

September 15, 2015

FIA and CUIA Review
Policy and Legislation Division
Ministry of Finance
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Victoria, BC V8W 9V8

Insurance Bureau of Canada (IBC) welcomes the opportunity to participate in the review of the BC *Financial Institutions Act*, and to address issues in the *Initial Public Consultation Paper* released in June 2015. Insurers have a fundamental interest in, and a responsibility, to remain solvent, manage risk and treat consumers fairly. They take their prudential and market-conduct responsibilities seriously. Insurers also recognize the role of regulators in a risk-based regulatory environment to support market confidence of investors and policyholders, ensure a level playing field among insurers, and protect consumers by overseeing the solvency and business conduct of insurers.

Underlying this commentary and our recommendations for improving the regulation of insurers in the province, is our view that regulation of prudential and market-conduct risks should be risk-based and consistent with the following principles:

- Regulation is necessary, but should be targeted, practical and proportionate to the nature, scale and complexity of measured risks, while the cost of any regulatory initiative should always be weighed against the benefits.
- Regulation should recognize the inherent interest insurers have in remaining solvent, managing risk well and treating consumers fairly.
- The regulatory process should identify and account for any potential adverse effect on insurance availability and affordability.
- Regulation should not interfere with insurers' ability to engage in healthy competition, respond to market conditions, innovate, take reasonable risks and fight fraud.
- Regulation should be consistent across provinces.

The topics that we address in this submission are financial consumer protection, market discipline and public disclosure of key financial risk information, regulatory powers and guidelines, rebating, out-of-province business, technological change, protection of confidential information and financial literacy.

Discussion Topics

1. Financial Consumer Protection

IBC recently updated its *Code of Consumer Rights and Responsibilities* (Code) and *Standards for Sound Marketplace Practice* (Standards) which are enclosed. The Code was originally

developed by IBC and its members in 2005, and the Standards in 2006. The Code was updated to be consistent with the International Association of Insurance Supervisors' (IAIS) *Insurance Core Principle (ICP) 19, Conduct of Business*.

The updated Code:

- Outlines what consumers can expect from their insurers and insurance representatives during the term of the policy;
- Ensures that consumers are well-informed throughout the life cycle of an insurance policy and provides tips on how to understand what they are purchasing; and
- Explains the responsibilities of consumers as party to the insurance contract.

The updated Standards set out principles that govern insurers' market conduct. They are intended to reflect the current reality of consumer and business threats in the insurance environment, ranging from fraud to catastrophic events.

These two documents illustrate the industry's commitment to protecting the interests of consumers and to strong corporate governance. While adoption by insurers of the Code and Standards is voluntary, the expectation of IBC's Board of Directors is that insurers will adopt and use them. For this reason, and also because of the strong business interest insurers have in treating consumers fairly, we believe that an industry self-regulatory approach, perhaps supported by a self-evaluative process, may be more appropriate and effective than a government-imposed market conduct code applying to all financial institutions.

However, if the government wishes to move forward with its own market conduct code, we recommend partnering with its provincial counterparts in the Canadian Council of Insurance Regulators (CCIR) to develop a national code. A national code would not incur the risks, costs and implementation problems associated with having different provincial codes that place different expectations on insurers' business practices. Moreover, we advise that a national market conduct code should be principles-based and focused on customer outcomes to recognize that different insurers may have different but equally effective corporate governance structures and approaches to product development, pricing, claims management and consumer engagement.

2. Market Discipline and Public Disclosure of Key Financial Risk Information

At present, the Financial Institutions Commission (FICOM) collects and analyzes a wide variety of financial and risk data, as well as information about insurers' business practices. In recent years, for example, FICOM has conducted surveys on insurers' plans to offer flood insurance, their plans to establish usage-based insurance (UBI) programs, their exposure to the earthquake peril and their use of third-party service providers.

While consolidated financial information is already public, almost all of the information FICOM collects on insurers' business practices is commercially sensitive. If FICOM begins to publish this information, there is a risk that some insurers may become more selective in what they provide in response to FICOM's requests on issues that could affect companies' competitive positioning. In a risk-based regulatory environment, information sharing is crucial for a regulator

to oversee the market and anticipate emerging issues. For this reason, we recommend that FICOM limit its publication of insurer data to consolidated financial information.

Because BC insurers are already incurring substantial costs to report information to FICOM and the federal Office of the Superintendent of Financial Institutions (OSFI), we strongly recommend that decisions to request new information, whether provincially or as part of any national database, be subjected to tests about their relevance to consumer protection, the purpose for which FICOM will use the information and the cost-benefit for consumers.

Currently, FICOM is not a member of the national complaint-reporting system. We recommend that FICOM join its provincial counterparts in carrying out this activity. In a risk-based regulatory environment, we believe that complaint information is a potent tool for helping regulators identify problems and emerging issues, and mobilize assessment and enforcement resources accordingly.

3. Regulatory Powers and Guidelines

In the P&C insurance industry's view, FICOM currently commands adequate tools to address existing and emerging risks to the insurance environment. At present, FICOM assesses market conduct by analyzing consumer complaints, issuing issue-specific surveys to insurers and conducting periodic examinations of an insurer's business practices. In instances when an insurer refuses to comply with an order, violates terms of the business authorization or permit, or conducts business without an authorization, our understanding is that FICOM can impose penalties or fines, initiate prosecutions, impose conditions on an insurer's business authorization, require an insurer to cease operating for a given length of time and/or revoke an insurer's business authorization or permit.

Also, consistent with its counterparts in common law provinces, FICOM can issue guidelines and information bulletins to elaborate on legislative directions and intent, clarify supervisory expectations and inform supervisory assessments. Accordingly, it is not apparent to us that there would be any additional benefit for the public from further enhancement of the authority of FICOM's market conduct-related guidance.

With respect to solvency regulation, almost 90% of BC insurers are federally incorporated and therefore subject to OSFI's solvency standards. For provincially regulated companies, the substantial alignment of FICOM's standards with OSFI's means that consumers can feel confident about the safety and soundness of these companies. Going forward, however, we encourage FICOM to require all new insurers in the province to meet OSFI's solvency and governance standards.

4. Rebating

In our view, the robustness of current prudential and market conduct regulations, both federally and provincially, has eliminated any argument that may have existed in the past for restrictions on rebating. The 25% of premium rebating threshold reduces competition and provides little, if any, benefit to consumers. We recommend elimination of the rebate threshold.

5. Out-of-Province Business

BC consumers are best served when insurers authorized to operate in the province compete for their business. These insurers have to comply with federal and/or provincial prudential and/or

market-conduct regulations that meet the highest international standards. To ensure the ongoing protection of personal and commercial consumers of insurance products, we believe that only in rare and exceptional circumstances should an unauthorized insurer be permitted to place business in the province.

The FIA allows intermediaries to place business with an unauthorized insurer only when the intermediary has not solicited the client on behalf of the unauthorized insurer and the client has authorized the intermediary to place the business with an unauthorized insurer. In light of the general availability of a wide variety of personal and commercial insurance products to BC consumers, we do not believe there is any reason to change BC's current approach to managing out of province business.

6. Technological Change

Consumers are the main beneficiaries of technological innovations to insurance products, underwriting and rating practices, and claims management. Consequently, we believe the regulator should generally encourage the incorporation of new technology within the insurance market, and that its approach to overseeing this process should embrace the following principles:

- Any regulatory approach should not favour one distribution model over another.
- Consumers should be able to choose the method of communicating with an insurer or an intermediary to purchase coverage.
- The duty of care placed on insurers and intermediaries when they use electronic transactions should be no different from that required for more conventional means.

With respect to the protection of personal information, BC's *Personal Information Protection Act* (PIPA) recognizes both the right of the individual to have his/her personal information protected and the need of organizations to collect, use and disclose personal information for purposes that are reasonable. Under PIPA, overall privacy accountability remains with the organization that collects the information. Thus, insurers are responsible for ensuring that their contractual agreements with third-party service providers provide effective safeguards with respect to data retention, storage, rights of retrieval and security, and use of personal and privileged information. Given the accountability provisions in PIPA and the insurance sector's strong record in protecting personal information, we do not believe there is a need for further restrictions or rules, specific to insurers and their service providers, relating to the storage and retention of personal information outside of Canada.

7. Protection of Confidential Information

The FIA contains a confidentiality provision stating that information submitted to FICOM cannot be disclosed for purposes other than administering the FIA, except for the purposes of prosecution or as required by law. The latter includes freedom of information requirements.

By contrast, the Alberta *Insurance Act* provides additional protection for insurer information that the government obtains or creates for the purpose of administering/enforcing the *Act*, and identifies the few circumstances when the government can disclose this information. Notably, the Alberta act prohibits such disclosure for freedom of information purposes. With respect to the information an insurer provides for a self-evaluative audit, it states that it is privileged

information and is not discoverable or admissible as evidence in any civil or administrative proceeding.

Our industry agrees that the sharing of commercially sensitive and confidential information with regulators is sometimes essential for effective oversight of financial services markets. To this end, the BC legislation should encourage insurers to share information with FICOM by protecting that information from disclosure. We recommend that the BC government exempt insurer information from freedom of information requests and identify information provided for a self-evaluative audit as privileged information. In this regard, we note that in 2008, CCIR released model wording for self-evaluative privilege, which was subsequently used in Alberta's *Insurance Act*. We recommend that the BC government consider adopting this wording for the FIA.

Also on the subject of protecting confidential information, we have taken this opportunity to review the recent CCIR *Memorandum of Understanding (MOU) and Protocol on Cooperation and the Exchange of Information*, and are concerned that the confidentiality provisions of the MOU may not provide adequate protection for insurers' confidential information. For example, it states that an application for information from another jurisdiction will contain a description of the reasoning behind the request. In the event that the application became public through a freedom of information request, it could prove damaging to an insurer depending upon the nature of the issue being explored. The MOU also provides that a regulator that receives information on an insurer from another province could disclose that information, without the insurer's knowledge, if the regulator believes that disclosing the information will not harm the insurer's business or financial interests. Moreover, a regulator in a province like Alberta with comprehensive confidentiality requirements for insurer information might share information with a regulator in a province that does not protect that information, for example, from freedom of information requests.

In light of these concerns, we recommend that, in its information-sharing actions pursuant to the MOU, FICOM takes steps to protect from disclosure the contents of applications for inter-jurisdictional transfer of information as well as the information itself. We also recommend that in situations when a regulator intends to make a judgment about the potential harm of disclosing information received from another regulator, notice is given to the affected insurer(s) of the potential disclosure and an opportunity is provided to the insurer to comment on the matter.

8. Financial Literacy

As noted previously, IBC's Code and Standards describe insurers' responsibilities to provide full information and support to consumers when purchasing insurance and throughout the term of the policy. The industry, including IBC and individual insurers, also works to improve financial literacy of consumers, including through workshops on insurance to small businesses, web-based campaigns about complex insurance issues and presentations on the basics of insurance. Insurance intermediaries also bear an important responsibility to assist consumers in understanding their insurance needs and purchasing appropriate products.

At the same time, we believe that the most important contribution the BC government can make to improving financial literacy of all its citizens is by ensuring the incorporation of effective, age-appropriate financial literacy programming throughout the educational system.

Another important contribution the BC government can make is to communicate information to consumers about certain government policies that could affect a consumer's decision to


purchase insurance. For instance, one of the reasons why consumers in earthquake-prone areas have not purchased appropriate insurance coverage is that they believe that government disaster-relief funds will be available to compensate for losses. In situations of this nature, we believe that consumers would be best served by clear messages from the government about the eligibility criteria for government disaster relief funds.

Conclusion

We want to thank you for involving IBC and its member companies in its review of the FIA. The review provides an opportunity to update the way the government regulates financial institutions in the province. We believe that our commentary and recommendations reflect the constantly changing nature and competitiveness of the market, and the new developments in international standards for risk-based regulation.

Please do not hesitate to contact me to discuss the contents of this submission.

Sincerely,



William A. Adams

Enclosures (2)