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Building, Resources and Markets  
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## Submission on Options Paper - Conduct of Financial Institutions

Kiwi Insurance Limited welcomes the opportunity to submit on the Options Paper – Conduct of Financial Institutions.

Kiwi Insurance is a licensed insurer under the Insurance (Prudential Supervision) Act 2010. It is a subsidiary of Kiwi Group Holdings Limited and a sister company to Kiwibank Limited. It provides life risk products which are distributed solely by Kiwibank to its customers.

Rather than responding to the individual questions in the Options Paper our submission focuses on some key high-level issues which we set out below.

- Kiwi Insurance strongly supports the Government's policy objective of ensuring that conduct and culture in the insurance and financial sector are delivering good outcomes for all customers. Good customer outcomes are at the very heart of Kiwi Insurance, not just a reflection of our legal obligations or regulatory expectations.
- A focus on good customer outcomes is important in ensuring that the public has and retains confidence in New Zealand's insurance and financial sector. Any erosion of that public confidence as a result of perceptions of possible misconduct in the insurance and financial sector is a concern. This is particularly true in the insurance sector as it risks exacerbating the problem of New Zealanders already being under-insured.
- While acknowledging the gap in New Zealand's legislative framework with respect to conduct regulation generally, we consider it essential that the Government takes sufficient time to ensure that any reform provides the appropriate solution for New Zealand and strikes the right balance. We are therefore concerned that this important work is being done in an accelerated timeframe and at the same time that changes to insurance contract law reform are being proposed and an extensive insurance industry review exercise is underway.

- Life insurers are in the process of preparing their responses to the Financial Markets Authority (FMA) and the Reserve Bank of New Zealand's (RBNZ) feedback on their review of conduct and culture of life insurers. These responses are due with the regulators at the end of June. That has made it challenging to respond to this consultation and to the Ministry's consultation on the Insurance Contract Law Review. It has also precluded input from the regulators' consideration of those responses from forming part of this consultation, which we consider is a missed opportunity.
- We recommend that the imposition of personal liability for any new conduct obligations be introduced on a staggered basis. Otherwise there is a risk that these reforms could have a chilling effect on these vital industries. If we want insurance and other financial institutions to be led and governed by the best people, then we need to provide more certainty as to how their obligations apply or they may select out of the industry. Therefore, at least in the initial stage while the sector and regulator are gaining an understanding of the new regime and what it may mean in terms of compliance, we consider that any new obligations should be imposed only on financial sector entities rather than extended to their directors and senior managers. The extension of accountability at executive level should be considered only in a second phase and after the new regime is bedded in and there is more certainty around the requirements. It should also be considered in a broader context that would look at director and senior manager accountability across the range of prudential and conduct regulation.
- Kiwi Insurance is generally supportive of the imposition of overarching conduct duties that would apply to the insurance and financial sector. However, it is essential that New Zealand get the drafting of any duties right. The duties need to be drafted in terms that are clear and easy for all parties to understand. Some of the duties proposed in the Options Paper appear open to different interpretations and others seem to be covered by the more general ones proposed. For example, is the duty to consider and prioritise the customer's interest intended to deal with conflicts of interest or to create a wider duty of fairness? If the latter, options 5 and 6, which deal respectively with a duty to manage conflicts of interest fairly and transparently and a duty to ensure complaints handling is fair, timely and transparent, may not be necessary as they are arguably included in the wider duty.
- We suggest that instead of the individual duties proposed in the Options Paper, MBIE considers a single overarching obligation that would meet all those requirements. In this regard, we refer to the Final Report of the Australian Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. Commissioner Hayne refers "to an overarching obligation to 'do all things necessary to ensure' that the financial services or credit activities authorised by the licence are provided 'efficiently, honestly and fairly'" and points out that this general obligation is already imposed in Australia on Australian financial services licence holders and Australian Credit Licence holders. He stated that "understood properly, this requirement would embrace all six norms" of conduct that he identified in his Interim Report.
- A new overarching conduct obligation should be subject to codified guidance to enable the obligation to be contextualised with the duties currently proposed by MBIE (conflicts of interest, remuneration, product governance, etc..) being provided by ways of example rather than statutory obligations, which inevitably overlap both with each other and other statutory duties. The code could also provide guidance on interplay with other regimes, which we discuss further below.



- The consideration of any new duties on the financial sector should be done on a holistic basis. We think it would be useful for MBIE to undertake a detailed review of the entire regulatory regime as there are already various duties and obligations that apply to financial and insurance sector providers. Adding to these, without this holistic review, risks creating more uncertainty and confusion for the regulators, regulated entities, and consumers. This is particularly the case where the same conduct can give rise to monitoring and enforcement by different regulators. For example, insurers could be subject to oversight by the RBNZ under the Insurance (Prudential Supervision) Act 2010, the Commerce Commission under the Credit Contracts and Consumer Finance Act (CCFA) 2003 and Fair Trading Act, and the FMA under this new legislation. There should at least be no overlap or differing conduct obligations imposed on insurers and financial institutions so that if you are subject to new conduct obligations under this regime you will be exempt from any other overarching obligation.
- We are supportive of the FMA having a broad range of regulatory tools to regulate any new conduct regime. We are also supportive of there being strong but proportionate penalties for non-compliance with the new obligations.
- Finally, we consider that any new reforms should be applied to the entire financial services industry rather than only to registered banks and licensed insurers. Otherwise this could lead to regulatory arbitrage. One of the arguments put forward in the Options Paper against extending the regime beyond these sectors is that there is only clear evidence of poor customer outcomes and practices in banking and life insurance, so this may impose disproportionate regulatory costs on other financial institutions. We do not find this argument compelling. While the FMA and RBNZ's recent review of conduct and culture only extended to these two sectors we do not think it follows that they are the only sectors where issues about conduct and culture likely exist.
- The recent reforms of the CCCFA introduced into Parliament which, among other things, proposes new certification requirements for persons that are not licensed, registered, authorised or approved, would seem to contradict this. It is not obvious to us why customers of entities in other sectors should not enjoy the same protections as those offered to customers of registered banks and licensed insurers under any new regime.

We would be happy to meet with you to discuss our submissions. Please contact Loretta DeSourdy, Head of Regulatory Affairs on Privacy of natural persons or email Privacy of natural persons in the first instance.

Yours sincerely



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