

## **Insurance Rule 30 of 2012**

### **Complaints-Handling by Authorised Companies**

#### **Rule pursuant to article 4 of the Act**

1. (1) This Insurance Rule on Complaints-Handling by Authorised Companies (“this Rule”) is made by the Authority pursuant to, and for the purposes of, article 4 of the Act.

(2) This Rule shall come into force on the [                      ].

#### **Application**

2. (1) This Rule applies to a company authorised to carry on, business of insurance (the “company concerned”).

(2) This Rule does not apply to a company if its business of insurance is restricted to reinsurance or business of affiliated insurance.

#### **Scope**

3. (1) The scope of this Rule is to determine the arrangements of companies concerned for handling insurance complaints.

(2) This Rule incorporates:

(a) the Guidelines on Complaints-Handling by Insurance Undertakings published by EIOPA on the 27<sup>th</sup> June 2012; and

(b) the Report on Best Practices by Insurance Undertakings in Handling complaints published by EIOPA on the 27<sup>th</sup> June 2012.

#### **Definitions**

4. In this Rule, unless the context otherwise requires –

“complaint” means a statement of dissatisfaction addressed to a company concerned by a person relating to the contract of insurance or service with which such person has been provided with. Complaints-handling should be differentiated from claims-handling as well as from simple requests for execution of the contract, information or clarification.

“complainant” means a person who is presumed to be eligible to have a complaint considered by a company concerned and has already lodged a complaint e.g. a policyholder, insured person, beneficiary and injured third party.

### **Complaints Management Policy**

5. (1) A company concerned should ensure that:

(a) it has in place a “complaints management policy” This policy should be defined and endorsed by the senior management of the company concerned, who should also be responsible for its implementation and for monitoring compliance with it.

(b) this “complaints management policy” is set out in a (written) document e.g. as part of a “general (fair) treatment policy” (applicable to actual or potential policyholders, insured persons, injured third parties and beneficiaries etc.).

(c) the “complaints management policy” is made available to all relevant staff of the company concerned through an adequate internal channel.

### **Complaints Management Function**

6. A company concerned should have a complaints management function which enables complaints to be investigated fairly and possible conflicts of interest to be identified and mitigated. The Complaints Management Function shall be entrusted to a person not involved in the handling of the claim on which a complaint has been lodged.

### **Registration**

7. A company concerned should register internally complaints, in an appropriate manner, within five working days (for example, through a secure electronic register).

### **Internal follow-up of complaints handling**

8. A company concerned should analyse, on an on-going basis, complaints-handling data, to ensure that it identifies and addresses any recurring or systemic problems, and potential legal and operational risks, for example, by:

(a) analysing the causes of individual complaints so as to identify root causes common to types of complaint;

(b) considering whether such root causes may also affect other processes or products, including those not directly complained of; and

(c) correcting, where reasonable to do so, such root causes.

### **Provision of information**

9. A company concerned should:

(a) on request or when acknowledging receipt of a complaint, provide written information regarding its complaints-handling process;

(b) publish details of its complaints-handling process in an easily accessible manner, for example, in brochures, pamphlets, contractual documents or through the website of the company concerned;

(c) provide clear, accurate and up-to-date information about the complaints- handling process, which includes:

(i) details of how to complain (e.g. the type of information to be provided by the complainant, the identity and contact details of the person or department to whom the complaint should be directed); and

(ii) the process that will be followed when handling a complaint (e.g. when the complaint will be acknowledged, indicative handling timelines, the function

of the Consumer Complaints Manager appointed by the MFSA and any other alternative dispute resolution (ADR) scheme, such as, arbitration and the Consumer Claims Tribunal;

d) keep the complainant informed about further handling of the complaint.

### **Procedures for responding to complaints**

**10.** A company concerned should:

(a) gather and investigate all relevant evidence and information regarding the complaint.

(b) communicate in plain language, which is clearly understood.

(c) provide a response without any unnecessary delay or at least by not later than two months from when the complaint was registered. When an answer cannot be provided within two months, the company concerned should inform the complainant about the causes of the delay and indicate when the investigation by the company concerned is likely to be completed.

(d) when providing a final decision that does not fully satisfy the complainant's demand (or any final decision, within two months from the response provided in accordance with paragraph (c) of this article), include a thorough explanation of the company concerned's position on the complaint and that if the complainant is not satisfied with the way the complaint was handled by the company concerned, the complainant may refer the complaint to the Consumer Complaints Manager appointed by the Authority. Such decision should be provided in writing.

### **Unrelated complainants**

**11.** (1) Where a company concerned receives a complaint about:

(a) activities other than those regulated by the Authority pursuant to Article 4(2) of the EIOPA Regulation; or

(b) the activities of another financial institution for which the company concerned has no legal or regulatory responsibility (and where those activities form the substance of the complaint),

the provisions of this Rule shall not apply.

(2) Notwithstanding the provisions of paragraph (1) of this article, the company concerned should where possible, explain the position of the company on the complaint and/or, where appropriate, direct the complainant to the insurance undertaking or other financial institution responsible for handling the complaint or to any other appropriate body which may deal with the complaint and/or seek independent professional advice.

### **Reporting to the Authority**

**12.** A company concerned should provide information on complaints and complaints-handling to the Authority, on an annual basis, by not later than three (3) months from the end of the calendar year. A company concerned should submit the information as specified in the Annex to this Rule.

### **Best practices by a company concerned**

**13.** In this Rule, guidelines on best practices for handling complaints by a company concerned and specific examples of the areas to be considered by a company concerned when handling complaints are set out in the Schedule to this Rule.

### **Savings**

**14.** The requirements of this Rule are without prejudice to the guidelines issued by the MFSA's Consumer Complaints Manager- *The role of the Consumer Complaints Manager – A note to financial services providers* ([mymoneybox.mfsa.com.mt](http://mymoneybox.mfsa.com.mt)).

## **SCHEDULE**

### **Best Practices by Companies Concerned in Handling complaints**

#### **Content of a “complaints management policy”**

1. It is considered best practice for a company concerned’s “complaint management policy” to include processes for:
  - (a) lodging a complaint with a company concerned by any reasonable means (including complaints submitted by an authorised representative e.g. a family member or a solicitor) and confirmation that this is free of charge;
  - (b) handling complaints received, including deadlines etc;
  - (c) the fair treatment of complainants;
  - (d) The proper treatment of a complainant’s information and personal data, according to the applicable legal framework;
  - (f) preventing, identifying and managing possible situations of conflicts of interest in complaints management;
  - (g) the prompt, equal, fair and efficient management of complaints;
  - (h) the adequate training of staff participating in complaints handling within the company concerned;
  - (i) internal reporting, follow up and monitoring of compliance with the “complaints management policy”.

#### **Organisation of the internal complaints management function**

2. Irrespective of the specific model that a company concerned may have adopted for complaints handling, it is considered best practice for a company concerned to:
  - (a) appoint one or more senior manager(s) with overall regulatory responsibility for the complaints management function;
  - (b) ensure the necessary internal flows of information and reporting lines for complaints management.
  - (c) control the effective and efficient treatment of complaints.

## **Registration**

3. Without prejudice to the provisions of the Data Protection Act (Cap. 440) and any applicable provisions of Maltese law relating to record keeping, it is considered best practice for:

(a) the register of complaints held by a company concerned to contain all the necessary information on the complaints, including:

- (i) the subject of the complaint;
- (ii) data on the complainant;
- (iii) date of receiving and answering the complaint;
- (iv) result/outcome of the complaints handling procedure;
- (iv) class of the insurance referred to.

(b) documentation relating to the complaint to be kept and archived in a secure manner for a reasonable period of time based on the nature of the complaint.

(c) a company concerned to provide information to complainants regarding their complaint, where reasonably requested by complainants.

## **Reporting**

4. The Authority should be informed of the identity and contact details of members of senior management involved in the complaints management function as referred to above and any changes thereof.

## **Internal follow-up of complaints-handling**

5. It is considered best practice for a company concerned to have in place the following processes in order to comply with the proper internal follow-up of complaints:

(a) the collection of management information on the causes of complaints and the products and services complaints relate to;

(b) a process to identify the root causes of complaints and to prioritise dealing with the root causes of complaints;

(c) a process to consider whether the root causes identified may affect other processes or products;

(d) a process for deciding whether root causes discovered should be corrected and how this should be done; and

(e) regular reporting to senior management where information on recurring or systemic problems may be needed for them to play their part in identifying, measuring, managing and controlling risks of regulatory concern and keeping records of analysis and decisions taken by senior personnel in response to management information on root causes of complaints.



## ANNEX

### COMPLAINTS REPORTED BY INSURANCE UNDERTAKINGS

#### Notes prior to completing the data below

Where breakdown of aggregated data can be provided the sub-totals should sum up to the aggregated totals.

In cases where you hold no data, please input in "N/A" in the relevant row. If you do collect data on a particular data item but the actual total is "0" for a particular reporting period, please input in "0" in the relevant row.

Data on any product types that are not mentioned in the tables, should be included in the "other" box.

Please refer to the definitions worksheet for a short description of the insurance product types covered.

<b>Definition</b>	
<b>Complaint</b>	National definition of complaint should be used and given as indicated in the following templates
<b>Period of Reporting</b>	Calendar year of which the data in this template has been completed for e.g. 2013
<b>Received</b>	All complaints received in the reported period, whether or not decided on in the period given
<b>Sales</b>	Any complaints related to the sales of insurance products. This may include unfair commercial practices (misleading advertisement), infringement of information requirements, any kind of market conduct related issues in accordance with sales practices
<b>Claims</b>	Complaints related to insurance claims, claim-handling, issues with compensations, refusal of the claims, insufficient compensation, performance/ lack of return, etc.
<b>Terms and conditions</b>	Any complaints related to the terms and conditions of the insurance contract stipulated in the contractual documentation. Complaints on e.g. changes in the contracts, unilateral modification of the contract, illegal termination of the contract, unfair contractual terms, insurance coverage, interpretation of contractual terms, etc.
<b>Commission and charges, premium</b>	Any complaints related to commission, charges, premiums, e.g. complaints on calculation of the premium, surrender value, etc.
<b>Administration</b>	Any complaints related to administration, e.g. administration failure, failure of the IT system, non-compliance with duty of secrecy: infringement of personal data / insurance data, discriminatory practices, statement of account, etc.
<b>Insurance undertaking</b>	A direct life or non-life insurance undertaking which has received authorisation in accordance with Article 14 in accordance with Article 13 of 2009/138/EC Directive.
<b>Insurance intermediary</b>	Any natural or legal person who, for remuneration, takes up or pursues insurance mediation according to 2002/92/EC on insurance mediation
<b>Life Insurance - with profit</b>	A long-term insurance contract which provides benefits through, at least in part, eligibility to participate materially in periodic discretionary distributions based on profits arising from the firm's business or from a particular part.
<b>Life Insurance - unit-linked</b>	(in relation to a contract of insurance) a long-term insurance contract where the benefits are wholly or partly determined by reference to the value of, or the income from, property of any description (whether or not specified in the contract) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).
<b>Motor Insurance</b>	Including motor insurance, third party liability, third party liability fire and theft and fully comprehensive as per classes 3, 7, 10 of the Solvency II Directive
<b>Household Insurance</b>	Including details of all insurances providing cover for fire and other damage to property purchased by the consumer. Household insurance as per classes 8, 9 of the Solvency II Directive.
<b>Travel Insurance</b>	Including insurance policies which provide cover for loss of damages and other risks related to travel.
<b>Accident and health</b>	Accident and Health as per classes 1 and 2 of the Solvency II Directive

<b>Name of Authorised Company:</b>	
<b>Period of reporting:</b>	
	<b>Received</b>
<b>Total number of complaints in reporting period</b> <i>(Please see definitions before filling out the templates) :</i>	

**Please provide a breakdown of complaints by complaint cause in reporting period**

<b>Number of complaints by complaint cause in reporting period</b> <i>(If you do not report complaints by complaint causes under these exact headings, please try to fit them into the most relevant categories (e.g. misleading information into sales):</i>	<b>Received</b>
Sales	
Claims	
Terms and conditions	
Commission and charges, premiums	
Administration	
Other 1 (please elaborate in Notes section below)	
Other 2	
Other 3	
<b>Total</b>	

**Please provide a breakdown of complaints by firm type in reporting period**

<b>Number of complaints by firm type in reporting period</b>	<b>Received</b>
Insurance undertaking	
Insurance intermediary <ul style="list-style-type: none"> <li>- Insurance Agent acting on behalf of the undertaking (if applicable);</li> <li>- Insurance Broker;</li> <li>- Tied insurance intermediary acting on behalf of the authorised company;</li> </ul>	
<b>Total</b>	

**Please provide a breakdown of complaints by financial instrument type in reporting period**

<b>Number of complaints by insurance products in reporting period *</b>	<b>Received</b>
Unknown	
<b>Life Insurance - total</b>	
Life Insurance - with profit	
Life Insurance - unit-linked	
Other Life Insurance (please elaborate in Notes section below)	
<b>Non life insurance - total</b>	
Accident and Health	
Motor Insurance <ul style="list-style-type: none"> <li>- Own Damage</li> <li>- Third Party Liability</li> </ul>	
Household Insurance	
Travel Insurance	
Liability Insurance (other than motor)	
Other Non-life Insurance (please elaborate in Notes section below)	
<b>Total</b>	

*\*Where an insurance product type is not offered by your or you do not have any data on the insurance product type to report, please input in "N/A" in the relevant row. Where you have data on the product type but the figure is "0", please input in the number "0" in the relevant row and do not leave blank. Please include the values for all insurance products that are not listed in the table under "other" and specify what the products in the "other" section are in the "Comments/notes" section below.*

**Notes**

Please include any other relevant information that helps explain the numbers