

## **Information for policyholders**

### **1. Introduction**

- 1.1 This Chapter lays down the information which an authorised insurance undertaking is required to provide to a policyholder or a potential policyholder before a contract of insurance is entered into and during the term of a contract. It also determines the manner in which such information is to be provided. The information shall be furnished by an insurance undertaking on an ongoing basis.
- 1.2 These requirements do not apply to an authorised reinsurance undertaking, a captive insurance undertaking and a captive reinsurance undertaking.
- 1.3 Any information required to be furnished under this Chapter shall be furnished in Maltese or English as it suits the person to whom the information is furnished, in both languages, or in a language agreed to by the parties.

### **2. Long term business: Before concluding a contract**

- 2.1 This section applies to a contract entered into by an insurance undertaking when the effecting of the contract constitutes a commitment where Malta is the country of commitment.
- 2.2 Before entering into a contract of insurance relating to long term business, an authorised insurance undertaking shall furnish the policyholder with, at least, the information required by paragraphs 2.3 and 2.4 in the case of long term contracts of insurance and in addition, paragraphs 3.1 and 3.2 in the case of linked long term contracts of insurance.
- 2.3 The following information relating to the commitment is to be communicated to the policyholder -
  - (a) a definition of each benefit and each option;

**Note:** There should be ample explanation on the object and purpose of a policy so that the policy is thoroughly understood.

(b) the term of the contract;

(c) the means of terminating the contract;

(d) the method of paying premiums and the duration of the payments;

(e) the method of calculating bonuses and the distribution of bonuses;

**Note:** There should be sufficient explanation as to the different types of bonuses (*i.e. Reversionary or Terminal*) which an insurance undertaking includes in a quotation and the difference between such bonuses. The expression “method of calculating bonus” should not be interpreted to refer to the actuarial techniques in determining the bonus rates but to the manner in which bonuses are calculated *i.e.* whether on a daily or an annual basis, whether expressed as a percentage of premium or the sum assured plus accruing bonuses, or as a percentage of accruing reversionary bonuses only;

(f) an indication of surrender and paid-up values and the extent to which such values are guaranteed;

**Note:** There should be illustration of surrender values for specific years *i.e.* 1, 2, 3, 4, 5, 10, 15, 20, 25, etc. Where no surrender value accumulates before the payment of 2 or 3 or more full year’s premium, that information should also be disclosed;

(g) the premiums for each benefit, whether a main or supplementary benefit;

(h) where appropriate, the amount and purpose of any charge or fee in addition to or included in the premium. The amount of document duty is to be disclosed separately;

(i) information as to the following, namely:

- (i) the requirements under the Insurance Business (Long Term Business Contract Statutory Notice) Regulations, 2000, or any regulations replacing them with respect to the 30 day period within which a policyholder may cancel the contract;
- (ii) any limited compensation which may be available under the Protection and Compensation Fund Regulations, 2003, if the insurance undertaking is insolvent and unable to meet its obligations under the contract;
- (j) information furnished to a policyholder shall not contain a statement relating to past performances unless:-
  - (i) the basis on which such performance is measured is clearly furnished and presentation is fair;
  - (ii) it is accompanied by a warning that past performance is not necessarily a guide to future performance;
  - (iii) the source of information is stated;
- (k) general information on the tax arrangements applicable to the type of policy. It should be made clear that the information relates to any appropriate current legislation as at the date of submission of that information and that such tax arrangements may change in the future;
- (l) the arrangements for handling complaints by the insurance undertaking from policyholders, lives assured or beneficiaries under contracts of insurance including, the function of the Consumer Complaints Manager appointed by the competent authority to investigate complaints without prejudice to the right of the policyholders, lives assured or beneficiaries to take legal proceedings;
- (m) whether the parties to the contract are entitled to choose the law applicable to the contract and:-
  - (i) if so, the law which the insurance undertaking proposes to choose; and
  - (ii) if not, the law which will be so applicable.

- 2.4 In addition, specific information shall be supplied by the insurance undertaking in order to provide a proper understanding of the risks underlying the contract which are assumed by the policyholder.
- 2.5 The information which is to be communicated to the policyholder, concerning the insurance undertaking is the following:-
- (a) the name and legal form of the insurance undertaking issuing the policy;
  - (b) the country where the insurance undertaking's head office is situated, and where applicable, the branch concluding the contract is situated; and,
  - (c) the address of the insurance undertaking's head office and:
    - (i) where the undertaking's head office is in Malta, if the contract is being entered into through an insurance agent or branch of the undertaking, the name and address of the insurance agent or branch;
    - (ii) where the undertaking is a third country insurance undertaking, the address of the Malta branch of the undertaking;
  - (d) a concrete reference to the report on the solvency and financial condition, pursuant to article 18F of the Act allowing the policy holder easy access to this information.
- 2.6 Where, in connection with an offer for or conclusion of a contract of long term business, the insurance undertaking provides figures relating to the amount of potential payments above and beyond the contractually agreed payments, the insurance undertaking shall provide the policy holder with a specimen calculation whereby the potential maturity payment is set out applying the basis for the premium calculation using three different rates of interest. This shall not apply to term insurances and contracts. The insurance undertaking shall inform the policyholder in a clear and comprehensible manner that the specimen calculation is only a model of computation based on notional assumptions, and that the policy holder shall not derive any contractual claims from the specimen calculation.

### 3. Linked Long term contracts of Insurance

3.1 Where a contract of insurance is a linked long term contract of insurance, the undertaking shall provide a Product Information document which shall include the detailed terms and conditions of the linked long term contract of insurance. The following minimum details are to be included in such document:

(a) a brief glossary to explain the meaning of a linked long term contract of insurance and other terms used in the document, such as fund, unit, bid/offer price, switching, notional allocation (it should be clear that the policyholder will be entitled to a *notional* allocation of units in the underlying funds or other instruments, rather than actual *ownership*, since such units would be owned by the insurance undertaking) etc;

(b) a brief description of the nature of each underlying fund or asset linked to the contract. Where one or more collective investment schemes are linked to the policy, a clear reference to the name of such scheme/s shall be included together with brief details of the investment objective of such scheme/s and a statement indicating that the choice of scheme/s to which the policy is linked should be based on the full details included in the prospectus/scheme particulars of the scheme, copies of which are to be made available upon request;

(c) definition of the units to which the benefits are linked;

(d) all charges, including where applicable switching charges.

In this regard, **note** should be taken of the following:

(i) maintenance costs/charges should be reasonable and their indexation which may be different from the indexation rate for premiums, capped (i.e. the maximum rate by which such charges may be increased by the insurance undertaking, should be specified in the policy terms and conditions);

(ii) annual percentage management charges may be levied by the insurance undertaking provided the total charges (inclusive of any initial charges on purchase of units, maintenance charges etc), are reasonable. Moreover, the

regular management charge should be calculated to ensure that no double charging (of fees levied by third party fund managers) occurs;

(iii) reference to any optional indexation of premiums at a specified rate;

(iv) reference to the frequency of reporting to policyholders free of charge which shall be at least annually, or if so requested by policyholders, at least every six months.

3.2 Any projected values relating to linked long term contracts of insurance shall be net of all applicable charges, including exit fees and annual charges and shall contain, where applicable, and in a prominent manner:

(a) a clear description of the basis of the projections and a clear linkage to risk warnings;

(b) a warning that the projected values may not materialise, are merely indicative, and that market conditions may be such as to result in returns which are by far inferior to the lowest projected values;

(c) a statement that the projected growth rates of return are for illustration purposes only and a warning that the projected growth rates are not minimum or maximum values but have only been selected to portray different scenarios for illustration purposes only;

(d) a warning that the surrender value or maturity value will depend on the market values of the underlying assets;

(e) a warning that a fixed annual rate of return is being assumed for the projected growth rates and that such a fixed return does not reflect the returns of the underlying assets which may fluctuate in value.

#### **4. Long term business: During the term of a contract**

4.1 If during the term of the contract covering a commitment where Malta is the country of commitment there is a change in the following:-

(a) the policy conditions, both general and special;

(b) the name of the insurance undertaking, its legal form or the address of its head office and were applicable, of the branch which concluded the contract;

(c) any change in the information mentioned in subparagraphs (d) to (j) of paragraph 2.3 or amendment of the law applicable to the contract,

the insurance undertaking shall inform the other party to the contract of the effect of the change.

4.2 If the contract provides for the payment of bonuses, the insurance undertaking shall, at least, once in every calendar year, inform the other party to the contract of the amount of any bonus:

(a) which has become payable under the contract, and

(b) of which that party has not been previously informed under this paragraph.

4.3 There is sufficient compliance with paragraph 4.2 if the insurance undertaking furnishes, on an annual basis, in writing, the other party to the contract with such information as will enable him to determine the amount of any such bonus as is mentioned in that paragraph, or if the insurance undertaking informs that party of:

(a) the total value of the benefits (including bonuses) which have accrued under the contract; and

(b) the rates of bonus which have been declared since that party was previously informed under this paragraph.

Furthermore, where the insurance undertaking has provided figures about the potential future development of the profit participation, the insurance undertaking shall inform the policyholder of differences between the actual development and the initial data.

## **5. General business: Before concluding a contract**

5.1 This section applies to a contract entered into by an insurance undertaking when the effecting of the contract constitutes the carrying on in Malta of general business contracts and the risk covered by the contract is a risk situated in Malta.

5.2 Before entering into a contract covering a risk situated in Malta, the insurance undertaking shall, if the other party (or one of the other parties) to the contract is an individual, inform that party –

(a) as to whether the parties to the contract are entitled to choose the law applicable to the contract and -

(i) if so, of the law which the insurance undertaking proposes to choose; and

(ii) if not, of the law which will be so applicable;

(b) of any limited compensation which may be available under the Protection and Compensation Fund Regulations, 2003, if the authorised insurance undertaking is insolvent and unable to meet its obligations under the contract;

(c) the arrangements for handling policyholders' complaints concerning contracts of insurance by the insurance undertaking including, the function of the Consumer Complaints Manager appointed by the competent authority to investigate complaints, without prejudice to the policyholder's right to take legal proceedings;

(d) the amount and purpose of any charge or fee in addition to the premium. The amount of document duty is to be disclosed separately;

(e) the date of inception of the policy.

5.3 Any relevant document issued by an insurance undertaking in relation to a contract to which this Section applies, shall state the name and address of the authorised insurance undertaking and, if the contract is to be entered into through a branch, the name and address of the branch.

5.4 In this paragraph “relevant document”, to the policyholder, means any proposal, policy or other document which, or statements contained in which, will or may bind the other party to the contract.

**6. Additional information in the case of general insurance business offered under the right of establishment or the freedom to provide services.**

6.1 Where a contract of insurance relating to general business is offered by an insurance undertaking under the right of establishment or the freedom to provide services in a Member State or EEA State, the insurance undertaking shall, before the contract is concluded, inform the policyholder that the head office of the insurance undertaking is in Malta, or, where appropriate, the Member State of the branch with which the contract is to be concluded, is situated. Any documents issued to the policyholder shall convey the information referred to in this paragraph.

6.2 The contract of insurance or any other document granting cover, together with the insurance proposal where it is binding upon the policyholder, shall state the address of the head office or, where appropriate, of the branch of the insurance undertaking granting cover.

6.3 Where the business of insurance which is carried on under the freedom of services relates to class 10 as specified in Part I of the Third Schedule to the Act, the name and address of the representative appointed the Member State in which it has passported shall also appear in the documents referred to in paragraph 6.2.

## **7. Proof of furnishing the required information**

7.1 Any disclosure required to be made by Sections 2 to 7 of this Chapter shall be communicated to the potential policyholder or policyholder -

(a) on paper or in some other durable medium that is accessible to such person; and

(b) in a clear and accurate manner, comprehensible to such person.

7.2 For the purposes of paragraph 7.1 “durable medium” means any instrument which enables the potential policyholder or policyholder to store information addressed personally to such person in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored. In particular, durable medium covers CD-ROMs, DVDs and hard drives of personal computers on which electronic mail is stored, but it excludes Internet sites, unless such sites meet the criteria specified in this paragraph.

7.3 Notwithstanding the provisions paragraph 7.1(a), the insurance undertaking shall verbally provide the information required by this Chapter:

(a) whenever the potential policyholder or policyholder asks for the information;

(b) whenever immediate cover is needed,

Provided that, in either case, the insurance undertaking shall, immediately after the contract of insurance is entered into, comply with paragraph 7.1.

7.4 No information given under this Chapter shall be sufficient if the information given is accompanied by any oral or written statement which somehow negatives, qualifies or otherwise reduces its impact.

7.5 The burden of proof that any information required to be furnished has been furnished in accordance with the requirements of this Chapter rests on the insurance undertaking.

7.6 Upon request by the competent authority, an insurance undertaking should be in a position to produce to the authority evidence that the information required to be disclosed by Sections 2 to 7 has been disclosed.

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