

AMENDMENTS TO THE INSURANCE BUSINESS ACT, CAP.403

Amendment of
the Insurance
Business Act.
Cap. 403.

1. This Part amends and shall be read and construed as one with the Insurance Business Act, hereinafter in this Part referred to as “the principal Act”.

Renaming and
renumbering of
Parts of the
principal Act.

2. In “Part X. Conduct of Business of Insurance” of the "ARRANGEMENT OF ACT" of the principal Act, for the words “Conduct of Business of Insurance”, there shall be substituted the words “Obligations on Undertakings”.

Amendment of
article 2 of the
principal Act.

3. Sub-article (1) of article 2 of the principal Act shall be amended as follows:

(a) for the definition "advertisement" there shall be substituted the following:

“ "advertisement", in relation to the business of insurance, means any form or medium of marketing activity or communication, other than a prospectus, which promotes the purchase or procurement of a service or product and which is addressed by an authorised insurance undertaking to a client or potential client, and without prejudice to the generality of the foregoing, includes any addressed or unaddressed printed matter, electronic message or advertisement received via a mobile telephone or pager, standard letters, press advertising with or without order form, catalogue, telephone with or without human intervention, seminars and presentations, radio, videophone, videotext, e-mail, fax, television, notice, billboards, posters, brochures, and web posting including internet banners, and references to the issue of an advertisement shall be construed accordingly:

Provided that, any advertisement shall not include the provision of a personal recommendation but shall include any advertisement which is disseminated to the public via all types of media;”;

(b) immediately after the definition “conditions” there shall be added the following new definition:

“ "Conduct of Business Rules" means Rules relating to conduct of business issued by the competent authority

under various articles of this Act and under any regulations made thereunder;” and

(c) immediately after the definition “insurance agent”, there shall be added the following new definition:

“ “Insurance Distribution Directive” means Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast), as amended from time to time, and includes any delegated acts and any technical standards that have been or may be issued thereunder;”.

Amendment of
article 3 of the
principal Act.

4. Article 3 of the principal Act shall be amended as follows:

(a) for the words “carry out the functions assigned to it by or under this Act and any regulations or Insurance Rules”, there shall be substituted the words “carry out the functions assigned to it by or under this Act and any regulations Insurance Rules or Conduct of Business Rules”; and

(b) immediately after the words “comply with the provisions of this Act and of any regulations made thereunder, with any Insurance Rules”, there shall be added the words “and Conduct of Business Rules”.

Amendment of
article 4 of the
principal Act.

5. Article 4 of the principal Act shall be amended as follows:

(a) for sub-article (4) thereof, there shall be substituted the following:

“(4) The competent authority may make Insurance Rules and Conduct of Business Rules as may be required for carrying into effect any of the provisions of this Act and of any regulations made thereunder. The competent authority may amend or revoke such Insurance Rules and Conduct of Business Rules, and any amendment or revocation thereof, shall be officially communicated to the persons concerned.”;

(b) for sub-article (5) thereof there shall be substituted the following:

“(5) The competent authority may make, amend or revoke, Insurance Rules and Conduct of Business Rules, as may be required for the purpose of implementing any guidelines, recommendations issued by EIOPA under

Article 16 of Regulation (EU) No 1094/2010, for the implementation of the Solvency II Directive.”; and

(c) in sub-article (6) thereof, immediately after the words “Insurance Rules”, there shall be added the words “and Conduct of Business Rules”.

Amendment of
article 21 of the
principal Act.

6. In sub-article (3) of article 21 of the principal Act, immediately after the words “and of any Insurance Rules”, there shall be added the words “or Conduct of Business Rules”.

Amendment of
article 26 of the
principal Act.

7. Article 26 of the principal Act shall be amended as follows:

(a) in paragraph (a) thereof, for the words “any regulations, or any Insurance Rules made thereunder; or”, there shall be substituted the words “any regulations, Insurance Rules or Conduct of Business Rules made thereunder; or”;

(b) in paragraph (d) thereof, for the words “or any Insurance Rule,”, there shall be substituted the words “or any Insurance Rules or Conduct of Business Rules,”.

(c) paragraph (l) thereof, shall be renumbered as paragraph (n);

(d) immediately after paragraph (k) thereof, there shall be added the following new paragraphs:

“(l) the authorised insurance or reinsurance undertaking fails to comply with the conduct of business requirements set out in Conduct of Business Rules transposing Chapters V and VI of the Insurance Distribution Directive, in relation to an insurance-based investment product; or

(m) the authorised insurance or reinsurance undertaking fails to comply with conduct of business requirements set out in Conduct of Business Rules transposing Chapter V of the Insurance Distribution Directive in relation to any insurance product other than an insurance-based investment product; or”.

Amendment of article 29 of the principal Act.

8. In sub-article (1) of article 29 of the principal Act, immediately after the words “require any such undertaking or any person”, there shall be added the words “who is or was carrying out business of insurance or who appears to be or have been carrying on business of insurance, or”.

Amendment of article 30 of the principal Act.

9. In sub-article (10) of article 30 of the principal Act, for the words “shall include an insurance intermediary, registered or enrolled under the Insurance Intermediaries Act, or registered with an authority or body in the Member State or EEA State responsible for the supervision of insurance intermediaries acting for the undertaking”, there shall be substituted the words “shall include persons registered or enrolled under the Insurance Distribution Act, or registered with an authority or body in the Member State or EEA State responsible for the supervision of intermediaries and ancillary insurance intermediaries acting for the undertaking”.

Amendment of article 32 of the principal Act.

10. In article 32 of the principal Act, for the words “as may be specified by means of regulations or Insurance Rules”, there shall be substituted the words “as may be specified by means of regulations, Insurance Rules or Conduct of Business Rules”.

Amendment of Part X of the principal Act.

11. In the heading of Part X of the principal Act, for the words “Conduct of Business of Insurance”, there shall be substituted the words “Obligations on Undertakings”.

Amendment of article 43 of the principal Act.

12. In sub-article (1) of article 43 of the principal Act, for the words “and any regulations made thereunder, or any Insurance Rules,”, there shall be substituted the words “and any regulations, Insurance Rules or Conduct of Business Rules made thereunder,”.

Amendment of article 46 of the principal Act.

13. In article 46 of the principal Act, for the words “or of any Insurance Rules issued in virtue of this Act or any insurance intermediaries rule issued in virtue of the Act.”, there shall be substituted the words “or of any Insurance Rules or Conduct of Business Rules issued in virtue of this Act or of any Insurance Distribution Rules or Conduct of Business Rules issued in virtue of the Act.”.

Amendment of
article 47 of the
principal Act.

14. Article 47 of the principal Act, shall be amended as follows:

(a) in sub-article (1) thereof, for the words “may by Insurance Rules made for the purpose of this article”, there shall be substituted the words “may by Conduct of Business Rules made for the purposes of this article”; and

(b) in sub-article (2) thereof, for the words “absence of any such Insurance Rules”, there shall be substituted the words “absence of any such Conduct of Business Rules”.

Amendment of
article 48 of the
principal Act.

15. In sub-article (2) of article 48 of the principal Act, for the words “may by Insurance Rules made for the purposes of this article”, there shall be substituted the words “may by Conduct of Business Rules made for the purposes of this article”.

Amendment of
article 48B of the
principal Act.

16. Article 48B of the principal Act shall be amended as follows:

(a) In the marginal note thereto, for the words “Appointment of insurance intermediaries.”, there shall be substituted the words “Appointment of intermediaries or ancillary insurance intermediaries.”;

(b) for the words “shall utilise the services of insurance intermediaries which are:”, there shall be substituted the words “utilise the services of insurance intermediaries, reinsurance intermediaries, tied insurance intermediaries and ancillary insurance intermediaries which are:”; and

(c) for paragraph (b) thereof, there shall be substituted the following:

“(b) registered under Article 3 of the Insurance Distribution Directive,”.

Addition of
Article 48D
to the principal
Act.

17. Immediately after article 48C of the principal Act, there shall be added the following new article 48D:

“Application of
certain articles of
the Insurance
Distribution Act
to insurance and
reinsurance
undertakings.

48D. An authorised insurance undertaking and an authorised reinsurance undertaking carrying out insurance distribution activities and reinsurance distribution activities in terms of the Insurance Distribution Act, as applicable, shall comply with the applicable provisions of the said Act and of any regulations, Insurance Distribution Rules and Conduct of Business Rules issued thereunder.”.

Amendment of
article 58 of the
principal Act.

18. Article 58 of the principal Act shall be amended as follows:

(a) in paragraph (i) of sub-article (1) thereof, for the words “as may be prescribed under article 67,”, there shall be substituted the words “as may be prescribed under article 67.”;

(b) the paragraph immediately following paragraph (i) of sub-article (1) thereof, shall be deleted;

(c) sub-article (2) thereof shall be renumbered as sub-article (3); and

(d) immediately after sub-article (1) thereof, there shall be added the following new sub-article (2):

“(2) The Financial Services Tribunal shall have exclusive competence to hear appeals on the matters listed in sub-article (1)”.

Amendment of
article 66 of the
principal Act.

19. In article 66 of the principal Act, for the words “regulations or Insurance Rules made thereunder, shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any functions under this Act, regulations or Insurance Rules aforesaid,” there shall be substituted the words “regulations, Insurance Rules or Conduct of Business Rules made thereunder, shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any functions under this Act, regulations, Insurance Rules or Conduct of Business Rules aforesaid,”.

Amendment of
article 67 of the
principal Act.

20. Article 67 of the principal Act shall be amended as follows:

(a) in sub-article (2) thereof:

(i) in paragraph (a) thereof, for the words “any regulations or Insurance Rules made thereunder;”, there shall be substituted the words “any regulations, Insurance Rules or Conduct of Business Rules made thereunder;”;

(ii) in paragraph (b) thereof, for the words “any regulations made thereunder or any Insurance Rules;”, there shall be substituted the words “any regulations, Insurance Rules or Conduct of Business Rules made thereunder;”;

(iii) in paragraph (c) thereof, for the words “or any regulations or Insurance Rules made thereunder;”, there shall be substituted the words “or any regulations, Insurance Rules or Conduct of Business Rules made thereunder;”;

(iv) in paragraph (e) thereof, for the words “of any regulations made thereunder or any Insurance Rules;”, there shall be substituted the words “of any regulations, Insurance Rules or Conduct of Business Rules made thereunder;”;

(v) in sub-paragraph (i) of paragraph (f) thereof, for the words “of any regulations, or any Insurance Rules made thereunder;”, there shall be substituted the words “of any regulations, Insurance Rules or Conduct of Business Rules made thereunder;”.

General
amendment of
the principal
Act.

21. For the words "Insurance Intermediaries Act", wherever they appear in the Act, other than in article 69 thereof, there shall be substituted the words "Insurance Distribution Act".