LESS REGULATIONS MORE EXPERTS

Bank Negara says insurance industry needs more experts, not regulations

RUPA DAMODARAN
KUALA LUMPUR
rupad@newstraitstimes.com.my

REGULATORY supervision in the insurance industry must be supported by more experts rather than regulations, says Bank Negara Malaysia governor Tan Sri Muhammad Ibrahim.

“In the current state of constant change, building the capacity of supervisors is one of the most critical priorities," he said at the 24th International Association of Insurance Supervisors (IAIS) Annual Conference 2017, held yesterday.

By doing so, it would guard against threats to stability without affecting growth and innovation, he said.

“...the need for a new paradigm on ethics."
### Subsidiary legislation approved and gazetted in Malaysia from 2013 - 2017

<table>
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<tr>
<th>Year</th>
<th>Regulations</th>
<th>Rules</th>
<th>Proclamations, Orders and others</th>
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<td>19 (10)</td>
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<td>2015</td>
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New Regulations and Rules gazetted in Malaysia from 2013 - 2017
INTRODUCTION

- **Industry self-regulation**
  - “A regulatory process whereby an industry-level organization sets rules and standards (codes of practice) relating to the conduct of firms in the industry”

- **Industry self-regulation in Malaysia**
  - General Consumer Code of Practice for the Communications and Multimedia Industry Malaysia – developed and administered by the Communications and Multimedia Consumer Forum of Malaysia
  - The Malaysian Communications and Multimedia Content Code – developed and administered by the Communications and Multimedia Content Forum Malaysia
Objective of the Code

To provide model procedures for:

(a) reasonably meeting Consumer requirements
(b) the handling of customer complaints and disputes
(c) the creation of an inexpensive mediation or process other than the court and procedures for compensation of the customers in case of a breach of the consumer code
(d) the protection of consumer information

to endeavour to achieve the national policy objectives of the Communications and Multimedia Act 1998
to provide benchmarks for the communications and multimedia Service Providers for the benefit of consumers

to promote a high level of consumer confidence in service delivery from the industry

to provide guidelines for self-regulation among the industry

Application of the Code

(a) all licensed Service Providers, as far as their licensed activities are concerned

(b) all non-licensed Service Providers who are members of the Consumer Forum
The Forum will monitor compliance with the codes provisions and the overall effectiveness of the code in achieving its objectives, e.g:

(a) complaints monitoring
(b) compliance monitoring
(c) routine verification of code compliance by Service Providers
(d) identification of universal code issues and breaches

The Code will be reviewed every three years
Non-adherence of Code

(a) Consumer complaints
- Complaints lodged and dealt with by the relevant Service Provider
- If still dissatisfied, the Consumer may lodge a complaint with the Consumer Forum
- Where the complainant or the Service Provider is dissatisfied with the Consumer Forum’s decision, the dissatisfied party can refer the complaints to the MCMC

(b) Industry complaints
- A complaint lodged by a minimum of two members of the industry against a Forum participant for alleged breach of a Code or complaints by a group comprising a minimum of two organizations representing consumer interests against a participant
All industry complaints will be lodged directly with the Consumer Forum and not the Service Provider.

The Forum will investigate the complaint in order to determine whether there has been a breach of the Code, in the event the Forum finds that there has been a breach, the Forum will consider the following factors in arriving at a decision on the type of sanctions to be imposed:

(a) seriousness of the breach

(b) past conduct of the Service Provider with respect to compliance with the Code

(c) representations made by the Service Provider with regards to the alleged breach
The types of sanction that can be imposed are:

(a) issuance of a caution notice

(b) issuance of a warning notice

• In the case of continued breaches of registered Codes, the Forum will use its discretion as to whether to refer a matter to MCMC for its consideration

• Service Provider must offer compensation to customers in cases of breach of a Consumer Code and any relevant mandatory standards that have been issued and will be issued from time to time by Malaysian Communications and Multimedia Commission regarding a matter dealt with in this Code or the said Mandatory Standard. It is accepted that compensation is not meant to penalize Service Providers nor to unjustly enrich customers. Compensation packages may be monetary or non-monetary form
The Malaysian Communications and Multimedia Content Code

- Objectives of the Code
- To recommend guidelines relating to the provision of Content through self-regulation by the industry in a practical and commercially feasible manner and foster, promote and encourage the growth and development of the industry
- Scope and coverage
- This Code shall apply to all Content made available in the Content industry in the networked medium and as defined in this Code and under the Act
- This Code shall apply to all Content Application Service Providers and in particular but not limited to:
(a) each member of the Forum
(b) each person who has submitted their agreement to the Forum that they will be bound by this Code; and
(c) each person whom the Commission has directed in accordance with Section 99 of the Act

- Section 99 of the Act provides that “The Commission may direct a person or a class of persons in accordance with section 51, to comply with a registered voluntary industry code”
- Section 100 of the Act provides that “Notwithstanding section 53, a person who fails to comply with a direction of the Commission that the person complies with any provision of a voluntary industry code shall be liable to pay to the Commission a fine not exceeding two hundred thousand ringgit”
Compliance with this Code is voluntary, subject to Section 99 of the Act and the provision of this Code.

Compliance with this Code shall be a defence against any prosecution, action or proceeding of any nature, whether in court or otherwise as stated under subsection 98(2) of the Act.

Subsection 98(2) provides that “Compliance with a registered voluntary industry code shall be a defence against any prosecution, action or proceeding of any nature, whether in court or otherwise, taken against a person (who is subject to the voluntary industry code) regarding a matter dealt with in that code.”
The Forum is responsible for the administration of this Code and for sanctions in the case of any breach.

The Forum through its Complaints Bureau shall receive, consider, mediate and if necessary, adjudicate and make a ruling on matters, such as complaints and grievances, relating to alleged breaches.

- Procedure for General Public Complaints

- Any complaints received from the public must be made in writing specifying, if possible, the part of the Content Code that has been breached together with supporting documents or details of the alleged misconduct.

- If complaint is frivolous/prima facie lacking in merit/outside the scope of the Code-complainant will be notified that no further action will be taken.
If the complaint warrants further investigation the complaint will be forwarded immediately to the party complained against for a response within two working days

The Chairman and members of the Complaints Bureau will decide on the complaint

Procedure for Industry Complaints

- Any complaint that any member or person from the industry has should first be raised with the alleged offending party in writing, specifying the Part of the Code which it is claimed has been breached with a copy extended to the Complaints Bureau

- If within two working days the complaint is not resolved, then either party shall in writing inform the Complaints Bureau
Inquiry proceedings

In adjudication of all cases, the Bureau may require the parties concerned to provide evidence in support of or against the complaint and for this purpose may require:

(a) a written submission with documents, recordings or transcripts of the relevant Content from the complainant and respondent;

(b) the presence of the complainant and respondent and their respective witnesses at the inquiry;

(c) the presence of any party to provide clarification on a document submitted as evidence; and

(d) the presence of any outside independent party for further information or further evidence.
Sanctions

The Bureau after adjudicating on a complaint and upon finding that there has been a breach of the Code may impose fines and other penalties permitted by virtue of this Code. The Bureau may upon finding that there has been a breach of the Code:

(a) issue a written reprimand;
(b) impose a fine not exceeding fifty thousand; and/or
(c) require removal of Content or cessation of the offending act

* The Bureau may also refer the Offending Party to the Communications and Multimedia Commission for further appropriate action as may be required
Publication of decision

The Complaints Bureau will report to the Forum’s Council the outcome of its mediation efforts or the ruling made, and whether or not the party complained against has complied with or the party in breach has agreed to comply with the ruling.

The Bureau shall publish its findings within thirty days of the conclusion of the inquiry and in doing so shall not include in the report:

(a) any material of a confidential nature; or

(b) any disclosure or personal information about any individual deemed not relevant to the complaint.
Composition of the Complaints Bureau

- Chairman - shall be a retired judge or judicial officer or anyone the Council deems fit
- Six members of the Forum one each representing Advertisers, Audiotext Service Providers, Broadcasters, Civic Groups, Content Creators/Distributors and Internet Access Service Providers
- The Chairman may be appointed and reappointed for any duration as deemed fit by the Council
- The members of the Complaints Bureau shall be appointed for a two year term at the Annual General Meeting of the Content Forum (eligible for reappointment but not more than two consecutive terms)
Development, amendment and review of Content Code

- Any proposal for development, amendment or review of the Code shall be referred to a Working Group comprising of Advertisers, Broadcasters, Audiotext Service Providers, Content Creators/Distributors, Internet Access Service Providers and Civic Groups.

- Approved proposal shall be referred to as Recommendation and it will be made available to members for input.

- Upon receiving input from members the Working Group shall deliberate and decide on the revision of the Recommendation, if 2/3 of the members agreed on the Recommendation, the Recommendation shall be submitted to the Council.

- If the Council approves the Recommendation the Council shall make available the Recommendation for Public Comment.
The Working Group shall consider the input from the Public and shall upon approval in its original or amended form by a simple majority forward its Recommendation to the Council.

The Council shall then forward the Code for registration with the MCMC.
Features of the Codes that are conducive to success

- Enforcement
  - Enforced by the Consumer Forum and the Content Forum
- Sanctions
  - Caution notice and warning notice for Consumer Code
  - Written reprimand, fine not exceeding fifty thousand and removal of content for Content Code
- Monitoring and Evaluation
  - Review every three years for Consumer Code
  - Continuous review for Content Code
- Dispute resolution and redress
  - Consumer Forum for Consumer Code
  - Complaints Bureau for Content Code
Advantages of self-regulation

- Going beyond legal requirements
- More flexibility
- Filling regulatory gaps quickly
- Higher technical expertise
- Lower compliance costs
- Stronger values and ethics
- Higher compliance levels
- Enhanced competition
- Conserving government resources
Challenges of self-regulation

- Strength of instruments
- Compliance and oversight
- Risk of regulatory capture
- Free-riders
- Market coverage of the scheme
- Favouritism, dominant firms
- Distortions in competition – barrier to entry
- Accountability
- Costs on the business to set up the scheme
Factors contributing to the success of industry self-regulation

- Environmental factors or features or provisions of a self-regulatory regimes
- Environmental factors
  - Industry self-interest
  - Alignment of industry, government and consumer interests
  - Number of market players
  - Market coverage
  - Homogeneity of products
  - Nature and magnitude of consumer detriment
  - Competition
Features or provision of the self-regulation regimes

- Clarity and strength of objectives
- Conformity of schemes with government policies
- Legal basis
- Leadership
- Leveraging industry knowledge in rule setting
- Monitoring, transparency and public accountability
- Enforcement and sanctions
- Dispute resolution and redress
- Stakeholder participation
- Public awareness
Potential benefits to industry and consumers

- Better informed
- More effective dispute resolution
- Combating unfair or abusive practices
- Enhanced consumer rights
- Enhancing consumer confidence/improving the image of business
- Disciplining business that fail to meet commitments
- Improving complaint handling
- Pre-empting formal government regulation
- Providing instructional resources
Conclusion

- Industry self-regulation can be an effective and efficient means of social control
- Throughout the advanced countries of the world self-regulatory regimes are being introduced
- The benefits of industry self-regulation are apparent e.g. speed, flexibility, sensitivity to market circumstances and lower costs
- Because standards are set by practitioners with detailed knowledge of the industry it will lead to more practicable standards and more effectively policed
- Industry self-regulation will reduce the government regulatory burden
Thank you