

CAYMAN ISLANDS MONETARY AUTHORITY

PRIVATE SECTOR CONSULTATION



Rule and Statement of Guidance (“SOG”) on Market Conduct – Insurers, Agents and Brokers

A. INTRODUCTION

1. Section 34(1)(a) of the Monetary Authority Law (2013 Revision) (as amended) (“MAL”) states that –

After private sector consultation and consultation with the Financial Secretary, the Authority may –

- (a) *issue or amend rules or statements of principle or guidance concerning the conduct of licensees and their officers and employees, and any other persons to whom and to the extent that the regulatory laws may apply;*

2. Requirements specific to the private sector consultation are outlined in section 4(1) of the MAL as follows:

When this Law requires private sector consultation in relation to a proposed measure –

- (a) *the Authority shall give to each private sector association a draft of the proposed measure, together with –*
 - i. *an explanation of the purpose of the proposed measure;*
 - ii. *an explanation of the Authority’s reasons for believing that the proposed measure is compatible with the Authority’s functions and duties under section 6;*
 - iii. *an explanation of the extent to which a corresponding measure has been adopted in a country or territory outside the Islands;*
 - iv. *an estimate of any significant costs of the proposed measure, together with an analysis of the benefits that will arise if the proposed measure is adopted; and*
 - v. *notice that representations about the proposed measure may be made to the Authority within a period specified in the notice (not being less than thirty days or such shorter period as may be permitted by subsection (3));and*

- (b) *before proceeding with the proposed measure, the Authority shall have regard to any representations made by the private sector associations,*

and shall give a written response, which shall be copied to all the private sector associations.

3. The Authority hereby seeks consultation and comment from the private sector associations concerning amendments to the Rule and to the Statement of Guidance on Market Conduct – Class A Insurers and Agents (2009), that give rise to a Revised Rule and Revised Statement of Guidance on Market Conduct – Insurers, Agents and Brokers.
4. The Revised Rule and Revised Statement of Guidance are attached as Appendix A and B respectively. The Revised Rule and Revised Statement of Guidance on Market Conduct- Insurers, Agents and Brokers have been adapted from existing guidance. The primary changes have been to insert specific provisions for further adherence to international principles and to make the measures applicable to Class B Insurers that write domestic business under the Insurance Law as approved by the Authority.

B. BACKGROUND

5. The first Statement of Guidance on Market Conduct was issued in 2003.¹ The objective at that time was to meet the supervisory standards set out in International Association of Insurance Supervisors (“IAIS”) core principles (“ICP”) and to improve the understanding of insurance by consumers, particularly at that time, in relation to health insurance. The visit of Hurricane Ivan exposed detrimental domestic insurance market practices prompting the Government to commission and release the Report on the Domestic Insurance Industry – Post Ivan (“The Ivan Report”). A number of the recommendations of the Ivan Report are, in the most basic form, as a result of inadequate servicing of policies and negligent claims handling. Subsequently, a revision to the Statement of Guidance on Market Conduct occurred in 2006, applying to Class A Insurers and Agents only due to the newly released “Code of Practice for Brokers” by the Cayman Islands Insurance Association. Ultimately, the Rule on Market Conduct – Class A Insurers, Agents and Brokers was introduced in 2009 with and the Statement of Guidance being revised to accommodate the new Rule.

Insurance Division Complaints Log

6. The Authority maintains a list of complaints from policyholders on their insurance company over the last 4 years. It is useful to note that complaints received by the Authority are based on the policyholder’s initiative. The common theme underlying each complaint centred on timely handling of claims and lack of communication with policyholders. Some examples are:
 - substantial delays in policy commencement or renewal;
 - delays in handling claims and communicating to policyholders on the status of claims;
 - not informing policyholders of changes to their policy; and
 - lack of communication on the delay in claims processing.

¹ Statement of Guidance on Market Conduct – Class A Insurers and Brokers and Agents 2003. The 2006 SOG did not apply to brokers.

7. The recommended changes proposed in the Revised Rule and Revised SOG - Market Conduct –Insurers, Agents and Brokers will cover the period between the last changes to these measures (March 2009) and the 2011 update to the ICPs for more comprehensive coverage of the conduct of business requirements. The amendments will address some components of complaints received over this period by enhancing the conduct of insurers, agents, and brokers towards policyholders.²

C. PURPOSE OF PROPOSED MEASURE AND CONSISTENCY WITH THE AUTHORITY’S FUNCTIONS

8. The purpose of the Revised Rule and Revised SOG is to promote and enhance market confidence and consumer protection pursuant to the Authority’s duties, in particular section 6(3) of MAL which requires that; “In performing its regulatory functions and its co-operative functions, the Authority shall, ... endeavour to promote and enhance market confidence, consumer protection and the reputation of the Islands as a financial centre;...”.
9. Section 6(3)(f) of MAL requires the recognition of the need for transparency and fairness on the part of the Authority, and consistency with the Authority’s other functions.
10. Under section 22 of the Insurance Law, the Authority has a duty to maintain a general review of insurance practice in the Islands.
11. In addition, the Authority’s mission statement includes: ...to carry out appropriate, effective, and efficient supervision and regulation in accordance with relevant international standards.... In this regard, the revision of the Rule and SOG seeks to: secure consistency in certain practices in the domestic insurance market, to bolster transparency and disclosure in selling to the benefit of consumers and the market as a whole, and fairness to insurers already following sound and fair business practices.³

List of new provisions in the Rule⁴

Para	New provision	International Standard
5.1.3	Insurers, Agents and Brokers must have in place a system of complaints handling. This system must include policies and processes to handle complaints in a timely and fair manner.	ICP 19.10
5.2.1	Insurers, Agents and Brokers must have policies and procedures for the protection of private information on customers.	ICP 19.12
5.2.2	Insurers, Agents and Brokers must inform customers about which information might be	ICP 19.11.6

² The Complaints Log is a summary of complaints received by CIMA from customers and is not intended to be a detailed account of issues and outcomes.

³ The Rule will be enforced by means of the Authority’s powers under section 34 of Monetary Authority Law (2013 Revision).

⁴ Revisions to the SOG are required primarily to accommodate the new rule.

	disclosed and to whom.	
5.5.1	Insurers, Agents and Brokers must have policies and processes in place to handle claims in a timely and fair manner.	ICP 19.9
5.5.2	Insurers, Agents and Brokers must maintain written documentation on their claims handling procedures, which include all steps from the claim being raised to its settlement.	ICP 19.9.2
5.5.3	Insurers, Agents and Brokers must inform customers about procedures, formalities and common timeframes for claims settlement.	ICP 19.9.3
5.5.4	Insurers, Agents and Brokers must provide information to claimants about the status of their claim in a timely and fair manner.	ICP 19.9.4
5.5.5	Insurers, Agents and Brokers must provide reasons in writing for denying a claim.	ICP 19.9.1

D. INTERNATIONAL INITIATIVES

12. The IAIS Core Principles and Methodology (Oct 2011) deal with market conduct in ICP 19.

13. In 2005, Cayman was assessed by the IMF against the IAIS core principles and was rated as "Observed" for the ICP 11: Market Conduct due to the SOG Market Conduct for Class A Insurers and Brokers and Agents. The IAIS Core Principles and Methodology were revised in October 2011 into a new hierarchy of supervisory material and expanded from the initial 17 principles to 26 (now referred to as principle "statements"). The statement ICP 19: Conduct of Business consists of 13 standards which are linked to that statement and must be met to demonstrate full observance with the core principles.

14. The three standards – ICP 19.8, 19.9, and 19.11 addressed policy servicing, handling of claims, and privacy protection of customers' personal information respectively. The Authority ranked itself as Largely Observed for ICP 19.8, Partly Observed for ICP 19.9, and Not Observed for ICP 19.11. It is anticipated to raise the expected IMF assessment against these standards.

E. IMPLEMENTATION IN OTHER JURISDICTIONS

15. Details on the regulatory requirements of several countries were examined. The jurisdictions below were selected on the basis that either:

- a. It has a similar domestic insurance market operating alongside a significant captive market: (Bermuda, Gibraltar, Guernsey) or
- b. It is located in the region thereby having a similar risk base (i.e. concentrated and subject to catastrophic risk) and also home to a number of Approved External Insurance licensees (Bahamas, Trinidad, Barbados, Jamaica) or

- c. It was recently assessed by the IMF in accordance with the Revised IAIS ICPs (Canada, Hong Kong)⁵

MARKET CONDUCT REQUIREMENTS

	Primary Legislation	Regulations/Guidance
Canada	<p>The Quebec legislation (<i>Act Respecting the Protection of Personal Information in the Private Sector</i> and the <i>Distribution of Financial Products Act</i>) establishes specific rules to protect the privacy of customer information, and require that proper policies and procedures must be in place to handle claims equitably.</p> <p>Ontario's <i>Personal Information Protection and Electronic Documents Act</i> governs the collection, use and disclosure of personal information. The <i>Insurance Act of Ontario</i> and the <i>Registered Insurance Brokers Act</i> prohibits insurers and intermediaries from unfair or deceptive acts or practices including unreasonable delay in adjustment and settlement of claims.</p>	<p>The Quebec regulator (AMF) issued a Notice on the obligation of insurers and intermediaries to service policies until expiry. With regards to claims handling, a Complaint Examination and Dispute Resolution Policy was published to guide in adopting best practices.</p> <p>Ontario has established a Model Code which requires development and implementation of guidelines pertaining to personal information held by organizations.</p>

⁵ Assessment IMF grading for Canada were; *Observed (14) Largely Observed (8) Partly Observed (4) Not Observed (0) Not Applicable (0)* and for Hong Kong were; *Observed (9) Largely Observed (12) Partly Observed (5) Not Observed (0) Not Applicable (0)*

<p>Hong Kong</p>	<p><i>Personal Data Privacy Ordinance</i> is a comprehensive legislation on the storage, handling, retention, collection, access, and communication of personal data.</p> <p><i>S6A Insurance Companies Ordinance 2013</i> includes provisions on illegal contracts.</p>	<p><i>Minimum Requirements for Insurance Brokers (MRIB)</i> guidelines require brokers to exercise due care and diligence in handling claims, confidentiality, and understanding and satisfying the needs of clients. It is industry practice for insurers to service policies regardless of duration through to the point at which all obligations under the policy have been satisfied including the disclosure of relevant information.</p> <p>Guidance Note <i>Guidance on the Proper Handling of Consumers' Personal Data for the Insurance Industry</i>.</p>
<p>Bermuda</p>	<p><i>S13 Insurance Amendment Act 2001</i> highlights restriction on disclosure of customer information along with high fines for violations.</p>	<p><i>Guidance Note 11 Market Conduct March 2005</i> and <i>The Insurance Code of Conduct, 2010</i> requires insurers and intermediaries to conduct business efficiently and expeditiously as well as keeping customer information confidential.</p>
<p>Guernsey</p>	<p><i>S47 The Insurance Business (Bailiwick of Guernsey) Law, 2002</i> discusses the requirement for policyholders to be made aware of the right to cancel with regards to transfer of long term business. <i>S79</i> establishes restrictions on disclosure of customer personal information.</p> <p>Additionally, <i>S56 The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002</i> addresses unauthorized disclosure of customer personal information.</p>	<p><i>Conduct of Business Rules for Licensed Intermediaries</i> require the retention of all correspondence with customers from commencement of the policy through to the period of time where claims can be brought.</p> <p><i>Licensed Insurers Code of Conduct</i> includes provisions for disclosure of customer information and informing customers of conditions under which information will be disclosed.</p>

Gibraltar	<p><i>Sch12</i> specifies information to be provided at commencement and for the duration of the policy and information on motor vehicle claims.</p> <p><i>Sch16</i> sets out conditions under which customer personal information may be disclosed.</p> <p><i>S30 Financial Services (Insurance Companies) Act</i> lays out provisions for the fair handling of motor vehicle claims.</p>	<p><i>Guidance Notes on Disclosure of Information relating to Insurance Contracts</i> is a comprehensive document detailing how information should be disclosed, to whom, and when disclosures should occur. Information includes policy surrender value, bonus payments to policyholders, the complaints procedure, and specific disclosures with regards to life insurance contracts.</p>
Bahamas	<p><i>(Domestic) Insurance Act</i> passed 2005 to come into force early 2006. Comprehensive legislation including provisions on fraudulent representation advertising, rights of cancellation, the expeditious issue of policy documents, and the disclosure of pro rata condition of average.</p>	None identified.
Trinidad	<p><i>Insurance Act</i> includes provisions on misleading adverts, fraudulent representation, avoidance of policies, particulars to be specified in policies, claims handling. Proposed amendments to legislation (<i>Insurance Bill, 2013</i>) contain provisions for cancellation of registration if the interest of policyholders is threatened, there are unfair or delayed handling and settlement of claims, or there is unsound practice. It also addresses payment and processing of premiums.</p>	<p><i>Guideline on Security Systems for Safeguarding Customer Information</i> is a document outlaying provisions for the physical storage, IT systems, staff training, and outsourcing considerations as applicable to customer data.</p> <p><i>Claims Guideline</i> requires insurers and intermediaries to receive, process, settle, and resolve disputes within specific timeframes as set out in the document.</p> <p><i>Code of Ethics, Association of Trinidad & Tobago Insurance Companies</i> require members to treat all customers fairly in the provision of insurance services and adequately handle all contractual obligations including claims, disclosures, and confidentiality.</p>

Barbados	<i>Insurance Act 2007</i> sets out provisions for cancellation of registration of persons for undue delay in claims handling and any fraudulent or dishonest practice; liability on insurer, agent, broker for unlawful contracts; false advertising; failure to pay over premiums in a timely manner; insured's right to cancel; divulging personal information. Insurance rebates are not allowed.	<i>Market Conduct Guidelines</i> outlines the requirement for insurers and intermediaries to transact all business with customers in an expeditious manner, disclose information to the customer that will assist in informed decision making, and set out and follow claims handling procedures.
Jamaica	<i>Insurance Act 2001</i> has a number of parts relating to market conduct, in particular provisions relating to avoidance of long-term policies and disclosure of pro rata condition of average for general insurance and misleading advertisements.	Proposed amendments issued in 2010 regarding requirement for the insurer (long term policies) to serve a notice within 15 days to the prospective policyholder giving details of the nature and type of the policy.

F. SIGNIFICANT COSTS AND BENEFITS

16. The extent of any cost will be dependant upon the existing practices of licensees and in particular its observance of the existing Rule (2009) and SOG (2009). It is known that the 2009 SOG is not seen as controversial by the industry, that the recommendations of the Ivan Report were accepted by industry and in many cases implemented voluntarily prior to the issuance of the Rule and SOG. For the purpose of this analysis, the costs are estimated for those firms that currently operate according to the Rule and SOG and those that do not. Thus the range of potential costs can be derived.

	Costs	Benefits
Authority	1. Gazette and publication of amended measures 2. Amend supervisory manuals 3. Training of Insurance Division staff	1. Enhance and support regulatory processes, in particular on-site inspection, 2. Supports internal training for new staff in Insurance Division, 3. Ensures compliance with International Standards of supervision set by the IAIS. 4. Improve the reputation of the Cayman Islands.
Cayman	To be fully effective there could be some expenditure to raise awareness of consumers by means of press releases, presentations and educational workshops but this is not required for the Rule and SOG to operate.	1. More transparent market for prospective policyholders with clarity as to the roles and duties of insurers, agents and brokers. 2. Lower costs for policyholders resulting from appropriate coverage and accurate underwriting. Less disputes and faster resolution of disputes that do arise.
Licensees	<p><u>For licensees currently complying with the Rule and SOG:</u> Direct compliance costs, arising from the Revised Rule and Revised SOG are expected to result from:</p> <ol style="list-style-type: none"> 1. Minor training costs to explain the changes to the Rule and SOG. Such costs may be discounted given the need to conduct training on a regular basis = \$0 per licensee; 2. Improvement or implementation of policies or systems for the protection of customers' personal information. <p><i>The costs of improvements for protection of customers' personal information will vary according to existing systems in place and may include enhancement of storage capabilities.</i></p> <p><u>For licensees not currently complying with the Rule and SOG:</u> Direct compliance costs, arising from the Revised Rule and Revised SOG are expected to be resulting from:</p> <ol style="list-style-type: none"> 1. Information provided to clients which ensures adequate policy servicing; 	<ol style="list-style-type: none"> 1. Provides information on the Authority's approach and sound business practice with regard to market conduct. 2. Assists licensees in the management of reputational, legal and regulatory risks. 3. Ensures that all market participants operate in a fair and transparent manner thus improving confidence in the market and encouraging domestic business. 4. Improves relations with counterparts outside Cayman including reinsurers and which should improve terms of dealing for Cayman entities. 5. Written documentation will assist in the speedy and efficient resolution of disputes between insurers and policyholder where expectations do not match the policy benefits. 6. Improved confidence in

	<p>2. Specific information to clients on claims handling procedures and dispute resolution; <i>The costs of publication of new contractual and promotional documentation will vary according to the nature and extent of materials already used by licensees. It is expected that most amendments will be minimal and most can be accommodated once existing documentation has been depleted and therefore the normal production costs of documents will apply.</i> =\$1,000 per licensee.</p> <p>3. Improvement or implementation of policies or systems for the protection of customers' personal information. <i>The costs of improvements for protection of customers' personal information will vary according to existing systems in place and may include enhancement of storage capabilities.</i></p> <p>4. Training of client facing personnel, namely sales staff, agents, claims handlers and complaints/compliance officers on the required policies and procedures. <i>Internal procedure review and training are on-going and thus the addition of policies and training concerning market conduct can be accommodated in this process.</i> =\$1-3,000k per licensee.</p>	<p>the domestic insurance market and its products thus increasing business and wider insurance coverage of domestic risks thus reducing social and economic detriment in the event of perils occurring.</p>
--	--	---

G. COMMENTS AND CONSULTATION

- 17. The Authority seeks consultation through written comments and representations concerning the Revised Rule and Revised Statement of Guidance on **Market Conduct – Insurers, Agents and Brokers** from the private sector associations.
- 18. Representations must be received by the Authority by **1700hrs on December 19th, 2014.**
- 19. Comments and representations should be addressed to:

The Managing Director
 Cayman Islands Monetary Authority
 P.O. Box 10052 APO

Grand Cayman, KY1-1001
Cayman Islands, BWI
Tel: 345-949-7089
Fax: 345-945-1145
Email: consultation@cimoney.com.ky and copied to
s.francis@cimoney.com.ky

20. The Authority shall have due regard to any representation made by private sector associations and industry stakeholders. The Authority shall provide a written response collating the feedback received and the Authority's position on this feedback. This response shall be copied to all relevant private sector associations only.