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Guernsey Financial
Services Commission

The Licensed Insurer's (Conduct of Business) Rules, 2018

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The Guernsey Financial Services Commission ("the Commission"), in exercise of the powers conferred on it by sections 38A and 38B of the Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended ("the Law") hereby makes the following rules.

1. Due skill, care and diligence when dealing with *customers*.

- 1.1. A *licensed insurer* must act with due skill, care and diligence when dealing with *customers*.
- 1.2. A *licensed insurer* must have policies and procedures in place to ensure that employees and agents meet high standards of ethics and integrity, and act with due skill, care and diligence when dealing with *customers*.

2. Fair treatment of *customers*

- 2.1. A *licensed insurer* must establish and implement policies and procedures on the fair treatment of *customers* as an integral part of its business culture.
- 2.2. A *licensed insurer* must adopt the fair treatment of *customers* as an integral part of their business culture, and policies and procedures to support this objective must be properly embedded in the organisation.

3. Conflicts of interest

- 3.1. A *licensed insurer* must avoid or properly manage any potential conflicts of interest.
- 3.2. A *licensed insurer* must take all reasonable steps to identify and avoid or properly manage conflicts of interest in its dealings with *customers*, and must communicate these through appropriate policies and procedures.
- 3.3. Appropriate disclosure can provide an indication of potential conflicts of interests, enabling the *customer* to determine whether the sale may be influenced by financial or non-financial incentives. It can thus help in managing conflicts of interest where it empowers *customers* to identify and challenge or avoid potentially poor advice or selling that may arise through the conflict of interest. However, managing conflicts of interest through disclosure or obtaining informed consent from *customers*, has limitations, including where the *customer* does not fully appreciate the conflict or its implications, and could be seen to place an unreasonable onus on the client.

3.4. Where conflicts of interest cannot be managed satisfactorily, this should result in the *licensed insurer* declining to act. In cases where the Commission may have concerns about the ability of a *licensed insurer* to manage conflicts of interest adequately, the Commission may consider requiring other measures.

4. Dealing with *intermediaries* to ensure the fair treatment of *customers*

4.1. A *licensed insurer* must have arrangements in place in dealing with *intermediaries* to ensure the fair treatment of *customers*.

4.2. A *licensed insurer* conducting business with *intermediaries* must do so only with *intermediaries* that are licensed in the Bailiwick or, if outside the Bailiwick, licensed in their home jurisdiction, where such a licensing regime is in place.

4.3. When a *licensed insurer* grants terms of business to *intermediaries*, that *licensed insurer* must:

- have in place a documented procedure for the appointment of new *intermediaries*;
- verify that the *intermediaries* have the appropriate knowledge and ability;
- establish that the *intermediaries*, both generally and in respect of their dealings with the *licensed insurer*, comply with applicable laws and regulatory requirements which are relevant to the services being provided to the *customer*;
- have an application form completed and signed by the *intermediary* applying for introducer terms - the application form will require the applicant to disclose certain facts about its directors, its principals and its partners, and as a minimum shall include:
 - (i) verification of identity, and
 - (ii) experience and qualifications;
- have a terms of business agreement completed and signed by the *intermediary* applying for introducer terms, to require the *intermediary* to

warrant that the agreement does not breach the provisions of the laws of the Bailiwick or any other legal obligation in any relevant jurisdiction, as applicable, that the *intermediary* will act only as agent of the *customer* and not for or on behalf of the *licensed insurer*, that the *intermediary* will observe the conditions of the agreement at all times and will clearly explain the risks inherent in the product to the *customer*;

- ensure that the terms of business agreement promotes the fair treatment of *customers* and clarifies the respective roles of the *licensed insurer* and the *intermediary* including, where relevant, on the following matters:
 - (i) product development,
 - (ii) product promotion,
 - (iii) the provision of pre-contractual and point of sale information to *customers*,
 - (iv) post sale policy servicing,
 - (v) claims notification and handling,
 - (vi) management information and other documentation required by the *licensed insurer*,
 - (vii) remedial measures, and
 - (viii) any other matters related to the relationship with *customers*;
- require an *intermediary* outside the Bailiwick to further warrant that the 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 where they operate; and
- take measures to monitor the performance of the *intermediary*, including the quality of the business, the persistency of the business, anticipated and actual levels and patterns of business, financial exposure to the *intermediary*, and complaints made against the *intermediary*.

5. Development and distribution of insurance products

5.1. A *licensed insurer* must take into account the interests of different types of consumers when developing and distributing insurance products.

5.2. A *licensed insurer* must ensure that products and distribution strategies are developed in

accordance with the following principles:

- Development of products and distribution strategies should include the use of adequate information to assess the needs of different consumer groups.
- Product development (including a product originating from a third party) should provide for a thorough assessment of the main characteristics of a new product and of the related disclosure documents by every appropriate department of the *licensed insurer*.
- Before bringing a product or service to the market, the *licensed insurer* should carry out a diligent review and testing of the product in relation to its business model, the existing rules and regulations and its risk management approach. In particular, the policies, procedures and controls put into place should enable the *licensed insurer* to:
 - offer a product that delivers the reasonably expected benefits;
 - target the customers for whose needs the product is likely to be appropriate, while preventing, or limiting, access by consumers for whom the product is likely to be inappropriate;
 - ensure that distribution methods are appropriate for the product, particularly in light of the legislation in force and whether or not advice should be provided;
 - assess the risks resulting from the product by considering, among other things, changes associated with the financial environment or stemming from the *licensed insurer's* policies that could harm customers; and
 - monitor a product after its launch to ensure it still meets the needs of target customers, assess the performance of the various methods of distribution used with respect to sound commercial practices and, if necessary, take the necessary remedial action.
- A *licensed insurer* should provide relevant information to its *intermediaries* to ensure that they understand the target market (and thus reduce the risk of mis-selling), such as information related to the target market itself, as well as the characteristics of the product.
- A *licensed insurer* should seek information from its *intermediaries* on the types of customers to whom the product is sold and whether the product meets the needs of that target market, in order to enable the *licensed insurer* to assess whether its target market is appropriate and to revise its distribution strategy for the product, or the product itself, when needed.

6. Promotion of products and services in a manner that is clear, fair and not misleading

6.1. A *licensed insurer* must promote products and services in a manner that is clear, fair and not misleading.

6.2. A *licensed insurer*, must ensure that any materials promoting or advertising its products or services:-

- (a) are clear, fair and not misleading;
- (b) do not contain any statement, promise or forecast which is untrue;
- (c) are not designed in such a way as to distort or conceal any relevant subject material;
- (d) are clearly recognisable as an advertisement;
- (e) are easily understandable;
- (f) accurately identify the product provider;
- (g) include the regulatory status of the *licensed insurer*;
- (h) are consistent with the coverage offered;
- (i) are consistent with the result reasonably expected to be achieved by the *customers* of that product;
- (j) state prominently the basis for any claimed benefits and any significant limitations;
- (k) do not hide, diminish or obscure important statements or warnings;
- (l) where appropriate state that the investment value is not guaranteed or that the value may fluctuate, and;
- (m) in the case of long term business –
 - i. do not employ phrases such as “tax-free” or “tax-paid” without making clear which taxes are being referred to,
 - ii. do not contain information about past performance unless it contains a warning that past performance is not necessarily a guide to future performance, and

- iii. where appropriate state that a whole of life or endowment policy is intended to be a long term contract and that surrender values, especially in early years, are frequently less than the total amount of premiums paid.

The above requirements apply to information upon which *intermediaries* may also rely.

Independent Review

6.3. Before a *licensed insurer* promotes or advertises an insurance product, it must take reasonable steps to ensure that the information provided is accurate, clear and not misleading. Procedures should provide for an independent review of promotional material intended for *customers* other than by the person or organisation that prepared or designed it. For example, where promotional material is developed by an *intermediary* on behalf of a *licensed insurer*, the *licensed insurer* should verify the accuracy of promotional material and compliance with the requirements of rule 6.2 before it is used.

Inaccurate, unclear or misleading material

6.4. If a *licensed insurer* becomes aware that the promotional or advertising material is not accurate and clear or is misleading, it should:

- inform the party responsible for that material;
- withdraw the material; and
- notify any person that it knows to be relying on the information as soon as reasonably practicable.

Overseas Promotion and Advertising

6.5. A *licensed insurer* must take all reasonable steps with a view to ensuring that, in addition to compliance with rules 6.1 to 6.4, any form of promotion or advertising in a country or territory outside of the Bailiwick of Guernsey is in accordance with the laws and regulations in force in that country or territory.

7. Provision of timely, clear and adequate pre-contractual and contractual information to customers.

7.1. A *licensed insurer* must provide timely, clear and adequate pre-contractual and contractual information to *customers*.

7.2. The *licensed insurer* must take reasonable steps to ensure that a *customer* is given appropriate information about a product in order that the *customer* can make an informed

decision about the arrangements proposed. Such information is also useful in helping *customers* understand their rights and obligations after sale.

- 7.3. Where a *licensed insurer* uses intermediaries for the distribution of insurance products, the *licensed insurer* must be satisfied that the *intermediaries* involved are providing information to *customers* in a manner that will assist them in making an informed decision.
- 7.4. The information provided should be sufficient to enable *customers* to understand the characteristics of the product they are buying and help them understand whether and why it may meet their requirements.
- 7.5. While the level of product information required may vary, it should include information on key features, such as:
- the name of the *licensed insurer*, its legal form and, where relevant, the group to which it belongs;
 - the type of insurance contract on offer, including the policy benefits;
 - a description of the risk insured by the contract and of the excluded risks;
 - the level of the premium, the due-date and the period for which the premium is payable, the consequences of late or non-payment, and provisions for premium reviews;
 - the type and level of charges to be deducted from or added to the quoted premium, and any charges to be paid directly by the *customer*;
 - the circumstances in which interest would accrue after the insurance has matured,
 - whether or not there are rights to surrender values in the contract and, if so, what those rights are;
 - when the insurance cover begins and ends; and
 - prominent and clear information on significant or unusual exclusions or limitations. A significant exclusion or limitation is one that would tend to affect the decision of consumers generally to buy. An unusual exclusion or limitation is one that is not normally found in comparable contracts. In determining what exclusions or limitations are significant, a *licensed insurer* should, in particular, consider the exclusions or limitations that relate to the significant features and benefits of a policy and factors which may have an adverse effect on the benefit payable under it. Examples of significant or unusual exclusions or limitations may include:
 - (i) deferred payment periods;
 - (ii) exclusion of certain conditions, diseases or pre-existing medical conditions;
 - (iv) moratorium periods;
 - (v) limits on the amounts of cover;
 - (vi) limits on the period for which benefits will be paid;
 - (vii) restrictions on eligibility to claim such as age, residence or employment; and
 - (viii) excesses.
- 7.6. Where an *intermediary* is not used for the distribution of insurance products the *licensed insurer* must seek to gather sufficient information so that adequate disclosure, or where

appropriate, a *fair presentation of risk* can be made by the *customer* to the *licensed insurer*.

- 7.7. A *licensed insurer* conducting long term business must provide a cancellation notice to long term policyholders offering the policyholder an appropriate cooling off period.
- 7.8. For the purposes of rule 7.6, “*fair presentation of risk*” means to disclose every material circumstance which the *customer* knows or ought to know, or to provide the *licensed insurer* with sufficient information to put that insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances. In relation to the disclosure of a circumstance “material” means it would influence the judgement of a prudent insurer in determining whether to accept the risk and, if so, on what terms.

8. Advice

- 8.1. Where a *licensed insurer* provides advice to a *customer* in relation to an insurance contract, the *licensed insurer* must take into account the *customer’s* disclosed circumstances.
- 8.2. Where a *licensed insurer* engages an *intermediary* in relation to the provision of insurance contracts and the *intermediary* provides advice to a *customer* in relation to an insurance contract, the *licensed insurer* must require that the *intermediary* take into account the *customer’s* disclosed circumstances.

9. Servicing and Disclosure in relation to policies

- 9.1. A *licensed insurer* must:
- a) service policies appropriately through to the point at which all obligations under the policy have been satisfied;
 - b) disclose to the policyholder information on any contractual changes during the life of the contract; and
 - c) disclose to the policyholder further relevant information depending on the type of insurance product.
- 9.2. A *licensed insurer* must satisfy its obligations under a policy in an appropriate manner and in accordance with the contractually agreed terms and legal provisions. This should include fair treatment in the case of switching between products or early cancellation of a policy. To enable them to do so, *licensed insurers* should maintain a relationship with the *customer* throughout the policy lifecycle.
- 9.3. Where there is an ongoing relationship between the *customer* and the *intermediary*, the *licensed insurer* remains ultimately responsible for servicing policies throughout their lifecycle, and ensuring that *intermediaries* have appropriate policies and procedures in

place in respect of the policy servicing activities that they perform on the *licensed insurer's* behalf.

- 9.4. Policy servicing includes the provision of relevant information to *customers* throughout the life of the policy.
- 9.5. Information to be disclosed by the *licensed insurer* to the policyholder includes:
- (a) any change in the name of the *licensed insurer*, its legal form or the address of its head office and any other offices as appropriate;
 - (b) any acquisition by another undertaking resulting in organisational changes as far as the policyholder is concerned; and
 - (c) where applicable, information on a portfolio transfer (including policyholders' rights in this regard).
- 9.6. *Licensed insurers* shall provide evidence of cover to the policyholder (including policy inclusions and exclusions) promptly after inception of a policy.
- 9.7. Information to be provided by or on behalf of a *licensed insurer* on an ongoing basis, including changes in policy terms and conditions or amendments to the legislation applicable to the policy, will vary by type of policy and may cover for example:
- (a) main features of the insurance benefits, in particular details on the nature, scope and due-dates of benefits payable by the *licensed insurer*;
 - (b) the total cost of the policy, expressed appropriately for the type of policy and in monetary terms where possible, including all taxes and other cost components; premiums should be stated individually if the insurance relationship comprises several independent insurance contracts or, if the exact cost cannot be provided, information provided on its basis of calculation to enable the policyholder to verify the cost;
 - (c) changes to the cost structure, if applicable, stating the total amount payable and any possible additional taxes, fees and costs not levied via or charged by the *licensed insurer*, as well as any costs incurred by the policyholder for the use of communication methods if such additional costs are chargeable;
 - (d) duration of the contract, terms and conditions for (early) termination of the contract and contractual consequences;
 - (e) means of payment of premiums and duration of payments;
 - (f) premiums for each benefit, both main benefits and supplementary benefits;
 - (g) information to the policyholder about the need to report depreciation/appreciation;
 - (h) information to the policyholder about other unique circumstances related to the contract;
 - (i) information on the impact of a switch option of an insurance contract;
 - (j) information on a renewal of the contract; and
 - (k) information on the ongoing suitability of the product, if such a service is provided by the *licensed insurer*.

9.8. In addition to the information set out in rules 9.1 to 9.7, the *licensed insurer* must provide, or must ensure that the *intermediary* provides, the following additional information at least annually to a *retail customer* regarding products with an investment element and should at a minimum include:

- (a) participation rights in surplus funds;
- (b) basis of calculation and state of bonuses;
- (c) the current surrender value;
- (d) premiums paid to date; and
- (e) for unit-linked life insurance, a report on the performance and investment strategy of each underlying investment fund, and a statement of changes of the investments, including the number and value of the units and movements during the past year, administration fees, taxes, charges and current status of the portfolio of investments underlying the insurance contract..

9.9. Rule 9.8 shall not apply to the *licensed insurer* in respect of a *customer*, where the *customer* has self-service access to a statement service, for example where statements are available via the internet, and the policyholder has agreed for this rule to not apply.

9.10. Where there are changes in terms and conditions, the *licensed insurer* should notify the policyholder of their rights and obligations regarding such changes and obtain the policyholder's consent as appropriate.

Renewal Notices

9.11. A *licensed insurer*, in respect of general insurance business only, shall:

- (a) not unduly withhold renewal notices if renewal notices are ordinarily issued;
- (b) ensure that renewal notices contain a warning about the duty of disclosure, including the necessity to advise changes affecting the policy which have occurred since the policy inception or last renewal date, whichever was the later.

10. Timely, fair and transparent claims handling.

10.1. A *licensed insurer* must handle claims in a timely, fair and transparent manner.

10.2. A *licensed insurer* must have a fair and transparent claims handling and claims dispute resolution policies and procedures in place.

10.3. *Licensed insurers* shall maintain written documentation on their claims handling procedures, which include all steps from the claim being raised to its settlement. Such documentation may include expected timeframes for these steps, which might be extended

in exceptional cases.

10.4. A *licensed insurer* shall ensure that:

10.4.1. Claimants are informed about procedures, formalities and common timeframes for claims settlement.

10.4.2. Claimants are given information about the status of their claim in a timely and fair manner.

10.4.3. Claim-determinative factors such as depreciations, discounting or negligence illustrated and explained in comprehensive language to claimants. The same applies where claims are denied in whole or in part.

10.5. A *licensed insurer* shall ensure that the claims assessment process is fair. At the minimum this requires avoidance of conflicts of interest, as well as competence and ongoing training of the staff involved, appropriate for the type of insurance policy and the level of technical and legal expertise required in relation to the insurance policy and the claim.

Claims disputes

10.6. Where there is a dispute between the claimant and the *licensed insurer* in the course of a claims settlement on the claims settlement amount, or coverage, the *licensed insurer* must ensure that the staff handling claims disputes are experienced in claims handling and appropriately qualified.

10.7. The *licensed insurer* must ensure that its dispute resolution procedures should follow a balanced and impartial approach, bearing in mind the legitimate interests of all parties involved. Such procedures should avoid being overly complicated, such as having burdensome paperwork requirements. Decisions should include the reasoning in clear language relating closely to the specific disputable issues.

Outsourcing

10.8. If the *licensed insurer* outsources, whether in part or in full, any of the claims handling processes, the *licensed insurer* remains ultimately responsible for the provision of fair and transparent claims handling and claims dispute resolution and compliance with the Rules. The *licensed insurer* must maintain close oversight over outsourced processes.

Interest

- 10.9. In respect of long-term insurance business only, when the payment of a claim is delayed by more than two (2) months, the *licensed insurer* shall pay interest on the cash sum due or make an equivalent adjustment to the sum due unless the amount of such interest would be immaterial. Subject to the satisfaction of applicable customer due diligence requirements, the two (2) month period shall run from the date the *licensed insurer* is notified of the insured event and after all conditions for payment of the claim are met or, in the case of a unit-linked policy, from the date on which the *licensed insurer* became liable for payment, if later. Interest will be calculated at the relevant market rate from the end of the two (2) month period until the actual date of payment of the claim.

11. Timely and fair manner complaints handling

- 11.1. A *licensed insurer* must handle *complaints* in a timely and fair manner.
- 11.2. A *licensed insurers* must have in operation, and ensure compliance with, a written procedure for the effective consideration and fair and proper handling of any *complaints* relating to the *licensed insurer's* insurance business, howsoever received.
- 11.3. A *licensed insurer* must ensure that each of its officers and employees responsible for dealing with *customers* is at all times aware of this procedure and of the obligation to follow it.
- 11.4. *Licensed insurers* shall make information on their policies and procedures on *complaints* handling available to its *customers*.
- 11.5. *Licensed insurers* shall respond to *complaints* without unnecessary delay; complainants should be kept informed about the handling of their *complaints*.
- 11.6. *Licensed insurers* shall send a written final response in relation to the *complaint* prior to the *complaint response date*. A 'final response' must:
- accept the *complaint* and offer any appropriate redress and/or remedy; or
 - offer redress and/or remedy without accepting the *complaint*; or
 - reject the *complaint* and give clear reasons for doing so.
- 11.7. *Licensed insurers* shall in the 'final response' also tell/remind the complainant in writing that, if he remains dissatisfied, he can refer the *complaint* to the Channel Islands Financial Ombudsman and also advise the complainant that they may inform the Commission directly of the *complaint*.

- 11.8. If the *licensed insurer* fails to issue a ‘final response’ by the *complaint response date*, the *licensed insurer* must inform the Commission within fourteen days after the *complaint response date*.
- 11.9. A *licensed insurer* must inform the Commission within fourteen days of it first becoming aware of a *significant complaint* and shall also advise the complainant that it may inform the Commission directly of the *complaint*.
- 11.10. A *licensed insurer* must maintain a register in which it records any *complaints* received, along with sufficient details to allow it to be able to demonstrate that it has dealt (or is dealing) with such *complaints* in accordance with the Rules and any other applicable provisions of the Law.
- 11.11. *Licensed insurers* shall analyse the *complaints* they receive to identify failures, trends and recurring risks and to identify, and enable them to correct, common root causes.
- 11.12. *Licensed insurers* shall analyse *complaints* that they receive against *intermediaries* in respect of products that the *intermediaries* have distributed on their behalf, to enable them to assess the complete *customer* experience and identify any issues that need to be addressed.

12. Citation, commencement and application

- (a) These rules may be cited as the Licensed Insurer (Conduct of Business) Rules 2018 (the “*Insurer Rules*”)
- (b) These rules come into force on 3 February 2019.
- (c) The *Insurer Rules* apply to all Category 1 and Category 3 *licensed insurers*, as categorized under the Insurance Business (Solvency) Rules 2015, with respect to business with *retail customers*.

13. Interpretation

In the Rules, unless the context requires otherwise -:

“*customer*” means a client, policyholder, or potential policyholder with whom a *licensed insurer* or *intermediary* interacts, and includes, where relevant, other beneficiaries and claimants with a legitimate interest in the policy;

“*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 or product, which alleges that the complainant has suffered (or may suffer) financial loss,

material distress or *material* inconvenience; a complaint may involve, but is different from, a claim and does not include a pure request for information;

“*complaint response date*” means three months from the date which the *complaint* is first received by the *licensed insurer* or the *licensed insurer* first becomes aware of the *complaint* (whichever date is earlier);

“*intermediary*” means an “insurance intermediary” as defined in the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002;

“*the Law*” means the Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended;

“*licensed insurer*” means a person who is a licensee within the meaning of the *Law* (that is, a person who is a licensed insurer under that Law);

“*microenterprise*” means an enterprise which employs fewer than 10 persons and whose annual turnover does not exceed £2 million;

the “*provisions of*” the *Law* or any other enactment include the provisions of -

- (a) any Ordinance or subordinate legislation, or any code, guidance, principles, policies or instructions, made or issued under the *Law* or that other enactment (as the case may be), and
- (b) any subordinate legislation, or any code, guidance, principles, policies or instructions, made or issued under any such Ordinance or subordinate legislation.

“*retail customer*” means a *customer* who is:

- (i) an individual who, in relation to a *licensed insurer*, is acting for purposes other than that individual’s trade, business or profession,
- (ii) a *microenterprise*, or
- (iii) a charity other than a Non-Governmental Organisation (NGO);

“*significant complaint*” means a *complaint* alleging a breach of the *Law*, mala fides, malpractice or impropriety, or repetition or recurrence of a matter previously complained of (whether significant or otherwise).

- (a) A term defined in the *Law* and used in these Rules shall have the meaning given to it in the *Law* unless otherwise defined in these Rules.
- (b) The Interpretation (Guernsey) Law, 1948 applies to the interpretation of these Rules;

- (c) Any reference in these Rules to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

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