (see GEN Rule 2.3.2(1)(b)(i)).

120. As noted before, this exclusion has very limited scope, because Insurance Management services, although provided for or on behalf of insurers, involve third

party policyholders or intending policyholders. We do not propose to make any changes to this exclusion but propose to clarify its limited scope (see draft GEN Rule 2.3.2(1)(b)(iv)).

Issue for consideration

Q42: Do you have any concerns relating to our proposal to clarify the limited scope of the intra-group intermediation activities? If so, what are they, and how should they be addressed?

(d) Are the current conduct requirements for Insurance Managers appropriate?

Reinsurance activities

121. Insurance Management is not a distinct financial service under the UK/EU regime. However, our current conduct requirements for Insurance Managers mirror the conduct requirements applicable to Insurance Intermediaries which are derived from the UK/EU regime. In line with this approach, we believe that most of the changes to the COB requirements proposed earlier for Insurance Intermediaries would also be appropriate for Insurance Managers.

122. So, where an Insurance Manager operates in reinsurance markets, to the extent it provides its management services to reinsurers, and also deals or interacts with ceding insurers, we consider there is merit in not applying to such an Insurance Manager:

(a) the client classification requirements – by deeming the reinsurers and ceding insurers as Market Counterparties (see draft COB Rules 2.3.1(5) and 2.3.9(1)(a)(iii) & (b) in Appendix 3); and

(b) the conduct requirements in COB chapter 7, except the requirements in COB Rule 7.3.1 (clear, fair and not misleading communications), COB Rule 7.5.1 (Authorised Firm's duty of disclosure), COB Rule 7.6.1 (disclosure of costs), COB Rule 7.9.1 (managing conflicts of interests), and COB sections 7.2 (restrictions), 7.10 (placement of insurance) and 7.12 (Insurance Monies) when dealing with ceding insurers as Market Counterparties (see draft COB Rule 7.1.1(3) in Appendix 3.)

Issues for consideration

Q43: Do you have any concerns about our proposals? If so, what are they, and how should they be addressed?

Q44: Are there any other conduct of business requirements that should apply to Insurance Managers operating in reinsurance markets? If so, what are they, and why should they be applied?

Conflicts of interests arising from ownership links

123. For the reasons set out in paragraphs 81 and 82, we propose that an Insurance Manager, like an Insurance Intermediary, be required to disclose any ownership

interest of 10% or more between it and an insurer for whom it acts, to any policyholder or prospective policyholder, other than a ceding insurer (see draft COB Rule 7.5.2 in Appendix 3).[21]

Issue for consideration

Q45: Do you have any concerns relating to our proposal to include a new Rule? If so, what are they, and how should they be addressed?

(e) Is the current capital regime for Insurance Managers appropriate?

Capital requirements

124. We considered whether there is a need to change the capital and related requirements applicable to an Insurance Manager, bearing in mind that the activities of an Insurance Manager are a hybrid of the activities of an Insurance Intermediary and of an Insurer. This is particularly significant as Insurance Managers can (if authorised by insurers) exercise judgement in accepting underwriting risks and/or liability for claims, although they do so as an 'agent' of an insurer and not as a principal.

125. As an Insurance Manager is treated as a PIB Category 4 firm, it has a minimum capital requirement which is the higher of US$10,000 or 6 or 18 weeks of its operational expenses based on the previous year's expenditure, depending on whether it holds Insurance Monies or not.

126. Insurance Managers have raised similar concerns as Insurance Intermediaries regarding the impact of the current capital requirement on their ability to expand.

127. Generally, Insurance Managers operate under a model closer to insurance agents, rather than insurance brokers who act for policyholders. As such, insurance agents and Insurance Managers, unlike insurance brokers, could easily operate under Risk Transfer Arrangements under COB Rule 7.12.2 and, by doing so, be subject to the lower expenditure based capital threshold of 6 weeks.

128. However, some Insurance Managers have more complex business models than Insurance Managers acting mainly as agents of their Group members or related parties. We are aware of some firms in the Centre which operate under a business model where they create a pool of risk carriers, and apportion risks and premiums, based on their own judgement/assessment. As a result, their role in handling Insurance Monies is more complex than an intermediary which simply passes through insurance premiums and claims monies to their principal.

129. In light of the above considerations, we do not consider it appropriate to alter the current capital requirements applicable to Insurance Managers in the same way as we proposed for Insurance Intermediaries.

Issue for consideration

[21] We also propose the disclosure required to be made by an Insurance Manager under COB Rule 7.5.1 to be limited to policyholders and prospective policyholders (other than ceding insurers) with whom they interact when carrying on their Insurance Management services.

Q46: Do you agree with our proposal to retain the current capital requirement for Insurance Managers? If not, what are your reasons and how should it be changed?

Part F: Miscellaneous enhancements

130. We have identified some discrete issues that impact on the regulatory regime applicable to Insurance Intermediaries and Insurance Managers. We propose to address these issues to provide greater clarity and flexibility, and also to remove unintended gaps and anomalies.

Eligible Banks

131. An Insurance Intermediary or Insurance Manager holding Insurance Monies is required to maintain such funds in an Insurance Bank Account held at an Eligible Bank in the U.A.E (defined in GLO module). Our supervisory experience has shown that this definition can be too restrictive.

132. Under the UK regime, a firm may hold insurance monies with a bank outside the UK where certain requirements are met. A firm must, before doing so, disclose to the client in writing (in its terms of business, client agreement or other document) that:

(a) his money may be deposited in a client bank account outside the UK, but that the client may notify the firm that he does not wish his money to be held in a particular jurisdiction;

(b) in such circumstances, the legal and regulatory regime applying to the approved bank will be different from that of the UK;

(c) in the event of a failure of the bank, his money may be treated in a different manner if held in a UK bank; and

(d) if that is the case, the relevant bank has not accepted that it has no right of set-off or counterclaim against money held in the client bank account in respect of any sum owed on any other account of the firm, although the firm has requested for a waiver of the bank's right of set-off or counterclaim.

133. To provide firms greater flexibility while also not reducing the level of regulatory protection available under these provisions, we propose to expand the categories of Eligible Banks (see draft definition of Eligible Bank in GLO in Appendix 4) by allowing Insurance Intermediaries and Insurance Managers to hold Insurance Monies in either:

(a) a DFSA authorised Bank;

(b) a bank authorised and supervised by the Central Bank of the U.A.E; or

(c) in the case of a bank outside the U.A.E, subject to the disclosure and procedures specified in paragraph 132, provided such a bank has at least a AA- rating issued by a rating agency acceptable to the DFSA.

Issue for consideration

Q47: Do you have any concerns relating to our proposal to expand the definition of Eligible Banks? If so, what are your concerns, and how should they be addressed?

Acknowledgement letter regarding waiver of set-offs

134. We have become aware through our supervisory work that firms in the Centre handling Insurance Monies are not properly meeting the requirement in COB Rule 7.12.5(c). This provision requires them to obtain from an Eligible Bank an acknowledgement letter that it accepts not to make any charge, lien, set-off or other claim against money held in an Insurance Bank Account.

135. Under the UK regime, if a firm handing client monies is unable to obtain the relevant acknowledgement within 20 business days after the firm sends the required notice, the firm must withdraw all money standing to the credit of the account and deposit it in a client bank account with another bank as soon as possible.

136. We propose a similar requirement as under the UK regime, as this would be appropriate to ensure proper protection of Insurance Monies without causing undue difficulties to firms, especially as we now propose to expand the categories of Eligible Banks (see draft COB Rules 7.12.5A in Appendix 3 and the GLO definition of Eligible Bank in Appendix 4).

Issue for consideration

Q48: Do you have any concerns relating to our proposal to set a 20 business day deadline for receipt of an acknowledgement letter? If so, what are your concerns, and how should they be addressed?

Removing unintended anomalies, promoting greater clarity

137. We have found that some of the current provisions in COB chapter 7 contain some unintended anomalies. For example:

(a) COB section 7.10 relating to 'placement of insurance' currently applies only to Insurance Intermediaries. However, to the extent Insurance Managers acting for multiple insurers also place insurance risks with insurers, these requirements would warrant being extended to Insurance Managers.

(b) COB Rule 7.12.3 states that a Client of an Insurance Manager, for the purposes of the Insurance Monies provisions, means the insurer to whom the manager provides its Insurance Management services. This is not clearly understood by the industry, in terms of the client classification requirements in COB chapter 2. We propose to clarify this by including an application provision in COB chapter 7 which sets out who the Client of an Insurance Manager is for the purposes of the requirements in that chapter (see draft COB Rule 7.1.3(1)) in Appendix 3). We also propose to move the current COB Rule 7.12.3 to COB section 7.1 (see draft COB Rule 7.1.3(2) and (3) in Appendix 3).

(c) COB Rule 7.12.8 is intended to apply to both an Insurance Intermediary and an Insurance Manager – yet the obligation is expressed as applying only to an Insurance Intermediary.

(d) Include a Table illustrating how the Rules in COB chapter 7 apply to Insurers, Insurance Intermediaries and Insurance Managers (see draft COB section

7.1A in Appendix 3).

Issue for consideration

Q49: Do you have any concerns relating to our proposals? If so, what are they, and how should they be addressed?

Part G: Transition

138. We believe that some of the proposals above may, if implemented, cause some temporary difficulties to Authorised Firms conducting insurance activities in the Centre. We propose to provide adequate transitional arrangements but, before doing so, wish to obtain industry input on:

(a) which proposals in the paper would trigger, in their view, the need for transitional arrangements;

(b) what should be the length of any transition period; and

(c) whether there are any specific matters that the DFSA should taking into account when providing transitional measures.

Transitional and residual issues

Q50: Are any proposals in this paper likely to lead to transitional difficulties if they are adopted? Please state how any transitional difficulties should be addressed and how long any transitional period should be.

Part H: Other aspects

139. As we are generally reviewing the insurance regime, we would like you to consider whether there are any other issues or aspects which need to be addressed.

140. For example, we would like your comments on whether an Insurer, to the extent our proposals permit it to undertake advice and arranging activities relating to its Group members (see sections (b) and (c) of Part C), be permitted to do so in a manner that would contravene the current prohibition against being a composite insurer (see current COB Rule 7.2.3).[22]

Issue for consideration

Q51: Do you agree or disagree that an Insurer should be allowed to give advice or arrange Contracts of Insurance if such activities contravene the prohibition against being a composite insurer? What are your reasons?

Q52: Are there any other aspects of the insurance regime which should be addressed? If so, what are they, why should they be addressed, and how should they be addressed?

[22] Under this Rule, an Insurer is prohibited from being a composite insurer, i.e., conduct both Long-Term Insurance Business and General Insurance Business, unless the General Insurance Business is limited to sickness and accidents.

Appendix 1: Benchmarking

1. As noted before, our regime is largely derived from the UK/EU regime, with the exception of Insurance Management, which is derived from a US/Canadian practice. Our regime also has provisions which are designed to address DIFC-specific factors and needs. In developing our proposals, we have also looked at the Singapore and Hong Kong insurance regimes, as they share some similarities with the DIFC. Key aspects of our benchmarking are highlighted below.

(a) The EU regime

2. While the UK regime follows the Insurance Mediation Directive ("IMD"), as noted earlier, it is to be superseded by the IDD, which was adopted in July 2015 to come into full effect at the end of 2017. The IDD, like the IMD, sets minimum harmonisation standards. EU member states are permitted to adopt more stringent requirements, provided they are not inconsistent with the provisions in the relevant directives.

3. The IDD contains some changes from the IMD. Some of the notable changes are that the IDD:

   (a) applies to insurers which directly distribute their products;

   (b) covers the giving of advice relating to contracts of insurance;

   (c) applies to web-based distribution through insurance aggregation sites;

   (d) imposes enhanced professional standards on insurance and reinsurance distributors;

   (e) imposes an express obligation on insurance distributors (and not on reinsurance distributors) to act in the best interest of customers; and

   (f) does not apply to 'introducers'.

4. Under the IDD, 'insurance distribution' is defined as '*the activities of advising on, proposing or carrying out other work preparatory to the conclusion of, contracts of insurance, concluding such contracts, or assisting in the administration and performance of such contracts, in particular in the event of a claim.*' It also goes on to cover the provision of information on contracts of insurance on websites and other media (aggregation sites) where customers can conclude insurance contracts. Insurance distributors to whom the IDD applies are defined as insurers, insurance intermediaries and ancillary insurance intermediaries.

5. The IDD definition expressly excludes:

   (a) the provision of information on an incidental basis in the context of another professional activity where that professional does not assist in the conclusion or performance of the contract of insurance;

   (b) the management of claims of an insurer on a professional basis, loss adjusting and expert appraisal of claims;

   (c) the mere provision to insurance intermediaries and insurers of data and information relating to potential policyholders, and the mere provision of information relating to insurance products to potential policyholders about insurance intermediaries or insurers, provided the information provider does not assist in the conclusion of the contract of insurance.

(b) Singapore

6. Under the Singapore regime, the concept of '*insurance business in Singapore*' is used for the purposes of regulation. This activity, which requires a licence as an insurer, is defined as "the business of assuming risk or undertaking liability in Singapore under policies, and of:

   (a) receiving proposals for policies in Singapore;

   (b) issuing policies in Singapore; or

   (c) collecting or receiving premiums on policies in Singapore …".

7. An 'insurance intermediary' is defined as 'a person who, as an agent for one or more insurers or as an agent for insureds or intending insureds, arranges contracts of insurance in Singapore, and includes an insurance agent or an insurance broker.'

8. An 'insurance agent' is then defined along the lines of:

   'a person, as an agent for one or more insurers (including a foreign insurer acting under an approved foreign insurer scheme such as the Lloyd's Asia scheme), carrying on business by conducting one or more activities of:

   (i) receiving proposals for or issuing policies;

   (ii) collecting or receiving premiums on policies; or

   (iii) arranging contracts of insurance

   in Singapore.'

9. An 'insurance broker' is defined along the lines of a person undertaking similar activities to an insurance agent above, but doing so 'as agent of an insured or intending insured'.

10. Insurance agents are not required to be licensed by the regulator in Singapore, but must be registered with the insurer for whom they act. In contrast, insurance brokers are required to be directly licenced by the regulator. Unlike our regime, claims administration is not a separate licensed activity but is an integral part of insurance business under the Singapore regime.

(c) Hong Kong

11. Under the Hong Kong regime, an insurer is defined as '*a person carrying on insurance business other than Lloyd's.'* An 'insurance intermediary' is defined as '*an insurance agent or insurance broker'*. An 'insurance agent' is defined as a '*person who holds himself out to advise on or arrange contracts of insurance in or from Hong Kong as an agent or sub-agent of one or more insurers*'. An 'insurance broker' is defined as '*a person who carries on the business of negotiating or arranging contracts of insurance in or from Hong Kong as the agent of the policyholder or potential policyholder, or advising on matters related to insurance*.'

12. Insurers must be licenced to be able to conduct insurance business. Insurance agents are not required to be licensed by the regulator but must be registered with the insurer. Insurance brokers must be registered with the regulator. Unlike our regime, claims administration is not a separate licensed activity but an integral part of insurance business under the Hong Kong regime.