

Consumer Protection
Policy & Authorisations
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Dear Sir

Review of the Minimum Competency Code 2011 – Consultation Paper CP106

Lloyd's would like to thank the Central Bank of Ireland (CBI) for the opportunity to comment on its consultation paper on the Minimum Competency Code 2011, which was published on 21 November 2016. Our main recommendations are:

- That the drafting and structure of the code should be simplified in order to prevent misunderstandings.
- That the most appropriate professional qualification requirement for reinsurance distribution would be a reinsurance specific qualification.
- That the product design specified function should not apply to large risks, which are exempted from the scope of both the EU Insurance Distribution Directive (IDD)¹ and the EIOPA Guidelines on Product Oversight and Governance.

Lloyd's supports the general aims of the draft revised Minimum Competency Code (MCC) to further improve professional standards in the insurance sector and implement recent EU financial services legislation. However, a particular area of concern is that the structure and the drafting of the draft revised MCC is complex and difficult to interpret, as is the MCC 2011. We would like this review of the MCC 2011 to take the opportunity to simplify the structure and drafting in order to avoid the risk of non-compliance due to misinterpretation and to reduce the need to cross-reference. We include some suggestions as to how this could be achieved in our comments below.

Please note that our comments only refer to the parts of the draft revised MCC that apply to non-investment related insurance products and the implementation of the IDD. The Lloyd's market does not transact investment related insurance products.

¹ EU Directive 2016/97.

1. Definition of “consumer”

The addition of point (c) to the definition of “consumer” on page 5, to include persons to whom a regulated entity distributes insurance, means that the application of the draft revised MCC has expanded to include relevant functions performed in relation to all customers that are individual or legal persons, not just to consumers as defined under the existing definition (i.e., individual persons, clubs, small charities and small-medium sized enterprises). If this is the CBI’s intention, we suggest that the definition of “consumer”, and references to this term, are deleted and that the term “person” is used throughout the draft revised MCC instead. We note that this approach has already been used in the revised definition of “advice”, which refers to “person” rather than “consumer”.

2. Definition of “regulated firm”

Part (c) of the definition of “regulated firm” has changed so that now the draft revised MCC does not apply to EEA insurance undertakings and insurance intermediaries “where responsibility for requirements in relation to the provision of such services [on a freedom of services or establishment basis] is reserved to the firm’s home state regulator by a provision of EU law”. Our analysis of EU law in relation to the relevant functions in the second paragraph of Section 1.2 has shown that the requirements for relevant functions (a) and (b) and specified functions nos. 1, 2, 3 and 5 are reserved to home state regulators under Article 10 of IDD. Further, the requirements for specified function no. 8 are reserved to home state regulators under Guideline 6 of EIOPA’s Preparatory Guidelines on Product Oversight and Governance², which relates to the implementation of Article 25 of IDD. Therefore, in respect of non-investment related insurance products, only specified function no. 6 is not reserved to home state regulators by a provision of EU law.

3. Definition of “Standards”

The definition of “Standards” should be stated in the list of definitions as “means Part 1 and Part 2 of this Code” and should not cross-refer to section 1.1.

4. Legislative basis

The penultimate paragraph of Section 1.1 states that a regulated firm must not permit “a person to perform a controlled function unless ... the person complies with these Standards...”. This statement could imply that the draft revised MCC applies to all persons who perform a controlled function. However, Section 1.2 states that the Standards apply “to the persons exercising a controlled function ... the exercise of which includes ... regulated activities ... [and] ... MiFID services or activities”, i.e., the Standards only apply to persons performing a controlled function in certain circumstances, not to all persons performing a controlled function. We would suggest that the wording of the penultimate paragraph of Section 1.1 is made clearer so that there does not appear to be a contradiction between it

² Published on 18 March 2016.

and Section 1.2. For instance, "A regulated firm shall not permit a person to whom these Standards apply to perform a controlled function unless the regulated firm is satisfied on reasonable grounds that the person complies with the Standards and the person has agreed to abide by the Standards".

5. Scope – Part 1

The draft revised MCC uses the terms "controlled function", "relevant function" and "specified function". These terms are not easy to understand or interpret as they have similar, or overlapping, meanings. For example, the relevant functions (a) and (b) are similar to CF3 and CF4 but they are not included in the list of specified functions. Also, specified functions nos. 1 and 2 are similar to CF5 and CF6, and specified function no. 6 is similar to CF8. Consequently, exercising a controlled function will not always mean that a relevant function or a specified function is also being exercised, a specified function is always a relevant function and a relevant function may not be a specified function. We note that these terms were used in the MCC 2011 but we recommend that the terminology and drafting of the text are simplified. We suggest that there is a clear distinction between the CFs and the specified functions and that the term "relevant function" is deleted. Thus, the list of specified functions would be as shown below.

Proposed specified functions in revised MCC

1. *providing advice to consumers on retail financial products;*
2. *arranging or offering to arrange retail financial products for consumers, including any amendments to insurance cover and the restructuring or rescheduling of loans;*
3. assisting consumers in the making of a claim under contracts of insurance;
4. determining the outcome of claims by consumers arising under contracts of insurance;
5. being directly involved in the activity of reinsurance distribution, as defined in [Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution];
6. providing debt management services, as defined in Part V of the Central Bank Act 1997;
7. acting for or on behalf of a regulated firm in the direct management or supervision of those persons who act for or on behalf of that regulated firm in ~~providing advice to consumers about retail financial products or who arrange or offer to arrange retail financial products for consumers or who carry carrying out~~ the functions at (1), (2), (3), (4) or (6) above;
8. adjudicating on any complaint communicated to a regulated firm by a consumer which relates to ~~advice about a retail financial product provided to that consumer or the arranging or the offering to arrange of a retail financial product for that consumer or who carry out~~ the functions at (1), (2), (3), (4) or (6) above;
9. a member of a board of a mortgage credit intermediary established as a legal person or a natural person performing equivalent tasks within a mortgage credit intermediary, which is a legal person but does not have a board; and
10. being directly involved in the design of retail financial products. Where product design is carried out by a range of experts who are not accredited persons, at

least one key person in the product design decision-making process shall hold a recognised qualification for the relevant retail financial product.

(Changes are in italics for ease of reference.)

The text of Section 1.2 would then read as follows.

Proposed text of Section 1.2.

These Standards apply to the persons exercising a controlled function on a professional basis, the exercise of which includes *a specified function or a MiFID service or activity*.

These Standards do not apply to a person exercising a controlled function the exercise of which is concerned solely with the provision of a retail financial product free of charge in conjunction with another financial product.

(Changes are in italics for ease of reference.)

The list of MiFID services or activities would be in the definition of "MiFID services or activities" in the Introduction rather than in Section 1.2.

The text in the left hand column of the table in Section 1.3 would read as follows.

Proposed text in the left hand column of the table in Section 1.3.

A person carrying out a *controlled function on a professional basis, the exercise of which includes a specified function* in respect of mortgage credit agreements.

A person carrying out a *controlled function on a professional basis, the exercise of which includes a specified function* in respect of MiFID II financial instruments or structured deposits.

A person carrying out a *controlled function on a professional basis, the exercise of which includes a specified function* in respect of any other retail financial product listed in Appendix 1.

(Changes are in italics for ease of reference.)

6. Continuing professional development

Section 1.7.1 (b) and (c) refers to an effective date of 1 January 2012. It is not clear whether this should be the effective date of the revised MCC or the effective date of the MCC 2011.

7. Exemptions from recognised qualifications

In section 3.2 we note that employees of regulated firms who hold professional qualifications from outside Ireland are still able to seek exemptions from recognised qualifications awarded by organisations in Ireland. We support the continuation of this arrangement.

8. Reinsurance

Specified function no. 3 in Appendix 2 relates to reinsurance distribution. In response to the CBI's comments on page 14 of the consultation paper and Question 9, we think that a specific reinsurance qualification, or a specific reinsurance module of a qualification, would be preferable to a qualification relating to the underlying class of business.

As reinsurance is not included in the list of retail financial products in Appendix 1, it seems that the table in Section 1.3 (a) does not apply to reinsurance distribution. Therefore, a person performing the specified function of reinsurance distribution would only be required to have a recognised qualification in respect of that activity if reinsurance is specifically referred to in the third row of the table in section 1. 3. The list in Appendix 1 only refers to types of insurance products (in addition to pensions, savings, investments and credit agreements).

9. Product design

Specified function no. 8 in Appendix 2 relates to the design of retail financial products. Lloyd's recognises that the introduction of this new specified function is in response to Article 25 of IDD and in particular Guideline 6 of EIOPA's Preparatory Guidelines on Product Oversight and Governance. However, Article 25(4) of IDD states that Article 25 does not apply to insurance products that cover large risks. This is reiterated in the last sentence of point 1.16 of the Guidelines, which states "These Guidelines do not apply to services or products that are explicitly exempted from the scope of the IDD, such as certain activities on an ancillary basis as defined in Article 1(3) or to insurance products which consists of the insurance of large risks as stated in Article 25(4) thereof".

The draft revised MCC does not recognise the distinction between large and mass risks that is in Article 25 of IDD. Retail financial product no. 5 in Appendix 1, commercial general insurance, comprises any type of non-life insurance contract that is sold to any type of commercial entity and therefore it includes both mass and large risks³.

We believe that the application of the specified function of product design to large risks is not the "proportionate and risk based approach" to the application of the EIOPA Guidelines that EIOPA advocates, as per point 1.16 of the Guidelines. As such, we believe that

³ All non-life risks in classes 4, 5, 6, 7, 11 and 12 and some non-life risks in classes 3, 8, 9, 10, 13, 14, 15 and 16 are large risks under the definition in the European Union (Insurance and Reinsurance) Regulations 2015.

insurance products covering large risks should be excluded from the scope of specified function no.8.

If you have any queries regarding our comments, please do not hesitate to contact me.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Joel Lewis', with a stylized, cursive script.

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