

Chapter 12: Conduct of Business Rules

12.1. Introduction

- 12.1.1 This Chapter lays down Insurance Rules made pursuant to articles 4, 39 and 48 of the Act relating to the conduct of business of an authorised insurance undertaking, and an authorised reinsurance undertaking, where applicable. This Chapter does not apply to a captive insurance undertaking and a captive reinsurance undertaking.
- 12.1.2 Section 12.2 (Information to Policyholders) of this Chapter lays down the necessary information which an authorised insurance undertaking is required to provide to a policyholder or a potential policyholder before the conclusion of the contract of insurance and throughout the term of the contract to enable the policyholder to choose the contract best suited to his needs. This Section also applies to a person enrolled under the Insurance Intermediaries Act, 2006. In the case of persons enrolled in the Managers List, Section 12.2 applies only to a person holding an appointment with authority to enter into contracts of insurance and whose appointment is governed by an agreement which has the effect of an agency agreement.
- 12.1.3 Section 12.3 (Insurance Advertisements and Other Promotional Activities) of this Chapter lays down the guidelines which an authorised insurance undertaking desirous of issuing insurance advertisements and other promotional activities is required to comply with pursuant to article 48 of the Act. The Section will also provide additional guidelines for those undertakings issuing adverts in relation to long term products as well as linked long term contracts of insurance.
- 12.1.4 Section 12.4 (Insurance Undertakings carrying on Business of Insurance through the Internet) of this Chapter determines the conditions which the authorised insurance undertaking is required to comply with when operating an internet site and the information which is to be included on an internet site operated by such undertaking
- 12.1.5 Section 12.5 (Complaints-Handling by an Authorised Insurance Undertaking) of this Chapter determines the arrangements of authorised insurance undertakings for handling insurance complaints.

12.1.6 Finally, Section 12.6 (Publicity Given to Notices to Cease to Carry on Business of Insurance) of this Chapter lays down the form of publicity which an authorised insurance undertaking or an authorised reinsurance undertaking is required to give to the notices given to the competent authority to cease to carry on the business of insurance they are authorised to carry on amongst their policyholders and in the press and the manner in which such publicity should be given.

12.2. Information to policyholders

Long term business: Before concluding a contract

12.2.1 Paragraphs 12.2.2 to 12.2.11 apply to a contract entered into by an authorised insurance undertaking when the effecting of the contract constitutes a commitment where Malta is the country of commitment.

12.2.2 Before entering into a contract of insurance relating to long term business, an authorised insurance undertaking shall furnish the policyholder with, at least, the information required by paragraphs 12.2.3 to 12.2.5 in the case of long term contracts of insurance and in addition, paragraphs 12.2.7 and 12.2.8 in the case of linked long term contracts of insurance.

12.2.3 The following information relating to the commitment is to be communicated to the policyholder -

(a) a definition of each benefit and each option;

Note: There should be ample explanation on the object and purpose of a policy so that the policy is thoroughly understood.

(b) the term of the contract;

(c) the means of terminating the contract;

(d) the method of paying premiums and the duration of the payments;

(e) the method of calculating bonuses and the distribution of bonuses;

Note: There should be sufficient explanation as to the different types of bonuses (*i.e. Reversionary or Terminal*) which an insurance undertaking includes in a quotation and the difference between such bonuses. The expression “method of calculating bonus” should not be interpreted to refer to the actuarial techniques in determining the bonus rates but to the manner in which bonuses are calculated *i.e.* whether on a daily or an annual basis, whether expressed as a percentage of premium or the sum assured plus accruing bonuses, or as a percentage of accruing reversionary bonuses only;

(f) an indication of surrender and paid-up values and the extent to which such values are guaranteed;

Note: There should be illustration of surrender values for specific years *i.e.* 1, 2, 3, 4, 5, 10, 15, 20, 25, etc. Where no surrender value accumulates before the payment of 2 or 3 or more full year’s premium, that information should also be disclosed;

(g) the premiums for each benefit, whether a main or supplementary benefit, where appropriate;

(h) 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;

(i) information as to the following, namely:

(i) the requirements under the Insurance Business (Long Term Business Contract Statutory Notice) Regulations, 2000, or any regulations replacing them with respect to the 30 day period within which a policyholder may cancel the contract;

(ii) any limited compensation which may be available under the Protection and Compensation Fund Regulations, 2003, if the insurance undertaking is insolvent and unable to meet its obligations under the contract;

(j) information furnished to a policyholder shall not contain a statement relating to past performances unless:-

(i) the basis on which such performance is measured is clearly furnished and presentation is fair;

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

(iii) the source of information is stated;

(k) general information on the tax arrangements applicable to the type of policy. It should be made clear that the information relates to any appropriate current legislation as at the date of submission of that information and that such tax arrangements may change in the future;

(l) the arrangements for handling complaints by the authorised insurance undertaking from policyholders, lives assured or beneficiaries under contracts of insurance including, the function of the Office of the Arbiter for Financial Services established under the Arbiter for Financial Services Act, (Cap.555), without prejudice to the right of the policyholders, lives assured or beneficiaries to take legal proceedings;

(m) whether the parties to the contract are entitled to choose the law applicable to the contract and:-

(i) if so, the law which the authorised insurance undertaking proposes to choose; and

(ii) if not, the law which will be so applicable.

12.2.4 In addition, specific information shall be supplied by the authorised insurance undertaking in order to provide a proper understanding of the risks underlying the contract which are assumed by the policyholder.

12.2.5 The information which is to be communicated to the policyholder, concerning the authorised insurance undertaking is the following:-

(a) the name and legal form of the insurance undertaking issuing the policy;

(b) the country where the insurance undertaking's head office is situated, and where applicable, the branch concluding the contract is situated; and,

(c) the address of the insurance undertaking's head office and:

(i) where the undertaking's head office is in Malta, if the contract is being entered into through an insurance agent or branch of the undertaking, the name and address of the insurance agent or branch;

(ii) where the undertaking is a third country insurance undertaking, the address of the Malta branch of the undertaking;

(d) a concrete reference to the report as required in article 18F of the Act on the solvency and financial condition, allowing the policy holder easy access to this information¹.

12.2.6 Where, in connection with an offer for or conclusion of a contract of long term business, the insurance undertaking provides figures relating to the amount of potential payments above and beyond the contractually agreed payments, the insurance undertaking shall provide the policy holder with a specimen calculation whereby the potential maturity payment is set out applying the basis for the premium calculation using three different rates of interest. This shall not apply to term insurances and contracts. The insurance undertaking shall inform the policyholder in a clear and comprehensible manner that the specimen calculation is only a model of computation based on notional assumptions, and that the policy holder shall not derive any contractual claims from the specimen calculation.

Linked Long term contracts of Insurance

12.2.7 Where a contract of insurance is a linked long term contract of insurance, the undertaking shall provide a Product Information document which shall include the detailed terms and conditions of the linked long term contract of insurance. The following minimum details are to be included in such document:

¹ This obligation is triggered off from the date the undertaking is obliged to disclose publicly, on an annual basis, a report on their Solvency and Financial Condition.

(a) a brief glossary to explain the meaning of a linked long term 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 insurance undertaking) etc;

(b) a brief description of the nature of each underlying fund or asset linked to the contract. Where one or more collective investment schemes are linked to the policy, 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 scheme/s to which the policy is linked should be based on the full details included in the prospectus/scheme particulars of the scheme, copies of which are to be made available upon request;

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

(d) all charges, including where applicable 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 insurance 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 policyholders free of charge which shall be at least annually, or if so requested by policyholders, at least every six months.

12.2.8 Any projected values relating to linked long term contracts of insurance shall be net of all applicable charges, including exit fees and annual charges and shall contain, where applicable, and in a prominent manner:

(a) a clear description of the basis of the projections and a clear linkage to risk warnings;

(b) a warning that the projected values 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 values;

(c) a statement that the projected growth rates of return are for illustration purposes only and a warning that the projected growth rates are not minimum or maximum values but have only been selected to portray different scenarios for illustration purposes only;

(d) a warning that the surrender value or maturity value will depend on the market values of the underlying assets;

(e) a warning that a fixed annual rate of return is being assumed for the projected growth rates and that such a fixed return does not reflect the returns of the underlying assets which may fluctuate in value.

Long term business: During the term of a contract

12.2.9 If during the term of the contract covering a commitment where Malta is the country of commitment there is a change in the following:-

(a) the policy conditions, both general and special;

(b) the name of the authorised insurance undertaking, its legal form or the address of its head office and were applicable, of the branch which concluded the contract;

(c) any change in the information mentioned in paragraphs 12.2.3(d) to 12.2.3(h), paragraph 12.2.3(i)(i) and paragraphs 12.2.7(b) and 12.2.7(c) or amendment of the law applicable to the contract,

the insurance undertaking shall inform the other party to the contract of the effect of the change.

12.2.10 If the contract provides for the payment of bonuses, the authorised insurance undertaking shall, at least, once in every calendar year, inform the other party to the contract 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.

12.2.11 There is sufficient compliance with paragraph 12.2.10 if the authorised insurance undertaking furnishes, on an annual basis, in writing, the other party to the contract with such information as will enable him to determine the amount of any such bonus as is mentioned in that paragraph, or if the insurance undertaking informs that party of:

- (a) the total value of the benefits (including bonuses) which have accrued under the contract; and
- (b) the rates of bonus which have been declared since that party was previously informed under this paragraph.

Furthermore, where the authorised insurance undertaking has provided figures about the potential future development of the profit participation, the authorised insurance undertaking shall inform the policyholder of differences between the actual development and the initial data.

General business: Before concluding a contract

12.2.12 Paragraphs 12.2.13 to 12.2.15 apply to a contract entered into by an insurance undertaking when the effecting of the contract constitutes the carrying on in Malta of general business contracts and the risk covered by the contract is a risk situated in Malta.

12.2.13 Before entering into a contract covering a risk situated in Malta, an authorised insurance undertaking shall, if the other party (or one of the other parties) to the contract is an individual, inform that party –

(a) as to whether the parties to the contract are entitled to choose the law applicable to the contract and -

(i) if so, of the law which the insurance undertaking proposes to choose; and

(ii) if not, of the law which will be so applicable;

(b) of any limited compensation which may be available under the Protection and Compensation Fund Regulations, 2003, if the authorised insurance undertaking is insolvent and unable to meet its obligations under the contract;

(c) the arrangements for handling policyholders' complaints concerning contracts of insurance by the insurance undertaking including, the function of the Office of the Arbiter for Financial Services established under the Arbiter for Financial Services Act, (Cap.555), without prejudice to the policyholder's right to take legal proceedings;

(d) the amount and purpose of any charge or fee in addition to the premium. The amount of document duty is to be disclosed separately;

(e) the date of inception of the policy.

12.2.14 Any relevant document issued by an insurance undertaking in relation to a contract to which this Section applies, shall state the name and address of the authorised insurance undertaking and, if the contract is to be entered into through a branch or insurance agent, the name and address of the branch.

12.2.15 In this paragraph “relevant document”, to the policyholder, means any proposal, policy or other document which, or statements contained in which, will or may bind the other party to the contract.

Proof of furnishing the required information

12.2.16 Any disclosure required to be made by Section 12.2 shall be communicated to the potential policyholder or policyholder–

- (a) on paper or in some other durable medium that is accessible to such person; and
- (b) in a clear and accurate manner, comprehensible to such person.

12.2.17 For the purposes of paragraph 12.2.16 “durable medium” means any instrument which enables the potential policyholder or policyholder to store information addressed personally to such person in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored. In particular, durable medium covers floppy disks, CD-ROMs, DVDs and hard drives of personal computers on which electronic mail is stored, but it excludes Internet sites, unless such sites meet the criteria specified in this paragraph.

12.2.18 Notwithstanding the provisions of paragraph 12.2.16 (a), the insurance undertaking shall verbally provide the information required by this Section:

- (a) whenever the potential policyholder or policyholder asks for the information;
- (b) whenever immediate cover is needed,

Provided that, in either case, the insurance undertaking shall, immediately after the contract of insurance is entered into, comply with paragraph 12.2.16.

12.2.19 No information given under this Section shall be sufficient if the information given is accompanied by any oral or written statement which somehow negatives, qualifies or otherwise reduces its impact.

- 12.2.20 The burden of proof that any information required to be furnished has been furnished in accordance with the requirements of this Section rests on the insurance undertaking.
- 12.2.21 Upon request by the competent authority, an insurance undertaking should be in a position to produce to the authority evidence that the information required to be disclosed by Section 12.2 has been disclosed.
- 12.2.22 Any information required to be furnished under Section 12.2 shall be furnished in Maltese or English as it suits the person to whom the information is furnished, in both languages, or in a language agreed to by the parties.

Policy Conditions for general business contracts

- 12.2.23 Pursuant to Article 187 of the Solvency II Directive, in the case of an insurance contract issued by an authorised insurance undertaking, general and special policy conditions shall not include any conditions intended to meet, in an individual case, the particular circumstances of the risk to be covered.

12.3 Insurance Advertisements and Other Promotional Activities

- 12.3.1 Pursuant to article 48 of the Act, where an authorised insurance undertaking desires to issue or caused to be issued insurance advertisements, the form and manner of such advertisements shall be determined in accordance with Section 12.3 of this Chapter.

General guidelines related to advertisements

- 12.3.2 The consent of the competent authority is not required before any advertisement is issued.
- 12.3.3 Any requirements determined by Section 12.3 of this Chapter which are to be included in any advertisement shall be shown prominently, clearly and intelligibly.

- 12.3.4 Any advertisement issued by an authorised insurance undertaking shall state that the undertaking issuing the advertisement is an undertaking authorised to carry on business of insurance and regulated by the Malta Financial Services Authority (“the authorisation statement”).
- 12.3.5 Any advertisement issued by an authorised insurance undertaking which is an undertaking incorporated with a share capital, which states in the advertisement the amount of the authorised capital of the undertaking 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.
- 12.3.6 Every authorised insurance undertaking shall when issuing an advertisement ensure that:
- (a) the advertisement is approved by the undertaking’s compliance officer or alternatively by any officer formally authorised by the undertaking to do so. Advertisements may also be approved by third parties such as lawyers on behalf of the undertaking. Whatever practical arrangements are put in place for the approval of advertisements, the authorised insurance undertaking shall remain responsible; and
 - (b) it keeps a record of all advertisements issued by the undertaking, including the date of issue, details of publication in which the advertisement was published and evidence of approval of the advertisement pursuant to sub-paragraph (a) of this paragraph.
- 12.3.7 An authorised insurance undertaking shall keep a separate record of all advertisements issued by its enrolled insurance agents, insurance managers and tied insurance intermediaries and approved by it.
- 12.3.8 For the purposes of paragraphs 12.3.6 and 12.3.7, the words “keep a record of all advertisements” means that the authorised insurance undertaking is required to keep a copy of each, different kind of advertisement issued or approved by it, for a period of not less than five (5) years.

12.3.9 An advertisement should not make unfair, incorrect or unverifiable comparisons when competing undertakings or products.

12.3.10 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 authorised insurance undertaking or a close relative of any official or employee of the authorised insurance undertaking 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 (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.

Guidelines governing advertisement relating to long term business and general business

12.3.11 When issuing an advertisement, an authorised insurance undertaking shall:

(a) avoid taking any improper advantage of any characteristic or circumstances that may make policyholders or prospective policyholders to fully grasp the nature of any commitment into which they may enter as a result of responding to an advert;

(b) exercise care while aiming to help policyholders or prospective policyholders to fully grasp the nature of any commitment into which they may enter as a result of responding to an advert.

12.3.12 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 authorised insurance undertaking does not, at the time the advertisement is issued:

(i) have reasonable grounds supported by documentary evidence for believing it to be true;

(ii) have reasonable grounds for believing it will continue to be true for as long as it remains relevant to the subject matter of the advertisement;

(c) a statement of opinion held by any person (whether that person is an authorised insurance undertaking or any other person) which the authorised insurance undertaking 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;

(d) a misleading statement about the policies of insurance issued by, or resources of, or available to, the authorised insurance undertaking;

(e) a comparison with other types of policies of insurance issued unless the basis of comparison is clearly stated and the comparison is fair;

(f) a statement of endorsement which is used out of context without suitable explanation, or is misleading by omission.

12.3.13 The content and format of an advertisement shall not –

(a) be likely to be misunderstood;

- (b) disguise the significance of any warning statement or information which the competent authority may either generally or specifically require to be included;
- (c) be presented in such a way that it is not clearly identifiable as an advertisement.

12.3.14 (a) The format of an advertisement shall:

- (i) contain any warnings, where applicable, and authorisation statements and the font size of such warnings and statements should be relative 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 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 authorisation statement or an abbreviated statement (for example “an undertaking authorised by the Malta Financial Services Authority”) of all licence holders mentioned in the advertisement; and

- (ii) where applicable, appropriate risk warnings which are to be read out during broadcast sponsorships, television and radio advertisements and any warnings on television advertisements should also be visually presented in a clear and legible manner;

and in each case, the relative risk warnings and authorisation 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.

12.3.15 An advertisement shall:

- (a) identify the authorised insurance undertaking which issued it;
 - (b) if the advert relates to a specific product, contain sufficient information about the product being advertised, to enable the consumer to understand what is being offered and the risks involved, to enable such person to make an informed decision.
- 12.3.16 Any advertisement issued by an authorised insurance undertaking in a country outside Malta shall conform with any insurance advertising law or regulations of the country where the advertisement is issued. Where in such country there are no laws or regulations which govern insurance advertisements, any advertisement issued by the undertaking shall, as far as practicable, conform with the requirements of this Rule.
- 12.3.17 An authorised insurance undertaking 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.
- 12.3.18 If an advertisement includes an invitation for the reader to enter into a contract of insurance, the advertisement (and any subsequent documentation) shall contain sufficient information to enable the reader to understand the product and the risks involved and to assess its suitability.
- 12.3.19 Where an authorised insurance undertaking carries on business of insurance directly and/or through an insurance agent or insurance manager (“the agent”), if the agent issues any advertisement relating to the business carried on by the authorised insurance undertaking, the undertaking shall approve the advertisement before publication, accept responsibility for it and ensure that it fulfils or complies with all the legal and regulatory requirements provided by or under the Act.
- 12.3.20 Where an advertisement is issued in accordance with paragraph 12.3.19, the authorised insurance undertaking shall ensure that the advertisement –
- (a) identifies in the same prominence both the authorised insurance undertaking and the agent which issued it;

(b) contains a statement that the authorised insurance undertaking is authorised under the Act and the agent is enrolled under the Insurance Intermediaries Act, 2006;

(c) contains a statement that the policy is underwritten by the authorised insurance undertaking;

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

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

12.3.21 Where an advertisement relates to specific policy benefits and the benefits are dominated in a currency other than the Euro, the advertisement shall contain a warning concerning foreign exchange rate fluctuations.

12.3.22 Although advertisements issued by tied insurance intermediaries are governed by Insurance Intermediaries Rule 5 of 2008 on the Insurance Intermediaries Advertisements and Other Promotional Activities, in relation to any advertisement issued by a tied insurance intermediary of the authorised insurance undertaking, the undertaking is likewise required to satisfy or comply with the requirements of Section 12.3 of this Chapter of these Insurance Rules.

Additional guidelines governing advertisements relating solely to long term business

12.3.23 In addition to the guidelines listed in paragraphs 12.3.11 to 12.3.22, advertisements issued by an authorised insurance undertaking carrying on long term business are to be governed by the guidelines issued pursuant to paragraphs 12.3.24 to 12.3.27. The guidelines in paragraphs 12.3.24 to 12.3.27 shall be read and construed as one with the guidelines set out in paragraphs 12.3.11 to 12.3.22.

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

(a) a statement relating to past performance unless:

- (i) the basis on which such performance is measured is clearly stated and the presentation is fair;
 - (ii) it is accompanied by a warning that past performance is not necessarily a guide to future performance;
 - (iii) the past performance is relevant to the authorised insurance undertaking or the policies offered by the undertaking;
 - (iv) the source of information is stated;
 - (v) where charges are not taken into account there is a statement to that effect;
 - (vi) 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.

12.3.25 An advertisement relating to 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.

12.3.26 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 authorised insurance undertaking of its obligations, the advertisement shall not contain any matter which implies that there is such a guarantee.

12.3.27 Subject to paragraphs 12.3.28 to 12.3.31, 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 matter which may effect the policyholder's ability to benefit from it;

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

Additional guidelines governing advertisements relating solely to linked long term contract of insurance

12.3.28 In addition to the guidelines listed in paragraphs 12.3.11 to 12.3.22 and in 12.3.23 to 12.3.27, advertisements issued in relation to linked long term contracts of insurance by an authorised insurance undertaking carrying on long term business are to be governed by the guidelines issued pursuant to paragraphs 12.3.28 to 12.3.31. The guidelines in paragraphs 12.3.28 to 12.3.31 shall be read and construed as one with the guidelines set out in paragraphs 12.3.11 to 12.3.22 and 12.3.23 to 12.3.27.

12.3.29 Where an insurance contract is a linked long term contract of insurance, an authorised insurance undertaking shall:

(a) include a statement that the investment decision should be based on the full details of the product information document, and shall state from where this document may be obtained or accessed;

(b) include a statement in the case where deductions for charges or expenses are made disproportionately in the early years of the contract of insurance. The advertisement should also include a statement to the effect that if the policyholder withdraws from the contract of insurance in the early years a person may not get back the amount invested;

(c) in the case where the investment element is guaranteed, include 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 applicable, the guarantee is from a firm within the same group as the authorised insurance undertaking.

12.3.30 Where an advertisement referred to in paragraph 12.3.29 quotes past performance:

- (a) this must not be based on simulated figures;
- (b) in the case of linked long term contracts of insurance linked to a collective investment scheme and such advert contains periodic figures relating to the past performance of a collective investment scheme, this 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 sub-paragraph (g);
- (c) it should contain appropriate risk warnings including the following: “the value of the investments may fall as well as rise”. This together with other appropriate warnings, must be read out during Broadcast Sponsorships, television and radio advertisements and be visually presented in a clear and legible manner. In the case of Broadcast Sponsorships and television advertisements, the relative risk warnings and authorisation statements (“the regulatory text”) 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;
- (d) it should be as current and up-to-date as possible. The more volatile the market, the more current the rate should be. Ordinarily “current” means less than three months old;
- (e) the performance rates shown should not have excessive prominence in relation to the main text of the advert;
- (f) the performance rates should also be linked with an asterisk to the past performance risk warning;
- (g) the performance rate should be annualised except where to do so would be misleading. Periodic rates are not excluded but these are only acceptable as ancillary to annualised rate and on the condition that the period selected is not exceptional.

12.3.31 A price box for linked long term contracts of insurance shall include:

- (a) the name and contact details of the authorised insurance undertaking;
- (b) names of the funds which may be linked thereto;
- (c) the price(s) and their relevant date;
- (d) the change from the previously quoted price(s);
- (e) an indication that initial and/or exit fees apply or may apply, as appropriate.

Image advertisements

12.3.32 Any authorised insurance undertaking may issue an image advertisement.

12.3.33 For the purpose of this paragraph and paragraph 12.3.32, “image advertisement”, in relation to an authorised insurance undertaking, means a communication that consists of only one or more of the following –

- (a) the identity of the authorised insurance undertaking;
- (b) a logo or other image associated with the authorised insurance undertaking;
- (c) a contact point (address or telephone number);
- (d) a reference to the type of activity carried out by the authorised insurance undertaking.

12.4. Insurance Undertakings carrying on Business of Insurance through the Internet

12.4.1 Where in the course of carrying on business of insurance, an authorised insurance undertaking carries on such business through the internet, the internet site shall satisfy the conditions indicated under paragraph 12.4.2 which the authorised

insurance undertaking is required to comply with when operating such site and should, as a minimum, include the information indicated under paragraph 12.4.3.

12.4.2 Where business of insurance is carried on through the internet, the following conditions shall be satisfied at all times;

(a) the authorised insurance undertaking assumes full responsibility for all information that is communicated or displayed on the internet site and of the overall quality of any such information communicated or displayed thereon;

(b) the authorised insurance undertaking shall designate a senior officer to act as a main point of contact with the competent authority in respect of the said site. The designated person and any change of the designated person shall be immediately communicated to the competent authority;

(c) the authorised insurance undertaking shall ensure that the appropriate warnings and disclaimers can be viewed in the same browser format as the rest of the site is complete and constantly updated;

(d) the authorised insurance undertaking shall ensure that the appropriate warnings and disclaimers can be viewed in the same browser format as the rest of the site so as to be visible to all visitors to the site;

(e) the authorised insurance undertaking includes appropriate statements the policyholder or prospective policyholder is leaving the authorised insurance undertaking internet site and accessing another internet site in cases where the undertaking's internet site is hyperlinked to other sites.

12.4.3 The internet site, shall, as a minimum, include the following information:

(a) the name, address and contact details of the authorised insurance undertaking;

(b) a statement that such undertaking is authorised to carry on business of insurance in terms of the Act;

(c) a list of the jurisdictions in which such undertaking is authorised to carry on business of insurance. The term “authorised” includes an undertaking establishing a branch or providing services in a Member State or an EEA State in exercise of a European right in terms of the European Passport Rights for Insurance and Reinsurance Undertakings Regulations, 2015;

(d) procedures for the submission of claims and a description of the claims handling procedure of the authorised insurance undertaking;

(e) contact details of the officer of the authorised insurance undertaking responsible for consumer complaints and information that complaints may be referred by the complainant to the Office of the Arbiter for Financial Services established under the Arbiter for Financial Services Act, (Cap.555), if the complainant is not satisfied with the manner in which his complaint has been resolved by the authorised insurance undertaking;

(f) statements as to whom the website is targeted, for example, residents in Malta and for all risks situated in Malta.

12.5. Complaints-Handling by an Authorised Insurance Undertaking

Complaints Management Policy

12.5.1 An authorised insurance undertaking should ensure that:

(a) it has in place a “complaints management policy”. This policy should be defined and endorsed by the senior management of the authorised insurance undertaking, who should also be responsible for its implementation and for monitoring compliance with it;

(b) this “complaints management policy” is set out in a (written) document e.g. as part of a “general” (fair) treatment policy” (applicable to actual or potential policyholders, insured persons, injured third parties and beneficiaries, etc.);

(c) the “complaints management policy” is made available to all relevant staff of the authorised insurance undertaking through an adequate internal channel.

Complaints Management Function

- 12.5.2 An authorised insurance undertaking should have a complaints management function which enables complaints to be investigated fairly and possible conflicts of interest to be identified and mitigated. The Complaints Management Function shall be entrusted to a person not involved in the handling of the claim on which a complaint has been lodged.

Registration

- 12.5.3 An authorised insurance undertaking should register internally complaints, in an appropriate manner, (for example, through a secure electronic register) as soon as these are received and should record the measures taken for its resolution.

Internal follow-up of complaints handling

- 12.5.4 An authorised insurance undertaking should analyse, on an on-going basis, complaints-handling data, to ensure that it identifies and addresses any recurring or systematic problems, and potential legal and operational risks, for example by:

- (a) analysing the causes of individual complaints so as to identify root causes common to types of complaint;
- (b) considering whether such root causes may also affect other processes or products, including those not directly complained of; and
- (c) correcting, where reasonable to do so, such root causes.

Provision of information

- 12.5.5 An authorised insurance undertaking should:
- (a) on request or when acknowledging receipt of a complaint, provide written information regarding its complaints-handling process;

(b) publish details of its complaints-handling process in an easily accessible manner, for example, in brochures, pamphlets, contractual documents or through the website of the authorised insurance undertaking;

(c) provide clear, accurate and up-to-date information about the complaints-handling process, which includes:

(i) details of how to complain (e.g. the type of information to be provided by the complainant, the identity and contact details of the person or department to whom the complaint should be directed); and

(ii) the process that will be followed when handling a complaint (e.g. when the complaint will be acknowledged, indicative handling timelines, the function of the Office of the Arbiter for Financial Services established under the Arbiter for Financial Services Act, (Cap.555), and any other alternative dispute resolution (ADR) scheme, such as, arbitration and the Consumer Claims Tribunal);

(d) keep the complainant informed about further handling of the complaint.

Procedures for responding to complaints

12.5.6 An authorised insurance undertaking should:

(a) gather and investigate all relevant evidence and information regarding the complaint;

(b) communicate in plain language, which is clearly understood;

(c) provide a response without any unnecessary delay or, at least, by not later than fifteen working days from when the complaint was registered, When an answer cannot be provided within fifteen working days, the authorised insurance undertaking should inform the complainant about the causes of the delay and indicate when the investigation by the authorised insurance undertaking is likely to be completed;

(d) when providing a final decision that does not fully satisfy the complainant's demand (or any final decision, within fifteen working days from the response

provided in accordance with sub-paragraph (c)), include a thorough explanation of the undertaking's position on the complaint and that if the complainant is not satisfied with the way the complaint was resolved by the authorised insurance undertaking, the complainant may refer the complaint to the Office of the Arbiter for Financial Services established under the Arbiter for Financial Services Act, (Cap.555). Such decision should be provided in writing.

Unrelated complainants

12.5.7 Where an authorised insurance undertaking receives a complaint about:

(a) activities other than those regulated by the competent authority pursuant to article 4(2) of the EIOPA Regulation (Regulation (EU) No. 1094/2010); or

(b) the activities of another financial institution for which the authorised insurance undertaking has no legal or regulatory responsibility (and where those activities form the substance of the complaint),

the provisions of Section 12.5 of this Chapter of these Insurance Rules shall not apply.

12.5.8 Notwithstanding the provisions of paragraph 12.5.7, the authorised insurance undertaking should where possible, explain the position of the undertaking on the complaint and/or, where appropriate, direct the complainant to the insurance undertaking or other financial institution responsible for handling the complaint or to any other appropriate body which may deal with the complaint and/or seek independent professional advice.

Reporting to the competent authority

12.5.9 An authorised insurance undertaking should provide information on complaints and complaints handling to the competent authority on an annual basis, by not less than two months from the end of the calendar year. An authorised insurance undertaking should submit the information as specified in the Annex to this Chapter of these Insurance Rules.

12.5.10 Where a complaint has been lodged with the Office of the Arbiter for Financial Services and the case has been decided, the authorised insurance undertaking shall immediately provide the competent authority with a copy of the Arbiter's final decision. In the event that an appeal from the decision of the Arbiter is lodged by the complainant or by the authorised insurance undertaking itself, in terms of the Arbiter for Financial Services Act, (Cap.555), the authorised insurance undertaking shall immediately notify the competent authority that such an appeal has been lodged, and once such appeal has been decided, the authorised insurance undertaking shall provide the competent authority with the final decision of the Court.

Best practices by an authorised insurance undertaking

12.5.11. In Section 12.5 of this Chapter, the guidelines on best practices for handling complaints by an authorised insurance undertaking and specific examples of the areas to be considered by such concerned when handling complaints are set out in the Schedule to this Chapter of these Insurance Rules.

12.6. Publicity Given to Notices to Cease to Carry on Business of Insurance

Form and manner of publicity

12.6.1 Pursuant to article 39 and 40 of the Act, where an authorised insurance undertaking or authorised reinsurance undertaking gives notice in writing to the competent authority that it intends to cease wither wholly or partly to carry on the business of insurance it is authorised to carry on, such undertaking shall also give publicity to the matter amongst its policyholders and in the press in the form and manner hereunder determined.

12.6.2 The form and manner of publicity which the undertaking shall give to the matter shall be set out in paragraphs 12.6.3 to 12.6.6.

12.6.3 An authorised insurance or reinsurance undertaking shall publish in the press at its expense a publicity notice. The publicity notice is to be approved by the competent authority before publication and published by the undertaking in at least:

(a) two daily local newspapers of which one is published in the Maltese language and the other in the English language where the risk is situated in Malta or a commitment where Malta is the country of commitment;

(b) two daily newspapers where the risk is situated in a country outside Malta or a commitment where Malta is not the county of commitment, in such country and in the language of a risk or the country of the commitment.

12.6.4 In the case of an authorised insurance undertaking, such undertaking shall publish a publicity notice not less than twice at an interval of between twenty-five to thirty-five days between one publication and another during a period of not more than three months from the date of the first publication.

12.6.5 In the case of an authorised reinsurance undertaking, such undertaking shall publish a publicity notice at least once.

12.6.6 The date of the first publication of a publicity notice shall be agreed between the undertaking and the competent authority.

Information to be Included in Publicity Notices

12.6.7 Every publicity notice required to be published by the authorised insurance undertaking or authorised reinsurance undertaking shall include the following information:

(a) the name, address of the principal place of business, business telephone, fax numbers and e-mail address of the undertaking;

(b) in the case of a third country insurance undertaking or third country reinsurance undertaking, carrying on business of insurance through:

(i) a local branch, in addition to the information required in indent (a) of this paragraph, the address, business telephone, fax numbers and e-mail address of such branch;

- (ii) a local branch in addition to the information required in indent (a) of this paragraph, and the business is carried on by an insurance manager, the name, business address, business telephone, fax numbers and e-mail address of the insurance manager;
- (c) the date when the authorised insurance undertaking or authorised reinsurance undertaking gave notice to the competent authority to cease to carry on the business of insurance it intends to cease to carry on;
- (d) the date proposed by the authorised insurance undertaking or authorised reinsurance undertaking on which to cease to carry on the business of insurance it intends to cease to carry on;
- (e) where the notice given to the competent authority by the authorised insurance undertaking or authorised reinsurance undertaking is:
- (i) a notice to cease **wholly** to carry on the business of insurance the undertaking is authorised to carry on, the kind of business (*whether long term business or general business*) in respect of which the undertaking gave notice to cease to carry on;
 - (ii) a notice to cease **partly** to carry on the business of insurance the undertaking is authorised to carry on, the class or classes of business (*where the business concerned is long term business*) and the class or classes or the group or groups of classes (*where the business concerned is general business*) in respect of which the undertaking gave notice to cease to carry on;
- (f) the name, address of the principal place of business, business telephone, fax numbers and e-mail addresses of the person appointed by the authorised insurance undertaking under article 39 of the Act who shall be responsible for servicing or as the case may be, run-off the business of insurance in respect of which the undertaking gave notice to cease to carry on;
- (g) a statement that any further information will be supplied if requested;

(h) a statement that publicity to the notice to cease either wholly or partly to carry on is given by the authorised insurance undertaking pursuant to article 39 of the Act;

(i) a statement that the authorised insurance undertaking shall continue to discharge its obligations under the Act and, until all its obligations are fully discharged, the undertaking shall continue to be governed by the Act and regulated and supervised by the Malta Financial Services Authority;

(j) any such other information which the competent authority or the authorised insurance undertaking with the approval of the competent authority may consider relevant to a publicity notice.