

Insurance Rule 14 of 2008

Insurance Advertisements and Other Promotional Activities

Rule pursuant to article 48 of the Act

1. (1) This Insurance Rule on insurance advertisements and other promotional activities issued by companies authorised to carry on business of insurance (“this Rule”) is made by the Authority pursuant to, and for the purposes of, article 48 of the Act.

(2) This Rule shall come into force on the [2008].

Application

2. (1) This Rule applies, on continuing basis, to a company authorised to carry on business of insurance (the “company concerned”).

(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 guidelines on insurance advertisements and other promotional activities issued by companies concerned in Malta so that policyholders’ and prospective policyholders’ right to information which is not misleading is protected against unethical practice and insurance advertisements and other promotional activities so issued are carried out according to generally accepted ethical practice.

Definitions

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

“advertisement” means an insurance advertisement as defined in subarticle (1) of article 2 of the Act and includes a promotional activity and “advertisement issued” includes a promotional activity undertaken;

“issue”, in relation to an advertisement, includes causing or permitting an advertisement to be issued.

Advertisements to conform with guidelines

5. (1) The consent of the Authority is not required before any advertisement is issued. However, subarticle (2) of article 48 of the Act requires any advertisement issued to conform with guidelines determined by an Insurance Rule; hence the object of this Rule.

(2) The guidelines governing advertisements referred to in paragraph (1) of this article as determined by this Rule are -

(a) where advertisements relate to both long term business and general business, those set out in article 6 of this Rule;

(b) where advertisements relate solely to long term business, in addition to the guidelines set out in article 6 of this Rule, those set out in article 7 of this Rule;

(c) where the advertisement relates solely to linked long term contracts of insurance, in addition to the guidelines set out in articles 6 and 7 of this Rule, those set out on article 8 of this Rule.

(3) Any requirement determined by this Rule to be included in any advertisement shall be stated prominently, clearly and intelligibly.

(4) Any advertisement issued by a company concerned shall state that the company issuing the advertisement is a company authorised to carry on business of insurance, regulated by the Malta Financial Services Authority (“the authorisation statement”).

(5) Any advertisement issued by a company concerned which is a company incorporated with a share capital which states in the advertisement the amount of the authorised capital of the company 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.

(6) Every company concerned shall when issuing an advertisement ensure that:

(a) the advertisement is approved by the company’s compliance officer or alternatively by any officer formally

authorised by the company to do so. Advertisements may also be approved by third parties such as lawyers on behalf of the company. Whatever practical arrangements are put in place for the approval of advertisements, the company concerned shall remain responsible; and

(b) it keeps a record of all advertisements issued by the company, including the date of issue, details of the publication in which the advertisement was published and evidence of approval of the advertisement pursuant to sub-paragraph (a) of this paragraph.

(7) The company concerned shall keep a separate record of all advertisements issued by its enrolled insurance agents, insurance managers and tied insurance intermediaries and approved by it.

(8) For the purposes of paragraphs (6) and (7) of this article, the words “keep a record of all advertisements” means that the company concerned is required to keep a copy of each, different kind of advertisement issued or approved by it, for a period of not less than 5 years.

(9) An advertisement should not make unfair, incorrect or unverifiable comparisons with competing companies or products.

(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 company concerned or a close relative of any official or employee of the company concerned 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 advertisements relating to long term business and general business

6. (1) The guidelines governing advertisements relating to both long term business and general business are set out in the following paragraphs of this article.

(2) When issuing an advertisement, the company concerned shall:

(a) avoid taking any improper advantage of any characteristic or circumstances that may make policyholders or prospective policyholders vulnerable (e.g. by exploiting their lack of experience or knowledge);

(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.

(3) 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 company concerned 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 so long as it remains relevant to the subject matter of the advertisement;

(c) a statement that may be interpreted that a company concerned is an insurer if that is not the case;

(d) a statement of opinion held by any person (whether that person is the company concerned or any other person) which the company concerned 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;

(e) a misleading statement about the policies of insurance issued by, or the resources of, or available to, the company concerned;

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

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

(4) 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 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.

(5) (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, “a company authorised and regulated 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.

(6) An advertisement shall -

(a) identify the company concerned 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.

(7) Any advertisement issued by a company concerned 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 company shall, as far as practicable, conform with the requirements of this Rule.

(8) A company concerned 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.

(9) 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.

(10) Where a company concerned 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 company concerned, the company 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.

(11) Where an advertisement is issued in accordance with paragraph (10) of this article, the company concerned shall ensure that the advertisement -

(a) identifies in same prominence both the company concerned and the agent which issued it;

(b) contains a statement that the company concerned 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 company concerned;

(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) 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 rates fluctuations.

(13) 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 company concerned, the company is likewise required to satisfy or comply with the requirements of this Rule.

Guidelines governing advertisements relating solely to long term business

7. (1) The guidelines governing advertisements relating solely to long term business, in addition to the guidelines governing advertisements relating to both long term business and general business set out in article 6 of this Rule, are set out in the following paragraphs of this article and in the case of linked long term contracts of insurance, are those set out in article 8; and, the guidelines governing advertisements set out in article 6 of this Rule, in so far as they relate solely to long term business, shall be read and construed as one with the guidelines set out in this article and in article 8.

(2) 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 company concerned or the policies offered by the company;

(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.

(3) An advertisement relating to a 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.

(4) 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 company concerned of its obligations, the advertisement shall not contain any matter which implies that there is such a guarantee.

(5) Subject to article 8, 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 matters which may affect the policyholder’s ability to benefit from it;

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

8. (1) Where an insurance contract is a linked long term contract of insurance, a company concerned 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 full amount invested;

(c) in the case where the investment element is guaranteed, include in 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, that the guarantee is from a firm within the same group as the company concerned;

(2) Where an advertisement referred to in paragraph (1) of this article 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, 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 paragraph (g) of this article;

(c) it should contain appropriate risk warnings including the following: “the value of investments may fall as well as rise”. This together with other appropriate risk 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 TV adverts, 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. Such captions shall always have a black background and white text, in a bold font, not italicised, which should never exceed four lines on each caption and which may be update at intervals of not less than 4 seconds during broadcast of the visual;

(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 the annualised rate and on the condition that the period selected is not exceptional.

(3) A price box for linked long term contracts of insurance shall include:

- (a) the name and contact details of the authorised company;
- (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.

Repeals and Savings

9. (1) Saving the provisions of paragraph (2) of this article, Insurance Directive 14 of 1999 – Insurance Advertisements and Other Promotional Activities, is hereby repealed.

(2) Every action, directive, instruction, guideline or order whatsoever taken or commenced thereunder, in so far as insurance companies are concerned, shall continue to be valid and in force, as if such action, directive, instruction, guideline or order were taken or commenced under this Rule.