



**CONSULTATION PAPER
ON
PROPOSAL TO AMEND THE INSURANCE LEGISLATION BY REMOVING CERTAIN
SCHEDULES (FILING TEMPLATES) AND TO ENABLE THE FINANCIAL SERVICES
COMMISSION TO INSTEAD SPECIFY THE SCHEDULES AS REQUIRED**

1.0 Introduction

The Financial Services Commission (“FSC”) is mandated by section 6 of the Financial Services Commission Act, 2001 to protect customers of financial services and for that purpose, the FSC must carry out the functions of promoting stability and public confidence in the operations of the financial institutions that it regulates; promoting public understanding of the prescribed institutions; and promoting the modernization of the financial services with a view for the adoption and maintenance of international standards of competence, efficiency and competitiveness and protecting customers of financial services. Furthermore, the FSC accepts the guidance of the International Association of Insurance Supervisors (“IAIS”) in Insurance Core Principles¹ (“ICP”) which among other things, recognizes the need for supervisors to be mindful of the fact that:

- a. supervisory responsibilities, objectives and powers are aligned to actual challenges faced by the insurance market to effectively protect policyholders, maintain a fair, safe and stable insurance market and contribute to financial stability;
- b. market changes can mean that the legislation is no longer adequate for the supervisor to achieve its intended outcomes. The supervisor may identify changes in the economy, society or business environment in general that affect insurance supervision that are not currently or sufficiently addressed by legislation. When the

¹Source: IAIS ICP 1 - Objectives, Powers and Responsibilities of the Supervisor (page 19), November 2019.

supervisory outcomes may not be achieved with the current legislation, the supervisor should initiate or propose changes in legislation; and

- c. if supervisory responsibilities, objectives or powers assigned by primary legislation become obsolete, the supervisor should initiate or propose changes to the legislation.

(ICP 1 – Objectives, Powers and Responsibilities of the Supervisor, issued by IAIS, 2019)

Contextually, certain schedules (“filing templates”) used by insurance companies and insurance intermediaries respectively are entrenched in the insurance legislation by way of prescribed schedules. As a consequence, this impedes the FSC in executing its function, specifically, to timely and effectively regulate and supervise the insurance industry which is a very dynamic sector. This is as a result of the fact that the industry experiences periodic changes in the financial reporting standards and other similar reporting requirements which have an impact on how financial information is presented and reported. However, any change to the prescribed schedules in the Insurance Regulations, 2001 (the “Regulations”), must be done by way of legislative amendments each time there is a change. This practice is arguably a limitation of the insurance legislative framework which exists in Jamaica.

Therefore, the objective of this consultation paper is to solicit feedback on the proposal to amend certain provisions of the Insurance Act, 2001 (the “Act”), and the Regulations, by removing certain filing templates and enabling the FSC to instead, specify the filing templates used by insurance companies and insurance intermediaries, as deemed necessary.

2.0 Background

The standards that govern the financial sector are dynamic and recent changes in the international financial reporting standards (“IFRS”) set by the International Accounting Standards Board (“IASB”) have forced major adjustments to the presentation of financial reports. The financial statements of entities in the financial sector, especially, have been impacted by IFRS 9 and IFRS 16 that mandate new rules for accounting for financial instruments and leases, respectively. The format of financial statements and reports of the insurance industry will change dramatically owing to the new IFRS 17 due to come in force for insurance companies with annual reporting periods beginning on or after January 1, 2023. The Annual Statement and other financial reports will have to be drastically reformatted.

Summarized below are the various provisions of the insurance legislation which stipulate the filing requirements of a registered insurance company and an insurance intermediary under the Act, as well as, the prescribed form in which the filings are to be made to the FSC:

Section 26 (1) (a) of the Act provides that every registered insurer shall –

- (a) within ninety days after the end of each financial year, submit to the Commission, an annual statement and related documents in the prescribed form and containing the prescribed information.*

Section 89 (2) of the Act provides that:

Every broker or corporate agent shall, whenever required by the Commission, submit returns to the Commission containing such information as may be prescribed, to enable

it to determine the financial position of such broker or agent and to take appropriate action where necessary.

Section 117(1) of the Act provides that:

Every insurer shall include among the liabilities provided in its annual statement of account, reserves as prescribed by the Commission.

The referenced annual statements are prescribed under regulations 31 and 33 for life and general insurance companies, respectively. In the case of life insurance companies, these statements are to be filed in accordance with Schedule 8, while the statements for general insurance companies are to be filed in accordance with Schedule 10.

Regulations 32 and 34 also prescribe that an insurance company should file quarterly financial statements; the life insurance companies in accordance with Schedule 9 and the general insurance companies, in accordance with Schedule 11.

Additionally, regulations 28 and 29 require that general and life insurance companies file separately, their Minimum Capital Test and Minimum Continuing Capital Surplus Requirements reports, in accordance with Schedules 5 and 6 respectively.

3.0 Purpose/Objectives

The rationale for this consultation paper is to propose certain amendments to be made to various provisions of the Act and attendant regulations. This will confer unto the FSC the ability to respond in a timely manner, chiefly, to changes in the IFRS and other environmental

factors, which impacts the insurance industry and necessitate continual revisions to be made to relevant reporting forms. Accordingly, the main objective of this consultation paper is to sensitize the industry to the following proposal:

- a. To eliminate the requirement for amendments to be made to the Regulations, each time there is a change in the IFRS and other environmental factors which necessitate a change in the format of reporting forms;
- b. To enable the FSC to readily specify revisions to be made to financial reporting forms, predicated by seemingly frequent changes in IFRS and other environmental factors, in a reasonable timeframe without undue delay so that the insurance companies and insurance intermediaries face no challenges in filing their returns to the FSC;
- c. To reduce the administrative burden which is already placed on the parliamentary system to consider legislation, the current process involves a parliamentary review and approval by way of negative resolution before any amendments can be made to the format of the reporting forms; and
- d. To enhance the insurance legislative framework and align the FSC's supervisory and regulatory approach to similar international practices of other regulators such as the Securities and Exchange Commission ("SEC") in the United States of America and Office of the Superintendent of Financial Institutions ("OSFI") in Canada. The FSC and its registrants would benefit greatly from adopting a similar financial reporting framework, already implemented by these countries. Further, this financial reporting

framework has been proven to be a more efficient and practical approach to regulatory supervision compared to our current situation.

4.0 Issues with the Current Legislation

The current formulation of specific provisions of the Act and attendant regulations stipulates the prescribed format of the reporting schedules which are to be used by insurance companies and insurance intermediaries for the purpose of their financial reporting to the FSC. Accordingly, these are the following challenges to contend with:

- a. The IFRS are very dynamic in nature;
- b. Changes in the IFRS and other environmental factors will generally require a corresponding change to the prescribed format of financial reporting schedules used by insurance companies and insurance intermediaries;
- c. These financial reporting schedules used by insurance companies and insurance intermediaries are prescribed by the Act, and attendant regulations; and
- d. **In order to make changes to the format of financial reporting schedules, this must be done each time, by way of an amendment to the Regulations, which requires parliamentary review by way of negative resolution.**

Given the changing landscape of financial reporting over the last decade with the frequent introduction of new and amended IFRS, this situation has created the need for the FSC to revisit the current insurance legislation. The FSC is of the opinion that the current approach

of having the reporting schedules prescribed in the insurance legislation may be considered an out-dated and/or a less than optimally efficient approach to this area of regulating the insurance industry.

It is therefore being put forward that the existing approach creates a deficiency in the insurance legislation and thus the relevant provisions of the Act and attendant regulations which prescribe the reporting schedules should be amended.

5.0 Comparison in Other Jurisdictions

In order to arrive at a basis for our recommendations, the approaches adopted in other jurisdictions were examined, the details of which are summarized below:

a. United States of America (“USA”)²:

On July 13, 2016, the SEC³ had voted to propose certain amendments to various pieces of legislation which would have an impact on filings on a “go forward basis”.

As a result of on-going evaluation of disclosure requirements (which were dynamic and changed frequently) by its staff members, the SEC decided it was prudent and

² Source: <https://www.sec.gov/rules/final/2018/33-10532.pdf>

³ The U.S. Securities and Exchange Commission is a large independent agency of the United States federal government that was created following the stock market crash in the 1920s to protect investors and the national banking system.

necessary to make certain amendments to its legislation to facilitate the disclosure of information to investors and moreover, simplify compliance. The SEC felt strongly, that its existing legislative framework was deficient and described it as “redundant, duplicative, overlapping, out-dated, or superseded, in light of other Commission disclosure requirements U.S. Generally Accepted Accounting Principles (“U.S. GAAP”), or changes in the information environment.” The SEC contended that once the relevant pieces of legislation were amended to eliminate these deficiencies, it would result in improving investors’ ability to make investment decisions more efficiently as well as help to reduce issuer compliance costs, which may encourage capital formation.

To summarize, the amendments affected a variety of entities which the SEC regulates, including but not limited to issuers of securities or to subsets of such issuers, broker – dealers, investment advisers, and nationally recognized statistical rating organizations. Further, the scope of amendments which were proposed included but not limited to:

- i. Updating of rules to account for developments since their initial adoption;
 - ii. Revision/removal of rules and forms to update, streamline or otherwise improve the Commission’s disclosure framework;
 - iii. Simplify disclosure or the disclosure process, including proposed changes to exhibit filing requirements; and
 - iv. Incorporate technology to improve access to information (e.g. data tagging of information contained in filings).
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The proposal was rigorously debated and the amendments were subsequently approved and enacted on November 5, 2018. Notably, this resulted in, among other things, various disclosure requirements being deleted from the legislation and reliance placed instead on the presentation requirements as mandated periodically by U.S. GAAP. Further, certain reporting forms were amended while others completely removed and were neither replaced nor substituted.

b. Canada⁴:

In Canada, the insurance legislative framework is such that the financial returns form which must be filed by insurance companies (both life and property and casualty insurers) are not prescribed in the Insurance Companies Act. Instead, under Part XV - Regulation of Companies, Societies, Foreign Companies and Provincial Companies — Superintendent of the said Act, it affords OSFI⁵ the power to mandate its reporting forms by way of the following provisions which states:

*“Supervision
Required information*

⁴ Source: <https://laws-lois.justice.gc.ca/eng/acts/l-11.8/index.html>

⁵ OSFI is an independent agency of the Government of Canada, established in 1987 to contribute to the safety and soundness of the Canadian financial system. OSFI supervises and regulates federally registered banks and insurers, trust and loan companies, as well as private pension plans subject to federal oversight.

664 – *A company, society, foreign company or provincial company shall provide the Superintendent with such information, at such times and in such form as the Superintendent may require.”*

Further, section 665 (1) states:

“Annual return — companies, societies and provincial companies

665 (1) – A company, society or provincial company shall prepare annually a return of the condition and affairs of the company, society or provincial company as at the end of each financial year, showing its assets and liabilities and its income and expenditures during that financial year together with such other information as the Superintendent may deem necessary.”

Based on the aforementioned, the approach adopted by OSFI is that the actual reporting forms for regulatory returns are as the Superintendent may require at such time and posted under the relevant section on their website. Further, OSFI requires various changes/amendments to be made to these forms periodically which are also posted and stored historically on its website⁶ which are accessible by its registrants and the general public.

⁶Link to website (updated information on amendments): https://www.osfi-bsif.gc.ca/Eng/fi-if/rtn-rlv/fr-rf/lic-sa/lic-sav/Pages/Life_Section_VII.aspx

6.0 The Way Forward

As a regulator, the FSC is mindful of its supervisory responsibilities, objectives and powers consistent with ICP 1, which is to initiate or propose changes to the legislation where certain provisions are deemed to be:

- a. Inadequate for the FSC to achieve its intended outcomes;
- b. Insufficient to address the identifiable changes in the general business environment that affect insurance supervision; and
- c. Out-dated, such that the supervisory outcomes may not be achieved with the current legislation.

Accordingly, and similar to the SEC in the USA, a review of the current insurance legislation, in light of the pending new IFRS and amendments to existing standards, has revealed the need for the FSC to propose amendments to certain provisions of the Act and attendant regulations. Based on the fact that new IFRS and amendments thereof are set to continue into the foreseeable future, this will generally prompt a change to the format of financial statements and reports. The new IFRS 17, due to come in force for insurance companies with year-ends after January 1, 2023, has introduced a new paradigm in financial reporting. The Annual Statement and other financial reports will have to be drastically reformatted.

In order to address this issue, the FSC is proposing to amend Sections 26(1), 89(2) and 117 respectively of the Act and regulations 28(2), 29(2), 31, 32, 33 and 34 to eliminate the

prescriptive nature of the forms and to remove the references made to schedules 5, 6, 8, 9, 10, and 11 respectively.

Thus, the FSC is proposing to adopt the regulatory approach used in Canada whereby at the end of each financial year the regulated person should submit to the regulator (in this case the FSC) filings showing the assets and liabilities, income and expenditures during that financial year together with such other information as the regulator may deem necessary in such format as the regulator may specify from time to time by Notice in writing published in the Gazette. The Insurance Act and Regulations will require amendments in order to achieve this (underline for emphasis).

7.0 Recommendations

In light of the foregoing, the FSC is proposing the following amendments to the Act and attendant regulations respectively:

Legislation	Provision(s)	Amendment(s)
Insurance Act, 2001	Section 26 (1)(a): <i>“within ninety days after the end of each financial year, submit to the Commission, an annual statement and related documents in the prescribed form and containing the prescribed</i>	Please rephrase this section to convey the intention that within ninety days after the end of each financial year, an insurer shall submit to the Commission an annual statement in the form specified by the Commission from time to time by

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Legislation	Provision(s)	Amendment(s)
	<p><i>information.”</i></p>	<p>Notice published in the Gazette -</p> <ul style="list-style-type: none"> (a) containing the information specified in the Notice; and (b) along with such related documents as may be specified by the Commission in the Notice.
	<p>Section 89(2): <i>“Every broker or corporate agent shall, whenever required by the Commission, submit returns to the Commission containing such information as may be prescribed, to enable it to determine the financial position of such broker or agent and to take appropriate action where necessary.”</i></p>	<p>Please rephrase section 89 to convey the intention that every: broker or corporate agent shall, whenever required by the Commission, submit returns to the Commission containing such information as may be specified by the Commission from time to time by Notice published in the Gazette, in order to enable the Commission to determine the financial position of such broker or agent and to take appropriate action where necessary. The Commission shall specify the form of the returns in the gazetted Notice.</p>

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Legislation	Provision(s)	Amendment(s)
	<p>Section 117(1):</p> <p><i>“Every insurer shall include among the liabilities provided in its annual statement of account, reserves as prescribed by the Commission.”</i></p>	<p>Kindly rephrase this provision to convey the intention that every insurer shall include among the liabilities provided in its annual statement of account, reserves as specified by the Commission from time to time by Notice published in the Gazette.</p>
<p>Insurance Regulations, 2001</p>	<p>Part VI – Solvency: General Insurance Regulation 28(2):</p> <p>“The minimum asset test shall be filed in accordance with the requirements set out in Schedule 5.”</p>	<p>Kindly remove reference to Schedule 5. This provision should be reworded to state that the Minimum Capital Test (MCT) shall be filed in accordance with –</p> <ul style="list-style-type: none"> (a) the requirements specified by the Commission from time to time by Notice published in the Gazette; (b) the form specified in the Notice.
	<p>Part VI – Solvency: Long Term Insurance Regulation 29(2):</p> <p>“Minimum continuing capital and</p>	<p>Kindly remove reference to Schedule 6. This provision should be reworded to convey that the Minimum Continuing Capital and Surplus Requirements</p>

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Legislation	Provision(s)	Amendment(s)
	<p>surplus requirement shall be filed in accordance with the requirements set out in Schedule 6.”</p>	<p>(MCCSR) shall be –</p> <p>(a) specified by the Commission from time to time by Notice published in the Gazette; and</p> <p>(b) shall be submitted to the Commission in the form specified in the Notice</p>
	<p>Part VI – Solvency: Annual financial statement of life insurer.</p> <p>Regulation 31:</p> <p>“The annual statements based on the audited financial statements for life or sickness and health insurers shall be filed in accordance with the requirements set out in Schedule 8, not later than the 31st March in each year, reflecting the financial condition for the preceding</p>	<p>Please remove reference to Schedule 8. This provision should be reworded to indicate that the annual statements based on the audited financial statements for life or sickness and health insurers shall be filed in accordance with the requirements specified by the Commission from time to time by Notice published in the Gazette, not later than the 31st March in each year, reflecting the financial position for the preceding calendar year.</p>

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Legislation	Provision(s)	Amendment(s)
	calendar year.”	
	<p>Part VI – Solvency: Quarterly financial statement of life insurer.</p> <p>Regulation 32: “Quarterly statements for life or sickness and health insurers shall be filed in accordance with the requirements set out in Schedule 9.”</p>	<p>Please remove reference to Schedule 9. This provision should be amended to convey the intention that –</p> <p><i>Quarterly statements for life or sickness and health insurers shall be filed in accordance with the requirements specified by the Commission from time to time by Notice published in the Gazette.</i></p>
	<p>Part VI – Solvency: Annual financial statement of general insurers.</p> <p>Regulation 33: “The annual statements based on the audited financial statements for general insurers shall be filed in accordance with the requirements set out in Schedule</p>	<p>Please remove reference to Schedule 10. This provision should be reworded along the lines of –</p> <p><i>The annual statements based on the audited financial statements for general insurers shall be filed in accordance with the requirements specified by the Commission from time to time by Notice in the Gazette, not later than the 31st March</i></p>

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Legislation	Provision(s)	Amendment(s)
	<p>10, not later than the 31st March in each year, reflecting the financial condition for the preceding calendar year.”</p>	<p><i>in each year, reflecting the financial position for the preceding calendar year.</i></p>
	<p>Part VI – Solvency: Quarterly financial statement of general insurers.</p> <p>Regulation 34: “Quarterly statements for general insurers shall be filed in accordance with the requirements set out in Schedule 11.”</p>	<p>Please remove reference to Schedule 11.</p> <p>The provision should be reworded to convey the intention that quarterly statements for general insurers shall be filed in accordance with the requirements specified by the Commission from time to time by Notice published in the Gazette.</p>

Kindly note that once the legislation is amended to give effect to the above proposals, the FSC will, after consultation with the industry, specify periodically, as the need arises, changes to the format of the filing forms.

In the interim, insurance companies and insurance intermediaries shall continue to use the existing filing forms until such time that the FSC provides notice of a change to the format of the filing forms.

The intention of the FSC is to have a smooth transition of its insurance regulatory framework so as to eliminate the gaps in the existing supervisory regime. Further, the objective of the FSC under this approach is still to promote and afford consistency of the filing forms as standardized format facilitates the risk assessment process and the ability to compare the performance of entities and assess industry performance. Specifically, as it relates to the pending implementation of IFRS17 – Insurance Contracts (disclosure of information based on combined features of both a financial instrument and a service contract), the FSC is currently assessing the impact on the format of the filing forms, and in consultation with stakeholders and actuaries will develop and finalize the revised filing forms to be implemented and used by insurance companies and insurance intermediaries. The revised forms should be completed in time for the submission of filings based on IFRS 17.

8.0 Comments and Suggestions

The FSC invites comments and suggestions from interested parties regarding the content of this document. The deadline for submission of these comments is October 29, 2021. Please direct your comments to:

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REFERENCES

1. IAIS ICPs and ComFrame adopted in November 2019
(<https://www.iaisweb.org/page/supervisory-material/insurance-core-principles-and-comframe//file/91154/iais-icps-and-comframe-adopted-in-november-2019>)
 2. Office of the Superintendent of Financial Institutions, Canada:
(<https://www.osfi-bsif.gc.ca/Eng/fi-if/ic-sa/Pages/default.aspx>)
 3. Security and Exchange Commission, Washington, D.C., United States
(<https://www.sec.gov/rules/final/2018/33-10532.pdf>)
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4. International Financial Reporting Standards

(<https://www.ifrs.org/issued-standards/list-of-standards/ifrs-17-insurance-contracts/>)
