

### **Conduct of Business Rulebook (COBS)**

\*In this attachment underlining indicates new text and striking through indicates deleted text.



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## **2.5 Market Counterparties**

### **2.5.1 Subject to Rule 2.5.2:**

- (a) An Authorised Person may classify a Person as a Market Counterparty if:
  - (i) that Person qualifies as a “deemed” Professional Client in accordance with Rule 2.4.2; and
  - (ii) the requirements in Rule 2.5(b) have been met.
- (b) An Authorised Person must, before classifying a Professional Client as a Market Counterparty, ensure that such a Person has:
  - (i) been given a prior written notification of the classification as a Market Counterparty in relation to a particular Regulated Activity or Transaction, or in respect of all Regulated Activities and Transactions; and
  - (ii) not requested to be classified otherwise within the period specified in the notice.

### **Guidance**

In the case of a Market Counterparty which is a fund, trust or is otherwise managed or held by a Person which qualifies as a “deemed” Professional Client, notification under Rule 2.5.1(b)(i) must be given to the Person which manages or holds the assets of the Market Counterparty.

### **2.5.2 An Authorised Person which is an Insurer, Insurance Intermediary or Insurance Manager may “deem” any one or more of the following Persons to be a Market Counterparty:**

- (a) a ceding insurer; and

- (b) in respect of the services provided to that ceding insurer, any reinsurer, insurance agent or insurance broker that facilitates the provision of the services to the ceding insurer.

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## **7.1 Application**

### **7.1.1 The Rules in this chapter:**

- (a) apply to an Authorised Person with respect to the conduct in or from ~~the Abu Dhabi Global Market~~ ADGM of Insurance Business, Insurance Intermediation or Insurance Management to the extent specified in any Rule; and
- (b) do not apply to an Insurer that is an Authorised ISPV with the exception of Rule 7.2.

### **7.1.2 Only sections 7.2, 7.3, and 7.11, and Rules 7.6.1, 7.9.1 and 7.12.1 apply to an Insurer, Insurance Manager or Insurance Intermediary when it carries on a Regulated Activity with or for a Market Counterparty.**

## **7.2 Insurance Business and Intermediation Restrictions**

### **7.2.1 An Authorised Person may conduct Insurance Business, Insurance Management or Insurance Intermediation with or for a Client only to the extent specified in this section.**

### **7.2.2 An Authorised Person must ensure that it does not:**

- (a) if it is an Insurer, ~~E~~ffect a Contract of Insurance or carry out a Contract of Insurance through an establishment maintained by it in ~~the Abu Dhabi Global Market~~ ADGM; or
- (b) if it is an Insurance Manager or Insurance Intermediary, act in relation to a Contract of Insurance;

where the contract is in relation to a risk situated within the U.A.E., unless the risk is situated in ~~the Abu Dhabi Global Market~~ ADGM or another Financial Free Zone, or the contract is one of re-insurance.

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- 7.2.4 An Insurer must ensure that it does not carry on, through an establishment maintained by it in the ~~Abu Dhabi Global Market~~ ADGM, both Long-Term Insurance Business and General Insurance Business unless the General Insurance Business is restricted to Class 1 or Class 2 or both.

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- 7.2.7 An Insurer, Insurance Manager or Insurance Intermediary must only conduct business with insurance intermediaries:

- (a) that are Authorised Persons licensed to conduct Insurance Business, Insurance Management or Insurance Intermediation, as applicable, or are authorised, registered or appropriately licensed to carry out the relevant insurance activities in a jurisdiction outside of ADGM;
- (b) who satisfy the requirements of Rule 7.2.8; and
- (c) where there are written terms of business in place for such relationship.

- 7.2.8 An Insurer, Insurance Manager or Insurance Intermediary must satisfy itself that any other insurance intermediary with which it deals possesses appropriate levels of professional knowledge and experience.

## Guidance

1. The classes of Contracts of Insurance are set out in Chapter 1 of Part 4 of Schedule 1 of FSMR.
2. The following activities will normally be considered in direct connection with or for the purposes of Insurance Business carried on by an Insurer:
  - (a) investing, reinvesting or trading, as investor or rabb ul maal and for the Insurer's own account, that of its Subsidiary, its Holding Company or any Subsidiary of its Holding Company but not any other party, in Securities, loans, investment accounts, Units or Shares in Collective Investment Funds, certificates of

Mudaraba, certificates of Musharaka or other forms of Investments that are intended to earn profit or return for the investor;

- (b) rendering other services related to Insurance Business operations including, but not limited to, actuarial, risk assessment, loss prevention, safety engineering, data processing, accounting, claims handling, loss assessment, appraisal and collection services;
  - (c) acting as agent for another insurer in respect of Contracts of Insurance in which both Insurers participate; and
  - (d) establishing Subsidiaries or Associates engaged or organised to engage exclusively in one or more of the businesses specified above.
3. The ~~regulator~~ Regulator may give individual guidance on other business activities that may be determined to be in direct connection with Insurance Business.
4. Insurers, Insurance Managers and Insurance Intermediaries should enter into written contractual arrangements with intermediaries in respect of their dealings in order to clarify their respective roles and to ensure the fair treatment of Clients. Such agreements should include, where relevant, the parties' obligations in respect of:
- (a) product development;
  - (b) product promotion;
  - (c) the provision of pre-contractual and point of sale information to Clients;
  - (d) post-sale policy servicing;
  - (e) claims notification and handling;
  - (f) complaints notification and handling;
  - (g) management information and other documentation required by the Insurer;
  - (h) remedial measures; and

- (i) any other matters related to the relationship with Clients.

An Insurer will remain ultimately responsible for policy servicing throughout the lifecycle of the policy.

5. The Regulator expects Insurance Managers and Insurance Intermediaries to have a good understanding of different insurance products in respect of which they carry out their Regulated Activities, including with regard to the nature, key features and risks covered by, and associated with, an insurance product.
6. An Insurance Manager or an Insurance Intermediary should not carry on Regulated Activities in respect of any matter in relation to which its staff do not have the necessary specific skills or knowledge.
7. Insurers, Insurance Managers and Insurance Intermediaries are expected to have adequate systems and controls to comply with Rule 7.2.8 and to report to the Regulator any significant issues of which they become aware, including through identifying if a particular insurance intermediary is the subject of regular or frequent complaints.

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#### 7.3.1 **General Obligation**

- (a) When communicating any information in relation to Insurance Business, Insurance Intermediation or Insurance Management to a Person, an Authorised Person must take reasonable steps to ensure that the communication is clear, fair and not misleading.
- (b) An Insurer, Insurance Intermediary or Insurance Manager must not, in any form of communication with a Person, attempt to limit or avoid any duty or liability it may have to that Person under FSMR.
- (c) An Insurer or Insurance Intermediary must, when providing or directing Marketing Material to a Retail Client, comply with the requirements in Rule 3.2, if the Marketing Material relates to a Direct Long-Term Insurance Contract.

- (d) An Insurer, Insurance Manager or Insurance Intermediary must only market a Contract of Insurance which it has assessed to be suitable for its target Clients in accordance with Rule 7.13.1.

7.3.2 Where an Authorised Person becomes aware that any information provided pursuant to Rule 7.3.1(a) is not clear or fair, or is misleading, it must:

- (a) withdraw the information as soon as possible; and
- (b) take reasonable steps to notify any Person who is known to be relying on the information.

#### **Guidance**

1. A communication addressed to a Professional Client may not need to include the same information, or be presented in the same way as, a communication addressed to a Retail Client.
2. Records of information required to be communicated in relation to Insurance Business, Insurance Intermediation or Insurance Management pursuant to this Chapter 7 should be maintained in accordance with GEN Rule 3.3.34.
3. Where promotional material is developed by an Authorised Person, it is expected that an independent review of promotional materials should be undertaken by a person other than the person that prepared or designed it. Additionally, where the promotional material is developed by an Insurance Intermediary or Insurance Manager, the relevant Insurer should verify the accuracy of the promotional material before it is used.
4. Where information withdrawn pursuant to Rule 7.3.2 was prepared by a third party, for example, information prepared by an insurer for use by an insurance intermediary, the Authorised Person should inform that person immediately of the withdrawal of the information and the reason why it was considered not to be clear or fair, or misleading.

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7.5.1 An Insurer, Insurance Manager or Insurance Intermediary must disclose to a Client:

- (a) the name ~~and~~, address and the responsible supervisory authorities of the insurer or insurers effecting the Contract of Insurance;
- (b) its own name and address where different; and
- (c) contact details of the Person to whom a claim is to be notified.

7.5.2 The disclosures in Rule 7.5.1 must be made before effecting or placing the Contract of Insurance, and, where necessary, on its amendment or renewal, or as soon as reasonably practicable thereafter.

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7.5.7 An Insurer must take reasonable steps to satisfy itself that any intermediary with whom it deals complies with the disclosure obligations set out in Rule 7.5.

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7.6.4 An Insurer, Insurance Intermediary or Insurance Manager must, ~~on~~ at the request of any Client, disclose to that Client all commissions and other economic benefits accruing to the Authorised Person or any member of the same Group from:

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#### 7.7.4 **Specific Disclosure for Long-Term Insurance**

Where an Insurer or an Insurance Intermediary proposes Direct Long-Term Insurance to a Retail Client, the disclosure for the purposes of this section must include:

- (a) the method of calculation of any bonuses;
- (b) an indication of surrender values and paid-up values, and the extent to which any such values are guaranteed;
- (c) for unit-linked insurance contracts, definition of the units to which they are linked, and a description of the underlying assets;



- (d) the basis of any projections included in the information; ~~and~~
- (e) for the purposes of investment-based insurance products and where indication of past, simulated or future performance is provided, the limits on upside or downside potential and a prominent warning that past performance is not a reliable indicator of future performance; and
- (ef) any facts that are material to the decision to invest, including risks associated with the investment and factors that may adversely affect the performance of the Investments.

## 7.8 **Suitability and Advice**

- 7.8.1 An Insurer ~~or an~~, Insurance Intermediary or Insurance Manager must comply with the suitability requirement set out in Rule 3.4 when conducting any Insurance, Insurance Management or Insurance Intermediation Business with or for a Retail Client in respect of Direct Long-Term Insurance.
- 7.8.2
  - (a) The Insurer, Insurance Manager or Insurance Intermediary must obtain from a Retail Client such information as is necessary to identify the Client's circumstances and objectives, and consider whether the terms of the particular contract of General Insurance meet the requirements identified.
  - (b) An Insurer, Insurance Manager and an Insurance Intermediary may recommend to a Client a contract of General Insurance that does not meet all the Client's requirements only if it clearly explains to the Client, at the point of making the recommendation, that the contract does not fully meet the Client's requirements and the differences in the insurance recommended and the Client instructs the Insurer or Insurance Intermediary to proceed in writing under Rule 7.8.4.
- 7.8.3 When deciding what level of explanation is appropriate for a Client to whom a contract of insurance that does not fully meet that Client's requirements is required, the Insurer or Insurance Intermediary must take into consideration the knowledge held by the Client in relation to the type of insurance in question.

- 7.8.4 Where an Insurance Intermediary is instructed to obtain insurance which is contrary to the advice that it has given to a Client, the Insurance Intermediary must obtain from the Client written confirmation of the Client's instructions before arranging or buying the relevant insurance.
- 7.8.5 An Insurer, Insurance Intermediary or Insurance Manager must disclose to a Client whether or not it provides advice.
- 7.8.6 (a) When carrying on Insurance Business, Insurance Management or Insurance Intermediation for a Retail Client in respect of Direct Long-Term Insurance, an Authorised Person that does not provide advice must recommend to the Retail Client that they seek independent advice.
- (b) If a Retail Client chooses not to receive advice in respect of Direct Long-Term Insurance, the Authorised Person must obtain a written acknowledgement from the Retail Client to that effect.
- 7.8.7 When providing advice in relation to Insurance Business, Insurance Management or Insurance Intermediation an Authorised Person must take reasonable steps to ensure that any advice is communicated in a clear and accurate manner that is comprehensible to the Client and documented in writing.

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- 7.10.3 On expiry or cancellation of the insurance, at the request of the Client, an Insurer, Insurance Manager or Insurance Intermediary must promptly make available all documentation and information to which the Client is entitled.
- 7.10.3A An Insurer, Insurance Manager or Insurance Intermediary must provide prompt notification to a Client of any changes in policy terms and conditions or amendments to the legislation applicable to the policy.

### **Claims**

- 7.10.4 Where an Insurance Manager or Insurance Intermediary handles insurance claims it must:

- (a) on request, give the Client reasonable guidance, inform the Client of applicable procedures and provide the Client with the relevant forms in pursuing a claim under the relevant policy;
- (b) handle claims fairly and promptly and keep the Client informed of progress;
- (c) inform the Client in writing, with an explanation, if it is unable to deal with any part of a claim; ~~and~~
- (d) forward settlement of any claim, as soon as reasonably practicable, once it has been agreed; and
- (e) ensure that claims are handled by individuals who have the relevant competence, expertise and experience, and who are able to handle the claims in a fair and impartial manner.

7.10.5 An Insurer or an Insurance Manager acting on behalf of an Insurer must:

- (a) on request, give the Client reasonable guidance on applicable procedures and provide the Client with the relevant forms in pursuing a claim under the relevant policy;
- ~~(a)~~ (b) handle claims fairly and promptly;
- ~~(b)~~ (c) keep the Client informed of the progress of the claim;
- ~~(c)~~ (d) not reject a claim unreasonably;
- ~~(d)~~ (e) if only part of a claim is accepted:
  - (i) provide a clear statement about the part of the claim that is accepted; and
  - (ii) give clear reasons for rejecting that part of the claim that has not been accepted; ~~and~~
- ~~(e)~~ (f) settle the claim promptly; and

- (g) ensure, that claims are handled by individuals who have the relevant competence, capability, expertise and experience, and who are able to handle the claims in a fair and impartial manner.

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## **7.12 Conflicts of Interest**

- 7.12.1 An Insurer, Insurance Manager or Insurance Intermediary must take all appropriate steps to identify and to prevent or manage any conflict of interest to ensure that all its Clients are treated fairly and not prejudiced by any such conflict.
- 7.12.2 An Insurer, Insurance Manager or Insurance Intermediary must, as a part of its systems and controls, take reasonable steps to prevent conflicts of interest from adversely affecting the interests of its Clients.
- 7.12.3 An Insurer, Insurance Manager or Insurance Intermediary must disclose any conflict of interest to the affected Clients in writing.
- 7.12.4 If an Insurer, Insurance Manager or Insurance Intermediary is unable to prevent or manage a conflict or potential conflict of interest, it must decline to act for the affected Clients.

### **Guidance**

1. Insurers, Insurance Managers and Insurance Intermediaries are expected to ensure that their Clients are treated fairly and not prejudiced by any conflict of interests. For these purposes, reference should be made to the provisions of GEN 3.3.21 to 3.3.30 and, in particular, to the factors set out in GEN 3.3.22 whose existence may give rise to a material risk of damage to the interests of Clients.
2. Particular attention should be given to the role of an intermediary, the capacity in which it acts, to whom it owes its duties and the nature of its remuneration. For example, if it is acting as an Insurance Intermediary, it is acting as an agent for the policyholder and it has a duty to act in the best interests of the policyholder. Where it is acting as an Insurance Manager, it has a duty to act in the best interests

of its principal, i.e. the insurer or insurers from which it holds a mandate to act as agent.

3. While the Rules do not prohibit an Insurance Intermediary from acting for both an insurer and a policyholder in relation to the same risk, such an arrangement could result in conflicts of interest that are difficult to manage. If an Insurance Intermediary proposes to act for both an insurer and a policyholder in relation to the same risk, it should, under Rule 7.12.3 and at a minimum, notify both parties in a timely manner about the roles it will be performing and the procedures that will apply if acting in the interests of one party will impair its ability to properly act in the best interests of the other party.
4. Conflicts of interest may arise from compensation structures as well as other financial and non-financial incentives. Compensation and incentive structures, including performance targets or performance management criteria, that do not align the interests of an Insurer, Insurance Intermediary or Insurance Manager with the interests of a Client and that are not sufficiently linked to fair outcomes for the Client should not be used as they can encourage behaviour that results in unsuitable sales or other breaches of the Insurer's, Insurance Manager's or Insurance Intermediary's duty of care towards the Client.

### **7.13 Product Development**

#### **7.13.1 When designing and developing a Contract of Insurance, an Insurer must:**

- (a) take into consideration the needs and requirements of its target Client segments;
- (b) undertake an assessment of the characteristics of a new product and the related documentation;
- (c) undertake appropriate due diligence to understand and evaluate:
  - (i) the features and characteristics of the product and its benefits for each Client segment;

- (ii) whether the target Client segment would be able to understand the product;
  - (iii) whether the objectives, characteristics and associated costs and fees of the product are suitable for its target Clients;
  - (iv) whether the distribution methods are appropriate for the new product, including the competency of its Employees and (if applicable) any Insurance Manager or Insurance Intermediary to understand and properly explain the features and characteristics of the product; and
  - (v) whether the new product is consistent with its risk appetite.
- (d) identify Client segments for which the product is and is not suitable.

**7.13.2** Where the development of a product is undertaken by an Insurance Manager or Insurance Intermediary on behalf of an Insurer, the Insurer must retain oversight of, and is accountable for, the development of the product in accordance with Rule 7.13.1.

**Guidance**

1. Insurers should provide relevant information to insurance managers or insurance intermediaries to ensure that they understand the target market for a new product, including information related to the characteristics of the new product and the target market.
2. Insurers and Insurance Managers should monitor a new product after launch to ensure that it meets the needs and requirements of the target market.
3. Products and distribution strategies should be revised periodically based on the assessment undertaken pursuant to guidance 2.