



## INSURANCE INTERMEDIARIES (CONDUCT OF BUSINESS) (GENERAL BUSINESS) CODE 2020

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Statutory Document No. 2020/0437



*Insurance Act 2008*

## **INSURANCE INTERMEDIARIES (CONDUCT OF BUSINESS) (GENERAL BUSINESS) CODE 2020<sup>1</sup>**

*Laid before Tynwald:* 17 November 2020  
*Coming into Operation:* 31 December 2020

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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 Regulations are the Insurance Intermediaries (Conduct of Business) (General Business) Code 2020.

### **2 Commencement**

These Guidance Notes come into operation on 31 December 2020<sup>1</sup>.

### **3 Interpretation**

In these Guidance Notes —

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

“**client**” means the intermediary’s client and includes a prospective client;

“**intermediary**” means an insurance intermediary registered under Part 6 of the Act as such, but does not include a reinsurance intermediary;

“**large non-individual client**” means a client that is not an individual and has any 2 of the following characteristics —

- (a) a turnover of £10.2 million or more;
- (b) £5.1 million or more on its balance sheet; or
- (c) 50 employees or more;

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<sup>1</sup> Under section 51(7) of the Insurance Act 2008 Guidance Notes must be laid before Tynwald as soon as practicable after being issued.

“**packaged bank account**” means an arrangement under which a person provides a bank account for a customer as part of a package which includes access to other goods and services;

“**reinsurance intermediary**” means a person who for remuneration brings together, either directly or through the agency of a third party, with a view to the reinsurance of risks, persons seeking reinsurance and reinsurers; and

“**senior management**” means, in relation to an intermediary, any person whose appointment is required to be notified to the Authority under the Act, excluding its —

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

#### 4 Application

- (1) Subject to sub-paragraph (2), these Guidance Notes apply to an intermediary.
- (2) The following persons are exempt from these Guidance Notes —
  - (a) a reinsurance intermediary;
  - (b) an intermediary (“producing broker”) when —
    - (i) it is acting on behalf of a large non-individual client;
    - (ii) the business is being placed by an insurance intermediary (“placing broker”) that is subject to regulation by the UK Financial Conduct Authority; and
    - (iii) the client is made aware of the relationship between the producing broker and the placing broker within the producing broker’s terms of business; and
  - (c) a person acting as an intermediary in relation to insurance provided as part of a packaged bank account if the person —
    - (i) is licensed under section 7 of the Financial Services Act 2008 to carry on regulated activities falling within Class 1(1) or 1(2) of Schedule 1 to the Regulated Activities Order 2011<sup>2</sup>; and
    - (ii) complies with the requirements set out in the Schedule to these Guidance Notes in relation to the provision of insurance within the packaged bank account.

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<sup>2</sup> SD 0884/11 (as amended)

## **5 Action likely to bring Island into disrepute**

An intermediary must not carry on business of such a kind or in such a way as may be likely to bring the Island into disrepute or damage its standing as a financial centre.

## **6 Fair treatment of clients – general principles**

- (1) An intermediary must –
  - (a) establish and implement policies and procedures for the fair treatment of its clients as an integral part of its business and culture; and
  - (b) ensure that its policies and procedures for the fair treatment of its clients are set out in writing and are provided to all relevant staff.
- (2) The policies and procedures referred to in sub-paragraph (1) must be appropriate to the nature and scale of the business and must include a consideration of how an intermediary –
  - (a) develops and markets products in a way that pays due regard to the interests of its clients;
  - (b) ensures its clients are provided with clear information before, during and after the point of sale;
  - (c) deals with client complaints and disputes in a fair and transparent manner;
  - (d) monitors the intermediary’s performance with respect to the fair treatment of its clients;
  - (e) ensures that its officers and staff are aware of their obligations in relation to the fair treatment of clients including through regular training; and
  - (f) ensures that any performance and reward strategies for an intermediary’s officers and staff are aligned with the principles of the fair treatment of clients and do not result in unfair client outcomes.
- (3) The responsibility for the design, implementation and monitoring of adherence to the policies and procedures referred to in sub-paragraph (1) rests with the board of directors and senior management of the intermediary.
- (4) An intermediary must regularly review, and update where necessary, the policies and procedures referred to in sub-paragraph (1) to ensure that they remain valid and up to date.
- (5) An intermediary must –
  - (a) not claim that it is independent or impartial if it is not; and

- (b) ensure that any claim it makes as to its independence or impartiality adequately includes any limitation which there may be on either.

## 7 Fair and reasonable behaviour

- (1) An intermediary must have procedures for requiring those seeking to obtain business on the intermediary's behalf to —
  - (a) conduct business in good faith and with integrity;
  - (b) conduct business in a way which is clear, fair and not misleading, and all information given to the intermediary's clients (whether verbal or in writing) must be in line with this requirement;
  - (c) avoid exerting any undue pressure;
  - (d) make clear the purpose or purposes of the contact at the initial point of communication; and
  - (e) identify themselves and the intermediary that they represent to clients by providing contact information in writing.
- (2) An intermediary must not —
  - (a) make inaccurate, unsubstantiated or unfair criticism of any insurer; or
  - (b) make comparisons with other types of policy unless it makes clear the differing characteristics of each policy.

## 8 General sales principles

An intermediary must —

- (a) give advice only on insurance matters about which the intermediary is knowledgeable;
- (b) ensure that the policy offered is suitable for the demands and needs of the client;
- (c) explain the main provisions of the cover afforded by the policy so as to ensure, as far as possible, that the client understands what the client is buying;
- (d) draw attention to the main restrictions and exclusions applying to the policy;
- (e) draw attention to any policy excesses and direct the client to documentation that outlines the detail of these;
- (f) unless the policy is subject to the Consumer Insurance (Disclosure and Representations) Act 2012<sup>3</sup> (an Act of Parliament), explain to the client the duty to disclose all circumstances material to a policy

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<sup>3</sup> 2012 c.6

and what needs to be disclosed, and explain the consequences of any failure to make such a disclosure;

- (g) in obtaining the completion of the proposal form, or any other material, avoid influencing the client and make it clear that all answers or statements are the client's responsibility;
- (h) explain that the client has an obligation to monitor the client's own cover to ensure it remains adequate;
- (i) not impose any charge in addition to the premium required by the insurer without disclosing the amount and purpose of such charge;
- (j) disclose the intermediary's commission on request; and
- (k) execute clients' instructions in a timely fashion.

## 9 Terms of business

- (1) An intermediary must provide a client with written terms of business.
- (2) The terms of business must –
  - (a) set out the basis on which the intermediary is to provide its services, including whether –
    - (i) products are offered from the whole of the market, from a limited range of insurers or from a single insurer in relation to each type of insurance offered; and
    - (ii) the intermediary acts as an agent, working on behalf of an insurer, or as a broker, acting on behalf of the client;
  - (b) provide information on the nature of the remuneration received by the intermediary, including whether it works on the basis of a fee paid directly by the client, on the basis of commission or both;
  - (c) state that the client may request details of the amount of remuneration being received by the intermediary as a result of its relationship with, or transactions for, the client;
  - (d) state that the intermediary is registered as an insurance intermediary with the Authority;
  - (e) provide information on the intermediary's complaints process, including a contact for complaints and that complaints may subsequently be referred to the Isle of Man Financial Services Ombudsman Scheme;
  - (f) provide information on the intermediary's arrangements in relation to client money, including how interest received is to be dealt with and the arrangements for crediting interest to the client bank account; and
  - (g) if the intermediary will deal with claims, the contact details for notifying a claim or, if the intermediary does not deal with claims,

advise the client of that fact and direct the client to the document that sets out the contact details for notifying a claim.

## 10 Policy information – pre-inception

- (1) Subject to sub-paragraph (3), an intermediary must ensure that a client is given written confirmation of the details of the insurance that is going to be put in place on the client's behalf prior to inception of the policy.
- (2) The details referred to in sub-paragraph (1) must, at a minimum, include –
  - (a) the name of the insurer or lead insurer providing the policy;
  - (b) information about the type of insurance policy;
  - (c) a summary of the insurance policy, including the main risks insured, the insured sum and a summary of the excluded risks;
  - (d) the means of payment of premium and the duration of payments;
  - (e) any additional fees and charges associated with the policy;
  - (f) main exclusions where claims cannot be made;
  - (g) obligations at the start of the policy;
  - (h) obligations during the term of the policy;
  - (i) obligations in the event that a claim is made;
  - (j) the term of the policy including start and end dates of the policy;
  - (k) the means of terminating the policy; and
  - (l) for consumer policies, the existence and duration of the right of cancellation.
- (3) An intermediary may provide the written confirmation required under sub-paragraph (1) as soon as reasonably possible after the conclusion of a policy, if the policy has been concluded over the telephone at the client's request.

## 11 Full policy documentation

- (1) An intermediary must –
  - (a) if possible, provide a copy of the full policy documentation to the client pre-inception together with the written confirmation required by paragraph 10; or
  - (b) if it is not possible to provide a copy of the full policy documentation to the client pre-inception, provide it as soon as reasonably possible post-inception,

and in any event, a copy of the full policy documentation must be provided to the client within sufficient time to enable the client to exercise any option to cancel or withdraw from the policy.



- (2) An intermediary must not withhold from the client any documentation relating to the policy.

## 12 Renewals

At policy renewal, an intermediary must abide by the requirements of these Guidance Notes to the extent that they are relevant and, in particular must –

- (a) provide the client with renewal terms in a reasonable timeframe for the client to consider whether the client wishes to proceed with the renewal offer; and
- (b) confirm to the client the client's existing cover, prior year premium and any significant changes in cover or terms.

## 13 Gifts and other benefits

An intermediary must not –

- (a) offer or receive; or
- (b) permit any officer or staff to offer or receive,

any gift or other direct or indirect benefit, if to do so might adversely influence the giving of advice by the intermediary or its officers or staff.

## 14 Advertising

An intermediary must –

- (a) establish and implement procedures to ensure that it promotes its products and services in a manner that is clear, fair and not misleading; and
- (b) make clear to those with whom it has communications in the course of its business, or prospective business, its name, including any business names, and the fact that it is regulated by the Authority.

## 15 Claims

- (1) If a client advises an intermediary of an incident which might give rise to a claim, the intermediary must inform the relevant insurer without delay, and in any event within three working days, and thereafter give prompt advice to the client of the insurer's requirements concerning the claim, including the provision as soon as possible of information required to establish the nature and extent of the loss.
- (2) All appropriate and relevant information received by the intermediary from the client must be passed to the insurer without delay.

**MADE 22 OCTOBER 2020**



## SCHEDULE

### PERSONS ARRANGING INSURANCE THROUGH PACKAGED BANK ACCOUNTS

#### 1 Skill, care and diligence

The intermediary must act with due skill, care and diligence.

#### 2 Responsible behaviour in dealings

The intermediary must have procedures for ensuring that its intermediary activity is carried on —

- (a) openly and fairly;
- (b) in compliance with any applicable legislation relating to that activity in the country or territory in which it is carried on;
- (c) so far as possible, in a way that avoids any conflict of interest; and
- (d) with disclosure of any unavoidable conflict of interest to any client concerned. This applies whether any such conflict relates to the intermediary, its officers or staff.

#### 3 Informed decisions

The intermediary must —

- (a) take all reasonable steps to enable its clients to take informed decisions relating to their business with the intermediary; and
- (b) avoid misleading or deceptive representations or practices.

#### 4 Management controls

(1) The intermediary must —

- (a) organise and control its internal affairs in a responsible manner; and
- (b) promote high ethical standards in the conduct of its intermediary activities.

(2) The intermediary must establish and maintain appropriate internal and operational controls, systems, policies and procedures relating to all aspects of its business as an intermediary to ensure —

- (a) effective communication between the intermediary and its clients;
- (b) appropriate segregation of key duties and functions;
- (c) the fair treatment of clients;

- (d) effective maintenance of accounting and other records and the reliability of this information;
  - (e) appropriate safeguards to prevent and detect any abuse of the intermediary's services for money laundering, financial crime, the financing of terrorism, or the proliferation of weapons of mass destruction;
  - (f) appropriate safeguards to protect data from loss or misuse.
- (3) The intermediary must review the controls required by this paragraph annually, or more frequently if appropriate. These reviews should be documented.
- (4) Where the intermediary employs staff it must —
- (a) make adequate arrangements to ensure that those persons are suitable, adequately trained and properly supervised; and
  - (b) document the roles and responsibilities of, or limitations placed on, such persons.
- (5) The intermediary must ensure that the persons to whom this paragraph applies carry out their duties in a diligent and proper manner in accordance with the systems, controls, policies and procedures referred to in sub-paragraph (2).
- (6) The persons to whom paragraph (5) applies are —
- (a) the intermediary's officers and staff; and
  - (b) any other individual, whether or not employed by the intermediary, who carries on, or holds himself or herself out as carrying on, insurance intermediation in or from the Island in the course of his or her employment, or under any contract, with the intermediary.

## ENDNOTES

### Table of Endnote References

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<sup>1</sup> 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.