

INITIAL PUBLIC CONSULTATION PAPER

REVIEW OF THE *FINANCIAL INSTITUTIONS ACT*

BACKGROUND

The Insurance Council of British Columbia (“Council”) is a self regulatory organization, established under the *Financial Institutions Act* (the “FIA”), to licence and regulate the activities of life and general insurance agents, general insurance salespersons, insurance adjusters, restricted travel insurance agents, and restricted vehicle warranty dealers in British Columbia.

Council’s role is best described by its mission statement:

“We serve and protect the public by regulating insurance licensees under the Financial Institutions Act and by promoting ethical conduct, integrity, and competence.”

Council is made up of industry and consumer representatives, with each member bringing his or her own unique background, experience, and knowledge to the task of directing Council in fulfilling its mandate.

Council has in excess of 33,000 persons licensed in British Columbia to engage in insurance activities. The vast majority (31,000) are licensed as either life insurance agents or general insurance agents and salespersons. Council handles over 4,000 new licence applications each year. During its 2014/2015 fiscal year, Council received 222 complaints, resulting in 68 investigations, it conducted 158 inspections, and 50 errors and omissions or continuing education audits, and handled approximately 19,000 telephone and written inquiries from the industry and the public.

In preparing its submission, Council reviewed the issues contained in the Insurance Section of the Initial Public Consultation Paper. Council’s comments focus on issues addressed in the Initial Public Consultation Paper.

1. INSURANCE RETAILING AND LICENCE EXEMPTIONS

Council supports the concept of a level playing field when it comes to the licensing and regulation of the distribution of insurance products. In doing so, Council believes all consumers of insurance products should be afforded equal rights and protections, regardless of how, or from whom, they purchase insurance.

The *Insurance Licensing Exemptions Regulation* under the FIA contains approximately 20 exemptions from the FIA's licensing requirements. The licensing exemptions vary from the sale of specific insurance products to engaging in specific insurance activities. For those exemptions relating to the sale of specific insurance products, the terms of the exemption vary from an unconditional, unrestricted exemption (i.e. Section 2(1)(a) - *the sale of product warranty insurance by the seller of the product*; or Section 2(1)(b.1) - *the sale of credit insurance by employees of a financial institution*) to conditional or restricted exemptions (i.e. Section 2(1)(i) - *travel agents engaged in the sale of travel insurance*).

Many of the FIA's licence exemptions apply to a unique insurance product, such as the sale of product warranty insurance or forgery insurance (section 2(1)(a) and (b) of the *Insurance Licensing Exemptions Regulation*, respectively). While Council has not experienced complaints resulting from the sale of insurance under these types of licensing exemptions, Council believes that consumers should have a form of recourse similar to what is available had they used the services of an insurance licensee.

Council proposes that amendments to the *Insurance Licensing Exemptions Regulation* be considered, which establishes responsibilities relating to the sale of insurance under a licensing exemption, and creates, either directly or indirectly, a duty on the person relying on the licensing exemption and on the insurance company whose product is being sold. When insurance products are sold under a licensing exemption, the insurance company plays a role in determining who it will permit to sell its insurance product under the relevant licensing exemption.

As insurance companies are not required to rely on a licensing exemption and can elect to use insurance licensees, there should be specific obligations or requirements on an insurance company if a complaint arises as the result of the sale of insurance by a person who is exempt from the FIA's licensing requirements. Failing that, licensing exemptions should come with mandatory disclosure requirements that will ensure a consumer is aware they are dealing with an unlicensed and unregulated person and, as a consequence, are not afforded the same protections that exist if they were using the services of a licensed insurance agent or salesperson.

TRAVEL AGENTS AND FUNERAL DIRECTORS

The *Insurance Licensing Exemptions Regulation* allows for the sale of travel insurance and funeral insurance by way of a licensing exemption. The licensing exemptions involving travel insurance and funeral insurance include conditions, which limit the amount of insurance sold, require disclosure, or require minimum education or training to qualify for the licensing exemptions.

For persons involved in the sale of travel insurance (travel agents) or funeral insurance (funeral directors), both are also subject to regulation of their primary business activity:

1. Travel Agents – Consumer Protection BC
2. Funeral Directors – Consumer Protection BC

With these two licensing exemptions, the persons involved are already subject to regulation because of their primary business activity. The licensing exemption limits the sale of insurance to a secondary activity arising from their primary business activity. As such, Council sees an opportunity to streamline some regulatory requirements by allowing the insurance activities of these persons to be regulated by their principle regulator.

This approach would allow for a more effective regulation of the insurance activities of these groups by reducing the overall cost of regulation (e.g. travel agencies would no longer have to obtain a licence from Council as required by their licensing exemption) and would provide consumers an opportunity to bring a concern to a regulator that has a direct interest in the suitability of the person engaged in the (exempt) insurance activity. As travel agents and funeral directors are already subject to regulation, the additional oversight of the exempt insurance activities provides an effective option for both the industry and the consumer.

MOTOR VEHICLE DEALERS

Section 2(1)(g) of the *Insurance Licensing Exemptions Regulation* exempts a motor vehicle dealer, or an employee or commissioned sales representative of a motor vehicle dealer, whose only activity as an insurance agent or insurance salesperson is in connection with vehicle warranty insurance sold incidentally to the ordinary business of the motor vehicle dealer.

However, motor vehicle dealers are also engaged in the sale of a number of other insurance products which are also incidental to the sale of a motor vehicle. (Note: this does not include insurance from the Insurance Corporation of British Columbia, which can only be sold by licensed agents and salespersons).

While motor vehicle dealers are subject to regulation by the Motor Vehicle Sales Authority of B.C., in a manner similar to travel agents and funeral directors, Council believes the insurance activities of motor vehicle dealers should continue to be regulated by Council and that the exemption under section 2(1)(g) of the *Insurance Licensing Exemptions Regulation* should be removed.

Council believes that to exempt a group from licensing regarding the sale of one insurance product, but require licensing for other products, as is the case of motor vehicle dealers, is neither appropriate nor in the public's best interests. In addition, the variety of insurance products that have been developed to be sold incidental to the sale of a motor vehicle requires licensing and oversight.

Unlike the exemptions for travel agents and funeral directors, motor vehicle dealers have a variety of insurance products that can be offered to their clients, with new products being developed each year. As a result, because of the variety of the products and the opportunity for consumers to be improperly informed, or worse, misled, Council recommends that all insurance activities conducted by a motor vehicle dealer should be regulated by Council.

CREDIT INSURANCE

Section 2(1)(b.1) of the *Insurance Licensing Exemptions Regulation* allows for the sale of credit insurance by employees (or service providers) of a financial institution in conjunction with the granting of a loan by the financial institution. (As well, under section 2(1)(c) of the *Insurance Licensing Exemptions Regulation*, mortgage brokers are exempt from licensing as it relates to the sale of credit insurance). This licensing exemption allows an individual to sell credit insurance to a consumer without a licence, education, or training.

Credit insurance, which is a form of life insurance and can include components of disability or critical illness insurance, is sold in conjunction with the granting of a loan or mortgage by the financial institution that provides the loan or mortgage. This licensing exemption, as mortgages can easily exceed \$1,000,000.00, allows for the sale of similar amounts of life insurance by persons who are not required to have any specific education or training.

The sale of a similar life insurance product must be sold by a licensed life insurance agent, who must first successfully complete an education program and licensing exam to qualify for a licence. Once licensed, a life insurance agent must complete annual continuing education and maintain errors and omissions insurance. In addition, as part of any insurance transaction, a licensed life insurance agent is required to conduct an appropriate level of due diligence to determine the needs of the client and make recommendations consistent with that determination.

For persons relying on this licensing exemption, that level of due diligence is not required. A client could be sold credit insurance he or she does not need and, more importantly, the needs of clients may not be the paramount consideration behind the sale. A primary beneficiary from the sale of credit insurance is the financial institution itself. If the client dies, while there may be benefits for the client's family or estate, the proceeds from a credit insurance policy go toward paying off the loan to the financial institutions. The sale of credit insurance without any regard to a consumer's overall insurance needs is counter to the principles established under the FIA, as well as the obligations of a licensed life insurance agent under Council's Rules.

In addition, consumers with complaints arising from the sale of credit insurance under the licensing exemption have nowhere to go, except the Courts, as there is no oversight of this activity.

Council is recommending a number of possible options to address its concerns with the existing licensing exemption under section 2(1)(b.1) of the *Insurance Licensing Exemptions Regulation*.

The first option is to limit the licensing exemption so that it only applies to an amount not exceeding \$50,000.00 (a similar limitation is part of the licensing exemption for the sale of funeral services insurance). For amounts over \$50,000.00, there should be no exemption and a life insurance licence should be required.

In the alternative, if no maximum dollar amount is tied to a licensing exemption for credit insurance, Council proposes including additional conditions to the licensing exemption, such as mandatory successful completion of the education program, similar to that required to hold a life insurance agent licence (a similar provision is in place for the travel insurance exemption); mandatory disclosure to a client that he/she should seek a second opinion from a licensed life insurance agent; that the exempt person is neither licensed nor qualified to sell life insurance; and/or that the client is not required to purchase insurance from the financial institution as a condition of obtaining a loan or mortgage.

Council also proposes that, if the licensing exemption for credit insurance remains (or for that matter, any exempt insurance product), there should be a prohibition on insurance that is sold on a post-claims underwriting basis. Post-claims underwriting allows an insurer to determine whether a client is insured only if a claim is made. Clients should be entitled to know, within a reasonable time after purchasing a policy, whether they have insurance in place. If financial institutions are permitted to sell credit insurance without the benefit of licensed insurance agents, then they should be required to undertake the appropriate underwriting processes upfront, not just when, or if, a client makes a claim.

Note: if the licence exemption for the sale of credit insurance is removed or amended so that a life insurance agent licence is required in some or all circumstances, it will be necessary to review the Shared Premises Regulation, which prohibits the sale of insurance products at the location of a financial institution. If the existing credit insurance exemption is removed or revised, there would have to be provisions to allow the staff of financial institutions, who are currently engaged in this activity, to be able to obtain an insurance licence and conduct insurance activity in a branch of a financial institution. Council believes the sale of insurance products by a licensed individual from inside the offices of a financial institution does not represent a risk to the public.

2. REGULATION OF INSURANCE INTERMEDIARIES

COUNCIL STRUCTURE

Council is established pursuant to section 220 of the FIA, which requires that Council consists of 11 voting members:

- two representatives from life insurance companies;
- two representatives from general insurance companies;
- two life insurance agents;
- two general insurance agents or salespersons;
- two lay persons; and
- one insurance adjuster.

All voting member appointments are by Order-in-Council (“OIC”) and voting members can serve a maximum term of six years.

The FIA allows Council to have an unlimited number of non-voting members, who are appointed by the Minister of Finance. The non-voting members assist Council with a number of its tasks (committees, hearing members, and alternates for voting members) and provides a training opportunity for potential voting members. Non-voting members are often considered when a voting position on Council becomes vacant, providing for a smoother transition.

Council’s mandate is the regulation of insurance agents, adjusters, and salespersons, but only 5 of the 11 voting members come from one of these categories (the other six being insurance company representatives or lay persons). Council is recommending that the representation of licensed insurance agents and salespersons as voting members be increased. This can be accomplished in one of two ways.

The first option involves reducing the number of insurance company representatives from four to two: one life and one general insurance company representative, and to replace these two positions with an additional life insurance agent representative and an additional general insurance agent or salesperson representative. Such a change will increase the representation of licensees on Council to 7 of 11 voting members, while maintaining appropriate representation for consumers and insurance companies. This recommendation takes into consideration the fact that Council does not regulate insurance companies and, while it believes insurance company representation is relevant and appropriate, the insurance industry and the public would be better served if the majority of voting members are insurance licensees.

The alternative is to increase the number of voting members on Council from 11 to 13 voting members by adding a life insurance agent representative and a general insurance agent or salesperson representative. This proposal would still see the majority of voting members representing licensees.

COUNCIL MEMBERS – APPOINTMENT VS. ELECTION

The current process regarding voting Council members has all positions appointed by OIC. Council is proposing that the layperson and insurance company representative positions continue to be appointed by OIC, but that life, general, and adjuster licensee representatives move to an election process. The election process would have life insurance agents electing the life insurance agent representatives, insurance adjusters electing the insurance adjuster representative, and general insurance agents and salespersons electing the general insurance licensee representatives.

Council is conscious that it has become more common for self-regulatory organizations to have board members elected by its members. As an example, the Alberta Insurance Council and the Registered Insurance Brokers of Ontario elect some of their board member's positions.

Council's concern with the introduction of an election process is that election turnout for this type of process tends to be low, possibly affecting outcomes. In addition, most of Council's voting members have previously served as non-voting members, coming into a voting position with experience and a solid understanding of Council's role. To address this, if elections of voting members is considered, Council proposes that only persons who are serving, or have served, at least one two-year term as a non-voting member would be eligible for election as a voting member. Such a requirement ensures that, by first serving as a non-voting member, a level of commitment to the position exists, and only informed licensees are elected.

COUNCIL HEARINGS

Part of Council's discipline process involves providing licensees the opportunity of a hearing when Council makes an intended decision. Pursuant to section 223 of the FIA, when a hearing is requested, Council can hear the matter directly, or it can establish a committee and delegate the hearing responsibility to that committee. In accordance with section 223 of the FIA, the hearing committee must consist of at least one voting Council member.

Section 223(4) of the FIA requires that when a hearing is delegated to a committee, the committee must hold the hearing and, when finished, prepare a report for Council. It is Council that will make the actual decision as it applies to penalty.

Council is proposing that section 223(4) be amended such that the hearing committee is given the authority to decide the matter, not just prepare a report to Council. Council believes that as long as a hearing committee consists of both voting and non-voting members, it is more appropriate for the hearing committee, which has heard the evidence first-hand, to be the decision-maker in such circumstances. This recommendation is consistent with how most other regulatory bodies operate.

SPECIAL BROKERS LICENCE

The Insurance Section of the Initial Public Consultation Paper discussed whether a *special broker's licence* is necessary. Council is satisfied the FIA, and by extension, Council's rule-making authority, provide it the tools necessary to regulate the various models of distribution of insurance. Through licence conditions and restrictions, Council is able to tailor its regulation of different distribution models, including managing general agents, wholesalers, and sub-brokers ("special brokers").

Council recognizes the uniqueness of the different types of distribution models existing in the insurance industry, and is able to establish effective licensing models that recognize the distinctness of special brokers.

OUT OF PROVINCE ADJUSTERS

Based on section 225.1 of the FIA, Council has the authority under Rule 2(9) to issue a temporary insurance adjuster licence to licensed insurance adjusters from other jurisdictions in the event of a catastrophe. An adjusting firm is only required to provide Council a list of their adjusters (name and address) coming from other provinces, and the non-resident adjuster can commence work in B.C. immediately. The necessary application process can be completed when time allows.

Council is confident the current regulatory model can accommodate the timely movement of additional insurance adjusters into B.C. when required.

REGULATORY TOOLS

Council believes the FIA provides it with the regulatory tools necessary to fulfill its mandate and it does not foresee this changing if its recommendations on the change to Council's structure are adopted. However, Council has identified some specific tools or requirements that could be improved or updated. These include:

1. Section 231(k) of the FIA gives Council the authority to fine licensees and former licensees a maximum \$10,000.00 for individuals, and \$20,000.00 for corporations and partnerships. Council believes its fining authority is an appropriate tool in many disciplinary situations but the nature of some breaches can require more significant fines.

To address this need, Council is proposing an increase in its fining authority to a maximum of \$25,000.00 for individuals and \$50,000.00 for corporations and partnerships.

2. Section 241.1 of the FIA allows Council to assess investigation costs against a licensee or former licensee where it issues an order (takes disciplinary action). Where Council conducts an investigation and determines wrongdoing, but determines disciplinary action is not warranted, Council cannot assess investigation costs.

This section should be amended to allow Council to assess investigation costs against a licensee or former licensee where it determines the licensee's actions were at fault, or a contributing factor in the complaint, but determines disciplinary action is not warranted.

3. Section 227(b) of the FIA identifies a number of records that Council must maintain, which includes "... a record of every decision made by council under this Act concerning the issue, amendment, suspension, cancellation, or transfer of a licence, including the reasons for the decision ...".

Section 227(c) goes on to state that such records must be available to the public for inspection.

Council is proposing that section 227 be clarified to allow Council to publish its decisions (i.e., on its website or other websites). While Council currently publishes its decisions in different formats, it believes section 227 is limiting and would benefit from further clarity.

3. HOUSEKEEPING ISSUES

Council has identified a number of opportunities to streamline or clarify some of the requirements of the FIA which would improve the overall regulatory structure. Examples of where the FIA can be amended include:

1. There are a number of provisions within the FIA involving licensees that would be better served if included in Council's rule-making authority under section 225.1 of the FIA. As examples: section 177(a) of the FIA sets out restrictions regarding the replacement of a life insurance product, which is supported by the Insurance Contracts (Life Insurance Replacement) Regulation, and the disclosure requirements under the Marketing of Financial Products Regulation. Council recommends that these provisions be moved under section 225.1 of the FIA to streamline the process, removing the need to amend both the FIA

and regulations when amendments are required. This will allow Council to respond more quickly to changes through its rule-making authority.

2. Section 2 of the *Marketing of Financial Products Regulation* allows for the rebate of up to 25% of the premium. Council believes this amount can easily exceed the amount of commission that a licensee may receive from the sale of an insurance product.

Council recommends that a rebate should be limited to the amount of commission received by a licensee for the sale of that insurance product.

Council appreciates the opportunity to comment on the Ministry of Finance's Initial Public Consultation Paper and is receptive to providing further guidance or clarification on its submission.

Any questions or comments should be addressed to:

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