



**INSURANCE COMMISSION  
OF THE BAHAMAS**

**Terms of Reference:  
Drafting of New Legislation Governing the Insurance Industry**

**Contextual Background**

The Insurance Commission of The Bahamas (the Commission) is undertaking a review of the insurance legislative regime, with the goal of ensuring that the relevant laws are current, modern, reflect international best practices and promote the development of the insurance industry in The Bahamas. The framework for the regulation of insurance business can be found in the following legislation and subsequent amendments:

1. Insurance Act, 2005
2. Insurance (General) Regulations, 2010
3. External Insurance Act, 2009
4. External Insurance (Judicial Management) Regulations, 2009
5. External Insurance (Capital Requirements for External Insurers, Insurance Managers and External Insurance Brokers) Regulations, 2010
6. External Insurance (Classes of Insurance Business) Regulations, 2010
7. External Insurance (Forms & Fees) Regulations, 2010
8. External Insurance (Variable Insurance Business) Regulations, 2010

The regulation of insurance is governed globally in accordance with the International Core Principles (ICPs) of the International Association of Insurance Supervisors. During 2012, The Bahamas was the subject of a Financial Sector Assessment Program (FSAP), coordinated by the International Monetary Fund (IMF). This FSAP reviewed the compliance of The Bahamas' regulatory framework and supervisory practices with the ICPs. Upon completion, recommendations by the IMF included a recommendation that the legislation governing the domestic and external insurance sectors be harmonized and combined, to avoid gaps in regulation. Given the relatively new commencement of work under the Insurance Act and the External Insurance Act, both of which became effective in 2009, the insurance legislation was not tested in many areas. Today, a number of key areas have now been identified by the Commission and by industry stakeholders for amendments and changes, including combining the legislation for the domestic and external sectors.

In December 2018, the Government of The Bahamas passed a compendium of legislation geared towards reform of the financial services sector in tax compliance and demonstrating its commitment to global standards and international best practices.

Amendments to the current insurance legislation<sup>1</sup> were subsequently drafted and are awaiting Parliamentary approval, which seek to harmonize the fee structure under the existing legislation and allows for consideration of an institution's systemic impact on the domestic financial system. Accordingly, all financial institutions are now permitted to offer services to both domestic and international clients provided that the institution meets prescribed regulatory requirements and the regulation of all institutions is harmonized.

Harmonization will be achieved with changes in the business licence fee structure for all financial institutions. The new fee structure recognizes and prepares for the regulation of financial services business in accordance with the institution's size, complexity, degree of integration into the domestic financial system and access to the domestic payments system.<sup>2</sup> For the insurance industry, business licence fees are equivalent to premium

<sup>1</sup> Insurance (Amendment) Bill, 2020; External Insurance (Amendment) Bill, 2020.

<sup>2</sup> See Statement of the Honourable K. Peter Turnquest, Deputy Prime Minister and Minister of Finance, Regarding Financial Sector Reform, January 3, 2019.

taxes. There were significant differences in the fee structure under the Insurance Act when compared to the External Insurance Act, which are now in the process of amendment.

Other amendments will include the introduction of new definitions, the revision of forms and fees, and other consequential amendments.

The Commission is requesting proposals from a consultant for the purpose of reviewing existing insurance legislation and drafting new legislation that will update the current legislative framework in The Bahamas. It is proposed that the consultant will review domestic financial legislation (as necessary), benchmark the global competitive landscape in order to recommend opportunities to improve the insurance legislative regime and draft insurance legislation to be compliant with international standards and best practices, by combining the Insurance and External Insurance Acts and regulations. The project will include a review, analysis and consultation with the Commission and its project team at various phases to be agreed between the Commission and the selected consultant.

### **Requirements and Deliverables Overview**

It is expected that the assignment will be completed within a six (6) month period from the date that the consultancy contract is signed by the consultant (“the commencement date”). Deliverables of the consultancy include, but are not limited to the following:

- i. a detailed work plan (inclusive of the review and updating of legislation, policies and procedures) and a time schedule for the consultancy,
- ii. progress reports within terms to be agreed with the Commission,
- iii. consultative meetings with the Commission’s project team,
- iv. consultative meetings with a project team from the insurance sector,
- v. a first draft of insurance legislation,
- vi. a second draft of the insurance legislation,<sup>3</sup> after having received comments from the Commission, and the industry, as necessary, and
- vii. a final draft of the combined legislation.

Any proposed changes in the agreed schedule for deliverables by the consultant must immediately be communicated to the Commission’s project team leader. Changes to the agreed timelines must be approved by the Superintendent of Insurance. Work may be conducted onsite or offsite.

The collection of data used for the consultancy is the responsibility of the consultant. At the completion of the consultancy, all data collected becomes the property of the Commission.

The consultant is subject to confidentiality provisions as per section 74, Insurance Act.

### **Qualifications Overview**

The consultant shall be either a qualified legal practitioner or an industry professional, with not less than ten (10) years practical experience in drafting and review of legislation in a common law system. Candidates should have experience in drafting financial services legislation with the following specific qualifications:

- technical knowledge of the subject-matter (i.e. principles of insurance, reinsurance, captive insurance, accounting and actuarial principles) and knowledge of international standards with respect to the insurance industry,
- strong drafting, analytical and communication skills, and
- familiarity with the English common law system.

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<sup>3</sup> 2<sup>nd</sup> and subsequent drafts should reflect tracked changes.

### **Submission of Proposal**

Eligible candidates should submit a proposal to the Superintendent of Insurance, which is to include a statement of relevant experience (including a sample of previous work and references), educational qualifications, a recent photo, permanent address (and current address, if different from permanent address), an indication of availability to carry out the assignment during the period October 1, 2020 to March 31, 2021 and a fee and billing proposal. Submissions must also include a declaration of the lack of conflict of interest. Proposals by eligible candidates should be submitted in electronic format to **consultant@icb.gov.bs** not later than 5 p.m. EST on the date of the deadline.

The submission deadline for proposals is Friday, September 11, 2020.