

## THE LAW ON INSURANCE AND REINSURANCE BUSINESS AND OTHER RELATED ISSUES OF 2016

**Decision dated 30<sup>th</sup> January, 2015 of the Superintendent of Insurance which came into force on 1/5/2015 based on article 193(4)(f) of the Laws on Insurance Services and Other Related Issues of 2002-2013 as amended by the above-mentioned Law regarding the Guidelines on complaints-handling by insurance intermediaries**

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The Superintendent of Insurance, after taking into consideration:

- (a) Article 16 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 for establishing the European Insurance and Occupational Pensions Authority ("EIOPA"), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC and taking into account Recital 22 and Article 10 of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation ("Directive on insurance mediation" - "IMD"),
- (b) The EIOPA Report with number. BoS – 13/171 dated 27 November 2013 on Best Practices in handling complaints by Insurance Intermediaries,
- (c) The EIOPA Guidelines on complaints-handling by insurance intermediaries issued on 27 November 2013 in the Official Journal of the European Union,
- (d) The powers vested on the Superintendent of Insurance under article 193(4)(f) of the Laws on Insurance Services and Other Related Issues 2002-2013 and which are now vested on the Superintendent of Insurance under article 31(1)(3) of the Law on Insurance and Reinsurance Business and Other Related Issues of 2016,

decided that the Orders shown below, based on the above-mentioned EIOPA Guidelines on complaints-handling, should be followed by the insurance intermediaries.

## CRITERIA ON COMPLAINTS HANDLINGS BY INSURANCE INTERMEDIARIES

For the purpose of the below Orders,

- Complaint means:

A statement of dissatisfaction addressed to an insurance intermediary by a person relating to the mediation activities of the intermediary in accordance with the definition of “insurance mediation” in Article 2 paragraph 3 of the Directive 2002/92/EC for Insurance Mediation as well as with the definition of “intermediary” in Article 356 of the Law on Insurance and Reinsurance Business and Other Related Issues of 2016. Complaints-handling should be differentiated from claims -handling as well as from simple requests for execution of the insurance contract, information or clarification.

- Complainant means:

A person who is presumed to be eligible to have a complaint considered by an insurance intermediary and has already lodged a complaint e.g. a policyholder, insured person, beneficiary.

- The Orders below do not apply when:

- (1) an insurance intermediary receives a complaint about activities other than those supervised by the Superintendent of Insurance and regulated in accordance with the Law on Insurance and Reinsurance Business and Other Related Issues of 2016, as amended or replaced from time to time, or
- (2) an insurance intermediary handles a complaint on behalf of another financial institution under the legal provisions applicable to that institution.

In cases where the Orders do not apply for the reasons set out in paragraph (1) above, the insurance intermediary should respond, where possible, explaining the reasons why he/she is not the right person to complain to.

### **Order 1- Ensuring the right institution deals with the complaint**

- (a) Where a complaint is received by an insurance intermediary for which an insurance undertaking is responsible and the insurance intermediary does not handle the complaint on behalf of the insurance undertaking, the insurance intermediary should inform the complainant and direct the complaint to the insurance undertaking. In case where the

complaint relates to another financial institution, the insurance intermediary should follow the same procedure, as long as the said financial institution is identifiable.

- (b) Where an insurance intermediary complies with Order 1(a), it shall not be required to handle the complaint under Orders 2-8.

#### **Order 2 – Complaints management policy**

- a) Insurance intermediaries should put in place a complaints management policy. This policy should be defined and endorsed by the insurance intermediary's management, who should also be responsible for its implementation and for monitoring compliance with it.
- b) This complaints management policy should be 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, beneficiaries etc.).
- c) The complaints management policy should be made available to all relevant staff of the insurance intermediary through an adequate internal channel.

#### **Order 3- Complaints management function**

Insurance intermediaries should have a complaints management function which enables complaints to be investigated fairly and, with the exception of insurance intermediaries which are sole traders, possible conflicts of interest to be identified and mitigated.

#### **Order 4- Registration**

Insurance intermediaries should register, internally, complaints within three (3) working days of their receipt, in a central Register and in a corresponding separate file. After receiving the complaint, the insurance intermediary should acknowledge in writing, to each complainant, within two (2) working days, the receipt of the complaint. All the documents related to the handling of the complaint, should be included in the corresponding file in chronological order.

- (i) Each complaints file should at least contain the following:

- a) Document of the complaint's submission and date of submission.

- b) Personal data of the complainant.
  - c) Description of the complaint and cause of the complaint.
  - d) Insurance Business Class related to the complaint.
  - e) Result/outcome of the complaints-handling procedure, e.g if the complaint was resolved and how, if it was not resolved and why, if it was brought to Justice and why.
  - f) If the complaint occurred from a gap or lack of the internal processes of the insurance intermediary or from incorrect application of the internal procedures by persons directly or indirectly connected with the insurance intermediary.
  - g) Date that the case was closed.
- (ii) The files related to the complaint should be kept and archived in a secure manner as long as the complaint is pending.
- (iii) Insurance intermediaries should provide information to the complainants regarding their complaints, when and if requested by complainants.

#### **Order 5 - Reporting**

Insurance intermediaries, when requested, should be in a position to provide the following information on complaints and complaints-handling to the Superintendent of Insurance or other competent authority, received per year:

- a) The total number of complaints received.
- b) Detailed statistical data on the number of complaints received per type of complaint, per cause and per class of insurance.
- c) The number of complaints resolved, the number of unresolved complaints and the reasons for failing to be resolved, as well as the number of complaints brought to Justice and the reasons for it.

In addition, if and when requested, insurance intermediaries should submit the following to the Superintendent of Insurance:

- a) The number of complaints occurred from a gap or lack of the internal processes of the insurance intermediary and what was the corrective action taken.
- b) The number of complaints occurred from incorrect use of the internal procedures and what was the corrective action taken.

#### **Order 6 – Internal follow-up of complaints handling**

Insurance intermediaries should analyse, on an on-going basis, complaints-handling data, in order to ensure that they identify and address any recurring problems and potential legal and operational risks, for example, by:

- (i) Analysing the causes of individual complaints so as to identify the root causes common to each type of complaint.
- (ii) Considering whether such root causes may also affect other processes or products, including those not directly referred to in a complaint.
- (iii) Correcting, where reasonable to do so, such root causes.

#### **Order 7 – Provision of information**

Insurance intermediaries should:

- a) On request or when acknowledging receipt of a complaint, provide written information regarding their complaints-handling process.
- b) Publish details of their complaints- handling process in an easily accessible manner, for example, in brochures, pamphlets, contractual documents or via the insurance intermediary's website.
- c) Provide clear, accurate and up-to-date information about the complaints-handling process, which includes:
  - (i) details of how to submit a 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),
  - (ii) the process that will be followed when handling a complaint (e.g. when the complaint will be acknowledged, indicative handling timelines for the completion of the process, the possibility to appeal to a competent authority, an ombudsman or alternative out-of-court mechanism).
- d) Keep the complainant informed about the course of the handling of the complaint.

## **Order 8 - Procedures for responding to complaints**

Insurance Intermediaries should:

- a) Seek to gather and investigate all relevant evidence and information regarding the complaint.
- b) Communicate with the interested parties in plain language, which is clearly understood.
- c) Provide a written response within fifteen (15) working days if a decision can be taken within this period, taking into consideration all the information relevant to each complaint. When an answer cannot be provided within the expected time limits, the insurance intermediary should inform the complainant in writing about the causes of the delay before the expiry of the deadline and indicate the time period within which the insurance intermediary's investigation is likely to be completed. The additional time limit should not be more than thirty (30) working days from the expiry of the initial deadline of the fifteen (15) working days.
- d) When providing a final decision that does not fully satisfy the complainant's demand, insurance intermediaries should include a thorough explanation of their position on the complaint and set out explicitly the complainant's option to insist on the complaint and to appeal to any other out-of-court mechanisms which exist on the basis of specific legislations or to the Courts of Justice. Such decision should be provided in writing.

INSURANCE COMPANIES CONTROL SERVICE

3<sup>rd</sup> January, 2017