

# FCA PUBLISHES DISCUSSION PAPER ON THE REGULATION OF COMMERCIAL AND BESPOKE INSURANCE BUSINESS

On 29 July 2024, the FCA published Discussion Paper [DP 24/1](#) on the regulation of commercial and bespoke insurance business. The paper discusses a number of changes to the rules which aim to create a more appropriate balance between providing customers with regulatory protections and facilitating competitiveness in the commercial non-investment general insurance market. We summarise the proposals in the Discussion paper below.

## Determining which rules apply to commercial insurance

Chapter 2 of the Discussion Paper considers how the existing rules distinguish between consumer insurance and commercial customers through the definition of "contracts of large risks", and sets out potential options to amend or replace this definition.

Consumers and certain SMEs benefit from higher levels of protection contained in ICOBS, PROD, PRIN, and they may refer complaints to the Financial Ombudsman Service (**FOS**). Such protections are not afforded in respect of a "contract of large risks". The FCA does not define "contract of large risks" consistently – there are different definitions in the FCA Glossary, DISP and PERG, each with their own criteria based on factors such as balance sheet figures, turnover, number of employees and certain included and excluded business. As such, the business of some SMEs may fall under one definition, but not another.

The FCA proposes the following options for amendment to the criteria to ensure that there is a consistent approach to determining which SMEs should benefit from regulatory protections, with a view to reducing regulatory costs:

1. Replacing the "contract of large risks" definition so that it aligns with the existing definition of "eligible complainant" from the DISP rules. Under this definition, customers that are eligible to bring FOS complaints would automatically be given protections (including falling within the scope of the Consumer Duty) similar to consumers. This would also remove the product-specific criteria under the current FCA Handbook Glossary definition of "contract of large risks".
2. Amending the FCA Handbook Glossary definition of "contract of large risks" to remove all of the product-specific criteria, which would improve the consistency of the treatment of commercial customers regardless of the product category.
3. Developing a new definition of "contract of large risks" to distinguish SMEs from larger commercial customers in the insurance market.

## Co-manufacturers of insurance products

Chapter 3 of the Discussion Paper considers how the rules apply where more than one firm is responsible for manufacturing an insurance product. Under PROD 4.2 (Manufacture of insurance products) firms must approve, maintain, operate and review a process for the approval of insurance products. The current rules require all co-manufacturers to have a written agreement governing their roles and responsibilities in the approval process, but all co-manufacturers are equally responsible for compliance with the rules in PROD 4.2. Stakeholders have raised concerns with this requirement, in relation to the duplication of fair value assessments, and the risk of conflicting fair value assessments.

The FCA proposes three potential solutions:

1. Designating responsibility for compliance with PROD 4.2 to the lead insurer. The FCA would expect the lead insurer to be the insurer taking the greatest proportion of the insurance risk and/or the insurer responsible for claims handling.
2. Amending the rules to allow co-manufacturers to decide between themselves who is responsible for complying with PROD 4.2. This could include flexibility either to appoint a lead firm with sole responsibility for compliance, or to share the responsibility between the co-manufacturers.
3. Providing further guidance to clarify how the rules apply in the context of co-manufacturer arrangements.

## Bespoke insurance products

Chapter 4 considers PROD's "bespoke product exclusion", pursuant to which (i) products which are personalised and/or adapted for an individual customer, and (ii) contracts which are tailor made at the request of an individual customer, fall outside of the scope of the rules on "manufacturing" in the context of insurance distribution. Therefore, an intermediary which designs a bespoke contract at a customer's request will not be a manufacturer, but the relevant insurer will remain a manufacturer under PROD. Industry stakeholders have informed the FCA that this exclusion is rarely used.

The FCA considers that the reluctance to use the exclusion may result in part from a misinterpretation of the PROD rules. As such, the FCA is considering potential rule changes and/or guidance to:

1. Expand the scope of the bespoke contract exclusion.
2. Clarify which products should be considered bespoke.

## Conclusion

The FCA's proposals in DP24/1 reflect its pragmatic approach to improving customer protection, whilst continuing to focus on the competitiveness of the UK insurance market.

The deadline for comments is 16 September 2024, and we await the FCA's next steps.

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