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BINDER REGULATIONS

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Status

- 1st release for comment by FSB - 31 Aug 2010
- 2nd release for comment by MoF – 22 July 2011
- Both drafts result of robust and inclusive consultation (incl. ASISA, SAIA, FIA & SAUMA)
- Envisaged promulgation by end 2011
- Process forward under regulatory projects session



Amendments to 1st draft reflected in 2nd draft

- **Significant**
 - underwriting managers may render intermediary services other than marketing or selling (incl. variation & renewing)
 - May act on behalf of more than one insurer if all relevant insurers agree



Amendments to 1st draft reflected in 2nd draft

- **Technical / clarifications**

- Implications of termination period clarified
- What constitutes a “termination” of a binder agreement clarified
- Reporting requirements clarified
- Definition of “settle a claim” clarified



Principles informing draft regulations

- Accountability of the insurer
- Responsible outsourcing
- Policyholder protection
- Managing conflicts of interest



Scope of draft regulations

- One of a number of initiatives of NT & FSB
- Do not address –
 - intermediary relationships raised in the Contractual Savings Discussion Document
 - outsourcing of core insurer functions to third parties holistically
 - ownership structures or cell arrangements
- Address a subset of outsourcing only - i.e. outsourcing of binder functions



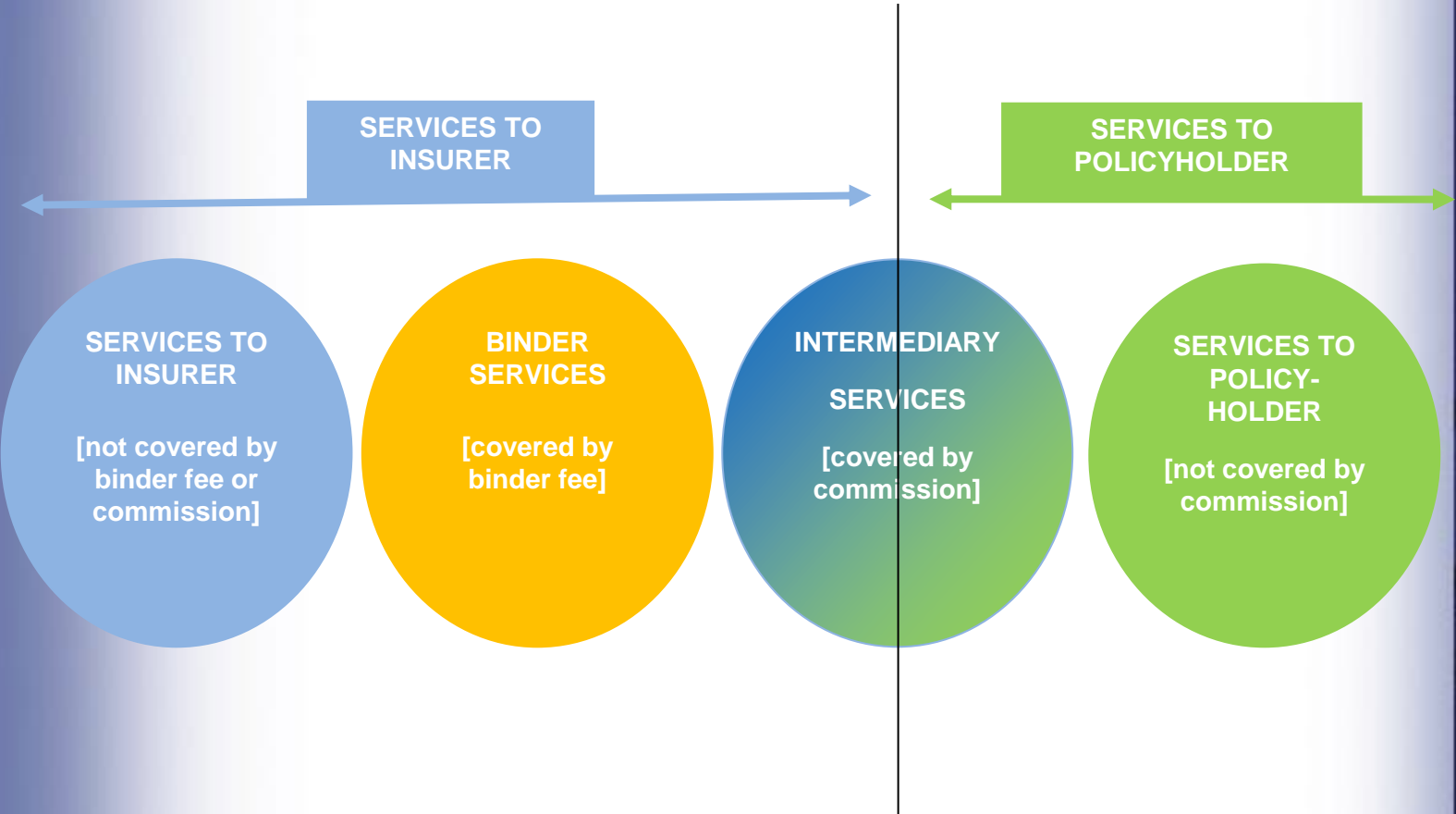
What are binder functions?

- Binder functions are collective term for functions that a binder holder performs as the agent of the insurer
 - Binder holder acts on behalf of insurer, as if the insurer
- Binder functions identified in Act are –
 - enter into, vary or renew a policy
 - determine the wording of a policy
 - determine premiums under a policy
 - determine the value of policy benefits under a policy
 - settle claims under a policy
- The draft regs define certain of these functions to ensure consistent interpretation



Where does binder functions fit?

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Who may be a binder holder?

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Underwriting manager	Non-mandated intermediary	Administrative FSP as defined in FAIS Act (ONLY LT)
<ul style="list-style-type: none"> Person that renders a service to an insurer only 	<ul style="list-style-type: none"> Representative or independent intermediary 	<ul style="list-style-type: none"> As defined in FAIS Code of Conduct for authorised FSPs & Representatives
<ul style="list-style-type: none"> May “render services as an intermediary” other than marketing or selling 	<ul style="list-style-type: none"> <i>May not</i> hold written mandate from policyholder to terminate policy or perform act that binds. Prior approval necessary (cannot “move book of business”) 	<ul style="list-style-type: none"> May hold a written mandate from policyholder to change the underlying investment portfolio of a policy
<ul style="list-style-type: none"> May be a binder holder for another insurer if all insurers agree in writing 	<ul style="list-style-type: none"> May not also be mandated intermediary May not be associate of an independent intermediary 	<p style="text-align: center;">ST exemptions</p>



Who may be a binder holder (cont.)?

Exemptions (short-term only):

- Hold-covered binder agreement with mandated or non-mandated intermediary under certain specific circumstances (policies interim and limited-in-time, no fee payable)
- Binder agreement with non-mandated intermediary in respect of commercial lines business that is a mandated intermediary in respect of personal lines business (but not that commercial lines business) and vice versa



What may a binder holder do and not do?

- May perform binder functions
- May not further delegate binder functions
- Agreement with non-mandated intermediary must limit discretion of binder holder in respect of –
 - maximum value of policy benefits that may be determined under each policy or the maximum value of each claim that may be settled
 - risk factors that must be considered when entering into, renewing or varying a policy or determining the value of policy benefits
 - other parameters in accordance with which services must be rendered



What may a binder holder do and not do (cont.)?

- Agreement with non-mandated intermediary may not allow non-mandated intermediary to –
 - refuse to renew a policy
 - reject or refuse to pay a claim or a part thereof
 - terminate
 - repudiate
 - deny an insurer's liability
 - declare a policy void



What must a binder agreement provide for?

Exemption (ST only): Certain matters need not be included in hold-covered binder agreements

- Draft regs require agreements to include matters in addition to those required and prohibited by the Act
- Specific requirements for agreements concluded with non-mandated intermediaries are provided for
- **Information:** Note that regs provide for regular updating of information & Act provides for *ad hoc* information requests
- **Termination:** Regs do not prohibit insurer from stopping binder holder from performing certain functions or taking steps to mitigate its risks - minimum 90-day period necessary to ensure orderly winding-up of agreement



What may a binder agreement not provide for?

- May not provide for any other arrangement or relationship with binder holder
- May not prohibit insurer from communicating directly with independent intermediaries or its policyholders
- Act provides that no additions to any gross premium may be allowed, unless regs provides otherwise
 - Regs silent
 - All costs associated with the policy to be determined by insurer & included in gross premiums

It is important to read the Act together with the draft regs when drafting or entering into a binder agreement



What consideration may a binder holder receive?

ST only: No fees may be paid under hold-covered binder agreements

Underwriting manager	Non-mandated intermediary
May be paid a fee for services rendered ★	May be paid a fee for services rendered ★
May share in profits of the insurer attributable to the type or kind of policies referred to in the binder agreement	If claims may be settled / value of policy benefits may be determined, fee may not constitute or be based on % of difference between amount claimed / maximum value of policy benefits payable and amount / policy benefits actually paid in settlement
★ Fee must be reasonably commensurate with actual costs incurred by binder holder associated with rendering the services	Fee must be disclosed to policyholder
Allowance may be made for a reasonable rate of return	May not (directly or indirectly) receive or be offered share in the profits of insurer in respect of services rendered under agreement and type or kind of policies referred to in agreement



What consideration may a binder holder receive (cont.)?

- Binder holder may also receive outsourcing fee for outsourced functions performed on behalf of insurer
- Non-mandated intermediaries may also receive commission for rendering services as an intermediary
- Outsourcing fee & commission subject to –
 - compliance with commission regs
 - a person / intermediary not being remunerated twice for the same or similar service
 - any remuneration paid being reasonable & commensurate with actual cost of services rendered



What consideration may a binder holder receive (cont.)?

- **Short-term:** non-mandated intermediary may negotiate a policy fee with the policyholder under s8(5) of the Act
 - circumstances under which this may occur are under review by FSB
 - Principle:
 - policyholder should not be charged twice for the same or similar service
 - In particular, should not be charged a fee for a service that falls within the definition of intermediary services for which commission is payable
- FSB is developing proposals to clarify interpretation of “intermediary services” versus “outsourced” insurer or policyholder services



What must be reported on termination of binder agreements?

- If agreement will terminate, insurer must report to the Registrar –
 - the date on which the agreement will terminate
 - the reasons for terminating the agreement
 - how policies to which the agreement relates will be dealt with
 - how legislative requirements relating to the termination of the agreement or policies (if one or more will terminate) will be complied with



Which binder agreements are subject to the regulations?

- All agreements concluded before or on the date on which the draft regs will commence must be aligned with the regs within one year of it coming into operation



What are the implications of the regulations for “administrators”?

- Term “administrator” broadly used to refer to a variety of business models involving a range of administrative services, some of which may be binder functions or intermediary services
- “Administrators” that want to perform binder functions must choose to do so as -
 - a non-mandated intermediary; or
 - an underwriting manager
- “Administrators” providing services other than intermediary services or binder functions may continue to do so on an outsourced basis
 - Need not be an independent intermediary or underwriting manager for purposes of the regs



Which binder agreements are subject to the regulations?

- All agreements concluded before or on the date on which the draft regs will commence must be aligned with the regs within one year of it coming into operation



What are the consequences of non-compliance?

- Non-compliance with Act or the regulations constitutes a criminal offence for insurers and binder holders
- Registrar may refer any non-compliance with the Act or regulations to the enforcement committee



Compliance monitoring

- Onsite visits
- Information requests
- Complaints



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Questions