

LEGAL NOTICE NO. 124 OF 2010

THE INSURANCE ACT, 2005
(Act No. 7 of 2005)

THE INSURANCE DIRECTIVES (AMENDMENT) NOTICE, 2010
(Under Section 118)

In exercise of the powers conferred by Section 118 of the Insurance Act, 2005, the Registrar hereby issues the following Notice-

Citation and Commencement

1. This Notice may be cited as the Insurance Directives (Amendment) Notice, 2010 and shall be read as one with the Insurance Directives, 2008. The Notice shall come into force on the 1st of July, 2010.

Replacement of Form RDI 14

2. Form RDI 14 the code of conduct for insurance brokers is hereby replaced with a new Form RDI 14 the code of conduct for insurance brokers.

MAJOZI V. SITHOLE
MINISTER OF FINANCE

Mbabane
11th June, 2010

KINGDOM OF SWAZILAND
OFFICE OF THE REGISTRAR OF INSURANCE AND RETIREMENT FUNDS
CODE OF CONDUCT FOR INSURANCE BROKERS

1. INTRODUCTION

This Directive sets out the Code of Conduct for insurance brokers offering insurance services and advice to the members of the public in the Kingdom of Swaziland. It replaces form RDI 14 of the Insurance Directives, 20008, and shall be effective on date of publication in the gazette.

The members of the public seeking insurance advice not only rely on insurance advisors' expertise but also expect a high standard of professionalism and integrity from an advisor. In order to support these standards, advisors must uphold the following Code of Conduct in all their relationships with members of the public, other advisors, employees as well as insurers and any other parties supplying a service to the public.

2. PUBLICATION OF THE CODE OF CONDUCT

The Code of Conduct shall be published by notice in the gazette in accordance with section 118 of the Insurance Act, 2005.

3. COMPETENCY

A broker is obliged to maintain a high level of professional knowledge and skill in order to advise clients in accordance with all relevant laws as well as appropriate technical and professional practice and standards.

A broker will only provide advice in those areas and subjects in respect of which the broker is technically and professionally qualified unless advice and assistance is obtained from a competent practitioner in those areas.

3.1 Scope of Duty

A broker's duty to the client is to provide competent guidance based on sufficient knowledge of the client's needs, specific risks entailed and adequate consideration of the relevant insurance principles in a skilful and expert manner.

3.2 Knowledge and Skill

The public regards registration as an insurance broker an indication of competence. Competence is not limited to the legal qualification as an insurance broker. It is also the broker's ability to competently provide the services needed by the client. It calls for a clear understanding of insurance principles, and it requires sound knowledge of practices and procedures to apply them effectively in the best interest of the client.

A registered insurance broker should be knowledgeable, skilled and capable of performing as an insurance intermediary. The client is entitled to assume that the broker has the ability and capacity to deal adequately with insurance matters on the client's behalf.

A broker should not undertake to arrange insurance without being satisfied that the broker is competent to handle the arrangements without causing the client unnecessary delay, risk or expense. This becomes an ethical question relating to transparent, just and fair dealings with

the client, and is important since an incompetent broker can impair the credibility and perception of the industry. A broker should therefore act honestly and fairly, with due skill, care and diligence, in the interests of clients and the integrity of the insurance industry.

3.3 Consequences of Incompetence

The intention is not to establish a standard of perfection for the purpose of determining whether or not disciplinary action should be taken. An honest mistake may not necessarily constitute failure to adhere to the Code, even though it may result in a successful negligence claim by the client. Evidence of gross neglect or a pattern of neglect or mistakes over time, however, may be evidence of failing to meet the standards expected regardless of whether or not the broker is liable for negligence. Where both negligence and incompetence are established, damages may be awarded through civil remedy to the client for negligence, and disciplinary action may be taken by the Registrar for incompetence.

A broker must be sensitive to any weakness in competence and realize the disservice that would be done to a client by attempting to act beyond the level of competence. In such circumstances, a broker should either decline to act or advise the client to seek the services of another broker with competence in the required area.

For example, a broker with little or no commercial lines insurance experience should not attempt to provide coverage for a large manufacturing risk.

3.4 Consulting Experts

Brokers should recognize that competence in a particular situation may require clients to seek advice from experts in a non-insurance field, such as accounting or law, and clients should be encouraged to consult the appropriate experts.

4. INTEGRITY AND PROFESSIONALISM

In all dealings with the public, a broker will act with integrity, professionalism and utmost good faith.

A broker will apply knowledge and skill to provide a client with those products and services which will best fulfil that client's particular needs, with specific reference to:

- (a) the client's financial circumstances;
- (b) the client's existing coverage;
- (c) the client's ability to afford the product or service concerned; and
- (d) the client's objectives in relation to the insurance service required.

Should any product or service be marketed to a client, the advantages as well as limitations of the relevant product or service must be explained to the client, so that the client can make an informed decision regarding the product or service. The client's needs must be determined by means of a thorough analysis of the client's relevant affairs.

4.1 Scope and Clarity of Advice

Recommendations to clients should be complete, open and clear. A broker should indicate in detail the facts and assumptions upon which recommendations are based. A broker should study the risk in sufficient detail to provide the client with adequate information with which to make an informed decision.

A client is entitled to full, accurate and clear information. Accordingly, the Registrar will consider that a broker has not complied with this requirement if disclosure is provided in a manner that is unclear or obscure, for example, disclosure of relevant information that is buried in a thick document that no one is likely to read.

4.2 Disclosure of Markets

Brokers are generally obliged to present to a client quotes from more than one insurer. If a broker can offer only one company's quote to a prospective client, there is a duty upon the broker to make this limitation known before accepting and placing any business on behalf of the client. Similarly, an obligation exists to be open and honest with clients where a broker is able to place insurance with only a single insurer or with a limited number of insurers that may not be representative of the entire market. Since these facts may influence the judgement of a client or prospective client, disclosure is required.

4.3 Product Disclosure and Comparisons

A broker has an obligation to inform clients at all times about all aspects of the insurance products they have purchased including any changes affecting a policy which occur during the policy term. In addition, all relevant laws relating to public protection and disclosure of information to clients must be observed.

A broker shall not pass unfair or unjust criticism of any product which currently forms part of the client's portfolio and shall not pass any unfair or unjust criticism of or make unfair comparisons with a product or service offered by other persons or institutions. As required by the Insurance Act, no person may induce a policyholder or a prospective policyholder in any way to enter into a contract of insurance or to make any alterations or additions to or cancel a policy. Any proposal to enter into a contract of insurance or to make any alterations or additions to or cancel a policy shall be made in the best interests of the policyholder and shall not be motivated by the additional compensation that might be received by the broker.

5. COMPENSATION DISCLOSURE

In order to retain the integrity of the broker, clients should be made aware of the broker's financial interest in what the broker is advising the client to do. All fees and commissions are to be fully disclosed to clients.

There may be instances in which traditional remuneration by commission from the insurer does not yield a fair return to the broker for services rendered to the client or prospective client, or which may be an inappropriate method of determining compensation. Brokers are free to negotiate the form of compensation, which may include commissions, fees or a combination thereof, and the amount of such compensation with their clients. All compensation must be disclosed to the client by the broker. The total of commissions and fees for any policy shall not exceed the rates of commission specified in RDI 11 without the written approval of the Registrar. Any fees will be subject to levy by the Registrar, at the same rate as commissions.

6. CONFIDENTIALITY AND NON DISCLOSURE

A broker will at all times treat information given to the broker as confidential, and under no circumstances disclose such information unless given authority to do so or unless there is a legal duty to do so, nor shall information be used for the broker's or a third party's financial gain.

6.1 Guiding Principles

It is impossible for a broker to advise a client properly without full knowledge of the client's circumstances and affairs, insofar as they affect the exposures being considered. Clients therefore must feel absolutely certain that the information they disclose will be treated with the utmost confidentiality. Unless the broker develops and maintain this trust, the broker's ability to provide the service expected by clients will be severely impaired.

A broker cannot render meaningful service to clients without full and unreserved communication with them. At the same time, clients must feel completely secure that, without any express stipulation or request, matters disclosed to a broker will be held completely confidential by the broker and its staff, and that any such information will only be revealed to others: with the client's consent; if it is legally necessary to do so; or in the course of negotiating with underwriters on behalf of the client.

6.2 Authorized and Justified Disclosure

Confidential information may be divulged with the express permission of the client concerned, and in some situations, the authority of the client to divulge such information may be implied by the client's instructions. For example, disclosure of matters material to the risk is necessary to arrange suitable insurance for the client.

Unless the client otherwise directs, for the purpose of providing services to the client, a broker may disclose the client's affairs to partners, associates and those staff who handle the client's files. This implied authority to disclose information places the broker under a parallel obligation to impress the need for confidentiality upon those concerned. The importance of confidentiality and non-disclosure (both during their employment and afterwards) requires the broker to take reasonable care (including proper staff training and supervision) to prevent others from disclosing or using any information which must be kept confidential.

When disclosure is required by law or by order of court the broker should be careful not to divulge more information than is required. Verification of the existence or validity of an automobile liability certificate produced by a client would be deemed permissible to disclose. However, requests for additional information will require client authorization or a subpoena. It is important that all such requests be properly documented in the client files.

Disclosure may also be justified in order to defend the broker and its staff against any allegation of incompetence or misconduct, or in legal proceedings to collect earned premiums or fees, but only to the extent necessary for such purposes.

6.3 Scope of Duty

A broker owes the duty of confidentiality to every client without exception. The duty survives the professional relationship and continues indefinitely after the broker has ceased to act for the client, whether or not differences may have arisen between the broker and the client.

A broker should take care to avoid disclosure to one client of confidential information concerning or received from another client. This may not apply to facts that are public knowledge, but nonetheless, a broker should guard against participating in or commenting upon speculation concerning a client's affairs or business.

A broker should avoid indiscreet conversations, even with a client's family, about a client's affairs and should shun any gossip about such things. Likewise, a broker should not repeat any gossip or information about the client's business or affairs that is overheard or recounted.

Apart from ethical considerations or questions of good taste, indiscreet shop-talk between brokers, if overheard by others able to identify the matter being discussed, could be prejudicial to the client's interest. Moreover, the respect of the listener for brokers and all insurance intermediaries will likely be lessened in such situations.

7. CONFLICT OF INTEREST

A broker shall make adequate disclosures of relevant material information, including disclosures of actual or potential own interests, in relation to dealings with clients. A broker shall disclose in writing to a client or prospective client any conflict of interest or potential conflict of interest of the member that is associated with a transaction or recommendation.

7.1 Application of Duty

The fundamental premise is that a client is entitled to any information about a broker's business relationships that pertain to a transaction or recommendation.

A business relationship means any direct or indirect interest or benefit that is relevant to the transaction or arises from placing, or the recommendation to place, a contract of insurance with a particular insurer (over another).

The interest must be sufficient to raise the perception of influence over the broker's independent decision making process, in the mind of a reasonable person, in possession of all the facts. In other words, the influence must be material enough that a reasonable person would believe that a client could not make an informed decision without that knowledge.

In all cases as well, the code is intended to deal with situations where non-disclosure of potential conflicts of interest would be detrimental to clients.

7.2 Guidelines

This provision as drafted is very broad in scope. Accordingly, to provide guidance to brokers in understanding what this provision means in order to comply, the following Guidelines set out the interpretation of what this disclosure requirement means for brokers, and sets out a number of factors that may give rise to influence sufficient to require disclosure.

7.2.1 Any direct or indirect ownership interest in an insurer by a broker²

Any ownership interest requires disclosure, including those situations whereby shareholders' agreements provide for direction and control over the brokerage, regardless of voting rights or number of shares held.

This factor means that if it would appear to a reasonable person in possession of all the facts that a broker is influenced in placing a policy with a particular insurer because of an ownership relationship between that broker and that insurer, that relationship must be disclosed to the client.

7.2.2 Common ownership of a brokerage and an insurer by a financial conglomerate or other holding company or group of companies

This factor means that if it would appear to a reasonable person in possession of all the facts that a broker is influenced in placing a policy with a particular insurer because both entities are owned or controlled by a common company or group of companies or that a common company or group of companies hold shares in the broker and insurers irrespective of control, that relationship must be disclosed to the client.

7.2.3 A loan, credit facility or other financial relationship, direct or indirect

Influence can be exerted on a broker by other means than having a direct, indirect or common ownership relationship with an insurer. There are numerous historical examples of insurers either lending capital to brokerages for acquisitions or other reasons, or extending credit facilities for various reasons. These financial relationships, however provided, exert influence or control over the decision-making process in the same way as an ownership relationship and ought, therefore, to be disclosed.

² The Insurance Act prohibits any direct or indirect ownership interest in a broker by an insurer. The RIRF proposes to amend the Insurance Act to also prohibit any direct or indirect ownership interest in an insurer by a broker.

This factor means that if it would appear to a reasonable person in possession of all the facts that a broker is influenced in placing a policy with a particular insurer because of a financial relationship, that relationship must be disclosed to the client.

8. PROCEDURE FOR OBTAINING CLIENT INFORMATION

In order to maintain and protect the confidentiality of client information, a formal process should be followed by the broker when obtaining quotations and benefit payments.

When approaching any person for client information, the broker must have a valid letter of authority from the client. No information may be requested without such authorisation.

9. GENERAL CONDUCT

A broker shall maintain proper safekeeping, separation and protection of funds and transaction documentation of clients.

Should a broker receive any funds from any client, whether in the form of cash, cheque, postal order, or otherwise, on behalf of another party, adequate record shall be kept of the receipt of such funds and within 30 days the funds must be paid over to the party for which they are intended.

A broker shall have and employ effectively the resources, procedures and appropriate technological systems for the proper performance of professional activities.

A broker shall not engage in fraudulent and misleading advertising, canvassing and marketing.

A broker shall refrain from conduct that could result in the inclusion of the broker's name on Circular RDI 13.

10. PENALTY

A broker shall be familiar with the provisions of the Insurance Act and shall not act in contravention of the Act. Should a broker's conduct be in contravention of this Code, the broker shall be guilty of an offence and the Registrar may also act against the broker in terms of section 18 and section 114 of the Act.

Date

Registrar of Insurance

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LEGAL NOTICE NO. 125 OF 2010

THE PUBLIC PENSION FUND ORDER, 1993
(Order No. 13 of 1993)

THE PUBLIC SERVICE PENSION FUND REGULATIONS
(AMENDMENT) NOTICE, 2010
(Under Section 9)

In exercise of the powers conferred by Section 9 of the Public Service Pensions Order, 1993, the Minister of Public Service issues the following Notice -

Citation and Commencement

1. (1) This Notice may be cited as the Public Service Pension Fund Regulations (Amendment) Notice, 2010.

(2) This Notice shall be deemed to have come into force on the 1st May 2007.

Amendment of Regulation 3

2. Regulation 3 (1) of the Principal Regulations is amended by deleting both provisos.

MTITI FAKUDZE
MINISTER FOR PUBLIC SERVICE