

**Jornadas Luso-Brasileiras de Direito dos Seguros**  
**Rio de Janeiro/S. Paulo 2003**

**A auto-regulamentação da actividade seguradora na União**  
**Europeia**

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# 1. Introdução

O tema que me foi proposto para estas Jornadas é a auto-regulamentação do seguro na União Europeia. Como em tudo na vida, devemos partir do geral para o especial, o que neste caso significa desde já a clarificação do conceito de auto-regulamentação que vou utilizar.

Qualquer actividade humana carece de alguma regulamentação por muito incipiente que seja. A prática das últimas décadas no mundo ocidental, motivada por preocupações sociais, económicas e de interesse público, tem sido a de uma crescente regulamentação das actividades por parte dos poderes públicos. O que significa, pelo essencial, que assistimos, durante todo o século XX a um aumento exponencial na produção legislativa reguladora das actividades humanas.

Apesar disso, nem todos os aspectos de todas as actividades estão satisfatoriamente regulamentados, o que tem levado, nas últimas décadas a um interesse crescente pela chamada “industry self-regulation” e a consequente proliferação de padrões e códigos de conduta.

Estes padrões e códigos de conduta são geralmente elaborados seja por organismos não governamentais independentes seja por associações de operadores e têm uma natureza voluntária: em princípio, a sua existência não é obrigatória por lei e, quando existem, a submissão às suas regras apenas se torna imperativa através do consentimento. Isto significa que na maioria dos casos a vinculação à regra tem, no máximo, uma força contratual. Note-se que esta auto-regulamentação pode, por força da lei, ganhar imperatividade; é o caso, por exemplo, da contratação colectiva em Direito Laboral, especialmente nos casos em que exista extensão normativa.

O exemplo da contratação colectiva em Direito Laboral ilustra ainda um outro aspecto da auto-regulamentação: é que esta pode ser (e na pureza etimológica é) unilateral, o que não se verifica no exemplo, ou, em sentido mais lato, como auto-regulamentação global de um sector, colher contributos dos vários sujeitos adquirindo como que uma plurilateralidade, chegando até a ganhar uma natureza contratual.

A auto-regulamentação tem um limite fundamental: ela não é possível quando existam normas imperativas, excepto quando estas normas impõem patamares mínimos; neste caso, a auto-regulamentação pode intervir no sentido de elevar esses mesmos patamares. Vejamos: Um dos aspectos em que se manifesta a auto-regulamentação é a protecção do consumidor. Nesta matéria a imperatividade da norma legi é a regra. Mas é também

verdade que a formulação é sempre no sentido do mínimo de protecção que deve ser reconhecida ao consumidor. Assim sendo, nada obsta a que, por via da auto-regulamentação, se atribua ao consumidor um maior nível de protecção; esta mesma afirmação pode produzir-se, por exemplo, no âmbito da protecção ambiental.

A auto-regulamentação tem alguns aspectos potencialmente perversos requerendo uma atenção especial. Trata-se, pelo essencial, da sua particular aptidão como instrumento da violação das regras de Direito da Concorrência.

## **2. O objecto da auto-regulamentação**

Há que distinguir nesta matéria em particular as actividades que são regulamentadas por lei e as actividades que não são regulamentadas por lei (se é que na realidade as há – em bom rigor parece-me que devemos falar de actividades mais ou menos regulamentadas).

A regulamentação legal de uma actividade pode desdobrar-se em dois aspectos: o regime de acesso à actividade e as condições de exercício.

O regime de acesso terá sempre natureza legal e não poderá ser objecto de auto-regulamentação. Auto-regulamentar o regime de acesso a uma actividade pode colidir com um conjunto de princípios jurídicos ou económicos fundamentais: desde logo o princípio da livre concorrência, o princípio da liberdade de trabalho, o direito de estabelecimento, o direito à iniciativa privada e, em última análise, o princípio da propriedade privada e o direito à propriedade.

No que respeita às condições de exercício de uma actividade há que distinguir entre aquelas que são ditadas pelo interesse público geral, que garantem o mínimo regulamentar, normalmente estabelecidas por lei e aquelas que os sujeitos envolvidos na actividade consideram necessária para um correcto funcionamento do mercado. O que significa que o objecto por excelência da auto-regulamentação é o combate à disfuncionalidade do mercado.

Uma disfuncionalidade comum é a assimetria da informação prestada ao consumidor. Esta situação é normalmente associada a situações de concorrência desleal e publicidade enganosa: a auto-regulamentação no marketing directo e publicidade tem muitas vezes como objectivo reduzir a possibilidade de, através de informação incompleta ou deturpada, se enganarem os consumidores e se praticar uma concorrência desleal.

Trata-se, afinal, de facilitar o processo de consumo, eliminando, tanto quanto possível, a incerteza do consumidor, facilitando a escolha. O que em última análise é benéfico

também para a indústria: aumentando a transparência reduz a conflitualidade e melhora a imagem institucional.

A conflitualidade do consumo é outro aspecto em que a auto-regulamentação se pode manifestar, através da criação de processos alternativos de solução de conflitos, como é o caso da solução da IEC australiana.

### **3. A forma da auto-regulamentação**

A auto-regulamentação, como vimos, tende primordialmente, ao estabelecimento de padrões de serviços e métodos comerciais. Fá-lo através da criação de Códigos de Conduta, Guias de boas Práticas e outros instrumentos de natureza similar e esses instrumentos são, muitas vezes, produzidos por associações do sector.

### **4. Constrangimentos à auto-regulamentação**

Existem um constrangimento fundamental à auto-regulamentação: as normas legais imperativas entre as quais avulta o Direito da Concorrência.

A problemática da compatibilidade entre a auto-regulamentação e o Direito da Concorrência é um terreno pantanoso, desde logo pela origem da iniciativa. Recordemos que o objectivo principal do Direito da Concorrência é o da salvaguarda da concorrência no mercado, objectivo primordial e condição sine qua non para que o sistema de mercado funcione eficientemente na gestão da economia.

Esta ideia de salvaguarda, que é inerente a todos os ordenamentos jurídicos em que se entendeu regulamentar a concorrência, tem muito pouco que ver com a censura da concorrência desleal. Em última análise e num plano ideal para um fundamentalista do mercado, até a concorrência desleal seria desejável até ao momento em que provocasse alguma distorção no mercado. Só então e porque a concorrência estaria limitada é que a censura ao concorrente desleal apareceria – mas ainda assim não por ter sido desleal, mas por adoptar um comportamento anticoncorrencial, quiçá por ter adquirido uma posição monopolista ou oligopolística.

Por aqui se vê que a auto-regulamentação não deverá ser querida aos teóricos da concorrência. E assim é desde Adam Smith (1776), que no seu livro escrevia “People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public or in some contrivance to raise prices.”

A situação tem vindo a alterar-se durante todo o século XX: das quase incipientes iniciativas de auto-regulamentação que se traduziam no estabelecimento de requerimentos de entrada em corporações profissionais, passou-se a um esforço de harmonização tornado reconhecidamente indispensável perante a necessidade (ditada pela economia de escalas) do acesso a novos mercados e de maior integração económica.

Este é talvez o ponto chave de viragem. Para o teórico do mercado, a integração económica enquanto sinónimo de abolição do proteccionismo, é um factor de eficiência e como tal desejável. O que significa que se torna necessário, senão incrementar, pelo menos tolerar as iniciativas de harmonização industrial.

A preferência, numa fase precoce, é dada à harmonização por via legislativa ou pelo menos externa. A auto-regulamentação só veio a conhecer maior aceitação por causa do desenvolvimento tecnológico e a necessidade de interoperatividade. Tal é o caso de uma das iniciativas mais antigas na União Europeia – e também das de maior dimensão: o acordo de Florença sobre cartões bancários.

No âmbito do Conselho Europeu de sistemas de pagamento, entidade que congrega diversas instituições bancárias, celebrou-se em Agosto de 1987 um acordo, normalmente designado por Acordo de Florença. Este acordo inclui propostas de princípio para a implementação de reciprocidade europeia para utilização de cartões bancários. O objectivo do acordo é estabelecer os termos da organização do pagamento por cartões bancários na Europa, sendo este serviço organizado pelos bancos Europeus, estando disponível para os cartões acreditados, emitidos pelos bancos Europeus signatários.

O Acordo está estruturado em duas secções, a primeira estabelecendo as bases fundamentais de cooperação e determinando um acordo de princípios quanto aos pressupostos de implementação, e a segunda, que estabelece os termos de cooperação ab initio, mantendo uma margem de manobra suficiente para ultrapassar as dificuldades próprias de um tal projecto.

## **5. Exemplos de auto-regulamentação dos seguros**

### **5.1 União Europeia**

Um dos melhores exemplos de auto-regulamentação na UE é o o Guia Europeu de boas práticas para as operações de seguros pela Internet (em anexo), da iniciativa . Este guia, da iniciativa do Comité Europeu dos Seguradores, fixa os compromissos assumidos pelas empresas de seguros que apresentam os seus contratos aos consumidores via Internet. O guia tem como objectivo o estabelecimento homogéneo a nível europeu, de padrões elevados de informação para os consumidores acerca das empresas e seus produtos. Os seguradores comprometem-se também a tomar todas as medidas necessárias para atingir o nível de segurança requerida para protecção dos dados pessoais e pagamento seguro dos prémios. O guia garante também o respeito por práticas comerciais leais na utilização da Internet.

Este guia de boas práticas complementa o regime jurídico imperativo estabelecido pela Directiva do Conselho da União Europeia sobre a comercialização de serviços financeiros à distância (em anexo).

### **5.2 Austrália**

A auto-regulamentação dos seguros na Austrália conta já com alguns anos. Deve-se pelo essencial ao esforço de uma entidade auto-regulamentadora, o Insurance Council of Australia, constituído em 1975, que representa os interesses da indústria seguradora australiana.

No exercício desta actividade, o ICA desenvolveu o Código de Práticas para o seguro em geral (em anexo), o Código de privacidade nos seguros, que estabelece regras sobre a privacidade dos dados contidos em bases de dados da indústria seguradora (em anexo), e o sistema de resolução alternativa de conflitos.

O General Insurance Code of Practice tem como objectivo principal elevar o padrão da prática seguradora na Austrália e ao mesmo tempo impôr às seguradoras a adesão ao sistema de resolução alternativa de conflitos nele estabelecido e gerido pela IEC (Insurance Enquiries and Complaints Limited).

## **5.2 Reino Unido**

O sistema de auto-regulamentação dos seguros no Reino Unido assenta num organismo regulador, o General Insurance Standards Council (GISC). O seu objectivo principal é a defesa do consumidor.

Para a prossecução dos seus objectivos o GISC tem adoptado um conjunto de regras a que os seus membros se vinculam de forma voluntária. Estas regras incluem um Código do cliente, um Código comercial, um Código de práticas, regras de ecommerce, e requerimentos de associação (em anexo).

## **Anexos**

### ***Guia europeu de boas práticas para as operações de seguros pela Internet***

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#### **1. IDENTIFICATION OF THE UNDERTAKING**

Any insurance undertaking proposing online contracts undertakes to provide potential consumers who visit the site with easy, direct and permanent access to the following information:

- a) name of the undertaking;
- b) Member State in which the authorisation was issued as well as the details of the competent authority via a hypertext link with that authority's site from which it should be possible to access the information listed by it;
- c) name of the Member State in which the head office is established;
- d) details of the head office and, where appropriate the agency or the branch with which the contract is concluded (address, telephone n<sup>o</sup>, e-mail);
- e) details of the service/person responsible for consumer questions/liaison within the undertaking (name, address/telephone n<sup>o</sup>/e-mail...);

#### **2. GENERAL INFORMATION ON PRODUCTS**

The potential consumer who visits the site should have direct and easy access to a glossary of technical and legal terms appearing on the site, which should at least contain the definitions shown in the list annexed. The following information must also be made available to him/her:

- a) general conditions of the contracts offered;
- b) language(s) in which the contractual relationship can take place, without prejudice to the language in which the contract should be drawn up in application of existing legislative provisions.
- c) territorial scope of the insurance cover offered;
- d) methods of payment; the undertaking must inform the consumer, in accessible language, that the financial data concerning him/her is protected, e.g., by the use of encryption techniques for credit card transactions.
- e) claims notification (service/person to contact, documentation required, timetable) procedures;

f) services responsible in the undertaking for handling complaints in respect of the contract, including if applicable the existence of a body which is external to the undertaking responsible for the out-of-court settlement of insurance disputes, without prejudice to the policyholder's right to initiate legal proceedings;

g) the possibility of concluding the contract on-line or the need to call a telephone operator or for written confirmation.

### **3. CONDITIONS UNDER WHICH THE CONSUMER MAY BE SOLICITED**

Any insurance undertaking which sends emails to canvas business:

a) according to the legislative provisions in force in the Member States concerned,

- regularly consults the "opt-out" registers in which natural persons who do not wish to receive unsolicited commercial communications may be registered and respects the wishes of these individuals;

or

- ensures that the potential consumer has specifically agreed to receive such communications;

b) ensures that commercial communications are clearly identifiable as such on receipt and identify the undertaking(s) on whose behalf they are carried out;

c) makes sure that competitions, games and promotional offers, where appropriate, are also identifiable and the conditions for benefiting from them are easily accessible and presented in a precise, unequivocal manner.

### **4. INFORMATION ON PERSONAL DATA PROTECTION**

Any insurance undertaking which in the framework of transactions done on the Internet (contract concluded) collects personal data agrees:

a) to obtain it in a fair manner, for specific purposes;

b) to process it appropriately and responsibly after having informed and, when necessary, received the consent of the person concerned;

c) to retain it in a form which allows identification of the persons concerned for a period not exceeding that necessary to meet the objectives for which it was collected;

d) to provide the person concerned with any information required relating to the processing of the personal data collected and at the end of such processing the means of accessing and rectifying it, as well as its possible future use;

e) to inform the person concerned of his/her right to object, on request and free of charge, to the processing of data concerning him/her for canvassing purposes.

The consumer must be able to access, if he wishes, information on the processing of personal data and its final aim wherever possible before completing the on-line questionnaire intended to collect the nominative data concerning him/her.

Insurance undertakings must also inform consumers, in clear and accessible language, of the use of permanent “cookies” on the hard disk and the reason for their use.

## **5. PRE-CONTRACTUAL INFORMATION**

In order to allow the clear consent of the consumer, made in full knowledge of the facts, all insurance undertakings supply the consumer who intends to take out an insurance policy on the Internet with the following information before the conclusion of the contract, worded clearly, accurately and in an easily understandable manner and on a medium which allows it to be retained and printed:

a) in life insurance

- 1. definition of each benefit and each option*
- 2. term of the contract*
- 3. means of terminating the contract*
- 4. means of payment of premiums and duration of premiums*
- 5. means of calculating and distribution of bonuses*
- 6. indication of surrender and paid-up values and the extent to which they are guaranteed*
- 7. information on the premium for each benefit, whether main benefit or supplementary benefit, where appropriate*
- 8. for unit-linked policies, definition of the units to which the benefits are linked*
- 9. indication of the nature of the underlying assets for unit-linked policies*
- 10. arrangements for the application of the cooling-off period*
- 11. general information on the tax arrangements applicable to the type of policy*
- 12. law applicable to the contract where the parties do not have a free choice or, where the parties are free to choose the law applicable, the law the insurer proposes to choose*

b) in non-life insurance

- 1. date of entry into effect*
- 2. duration of the contract*
- 3. how premiums must be paid*
- 4. sums declared; sums insured*

*5. premium to be paid, including all taxes, or when an exact premium cannot be indicated, the basis for the calculation of the premium; methods of indexing the premium*

*6. main features of the cover which the insurance contract will provide and main exclusions from this cover*

*7. amounts of excesses*

*8. law applicable to the contract if the parties are not free to choose or, where the parties are free to choose the law applicable, the law which the insurer proposes to choose.*

## **6. PROCEDURE FOR CONCLUDING THE CONTRACT**

Before transacting an on-line insurance contract, all insurance undertakings make available to the consumer the following information, worded in a clear, understandable and unambiguous manner:

- a) the different technical stages necessary for validation of the contract; the consumer must have access to all the contractual clauses which make up his/her commitment, at each stage of the procedure;
- b) the means of identifying and correcting any errors made in data collection which must be accessible during the entire contract subscription procedure and before final conclusion of the contract.

For this purpose, the undertaking may, as an example, make available to its consumer a “double click” system to validate the contract:

— *1st click* = agreement on the content of the contract: the undertaking then makes available to its consumer a summary of the terms of the contract and price which should be capable of being reproduced and retained by the consumer.

— *2nd click* = confirmation of the contract: the insurance undertaking must acknowledge receipt of the confirmation of the contract by the consumer and recapitulate all the parts of the agreement as they result from the information given by him/ her, without delay and by electronic means.

The insurance undertaking indicates whether it files the concluded contract, and if it maintains it at the disposal of the consumer, for consultation, for example, directly on screen. It takes all measures necessary for the confidentiality of the terms of the transaction.

## **7. CONDITIONS FOR THE SECURITY OF PAYMENTS**

Any insurance undertaking which offers payment of insurance premiums on the Internet uses payment systems which are protected in accordance with the technological means at its disposal and undertakes to take all necessary and appropriate measures for the security and integrity of transactions.

The European insurers' Good Practice Guide for the sale of products on the Internet is a CEA recommendation which national associations are invited to "promote" on their respective markets. They should encourage its application by their member companies and ensure its satisfactory implementation.

Insurance undertakings individually declare their decision to comply with the criteria laid down in this Guide and indicate this commitment on the home page of their site by displaying a common label referring to the Guide.

Compliance with the provisions of the Guide is based on procedures and practices in force on each market.

#### Implementation

Legal and technical terms whose definition must be made available to web site users

- *General conditions, special conditions*
- *Consumer*
- *Date of entry into force of the contract*
- *Territorial scope*
- *Exclusion*
- *Excess*
- *Guarantee*
- *Compensation*
- *Option*
- *Premium*
- *Cancellation*
- *Claim*
- *"On-line" insurance contract*
- *Commercial communication*
- *Personal data*
- *Hypertext link*
- *"Opt-out" register*
- *"Cookie"*

***Directiva 2002/65/CE do Parlamento Europeu e do Conselho, de 23 de Setembro de 2002, relativa à comercialização à distância de serviços financeiros prestados a consumidores e que altera as Directivas 90/619/CEE do Conselho, 97/7/CE e 98/27/CE***

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Directiva 2002/65/CE do Parlamento Europeu e do Conselho

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relativa à comercialização à distância de serviços financeiros prestados a consumidores e que altera as Directivas 90/619/CEE do Conselho, 97/7/CE e 98/27/CE

O PARLAMENTO EUROPEU E O CONSELHO DA UNIÃO EUROPEIA,

Tendo em conta o Tratado que institui a Comunidade Europeia e, nomeadamente, o n.º 2 do seu artigo 47.º e os seus artigos 55.º e 95.º,

Tendo em conta a proposta da Comissão(1),

Tendo em conta o parecer do Comité Económico e Social(2),

Deliberando nos termos do artigo 251.º do Tratado(3),

Considerando o seguinte:

(1) No contexto da realização dos objectivos do mercado interno importa aprovar medidas destinadas a consolidar progressivamente esse mercado, devendo estas, por outro lado, contribuir para a concretização de um elevado nível de defesa dos consumidores, nos termos dos artigos 95.º e 153.º do Tratado.

(2) A comercialização à distância de serviços financeiros constitui, tanto para os consumidores como para os prestadores de serviços financeiros, uma das principais manifestações concretas da realização do mercado interno.

(3) No âmbito do mercado interno, é do interesse dos consumidores ter acesso sem discriminações à mais ampla gama possível de serviços financeiros disponíveis na Comunidade, de modo a poderem escolher os que mais se adequem às suas necessidades. A fim de garantir a liberdade de escolha dos consumidores, que constitui um direito fundamental destes, é necessário um elevado nível de protecção dos

consumidores para garantir o reforço da confiança do consumidor na venda à distância.

(4) É essencial para o bom funcionamento do mercado interno que os consumidores possam negociar e celebrar contratos com um prestador estabelecido noutra Estado-Membro, independentemente de o prestador estar ou não também estabelecido no Estado-Membro de residência do consumidor.

(5) Devido à sua natureza desmaterializada, os serviços financeiros prestam-se particularmente à venda à distância; o estabelecimento de um quadro jurídico aplicável à comercialização à distância de serviços financeiros deverá contribuir para aumentar a confiança do consumidor no recurso às novas técnicas de comercialização à distância de serviços financeiros, como o comércio electrónico.

(6) A presente directiva deve ser aplicada nos termos do Tratado e do direito derivado, incluindo a Directiva 2000/31/CE(4) relativa ao comércio electrónico, sendo esta última aplicável unicamente às operações por ela abrangidas.

(7) A presente directiva visa a realização dos objectivos enunciados supra, sem prejuízo da legislação comunitária ou nacional que regula a liberdade de prestação de serviços ou, quando aplicável, os sistemas de controlo pelo Estado-Membro de acolhimento e/ou de autorização ou de supervisão dos Estados-Membros, sempre que tal seja compatível com a legislação comunitária.

(8) Além disso, a presente directiva, nomeadamente as suas disposições referentes às informações sobre qualquer cláusula contratual relativa à lei aplicável ao contrato e/ou ao tribunal competente, não prejudica a aplicação à comercialização à distância de serviços financeiros do Regulamento (CE) n.º 44/2001 do Conselho, de 22 de Dezembro de 2000, relativo à competência judiciária, ao reconhecimento e à execução de decisões em matéria civil e comercial(5) e da Convenção de Roma de 1980 sobre a lei aplicável às obrigações contratuais.

(9) A concretização dos objectivos do plano de acção para os serviços financeiros requer um nível mais elevado de protecção do consumidor em determinados sectores, o que implica uma maior convergência, designadamente em matéria de fundos de investimento colectivo não harmonizados, de regras de conduta aplicáveis aos serviços de investimento e de crédito ao consumo. Enquanto se aguarda a concretização dessa convergência, deverá ser mantido um elevado nível de protecção do consumidor.

(10) A Directiva 97/7/CE do Parlamento Europeu e do Conselho, de 20 de Maio de 1997, relativa à protecção dos consumidores em matéria de contratos à distância(6), estabelece as principais disposições aplicáveis aos contratos à distância relativos a bens

ou serviços celebrados entre um prestador e um consumidor. Todavia, os serviços financeiros não são abrangidos por essa directiva.

(11) No âmbito da análise efectuada para determinar a necessidade de medidas específicas no domínio dos serviços financeiros, a Comissão convidou todas as partes interessadas a transmitirem-lhe as suas observações, nomeadamente por ocasião da elaboração do seu livro verde intitulado "Serviços financeiros: dar resposta às expectativas dos consumidores". Na sequência das consultas feitas neste contexto, concluiu-se pela necessidade de reforçar a protecção do consumidor neste domínio. A Comissão decidiu, por isso, apresentar uma proposta específica relativa à comercialização à distância dos serviços financeiros.

(12) A adopção pelos Estados-Membros de disposições de protecção dos consumidores contraditórias ou diferentes em matéria de comercialização à distância de serviços financeiros prestados a consumidores teria uma incidência negativa no funcionamento do mercado interno e na concorrência entre as empresas nesse mesmo mercado. Por conseguinte, é necessário introduzir regras comuns ao nível comunitário neste domínio, sem prejudicar a protecção geral do consumidor nos Estados-Membros.

(13) A presente directiva deve assegurar um elevado nível de defesa do consumidor a fim de garantir a livre circulação dos serviços financeiros. Os Estados-Membros não poderão prever outras disposições para além das estabelecidas pela presente directiva nos domínios por ela harmonizados, salvo disposição explícita em contrário da presente directiva.

(14) A presente directiva abrange todos os serviços financeiros que podem ser prestados à distância. Determinados serviços financeiros são, no entanto, regulados por disposições específicas da legislação comunitária que continuam a ser-lhes aplicáveis. Contudo, devem ser consagrados princípios relativos à comercialização desses serviços à distância.

(15) Os contratos negociados à distância implicam o emprego de técnicas de comunicação à distância que são utilizadas no quadro de um sistema de venda ou de prestação de serviços à distância sem a presença simultânea do prestador e do consumidor. A evolução permanente das referidas técnicas impõe a definição de princípios válidos mesmo para aquelas que ainda são pouco utilizadas. Os contratos à distância são portanto aqueles cuja proposta, negociação e conclusão são efectuados à distância.

(16) Um mesmo contrato que abranja operações sucessivas ou distintas da mesma

natureza, de execução continuada pode ser objecto de qualificações jurídicas diferentes nos diversos Estados-Membros. No entanto, a presente directiva deverá ser aplicada de igual modo em todos os Estados-Membros. Para o efeito, deve considerar-se que a presente directiva se aplica à primeira de uma série de operações sucessivas ou da mesma natureza, de execução continuada e que podem ser consideradas como formando um todo, independentemente de esta operação ou esta série de operações ser objecto de um contrato único ou de contratos distintos sucessivos.

(17) Por "acordo inicial de serviço" entende-se, por exemplo, a abertura de uma conta bancária, a aquisição de um cartão de crédito, a celebração de um contrato de gestão de carteira; por "operações" entende-se, por exemplo, o depósito de dinheiro numa conta bancária ou o levantamento de dinheiro de uma conta bancária, pagamentos efectuados por cartão de crédito, transacções realizadas no âmbito de um contrato de gestão de carteira. O aditamento de novos elementos a um acordo inicial de serviço, como a possibilidade de usar um instrumento de pagamento electrónico juntamente com a conta bancária existente, não constitui "uma operação", mas sim um contrato adicional a que se aplica a presente directiva. A subscrição de novas unidades de participação do mesmo fundo de investimento colectivo é considerada uma das "operações sucessivas da mesma natureza".

(18) Ao fazer referência a um sistema de prestação de serviços organizado pelo prestador de serviços financeiros, a presente directiva pretende excluir do seu âmbito de aplicação as prestações de serviços efectuadas numa base estritamente ocasional e fora de uma estrutura comercial cuja finalidade seja celebrar contratos à distância.

(19) O prestador é a pessoa que presta serviços à distância. Todavia, a presente directiva deve também aplicar-se sempre que uma das fases da comercialização se desenrolar com a participação de um intermediário; de acordo com a natureza e o grau desta participação, as disposições pertinentes da presente directiva deverão ser aplicadas ao referido intermediário, independentemente do seu estatuto jurídico.

(20) Os suportes duradouros incluem, nomeadamente, disquetes informáticas, CD-ROM, DVD e o disco duro do computador do consumidor que armazene o correio electrónico, mas não incluem sítios na internet, salvo se estes preencherem os critérios contidos na definição de suporte duradouro.

(21) A utilização de técnicas de comunicação à distância não deve conduzir a uma limitação indevida da informação prestada ao cliente. A fim de assegurar a transparência, a presente directiva fixa requisitos relativos a um nível adequado de

informação do consumidor, tanto antes como após a celebração do contrato. O consumidor deverá receber, antes da celebração de um contrato, as informações prévias necessárias para que possa apreciar convenientemente o serviço financeiro que lhe é proposto e, logo, poder fazer a sua escolha com um melhor conhecimento de causa. O prestador deve indicar expressamente por quanto tempo a sua proposta permanece inalterada.

(22) Os elementos de informação enumerados na presente directiva remetem para informações de carácter geral relativas a qualquer tipo de serviços financeiros. Os outros requisitos de informação relativos a um determinado serviço, tal como o âmbito da cobertura de uma apólice de seguros, não são especificados apenas na presente directiva. Este tipo de informação deve ser prestado, se for caso disso, nos termos da legislação comunitária ou nacional pertinente adoptada nos termos do direito comunitário.

(23) Para garantir uma protecção óptima do consumidor, é importante que este seja suficientemente informado das disposições da presente directiva e, eventualmente, dos códigos de conduta em vigor neste domínio e que ele tenha um direito de rescisão.

(24) Quando o direito de rescisão não for aplicável porque o consumidor pede expressamente o cumprimento do contrato, o prestador deve informar o consumidor desse facto.

(25) O consumidor deve ser protegido contra serviços não solicitados e ficar nesse caso dispensado de qualquer obrigação, não podendo a falta de resposta ser entendida como consentimento da sua parte. No entanto, esta regra não deve prejudicar a renovação tácita dos contratos validamente celebrados entre as partes, sempre que essa renovação tácita seja permitida pela lei dos Estados-Membros.

(26) Os Estados-Membros devem tomar as medidas necessárias para proteger efectivamente os consumidores que não desejem ser contactados através de determinadas técnicas de comunicação ou em determinadas ocasiões. A presente directiva não deve prejudicar as garantias específicas oferecidas ao consumidor pela legislação comunitária relativa à protecção da vida privada e dos dados de carácter pessoal.

(27) Para proteger os consumidores, é necessário prever processos adequados e eficazes de reclamação e recurso nos Estados-Membros com vista à resolução de eventuais litígios entre prestadores e consumidores, utilizando, quando tal se justificar, os já existentes.

(28) É conveniente que os Estados-Membros encorajem os organismos públicos ou privados instituídos para a resolução extrajudicial de litígios a cooperar na resolução de litígios transfronteiriços. Essa cooperação poderia ter como objectivo, nomeadamente, permitir ao consumidor apresentar aos órgãos extrajudiciais do Estado-Membro da sua residência as queixas relativas a prestadores estabelecidos em outros Estados-Membros. A criação da FIN-NET oferece uma maior assistência aos consumidores na utilização de serviços transfronteiriços.

(29) A presente directiva não impede que, nos termos do direito comunitário, os Estados-Membros tornem a protecção nela prevista extensiva a organizações sem fins lucrativos ou a pessoas que recorrem a serviços financeiros para se tornarem empresários.

(30) A presente directiva deve abranger igualmente os casos em que a legislação nacional inclui o conceito de declaração contratual vinculativa por parte do consumidor.

(31) As disposições da presente directiva relativas à escolha da língua pelo prestador não devem prejudicar as disposições de direito nacional relativas à escolha da língua adoptadas nos termos do direito comunitário.

(32) A Comunidade e os Estados-Membros assumiram compromissos no âmbito do Acordo Geral sobre o Comércio de Serviços (GATS), da OMC, relativamente à possibilidade de os consumidores comprarem no estrangeiro serviços bancários e serviços de investimento. O GATS permite aos Estados-Membros adoptarem medidas por razões prudenciais, incluindo medidas de protecção dos investidores, dos depositantes, dos segurados ou das pessoas a quem um prestador de serviços financeiros preste um serviço desse tipo. Essas medidas não devem impor restrições superiores às necessárias à garantia da protecção dos consumidores.

(33) Tendo em vista a adopção da presente directiva, deve-se adaptar o âmbito de aplicação da Directiva 97/7/CE e da Directiva 98/27/CE do Parlamento Europeu e do Conselho, de 19 de Maio de 1998, relativa às acções inibitórias em matéria de protecção dos interesses dos consumidores(7), bem como o âmbito de aplicação do prazo de anulação previsto na segunda Directiva 90/619/CE do Conselho, de 8 de Novembro de 1990, relativa à coordenação das disposições legislativas, regulamentares e administrativas respeitantes ao seguro directo de vida, que fixa as disposições destinadas a facilitar o exercício efectivo da livre prestação de serviços(8).

(34) Como o objectivo da presente directiva, ou seja o estabelecimento de regras comuns em matéria de comercialização à distância de serviços financeiros prestados a

consumidores, não pode ser suficientemente realizado pelos Estados-Membros, podendo, por conseguinte, ser melhor alcançado ao nível comunitário, a Comunidade pode tomar medidas, segundo o princípio da subsidiariedade consagrado no artigo 5.o do Tratado. De acordo com o princípio da proporcionalidade, mencionado no referido artigo, a presente directiva limita-se ao mínimo necessário para alcançar esse objectivo, ADOPTARAM A PRESENTE DIRECTIVA:

## Artigo 1.o

### Objecto e âmbito

1. A presente directiva tem por objecto a aproximação das disposições legislativas, regulamentares e administrativas dos Estados-Membros relativas à comercialização à distância de serviços financeiros prestados a consumidores.

2. No caso de contratos relativos a serviços financeiros que compreendam um acordo inicial de serviço seguido de operações sucessivas ou de uma série de operações distintas da mesma natureza, de execução continuada, as disposições da presente directiva são aplicáveis apenas ao acordo inicial de serviço.

Quando não exista um acordo inicial de serviço, mas as operações sucessivas da mesma natureza de execução continuada sejam realizadas entre as mesmas partes contratuais, os artigos 3.o e 4.o são aplicáveis apenas quando se realizar a primeira operação. No entanto, se durante mais de um ano não for realizada qualquer operação da mesma natureza, a operação seguinte será considerada a primeira de uma nova série de operações, sendo, por conseguinte, aplicáveis os artigos 3.o e 4.o

## Artigo 2.o

### Definições

Para efeitos da presente directiva, entende-se por:

- a) "Contrato à distância": qualquer contrato relativo a serviços financeiros, celebrado entre um prestador e um consumidor, ao abrigo de um sistema de venda ou prestação de serviços à distância organizado pelo prestador que, para esse contrato, utilize exclusivamente um ou mais meios de comunicação à distância, até ao momento da celebração do contrato, inclusive;
- b) "Serviço financeiro": qualquer serviço bancário, de crédito, de seguros, de pensão individual, de investimento ou de pagamento;
- c) "Prestador": qualquer pessoa singular ou colectiva, privada ou pública, que, no

âmbito das suas actividades comerciais ou profissionais, seja o prestador contratual de serviços que sejam objecto de contratos à distância;

d) "Consumidor": qualquer pessoa singular que, nos contratos à distância, actue de acordo com objectivos que não se integrem no âmbito da sua actividade comercial ou profissional;

e) "Meio de comunicação à distância": qualquer meio que possa ser utilizado, sem a presença física e simultânea do prestador e do consumidor, para a comercialização à distância de um serviço entre essas partes;

f) "Suporte duradouro": qualquer instrumento que permita ao consumidor armazenar informações que lhe sejam pessoalmente dirigidas, de um modo que, no futuro, lhe permita um acesso fácil às mesmas durante um período de tempo adequado aos fins a que as informações se destinam e que permita a reprodução inalterada das informações armazenadas;

g) "Operador ou prestador de um meio de comunicação à distância": qualquer pessoa singular ou colectiva, privada ou pública, cuja actividade comercial ou profissional consista em pôr à disposição dos prestadores um ou mais meios de comunicação à distância.

### Artigo 3.º

#### Informação do consumidor antes da celebração do contrato à distância

1. Em tempo útil e antes de ficar vinculado por um contrato à distância ou por uma proposta, o consumidor deve beneficiar das seguintes informações relativas:

1. Ao prestador

a) A identidade e actividade principal do prestador, endereço geográfico onde este se encontra estabelecido e qualquer outro endereço geográfico relevante para as relações do cliente com o prestador;

b) A identidade do representante do prestador no Estado-Membro de residência do consumidor e o endereço geográfico relevante para as relações do consumidor com o representante, quando este exista;

c) Se o consumidor tiver relações comerciais com um profissional diferente do prestador, a identidade desse profissional, a qualidade em que trata com o consumidor e o endereço geográfico pertinente para as relações do cliente com esse profissional;

d) Se o prestador estiver inscrito num registo comercial ou noutro registo público equivalente, o registo comercial em que se encontra inscrito e o respectivo número de

registo, ou forma de identificação equivalente nesse registo;

e) Se a actividade do prestador estiver sujeita a um regime de autorização, os elementos de informação relativos à autoridade de controlo competente;

## 2. Ao serviço financeiro

a) Uma descrição das principais características do serviço financeiro;

b) Preço total devido pelo consumidor ao prestador pelo serviço financeiro, incluindo o conjunto das comissões, encargos e despesas inerentes e todos os impostos pagos através do prestador ou, quando não puder ser indicado um preço exacto, a base de cálculo do preço que permita a sua verificação pelo consumidor;

c) Quando for caso disso, uma indicação de que o serviço financeiro está relacionado com instrumentos que impliquem riscos especiais relacionados com as suas características específicas ou com as operações a executar, ou cujo preço dependa de flutuações dos mercados financeiros fora do controlo do prestador e cujos resultados passados não sejam indicativos dos resultados futuros;

d) Indicação da eventual existência de outros impostos e/ou custos que não sejam pagos através do prestador ou por ele facturados;

e) Qualquer limitação do período durante o qual as informações prestadas são válidas;

f) Modos de pagamento e de execução;

g) Quaisquer custos adicionais para o consumidor decorrentes da utilização de meios de comunicação à distância, quando esses custos adicionais sejam facturados;

## 3. Ao contrato à distância

a) Existência ou não do direito de rescisão previsto no artigo 6.o e, quando este exista, a respectiva duração e condições de exercício, incluindo informações sobre o montante que pode ser exigido ao consumidor nos termos do n.o 1 do artigo 7.o, bem como as consequências do não exercício desse direito;

b) Duração mínima do contrato à distância, no caso de contratos de prestação de serviços financeiros permanente ou periódica;

c) Informações sobre os eventuais direitos das partes em matéria de resolução antecipada ou unilateral do contrato à distância por força dos seus próprios termos, incluindo as eventuais penalizações que este imponha nesses casos;

d) Instruções práticas para o exercício do direito de rescisão, indicando, designadamente, para onde deve ser enviada a notificação de rescisão;

e) O Estado ou Estados-Membros em cujas leis o prestador se baseia para estabelecer relações com o consumidor antes da celebração do contrato à distância;

f) Qualquer cláusula contratual relativa à legislação aplicável ao contrato à distância e/ou ao tribunal competente;

g) Língua ou línguas em que são comunicados os termos do contrato, bem como as informações prévias a que se refere o presente artigo e, além disso, a língua ou línguas em que o prestador se compromete a comunicar com o consumidor durante a vigência do contrato à distância;

#### 4. Aos recursos

a) A existência ou inexistência de processos extrajudiciais de reclamação e de recurso acessíveis ao consumidor que é parte no contrato e, quando aqueles existam, o respectivo modo de acesso;

b) A existência de fundos de garantia ou de outros sistemas de indemnização, não abrangidos pela Directiva 94/19/CE do Parlamento Europeu e do Conselho, de 30 de Maio de 1994, relativa aos sistemas de garantia de depósitos(9), nem pela Directiva 97/9/CE do Parlamento Europeu e do Conselho, de 3 de Março de 1997, relativa aos sistemas de indemnização dos investidores(10).

2. As informações referidas no n.º 1, cujo objectivo comercial deva ser evidenciado de modo inequívoco, devem ser prestadas de maneira clara e compreensível, por qualquer forma adaptada ao meio de comunicação à distância utilizado, nomeadamente, na observância dos princípios de boa fé nas transacções comerciais e da protecção das pessoas que, como os menores, são consideradas incapazes nos termos da legislação dos Estados-Membros.

#### 3. No caso de comunicações por telefonia vocal:

a) A identidade do prestador e o objectivo comercial da chamada por ele feita devem ser indicados inequivocamente no início de qualquer conversa com o consumidor;

b) Sob reserva do acordo formal do consumidor, só têm de ser prestadas as seguintes informações:

- identidade da pessoa em contacto com o consumidor e a sua ligação com o prestador,

- descrição das características principais do serviço financeiro,

- preço total a pagar pelo consumidor ao prestador pelo serviço financeiro, incluindo todos os impostos pagos através do prestador ou, quando não possa ser indicado um preço exacto, a base para o cálculo do preço, que permita a sua verificação pelo consumidor,

- informação sobre a eventual existência de outros impostos e/ou custos que não sejam pagos através do prestador ou por ele facturados,

- existência ou inexistência do direito de rescisão previsto no artigo 6.o e, quando este exista, a sua duração e condições de exercício, incluindo informações sobre o montante que o consumidor poderá ser obrigado a pagar nos termos do n.o 1 do artigo 7.o, O prestador deve, por um lado, informar o consumidor da possibilidade de prestação de outras informações, mediante pedido e, por outro, indicar a natureza dessas informações. Em qualquer caso, o prestador deve prestar informações completas quando cumprir as suas obrigações nos termos do artigo 5.o,

4. As informações sobre as obrigações contratuais, a comunicar ao consumidor durante a fase pré-contratual, devem ser conformes com as obrigações contratuais que resultem da lei presumivelmente aplicável ao contrato à distância quando este for celebrado.

#### Artigo 4.o

##### Requisitos de informação adicionais

1. Quando a legislação comunitária que regula os serviços financeiros preveja requisitos de informação prévia para além dos referidos no n.o 1 do artigo 3.o, esses requisitos continuam a ser aplicáveis.
2. Enquanto se aguarda uma maior harmonização, os Estados-Membros podem manter ou adoptar disposições mais rigorosas em relação aos requisitos de informação prévia, desde que essas disposições observem o direito comunitário.
3. Os Estados-Membros devem comunicar à Comissão as disposições nacionais sobre os requisitos de informação prévia previstos nos n.os 1 e 2 do presente artigo quando eles forem adicionais aos referidos no n.o 1 do artigo 3.o A Comissão tem em conta as disposições nacionais que lhe são comunicadas ao elaborar o relatório a que se refere o n.o 2 do artigo 20.o
4. A fim de instituir um elevado nível de transparência por todos os meios adequados, a Comissão assegura que as informações sobre as disposições nacionais que lhe tenham sido comunicadas sejam facultadas aos consumidores e prestadores.

#### Artigo 5.o

##### Comunicação dos termos do contrato e das informações prévias

1. O prestador comunica ao consumidor todos os termos do contrato e as informações referidas no n.o 1 do artigo 3.o e no artigo 4.o, em papel ou noutro suporte duradouro disponível e acessível ao consumidor, em tempo útil, antes de este estar vinculado por um contrato à distância ou uma proposta.

2. O prestador deve cumprir a obrigação prevista no n.o 1 imediatamente após a celebração do contrato à distância, se esse tiver sido celebrado a pedido do consumidor, utilizando um meio de comunicação à distância que não permita transmitir os termos do contrato e as informações nos termos do n.o 1.

3. Em qualquer momento, durante a relação contratual, o consumidor tem o direito de, a seu pedido, receber os termos do contrato em suporte de papel. Além disso, o consumidor tem o direito de alterar os meios de comunicação à distância utilizados, excepto se essa alteração for incompatível com o contrato à distância celebrado ou com a natureza do serviço financeiro prestado.

## Artigo 6.o

### Direito de rescisão

1. Os Estados-Membros devem garantir que o consumidor disponha de um prazo de 14 dias de calendário para rescindir o contrato, sem indicação do motivo nem penalização. Contudo, este prazo deve ser aumentado para 30 dias de calendário no caso de contratos à distância, abrangidos pela Directiva 90/619/CEE, relativos a seguros de vida e no caso de operações referentes a pensões individuais.

O prazo para o exercício do direito de rescisão começa a correr:

- a contar da data da celebração do contrato à distância, excepto no que se refere a seguros de vida, em que esse prazo começa a correr a partir do momento em que o consumidor for informado da celebração do contrato, ou
  - a contar da data de recepção, pelo consumidor, dos termos do contrato e das informações, nos termos dos n.os 1 ou 2 do artigo 5.o, se esta última data for posterior.
- Além do direito de rescisão, os Estados-Membros podem prever que a aplicabilidade dos contratos à distância relativos a serviços de investimento seja suspensa por prazo idêntico ao previsto no presente número.

2. O direito de rescisão não é aplicável:

a) Aos serviços financeiros cujo preço dependa de flutuações do mercado financeiro, fora do controlo do prestador, que se possam efectuar durante o prazo de rescisão, tais como os serviços relacionados com:

- operações cambiais,
- instrumentos do mercado monetário,
- valores mobiliários,
- unidades de participação em organismos de investimento colectivo,

- futuros sobre instrumentos financeiros, incluindo instrumentos equivalentes que dêem origem a uma liquidação em dinheiro,
- contratos a prazo relativos a taxas de juros (FRA),
- swaps de taxas de juro, de divisas ou de fluxos ligados a acções ou índices de acções (equity swaps),
- opções de compra ou de venda de qualquer dos instrumentos referidos na presente alínea, incluindo os instrumentos equivalentes que dêem origem a uma liquidação em dinheiro. Estão designadamente incluídas nesta categoria as opções sobre divisas e sobre taxas de juro.

b) Às apólices de seguros de viagem e de bagagem ou apólices equivalentes de seguros a curto prazo, de duração inferior a um mês;

c) Aos contratos integralmente cumpridos por ambas as partes a pedido expresso do consumidor antes de este exercer o direito de rescisão.

3. Os Estados-Membros podem prever que o direito de rescisão não seja aplicável:

a) A qualquer crédito destinado principalmente à aquisição ou à manutenção de direitos de propriedade sobre terrenos ou prédios existentes ou projectadas, ou para efeitos de renovação ou beneficiação de um prédio; quer

b) A qualquer crédito garantido por uma hipoteca sobre um bem imóvel ou por um direito relativo a um bem imóvel; quer

c) Às declarações dos consumidores feitas perante uma entidade oficial competente, desde que esta confirme que os direitos dos consumidores previstos no n.º 1 do artigo 5.º foram respeitados.

O presente número não prejudica o direito a um período de reflexão em benefício dos consumidores residentes nos Estados-Membros onde esse direito exista aquando da aprovação da presente directiva.

4. Os Estados-Membros que recorram à possibilidade prevista no n.º 3 informam a Comissão desse facto.

5. A Comissão transmite ao Parlamento Europeu e ao Conselho as informações comunicadas pelos Estados-Membros e assegura que estas sejam igualmente facultadas aos consumidores e prestadores que o solicitem.

6. Se o consumidor exercer o direito de rescisão, deverá notificá-lo, antes do termo do prazo, seguindo as instruções práticas que lhe tenham sido dadas nos termos do n.º 1, ponto 3), alínea d), do artigo 3.º, por meios de que possa fazer prova nos termos da legislação nacional. Considera-se que o prazo foi observado se a notificação, desde que

tenha sido feita em suporte de papel ou por outro meio duradouro disponível e acessível ao destinatário, tiver sido enviada antes de terminado o prazo.

7. O disposto no presente artigo não é aplicável aos contratos de crédito objecto de resolução nos termos do n.º 4 do artigo 6.º da Directiva 97/7/CE ou do artigo 7.º da Directiva 94/47/CE do Parlamento Europeu e do Conselho, de 26 de Outubro de 1994, relativa à protecção dos adquirentes quanto a certos aspectos dos contratos de aquisição de um direito de utilização a tempo parcial de bens imóveis(11).

Se a um contrato à distância relativo a um determinado serviço financeiro tiver sido anexado outro contrato à distância relativo a serviços financeiros prestados por um prestador ou por um terceiro com base num acordo entre o terceiro e o prestador, haverá resolução deste contrato adicional, sem qualquer penalização, desde que o consumidor exerça o direito de rescisão nos termos previstos no n.º 1 do artigo 6.º

8. O presente artigo não prejudica as disposições legislativas e regulamentares dos Estados-Membros que regulam a resolução, o não cumprimento ou a inexecução de um contrato ou o direito de um consumidor a cumprir as suas obrigações contratuais antes do prazo fixado no contrato à distância. Essas disposições são aplicáveis independentemente das condições e dos efeitos jurídicos da extinção do contrato à distância.

#### Artigo 7.º

##### Pagamento do serviço prestado antes da rescisão

1. Sempre que o consumidor exercer o direito de rescisão que lhe é conferido pelo n.º 1 do artigo 6.º, ficará vinculado apenas ao pagamento, o mais rápido possível, do serviço financeiro, efectivamente prestado pelo prestador ao abrigo do contrato à distância. O contrato só poderá ser executado após consentimento do consumidor. O montante a pagar:

- não pode exceder um montante proporcional à importância dos serviços já prestados relativamente ao conjunto das prestações previstas no contrato à distância,

- nunca pode ser tal que possa ser interpretado como uma penalização.

2. Os Estados-Membros podem prever que não seja devido nenhum montante pela resolução de um contrato de seguro.

3. O prestador não pode obrigar o consumidor a pagar um montante com base no n.º 1, excepto se puder provar que o consumidor foi devidamente informado do montante a pagar, nos termos do artigo 3.º, n.º 1, ponto 3, alínea a). Todavia, o prestador só pode

exigir esse pagamento se tiver dado início à execução do contrato antes do termo do prazo de rescisão previsto no n.o 1 do artigo 6.o, sem um pedido prévio do consumidor.

4. O prestador fica obrigado a restituir ao consumidor, o mais rapidamente possível, e o mais tardar no prazo de 30 dias de calendário, quaisquer quantias dele recebidas nos termos do contrato à distância, com exceção do montante referido no n.o 1. Esse prazo começa a correr no dia em que o prestador receber a notificação da rescisão.

5. O consumidor restitui ao prestador, o mais rapidamente possível, e o mais tardar no prazo de 30 dias de calendário quaisquer quantias e/ou bens dele recebidos. Esse prazo começa a correr no dia em que o consumidor enviar a notificação da rescisão.

#### Artigo 8.o

##### Pagamento por cartão

Os Estados-Membros devem garantir a existência de medidas adequadas para que:

- o consumidor possa pedir a anulação de um pagamento em caso de utilização fraudulenta do seu cartão de pagamento no âmbito de contratos à distância,
- no caso dessa utilização fraudulenta, as quantias pagas sejam de novo creditadas ou restituídas ao consumidor.

#### Artigo 9.o

##### Serviços não pedidos

Sem prejuízo das disposições dos Estados-Membros relativas à renovação tácita dos contratos à distância, sempre que essas disposições a permitam, os Estados-Membros tomarão as medidas necessárias para:

- proibir a prestação de serviços financeiros a um consumidor que os não tenha previamente pedido, sempre que essa prestação inclua um pedido de pagamento imediato ou diferido,
- dispensar o consumidor de qualquer obrigação em caso de prestação não pedida, não constituindo consentimento a falta de resposta.

#### Artigo 10.o

##### Comunicações não pedidas

1. A utilização por um prestador das seguintes técnicas de comunicação à distância exige o consentimento prévio do consumidor:

- a) Sistemas automatizados de chamadas sem intervenção humana (máquinas de

chamada automática);

b) Faxes.

2. Os Estados-Membros devem assegurar que, quando permitam uma comunicação individual, os meios de comunicação à distância diferentes dos referidos no n.º 1:

a) Não sejam autorizados sem o consentimento do consumidor em causa, ou

b) Só possam ser utilizados quando não existir oposição manifesta do consumidor.

3. As medidas referidas nos n.ºs 1 e 2 não devem implicar custos para o consumidor.

## Artigo 11.º

### Sanções

Os Estados-Membros estabelecem sanções adequadas em caso de incumprimento pelo prestador das disposições nacionais adoptadas em execução da presente directiva.

Para o efeito, os Estados-Membros podem, nomeadamente, prever que o consumidor possa resolver o contrato a qualquer momento, sem despesas nem penalização.

Essas sanções devem ser eficazes, proporcionadas e dissuasivas.

## Artigo 12.º

### Carácter imperativo das disposições da presente directiva

1. O consumidor não pode renunciar aos direitos que lhe são conferidos pela presente directiva.

2. Os Estados-Membros tomam as medidas necessárias para assegurar que o consumidor não perca a protecção que lhe é conferida pela presente directiva em caso de escolha da lei de um Estado terceiro como lei aplicável ao contrato, se este último tiver um vínculo estreito com o território de um ou mais Estados-Membros.

## Artigo 13.º

### Recursos judiciais e administrativos

1. Os Estados-Membros devem assegurar a existência de meios adequados e eficazes para garantir o cumprimento do disposto na presente directiva no interesse dos consumidores.

2. Os meios referidos no n.º 1 incluem disposições que permitam a um ou mais dos seguintes organismos, determinados pela legislação nacional, recorrer, nos termos desta, aos tribunais ou órgãos administrativos competentes para que sejam aplicadas as disposições nacionais adoptadas em execução da presente directiva:

- a) Organismos públicos ou os seus representantes;
  - b) Organizações de consumidores que tenham um interesse legítimo na protecção dos consumidores;
  - c) Organizações profissionais que tenham um interesse legítimo em agir.
3. Os Estados-Membros devem tomar as medidas necessárias para que, sempre que estejam em condições de o fazer, os operadores e prestadores de meios de comunicação à distância ponham termo às práticas declaradas não conformes com o disposto na presente directiva, com base numa decisão judicial ou administrativa ou de uma autoridade de controlo que lhes seja notificada.

#### Artigo 14.o

##### Recurso a meios extrajudiciais

1. Os Estados-Membros devem promover a criação ou o desenvolvimento de procedimentos extrajudiciais, adequados e efectivos, de reclamação e recurso, para a resolução de litígios de consumo relativos à prestação de serviços financeiros à distância.
2. Os Estados-Membros devem, nomeadamente, incentivar os organismos responsáveis pela resolução extrajudicial de litígios a cooperarem na resolução de litígios transfronteiriços relativos à prestação de serviços financeiros à distância.

#### Artigo 15.o

##### Ónus da prova

Sem prejuízo do n.o 3 do artigo 7.o, os Estados-Membros podem dispor que o ónus da prova do cumprimento das obrigações de informação do consumidor impostas ao prestador, assim como do consentimento do consumidor em relação à celebração do contrato e, sendo caso disso, à sua execução, pode pertencer ao prestador.

Qualquer cláusula contratual que determine que o ónus da prova do cumprimento pelo prestador da totalidade ou de parte das obrigações que para ele decorrem da presente directiva recai sobre o consumidor é considerada abusiva na acepção da Directiva 93/13/CEE do Conselho, de 5 de Abril de 1993, relativa às cláusulas abusivas nos contratos celebrados com os consumidores(12).

#### Artigo 16.o

##### Medidas transitórias

Os Estados-Membros podem aplicar regras nacionais conformes com a presente directiva aos prestadores estabelecidos num Estado-Membro que ainda não a tenha transposto e cujo direito interno não preveja obrigações correspondentes às previstas na presente directiva.

#### Artigo 17.o

##### Directiva 90/619/CEE

No n.o 1 do artigo 15.o da Directiva 90/619/CEE, o primeiro parágrafo passa a ter a seguinte redacção: "1. Cada Estado-Membro deve determinar que o tomador de um contrato individual de seguro de vida dispõe de um prazo de 30 dias, a contar da data em que lhe tenha sido confirmada a sua celebração, para renunciar aos efeitos desse contrato."

#### Artigo 18.o

##### Directiva 97/7/CE

A Directiva 97/7/CE é alterada do seguinte modo:

1. No artigo 3.o, o primeiro travessão do n.o 1 passa a ter a seguinte redacção: "- relacionado com qualquer serviço financeiro abrangido pela Directiva 2002/65/CE do Parlamento Europeu e do Conselho, de 23 de Setembro de 2002, relativa à comercialização à distância de serviços financeiros prestados a consumidores, e que altera as Directivas 90/619/CEE do Conselho, 97/7/CE e 98/27/CE(13).";
2. É revogado o anexo II.

#### Artigo 19.o

##### Directiva 98/27/CE

No anexo da Directiva 98/27/CE é aditado o seguinte ponto: "11. Directiva 2002/65/CE do Parlamento Europeu e do Conselho, de 23 de Setembro de 2002, relativa à comercialização à distância de serviços financeiros prestados a consumidores, e que altera as Directivas 90/619/CEE do Conselho, 97/7/CE e 98/27/CE(14)."

#### Artigo 20.o

##### Reexame

1. Após a execução da presente directiva, a Comissão deve analisar o funcionamento do mercado único dos serviços financeiros em relação à comercialização desses serviços. A

Comissão esforçar-se-á por analisar e identificar pormenorizadamente as dificuldades com que se confrontam ou podem confrontar, tanto os consumidores como os prestadores, nomeadamente as resultantes das diferenças entre as disposições nacionais referentes à informação e ao direito de rescisão.

2. O mais tardar em 9 de Abril de 2006, a Comissão apresenta ao Parlamento Europeu e ao Conselho um relatório sobre os problemas dos consumidores e dos prestadores na compra e venda de serviços financeiros, bem como, se necessário, propostas de alteração e/ou de uma maior harmonização das disposições sobre a informação e o direito de rescisão constantes da legislação comunitária aplicável aos serviços financeiros e/ou aos serviços referidos no artigo 3.º

#### Artigo 21.º

##### Transposição

1. Os Estados-Membros devem pôr em vigor as disposições legislativas, regulamentares e administrativas necessárias para dar cumprimento à presente directiva o mais tardar em 9 de Outubro de 2004 e informar imediatamente a Comissão desse facto.

Quando os Estados-Membros as adoptarem, essas disposições devem fazer referência à presente directiva ou ser dela acompanhadas aquando da sua publicação oficial. As modalidades dessa referência são aprovadas pelos Estados-Membros.

2. Os Estados-Membros comunicam à Comissão o texto das principais disposições de direito interno que adoptarem nas matérias reguladas pela presente directiva, bem como um quadro de correspondência entre as disposições da presente directiva e as disposições nacionais adoptadas.

#### Artigo 22.º

##### Entrada em vigor

A presente directiva entra em vigor na data da sua publicação no Jornal Oficial das Comunidades Europeias.

#### Artigo 23.º

##### Destinatários

Os Estados-Membros são os destinatários da presente directiva.

Feito em Bruxelas, em 23 de Setembro de 2002.

Pelo Parlamento Europeu

O Presidente

P. Cox

O Conselho

O Presidente

M. Fischer Boel

(1) JO C 385 de 11.12.1998, p. 10 e

JO C 177 E de 27.6.2000, p. 21.

(2) JO C 169 de 16.6.1999, p. 43.

(3) Parecer do Parlamento Europeu, de 5 de Maio de 1999, (JO C 279 de 1.10.1999, p. 207), posição comum do Conselho, de 19 de Dezembro de 2002, (JO C 58 E de 5.3.2002, p. 32) e decisão do Parlamento Europeu de 14 de Maio de 2002 (ainda não publicada no Jornal Oficial). Decisão do Conselho, de 26 de Junho de 2002, (ainda não publicada no Jornal Oficial).

(4) JO L 178 de 17.7.2000, p. 1.

(5) JO L 12 de 16.1.2001, p. 1.

(6) JO L 144 de 4.6.1997, p. 19.

(7) JO L 166 de 11.6.1998, p. 51. Directiva com a última redacção que lhe foi dada pela Directiva 2000/31/CE (JO L 178 de 17.7.2001, p. 1).

(8) JO L 330 de 29.11.1990, p. 50. Directiva com a última redacção que lhe foi dada pela Directiva 92/96/CEE (JO L 360 de 9.12.1992, p. 1).

(9) JO L 135 de 31.5.1994, p. 5.

(10) JO L 84 de 26.3.1997, p. 22.

(11) JO L 280 de 29.10.1994, p. 83.

(12) JO L 95 de 21.4.1993, p. 29.

(13) JO L 271 de 9.10.2002, p. 16.

(14) JO L 271 de 9.10.2002, p. 16.

# ***General Insurance Code of Practice (Australia)***

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## 1. Introduction

### 1.1 Outline of the Code

The General Insurance Code of Practice (the Code) is a self regulatory Code to promote good relations between insurers, agents and consumers and good insurance practice by describing standards of good practice and service.

It is intended that the Code will raise service standards across the general insurance industry. For this purpose the Code is to be a "living Code" which will be progressively developed after consultation with interested groups.

Although no specific consumer redress is provided by the Code, it requires participating insurers to establish internal and external dispute handling procedures and insurers may be penalised if they fail to meet the Code's requirements.

### 1.2 The Objectives

The Code will:

- (a) describe standards of good practice and service to be met by participating insurers;
- (b) promote disclosure of information relevant and useful to consumers so as to allow them to make an informed choice and compare one product with another;
- (c) facilitate the education of consumers about their rights and obligations under insurance contracts;
- (d) promote informed and effective relationships between consumers, insurers and agents;
- (e) require insurers to have fair procedures for resolution of disputes between consumers and insurers or consumers and agents;
- (f) provide representation for consumer views in the administration and development of the Code, but apart from the provisions for enforcement and sanctions in this Code, a breach of the Code shall not give rise to any legal right or liability.

### 1.3 Principles

The objectives of this Code shall be achieved and the provisions of this Code shall be applied having regard to:

- (a) the requirement of insurers to meet the prudential standards established under the Insurance Act 1973;
- (b) the fact that both insurance contracts and arrangements between consumers, insurers and insurance intermediaries are governed by the Insurance Contracts Act 1984 and the Insurance (Agents & Brokers ) Act 1984;

- (c) the duty of utmost good faith and the fact that the insurance contract is the governing document of the relationship of the consumer and an insurer;
- (d) the need for effective competition and cost efficiency being promoted in the general insurance industry, and ensuring flexibility in the development and enhancement of products and services for consumers;
- (e) the need to protect consumers and insurers from increased costs from fraud;
- (f) the need for consumers to be made aware of the provisions of this Code.

#### 1.4 Monitoring

Compliance with the Code and the Code's operations shall be monitored by Insurance Enquiries and Complaints Limited ("IEC").

#### 1.5 Code Compliance Committee

The Code Compliance Committee shall be a committee of the IEC board made up of the chief executive of the Insurance Council ("ICA") or his nominee, a consumer member on the board of IEC and an independent chair being a person with experience in the insurance industry nominated by ICA, and appointed by unanimous decision of the board of IEC.

#### 1.6 Review and Development of the Code

##### 1.6.1 Guidelines

ICA may develop guidelines to assist in the implementation and administration of the Code to be endorsed and promulgated by the IEC. The Code Compliance Committee may also approve guidelines developed by individual insurers for their own use.

##### 1.6.2 Living Code

ICA with the assistance of IEC shall be responsible for the development of the Code on an ongoing basis. Any recommendations for change to the Code shall be discussed with consumer representatives, the insurance industry and ASIC before implementation. ASIC approval will be required for any change to the Code.

##### 1.6.3 Formal Review

Every three years the Code shall be generally reviewed with the intention that the review will be completed within one year. This review shall be undertaken by an independent party agreed between IEC and ASIC and commissioned by ICA and shall consider whether its operation is in accordance with the objectives and principles set out above. This general review shall be conducted in consultation with the IEC, the insurers, consumer representatives and ASIC.

Subject to the approval of ASIC any agreed changes arising from that review shall be incorporated into the Code.

### 1.7 Endorsement

Each insurer may endorse insurance business to which the Code applies by specifying that the insurer participates in the General Insurance Code of Practice and the insurer shall specify how and where consumers may obtain information about this Code and its operation.

### 1.8 Publication of Code by Insurers and Agents

Insurers shall, and shall require their agents to, have available for consumers information about the Code and its operation.

### 1.9 Adoption of Code

An insurer may adopt this Code by entering an agreement with IEC, on terms approved by IEC, agreeing to comply with the Code and any sanction imposed under it.

## 2. Defined words and operative date

### 2.1 Defined Words

In this Code:

"agent" means an insurance intermediary as that term is used in the Insurance (Agents & Brokers) Act 1984 but does not include any general insurance broker or life insurance broker other than where such a broker is an agent of an insurer;

"consumer" means an individual, when that individual, whether alone or jointly with another individual, enters or proposes to enter into an insurance contract which is wholly and exclusively for the consumer's private or domestic use;

"CRP" means the General Insurance Claims Review Panel;

"dispute" means an unresolved complaint about a product or service of an insurer and for this purpose a complaint is an expression of dissatisfaction conveyed to an insurer together with a request that the complaint be remedied by the insurer;

"insurance business" means:

(a) contracts of insurance (including interim contracts of insurance as defined in subsection 11(2) of the Insurance Contracts Act 1984) which are prescribed contracts under section 34 of the Insurance Contracts Act 1984. These contracts are described in the Insurance Contracts Regulations as:

- . Motor Vehicle (comprehensive, third party property damage only or extended third party property damage policies)
- . Home Buildings

. Home Contents

. Sickness and Accident

. Consumer Credit

. Travel

(b) contracts of insurance which insure personal and domestic property (including movables, valuables, caravans, on-site mobile homes and marine pleasure craft); and

(c) other contracts of insurance in respect of which an individual insurer determines to apply the Code;

"insurance contract" or "policy" means each general insurance contract arising out of or in connection with insurance business between an insurer and consumer;

"insurer" means any insurer authorised under State, Territory or Commonwealth law to carry on general insurance business in Australia or in any State or Territory who agrees with IEC to adopt the Code.

"the Scheme" means the General Insurance and Enquiries Complaints Scheme.

## 2.2 Operative Date

Sections 1, 2, 6 and 7

The provisions contained in Section 1 (Introduction), Section 2 (Defined Words and Operative Date), Section 6 (Dispute Resolution) and Section 7 (Responsibility, Review and Sanctions) of the Code shall operate in respect of insurance contracts issued on or after 1 July 1995 or from such later date on which an insurer agrees to adopt the Code.

## 2.3 Operative Date

Sections 3, 4 and 5

In the case of any insurer who adopts the Code after 1 July 1995, each insurer shall on the date of adoption propose a plan to the Code Compliance Committee for its approval setting out the steps it proposes to take and a timetable for compliance with the provisions of Section 3 (Agents and Employees), Section 4 (Policy Documentation) and Section 5 (Claims Handling). Each plan shall provide that full compliance is achieved no later than 6 months of the date of adoption. An insurer is required to comply with the provisions of Section 3 (Agents and Employees), Section 4 (Policy Documentation) and Section 5 (Claims Handling) of the Code as set out in its approved compliance plan.

## 3. Agents and employees

### 3.1 Supervision of Agents

Insurers shall require their agents to:

- (a) possess the necessary skills appropriate to the insurance they are arranging and the insurance services they are providing; and
- (b) inform consumers of their status, the identity of the insurer for whom they are acting and the nature of any association between the insurer and the agent.

### 3.2 Authority

Insurers should ensure that agents are not authorised to arrange insurance for consumers which does not match the agent's expertise, having regard to the services the agent is providing.

### 3.3 Agent Training

Insurers shall require their agents to receive adequate training or instructions, and documentation to competently arrange insurance contracts for and provide the insurance services to consumers which they are authorised to arrange or provide. The obligation to provide training or instruction, and documentation shall be ongoing and include training or instruction and documentation in the areas of:

- . principles of general insurance and any relevant consumer protection law;
- . product knowledge;
- . what to do in the event of a claim;
- . the requirement of this Code,

as may be appropriate in relation to the authority and responsibility of the agent.

### 3.4 Agent Record Keeping

Insurers shall keep and require their agents to keep records relating to their appointment and training for at least 5 years and on request shall make those records available for examination by the IEC.

### 3.5 Employees

Insurers shall:

- (a) ensure that employees involved in arranging insurance, claims handling and dispute resolution are familiar with the provisions of this Code and that they possess the necessary skills appropriate to their responsibilities; and
- (b) provide adequate training to employees having regard to the employee's role and responsibility and the insurance contracts for and the insurance services to consumers that they are authorised to arrange or provide.

### 3.6 Implementation for Agents and Employees

In implementing these requirements insurers shall have regard to whether the agent or employee would ordinarily provide advice to consumers and, if this is not the case, insurers shall provide such agents or employees with information as to how consumers may be able to obtain advice.

Insurers shall instruct agents and employees not to provide advice in relation to any product in respect of which they have not been trained to provide advice.

## 4. Policy documentation

### 4.1 Policy Documentation

Insurers shall:

- (a) express policy documentation in plain language, and, design and present policy documentation, with the aim to assist comprehension by consumers;
- (b) make available to consumers copies of policy wordings;
- (c) prior to each renewal:
  - (i) provide to consumers information on any changes to the policy being renewed in plain language and in a format aimed to assist comprehension by consumers; and
  - (ii) clearly inform the insured that the duty of disclosure applies on renewal and the consequences of any non-disclosure; and
- (d) make available with policy documentation:
  - (i) advice that the documentation should be read carefully and retained;
  - (ii) where appropriate, advice that evidence of the value of the property insured or the amount of any loss should be kept by the insured; and
  - (iii) information about the existence of the Code and the availability of internal and external dispute resolution processes.

### 4.2 Proposals

Insurers shall use proposal forms or have procedures for collecting information in relation to the provision of cover that:

- (a) identify all usual information that the insurer ordinarily requires to be disclosed and which the insurer wishes to know prior to providing cover;
- (b) clearly informs consumers of their duty of disclosure and the consequences of non-disclosure;
- (c) express questions in plain language and, where instructions are necessary, provide information on how the questions are to be answered; and

(d) provide adequate space or opportunity to answer questions or if there is inadequate space or opportunity provide advice as to how the additional information is to be provided.

#### 4.3 Declined Cover

Where an insurer declines cover or refuses to renew a policy because of factors that do not relate to the assessment of the particular risk (for example, the insurer has ceased to offer the cover) then the insurer shall notify the consumer of that fact.

An insurer shall not require a consumer to disclose to it prior refusals of cover or renewal where another insurer (whether that insurer has adopted this Code or not) has advised the consumer that the refusal was because of factors that did not relate to the assessment of the particular risk.

#### 4.4 Consumer Information Brochures

Where an insurer publishes consumer information brochures developed by itself or ICA relating to the general nature of insurance or the effect and operation of a policy, then the insurer shall make those brochures available to consumers on request.

### 5. Claims handling

#### 5.1 Principles

(a) Insurers shall:

- (i) make claim forms or claim procedures readily available to claimants free of charge.
- (ii) in plain language explain what information is required and the procedure for making a claim;
- (iii) promptly respond to reasonable requests by claimants for assistance in making a claim; and
- (iv) provide information as to the internal dispute resolution procedures of the insurer and the availability of the external dispute resolution procedure if any dispute remains unresolved.

(b) Claim forms for other methods of collecting information for the processing of a claim shall be in plain language, be designed and set out in a manner that aids comprehension and identify all usual information that the insurer shall ordinarily require to process the claim and the manner in which that information is to be provided.

(c) Completed claims shall be promptly considered and assessed by insurers having regard to the type of claim made. In normal circumstances, insurers shall within 15 business days of receipt of a claim respond to the claim.

(d) Insurers shall keep consumers informed as to the progress of a claim unless the insurer is awaiting a response from the consumer.

(e) Where a reasonable period for consideration and assessment of a claim has passed and where all information required by the insurer for the purposes of the claim has been provided, the insurer shall advise the claimant whether the claim is accepted or rejected.

(f) If an insurer decides to accept a claim or requires further information, the insurer shall promptly advise the claimant.

(g) Where a claim is rejected an insurer shall promptly advise the claimant of that decision and the reasons for it, and the availability of the insurer's dispute resolution process described in Section 6.

(h) Where reasons are provided by an insurer, those reasons shall not require disclosure of:

(i) information provided by third parties that is confidential or the identity of those third parties;

(ii) information that is subject to legal professional privilege;

(iii) information that may prejudice the insurer in any further investigation or in any dispute over the claim.

Where reasons are not given by an insurer, the insurer shall advise the consumer of the availability of the insurer's internal disputes resolution procedure and of the CRP. This notice is in addition to the general publicity requirements of the CRP.

## 5.2 Supervision of Investigators, Assessors Collection Agents and Loss

### Adjusters

Insurers shall require investigators, assessors, collection agents and loss adjusters acting on behalf of the insurer to:

(a) operate in a professional manner;

(b) inform consumers of their status and the identity of the insurer for whom they are acting; and

(c) comply with the law and this Code.

Insurers should ensure that investigators, assessors, collection agents and loss adjusters are not authorised by the insurer to act in matters which do not match their expertise.

Complaints relating to investigators, assessors, collection agents and loss adjusters shall be handled by an insurer under the insurer's internal dispute resolution process.

## 5.3 Investigators

Insurers should ensure that each investigator acting on behalf of the insurer (not being an employee) has:

- (a) been approved by the insurer;
- (b) a current licence as required under relevant State legislation; and
- (c) sufficient expertise to act in relation to the matter that they are investigating.

#### 5.4 Assessors Collection Agents and Loss Adjusters

Insurers should ensure that each assessor, collection agent or loss adjuster acting on behalf of the insurer (not being an employee) has:

- (a) been approved by the insurer; and
- (b) membership of an assessing or loss adjusting professional body or sufficient expertise to act on behalf of the insurer.

### 6. Dispute resolution

#### 6.1 Internal Dispute Resolution

Each insurer shall have a fully documented internal process for resolving a dispute between the consumer and the insurer, the consumer and the insurer's agent or the consumer and the insurer's investigator, assessor or loss adjuster. This process shall be readily accessible by consumers without any charges imposed by the insurer. The internal process shall provide a fair and timely method of handling disputes. The insurer shall establish procedures for the monitoring of disputes that are referred to this process.

#### 6.2 Brochures

The insurer shall have brochures available providing general descriptive information on:

- (a) the procedures for handling a dispute by the insurer;
- (b) the time within which a dispute will be normally handled by the insurer; and
- (c) the fact that the dispute will be handled by an officer of the insurer with appropriate powers to deal with the dispute.

#### 6.3 Resolution Requests

Where an insurer receives from a consumer a request, whether written or oral, for the resolution of a dispute or a request for a response from the insurer in writing in relation to the dispute, the insurer shall promptly reply to the consumer and, if the dispute is not resolved in a manner acceptable to the consumer, the insurer shall provide:

- (a) where appropriate, the general reasons for that outcome; and
- (b) information on the further action that the consumer can take such as the process for resolution of disputes referred to in 6.4 below.

Where reasons are supplied in relation to a dispute relating to a claim, the provisions of Section 5.1(h) shall apply to those reasons.

#### 6.4 External Dispute Resolution

Each insurer shall participate in the General Insurance Enquiries and Complaints Scheme operated by IEC.

### 7. Responsibility, review and sanctions

#### 7.1 Responsibility of Insurer

An insurer shall ensure that it:

- (a) implements appropriate systems and documentation for the insurer to comply with the Code;
- (b) prepares an annual report to IEC on the operation and compliance with the Code in accordance with the guidelines promulgated by IEC;
- (c) monitors disputes with consumers and compliance with the Code.

#### 7.2 Review of Compliance

- (a) IEC may from time to time review compliance of this Code by an insurer and an insurer shall take all reasonable steps to ensure that procedures are established to stop any breach occurring or recurring.

Insurers shall co-operate with the staff of IEC in such a review and provide information about any alleged breach and the procedures adopted by the insurer to comply with the Code.

- (b) IEC shall receive complaints about alleged breaches of the Code by insurers, and shall consult with insurers in respect of the alleged breaches and make recommendations, if necessary, about the alleged breach and the insurer's compliance with the Code.

- (c) Any panel, adjudicator, body or individual having jurisdiction in relation to the Scheme may report any alleged breaches of the Code to IEC.

#### 7.3 Publication of Participants and Annual Report by IEC

IEC shall publish the names of participants in the Code and an annual report reporting on the operation of this Code including compliance.

IEC shall publish and make available to consumers the names of insurers who have adopted the Code and information about the requirements of the Code.

#### 7.4 Sanctions imposed by IEC and the Code Compliance Committee

If IEC is of the view that there has been a material breach of the Code and the insurer has not taken all reasonable steps to ensure procedures are established to prevent the

breach recurring, then IEC shall immediately report the matter to the Code Compliance Committee.

If the Code Compliance Committee has satisfied itself that the insurer has not complied with the Code and not put in place procedures to stop the material breach recurring, it shall consult with the insurer and ask for the breach to be rectified. The insurer shall have an opportunity to make representation to the Code Compliance Committee in respect of such breach. If the Code Compliance Committee is still of the opinion that the insurer has not complied with the Code it shall request the insurer to do so by writing to the Chief Executive of the insurer. If the insurer refuses to co-operate with a request of the Code Compliance Committee, the Code Compliance Committee may give notice to the insurer that it proposes to impose sanctions on the insurer for non-compliance with the Code. A copy of the notice shall be sent to the Chief Executive Officer of the insurer.

The Code Compliance Committee shall not impose sanctions for at least 20 business days after the notice has been given. The insurer shall have an opportunity during this period to make further representations to the Code Compliance Committee in respect of such breach for the Code Compliance Committee's further consideration. If the Code Compliance Committee is still of the opinion that a material breach has occurred and the insurer has not put in place a remedy to comply with the Code, the Code Compliance Committee may impose sanctions.

Before imposing any sanctions on an insurer, the Code Compliance Committee shall have regard to:

- (a) the objectives and the principles governing the Code; and
- (b) the severity of the breach of the Code and the appropriateness of the sanction.

The Code Compliance Committee may impose one or more of the following:

- (i) a requirement that particular rectification steps be taken by the insurer in accordance with a specified timetable and imposing a timetable for rectification;
- (ii) a requirement that a compliance audit be undertaken;
- (iii) corrective advertising; and
- (iv) a recommendation to the board of IEC that the insurer be named in the annual report as not having complied with the Code and setting out the nature of the non-compliance.

## 7.5 Reporting

The Code Compliance Committee may report to the board of IEC in respect of its activities but it shall not disclose the name of an insurer who is alleged to have breached the Code or on whom sanctions have been imposed unless it recommends that the insurer be named in the annual report or unless the insurer consents.

#### 7.6 Review of Sanctions

An insurer who is sanctioned under this Code may request that the sanction be reviewed by the board of IEC and in that case, if the board considers that there are grounds for review, the board may refer the matter to the Code Compliance Committee for reconsideration.

#### 7.7 Failure to Comply

The Code Compliance Committee may report to the board of IEC any failure by an insurer to comply with a sanction imposed on it and recommend action to be taken by IEC and that the insurer be named in the annual report as having failed to comply with a sanction.

#### 7.8 Naming and Enforcement of Sanctions

Upon the recommendation of the Code Compliance Committee, the board of IEC may determine to name an insurer in the annual report as having failed to comply with the Code and set out in the report the nature of the non-compliance.

IEC may take such steps as it believes appropriate to enforce any sanctions imposed by it or the Code Compliance Committee and may report such a matter to ASIC.

## ***GISC Rules***

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## SECTION A - General

### Scope and Objective

1. The regulatory scope of *GISC* is *Members' General Insurance Activities*. For the avoidance of doubt, this includes relevant reinsurance and retrocession but excludes *General Insurance Activities* engaged in otherwise than from a permanent place of business within the *United Kingdom*.
2. *GISC's* objective is to establish a single regulatory regime to monitor and enforce standards in all areas of *General Insurance Activities* including:
  - 2.1 all matters relevant to the fair treatment of *Customers* as specified in the Codes set out in Sections C and D;
  - 2.2 *Financial Requirements* for *Intermediaries* set out in Section G1;
  - 2.3 procedures for the handling of complaints and the availability of redress, for *Customers* as specified in Section G2; and
  - 2.4 the competence and training of the *Employees* of its *Members* (and their *Appointed Agents* and *Appointed Sub-Agents*) specified in Section G3.

### The Rules

3. The *Rules* shall be available in hard copy format obtainable from *GISC* and, in due course in various other formats. *Members* may reproduce the *Rules* for distribution to their *Employees*, *Appointed Agents*, *Appointed Sub-Agents*, *Introducers* and *Customers* and, where a *Member* does so, it shall be the responsibility of the *Member* to ensure the accuracy of any such reproductions. In the event that there are any differences between the *Rules* available from *GISC* and the contents of any reproductions made by *Members*, the contents of the *Rules* available from *GISC* shall take precedence.
4. References within the *Rules* to individual *Rules* are in the following format:

eg. *Rule A 2.1.1*

where "A" refers to Section A and the following numbers refer to the particular *Rule* and sub-*Rule* of that Section.
5. Headings and sub-headings are included for guidance purposes only and do not form part of the *Rules*.
6. Words appearing in the *Rules* in italics refer to definitions contained in Section B.
7. Any reference in the *Rules* to any statute or regulation shall include a reference to any modification or replacement thereof.
8. Any reference in the *Rules* in the plural form shall include the singular and vice versa unless the context otherwise requires.

### Amendments

9. The *Rules* and the Practice Notes contained in Section D may be amended from time to time by the *Board* if in its opinion such amendments are necessary or desirable for the purposes of enabling *GISC* to discharge its function of regulating *General Insurance Activities*.
10. Except where the *Board* considers that an immediate *Rule* or Practice Note amendment is desirable, no material *Rule* or Practice Note amendment shall be made without consultation.

### Rule Waivers and Guidance

11. *Rule* waivers and guidance on the application of the *Rules* may be issued by *GISC* in the circumstances detailed in Appendix 4.

### Personal Data

12. *Applicants* and *Members* shall provide to *GISC* immediately upon request, and *GISC* may obtain and use, all such personal data as it may require (including *Sensitive Personal Data*) in relation to *Applicants*, *Members*, *Members' Appointed Agents*, *Appointed Sub-Agents*, *Introducers* or *Customers* or any third party for any *Permitted Purpose* and according to law.

13. *GISC* shall treat as confidential all information relating to *Applicants*, *Members* and *Members' Appointed Agents*, *Appointed Sub-Agents*, *Introducers* and *Customers* except that it may pass on any such information, including *Sensitive Personal Data* for any *Permitted Purpose*, to:
  - 13.1 *GISC's* professional advisers;
  - 13.2 any enforcement agency;
  - 13.3 any body exercising a regulatory or similar function;
  - 13.4 any ombudsman;
  - 13.5 a third party to process *Applicants' and Members' personal data* on its behalf; or
  - 13.6 any other person *GISC* may consider appropriate in pursuance of its objective.
14. From time to time, in order to carry out the data processing outlined in *Rule A 13* above, *GISC* may need to pass relevant personal data, including any relevant *Sensitive Personal Data*, to third parties which are located outside the *United Kingdom* on the understanding that such third parties will keep such personal data safe and secure.
15. *Members* acknowledge that *GISC* may publish a list of *Members' names and addresses* from time to time on its website or in other promotional or informative materials.
16. *Members* undertake to obtain all necessary consents prior to providing *GISC* with personal data in respect of any of their *Employees*, *Appointed Agents*, *Appointed Sub-Agents*, *Introducers* or *Customers* or any third party to enable *GISC* to process fairly and lawfully such personal data in accordance with the *Rules*.

### **Applicable Law and Jurisdiction**

17. The *Rules* and each *Membership Contract* between *GISC* and a *Member* shall be governed by and construed in accordance with English law and *GISC* and its *Members* submit to the exclusive jurisdiction of the courts of England and Wales.

### **Exclusion of Liability**

18. In the absence of bad faith, *GISC* shall not be liable in damages for any loss, cost, damage or expense which arises from any act or omission of *GISC* in the discharge or purported discharge of *GISC's* powers or obligations under the *Rules* or in pursuance of its objective, whether arising from negligence, breach of contract or otherwise. Nothing in this paragraph shall limit *GISC's* liability for fraud or death or personal injury caused by negligence.

### **Indemnity against Contravention**

19. *Members* shall not enter into any arrangement intended to indemnify or compensate them for any liabilities they may incur to *GISC* in the form of fines imposed by or agreed with *GISC* in respect of an act or acts of *Misconduct*.

### **Service of Documents**

20. Where *GISC* is required or wishes to serve a document on a *Member*, it shall do so by first class post to the address provided on the application form, or to any address notified by the *Member* to *GISC* in substitution for that address. *GISC* may in addition effect service by such other means (eg. by facsimile transmission) as it considers appropriate having regard to the urgency of the document.
21. Where a *Member* is required or wishes to serve a document on *GISC*, it shall do so by first class post addressed to *GISC*, 110 Cannon Street, London, EC4N 6EU. A *Member* may in addition effect service by such other means (eg. by facsimile transmission) as it considers appropriate having regard to the urgency of the document.

### **Payments due to GISC**

22. Where, in accordance with the *Rules*, a *Member* is required to make a payment to *GISC*, *GISC* shall provide the *Member* with reasonable notice (not less than 10 *Business Days*) of the due date. If the *Member* fails to pay the amount owing by the due date, *GISC* shall issue a *Demand Notice* giving the *Member* 10 *Business Days* in which to effect payment. If payment is not effected within 10 *Business Days* of the date of the *Demand Notice*, the *Member's Membership* may be terminated in accordance with *Rule F 32.1*.

### **Third Party Rights**

23. Nothing in the *Rules* or the *Membership Contract* between *GISC* and a *Member* will give any person any right to enforce any term of the *Membership Contract* which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

## SECTION B - Definitions

Where a definition is used in the text it will appear in italics.

***Appeal Tribunal*** means the tribunal appointed in accordance with *Rule J 13*

***Applicant*** means an applicant for *Membership* whose application has not yet been considered and decided by *GISC*.

***Appointed Agent*** means a non-*Member* who engages in *General Insurance Activities* on behalf of a *Member*, who is party to an *Appointed Agent Agreement* and for whose *General Insurance Activities* the *Member* accepts responsibility.

***Appointed Agent Agreement*** means a written agreement between a *Member* as principal and a non-*Member* as *Appointed Agent* under the terms of which the *Appointed Agent* agrees to engage in *General Insurance Activities* as *Appointed Agent* of the *Member* and the *Member* accepts responsibility for the *Appointed Agent's* compliance with the *Rules*.

***Appointed Sub-Agent*** means a non-*Member* who engages in *General Insurance Activities* on behalf of an *Appointed Agent* or another *Appointed Sub-Agent*, who is party to an *Appointed Sub-Agent Agreement* and for whose *General Insurance Activities* a *Member* accepts responsibility.

***Appointed Sub-Agent Agreement*** means an *Appointed Agent Agreement* between an *Appointed Agent* and an *Appointed Sub-Agent* or between an *Appointed Sub-Agent* and another *Appointed Sub-Agent*.

***Approved Assets*** means *Approved Certificates of Deposit*, *Approved Money Market Funds* and *Approved Investments* and/or such other assets as *GISC* may subsequently approve and publish.

***Approved Bank*** means any of the following institutions which has been given a minimum short term rating of at least A1 by Standard and Poor's, P1 by Moody's Investor Services, F1 by Fitch IBCA or TBW1 by Thomson Financial Bank Watch:

1. An institution which has a part IV permission under the Financial Services and Markets Act 2000 to carry on the activity of accepting deposits;
2. A Building Society under the Building Societies Act 1986;
3. A bank which is supervised by the Central Bank or other banking regulator of a member state of the OECD;
4. A credit institution which has qualified for authorisation under paragraph 12(1) of Schedule 1 to the Financial Services and Markets Act 2000 (EEA firms), is identified on a list maintained by the Financial Services Authority, and is entitled to establish branches in the *United Kingdom* for the purpose of accepting deposits in the *United Kingdom*;
5. A wholly owned subsidiary of a parent bank or institution included in the above four paragraphs, where the parent has a qualifying rating and the subsidiary is guaranteed by the parent; or
6. A wholly owned subsidiary, within the meaning of Section 736 (2) of the Companies Act 1985, of an institution which has a qualifying rating and which is authorised to take deposits in the Channel Islands or the Isle of Man, such subsidiary being itself authorised to take deposits under the Financial Services and Markets Act 2000.

***Approved Bond Fund*** means a bond fund which is:

1. An Approved Undertaking for Collective Investments in Transferable Securities (UCITS) and is recognised by the Financial Services Authority under either chapter II or chapter V of the Financial Services and Markets Act 2000 or the Open-Ended Investment *Company* Regulations 2001; or
2. Is registered with the Securities Exchange Commission (SEC) under the Investment *Company* Act of the United States of America 1940,

and which has a minimum credit rating and risk rating of Aaf and S2 respectively by Standard and Poor's, Aa and MR2 respectively by Moody's Investor Services or AA and V2 respectively by Fitch IBCA.

***Approved Certificate of Deposit*** means a certificate of deposit with a maximum term to maturity of 6 months issued by and held with an *Approved Bank*.

**Approved Dispute Resolution Facility** means the Insurance Ombudsman Scheme, the Financial Ombudsman Service, the *GISC Dispute Resolution Scheme* or such other dispute resolution scheme as *GISC* may approve for the resolution of disputes between its *Members* and their *Customers* arising out of their *General Insurance Activities*.

**Approved Insurer** means an authorised *United Kingdom* or *EEA Insurer* or an *Insurer* authorised to transact business in the *United Kingdom* or the *EEA*.

**Approved Investment** means:

1. a term deposit with an *Approved Bank* with a remaining term to maturity of 1 year or less;
2. a negotiable debt instrument, with a remaining term to maturity of 5 years or less, where the instrument, or issuer thereof, has:
  - 2.1 a minimum short-term credit rating of A1 by Standard and Poor's, P1 by Moody's Investor Services or F1 by Fitch IBCA, where the instrument has a remaining term to maturity of 366 days or less; or
  - 2.2 a minimum long-term credit rating of AA – by Standard and Poor's, Aa3 by Moody's Investor Services or AA – by Fitch IBCA where the instrument has a term to maturity of more than 366 days;
3. a repurchase agreement which is fully collateralised with negotiable debt instruments meeting the rating criteria in paragraph 2 above, and where the credit rating of the counterparty also meets the criteria; or
4. an *Approved Bond Fund* where the designated bank account for redeemed investment is an *Insurance Bank Account* held with an *Approved Bank*.

**Approved Money Market Fund** means a fund which is:

1. an Approved Undertaking for Collective Investments in Transferable Securities (UCITS) and is recognised by the Financial Services Authority under either chapter II or chapter V of the Financial Services and Markets Act 2000 or the Open-Ended Investment *Company* Regulations 2001;
2. has a minimum credit and risk rating of Aaa and MR1+ respectively by Moody's Investor Services, AAAM by Standard and Poor's, or AAA and V1+ respectively by Fitch IBCA; and
3. where the designated bank account for redeemed investments is an *Insurance Bank Account* held with an *Approved Bank*.

**Board** means the board of directors of *GISC* as constituted from time to time and anyone acting under delegated authority of the *Board*.

**Business Day** means any day except Saturday, Sunday, bank holidays and public holidays (not being bank holidays).

**Codes** means the *Private Customer Code* and/or the *Commercial Code*.

**Commercial Code** means the Core Principles contained in Section D of the *Rules* but excludes the Practice Notes.

**Commercial Customer** means a *Customer* who is not a *Private Customer*.

**Company** means General Insurance Standards Council, incorporated as a company limited by guarantee.

**Controller** means:

1. in the case of a body corporate, its directors and any shareholder entitled to at least 15% of the votes at a general meeting of the body corporate;
2. in the case of a partnership, its partners; and
3. in any case, anyone in accordance with whose instructions business is conducted.

**Customer** means anyone who purchases a *General Insurance Product* or is the recipient of advice or other services amounting to *General Insurance Activities*.

**Deemed Date of Calculation** means the date as at which the solvency margin is calculated, not the actual date of the calculation (unless this is the same date).

**Demand Notice** means a notice issued by *GISC* in accordance with *Rule A 22*.

**Direct Sales** means sales by a *Member* direct to *Customers*.

**Disciplinary Appeal Tribunal** means the tribunal appointed in accordance with paragraphs 12, 14, 16 and 17 of Appendix 1.

**Disciplinary Panel** means the panel of individuals appointed by the *Board* in accordance with paragraph 8 of

Appendix 1 from which the *Disciplinary Tribunal* and the *Disciplinary Appeal Tribunal* shall be selected.

**Disciplinary Tribunal** means the tribunal appointed in accordance with paragraphs 12, 13 and 16 of Appendix 1.

**Employees** means all individuals engaging in *General Insurance Activities* employed in accordance with the terms of a formal contract of service, temporary staff, consultants, directors and, in the case of a partnership, partners and anyone to whom any *General Insurance Activities* are outsourced and their *Employees*.

**Enforcement Committee** means the committee selected from the *Enforcement Panel* in accordance with paragraphs 4 and 6 of Appendix 1.

**Enforcement Panel** means the panel of individuals appointed by the *Board* in accordance with paragraph 1 of Appendix 1 from which the *Enforcement Committee* shall be selected.

**Financial Requirements** means the contents of Practice Requirement G1.

**General Insurance Activities** means *Regulated Activities* carried on from a permanent place of business within the *United Kingdom* in connection with one or more *General Insurance Products* (unless *GISC* agrees to restrict the application of the *Rules* to a specified category of a *Member's General Insurance Activities*).

**General Insurance Product or Service Specific Page** means a website page which details information specifically relating to a *General Insurance Product* or *General Insurance Activity*-related service.

**General Insurance Products** means the general insurance contracts listed in Schedule 1 Part I of the Financial Services and Markets Act (*Regulated Activities*) Order 2001, (including, for the avoidance of doubt, relevant contracts of reinsurance and retrocession).

**GISC** means the General Insurance Standards Council, its *Employees* and agents, its *Board* and committees of the *Board* and anyone acting under the delegated authority of *GISC*.

**GISC Dispute Resolution Scheme** means the scheme for the resolution of disputes between *Members* and their *Customers* established by *GISC*.

**Group Company** means, in relation to a body corporate, any other body corporate which is its holding company or subsidiary and any other body corporate which is a subsidiary of that holding company.

**Group of Companies** means in relation to a body corporate, the body corporate and each of its *Group Companies*.

**Home Page** means the main website page that a *Customer* or prospective *Customer* will see when typing in the *Member's* website address, (eg. www.gisc.co.uk), excluding a page containing purely brand images designed to front a website and which contains no useful information (typically referred to as a "splash page").

**Independent Intermediary** means an *Intermediary* who, in respect of any product type, offers or sells the products of more than one *Insurer*.

**Insurance Bank Account (or IBA)** means a bank account designated as an *Insurance Bank Account* for holding *Insurance Monies* in accordance with the *Financial Requirements*. This must be an account offered by an *Approved Bank* and may be an ordinary, current, savings, investment, call, notice, treasury, money market, or deposit account.

**Insurance Monies** means the following individual items or balances representing the same arising from *General Insurance Activities*:

1. premiums, additional premiums and return premiums of all kinds;
2. claims and other monies due under contracts of insurance;
3. refunds and salvages;
4. fees, charges, taxes and similar fiscal levies relating to contracts of insurance;
5. all forms of reserves under contracts of insurance and any adjustment to them; and
6. discounts, commissions and brokerage.

**Insurer** means a person who writes contracts of insurance falling within the terms of Schedule 1 Part I of the Financial Services and Markets Act (*Regulated Activities*) Order 2001.

**Interactive Website** means a website which is used for more than the provision of information only. This definition includes websites which allow users to communicate with the website owner or request information, for example, where *Customers* can complete a website-based form and obtain a quotation, even where policy information is returned to them in writing, or where cover can be purchased by *Customers* without the need to complete a proposal

form.

**Intermediary** means anyone who engages in *General Insurance Activities* who is not:

1. an *Insurer*;
2. an *Appointed Agent* or *Appointed Sub-Agent*; or
3. an *Introducer*.

**Intervention Order** means an order of the type described in *Rule J 2*.

**Introducer** means a non-*Member* which, from a permanent place of business within the *United Kingdom*, introduces potential *Customers* to *Members*, *Appointed Agents* or *Appointed Sub-Agents* or provides potential *Customers* with advertising literature of or approved by *Members*, *Appointed Agents* or *Appointed Sub-Agents* relating to *General Insurance Products* or *General Insurance Activities* and receives fees or commission in respect of its activities as *Introducer*.

**Member** means an individual or organisation which has been admitted to *Membership* of *GISC*. Where a *Member* is a partnership, the *Member* is the partnership as constituted from time to time. A change in the constitution of the partnership will not require a new application for *Membership* to be submitted. For the avoidance of doubt, unless the *Company* and the *Member* agree otherwise, a *Member* is not a member of the *Company* for the purposes of the *Company's* articles of association, nor does a *Member* have any ownership rights in respect of the *Company*.

**Membership** means membership of *GISC*. It does not mean membership of the *Company* for the purposes of the *Company's* Articles of Association nor does it grant a *Member* any ownership rights in respect of the *Company*.

**Membership Appeal Tribunal** means the tribunal appointed in accordance with *Rule F 11*.

**Membership Committee** means the committee appointed by the *Board* to consider applications for *Membership* and applications for resignation from *Membership*.

**Membership Contract** means the contract entered into by *GISC* and each *Member*, incorporating the *Rules*.

**Membership Fee** means the fee calculated in accordance with Appendix 2.

**Misconduct** means:

1. an act or omission which constitutes a breach of the *Rules*;
2. an act or omission which causes another *Member* to be in breach of the *Rules*;
3. the provision to *GISC* of information which the *Member* knows or after reasonable investigation should have known is false, misleading or inaccurate in any material particular;
4. failure to comply with the terms of an *Intervention Order* or *Witness Order*; or
5. an act or omission which constitutes a breach of terms and/or conditions imposed by *GISC* on *Membership*,

except where such an act or omission is not considered by *GISC* to be material.

**Multi-Tied Agent** means an *Appointed Agent* or *Appointed Sub-Agent* which, in respect of any product type, offers or sells the *General Insurance Product(s)* of only one *Insurer*.

**Net Retained Brokerage** means the net amount retained by an *Intermediary* of all brokerage, fees, commissions and other related income (eg. administration charges, overrides, profit shares) due to the *Intermediary* in respect of or in relation to *General Insurance Activities*.

**Non-UK Applicant** means a *Non-UK Insurer* or a *Non-UK Intermediary* whose application for *Membership* has not yet been considered and decided by *GISC*.

**Non-UK Insurer** means an *Insurer* based outside the *United Kingdom* with no permanent place of business within the *United Kingdom* from which it engages in *General Insurance Activities*.

**Non-UK Intermediary** means an *Intermediary* based outside the *United Kingdom* with no permanent place of business within the *United Kingdom* from which it engages in *General Insurance Activities*.

**Non-UK Member** means a *Non-UK Insurer* or *Non-UK Intermediary* which has been admitted to *Membership*.

**Other Sales** means, in the case of an *Insurer*, sales of *General Insurance Products* made otherwise than:

1. direct to *Customers*; and
2. through agents and sub-agents (including *Appointed Agents* and *Appointed Sub-Agents*).

**Penalty** means one or more of:

1. a public reprimand;
2. a fine;
3. terms and conditions on continuing *Membership*;
4. suspension of *Membership* for a specified period; and
5. expulsion and prohibition on re-application.

**Permitted Purpose** means one or more of:

1. processing and managing applications for *Membership* and *Membership*;
2. complying with *GISC*'s legal and regulatory obligations;
3. exercising and performing *GISC*'s powers and obligations under the *Rules*;
4. detecting, investigating or presenting any alleged or actual act of *Misconduct* or unlawful activity; and
5. otherwise discharging *GISC*'s function of regulating *General Insurance Activities*.

**Primary Contact** means the individual nominated by a *Member* as *Primary Contact* on the application form or any individual notified by the *Member* to *GISC* in substitution for that individual.

**Private Customer** means a *Customer* who is a natural person acting otherwise than solely for the purposes of his or her business.

**Private Customer Code** means the contents of Section C of the *Rules*.

**Product Type** means in respect of *General Insurance Products*, any category of products which are competing or substitutable for one another.

**Regulated Activity** means one or more of:

1. selling;
2. advising;
3. broking (including producing and placing); and
4. any other activity which, when engaged in connection with a *General Insurance Product*, is regulated by the Codes.

**Revenue** means, for an *Insurer*, gross premium income arising from *General Insurance Activities* less commission paid to *Intermediaries* and *Introducers* and, for an *Intermediary*, *Net Retained Brokerage*.

**Rules** means the rules of *GISC* as amended from time to time including the Codes, Practice Requirements and Appendices and any other codes of practice, rules or regulations which *GISC* may adopt and enforce. For the avoidance of doubt, the *Rules* do not include the Practice Notes contained in the *Commercial Code*.

**Sensitive Personal Data** means sensitive personal data as defined under the Data Protection Act 1998, and includes data in relation to a living individual's physical or mental health or condition, commission or alleged commission of any offence and any proceedings in respect of any such offence.

**Single Tied Agent** means an *Appointed Agent* or *Appointed Sub-Agent* which offers or sells the *General Insurance Product(s)* of only one *Insurer*.

**Tribunal Chairman** means a legally qualified member of the *Disciplinary Panel* appointed in accordance with *Rules* I 39 or J 9 to hear an application for permission to appeal or an application for a stay of an *Intervention Order* respectively.

**United Kingdom** means England, Wales, Scotland and Northern Ireland and excludes the Channel Islands and the Isle of Man for these purposes.

**Witness Order** means an order issued by the chairman of a *Disciplinary Tribunal* in accordance with *Rule I 18.6*.

## **SECTION C - The GISC General Insurance Code for private customers**

### **The Private Customer Code**

This Private Customer Code sets the minimum standards of good practice which all Members of GISC must follow when they deal with Private Customers. It gives you important protection and should help you to understand:

- how Insurers, Intermediaries and agents, and anyone acting for them, must deal with you;
- what information you should receive before you commit yourself to buying any insurance; and
- how your insurance should be dealt with once it is in place.

### **Insurance Products and Services Covered by the Private Customer Code**

The Private Customer Code covers all types of General Insurance Products and services that are sold to Private Customers, including:

- motor insurance;
- home insurance – buildings and contents;
- insurance for caravans, boats, pets and other property;
- travel insurance;
- private medical and dental insurance;
- personal accident insurance;
- extended warranty and breakdown insurance;
- legal expenses insurance; and
- payment protection insurance for mortgages and other loans.

### **Understanding the Private Customer Code**

Within the Private Customer Code, ‘you’ means the Private Customer and ‘we’ and ‘us’ means the Member of GISC (an Insurer, Intermediary or agent), and anyone acting for them, who you deal with.

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## 1 **Our Commitments**

### 1.1 As Members of GISC, we promise that we will:

- act fairly and reasonably when we deal with you;
- make sure that all our general insurance services satisfy the requirements of this Private Customer Code;
- make sure all the information we give you is clear, fair and not misleading;
- avoid conflicts of interest or, if we cannot avoid this, explain the position fully to you;
- give you enough information and help so you can make an informed decision before you make a final commitment to buy your insurance policy;
- confirm your insurance arrangements;
- make sure that our service meets GISC's standards;
- handle claims fairly and promptly;
- make sure you receive all the documentation you need;
- protect any personal information, money and property that we hold or handle for you; and
- handle complaints fairly and promptly.

## 2 **Marketing**

### **Advertising**

- 2.1 We will make sure that all our advertising and promotional material is clear, fair and not misleading.

## 3 **Helping You Find Insurance to Meet Your Needs**

**We will give you enough information and help so you can make an informed decision before you make a final commitment to buy your insurance policy.**

### **Explaining our service**

- 3.1 We will explain the service we can offer and our relationship with you, including:

- the type of service we offer;
- whether we act for an Insurer or act independently for you as an intermediary;
- whether we act as an agent of another intermediary or agent; and
- the choice of products and services we can offer you.

### **Matching your requirements**

3.2 We will make sure, as far as possible, that the products and services we offer you will match your requirements:

- If it is practical, we will identify your needs by getting relevant information from you.
- We will offer you products and services to meet your needs, and match any requirements you have.
- If we cannot match your requirements, we will explain the differences in the product or service that we can offer you.
- If it is not practical to match all your requirements, we will give you enough information so you can make an informed decision about your insurance.

### **Information about products and services**

3.3 We will explain all the main features of the products and services that we offer, including:

- who the Insurer is;
- all the important details of cover and benefits;
- any significant or unusual restrictions or exclusions;
- any significant conditions or obligations which you must meet; and
- the period of cover.

### **Information on costs**

3.4 We will give you full details of the costs of your insurance, including:

- separate insurance premiums for each of the individual products or services we are offering;
- details of any fees and charges other than the insurance premium, and the purpose of each fee or charge (this will include any possible future fees or charges, such as for changing or cancelling the policy or handling claims);
- when you need to pay the premiums, fees and charges, and an explanation of how you can pay; and
- if we are acting on your behalf in arranging your insurance and you ask us to, we will tell you what our commission is and any other amounts we receive for arranging your insurance or providing you with any other services.

### **Advice and recommendations**

3.5 If we give you any advice or recommendations, we will:

- only discuss or advise on matters that we have knowledge of;
- make sure that any advice we give you or recommendations we make are aimed at meeting your interests; and
- not make any misleading claims for the products or services we offer or make any unfair criticisms about products and services that are offered by anyone else.

### **Customer protection information**

3.6 We will explain the customer protection benefits under our GISC Membership, including:

- our complaints procedures, together with details of who you should contact first if you want to make a complaint; and
- whether any of the products or services we are offering you are not covered by this Private Customer

Code.

### **Your duty to give information**

- 3.7 We will explain your duty to give Insurers information before cover begins and during the policy, and what may happen if you do not.

### **Quotes**

- 3.8 If you want to consider the products or services we have offered you, we will:
- confirm how long you have to take up your insurance on the terms we have quoted to you;
  - give you a written quote if you ask for one, including all the information you need to make an informed decision; and
  - give you a sample policy if you ask for one.

### **‘Cooling-off’ period**

- 3.9 Under the Private Customer Code, we have to give you certain information before you make your decision. If we have not given you this information when you buy your insurance (and you have not told us you do not want it) we will allow you a ‘cooling-off’ period of at least 14 days from the time you receive the information. If you do not want to continue with the insurance, you may cancel your cover within this period and get all your money back (as long as you have not made any claims).

### **Choosing to receive limited information**

- 3.10 If you want to buy your insurance without receiving all the information about the products and services that the Private Customer Code requires, we will keep a record of your agreement to this and there will not be a ‘cooling-off’ period.

## **4 Confirming Your Cover**

**We will confirm your insurance arrangements and provide you with full policy documentation.**

### **Confirming your cover**

- 4.1 When we put your insurance arrangements in place, we will give you written confirmation of cover, including:
- enough information so you can check the details of your cover;
  - the date when your cover starts and the period of cover;
  - any certificates or documents which you need to have by law; and
  - details of any ‘cooling-off’ period.

### **Proof of payment**

- 4.2 We will make sure that you have proof that you have paid the premiums, fees and charges.

### **Full policy documents**

- 4.3 We will send you full policy documentation promptly.

## **5 Providing Our Service to You**

**We will make sure that our service meets the GISC’s standards.**

### **Questions**

- 5.1 We will answer any questions promptly and give you help and advice if you need it.

### **Changes to your policy**

5.2 We will deal with any changes to your insurance policy promptly. We will:

- give you written confirmation of any changes to your policy;
- give you full details of any premiums or charges that you must pay or we must return to you;
- give you any certificates or documents that you need to have by law;
- make sure that you have proof that you have paid extra premiums, fees and charges; and
- send you any refunds of the premiums, fees or charges that are due to you.

#### **Notice of renewal**

5.3 We will tell you when you need to renew your policy or, when it will end, in time to allow you to consider and arrange any continuing cover you may need. We will:

- explain the renewal terms (if offered);
- tell you about any changes to the cover, service or insurer being offered;
- explain your continuing duty to give Insurers information; and
- send you any certificates or documents that you need to have by law.

#### **Expiry or cancellation**

5.4 When your policy ends or is cancelled, we will send you all the documentation and information that you are entitled to, if you ask for it.

### **6 Claims**

**We will handle claims fairly and promptly.**

#### **Information on claims procedures**

6.1 When you first become a Customer, we will give you details of how you can make a claim and tell you what your responsibilities are in relation to making claims.

#### **If you make a claim**

6.2 If you make a claim:

- we will respond promptly, explain how we will handle your claim and tell you what you need to do;
- we will give you reasonable guidance to help you make a claim under your policy;
- we will consider and handle your claim fairly and promptly, and tell you how your claim is progressing;
- we will tell you, in writing, and explain why, if we cannot deal with all or any part of your claim; and
- once we have agreed to settle your claim, we will do so promptly.

### **7 Documentation**

**We will make sure you receive all the documentation you need.**

#### **Information in writing**

7.1 We will give you information in writing, especially if there is a lot of information or if it is very complicated.

#### **Standards of written information**

7.2 We will make sure that all the written information and documents we send you are clear, fair and not misleading.

#### **Sending you documentation**

7.3 We will send you all the documentation you need promptly.

#### **Withholding documentation**

7.4 We will not withhold any insurance documentation from you without your permission, unless we are allowed to

do so by law. If we do withhold any documents, we will make sure that you receive full details of your insurance cover and any documents that you need to have by law.

## 8 Confidentiality and Security

**We will protect your personal information, money and property.**

### Confidentiality

8.1 We will treat all your personal information as private and confidential to us and anyone else involved in providing your insurance, even when you are no longer a Customer. We will not give anyone else any personal information about you, except:

- when you ask us to or give us permission;
- if we have to because we are a Member of GISC; or
- if we have to by law.

### Security

8.2 We will take appropriate steps to make sure that any money, documents, other property or information that we handle or hold for you is secure.

## 9 Complaints

**We will handle complaints fairly and promptly.**

### Information on complaints procedures

9.1 When you first become a Customer, we will give you details of our complaints procedures in our policy or service documentation.

### If you make a complaint

9.2 If you make a complaint:

- we will acknowledge it promptly, explain how we will handle your complaint, and tell you what you need to do; and
- we will consider and handle your complaint fairly and promptly, and tell you how your complaint is progressing.

### Dispute resolution scheme

9.3 We are a member of a recognised independent dispute resolution scheme. If you are not happy with our final response to your complaint, we will tell you how you can contact this scheme.

## 10 Other Information

### GISC monitoring

10.1 We are monitored independently by GISC to make sure that we meet the standards of this Private Customer Code. If we do not satisfy the requirements of the Private Customer Code, we may face a Penalty.

### The Private Customer Code and your legal rights

10.2 The Private Customer Code forms part of the Membership Contract (which is governed by English law) between GISC and us. Nothing in the Private Customer Code or in our Membership Contract with GISC, will give any person any right to enforce any term of our Membership Contract which they would otherwise have under the Contracts (Rights of Third Parties) Act 1999.

## Section D - The Commercial Code

### Introduction

Within this *Commercial Code* “Member” means a Member of GISC (an Insurer, Intermediary (including broker) or agent), and anyone acting on its behalf, with whom the *Commercial Customer* deals.

## Core Principles

In the course of their *General Insurance Activities* Members should:

- 1.1 act with due skill, care and diligence;
- 1.2 observe high standards of integrity and deal openly and fairly with their *Commercial Customers*;
- 1.3 seek from *Commercial Customers* such information about their circumstances and objectives as might reasonably be expected to be relevant in enabling the *Member* to fulfil their responsibilities to them;
- 1.4 take reasonable steps to give *Commercial Customers* sufficient information in a comprehensible and timely way to enable them to make balanced and informed decisions about their insurance;
- 1.5 take appropriate steps to safeguard information, money and property held or handled on behalf of *Commercial Customers*;
- 1.6 conduct their business and organise their affairs in a prudent manner;
- 1.7 seek to avoid conflicts of interest, but where a conflict is unavoidable or does arise, manage it in such a way as to avoid prejudice to any party. *Members* will not unfairly put their own interests above their duty to any *Commercial Customer* for whom they act; and
- 1.8 handle complaints fairly and promptly.

## PRACTICE NOTES

1. **It is GISC's intention to promote standards of professional conduct for *Members*. These Practice Notes represent statements of reasonable practice which *Members* will be expected to follow generally in adhering to the Core Principles.**
2. **A failure on the part of a *Member* to observe the standards set out in these Practice Notes shall not of itself constitute a breach of the *Rules* but any such failure may in disciplinary proceedings be relied upon by GISC or any party to the proceedings as tending to establish or to negate any liability which is in question in those proceedings.**

## Marketing

3. *Members* will ensure that all their advertising and promotional material is clear, fair and not misleading.

## Arranging the Insurance

### *Commercial Customer* relationship

4. *Members* will advise their *Commercial Customers* of the nature of their service and their relationship with them, in particular, whether they act on behalf of an *Insurer* or act independently on behalf of the *Commercial Customer* as an *Intermediary*. They will also make it clear if they operate as an agent of another *Intermediary*.
5. *Members* will, where it is reasonably practical, confirm in writing instructions to act on behalf of a *Commercial Customer* and this will include appropriate reference to any recommendations made by the *Member* but declined by the *Commercial Customer*.

### *Commercial Customer* requirements

6. *Members* will take appropriate steps to understand the types of *Commercial Customers* they are dealing with and the extent of their *Commercial Customers'* awareness of risk and *General Insurance Products* and take that knowledge into account in their dealings with them.
7. *Members* will seek from *Commercial Customers* such information about their circumstances and objectives as might reasonably be expected to be relevant in enabling them to identify the *Commercial Customer's* requirements and fulfil their responsibilities to their *Commercial Customers*.

### Information about proposed insurance

8. *Members* will provide adequate information in a comprehensive and timely way to enable *Commercial Customers* to make an informed decision about the *General Insurance Products* or *General Insurance Activity*-related services being proposed.
9. If they are acting on behalf of the *Commercial Customer*, *Members* will explain the differences in, and the relative costs of, the types of insurance, which in the opinion of the *Member*, would suit the *Commercial Customer's* needs. In so doing *Members* will take into consideration the knowledge held by their *Commercial Customers* when deciding to what extent it is appropriate for their *Commercial Customers* to have the terms and conditions of a particular insurance explained to them.

10. *Members* will advise *Commercial Customers* of the key features of the insurance proposed, including the essential cover and benefits, any significant or unusual restrictions, exclusions, conditions or obligations, and the period of cover. In so doing, *Members* will take into consideration the knowledge held by their *Commercial Customers* when deciding to what extent it is appropriate for *Commercial Customers* to have the terms and conditions of a particular insurance explained to them.
11. If *Members* are unable to match *Commercial Customers*' requirements they will explain the differences in the insurance proposed.

#### **Advice and recommendations**

12. *Members* should only discuss with or advise *Commercial Customers* on matters in which they are knowledgeable and seek or recommend other specialist advice when necessary.
13. *Members* will take reasonable steps to advise *Commercial Customers* if any *General Insurance Products* or *General Insurance Activity*-related services being offered or requested are not covered by this *Commercial Code* and any possible risks involved. In so doing, *Members* will take into consideration the knowledge held by their *Commercial Customers* in deciding to what extent such advice may be necessary.

#### **Information about costs and remuneration**

14. *Members* will provide details of the costs of each *General Insurance Product* or *General Insurance Activity*-related service offered.
15. *Members* will not impose any fees or charges in addition to the premium required by the *Insurer* without first disclosing the amount and purpose of the charge. This will include charges for policy amendments, claims handling or cancellation.
16. *Members* who are acting on behalf of a *Commercial Customer* in arranging their insurance will, on request, or where they are legally obliged to do so, disclose the amount of commission and any other remuneration received for arranging the insurance.
17. *Members* will disclose to *Commercial Customers* any payment they receive for providing to, or securing on behalf of, their *Commercial Customers* any additional *General Insurance Activity*-related services.

#### **Duty of disclosure**

18. *Members* will explain to *Commercial Customers* their duty to disclose all circumstances material to the insurance and the consequences of any failure to make such disclosures, both before the insurance commences and during the policy.
19. *Members* will make it clear to *Commercial Customers* that all answers or statements given on a proposal form, claim form, or any other material document, are the *Commercial Customer*'s own responsibility. *Commercial Customers* should always be asked to check the accuracy of information provided.
20. If *Members* believe that any disclosure of material facts by their *Commercial Customers* is not true, fair or complete, they will request their *Commercial Customers* to make the necessary true, fair or complete disclosure, and if this is not forthcoming must consider declining to continue acting on their *Commercial Customer*'s behalf.

#### **Quotations**

21. When giving a quotation, *Members* will take due care to ensure its accuracy and their ability to place the insurance at the quoted terms.

#### **Placement**

22. *Members* who act on behalf of *Commercial Customers* when arranging their insurance will use their skill objectively in the best interests of their *Commercial Customers* when choosing *Insurers*.
23. Where two or more *Members* are acting jointly for a *Commercial Customer* when placing an insurance, *Members* will take appropriate steps to see that they and their *Commercial Customers* know their individual responsibilities and duties.
24. *Members* will inform and seek from their *Commercial Customers* written acknowledgement where they are instructed to place an insurance which is contrary to the advice that has been given by the *Member*.

#### **Confirming Cover**

25. *Members* will provide *Commercial Customers* with prompt written confirmation and details of the insurance which has been effected on their behalf.

26. *Members* will identify the *Insurer(s)* and advise any changes once the contract has commenced at the earliest opportunity.
27. *Members* will forward full policy documentation without avoidable delay where this is not included with the confirmation of cover.

### **Providing Ongoing Service**

28. *Members* will respond promptly to *Commercial Customers'* queries and correspondence.
29. *Members* will deal promptly with *Commercial Customers'* requests for amendments to cover and provide them with full details of any premium or charges to be paid or returned.
30. *Members* will provide written confirmation when amendments are made.
31. *Members* will remit any return premium and charges due to *Commercial Customers* without avoidable delay.
32. *Members* will notify *Commercial Customers* of the renewal or expiry of their policy in time to allow them to consider and arrange any continuing cover they may need.
33. *Members* will remind *Commercial Customers* at renewal of their duty to disclose all circumstances material to the insurance.
34. On expiry or cancellation of the insurance, at the request of the *Commercial Customer*, *Members* will promptly make available all documentation and information to which the *Commercial Customer* is entitled.

### **Claims**

Where *Members* handle claims:

35. *Members* will, on request, give their *Commercial Customers* reasonable guidance in pursuing a claim under their policy.
36. *Members* will handle claims fairly and promptly and keep their *Commercial Customers* informed of progress.
37. *Members* will inform *Commercial Customers* in writing, with an explanation, if they are unable to deal with any part of a claim.
38. *Members* will forward settlement of a claim, without avoidable delay, once it has been agreed.

### **Documentation**

39. *Members* will reply promptly or use their best endeavours to obtain a prompt reply to all correspondence.
40. *Members* will forward documentation without avoidable delay.
41. *Members* should not withhold from their *Commercial Customers* any written evidence or documentation relating to their contracts of insurance without their consent or adequate and justifiable reasons being disclosed in writing and without delay. If *Members* withhold a document from their *Commercial Customers* by way of a lien for monies due from those *Commercial Customers* they should provide advice of this to those *Commercial Customers* in writing at the time that the documents are withheld. If any documentation is withheld *Members* will ensure that *Commercial Customers* receive full details of the insurance cover and any documents to which they are legally entitled.

### **Conflicts of Interest**

42. *Members* will seek to avoid conflicts of interest, but where this is unavoidable, they will explain the position fully and manage the situation in such a way as to avoid prejudice to any party.
43. *Members* will not put their own interests above their duty to any *Commercial Customer* on whose behalf they act.

### **Confidentiality and Security**

44. *Members* will ensure that any information obtained from a *Commercial Customer* will not be used or disclosed except in the normal course of negotiating, maintaining or renewing insurance for that *Commercial Customer*, unless they have their *Commercial Customer's* consent, or disclosure is made to enable *GISC* to fulfil its regulatory function, or where the *Member* is legally obliged to disclose the information.
45. *Members* will take appropriate steps to ensure the security of any money, documents, other property or information handled or held on behalf of *Commercial Customers*.

## Complaints

46. *Members* will provide details of their complaints procedures to *Commercial Customers*, and details, if appropriate, of any dispute resolution facility which is available to them.
47. *Members* will handle complaints fairly and promptly.

## Commercial Code

48. *Members* will provide, on request, a copy of this *Commercial Code* to *Commercial Customers* or anyone acting on their behalf.
49. The *Commercial Code* forms part of the *Membership Contract* between *Members* and *GISC* which is governed by English law. Nothing in the *Commercial Code* or in the *Membership Contract* between *Members* and *GISC* will give any person any right to enforce any term of the *Membership Contract* between *Members* and *GISC* (including the *Commercial Code*) which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999

## SECTION E - Code Practice Requirement

### Practice Requirement E1 - E-Commerce

1. This Practice Requirement describes requirements and guidance for *Members* who wish to provide *General Insurance Activity*-related information or services to their *Private Customers* and potential *Private Customers* or engage in *General Insurance Activities* with *Private Customers* over the internet or any similar medium, for example, WAP or digital television. Where this Practice Requirement requires information to be provided or displayed, that information shall be provided or displayed in a manner which is easily accessible and readable and is not concealed in the design of the website or by the use of links.

### ALL WEBSITES

#### Home Page Elements

2. The *Home Page* or the first *General Insurance Product or Service Specific Page* must contain the registered name of the *Member*, the *Member's* status and, in the case of an *Intermediary*, an indication of the number of *Insurers' General Insurance Products* it is able to offer and details of the *Member's* normal trading address, and contact details (including phone, fax and e-mail).
3. From the *Home Page* or the first *General Insurance Product or Service Specific Page* there must be access to:
  - 3.1 the *GISC* logo (including ALT tag text), or a statement that the site owner is a *Member*. A hyperlink to the *GISC* site must be provided unless the technical environment does not allow for such a link, in which case the site should include a statement that the *Member* is a *GISC Member* and an explanation of where more information about *GISC* may be obtained;
  - 3.2 information on the services which are offered by the *Member* and whether those services are offered on-line and/or by other means; and
  - 3.3 information on contacting the *Member* with any queries.
4. Acceptable forms of access to the above information include placing it on the *Home Page* or the first *General Insurance Product or Service Specific Page*, or providing a link to a subsequent page which contains that information (providing the link is clear in its purpose).

#### Other Page Elements

5. All pages within the website must include access to the *Home Page*.

### INTERACTIVE WEBSITES

6. These requirements apply to all *Interactive Websites* operated by *Members*.

#### On-Line Quotations or Sales

7. *Private Customers* and prospective *Private Customers* must be provided with the following information, either by e-mail or on a website page:
  - 7.1 the name of the *Insurer*;

- 7.2 a summary of the cover provided by the policy offered, including the main provisions, any significant or unusual restrictions or exclusions;
  - 7.3 any significant conditions or obligations the *Private Customer* must meet;
  - 7.4 a clear statement of how to take up any quotation, how long it will remain available for acceptance and when the cover will be effective;
  - 7.5 a clear statement on when the cover will end and how to cancel the policy;
  - 7.6 a clear statement on the total amount the *Private Customer* will be expected to pay for each *General Insurance Product* or *General Insurance Activity*-related service including any fees or charges which must be separately identified. This must include any possible future fees and charges;
  - 7.7 a clear statement of the *Private Customer's* duty to disclose information and the consequences of not disclosing material facts; and
  - 7.8 a clear statement of when a contract is formed, the governing law and which court shall have jurisdiction in the event of a dispute.
8. In addition to the above, *Members* must provide any other information required by the *Private Customer Code* to be given to *Private Customers* before they make a final commitment to buy their insurance and provide access to the full policy wording.
  9. Websites which include forms must set out carefully structured questions to obtain all necessary information and ensure that the extent of cover required by the *Private Customer* is ascertained. Websites should be designed wherever possible to ensure *Private Customers* answer every question on a form. Where form responses are pre-entered, *Private Customers* must not be allowed to proceed until they have checked a confirmation box and made a positive statement confirming the accuracy of the responses given on the form.
  10. *Private Customers* should be obliged specifically to confirm that they have read the summary of cover and must have the opportunity to read the full policy wording before accepting cover.

#### **On-Line Policy Access**

11. *Private Customers* and prospective *Private Customers* must have access to a full policy wording, representing the terms of their contract before purchase is completed. *Private Customers* must be encouraged to print or copy policy information for their own records at the time of purchase. Where printing by the *Private Customer* is not practical, *Members* must provide policy information by other means.
12. Policy information specific to individual purchases must remain available to the *Private Customer*, on-line, or by alternative means for the life of the policy. This includes changes to policy documentation.
13. Versions of the policy documentation should be dated or otherwise identified to ensure the correct version incorporated into the contract of insurance is being applied in each case.

#### **Geographic and Demographic Jurisdiction**

14. *Members* must consider carefully, both the geographic and demographic profile of their *General Insurance Products* and *General Insurance Activity*-related services. *Members* must state clearly if their *General Insurance Products* or *General Insurance Activity*-related services are not available to *Private Customers* from certain countries (eg. countries in which the *Member* is not licensed to operate). *Members* must use disclaimers setting out the audience and territory for which the website is intended and validation procedures to bar users in other countries from sending a website proposal form or obtaining a quotation.

#### **Private Customer Data Protection and Security**

15. *Members* must maintain all data relating to *Private Customers* in a secure environment. Access to the data, including any website-based forms, which may be used to capture data from users, should only be available through secure protocols.
16. When *Private Customers* create or amend passwords they must be informed of the consequences of disclosure of their personal data to third parties, including any potential liabilities for which they will then be responsible.
17. Procedures must be put in place to prevent possible fraudulent misuse of insurance certificates, where the website allows for on-line certificates to be issued. Such precautions might include a unique certificate number and a system of validation to prevent backdating of cover.

#### **Disclosure of Alternative Channel Restrictions**

18. *Private Customers* must be informed if a *General Insurance Product* or *General Insurance Activity*-related service is "internet only" and if subsequent services (including claims) will be handled via the internet, before they commit themselves to purchasing the *General Insurance Product* or *General Insurance Activity*-related service. *Private Customers* must be advised if there will be any other restrictions or conditions that may apply if they choose to use alternative channels of communication (such as additional fees or different rates being applied).

#### **Claims**

19. If *Members* wish to use *Interactive Websites* in connection with claims they must take into account the need to acknowledge receipt of data or provide confirmation that information has been received and is, where appropriate, being acted upon.
20. The website must make clear the form and method of any documentary evidence required when claims are made (such as original documents in hard copy).

#### **Writing**

21. Both e-mail and a website are acceptable forms of writing for the purposes of the requirements of the *Private Customer Code* when dealing with *Private Customers*.
22. However, where a *Private Customer* needs to be actively informed of an event such as a renewal or change of policy wording, website-based notification is not acceptable and the *Private Customer* should be contacted by other methods, such as e-mail.
23. *Members* should provide an indication on their website as to when the *Private Customer* or potential *Private Customer* is likely to receive a response to an e-mail enquiry and who to contact in the event of any problems.

#### **GUIDANCE**

This section provides guidance to *Members* wishing to offer *General Insurance Activity*-related information or services to *Private Customers* or potential *Private Customers* or engage in *General Insurance Activities* with *Private Customers* over the internet or any similar medium, for example, WAP or digital television.

This Practice Requirement does not apply to websites which simply link *Private Customers* or potential *Private Customers* to providers of insurance or *General Insurance Activity*-related services where the website does not take any responsibility for ongoing servicing of any *General Insurance Product*. Examples might include portals, search engines, shopbots and netmarkets/online auctions.

#### **Policy Suitability**

*Members* should consider the suitability of their *General Insurance Products* and *General Insurance Activity*-related services for on-line trading. Factors to consider include:

1. the detail of the policy synopsis;
2. the clarity of the policy wording;
3. the technology through which *Private Customers* will access the website; and
4. the complexity of the *General Insurance Product*.

#### **Website Design**

Care should be taken when trading on-line as a website does not have the same level of interactive exchange of information with potential *Private Customers* as other means of communication.

Where possible, technical means should be put in place to prevent information given on a website from being stored in a browser's cache.

#### **Responsibility for Service Providers**

*Members* are reminded that they have ultimate responsibility for ensuring their website conforms with the *Private Customer Code*. *Members* are responsible for ensuring that the websites of their *Appointed Agents* and *Appointed Sub-Agents* conform with the *Private Customer Code*.

#### **Responsibility for E-mail**

*Members* should ensure that when sending unsolicited communications to *Private Customers*, the communication should identify the *Member* as being the sender as soon as it is received (on the headline of the e-mail itself) and ensure that

unsolicited e-mails are not sent to *Private Customers* or potential *Private Customers* who have indicated their objection to this. *Members* are also reminded that mass e-mailings to *Private Customers* or potential *Private Customers* should be done in a way that does not identify individual *Private Customers* or potential *Private Customers* to each other (such as using the "Blind Copy To" option).

### **Linking to Other Sites**

*Members* are reminded that when linking to websites operated by other parties, care should be taken to ensure such links are current and to protect the copyright of the owners of that website. For example, the use of logos or opening the link in a frame within the *Member's* website should be discussed with the owners of the target website. Where appropriate, *Members* should consider the use of disclaimers or risk warnings in these circumstances.

### **Other Responsibilities**

*Members* are reminded of their obligations generally under the *Private Customer Code* especially in relation to the provision of information to *Private Customers*. *Members* must also comply with their legal obligations for example, under the Consumer Credit Act and the Rehabilitation of Offenders Act. *Members* must also comply with other contractual or regulatory frameworks. These may, for example, include direct debit providers, credit card providers, the Data Protection Commissioner, the Advertising Standards Authority and the Statement of Insurance Practice.

*Members* should obtain appropriate legal advice before establishing a website and as necessary thereafter.

### **Monitoring**

A *Member's* website may be monitored by *GISC* and may fall within the scope of any compliance visit

## **Section F - Membership**

### **Application Procedure**

1. Any person or organisation who engages in *General Insurance Activities* from a permanent place of business in the *United Kingdom* shall be eligible to apply for *Membership*.
2. An *Applicant* for *Membership* shall apply using the application form obtainable from *GISC* which must be fully completed, signed by or on behalf of the *Applicant*, and returned accompanied by a cheque for the correct *Membership Fee* calculated in accordance with *GISC's* published fee structure and any application fee applying at the date of application.
3. An *Applicant* for *Membership* may at any stage of the application process provide any documents, written information or submissions in addition to that required to be provided with the application form which it considers relevant to its application.

### **Membership Committee**

4. The *Board* shall appoint a *Membership Committee* to consider and determine all applications for *Membership*.
5. The *Membership Committee* may:
  - 5.1 require an *Applicant* or a specified representative to attend before it to answer questions and explain any matter it considers relevant to its application; and/or
  - 5.2 require an *Applicant* to provide further information or documentation which the *Membership Committee* considers relevant to its application.
6. The *Membership Committee* may require an *Applicant* to satisfy it that the *Applicant* has and will continue to have the necessary ability, resources, integrity and commitment to comply with the *Rules*. The *Membership Committee* may have regard to matters whether arising in the *United Kingdom* or elsewhere which it considers to be relevant to the *Applicant* or its *Controllers* including, but not limited to, those matters which are required to be disclosed on the application form. The *Membership Committee* may:
  - 6.1 admit the *Applicant*;
  - 6.2 admit the *Applicant* subject to condition(s);
  - 6.3 refuse the *Applicant's* application for *Membership*; or
  - 6.4 defer consideration of the application for *Membership* until further information has been obtained by *GISC* or

provided by the *Applicant*.

7. The *Membership Committee* shall have regard to the range and nature of the *General Insurance Activities* in which *Applicants* propose to engage. The *Membership Committee* shall take account of the diversity of businesses engaging in *General Insurance Activities* and may apply different standards depending on the nature and range of *Applicants' General Insurance Activities*.
8. *Membership* shall commence from the date of the *Membership Certificate* issued by *GISC*.

### **Membership Appeals**

9. If the *Membership Committee* decides to refuse an application for *Membership* or grants it subject to condition(s), the *Applicant* shall be notified in writing of the reasons for the *Membership Committee's* decision.
10. In such cases, the *Applicant* shall also be informed that it may serve a notice of appeal on *GISC* within 10 *Business Days* of the date of the decision of the *Membership Committee*. If no such notice is served, the decision of the *Membership Committee* shall be final.
11. Where an *Applicant* serves a notice of appeal on *GISC*, a *Membership Appeal Tribunal* shall be appointed in accordance with the procedures contained in paragraphs 12, 14 and 16 of Appendix 1 for the appointment of a *Disciplinary Appeal Tribunal*.
12. The following *Rules* shall apply to membership appeals:
  - 12.1 *Rule I 44* relating to privacy;
  - 12.2 *Rule I 45* relating to procedures;
  - 12.3 *Rule I 46* relating to the decision of the *Membership Appeal Tribunal*; and
  - 12.4 *Rule I 33* relating to costs.

### **Membership Obligations**

13. The rights and obligations of *Members* and *GISC* are set out in the *Rules*.
14. *Members* agree to:

### **Compliance**

- 14.1 observe and comply in the course of their *General Insurance Activities* with the *Rules* as amended from time to time, any relevant regulations and codes of practice adopted by *GISC*, any relevant laws and any condition or requirement of their *Membership*;
- 14.2 observe high standards of integrity and fair dealing and act with due skill, care and diligence in the course of their *General Insurance Activities*;
- 14.3 perform their obligations in such a way, when dealing with other *Members*, *Appointed Agents* or *Appointed Sub-Agents*, that those *Members*, *Appointed Agents* or *Appointed Sub-Agents* are reasonably able to comply with their obligations under the *Codes* and under this *Rule F 14.3*. This *Rule* imposes minimum obligations which will apply irrespective of any agreement under *Rule F 29*;

Note: The effect of this *Rule* is that if X deals with Y, who deals with Z, who deals with the *Customer*, the way in which X deals with Y (eg. in providing confirmation of cover or policy documentation) should not prevent Z from meeting its *Code* obligations.

This Note does not form part of the *Rules*.

- 14.4 appoint a *Primary Contact* to deal with *GISC* and deal with *GISC* in an open and co-operative manner;
- 14.5 submit to *GISC's* Monitoring, Investigation, Enforcement and Intervention powers set out in the *Rules*;
- 14.6 have and maintain adequate internal controls and procedures to ensure compliance with the *Rules*;
- 14.7 organise their internal affairs in a prudent manner, taking into account the size, nature and complexity of their business, including maintaining proper records (including appropriate records in respect of *Rule* breaches) and systems;

14.8 maintain the good name and reputation of *GISC*;

#### **Financial**

14.9 pay *Membership Fees* and any other amounts due to *GISC* in accordance with the *Rules* by the due date;

14.10 maintain adequate financial resources to meet their commitments;

14.11 comply with the *Financial Requirements* (if applicable);

14.12 deal prudently with assets held on behalf of others in connection with their *General Insurance Activities*;

#### **Employees**

14.13 maintain adequate systems and checks to ensure that their *Employees* are adequately trained and properly supervised for the range of *General Insurance Activities* they undertake;

14.14 ensure that their *Employees* possess the necessary knowledge, understanding and skills relevant to their *General Insurance Activities*;

14.15 ensure they have systems in place to monitor the quality of the *General Insurance Activities* of their *Employees*;

14.16 ensure that their *Employees* are aware of and comply with the relevant requirements of the *Rules*;

#### **Advertising/Communication**

14.17 observe the requirements of the British Codes of Advertising and Sales Promotion, the Independent Television Code of Advertising Standards and Practice, the Radio Authority Advertising and Sponsorship Code and other relevant advertising codes of practice of similar standing adopted by *GISC*;

14.18 state with reasonable prominence that they are *Members* of *GISC* or display the *GISC* logo (in accordance with *GISC*'s instructions for the use of the *GISC* logo and name) in all advertising and communications with *Customers* and potential *Customers* in connection with *General Insurance Activities* and only use the *GISC* logo in accordance with instructions issued by *GISC* (where a *Member* is a *Member* only in respect of a specified category of its *General Insurance Activities*, it may only state that it is a *Member* in advertising and communications with *Customers* and potential *Customers* and use the *GISC* logo in connection with that specified category of its *General Insurance Activities*). *Members* must also ensure that, unless they fall within *Rule F 23*, their *Appointed Agents* and *Appointed Sub-Agents* disclose their *Appointed Agent* or *Appointed Sub-Agent* status in all such advertisements and communications, including identifying the *Member*;

14.19 only use the words "Insurance Broker" in their trading names if they are *Independent Intermediaries* (*Members* wishing to use these words prior to the repeal of the Insurance Brokers Registration Act 1977 must be registered with the Insurance Brokers Registration Council);

#### **Information**

14.20 treat all confidential information supplied by *Customers* and potential *Customers* as confidential to themselves, except where disclosure is required in the normal course of engaging in *General Insurance Activities*, in compliance with a request from *GISC* or where otherwise required by law or another regulator;

14.21 disclose or supply to *GISC* any information, report or record it may request to enable it to fulfil its regulatory functions; and

#### **Dispute Resolution**

14.22 maintain membership of an *Approved Dispute Resolution Facility*.

### ***Appointed Agents, Appointed Sub-Agents, Introducers and Outsourcing***

#### ***Appointed Agents and Appointed Sub-Agents***

15. A *Member* may enter into an *Appointed Agent Agreement* with a non-*Member*. A *Member* may permit its *Appointed Agents* to enter into *Appointed Sub-Agent Agreements* under the terms of which the *Appointed Sub-Agent* may engage in *General Insurance Activities* as an *Appointed Sub-Agent* of the *Member*. A non-*Member* cannot be the *Appointed Agent* or *Appointed Sub-Agent* of more than one *Member* for any one *Product Type*.

16. *Members* shall be responsible for the *General Insurance Activities* engaged in by their *Appointed Agents* and *Appointed Sub-Agents* on their behalf and it shall be the *Members*' responsibility to ensure that their *Appointed Agents* and *Appointed Sub-Agents* comply with the *Rules* when acting as such.

17. An *Appointed Agent Agreement* shall contain terms:
  - 17.1 clearly defining the respective roles of the *Member* and the *Appointed Agent* and their responsibilities regarding compliance with the *Rules*;
  - 17.2 requiring the *Appointed Agent* to disclose to *Customers* that it is acting as *Appointed Agent* of a *Member* and the identity of the *Member* and prohibiting the *Appointed Agent* from holding itself out as being a *Member*;
  - 17.3 requiring the *Member* to accept responsibility for complaints made by *Customers* in connection with the *Appointed Agent's* activities in pursuance of the *Appointed Agent Agreement*;
  - 17.4 requiring the *Appointed Agent* to allow the *Member* and *GISC* access to the *Appointed Agent's* premises, records, documents, files, audio tapes and other material or information as the *Member* or *GISC* may request to monitor or investigate the *Appointed Agent's* compliance with the *Rules*; and
  - 17.5 specifying that the *Appointed Agent* may not enter into an *Appointed Sub-Agent Agreement* without the prior written consent of the *Member*.
18. An *Appointed Sub-Agent Agreement* shall contain terms:
  - 18.1 clearly defining the respective roles of the *Appointed Agent* and *Appointed Sub-Agent* and their responsibilities regarding compliance with the *Rules*;
  - 18.2 requiring the *Appointed Sub-Agent* to disclose to *Customers* that it is acting as *Appointed Sub-Agent* of a *Member* and the identity of the *Member* and prohibiting the *Appointed Sub-Agent* from holding itself out as being a *Member*;
  - 18.3 requiring the *Appointed Agent* to accept responsibility for complaints made by *Customers* in connection with the *Appointed Sub-Agent's* activities in pursuance of the *Appointed Sub-Agent Agreement*;
  - 18.4 requiring the *Appointed Sub-Agent* to allow the *Appointed Agent*, the *Member* and *GISC* access to the *Appointed Sub-Agent's* premises, records, documents, files, audio tapes and other material or information as the *Appointed Agent*, the *Member* or *GISC* may request to monitor or investigate the *Sub-Agent's* compliance with the *Rules*; and
  - 18.5 specifying that the *Appointed Sub-Agent* may not enter into a further *Appointed Sub-Agent Agreement* without the prior written consent of the *Member*.
19. *Members* shall have and maintain appropriate controls and procedures to ensure that their *Appointed Agents* and *Appointed Sub-Agents* comply with the *Rules*, including:
  - 19.1 maintaining records of the identity of their *Appointed Agents* and *Appointed Sub-Agents* and their activities;
  - 19.2 ensuring there are clearly defined reporting structures between *Members* and their *Appointed Agents* and *Appointed Sub-Agents*;
  - 19.3 controls over their *Appointed Agents'* and *Appointed Sub-Agents'* procedures to ensure that their *Appointed Agents* and *Appointed Sub-Agents* comply with the *Rules*;
  - 19.4 procedures for monitoring *Appointed Agents'* and *Appointed Sub-Agents'* compliance with the *Rules*;
  - 19.5 procedures for reviewing, suspending and terminating *Appointed Agent Agreements* and *Appointed Sub-Agent Agreements* if their *Appointed Agents* or *Appointed Sub-Agents* fail to comply with the requirements of the *Rules* and/or their obligations under their respective *Appointed Agent Agreements* and *Appointed Sub-Agent Agreements* and an ability to take over responsibility for the provision of ongoing services to a *Member's* existing *Customers*; and
  - 19.6 procedures to ensure that their *Appointed Agents* and *Appointed Sub-Agents* do not appoint *Appointed Sub-Agents* without the *Member's* prior written approval of the *Appointed Sub-Agent* and the terms of the *Appointed Sub-Agent Agreement*.
20. Prior to entering into an *Appointed Agent Agreement* (or permitting an *Appointed Agent* to appoint an *Appointed Sub-Agent*) and at appropriate times during the currency of the *Appointed Agent Agreement* or *Appointed Sub-Agent Agreement*, *Members* shall carry out adequate investigation in order to satisfy themselves that a prospective *Appointed Agent*, *Appointed Agent*, prospective *Appointed Sub-Agent* or *Appointed Sub-Agent* has the necessary ability, resources, integrity and commitment to ensure that they comply with the *Rules* when acting as their *Appointed Agent* or *Appointed Sub-Agent*.

21. Where an *Appointed Agent Agreement* or an *Appointed Sub-Agent Agreement* is terminated, the *Member* responsible for that *Appointed Agent's* or *Appointed Sub-Agent's General Insurance Activities* shall ensure that any *General Insurance Activities* which are outstanding are properly completed.
22. *Appointed Agents* and *Appointed Sub-Agents* may engage in *General Insurance Activities* in relation to more than one *Product Type* but a *Member* (and only one *Member*) must accept responsibility to *GISC* for all advising, selling, broking and arranging *General Insurance Activities* carried on by its *Appointed Agent* or *Appointed Sub-Agent* in relation to all *General Insurance Products* within any particular *Product Type*.
23. The restrictions in *Rule F 22* shall not apply in respect of *Appointed Agents* and *Appointed Sub-Agents*:
  - 23.1 who, to each *Customer*, are able to offer the *General Insurance Products* of one *Member* only; and
  - 23.2 who perform all *General Insurance Activities* in the name of the relevant *Member* so the *Customer* is likely to consider he is dealing with the *Member*.

Note: This exemption is designed primarily to enable call centres, who answer the telephone in the name of the *Member*, to perform *General Insurance Activities* on behalf of more than one *Member* even if those *General Insurance Activities* relate to *General Insurance Products* of the same *Product Type*.

#### **Introducers**

25. A *Member*, an *Appointed Agent* or an *Appointed Sub-Agent* may appoint an *Introducer*. Prior to appointing an *Introducer* and at appropriate times during the currency of the introduction agreement, the *Member* shall carry out adequate investigation in order to satisfy itself that a prospective *Introducer* or *Introducer* is able to carry out its functions as an *Introducer*. *Members* must ensure they have procedures in place for supervising the activities of their *Introducers* and those of their *Appointed Agents* and *Appointed Sub-Agents* and ensuring that those *Introducers* carry out no activities other than those permitted to be undertaken by an *Introducer* and that their *Introducers* do not hold themselves out as being an *Appointed Agent*, *Appointed Sub-Agent* or *Member*. *Members* must have procedures in place for terminating the appointment of an *Introducer* if it carries out *General Insurance Activities* other than those which an *Introducer* is permitted to carry out.

#### **Outsourcing**

26. *Members* shall act prudently when appointing and continuing to use the services of an outsourcing provider. *Members* shall remain responsible for compliance with the *Rules* notwithstanding any outsourcing arrangements they may enter into.

Note: the *Member's* responsibility extends to all areas of the *Rules*, including ensuring that adequate records are maintained in relation to the *General Insurance Activities* and that *GISC* is able properly to monitor the *General Insurance Activities*.

#### **Members' Responsibilities**

27. Anything said, done or omitted by an *Employee*, *Appointed Agent*, *Appointed Sub-Agent* or *Introducer* of a *Member* shall be regarded by *GISC* as having been said, done or omitted by the *Member*.
28. *Members* shall accept responsibility for dealing with complaints relating to the activities of their *Appointed Agents* and *Appointed Sub-Agents* as if they were complaints relating to their own activities. *Members* shall be liable to disciplinary action by *GISC* in respect of *Misconduct* committed by their *Appointed Agents* and *Appointed Sub-Agents*. Where compensation is due to a *Private Customer* under *Rule I 30* or *I 48* in connection with the activities of an *Appointed Agent* or *Appointed Sub-Agent*, the *Member* shall be liable to the *Private Customer* for the amount of that compensation.
29. Where, in the course of *General Insurance Activities*, *Members* deal with other *Members*, they shall agree in advance formal trading agreements clearly defining the parties' respective responsibilities, including their respective responsibilities for compliance with all requirements of the *Codes*, in their dealings with *Customers*, unless to do so would be contrary to accepted market practice.

#### **Notification Requirements**

30. *Members* shall notify *GISC* in writing as soon as reasonably practicable and in any event within 5 *Business Days* of becoming aware of any of the following:
  - 30.1 any material change in the information provided in the application form or any occurrence which, had it happened prior to the *Member's* application for *Membership*, the *Member* would have been required to disclose on the application form;
  - 30.2 the grant, withdrawal or refusal of an application for, or revocation of, membership of any financial services

regulatory authority or any statutory or professional body exercising a regulatory function whether in the *United Kingdom* or overseas;

- 30.3 the appointment of inspectors under companies legislation or by a statutory or other regulatory authority to investigate the affairs of the *Member*;
- 30.4 any failure by the *Member* to comply with the *Rules* or any circumstances which make it likely that the *Member* will fail to comply with the *Rules* in the foreseeable future which would be material to *GISC*'s supervision of the *Member*;
- 30.5 the *Member* or its *Appointed Agent(s)* or *Appointed Sub-Agent(s)* becoming insolvent or going into liquidation or an administrator, receiver, administrative receiver or manager being appointed over it or any part of its assets or any similar event occurring in respect of the *Member* in another jurisdiction; or
- 30.6 any other matter which would be material to *GISC*'s supervision of the *Member*.

### **Overseas Regulation**

- 31. Where a *Member's* head office is not situated in the *United Kingdom* and the *Member* satisfies the *Membership Committee* that it is subject to requirements in its home state which are at least the equivalent of those contained in the following *Rules*, the *Membership Committee* may disapply those *Rules* or the relevant parts of them in respect of that *Member*:
  - 31.1 Practice Requirement G1 *Financial Requirements*
  - 31.2 Practice Requirements G3 *Competence and Training*

### **Cessation of Membership**

- 32. *Membership* may be terminated by *GISC* where a *Member*:
  - 32.1 fails to comply with a *Demand Notice*; or
  - 32.2 is found, in the course of disciplinary proceedings, to have committed an act or acts of *Misconduct*.
- 33. Where a *Member* wishes to resign from *Membership*, it should notify *GISC* in writing at least 20 *Business Days* prior to its proposed resignation date.
- 34. Where a *Member* decides to resign from *Membership* it must ensure that any *General Insurance Activities* which are outstanding are properly completed or responsibility for compliance with the *Rules* in respect of the resigning *Member's Customers* is accepted by another *Member* prior to resignation. The *Membership Committee* may, in its absolute discretion, refuse to accept the resignation of a *Member* if it considers that:
  - 34.1 any matter affecting the *Member* should be investigated as a preliminary to deciding whether the *Member* should be expelled or otherwise disciplined; or
  - 34.2 any measures are necessary for the protection of the *Member's Customers* at the time of its resignation.
- 35. The *Membership Fee* is payable for 12 months' *Membership* and no refund will normally be made where *Membership* is terminated part way through the *Membership* year. The *Board* will, however, consider requests for mid-term cancellation and refund in exceptional circumstances.
- 36. On termination or resignation of *Membership*, former *Members* shall cease to hold themselves out as being *Members* of *GISC* and shall not use the *GISC* logo.
- 37. Former *Members* shall for the period of 2 years from the date of termination or resignation of *Membership* remain liable to *GISC's* authority and jurisdiction in respect of any activity occurring during their period of *Membership* including the conduct of investigations under Section H of the *Rules* in respect of acts and omissions before the date of termination or resignation of *Membership* and any enforcement steps or proceedings in respect of such acts and omissions whether commenced prior to the date of termination or resignation or within the subsequent 2 years. Where disciplinary proceedings are commenced within 2 years of termination or resignation of *Membership*, former *Members* shall remain subject to *GISC's* authority and jurisdiction until the conclusion of those proceedings.
- 38. The provisions of *Rules* F 36 and F 37 shall continue to apply after termination or resignation of *Membership*.

### **Acceptance of Non-UK Applicants**

- 39. The *Membership Committee* may consider applications for *Membership* from *Non-UK Applicants* who engage in

*General Insurance Activities with Customers resident within the United Kingdom.*

40. The *Membership Committee* may admit such *Non-UK Applicants* to *Membership* and may impose such terms and conditions on *Membership* as it considers appropriate.
41. The *Membership Committee* may disapply any *Rule(s)* in respect of a *Non-UK Member* if in its opinion its application to the particular *Non-UK Member* in question is not necessary for the protection of *Customers*.

## **SECTION G - Membership Practice Requirements**

### **Practice Requirement G1 - Financial Requirements**

#### **PRACTICE REQUIREMENT**

The following *Financial Requirements* apply to all *Intermediaries*, except where indicated. They also apply to *Appointed Agents* and *Appointed Sub-Agents* of *Members* (with the exception of *Financial Requirements* G1 19 to 22) as if references to an *Intermediary* or a *Member* were references to the *Appointed Agent* or *Appointed Sub-Agent*. *Appointed Agents* and *Appointed Sub-Agents* shall not be obliged to operate an *Insurance Bank Account* (IBA) in their own name. They may instead pay *Insurance Monies* into an IBA operated by the *Member* who accepts responsibility to *GISC* for their *General Insurance Activities* or by any other *Appointed Agent* or *Appointed Sub-Agent* of that *Member* through which the relevant *Appointed Agent* or *Appointed Sub-Agent* is appointed.

A summary of the exclusions from the *Financial Requirements* is contained in Appendix 5.

#### **Insurance Money Segregation**

1. *Intermediaries* shall:
  - 1.1 treat all monies (premium and claims) received from, or on behalf of a *Customer* as *Insurance Monies*;
  - 1.2 maintain one or more separate *Insurance Bank Accounts* with an *Approved Bank* and containing in its title the name of the *Member*, together with the designation *Insurance Bank Account (or IBA)*;
  - 1.3 prior to operating the *Insurance Bank Account*, give written notice to, and receive written confirmation from, the *Approved Bank* that the *Approved Bank* is not entitled to combine the *Insurance Bank Account* with any other account unless that account is itself an *Insurance Bank Account* held by the *Member*, or to any charge, encumbrance, lien, right of set-off, compensation or retention against monies standing to the credit of the *Insurance Bank Account*;
  - 1.4 without delay pay directly all *Insurance Monies* into an *Insurance Bank Account*;
  - 1.5 only use an *Insurance Bank Account* for the following purposes:
    - 1.5.1 the receipt of *Insurance Monies*;
    - 1.5.2 the receipt of such monies as may be required to be paid into the *Insurance Bank Account* to ensure compliance by the *Member* with any conditions or requirements prescribed by *GISC*;
    - 1.5.3 the payment to *Customers* or to *Insurers* of monies due under *General Insurance Activity* transactions;
    - 1.5.4 the payment of all monies payable by the *Member* in respect of the acquisition of or otherwise in connection with *Approved Assets*;
    - 1.5.5 the withdrawal of brokerage and other *General Insurance Activity*-related income either in cash or by way of transfer to an account in the name of the *Intermediary* which is not an *Insurance Bank Account* (but so that no amount received by an *Intermediary* by way of *Net Retained Brokerage* and other *General Insurance Activity*-related income may be withdrawn from the *Insurance Bank Account* before the time at which, in accordance with the accounting policies adopted by the *Intermediary*, that amount may be brought into account as income of the *Intermediary*);
    - 1.5.6 the withdrawal of monies paid into the *Insurance Bank Account* in error; and
    - 1.5.7 the withdrawal of any monies credited to the *Insurance Bank Account* in excess of those required by any conditions and requirements prescribed by *GISC*;

- 1.6 ensure that any amount held in the *Insurance Bank Account* or other *Approved Assets*, together with any amount due and recoverable from insurance debtors, is equal to, or greater than the amount due to insurance creditors; and
- 1.7 take immediate steps to restore the required position if at any time they become aware of any deficiency in the required segregated amount.
2. *Intermediaries* may not obtain a loan or overdraft for any purpose relating to an *Insurance Bank Account* unless that advance is:
  - 2.1 on a bank account which is designated as an *Insurance Bank Account*, and the loan or overdraft is used for payment to *Customers* or to *Insurers* of monies due under *General Insurance Activity* transactions;
  - 2.2 does not give rise to a breach of the requirements of paragraph 1.6 above; and
  - 2.3 is of a temporary nature and is repaid as soon as reasonably practicable.

### **Holding and Investing Insurance Monies**

3. *Intermediaries* shall hold *Insurance Monies* in an *Insurance Bank Account*, with one or more *Approved Banks*, or in *Approved Assets*.
4. *Approved Assets* must be:
  - 4.1 registered in the name of the *Intermediary* and designated "*Insurance Bank Account*"; or
  - 4.2 held for the *Insurance Bank Account* of the *Intermediary* at the *Approved Bank* at which such *Insurance Bank Account* is held.
5. *Insurance Monies*, other than interest, arising from *Approved Assets* or their realisation, sale or disposal must be paid into an *Insurance Bank Account*.
6. *Insurance Monies* may not be held in *Approved Assets* until the *Intermediary* has given written notice to and received written notice from the *Approved Bank* that the *Approved Bank* is not entitled to any charge, encumbrance, lien, right of set-off, compensation or retention against *Approved Assets* held for the *Intermediary's Insurance Bank Account*.
7. *Approved Assets* may only be used as security for any loan or overdraft where that loan or overdraft is for a purpose relating to an *Insurance Bank Account* as permitted by this Practice Requirement.
8. *Intermediaries* may only invest *Insurance Monies* in one or more *Approved Investments* provided:
  - 8.1 either the *Intermediary*, or the *Intermediary* in conjunction with other *Intermediaries* who are also part of the same *Group of Companies*, has an average annual *Net Retained Brokerage* of £1m or more over the previous three complete calendar years, or from the commencement of the *Member's General Insurance Activities* if this is a shorter period, provided that period is at least 12 months; and
  - 8.2 the *Intermediary* complies with the general investment principles as set out below.

### **General Investment Principles**

9. *Intermediaries* shall in relation to the holding of *Approved Assets* make appropriate investment arrangements commensurate with the size of their operations and the scale and type of investments held. *Intermediaries* must also maintain a suitable level of liquidity to ensure that their financial obligations relating to *Insurance Monies* can be met at all times.
10. *Intermediaries'* investment arrangements shall include:
  - 10.1 a suitable diversification policy and strategy;
  - 10.2 a suitable liquidity strategy to ensure the timely meeting of financial obligations relating to *Insurance Monies*;
  - 10.3 a suitable credit risk policy and strategy;
  - 10.4 an overall investment policy and strategy which has been approved by the *Intermediary's* board of directors or equivalent body;
  - 10.5 appropriate and prudent custody arrangements;

- 10.6 the prudent management of foreign exchange risks;
  - 10.7 the proper recording, monitoring and control of investments;
  - 10.8 the proper supervision of internal and external investment managers, if any; and
  - 10.9 a review of investment performance at least every 6 months by the *Intermediary's* board of directors or equivalent body.
11. Where *Insurance Monies* are held in *Approved Assets* whose rating drops below the minimum stipulated within the definitions, that investment or asset will cease to be an *Approved Asset* and the *Intermediary* must dispose of the investment or asset as soon as possible and no later than within 20 *Business Days* of the rating change.
  13. The use of derivatives is not permitted except for the prudent management of currency exchange risks.

#### **Customers who cannot be traced/credit write-backs**

14. *Intermediaries* who have credit balances for *Customers* who cannot be traced should not take credit for such amounts except where:
  - 14.1 reasonable steps have been taken by the *Intermediary* to trace the *Customer* and to inform them that they are entitled to the money;
  - 14.2 sufficient time (at least 6 years from the date the credit was initially notified to the *Customer*) has elapsed to make it unlikely that the *Customer* will come forward to claim the money; and
  - 14.3 the amount held in the *Insurance Bank Account* or other *Approved Assets*, together with any amount due and recoverable from insurance debtors, will be equal to, or greater than the amount due to insurance creditors after the withdrawal of monies credited to the *Intermediary* in respect of *Customers* who cannot be traced.
15. *Intermediaries* must keep records of all sums withdrawn from the *Insurance Bank Account* or realised *Approved Assets* as a result of credit write-backs for at least 6 years from the date of withdrawal or realisation.

#### **De Minimis Amounts**

16. It is recognised that for reasons of practicality, there should be some tolerance in taking to credit amounts in the following situations:
  - 16.1 differences relating to an individual receipt which are caused by the *Intermediary's* accounting system in the ordinary course of business (for example raising or lowering a number to a few decimal places); and
  - 16.2 minor calculation or input errors of a clerical nature.
17. A de minimis amount can only be removed from the *Insurance Bank Account* for the benefit of the *Intermediary* if the amount held in the *Insurance Bank Account* or other *Approved Assets* together with any amount due and recoverable from insurance debtors, will be greater than the amount due to insurance creditors after the withdrawal of the de minimis amount.

#### **Disapplication of Segregation Rules**

18. The requirement to segregate *Insurance Monies* will not apply where:
  - 18.1 the *Intermediary* is regulated by a recognised regulatory or professional body approved by *GISC*, whose requirements provide an equivalent level of protection for *Insurance Monies*;
  - 18.2 the *Intermediary* has sought and obtained confirmation from *GISC* that it is satisfied that *General Insurance Activities* are secondary to the main business activity of the *Intermediary*;
  - 18.3 the *Intermediary* is the legal agent of an *Insurer*, under the terms of a written agreement;
  - 18.4 there is a written agreement in place between the *Intermediary* and the *Insurer* to whom the relevant *Insurance Monies* are to be paid (or from whom they have been received) under which the *Insurer* agrees that the *Intermediary* holds all *Insurance Monies* received by it in connection with *General Insurance Products* issued or to be issued by the *Insurer* as agent for the *Insurer* and:
    - insurance cover is maintained for the *Customer* once *Insurance Monies* are received by the *Intermediary*; and

- the *Insurer's* obligation to make a payment to the *Customer* is not discharged until actual receipt of the relevant payment by the *Customer*.

18.5 the *Intermediary's* annual *Net Retained Brokerage* is less than £5,000 and premiums handled are less than £50,000 per annum.

### **Professional Indemnity Insurance**

19. *Intermediaries* must take out and maintain professional indemnity cover with an *Approved Insurer* which complies with the following requirements.

19.1 The professional indemnity insurance must indemnify, as a minimum, losses arising in the course of its *General Insurance Activities* and those of its *Appointed Agents* and *Appointed Sub-Agents* from:

- 19.1.1 a breach of duty by reason of any negligent act, error or omission;
- 19.1.2 libel or slander (or, in Scotland, defamation);
- 19.1.3 any loss of money or other property arising out of the dishonest or fraudulent acts or omissions of *Employees* or former *Employees* for which the *Intermediary* is legally liable;
- 19.1.4 legal liability incurred by the *Intermediary*, *Appointed Agent*, or *Appointed Sub-Agent* by reason of loss of documents;
- 19.1.6 any award of compensation imposed by any dispute resolution body to which the *Intermediary* belongs.

Note: In the context of paragraph 19.1.3, the term *Employees* does not extend to any director(s) or former director(s) nor, where appropriate, partner(s) or former partner(s).

19.2 The professional indemnity insurance must not contain any terms to the effect that payment of claims depends on the insured having first made payment to the claimant.

19.3 The professional indemnity insurance must indemnify the *Intermediary* for:

- 19.3.1 all claims made and reported during the period of insurance, regardless of the time at which the event giving rise to the claim may have occurred; and
- 19.3.2 all claims whenever made if the circumstances or occurrences which gave rise to such a claim have been notified in writing to the *Insurer* during the period of insurance or in accordance with any policy terms and conditions.

19.4 The professional indemnity insurance shall not be for more than 12 months from commencement plus odd time not exceeding 18 months in all (unless the policy has a provision to reinstate cover and the minimum limit of indemnity operates throughout the entire period of the policy in which case the policy may operate for a longer period).

19.5 The minimum annual limit of indemnity shall be the greater of £1m or 3 times annual *Net Retained Brokerage*, in respect of the *Intermediary's* *General Insurance Activities*. The minimum annual level of indemnity need not exceed £10m.

19.6 The minimum limit may apply to each claim or in the annual aggregate.

19.7 The uninsured excess in respect of each claim must not exceed 1% of the minimum limit of indemnity up to a maximum of £100,000. The excess may be increased beyond this with the prior written consent of *GISC*, subject to any terms and conditions as *GISC* may require.

19.8 The *Approved Insurer* must agree to provide either directly or through the placing intermediary (provided that the placing intermediary is not the policy holder itself):

- 19.8.1 the policy holder with an annual certificate (containing the name and address, including the post code of the placing intermediary, the policy number, the limit of indemnity, the uninsured excess, the period of cover and the name of the *Approved Insurer(s)*) and confirmation that the professional indemnity insurance meets *GISC's* requirements;

- 19.8.2 *GISC* with a duplicate certificate or confirmation of cover in an agreed format at the same time as the certificate is issued to the policy holder; and
- 19.8.3 *GISC* with confirmation, by means of monthly lists, of any cases of voidance, non-renewal or mid-term cancellation of policies of professional indemnity insurance required to be taken out by *Intermediaries* in accordance with the *Financial Requirements*.
20. Professional indemnity insurance may be taken out for a *Group of Companies* which includes one or more *Intermediaries*, provided that the terms and conditions of the professional indemnity insurance comply with the above requirements for each *Intermediary*.
21. *Intermediaries* shall:
- 21.1 inform *GISC* immediately should their professional indemnity insurance be cancelled or voided, or if it is not renewed;
- 21.2 comply with the professional indemnity insurance policy's conditions concerning the notification and reporting of claims made against it or any circumstances which may give rise to a claim; and
- 21.3 Advise *GISC* as soon as the *Approved Insurer* has intimated that it intends to decline indemnity in respect of a claim under the professional indemnity insurance if this may have a material effect on the *Member's* business or financial position.

#### **Disapplication of Professional Indemnity Rules**

22. The requirements for professional indemnity insurance will not apply where:
- 22.1 the *Intermediary* is regulated by and subject to the professional indemnity insurance requirements of a recognised regulatory or professional body approved by *GISC*;
- 22.2 the *Intermediary* has sought and obtained confirmation from *GISC* that it is satisfied that *General Insurance Activities* are secondary to the main business activity of the *Intermediary*, the insurance is ancillary to the goods and services supplied by the *Intermediary*, and the cover is restricted to the risk of loss of or damage to the goods and/or services; or
- 22.3 the *Intermediary* has demonstrated to *GISC's* satisfaction that it has net tangible assets or a parental guarantee of at least £100m.

#### **Solvency**

23. Solvency requirements apply to those *Intermediaries* who are required to segregate *Insurance Monies* and may apply, at *GISC's* discretion, where the uninsured excess under a professional indemnity insurance policy exceeds the permitted limit.
24. *Intermediaries* who are required to segregate *Insurance Monies* and whose practice is to withdraw *Revenue* on a "Received Basis" <sup>1</sup> must have sufficient assets to meet their liabilities as and when they fall due for settlement.
25. *Intermediaries* who are required to segregate *Insurance Monies* and whose practice is to withdraw *Revenue* on an "Earned Basis" <sup>2</sup> must maintain at all times net assets, as determined by Generally Accepted Accountancy Principles (GAAP), in accordance with the following table:

<b>Revenue and other General Insurance Activity-related income</b>	<b>Percentage of Revenue and other General Insurance Activity-related income required to be represented by net assets</b>
Up to £1m	20%
For the next £4m	10%
For the next £20m	5%
From £25m	0%

#### Footnotes

1. Deducting *Revenue* on a "Received Basis" is the practice of withdrawing *Revenue* due in respect of a particular

sum only after the payment has been received into the *Insurance Bank Account* or is due under a formal credit arrangement (this includes payments due from agents within a formally agreed period not exceeding 30 days).

2. Deducting *Revenue* on an "Earned Basis" is any practice of withdrawing *Revenue* from an *Insurance Bank Account* other than deducting *Revenue* on a "Received Basis".

26. For the purposes of calculating solvency:

26.1 *Revenue* and other *General Insurance Activity*-related income means *Net Retained Brokerage* and other income arising from their *General Insurance Activities* earned for a continuous period of 12 months prior to the *Deemed Date of Calculation*. All calculated amounts will need to be aggregated;

26.2 net assets shall be determined by Generally Accepted Accounting Principals (GAAP) save that subordinated loans may only be used with the prior written approval of *GISC*; and

26.3 the maximum amount of net assets required will be £1.6m.

### **Recoverable Debts**

27. The value of debtors taken into account as assets available to support financial requirements must not exceed the amount which the *Intermediary* actually expects to receive net of any significant costs associated with making the recovery.

28. *Intermediaries* must make adequate provisions for any debt (or part thereof) which is unlikely to be received or recovered from the debtor (for example, as a result of bankruptcy or inability to trace the debtor or pursue the debt).

### **Reporting and Monitoring**

29. Some financial information will be required to be supplied to *GISC* on application for *Membership* and as part of a yearly return to *GISC*.

30. *Intermediaries* whose practice is to segregate *Insurance Monies* and withdraw *Net Retained Brokerage* on an "Earned Basis" will be required to submit financial returns at intervals to be determined by *GISC*.

31. *GISC* may, at its discretion, require any *Intermediary* to provide financial information in a pre-determined format or obtain an independent report from an auditor or member of another professional body at the *Intermediary's* cost and by any advised due date.

32. *Intermediaries* shall retain records in respect of relevant financial information for a minimum of 6 years.

### **GUIDANCE**

**This section provides guidance to *Intermediaries* and does not form part of the *Rules*.**

Practice Requirement G1 contains a number of exceptions which are available to various categories of *Intermediary*. For example *Intermediaries* with de minimis levels of *General Insurance Activities* need only comply with the requirements relating to professional indemnity insurance (if applicable) and supply *GISC* with such financial or other information as it may require from the *Intermediary*.

#### **Segregated Accounts**

*Intermediaries* who are required to segregate *Insurance Monies* will need to maintain one or more separate bank accounts which are designated as *Insurance Bank Accounts*. Before operating an *Insurance Bank Account* the *Intermediary* will need to give written notice to and request written confirmation from an *Approved Bank* in accordance with *GISC's* requirements.

To assist *Intermediaries* in setting up an *Insurance Bank Account*, Appendix 3 contains suggested wordings of letters which may be followed. Letter 1 may be used where an *Intermediary* has an existing bank account and letter 2 where a new account is required. Letter 3 sets out the form of acknowledgement the *Intermediary* should obtain from the *Approved Bank* indicating the *Approved Bank's* understanding and confirmation of the arrangements.

Practice Requirement G1 does not specify when or how often an *Intermediary* must undertake a formal reconciliation of the *Insurance Bank Account*. It is for individual *Intermediaries* to determine a practical basis for ensuring that they comply at all times with the segregation requirements. However, *Intermediaries* will be expected to undertake a formal reconciliation of the *Insurance Bank Account* at least once every month.

## Professional Indemnity Insurance

*Intermediaries* should give due consideration to the security of the *Approved Insurer*.

The uninsured excess may be increased beyond the maximum permitted subject to prior approval by *GISC* who may impose such terms and conditions as *GISC* may require. For example, a solvency margin may be required to be maintained at least equivalent to the excess over 1% of the minimum limit of indemnity.

*Intermediaries* whose main business is not engaging in *General Insurance Activities* and the insurance provided is ancillary to the goods and/or services supplied, are not required to effect professional indemnity insurance where insurance is restricted to the risk of loss of or damage to the goods or services supplied. Examples of such insurance would include extended warranty policies and travel policies restricted to holiday cancellation and GAP (motor) insurance. *Intermediaries* must seek and obtain confirmation from *GISC* that the *Intermediary* may disapply the requirements relating to professional indemnity insurance.

## Solvency Margin

*Intermediaries* who are required to maintain a solvency margin must meet those requirements at all times. The reference in Practice Requirement G1 to "a continuous period of 12 months prior to *Deemed Date of Calculation*" is intended to ensure that the solvency margin is kept in line with the level of *Revenue* and other *General Insurance Activity*-related income earned by the *Intermediary*. The requirements do not specify when or how often an *Intermediary* must calculate its solvency margin. It is for individual *Intermediaries* to determine a practical basis for ensuring that they comply at all times with the solvency margin requirements.

*Intermediaries* whose practice is to withdraw *Revenue* and other *General Insurance Activity*-related income on an "Earned Basis" are required to maintain net assets depending on the level of their *Revenue* and other *General Insurance Activity*-related income. Accordingly, *Intermediaries* should be aware that any substantial increases in *Revenue* and other *General Insurance Activity*-related income may give rise to an increase in the solvency margin which must be maintained. Where *Intermediaries* are likely to be required in the future to demonstrate a larger percentage of *Revenue* and other *General Insurance Activity*-related income by net assets, it may be prudent for *Intermediaries* to hold an amount of net assets surplus to any current requirements to cover the impact of such increases and to ensure that at all times they comply with the solvency requirements.

An example of the calculation of the required solvency margin where it is the *Intermediary's* practice to withdraw *Revenue* and other *General Insurance Activity*-related income on an "Earned Basis" is set out below:

An *Intermediary* has withdrawn *Net Retained Brokerage* on an "Earned Basis" amounting to £4.25m during the calendar year 2000 and has earned interest and sundry *General Insurance Activity*-related income of £250,000 during the same period. The solvency margin required to be held as at 31 December 2000 is:

	£
On the first £1m – 20% =	200,000
On the balance £3.5m – 10% =	350,000
<b>Required Solvency Margin</b>	<b>£550,000</b>

As a result of increased *General Insurance Activities* during the first quarter of calendar year 2001, the *Net Retained Brokerage* for the 12 months to 31 March 2001 is £5.2m and other *General Insurance Activity*-related income is £300,000. The solvency margin required to be held as at 31 March 2001 is:

	£
On the first £1m – 20% =	200,000
On the next £4m – 10% =	400,000
On the balance £0.5m – 5% =	25,000
<b>Required Solvency Margin</b>	<b>£625,000</b>

## Practice Requirement G2 - Complaints Handling

## PRACTICE REQUIREMENT

### Complaints Procedures

1. The following Practice Requirement describes requirements and guidance for *Members* in connection with the handling of *Customers'* complaints. Nothing in this Practice Requirement relieves *Insurers* from their obligations under *Rule 6.8* in the Financial Services Authority's Conduct of Business Sourcebook.
2. *Customers* must be informed at the point of sale of the details of whom they should contact first if they wish to make a complaint and the existence of an *Approved Dispute Resolution Facility* (if one is available for the resolution of complaints by that *Customer*).
3. *Customers* must be provided with written details of the *Member's* complaints handling procedures as soon as cover has been commenced (for example in confirmation of cover letters or policy documentation). In addition, details of these procedures must also be provided to *Customers* on request. Written details must include:
  - 3.1 an explanation of how *Customers* can complain;
  - 3.3 details of any *Approved Dispute Resolution Facility* to which *Customers* may refer should they remain dissatisfied after a complaint has been considered by the *Member's* internal complaints procedures.
4. *Members* must enable *Customers* to complain at any time during the insurance process and accept complaints orally or in writing.
5. All complaints must be acknowledged within 5 *Business Days* of receipt and the *Customer* should be advised of the person who will be dealing with the complaint and when the *Customer* can expect to receive a response.
6. If a *Member* receives a complaint, which does not relate to any *General Insurance Product* or *General Insurance Activity*-related service that the *Member* has provided or should more appropriately be referred to another *Member* or organisation, the *Member* must advise the *Customer* in writing within 5 *Business Days* of receipt of the complaint and, where possible, provide details of to whom the complaint should be redirected.
7. A *Member* may be able to respond to a complaint immediately, for example, if the complaint is made orally to an *Employee* with the necessary experience and authority to deal with it on the *Member's* behalf. If this is not possible, a written response must be given within 20 *Business Days* of receipt of the complaint unless the complaint is sufficiently complicated to warrant longer investigation or it requires review of information outstanding from a third party, in which case the *Customer* must be advised accordingly. The *Member's* response must either:
  - 7.1 accept the complaint and offer compensation, where appropriate, or other form of redress;
  - 7.2 reject the complaint, giving full reasons for doing so; or
  - 7.3 be a combination of 7.1 and 7.2 above
8. If a response cannot be given within 20 *Business Days*, the *Customer* must be informed in writing of the reasons why the *Member* has been unable to resolve the complaint and needs more time to do so. *Customers* must be advised when they can expect to receive the *Member's* final response.
9. Where a *Customer* has a right to refer the matter to an *Approved Dispute Resolution Facility*, they must be informed of their ability to do so if they are unhappy with the *Member's* response.

### Management Controls

10. *Members* must have appropriate management controls in place to ensure that complaints are handled promptly, fairly, and consistently and at a suitably senior level. *Members* must ensure that:
  - 10.1 all appropriate *Employees* know what to do on receipt of a complaint (as a complaint could be made to any of the *Member's Employees*) and are aware of the *Member's* internal complaints procedures;
  - 10.2 designated *Employees* are empowered to deal with complaints and have authority to make binding decisions on behalf of the *Member*;
  - 10.3 complaints are dealt with by *Employees* with appropriate experience who are, wherever possible, independent of the *Employee(s)* who originally dealt with the *Customer*;
  - 10.4 *Employees* are given clear guidelines on when complaints must be referred elsewhere, to whom they should be

referred, the types of complaints which are outside their scope of authorisation and what to do if a *Customer* does not accept a proposed resolution; and

10.5 complaints are investigated promptly and thoroughly.

11. Effective monitoring of complaints can provide useful information to identify recurring problems or areas of the *Member's General Insurance Activities* that can be improved. *Members* must ensure that records of complaints are monitored regularly so that recurring problems are identified and corrected within an appropriate period of time having regard to the nature of the problem identified.

### **Complaints Records**

12. All complaints must be recorded and documented. *Members* must record data about the number and type of complaints they receive for internal use and for monitoring purposes. Records must include information about:
- 12.1 the number of complaints received; and
  - 12.2 a breakdown of the subject-matter of the complaints.
13. Records of complaints must be retained for at least 2 years from the date of acceptance of redress or the date of the final response.
14. *Members* must on request provide *GISC* access to their complaints files in the course of a monitoring visit and/or investigation in order that *GISC* may check that a *Member's* complaints procedures are being operated in accordance with this Practice Requirement.

### **Guidance**

**This section provides guidance to *Members* and does not form part of the *Rules*.**

#### **Avoidance and Handling of Complaints**

Whatever the size of an organisation, handling complaints properly can provide a positive benefit to *Members*. If a complaint is handled well a *Member* could have a more satisfied *Customer* than they had before. *Customers* who complain provide information that may be used to improve *General Insurance Products* and standards of service especially where complaints indicate that these do not meet *Customers'* expectations.

Benefits and cost savings can be achieved by the avoidance of complaints and an appropriate complaints handling mechanism. *Members* should aim to ensure that *Customers* feel satisfied with the way their complaints have been handled and that sufficient information is obtained to enable the *Member* to learn from mistakes and prevent recurring problems. Complaints should be treated consistently even if the individual complaint may appear to be based on an unrealistic expectation of what the *Member* can do.

*Members* should offer maximum co-operation with local consumer advisers and any other persons or organisations consulted by the *Customer* in relation to a complaint.

#### **What is a Complaint?**

Individual *Members* must decide what constitutes a complaint and how complaints will be dealt with. For example, if a *Customer* is dissatisfied because it has taken half an hour to return his or her call, that may or may not amount to a complaint. If a *Customer* says that his or her calls are not returned at all, that is a complaint.

A complaint should involve some allegation that the *Customer* has suffered financial loss, distress or material inconvenience.

#### **Oral Complaints**

Where a complaint has been made orally, a *Member* may for the sake of clarity and for record keeping purposes, choose to provide when acknowledging receipt of the complaint a summary of the issue(s) that the *Member* will be investigating.

In the case of oral complaints which are resolved immediately, no acknowledgement or other formal paperwork need be sent to the *Customer*. However, an internal record of the complaint should be retained.

#### **British Standard**

A new British Standard, 'Complaints Management Systems – Guide to Design and Implementation' (BS8600) provides a helpful source of guidance on an appropriate complaints procedure.

Copies of the British Standard are available from:

British Standards Institution  
389 Chiswick High Road  
London W4 4AL  
Tel: 020 8996 7111  
Fax: 020 8996 7400

## **Practice Requirement G3 - Competence and Training**

### **PRACTICE REQUIREMENT**

1. Competence and training requirements apply to *Members' Employees* and *Employees of Appointed Agents* and *Appointed Sub-Agents* where they are acting in a *General Insurance Activity*-related capacity on behalf of the *Member*.

#### **Recruitment**

2. *Members* must make suitable checks of all prospective *Employees* who will act in a *General Insurance Activity*-related capacity to assess the adequacy of their knowledge and skills for the requirements of their job. Relevant information should be sought to verify prospective *Employees'* past training, experience, qualifications and employment record.

#### **Training**

3. *Members* must ensure that *Employees* are appropriately trained.
4. Training must include providing *Employees* with adequate knowledge of the following:
  - 4.1 the requirements of the Codes;
  - 4.2 *General Insurance Products* and any relevant technical matters; and
  - 4.3 relevant legal and other general principles affecting their *General Insurance Activities* including applicable aspects of the law of agency, money laundering regulations and the Data Protection Act.

#### **Assessment**

5. *Members* must assess *Employees* on a regular basis (at least once a year) to ensure their competence, taking into account:
  - 5.1 the acquisition of and understanding of knowledge;
  - 5.2 the ability to apply that knowledge in a practical way; and
  - 5.3 familiarity with the *Member's* internal referral and supervisory procedures.
6. *Employees* will be assessed to be competent when they are able to apply the knowledge and skills needed to engage, without supervision, in their relevant activity.

#### **Maintaining Competence**

7. *Members* must ensure that all *Employees* acting in a *General Insurance Activity*-related capacity remain competent. Where an *Employee's* role develops or changes, the *Member* will need to reconsider the standard of competency necessary for the role.

#### **Supervision**

8. *Members* must adequately supervise *Employees* during the period of their training and subsequently as necessary to ensure that they remain competent. This supervision must involve knowledge of what an *Employee* is doing and quality control checks on his or her activities. There should be an internal system of referral to ensure that *Employees* who are unable to answer specific questions or require guidance know to whom they should refer.

#### **Continuing Professional Development (CPD)**

9. *Members* must determine which *Employees* require CPD and the level of CPD which is sufficient to ensure that, once an *Employee* has achieved the required level of competence, it is subsequently maintained. CPD should

include:

- 9.1 technical knowledge and application;
- 9.2 skills application and development; and
- 9.3 changes in the market and to legislation.

### **Record Keeping**

10. *Members* must maintain records of training provided, assessments carried out, formal qualifications held and continuing professional development activities undertaken in respect of each relevant *Employee* for the duration of that *Employee's* employment.

### **Guidance**

**This section provides guidance to *Members* and does not form part of the *Rules*.**

### **Competence**

The onus will be on individual *Members* to determine what measures are required in order to deliver the right levels of competence within their organisation based on:

1. the *Regulated Activities* the *Member* undertakes;
2. the *General Insurance Product(s)* the *Member* offers; and
3. the types of *Customer* with which it deals.

### **Monitoring**

*GISC's* monitors will be responsible for assessing whether competency levels of *Members' Employees* are adequate. They will check that *Members* are using competence and training arrangements that are suitable for the nature of the *Member's General Insurance Activities*, the type of *General Insurance Products* and their *Customers* as well as the means of distribution. *Members* will be responsible for keeping training records for individual *Employees* and for assessing their competence.

During the course of a monitoring visit, monitors will review *Members' training* procedures. In the case of larger/multi-site *Members*, this could include assessment of central training programmes (if these have not been accredited) and the discussion of improvements where necessary. For other *Members*, monitoring would include analysis of areas where competency was weak and recommendations about how training and supervision might help to put matters right. It is envisaged that monitors will look at *Members' complaints* records in assessing the skills and competence of *Employees*.

### **Knowledge and Assessment**

The emphasis should be on combining knowledge and technical training with the ability to apply that knowledge in practice. *Employees* must understand the *General Insurance Products* that they are selling and advising on, and be able to recognise *Customers' needs* in situations where they are acting on their behalf. *Employees* must be able to assess the extent to which the *General Insurance Products* they recommend may or may not satisfy those needs. Assessment of *Employees* should include an appraisal of the *Employees' ability* to apply their knowledge appropriately. The fact that an *Employee* has acquired knowledge cannot be assumed merely from attendance on a course or having been supplied with written material. Verification of knowledge can usually be provided via tests, comprising questions designed to check understanding of the material, or via other forms of verification such as continuous assessment of *Employees' performance*.

In the absence of evidence of assessment under an accredited scheme or within a formal qualification framework it will be the responsibility of the *Member* concerned to establish to the satisfaction of *GISC* and its monitors that suitable methods for assessment of *Employees* are in place which are appropriate to the activities undertaken.

### **Accreditation**

*GISC* can make arrangements for the accreditation of in-house training schemes if *Members* demonstrate that the training offered is of the appropriate standard. Where a training scheme has been accredited, monitors will not need to review training procedures. However, *Members* with accredited training schemes will need to have the means of verifying that *Employees* remain competent.

### **Formal Qualifications**

Qualifications play an important role in demonstrating *Employees'* competence as they provide a valuable source of evidence of *Employees'* acquisition of knowledge and of their understanding having been assessed objectively. The Insurance Foundation Certificate, offered by the Chartered Insurance Institute (CII), has been identified as a benchmark suitable for those who require a sound knowledge and understanding of areas including insurance terminology, relevant legal principles and fundamental aspects of market and product awareness. It is recommended for those involved in the provision of a variety of *General Insurance Products* and services to a range of *Customers*.

Some *Employees* will require greater levels of knowledge and understanding of insurance matters along with a specialised knowledge of specific types of coverage. Examples are those who supervise *Employees* and to whom enquiries involving matters beyond the competence or knowledge of other *Employees* in their organisation might be referred. The CII Certificate of Insurance Practice is a qualification which offers the necessary content at a level considered appropriate for such *Employees*. There are a number of options available including one covering the management of insurance broking operations. This certificate has been previously recognised by the Insurance Brokers Registration Council as forming part of the qualification requirements applied to those seeking registration in respect of general insurance broking activities.

*Members* who are involved in banking or building society activities may have *Employees* pursuing the qualifications of the Chartered Institute of Bankers (CIB). The Certificate of Financial Services Practice offered by the CIB will include an optional module on general insurance which will provide evidence of knowledge and understanding of this area.

Other qualifications (including relevant overseas qualifications) may be suitable for *Employees* depending on their role and the type of *General Insurance Products* and *General Insurance Activity*-related services being offered by the *Member*. Insurance related qualifications at a higher level than those mentioned above would be regarded as satisfactory for *GISC* purposes.

*GISC* fully recognises the principles laid down by European law relating to mutual recognition of qualifications (Council Directive 77/92/EEC) and *Members* are entitled to take into account the relevant professional qualifications and other work experience of potential *Employees* from other EEA countries.

## **SECTION H - Monitoring and Investigation**

### **Appointment of Monitors and Investigators**

1. The *Board* may appoint monitors and investigators to carry out such functions as the *Board* may direct in connection with the monitoring and investigation of compliance with the *Rules* by *Members*, *Appointed Agents* and *Appointed Sub-Agents*.
2. The monitors and investigators shall be agents of *GISC* and shall act under the direction of the *Board*.
3. The principal function of the monitors shall be to conduct a review of compliance with the *Rules* by *Members*, *Appointed Agents* and *Appointed Sub-Agents* and report their findings to *GISC* and the *Members* in question. In addition, they may, at their discretion, provide constructive feedback to *Members* to help them achieve and maintain compliance with the *Rules*.
4. The principal role of the investigators shall be to conduct any investigations instituted in accordance with *Rule H 6* and report their findings to *GISC*. Subject to any specific directions from *GISC*, the investigators may extend their investigations to cover associated areas of *General Insurance Activities* engaged in by the *Members*, *Appointed Agents* and *Appointed Sub-Agents* concerned.

### **Monitoring Visits**

5. *GISC* may carry out monitoring visits as frequently as it considers appropriate to ensure the effective discharge of its regulatory functions, taking into account the particular circumstances of individual *Members* and all relevant circumstances. *GISC* may conduct monitoring visits in respect of all or part of a *Member's General Insurance Activities*.

### **Investigations**

6. *GISC* may institute an investigation into any matter which appears to constitute, or could lead to, an act of *Misconduct*.
7. *GISC* may require a *Member* to contribute to or pay for the costs of an investigation where, due to:
  - 7.1 the location of the place of business of the *Member*, *Appointed Agent* or *Appointed Sub-Agent*;
  - 7.2 the duration of the investigation;
  - 7.3 the matter(s) under investigation;

- 7.4 the nature of the investigation undertaken; or
- 7.5 any other factor relevant to the investigation, the response of the *Member*, *Appointed Agent* or *Appointed Sub-Agent* to the investigation or the co-operation of the *Member*, *Appointed Agent* or *Appointed Sub-Agent* with the investigators,

*GISC* considers that part or all of the costs should be borne by the *Member*.

### **Notification of Monitoring Visits and Investigations**

8. Except where *GISC* considers it necessary to ensure the effective application of its monitoring and/or investigation powers, it shall provide the *Member* concerned with at least 5 *Business Days*' notice, in writing, of:
  - 8.1 the time and place it intends commencing its monitoring visit and/or investigation; and
  - 8.2 the areas of the *Member's General Insurance Activities* which will be the subject of initial monitoring and/or investigation.

### **Co-operation and Provision of Information**

9. *Members* shall, and shall ensure that their *Appointed Agents* and *Appointed Sub-Agents* shall, on request, allow *GISC* access to their premises in order for *GISC* to fulfil its monitoring and investigation functions.
10. *Members* shall, and shall ensure that their *Appointed Agents*, *Appointed Sub-Agents* and *Employees* shall, at the time and place fixed by *GISC*, produce to *GISC* such records, documents, files, audio tapes and other material or information as *GISC* may request in order to fulfil its monitoring and/or investigation functions and, on request, attend for interview pursuant to *Rule H 12.1*.
11. Information kept in electronic format must, where possible, be produced in the form required by *GISC*.
12. *GISC* may seek from *Members*, their *Appointed Agents*, *Appointed Sub-Agents*, *Customers* and other persons, information relating to and explanations of matters relevant to the exercise of its monitoring and/or investigation functions.
  - 12.1 In the course of the exercise of its investigation functions, *GISC* may conduct interviews with *Members*, their *Appointed Agents*, *Appointed Sub-Agents* or *Employees* and, subject to their prior consent, may make audio and/or video recordings and produce transcripts of such interviews. Where possible, the content of any such transcripts produced will be agreed with the interviewee.
13. Where, under *Rule H 12*, a request is made of an *Employee* of a *Member* or a *Member's Appointed Agent* or *Appointed Sub-Agent*, the *Member* shall take all reasonable steps to ensure that the *Employee* complies with it.
14. *Members* shall, and shall ensure that their *Appointed Agents* and *Appointed Sub-Agents* shall, on request, allow *GISC* to observe any part of their *General Insurance Activities* in operation.
15. Any material produced in accordance with the requirements of this Section H may be inspected and copied and the copies retained by *GISC* and any such material and any transcripts and/or other recordings of interviews conducted pursuant to *Rule H 12.1* may, where relevant, be used in evidence by *GISC* in subsequent enforcement or intervention proceedings

## **SECTION I - Enforcement**

### **Introduction**

1. *GISC* and its committees and tribunals shall at all stages of the enforcement process have regard to the principles of natural justice.
2. Unless the *Enforcement Committee* considers it may not be in the best interests of existing or potential *Customers* of the *Member*, the outcome of all cases settled after the date of service of a statement of case or decided by the *Disciplinary Tribunal* or the *Disciplinary Appeal Tribunal* may be made public.

### **Settlements**

3. Where a settlement of a case is agreed, the terms of settlement shall be evidenced in a *Decision Notice* issued by the *Enforcement Committee*.

### **Enforcement Committee Proceedings**

4. If *GISC* considers there are grounds to believe that a *Member* has committed an act of *Misconduct* and it considers disciplinary action would be appropriate, *GISC* shall:
  - 4.1 inform the *Member* that it is considering referring the case to the *Enforcement Committee*;
  - 4.2 provide the *Member* with a copy of the relevant monitoring report and/or other documentation which, if not answered to *GISC*'s satisfaction, will form the basis of *GISC*'s case; and
  - 4.3 invite the *Member* to respond to such monitoring report and/or documentation, except where *GISC* considers it necessary to ensure the effective application of its powers.
5. If, having considered the *Member*'s response, *GISC* considers that there are grounds to believe the *Member* has committed an act of *Misconduct* (or if no response is received) and that disciplinary action would be appropriate, *GISC* shall refer the case to the *Enforcement Committee*. *GISC* shall supply the *Enforcement Committee* with copies of the relevant monitoring report and/or other relevant documentation on which *GISC*'s case is based and the *Member*'s response (if any).
6. Having considered the documents referred to it, the *Enforcement Committee* shall decide within 20 *Business Days* of the date of the referral:
  - 6.1 to take no disciplinary action against the *Member*;
  - 6.2 to require further investigation by *GISC* into the matters referred to it; or
  - 6.3 if it considers that the *Member* has committed an act of *Misconduct* and that the imposition of a *Penalty* would be appropriate, to issue and serve on both *GISC* and the *Member* a *Warning Notice*.
7.
  - 7.1 A *Warning Notice* shall contain the following information:
    - 7.1.1 a statement of *Misconduct*;
    - 7.1.2 a statement of the facts relied upon as constituting *Misconduct*;
    - 7.1.3 details of the *Member*'s previous disciplinary record which have been taken into account; and
    - 7.1.4 the proposed *Penalty*.
  - 7.2 A *Warning Notice* shall also give the *Member* at least 10 *Business Days*' notice of the date when, if the contents of the *Warning Notice* are not agreed, the *Enforcement Committee* will meet to consider any written or oral representations the *Member* wishes to make in response.
8. If no response is received to a *Warning Notice* and the *Member* fails to attend the meeting of the *Enforcement Committee* at which the *Member*'s response to the *Warning Notice* was to be discussed, the *Warning Notice* shall be deemed to be a *Decision Notice*. The *Member* shall be informed of its right to refer the case to a *Disciplinary Tribunal* if the contents of the *Decision Notice* are not agreed.
9. Prior to the meeting of the *Enforcement Committee*, the *Member* shall be permitted access to such evidence relevant to the case which is in the possession of *GISC* and on such terms as the chairman of the *Enforcement Committee* may direct.
10. The *Enforcement Committee* shall adopt such procedures at its meeting with the *Member* as it thinks fit in each case with a view to ensuring fairness and informality and, if possible, agreeing with the *Member* a settlement of the case. *Members* shall be permitted legal representation during such meetings only with the prior permission of the chairman of the *Enforcement Committee*. Unless otherwise agreed by the chairman of the *Enforcement Committee*, any documentary evidence to which the *Member* wishes to refer and any written submissions which the *Member* wishes the *Enforcement Committee* to consider shall be provided to the *Enforcement Committee* at least 2 *Business Days* prior to the meeting.
11. If the *Enforcement Committee* considers it appropriate, further meetings between the *Enforcement Committee* and the *Member* may be arranged if it has not been possible to agree a settlement of the case.
12. Having considered all written and oral submissions and/or documentary evidence, the *Enforcement Committee* shall issue and serve on both *GISC* and the *Member* a *Decision Notice*. A *Decision Notice* shall include:

- 12.1 if the *Enforcement Committee* does not consider that the *Member* has committed an act of *Misconduct*, a statement that no disciplinary action will be taken against the *Member*; or
- 12.2 if the *Enforcement Committee* considers the *Member* has committed an act of *Misconduct*:
  - 12.2.1 a statement of *Misconduct*;
  - 12.2.2 a statement of the facts relied upon as constituting *Misconduct*;
  - 12.2.3 details of the *Member*'s previous disciplinary history which have been taken into account;
  - 12.2.4 the proposed *Penalty*;
  - 12.2.5 the *Enforcement Committee*'s reasons for its decision; and
  - 12.2.6 an explanation of the *Member*'s right to refer the case to a *Disciplinary Tribunal* if the contents of the *Decision Notice* are not agreed.

### **Commencement of Disciplinary Proceedings**

13. If a *Member* does not agree with the contents of a *Decision Notice* served on it, it may within 20 *Business Days* of service of the *Decision Notice* refer the case to the chairman of the *Disciplinary Panel* requesting that it be heard by a *Disciplinary Tribunal*. If no such referral is made, the *Decision Notice* shall be final.
14. *GISC* shall within 20 *Business Days* of receipt of notification from the chairman of the *Disciplinary Panel* that a case has been referred to him serve on the *Member* *GISC*'s statement of case and any supporting documentation.
15. The *Member* shall within 20 *Business Days* of service of the statement of case serve on *GISC* its defence and any supporting documentation.
16. The *Disciplinary Tribunal* shall be provided with copies of the statement of case and the defence and any supporting documentation. The *Warning Notice* and the *Decision Notice* shall not be supplied to the *Disciplinary Tribunal* and their contents shall not be referred to in proceedings before either the *Disciplinary Tribunal* or the *Disciplinary Appeal Tribunal*.

### **Disciplinary Tribunal Procedures**

#### **General**

17. In all proceedings before the *Disciplinary Tribunal* the burden of proof shall be on *GISC*. The standard of proof shall be the civil standard.
18. On the application of any party or at the initiative of the chairman of the *Disciplinary Tribunal* there may be a preliminary hearing at which the chairman of the *Disciplinary Tribunal* sitting alone may give directions for the conduct of the case. The chairman of the *Disciplinary Tribunal* may:
  - 18.1 permit amendments to documents served by any party;
  - 18.2 give directions regarding the disclosure of documents;
  - 18.3 give directions regarding the use of expert evidence;
  - 18.4 set and change time limits governing the conduct of the case (including those set by these *Rules*);
  - 18.5 determine the admissibility of evidence;
  - 18.6 issue, set aside or vary a *Witness Order* requiring the attendance of a witness;
  - 18.7 direct that a transcript be made of the hearing;
  - 18.8 direct that two or more related cases be heard together; and
  - 18.9 give such other directions as are necessary for the clarification of the issues before the *Disciplinary Tribunal* and for the just and expeditious determination of the case.
19. If all parties agree, the chairman of the *Disciplinary Tribunal* may direct that the *Disciplinary Tribunal* proceed by way of written submissions only and give the necessary directions.
20. Where the chairman of the *Disciplinary Tribunal* considers it appropriate, he may direct that a third party be

joined as a party to the proceedings and give the necessary directions.

21. Where a *Witness Order* is served on an *Employee* of a *Member* (or of its *Appointed Agent* or *Appointed Sub-Agent*) or *GISC*, the *Member* or *GISC* shall take all reasonable steps to ensure that the *Employee* obeys it. For the purpose of this *Rule*, members of the monitoring or investigation teams appointed by the *Board* and anyone acting under delegated authority from *GISC* shall be considered *Employees* of *GISC*.
22. The recipient of a *Witness Order* may apply to the chairman of the *Disciplinary Tribunal* to have it varied or set aside on the grounds that he or she is unable to give relevant evidence in connection with all or part of the case before the *Disciplinary Tribunal*.
23. The *Disciplinary Tribunal* shall not be bound by any enactment or law relating to the admissibility of evidence in court proceedings. The test of admissibility shall be relevance to the issues under consideration.
24. The findings of fact of:
  - 24.1 any court of competent jurisdiction, whether within the *United Kingdom* or elsewhere;
  - 24.2 the Financial Services and Markets Tribunal;
  - 24.3 any financial services regulatory authority;
  - 24.4 any overseas financial services regulatory authority; or
  - 24.5 any statutory or professional body exercising a regulatory function,

shall be prima facie evidence of the facts so found.

25. If a *Member* fails to attend a *Disciplinary Tribunal* hearing (including a preliminary hearing), and the *Disciplinary Tribunal* is not satisfied that there is a reasonable excuse for its non-attendance, the *Disciplinary Tribunal* may proceed in its absence, provided *GISC* satisfies the *Disciplinary Tribunal* that the statement of case and notification of the date of the *Disciplinary Tribunal* hearing have been served on the *Member* in accordance with these *Rules*.

### **The Disciplinary Tribunal Hearing**

26. The *Disciplinary Tribunal* hearing shall be in private unless the *Member* requests it be held in public.
27. The chairman of the *Disciplinary Tribunal* shall determine the conduct and procedure to be followed at the *Disciplinary Tribunal* hearing.
28. If the *Disciplinary Tribunal* is satisfied that a *Member* has committed an act of *Misconduct* it shall, taking account of the *Member's* disciplinary history and any representations made by any party, decide the *Penalty* to be imposed and whether compensation and/or costs should be ordered.
29. The *Disciplinary Tribunal* may direct that a separate hearing be held to hear the parties' submissions and decide the issue of *Penalty*.
30. The *Disciplinary Tribunal* may order that a *Member* pays compensation to affected *Private Customers* not exceeding £100,000 in respect of any one act of *Misconduct*.
31. Where the *Disciplinary Tribunal* imposes a *Penalty* in the form of a fine, in determining the amount of the fine, regard shall be had to the seriousness of the act of *Misconduct* and the *Member's* ability to pay.
32. Where the *Disciplinary Tribunal* imposes a *Penalty* in the form of terms and conditions on continuing *Membership*, it may impose such terms and conditions (or both) on continuing *Membership* as appropriate. They may include a requirement that:
  - 32.1 a *Member* take steps to remedy or prevent a breach of the *Rules*;
  - 32.2 restrictions on the types of transaction the *Member* may enter into;
  - 32.3 restrictions on the classes of *Customers* with which the *Member* may engage in *General Insurance Activities*; or
  - 32.4 the imposition of financial requirements in addition to those imposed by the *Financial Requirements*.
33. The *Disciplinary Tribunal* may award any party all or part of its costs of the disciplinary proceedings (from the date of the referral to the chairman of the *Disciplinary Panel*) if in its opinion another party has acted in a wasteful, unreasonable or vexatious manner.

34. The *Disciplinary Tribunal* shall announce its decision as soon as practicable and shall serve on the parties a written judgment and an explanation of the right of appeal within 10 *Business Days* of the date of the announcement of its decision unless a longer period is sanctioned by the *Enforcement Committee*.

### **Appeals and Procedures of the Disciplinary Appeal Tribunal**

35. Subject to obtaining permission to appeal in accordance with *Rules* I 37 to I 41 below, any party may appeal against a decision of the *Disciplinary Tribunal* on the grounds that the decision was:
- 35.1 based on an error of law; or
- 35.2 based on a misinterpretation of the *Rules*.
36. In all proceedings before the *Disciplinary Appeal Tribunal*, the standard of proof shall be the civil standard.

#### **Permission to Appeal**

37. Within 10 *Business Days* of service of the *Disciplinary Tribunal's* written judgment any party may apply for permission to appeal by letter to the chairman of the *Disciplinary Panel* (and copied simultaneously to all other parties) containing a brief explanation of the grounds for appeal and all matters relied upon by the appellant.
38. All other parties may within 10 *Business Days* of the date of the application for permission to appeal respond in writing to the chairman of the *Disciplinary Panel* setting out their grounds for opposing the application.
39. The chairman of the *Disciplinary Panel* shall, taking account of the requirements of paragraph 16 of Appendix 1, appoint a legally qualified member of the *Disciplinary Panel* (a *Tribunal Chairman*) to consider the application for permission to appeal.
40. Unless all parties agree that the application for permission to appeal may proceed without a hearing, a hearing shall be held as soon as practicable. The *Tribunal Chairman* shall determine the conduct and procedure to be followed at the hearing allowing each party the opportunity to make oral submissions.
41. The *Tribunal Chairman* shall announce his decision as soon as practicable and shall serve on all parties a written judgment within 5 *Business Days* of the date of the announcement of his decision.

#### **Appeals**

42. If permission to appeal is granted, the appellant shall serve on all parties a Notice of Appeal within 5 *Business Days* of the date of the announcement of the *Tribunal Chairman's* decision to grant permission. The notice of appeal shall set out the grounds for appeal and contain a statement of all matters relied upon by the appellant.
43. The respondent shall serve on all parties its response to the notice of appeal within 10 *Business Days* of service of the notice of appeal.
44. The *Disciplinary Appeal Tribunal* hearing shall be in private unless the *Member* requests it be held in public.
45. The chairman of the *Disciplinary Appeal Tribunal* shall determine the conduct and procedure to be followed at the *Disciplinary Appeal Tribunal* hearing.
46. The *Disciplinary Appeal Tribunal* shall announce its decision as soon as practicable and shall serve on the parties a written judgment within 10 *Business Days* of the date of the announcement of its decision unless a longer period is sanctioned by the *Enforcement Committee*.
47. The *Disciplinary Appeal Tribunal* may dismiss or allow the appeal and may decide that no *Penalty* should be imposed or substitute a different *Penalty* in place of the *Penalty* imposed by the *Disciplinary Tribunal* as it considers appropriate.
48. *Rules* I 30 to I 33 shall apply to the *Disciplinary Appeal Tribunal*.
49. If the respondent fails to attend a *Disciplinary Appeal Tribunal* hearing (including the hearing of an application for permission to appeal), and the *Disciplinary Appeal Tribunal* is not satisfied that there is a reasonable excuse for its non-attendance, the *Disciplinary Appeal Tribunal* may proceed in its absence, provided the appellant satisfies the *Disciplinary Appeal Tribunal* that the application for permission to appeal or notice of appeal and notification of the date of the *Disciplinary Appeal Tribunal* hearing have been served in accordance with these *Rules*.

## **SECTION J - Intervention**

### **Intervention Order**

1. Where, having taken all relevant circumstances into account, it appears to the *Enforcement Committee* that:
  - 1.1 a *Member* has committed or is likely to commit an act of *Misconduct*; or
  - 1.2 a *Member* is no longer able to engage in some or all of its *General Insurance Activities* in compliance with the *Rules*,

and the exercise of its intervention powers is desirable for the protection of *Customers*, the *Enforcement Committee* may make an *Intervention Order*.

2. An *Intervention Order* shall be in writing and specify:
  - 2.1 the steps which the *Member* is required to take or forbidden from taking;
  - 2.2 the date and time when the *Intervention Order* shall take effect;
  - 2.3 the period for which the *Intervention Order* shall operate;
  - 2.4 the reasons for the issue of the *Intervention Order*; and
  - 2.5 that the *Member* may apply for a stay of or appeal against the *Intervention Order* or any part of it.
3. An *Intervention Order* may come into effect immediately on service or at such later date as the *Enforcement Committee* may specify. It may operate for a fixed period, until the occurrence of a specified event or until the *Member* complies with specified conditions.
4. An *Intervention Order* may require a *Member* to take specified steps or forbid it:
  - 4.1 from disposing of or otherwise dealing with any specified assets;
  - 4.2 from entering into specified or any *General Insurance Activity*-related transactions;
  - 4.3 from entering into specified transactions except in specified circumstances or to a specified extent;
  - 4.4 from soliciting *General Insurance Activity*-related business from specified persons;
  - 4.5 from soliciting *General Insurance Activity*-related business otherwise than from specified persons;
  - 4.6 from engaging in *General Insurance Activities* in a specified manner; or
  - 4.7 from engaging in *General Insurance Activities* otherwise than in a specified manner.
5. The *Enforcement Committee* may at any time before or after an *Intervention Order* comes into effect revoke it or vary its terms. Any variation shall be effected by the service of a new *Intervention Order*.
6. Unless the *Enforcement Committee* considers it may not be in the best interests of existing or potential *Customers* of the *Member*, an *Intervention Order* may be made public immediately following service of the *Intervention Order* on the *Member*.

#### **Appeals and Applications for Stay Pending Appeal**

7. Upon service of an *Intervention Order* or at any time thereafter the recipient may serve on the chairman of the *Disciplinary Panel*:
  - 7.1 a notice of appeal; and
  - 7.2 if it wishes, an application for a stay of the *Intervention Order*, or any part of it, pending appeal.

#### **Application for Stay Pending Appeal**

8. The following *Rules* shall apply to an application for a stay of an *Intervention Order* pending appeal and an appeal against an *Intervention Order*:
  - 8.1 *Rule I 26* relating to privacy;
  - 8.2 *Rule I 27* relating to procedures;
  - 8.3 *Rule I 34* relating to the decision of the *Disciplinary Appeal Tribunal*; and

- 8.4 *Rule I 49* relating to the Respondent's failure to attend.
9. The chairman of the *Disciplinary Panel* shall, taking account of the considerations listed in paragraph 16 of Appendix 1, appoint a legally qualified member of the *Disciplinary Panel* (a *Tribunal Chairman*) to consider the *Member's* application for a stay pending appeal.
10. The application for a stay pending appeal shall be heard as soon as practicable. The burden shall be on the applicant to show cause why the stay should be granted.
11. Having regard to the representations of the applicant and *GISC*, the merits of the case and the likelihood of the applicant successfully appealing against the *Intervention Order*, the *Tribunal Chairman* may:
- 11.1 grant a stay pending appeal (in whole or in part and with or without conditions); or
- 11.2 refuse a stay.
12. The *Tribunal Chairman* may award any party all or part of its costs of the application for a stay if in his opinion another party has acted in a wasteful, unreasonable or vexatious manner.

### **Appeals**

13. The chairman of the *Disciplinary Panel* shall appoint an *Appeal Tribunal* in accordance with paragraphs 14 and 16 of Appendix 1 to consider the *Member's* appeal against an *Intervention Order*. The chairman of the *Appeal Tribunal* shall not be the member of the *Disciplinary Panel* appointed in accordance with *Rule J 9* above to consider the *Member's* application for a stay pending appeal (if any).
14. The *Appeal Tribunal* may award any party all or part of its costs of the appeal if another party has acted in a wasteful, unreasonable or vexatious manner.

## **SECTION K - Appendices**

### **Appendix 1 – Constitution of the *Enforcement Committee, Disciplinary Tribunal and Disciplinary Appeal Tribunal***

#### **Constitution of the *Enforcement Committee***

1. The *Board* shall appoint a panel of individuals (the *Enforcement Panel*) from which the *Enforcement Committee* shall be selected. The *Enforcement Panel* shall consist of:
- 1.1 public interest representatives;
- 1.2 general insurance industry representatives;
- 1.3 other individuals with sufficient experience of the general insurance industry;
- 1.4 legally qualified individuals; and
- 1.5 *Board* members.

The *Board* shall appoint a chairman and deputy chairman of the *Enforcement Panel* (who shall both be legally qualified). Neither the chairman nor the deputy chairman may be members of the *Board*. The deputy chairman shall exercise the chairman's powers in the absence of the chairman.

2. The *Board* may remove any individual from the *Enforcement Panel* if it considers that individual is no longer suitable to hold the post. *Enforcement Panel* members may resign from membership of the *Enforcement Panel*.
3. No member of the *Disciplinary Panel* may be a member of the *Enforcement Panel*.
4. The chairman shall select a minimum of 4 members of the *Enforcement Panel* to constitute the *Enforcement Committee*. The *Enforcement Committee* shall include a minimum of:
- 4.1 a legally qualified chairman;
- 4.2 two individuals with practical experience of the area of business relevant to the case; and
- 4.3 one public interest representative.

5. A *Member* may object to any individual selected to sit on an *Enforcement Committee* considering a case involving that *Member*. If the chairman of the *Enforcement Panel* considers it necessary in the interests of achieving a fair consideration of the case, he may replace that member of the *Enforcement Committee*.
6. An *Enforcement Panel* member must not be selected to sit on an *Enforcement Committee* if:
  - 6.1 he has any personal or financial interest in the case under consideration;
  - 6.2 he has a close connection with the *Member* or another interested party;
  - 6.3 he was a member of any body which inquired into the case; or
  - 6.4 he was present at any meeting of *GISC Employees* when any report was presented or discussion took place as to whether the case should be referred to the *Enforcement Committee*.
7. Decisions of the *Enforcement Committee* shall be by majority vote and the chairman shall have a casting vote if required.

#### **Constitution of the *Disciplinary Tribunal* and *Disciplinary Appeal Tribunal***

8. The *Board* shall appoint a panel of individuals (the *Disciplinary Panel*) from which the *Disciplinary Tribunal* and the *Disciplinary Appeal Tribunal* shall be selected. The *Disciplinary Panel* shall consist of:
  - 8.1 public interest representatives;
  - 8.2 general insurance industry representatives;
  - 8.3 other individuals with sufficient experience of the general insurance industry; and
  - 8.4 legally qualified individuals.
9. The *Board* shall appoint a chairman and deputy chairman of the *Disciplinary Panel* (who shall both be legally qualified). The deputy chairman of the *Disciplinary Panel* shall exercise the chairman's powers in the absence of the chairman.
10. No member of the *Board* or the *Enforcement Panel* may be a member of the *Disciplinary Panel*.
11. The *Board* may remove any individual from the *Disciplinary Panel* if it considers that individual is no longer suitable to hold the post. *Disciplinary Panel* members may resign from membership of the *Disciplinary Panel*.
12. The chairman of the *Disciplinary Panel* shall select members of the *Disciplinary Panel* to constitute the *Disciplinary Tribunal* and *Disciplinary Appeal Tribunal*.
13. The *Disciplinary Tribunal* shall include a minimum of:
  - 13.1 a legally qualified chairman;
  - 13.2 two individuals with practical experience of the area of business relevant to the case; and
  - 13.3 one public interest representative.
14. The *Disciplinary Appeal Tribunal* shall consist of:
  - 14.1 a legally qualified chairman;
  - 14.2 one individual who has practical experience of the area of business relevant to the case; and
  - 14.3 one public interest representative.
15. Decisions of both the *Disciplinary Tribunal* and the *Disciplinary Appeal Tribunal* shall be by majority vote and the chairman shall have a casting vote if required.
16. No member of the *Disciplinary Panel* may be selected to sit on a *Disciplinary Tribunal* or *Disciplinary Appeal Tribunal* if:
  - 16.1 he has any personal or financial interest in the case under consideration;

- 16.2 he has a close connection with the *Member* or another interested party;
  - 16.3 he was a member of any body which inquired into the case; or
  - 16.4 he was present at any meeting of *GISC* when any report was presented or discussion took place as to whether the case should be referred to an *Enforcement Committee*.
17. No member of the *Disciplinary Panel* may be selected to sit on a *Disciplinary Appeal Tribunal* if he was a member of the *Disciplinary Tribunal* whose decision is subject to appeal or if he was appointed in accordance with *Rules* I 39, J 9, J 13 to consider an application for permission to appeal in the case under consideration, to consider an application for a stay of an *Intervention Order* or an appeal against an *Intervention Order* arising out of the same or connected facts.
18. A *Member* may object to any individual selected to sit on a *Disciplinary Tribunal* or *Disciplinary Appeal Tribunal* considering a case involving that *Member*. If the chairman of the *Disciplinary Panel* considers it necessary in the interests of achieving a fair consideration of the case, he may replace that member of the *Disciplinary Tribunal* or *Disciplinary Appeal Tribunal*.

**Appendix 2 - Membership Fees**

- 1. The level of *Membership Fees* shall be determined by the *Board* from time to time. The *Board* will consult on any fee proposals.
- 2. *Membership Fees* shall be calculated in accordance with *GISC*'s published fee structure applying at the date of application for *Membership* or on the due date.
- 8. *GISC* reserves the right to review and to amend the *Membership Fee* payable by individual *Members* in circumstances where it considers that the level of the *Membership Fee* calculated using the published fee structure is inequitable. Such cases will be referred to the *Membership Committee*.

Examples of circumstances under which referral would be made to the *Membership Committee* include:

- 8.1 Group structures which include a number of businesses applying for *Membership*.
- 8.2 Where the *Member's* commission, fee or premium levels do not reflect the extent of the *Member's General Insurance Activities*.
- 10. *Members* shall calculate the *Membership Fee* on the basis of self-certification, which will be subject to spot checks by *GISC* through its monitoring visits and on a random sample basis. *GISC* reserves the right to recover underpayments.

**Appendix 3 – Example Letters for Use when Establishing an Insurance Bank Account**

**Letter 1. An Existing Account**

Dear Sir,

*Insurance Bank Account* (IBA) Account No:

In connection with the above bank account with your branch [I am] [we are] now required to inform you in accordance with the financial requirements of the General Insurance Standards Council ('the *Rules*') that:

- (i) the account shall be designated '*Insurance Bank Account*' and the title of the account shall contain [my name] [this company's name] [the name of the partnership];
- (ii) the *Insurance Bank Account* is open to comply with the provisions of the *Rules*;
- (iii) your bank is not entitled to combine the *Insurance Bank Account* with any other account unless that account is itself an *Insurance Bank Account* in [my name] [this company's name] [the name of the partnership] or to any charge, encumbrance, lien, right of set-off, compensation or retention against money standing to the credit of the *Insurance Bank Account*; and
- (iv) your bank is not entitled to any charge, encumbrance, lien, right of set-off, compensation or retention against *Approved Assets* held for the *Insurance Bank Account*.

Please would you make the necessary amendments to the bank account in accordance with these instructions and write to

acknowledge your acceptance of them on the basis set out in the attached draft.

Yours faithfully

### **Letter 2. A New Account**

Dear Sir,

*Insurance Bank Account* (IBA)

[I am] [We are] sending you under cover of a separate letter the necessary documents for the opening of a bank account with your branch. In accordance with the financial requirements of the General Insurance Standards Council ('the *Rules*') [I am] [we are] required to inform you that:

- (i) the account shall be designated '*Insurance Bank Account*' and the title of the account shall contain [my name] [this company's name] [the name of the partnership];
- (ii) the *Insurance Bank Account* is being opened to comply with the provisions of the *Rules*;
- (iii) your bank is not entitled to combine the *Insurance Bank Account* with any other account unless that account is itself an *Insurance Bank Account* in [my name] [this company's name] [the name of the partnership] or to any charge, encumbrance, lien, right of set-off, compensation or retention against money standing to the credit of the *Insurance Bank Account*; and
- (iv) your bank is not entitled to any charge, encumbrance, lien, right of set-off, compensation or retention against *Approved Assets* held for the *Insurance Bank Account*.

Please would you open a bank account in accordance with these instructions and write to acknowledge your acceptance of them on the basis set out in the attached draft.

Yours faithfully

### **Letter 3. Acknowledgement by Bank**

Dear Sir,

*Insurance Bank Account* (IBA) Account No:

We acknowledge receipt of your letter of in connection with an *Insurance Bank Account*. In accordance with your instructions the account has been designated '*Insurance Bank Account*' and contains, in the title of the account, [your name] [your company's name] [the name of the partnership].

We acknowledge that the bank is not to be entitled to combine the *Insurance Bank Account* with any other account unless that account is itself an *Insurance Bank Account* in [your name] [the company's name] [the name of the partnership] nor is the bank entitled to any charge, encumbrance, lien, right of set-off, compensation or retention against money standing to the credit of the *Insurance Bank Account*.

We acknowledge that the bank is not entitled to any charge, encumbrance, lien, right of set-off, compensation or retention against *Approved Assets* held for the *Insurance Bank Account*.

Yours faithfully

### **Appendix 4 - Rule Waivers and Guidance**

1. *GISC*'s approach to the monitoring and enforcement of compliance with the *Rules* will allow *Members* to demonstrate compliance in the way that best suits their organisations. It is important that *Members* and those who manage their affairs should take responsibility for assessing the implications of the *Rules* for their own business.
2. *GISC* will, where appropriate, offer the following:
  - 2.1 General guidance
  - 2.2 Individual guidance

## 2.3 Rule Waivers

### General Guidance

3. General guidance will be designed to clarify the application of the *Rules*, but will not be intended to be an exhaustive statement of a *Member's* obligations in a particular area. Each *Member* will be best placed to understand its own business requirements in relation to its particular circumstances and its *General Insurance Activities*. Accordingly, compliance with general guidance will not necessarily relieve *Members* of their responsibility to comply with the *Rules*. However, if general guidance is being followed by a *Member* in the circumstances contemplated by that guidance, the *Member* will have demonstrated that it has complied with the aspect of the *Rules* to which the guidance refers.

### Individual Guidance

4. Case by case guidance may be provided in writing to *Applicants* or potential *Applicants* for *Membership* or to *Members* in relation to the requirements of specific *Rules*.
5. *GISC* will not take disciplinary action against a *Member* in relation to its *General Insurance Activities* if guidance issued by *GISC* is being followed in the circumstances disclosed to and envisaged by *GISC* at the time of issuing the guidance.

### Waivers

6. *GISC* will apply its *Rules* in a way that allows them to be adapted to fit the circumstances of *Members'* organisations. This will be achieved by the pragmatic approach that will be taken by *GISC* and its monitors. However, in exceptional circumstances, it may be appropriate for *GISC* to issue a *Rule* waiver.
7. *GISC* may issue general *Rule* waivers and/or specific *Rule* waivers. A general *Rule* waiver is a *Rule* waiver which applies to all *Members*. A specific *Rule* waiver is a *Rule* waiver which applies to one or more specified *Members* or a class of *Members*. *GISC* may issue a *Rule* waiver if it is satisfied that:
  - 7.1 compliance by the *Member* (or all *Members* or a class of *Members*) with a *Rule* would be unduly burdensome, or would not achieve the purpose for which the *Rule* was intended; and
  - 7.2 the *Rule* waiver would be appropriate having regard to any increased risk to *Customers*.
8. *GISC* will publish details of *Rule* waivers and will do so promptly in a way that enables other *Members* to ascertain readily the type of waivers that have been granted. However, a *Rule* waiver may not be published if it would prejudice the commercial interests of the *Member*. In most cases this risk will be avoided by "anonymising" the published version of the *Rule* waiver. The fact that a *Rule* waiver has been granted to a particular *Member* should not be regarded as an indication that similar *Rule* waivers will be issued to other *Members*. Each application for a *Rule* waiver will be considered and decided having regard to the circumstances of each case.

### Application for Guidance and Rule Waivers

10. *Members* should apply for guidance and *Rule* waivers in sufficient time to enable *GISC* to consider the application and with sufficient information to enable *GISC* to undertake a proper evaluation. Applications should be sent in writing for the attention of the Head of Policy, *GISC*.

### Appendix 5 - Table of Exclusions from Financial Requirements

The following table shows the criteria by which *Intermediaries* may be excluded from particular *Financial Requirements*. *Intermediaries* already subject to oversight by a regulatory body approved by *GISC* will be excluded from all *Financial Requirements* other than those relating to reporting and monitoring.

#### Segregation

- The *Intermediary* is regulated by a regulatory or professional body recognised by *GISC* (this includes the Financial Services Authority).
- *General Insurance Activities* are secondary, confirmation of this having been sought and obtained from *GISC*.
- The *Intermediary* is a *Single Tied Agent* or a *Multi-Tied Agent* of an *Insurer*.
- There is a written agreement in place between the *Intermediary* and the *Insurer* to whom the relevant *Insurance Monies* are to be paid (or from whom they have been received) under which the *Insurer* agrees that the *Intermediary* holds all *Insurance Monies* received by it in connection with *General Insurance Products* issued or to be issued by the *Insurer* as agent for the *Insurer* and:

- insurance cover is maintained for the *Customer* once *Insurance Monies* are received by the *Intermediary*; and
  - the *Insurer's* obligation to make a payment to the *Customer* is not discharged until actual receipt of the relevant payment by the *Customer*.
- The *Intermediary's* annual *Net Retained Brokerage* is less than £5,000 and premiums handled are less than £50,000 per annum.

**Professional Indemnity**

- The *Intermediary* is regulated by and subject to the professional indemnity insurance requirements of a recognised regulatory or professional body approved by *GISC*.
- *General Insurance Activities* are secondary, the insurance is ancillary to the goods and services supplied and the *General Insurance Products* provided merely protect against loss or damage to the goods or services which the *Intermediary* provides, confirmation of this having been sought and obtained from *GISC*.
- The *Intermediary* has net tangible assets or a parental guarantee of at least £100m.

**Solvency Margin**

- All *Intermediaries* except those who are required to segregate *Insurance Monies*.