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Guernsey Financial
Services Commission

INSURANCE MANAGERS (CONDUCT OF BUSINESS) RULES 2014

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The Insurance Managers (Conduct of Business) Rules 2014

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The Principles of Conduct of Finance Business

1. Integrity

A licensee should observe high standards of integrity and fair dealing in the conduct of its business.

2. Skill, Care and Diligence

A licensee should act with due skill, care and diligence towards its customers and counterparties.

3. Conflicts of Interest

A licensee should either avoid any conflict of interest arising or, where a conflict arises, should ensure fair treatment to all its customers by disclosure, internal rules of confidentiality, declining to act, or otherwise. A licensee should not unfairly place its interests above those of its customers and, where a properly informed customer would reasonably expect that the firm would place his interests above its own, the firm should live up to that expectation.

4. Information about Customers

A licensee should seek from customers it advises or for whom it exercises discretion any information about their circumstances and investment objectives which might reasonably be expected to be relevant in enabling it to fulfil its responsibilities to them.

5. Information for Customers

A licensee should take reasonable steps to give a customer it advises, in a comprehensible and timely way, any information needed to enable him to make a balanced and informed decision. A licensee should similarly be ready to provide a customer with a full and fair account of the fulfilment of its responsibilities to him.

6. Customer Assets

Where a licensee has control of or is otherwise responsible for assets belonging to a customer which it is required to safeguard, it should arrange proper protection for them, by way of segregation and identification of those assets or otherwise, in accordance with the responsibility it has accepted.

7. Market Practice

A licensee should observe high standards of market conduct, and should also comply with any code of standard as in force from time to time and issued or approved by the Commission.

8. Financial Resources

A licensee should ensure that it maintains adequate financial resources to meet its finance business commitments and to withstand the risks to which its business is subject.

9. Internal Organisation

A licensee should organise and control its internal affairs in a responsible manner, keeping proper records, and where the firm employs staff or is responsible for the conduct of finance business by others, should have adequate arrangements to ensure that they are suitable, adequately trained and properly supervised and that it has well-defined compliance procedures.

10. Relations with Guernsey Financial Services Commission

A licensee should deal with the Commission in an open and co-operative manner and keep the regulator promptly informed of anything concerning the firm which might reasonably be expected to be disclosed to it.

THE INSURANCE MANAGERS (CONDUCT OF BUSINESS) RULES 2014

The Guernsey Financial Services Commission (“*the Commission*”), in exercise of the powers conferred on it by section 18 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended (“*the Law*”) hereby makes the following rules:-

1. Introduction

- 1.1. These rules may be cited as the Insurance Managers (Conduct of Business) Rules 2014 (“*the Managers Rules*”) and shall come into operation on 1 January 2015.
- 1.2. *The Managers Rules* apply to any *insurance manager* who advises or arranges insurance products in relation to the general public and is required to appoint an *authorised insurance representative* (“an *AIR*”).
- 1.3. *The Commission* may in its absolute discretion by notice in writing to a *licensee* exclude or modify the application of any provision of *the Managers Rules* if *the Commission* is satisfied that any such derogation will not be prejudicial to the interests of clients.
- 1.4. For the purposes of *the Managers Rules*, the term *AIR* shall include any individual authorised by a *licensee* as a *financial adviser*.
- 1.5. The following paragraphs of these rules also shall apply to all managers: 6, 7.1.(c), 7.2.(g), 7.2.(h), 7.2.(i), 7.3., 11.1(a), 11.1(b), 11.3. and 11.4.

2. Interpretation

- 2.1. Subject to the terms defined below and unless the context otherwise requires, in *the Managers Rules* expressions defined in *the Law* have the same meaning as they have in *the Law*, and the following expressions have the meanings assigned to them:

“advertisement” means every form of advertising, whether in a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or cinematograph films or by way of sound broadcasting, television or any other electronic media;

“authorised insurance representative” or “*AIR*” means an insurance representative authorised by a licensed insurance intermediary, licensed insurer or licensed insurance manager, in accordance with section 15 of *the Law*;

“Board” has the meaning given to it by section 133 of the Companies (Guernsey) Law, 2008, as amended or, in the case of an unincorporated entity, the committee or managing board of a partnership or other similar governing body;

“business day” means any day excluding public holidays and weekends;

“the Commission” means the Guernsey Financial Services Commission;

“complaint” means any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of a person about the provision of, or failure to provide a financial service which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience;

“director” means, in respect of a company, any person appearing on the register of directors of such company, in respect of a limited partnership, any person appearing on the register of directors of the general partner of such limited partnership and in respect of any other incorporated bodies, any person responsible for the management of the incorporated body;

“employee”, in relation to a person, means an individual who is employed in connection with a *licensee’s insurance manager business* in Guernsey whether under a contract of service or for services or otherwise;

“financial adviser” means an authorised insurance representative authorised by a licensee to give advice to retail clients on long term insurance business;

“insurance manager (“a manager”)” means a company licensed under the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended;

“insurance manager business” means the provision of managerial functions (including administration and underwriting) to any insurer or such other functions as may be prescribed by *the Commission* by regulation;

“the Law” means the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 202, as amended;

“licensee” means the holder of a licence to carry on *insurance manager business* issued under *the Law*;

“long term insurance products” means any policy or product falling under schedule 1 of *the Law* excluding permanent health, credit life assurance and any contracts on human life that are renewable annually;

“the Managers Rules” means the Insurance Managers (Conduct of Business) Rules 2014;

“long term business” means long term business as defined in schedule 1 to *the Law*;

3. Authorised Insurance Representatives

- 3.1. A licensee shall ensure that each *AIR* used by him complies with the Code of Conduct for Authorised Insurance Representatives or, where applicable, the Code of Conduct for Financial Advisers.
- 3.2. A licensee shall have in place a fair dealing policy to avoid any conflict of interest.
- 3.3. An *AIR* shall explain charges in respect of *long term business*, including but not limited to life cover charges, commissions and surrender penalties, to a client and provide the information required without delay.
- 3.4. A licensee shall supply the Commission with details, including date of birth, qualifications and previous employment of each *AIR* authorised by him and notify the Commission of any changes, including reasons, within 10 business days.
- 3.5. An *AIR* shall hold such qualifications to the minimum standard as determined by the Commission or satisfy such requirements as the Commission may determine.
- 3.6. A licensee shall require of each *AIR* used by him to provide prospective clients with the following information –
 - (a) the name of the *AIR*,
 - (b) who the *AIR* represents, and
 - (c) what type of products the *AIR* is authorised to sell and/or advise on.
- 3.7. A licensee shall ensure that detailed records of information received from and provided to a client are maintained.

4. Advertisements

- 4.1. A licensee must ensure that an *advertisement* -
 - (a) does not contain any statement, promise or forecast which is untrue, misleading or extravagant,
 - (b) is not designed in such a way as to distort or conceal any relevant subject material,
 - (c) is clearly recognisable as an *advertisement*,
 - (d) is not likely to be misunderstood,
 - (e) where appropriate, states that the investment value is not guaranteed or that the value may fluctuate, and

(f) in the case of *long term business* -

- (i) does not employ such phrases as “tax-free” or “tax paid” without making clear which taxes are being referred to, and
- (ii) does not contain information about past performance unless it contains a warning that past performance is not necessarily a guide to future performance.

4.2. The regulatory status of *the licensee* is to be included on all communications, including but not limited to *advertisements* and letters sent out on headed paper.

5. Complaints

5.1. Where a *licensee* arranges or issues insurance policies on behalf of an insurer to the general public, the *licensee* must be able to demonstrate that it has in place procedures for dealing with customer *complaints*, which shall as a minimum set out the following -

- (a) in the event of a *complaint* being received by a licensee, the *AIR* concerned and the person to whom the *AIR* reports should be advised of the *complaint* and handle it,
- (b) where a satisfactory response is not issued within 30 days of the *complaint*, the *complaint* should then be directed to a member of the *Board* of the *licensee*,
- (c) where a satisfactory response is not issued within 30 days of the *complaint* being referred to a member of the *Board*, the *licensee* should inform the complainant of his rights and procedures to pursue the *complaint* further,
- (d) where a satisfactory response is not issued within 90 days of the *complaint*, the *licensee* must notify the *Commission* in writing of the details of the *complaint*, and
- (e) appropriate information must be provided to the client to enable them to contact the parties detailed above.

5.2. The licensee shall maintain a register of all written client *complaints* and any verbal *complaints* not resolved within 24 hours, and the register shall, as a minimum, contain the following information -

- (a) whether the *complaint* relates to the service provided by the *licensee* or the advice provided by the *licensee*, and
- (b) the status of the *complaint* and the actions taken to resolve it.

6. Professional Indemnity Insurance

- 6.1. Every *licensee* shall maintain professional indemnity insurance with the following minimum limits -
- (a) on the basis of each and every loss cover of at least £250,000, and
 - (b) on an annual basis, £1,000,000 or 3 times fee income, whichever is the greater.
- 6.2. Where the deductible or excess exceeds £20,000 on the basis of each and every loss, the minimum capital requirement will increase to 125% of the deductible or excess. *The Commission* reserves the right to vary the application of this subparagraph in relation to individual *licensees*, where it considers it appropriate to do so.
- 6.3. A *licensee* shall –
- (a) when applying for cover, notify his professional indemnity insurer, through his professional indemnity insurance broker where appropriate, of all material facts, which shall include, without limitation -
 - (i) the imposition and details of any conditions imposed on the *licensee* under section 7 of *the Law*,
 - (ii) the revocation of the *licensee's* licence under section 9 of *the Law*,
 - (iii) any regulatory penalty taken by *the Commission* against the *licensee*, or any of its *directors* or *employees*, under the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 (as amended) or any of the regulatory Laws,
 - (iv) any prohibition order made against the *licensee*, or any of its *directors* or *employees*,
 - (v) any criminal proceedings commenced against the *licensee*, or any of its *directors* or *employees*, and
 - (vi) any criminal or regulatory investigation or formal enquiry which involves the *licensee*, or any of its *directors* or *employees*,
 - (b) ensure that he complies with all warranties applying at the date of the commencement of his professional indemnity policies and any continuing warranties applying during the duration of the professional indemnity insurance policy, and
 - (c) ensure that he makes all notifications and disclosures which are required to be made to his professional indemnity insurers during the duration of the policy pursuant to its terms and conditions.

- 6.4. A *licensee* shall notify his professional indemnity insurers, through his professional indemnity insurance broker where appropriate, within 14 days of the following events or such earlier period as is specified by his professional indemnity policy -
- (a) the imposition and details of any conditions imposed on the *licensee* under section 7 of *the Law*,
 - (b) the revocation of the *licensee's* licence under section 9 of *the Law*,
 - (c) any regulatory penalty taken by *the Commission* against the *licensee*, or any of its *directors* or *employees* under *the Law*, the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 (as amended) or any of the regulatory Laws,
 - (d) any prohibition order made against the *licensee*, or any of its *directors* or *employees*,
 - (e) any criminal proceedings commenced against the *licensee*, or any of its *directors* or *employees*, and
 - (f) any criminal or regulatory investigation or formal enquiry which involves the *licensee*, or any of its *directors* or *employees*.
- 6.5. A *licensee* shall notify *the Commission* of the following events immediately-
- (a) any actual or purported termination, avoidance or invalidation of the *licensee's* professional indemnity cover, or
 - (b) any notification made by a *licensee* to his professional indemnity insurers with respect to a claim or potential claim which may be made by the *licensee* under its professional indemnity policy.

7. Reporting to the Commission

- 7.1. Notwithstanding that the prior written consent of *the Commission* may be required under *the Law* in respect of any of the following events, a *licensee* shall obtain the prior written consent of *the Commission* in respect of -
- (a) any change in any *director*, controller, partner, MLRO and compliance officer,
 - (b) any transfer of a block of business to or from the *licensee*, where such transfer has occurred at the *licensee's* instigation, and for the purposes of these rules "block of business" shall mean business which increases or reduces the brokerage turnover or fee income of the *licensee* by 15% or more, such figure being calculated using the last audited accounts of the *licensee*, and
 - (c) any change to outsourcing arrangements.

- 7.2. The following events require notification to *the Commission* within 7 days –
- (a) any change in *AIR*, auditor or registered office,
 - (b) any *complaints* that remain unsatisfied after 90 days,
 - (c) any breach of any applicable overseas laws, rules, regulations or codes of which the *licensee* is aware,
 - (d) any breach of the Code of Conduct for Authorised Insurance Representatives by an *AIR* used by a *licensee*,
 - (e) any change in delegated authorities granted to the *licensee* such as claims handling,
 - (f) any litigation or arbitration proceedings commenced against the *licensee* and any other claims which are made or asserted against the *licensee*,
 - (g) any criminal proceedings against the *licensee*, any of its *directors* or *employees*,
 - (h) any involvement in any way whatsoever of any of its *directors* or *employees* in any regulatory or criminal investigation or inquiry, and
 - (i) any material change to the business plan.
- 7.3. The following events require notification to *the Commission*, together with a plan for remedial action –
- (a) any breaches of a solvency or insurance requirement and any other breach of the Minimum Criteria for Licensing under Schedule 4 of the *Law*, and
 - (b) any cancellation, invalidation or avoidance of in-force professional indemnity insurance cover.

8. Compliance Officers

- 8.1. Every *licensee* shall appoint a compliance officer, who shall –
- (a) be approved by *the Commission* prior to his appointment,
 - (b) be sufficiently knowledgeable and experienced to perform the role, taking into account the size of the *licensee* and the classes, volume and complexity of business handled by the *licensee*, and
 - (c) have a clearly defined job specification setting out his responsibilities in writing, which includes ensuring that the activities of the *AIR* are reviewed and managed by suitably qualified and experienced individuals, and, although the use of an outsourced compliance function may be

permitted, the *Board* of the *licensee* shall be responsible for compliance notwithstanding the appointment of a compliance officer whether or not this is outsourced.

9. Training and Competence

- 9.1. Every *licensee* shall create and implement a training and competence scheme (the “Scheme”) for all *AIRs* appropriate to the nature and scale of the *licensee*’s business.
- 9.2. The Scheme should ensure that *AIRs* are fully aware of and conversant with the products and services provided and the advantages and disadvantages for clients of purchasing those products.
- 9.3. Each *licensee*, in conjunction with its *AIRs*, shall maintain a training log in respect of each *AIR*.

10. Outsourcing Arrangements

- 10.1. Where outsourcing arrangements are entered into by a *licensee*, the *licensee* shall at all times remain responsible and accountable to the *Commission*, as its regulator, for compliance with the *Law* and any rules, regulations and codes made thereunder.
- 10.2. The outsourcing arrangement must not impair the *Commission*’s ability to supervise the *licensee*.
- 10.3. Before entering into an outsourcing arrangement –
 - (a) a *licensee* shall –
 - (i) conduct suitable due diligence processes regarding its financial condition and expertise when selecting an appropriate third party service provider, and
 - (ii) ensure appropriate internal procedures are developed to monitor its ongoing performance,
 - (b) there shall be a legally binding written contract between the *licensee* and each third party service provider, the nature and detail of which should be appropriate to the materiality of the outsourced activity to the ongoing business of the *licensee*, and the contract should contain, in particular, provisions relating to its termination such that the *licensee* is able to terminate it on reasonable notice,
 - (c) a *licensee* shall take appropriate measures to determine that -
 - (i) procedures are in place to protect the *licensee*’s intellectual property rights in its software, and

- (ii) its third party service providers establish and maintain emergency procedures and a plan for disaster recovery, with periodic testing of backup facilities,
- (d) the *licensee* shall take appropriate steps to require that service providers protect confidential information regarding the *licensee's* proprietary and other information, as well as the *licensee's* clients or investors from intentional or inadvertent disclosure to unauthorised individuals,
- (e) the *licensee* shall decide upon appropriate exit strategies to ensure a smooth transition of the outsourced operations, and
- (f) *the Commission*, the *licensee* and its auditors must have access to the books and records maintained by third party service providers relating to the outsourced activities and *the Commission* must be able to obtain promptly, upon request, information concerning the outsourced activities that are relevant to its regulatory oversight.

11. Record Keeping

- 11.1. A licensee shall maintain legible and orderly files of –
 - (a) all correspondence and due diligence materials, which are required by or under the Criminal Justice (Proceeds of Crime) Law, 1999, or the Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing, and
 - (b) copies of correspondence with clients.
- 11.2. Where a policy is cancelled, lapsed, partially or fully withdrawn, details of such occurrences shall be maintained, together with an explanation of the reasons for such occurrences, or evidence that such an explanation has been sought, even if not received.
- 11.3. Any correspondence, material, details or explanation mentioned in rule 11.1 or 11.2 must be available for inspection by *the Commission* within 72 hours in the Bailiwick, although it need not necessarily be maintained in the Bailiwick.
- 11.4. Any correspondence with a client shall remain on the client file for the duration of the period of the insurance policy sold to the client and for the period of time within which claims can be brought against the *licensee* in accordance with the prevailing prescription period.

12. Countering Financial Crime & Terrorist Financing

- 12.1. A *licensee* shall comply with all anti-money laundering/countering the financing of terrorism laws, regulations, instructions, guidance or rules issued from time to time by *the Commission*.

13. Miscellaneous

- 13.1. In the event of the insolvency of a licensed insurer or a recognised insurer used by a *licensee*, the *licensee* shall take all reasonable steps to ensure that the client is aware of the situation and provide the client with appropriate advice.
- 13.2. Unless the contrary intention is demonstrated, terms in these Rules shall have the same meaning as in *the Law*.

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