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GOVERNMENT NOTICE  
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DEPARTMENT OF FINANCE  
DEPARTEMENT VAN FINANSIES

No. R. 164

23 February 2001

**FINANCIAL SERVICES BOARD**  
**POLICYHOLDER PROTECTION RULES**  
**UNDER THE SHORT-TERM INSURANCE**  
**ACT, 1998**

The Minister of Finance has under Section 55 of the Short-Term Insurance Act, 1998, made the Policyholder Protection Rules set out in the Schedule.

These Policyholder Protection Rules shall come into operation on 1 July 2001.

## SCHEDULE

### POLICYHOLDER PROTECTION RULES (SHORT-TERM INSURANCE), 2001

#### Section 55, Short-term Insurance Act, 1998

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#### PART I

#### DEFINITIONS AND PURPOSE OF THE RULES

##### Definitions

1. In these Rules, "the Act" means the Short-term Insurance Act, 1998 (Act No 53 of 1998), any word or expression to which a meaning has been assigned in the Act, including the regulations promulgated under section 70 of the Act, shall bear that meaning and, unless the context otherwise indicates –
  - (i) "compliance officer", in relation to an insurer, means the public officer of the insurer or a person appointed as a compliance officer by the public officer, and in the case of Lloyd's, the Lloyd's representative;
  - (ii) "effective date", in relation to the entering into or variation of any policy, means the date on which any such policy is entered into or varied;

- (iii) "ensure", in relation to a person or body and any matter mentioned in a provision of these Rules, means to take any necessary steps in order that the clear objective of the provision is achieved;
- (iv) "enter into", in respect of a policy, includes the renewal of any such policy: Provided that in the case of monthly policies only the renewal after the entering into of the policy effected during every consecutive twelfth month of the currency of the policy shall qualify as a renewal referred to in this definition;
- (v) "independent intermediary" means a person, other than a representative, who renders services as intermediary and includes a Lloyd's correspondent;
- (vi) "inspection" means any inspection contemplated in the Inspection of Financial Institutions Act, 1998 (Act No 80 of 1998);
- (vii) "insurance party involved" means any insurer or independent intermediary involved in the entering into or variation of a policy with the policyholder concerned;
- (viii) "insurer" means a short-term insurer, and includes any representative of the insurer, and any independent intermediary referred to in section 48(2) of the Act;
- (ix) "policy" means any short-term policy existing on the date envisaged in section 55(5) of the Act or entered into on or after that date, but excludes a reinsurance policy;
- (x) "policyholder" means any natural person acting otherwise than solely for the purposes of his or her own business and includes any such prospective holder of a policy or any person requesting disclosure;

- (xi) "variation", in respect of a policy, means any variation of the premiums or benefits of the policy, excluding any periodic variation in terms of a contractually determined inflation-connected formula, or otherwise in terms of fixed contractually determined provisions.

#### **PURPOSE OF THE RULES**

2. The purposes of disclosures referred to in these Rules are to enable a policyholder to make informed decisions in regard to short-term insurance products, and to ensure that the parties involved conduct business fairly and with due care and diligence.

**PART II****RULES ON DISCLOSURE****3. Principles of disclosures**

3.1 The following shall apply to disclosure contemplated in these Rules:

- (a) The independent intermediary or insurer, as applicable, shall bear the onus of proving that a disclosure has been made.
- (b) Disclosure must be in plain language and must be structured so as to promote easy comprehension and to avoid uncertainty or confusion. Any written or printed disclosures, including any policy or policy variation which may be issued to policyholders, must be issued in a clear and readable print size, spacing and format.
- (c) Disclosure shall be made at an appropriate time and may be made in writing, orally, using any appropriate electronic medium or by telefax.
- (d) An insurer or independent intermediary, as appropriate, shall ensure that they confirm any disclosure to the policyholder in writing, if made orally, within 30 days after such disclosure.
- (e) Disclosures need not be duplicated or repeated to the same policyholder unless there are changes to the premiums, fees, excess payable or a change in the policy conditions and benefits which will affect that policyholder or the transactions contemplated make it desirable or necessary.
- (f) Disclosures may be validly made using standard forms or format.
- (g) Where records of disclosures are required to be kept in terms of these Rules, such records may be kept in writing or by using any appropriate electronic medium.

**4. Obligatory disclosures**

4.1 An independent intermediary shall ensure that at the commencement of dealings with a policyholder in respect of an insurance transaction that at least the following disclosures, where applicable, are made once to the policyholder, in writing and where made orally, to be confirmed in writing:

- (a) the Statutory Notice as contemplated in Part VII must be given without any amendment except for details that are furnished in terms of the Statutory Notice;
- (b) full names, titles and designations of independent intermediaries, postal and physical addresses of the independent intermediaries' head offices and relevant service offices, telephonic and electronic communication details of contact persons;
- (c) legal status of the independent intermediary; confirmation of the contractual relationship with the insurer or various insurers; disclosure of the fact that the independent intermediary directly or indirectly holds more than 10% of an insurer's shares (if any); has received more than 30% of his total commission and remuneration from a particular insurer in the preceding calendar year (if any), or is an associated company of the insurer (if applicable);
- (d) whether they hold professional indemnity insurance or not;
- (e) details of required claims notification procedures; and
- (f) the amount of the consideration referred to in section 48 of the Act accruing to the independent intermediary in respect of the relevant entering into or variation of the policy concerned, and of any fee contemplated in section 8(5) of the Act (if any).

4.2 An insurer shall ensure that at least the following disclosures are made to the policyholder, as soon as is practical after an insurance transaction is initiated:

- (a) the Statutory Notice as contemplated in Part VII must be given without any amendment except for details that are furnished in terms of the Statutory Notice, in cases where an independent intermediary is not involved in the insurance transaction;
- (b) full registered name and abbreviated name, postal and physical addresses of the head offices and issuing offices, telephonic and electronic access numbers and communication details of service departments;
- (c) the name and contact details of the compliance department or officer of the insurer and details of procedures (if any) for the resolution of complaints by policyholders, including complaints in respect of independent intermediaries or representatives involved;
- (d) claims notification procedures;
- (e) name, class or type of policy involved;
- (f) nature and extent of monetary obligations assumed by the policyholder, manner of payment of premiums, due date for payment of premiums and the consequences of non-payment of such premiums;

4.3 As regards the variation of a policy, an insurer shall ensure that at least the following disclosures are made to the policyholder, as soon as is practical before the variation of the policy:

- (a) name, class or type of policy involved;
- (b) nature of indemnification (benefits) for the policyholder, manner of deriving or obtaining thereof, and manner of payment or furnishing of indemnification (benefits), as the case may be;



- (c) nature and extent of monetary obligations assumed by the policyholder, manner of compliance therewith and consequences of non-compliance; and
- (d) loadings, excesses payable, exclusions or other special terms or conditions.

**Other disclosures**

- 5.1 The provisions of this Part shall not be construed as preventing any insurance party involved in any particular case from making any other or additional disclosures to a policyholder before the effective date, where such disclosures will promote the better achievement of the objects of these Rules and are deemed necessary or expedient in the circumstances of the particular case, or to comply with any other code of business conduct provisions applying lawfully to any such party.
- 5.2 Any subsequent changes to information referred to in Rules 4.1(b) and 4.2(b), must be communicated in writing to the policyholder.

**Standardised disclosures**

6. Without prejudice to the provisions of Rules 3 and 4, an insurer, or any independent intermediary with the concurrence of the insurer, may draft standardised disclosure documentation in respect of any particular class or type of policy or insurance transaction, to be used for the purpose of complying with the provisions of this Part: Provided that -

- (a) such documentation is current on any relevant effective date; and
- (b) such use does not exonerate any insurance party involved from compliance with any disclosure requirement of this Part not addressed, or not fully addressed, in such documentation.

**Consequences of non-compliance**

- 7.1 Where a policyholder considers that a provision of this Part has been contravened or not complied with by any insurance party involved in a policy held by him or her, such policyholder may lodge a written complaint to the insurance party involved

and, if such complaint is not resolved to the satisfaction of the policyholder, to the Registrar: Provided that the foregoing provisions of this subrule shall with the necessary changes also apply to any insurer, independent intermediary or any other interested member of the public who or which considers that any provision of this Part has in connection with any policy and in any particular case been contravened or not complied with.

- 7.2 The Registrar shall, on receipt of any such complaint, require the insurance party involved by written notice to provide the Registrar within a period determined by the Registrar with a full reply to the complaint.
- 7.3 (a) The Registrar may, whether an inspection has been carried out or not, and where a breach of these Rules has been established to the Registrar's satisfaction, after informing the insurance party or parties involved of the intention so to act and affording them a reasonable opportunity to respond thereto, by written notice require any insurance party involved to take particular corrective steps in accordance with a specified timetable, and the Registrar may take any other step in connection with the breach which is available to the Registrar in law.
- (b) An insurance party involved to which a notice contemplated in Rule 7.2 or paragraph (a) of this subrule has been directed, shall within the period determined by the Registrar in the notice, or within any extended period determined by the Registrar on written application by the party, comply with the requirements stated in the relevant notice.

**PART III**  
**RULES ON VOID PROVISIONS AND FORMAT**

**Void provisions**

- 8.1 A provision of a policy of which the effective date of the entering into thereof is a date on or after a date 90 days after the date referred in section 55(5) of the Act, is void to the extent that it provides expressly or by implication -
- (a) that in connection with any claim made under the policy, the policyholder may be obliged to undergo a polygraph, lie detector or truth verification, or any other similar, test or procedure which is furnished or made available by the insurer or any other person in terms of an arrangement with the insurer and which is conducted under the control of the insurer or such other person;
  - (b) for an inducement of any nature for a policyholder to voluntarily agree to undergo a test or procedure envisaged in paragraph (a) of this subrule where the policyholder submits a claim under the policy;
  - (c) that where a policyholder under other circumstances than those contemplated in paragraph (b) of this subrule voluntarily agrees to undergo a test or procedure envisaged in paragraph (a) of this subrule where the policyholder submits a claim under the policy, and the policyholder fails to pass such test, the claim will be repudiated or the policy will become void merely as a result of such failure to pass the test or procedure;
  - (d) that in the event of any dispute arising under the policy, the dispute can only be resolved by means of arbitration; and
  - (e) that an insurer may repudiate a claim because a premium was not paid on due date, if payment was made during the period of grace referred to in Rule 10.5, whether or not the payment was made prior to the event giving rise to the claim.

8.2 Rule 8.1(d) shall not be construed as rendering void a provision of a policy that the parties may, after a dispute under the policy has arisen, voluntarily agree to submit the dispute to arbitration or, in the absence of such a provision, as voiding any agreement between the parties to that effect.

**Format of policies**

9. An insurer involved shall ensure that a policy of which the effective date of the entering into thereof is a date on or after a date 90 days after the date referred in section 55(5) of the Act, is only issued to a policyholder concerned if the provisions of the policy are recorded, as regards layout, letter types and spacing, in an easily readable manner and if the wording of every provision of the policy has a reasonably precise ascertainable meaning.

**PART IV**  
**GENERAL RULES**

**Additional duties of insurers and independent intermediaries**

- 10.1 (a) Subject to paragraph (b) of this subrule, an insurer must, where an agreement is to be entered into with an independent intermediary for the rendering of services as independent intermediary, furnish the independent intermediary with a written mandate or authority to act on behalf of the insurer, setting out the terms and conditions of such mandate or authority.
- (b) An insurer must in the case of an agreement contemplated in paragraph (a) of this subrule existing immediately prior to the date referred to in section 55(5) of the Act, and which does not contain any written mandate or authority contemplated in paragraph (a) of this subrule, within 30 days after the said date furnish such independent intermediary with such written mandate or authority.
- 10.2 An insurance party involved -
- (a) shall ensure that any debit order to be signed by a policyholder on or after a date 30 days after the date referred to in section 55(5) of the Act, for the payment of premiums to any such party, shall not be drafted to be in favour of any other person (whether conjointly with the insurance party involved or as an alternative) but such first mentioned party; and
- (b) shall not unilaterally terminate any current debit order signed by a policyholder without having informed the policyholder in writing of the intention so to terminate the debit order at least 30 days before the effective date of such envisaged termination.
- 10.3 (a) An insurer shall not unilaterally terminate any policy without giving notice as set out in paragraph (b) of this subrule.

- (b) The insurer may give notice either-
- (i) direct to the policyholder; or
  - (ii) by satisfying itself that notice has been given to the policyholder by the independent intermediary; or
  - (iii) if (i) or (ii) is not possible, by publication of such notice in two editions of a newspaper circulating in all areas in which it is reasonably believed that policyholders reside; a copy of such notice shall be forwarded to the Registrar prior to publication.

10.4 An insurer shall ensure that where any decision has been made as to the repudiation of any claim under a policy, or as regards the quantum of a claim which is in dispute, the policyholder concerned is in writing informed of the reasons for the decision and that the policyholder may within a period of not less than 90 days after the date of the relevant decision make representations to the relevant insurer in respect of such decision. The 90 days referred to may not be included in any time-barring period contained in the policy for the institution of legal action.

10.5 An insurer shall ensure that a policy to be entered into on or after a date 90 days after the date referred to in section 55(5) of the Act, contains a provision for a period of grace for the payment of premiums of not less than 15 days after the relevant due date: Provided that in the case of a monthly policy, such provision must apply with effect from the second month of the currency of the policy.

10.6 The practice of signing blank or partially completed forms by a policyholder, whereby someone else fills in the details at a later stage, shall be an offence by the insurance party involved under these Rules.

#### **Termination and alteration of certain agreements and relationships**

11.1 No termination of any agreement contemplated in Rule 10.1(a) and (b) between any insurer and an independent intermediary, irrespective of whether the termination has been mutually agreed upon, or is effected by any one party by notice to the other, shall be effective unless -

- (a) all policyholders holding current policies entered into by that insurer through the intermediation of that independent intermediary, have been given prior notice of the termination in accordance with Rule 10.3(b), by either the insurer or the independent intermediary, or by both; and
- (b) both such insurance parties are beforehand satisfied that all reasonable steps have been taken for such information to reach all such policyholders.

11.2 The provisions of Rule 11.1 shall, with the necessary changes, apply in respect of any change occurring in the status or relationship, or authority or mandate, of any independent intermediary, contemplated in Rule 4.1(c).

**Records, monitoring systems and annual reports**

- 12.1 (a) An insurance party involved shall ensure that records are kept of all disclosures made, including the manner of disclosure, in respect of the entering into or variation of any particular policy. These records must be kept available for a period of at least three years for inspection by the Registrar.
- (b) Copies of such disclosure documents are to be provided to the policyholder.
  - (c) The insurance parties involved is not required to keep the disclosure records themselves but must ensure that they are available for inspection within 7 days from the Registrar's request.
- 12.2 Insurers and independent intermediaries, as applicable, shall within 6 months from the date of coming into operation of these Rules, ensure that they provide:
- (a) for monitoring systems to measure compliance with these Rules ;
  - (b) where necessary, for information or training courses for persons employed or contracted in such business, in respect of the implementation by them of these Rules;

- (c) for the accreditation of independent intermediaries, within 6 months of such person becoming active, of the relevant knowledge, competency and proficiency of such persons in the products that they may market; and
- (d) for the ongoing recording of the knowledge, competency and proficiency of accredited persons.

12.3 Every insurer shall, within a period of four months after the end of every financial year of the insurer, submit a written report to the Registrar, in respect of the period of every such financial year, on -

- (a) all steps taken by the insurer to ensure compliance with the provisions of these Rules, and the reasons for any non-compliance which may have occurred; .
- (b) problems experienced by the insurer and any of its representatives with the interpretation or implementation of these Rules, and suggestions or recommendations for improvements or other amendments; and
- (c) full details of any complaints received by the insurer in connection with the implementation of these Rules, and of all steps taken in connection therewith.

#### **Special duties of Registrar**

13. The Registrar -

- (a) may take any step deemed necessary or expedient to inform policyholders and the public in general of the existence, ambit and meaning of these Rules and of available avenues or mechanisms for lodging of complaints;
- (b) shall ensure that copies of these Rules and of any guidelines referred to in paragraph (c) of this Rule are readily available at the Registrar's office for distribution at the request of any person at a reasonable fee determined on a non-profit basis by the Registrar to cover costs and expenses;



- (c) may from time to time, with the concurrence of the Advisory Committee, issue non-binding -
- (i) guidelines on the interpretation and implementation of these Rules; and
  - (ii) best conduct directives for independent intermediaries and representatives; and
- (d) shall -
- (i) annually compile a compliance review summarising the import of reports referred to in Rule 12.3 and containing advice deemed necessary or expedient in connection with the achieving of the objects of these Rules, including recommendations on the amendment of these Rules or of the Act, including advice not specifically connected to such reports; and
  - (ii) submit such compliance review to the Advisory Committee for consideration.

**Waiver of rights**

14. No waiver by any policyholder of any right or benefit by these Rules, shall be valid.

**Penalties**

15. An insurance party involved who contravenes or fails to comply with a provision of these Rules shall be guilty of an offence and on conviction liable to a penalty or fine referred to in section 64(1)(c) or 65(1)(c), as the case may be, of the Act.

**PART V****16. SPECIFIC ARRANGEMENTS RELATING TO LLOYD'S**

- 16.1 For purposes of these Rules a Lloyd's open market correspondent will be regarded as an independent intermediary and therefor must comply with the requirements of the Rules insofar as they pertain to independent intermediaries. Lloyd's coverholders are regarded as section 48(2) intermediaries and have to comply with the rules insofar as they pertain to insurers.

**PART VI****17 SPECIAL PROVISIONS REGARDING MARKETING OF PRODUCTS  
DIRECTLY TO THE PUBLIC****17.1 Telephone Sales**

Telesales personnel must disclose to the policyholder that they receive commission and the amount thereof.

17.1.1 For purposes of this Part, the sequence of Rule 4.1 and 4.2 need not be followed in the sequence presented in the Rules. The sequence may be changed provided that all the disclosures are made to the prospective policyholder before the telephone interaction comes to an end. It is a requirement that the call must be voicellogged, and full disclosure be made to the policyholder in writing after the telesale. The insurer or intermediary must be in a position to provide a copy of the voicellogging.

17.1.2 The provisions of Rule 4.2(c) need only be provided to the policyholder in the written disclosures which are provided to the policyholder after the sale. During the transaction it is sufficient to indicate that the insurer has a compliance department and to provide basic contact details e.g. telephone number or address. The direct marketers are not obliged to give the Statutory Notice if all the disclosures contemplated in the notice are made during the transaction and are recorded in writing or voicellogged. The requirements of Rule 4.2(b) need not be disclosed to the full but must be confirmed to the policyholder in writing after the sale.

17.1.3 Where use is made of an infomercial advertisement, disclosure may be made in the advertisement. For the purposes of this paragraph infomercial is defined as meaning:

"An infomercial means advertising material of more than two minutes in duration broadcast in visual and/or audio form. It is usually presented in a programme format and promotes the interest of a person, product or service. It entails a direct offer of a product or service to the public in return for payment, and usually

contains a demonstration of the use of the product or service concerned, and includes material known as tele-shopping, home shopping, direct marketing and direct sales".

- 17.2 Marketing by means of Direct Mailing, Media Advertisements and Inserts (with application form), does not require the printing of separate documents for disclosure in terms of the Rules or Statutory Notice. It is not required to repeat any disclosures made in the text of the offer in any specific disclosure addendum or page.
- 17.3 Media Advertisements including Inserts (without application form), Spot Television and Radio Advertising which are designed to generate awareness will not be considered as part of the insurance transaction and therefore no disclosure is contemplated in terms of the Rules. Any contact by prospective policyholders will require the insurance parties involved to disclose in terms of the Rules applicable to telephonic sales.

**PART VII**

**18. STATUTORY NOTICE TO SHORT-TERM INSURANCE POLICYHOLDERS  
IMPORTANT - PLEASE READ CAREFULLY  
DISCLOSURE AND OTHER LEGAL REQUIREMENTS**

(This notice does not form part of the Insurance Contract or any other document)

**As a short-term insurance policyholder, or prospective policyholder, you have the right to the following information:**

<p><b>1. About the intermediary (insurance broker)</b></p> <p>(a) Name, physical address and postal address and telephone number.  (b) Legal status and any interest in the insurer.  (c) Whether or not in possession of professional indemnity insurance.  (d) Detail of how to institute a claim.  (e) Rand amount of fees and commission payable.  (f) Written mandate to act on behalf of insurer.</p> <p><b>2. About the insurer</b></p> <p>(a) Name, physical and postal address and telephone numbers.  (b) Telephone number of compliance department of the insurer.  (c) Details of how to institute a claim and/or complaint.  (d) Type of policy involved.  (e) Extent of premium obligations you assume as policyholder.  (f) Manner of payment of premium, due date of premiums and consequences of non-payment.</p> <p><b>3. Other matters of importance</b></p> <p>(a) You must be informed of any material changes to the information referred to in paragraph 1 and 2.  (b) If the information in paragraphs 1 and 2 was given orally, it must be confirmed in writing within 30 days.  (c) If any complaint to the intermediary or insurer is not resolved to your satisfaction, you may submit the complaint to the Registrar of Short-term Insurance.  (d) Polygraph or any lie detector test is not obligatory in the event of a claim and the failure thereof may not be the sole reason for repudiating a claim.  (e) If premium is paid by debit order:  (i) it may only be in favour of one person and may not be transferred without your approval; and  (ii) the insurer must inform you at least 30 days before the cancellation thereof, in writing, of its intention to cancel such debit order.  (f) The insurer and not the intermediary must give reasons for repudiating your claim.  (g) Your insurer may not cancel your insurance merely by informing your intermediary. There is an obligation to make sure the notice has been sent to you.  (h) You are entitled to a copy of the policy free of charge.</p> <p><b>4. Warning</b></p> <p>Do not sign any blank or partially completed application form.  Complete all forms in ink.  Keep all documents handed to you.  Make note as to what is said to you.  Don't be pressurised to buy the product.  Incorrect or non-disclosure by you of relevant facts may influence an insurer on any claims arising from your contract of insurance.</p>	√
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<p><b>5 Particulars of Short-term Insurance Ombudsman who is available to advise you in the event of claim problems which are not satisfactorily resolved by the insurance intermediary and/or the insurer.</b></p> <p>PO Box 30619 BRAAMFONTEIN 2017</p> <p>Tel: (011) 339-6525 Fax: (011) 339-7065</p> <p><b>6 Particulars of Registrar of Short-term Insurance</b></p> <p>Financial Service Board PO Box 35655 MENLO PARK 0102</p> <p>Tel: (012) 428-8000 Fax: (012) 347-0221</p> <p>(You may be required to sign a copy of this document.)</p>	
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**PART VIII**

**TITLE**

**19. Title**

These Rules shall be called the Policyholder Protection Rules (Short-term Insurance), 2001 and shall come into operation on a date published in the *Government Gazette*.