



CAYMAN ISLANDS MONETARY AUTHORITY

May 2018

Statement of Guidance Market Conduct – Insurers, Agents and Brokers

1. Statement of Objectives

- 1.1. To provide guidance on the requirement imposed on licensees by the Rule on Market Conduct.
- 1.2. To provide a standard of best practice to insurance licensees in conducting business with customers.

2. Introduction

- 2.1. The Insurance Law seeks to provide for stability within insurance markets thereby maintaining confidence in the relationship between customers, Insurers and Intermediaries.
- 2.2. There is a need for sound market conduct guidance to reinforce legislation, the Rule on Market Conduct and to provide basic standards of business conduct to strengthen consumer confidence and protection. Such guidance will provide direction as to what are legitimate and acceptable practices in the domestic insurance market.

3. Scope of Application

- 3.1. This Statement of Guidance applies to all Class A Insurers and Insurance Intermediaries licensed under the Insurance Law ("IL") by the Authority to carry on domestic insurance business. This Rule also applies to Class A Insurers' overseas operations under its Cayman Islands licence.
- 3.2. This Statement of Guidance applies to Class B insurers in the conduct of their business to retail third party policyholders. The Rule also applies to Class B Insurers' insurance products that are sold by insurance intermediaries and insurance business conducted through digital and non-digital means.
- 3.3. This Statement of guidance does not apply to reinsurance business.
- 3.4. The Authority will assess regulated entities' compliance with this Statement of Guidance in a proportionate manner relative to their nature, scale, and complexity. The Authority appreciates that regulated entities have varying risk profiles arising from the nature, scale, and complexity of their business, and that the insurers and intermediaries with higher risk profiles may require more comprehensive and



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dynamic application to conduct their business in a sound and prudent manner.

4. Definition

- 4.1. For the purpose of this Statement of Guidance, the following definitions are provided:

"Customer" – Includes any policyholder, prospective policyholder, or applicant for a contract of insurance including plan participants of a trust where the trust is used to hold an insurance contract.

- 4.2. **"Insurance Intermediaries"** – As per the IL, intermediaries fall into two categories in the Cayman Islands.

i. **"Insurance Agent"**

means a holder of a valid insurance agent licence for the soliciting of domestic business on behalf of not more than one general insurer and one long term insurer.

In this Statement of Guidance, "Agent" includes a natural and a corporate person.

ii. **"Insurance Broker"**

means a holder of a valid insurance broker licence for arranging or procuring, directly or through representatives, insurance or reinsurance contracts or the continuance of such contracts on behalf of existing or prospective policyholders.

For the purposes of this Rule the term "intermediary" refers to a range of intermediaries from individuals to large international firms. Intermediaries can operate as enterprises or divisions of insurers or other financial institutions including banks, or as part of non-financial organisations.

- 4.3. **"Policy Servicing"** – involves servicing policies appropriately through to the point at which all obligations under the policy have been satisfied; disclose to the policyholder information on any contractual changes during the life of the contract; and disclose to the policyholder further relevant information depending on the type of insurance product.
- 4.4. **"Advice"** – Advice includes the provision of product information and relates specifically to the provision of a personalised recommendation on a product in relation to the disclosed needs of the customer.

5. Guidance Pertaining to Rule on Market Conduct



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5.1. Insurers' Responsibility for Intermediaries

- 5.1.1 Insurers should have policies and procedures in place for determining the fitness and propriety of the intermediaries that they utilize. Insurers should be able to demonstrate to the Authority via documented evidence that intermediaries that act on their behalf meet the fit and proper criteria within their own internal policies and procedures.
- 5.1.2 Insurers should conduct appropriate due diligence on the intermediaries with which they conduct business. Due diligence should include verification that:
 - a. the intermediary is licensed in the jurisdiction in which it operates;
 - b. if not, whether the law in the jurisdiction in which it operates requires a licence.
- 5.1.3 Insurers should avoid the use of intermediaries that are not sufficiently qualified and or trained to accurately promote, distribute or advise on its products.
- 5.1.4 Insurers are responsible for providing specific training to intermediaries to verify that they have the appropriate knowledge of the features of products and services, the insurer's policies and procedures on fair treatment of customers, selling practices, ethical issues in insurance, claims and complaint handling processes and any other topic that would promote favourable and fair customer outcomes.
- 5.1.5 Insurers should ensure they have written agreements with intermediaries that act on their behalf or distribute their products in addition to addressing matters listed in Section 5.2.4 of the Rule on Market Conduct for Insurers, Agents and Brokers. These agreements should clarify the respective roles of the insurer and intermediary, promote the fair treatment of customers and include responsibilities on matters such as:
 - a. product development;
 - b. product promotion;
 - c. the provision of pre-contractual and point of sale information to customers;
 - d. post-sale policy servicing;
 - e. claims notification and handling;
 - f. complaints notification and handling;
 - g. management information and other documentation required by the insurer;
 - h. remedial measures; and
 - i. other matters related to the relationship with customers.



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- 5.1.6 Insurers should monitor the Agents that act on their behalf and report any significant issues of which they become aware to the Authority or other appropriate Authorities.

5.2. Fair Treatment of Customers

- 5.2.1 Insurers' and intermediaries' policies and procedures for the fair treatment of customers should promote the following outcomes:
- a. **Outcome 1:** Developing, marketing and selling products in a way that pays due regard to the interests and needs of customers;
 - b. **Outcome 2:** Providing customers with information before, during and after the point of sale that is accurate, clear, and not misleading;
 - c. **Outcome 3:** Minimising the risk of sales which are not appropriate to customers' interests and needs;
 - d. **Outcome 4:** Ensuring that any advice given is of a high quality;
 - e. **Outcome 5:** Dealing with customer claims, complaints and disputes in a fair and timely manner; and
 - f. **Outcome 6:** Protecting the privacy of information obtained from customers.
- 5.2.2 Insurers and intermediaries should ensure that customers are aware of the Insurer's policies and procedures for the fair treatment of customers.
- 5.2.3 Insurers' and intermediaries' strategies, policies and procedures dealing with the fair treatment of customers should be made available to the Authority upon request.
- 5.2.4 Insurers and intermediaries should act in a timely manner, and employ all resources to ensure proper consideration of the customer's needs.
- 5.2.5 Insurers and intermediaries should ensure good conduct is upheld throughout an insurance contract's life-cycle.
- 5.2.6 Intermediaries should receive training on fair treatment of customers' policies and procedures from the insurers on whose behalf they act.
- 5.2.7 Brokers should use their skill objectively in the best interest of the customer when recommending an insurer and product to the customer.



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5.3. Conflict of Interest

- 5.3.1 Where the interests of an intermediary conflicts with the interests of the insured, they should decline to act or withdraw from the relationship unless after full disclosure of the conflicting interests, all relevant parties including the insured, agree in writing that they should continue.

5.4. Protection of Information

- 5.4.1 Insurers and intermediaries should consider personal information as such regardless of its medium and the form in which it is accessible.
- 5.4.2 Insurers and intermediaries should treat information that a customer might reasonably expect to be confidential as such.
- 5.4.3 Insurers, Agents and Brokers should have the proper safeguards in place for collection, storage and processing of customers' confidential information and to prevent unauthorized access.
- 5.4.4 Insurers and intermediaries should take measures to:
- a. Have in place the appropriate technology to manage adequately the personal and other information an insurer or intermediary is holding on a customer;
 - b. have in place policies and procedures relating to the use of data, ensuring that the data collected is not used in an unfair manner including when processed through algorithms or other technologies;
 - c. provide necessary training to their employees at all levels in order to promote awareness of privacy protection requirements;
 - d. implement internal controls that meet the objectives of privacy protection and support the achievement of those objectives;
 - e. ensure that the appropriate technology is in place to manage the financial, medical and personal information of customers;
 - f. implement policies and procedures pertaining to the security of private information.
 - g. assess the risks associated with any major breaches in security and mitigate the impacts of these on resources, operations, environment and reputation;
 - h. determine the measures to be taken in light of the risks occurring



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from security breaches as part of business continuity planning;
and

- i. ensure that group, cross-border or other structures are not abused to circumvent prohibitions on the sharing of personal information.

5.4.5 Insurers and intermediaries should notify relevant persons of any security breaches that threaten the safety of their private information in a timely manner.

5.4.6 Insurers, Agents and Brokers should be aware of outsourcing risk, especially when the outsourcing agreement is reached with firms in another jurisdiction.

5.4.7 Insurers, Agents and Brokers should be aware of reputational risk arising from cross-border activities and ensure that the firms to which they outsource processes have sufficient safeguards in place to prevent the misuse or inappropriate communication of any personal information they have in their records.

5.5. Disclosure of Information to Customers

5.5.1 In conducting insurance business through digital channels, insurers and intermediaries should take into account the specifics of the medium used, and use appropriate tools to ensure that customers receive timely, clear and adequate information that helps their understanding of the terms on which the business is conducted.

5.5.2 Whether insurers and intermediaries offer insurance products through digital means or face to face they should disclose relevant business and contact information such as:

- a. the address of the insurer's head office and the contact details of the supervisor responsible for the supervision of the head office;
- b. contact details of the insurer, branch or intermediary, and of the supervisor responsible for the supervision of the business, if different from the above;
- c. the jurisdictions in which the insurer or intermediary is legally permitted to provide insurance;
- d. procedures for the submission of claims and a description of the claims handling procedures; and
- e. contact information on the authority or organisation dealing with



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dispute resolution and/or consumer complaints.

- 5.5.3 Insurers and intermediaries may present the information listed in 5.5.2 above in a terms of business agreement or other means that is most useful for the customer.
- 5.5.4 Where insurers and intermediaries use materials such as product information sheets or pamphlets, insurers and intermediaries should ensure that these materials are appropriately labelled as such and indicate that they are not exhaustive.
- 5.5.5 Insurers and intermediaries should ensure that when information on the product information sheet or pamphlet concerns the content of the insurance contract, reference is made to the relevant provisions of the contract or to the general policy conditions underlying the contract.
- 5.5.6 Insurers and intermediaries should inform customers of any specific changes to the insurer including, but not limited to:
 - a. any change in the name of the insurer, its legal form or the address of its head office and any other offices as appropriate;
 - b. any acquisition by another undertaking resulting in organisational changes as far as the policyholder is concerned; and
 - c. where applicable, information on a portfolio transfer (including policyholders' rights in this regard).
- 5.5.7 Insurers and intermediaries should provide ongoing information to customers regarding products with an investment element including:
 - a. participation rights in surplus funds;
 - b. the basis of calculation and state of bonuses;
 - c. the current surrender value;
 - d. premiums paid to date; and
 - e. for unit-linked life insurance, a report from the investment firm (including performance of underlying funds, changes of investments, investment strategy, number and value of the units and movements during the past year, administration fees, taxes, charges and current status of the account of the contract).
- 5.5.8 Insurers and intermediaries should provide customers pre-contractual and contractual information on their rights and obligations under the insurance contract e.g. right to claim benefits, right to complain, obligation to monitor cover.



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5.6. Advice to Customers

- 5.6.1 Insurers and intermediaries providing advice to customers before concluding an insurance contract should ensure that they seek the information from their customers that is appropriate for assessing their insurance demands and needs, before giving advice. This information may include information on the customer's:
- a. financial knowledge and experience;
 - b. needs, priorities and circumstances;
 - c. ability to afford the product; and
 - d. risk profile.
- 5.6.2 Where advice is provided, this should be communicated to the customer in written format, on paper or in a durable and accessible medium, and a record kept in a client file.
- 5.6.3 Insurers and intermediaries should recognise that advice goes beyond the provision of product information and relates specifically to the provision of a personalised recommendation on a product in relation to the disclosed needs of the customer. The insurer or the intermediary should make it clear whether advice is provided or not.
- 5.6.4 Insurers and intermediaries should retain sufficient documentation to demonstrate that the advice provided was appropriate, taking into account the customer's disclosed circumstances.
- 5.6.5 Insurers should review their Agents' client files to monitor the quality of the advice given by their Agents and take remedial measures if necessary.
- 5.6.6 Insurers and the intermediaries should establish continuous training programmes that allow the persons giving advice to:
- a. keep abreast of market trends, economic conditions, innovations and modifications made to the products and services;
 - b. maintain an appropriate level of knowledge about their industry segment, including the characteristics and risks of the products and services;
 - c. know the applicable legal and regulatory requirements in any jurisdiction in which they operate;
 - d. know the requirements for the communication of information regarding the products and services and for appropriate disclosure of any situation liable to compromise the impartiality of the advice given or limit such advice; and



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- e. be familiar with the documentation regarding the products and services and answer reasonably foreseeable questions. This could include insurers providing training to their sales staff and to intermediaries in respect of specific products

5.7. Product Design and Development

- 5.7.1 Before bringing a product or service to the market, insurers should carry out diligent review and testing of the product in relation to its business model, the existing rules and regulations and its risk management approach.
- 5.7.2 Insurers should provide relevant information to intermediaries to ensure that they understand the intended target market as well as the characteristics of the product.
- 5.7.3 Intermediaries should provide the insurer information on the types of customers to whom their products are being sold and whether the products are meeting their needs, in order to enable the insurer to assess the appropriateness of the target market and to revise its distribution strategy when needed.

5.8. Policy Servicing

- 5.8.1 Insurers hold ultimate responsibility for servicing policies throughout their lifecycle despite any involvement of an intermediary.
- 5.8.2 Insurers and intermediaries should recognise that their duty to the customer goes beyond the point of sale. Insurers and intermediaries should therefore follow-up with clients on a periodic basis to ensure the products which they were sold continue to meet their specific needs.
- 5.8.3 Where there are changes in terms and conditions of an insurance contract, the insurer should notify the policyholder of their rights and obligations regarding such changes and obtain the policyholder's consent as appropriate.

5.9. Advertising and Financial Promotion

- 5.9.1 Before an insurer or intermediary promotes an insurance product, it should take reasonable steps to ensure that the information provided is fair, clear



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and not misleading.

- 5.9.2 Insurers' and intermediaries' policies and procedures pertaining to advertising and financial promotion should provide for an independent review of promotional material, intended for customers, other than by the individual that prepared or designed it.
- 5.9.3 Where promotional material is developed by an intermediary on behalf of an insurer, the insurer should verify the accuracy of promotional material before it is used.
- 5.9.4 The individual(s) responsible for the approval of financial promotions should be at least at senior management level and have the requisite skills and knowledge of the product or service that is the subject matter of the financial promotion.
- 5.9.5 Intermediaries should ensure that their advertisements:
 - a. Disclose the full name of the broker or agent and are not designed in such a way as to give the impression that the broker or agent is an "insurance company".
 - b. Clearly identify the insurance company underwriting the product being advertised.

5.10.Complaints Handling

- 5.10.1 The system for complaints handling established by insurers and intermediaries should aim to deal with complaints of customers quickly, effectively and fairly. The required complaints process should be simple and equitable, to facilitate resolution effectively.
- 5.10.2 The established system by insurers and intermediaries for handling complaints should include proper policies and procedures of record keeping for each complaint and the measures taken for its resolution.
- 5.10.3 Insurers and intermediaries should acknowledge complaints as soon as possible and no longer than five (5) days after receipt of the complaint.
- 5.10.4 Insurers should have transparent systems to handle complaints against intermediaries. This might include identifying whether particular intermediaries or particular matters are the subject of regular or frequent complaints.



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5.10.5 At a minimum, insurers' and intermediaries' written complaints policies and procedures should, among other things, provide that:

- a. The insurer or intermediary acknowledge each complaint in writing within a specified timeframe of the complaint being received;
- b. The insurer or intermediary provide the complainant with the name of one or more individuals appointed by the insurer or Intermediary to be the complainant's point of contact in relation to the complaint until the complaint is resolved;
- c. The insurer or intermediary provide the complainant with regular written updates on the progress of the investigation of the complaint at regular intervals;
- d. The insurer or intermediary attempt to investigate and resolve a complaint as soon as possible after having received the complaint and within the time period stipulated within the policies and procedures.
- e. Where the time period stipulated for handling complaints within the policy has elapsed before the complaint is resolved, the insurer or intermediary should inform the complainant of the anticipated timeframe within which the insurer or intermediary expects to resolve the complaint.
- f. The insurer or intermediary advise the complainant in writing of the outcome of the investigation, as soon as possible after the completion of the investigation of a complaint, and where applicable, explain the terms of any offer or settlement being made.
- g. The insurer and intermediary have processes for escalation should the complainant not be satisfied.

5.10.6 Insurers' and intermediaries' log of all complaints should include sufficient details on the complaints and the actions that were taken to resolve them.

5.10.7 Insurers and intermediaries should review complaints from time to time to identify any trends with a view to assessing whether or not there may be deficiencies in their fair treatment of customers policies and procedures.

5.11.Claims Handling

5.11.1 Insurers and intermediaries should ensure that claim settlement procedures are clearly identified and set out in the policy sold and this procedure should be appropriately communicated to the customer. Insurers must follow the



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terms and conditions of claims settlement contained in the policy document.

- 5.11.2 In claims documentation sent to the policyholder, claim-determinative factors such as depreciations, discounts or policyholder negligence should be illustrated and explained in a comprehensive language.
- 5.11.3 Where intermediaries serve as an initial contact for claimants, the insurer's responsibilities towards the policyholder is not diminished.
- 5.11.4 Insurers and intermediaries should have appropriate technical and legal competence in claims settlement procedures and receive ongoing training.
- 5.11.5 Insurers and intermediaries should be experienced in claims handling and appropriately qualified.
- 5.11.6 Insurers should not unduly influence the work of adjusters. Adjusters should be able to make recommendations, independent of insurers' instructions, on the settlement of individual claims.
- 5.11.7 Insurers and intermediaries should ensure dispute resolution procedures follow a balanced approach, bearing in mind the legitimate interest of all parties involved. Procedures should avoid being overly complicated, such as having burdensome paperwork requirements. Decisions should include the reasoning in clear language relating closely to the specific disputable issues.
- 5.11.8 Insurers and intermediaries should make all efforts to settle legitimate claims within a reasonable time period.
- 5.11.9 Insurers and intermediaries should avoid unreasonable or unsubstantiated delays in determinations on claim settlements especially in instances where the unreasonable delay is to the detriment of the customer in cases where the delay cannot be attributed to the actions of the customer or a third party.
- 5.11.10 Claim settlement policies and procedures should be written in the spirit in which the policy document was written. Insurers and intermediaries should avoid all attempts to intentionally delay claim payment or to intentionally quantify claim settlement amounts without appropriate rationale.
- 5.11.11 Insurers and intermediaries should review claims from time to time to identify any trends in denial of claims or other trends with a view to assessing whether or not there may be deficiencies in their fair treatment of customers policies and procedures.



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5.12.Integrity

- 5.12.1 Insurers and intermediaries should at all times act honestly and in a straightforward manner towards their customers.
- 5.12.2 Insurers and intermediaries have an obligation to avoid misleading and deceptive acts or representations. They should also not seek to rely unreasonably on any provision of the contract seeking to exclude or restrict any such duty or liability.
- 5.12.3 Brokers are the representative of the insured at all times and should act accordingly. Brokers should at all times conduct business with utmost good faith and integrity and should provide advice objectively and independently in the best interests of the insured.
- 5.12.4 Where the interests of the intermediary conflicts with the interests of the insured, they should decline to act or withdraw from the relationship unless after full disclosure of the conflicting interests, all relevant parties including the insured, agree in writing that they should continue.
- 5.12.5 The relationship with customers should be one of trust and utmost good faith.
- 5.12.6 Market participants should act with integrity and avoid unethical business practices.

5.13.Care, Skill and Diligence

- 5.13.1 In conducting their business activities, insurers, agents and brokers should act with due care, skill and diligence.
- 5.13.2 Due (or reasonable) care is the degree of care that a prudent and competent person engaged in the same line of business or endeavour would exercise under similar circumstances.
- 5.13.3 Insurers and intermediaries have a duty to act competently and diligently with regard to all transactions between themselves and the customer.