

BERMUDA MONETARY AUTHORITY

INSURANCE DEPARTMENT

GUIDANCE NOTE #11

**MARKET CONDUCT FOR DOMESTIC
INSURANCE BUSINESS – INSURERS AND
INTERMEDIARIES**

MARCH 2005

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Introduction

- 1 Requirements for the conduct of insurance business help to strengthen consumer confidence in the insurance market. The Bermuda Monetary Authority (the “Authority”) expects insurers and intermediaries, who write, advise or are otherwise involved in the placement of domestic insurance business in or from Bermuda to uphold themselves to a certain level of conduct. This note sets out the guidance for market conduct for writers of domestic insurance business.
- 2 The Authority recognizes the need for clarity as to the scope and implementation of the provisions of the Act ¹ if the regulatory system is to command the confidence of insurers and policyholders. It seeks, therefore, to ensure that those operating in Bermuda have a good understanding of the nature of the requirements and of the Authority’s approach in implementing the Act.
- 3 While the Authority aims to provide clarity as to its approach, this Guidance Note is not intended to be exhaustive. The Authority will do its best through this Guidance Note to set out its understanding of the legal provisions affecting market conduct, and to provide additional information about the Authority’s regulatory approach and expectations for these matters.² Interpretation of statutes is ultimately a matter for the Bermuda courts. (The applicable sections of the Act are shown in brackets.)³
- 4 The Authority’s guidance is of general application. There is likely to be a need for the Guidance to be revised and developed over time. Material changes in the Guidance will be published, generally through the issue of a revised version.
- 5 Any guidance provided is intended to be reflective of minimum standards that should be observed in all cases. While this Guidance Note attempts to be as objective as possible, it is not intended to be exhaustive. In areas where any

¹ The insurance legislation is comprised of the Insurance Act 1978 (as amended by the Insurance Amendment Acts, 1981, 1983, 1985, 1995, 1998 and 2001) and the regulations promulgated under that Act (the “Regulations”). The Regulations are the Insurance Accounts Regulations 1980 (as amended by The Insurance Accounts Amendment Regulations 1981, 1985 and 1989) and the Insurance Returns and Solvency Regulations 1980 (as amended by The Insurance Returns and Solvency Amendment Regulations 1981, 1985 and 1989). References herein to the “Act” are to the Insurance Act 1978 (as amended) and the Regulations.

² The legislative summary in this Guideline is not intended to be a substitute for provisions of the Act. The reader is advised to refer to the provisions of the Act and not to rely on the interpretation of those provisions contained in this Guideline.

³ “IA” means the Insurance Act 1978. “IAR” means the Insurance Accounts Regulations 1980. “IRASR” refers to the Insurance Returns and Solvency Regulations 1980.

guidance is not specific, insurers and intermediaries should be guided by the Guidance's underlying spirit.

- 6 For references in these Guidance Notes with respect to the changes in legislation contained in the Insurance Amendment Act 2004 insurers must take immediate steps to ensure they are in compliance with the Act. In relation to other matters contained in the Guidance Notes, the Authority encourages insurers to come into compliance as soon as possible and, in any event, not later than 31st December 2005 or a later date as may be agreed with the Authority in a particular case.

Definitions

- 7 **Domestic business** under the Act means “insurance business where, whether the contract of insurance is made in Bermuda or elsewhere, the subject-matter of the contract is either – (a) property that at the time of the making of the contract is in, or in transit to or from Bermuda; or (b) the life, safety, fidelity or insurable interest of an individual who at the time of the making of the contract is ordinarily resident in Bermuda; or (c) a risk of a company formed in Bermuda that is not an exempted company within the definition of that expression in section 127 of the Companies Act 1981.”⁴
- 8 **Customer** is a person to whom a good or service is provided by an insurer or intermediary, and includes policyholders.
- 9 **Insurer** has the meaning under the Act and means “a person carrying on insurance business.”⁵
- 10 **Intermediary** refers to a person registered with the Authority pursuant to The Insurance Act 1978, as an insurance agent, insurance broker or an insurance salesman. An **Authorized Intermediary** is an intermediary who is authorized by the insurer to advise or place domestic insurance business on behalf of the insurer.

Application

- 11 This guidance applies to all insurers licensed to write domestic business in or from Bermuda and to all intermediaries who advise on place domestic insurance business. For clarification, this Guidance does not apply to the insurance business written by those insurers which is not domestic business.
- 12 Where an insurer or intermediary is subject to this Guidance, but is unable to comply with all parts, it must provide full details and reasons to the Authority for non-compliance and must obtain a written exemption from the Authority.

⁴ Refer to Section 1 (1) of the Act.

⁵ Refer to Section 1 (1) of the Act.

General Provisions

- 13 The objectives of this Guidance are to ensure that, with respect to domestic business, an insurer or intermediary:
- (a) acts with high standards of integrity and fair dealing in the conduct of their business; and,
 - (b) acts with due skill, care and diligence in providing services, including any services which it has indicated a willingness to provide.

Integrity and Fair Dealing

- 14 An insurer or intermediary shall observe high standards of integrity and fair dealing in the conduct of its business.
- 15 An insurer or intermediary has an obligation to avoid misleading and deceptive acts or representations. It should not seek to exclude or restrict any duty or liability to a customer that it has under a legislative framework and/or accepted practices. Additionally, it should not seek to rely unreasonably on any provision of a contract seeking to exclude or restrict any such duty or liability.
- 16 An insurer or intermediary should either avoid any conflict of interest arising or, where a conflict arises, should ensure fair treatment to all its customer by disclosure, internal rules on confidentiality, declining to act, or otherwise as appropriate.
- 17 An insurer or intermediary should not unfairly place its interest above those of its customers and, where a properly informed customer would reasonably expect it would place the customer's interest above its own, the insurer or intermediary should live up to that expectation.

Skill, Care and Diligence

- 18 An insurer or intermediary should act with due skill, care, and diligence in the conduct of its business and in its dealings with customers or potential customers.
- 19 Where an insurer or intermediary is responsible for providing advice or exercising discretion for or in relation to customers, it must be able to demonstrate that the advice, or exercise of discretion, is appropriate for the customer.
- 20 An insurer or intermediary must transact its business (including the establishment, maintenance, transfer or closure of business relationships with its customers) in an expeditious manner.

Information About Customers

- 21 Where an insurer or intermediary is responsible for providing advice or exercising discretion for its customers, it must seek from them such information about their circumstances and objectives as may be appropriate with regard to the services requested. Documentary evidence must be maintained in this respect.
- 22 An insurer or intermediary may only exercise its power or its discretion for a proper purpose.
- 23 Information, which a customer might reasonably expect to be confidential, should be treated as such.

Disclosure and Information

- 24 An insurer or intermediary should take reasonable steps to give a customer, in a comprehensible and timely way, information to assist the customer to make a balanced and informed decision and shall avoid misleading or deceptive representations or practices. This includes communicating:
 - relevant and meaningful information in a timely and comprehensive manner to enable the customer to make a balanced and informed decision before entering into a contract;
 - the benefits and risks to the customer in a fair and balanced way;
 - the obligations of the parties involved, being the insurers, intermediaries and the customer, in a clear and understandable way, for the duration of the contract, including such matters as whether the intermediary is compensated by commission, or whether the intermediary is independent or associated with the particular insurance company;
 - complaints handling and other contractual arrangements; and
 - the duty of customers to disclose material information.
- 25 Similarly, an insurer or intermediary should be ready to provide a customer with a full and fair account of the fulfillment of its responsibilities to him. The frequency with which additional information is to be disclosed during the course of the contract depends on the type of contractual arrangement.
- 26 An insurer or intermediary should take reasonable care that the information disclosed by him is accurate in all material respects, not misleading, easily understandable, and available in writing or appropriate electronic means.

Customer Assets

- 27 Where an insurer or intermediary has control of or is otherwise responsible for assets belonging to a customer which it is required to safeguard, it should arrange proper protection for them, by way of segregation and identification of those assets or otherwise, in accordance with the responsibility it has accepted.

Complaints Procedure

- 28 An insurer or intermediary shall have procedures in place, as applicable, to deal with customer complaints effectively and fairly through a simple and equitable process. These procedures should be well disclosed and easily accessible. A record of the details of the complaint, the insurer's or intermediary's response and any action taken as a result, shall also be made and maintained
- 29 The Authority expects each insurer (or intermediary, as appropriate) with domestic business to appoint a Market Conduct Compliance Officer, who is responsible for ensuring compliance with this Guidance and for reporting at least annually to the Board of Directors (or a sub-committee of the Board) on the insurer's or intermediary's compliance with this Guidance.

Advertisements

- 30 An insurers or intermediary should ensure that advertisements:
- (a) do not contain a statement, promise or forecast which is untrue or misleading;
 - (b) are not designed in such a way as to distort or conceal any relevant subject material;
 - (c) are clearly recognizable as advertisements;
 - (d) where appropriate, state that the investment value is not guaranteed or that the value may fluctuate;
 - (e) do not contain a statement relating to taxation benefits unless it contains appropriate qualifications to show what it means in practice and to whom such benefits apply; and
 - (f) do not contain a statement relating to past performance unless:
 - i) the basis on which such performance is measured is clearly stated and the presentation is fair;

ii) it is accompanied by a warning that past performance is not necessarily a guide to future performance; and

iii) the past performance is relevant to the investment or the services offered by the investment provider.

31 In the case of long-term business, each insurer or intermediary in its promotional material, should endeavour to impress on clients that a whole life or endowment policy is intended to be a long-term contract and that surrender values, especially in early years, are frequently less than the total amount of premiums paid.

Authorized Intermediaries

32 Insurers are required to take responsibility for the appointment and activities of authorized intermediaries. In this respect, insurers shall:

- ensure all authorized intermediaries are registered with the Authority;
- ensure that all authorized intermediaries provide prospective customers with the name of the insurer represented by the authorized intermediary and the types of product(s) the authorized intermediary is authorized to sell and/or advise on behalf of the insurer; and,

33 When an insurer, subject to this Guidance, grants terms of business to an authorized intermediary, that insurer shall:

- Have a terms of business agreement completed and signed by the authorized intermediary to require the intermediary to warrant that the agreement does not breach any legal obligations and that the authorized intermediary will clearly explain the risks inherent in the product to the client; and
- take measures to monitor the performance of the authorized intermediary, including complaints made against the authorized intermediary with respect to advice or sales made by the authorized intermediary on behalf of the insurer.

Intermediary Disclosure

34 An intermediary is required to give customers information on its status, specifically whether it is independent or associated with particular insurance companies, and whether it is authorized to conclude insurance contracts on behalf of an insurer or not.

Policy Statement and Training

- 35 An insurer (or intermediary, if appropriate) is required to have a policy statement on how to treat customers fairly and to comply with this Guidance that is communicated to all staff, and to have systems and provide training to ensure compliance with the policies by their employees and any authorized sales representatives.

Compliance

- 36 An insurer or intermediary shall establish and maintain systems and controls to enable ongoing monitoring of compliance with this Guidance and ensure controls and procedures are properly documented.
- 37 Compliance with this Guidance will be checked by the Authority when it performs on-site inspections of domestic insurers. During the on-site inspection, the Authority may include in its review, among other matters the following:
- reviewing the insurer's policy for compliance with this Guidance and any related training;
 - checking the sufficiency and adequacy of the information given to consumers;
 - reviewing record of complaints, including the frequency and nature, and the timing and resolution of the matters raised in the complaints;
 - reviewing the frequency and nature of any litigation arising from market conduct matters; and
 - generally assessing observance of the market conduct standards and consumer regulations.

End of guidance note.

If you have questions on this or other guidance from the Insurance Department please email info@bma.bm . Please put "Insurance Guidance" in the title of your email.