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RESPONSES ON COMMENTS BY THE INDUSTRY ON AMENDMENTS TO THE INSURANCE ACT 2008

1. Introduction

Further to the comments received from members of the Industry, this paper serves to respond and/or discuss the position of Financial Services Authority (FSA). Henceforth, this paper would be segregated into different points.

2. Members of the Industry who submitted their comments

Insurance Association Seychelles
African Risk Transfer

A. FSA's raison d'être for making amendments to the Insurance Act, 2008.

Based on the comments received, the Industry members were in agreement that there needs to be an amendment undertaken in regards to the Insurance Act, 2008 ("Act") and certain provisions within the Act is not consistent with International standards and best international practices.

Additionally, they agreed that some of the provisions are ambiguous and outdated and needs to be amended in order to adequately reflect the current landscape of the Insurance sector.

The Industry members reviewed the White Paper – Policy Changes to the Insurance Act and outlined certain of their concerns and put forth certain proposals and recommendations for the FSA to consider so as to more appropriately address the issues that they as the Industry have been facing within the sector.

The points raised and feedback provided are detailed below;

B. Amendments under the Insurance Act, 2008.

i. Definitions under Part I – Preliminary

(a) Definition of "actuary"

The members of the industry commented on "Why has the change in the definition of the actuary removed specifics for requirements of the actuary to hold required qualifications?".

This gives the impression that any person can become an actuary.

The members of the industry also proposed a new definition;

actuary "means a person approved by the Authority in accordance with the provisions of this law, the responsibilities of who include, but are not limited to, the calculation of insurance risk and premiums, by analysing statistics".

The FSA is in agreement with the need to maintain requirements and agreed to the proposed definition, however amend it to reflect the need to keep requirements for qualifications as per below;

actuary “means a person qualified and holding such actuarial qualifications by a credentialed and internationally accepted organization, and approved by the Authority in accordance with the provisions of this law, the responsibilities of who include, but are not limited to, the calculation of insurance risk and premiums, by analysing statistics”.

ii. Definition of “annuity”

The members of the industry proposed a new definition of annuity as per below;

“annuity” means an insurance investment contract providing periodic payments specified for a number of years or life”

The FSA was not in agreement of the new definition and propose to maintain initial definition as not all contracts can be deemed to be for an investment purpose but merely a contract between the policyholder and the insurer.

iii. Definition of “auditor”

The members of the industry proposed a new definition of auditor as per below;

“auditor” means a person who has a qualified Professional Auditing or Accounting qualification by a credentialed and internationally accepted auditing organization, and who is a current member of good standing of one of the above institutions or a person of good standing with some other accountancy qualification who is recognized by the Authority as such for the purpose of this Act

The FSA proposes some further changes to the proposed definition by the industry to read as below;

“auditor” means a person who has qualified a Professional Auditing or Accounting qualification by a credentialed and internationally accepted auditing organization, and who is a current member of good standing of one of the above institutions or a person of good standing with some other accountancy qualification who is recognized by the Authority as such for the purpose of this Act;

iv. Financial Consumer Protection Act

The members of the industry proposed that throughout the proposed amendments that instead of Financial Consumer Protection Act, the FSA uses Financial Consumer Protection Bill, given that the new proposed Bill has yet to be enacted.

Although the FSA is in agreement that the Bill has not yet been enacted to become the Act, the FSA’s reasoning for such is that the Bill might be enacted whilst changes and works are still being undertaken with the Insurance Act.

v. Premium Collection

The members of the industry proposed that the section in terms of premium collection be amended so as to remove any ambiguities.

The FSA is in agreement with this and as such has amended the section which has provisions for premium as detailed below;

Premium rate under insurance policies

87.(1) An insurer shall not issue a long term insurance policy except where the premium rate chargeable under that class of policy has been certified by its actuary as being in accordance with sound insurance business and actuarial principles.

(2) An insurer shall provide the Authority with particulars of every new insurance policy product together with the certificate from its actuary, the prospectus or other sales literature and specimen policy relating to that product and any other supporting information as the Authority may specify, at least 30 days before offering the product to the public.

(3) Where it appears to the Authority that a long term insurance product is not appropriate for any reason, the Authority may, before the expiry of the 30 days —

- (a) prohibit the insurer from offering the policy to the public;**
- (b) require the insurer to make such changes to the product as the Authority may specify before it is offered to the public.**

(4) The actuary shall not certify premium rates for an insurance policy product unless the actuary is satisfied that it is suitable and in accordance with sound insurance business and actuarial principles.

(5) The Authority may require the actuary of an insurer to provide it with a report on —

- (a) the suitability of the policy terms and premium rates for the time being chargeable by the insurer for an insurance policy product; or**
- (b) on such other matter as the Authority may specify in its request.**

(6) The Authority may after considering the report of the actuary take such measures as are referred to in subsection (3).

vi. Definition of “insurance”

The members of the industry commented in regards to the proposed new definition of “insurance”, where reference was being made to only transfer of risk from an individual to a company and not from company to company.

The FSA is in agreement that this is an issue and has thus acknowledge the need to remove the definition of “insurance”, given that within the Act already caters for the definition of “insurance business which has the same meaning, thus is merely causing a duplication in definition.

vii. Definition of “insurance broker”

The members of the industry proposed a new definition of “insurance broker” as per below;

“Insurance broker” means a person or company who works for the policyholder in the insurance process, acting on behalf of the client, independent of insurers

The FSA was not in agreement of the new definition and propose to maintain initial definition as per below;

“insurance broker” means a person who works for the policyholder in the insurance process, acting on behalf of the client, independent of insurers

viii. Definition of “insurance intermediary”

The members of the industry proposed a new definition of “insurance intermediary” as per below;

“insurance intermediary” means any person or company that engages in insurance intermediation, including brokers, who represent buyers in insurance activity, insurance sales representative and introducers as an agent of the insurer;

The FSA in agreement of the new definition, however propose to remove “or company” given the definition of person as per the IGPA includes company;

ix. Definition of “insurance intermediation”

The members of the industry proposed that the definition be in a list form as the paragraph was quite lengthy and caused certain confusion while being read.

The FSA was in agreement to the comment and suggestion, and agreed to amend accordingly.

x. Definition of “insurance technology or InsurTech”

The members of the industry proposed a new definition as per below;

“insurance technology or InsurTech” means the variety of emerging technologies and innovative business models that have the potential to transform the digital evolution of Insurers

The FSA was not in agreement of the new definition and propose to maintain initial definition as per below;

“insurance technology or InsurTech” means the variety of emerging technologies and innovative business models that have the potential to transform the insurance business”

xi. Definition of “financial technologies or FinTech”

The members of the industry proposed a new definition as per below;

“financial technologies” or fintech” means technologically enabled financial innovation that could result in new business models, applications, processes, or products with an associated material effect on financial markets and institutions and the provision of improved delivery of financial services

The FSA was not in agreement of the new definition and propose to maintain initial definition as per below;

“financial technologies” or fintech” means technologically enabled financial innovation that could result in new business models, applications, processes, or products with an associated material effect on financial markets and institutions and the provision of financial services;

xii. Definition of “loss assessor”

The members of the industry queried as to whether the new definition of loss assessor would mean that internal loss assessors of insurance companies will need to be licenced with the FSA and proposed that they be excluded.

The FSA is in agreement with this proposal and will make necessary amendments required to exclude the internal loss assessor from the definition.

xiii. Definition of “outsourcing”

The FSA will amend the definition to give more clarity as to what activities exactly the Authority will allow companies to outsource given that the current definition is quite broad.

xiv. Definition of “principal officer”

The members of the industry expressed concerns as to the current wording of the definition. They queried as to if the FSA is referring to the “manager of an internal audit function, or the “managers of the company”.

The FSA agreed to make necessary amendments to the definition to give more clarity as per below;

“principal officer” means a Director, Chief Executive Officer, the manager or the Chief Internal Auditor, and includes a person or any other person who holds the position of a senior managing official holding similar key controlling functions and responsibilities

xv. Definition of “prescribed capital requirement”

The members of the industry clarified as to whether the specifics, and various definitions as provided for under the prescribed capital would be published in the relevant regulations and/or subsequent guidelines.

The FSA acknowledges this comment and confirms that these would be published in regulations or guidelines which would need to be read in conjunction with the Act. The FSA also proposes to keep the name of “Under Solvency Regulations” broad in case of any future amendments whereby the name might change.

xvi. Definition of “professional indemnity”

The members of the industry proposed a new definition as per below;

“professional indemnity” protects business owners, professional people (freelancers, professionals and the self-employed), against claims which might be made alleging any wrongful advice or acts, errors and omissions and inadequate service;

The FSA is in agreement that the proposed definition is acceptable and will be considered when making the amendments to the Act.

xvii. Definition of “risk management”

The members of the industry proposed a new definition as per below;

“risk management” means the process of forecasting and evaluating of risk together with identification of procedures to avoid or minimize their impact;

The FSA finds that the initial definition as proposed by the Authority is more adequate, and encompasses all elements of risk management and will thus maintain the original definition as per below;

“risk management” means the process through which risks are managed allowing all risks of an insurer to be identified, assessed, monitored, mitigated (as needed) and reported on a timely and comprehensive basis.

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“risk management” means the process through which risks are managed allowing all risks of an insurer to be identified, assessed, monitored, mitigated (as needed) and reported on a timely and comprehensive basis.

ii. Section 9 – Application for a licence as an insurer

This amended section is in regards to the codes and regulations in accordance with corporate governance and the members of the industry queried as to whether the amended Act will be incorporating all the changes within the Codes and whether or not they will be void.

The FSA’s reply is that as per normal policy process and standard procedures, once any Act is amended, any codes, guidelines or regulations is amended and revised subsequently in order to align them with provisions of the Act.

iii. Section 23 – Solvency regulations

- a) This amended Part and section within the Act is in regards to the maintenance of capital and the ability for the insurance companies to have adequate capital in case of any solvencies and its regulations.

The members of the industry expressed their concerns in them being afforded reasonable transition period before they are to meet all the new requirements being proposed by the Act.

The FSA’s reply is that adequate transition period will be provided for all licensees, and it is the normal policy process that once any Act is amended, a transition period is provided for given that some amendments are quite substantial and the Authority acknowledges the significant changes and amendments required to be undertaken.

- b) Another section within the Part amended is in terms Minimum Capital Requirement and Prescribed Capital Requirement.

In line with this the members of the industry commented that “the availability of investments must also be considered when setting the investment concentration limits due to the limited size of the Seychelles market.

The FSA acknowledges this, and due consideration will be given when reviewing these requirements to be placed on the insurers.

- c) Within the section 23, which describes maintenance of minimum shareholders’ fund, the term “Capital Floor” is used and the members of the industry commented that this is not specifically defined anywhere.

The FSA acknowledges this, and due consideration will be given, and the definition of capital floor will be included under Part I – Preliminary, to mean as per below;

“the minimum paid up share capital that must be maintained by an insurer” when reviewing these requirements to be placed on the insurers.

iv. Inserting a new “Section 44 – Part IX – Risk Management”

Given the important and the many aspects of risk which exists within the insurance sector, a new Part specifying risk management has been added to the Act and in relation to this the members of the industry enquired as to “What is the current risk management framework and if all insurers will be able to comply with what is being proposed within the Act”.

In reply to the comment, the FSA advises its licensees that there is currently a code in force specifically for risk management, which include all functions of risk management. This framework is decided not by the FSA but by the insurer and the functions can be done either in house or outsourced.

v. Amending Section 45 – Auditors, Actuaries, Accounts and Returns.

Given the importance that IAIS places on professionals such as Actuaries, operating within the sector, the Authority has expanded on this section to create more emphasis on auditors and actuaries. In line with this expansion, the members of the industry proposed some additional actuarial requirements as per below;

For General Insurance;

- a. Current stochastic model and 75% Confidence Level of reserves computation is in line with the RBC regime.
- b. The proposed Act called for premium rating to be back by statistical database.

For Life Insurance;

- a. Current net premium reserving would fall short and need to switch to gross premium valuation basis and the many aspects of risk which exists within the insurance sector, a new Part specifying risk management has been added to the Act and in relation to this the members of the industry enquired as to “What is the current risk management framework and if all insurers will be able to comply with what is being proposed within the Act”.

In reply to the proposal by the members, the FSA has taken note of the proposal put forth and due consideration will be given when drafting the necessary codes or guidelines specifying more of the requirements of the auditors or actuaries.

vi. Amending Section 50 – Actuarial assessment.

In furtherance to the actuarial requirement and the specific regulations and/or guidelines stating such, the members of the industry clarified as to whether technical reserves, solvency margin, surplus, free assets, and solvency ratio will be included given that current annual actuarial valuation do provide these financial measurements.

The FSA, as stated previously will include all existing provisions in the new regulations, to enhance these provisions following the enactment of the Act.

vii. Amending Section 52 – Accounts, balance sheet and other returns.

In pushing for the Act to be in more conformity with international norms and standards, namely the IAIS which specifies that accounts prepared by the licensees be in compliance with International Financial Reporting Standards the Authority has amended this section. However, the members of the industry have concerns as to whether or not the task of moving to IFRS standards would not be too onerous for local insurers. They also stressed on the fact that if Seychelles is ready to adopt IFRS in full and what measures have been taken by the FSA in addressing implications of IFRS 17.

Additionally, the members of the industry also expressed that certain jurisdictions do not make reference to IFRS.

The FSA, acknowledges the concern of the industry, but however makes a note that certain authorities in Seychelles, such as the SRC mostly adopts IFRS standards when accepting accounts and returns.

Moreover, these accounts will only be reflected after the transition period has been stated with the enactment of the act which will most likely be in 2023 giving sufficient time for licensees to make necessary adjustments to their business landscape.

viii. Amending Section 72 – Intermediaries and other insurance professionals.

The members of the industry commented on the activities of the insurance and reinsurance intermediaries, and sought clarity in regards to whether these foreign reinsurance brokers will need to be licenced with the FSA and recommended that they be excluded or rather use the word “local” instead.

The FSA, clarified that no, they will not be licensed with the FSA unless that they come and set up their business within Seychelles, basically having substance.

ix. Amending Section 72 – Intermediaries and other insurance professionals.

The members of the industry proposed to add under subsection 3, part (c) the following paragraph “of an Insurance company and an insurance intermediary” to read as follows;

“the activity of handling insurance claims, if this is carried out by an employee of an insurance company and an insurance intermediary”.

The FSA is in agreement with the proposal and will consider adding the paragraph.

- x. Amending Section 72 – Intermediaries and other insurance professionals.

The members of the industry proposed to add under subsection 3, part (c) the following paragraph “of an Insurance company and an insurance intermediary” to read as follows;

“the activity of handling insurance claims, if this is carried out by an employee of an insurance company and an insurance intermediary”.

The FSA is in agreement with the proposal and will consider adding the paragraph.

- xi. Amending Section 74

The amendments included within the Act for financial reporting standards has been extended to Insurance intermediaries and the members of the industry expressed concerns as to the cost for small businesses to maintain accounting personnel or to have the financial means to produce accounts for submission to the auditors.

Given that the FSA is moving towards International standards and the need to meet requirements of the IAIS standards and norms, the FSA advises that there is the need to prepare these accounts as per the international standards.

- xii. Amending Section 75 – Intermediaries and other insurance professionals.

The amendments to this section is in regards to payment of premium from a policyholder on behalf of an insurer, and the Authority through inspection found that there were gaps in making payments. Hence this part has been amended to cater for such and the members of the industry expressed further concerns that though codes hold similar requirements, brokers are not compliant and sought guidance from the FSA as to what steps are being taken by the Authority to ensure enforcement and What penalties will the intermediaries face?

The FSA clarifies that through amendment of this section it expects it will address these issues but clarifies that the agreements in place are between the brokers and insurance companies. The FSA further adds that it is working on making necessary amendments to cater for enforcement actions on penalties issued and non-compliance.

- xiii. Amending Section 75 – Intermediaries and other insurance professionals.

Further amendments to this section is in regards to claims professional and this section specifies that unless the person is registered with the Authority cannot

perform actions of a claims professional and with this amendment the members of the industry sought to clarify whether their international loss adjustors need to be registered with the FSA?

The members of the industry sought some further guidance from the Authority in terms of the time frame and length of process for registration.

In addition to the registration, the section also gives specifics when the person is removed from the register and the members of the industry queried the FSA if they will be made aware when this procedure happens as they do not wish to use unregistered, unlicensed or suspended claims professional.

The FSA clarified that international loss adjustors need not register if they are conducting business for a specified case, otherwise should they have permanent business in Seychelles then they will be required to be licensed.

In reference to the removal of the claims professional from the register, the FSA clarifies that they shall be published on the FSAs' website or through Notices issued to the general public.

xiv. Amending Section 78.

This amendment provides specifics in regards to payment of annual fee for principal insurance representative and the members of the industry clarified as to the definition of "insurance representative" and what are the requirements for them to be recorded and approved? The members also proposed to introduce terms such as key individuals and fit and proper persons.

The FSA clarified that current definition applies and there is already a process in place whereby they are assessed to be fit and proper by the Authority.

xv. Amending Section 83.

This amendment provides specifics in regards to claims professional such as payment of annual fee amongst others and the members of the industry proposed some amendments to the subsection as below;

"A claims professional shall take out insurance against their third party Professional Indemnity liability or another form of similar security for any damage resulting from their actions or omissions in a calendar year"

The FSA is in agreement with the current wording proposed and will amend within the Act accordingly.

xvi. Amending Section 87.

This particular section deals with amendments in regards to the Financial Consumer Protection Act, and the members of the industry commented on how all licensees will "provide for the confidentiality of personal data".

The FSA took note of this and clarifies that it is the obligation of the licensee to ensure that they have their own manuals and procedures in place and also maintain their own codes for internal controls and management.

xvii. Amending Section 88.

This particular section deals with amendments in regards to all aspects of information disclosure in terms of policies and the members of the industry commented on why not all licensees are covered within the context of this section given that all licensees are obligated to do so. They also added that that summaries are not required for the Authority given that there are already requirements in place for fulfilling application as Insurance providers and would be preferable to draft a separate mandatory disclosure document.

The FSA took note of this and is in agreement to reword this to include intermediaries instead of current wording so that all licensees are covered and is in agreement to remove the words “in the form of the summary” as per below;

“Where an insurance policy, other than a reinsurance treaty, is entered into, the insurer or the intermediaries shall, not later 30 days after the policy has been entered into, on policies provide for the purpose of the policyholder written information that (at least the following matters)”,

xviii. Amending Section 88.

Further amendments within this section deals with methods of premium calculation and other methods of paying premiums and the members of the industry sought clarity on this section, as to what is the intention of the FSA and commented as to the fact that insurers refuse to disclose these rates.

The FSA takes note of this and understands that disclosure of rates is by default a business approach and not all insurers would want to disclose rates to their immediate competitors. The FSA also has agreed to add breakdown of how premiums should be calculated for more clarity.

xix. Amending Section 88.

Further amendments within this section deals with time limits for the payment of insurance claims or the insured amount and the members of the industry has concerns in terms of setting a time limit for settling of claims as they all vary in size, difficulty and complexity. The members also expressed that payment of claims is described in the policy conditions and why the need to introduce another rule.

The FSA takes note of this and understands the difficulty in taking such an approach given the variations by different insurers. The FSA has therefore agreed however to conduct a small survey to identify the different time limits for payment of claims and based on this would set an industry standard norms which caters for all licensees. The FSA further adds that there is a code for claims management and payment of claims is already in the policy conditions.

xx. Amending Section 88.

Further amendments within this section touches on out of court proceedings for settling on disputes and the members of the industry expressed that this should be stated in the policy wording and statutory disclosures.

The FSA clarifies that these are already in the policy wording and all these procedures will be formalized in the Insurance Act.

xxi. Amending Section 88.

Further amendments within this section address the conditions concerning unilateral contract termination and the members of the industry queried as to why Seychelles cannot agree on a bilateral cancellation clause.

The FSA takes note of this and has agreed to consider removing unilateral and keep it broad allowing both parties to be covered during contract termination.

xxii. Amending Section 88.

Further amendments within this section address the need for licensees and registered person to inform of any changes within the insurance industry to their policyholders within a 10-day period and the members of the industry queried as to if this is a reasonable time frame and are these events such as insolvency, changes to legislation common knowledge.

The FSA advises that this is usually common knowledge as such information are shared to the general public and there is a need to place more emphasis on obligation to disclose information and further to the time frame the FSA has agreed to extend it to 15 days instead.

xxiii. Amending Section 96.

This section deals with matters in regards to the POPF and to bring more clarity due to many concerns and complaints received in respect to POPF and the members of the industry queried as to if a full disclosure information is made available by the Authorities on the size of the present fund and the measures to secure monies against use for other purposes. The members also queried as to if the fund has been audited in the past years and whether the fee determined by an actuary report and whether the old fund will be transferred to the new Insurance Act. The members also queried about disclosures, actuaries and openness of the fund and whether fit and proper requirements are provided for.

The FSA points out that the POPF is audited yearly and in terms of new wording and amendments the FSA will maintain previous wording of the Insurance Act and any further amendments to the POPF will be set out in the regulations.

xxiv. Amending Section 97.

Part of the section of the POPF deals with suspension of the POPF based on the determination of an internationally credentialed and the members of the industry queried as to if this is something that should be considered and queried as to if this is determined by the actuaries.

The FSA takes note of this point and has considered to delete given the complexity of having the POPF suspended and repercussions.

xxv. Amending Section 99.

Part of this section deals with eligibility and compensation of claimant from the POPF and the members of the industry queried as to if this section is referring to the policyholder or the third party claimant and clarified the 5 years in terms of the years taken in order to make a claim.

The FSA takes note of this point and has considered to check the length of time given that the Civil code allows for 5 years. delete given the complexity of having the POPF suspended and repercussions.

xxvi. Amending Section 100.

This section deals with supervision of licensees by the Authority and the members of the industry queried about insurance companies not within groups, and agent and agent companies and is it the intention of the Authority to supervise an Insurance activity already supervised.

The FSA takes note of this point and has considered to remove brokerage companies given that mostly all brokers will be licensed as a company and they either operate as a sole trader or a company.

3. Other comments.

The FSA have taken note of other relevant comments received throughout the document and as such makes the below proposals to address these;

- Introduce the definition of persons as defined under the IGPA
- Introduce throughout the Act the terms “policyholders” to make reference to customers or clients of insurers.
- Sections 87, 88 contains certain subsections which needs to be reworded in order to provide more clarity and understanding and additionally give clearer guidance in terms of its processes
- Within certain sections, such as section 88, the members of the industry proposed to the FSA to use the wording “insurance intermediaries” instead so

as to cover all licensees, namely, insurance brokers, insurance agents or sales insurance representatives.

- The FSA will introduce a transition period of 12 months to allow for licensees to make necessary business arrangements.

◁ **END** ▷