

## ICP 18 Intermediaries

**The supervisor sets and enforces requirements for the conduct of insurance intermediaries, to ensure that they conduct business in a professional and transparent manner.**

### *Introductory Guidance*

- 18.0.1 Most of the standards under this ICP apply to intermediaries in a functional capacity (i.e. as individuals providing intermediation services to customers). In some cases, the standards' requirements apply to the intermediary as an organisation; where this is the case, this is made clear in the corresponding guidance. Where insurers' direct sales staff solicit, negotiate or sell insurance as employees of the insurer, the standards apply to the insurer.
- 18.0.2 Individuals or firms which simply refer (or "introduce") potential customers to an insurer or insurance intermediary, without carrying out intermediation, are excluded from the scope of these standards. Also excluded from the scope of these standards are persons, such as tax advisers or accountants, who in conducting another professional activity provide:
- advice on insurance cover on an incidental basis in the course of that other activity, or
  - information of a general nature on insurance products (without advising on the choice of insurance product provider)
- provided that the purpose of that activity is not to intermediate an insurance or reinsurance contract.
- 18.0.3 Insurance intermediaries may also perform functions supplemental to intermediation, many of which may be described as outsourced functions of the insurer. These supplemental functions may include underwriting, premium collection, administration, management of insurance claims, loss adjusting and claims appraisal. These functions are excluded from the IAIS definition of insurance intermediation<sup>60</sup> but may be subject to other ICPs and standards relating to business conduct.

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<sup>60</sup> However, in some jurisdictions these supplemental functions are included in the definition of intermediation. See Glossary.

- 18.0.4 Intermediation systems and practices are closely linked with jurisdictions' tradition, culture, legal regime and the degree of the development of insurance markets. For this reason, regulatory approaches to intermediation also tend to vary. Such diversity should be taken into consideration in implementing this ICP and related standards and guidance material in order to achieve the outcome of fair treatment of customers.
- 18.0.5 Insurance intermediation involves the interface between insurers and actual or potential policyholders. Effective assessment of the quality of insurance intermediation to a large extent requires supervisory consideration of policies, processes and procedures that relate to individual customer relationships and individual transactions. Where insurance intermediation (including intermediation activity of an insurer's direct sales staff) is carried out by intermediaries which are part of a group, supervisors are expected to apply these standards to all the entities within the group that conduct insurance intermediation business. Where intermediaries participate in a group or financial conglomerate, the application of appropriate policies and procedures on insurance intermediation across the group should result in the fair treatment of customers on a group-wide basis, even if legal provisions in some jurisdictions set requirements that are potentially lower than those used by the group.
- 18.0.6 The supervisor should consider the application of these standards and guidance material taking into account that there are various business models ranging from sole traders to large enterprises, including specialist wholesale or reinsurance intermediaries.
- 18.0.7 The nature of the customers with which an intermediary interacts and the complexity of the products offered are also relevant. Private customers have different needs in terms of consumer protection than larger businesses; life products with an investment element are typically more complex than general personal lines products.
- 18.0.8 In order to take into account the nature, scale and complexity of the business in applying this ICP and standards, the supervisor may wish to take a functional approach, focusing on the activity carried out by the intermediary, to ensure consistency and prevent the opportunity for regulatory arbitrage.

#### *Types of intermediaries*

- 18.0.9 Intermediaries fall into two categories. They act either primarily on behalf of the customer or primarily on behalf of the insurer.
- Where the intermediary acts primarily on behalf of the insurer, the intermediary sells products for and on behalf of one or more insurers, they are often referred to as "agent" or "producer". Intermediaries may act for a single insurer

(sometimes referred to as “tied”) or represent several. The products they can offer may be restricted by agency agreements with the insurer(s) concerned.

- Where the intermediary acts primarily on behalf of the customer, the intermediary is independent of the insurer(s) whose products he sells. Often referred to as “broker”, or “independent financial adviser”, they are able to select products from those available across the market.

For the purposes of these standards and guidance, where it is relevant to distinguish between the intermediaries described above, the former are referred to as “agents” and the latter are referred to as “brokers”.

- 18.0.10 Some supervisors do not distinguish between agents and brokers in legislation and instead focus on the activity performed. It may be possible for an intermediary to have different status depending on the customer relationship and the product or service being offered.
- 18.0.11 Intermediary operations range from large international firms to local sole traders. Intermediary firms sometimes operate as independent enterprises or divisions of insurers or other financial institutions, or as part of non-financial organisations.
- 18.0.12 Insurers use various distribution channels to market and sell insurance products. These can include a variety of partners such as car dealerships, post offices, retailers and travel agents who offer insurance in respect of the primary goods and services in which they trade. In many cases this activity will represent intermediation on the respective insurance products.
- 18.0.13 Bancassurance describes the relationship between a bank and an insurer whereby the bank’s distribution channels are used to sell insurance products.
- 18.0.14 Intermediaries are generally remunerated through fees or commissions, which may be paid by the insurer, deducted from funds invested in a policy or charged directly to the customer, depending on the circumstances. Where insurers’ direct sales staff carry out insurance intermediation as employees of the insurer, they may be salaried as well as receive any applicable commission.

*Intermediaries’ role in promoting public trust and confidence in the insurance sector*

- 18.0.15 Insurance plays an important role in society. In most insurance markets, intermediaries serve as important distribution channels of insurance. Their good conduct is essential to promote confidence in insurance markets.

- 18.0.16 It is in the interests of supervisors, in promoting fair, safe and stable insurance markets, that the public has trust and confidence in the insurance sector. Insurance intermediaries' interface between consumers and insurers gives them a key role in building and justifying this public trust and confidence.
- 18.0.17 Intermediaries' duty to the public interest has also been considered by some professional bodies and other interested organisations. With a view to enhancing the professionalism of insurance intermediaries, they encourage, amongst other things, the obtaining of professional qualifications, continuous professional development, ethical behaviour, the fair treatment of customers and better communication with the public including thought leadership. Such measures are aimed at enhancing public confidence in insurance intermediaries through raising professional standards, and many of these are discussed further in this guidance.

*Intermediaries' role in promoting financial awareness*

- 18.0.18 Intermediaries can promote consumer protection by assisting consumers to make better informed decisions about the products that they buy. At the heart of consumer protection are asymmetries of information between financial services product providers and the public to whom the products are sold. The adoption of good conduct of business practices by insurers and insurance intermediaries helps to ensure that customers are sufficiently informed on the insurance products they buy before concluding a contract.
- 18.0.19 The enhanced financial awareness of consumers is a further means of ensuring that consumers are aware of the products available to them and understand their purpose, how they work and their key features, including cost. This understanding helps consumers to compare products and to purchase insurance products that meet their needs.
- 18.0.20 The promotion of financial awareness is likely to benefit, in particular, consumers in jurisdictions where consumer protection standards are weak or levels of financial literacy are low. It is also especially important when dealing with more complex financial products, particularly those with an investment element.
- 18.0.21 Insurance intermediaries are not the only stakeholders in promoting the financial and risk awareness of consumers; governments, supervisors, social interest organisations and insurers have a significant interest and role to play in consumer protection. Nor are insurance intermediaries the only means of improving financial education. Other stakeholders, using various communication channels including the media, are also able to play a significant role. Nevertheless, intermediaries' face-to-face dealings with their customers and marketing of products to consumers place them in a

position to contribute to strengthening the financial awareness and education of the public on risk and insurance matters. Supervisors may therefore wish to encourage insurance intermediaries to promote the financial awareness of consumers on insurance products.

18.0.22 A variety of means may be used by insurance intermediaries to promote financial awareness, such as:

- taking advantage of face-to-face meetings to explain features of products in which customers may be interested, which may be particularly important where their interest is in complex or long term contracts;
- providing references to specific websites or other reference material which gives relevant information, or publishing such material themselves;
- making available or suggesting other sources of financial tools such as on-line calculators which estimate premiums or coverage levels; or
- participating in educational initiatives such as training seminars.

18.0.23 In undertaking financial education initiatives, intermediaries should ensure that the personnel used to undertake the relevant activity have sufficient knowledge for this purpose and that material or tools provided are up to date and free from error to the extent practicable. Such initiatives may target specific audiences, such as vulnerable groups, and are likely to benefit from a user-friendly approach.

18.0.24 Improved understanding by consumers of the terms and benefits they can expect from insurance products may also lead to a reduction in complaints against intermediaries or the insurers whose products they sell.

18.0.25 Intermediaries' initiatives to promote financial awareness, where conducted with professionalism, may be seen as a public service and help to enhance both their own reputation and that of the insurance sector.

#### *Application of ICPs to intermediaries*

18.0.26 Whilst this ICP is specific to the supervision of intermediaries, other ICPs that apply, generally or in part, to the supervision of intermediaries as well as to the supervision of insurers are:

- ICP 19 Conduct of Business
- ICP 21 Countering Fraud in Insurance
- ICP 22 Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT).

18.0.27 The supervisor should have adequate powers to conduct supervision of intermediaries, including powers to issue rules and take enforcement action.

**18.1 The supervisor ensures that insurance intermediaries are required to be licensed.**

18.1.1 In some jurisdictions other terminology or processes, such as “authorisation” or “registration”, are used in place of “licensing”. For the purposes of this ICP these terms are collectively referred to as “licensing”.

18.1.2 The supervisor may choose to license intermediaries at the entity level or the individual level, or both. Where insurers’ direct sales staff carry out insurance intermediation as employees of the insurer, these activities may be covered by the insurer’s licence or may require separate intermediary licensing.

18.1.3 Where licensing is at the entity level the supervisor may consider whether the entity has in place procedures to ensure that the individuals who conduct insurance intermediation under its responsibility meet appropriate standards of professionalism and competence. The supervisor may also wish to set its own requirements for approval of individuals, within an insurance intermediary, who conduct intermediary business.

18.1.4 Certain types of insurance business involve greater complexity and risks and hence require more skill and experience, including the provision of advice, in their intermediation. In view of this, the supervisor may wish to specify in the licence the types of insurance intermediation which the insurance intermediary is permitted to undertake, taking into account, for example, the intermediary’s proposed business plan and areas of expertise.

18.1.5 Prior to issuing a licence, the supervisor should require an application, together with additional information which may include items such as:

- A copy of the insurance intermediary’s Conduct of Business Rules or confirmation of agreement to Conduct of Business Rules published by the supervisor
- Details of ownership, including all relevant information necessary to provide a full understanding of the insurance intermediary’s ownership and control
- The proposed method of capitalisation
- A business plan, including details of proposed business and financial projections
- Information on personnel, in particular on key functionaries
- Successful due diligence in respect of key functionaries

- Details of any significant third party service providers
- Details of the proposed auditor, where applicable
- Details of professional indemnity insurance cover, including amount and limitations, or comparable guarantee
- Business continuity plans
- If incorporated, relevant information on incorporation such as memorandum and articles of association and certificate of incorporation
- Details of policies, procedures and controls in key areas such as:
  - o compliance
  - o combating financial crime (including AML/CFT and fraud)
  - o new business
  - o client money
  - o complaints
  - o conflicts of interest.

The supervisor may require additional information to complete the licensing process, upon request.

- 18.1.6 The supervisor may decide to set minimum financial resource requirements, for example to discourage market entrants with insufficient financial resources to withstand shocks. Where this is the case, such requirements might take into account risk factors such as the nature of the business to be intermediated, whether the intermediary operates client accounts, the level of professional indemnity insurance and the level of operating expenses, to ensure that an appropriately risk-based financial resource requirement is set.
- 18.1.7 In specific and limited circumstances, the supervisor may choose to make exceptions to certain licensing requirements. The supervisor should ensure that any such exceptions do not encourage regulatory arbitrage or increase the risk to consumers.
- 18.1.8 The supervisor should consider what licensing requirements, if any, are applicable to intermediaries operating on a cross-border basis from outside the jurisdiction. These requirements should be transparent to consumers, as well as to intermediaries, so that they can make an informed decision when choosing to deal with intermediaries from other jurisdictions.
- 18.1.9 The supervisor may wish to consider the possibility of issuing periodically renewable licences. An advantage of doing so would be

to ensure periodic reassessment of compliance with the regulatory licensing requirements.

**18.2 The supervisor ensures that insurance intermediaries licensed in its jurisdiction are subject to ongoing supervisory review.**

18.2.1 The supervisor should ensure that initial licensing conditions, as applicable, and ongoing regulatory requirements are maintained subsequent to the licence being issued.

18.2.2 In addition to monitoring ongoing compliance with licensing conditions and other regulatory matters, the supervisor may require that any breaches in licensing conditions or other matters of regulatory concern are reported promptly.

18.2.3 In general, the analysis of complaints against insurers and intermediaries is a valuable source of information in identifying poor conduct in the area of intermediation.

18.2.4 Ongoing supervision may include both reporting to the supervisor (off-site monitoring) and on-site inspection, as necessary. Further information on this topic is available in ICP 9 Supervisory Review and Reporting, but may require adaptation to make it appropriate for the specific nature of intermediary business. The supervisor may specify information to be provided for off-site monitoring purposes, including information to be reported routinely or on an ad-hoc basis, for example (but not limited to):

- Financial statements, audited where applicable, or other certification of the financial soundness of the intermediary
- Auditor's management letter, where applicable
- Confirmation of professional indemnity cover (including exclusions or limitations) or comparable guarantee
- Information on the sources of and placement of business
- Summary of movements on client money accounts, where applicable
- Changes in key functionaries and significant owners.

18.2.5 On-site inspections may consider areas such as:

- Corporate governance and internal controls
- Procedures and controls for combating financial crime
- Review of client money accounts where applicable
- Review of customer files
- Review of complaints
- Review of disclosure to customers and terms of business agreements (TOBAs)

- Review of documentation of advice given and the reasons for that advice.
- 18.2.6 Where appropriate, the supervisor may also use regular formal meetings with intermediaries as a means of supplementing these off-site and on-site procedures. In addition, where appropriate, the supervisor may also use on-the-ground testing, such as “mystery shopping”, to evaluate whether intermediaries’ policies and procedures have transferred into fair outcomes for customers.
- 18.2.7 Where applicable, the supervisor will need to apply supervisory review procedures to insurance intermediaries at the level at which licensing takes place (i.e. at the entity or individual level) or at the insurer level. Reporting requirements in respect of an insurer’s direct sales staff would be the responsibility of the insurer.
- 18.2.8 In conducting ongoing supervision, the supervisor may wish to consider the advantages of a risk-based approach in which greater attention is focused on areas which may be of higher risk, for example:
- where intermediation includes the provision of advice
  - intermediation on long-term or complex products or those with a significant investment element
  - in respect of less sophisticated customers.

*Indirect supervision*

- 18.2.9 A means of supervision used in some jurisdictions is to supervise intermediaries indirectly through the supervision of the insurers. In applying an indirect approach, the supervisor will need to take into account the extent to which such an approach achieves effective supervision. Regardless of the approach, it is ultimately the supervisor’s responsibility to ensure that intermediaries are effectively supervised.
- 18.2.10 An indirect approach may be more appropriate for the agent model than the broker model, as under the agent model the intermediary may act under an agency agreement with the insurer.
- 18.2.11 Indirect supervision can relate to circumstances where the insurer relies upon an intermediary to perform processes on its behalf. For example, insurers are expected to obtain appropriate documentation regarding their customers to demonstrate that appropriate customer due diligence and/or fact-finding procedures have been carried out. Insurers will be assessed on the adequacy of the processes carried out and documentation obtained, including where the insurer relies upon intermediaries to perform this work and supply the documentation required.

- 18.2.12 The supervisor should require insurers to conduct business only with intermediaries who are licensed and to verify that the intermediaries under such arrangements have the appropriate knowledge, ability and financial circumstances with which to conduct such business.
- 18.2.13 The supervisor may also require insurers to have transparent mechanisms to handle complaints against such intermediaries and report breaches of regulatory requirements by intermediaries. This might include identifying whether particular intermediaries or particular matters are the subject of regular or frequent complaints. Documentation on this will enable insurers to report “recurring” complaints to the supervisor where such complaints may be relevant to an assessment of the intermediaries’ reliability.
- 18.2.14 Under this approach the supervisor should ensure compliance by insurers in supervising intermediaries through its on-site inspection and off-site monitoring of the insurer.

#### *Self-regulatory organisations*

- 18.2.15 A self-regulatory organisation (SRO) is a non-government organisation that exercises some degree of supervisory oversight for an industry or profession. The supervisory functions of a self-regulatory organisation can contribute to the supervision of intermediaries through the regulation of its members and requirements for professional standards.
- 18.2.16 Where an SRO is involved in the supervision of intermediaries, the supervisor should ensure that the SRO meets appropriate standards before being allowed to exercise authority. The supervisor should maintain oversight of the self-regulatory system by verifying that its functions are being performed adequately and that its standards are sufficiently robust and take appropriate action to deal with any shortcomings.
- 18.2.17 An SRO’s regulatory and professional requirements may not address all the aspects of the supervision of insurance intermediaries in which the supervisor has an interest. Therefore, where an SRO shares some of the supervisory responsibility, the supervisor should nevertheless not abdicate its overall responsibility for supervision as a result of the operation of such as system.

### **18.3 The supervisor requires insurance intermediaries to possess appropriate levels of professional knowledge and experience, integrity and competence.**

#### *Professional knowledge and experience*

- 18.3.1 It is important that individuals working as insurance intermediaries have adequate professional knowledge to carry out their responsibilities. Professional knowledge can be gained from experience, education and training. Importantly, to be able to demonstrate that a certain level of professional knowledge has been achieved, it is preferable that this is supported by the attainment of relevant professional qualifications.
- 18.3.2 Professional qualifications underpin the quality of work carried out by professionals, including insurance intermediaries. The supervisor thus has an interest in ensuring that insurance intermediaries have policies and procedures which encourage individuals to achieve relevant professional qualifications.
- 18.3.3 The supervisor may also wish to ensure that individuals responsible for insurance intermediation activities have professional qualifications and experience appropriate for the business which they intermediate. More complex products or customer needs will require higher or more specialised qualification and experience. The qualifications and experience of individuals should also be appropriate for the type of intermediation being carried out, whether as agent for a specific insurer or acting as a broker primarily on behalf of the customer. Once professional qualifications have been achieved, it is important that individuals who continue to work as insurance intermediaries keep their professional knowledge up to date. Certain professional bodies require their members to spend a specified minimum amount of time on continuous professional development.
- 18.3.4 The supervisor may consider recognising the qualifications of specified professional bodies. Where a jurisdiction has no such professional body, consideration could be given to encouraging or recognising qualifications obtained through professional bodies in other jurisdictions. The supervisor might also consider recognising international qualifications where these are considered to be equivalent to, or exceed, a jurisdiction's qualifications.
- 18.3.5 Intermediaries should also be knowledgeable regarding the status of the insurers whose products they sell. For example, they should be aware of the jurisdiction(s) in which the insurer is licensed, whether they are placing business with a branch or subsidiary company, the financial status and credit rating of the insurer and the applicability of any policyholder protection schemes to that insurer's products.

#### *Integrity*

- 18.3.6 It is essential that insurance intermediaries act with integrity and high ethical standards. These relate to qualities of the individuals concerned, such as:
- being honest, trustworthy and open

- being reliable, dependable and respectful
  - not taking unfair advantage
  - not accepting or offering gifts where this might imply an improper obligation.
- 18.3.7 The supervisor may wish to ensure that individuals acting as intermediaries are subject either to internal policies and procedures, or to the ethical standards of professional bodies, that require integrity.
- 18.3.8 The supervisor may also wish to lay down their own expectations through the publication of a code of conduct with which intermediaries are required to comply. Codes of conduct should be complementary to the relevant legislation and may address any aspect of dealings between insurance intermediaries and their customers.
- 18.3.9 Intermediary firms should operate procedures to assess the integrity of those acting as intermediaries on its behalf. Such procedures would be expected to include pre-employment checks as well as ongoing requirements. Pre-employment checks would include, amongst other things, checks for any criminal convictions and on employment history.

#### *Competence*

- 18.3.10 The supervisor should ensure that the individuals carrying out insurance intermediation do so only in respect of business for which they have the required competence.
- 18.3.11 The supervisor will expect insurance intermediaries to implement policies and procedures to assess the competence of the individuals undertaking intermediation work. Assessment would be particularly important in the case of new employees or where staff are assigned different or more challenging responsibilities. Competence should also be monitored as an ongoing process for all relevant staff. This may include actions such as:
- observed interviews with clients
  - review of client files
  - internal interviews
  - coaching.
- 18.3.12 The supervisor's powers to conduct on-site inspections (including file reviews and interviews of selected staff) also provide the opportunity for the supervisor to assess competence during the course of supervisory examinations.

### *Role of professional standards*

- 18.3.13 Where these exist, SROs and professional bodies can be instrumental in promoting professional standards in cases where they issue standards or codes with which their members are required to comply. The standards required by SROs or professional bodies whose members are insurance practitioners might include areas such as:
- acting with high ethical standards and integrity
  - acting in the best interests of each client
  - providing a high standard of service
  - treating customers fairly.
- 18.3.14 Members who are found to be in breach of the professional standards of the organisation may be subject to disciplinary procedures such as suspension of or exclusion from membership.
- 18.3.15 The supervisor may wish to confirm that where there is reliance on the membership of a professional body, that body has an effective disciplinary scheme in force. The supervisor may nevertheless decide not to depend on such professional processes entirely and to retain the right to deal with issues of individuals' professional conduct directly.

## **18.4 The supervisor requires that insurance intermediaries apply appropriate corporate governance.**

- 18.4.1 Insurance intermediaries should be subject to minimum corporate governance requirements. The governance requirements may vary, depending upon the nature and scale of the intermediary and the complexity of its business, and may be subject to general company law. The requirements may therefore differ between different intermediary organisations. However, the minimum corporate governance requirements for each intermediary should be sufficient to provide for sound and prudent management of the business and to protect the interest of stakeholders.
- 18.4.2 Good governance may be promoted through the supervisor, as well as other authorities and organisations publishing guidance, for example a Code of Practice to insurance intermediaries on their obligations in respect of governance-related matters, setting out expectations in areas such as:
- achieving and maintaining standards on suitability of persons
  - ensuring appropriate standards for conduct of business

- ensuring that the making of key decisions is subject to sufficient discussion at Board level or with key functionaries as appropriate
- ensuring adequate human resources to conduct the business
- ensuring an appropriate level of internal controls of the business
- maintaining adequate files and records and ensuring their availability for inspection
- maintaining appropriate controls over outsourced functions
- compliance with all relevant legislation, including non-insurance legislation such as in respect of anti-money laundering, fraud etc.

18.4.3 In setting governance requirements the supervisor may need to consider the application of such requirements to sole traders and small entities operating as insurance intermediaries. Due to their small size, sole traders and small businesses will have difficulty in meeting, or be unable to meet, various requirements expected of larger entities. Key areas where requirements may prove difficult to meet could include internal controls, segregation of duties, compliance functions and maintaining training and competence requirements. Whilst this and other IAIS standards relevant to insurance intermediaries are expected to be applied taking into account the scale, nature and complexity of the business, the supervisor will need to be satisfied that a minimum standard is achieved.

18.4.4 Insurers are responsible for the governance of their direct sales staff and are subject to the requirements of ICP 7 Corporate Governance.

**18.5 The supervisor requires insurance intermediaries to disclose to customers, at a minimum:**

- **the terms and conditions of business between themselves and the customer;**
- **the relationship they have with the insurers with whom they deal; and**
- **information on the basis on which they are remunerated where a potential conflict of interest exists.**

18.5.1 This standard is concerned with the disclosure of matters relating to intermediaries themselves. Requirements to disclose information on insurance products offered to customers is covered by ICP 19 Conduct of Business.

18.5.2 In setting disclosure requirements, the supervisor may find it relevant to take into account that there are differences in:

- the nature of different insurance products;
- the level of sophistication of different customers; and
- the way in which different types of insurance are transacted (for example, differences between commercial and personal (retail) lines).

These may influence the nature and timing of disclosures to some extent.

- 18.5.3 Expectations of timing and detail of disclosure may therefore differ according to the circumstances. The supervisor will wish to ensure that disclosure requirements provide adequate protection to customers as appropriate, taking into account these factors.

*Terms of business*

- 18.5.4 A terms of business agreement may be a convenient means by which an insurance intermediary can provide important information to a customer and satisfy many of the disclosure requirements. Such a document might include information such as:

- by whom they are licensed and supervised
- whether they act as agents or brokers
- the services provided, including whether they offer products from a full range of insurers, from a limited range or from a single insurer
- charging arrangements
- cancellation rights
- notification of complaints
- client money arrangements, including treatment of interest
- confidentiality of information provided
- relevant laws
- information on the basis on which they are remunerated.

- 18.5.5 Insurance intermediaries should be expected to provide information on terms of business to customers and to do so prior to an insurance policy being entered into. Where there is an ongoing business relationship between an intermediary and a customer, or in the case of policy renewals, once terms of business information has initially been provided, the intermediary should review whether reiterating this information is necessary. Further information on terms of business might only be necessary where there are changes to the terms.

- 18.5.6 When insurance cover needs to be arranged immediately it may not be possible to provide documentation of terms of business at the point of arranging the contract. In such situations the information may be provided orally and followed up with written documentation within a reasonable period of time.
- 18.5.7 The supervisor may consider it best practice, and hence recommend or require, that a copy of the terms of business, signed by the customer, is retained as part of the insurance intermediary's records. Where insurance is intermediated over the internet, the customer can be required to acknowledge the terms of business before a policy can be proceeded with. Electronic records could be retained by the insurer.

#### *Intermediary status*

- 18.5.8 An insurance intermediary's status will provide information to a customer on the extent of products from which recommendations are made and provide an indication of potential conflicts of interest. Where the insurance intermediary is only able to select products from a single insurer or from a limited range, the customer may wish to carry out their own research to see whether they can obtain better terms or a more suitable product elsewhere in the market.
- 18.5.9 It is therefore particularly important that insurance intermediaries provide customers with information on their relationship with the insurers with whom they deal, specifically whether they are independent or an agent, legally or in practice, with one or more insurance companies and whether they are authorised to conclude insurance contracts on behalf of an insurer or not.
- 18.5.10 Potential conflicts of interest can arise if an intermediary is part of a wider insurance group or if the intermediary has a financial interest, such as a shareholding in an insurer or insurance group. Such relationships should be disclosed to customers.
- 18.5.11 This information may be provided as part of a terms of business agreement or separately. Because of its importance this information might also be highlighted verbally to the customer.

#### *Remuneration*

- 18.5.12 Insurance intermediaries are generally remunerated by way of fees and commissions:
- Fees paid directly by the customer;
  - Fees or commissions paid indirectly by the customer, e.g. by way of deduction from premiums or funds invested; or
  - Fees or commissions paid by the insurer.

- 18.5.13 Information on charging structures can be important information to customers, depending on the types of insurance involved. For example, for insurance products with an investment element, information on any fees or other costs deducted from the initial amount invested, as well as on fees or commissions deducted from the investment thereafter will be important. For non-life insurance and pure life insurance products, where fees are not paid directly by the customer, such information may have less of a direct impact but may have a bearing on the independence of any advice that is provided.
- 18.5.14 The circumstances under which potential conflicts of interest exist, which would require disclosure of the basis on which intermediaries are remunerated, are outlined in the discussion on conflicts of interest in ICP 19 Conduct of Business and applies to all types of intermediary. However, the supervisor may allow exceptions where the risk is low and potential conflicts of interest are adequately managed.
- 18.5.15 The supervisor may also require that customers are provided with further information on fees and commissions upon a customer's request, including the level of fees and commissions. The intermediary should make the customer aware of his/her right to request information on fees and commissions. Communication should be clear and not misleading. In view of the impact of fees and commissions upon insurance products with an investment element, the supervisor may choose to require that disclosure of fees and commissions is provided to customers prior to policies being entered into in respect of all such products.
- 18.5.16 Information on charging may be provided as part of a terms of business agreement, or separately. As fees and commissions vary by product and between product providers, they may need to be provided separately for each product recommended, often by inclusion in product documentation. Because of their significance to some types of product this information might also be highlighted verbally to the customer.
- 18.5.17 Some forms of remuneration of insurance intermediaries may potentially lead to a conflict of interest; an intermediary may be tempted to recommend a product which provides higher fees or commissions than another. The supervisor will wish to ensure that robust procedures are in place to identify and resolve conflicts of interest and ensure that customers' best interests are served. Conflicts of interest may be managed in different ways as relevant to the circumstances; for example, through appropriate disclosure and informed consent from customers. Where they cannot be managed satisfactorily this would result in the intermediary declining to act. In cases where the supervisor may have concerns about the ability of disclosure to deal adequately with conflicts of interest, the supervisor may consider requiring other options to manage such

conflicts. Examples from some jurisdictions, in place or under consideration include:

- prohibitions on certain types of financial interest
- structural changes to the retail distribution model, such as by prohibiting the payment or receipt of commission on investment products in favour of a fee-based approach.

These issues may also be covered in the ethical codes issued by self-regulatory organisations.

- 18.5.18 The supervisor should be aware of the use of non-monetary benefits, so called “soft” commissions, offered by insurers to intermediaries. These may include less tangible inducements such as professional support or corporate entertainment at sporting or cultural events. Such inducements may lead to conflicts of interest and are less transparent than fees or commissions and also need to be managed or prohibited as appropriate.

## **18.6 The supervisor requires an insurance intermediary who handles client monies to have sufficient safeguards in place to protect these funds.**

- 18.6.1 In the course of carrying out its business, an insurance intermediary may:
- receive monies from a client for the payment of premiums to an insurer
  - receive monies from an insurer in respect of claims or refunded premiums for onward payment to a client.
- 18.6.2 Some jurisdictions may have specific legal requirements in respect of the cash flows where monies are transferred via an intermediary from the customer to the insurer and vice versa, including in determining whether the customer or the insurer is at risk in respect of such funds.
- 18.6.3 Where funds are held at the risk of the client, they may be referred to as “client monies” or “client’s money”. The intermediary should be expected to have adequate policies and procedures in place for the safeguarding of such funds in the interests of their customers.
- 18.6.4 Where the insurance intermediary acts as agent for the insurer, these funds may be considered “monies held at the risk of insurers”. In these circumstances the insurer is responsible for such funds held by agents on its behalf.
- 18.6.5 In setting requirements for insurance intermediaries in respect of the safeguarding of client monies, the supervisor may wish to consider recommending, amongst other things, that the following are adequately covered in their client money policies and procedures:

- the use of separate client accounts clearly distinguishable from the intermediary's own bank accounts;
- ensuring that client accounts are held with licensed banks within the jurisdiction, or specified other jurisdictions;
- disallowing monies other than client monies within the account, except in specific circumstances such as to achieve or maintain a minimum balance, to receive interest, or to receive commission due to the intermediary;
- ensuring that monies are paid into the account promptly;
- ensuring that adequate financial systems and controls are maintained, including authorisation of payments from the account;
- ensuring that adequate books and records are maintained and subject to audit;
- ensuring that reconciliations are performed on a regular basis and reviewed;
- ensuring that discrepancies on the account are followed up promptly and resolved satisfactorily;
- ensuring, for each client, that payments from a client account are not made before sufficient monies paid into the account have cleared, thus ensuring that any balance held in respect of each client is not negative; and
- the treatment of interest.

18.6.6 In the interests of safeguarding clients' money, it will be important that client accounts cannot be used to reimburse creditors of the insurance intermediary in the event of its bankruptcy.

18.6.7 The supervisor may wish to ensure that, where insurance intermediaries operate client accounts, the terms and conditions of such accounts are disclosed to their customers, including whether funds held in such accounts are at the risk of clients or at the risk of the insurer.

**18.7 The supervisor takes appropriate supervisory action against licensed insurance intermediaries, where necessary, and has powers to take action against those individuals or entities that are carrying on insurance intermediation without the necessary licence.**

18.7.1 The supervisor needs to be able to take action against the insurance intermediary as licensee (i.e. as either an entity or an individual) where appropriate, for example where the intermediary fails to meet licensing or other regulatory requirements or where consumers may otherwise be at risk. This might occur, for example, where:

- Required information is not provided to customers

- Policies and procedures are inadequate (particularly where this results in inadequate due diligence work)
  - Internal controls, file keeping or documentation are inadequate
  - Conflicts of interest are not adequately identified or managed
  - There are concerns over business continuity.
- 18.7.2 Supervisory action should apply at either the entity level or individual level, as appropriate. It may be corrective or involve sanctions and could include:
- Requiring the implementation of enhanced policies and procedures
  - Restricting business activities
  - Removing key functionaries
  - Suspending or barring specific individuals from engaging in intermediary business
  - Suspending, revoking or not renewing the licence.
- 18.7.3 Supervisory action may also include action against insurers in the case of direct sales or where an insurer knowingly cooperates with an intermediary which is in breach of its regulatory requirements.
- 18.7.4 In some circumstances it may be appropriate to apply sanctions indirectly through insurers, for instance where action is taken to remove certain conflicts of interest.
- 18.7.5 The corrective action or sanctions imposed would be expected to be appropriate to the shortcomings. Minor offences might be dealt with through oral or written communications with management and then followed up, whereas more significant deficiencies which result in a risk to customers might warrant immediate or more significant action.
- 18.7.6 The supervisor would be expected to ensure that due process rights for an intermediary (or insurer where relevant) to appeal supervisory action are in place.

## ICP 19 Conduct of Business

**The supervisor sets requirements for the conduct of the business of insurance to ensure customers are treated fairly, both before a contract is entered into and through to the point at which all obligations under a contract have been satisfied.**

### *Introductory Guidance*

- 19.0.1 Requirements for the conduct of insurance business help to:
- strengthen public trust and consumer confidence in the insurance sector;
  - minimise the risk of insurers following business models that are unsustainable or pose reputational risk, thereby complementing the risk management framework of a solvency regime and contributing to overall financial stability; and
  - support a sound and vigorous insurance sector by creating level playing fields in terms of the basis on which insurers can compete while maintaining acceptable business practices with respect to the fair treatment of customers.
- 19.0.2 Conduct of business, including business practices, is closely linked with jurisdictions' tradition, culture, legal regime and the degree of development of the insurance sector. For this reason, regulatory approaches to the conduct of business also tend to vary. Such diversity should be taken into consideration in implementing this ICP and related standards and guidance material in order to achieve the outcome of fair treatment of customers. The fair treatment of customers encompasses concepts such as ethical behaviour, acting in good faith and the prohibition of abusive practices.
- 19.0.3 Requirements for the conduct of insurance business may differ depending on the nature of the customer with whom an insurer interacts and the type of insurance provided. The scope of requirements for conduct of insurance business should reflect the combined probability and impact of the risk of unfair treatment of customers, taking into account the nature of the customer and the type of insurance provided.
- 19.0.4 In particular, detailed conduct of business rules may not be appropriate for reinsurance transactions (where benefits under a policy are not affected by the reinsurance arrangements). Nonetheless, this does not relieve reinsurers of their duty to provide complete and accurate information to the insurers with which they deal. (See also Guidance 13.0.7.)

19.0.5 The legislation should set requirements with which insurers must comply, including foreign insurers selling products on a cross-border basis.

19.0.6 These standards and the related guidance material deal with the conduct of insurance business, which is primarily concerned with the fair treatment of customers. Effective assessment of the quality of conduct of insurance business to a large extent requires supervisory consideration of policies, processes and procedures that apply to selling insurance products to customers and servicing these policies, and hence to legal entity supervision. Where insurers participate in an insurance group or financial conglomerate, the application of appropriate policies and procedures on conduct of business across the group should result in the fair treatment of customers on a group-wide basis, even if legal provisions in some jurisdictions set requirements that are potentially lower than those used by the group. In addition, there are a number of other group-related aspects that are relevant to the supervision of conduct of business by insurers and intermediaries, such as:

- the public disclosure by the supervisor of the regulatory requirements in respect of the offering of cross-border insurance
- the disclosure to customers of the group to which a policy underwriter belongs
- the potential risks from group entities that could affect policies being sold or administered.

The supervisor should consider the implications arising from group structures in applying these standards.

19.0.7 Supervisors should be aware of the conduct of business requirements set by the regulators of other financial services sectors with a view to minimising unnecessary inconsistencies, possible duplication and the potential for regulatory arbitrage.

### ***Fair treatment of customers***

#### **19.1 The supervisor requires insurers and intermediaries to act with due skill, care and diligence when dealing with customers.**

19.1.1 The concept of due skill, care and diligence implies that insurers and intermediaries should discharge their duties in a way that can reasonably be expected from a prudent person in a like position and under similar circumstances.

19.1.2 Insurers and intermediaries should have proper policies and procedures in place to achieve this outcome, including taking appropriate measures to ensure that their employees and agents meet high standards of ethics and integrity.

**19.2 The supervisor requires insurers and intermediaries to establish and implement policies and procedures on the fair treatment of customers that are an integral part of their business culture.**

- 19.2.1 Supervisors should ensure that insurers and intermediaries have proper policies and procedures in place to achieve the fair treatment of customers and monitor that such policies and procedures are adhered to.
- 19.2.2 Proper policies and procedures dealing with the fair treatment of customers are likely to be particularly important with respect to retail customers, because of the asymmetry of information that tends to exist between the insurer or intermediary and the individual retail customer.
- 19.2.3 Supervisory requirements with respect to fair treatment of customers may vary depending on the legal framework in place in a particular jurisdiction. While the desired *outcome* is fair treatment of customers, this may be achieved through a variety of approaches, with some jurisdictions favouring a principles-based set of requirements, some favouring a rules-based approach, and others following some combination of approaches depending on the circumstances.
- 19.2.4 Fair treatment of customers encompasses achieving outcomes such as:
- developing and marketing products in a way that pays due regard to the interests of customers
  - providing customers with clear information before, during and after the point of sale
  - reducing the risk of sales which are not appropriate to customers' needs
  - ensuring that any advice given is of a high quality
  - dealing with customer complaints and disputes in a fair manner
  - protecting the privacy of information obtained from customers
  - managing the reasonable expectations of customers.
- 19.2.5 Ensuring the achievement of fair outcomes for customers will tend to require that insurers and intermediaries adopt the fair treatment of customers as an integral part of their business culture and that policies and procedures to support this objective are properly embedded in the organisation. Embedding the fair treatment of customers in the culture of the insurer or intermediary may include the following:

- Leadership: Responsibility for fair treatment of customers should be at the level of the Board and Senior Management, who should design, implement and monitor adherence to policies and procedures aimed at ensuring that customers are treated fairly.
- Strategy: Fair treatment of customers should be an objective taken into consideration in the design of the business strategy.
- Decision making: All decisions that impact on customers should be subject to particular scrutiny in terms of whether they support the fair treatment of customers.
- Internal controls: Monitoring the fair treatment of customers requires that relevant management information is identified, collected and evaluated. A particular challenge is establishing internal reports that include the most useful information and indicators to allow the Board and Senior Management to measure the insurer's or intermediary's performance with respect to fair treatment of customers. Mechanisms and controls should also be established to ensure that all departures from policies and procedures as well as all other situations that jeopardise the protection of the interests of customers are promptly remedied by decision makers.
- Performance management: Appropriate attention should be paid to the recruitment of staff and agents who meet high standards of ethics and integrity. Moreover, relevant staff should be trained to deliver appropriate outcomes in terms of fair treatment of customers. Evaluation of performance should include the contribution made to achieving these outcomes.
- Reward: Remuneration and reward strategies should take account of fair customer outcomes. Hence reward structures may need to be reviewed in terms of quality issues and ensure there are not incentives which would result in the unfair treatment of customers.

19.2.6 Insurers' and intermediaries' policies and procedures dealing with the fair treatment of customers should be made available to the supervisor. The supervisor may encourage insurers and intermediaries to make relevant policies and procedures publicly available as good practice, in particular their claims handling, complaints handling and dispute resolution policies and procedures.

19.2.7 In addition to reviewing insurers' and intermediaries' policies and procedures on the fair treatment of customers, supervisors may also wish to issue guidelines on their expectations to help insurers and intermediaries establish appropriate policies and procedures.

### *Pre-sale process*

#### **19.3 The supervisor requires insurers to take into account the interests of different types of customers when developing and marketing insurance products.**

19.3.1 In some jurisdictions, this can be achieved through a product approval approach, whereby the supervisor reviews insurance products for compliance with applicable laws. These laws could include not only actuarial standards, but also rules designed to protect customers, such as prohibitions on certain types of exclusions. In other jurisdictions, a “principles-based” approach is followed, which places more onus on the insurer’s Board and Senior Management to ensure that products are developed and marketed in a manner which can be regarded as meeting the outcome that the legislated principle is designed to achieve.

#### *Product approval approach*

19.3.2 Where supervisors have the power to approve contract conditions or pricing, the approval process should balance the protection of customers against the benefits to customers of innovation and choice in insurance products. Supervisory approval of contract conditions or pricing is likely to be more appropriate in certain circumstances, such as where the insurer is dealing with less financially-capable customers, where products are complex or insurance contracts that are required by law such as automobile liability insurance or health insurance.

19.3.3 In such situations the supervisor may review products for compliance with things such as:

- mandated policy limits
- coverage of specified risks, procedures or conditions
- absence of prohibited exclusions
- compliance with specifically required policy language.

#### *Principles-based approach*

19.3.4 Where supervisors follow a more principles-based approach, supervisors may issue guidance in terms of what is expected of insurers in this regard. This may include the following:

- Product development and marketing should include the use of adequate information on customer needs.
- Product development (including a product originating from a third party) should provide for a thorough assessment of the main characteristics of a new product and of the

disclosure documents related thereto by competent persons within every appropriate department of the insurer.

- Before marketing a product or service, the insurer should carry out a diligent review of the product in relation to its business model, the existing rules and regulations and its risk management approach. In particular, the policies, procedures and controls put into place should enable the insurer to:
  - o offer a sustainable product
  - o target the customers for whose needs the product is likely to be appropriate, while limiting access by customers for whom the product is likely to be inappropriate
  - o assess the risks resulting from the product by considering, among other things, changes associated with the environment or stemming from the insurer's policies that could harm customers
  - o ensure that distribution methods are suitable for the product, particularly in light of the laws and regulations in force and whether or not advice should be provided
  - o monitor a product after its launch to ensure it still meets the needs of target customers, assess the performance of the various methods of distribution used with respect to sound commercial practices and, if necessary, take the necessary remedial action.
- Insurers should provide support to intermediaries in helping to ensure that they understand the target market (and thus reduce the risk of mis-selling).

#### **19.4 The supervisor requires insurers and intermediaries to promote products and services in a manner that is clear, fair and not misleading.**

19.4.1 Before an insurer or intermediary promotes an insurance product, it should take reasonable steps to ensure that the information provided is accurate, clear and not misleading. Ideally, procedures should provide for an independent review of advertising materials and other communications intended for customers other than by the person or organisation that prepared or designed them.

19.4.2 If, subsequently, an insurer or intermediary becomes aware that the information provided is not accurate and clear or is misleading, it should withdraw the information and notify any person that it knows to be relying on the information as soon as reasonably practicable.

19.4.3 The information provided should:

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

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

**19.5 The supervisor sets requirements for insurers and intermediaries with regard to the timing, delivery, and content of information provided to customers at point of sale.**

19.5.1 The insurer or intermediary, as relevant, should take reasonable steps to ensure that a customer is given appropriate information about a policy in good time and in a comprehensible form so that the customer can make an informed decision about the arrangements proposed.

*Timing of the provision of information to customers*

19.5.2 Customers should be appropriately informed before and at the point of sale. Information should enable an informed decision to be made before entering into a contract.

19.5.3 In determining what is “in good time”, an insurer or intermediary should consider the importance of the information to the customer’s decision-making process and the point at which the information may be most useful.

*Delivery of information to customers*

19.5.4 Information should be provided in a way that is clear, fair and not misleading. Wherever possible, attempts should be made to use “plain language” that can easily be understood by the customer.

19.5.5 Product information should be provided in writing or another durable medium.

19.5.6 It is advisable to focus on the quality of product disclosure rather than the quantity of disclosure, as there is a risk that if the disclosure becomes too voluminous then the customer may be less likely to read the information. The quality of disclosure may also be improved by the introduction of a standardised format for disclosure

(such as a product information sheet), which will aid comparability across competing products and allow for a more informed choice.

- 19.5.7 There is likely to be an enhanced need for clear and simple disclosure for more complex or “bundled” products, which are difficult for consumers to understand, such as packaged retail investment products (PRIPS), particularly regarding the costs and risks involved.
- 19.5.8 Supervisors should encourage insurers and intermediaries to obtain acknowledgements from customers that they have received and understood the information provided.

*Content of the provision of information to customers*

- 19.5.9 The information provided should enable customers to understand the characteristics of the product they are buying and help them understand whether and why it meets their requirements.
- 19.5.10 The level of information required will tend to vary according to matters such as:
- the knowledge and experience of a typical customer for the policy in question
  - the policy terms and conditions, including its main benefits, exclusions, limitations, conditions and its duration
  - the policy's overall complexity
  - whether the policy is bought in connection with other goods and services
  - whether the same information has been provided to the customer previously and, if so, when.

*Disclosure of product features*

- 19.5.11 While the level of product information required may vary, it should include information on key features, such as:
- the name of the insurer, its legal form and, where relevant, the group to which it belongs
  - the type of insurance contract on offer, including the policy benefits
  - the level of the premium, the due-date and the period for which the premium is payable, as well as the consequences of late or non-payment. Where a policy is bought in connection with other goods or services (a bundled product) good practice would be to disclose premiums for each benefit (both main benefits and

supplementary benefits) separately from any other prices and whether buying the policy is compulsory

- the type and level of charges to be deducted from or added to the quoted premium, and any charges to be paid directly by the customer
- when the insurance cover begins and ends
- a description of the risk insured by the contract and of the excluded risks
- prominent and clear information on significant or unusual exclusions or limitations. A significant exclusion or limitation is one that would tend to affect the decision of consumers generally to buy. An unusual exclusion or limitation is one that is not normally found in comparable contracts. In determining what exclusions or limitations are significant, an insurer or intermediary should, in particular, consider the exclusions or limitations that relate to the significant features and benefits of a policy and factors which may have an adverse effect on the benefit payable under it. Examples of significant or unusual exclusions or limitations may include:
  - o deferred payment periods
  - o exclusion of certain conditions, diseases or pre-existing medical conditions
  - o moratorium periods
  - o limits on the amounts of cover
  - o limits on the period for which benefits will be paid
  - o restrictions on eligibility to claim such as age, residence or employment
  - o excesses.

19.5.12 Where information provided about an investment policy includes an indication of past, simulated or future performance, the information should include any limits on upside or downside potential and a prominent warning that past performance is not a reliable indicator of future performance.

19.5.13 A helpful means to ensure that accurate and comprehensible information is provided to the customer is a product information sheet containing information on key product features that are of particular significance to the conclusion or performance of the insurance contract. The product information sheet should be clearly identified as such and it should be pointed out to the customer that the information is not exhaustive. Insofar as the information concerns the content of the contract, reference should be made as appropriate to the relevant provisions of the contract or to the

general policy conditions underlying the contract. Insurers should consider the use of evaluation by third parties, such as consumer testing, in developing product information sheets in order to ensure their understandability.

#### *Disclosure of rights and obligations*

- 19.5.14 Retail customers in particular often have only limited knowledge about the legal rights and obligations arising from an insurance contract. Before an insurance contract is concluded, the insurer or intermediary, as relevant, should therefore inform a retail customer on matters such as:
- General provisions – including the law applicable to the contract
  - Obligation to disclose material facts – including prominent and clear information on the obligation on the customer to truthfully disclose material facts. Ways of ensuring a customer knows what he or she must disclose include explaining the duty to disclose all circumstances material to a policy and what needs to be disclosed, and explaining the consequences of any failure to make such a disclosure. Alternatively, rather than an obligation of disclosure, the customer may be asked clear questions about any matter material to the insurer
  - Obligations to be complied with when a contract is concluded and during its lifetime, as well as the legal consequences of non-compliance
  - Obligation to monitor cover – including a statement, where relevant, that the customer may need to review and update the cover periodically to ensure it remains adequate
  - Right to cancel – including the existence, duration and conditions relating to the right to cancel. If there are any charges related to the early cancellation or switching of a policy, this should be prominently disclosed
  - Right to claim benefits – including conditions under which the policyholder can claim and the contact details to notify a claim
  - Right to complain – including the arrangements for handling policyholders' complaints, which might include an insurer's internal claims dispute mechanism or the existence of an independent dispute resolution mechanism.
- 19.5.15 Where applicable, the customer may also be provided with information on any policyholder protection scheme or compensation scheme in the case of an insurer not being able to meet its liabilities and any limitations on such a scheme.

- 19.5.16 If the insurance undertaking is a foreign insurer, the insurer or intermediary should be required to inform the customer, before any commitment is entered into, of details of the home authority responsible for the supervision of the insurer, and of the jurisdiction in which the head office or, where appropriate, the branch with which the contract is to be concluded is situated.

*Disclosure specific to internet sales*

- 19.5.17 Supervisors should ensure that the principles of transparency and disclosure applied to internet insurance activities are equivalent to those applied to insurance activities through traditional means. In addition, supervisors should require that insurers and intermediaries over which they exercise jurisdiction and which offer insurance products over the internet should disclose certain information on their internet site, such as:

- the address of the insurer's head office and the contact details of the supervisor responsible for the supervision of the head office;
- contact details of the insurer, branch or intermediary, and of the supervisor responsible for the supervision of the business, if different from above;
- the jurisdictions in which the insurer or intermediary is legally permitted to provide insurance;
- procedures for the submission of claims and a description of the insurer's claims handling procedures; and
- contact information on the authority or organisation dealing with dispute resolution and/or consumer complaints.

**19.6 The supervisor requires insurers and intermediaries to ensure that, where customers receive advice before concluding an insurance contract, such advice is appropriate, taking into account the customer's disclosed circumstances.**

- 19.6.1 Advice goes beyond the provision of product information and relates specifically to the provision of a recommendation on the appropriateness of a product to the disclosed needs of the customer.

- 19.6.2 Insurers and intermediaries should seek the information from their customers that is appropriate for assessing their insurance needs, before giving advice or concluding a contract. This information may differ depending on the type of product and may, for example, include information on the customer's:

- financial knowledge and experience
- needs, priorities and circumstances
- ability to afford the product

- risk profile.

- 19.6.3 In cases where advice would normally be expected and the customer chooses not to receive advice, it is advisable that the customer is required to sign an acknowledgment to this effect.
- 19.6.4 The supervisor may also wish to specify particular types of policies or customers for which advice is not expected to be given. Typically, this may include simple to understand products, products sold to customer groups that have expert knowledge of the type of product or, where relevant, mandated coverage for which there are no options.
- 19.6.5 The basis on which a recommendation is made should be explained and documented, particularly in the case of complex products and products with an investment element. All advice should be communicated in a clear and accurate manner, comprehensible to the customer. Where investment advice is provided, this should be communicated on paper or another durable medium accessible to the customer and a record kept in a “client file”.
- 19.6.6 In addition, the insurer should also review its agents’<sup>61</sup> “client files” so that the insurer can exercise independent control after the fact on the quality of the advice given by its agents, take any necessary remedial measures with respect to the delivery of advice and, if applicable, be in a position to examine fairly any complaints submitted to it.
- 19.6.7 There should be a responsibility on the insurer and the intermediary to promote quality advice. In order to ensure the delivery of quality advice, the insurer and intermediary should, in particular, establish continuous training programs that allows the persons giving advice to:
- keep abreast of market trends, economic conditions, innovations and modifications made to the products and services;
  - maintain an appropriate level of knowledge about their industry segment, including the characteristics and risks of the products and services;
  - know the applicable legal and regulatory requirements;
  - know the requirements for the communication of information regarding the products and services and for appropriate disclosure of any situation liable to

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<sup>61</sup> See Guidance 18.0.10 for discussion on agents.

compromise the impartiality of the advice given or limit such advice; and

- be familiar with the documentation regarding the products and services and answer reasonably foreseeable questions.

**19.7 The supervisor requires insurers and intermediaries to ensure that, where customers receive advice before concluding an insurance contract, any potential conflicts of interest are properly managed.**

19.7.1 In their dealings either with each other or with customers, insurers and intermediaries may encounter conflicts of interest. Conflicts of interest arise where a party has competing professional and personal interests. This includes soliciting or accepting inducements where this would conflict with the insurer's or intermediary's duties to its customers. An inducement can be defined as a benefit offered to an insurer or intermediary, or any person acting on its behalf, with a view to that firm/person adopting a particular course of action. This can include, but is not limited to, cash, cash equivalents, commission, goods and hospitality. Where intermediaries who represent the interests of customers receive inducements from insurers, this could result in a conflict of interest that could affect the independence of advice given by them.

19.7.2 Generally, the payment or acceptance of an inducement or any non-monetary benefit, to or from a third party, may be considered to create a conflict of interest. In some jurisdictions, this is deemed not to be problematic if the following conditions are all met:

- the payment or receipt is designed to enhance the quality of the service to the client;
- the payment or receipt is disclosed to the client before the service is provided to them; and
- the payment or receipt does not impair compliance with the insurer's or intermediary's duty to act in the customer's best interests where such a duty exists.

19.7.3 As an insurance intermediary interacts with both the customer and the insurer, an intermediary is more likely than an insurer to encounter conflicts of interest. For an insurance intermediary, examples of where a conflict of interest may occur include:

- where the intermediary owes a duty to two or more customers in respect of the same or related matters – the intermediary may be unable to act in the best interests of one without adversely affecting the interests of the other
- where the relationship with a party other than the customer influences the advice given to the customer

- where the intermediary is likely to make a financial gain, or avoid a financial loss, at the expense of the customer
- where the intermediary has an interest in the outcome of a service provided to, or a transaction carried out on behalf of, a customer which is distinct from the customer's interest
- where the intermediary has significant influence over the customer's decision (such as in an employment relationship) and the intermediary's interest is distinct from that of the customer
- where the intermediary receives an inducement to provide a service to a customer other than the standard fee or commission for that service
- where the intermediary has an indirect interest in the outcome of a service provided to, or a transaction carried out on behalf of, a customer due to an association with the party that directly benefits (such as soliciting insurance products which are sold together with other financial services in a bancassurance relationship) and where such indirect interest is distinct from the customer's interest.

19.7.4 To ensure that insurers and insurance intermediaries act in the best interests of customers, it is important that the supervisor requires that they take all reasonable steps to identify and manage conflicts of interest through appropriate policies and procedures.

19.7.5 Conflicts of interest may be managed in different ways as relevant to the circumstances, for example, through appropriate disclosure and informed consent from customers. Where they cannot be managed satisfactorily, this would result in the insurer or intermediary declining to act. In cases where the supervisor may have concerns about the ability of disclosure to deal adequately with conflicts of interest, the supervisor may consider requiring other options for insurers and intermediaries to manage such conflicts. Examples from some jurisdictions, in place or under consideration, include:

- prohibitions on certain types of financial interest
- structural changes to the retail distribution model, such as by prohibiting the payment or receipt of commission on investment products in favour of a fee-based approach.

### ***Policy servicing***

**19.8 The supervisor requires insurers to:**

- **service policies appropriately through to the point at which all obligations under the policy have been satisfied;**

- **disclose to the policyholder<sup>62</sup> information on any contractual changes during the life of the contract; and**
- **disclose to the policyholder further relevant information depending on the type of insurance product.**

19.8.1 Ongoing supervision of insurers should include the monitoring of insurers' conduct of business with regard to policy servicing, in particular:

- the provision of ongoing information to policyholders;
- the handling of policyholders' claims; and
- the handling of policyholders' complaints.

19.8.2 Appropriate policy servicing also includes fair treatment in the case of switching between products or early cancellation of a policy, which goes beyond information disclosure.

19.8.3 Supervisors should require insurers to have sufficient safeguards in place to ensure that obligations under a policy are satisfied in an appropriate manner. The same should apply to intermediaries where they participate in policy servicing tasks.

*Information on the insurer*

19.8.4 Information to be disclosed about the insurer includes:

- any change in the name of the insurer, its legal form or the address of its head office and any other offices as appropriate
- any acquisition by another undertaking resulting in organisational changes as far as the policyholder is concerned
- where applicable, information on a portfolio transfer (including policyholders' rights in this regard).

*Information on terms and conditions*

19.8.5 Insurers should provide evidence of cover (including policy inclusions and exclusions) promptly after inception of a policy.

19.8.6 Information needs of policyholders differ depending on the type of insurance product. Whilst such information is generally provided on

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<sup>62</sup> For the purposes of Standard 19.8 and corresponding guidance, "policyholder" refers to the party to whom a contract of insurance is issued by an insurer.

a regular basis, in some jurisdictions it is practice for policyholders to receive this information only on request.

19.8.7 Information to be provided on an ongoing basis, including changes in policy terms and conditions or amendments to the law(s) applicable to the policy, will vary by type of policy and may cover for example:

- main features of the insurance benefits, in particular details on the nature, scope and due-dates of benefits payable by the insurer
- the total cost of the policy, expressed appropriately for the type of policy, including all taxes and other cost components; premiums should be stated individually if the insurance relationship comprises several independent insurance contracts or, if the exact cost cannot be provided, information provided on its basis of calculation to enable the policyholder to verify the cost
- any changes to the cost structure, if applicable, stating the total amount payable and any possible additional taxes, fees and costs not levied via or charged by the insurer, as well as any costs incurred by the policyholder for the use of communication methods if such additional costs are chargeable
- duration of the contract, terms and conditions for (early) termination of the contract and contractual consequences
- means of payment of premiums and duration of payments
- premiums for each benefit, both main benefits and supplementary benefits
- information to the policyholder about the need to report depreciation/appreciation
- information to the policyholder about other unique circumstances related to the contract
- information on the impact of a switch option of an insurance contract
- information on a renewal of the contract.

19.8.8 Additional information regarding life insurance and annuities (products with an investment element) should at a minimum include:

- participation rights in surplus funds
- the basis of calculation and state of bonuses
- the current cash surrender value
- premiums paid to date

- for unit-linked life insurance, a report from the investment firm (including performance of underlying funds, changes of investments, investment strategy, number and value of the units and movements during the past year, administration fees, taxes, charges and current status of the account of the contract).

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

**19.9 The supervisor requires that insurers have policies and processes in place to handle claims in a timely and fair manner.**

19.9.1 Supervisors should require that insurers have fair and transparent claims handling and claims dispute resolution procedures in place.

*Claims handling*

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

19.9.3 Claimants should be informed about procedures, formalities and common timeframes for claims settlement.

19.9.4 Claimants should be given information about the status of their claim in a timely and fair manner.

19.9.5 Claim-determinative factors such as depreciations, discounting or negligence should be illustrated and explained in comprehensive language. The same applies where claims are denied in whole or in part.

19.9.6 Sometimes intermediaries serve as an initial contact for claimants, which may be in the common interest of the policyholder, intermediary and insurer; however, this does not diminish the insurer's responsibilities.

19.9.7 A fair claims assessment requires appropriate competence of insurers' and – where applicable – intermediaries' staff who are involved in claims settlement procedures, as well as ongoing training.

19.9.8 Competence requirements for claims assessment differ depending on the type of insurance policy and generally include technical and legal expertise.

### *Claims disputes*

- 19.9.9 Staff handling claims disputes should be experienced in claims handling and be appropriately qualified. Adjusters should be able to make recommendations, independent of the insurers' instructions, on the settlement of individual claims.
- 19.9.10 Dispute resolution procedures should follow a balanced approach, bearing in mind the legitimate interests of all parties involved. Procedures should avoid being overly complicated, such as having burdensome paperwork requirements. Decisions should include the reasoning in clear language relating closely to the specific disputable issues.
- 19.9.11 Supervisors may encourage insurers to ensure that relevant policies are in place by establishing a Claims Redress Committee acting as an appellate body within the insurer to promote fair play and objectivity in the decisions.

### **19.10 The supervisor requires that insurers and intermediaries have policies and processes in place to handle complaints in a timely and fair manner.**

- 19.10.1 A complaint can be defined as an expression of dissatisfaction about the service provided by an insurer or intermediary. It may involve a claim for a financial loss and does not include a pure request for information.
- 19.10.2 An accumulation of complaints against insurers or intermediaries indicates possible grievances in certain areas. Therefore, the ongoing analysis of policyholders' complaints is a key indicator for the quality of an insurer's or an intermediary's conduct of business.
- 19.10.3 Proper policies and procedures would include record keeping for each complaint and the measures taken for its resolution.
- 19.10.4 Some insurers and intermediaries may decide to establish a Complaints Redress Committee in order to ensure respective policies on complaint handling are in place.
- 19.10.5 Supervisors may choose to have their own complaints monitoring systems in place in order to benefit from the findings resulting from policyholder complaints.
- 19.10.6 Supervisors should cooperate with each other regarding cross-border complaints handling. This is likely to be subject to confidentiality requirements. For further information on cross-border supervisory cooperation see ICP 3 Information Exchange and Confidentiality Requirements and ICP 25 Supervisory Cooperation and Coordination.

### *Dispute resolution mechanisms*

- 19.10.7 It is important that there are simple, affordable, easily accessible and equitable mechanisms in place, independent of insurers and intermediaries, to resolve disputes that have not been resolved by the insurer or intermediary. Such mechanisms, collectively referred to here as Independent Dispute Resolution (“IDR”) mechanisms, may vary across jurisdictions and may include mediation, an independent review organisation, or an ombudsman. These are out of court mechanisms.
- 19.10.8 IDR mechanisms often operate on the basis of a code of procedure and may be restricted to non-commercial policyholders and are sometimes free of charge for such policyholders. Decisions are non-binding for the policyholder but may be binding for the insurer or intermediary within certain limits. As consumers may still avail themselves of court processes if the dispute is not satisfactorily resolved, it is usually agreed that the period of limitation is suspended during an IDR procedure.
- 19.10.9 Mediators serving IDR mechanisms should meet high standards of professional knowledge, integrity and competence. This would be evidenced, for example, where the mediator is qualified to exercise the functions of a judge and is well grounded in the field of insurance law. Although IDR mechanisms are usually financed by insurers and/or intermediaries, their mediators must be independent from them. Doubts over independence might be expected if the mediator:
- is subject to instructions from insurers/intermediaries;
  - is a former employee of an insurer/intermediary; or
  - simultaneously performs other functions which could affect their independence.

### **19.11 Legislation identifies provisions relating to privacy protection under which insurers and intermediaries are allowed to collect, hold, use or communicate personal information of customers to third parties.**

- 19.11.1 Generally, personal information refers to information that a person or entity collects, holds, uses or communicates to third parties in the course of its business.
- 19.11.2 In the insurance business, information security is obviously important since the collection, storage and processing involves a significant amount of financial, medical and personal information. Safeguarding personal and financial data is one of the key responsibilities of the financial services industry.

- 19.11.3 Personal information is considered as such whatever the nature of its medium and whatever the form in which it is accessible, whether written, electronic, etc.
- 19.11.4 Legal provisions regarding the protection of personal information on a customer may differ from jurisdiction to jurisdiction and from one supervisor to another.
- 19.11.5 Although customer protection and privacy regulations vary from jurisdiction to jurisdiction, insurers and intermediaries have a clear responsibility to provide their customers with a level of comfort regarding information disclosure and the security of personal information.
- 19.11.6 Insurers and intermediaries should obtain sufficient information about customers to assess their insurance needs. Information which a customer expects to be confidential should be treated as such. Customers should be informed about which information might be disclosed and to whom.

**19.12 The supervisor requires insurers and intermediaries to have policies and procedures for the protection of private information on customers.**

- 19.12.1 The supervisor should require an insurer or an intermediary to have sufficient safeguards in place to prevent the misuse or inappropriate communication of any personal information it has in its records.
- 19.12.2 The Board and Senior Management should be aware of challenges relating to privacy protection in order to demonstrate to all employees that this is part of the organisation's culture and strategy.
- 19.12.3 Due to the importance and sensitivity of personal information, insurers and intermediaries should take measures such as:
- develop policies and procedures relating to privacy protection in order to ensure compliance with legal provisions and industry best practices
  - provide necessary training to their employees at all levels of the organisation, in order to promote awareness of privacy protection requirements
  - implement internal control mechanisms that meet the objectives of privacy protection and support the achievement of those objectives
  - ensure that the appropriate technology is available and in place to manage adequately the financial, medical and personal information an insurer is holding on a customer
  - implement policies and procedures relating to privacy protection in order to manage risks and threats pertaining to security breaches. Any security breaches should be

notified, in a timely manner, to the responsible persons (Board Members, members of Senior Management or the relevant Key Persons in Control Functions)

- implement policies and procedures relating to data security in order to be able to report, in a timely manner, security breaches to affected customers and supervisors, and meet other relevant reporting requirements
- assess the risks associated with any major breaches in security and mitigate the impacts of these on its resources, operations, environment and reputation
- determine the measures to be taken in light of the risks occurring from security breaches as part of business continuity planning
- ensure that group structures are not abused to circumvent prohibitions on the sharing of personal information.

19.12.4 Insurers and intermediaries should be aware of outsourcing risk, especially when the outsourcing agreement is reached with firms in another jurisdiction. Insurers and intermediaries should be aware of reputation risk arising from cross-border activities and ensure that the firms to which they outsource processes have sufficient safeguards in place to prevent the misuse or inappropriate communication of any personal information they have in their records.

19.12.5 Supervisors should have various measures of a preventive and of a corrective nature in respect of privacy protection issues.

19.12.6 Where appropriate, supervisors should be able to take action against an insurer or intermediary which fails to collect, hold, use or communicate personal information it holds on a customer to third parties in a responsible manner. For example, preventive measures or minor offences might be dealt with through oral or written communications with management and then followed up. More significant deficiencies, which result in a risk to customers, might warrant immediate or more significant action.

**19.13 The supervisor publicly discloses information that supports the fair treatment of customers.**

19.13.1 Supervisors should publish the policyholder protection arrangements that are in place for the insurers that fall within their jurisdiction and confirm the position of policyholders dealing with insurers and intermediaries not subject to oversight or supervision within their jurisdiction.

19.13.2 Supervisors should give information to the public about whether and how local legislation applies to the cross-border offering of insurance, such as through e-commerce.

- 19.13.3 Supervisors should issue warning notices to consumers when necessary in order to avoid transactions with unsupervised entities.
- 19.13.4 Supervisors should promote consumers' understanding of insurance contracts as well as steps consumers can take to protect themselves and make informed decisions.