

Insurance Intermediaries Rule 3 of 2007

Disclosure of Information for Clients

Rule pursuant to article 4 of the Act

1. (1) This Insurance Intermediaries Rule on the disclosure of information for clients (“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 January 2007.

Application

2. (1) This Rule applies, on continuing basis, to a person enrolled in the Agents List, Managers List or Brokers List and carrying out insurance intermediaries activities (the “enrolled person”). In the case of persons enrolled in the Managers List, this Rule 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, or where an insurance manager accepts an appointment from a company enrolled in the Brokers List under article 13 of the Act.

(2) This Rule does not apply to enrolled persons where the insurance intermediaries activities relate to business of reinsurance.

Scope

3. The scope of this Rule is to determine the information which an enrolled person shall disclose to a client before negotiations on any contract of insurance are concluded, and if necessary upon amendment or renewal thereof, in any of the circumstances specified in this Rule.

The specified circumstances

4. (1) Before any negotiations on any contract of insurance are concluded, an enrolled person shall provide the client with the following information:

(a) the name and address of the enrolled person;

(b) the list in which the enrolled person has been enrolled and the means for verifying that such person has been enrolled;

(c) the procedure for submitting a complaint to the enrolled person in relation to insurance intermediaries activities carried out by that person and in the case that one remains dissatisfied with the manner in which a complaint is handled, the complainant may subsequently be referred to the Office of Arbiter for Financial Services established under the Arbiter for Financial Services Act, (Cap.555).

(2) If an enrolled person is connected with an authorised undertaking, the enrolled person shall disclose that connection to a client in accordance with article 8 of this Rule. For the purposes of this Rule, an enrolled person is connected with an authorised undertaking if -

(a) the enrolled person, or any partner, director, controller or manager of the enrolled company, is a partner, director, controller or manager of the authorised undertaking;

(b) the authorised undertaking, or any partner, director, controller or manager of the authorised undertaking, is a partner, director, controller or manager of the enrolled person;

(c) the enrolled person holds a qualifying shareholding in the authorised undertaking;

(d) the authorised undertaking holds a qualifying shareholding in the enrolled company.

(3) For the purposes of paragraph (2) of this article, “authorised undertaking” means an undertaking authorised under the Insurance Business Act, 1998 to carry on the business of insurance and a European insurance undertaking having its head office in a Member State or an EEA State establishing a branch or providing services in Malta in exercise of a European right.

(4) In addition to the information to be disclosed under paragraphs (1) and (2) of this article, an enrolled person shall inform the client in relation to the contract that is provided, whether:

(a) he/it gives advice based on the obligation to provide a fair analysis; or

(b) he/it is under a contractual obligation to carry out insurance intermediaries activities exclusively with one or more authorised undertakings. In that case, he/it shall, provide the names of those authorised undertakings; or

(c) he/it is not under a contractual obligation to conduct insurance intermediaries activities exclusively with one or more authorised undertakings and does not give advice based on the obligation to provide a fair analysis. In that case, he/it shall, at the clients' request, provide the names of the authorised undertakings with which he/it may and does conduct business,

Provided that, where information is to be provided solely at the client's request, the client shall be informed that he has the right to request such information.

(5) For the purposes of paragraph (4) of this article, "fair analysis" means providing advice on the basis of an analysis of a sufficiently large number of contracts of insurance available on the market, to enable the enrolled person to make a recommendation, in accordance with professional criteria, regarding which contract of insurance would be adequate to meet the client's needs.

(6) Before any negotiations on any contract of insurance are concluded, an enrolled person shall take reasonable steps to ensure that, if in the course of carrying out insurance intermediaries activities he/it makes a personal recommendation, the personal recommendation is suitable for the client's demands and needs at the time the personal recommendation is made.

(7) For the purposes of paragraph (6) of this article, in assessing the client's demands and needs, the enrolled person shall:

(a) seek such information about the client's circumstances and objectives as might reasonably be expected to be relevant in enabling the enrolled person to identify the client's requirements. This shall include any facts that would affect the type of insurance recommended, such as any relevant existing insurance;

(b) have regard to any relevant details about the client that are readily available and accessible to the enrolled person, for example,

in respect of other contracts of insurance on which the enrolled person had provided advice or information; and

(c) explain to the client his duty to disclose all circumstances material to the insurance and the consequences of any failure to make such a disclosure, both before the contract of insurance commences and throughout the duration of the contract; and take account of the information the client discloses.

(8) Without prejudice to the foregoing paragraphs of this article where -

(a) pursuant to article 31 of the Act, a person enrolled in the Brokers List proposes to place a contract of insurance with:

(i) an insurer which is not an undertaking authorised under the Insurance Business Act, 1998; or

(ii) a European insurance undertaking having its head office in a Member State or an EEA State establishing a branch or providing services in Malta in exercise of a European right,

the enrolled person shall, before placing the contract with such insurer, disclose to a client the information set out in article 5 of this Rule;

(b) a person enrolled in the Brokers List has made or entered into any underwriting agreement or computer link arrangement with any authorised undertaking, the enrolled person shall, before placing any business under the underwriting agreement or computer link arrangement, disclose that fact to a client and:

(i) if the underwriting agreement or computer link arrangement is made or entered into with an authorised undertaking, comply with the requirements of article 6 of this Rule; and

(ii) if the underwriting agreement or computer link arrangement is made or entered into with a member of Lloyd's, comply with the requirements of article 7 of this Rule.

Placing of client's insurance requirements with unauthorised insurers

5. Where, pursuant to article 31 of the Act, a person enrolled in the Brokers List proposes to place a client's insurance requirements with an insurer which is not an undertaking authorised under the Insurance Business Act, 1998 or is a European insurance undertaking, the enrolled person shall inform the client of the following -

(a) that the insurer is not an undertaking authorised under the Insurance Business Act, 1998 and, consequently, the management and solvency of the insurer are not supervised by the Authority;

(b) if the insurer becomes insolvent, the client may not be protected by the Protection and Compensation Fund established by the Insurance Business Act, 1998;

(c) that the insurer may not have a general representative in Malta and the client may have difficulty in suing or executing judgement against the insurer;

(d) whether the parties to the contract are entitled to choose the law applicable to the contract;

(e) that any premiums to be paid in respect of a contract and any claim that may arise out of the contract may have to be paid in a foreign currency which is subject to foreign exchange rate fluctuations.

Underwriting agreements or Computer Link Arrangements with authorised undertakings

6. (1) A person enrolled in the Brokers List ("insurance broker") may make or enter into an underwriting agreement or a computer link arrangement with any authorised undertaking solely in respect of general business.

(2) The primary purpose of this practice is to facilitate prompt and efficient acceptance of business.

(3) An insurance broker's first duty will, however, be to its existing and future clients rather than to the authorised undertaking with which the insurance broker made or entered into an underwriting agreement or a computer link arrangement.

(4) If an insurance broker is in a position to place business from its own clients under the underwriting agreement or the computer link arrangement, the insurance broker has a potential conflict of interest.

(5) An insurance broker shall not accept business from a client under any underwriting agreement or a computer link arrangement made or entered with the undertaking if to do so will not be in the client's best interest.

(6) Where an insurance broker accepts its own client's risk on behalf of any authorised undertaking under any underwriting agreement or a computer link arrangement, the insurance broker shall disclose that fact in writing to the client.

Placing of client's insurance requirements with members of Lloyd's

7. (1) Where a person enrolled:

(a) in the Brokers List proposes to place a client's insurance requirements with a member of Lloyd's whether or not such member carries on business of insurance in Malta -

(i) through a person enrolled in the Agents List acting as coverholder for such member;

(ii) with a person enrolled in the Brokers List acting as coverholder for such member by virtue of an underwriting agreement or otherwise; or

(b) in the Agents List is acting as a coverholder for a member of Lloyd's,

the enrolled person shall inform the client of the following matters in accordance with article 8 of this Rule –

(i) state the relationship which the enrolled person has with the underwriting member of Lloyd's subscribing to the policy;

(ii) explain that a contract of insurance underwritten at Lloyd's is underwritten by underwriting members with several liability and not joint and is limited solely to the extent of each Lloyd's underwriting member's subscription. The subscribing Lloyd's underwriting members are not responsible for the

subscription of any co-subscribing Lloyd's underwriting member or other insurer who for any reason does not satisfy all or part of its obligations. However, the person should also explain that:

(aa) the Lloyd's Central Fund may be made available at the discretion of the Council of Lloyd's to meet the liabilities of each of those underwriting members of Lloyd's who are not financially able to meet their own liabilities; and

(bb) in the eventuality of claims remaining unpaid in respect of contracts of insurance which are concluded in Malta and which are entered into by a Lloyd's approved Maltese coverholder due to the financial inability of an underwriting member of Lloyd's to meet its liabilities, limited compensation may be available to the client from the Protection and Compensation Fund established under the Insurance Business Act, 1998;

(iii) give the name and address of Lloyd's representative in Malta and explain that the representative of Lloyd's in Malta is authorised to act generally as judicial representative of, and accept service of any document on behalf of, Lloyd's and of each of its underwriting members and to file any judicial acts in the registry of any court or similar authority in Malta on behalf of Lloyd's or any of its underwriting members;

(iv) furnish all policy details as are specified by or under article 48A of the Insurance Business Act, 1998, particularly -

(aa) the number reference and date of the policy;

(bb) the identifying number of each of the syndicates subscribing to the policy; and

(cc) where known, the names of the underwriting members of Lloyd's comprising those syndicates.

(2) Where the contract is to be underwritten through a person enrolled in the Agents List acting as coverholder for the underwriting member of Lloyd's, the name and address of the insurance agent are to be provided.

Disclosures

8. (1) Any disclosure required to be made by this Rule shall be communicated to the client -

(a) on paper or in some other durable medium that is accessible to the client;

(b) in a clear and accurate manner, comprehensible to the client; and

(c) in the Maltese or English language or in a language agreed to by the parties.

(2) For the purposes of paragraph (1) of this article, “durable medium” means any instrument which enables the client to store information addressed personally to him in a way accessible for future reference for a period of time adequate to the purposes of the information and which allow the unchanged reproduction of the information stored. In particular, durable medium includes 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.

(3) Notwithstanding the provisions of sub-paragraph (a) of paragraph (1) of this article, the enrolled person shall verbally provide the information required by this Rule:

(a) whenever the client asks for the information; or

(b) whenever immediate cover is needed:

Provided that, in either case, the enrolled person shall, immediately after the contract of insurance is entered into, comply with paragraph (1) of this article.

(4) If the enrolled person makes use of telephone selling, the enrolled person shall ensure that the information given to the client complies with the Distance Selling (Retail Financial Services) Regulations, 2005. In that case, the enrolled person shall comply with paragraph (1) of this article immediately after the contract of insurance is entered into.

(5) No disclosure required to be made pursuant to paragraph (1) of this article shall be sufficient if the disclosure is accompanied by

any oral or written statement which somehow negatives, qualifies or otherwise reduces its impact.

(6) The burden of proof that any information required to be disclosed by this Rule has been disclosed rests on the enrolled person.

(7) Upon request by the Authority, an enrolled person should be in a position to produce to the Authority evidence that the information required to be disclosed by this Rule had been disclosed.

Repeals and Savings

9. (1) Without prejudice to article 4(2) of the Preliminary provisions, and saving the provisions of paragraph (2) of this article, Insurance Intermediaries Directive 3 of 1999 – Disclosure of Information for Clients, 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.

(3) The requirements of this Rule are without prejudice to the requirements of Section 12.2 of Chapter 12 of Part B of the Insurance Rules issued under the Insurance Business Act.