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Citation and Commencement

1. (1) This Guideline may be cited as the Policyholder Protection Guideline 2017 and shall come into force on the 1st November 2017.

Interpretation

2. In this Guideline, unless the context otherwise requires,-

“Act” means the Insurance Act, 2005;

“Authority” means the Financial Services Regulatory Authority

“insurer” has the meaning assigned to it in the Insurance Act, 2005.

“intermediary” is any person who offers any service, other than the furnishing of advice, for and on behalf of a client;

with a view to;

- a) Buying selling or otherwise dealing, managing, administering, keeping in safe custody maintaining or servicing a product
- b) Collecting or accounting for premiums or other moneys payable by the client
- c) Receiving submitting or processing the claims of a client against a product supplier

Objective

3. The objective of the Guideline is to ensure that all insurance policies as defined in section 2 of the Insurance Act 2005, are entered into, executed and enforced in accordance with sound insurance principles and practice in the interests of all parties concerned. The Rules also seek to ensure that consumers are provided with sufficient information to make informed decisions about products, before purchase is made and after purchase.

- 3.1.1. This guideline is issued pursuant to **section 33 of the FSRA Act, 2010** which empowers the Authority to issue guidelines, as it considers appropriate, for providing guidance in furtherance of its regulatory objectives in terms of the **FSRA Act read** together with the **Insurance Act 2005**.

Application

3. (1) The Guideline applies to-

- (a) policies proposed or entered into;
- (b) transactions and communications in respect of a policy in force on the effective date, except that the sections on cooling-off period and policy provisions do not apply to such policies;
- (c) an insurer, intermediary or service provider involved in the solicitation, sale or administration of insurance policies underwritten by the insurer, to the extent relevant to the nature of their involvement.

(2) These guideline shall not affect the duty of any person to comply with any applicable provision of the **FSRA Act 2010** and the **Insurance Act, 2005**

Obligations of an insurer or intermediary

4. (1) An insurer and/or intermediary, shall at all times render services with honesty, fairness, and due skill, care and diligence.

(2) An insurer and/or intermediary shall provide a consumer with sufficient information to make informed decisions about proposed or existing insurance policies.

General Criteria for Information

5. (1) An insurer and/or intermediary shall communicate and deal with a policyholder in a precise, clear manner and shall use simple language.

(2) Any written information given by an insurer to a policyholder, including marketing materials, policy contracts and certificates, forms and statements, shall be in one or both of the official languages of Swaziland.

(3) The insurer and/or intermediary shall present information to a policyholder in a clear and readable print size, spacing and format.

(4) All amounts, sums, values, charges, fees, remuneration or monetary obligations mentioned or referred to shall be stated in specific monetary terms or the basis of their calculation shall be clearly and accurately described.

Conflict of Interest

6. (1) An insurer and/or intermediary shall disclose the existence of any circumstance which gives rise to an actual or potential conflict of interest in relation to the selling and administration of an insurance product to the policyholder. .

(2) The insurer and/or intermediary shall take all reasonable steps to ensure fair treatment of the policyholder. *Information to be provided at or before the delivery of a Policy*

7. (1) An insurer and/or intermediary shall provide information to a prospective policyholder at the proposal stage that is adequate and appropriate taking into account the level of knowledge of the person.

(2) The information that shall be provided at or before the delivery of an insurance policy is-

- (a) the business or trade name and registration certificate number of the insurer;
- (b) contact details and physical address of the insurer;
- (c) the name, class and type of the policy;
- (d) a general explanation of the policy, including any information that would reasonably be expected to be needed to enable the policyholder to make an informed decision;
- (e) the nature and extent of benefits provided by the policy, including any guaranteed minimum benefits or other guarantees;
- (f) any special terms and conditions, exclusions, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be paid;
- (g) the nature and extent of the monetary obligations assumed by the policyholder (including any anticipated or contractual escalations, increases or additions, the manner of compliance therewith, and the consequences of non-compliance);

- (h) any charges and fees to be levied against the policy, including the amount and frequency thereof;
- (i) any restrictions on or penalties for early termination or withdrawal from the policy;
- (j) any material investment or other risks associated with the policy;
- (k) where the policy has an investment component, the net amount that will actually be invested for the benefit of the policyholder and the extent to which funds will be accessible by the policyholder;
- (l) the cooling-off period and the procedure for exercise thereof;
- (m) the procedure for making claims under the relevant policy;
- (n) the procedure for lodging complaints, both with the insurer and with the Insurance Adjudicator; and
- (o) any commissions, considerations, fees, charges or brokerages which will or may become payable to intermediary by the policyholder or the insurer in respect of the policy.

Cooling-off Period

8. (1) A policyholder shall be given a cooling-off period to review the terms and conditions of an insurance policy.

(2) A policyholder may cancel any insurance transaction, excluding a policy or variation which only lasts for 30 days or less, by written cancellation notice sent to the insurer, on the condition that-

- (a) no benefit has been paid or claimed or an event insured against has not yet occurred; and
- (b) the notice is sent within a period of 30 days of receipt of the policy schedule or a reasonable date on which it can be deemed that the policyholder received the policy schedule.

(3) An insurer shall refund a policyholder all premiums or monies paid by the policyholder to the insurer up to the date of receipt of the cancellation notice or received at any date after the cancellation, in respect of the cancelled or varied policy, subject to the deduction of the cost of any risk cover actually enjoyed and any market loss where the market value of the investments made has decreased in the intervening period due to prevailing market conditions.

(4) An insurer shall ensure that it complies with the request for cancellation received after the 30 day notice period but not later than 60 days after the **effective date**, where the policyholder can prove that a cancellation notice not received by the insurer was completed in good faith and communicated to the insurer within the 30 days notice period.

(5) Where a policy cannot be cancelled, or is by virtue of its terms and nature not capable of being cancelled, such fact shall be disclosed to the policyholder before the entering into of any insurance transaction in respect of the policy.

Prohibition of inducements

9. A person shall not induce a policyholder or a prospective policyholder in any way to enter into a contract of insurance or to make alterations or additions to or cancel a policy.

Prohibition of Coercion

10. (1) A person who is party to a contract in terms of which money is loaned, goods are leased or credit is granted and who is required to provide security by means of an insurance policy to secure the debt incurred by that person, then that person shall be entitled to-

- (a) either enter into and cede a new policy contract to secure the debt or to cede an existing policy to secure the debt; or
- (b) choose the insurer and intermediary with whom he shall conclude a contract or insurance for purposes of securing the debt.

(2) A person who is party to the contract referred to in subsection (1) shall be informed of the entitlement of that person in writing.

INFORMATION AND DIRECTIONS FROM POLICYHOLDERS

Incomplete or Unsigned Forms

11. (1) A person shall not be required or permitted to sign any blank or partially-completed form required for the purpose of applying for a policy or effecting a transaction in respect of a policy if another person will subsequently be required or permitted to fill in other required detail.

(2) An insurer shall not conclude any transaction where the signing and provision of details have occurred in the manner contemplated in sub-section (1).

Debit Orders

12. (1) An insurer and/or intermediary shall ensure that any debit order for the payment of premiums to the insurer has been drawn solely in favour of the insurer and has been signed by the premium payer.

(2) An insurer and/or intermediary shall not unilaterally terminate a debit order for the payment of premiums without having informed the premium payer in writing of the intention to terminate the debit order at least 30 days before the effective date of such envisaged termination.

Premiums received in cash

13. Any person who receives payment of premiums in bank notes or coins shall issue a written receipt for the payment and the receipt shall contain in print or stamp the name of the institution that is receiving the payment.

Confidentiality and Non-Disclosure

14. (1) An insurer and/or intermediary shall put in place appropriate safeguards to protect sensitive information and preserve fiduciary relationships.

(2) An insurer and/or intermediary may not divulge confidential information with the express permission of the policyholder concerned.

(3) An insurer and/or intermediary shall take reasonable care, including proper staff training and supervision, to prevent other persons from disclosing or using any information which is kept confidential.

(4) Where disclosure of information is required by law or by order of court care shall be taken not to divulge more information than is required.

(5) Any request for additional information shall be in writing and be authorised by the relevant person or a subpoena.

(6) An insurer and/or intermediary may justify any disclosure made in order to defend itself against any allegation of incompetence or misconduct, or in legal proceedings related to a policy, but only to the extent necessary for such purposes.

POLICY PROVISIONS

Grace Period

15. (1) A policy shall provide a period of grace for the payment of premiums of not less than 30 days after the relevant due date.

(2) The policy shall specify the consequences of late payment of premiums, including the treatment of claims incurred during the grace period.

Void Provisions

16. Any provision of a policy shall be considered void if it provides expressly or by implication that-

- (a) the insurer is absolved for the responsibility of the actions, omissions or representation of his agents, employees or representatives.
- (b) an agent, employee or representative of the insurer had acted on behalf of the policyholder;
- (c) the fulfilment of the obligations of the insurer under the contract is dependent upon the fulfilment of the obligation of another person under a reinsurance contract;
- (d) the policyholder waves any of the rights of that person under the Act;
- (e) a claim shall be paid on condition that the policyholder undergoes a polygraph, lie detector, truth verification, or any other similar test or procedure, which is furnished or made available by the insurer or any other person in terms of an arrangement with the insurer, and which is conducted under the control of the insurer or such other person;
- (f) an inducement of any nature is provided for a policyholder to voluntarily agree to undergo a test or procedure, as described in the previous paragraph, where the policyholder submits a claim under the policy;
- (g) in the event of any dispute arising under the policy, the dispute can only be resolved by means of arbitration; or

- (h) a claim might be rejected because a premium was not paid on due date, if payment was made during the period of grace referred to in Rule 8.1, whether or not the payment was made prior to the event giving rise to the claim.

POLICY LOANS AND CESSIONS

Policy Loans

17. (1) Where a long-term insurance policy provides for policy loans, an insurer shall disclose to the policyholder on entering into a policy loan agreement information-

- (a) the interest rate of the loan at the time of entering into the contract;
- (b) whether the interest rate on the loan might fluctuate; and
- (c) any arrangement for repayment of the loan.

(2) Where a policy loan is outstanding, an insurer shall disclose to the policyholder-

- (a) immediately, any changes to the interest rate applicable to the policy loan;
- (b) at least once annually, the outstanding amount of the policy loan and accrued interest, and the interest rate currently applicable to the loan;
- (c) at least 30 days in advance of the relevant date, notice that the loan is about to equal the value of the policy and how this will affect the policy; and
- (d) immediately, notice that the policy has been terminated as a result of the policy loan equalling the value of the policy.

Cession

18. (1) An insurer shall not endorse or record a cession of a policy unless it receives notification from the cessionary.

(2) In order for an insurer to endorse and record a cession, the cession shall provide-

- (a) full details of the cessionary;

(b) the reason for the cession; and

(c) the term of the cession.

(3) An insurer shall, on receipt of notification of a cession on the policy, advise the policyholder on the-

(a) name of the cessionary;

(b) fact that the cession is endorsed and recorded in the records of the insurer;
and

(c) nature of the cession, whether it is outright cession or a cession securing a debt.

(4) An insurer shall give notice to a cessionary-

(a) that it intends to unilaterally terminate a debit order for the payment of premiums, at least 30 days before the effective date of such envisaged termination;

(b) immediately, that the premium payer has terminated a debit order;

(c) at least 30 days in advance of the relevant date, that the loan is about to equal the surrender value of the policy and how this will affect the policy;

(d) forthwith, that the policy has been terminated as a result of the policy loan equalling the value of the policy; and

(e) that it intends to unilaterally cancel the policy, at least 30 days before the cancellation date.

Rejection of a claim

19. (1) An insurer and/or intermediary shall ensure that where any decision has been made as to the rejection of any claim under a policy, or as regards the quantum of a claim which is in dispute, the policyholder concerned is, in writing, informed of the reasons for the decision and that the policyholder may within a period of not less than

ninety (90) days after the date of the decision make representations to the insurer and/or intermediary in respect of such decision.

(2) The ninety (90) days referred to in sub-section (1) may not be included in any time-barring period contained in the policy for the institution of legal action. Exceptions to the 90 days would be permitted if specifically provided for in the policy, and the Registrar is informed of the existence of such provision.

(3) Where a claim is rejected or a quantum is disputed on behalf of an insurer, by a person other than the insurer, such other person shall provide the rejection notice.

(4) The rejection notice referred to in sub-section (3) shall contain the name and contact details of the insurer and state that any recourse or enquiries shall be directed to that insurer.

Misrepresentation

20. (1) A policy contract shall not be invalidated on account of the policyholder or his agent having supplied the insurer or his agent with information that is proved to be false except if the false information was such a nature that it has resulted in the assessment of the risk under the policy being materially affected at the time of its issue, renewal or endorsement.

(2) Where the age of a life assured has been misrepresented to an insurer or an agent, the policy benefits shall be adjusted so that the policy benefits are equal to those that would have been provided under the policy being based on the correct age for the premium.

Unilateral Cancellation by an Insurer

21. An insurer shall not unilaterally cancel any policy without giving notice to the policyholder at least 30 days prior to the cancellation date, either-

(a) directly to the policyholder;

(b) by satisfying itself that such notice has been given to the policyholder by an intermediary; or

- (c) if neither of these is possible, by publication of such notice in two editions of a newspaper circulating in all areas in which it is reasonably believed that relevant policyholder resides.

Compliance

- 22. Any policy issued in contravention of this Guideline shall be voidable and the policyholder may lodge a complaint with the Ombudsman of Financial Services.

Submission of report

- 23. (1) An insurer and/or intermediary shall submit a report in respect of all complaints received, quarterly within 30 days after the expiry of each quarter to the -Authority.
- (2) The report shall give the details of each complaint received and the steps taken to resolve it including the complaints that were not resolved and the reasons.

Record Keeping

- 24. (1) The insurer and/or intermediary shall have appropriate procedures and systems in place to store and retrieve transactional and other documentation relating to the policyholder and to keep such documentation secure and safe from destruction.
- (2) Records shall be kept in an appropriate recorded or electronic format, which shall be readily accessible and reducible to printed format.
- (3) Disclosure records and documentation pertaining thereto shall be kept for a minimum period of at least five years after the termination of the relevant policy.
- (4) The records shall be available for inspection upon request by the Authority and copies shall be furnished to a policyholder upon request by the policyholder.