

Insurance Intermediaries Rule 22 of 2007

Computer Link Arrangements

Rule pursuant to article 4 of the Act

1. (1) This Insurance Intermediaries Rule on computer link arrangements (“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 1st June 2007.

Application

2. This Rule applies, on continuing basis, to -

(a) a person enrolled in the Brokers List and carrying on business as insurance broker;

(b) a person enrolled in the Tied Insurance Intermediaries List of the Authority and carrying out tied insurance intermediaries activities,

(the “enrolled person”).

Scope

3. The scope of this Rule is to determine -

(a) the provisions to be included in and excluded from a computer link arrangement;

(b) the information which an authorised undertaking is required to submit to the Authority when notifying it of a computer link arrangement;

(c) the manner in which an authorised undertaking is to notify the Authority of a computer link arrangement.

Definitions

4 (1) An “authorised undertaking” means an undertaking authorised under the Insurance Business Act to carry on business of insurance, and includes a company enrolled in the Agents List, as well as a European insurance undertaking having its head office in a Member State or EEA State establishing a branch or providing services in Malta in exercise of European right.

(2) A “computer link arrangement” means an arrangement between an authorised undertaking and an enrolled person, other than a computer link arrangement which is merely an electronic communication facility, by which the enrolled person is given the facility to:

(a) transmit proposals for the covering of a risk or a commitment to the authorised undertaking;

(b) receive the acceptance of the authorised undertaking to such a proposal; and

(c) transmit such acceptance by the authorised undertaking to the client in a material form.

(3) An “electronic communication” shall have the same meaning as is assigned to it by the Electronic Commerce Act (Cap.426), and “electronic communication facility” shall be construed accordingly.

Restrictions and limitations

5. (1) Subject to paragraph (2) of this article, computer link arrangements shall only be accepted by the Authority if such arrangements are made or entered into solely with authorised undertakings.

(2) In so far as enrolled tied insurance intermediaries are concerned, the provisions of this article are without prejudice to the requirements of Insurance Intermediaries Rule 18 of 2007 - Business of Insurance Not Subject to Tied Insurance Intermediaries Activities.

Provisions to be included in computer link arrangements

6. (1) Every computer link arrangement shall include provision -

(a) for discontinuance at any time of the computer link arrangement by the authorised undertaking or by the enrolled person upon such notice in writing as may be specified in the computer link arrangement;

(b) that, in the event of discontinuation of the computer link arrangement, the enrolled person shall return promptly to the authorised undertaking, or its appointed representative, all unused certificates of insurance and other documentation or material in its possession in connection with the computer link arrangement which might be used as evidence of the insurance and which bear the name of, or refer to, the authorised undertaking;

(c) that the enrolled person shall establish and maintain a proper accounting system recording monies received in relation to contracts of insurance, broken down into premiums, document duty and any other charges or fees, and in the case of an enrolled insurance broker claims paid and outstanding claims, in respect of insurances effected under the computer link arrangement and shall submit detailed accounts of the same to the authorised undertaking on a regular basis;

(d) that the authorised undertaking, or its representative, shall have the right, without restrictions or limitations, to inspect and audit any records of the enrolled person related to the computer link arrangement at any time during reasonable business hours and shall have the right to make copies or extracts of any such records;

(e) that the enrolled person shall notify the authorised undertaking immediately upon becoming aware of any matter concerning any business accepted under the computer link arrangement which may, or does, give rise to litigation naming the authorised undertaking, or which may, or does, result in a complaint to the Authority;

(f) that access to such link shall be exclusive to the enrolled person, and shall be conditional upon prior, individual authorisation from the authorised undertaking through password or similar means.

Provisions to be excluded from computer link arrangements

7. Every computer link arrangement shall exclude provision -

(a) for any power to act generally or specifically on behalf of the authorised undertaking, other than is strictly necessary for the purposes that are listed in article 4 of this Rule;

(b) for any power to accept service of document, on behalf of the authorised undertaking;

(c) for any power of delegation of any authority granted to the enrolled person to any other person, firm or undertaking.

Computer link arrangements granted by insurance agents

8. Every insurance agent authorised to act on behalf of an authorised undertaking shall not grant any computer link arrangements to any enrolled person unless the power to grant a computer link arrangement to enrolled persons is expressed in writing in the appointment of the insurance agent issued by the authorised undertaking.

Notification of computer link arrangements

9. (1) An authorised undertaking which has entered into a computer link arrangement with an enrolled person, shall, within twenty working days from the date on which that arrangement has been entered into, notify in writing the Authority, of any computer link arrangement made or entered into in the form and manner as are determined by this Rule.

(2) No business of insurance shall be accepted under a computer link arrangement unless that arrangement has first been duly notified to the Authority.

(3) The form and manner in which a computer link arrangement is to be notified to the Authority are set out in paragraphs (4) and (5) of this article.

(4) The notification referred to in paragraph (1) of this article shall contain:

(a) the name of the enrolled person; and

(b) the class or classes of long term business or the class or classes or group of classes of general business to be carried out under the computer link arrangement in accordance with paragraph (2) of article 5 of this Rule.

(5) Every notification shall include a certification issued by the authorised undertaking certifying that such arrangement is limited to the facilities listed in article 4 of this Rule.

(6) An authorised undertaking shall, before making any addition or alteration to any computer link arrangement, submit to the Authority particulars in writing of the proposed addition or alteration.

(7) In the event of discontinuation of the computer link arrangement, the authorised undertaking shall, within twenty working days from the date of discontinuation, notify in writing, the Authority of the discontinuation of the arrangement and the reasons for so doing.

(8) Any notification made by the authorised undertaking under this article shall be copied to the enrolled person.

Application of the Insurance Business Act, 1998

10. (1) Where an enrolled person makes or enters into a computer link arrangement with an authorised undertaking whose head office is in a country outside Malta, if the computer link arrangement is made or entered into directly with the authorised undertaking, notwithstanding that the undertaking has an authorised agent in Malta, for all intents and purposes of the Insurance Business Act, 1998, the business accepted under the computer link arrangement agreement is deemed to be business carried on by the undertaking in Malta.

(2) Any computer link arrangement made or entered into by an authorised undertaking shall:

(a) in relation to an undertaking authorised under the Insurance Business Act, be limited to the class or classes of insurance the undertaking is authorised to carry on in Malta;

(b) in relation to a European insurance undertaking, be limited to the class or classes of insurance in respect of which the Authority has received notification from the home Member State of the undertaking concerned.

Repeals and Savings

11. (1) Without prejudice to article 4(2) of the Preliminary provisions and saving the provisions of paragraph (2) of this article,

Insurance Intermediaries Directive 22 of 2005 – Computer Link Arrangements, is hereby repealed.

(2) 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 were taken or commenced under this Rule.