

Market Conduct Code for Insurance Brokers



FINANCIAL SERVICES AUTHORITY

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1. INTRODUCTION

The Financial Services Authority (herein referred to as “the Authority”) has a mandate to develop, formulate and enforce supervisory standards for the conduct of insurance and reinsurance businesses in Seychelles.

The Authority endeavors to have a mechanism for potential policyholders to have access to all material information before the conclusion of an insurance contract, to receive advice in a correct and meaningful manner in assessing their insurance requirements, to be informed about their rights and obligations for the duration of the contract, to be confident that they will provide correct and timely assistance from brokers to their clients in the event of a claim.

It is imperative to note that for a large number of market participants insurance products are difficult to understand and evaluate. They take the form of contractually agreed promises by the insurer to provide benefits or compensation (indemnity) to cover specified events or risks in exchange for certain obligations by the policyholder. As a result it is important for customers to have relevant, meaningful and understandable information, as far as possible in writing.

The Authority recognizes the role of brokers in the conduct of the insurance business and appreciates that only by them observing the code shall provide confidence and penetration in the insurance industry to be boosted.

The Authority further recognizes the fact that the brokers reflect the image of the insurance industry and their conduct is pivotal to the development of the industry.

It is important for brokers to have continued relationship with their clients even after the signing of the insurance contract or provision of service. Policyholders have a right to deal with honest, trustworthy and knowledgeable intermediaries.

The Authority hereby issues the code set out below, for observance by all insurance brokers in Seychelles, in order to enhance internationally acceptable insurance market conduct practices by the insurance brokers.

2. APPLICATION

This code is being issued by the Financial Services Authority (herein referred to as “the Authority”) and by the powers conferred by section 33 of the Financial Services Authority Act.

This code shall apply to all insurance brokers authorized by law to carry out insurance business as intermediaries under the Insurance Act, 2008 (herein referred to as “the Act”).

All the brokers licensed under the Insurance Act, 2008 by the Authority shall be required to adhere to this code in their conduct of the insurance business.

3. DEFINITIONS

The following key definitions apply:

“Address” means the point of contact and it includes the post office box, physical location, e-mail, fax and fixed/mobile telephone number;

“Broker service” means any act performed by a person for or on behalf of a client or an insurer in the course of his professional service.

“Customer/Clients” means a policyholder and or potential policyholder.

“Insurance broker” means a person who works for the policyholder in the insurance process, acting on behalf of the client, independent of insurers.

“insurance intermediation” means the promoting or facilitating of an insurance contract between an insurer and a purchaser, selling or attempting to sell insurance on behalf of an insurer, asking or urging potential purchaser to apply for a particular insurance product, or conferring with or giving advice to a potential purchaser concerning a particular insurance product by a person or entity who sells or arranges the insurance contract. Activities by an insurer are not included.

“intermediary service” means any act performed by a person for or on behalf of a client or an insurer:

- (a) The result of which is that a client may enter into any transaction in respect of an insurance contract with an insurer; or
- (b) With a view to –
 - (i) buying, selling or otherwise dealing in, managing, administering, keeping in safe custody, maintaining or servicing an insurance contract entered into by a client from an insurer;
 - (ii) collecting or accounting for premiums or other moneys payable by the client to an insurer in respect of an insurance contract; or
 - (iii) Assist in the handling of claims.

4. OBJECTIVES

This code sets out the market conduct and service standards expected of insurance intermediaries. They are meant to provide general guidance and are not intended to replace or override any legislative provisions or written directives issued under the Insurance Act in respect of business conduct requirements specifically applicable to insurance brokers.

This code should be read in conjunction with the provisions of the Act as well as notices, circulars and other codes that the Authority may issue from time to time.

5. PRINCIPLES FOR CONDUCT OF INSURANCE BUSINESS

5.1 Client Relationship

- 5.1.1 A broker shall observe high standards of integrity and fair dealing in the conduct of its business.
- 5.1.2 A broker has an obligation to avoid misleading and deceptive acts or misrepresentations to the client. It should not seek to exclude or restrict any duty or liability to a customer that it has under a legislative framework and/or accepted practices. Additionally, it should not seek to rely unreasonably on any provision of a contract seeking to exclude or restrict any such duty or liability.
- 5.1.3 A broker shall act with due skill, care, and diligence in the conduct of its business and in its dealings with customers.
- 5.1.4 A broker shall ensure that the client understands his/her relationship with the broker and on whose behalf the broker is acting.
- 5.1.5 In assessing the customers' needs, the broker shall:
- (i) Seek such information about the customer's circumstances and objectives as might reasonably be expected to be relevant in enabling the insurance broker to identify the customer's requirements. This shall include any facts that would affect the type of insurance proposed, such as any relevant existing insurance contract; and
 - (ii) Explain to the customer his duty to disclose all circumstances material to the insurance and the consequences of any failure to make such a disclosure, both before the insurance contract commences and throughout the duration of the contract; and take into account the information that the customer discloses.
- 5.1.6 Where a broker is responsible for providing advice for its customers, it must seek from them such information about their circumstances and objectives as may be appropriate with regard to the services requested. Documentary evidence must be obtained in this respect.
- 5.1.7 All information in possession of a broker relating to a client shall be kept confidential. A broker shall adopt documented policy and procedures that are designed to ensure that information about the client is kept confidential and secure.

5.2 Sales Conduct

- 5.2.1 A broker must take reasonable steps to ensure that, if in the course of insurance negotiation, it makes any personal recommendation to a customer to buy an insurance product, the personal recommendation is suitable for the customer's needs at the time the personal recommendation is made.
- 5.2.2 Where the broker makes personal recommendation to the customer that does not meet all of the customer's needs as requested, the broker shall identify to the customer, at the point at which the personal recommendation is made, the needs that are not met by that insurance product.
- 5.2.3 The personal recommendation to be given by the broker should be based on the fact given by the customers and on the customer's existing insurance cover. If the broker is aware that the customer's existing insurance cover is likely to significantly affect the suitability of any personal recommendation that the insurance broker might make, the broker must either:
- (i) Not make a personal recommendation until details of the insurance cover are made available; or
 - (ii) If it makes a personal recommendation, make clear to the customer that this may not be suitable because the broker has not taken into account full details of the customer's existing insurance cover.
- 5.2.4 In assessing whether an insurance product is suitable to meet a customer's needs, an insurance broker must take into account at least the following matters:
- (i) Whether the level of cover is sufficient for the risks that the customer wishes to insure;
 - (ii) The cost of the product, where this is relevant to the customer's needs; and
 - (iii) The relevance of any exclusion, excess, limitations or conditions in the contract.
- 5.2.5 A broker shall explain when and how the premium is payable and how such premium is to be collected and explain the process to follow in the event of a loss.
- 5.2.6 A broker while making a sale to a client shall ensure that the customer must sign the proposal form.

5.3 Disclosure of Information to Customers

- 5.3.1 A broker shall provide clients with adequate information about their business including their business address and telephone number.
- 5.3.2 When providing advice to, or arranging contracts of insurance for the client, a broker shall make full and adequate disclosure of all facts necessary for their clients to make an informed decision.
- 5.3.3 A broker shall explain all the essential provisions contained in the contract of insurance which they are recommending so as to ensure as far as possible that their client understands what insurance cover they are buying.
- 5.3.4 A broker shall draw their client's attention to any conditions or any exclusions and any warranty applying to the contract of insurance.
- 5.3.5 A broker shall, disclose the amount of commission and, or fee paid by the insurer under any relevant contract of insurance the client is buying.
- 5.3.6 The broker shall give to the customer the following information before the conclusion of the insurance contract:
- (i) Name of the insurer undertaking the risk;
 - (ii) Type of insurance;
 - (iii) Significant features and benefits of the policy;
 - (iv) The premium to be paid by the customer for the insurance product;
 - (v) Notice of the possibility that other taxes or costs and, or benefit may exist in respect of the insurance contract;
 - (vi) The existence of the right of cancellation and, where applicable, the duration of the cancellation period and the conditions for exercising the right to cancel, including information on penalties that may arise thereon;
 - (vii) A telephone number or address through which a claim may be notified; and
 - (viii) That any other information as may be required is available on request.

5.4 Explanation of Information in the Contract

- 5.4.1 Every broker shall:
- (i) Provide the list of insurer(s) participating under the insurance contract and advise any subsequent changes thereafter;

- (ii) Explain all the essential provisions of the cover afforded by the policy recommended by the broker so that, as far as possible, the prospective client understands what is being purchased;
- (iii) Quote terms exactly as provided by insurer;
- (iv) Provide the client with prompt written confirmation that insurance has been effected. If the final policy wording is not included with this confirmation, the same shall be forwarded expeditiously;
- (v) Notify changes to the terms and conditions of any insurance contract and give reasonable notice before any changes take effect; provided that no change shall be valid unless consented to by all parties;
- (vi) Advise their clients on the consequences of surrendering the policy in its early years.

5.5 Premium handling

5.5.1 Every insurance intermediary:

- (i) has a legal responsibility with respect to the premiums received or collected as insurance agents and brokers.
- (ii) must arrange adequate protection for client's funds when they are responsible for them.
- (iii) ensure that reasonable care is taken to organize and control its affairs responsibly and effectively, with adequate administrative systems.

5.5.2 A broker is required to maintain a separate bank account for its customers and adequate records of the amount of money transacted must be maintained and made available to the Authority when requested.

5.5.3 Money received by a broker must be paid to the insurer directly or into the insurer's specified bank account within seven (7) working days of receiving the money.

5.5.4 All premiums collected and received by a broker from a policyholder must be used solely for the purpose it is intended for; settlement of premiums owed to the insurers for the purchase of an insurance contract.

5.5.5 As part of effective record keeping, a broker must retain receipt books. Original receipts must be provided to policyholders as proof of payment and copies of the receipt must be sufficiently kept to show and explain the intermediary's transactions and commitments in respect of its client's money.

5.5.6 All cheques received issued by policyholders as settlement of premiums must be made payable to the insurance company.

5.5.7 A broker must not remit, on behalf of clients, payment for premiums or other transactions using their personal cheque.

5.5.8 In the event an insurer issues premium refund to a policyholder, the money must be promptly returned to the client or other authorised persons on whose behalf the money is held within three (3) working days.

5.6 Renewal of Insurance Policy

5.6.1 Every broker shall;

- (i) Ensure that its client is informed in writing of the expiry date of the insurance policy not less than one month before the expiry date. Provided where the services of the broker are terminated by the insurer in a manner that it will not be possible for such broker to give the information of the expiry of the policy, the responsibility to provide such information shall lie with the insurer.
- (ii) Ensure that renewal notices contain a notification regarding the duty of disclosure including the necessity to advise changes affecting the policy, which have occurred since the policy inception or the last renewal date.
- (iii) Draw attention and explain the contents of the renewal notices as issued by the insurer.

5.7 Claims Handling

5.7.1 Every broker shall:

- (i) Explain to its clients their obligation to notify claims promptly, to disclose circumstances surrounding the loss and advise subsequent developments as soon as possible. The broker shall inform the clients of the claims supporting documents that shall be required by the insurer at the time of making the claim;
- (ii) Request the client to make true, fair and complete disclosure where it believes that the client has not done so and explain the consequences of such non- disclosure;
- (iii) Give prompt advice to the client of any requirements concerning the claim;
- (iv) Forward any information received from the client regarding a claims or an incident that may give rise to a claim without delay, and in any event within seven days;
- (v) Advise the client without delay of the insurer's decision and give all reasonable assistance to the client in pursuing the claim;

- (vi) Where there is any dispute arising out of the payment of the claim, advise the client on any mechanisms available to resolve the dispute in accordance with the terms of the policy.

5.8 Complaints Handling

5.8.1 Insurance brokers shall develop a complaint handling mechanism and communicate the same to every proposer or policyholder. Such mechanism shall include provision for:

- (i) Handling complaints in a fair, timely and appropriate manner;
- (ii) Addressing the complaints promptly;
- (iii) Acknowledgement of complaints;
- (iv) Maintenance of complaints register containing the details of complaints received and how they have been dealt with.

5.9 Documentation

5.9.1 The broker shall ensure that the documents issued under the insurance contract comply with both statutory and regulatory requirements.

5.9.2 The broker shall ensure that the policy document is sent to the client as soon as the proposal of the client is accepted by the insurer, provided that:

- (i) The policy document shall be sent not later than fourteen days from the date of receipt from the insurer;
- (ii) The broker shall take an acknowledgement note signed and dated from the client acknowledging the receipt.

5.9.3 The broker shall not withhold documentation from its clients without their consent, unless adequate and justifiable reasons are disclosed in writing and without delay to the client. Where documentation is withheld, the client must still receive a copy of the insurance contract.

5.10 Remuneration

5.10.1 The basis of remunerating the broker shall be by means of a commission and/or fees as provided in the Insurance Act or as may be specified by the Authority from time to time.

5.11 Training

- 5.11.1 A broker shall be required to possess relevant knowledge and skill in insurance as may be prescribed by the Authority.
- 5.11.2 A broker shall act with competence and strive to maintain the necessary knowledge and expertise necessary for the proper conduct of their business activities.
- 5.11.3 Individual insurance agents, sub agents and principal officers of brokerage firm shall be required to pass or to be exempted from any insurance qualification as the Authority may determine from time to time.
- 5.11.4 Insurance brokers shall ensure that the staffs employed or so appointed are suitably qualified and competent, and the person possesses the relevant professional training or experience to act in the capacity so employed.

5.12 Conflict of Interest

- 5.12.1 A broker shall avoid any conflict of interest arising, and where one arises disclose and decline to act.
- 5.12.2 A broker shall not place its interest above those of its customers.

5.13 Display of Notice

- 5.13.1 Every broker shall display in every office where it carries on business and to which the public have access a notice to the effect that a copy of this code is available upon request.

6. ENFORCEMENT

The Authority shall enforce compliance to this code by exercising its powers to any brokers who contravene this code or take any other measure as prescribed in the relevant law.

7. EFFECTIVE DATE

The effective date of this code is October 1st, 2018.

8. ENQUIRY

Enquiries on any aspect of this code shall be referred to:

The Director of Insurance and Pension Supervision Section
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