

Insurance Intermediaries Rule 7 of 2007

Code of Insurance Selling Practice

Rule pursuant to article 4 of the Act

1. (1) This Insurance Intermediaries Rule on the Code of Insurance Selling Practice of persons registered in the Tied Insurance Intermediaries Company Register of an authorised undertaking and carrying out tied insurance intermediaries activities on behalf of the undertaking (“this Rule”) is made by the Authority pursuant to, and for the purposes of, article 4 of the Act.

(2) This Rule shall come into force on the 28th February 2007.

Application

2. (1) This Rule applies, on continuing basis, to a person registered in the Tied Insurance Intermediaries Company Register of an authorised undertaking and carrying out tied insurance intermediaries activities on behalf of the undertaking (the “tied insurance intermediary”).

(2) The responsibility for enforcing compliance with the Code of Insurance Selling Practice (“the Code”) resides primarily with authorised undertakings appointing, registering and enrolling persons as tied insurance intermediaries to carry out tied insurance intermediaries activities on their behalf. Responsibility derives from subarticle (9) of article 37 of the Act. Enforcement is a requirement of paragraph 13 of the Code as set out in the First Schedule to this Rule.

Scope

3. The scope of this Rule is to determine a Code of Insurance Selling Practice which establishes a recognised standard of insurance selling practice required of all tied insurance intermediaries.

Definitions

4. In this Rule, unless the context otherwise requires -

(a) “authorised undertaking” shall be construed in accordance with subarticle (1) of article 43 of the Act;

(b) “bank” shall have the same meaning as is assigned to it by the Banking Act (Cap. 371).

The legal basis

5. (1) The legal basis for establishing the Code is provided in subarticle (9) of article 37 of the Act which requires that “An authorised undertaking shall at all times be responsible for any act or omission of its registered tied insurance intermediaries provided that such act or omission is an act or omission pertaining to a contract of insurance issued by the undertaking or offered on its behalf through the services of such tied insurance intermediaries. For the purposes of this subarticle any reference to registered tied insurance intermediaries shall include a reference to past as well as present registered tied insurance intermediaries.”.

(2) The legal provisions require -

(a) that authorised undertakings are held responsible for enforcing compliance with the Code by their registered tied insurance intermediaries; and

(b) that the Code forms an integral part of any tied insurance intermediary appointment made by authorised undertakings.

(3) In conformity with the provisions of the Code, tied insurance intermediaries shall -

(a) carry out their tied insurance intermediaries activities with utmost good faith and integrity; and

(b) do everything possible to satisfy the insurance requirements of policyholders and prospective policyholders.

The Code of Insurance Selling Practice

6. The Code is set out in the First Schedule to this Rule. Compliance by tied insurance intermediaries with the Code is compulsory.

Banks carrying out tied insurance intermediaries activities in the classes of long term insurance

7. (1) Where a tied insurance intermediary is a bank and, in the course of its transactions under its banking licence, the bank is in the process of granting credit or loan facilities to a customer against security of a policy of life assurance, the bank may inform the customer that, as the bank is a tied insurance intermediary of an authorised undertaking (*the name and any other relevant particulars of the undertaking are to be disclosed*), it can obtain for him from the insurance undertaking the required policy of life assurance. However, at the same time, the bank shall explain to the customer that policies of life assurance issued or offered by other insurance undertakings could similarly meet the bank's requirements (*which should be disclosed*). The bank shall refrain from exerting any undue or improper pressure on its customers but shall allow them the greatest possible freedom of choice with regard to life assurance policies requirement.

(2) Every bank registered as a tied insurance intermediary in the Tied Insurance Intermediaries Company Register of any authorised undertaking and carrying out tied insurance intermediaries activities for that undertaking shall exhibit in a conspicuous position in its head office and in each of its offices and branches where the bank carries out selling of life assurance policies a long term business notice in the form set out in the Second Schedule to this Rule. The long term business notice shall be made out in the Maltese and English language and shall be easily legible from a reasonable distance.

(3) In the circumstances set out in paragraph (1) of this article, the bank shall serve a customer with a copy of the long term business notice as set out in the Second Schedule to this Rule.

Banks carrying out tied insurance intermediaries activities in the classes of general insurance

8. (1) Where a tied insurance intermediary is a bank and, in the course of its transactions carries out tied insurance intermediaries activities in general business classes 1, 2 and 16 restricted to payment protection contracts of insurance issued in relation to loan repayments and class 14 restricted to export credit contracts of insurance, the bank shall refrain from exerting any undue or improper pressure on its customers but shall allow them the greatest possible freedom of choice with regard to such contracts of insurance.

(2) The provisions of paragraphs (2) and (3) of article 7, in so far as they relate to the long term business notice shall apply to banks in the same manner and to the same extent as if “life assurance policies” were a reference to “general insurance policies” and “long term business notice” were a reference to “general business notice” .

Proof of furnishing the required information and serving the notice

9. (1) Every bank acting as a tied insurance intermediary shall obtain from a customer a proper acknowledgement, duly signed and dated, for the information furnished to, and copy of the notice served on, him under articles 7 and 8 of this Rule.

(2) No disclosure required to be made by this Rule shall be sufficient if the disclosure is accompanied by any oral or written statement which somehow negates, qualifies or otherwise reduces its impact.

(3) Upon request by the Authority, a bank should be in a position to produce to the Authority any such acknowledgement.

Repeals and Savings

10. (1) The requirements of this Rule are without prejudice to the requirements of:

(a) Section 12.2 of Chapter 12 of Part B of the Insurance Rules issued under the Insurance Business Act;

(b) Insurance Intermediaries Rule 22 of 2007 on Computer Link Arrangements; and

(c) the Distance Selling (Retail Financial Services) Regulations, 2005 (L.N. 36 of 2005).

(2) Without prejudice to article 4(2) of the Preliminary provisions and saving the provisions of paragraph (3) of this article, Insurance Intermediaries Directive 7 of 1999 – Code of Insurance Selling Practice, is hereby repealed.

(3) Every action, directive, instruction, guideline or order whatsoever taken or commenced thereunder, shall continue to be valid and in force, as if such action, directive, instruction, guideline or order whatsoever were taken or commenced under this Rule.

FIRST SCHEDULE

(Article 6 of the Rule)

Code of Insurance Selling Practice

Definitions

1. In this Code “insurance undertaking” means an undertaking authorised under the Insurance Business Act, 1998 to carry on business of insurance and includes a company enrolled under the Act to act as an insurance agent.

General sales principles

2. (1) A tied insurance intermediary shall -

(a) where appropriate make a prior appointment to call. Unsolicited or unarranged calls shall be made between 9.00 a.m. and 7.00 p.m Monday to Friday (excluding public holidays) and Saturday from 9.00 a.m. to 5.00 p.m., unless otherwise requested by an existing or potential policyholder;

(b) when contacting the prospective policyholder, identify himself/herself by showing identification documents and explain as soon as possible the intention to discuss insurance. The tied insurance intermediary shall make it known that he/she is a tied insurance intermediary of an insurance undertaking (*and disclose the name and any other relevant particulars of the undertaking, enrolment number and show the undertaking 'sbusiness card*) for whose conduct the undertaking offering or issuing a contract of insurance accepts responsibility;

(c) when carrying out tied insurance intermediaries activities from a place of business or from any other place accessible to the public, the tied insurance intermediary is to display in a prominent position in that place in a part thereof to which the public has access, the certificate of enrolment or an official copy thereof issued by the Authority;

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

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

(f) treat all information supplied by the prospective policyholder as completely confidential; and

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

(2) A tied insurance intermediary shall not -

(a) inform the prospective policyholder that his/her name has been given by another person unless the tied insurance intermediary 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, enrolled person 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 the differing characteristics of each policy are made clear;

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

Explanation of the contract

3. (1) A tied insurance intermediary shall -

(a) where the contract is a contract of **long term business**:

(i) identify the insurance undertaking and, where the undertaking carries on business through an insurance agent, identify also the insurance agent;

(ii) explain all the essential provisions of the contract, or contracts being recommended so as to ensure, as far as possible, that the prospective policyholder understands the commitment being entered into;

(iii) draw attention to any restrictions and/or exclusions applying to the policy;

(iv) if necessary, obtain from the insurance undertaking specialist advice in relation to indents (ii) and (iii) of this sub-paragraph;

(v) draw attention to the long term nature of the policy and, where appropriate, to the consequent effects of early discontinuance and surrender;

(vi) disclose, where applicable, the amount and purpose of any charge or fee in addition to, or included in, the premium. The amount of document duty is to be disclosed separately; and

(b) where the contract is a contract of **general business**:

(i) identify the insurance undertaking and, where the undertaking carries on business through an insurance agent, identify also the agent;

(ii) explain all the essential provisions of the cover afforded by the policy, or policies being recommended, so as to ensure, as far as possible, that the prospective policyholder understands the product being acquired;

(iii) draw attention to any restrictions and/or exclusions applying to the policy;

(iv) if necessary, obtain from the insurance undertaking specialist advice in relation to indents (ii) and (iii) of this sub-paragraph;

(v) disclose, where applicable, the amount and purpose of any charge or fee in addition to or included in the premium. The amount of document duty is to be disclosed separately.

(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, the tied insurance intermediary shall explain to the prospective policyholder the meanings of such words and expressions in plain Maltese.

Disclosure of connected persons

4. (1) Prior to the conclusion of any initial contract and if, necessary, upon amendment or renewal thereof, a tied insurance intermediary shall provide the prospective policyholder with the following information in writing:

(a) whether the tied insurance intermediary has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in an authorised undertaking;

(b) whether an authorised undertaking or parent undertaking of a given authorised undertaking has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in the tied insurance intermediary.

(2) For the purpose of this article, “authorised undertaking” means an undertaking authorised under the Insurance Business Act, 1998.

Disclosure of underwriting information

5. 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 pointed out to the prospective policyholder, or the proposer, by showing the relevant statement in the proposal form and by explaining them to the prospective policyholder, or the proposer.

Accounts and financial aspects

6. (1) Without prejudice to the requirements contained in article 7 of this Rule, a tied insurance intermediary shall, if authorised to collect and hold monies by the insurance undertaking in accordance with the terms of the tied insurance intermediaries appointment, open and maintain one or more bank accounts for the purposes of carrying out tied insurance intermediaries activities and each tied insurance intermediaries account shall-

(a) be maintained with an approved bank;

(b) contain in its title the name and enrolment number of the tied insurance intermediary together with the designation “Tied Insurance Intermediaries Account” and the name of the insurance undertaking on whose behalf monies are being collected; and monies standing to the credit of this Account shall be used solely for the purposes set out in this article.

(2) Every tied insurance intermediary opening a Tied Insurance Intermediaries Account with an approved bank shall inform the bank in writing that –

(a) the account shall be designated “Tied Insurance Intermediaries Account” and the title of the account shall contain the name and enrolment number of the tied insurance intermediary and the name of the insurance undertaking on whose behalf monies are being collected;

(b) the account is being opened pursuant to, and for the purposes of, this Rule;

(c) the bank shall renounce, and will not attempt to enforce or execute, any charge, encumbrance, lien or right of set-off or other claims against monies standing to the credit of the account, or combine the account with any other account of the tied insurance intermediary in respect of a debt owed to it by the tied insurance intermediary;

(d) any charges, relating to the account, including tax payable, other than tax payable on interest paid to the account shall not be debited to the account,

and shall, before operating the account, obtain in writing from the bank a statement acknowledging agreement to the matters set out in sub-paragraphs (a) to (d) of this paragraph.

(3) Where a tied insurance intermediary is registered in the Tied Insurance Intermediaries Company Register of more than one insurance undertaking, the tied insurance intermediary is required to maintain a separate tied insurance intermediaries account in respect of each insurance undertaking on whose behalf the tied insurance intermediary is authorised to collect and hold money.

(4) A tied insurance intermediary shall without delay and in any event, not later than the next two business days after the date the money is paid to, or received by the tied insurance intermediary, pay or cause to be paid into the Tied Insurance Intermediaries Account and into no other account:

(a) all monies which are paid to or received by the tied insurance intermediary, other than for cheques issued in the name of the insurer, from prospective policyholders and policyholders and which relate to insurance transactions connected with tied insurance intermediaries activities, including commission; and

(b) motor vehicle licence fees received by the tied insurance intermediary in relation to motor insurance business.

(5) A tied insurance intermediary shall use a Tied Insurance Intermediaries Account and no other account for payment to his principal of all monies due under insurance transactions connected with tied insurance intermediaries activities.

(6) For the purposes of this article “approved bank”, in relation to a Tied Insurance Intermediaries Account, means a bank or credit institution licensed to carry on business of banking under the laws of Malta.

7. (1) A tied insurance intermediary shall, if authorised to collect money in accordance with the terms of the tied insurance intermediary appointment -

(a) keep a proper account of all financial transactions with a prospective policyholder which involve the transmission of money in respect of insurance;

(b) acknowledge receipt (which, unless the tied insurance intermediary has been otherwise authorised by the insurance undertaking, shall be on his/her own behalf) of all money received in connection with an insurance policy;

(c) remit any such monies so collected in strict conformity with the tied insurance intermediaries appointment.

(2) A receipt of monies received from a prospective policyholder in connection with an insurance policy issued to the prospective policyholder shall not satisfy the requirements of subparagraph (b) of paragraph (1) of this article unless the receipt -

(a) has printed on it, the full name and business address of the tied insurance intermediary;

(b) has printed on it the enrolment number of the tied insurance intermediary;

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

(d) shows the total amount of money paid to the tied insurance intermediary and shall distinguish the premium, document duty and motor vehicle licence fees, where applicable, and any charge or fee imposed in addition to the premium, shall be disclosed separately;

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

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

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

(h) is drawn up in triplicate; and

(i) is signed and dated by the tied insurance intermediary.

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

Documentation

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

Existing policyholders

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

Records

10. A tied insurance intermediary shall ensure that records connected to tied insurance intermediaries activities carried out on behalf of any one insurance undertaking are segregated from any other records maintained with respect to other professional activities and any other tied insurance intermediaries activities carried out on behalf of any other undertaking or undertakings in such a way as to enable compliance with the relevant provisions of this Code to be demonstrated at any time.

Claims

11. If the policyholder advises the tied insurance intermediary of an incident which might give rise to a claim, the tied insurance intermediary shall, without delay, inform the insurance undertaking of that incident and give prompt advice to the policyholder to pursue the matter further with the insurance undertaking.

Transmission of Findings on On-site inspections

12. Where in pursuance of article 30 of the Insurance Business Act, made applicable to persons enrolled in the Tied Insurance Intermediaries List by virtue of article 54 of the Act, the Authority carries out an inspection, the tied insurance intermediary shall forward, within a period of 30 days, to the insurance undertaking in respect of which the tied insurance intermediary is enrolled, a copy of the Authority's findings relating to the activities which the tied insurance intermediary carries out on behalf of the insurance undertaking concerned.

Appointment Letters of tied insurance intermediaries

13. (1) The registration of a tied insurance intermediary in the Tied Insurance Intermediaries Company Register shall be governed by a formal appointment.

(2) This Code shall be incorporated verbatim or by reference in all appointment letters of tied insurance intermediaries issued by an insurance undertaking to persons registered in the Tied Insurance Intermediaries Company Register of the insurance undertaking.

SECOND SCHEDULE

(Article 7 of the Rule)

Long Term Business Notice

Customers are reminded that any policy of life assurance required by the bank as security against credit or loan facilities, or for any other reason, may, provided the policy meets the requirements of the bank, be arranged with and obtained from any insurance undertaking, or through an enrolled insurance agent, broker or tied insurance intermediary.

Avviż dwar Kummerċ fit-Tul

Infakkru lill-klijenti illi kull polza ta' assigurazzjoni fuq il-hajja mitluba mill-bank bħala garanzija fuq dejn jew self mal-bank, jew għal kull raġuni oħra, kemm-il darba l-polza tissodisfa l-htigiet tal-bank, tista' tinxtara minghand kull impriza tal-assigurazzjoni jew permezz ta' kull aġent, *broker* fl-assigurazzjoni iskritt, jew ta' xi intermedjarju marbut fl-assigurazzjoni iskritt.

(Article 8 of this Rule)

General Business Notice

Customers are reminded that any payment protection contracts of insurance issued in relation to loan repayments and any export credit contracts of insurance offered by the bank, may, be arranged with and obtained from any insurance undertaking, or through an enrolled insurance agent, broker or tied insurance intermediary.

Avviż dwar Kummerċ Ġenerali

Infakkru lill-klijenti li kuntratti ta' assigurazzjoni fuq pagament protett maħruġ fuq self u kuntratti ta' assigurazzjoni fuq kreditu għall-esportazzjoni offruti mill-bank, jistgħu jinxtraw mingħand kull impriża tal-assigurazzjoni jew permezz ta' kull aġent iskritt, *broker* fl-assigurazzjoni iskritt, jew intermedjarju marbut fl-assigurazzjoni iskritt.