

31 March 2017

Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

S 9 (2) (a)

Dear Sir,

Delta Insurance NZ Limited – Submission on the Draft Financial Services Legislation Amendment Bill and proposed transitional arrangement

Introduction

1. This submission is from Delta Insurance New Zealand Limited (**Delta Insurance**).
2. Delta Insurance thank you for the opportunity to submit on the review of the Draft Financial Services Legislation Amendment Bill.
3. Delta Insurance supports the review and the proposed legislation as it is relevant to the financial service providers operating directly to consumers. Delta has reviewed:
 - 3.1 The submissions prepared in July 2015 that were put to the Ministry of Business, Innovation & Employment (**MBIE**) in support of the review of the Financial Advisors Act 2008 and the Financial Service Provers (Registration and Dispute Resolution) Act 2008;
 - 3.2 Financial Services Legislation Amendment Bill; and
 - 3.3 Consultation Paper – New Financial Advice Regime.
4. Delta Insurance broadly supports the views submitted by the Insurance Council of New Zealand (**ICNZ**) and provided to MBIE. These submissions supplement the ICNZ submission, with the particular reference to issues that are likely to impact insurance underwriting agents and coverholders (a subset of insurance providers), who predominantly provide services to insureds, via brokers in the insurance market.

Underwriting Agencies in the financial services market

5. Delta Insurance is a Lloyd's coverholder.¹ Delta Insurance works primarily with the Allied World Assurance Company (**Allied World**), who are the capacity partner, and this capacity which is accessed through the coverholder relationship via Lloyd's. Whilst around 95% of Delta Insurance's insurance contracts are executed and managed on behalf of Allied World, coverholders can also access capacity through dedicated binding arrangements with other Lloyd's syndicates.
6. As a coverholder, Delta Insurance is authorised by the Allied World binding authority as an agent to enter into contracts of insurance and to manage claims associated with those contracts of insurance.
7. Lloyd's is licensed under s205 of the Insurance (Prudential Supervision) Act 2010 (**the Act**) for Lloyd's underwriters to carry out insurance business in New Zealand. Each independent Lloyd's coverholder does not require separate registration. Delta Insurance does not hold, and is not required to currently hold, QFE status. Its advisors are registered financial advisors under the current legislation.
8. Outside of the Lloyd's model there are also other entities in New Zealand that perform a similar function to Delta Insurance. The generic term for these entities is "Underwriting Agency" as they act as agents of insurers. Outside the Lloyd's model, these other Underwriting Agencies will have delegated authorities to act on behalf of other licensed insurers (non-Lloyd's).
9. We understand there may be up to 40 Underwriting Agencies in New Zealand and approximately 29 of these operate as Lloyd's coverholders.

Where does an underwriting agent sit within this legislation?

10. We are concerned that an entity such as an Underwriting Agency or Lloyd's coverholder does not adequately fit into the scope of the Bill. Underwriting agents are not licenced insurers. But neither are they considered a broking agency and so do not naturally fit under the definition set out in new subpart 5B of Part 6 of the Bill.
11. Generally an Underwriting Agency will not provide "financial advice." At present, Delta Insurance is a registered financial services provider. It has individuals, as do other similar underwriting agency operations,¹ who have registered staff as brokers under FSPR for the provision of financial service. But Delta Insurance's staff ordinarily provide sales and would not usually intend to provide advice as contemplated under the proposed bill. Those staff act on behalf of an insurer to enter into insurance contracts on the insurer's behalf, and negotiate terms and conditions concerning those contracts with brokers.

¹ For more information on coverholders see: <https://www.lloyds.com/the-market/i-am-a/delegated-authority/compliance-and-operations/about-coverholders>

12. Some Underwriting Agencies may provide a mix of financial sales services and financial advice within the broader mandate of their business, which might include brokerage services to clients. There are a number of entities that fall into this category in New Zealand and transact a significant amount of business. But we consider that the Agencies that operate under this model would require registration as brokers.
13. We consider it would be appropriate to adopt a special financial service category for Underwriting Agencies within the propose Bill. A clear category with clarity as to what nature and scope those services Underwriting Agencies hold would benefit the market to understand the unique role of these providers in the financial services sector. We agree with the ICNZ submission that registration as either RFAs or broking service providers, remains appropriate depending on the services to be provided and we agree that it is appropriate to remain participants of a dispute resolution scheme.

Do you support extending the client-first duty to providers who do not provide a retail service (i.e. those who only advise wholesale clients)? Why or why not?

14. Under the proposed amended clause 431H “duty to put clients’ interests first”, is too uncertain, too broad and causes a problem for services such as an underwriting agency. An underwriting agency not giving financial advice, ought not to be obligated to do so.
15. The proposed clause creates a potential conflict for underwriting agents/coverholders. An underwriting agent acts for the underwriter (whether that be a local licenced insurer or an overseas insurer/underwriter). As such, they have clear obligations to act in the best interests of the insurer. The effect of the proposed clauses could be to require an underwriting agency to give financial advice on the efficacy of competing products. This might be appropriate for the broker providing advice, such as an investment advisor or life agent providing advice to their client, but not where an agency is only providing an intermediated sale service to that broker. From an underwriting agent’s standpoint, the first duty of that agent is to sell the product of the insurer and advise the insurer of the efficacy of the sale of the product. That is why the majority of insurance provision involves the utilisation of a broker as an intermediary.
16. We consider the duty of an underwriting agency should only extend to the provision of accurate information on the financial services provided and there should not be the broad duty as contemplated under clause 431H.

Should financial advisers have direct civil liability for breaches of their obligations, if the financial advice provider has met its obligations to support its advisers? Why or why not?

17. We agree that financial advisers should have professional and ethical standards as a benchmark for all advisers regulated under the proposed Bill. However, civil liability will vary depending on the independent standards and the type of advice being provided. It would be difficult for a single standard to be flexible enough to apply across the spectrum of financial advisers. As such, we consider that liability should not extend under the Bill beyond failing to adhere to any professional or ethical standards that may be derived from any given code of conduct to be formulated. We have no view on whether the outcome for such breaches be civil pecuniary penalties or sanction.

Robo advice provisions

18. We agree with the proposed Bill regarding the introduction of provisions to allow financial advice to be provided on a robo-advice platform. We are aware of several technological innovations both here and overseas that will support the offering of such financial advice to consumers in an effective and professional manner. We agree that robo-advice should be treated as being provided by the financial advice provider.
19. We are concerned that robo-advice platforms cannot be licensed until February 2019. We are aware of a number of companies in the insurance sector who plan to offer robo-advice through various online websites and this is consistent with "fintech" trends occurring overseas. We believe that this licensing limitation could stifle innovation in the financial sector, discourage engagement with the FMA in the intervening period and be detrimental to the development of these industries particularly in comparison to offshore markets that are moving rapidly.
20. We believe that a transitional licensing process does need to be implemented for robo-advice platforms. We believe that applications for license to provide robo-advice services should be made on an individual basis to the FMA for consideration and a process established to manage this.

Yours sincerely,

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