



CAYMAN ISLANDS MONETARY AUTHORITY

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PRIVATE SECTOR CONSULTATION

RULE AND STATEMENT OF GUIDANCE – MARKET CONDUCT FOR INSURERS, AGENTS AND BROKERS

A. Introduction

1. Section 34(1)(a) of the Monetary Authority Law (2016 Revision) (as amended) (“MAL”) states that –

After private sector consultation and consultation with the Minister charged with responsibility for Financial Services, the Authority may –

- (a) *issue or amend rules or statements of principle or guidance concerning the conduct of licensees and their officers and employees, and any other persons to whom and to the extent that the regulatory laws may apply;*

2. Requirements specific to the private sector consultation are outlined in section 4(1) of the MAL as follows:

When this Law requires private sector consultation in relation to a proposed measure –

- i. the Authority shall give to each private sector association a draft of the proposed measure, together with –*
 - i. an explanation of the purpose of the proposed measure;*
 - ii. an explanation of the Authority’s reasons for believing that the proposed measure is compatible with the Authority’s functions and duties under section 6;*
 - iii. an explanation of the extent to which a corresponding measure has been adopted in a country or territory outside the Islands;*
 - iv. an estimate of any significant costs of the proposed measure, together with an analysis of the benefits that will arise if the proposed measure is adopted; and*
 - v. notice that representations about the proposed measure may be made to the Authority within a period specified in the notice (not being less than thirty days or such shorter period as may be permitted by subsection (3));and*

- (b) before proceeding with the proposed measure, the Authority shall have regard to any representations made by the private sector associations, and shall give a written response, which shall be copied to all the private sector associations.*

3. The Cayman Islands Monetary Authority (“the Authority”) seeks consultation and comment from the private sector associations concerning the following:



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- a. Statement of Guidance – Market Conduct for Insurers, Agents and Brokers; and
- b. Rule – Market Conduct for Insurers, Agents and Brokers.

B. Background

4. Good market conduct is critical to the insurance sector, financial industry and the reputation of the Cayman Islands as an international financial centre. Therefore, it is important that the Authority has a sufficiently robust regime in place to combat and mitigate the risks associated with licensees' conduct in the market.
5. The recent global financial crisis highlighted that systemic risks can arise not only through poor financial and capital management, but also through poor conduct of business practices.
6. Anecdotal and empirical evidence shows clear linkages between market conduct and prudential risks. Persistent poor customer treatment may expose an insurer or intermediary to undue reputational, legal and regulatory risks that could ultimately threaten its sustainability. Alternatively, poor management of prudential risk may lead to an insurer or intermediary being under financial pressure, which could increase the risk of poor customer treatment such as unfair pricing, inappropriate "hard selling" sales tactics, or unfair claims handling.
7. Further, unfair customer treatment and poor business practices fosters mistrust in the insurance sector. Low customer confidence in the industry can lead to reputational issues that can impact economic and financial stability.
8. Considering this, the International Association of Insurance Supervisors ("IAIS") decided to update its recommendations on the supervision of Conduct of Business risk (ICP 19 – Conduct of Business) to ensure a more robust supervision of market conduct risks globally.
9. The Authority has taken into account the IAIS' ICP 19 – Conduct of Business revisions as well as issues that have come to the Insurance Division's attention in the normal course of its supervisory work and has decided to make a general revision to the Rule and Statement of Guidance on Market Conduct. In large part, the issues identified have compelled the Insurance Division to re-visit current market conduct measures to ensure the following:
 - a. Measures address cross-border considerations.
 - b. Insurers and intermediaries clearly understand their obligation to treat customers fairly including selling practices and the handling of claims and complaints.
 - c. Measures address the suitability of intermediaries and introducers used by insurance undertakings to promote, sell and or distribute products on their behalf.



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- d. Insurers take into consideration different types of customers in product development, design and review phases.
- e. Insurers and intermediaries understand their obligation to disclose information to consumers that is clear, fair and not misleading e.g. regarding any investment returns, charges and fees attached to products etc.
- f. Insurers and intermediaries give advice to customers that will allow them to make informed decisions.
- g. Insurers' and intermediaries' promotional materials are fair and not misleading
- h. Insurers and intermediaries have appropriate systems specifically for customer complaints.

C. Purpose of Proposed Measure and Consistency with the Authority's Functions

- 10. Section 6(1) of the MAL provides that the principal responsibilities of the Authority include its regulatory functions, *inter alia*, "to regulate and supervise financial services business carried on in or from within the Islands ..."
- 11. Section 6(3) of the MAL provides that in performing its regulatory functions, the Authority shall, *inter alia*:
 - a. endeavour to promote and enhance market confidence and the reputation of the Islands as a financial centre;
 - b. recognise the international character of financial services and markets and the necessity of maintaining the competitive position of the Islands, vis a vis both consumers and suppliers of financial services, while conforming to internationally applied standards insofar as they are relevant and appropriate to the circumstances of the Islands;
 - c. recognise the principle that a burden or restriction which is imposed on a person or activity should be proportionate to the benefits, considered in general terms; and
 - d. recognise the desirability of facilitating innovation in financial services business.
- 12. The revised Rule and Statement of Guidance on Market Conduct for Insurers, Agents and Brokers enhance the regulatory function of the Authority in line with Sections 6(1) and 6(3) of the MAL, as stated above.

D. International Standards

- 13. The revised ICP – 19 Conduct of Business supports the Authority's proposed amendments to the Rule and Statement of Guidance on Market Conduct for Insurers, Agents and Brokers. See revised IAIS standards and/or guidance listed in the same order as the proposed amendments in paragraph 9, a-h.



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- a. **19.0.16** *The supervisor should also consider having in place adequate coordination arrangements to deal with conduct of business issues arising in cross-border business.*
 - b. **19.2.1** *Supervisors should require insurers and intermediaries to have policies and procedures in place to achieve the fair treatment of customers and should monitor whether such policies and procedures are adhered to.*
 - c. **19.3.1** *The supervisor should require insurers to conduct business only with intermediaries that are licensed, and to verify that the intermediaries under such arrangements have the appropriate knowledge and ability with which to conduct such business.*
 - d. **19.4** *The supervisor requires insurers to take into account the interests of different types of consumers when developing and distributing insurance products.*
 - e. **19.6.1** *The insurer or intermediary should take reasonable steps to ensure that a customer is given appropriate information about a product in order that the customer can make an informed decision about the arrangements proposed. Such information is also useful in helping customers understand their rights and obligations after sale. **19.6.13** For investment-based insurance products, information on investment performance is generally provided. Where this includes an indication of past, simulated or future performance, the information should include any limits on upside or downside potential and a prominent warning that past performance is not a reliable indicator of future performance.*
 - f. **19.7** *Where customers receive advice before concluding an insurance contract the supervisor requires that the advice provided by insurers and intermediaries takes into account the customer's disclosed circumstances.*
 - g. **19.5.1** *The insurer should be responsible for providing promotional material that is accurate, clear and not misleading not only to customers but also to intermediaries who may rely on such information.*
 - h. **19.11.2** *Insurers and intermediaries should establish written policies and procedures, agreed at the Senior Management level, to deal in a fair manner with complaints they receive. They should include keeping a record of each complain and the measures taken for its resolution.*
14. The revised Rule and Statement of Guidance on Market Conduct for Insurers, Agents and Brokers also addresses gaps in the existing regulatory measures for Market Conduct outlined in the IAIS' revised ICP 19 – Conduct of Business. See below **Table 1**:



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Table 1 – Summary Revised Insurance Core Principle 19

Revised Insurance Core Principle 19 – Conduct of Business	March 2015 Measures	November 2017 Measures
Cross-border and Group Considerations		
19.0.16 <i>The supervisor should also consider having in place adequate coordination arrangements to deal with conduct of business issues arising in cross-border business.</i>		✓
Fair Treatment of Customers		
19.1 <i>The supervisor requires insurers and intermediaries to act with due skill, care and diligence when dealing with customers.</i>		✓
19.2 <i>The supervisor requires insurers and intermediaries to establish and implement policies and procedures on the fair treatment of customers, as an integral part of business.</i>		✓
19.3 <i>The supervisor requires insurers to have arrangements in place in dealing with intermediaries to ensure the fair treatment of customers.</i>		✓
Product Development and Pre-Contractual Stage		
19.4 <i>The supervisor requires insurers to take into account the interests of different types of consumers when developing and distributing insurance products.</i>		✓
Advertising and Promotion		
19.5 <i>The supervisor requires insurers and intermediaries to promote products and services in a manner that is clear, fair and not misleading.</i>		✓
Disclosure of Information		
19.6 <i>The supervisor requires insurers and intermediaries to provide timely, clear and adequate pre-contractual and contractual information to customers.</i>	✓	✓
19.7 <i>Where customers receive advice before concluding an insurance contract the supervisor requires that the advice provided by insurers and intermediaries takes into account the customer's disclosed circumstances.</i>	✓	✓
19.8 <i>The supervisor requires insurers and intermediaries to avoid or properly manage any potential conflicts of interest, before concluding an insurance contract.</i>	✓	✓
Policy Servicing		
19.9 <i>The supervisor requires insurers to:</i> <ul style="list-style-type: none"> ▪ <i>service policies appropriately through to the point at which all obligations under the policy have been satisfied.</i> ▪ <i>disclose to the policyholder information on any contractual changes during the life of the contract; and</i> ▪ <i>disclose to the policyholder further relevant information depending on the type of insurance product.</i> 	✓	✓
Claims Handling		
19.10 <i>The supervisor requires insurers to handle claims in a timely, fair and transparent manner.</i>	✓	✓
19.11 <i>The supervisor requires insurers to handle complaints in a timely, fair and transparent manner.</i>	✓	✓
Protection of Information		
19.12 <i>The supervisor requires insurers and intermediaries to have policies and procedures for the protection and use of information and customers.</i>	✓	✓
19.13 <i>The supervisor publicly discloses information that supports the fair treatment of customers.</i>	N/A	N/A



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E. Jurisdictional Comparison

15. The Policy and Development Division reviewed the market conduct regime of a total of 8 jurisdictions – United States, United Kingdom, Canada, Ireland, Guernsey, Bermuda, Barbados, Bahamas, Jamaica. The Division selected these jurisdictions on the basis that either:

- a. It has a similar domestic insurance market operating alongside a significant captive market (Bermuda, Guernsey); or
- b. It is in the region thereby having a similar risk base (i.e. concentrated and subject to catastrophic risk) and also home to a number of Approved External Insurance licensees (Bahamas, Barbados, Jamaica); or
- c. The jurisdiction is known to have a robust market conduct framework (United States, United Kingdom, Ireland).

16. Almost all the jurisdictions reviewed had robust standards for market conduct in line with the revisions the Authority is proposing, prior to the IAIS most recent revisions to ICP 19, except the Bahamas. See **Table 2** below:

Table 2 – Summary Jurisdictional Comparison for Proposed Amendments

	United States	United Kingdom	Ireland	Guernsey	Bermuda	Barbados	Jamaica	Bahamas
Cross-Border Measures or Supervisory Considerations			✓					
Fair Treatment of Customers Claims Handling / Complaints Handling	✓	✓	✓	✓	✓	✓	✓	✓
Suitability of Intermediaries to promote, sell and distribute products	✓	✓	✓	✓	✓	✓	✓	✓
Customers taken into consideration during Product Development and Design.			✓					
Insurers obligated to disclose information that is clear and fair and not misleading.	✓	✓	✓	✓	✓	✓	✓	✓
Obligation to give appropriate advice to customers.	✓	✓	✓		✓	✓	✓	



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Promotional materials fair, clear and not misleading	✓	✓	✓	✓	✓	✓	✓	✓
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F. Significant Costs and Benefits

17. The relevant costs and benefits associated with the revision of Rules and Guidance on the Market Conduct of Insurers, Agents and Brokers are presented in **Table 3**.

Table 3 – Estimated Costs and Benefits of Proposed Measures

	Costs	Benefits
Insurance Companies	<ol style="list-style-type: none"> 1. Companies may need to change or modify their policies and procedures with respect to agents and in some cases employees. This change will come with administrative and labour costs. Management time is expensive. Spending time reviewing and approving new policies and procedures imposed by the regulator encroaches on time necessary to manage day to day activities and find innovative ways for business growth and efficiency. 2. The opportunity cost of all forgone alternatives. Money and time spent on costs and activities associated with the implementation of a new Rule and Statement of Guidance could have been spent on any number of other options. 	<ol style="list-style-type: none"> 1. Insurance companies may benefit from increased gross written premium ("GWP") due to the improvement in public perception of insurance as whole. Strong market conduct rules go a long way in fostering confidence in the sector. Better public perception of insurance results in the engagement and in some cases the re-engagement of persons currently outside the insurance market (i.e. sceptics or persons disillusioned with insurance). New entrants and re-entrants to the insurance market could mean increased GWP across the domestic industry. 2. Individual insurance companies may also realise improvements to their own reputation and credibility. This benefit again is indirectly tied to increased GWP, similar to point 1.



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	Costs	Benefits
		<p>3. Companies have the potential to keep policies on their books longer and as a result experience more sustained GWP and profits. Based on studies conducted, policyholders are more satisfied with the insurance products they purchase if the products are sold in accordance with market conduct best practices. When policyholders are satisfied with their product, they hold on to it longer.</p> <p>4. Better intermediary conduct can lead to cost savings for Insurance companies i.e. potentially less litigation costs, on-time premium remittances, longer-term policies holders (sustained premiums) etc.</p>
<i>Insurance Intermediaries</i>	<p>1. Companies may need to change or modify their policies and procedures with respect to intermediaries and in some cases employees. This change will come with administrative and labour costs. Management time is expensive. Spending time reviewing and approving new policies and procedures imposed by the regulator encroaches on time necessary to manage day to day</p>	<p>1. Insurance intermediaries will benefit from clear expectations for market conduct practices.</p> <p>2. Insurance agents can enjoy larger or more sustained commission income. When insurance intermediaries are better qualified to advise policyholders on the best products for their needs, policyholders tend to hold policies longer.</p> <p>3. Reduction in refunded commissions. As is customary, insurance agents</p>



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	Costs	Benefits
	<p>activities and find innovative ways for business growth and efficiency.</p> <p>2. The opportunity cost of all forgone alternatives. Money and time spent on costs/activities associated with the implementation of a new policy could have been spent on any number of other options.</p>	<p>are paid commissions based on the present value of total premiums collected at the end of the year. If policies are cancelled/lapsed etc. within the year, the agent is liable to refund the insurance company the portion of commissions paid up front for the policy or policies that have been cancelled. When insurance agents act in good faith, with skill, fairness and transparency, policyholders tend to understand the benefit of having the product and therefore aim to hold on to their policies.</p> <p>4. Intermediaries can also benefit from a better overall perception of the insurance industry.</p> <p>5. Reduces likelihood of disputes and litigation between intermediary and sponsors because of clear requirements to segregate accounts etc.</p>
Consumers	<p>1. Any costs incurred by insurance companies because of implementing policies and practices in service of compliance of the Rule and Statement of Guidance will most likely be passed on to the consumer.</p>	<p>1. Consumers will be better equipped to handle the financial impact of adverse events. Enhanced confidence in the insurance sector can potentially encourage sceptics or persons disillusioned with insurance to access the necessary insurance products. Having important insurance coverage improves consumers' ability</p>



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	Costs	Benefits
		<p>to absorb financial shocks after an adverse event and, in some cases, alter consumer behaviour to prevent adverse events resulting financial shock in the first place.</p> <ol style="list-style-type: none"> 2. Strong market conduct regulation fosters transparency and fairness. Consumers can get better quality advice, more accurate information and the right products for their needs and reduce the risk of paying premiums for policies that are inappropriate for their specific needs. 3. Consumers can potentially save money on policies that are more appropriate for their needs. 4. There is also the potential for consumers to save time and administrative hassle associated with cancelling and surrendering policies that don't work for them or due to manipulation and mis-selling by unscrupulous insurance agents and other persons involved in insurance intermediation.
CIMA	<ol style="list-style-type: none"> 1. Gazette and publication of new measure. 2. Amend internal supervisory manuals and procedures. 3. Training of staff. 4. Conduct consultation. 	<ol style="list-style-type: none"> 1. Supports internal training for new staff in the Insurance Division. 2. The Authority having to follow up on fewer complaints from the general public.



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	Costs	Benefits
	<p>5. Answer queries from industry and general public on new requirements in the near term.</p> <p>6. More robust regulatory requirements will cost the Authority more man power hours at all levels.</p>	<p>3. Modernized and more comprehensive Rule and Statement of Guidance on Market conduct enhances the Authority's reputation.</p> <p>4. Fewer inquiries and discussion with insurance companies and intermediaries regarding their role and responsibilities in this regard.</p>
Cayman Islands	<p>1. To ensure that the Policy is effective, there could be some costs associated with raising the awareness of the general public, insurance agents and brokers:</p> <ul style="list-style-type: none"> ○ press releases ○ presentations ○ educational workshops <p>2. Some licensees might choose to surrender their license instead of complying with the new Rule and Statement of Guidance.</p>	<p>1. Raise the jurisdiction's profile as an international financial centre and manage reputational risk. The Cayman Islands' reputation is a key asset directly related to GDP and millions of dollars in government revenue. Effectively managing reputational risk begins with recognizing that reputation is a matter of perception. Reputation is distinct from the actual characteristics of the jurisdiction. Thus, the potential for significant risk arises when the jurisdiction's reputation is more positive than the underlying reality and not only when negative events occur. To bridge reputation-reality gaps, the Cayman Islands must continually improve its ability to meet international standards and comply with global best practices.</p> <p>2. Improve results of future assessments by international standard setters.</p>



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G. Comments and Consultation

18. The Authority seeks consultation through written comments and representations from the private sector associations concerning

- a. *Rule on Market Conduct for Insurers, Agents and Brokers; and*
- b. *Statement of Guidance on Market Conduct for Insurers, Agents and Brokers*

19. The Authority must receive representations by **5:00pm** on **Friday, 23 February 2018**.

20. Comments and representations must be addressed to:

The Managing Director
Cayman Islands Monetary Authority
P.O. Box 10052
80e Shedden Road
Elizabethan Square
Grand Cayman KY1-1001
Cayman Islands
Tel: 345-949-7089
Fax: 345-946-5611
Email:

Consultation@cimoney.com.ky
and copied to j.moss@cimoney.com.ky

21. The Authority shall have due regard to any representation made by the private sector associations and industry stakeholders. The Authority shall provide a written response collating the feedback received and the Authority's position on this feedback. This response shall be copied to all relevant private sector associations only.
