

Guidelines

Provisions for European Insurance Intermediaries Pursuing Insurance Mediation in Malta under the Provisions of Freedom of Establishment or Freedom of Services

1.0 Application

- 1.1** These Guidelines apply, on a continuing basis to a European Insurance or Reinsurance Intermediary (“the insurance intermediary”) which/who in accordance with Article 6 of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (“Insurance Mediation Directive”), has informed the supervisory authority of its/his home member state of the intention to pursue insurance mediation in Malta under the provisions of freedom of establishment or freedom to provide services and the Malta Financial Services Authority (“the MFSA”) has received the notification provided for in the said Article 6.
- 1.2** These Guidelines shall not apply to an insurance intermediary which/who mediates into contracts relating to large risks as defined in Article 5(d) of the First Non-Life Insurance Directive 73/239/EEC of 24 July 1973 (as amended by Article 5 of the Second Non-Life Insurance Directive 88/357/EEC of the 22 June 1988).
- 1.3** The provisions contained in paragraph 3.1 (a) of these Guidelines shall not apply to insurance mediation pursued by reinsurance intermediaries.

2.0 Definitions

- 2.1** In these Guidelines, unless the context otherwise requires –

“insurance agent” means a person appointed by an insurance undertaking to be its agent in respect of business of insurance with authority to enter into contracts of insurance on behalf of the insurance undertaking under the terms of the appointment;

“insurance broker”, means a person who, acting with complete freedom as to its choice of lawful insurance undertakings, brings together, with a view to the insurance or reinsurance of risks or commitments, persons seeking insurance or reinsurance and insurance undertakings, carries out work preparatory to the conclusion of contracts of insurance or reinsurance and, where appropriate, assists in the administration and performance of such contracts, in particular in the event of a claim;

“insurance intermediary” includes any person acting as insurance agent, insurance broker and tied insurance intermediary;

“tied insurance intermediary” shall have the same meaning as defined in Article 2 of the Insurance Mediation Directive and may collect premiums or amounts intended for the customer.

3.0 Purpose

3.1 The purpose of these Guidelines is to determine –

(a) the information which an insurance intermediary is to communicate to a policyholder, including a potential policyholder, before a contract is concluded or during the term of a contract and the manner in which that information is to be furnished;

(b) the recognised standard of professional conduct required of:

(i) all insurance brokers, as set out in Schedule II to these Guidelines;

(ii) all tied insurance intermediaries; as set out in Schedule III to these Guidelines;

in terms of which, insurance brokers and tied insurance intermediaries shall at all times exercise their respective professional activities,

(c) guidelines on insurance advertisements and other promotional activities issued by insurance intermediaries.

3.2 These Guidelines are without prejudice to the provisions of Directive 2002//65/EC of the European Parliament and of the Council of the 23 September 2002 concerning distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC.

Guidelines on information to be provided by the insurance intermediary

1.1 The information which an insurance intermediary is required to provide the customer in terms of these Guidelines shall be given in accordance with and in addition to the information contained in Article 13 of the Insurance Mediation Directive. Any information shall be furnished in Maltese or English or in any other language agreed by the insurance intermediary and the customer.

1.2 Life assurance contracts: Before concluding a contract

1.2.1 This paragraph applies to an insurance contract–

- (a) which is a life assurance contract covering a commitment represented by one of the kinds of insurance or operations referred to in Article 2 of Directive 2002/83/EC of the European Parliament and of the Council of the 5 November 2002 concerning life assurance; and
- (b) covering a commitment where Malta is the country of the commitment.

1.2.2 Before entering into a contract to which this paragraph applies, the insurance intermediary shall furnish the customer in writing with the information required by sub-paragraph 1.2.3, and –

- (a) where the insurance undertaking underwriting the risk or commitment is an undertaking which has received official authorisation in accordance with Article 6 of Directive 73/239/EEC (“insurance undertaking”), other than the association of underwriters known as Lloyd’s, the information required by sub-paragraph 1.2.4; and
- (b) where the insurance undertaking is the association of underwriters known as Lloyd’s, the information required by sub-paragraph 1.2.5.

1.2.3 The information required by this sub-paragraph is -

- (a) the information listed in points (a) 4 to (a) 16 of Annex III(A) of Directive 2002/83/EC of the European Parliament and of the Council of the 5 November 2002 concerning life assurance;
- (b) where applicable, the amount and purpose of any charge in addition to or included in the premium;
- (c) information whether in the home member state of the insurance undertaking issuing the life assurance contract there exists an insurance guarantee scheme which protects the policyholder in the event of the insolvency of the insurance undertaking;

- (d) information as to the customer's right, where the customer is a private customer, to lodge a complaint to the Consumer Complaints Manager in terms of the Malta Financial Services Authority Act, 1994 without prejudice to the policyholder's right to institute legal proceedings;
- (e) information furnished to a policyholder shall not contain:
 - (i) a statement relating to past performance unless:-
 - (aa) the basis on which such performance is measured is clearly furnished and the presentation is fair;
 - (bb) it is accompanied by a warning that past performance is not necessarily a guide to future performance;
 - (cc) the past performance is relevant to the insurance undertaking or the policies offered by the insurance undertaking;
 - (dd) the source of information is stated.

1.2.4 The information required by this sub-paragraph is that listed in (a)1 to (a)3 of Annex III(A) of Directive 2002/83/EC of the European Parliament and of the Council of the 5 November 2002 concerning life assurance;

1.2.5 The information required by this paragraph is –

- (a) the type of relationship (*i.e. acting as a coverholder under a binding authority agreement or acting as a Lloyd's broker*) the insurance intermediary has with the members of Lloyd's underwriting the policy;
- (b) explanation that a contract of insurance underwritten at Lloyd's is underwritten with several liability, each member for his own part and not one for another, and if the liability of each member is accepted, solely for his own account; and a further explanation that the Lloyd's Central Fund is available for the liabilities of insolvent members of Lloyd's at the discretion of the Council of Lloyd's;
- (c) the name and address of Lloyd's representative in Malta and an explanation that the representative of Lloyd's in Malta is authorised to act generally as judicial representative of, and accept service of any document of, Lloyd's and of each of its members and to file any judicial acts in the registry of any court or similar authority in Malta on behalf of Lloyd's or any of its members;
- (d) furnishing of all policy details, particularly:
 - (i) the number reference and date of the policy;

(ii) the identifying number of each of the syndicates subscribing to the policy; and

(iii) where known, the names of the members of Lloyd's comprising those syndicates.

1.3 Supplementary information to be provided in relation to Unit-linked policies

1.3.1 An insurance intermediary carrying on insurance mediation activities in class III of Annex I of Directive 2002/83/EC of the European Parliament and of the Council of the 5 November 2002 concerning life assurance, shall provide a document which shall include the detailed terms and conditions of the product. The following minimum details are to be included in such document:

(a) a brief glossary to explain the meaning of a unit-linked contract of insurance and other terms used in the document, such as fund, unit, bid/offer price, switching, notional allocation (it should be clear that the policyholder will be entitled to a *notional* allocation of units in the underlying funds or other instruments, rather than actual *ownership*, since such units would be owned by the undertaking) etc;

(b) a brief description of the nature of each underlying fund or instrument which may be linked to the contract at the option of the policyholder. Where one or more collective investment schemes may be linked, a clear reference to the name of such scheme/s shall be included together with brief details of the investment objective of such scheme/s and a statement indicating that the choice of which scheme/s to link to the policy should be based on the full details included in the prospectus/scheme particulars of the scheme, copies of which are available upon request;

(c) definition of the units to which the benefits are linked;

(d) without prejudice to the information to be provided under paragraph 1.2.3 (b) above, all charges, including switching charges. In this regard, note should be taken of the following:

(i) maintenance costs/charges should be reasonable and their indexation which may be different from the indexation rate for premiums, capped (i.e. the maximum rate by which such charges may be increased by the undertaking, should be specified in the policy terms and conditions);

(ii) annual percentage management charges may be levied by the insurance undertaking provided the total charges (inclusive of any initial charges on purchase of units, maintenance charges etc), are reasonable. Moreover, the regular management charge should be calculated to ensure that no double charging (of fees levied by third party fund managers), occurs;

(iii) reference to any optional indexation of premiums at a specified rate;

(iv) reference to the frequency of reporting to policy-holders free of charge which shall be at least annually, or if so requested by policyholders, at least every six months.

1.3.2 Any projection of benefits arising from unit-linked contracts of insurance provided to potential policyholders shall be net of all applicable charges and shall include:

(a) a clear description of the basis of the projections;

(b) a warning that the projected benefits may not materialise, are merely indicative, and that market conditions may be such as to result in returns which are by far inferior to the lowest projected returns indicated in the relative documentation;

(c) in addition to the risk warnings mentioned in paragraph 1.2.3 (e) (i) (bb) above, in the case where performance rates over more than one year are provided, a further risk warning that the annualised rate is an indication of the average growth/return of the fund over one year and that any sharp fluctuations in the performance of the fund over a period of time are not necessarily represented by the performance rate or by the annualised rate indicated.

1.3.3 Information given in terms of sub-paragraph 1.3.2 shall be available both in Maltese and English.

1.4 Life assurance contracts: During the term of a contract

1.4.1 This paragraph applies where the commitment covered by the insurance contract is a commitment where Malta is the country of commitment.

1.4.2 If during the term of the contract there is –

(a) any change in the information listed in (a) 4 to (a) 12 and (a) 16 of Annex III(A) of Directive 2002/83/EC of the European Parliament and of the Council of the 5 November 2002 concerning life assurance ; or

(b) any change in the information mentioned in indents (b) to (d) of sub-paragraph 1.3.2; or

(c) in the case of an insurance undertaking other than the association of underwriters known as Lloyd's, any change in the information mentioned in sub-paragraph 1.2.4; or

(d) in the case of the association of underwriters known as Lloyd's, any change in the information mentioned in sub-paragraph 1.2.5,

the insurance intermediary shall inform its/his client in writing of the effect of the change.

1.4.3 If the contract provides for the payment of bonuses, the insurance intermediary shall, at least once in every calendar year except the first, inform its/his client in writing of the amount of any bonus -

(a) which has become payable under the contract, and

(b) of which that party has not been previously informed under this paragraph.

1.4.4 There is a sufficient compliance with sub-paragraph 1.4.3 if the insurance intermediary furnishes its/his client with such information as will enable him/it to determine the amount of any such bonus as is mentioned in that paragraph, or if the insurance intermediary informs its/his client of -

(a) the total value of the benefits (including bonuses) which have accrued under the contract; and

(b) the rates of bonus (unless specified in the contract) which have been declared since that party was previously informed under this paragraph.

1.5 Non-life insurance contracts: Before concluding a contract

1.5.1 This paragraph applies where the risk covered by the contract is a risk situated in Malta.

1.5.2 Before entering into a contract to which this paragraph applies, the insurance intermediary shall, if the potential policyholder is an individual, inform him in writing –

(a) of the information contained in Article 31 of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive);

(b) whether in the home member state of the insurance undertaking issuing the contract there exists an insurance guarantee scheme which protects the policyholder in the event of the insolvency of the insurance undertaking underwriting the risk;

(c) information as to the customer's right, where the customer is a private customer, to lodge a complaint to the Consumer Complaints Manager in terms of the Malta Financial Services Authority Act, 1994 without prejudice to the policyholder's right to institute legal proceedings; ; and

(d) the amount and purpose of any charge in addition to the premium.

1.5.3 If the information required by sub-paragraph 1.5.2 is furnished otherwise than in writing before the time when the contract is entered into, there is a sufficient compliance with that paragraph if it is also furnished in writing as soon as practicable after that time.

1.5.4 Any proposal, policy or other document which, or statements contained in which, will or may bind the other party to the contract issued by an insurer in relation to a contract to which this paragraph applies shall state -

(a) where the insurer is an insurance undertaking, other than the association of underwriters known as Lloyd's, the name and address of the insurance undertaking and, if the contract is to be entered into through a branch or insurance agent, the name and address of the branch or insurance agent;

(b) where the insurer is the association of underwriters known as Lloyd's, the information included under sub-paragraph 1.2.5 of these Guidelines:

1.6 Supplementary information to be provided by persons acting as insurance brokers

1.6.1 Before any negotiations on any contract of insurance are commenced, if:

(a) the insurance broker, or any partner, director, controller or manager of the insurance broker, is a partner, director, controller or manager of an insurance undertaking or of any controller thereof;

(b) an insurance undertaking, or any partner, director, controller or manager of the insurance undertaking, is a partner, director, controller or manager of the insurance broker or of any controller thereof,

the insurance broker shall disclose that connection to a client.

1.6.2 The information regarding any connection which an insurance undertaking may have and which the company is required to disclose under sub-paragraph 1.6.1 shall be disclosed by the insurance intermediary in the manner set out in Schedule I to these Guidelines.

1.7 Proof of furnishing in writing the required information

1.7.1 The burden of proof that any information required to be furnished under the Insurance Mediation Directive and these Guidelines has been furnished in accordance with the requirements of the Insurance Mediation Directive and these Guidelines rests on the undertaking as the party underwriting the contract.

Guidelines on Insurance Intermediaries Advertisements and Other Promotional Activities

- 1.0** Any advertisement issued by an insurance intermediary shall be shown prominently, clearly and intelligibly and shall state the name, address and role of the insurance intermediary and the name of the home state regulatory authority (“the licensing statement”). Where applicable, an advertisement shall also state the name and address of the insurance undertaking on whose behalf the insurance intermediary issuing the advertisement is acting. The name of the insurance undertaking shall take the same prominence in all respects as the identity of the insurance intermediary issuing the advertisement.
- 1.1** Any advertisement issued by an insurance intermediary which is a company incorporated with a share capital which states in the advertisement the amount of the authorised capital of the company shall also state the amount of that capital which has been subscribed and the amount thereof which has been paid up at the time the advertisement is issued.
- 1.2** Where an advertisement relates to specific policy benefits and the benefits are denominated in a currency other than the Maltese lira, the advertisement shall contain a warning concerning foreign exchange rates fluctuations.
- 1.3** Advertisements should not unfairly attack or discredit other businesses or their products and shall not be misleading or unrealistic.
- 1.4** Every insurance intermediary shall keep a record of all advertisements issued including the date of issue and the publication in which the advertisement was published.
- 2.0 Provisions governing advertisements issued by insurance brokers**
- 2.1** Advertisements issued by or on behalf of an insurance broker shall distinguish between contractual benefits, that is benefits which the contract of insurance is bound to provide, and non-contractual benefits, that is the amount of benefits which the contract might provide assuming the insurance undertaking’s particular forecast is correct.
- 2.2** Where advertisements include a forecast of non-contractual benefits, an insurance broker shall restrict the forecast to that provided by the insurance undertaking concerned.
- 3.0 Provisions governing advertisements issued by tied insurance intermediaries**
- 3.1** A tied insurance intermediary shall not issue an advertisement -

- (a) except with the consent of the insurance undertaking to which the business advertised relates; and
- (b) unless the insurance undertaking to which the business advertised relates accepts responsibility for the material content of the advertisement.

3.2 An insurance undertaking shall not give its consent to the issue of an advertisement by any tied insurance intermediary except where the advertisement appears to the insurance undertaking that it conforms with these Guidelines.

4.0 Provisions governing advertisements issued by insurance agents

4.1 An advertisement may not quote anything said or written by any person, or include any statement purporting to represent the views of any person, other than any official or employee of the insurance agent or a close relative of any official or employee of the insurance agent unless:

- (a) the consent of that person to the inclusion on the advert of the quotation or statement representing his views has been obtained and not withdrawn;
- (b) the quotation or statement is relevant to the subject matter of the advertisement;
- (c) the quotation or statement fairly represents the views of the person to whom the views are attributed;
- (d) the quotation or statement or its use in the advert, has not become inaccurate or misleading since it was first made or given:

Provided that sub-paragraph 4.1 (a) shall not apply in any case where the quotation in question has already been published, otherwise than as part of an advert, and it is clear from the context of that earlier publication that the quotation can be used without the express consent of its originator.

4.2 When issuing an advertisement, the insurance agent shall:

- (a) avoid taking any improper advantage of any characteristic or circumstances that may make policyholders or potential policyholders vulnerable (e.g. by exploiting their lack of experience or knowledge);
- (b) exercise care while aiming to help policyholders or potential policyholders to fully grasp the nature of any commitment into which they may enter as a result of responding to an advert.

4.3 An advertisement shall be clearly identifiable as an advertisement. It shall not contain –

- (a) a statement, promise or forecast which is untrue or misleading;
- (b) a statement of fact which the insurance agent does not, at the time the advertisement is issued:
 - (i) have reasonable grounds supported by documentary evidence for believing to be true;
 - (ii) have reasonable grounds for believing will continue to be true for so long as it remains relevant to the subject matter of the advertisement;
- (c) a statement that may be interpreted that an insurance agent is an insurer if that is not the case;
- (d) a statement of opinion held by any person (whether that person is the company concerned or any other person) which the company concerned does not, at the time the advertisement is issued, have reasonable grounds supported by documentary evidence for believing to be the honestly held opinion of that person at that time;
- (e) a misleading statement about the policies of insurance of, or any of those policies of, or the resources of, or available to, the insurance agent;
- (f) a comparison with other types of policies of insurance unless the basis of comparison is clearly stated and the comparison is fair;
- (g) a statement of endorsement which is used out of context without suitable explanation, or is misleading by omission.

4.4 The content and format of an advertisement shall not disguise the significance of any warning statement or information which the MFSA may either generally or specifically require to be included.

4.5 (a) The format of an advertisement shall comply with the following requirements:

(i) when the main text appears in a minimum font size twelve, the font size of any warnings, where applicable, and authorisation statements may only be a maximum of four font sizes lower than the font size of the main text. In all cases, the font size of any warnings and authorisation statements should be proportional to the size of the advert so as to be sufficiently clear and legible;

(ii) where the footnotes are used these should be of sufficient size and prominence and should be easily legible;

(iii) where an asterisk is used to add explanation, the explanatory text may appear as a footnote provided that the linkage is absolutely clear.

(b) Broadcast sponsorships, television and radio advertisements, should contain the following information:

(i) the licensing statement of all licence holders mentioned in the advertisement; and

(ii) any warnings on television advertisements should be visually presented in a clear and legible manner, and those warnings included in radio advertisements should be clear and coherent.

4.6 Any advertisements (and any subsequent documentation), including those with an invitation for the reader to enter into a contract of insurance, shall contain sufficient information about the policy of insurance being advertised, and about other relevant matters, to enable the reader to understand what is being offered and the risks involved, so that he can make an informed decision.

4.7 An insurance agent shall keep a record of any evidence to support any statement made in any advertisement which purports to be a statement of fact or opinion.

4.8 If the insurance agent issues any advertisement relating to the business carried on by the insurance undertaking on whose behalf it/he acts, the insurance undertaking's approval is to be sought before publication of the advertisement.

4.9 Where an advertisement is issued in accordance with sub-paragraph 4.8 of this paragraph, the insurance undertaking shall ensure that the advertisement contains–

(a) a statement that both the insurance undertaking and the insurance agent are authorised under the legislation of their home member state;

(b) a statement that the policy is underwritten by the insurance undertaking;

(c) appropriate warnings dealing, if applicable, with the risks associated with fluctuations in foreign exchange rates;

(d) a statement that further information will be supplied if requested.

4.10 An advertisement relating solely to long term business shall not contain –

(a) a statement relating to past performance unless:

(i) the basis and the source of information on which such performance is measured is clearly stated and the presentation is fair. This includes any information disclosed in the form of (inter alia) pie charts, bar charts, graphs;

(ii) it is accompanied by a warning that past performance is not necessarily a guide to future performance. This warning should be included in the main text of the advert rather than with the licensing statement;

(iii) the past performance is relevant to the insurance undertaking or the policies offered by the insurance undertaking on whose behalf the insurance agent issued the advertisement;

(iv) where charges or taxes are not taken into account there is a statement to that effect;

(v) information relating to past performance must be dated;

(b) a statement relating to taxation, unless it is properly qualified, to show what it means in practice and to whom it applies.

4.11 An advertisement relating to a long term business policy which gives particulars of any of the benefits payable under the policy shall state -

(a) which of the benefits under the contract (if any) are of fixed amounts and what those amounts are; and

(b) which of them (if any) are not of fixed amounts.

4.12 Such an advertisement may describe a benefit of a fixed amount or a minimum amount of a variable benefit as a “guaranteed” amount but, if it does so and the advertisement refers to the participation of a third party who does not guarantee the performance by the insurance undertaking of its obligations, the advertisement shall not contain any matter which implies that there is such a guarantee.

4.13 Where an advertisement relates to a long term business policy which contains an investment element -

(a) if the investment element is guaranteed, the advertisement shall indicate any matters which may affect the policyholder’s ability to benefit from it;

(b) the advertisement shall not specify a rate of return without specifying how it is calculated.

5.0 Image advertisements issued by insurance intermediaries

5.1 Any insurance intermediary may at any time issue an advertisement which contains nothing other than any of the following –

- (a) matter promoting public awareness of the insurance intermediary;
- (b) a description of the nature of the services provided or the product marketed by the insurance intermediary;
- (c) matter commending the insurance intermediary in general but not any particular service provided or product marketed by the insurance intermediary;
- (d) a statement that further information will be supplied if requested.

(an “image advertisement”).

Before issuing an image advertisement, directly or indirectly, either in person or in writing, an insurance intermediary shall disclose its identity and purpose.

6.0 Supplementary provisions governing advertisements relating to Unit-linked policies

6.1 When issuing an advertisement relating to Unit-linked policies, the insurance intermediary advertisement shall:

(a) include a reference, where applicable, to the licensed intermediary appointed by the insurance undertaking to which the business advertised relates, to act as local point of contact for customers and the Malta Financial Services Authority;

(b) take into account matters of fact or opinion or forecasts which have been omitted (or might properly have been included) in the advertisement as well as the content and form of the advertisement itself, the context in which it is issued, the general impression that it creates, and the likelihood of any person being misled by it;

(c) include a statement in the case where deductions for charges or expenses are made disproportionately in the early years of an investment contract. The advertisement should also include a statement to the effect that if the customer withdraws from the investment in the early years he may not get back the full amount he has invested;

(d) in the case of an investment the value of which is guaranteed, include in an advert:

(i) the name and description of the guarantor;

(ii) the legally binding nature of the guarantee and to what it relates; and

(iii) where this is the case, that the guarantee is from a firm within the same group as the insurance intermediary;

6.2 Where an advertisement referred to in sub-paragraph 6.1 of this paragraph quotes past performance:

(i) the past performance of the investments must not be selected so as to exaggerate the success or disguise the lack of success of the investment;

(ii) this must not be based on simulated figures;

(iii) of a collective investment scheme in the form of periodic figures, these figures should include with equal prominence, the annualised performance rate for the previous five years or, if the scheme has not existed for five years, from the date of the launch of the scheme unless to do so would conflict with (vii) below;

(iv) it should be as current/up-to-date as possible. The more volatile the market, the more current the rate should be. Ordinarily “current” means less than three (3) months old;

(v) the performance rates shown should not have excessive prominence in relation to the main text of the advert;

(vi) preferably the performance rate should also be linked with an asterisk to the past performance risk warning;

(vii) the performance rate should be annualised except where to do so would be misleading such as for example in respect of a new fund that has not been operating for twelve (12) months. Periodic rates are not excluded but these are only acceptable as ancillary to the annualised rate and on the condition that the period selected is not exceptional;

6.3 (1) In the case of Broadcast sponsorships, television and radio advertisements the following shall be included in the advertisement:

(i) where applicable, the name of the licensed intermediary appointed by the insurance undertaking to which the business advertised relates, to act as local point of contact for customers and the Malta Financial Services Authority;

(ii) appropriate risk warnings, including the following text: “the value of investments may fall as well as rise”. This together with other appropriate risk warnings must be read out during Broadcast Sponsorships, television and radio advertisements. In the case of Broadcast Sponsorships and TV adverts, the relative risk warnings and licensing statements should be

clearly indicated on a caption at the very bottom of the visual which should take up not less than 20% of the whole screen. Such captions shall always have a black background and white text, in a bold font, not italicised, which should never exceed four lines on each caption and which may be updated at intervals of not less than 4 seconds during broadcast of the visual;

(2) Advertisements in terms of sub-paragraph 6.3 (1) which are of a duration which is less than 30 seconds shall not make reference to past performance.

7.0 Internet Pages

7.1 The above advertising guidelines should, where possible, be observed in respect of promotional information placed on the Internet.

7.2 The content of Internet pages advertising insurance products specifically targeted to customers in Malta should include:

(a) appropriate disclaimers and warnings, which may be made by means of hypertext links to the disclaimers/warnings on other pages;

(b) statements to whom the site is being targeted. The MFSA should be consulted if particular consumer groups in Malta (e.g. specific age groups) will be targeted;

(c) if the site is hyperlinked to other sites, appropriate statements to make it clear to the customer that he is leaving the insurance intermediary's site to access another.

SCHEDULE I

Disclosure of Information regarding connections of insurance brokers with insurance undertakings

1. In this Schedule, “invitation”, in relation to business of insurance, means an offer or a proposal or any other step taken by an insurance broker with a view to negotiating, on behalf of a client, a contract of insurance.

2. An insurance broker shall disclose to a client the information regarding any connection which the insurance intermediary may have with an insurance undertaking in the following manner -

(a) where an invitation to the client is issued in writing, by sending or delivering with the invitation a written statement disclosing to the client the information;

(b) where an invitation to the client is issued orally, by disclosing orally to the client the information -

and, at the time the invitation is issued -

(i) if the client is present, by delivering to the client immediately thereafter a written statement disclosing the information;

(ii) if the client is not present, by sending by post to the client, or by causing to be delivered to the client as soon as reasonably practicable, at the address supplied for that purpose by the client, or at the client’s last known address, a written statement disclosing the information.

3. Any written statement disclosing the information shall be deemed to satisfy or fulfil the requirements of this Schedule only if the invitation sent or delivered with the statement issued by an insurance broker is issued on letter paper having printed on it in prominence -

(a) the name and any other relevant particulars of the insurance broker;

(b) the name and any other relevant particulars of the insurance undertaking or, where the insurance undertaking is represented by an insurance agent or a branch, the name and any other relevant particulars of the insurance undertaking and the insurance agent or branch, as the case may be, representing the insurance undertaking;

(c) a statement showing the exact relationship between the intermediary and the insurance undertaking ,

and containing in the body of the invitation the name and any other relevant particulars of the insurance undertaking to which the invitation relates.

4. Paragraphs 2 and 3 of this Schedule shall not apply where -

(a) an amendment to an invitation issued in the manner set out in those paragraphs is made and there has been no significant change in the circumstances relevant to the information disclosed to the client when the invitation was first issued;

(b) an invitation for effecting and carrying out of a contract of insurance is such that the carrying out of the contract is to be shared between two or more insurance undertakings, if the share in the contract to be taken by any of the insurance undertakings with which the insurance broker has connection, or if, in the aggregate, the share to be taken by any two or more of the insurance undertakings with which the insurance broker has connection, does not exceed one-quarter of the total shares.

SCHEDULE II

Code of Conduct for Insurance Brokers

- 1.1** During the exercise of their professional activities of insurance broking, insurance brokers -
- (a) shall at all times conduct their business of insurance and any other commercial business which insurance brokers may carry out with utmost good faith and integrity;
 - (b) shall do everything which is reasonably possible to satisfy the insurance requirements of their clients and shall place the interests of those clients before all other considerations. Subject to these requirements and interests, insurance brokers shall have proper regard for others.
 - (c) shall not make statements when advertising which are misleading or unrealistic.
- 1.2** The following are some specific examples of the application of the above points:
- (1) In the conduct of their business, insurance brokers shall provide advice objectively and independently.
 - (2) Insurance brokers shall explain the differences in, and the relative costs of, the principal types of insurance which in the opinion of the insurance broker might suit a client's needs.
 - (3) Although the choice of an insurer can only be a matter of judgement, insurance brokers shall use their skill objectively in the best interests of their client.
 - (4) Insurance brokers shall not withhold from the policyholder any written evidence or documentation relating to the contract of insurance without adequate and justifiable reasons being disclosed in writing and without delay to the policyholder.
 - (5) Insurance brokers shall inform a client of the name and other relevant particulars of all insurance undertakings with whom a contract of insurance is placed. This information shall be given at the inception of the contract and any changes thereafter shall be advised at the earliest opportunity to the client.
 - (6) Before any work involving a charge is undertaken or an agreement to carry out business is concluded, insurance brokers shall

disclose and identify any amount they propose to charge to the client or policyholder which will be in addition to the premium payable to the insurer.

(7) Insurance brokers shall have proper regard for the wishes of a policyholder or client who seeks to terminate any agreement with them to carry out business.

(8) Any information acquired by an insurance broker from his client shall not be used or disclosed except in the normal course of negotiating, maintaining or renewing a contract of insurance for that client or unless the consent of the client has been obtained.

(9) In the completion of the proposal form, claim form, or any other material document, insurance brokers shall make it clear that all the answers or statements are the client's own responsibility. The client should always be asked to check the details and told that the inclusion of incorrect information may result in a claim being repudiated.

(10) Insurance brokers' independence should not only be respected but also be seen to be respected. In the spirit of such independence, insurance brokers who have interest in providing life assurance contracts when approached by a client for advice as to whether or not the client should cancel or surrender an existing life assurance policy, insurance brokers shall disclose their interest in providing life assurance contracts before giving or attempting to give, advice on the matter.

(11) Any member of the public who is not satisfied with the manner his complaint has been considered by an insurance broker may refer the matter to the Consumer Complaints Manager appointed by the MFSA to investigate complaints from private consumers.

SCHEDULE III

Code of Insurance Selling Practice for Tied Insurance Intermediaries

General sales principles

1. (1) A tied insurance intermediary shall -

(a) where appropriate, make a prior appointment to call. Unsolicited or unarranged calls shall be made at an hour likely to be suitable to the prospective policyholder;

(b) when he makes contact with the prospective policyholder, identify himself by showing his identification documents and explain as soon as possible that he wishes to discuss insurance. He shall make it known that he is a tied insurance intermediary of an insurance undertaking (*and disclose the name and any other relevant particulars of the undertaking and show the undertaking's business card*) for whose conduct the undertaking offering or issuing a contract of insurance accepts responsibility;

(c) ensure as far as possible that the policy proposed is suitable to the needs and resources of the prospective policyholder;

(d) give advice only on those insurance matters in which he is knowledgeable and seek or recommend other specialist advice when necessary from the insurance undertaking on whose behalf the business is being solicited; and

(e) treat all information supplied by the prospective policyholder as completely confidential to himself and to the undertaking on whose behalf the business is being solicited;

(f) have proper regard for the wishes of a policyholder or client who seeks to terminate any arrangement with him regarding insurance requirements.

(2) A tied insurance intermediary shall not -

(a) inform the prospective policyholder that his name has been given by another person unless he is prepared to disclose that person's name if requested to do so by the prospective

policyholder and has that person's consent to make that disclosure;

(b) make inaccurate or unfair criticism of any insurance undertaking, insurance broker or any other tied insurance intermediary, or any of their products, or any product offered by them;

(c) make comparisons with other types of policies unless he makes clear the differing characteristics of each policy;

(d) persuade or attempt to persuade a prospective policyholder to surrender or cancel any existing policies.

Explanation of the contract

2. (1) A tied insurance intermediary shall -

(a) provide the information listed in (a)1 to (a)3 of Annex III(A) of Directive 2002/83/EC of the European Parliament and of the Council of the 5 November 2002 concerning life assurance;

(b) explain all the essential provisions of the contract, or contracts, which he is recommending so as to ensure as far as possible that the prospective policyholder understands what he is committing himself to;

(c) draw attention to any restrictions applying to the policy;

(d) if necessary, obtain from the insurance undertaking specialist advice in relation to indents (b) and (c) of this sub-paragraph;

(e) disclose, where applicable, the amount and purpose of any charge in addition to or included in the premium; and

(f) where the contract is a life assurance contract, draw attention to the long term nature of the policy and, where appropriate, to the consequent effects of early discontinuance and surrender.

(2) A tied insurance intermediary shall explain to the prospective policyholder words and expressions of a technical nature

used in a proposal form, cover note or policy of insurance and, where the prospective policyholder appears to understand better in the Maltese language the meanings of such words and expressions, such words and expressions are explained to the prospective policyholder in plain Maltese.

Disclosure of underwriting information

3. A tied insurance intermediary shall, in obtaining the completion of the proposal form or any other material –

(a) avoid influencing the prospective policyholder, or the proposer, and make it clear that all the answers or statements are the latter's own responsibility;

(b) ensure that the consequences of non-disclosure and inaccuracies are pointed out to the prospective policyholder, or the proposer, by drawing his attention to the relevant statement in the proposal form and by explaining them himself to the prospective policyholder, or the proposer.

Accounts and financial aspects

4. (1) A receipt of monies received from a prospective policyholder in connection with an insurance policy issued to the prospective policyholder shall -

(a) have printed on it, in the case of a tied insurance intermediary who is an individual, the full name and address of the tied insurance intermediary, and in the case of a tied insurance intermediary which is not an individual, the full name and address of the company, undertaking or organisation;

(b) have printed on it, where applicable, the registration number of the tied insurance intermediary;

(c) show the full name and address or Identity Card number of the prospective policyholder;

(d) show the total amount of money paid to the tied insurance intermediary and broken-down between money paid as premium and money paid as any other charge;

(e) make reference to the type of policy in respect of which the money was paid;

(f) identify, where applicable, the policy by way of an identification or reference number;

(g) show the name and address of the insurance undertaking offering or issuing the policy;

(h) be drawn up in triplicate;

(i) be signed and dated by the insurance sub-agent or tied insurance intermediary.

(3) The original receipt shall be given to, and be retained by, the prospective policyholder.

Documentation

5. A tied insurance intermediary shall not withhold from the policyholder any written evidence or documentation relating to the contract of insurance.

Existing policyholders

6. A tied insurance intermediary shall abide by the principles set out in this Code to the extent that they are relevant to his dealings with existing policyholders.