Cassels

New Brunswick Proposes to Regulate the Incidental Sale of Insurance

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On December 1, 2019, the Financial and Consumer Services Commission of New Brunswick (the FCNB) published a consultation paper (the Consultation Paper) regarding the regulation of the incidental sale of insurance in New Brunswick through a restricted insurance licensing regime.

In the Consultation Paper, the FCNB defines an “incidental seller of insurance” as a person that solicits, negotiates, sells or arranges insurance, or offers to do so, in the course of selling or providing goods and services to its customers or clients.

Eligible Businesses and Classes of Insurance

The FCNB has proposed that a restricted insurance license could be issued to any of the following entities: deposit-taking institutions, transportation companies, automobile dealerships, portable electronics vendors and, importantly, “businesses engaged by one of the foregoing businesses to solicit, negotiate, sell or arrange insurance on its behalf.” This last category may expand the availability of licensing to third parties who are not directly involved in the retailer-customer or dealer-customer relationship. We expect this would be a welcome proposal to third party administrators.

The Consultation Paper sets out specific classes of insurance for the entities eligible to obtain restricted licensing. Depending on the nature of the business, license holders and their employees would be permitted to distribute one or more of the following types of insurance: cargo insurance; creditor’s insurance; export credit insurance; guaranteed asset protection insurance; mortgage insurance; portable electronics insurance; and/or rented vehicle insurance.

The foregoing would be new classes of insurance or new sub-classes of existing classes of insurance in New Brunswick.

Interestingly, the FCNB did not include travel insurance, funeral insurance or equipment warranty insurance as separate classes of insurance that are eligible for distribution by a restricted agent. In this regard, the FCNB is proposing to continue to issue a separate travel insurance agent license to qualified individuals and to continue to require that individuals selling funeral insurance be fully licensed life insurance agents.

The FCNB also clarifies that it “does not consider warranties or extended warranties to be insurance where the warranty is sold incidentally to the product and is sold by the “distributor” of the product or an affiliate of the distributor with a non-arm’s relationship.” It is also interesting that these comments of the FCNB focus on the incidental distribution of the warranty as so determinative of the nature of the warranty as “insurance” or “not insurance.” Equipment warranty insurance is a separate class of insurance in Alberta and Saskatchewan.

Proposed Licensing and Market Conduct Requirements

The proposed licensing requirements for restricted agents appear to be similar to the licensing requirements for general agents in the province. The FCNB also addresses market conduct and disclosure requirements in the Consultation Paper, which vary depending on the nature of the insurance product. The Consultation Paper contains a prohibition against tied selling and proposes that restricted license holders and their employees would not be permitted (i) to make the provision of goods or services conditional upon the consumer’s purchase of insurance through the license holder or a specific insurer or (ii) to advise the consumer that the consumer must purchase insurance through the license holder from a specific insurer.

Conclusion

We are in favour of this initiative by FCNB and, subject to the outcome of the consultation process, it is our view that the proposed incidental selling regime should provide additional clarity and flexibility for the incidental distribution of insurance products in New Brunswick.

Comments should be submitted to the FCNB in writing by January 31, 2020.

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