

Insurance Intermediaries Rule 25 of 2014

Complaints-Handling by Insurance Intermediaries

Rule pursuant to article 4 of the Act

1. (1) This Insurance Intermediaries Rule on Complaints-Handling by Insurance Intermediaries (“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 July 2014.

Application

2. (1) This Rule applies on continuing basis to an individual or a company enrolled, in the Agents List, Managers List or Brokers List and carrying out insurance intermediaries activities (the “insurance intermediary”).

(2) This Rule does not apply to a person enrolled in the Tied Insurance Intermediaries List to act on behalf of an authorised undertaking (the “tied insurance intermediary”) who receives a complaint for which an authorised undertaking is responsible, and the tied insurance intermediary concerned is not permitted to handle the complaint in terms of the tied insurance intermediary agreement entered into with the authorised undertaking.

(3) Where an insurance intermediary:

(a) receives a complaint on behalf of an insurance undertaking, and such intermediary is not authorised to handle such undertaking’s complaints, this Rule shall not apply and the insurance intermediary shall inform the complainant and direct the complaint to the relevant insurance undertaking;

(b) has entered into an agreement with an authorised undertaking to handle such undertaking’s complaints on its behalf, this Rule shall not apply, and such insurance intermediary shall apply Section 12.5 of Chapter 12 of Part B of the Insurance Rules issued under the Insurance Business Act instead.

Scope

3. (1) The scope of this Rule is to determine the arrangements of insurance intermediaries for handling insurance complaints.

(2) This Rule incorporates:

(a) the Guidelines on Complaints-Handling by Insurance Intermediaries published by EIOPA on the 27th November 2013; and

(b) the Report on Best Practices by Insurance Intermediaries in Handling complaints published by EIOPA on the 27th November 2013.

Definitions

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

“complaint” means a statement of dissatisfaction addressed to an insurance intermediary by a complainant relating to insurance intermediaries activities which such complainant has been provided with. Complaints-handling should be differentiated from claims-handling as well as from simple requests for execution of the contract, information or clarification;

“complainant” means a person who is presumed to be eligible to have a complaint considered by an insurance intermediary and has already lodged a complaint e.g. a policyholder, insured person, beneficiary and injured third party;

“sole trader” is an individual enrolled under article 13 of the Act.

Complaints Management Policy

5. (1) An insurance intermediary should ensure that:

(a) there is in place a “complaints management policy”. This policy should be defined and endorsed by the insurance intermediary’s senior management or where the insurance intermediary is a sole trader, by the sole trader himself, who should also be responsible for its implementation and for monitoring compliance with it;

(b) the “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 insurance intermediary through an adequate internal channel.

Complaints Management Function

6. An insurance intermediary 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 in relation to which a complaint has been lodged. In the case of a sole trader, the complaints management function may be exercised by the individual himself.

Registration

7. An insurance intermediary should register internally complaints, in the manner that seems best suited to the volume of complaints they receive (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

8. An insurance intermediary should analyse, on an on-going basis, complaints-handling data, to ensure that it identifies and addresses any recurring 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

9. An insurance intermediary 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 insurance intermediary;

(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

10. An insurance intermediary 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 insurance intermediary should

inform the complainant about the causes of the delay and indicate when the investigation by the insurance intermediary 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 paragraph (c) of this article), include a thorough explanation of the insurance intermediary's position on the complaint and that if the complainant is not satisfied with the way the complaint was resolved by the insurance intermediary, 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.

Reporting to the Authority

11. (1) An insurance intermediary should as a minimum keep a record of the number of complaints received, differentiated according to the class of business of insurance and the cause of complaint. An insurance intermediary should be in a position to provide information on its complaints and complaints-handling processes upon request by the Authority.

(2) Without prejudice to paragraph (1) of this article, where a complaint has been lodged with the Office of the Arbiter for Financial Services and the case has been decided, the insurance intermediary shall immediately provide the 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 insurance intermediary itself in terms of the Arbiter for Financial Services Act, (Cap.555), the insurance intermediary shall immediately notify the Authority that such an appeal has been lodged, and once such appeal has been decided, the insurance intermediary shall provide the Authority with the final decision of the Court.

Best practices by an insurance intermediary

12. For the purposes of this Rule, guidelines on best practices for handling complaints by an insurance intermediary and specific examples of the areas to be considered by an insurance intermediary when handling complaints are set out in the Schedule to this Rule.

S C H E D U L E

Best practices by insurance intermediaries in handling complaints

Content of a “complaints management policy”

1. It is considered best practice for an insurance intermediary’s “complaint management policy” to include processes for:
 - (a) lodging a complaint with the insurance intermediary by any reasonable means (including complaints submitted by an authorised representative e.g. a family member or a solicitor) and confirmation that this is free of charge;
 - (b) handling complaints received, including deadlines etc;
 - (c) the fair treatment of complainants;
 - (d) the proper treatment of a complainant’s information and personal data, according to the applicable legal framework;
 - (e) preventing, identifying and managing possible situations of conflicts of interest in complaints management;
 - (f) the adequate training of staff participating in complaints handling within the insurance intermediary;
 - (g) internal reporting, follow up and monitoring of compliance with the “complaints management policy”.

Endorsement of the “complaints management policy”

2. It is considered as best practice that a complaints management policy be defined and endorsed by the insurance intermediary’s senior management or where the insurance intermediary is a sole trader, defined by the sole trader himself. “Senior management” may mean different things depending on the size and structure of the insurance intermediary. The Authority considers that where the insurance intermediary is a sole trader, such individual may not have the same formal governance processes as larger insurance intermediaries and therefore a formal endorsement process may not be necessary. The Authority however considers that it is important that the complaints policy forms part of the formal processes followed by a sole trader.

Organisation of the internal complaints management function

3. Irrespective of the specific model that an insurance intermediary may have adopted for complaints handling, it is considered best practice for an insurance intermediary to:
 - (a) appoint one or more senior manager(s) with overall regulatory responsibility for the complaints management function or process, as appropriate;
 - (b) ensure the necessary internal flows of information and reporting lines for complaints management, as appropriate;
 - (c) control the effective and efficient treatment of complaints.
4. Where the insurance intermediary is considered as small, (especially in the case of sole traders) it might not be possible for the insurance intermediary to structure its internal organisation in such a way that it has a separate complaints management unit. However, the insurance intermediary should still ensure that they operate in a manner that ensures that complaints are handled fairly and impartially and (with the exception of sole traders) they identify and mitigate conflicts of interest.

Registration

5. Without prejudice to the provisions of the Data Protection Act (Cap. 440) and any applicable provisions of Maltese law relating to record keeping, it is considered best practice for:
 - (a) the register of complaints held by an insurance intermediary to contain all the necessary information on the complaints, including:
 - (i) the subject of the complaint;
 - (ii) data on the complainant;
 - (iii) date of receiving and answering the complaint;
 - (iv) result/outcome of the complaints handling procedure;
 - (iv) class of business to which the complaint relates;
 - (b) documentation relating to the complaint to be kept and archived in a secure manner for a reasonable period of time based on the nature of the complaint;

(c) an insurance intermediary to provide information to complainants regarding their complaint, where reasonably requested by complainants.

Reporting

6. The Authority should be informed of the identity and contact details of the individual/s involved in the complaints management function as referred to above and any changes thereof.

Internal follow-up of complaints-handling

7. It is considered best practice for an insurance intermediary to have in place the following processes in order to comply with the proper internal follow-up of complaints:
 - (a) the collection of management information on the causes of complaints and the products and services complaints relate to;
 - (b) a process to identify the root causes of complaints and to prioritise dealing with the root causes of complaints;
 - (c) a process to consider whether the root causes identified may affect other processes or products;
 - (d) a process for deciding whether root causes discovered should be corrected and how this should be done; and
 - (e) regular reporting or information on recurring problems are to be received by senior management.