

Insurance Rule 3 of 2007

Information for Policyholders

Rule pursuant to article 4 of the Act

1. (1) This Insurance Rule on the information for policyholders of authorised companies (“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 company authorised to carry on business of insurance and a person enrolled under the Insurance Intermediaries Act, 2006 (the “insurer”). 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.

(2) This Rule does not apply to a company if its business of insurance is restricted to reinsurance or affiliated insurance.

Scope

3. The scope of this Rule is to determine -

(a) the information which an insurer is to communicate to a potential policyholder before a contract is concluded or to a policyholder during the term of a contract;

(b) the manner in which that information is to be furnished.

Information for policyholders

4. (1) The information which an insurer is to communicate to a potential policyholder or policyholder and the manner in which that information is to be furnished -

(a) as respects long term business:

(i) before concluding the contract, is the information set out in article 5 of this Rule;

(ii) during the term of the contract, is the information set out in article 6 of this Rule;

(b) as respects general business, before concluding the contract, is the information set out in article 7 of this Rule.

(2) Any information required to be furnished under this Rule 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.

Long term business: Before concluding a contract

5. (1) This article applies to a contract entered into by an insurer if -

(a) the effecting of the contract constitutes:

(i) the carrying on in Malta of long term business which is not business of reinsurance; or

(ii) the provision in Malta of long term business contracts;
and

(b) the commitment covered by the contract is a commitment where Malta is the country of the commitment.

(2) Before entering into a contract to which this article applies, the insurer shall furnish the other party to the contract with the information required by:

(a) paragraphs (3) and (4) of this article in the case of long term contracts of insurance other than linked long term contracts;
or

(b) paragraphs (3)(g)(i) and (k) and paragraphs (4) to (6) of this article in the case of linked long term contracts of insurance.

(3) The information required by this paragraph is -

- (a) a definition of each benefit and 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 and the means by which it may be terminated;

- (c) the method of paying premiums and the duration of the payments;

- (d) 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 insurer 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;

- (e) 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;

- (f) the premiums for each benefit, whether a main or supplementary benefit and, where applicable, 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;

(g) 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 insurer is insolvent and unable to meet its obligations under the contract;

(iii) 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 made available under the Protection and Compensation Fund Regulations, 2003;

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

(i) the basis on which such performance is measured is clearly furnished 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 insurer or the policies offered by the insurer;

(iv) the source of information is stated;

(i) 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;

(j) the arrangements for handling policyholders' complaints concerning contracts of insurance by the insurer including, the appointment of the Consumer Complaints Manager by the

Authority, without prejudice to the policyholder's right to take legal proceedings;

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

(i) if so, the law which the insurer proposes to choose; and

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

(4) The information required by this paragraph is -

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

(b) the country where the insurance company's head office is situated; and,

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

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

(ii) where the company is a company whose head office is in a country outside Malta, the address of the Malta branch of the company or the name and address of the insurance agent of the company through whom the contract is to be entered into.

(5) Where an insurance contract is a linked long term contract of insurance, the insurance company 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:

(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 company) 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 company, should be specified in the policy terms and conditions);

(ii) annual percentage management charges may be levied by the insurance company 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.

(6) 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

6. (1) This article applies where an insurer has entered into a contract –

(a) the effecting of which constitutes:

(i) the carrying on in Malta of long term business which is not business of reinsurance; or

(ii) the provision in Malta of long term business contracts; and

(b) the commitment covered by the contract is a commitment where Malta is the country of commitment.

(2) If during the term of the contract there is -

(a) any change in the information mentioned in subparagraphs (a) to (f) of paragraph (3) or paragraphs (4) to (6) of article 5 of this Rule; or

(b) an amendment of the law applicable to the contract,

the insurer shall inform the other party to the contract of the effect of the change.

(3) If the contract provides for the payment of bonuses, the insurer 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.

(4) There is a sufficient compliance with paragraph (3) of this article if the insurer furnishes 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 insurer 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.

(5) In this article “bonus” does not include a bonus the amount of which is specified in the contract.

General business: Before concluding a contract

7. (1) This article applies to a contract entered into by an insurer if -

(a) the effecting of the contract constitutes:

(i) the carrying on in Malta of general business which is not business of reinsurance; or

(ii) the provision in Malta of general business contracts; and

(b) the risk covered by the contract is a risk situated in Malta.

(2) Before entering into a contract to which this article applies, the insurer 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 insurer 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 insurer is insolvent and unable to meet its obligations under the contract;

(c) 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 made available under the Protection and Compensation Fund Regulations, 2003;

(d) the arrangements for handling policyholders' complaints concerning contracts of insurance by the insurer including, the appointment of the Consumer Complaints Manager by the Authority, without prejudice to the policyholder's right to take legal proceedings;

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

(f) the date of inception of the policy.

(3) Any relevant document issued by an insurer in relation to a contract to which this article applies shall state the name and address of the insurer and, if the contract is to be entered into through a branch or insurance agent, the name and address of the branch or insurance agent.

(4) In this article "relevant document", in relation to a contract to which this article applies, 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

8. (1) Any disclosure required to be made by this Rule 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.

(2) For the purposes of paragraph (1) of this article, “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.

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

(a) whenever the potential policyholder or policyholder asks for the information; or

(b) whenever immediate cover is needed,

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

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

(5) The burden of proof that any information required to be furnished under this Rule has been furnished in accordance with the requirements of this Rule rests on the insurer .

(6) Upon request by the Authority, an insurer should be in a position to produce to the Authority evidence that the information required to be disclosed by this Rule has been disclosed.

Repeals and Savings

9. (1) The requirements of this Rule are without prejudice to the requirements of the Distance Selling (Retail Financial Services) Regulations, 2005 (L.N.36 of 2005).

(2) Saving the provisions of paragraph (3) of this article, Insurance Directive 3 of 1999 – Information for Policyholders, is hereby repealed.

(3) 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 whatsoever were taken or commenced under this Rule.