



IRA

Insurance Regulatory Authority

IRA/PG/18

**GUIDELINE TO THE INSURANCE INDUSTRY ON
MARKET CONDUCT FOR INSURERS**

JUNE 2013

**To Insurance Companies
Reinsurance Companies**

GUIDELINE ON MARKET CONDUCT FOR INSURERS

This guideline on Market Conduct for insurers is issued pursuant to section 3A of the Insurance Act for observance by Insurers.

The guideline aims to offer guidance on principles to be adhered to in conduct of insurance business by insurers with a primary focus on fair treatment of customers.

Fair treatment of customers encompasses concepts such as ethical behavior, acting in good faith and the prohibition of abusive practices.

In this regard, the Insurance Regulatory Authority issues this guideline on Market Conduct for insurers to be effective from 30th June, 2013.

Yours faithfully,

SAMMY M. MAKOVE
COMMISSIONER OF INSURANCE & CHIEF EXECUTIVE OFFICER



**THE INSURANCE ACT
(CAP 487)
IRA/PG/18**

**GUIDELINE TO THE INSURANCE INDUSTRY
Market Conduct for Insurers**

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1.0 AUTHORIZATION

IN EXERCISE of the powers conferred by Sections 3A (a), (b) and (g) of the Insurance Act, the Insurance Regulatory Authority issues the Guideline set out below, for observance by insurance and reinsurance companies (herein referred to as insurers) in Kenya, in order to offer guidance on principles to be adhered to in the conduct of the business of insurance to ensure customers are treated fairly, both before a contract is entered into and through to the point at which all obligations under a contract have been satisfied.

2.0 INTRODUCTION

- 2.1 The Authority recognizes that a stable insurance industry can only be achieved where the insurers, in conducting their business, treat the customers fairly and where there is a complaint by the customers the same is resolved expediently to the satisfaction of the customers.
- 2.2 This guidance offers guidance on principles to be adhered to in conduct of insurance business, which is primarily concerned with the fair treatment of customers. The fair treatment of customers encompasses concepts such as ethical behavior, acting in good faith and the prohibition of abusive practices.

3.0 DEFINITIONS

- 3.1 **Agent** means a person, not being a salaried employee of an insurer who in consideration of a commission, solicits or procures insurance business for an insurer or broker;



- 3.2 **independent Review** for the purpose of this guideline means the review carried out by a person not involved in the production or operation of a particular product or service and may include the review by a control function of the insurer.
- 3.3 **Intermediary** means a person who in the course of any business or profession invites other persons to make offers or proposals or to take other steps with a view to entering into contracts of insurance with an insurer, but does not include a person who merely publishes invitations on behalf of, or to the order of, some other person.
- 3.4 **Bundled Product** means two or more goods or services, for instance a bank loan and a insurance protection, purchased from a single vendor (a bank).

4.0 OBJECTIVES

In issuing this guideline, the Authority aims to:

- 4.1 strengthen public trust and confidence in the insurance sector by existing and potential customers and other market participants;
- 4.2 minimize the risk of insurers adopting business models that are unsustainable or pose reputational risk; and
- 4.3 Create a level playing field, upon which insurers can compete while maintaining acceptable business practices with respect to fair treatment of customers.

5.0 FAIR TREATMENT OF CUSTOMERS

- 5.1 An insurer shall act with due care, skill and diligence when dealing with customers. For the purpose of this guideline;



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- 5.1.1 Due care, skill and diligence implies that an insurer shall discharge its duties in a way that can reasonably be expected from a prudent person in a like position and under similar circumstances.
- 5.1.2 An insurer shall have proper policies and procedures in place to achieve this outcome; including taking appropriate measures to ensure that its employees and agents meet high standards of ethics and integrity.
- 5.2 An insurer shall establish and implement policies and procedures on the fair treatment of customers that shall be an integral part of its business culture.
- 5.2.1 Fair treatment of customers encompasses achieving outcomes which shall include but not limited to:
- i. developing and marketing products in a way that pays due regard to the interests of customers;
 - ii. providing customers with clear information before, during and after the point of sale;
 - iii. reducing the risk of sales which are not appropriate to customers' needs;
 - iv. ensuring that any advice given is of high quality;



- v. dealing with customer complaints and disputes in a fair manner;
- vi. protecting the confidentiality of information obtained from customers;
- vii. Managing reasonable expectations of customers.

5.2.2 Embedding the fair treatment of customers in the culture of the insurers shall include but not limited to the following:

- i. Board and Senior Management shall have the ultimate responsibility for fair treatment of customers, which shall include designing, implementing and monitoring adherence to policies and procedures aimed at ensuring that customers are treated fairly.
- ii. Fair treatment of customers should be an objective taken into consideration in the design of the business strategy.
- iii. All decisions that impact on customers should be subject to particular scrutiny in terms of whether they support the fair treatment of customers.
- iv. Monitoring the fair treatment of customers requires that relevant management information is identified, collected and evaluated. A particular challenge is establishing internal reports that include the most useful information and indicators to allow the Board and Senior Management to measure the insurer's performance with respect to fair treatment of customers.



- v. Mechanisms and controls should also be established to ensure that all departures from policies and procedures as well as all other situations that jeopardize the protection of the interests of customers are promptly remedied by decision makers.
 - vi. Appropriate attention should be paid to the recruitment of staff, intermediaries and service providers who meet high standards of ethics and integrity. An insurer shall train relevant staff to deliver appropriate outcomes in terms of fair treatment of customers. Evaluation of performance should include the contribution made to achieving these outcomes.
 - vii. Policies and strategies on remuneration and reward for both the insurer's staff, intermediaries and service providers, shall promote fair treatment of customers. Hence reward structures should ensure that there are no incentives which would result in the unfair treatment of customers.
- 5.3 An insurer shall make relevant policies and procedures publicly available, in particular its claims handling, complaints handling and dispute resolution policies and procedures.
- 5.4 An insurer shall file with the Authority its policies and procedures dealing with fair treatment of customers and shall notify the Authority of any significant changes to the policies.



6.0 PRE-SALE PROCESS

6.1 An insurer shall take into account the interests of different types of customers when developing and marketing insurance products.

6.1.1 An insurer, shall before marketing a product or service, carry out a diligent review of the product in relation to its business model, the existing rules and regulations as well as its risk management approach. In particular an insurer shall put in place policies, procedures and controls to enable it to:

- i. offer a sustainable product;
- ii. target customers for whose needs the product is likely to be appropriate;
- iii. assess risks resulting from the product by considering, among other things, changes associated with the environment or stemming from the insurer's policies that could harm customers;
- iv. ensure that distribution methods are suitable for the product, particularly in light of the laws and regulations in force;
- v. 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 remedial action.



6.1.2 An insurer shall provide support to intermediaries to ensure that they understand the target market and thus reduce the risk of mis-selling.

6.2 An insurer shall promote products and services in a manner that is clear, fair and not misleading.

6.2.1 An insurer shall, before promoting an insurance product, take reasonable steps to ensure that the information provided is accurate, clear and not misleading. An insurer shall provide for an independent review of advertising materials and other communications intended for customers.

6.2.2 An insurer shall, if it subsequently becomes aware that the information provided is not accurate and clear or is misleading, withdraw the information and notify any person that knows to be relying on the information as soon as reasonably practicable.

6.2.3 The information provided should:

- i. be easily understandable;
- ii. be consistent with the result reasonably expected to be achieved by the majority of customers of that product;
- iii. state prominently the basis for any claimed benefits and any significant limitations; and
- iv. not hide, diminish or obscure important statements or warnings.



6.2.4 An insurer shall be responsible for providing information that is accurate, clear and not misleading not only to customers but also to intermediaries who may rely on this information in providing advice to customers.

6.3 Requirements for insurers regarding the timing, delivery, and content of information provided to customers at point of sale.

6.3.1 An insurer shall provide customers with comprehensible information about a policy before and at the point of sale to enable them make an informed decision before entering into a contract.

6.3.2 An insurer shall in determining what is “in good time”, consider the importance of the information to the customer's decision-making process and the point at which the information may be most useful.

6.3.3 An insurer shall provide information in a way that is clear, fair and not misleading and use “plain language” that can easily be understood by the customer.

6.3.4 An insurer shall provide product information in writing or another durable medium.

6.3.5 An insurer shall ensure that the information provided enables customers to understand the characteristics of the product they are buying and help them understand whether or not it meets their needs.



6.3.6 An insurer shall ensure that the information provided contains key features, such as:

- i. name of the insurer, its legal form and, where relevant, the group to which it belongs;
- ii. type of insurance contract on offer, including the policy benefits;
- iii. level of the premium, due-date and period for which premium is payable, as well as consequences of late or non-payment. Where a policy is bought in connection with other goods or services (a bundled product) the insurer shall disclose premiums for each benefit (both main benefits and supplementary benefits) separately from any other prices and whether buying the policy is compulsory;
- iv. 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;
- v. when the insurance cover begins and ends, including the term of the contract
- vi. a description of risks insured by the contract and of the excluded risks;

- vii. prominent and clear information on significant or unusual exclusions or limitations which include, but are not limited to;
 - a. deferred payment periods
 - b. exclusion of certain conditions, diseases or pre-existing medical conditions
 - c. waiting periods
 - d. limits on the amounts of cover
 - e. limits on the period for which benefits will be paid
 - f. restrictions on eligibility to claim such as age, residence or employment clear information of beneficiaries excesses or deductibles.

6.3.7 An insurer shall ensure that where information provided about an investment policy includes an indication of past, simulated or future performance, the information should include any limits on upside or downside potential, commissions payable and a prominent warning that past performance is not a reliable indicator of future performance.

6.3.8 An insurer shall provide accurate and comprehensible information to the customer in a “Product Information Sheet” containing information on key product features that are of particular significance to the conclusion or performance of the insurance contract. The Product Information Sheet should be clearly identified as such and it should be pointed out that the information is not exhaustive.



6.3.9 An insurer shall prior to concluding an insurance contract inform customers, especially retail customers, on matters such as:

- i. General provisions – including the law applicable to the contract;
- ii. Obligation to disclose material facts – including prominent and clear information on the obligation on the customer to truthfully disclose material facts.
- iii. Obligations to be complied with when a contract is concluded and during its lifetime, as well as the legal consequences of non-compliance
- iv. Obligation to monitor cover – including a statement, where relevant, that the customer may need to review and update the cover periodically to ensure it remains adequate
- v. Right to cancel – including the existence, duration and conditions relating to the right to cancel. If there are any charges related to the early cancellation or switching of a policy, this should be prominently disclosed
- vi. Right to claim benefits – including conditions under which the policyholder can claim and the contact details to notify a claim
- vii. Right to complain – including the arrangements for handling policyholders' complaints



6.4 An insurer shall ensure that, where customers receive advice before concluding an insurance contract, such advice is appropriate; taking into account the customer’s disclosed circumstances.

6.4.1 Advice not only includes provision of product information but also provision of a recommendation on the appropriateness of a product based on the disclosed needs of the customer.

6.4.2 An insurer shall seek information from its customers that is appropriate for assessing their insurance needs, before giving advice or concluding a contract. This information may differ depending on the type of product and may include information on the customer’s:

- i. financial knowledge and experience;
- ii. needs, priorities and circumstances;
- iii. ability to afford the product; and
- iv. risk profile.

6.4.3 The basis on which a recommendation is made should be explained and documented, particularly in the case of complex products and products with an investment element. All advice should be communicated in a clear and accurate manner, comprehensible to the customer. Where investment advice is provided, this should be communicated in writing or another



durable medium accessible to the customer and a record kept in a “client file”

6.4.4 An insurer shall review its agents’ files to ascertain the quality of advice given by its agents and take any necessary remedial measures.

6.4.5 In order to ensure the delivery of quality advice, an insurer shall, in particular, establish continuous training programs to ensure that persons giving advice:

- i. keep abreast of market trends, economic conditions, innovations and modifications made to the products and services;
- ii. maintain an appropriate level of knowledge about their industry segment, including the characteristics and risks of the products and services;
- iii. know the applicable legal and regulatory requirements;
- iv. know the requirements for the communication of information regarding the products and services and for appropriate disclosure of any situation liable to compromise the impartiality of the advice given or limit such advice; and
- v. be familiar with the documentation regarding the products and services, and answer reasonably foreseeable questions.

6.5 An insurer shall ensure that, where customers receive advice before concluding an insurance contract, any potential conflicts of interest are properly managed.

6.5.1 Conflicts of interest arise where a party has competing professional and personal interests. This includes soliciting or accepting inducements where this would conflict with the insurer's or its intermediaries duties to its customers.

6.5.2 An insurer shall have appropriate policies and procedures to identify and manage conflicts of interest.

7.0 POLICY SERVICING

7.1 An insurer shall;

7.1.1 Service policies appropriately through to the point at which all obligations under the policy have been satisfied

7.1.2 disclose to the policyholder information on any contractual changes during the life of the contract; and

7.1.3 disclose to the policyholder further relevant information depending on the type of insurance product.

7.2 Appropriate policy servicing shall include fair treatment in the case of switching between products or early cancellation of a policy, which goes beyond information disclosure.



7.3 Information to be disclosed about the insurer shall include:

7.3.1 any change in the name of the insurer, its legal form or the address of its head office and any other offices as appropriate.

7.3.2 any acquisition by another undertaking resulting in organizational changes as far as the policyholder is concerned.

7.3.3 where applicable, information on a portfolio transfer (including policyholders' rights in this regard).

7.4 An insurer shall provide evidence of cover (policy document) promptly after inception of a policy.

7.5 An insurer shall provide information on an ongoing basis, including changes in policy terms and conditions or amendments to the law(s) applicable to the policy. This may vary by type of policy and shall include:

7.5.1 main features of the insurance benefits, in particular details on the nature, scope and due-dates of benefits payable by the insurer.

7.5.2 the total cost of the policy, expressed appropriately for the type of policy, including all taxes and other cost components. Premiums should be stated separately if the insurance policy comprises several independent insurance contracts or, if the exact cost cannot be provided, information should be



provided on the basis of calculation to enable the policyholder to verify the cost.

7.5.3 any 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 insurer, as well as any costs incurred by the policyholder.

7.5.4 duration of the contract, terms and conditions for early termination of the contract and contractual consequences.

7.5.5 means of payment of premiums and period of payments.

7.5.6 premiums for each benefit, both main benefits and supplementary benefits.

7.5.7 information to the policyholder about the need to report change in value of the subject matter.

7.5.8 information to the policyholder about other unique circumstances related to the contract.

7.5.9 information on the impact of a switch option of an insurance contract.

7.5.10 information on renewal of the contract.

7.6 Additional information regarding life insurance and annuities shall at a minimum include:

- i. participation rights in surplus funds



- ii. the basis of calculation and state of bonuses
- iii. the current cash surrender value
- iv. premiums paid to date
- v. for unit-linked life insurance, a report from the investment firm. These include performance of underlying funds, changes of investments, investment strategy, number and value of the units and movements during the past year, administration fees, taxes, charges and current status of the account of the contract.

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

7.8 An insurer shall have policies and processes in place to handle claims in a timely and fair manner.

7.8.1 An insurer shall have fair and transparent claims handling and claims dispute resolution procedures in place.

7.8.2 An insurer shall maintain written documentation on its claims handling procedures, which include all steps from the claim being raised to its settlement. Such documentation should include expected timeframes for these steps which might be extended in exceptional cases.



7.8.3 An insurer shall inform claimants about procedures, formalities and common timeframes for claims settlement.

7.8.4 An insurer shall provide claimants with information about the status of their claim in a timely and fair manner.

7.8.5 An insurer shall illustrate and explain claim-determinative factors such as depreciations, discounting or negligence in a comprehensive language. The same applies where claims are denied in whole or in part.

7.8.6 Where an intermediary serves as an initial contact for claimants, this shall not diminish the insurer's responsibilities.

7.8.7 An insurer shall have staff with appropriate competence involved in the claims settlement procedures and shall ensure that the staff undergoes continuous training to facilitate fair assessment of claims.

7.8.8 An insurer shall ensure that staff handling claims disputes are experienced in claims handling and be appropriately qualified.

7.8.9 Assessors and Adjusters should be able to make recommendations, independent of the insurers' instructions, on the settlement of individual claims.

7.9 An insurer shall have policies and processes in place to handle complaints in a timely and fair manner

7.9.1 An insurer shall keep record for each complaint received and the measures taken for its resolution

7.10 An insurer shall have policies and procedures for the protection of confidential information on customers;

7.10.1 An insurer or its intermediary shall have sufficient safeguards in place to prevent the misuse or inappropriate communication of any personal information it has in its records.

7.10.2 The Board and Management of an insurer shall ensure that confidentiality is part of the organization's culture and strategy.

7.10.3 For proper protection of personal information, an insurer shall:

- i. develop policies and procedures relating to confidentiality in order to ensure compliance with legal provisions and best practices
- ii. provide necessary training to their employees at all levels in the organization, in order to promote awareness of confidentiality requirements
- iii. implement internal control mechanisms that meet the objectives of confidentiality and support the achievement of those objectives



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- iv. ensure that appropriate technology is available and in place to manage adequately the financial, medical and personal customer information an insurer is holding.
 - v. implement policies and procedures relating to confidentiality in order to manage risks and threats pertaining to security breaches. Any security breaches should be notified, in a timely manner, to the responsible persons.
 - vi. implement policies and procedures relating to data security in order to be able to report, in a timely manner, security breaches to affected customers and meet other relevant reporting requirements.
 - vii. assess the risks associated with any major breaches in security and mitigate the impacts of these on its resources, operations, environment and reputation.
 - viii. determine the measures to be taken in light of the risks occurring from security breaches as part of business continuity planning.
 - ix. ensure that group structures are not abused to circumvent prohibitions on the sharing of personal information.
- 7.10.4 An insurer and its intermediaries should be aware of outsourcing risk, especially when the outsourcing agreement is reached with firms in another jurisdiction.



7.10.5 An insurer and its intermediaries should be aware of reputation risk arising from cross-border activities and shall ensure that firms to which they outsource processes have sufficient safeguards in place to prevent the misuse or inappropriate communication of any personal information they have in their records.

8.0. ENFORCEMENT

8.1 The Authority shall enforce compliance to this guideline by exercising its powers to any person who contravenes the guideline or take any other measure as prescribed in the Insurance Act.

9.0. EFFECTIVE DATE

The effective date of this Regulation is 30th June 2013

10.0. ENQUIRY

Enquiries on any aspect of this guideline shall be referred to;

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