



**Concept Paper for Proposed Legislative
Amendments to Strengthen Market Conduct
Requirements for Insurance Companies &
Intermediaries to Safeguard against Unfair
Trade Practices**

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1.0 INTRODUCTION

- 1.1 The Financial Services Commission (“the Commission”) is mandated by section 6 of the Financial Services Commission Act, 2001 (“FSC Act”) to promote stability and public confidence in the operations of the financial institutions that it regulates; promote public understanding of the prescribed institutions; and promote the modernization of the financial services with a view to the adoption and maintenance of international standards of competence, efficiency and competitiveness and to protecting customers of financial services. Furthermore section 6(2) (a) of the FSC Act also mandates the Commission to ensure that appropriate standards of conduct and performance are maintained by these institutions. The Commission is also in the forefront of the national initiatives to promote greater financial inclusion and to ensure that insurance services are delivered in a manner that accommodates the needs of the customers and policyholders of insurance companies and intermediaries.
- 1.2 The Insurance Act, 2001 (“Insurance Act”) and Insurance Regulations, 2001 (“Insurance Regulations”) seek to promote stability within the insurance industry, thereby, maintaining public confidence in the relationship between policyholders, insurance companies and insurance intermediaries with the view of protecting the interest of customers. Confidence in the insurance industry can be eroded if insurance companies and intermediaries engage in unethical behaviour or unfair trade practices. By law, insurers have a duty of care to policyholders (section 36 of the Insurance Act, 2001), consequently, when intermediaries act as agents of these insurers, they must be held to the same standards. Intermediaries also have a duty of care to their customers whom they represent in providing insurance services. The Commission is mandated to ensure that the principles and practices of sound market conduct are observed by all its registrants in order to protect the interests of policyholders. Insurance companies and intermediaries abiding to sound market conduct can aid in reducing the presence of unfair trade practices.
- 1.3 The Commission accepts the guidance of the International Association of Insurance Supervisors (IAIS) in Insurance Core Principle (ICP) 19 which recognizes the need for market conduct regulations in order to:
- a. protect policyholders and promote fair consumer outcomes;
 - b. strengthen public trust and consumer confidence in the insurance sector;
 - c. minimise the risk of insurers and intermediaries following business models that are unsustainable or pose reputational risk, thereby complementing the risk management framework of a solvency regime; and
 - d. support a sound and resilient insurance sector by creating level playing fields in terms of the basis on which insurers and intermediaries can compete while maintaining business practices that support the fair treatment of customers.
(ICP 19 Conduct of Business; issued by the IAIS, 2017)
- 1.4 The fair treatment of customers encompasses concepts such as ethical behaviour, acting in good faith and the prohibition of abusive practices as well as sound market conduct. Market conduct refers to all strategies, policies, activities, systems, practices and measures that are executed or performed by insurance companies and intermediaries in the ordinary course of business, prior to

the parties entering a contractual arrangement and until all obligations under the contract have been satisfied, to ensure that all customers are treated fairly¹.

- 1.5 With this paper, the Commission is therefore proposing amendment to the Insurance Regulations 2001 to legislate the standards for acceptable business practices for the protection of policyholders. The purpose of these proposed amendments to the regulations is to give the force of law to market conduct best practices outlined in the “**Revised Guidelines on Market Conduct of Business for Insurance Companies and Intermediaries**”². In particular, it is recommended that the existing Regulation 142, which deals with unfair trade practices be amended to incorporate the requirement that insurance companies and intermediaries establish as well as implement policies and procedures that will aid these companies to reduce the possibilities that their employees commit any unfair practices. In effect, these proposed regulations will raise the market conduct standards in the insurance industry and by doing so; there is a great opportunity to reduce unfair practices and to engender consumer confidence. Therefore, these proposed provisions should be seen as measures to minimise the occurrence of unfair trade practices. The next section of the paper provides the objective of the proposed amendments while the following sections (3-12) illustrate the provisions, under various headings, that will strengthen market conduct practices and hence reduce the potential for unfair trade practices.

2.0 OBJECTIVES

The main objectives of these proposed Regulations are the mandatory adoption of the following business standards by insurance companies and intermediaries:

- 2.1 The protection of customers by promoting fair consumer outcomes and exercising due care, skill and diligence in dealing with them;
- 2.2 The developing, marketing and selling of products and services in a manner that pays due regard to the interests and needs of the customer;
- 2.3 The adoption of policies and processes to handle complaints and disputes in a timely, fair and effective manner;
- 2.4 The adoption of policies and processes to handle policyholder claims in a timely and fair manner;
- 2.5 To obtain adequate information about the customer in order to assess his/her insurance needs professionally, thereby minimising the risk of sales which are not appropriate to the customer’s interests and needs;

¹ Source: IAIS Core Principles 19, Conduct of Business, page 287.

² The guideline on market conduct for insurance companies and intermediaries was first issued in 2014 and was then revised in 2018. See the FSC website.

2.6 To provide at all times, relevant, accurate, clear and meaningful information, that is not misleading, to customers in a timely and comprehensive manner;

2.7 The protection of the privacy of information obtained from all customers.

3.0 INTEGRITY AND FAIR DEALING

3.1 The insurer has a responsibility for good conduct throughout the insurance life cycle as it is the insurer that is the ultimate carrier of insurance risks. The insurer, therefore, must have in place policies and procedures on the fair treatment of customers as an integral part of its business culture.

Intermediaries play significant roles in insurance distribution and other areas and in the interface between insurers and customers; their good conduct in performing these services is critical in building and justifying public trust and confidence in the insurance sector. Intermediaries must, therefore, have in place policies and procedures on the fair treatment of customers as an integral part of their business culture.

The policies and procedures of the insurer and the intermediary are to be made available for inspection by the Commission.

3.2 Insurers and intermediaries must implement recruitment policies that facilitate the employment of persons of the highest calibre and competence who are able to satisfy the fit and proper requirements as stipulated by sections 2(3), 11(1) and 73(2) of the Insurance Act, 2001.

3.2 Insurers and intermediaries must develop charters, setting out standards of service that are to be delivered to their customers. A system must be implemented to regularly monitor the quality of service being delivered by staff members.

3.3 Insurers have a duty to ensure that intermediaries acting on their behalf comply with the insurer's policies and procedures in respect of market conduct and to report to the Commission breaches by the intermediaries of the provisions of the Insurance Act and the Insurance Regulations.

3.4 Intermediaries are to ensure that all premiums are paid to the insurer within the credit period agreed between the intermediary and the insurance company; failure to comply with this provision is a breach of these proposed regulations. Intermediaries are also required to monitor the progress of all claims initiated by their customers while giving professional assistance to the customers, adjusters and insurers, to facilitate efficient and just settlement.

4.0 CARE, SKILL AND DILIGENCE

4.1 Insurers and intermediaries must conduct their business activities with due care, skill and diligence ensuring that customers are adequately informed and given full explanations of the nature and effect of all provisions in insurance policies issued and distributed by them.

- 4.2 Insurers are required to maintain appropriate and up-to-date training procedures and training manuals and conduct training sessions at appropriate intervals to educate their sales representatives, agents and staff about the nature and characteristics of all their insurance products.
- 4.3 Intermediaries must also ensure that members of staff and their sales representatives are trained and equipped to adequately advise customers on the features and characteristics of all insurance policies that they distribute and or on which they give advice.

5.0 DISCLOSURE OF INFORMATION TO CUSTOMERS

- 5.1 Insurers and intermediaries are required to provide timely, clear and adequate pre-contractual and contractual information to customers.
- 5.2 As far as possible, insurers must ensure that policy documents are written in clear English language that is easily understood by customers. Notwithstanding, the insurer and intermediary have the responsibility to give full and clear explanations of the provisions of the insurance policy contract and to answer all queries from policyholders in a satisfactory manner.
- 5.3 Insurers and intermediaries are required to take reasonable care to ensure that information disclosed to customers is accurate, relevant and meaningful and is not deceptive particularly those relating to key contractual terms (for example, the average clause, deductibles or excesses, warranties, exclusions or restrictive terms and conditions). Information must be passed on in a format that will enable the customer to make informed decisions.
- 5.4 Insurers and intermediaries must provide to each prospective customer a brochure which summarises the policy provisions before finalising the sale of the policy in order to properly disclose the main provisions of the policy. The brochure will include information on benefits, risks and obligations associated with the insurance product, as well as, information about the procedures for filing complaints and making claims. The customers ought to be advised that the information provided is not exhaustive.

The above may be avoided in cases where general insurance cover is provided in situations of emergency or where the cover is secured by electronic or telephonic means. In these cases the information must be provided no later than three (3) days subsequent to the inception of insurance cover.

- 5.5 Insurers and intermediaries are also required to provide appropriate information on premium computation, in a manner designed to enable the customer to make informed decisions. Information on premiums and premium rates must be provided in writing, in good time and must include the total premium payable and the basis of calculation so that the customer can review the information intelligently.
- 5.6 Insurers and intermediaries must communicate to their customers the details of all fees other than premiums for an insurance activity and all fees that may be charged during the life of an insurance policy. The details must be given before the customer becomes liable to pay the fee, or before

conclusion of the contract, whichever is earlier. In cases where the actual fee cannot be quoted with certainty, the basis for calculation must be stated.

- 5.7 Insurers and intermediaries must make their latest audited financial statements available in a convenient location within their head office and branches and/or website, in order to assist customers in assessing their financial position.
- 5.8 Life insurers must provide written statements to policyholders, with investment-linked insurance policies, on the performance of their investments, at least annually.

In respect of investment-linked products, the insurer must explain adequately to potential customers, in writing, the nature of the policy and the fact that the possibility exists that in the future current premiums might not adequately cover the policy expenses. It must be made clear to the potential customers that while they will reap the reward of returns on investment, they will also bear the risk of losses.

Before finalising the sale of an investment-linked insurance policy, the life insurer is required to warn policyholders that past performance is not a reliable indicator of future performance.

- 5.9 Insurers and intermediaries which offer insurance products through digital means must disclose relevant business and contact information (for example on their website) to their customers:
- a. the address of the insurer i.e. its head office and the contact details;
 - b. contact details of the insurer, contact details and addresses of the branches of the insurer and intermediaries with which the insurer does insurance business.
 - c. procedures for the submission of claims and a description of the claims handling procedures;
 - d. The name and contact details of the regulator for the insurance companies and the intermediaries
 - e. any other appropriate information beneficial to the customer.
- 5.10 The insurer is required to disclose the following information to its customers:
- a. any change in the name of the insurer, its legal form or the address of its head office and other offices as appropriate;
 - b. any acquisition by another undertaking resulting in organisational changes as far as the policyholder is concerned; and
 - c. where applicable, information on a portfolio transfer

6.0 INFORMATION ON CUSTOMERS

- 6.1 Insurers and intermediaries are required to have appropriate policies and procedures in place for the protection and use of information on customers. The policies and procedures shall include provisions that stress the importance of the appropriate use and privacy of personal data and information.

- 6.2 Insurers and intermediaries must obtain relevant information on their customers to offer appropriate advice concerning products and services and to guard against money laundering. Customers must be informed about their duty to make true, fair and complete disclosure and to furnish all relevant information which may be considered as having a bearing on the risk to enable the insurer or insurance intermediary to properly assess the risk to be covered by a policy.
- 6.3 Information that a customer might reasonably expect to be confidential must be treated as such. The maintenance and safe-keeping of records must be in such a manner as to restrict inappropriate access, while ensuring confidentiality. The customer must be informed, however, of the insurer's or intermediary's obligation to disclose information when properly required to do so by the Commission, or if ordered to do so by a court of competent jurisdiction or other due process of law. Information must not be disclosed to a third party without the customer's consent unless so ordered by a court or other judicial authority.
- 6.4. Insurers and intermediaries must have in place appropriate technology to adequately manage and protect the confidentiality of personal and other information the insurer and intermediary hold on customers. They must have in place appropriate records management systems and controls to fulfil adequately these regulatory and statutory obligations.
- 6.5. Insurers and intermediaries shall ensure that customers have a right to access and, if needed, to correct data collected and used by the insurer and intermediary.
- 6.6. Insurers and intermediaries in conglomerates shall ensure that the structures of the group are not abused to circumvent prohibitions on the sharing of customers' private and personal information.
- 6.7 Insurers and intermediaries must be aware of the attendant risk of outsourcing and shall ensure that that the firms to which they outsource processes have adequate policies and procedures in place for the protection and use of private information on customers they have in their records.
- 6.8 In the event of a reorganisation, resolution, liquidation or restructuring, all the necessary data required by the appropriate authority, subject to data protection requirements, shall be accessible and readable. This includes all customer-related data, such as claims and policy data.

7.0 CONFLICTS OF INTEREST

- 7.1 Insurers and intermediaries must take all reasonable steps to avoid or manage any conflicts of interest. Insurers and intermediaries are expected to develop clear and appropriate policies and procedures on the management of conflicts of interest that ensure fair treatment of all their customers.
- 7.2 Where conflicts of interest cannot be managed satisfactorily, this must result in the insurer or intermediary declining to act.
- 7.3 Intermediaries, including sales representatives, must not encourage policyholders to lapse or surrender their insurance policies with one company in order to replace them with similar policies in

another company. Transactions of this nature must be conducted in accordance with regulation 124 of the Insurance Regulations.

- 7.4 Intermediaries must disclose to customers the terms and conditions of business between themselves and the customer and make clear the terms of reference. They must also disclose all association and affiliation with any insurer with whom they do business, and where potential conflicts of interest arise, the basis on which they are remunerated by these companies.

8.0 ADVERTISEMENTS

- 8.1 Advertisements in all media or printed material issued by insurers and intermediaries for promotion or information must be prepared in a manner that is clear, fair and not misleading to the policyholder. Insurers and intermediaries must take reasonable steps to ensure that all advertisements are clear, fair and not misleading before approving them.

- 8.2 Section 146 of the Insurance Act makes it an offence for an insurer or intermediary to knowingly, make or permit to be made any statement or issue any advertisement, circular, descriptive booklet or other document which is misleading or likely to mislead the public in relation to the insurance business.

- 8.3 Intermediaries are to ensure that in their advertisements of services provided, they disclose the full name of the broker or agent and that their advertisements are not designed in such a way as to give the impression that the broker or agent is an *“insurance company”*. Failure to use the word *“broker”* or *“agent”* in the name may mislead the public into thinking that the brokerage or agency is an insurance company.

- 8.4 Advertisements by intermediaries of insurance products which they distribute must clearly identify the insurance company that is underwriting the products being advertised. Failure to clearly identify the underwriter of the product may mislead the public into thinking that the insurance product was underwritten by the broker or agent. Only registered insurance companies are permitted to develop, underwrite and issue insurance policies in Jamaica.

- 8.5 Advertisements by intermediaries shall not contain statements offering *“discounts”* or the provision of *“premium financing”*. References to discounts erroneously suggest that the broker or agent can alter the terms and conditions of an insurance policy. Intermediaries must not provide premium financing.

- 8.6 Insurance companies must not provide premium financing. If a subsidiary or an associate of the insurance company provides financing of policyholders' premiums, the insurance company may not terminate insurance cover, if the premiums are up to date, on the grounds that a policyholder has failed to maintain the repayment schedule of the loan from the associate of the insurance company. Any such termination by an insurance company is an offence and is punishable on conviction in a Parish Court to a fine of up to \$3 million. The insurance company, however, may terminate the policy if premiums are outstanding, in breach of the policy contract.

- 8.7 Advertisements must not contain any reference to products that are not approved by the Commission or products which can only be obtained on a facultative placement basis from an

unregistered insurer, with prior approval from the Commission. Reference must not be made to products underwritten by an unregistered insurance company, and the name of an unregistered insurance company shall not be used in any advertisement.

9.0 COMPLAINTS HANDLING

- 9.1 Insurers and intermediaries are required to settle complaints of customers in a timely, effective and fair manner. Insurers and intermediaries must have written policies and procedures in place for the proper handling of complaints from customers. The policies and procedures must be made widely available to policyholders (e.g. via the company's website, notices, and noted in literature shared with the policyholders etc.).
- 9.2 Insurers and intermediaries shall respond to complaints without unnecessary delay and keep the complainant informed of the anticipated timeframe within which the complaint is expected to be resolved.
- 9.3 Insurers and intermediaries must log and keep a record of all complaints and the actions that were taken to resolve them. The log and record are to be made available for examination by the Commission, in accordance with regulations 142(3) (p) and (q), of the Insurance Regulations, 2001.
- 9.4 Insurers and intermediaries must analyse the complaints they receive to identify trends and recurring risks with a view of taking corrective action. Insurers must analyse complaints that they receive against intermediaries to enable them to assess the complete customer experience and identify any issues that need to be addressed.

10.0 CLAIMS MANAGEMENT

- 10.1 Insurers are to handle claims in a timely, fair and transparent manner and must have in place fair and transparent claims handling and claims dispute resolution policies and procedures. The written claims handling procedures must include all steps in the claims process, from the claim being raised to its settlement. The procedures must include settlement milestones which may be extended in exceptional cases.
- 10.2 Insurers and intermediaries are to ensure that employees in the Claims Department are competent and are qualified to process all claims effectively. Companies must foster and conduct on-going internal and external training.
- 10.3 Claim settlement procedures must be clearly identified and outlined in the insurance policy and must be appropriately communicated to the policyholder. Insurers are required to honour the terms and conditions of claims provisions contained in the policy document. Claimants must be given information on the status of their claims in a timely and fair manner.
- 10.4 At a minimum, the claims procedures must provide that:
- a. The insurer or the intermediary will notify and explain to the claimant at the earliest time and in writing when it appears that the claim is not covered by the insurance policy;

- b. The insurer will contact any other insurer that is involved in the claim and seek to resolve any inter-insurer arrangement in a fair and transparent manner without undue delay once it has received a completed set of claim documents that establishes proof of the event. Where claim settlement procedures involve several insurers, indemnifying the policyholder must be priority while potential disputes between insurers are dealt with at a later date;
 - c. When appropriate, if an insurer incurs an insurance loss as a result of the fault of a third party, the insurer will inform the policyholder of its right of subrogation and the main principles governing the process;
 - d. In assessing claims, the insurer will ensure that any loss evaluation methods used are reasonable and coherent. The insurer will use internal assessment methods based on the Insurance Regulations; and
 - e. Insurers shall notify claimants whenever they employ the services of loss adjusters or other intermediaries whose competence and qualifications the insurers must ascertain. The insurer shall explain to the claimant the reasons for employing these intermediaries. Whenever the damage is assessed, the insurer shall send a copy of the written estimate used to calculate the amount of compensation to the claimant.
- 10.5 Insurers shall not deny a claim without reasonable investigation and shall not overlook policy coverage provisions of any insurance policy when they are pertinent to a claim. The insurer shall not discourage claimants from seeking the services of an attorney or adjuster nor attempt to settle a claim for less than the amount to which the claimant is entitled to receive, in line with the policy contract, negotiated settlement or court order. The insurer shall not transfer responsibility for the claim to others, except where it is provided for explicitly in the policy contract.
- 10.6 Insurers and intermediaries, where applicable, must make every effort to settle legitimate claims with unavoidable delay. Regulations 132 to 139 of the Insurance Regulations, stipulate the actions that an insurer and insured must take in the event of a claim. Claims must be settled with unavoidable delay if:
- a. the insured event has been proved;
 - b. the liability under the policy has been established or ordered by the court;
 - c. the amount payable by the insurer has been agreed or ordered by the court; and
 - d. the entitlement of the claimant or claimants to receive payment has been established.

Therefore the claim must be paid by the insurer within 30 days when **the conditions listed above (a-d) have been satisfied**. If payment of the claim is delayed for 30 days or more when the four conditions have been met, then the insurer will be required to pay interest to the claimant at the prescribed rate in accordance with regulation 135.

- 10.7 Once the conditions in 10.6 above have been satisfied and the insurer at risk has agreed to settle, an insurer of a third party to a motor vehicle claim shall not deny payment of a claim for any of the following reasons:

- a. the third party insured has not reported the accident that led to the claim to the third party insurance company;
- b. the third party insured made no report to the police;
- c. any other reason that could be deemed to be unfair to the claimant.

If the insurer at risk and the third party insurer fail to reach an agreement within a reasonable time, after the passing of 30 days, they shall immediately refer the matter for mediation/arbitration (i.e. on the 31st day). The decision of the mediation process shall be final.

11.0 CONTROLS AGAINST FRAUD

11.1 In an effort to reduce fraudulent claims, insurers and intermediaries are required to take the following steps:

- a. Establish compliance programmes and internal control systems for combatting fraud and money laundering appropriate to their exposure and vulnerabilities;
- b. Invest in fraud-detection systems and explore different technologies including but not limited to link analysis and anomaly detection to uncover both opportunistic and organized fraud;
- c. Provide employees in the claims department with adequate training on insurance fraud indicators.
- d. Avoid fraudulent claims by informing customers/claimants of the consequences of submitting a false and/or incomplete statement. Claim forms must contain extracts of the appropriate law, statute or Regulations against the filing of fraudulent claims.

12.0 ARRANGEMENTS BETWEEN INTERMEDIARIES AND INSURERS

12.1 Insurers and intermediaries are to establish written agreements in respect of their business dealings with each other, to clarify their respective roles and promote the fair treatment of customers. Such agreements shall include, for example, respective responsibilities on matters such as:

- a. claims notification;
- b. remittance of premiums;
- c. credit terms;
- d. complaints notification and handling;
- e. management and other information documentation required by the insurer; and
- f. any other matters related to the relationship with customers.

12.2 Insurers are required to conduct business only with intermediaries that are registered to do insurance business in Jamaica.