



INSURANCE (CONDUCT OF BUSINESS)(NON LONG TERM BUSINESS) CODE 2018

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Statutory Document No. 2018/0290



Insurance Act 2008

INSURANCE (CONDUCT OF BUSINESS)(NON LONG TERM BUSINESS) CODE 2018¹

Laid before Tynwald: 20 November 2018

Coming into Operation: 1 January 2019

The Isle of Man Financial Services Authority makes the following Guidance Notes under section 51 of the Insurance Act 2008 as binding guidance, after carrying out the consultations required by section 51(6) of that Act.

1 Title

These Guidance Notes are the Insurance (Conduct of Business)(Non Long Term Business) Code 2018.

2 Commencement

These Guidance Notes come into operation on 1 January 2019.

3 Interpretation

In these Guidance Notes —

“**the Act**” means the Insurance Act 2008;

“**board**” means the board of directors of the regulated entity or, if the regulated entity has no board of directors, its equivalent governing body;

“**Class**” means a class of insurance business as set out within the table in the Regulations;

“**durable medium**” means any instrument which enables the recipient to store information in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored; “**policyholder**” includes a prospective policyholder;

“**regulated entity**” means an entity authorised to carry on insurance business of Class 3, 4, 5, 6, 7, 8 or 9;

“**the Regulations**” mean the Insurance Regulations 1986¹; and

“**senior management**” means, in relation to a regulated entity, any person whose appointment is required to be notified to the Authority under Part 7 of the Act, excluding its –

- (a) non-executive directors;
- (b) external auditor; and
- (c) controllers, provided that such a controller is not a person whose appointment must also be notified to the Authority under the Act other than as a controller.

4 Application

- (1) These Guidance Notes apply to a regulated entity that sells contracts of insurance in respect of which any of Classes 3, 4, 5, 6, 7, 8 or 9 authorisation (and not Class 11 or 12) would be required to carry on an insurance business that includes the effecting or carrying out of such a contract.
- (2) For the purpose of determining a Class of insurance under (1), regard will be had only to the principal policyholder of the insurance contract and not to any additional party insured under the contract.

5 Fair treatment of policyholders – general principles

- (1) In paying due regard to its policyholders and treating them fairly, a regulated entity must –
 - (a) establish and implement policies and procedures on the fair treatment of policyholders as an integral part of its business and culture; and
 - (b) ensure that its policies and procedures for the fair treatment of policyholders are set out in a written document and are provided to all relevant staff.
- (2) Procedures on the fair treatment of policyholders must include a consideration of how a regulated entity –
 - (a) develops and markets its products in a way that pays due regard to the interests of policyholders;
 - (b) ensures policyholders are provided with clear information before, during and after the point of sale;
 - (c) only permits distribution methods that are appropriate to the regulated entity’s products and its policyholders’ needs;
 - (d) deals with policyholder complaints and disputes in a fair and transparent manner;

¹ G.C. 319/86

- (e) manages the reasonable expectations of policyholders;
 - (f) monitors the regulated entity's performance with respect to the fair treatment of policyholders;
 - (g) ensures that its staff and management are aware of their obligations in relation to the fair treatment of policyholders including through regular training;
 - (h) ensures that any performance and reward strategies for a regulated entity's staff and management are aligned with the principles of the fair treatment of policyholders and do not result in unfair policyholder outcomes; and
 - (i) ensures that it promotes its products and services in a manner that is clear, fair and not misleading.
- (3) The responsibility for the design, implementation and monitoring of adherence to the policies and procedures in (1) rests with the board and senior management of the regulated entity.
- (4) A regulated entity must regularly review, and update where necessary, the policies and procedures in (1) to ensure that they remain valid and up to date.

6 Product development, marketing and promotion

- (1) A regulated entity must establish and implement product development oversight and governance arrangements designed to treat policyholders fairly. Such arrangements must aim to minimise the risk of potential policyholder detriment, provide for a proper management of conflicts of interest and ensure that the interests of policyholders are duly taken into account.
- (2) A regulated entity's product development procedures must identify and manage any conflicts of interest in the product design.
- (3) A regulated entity must take all reasonable steps to identify the intended target market for its products, and maintain a record of this.
- (4) A regulated entity must only design and market products with features, charges, fees, restrictions, exclusions and limitations that meet the interests, objectives and characteristics of the identified target market. When deciding whether a product meets the interests, objectives and characteristics of a particular target market, the regulated entity must include the identification of any groups of policyholders for which the product is not considered suitable, as may be the case.
- (5) A regulated entity must monitor its products on an ongoing basis to ensure that the product continues to meet the interests, objectives and characteristics of the identified target market. Where the regulated entity identifies a risk of policyholder detriment after designing and bringing products to the market or after carrying out product monitoring, the

regulated entity should take timely, appropriate and proportionate action to mitigate the situation and prevent the re-occurrence of detriment.

- (6) A regulated entity must ensure that any staff tasked with designing a product possess the appropriate skills, knowledge and competence and are appropriately trained in order to understand the operation of the product's main features and characteristics as well as the interests, objectives and characteristics of the target market.
- (7) A regulated entity must assess the appropriateness of the distribution channels for its products and target market.
- (8) In selecting a distribution channel and promoting its products through it, a regulated entity must provide the intermediary with information which is –
 - (a) of an adequate standard; and
 - (b) clear, precise and up-to-date.
- (9) The information provided to an intermediary must be sufficient to enable the intermediary to –
 - (a) understand and place the product properly to the target market;
 - (b) identify the target market for which the product is designed and also identify any group(s) of consumers, whose interest, objectives and characteristics the product is considered likely not to meet; and
 - (c) meet any other obligations under applicable legislation with regard to the target market, notably with regard to the relevant information that needs to be communicated to policyholders.
- (10) A regulated entity must take all reasonable steps to ensure that distribution channels act in compliance with the objectives of its product oversight and governance arrangements. Where a regulated entity considers that a distribution channel does not meet the objectives of the regulated entity's product governance oversight arrangements, the regulated entity must take timely remedial action with regard to the distribution channel.
- (11) If a regulated entity outsources the design and marketing of its products to a third party, the regulated entity retains full responsibility for compliance with its product oversight and governance arrangements as described in these Guidance Notes.

7 Product information

- (1) A regulated entity must ensure that a policyholder is given appropriate information about a product in good time so that the policyholder can make an informed decision about the product. In determining what constitutes "in good time", a regulated entity must consider the time

necessary for a prospective policyholder to read and understand the information.

- (2) In compliance with (1), the following information must be provided to a policyholder in a durable medium before he or she enters into a contract —
- (a) the name of the insurer providing the product;
 - (b) information about the type of insurance;
 - (c) a summary of the insurance cover, including the main risks insured, the insured sum and a summary of the excluded risks;
 - (d) the level of premium and the date it is due to be paid;
 - (e) the level of any excess payable;
 - (f) any additional fees and charges associated with the product;
 - (g) the main exclusions where claims cannot be made;
 - (h) the obligations at the start of the contract;
 - (i) the obligations during the term of the contract;
 - (j) the obligations in the event a claim is made;
 - (k) the term of the contract including the start and end dates of the contract;
 - (l) the means of terminating the contract;
 - (m) the existence and duration of the right of cancellation;
 - (n) the contact details for notifying a claim;
 - (o) how to complain to the regulated entity, including that complaints may subsequently be referred to the Isle of Man Financial Services Ombudsman Scheme; and
 - (p) whether or not there is any compensation scheme or policyholder protection scheme applicable to the product.
- (3) The information in paragraph (2) must either be in a separate document or within a prominent separate section of another document clearly identifiable as containing key information that the policyholder should read.

8 Procedures for granting terms of business to intermediaries

- (1) This paragraph applies to a regulated entity which permits the distribution of its products through an intermediary acting on behalf of a policyholder.
- (2) A regulated entity must establish documented procedures for—
- (a) the appointment intermediaries; and
 - (b) the entering onto of written terms of business with intermediaries.

- (3) The procedures referred to in paragraph (2) must take account of any requirement as may be prescribed by the Island's Anti-Money Laundering and Countering the Financing of Terrorism legislation, relevant to the regulated entity entering into written terms of business with intermediaries.
- (4) Terms of business established under paragraph (2) must, as a minimum, require the applicant for terms of business to attest that—
 - (a) the introduction of business by the intermediary to the regulated entity pursuant to the terms of business does not breach any legal obligation or laws of any competent authority in any relevant jurisdiction;
 - (b) the intermediary will use all reasonable efforts to comply with the terms of business;
 - (c) the intermediary will at all times maintain every obligatory licence, authorisation and registration and comply with or procure compliance by his officers and agents (as the case may be) with all applicable laws and regulations of jurisdictions in which they operate and notify the regulated entity without delay in the event of any material breach or non-compliance with same;
 - (d) the intermediary will comply with all anti-money laundering and countering the financing of terrorism laws, regulations, instructions, guidance or rules applicable to the applicant, issued in the Island or elsewhere;
 - (e) where documents and other information are provided by a regulated entity for the attention of the policyholders via the intermediary, the intermediary will ensure that the policyholders receive such information in good time to enable them to properly consider that information; and
 - (f) if the intermediary will have responsibility for claims handling under the terms of business, the intermediary has documented claims handling procedures that are fair and transparent to policyholders.

9 Procedures for monitoring terms of business with intermediaries

A regulated entity must establish procedures to regularly monitor intermediaries with whom it has entered into terms of business to ensure that any such intermediary acts within the terms of the agreement and remains an appropriate distribution channel for its products and target markets.

10 Cancellation rights for non-long term insurance business

- (1) Contracts of insurance of the description falling within Class 3, 4, 5, 6, 7, 8 or 9, as set out in the Insurance Regulations 1986, must be a cancellable contract.

- (2) A policyholder must have the right to cancel such a contract within the cancellation period.
- (3) When a policyholder exercises the right to cancel a contract, the policyholder is only required to pay for the service actually provided under the contract.
- (4) By exercising a right to cancel, a policyholder withdraws from the contract and the contract is terminated.

11 Regulated entity's obligation on cancellation

- (1) If a policyholder exercises the right to cancel a contract, the regulated entity must, without any undue delay and no later than within 30 days, return to a policyholder any sums it has received from the policyholder in accordance with the contract, except as specified in paragraph 10.
- (2) This period begins from the day on which the regulated entity receives the notification of cancellation.

12 Cancellation disclosure requirements

- (1) A regulated entity must disclose to the policyholder (in good time before, or immediately after, the policyholder is bound by a contract that attracts a right to cancel)—
 - (a) the existence of a right to cancel the contract, the cancellation period and any conditions attaching to the exercise of the right to cancel; and
 - (b) practical instructions to the policyholder on how to exercise the right to cancel.
- (2) The information required to be disclosed to a policyholder under paragraph (1) must be in a durable medium.

13 Start of and duration of the cancellation period

- (1) The cancellation period commences on the date of the delivery of the policy contract documentation and any accompanying pre-contractual information as may be required under applicable legislation made in the Island or elsewhere.
- (2) The regulated entity must determine, for each of its products, the appropriate cancellation period, which must be at a minimum 14 days.

14 Exercising a right to cancel

- (1) A policyholder may exercise the right to cancel a contract before the expiry of the cancellation period disclosed in accordance with paragraph 12.

- (2) This condition is deemed to have been observed if notification to cancel from the policyholder is dispatched before the cancellation period expires and is subsequently received in a durable medium accessible to the regulated entity.

15 Records

Without limiting any other applicable legislative or regulatory requirement, a regulated entity must maintain records concerning the exercise of a right to cancel a contract in accordance with the requirements of paragraph 5.8 of the Corporate Governance Code of Practice for Regulated Insurance Entities².

16 Post-sale disclosure requirements

- (1) A regulated entity must ensure a policyholder receives, on an ongoing basis, adequate and appropriate information on the product and services provided by the regulated entity.
- (2) A regulated entity must provide evidence of cover promptly after inception of an insurance policy.
- (3) Without limiting the requirements in the Corporate Governance Code of Practice for Regulated Insurance Entities, a regulated entity must establish procedures to ensure effective communication to policyholders of information on the regulated entity. Such information must include –
 - (a) any change in the name of the regulated entity, its legal form and the address of its registered office and of any of its other offices, as appropriate; and
 - (b) any transfer of the regulated entity's voting shares which has a material effect on its immediate or ultimate control.
- (4) Where an insurance contract issued by a regulated entity allows for changes in terms and conditions, in exercising any change to terms and conditions, a regulated entity must disclose to the policyholder the policyholder's rights and obligations regarding such changes and obtain the policyholder's consent, as appropriate, in accordance with the terms and conditions.

17 Claims procedures for non-long term insurance businesses

- (1) A regulated entity must –
 - (a) handle claims promptly and fairly;
 - (i)
 - (b) restrict the request and use of information from policyholders notifying and submitting a claim to that which is relevant to decide a claim;

² SD0880/10

- (c) ensure that claims procedures do not discourage policyholders from making a claim;
 - (d) publish and provide reasonable guidance or a summary of its claims procedures to help policyholders make a claim;
 - (e) provide appropriate and timely information on the progress of claims to policyholders, or persons acting on their behalf;
 - (f) not unreasonably reject a claim (including by terminating or voiding a policy); and
 - (g) settle claims promptly once settlement terms are agreed.
- (2) For the purposes of paragraph 1(f), a rejection of a policyholder's claim is unreasonable (except where there is evidence of fraud) if it is rejected for any of the following reasons –
- (a) (under contracts requiring the disclosure by the policyholder of material facts) the non-disclosure of a fact material to the risk which the policyholder could not reasonably be expected to have disclosed;
 - (b) the non-negligent misrepresentation of a fact material to the risk;
or
 - (c) for breach of warranty or condition unless the circumstances of the claim are connected to the breach and unless the warranty is material to the risk and was drawn to the policyholder's attention before the conclusion of the contract.

MADE 1 NOVEMBER 2018

ENDNOTES

Table of Endnote References

¹ The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.