

**NON-BANK FINANCIAL
INSTITUTIONS REGULATORY
AUTHORITY
(NBFIRA)**

INSURANCE ADMINISTRATIVE RULES

PPR

Policyholder Protection Rules

Effective May 17, 2019

1. Contents

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|---|----|
| 1. Contents | 1 |
| 1. Introduction | 2 |
| 1.1. Insurance Administrative Rules | 2 |
| 1.2. Purpose | 2 |
| 2. Definitions | 3 |
| 3. Disclosure | 4 |
| 3.1. Policyholder Contract Disclosures | 4 |
| 3.2. General Format of Policies | 5 |
| 3.3. Summary, Inspection and Copy of Policy | 5 |
| 3.4. Rules on Fund Policies | 6 |
| 3.5. Misrepresentation and Failure to Disclose Material Information | 7 |
| 3.6. Keeping of Information | 7 |
| 4. The Use of Policyholder Information | 8 |
| 4.1. Privacy of Information | 8 |
| 5. Discrimination | 9 |
| 6. Administration of Policyholder Accounts | 10 |
| 7. Policy Loans and Cessions | 11 |
| 8. Rules on With Profit Policies | 12 |
| 9. Free Choice in Certain Circumstances | 14 |
| 10. Miscellaneous | 15 |
| 10.1. Cancellation of Policies and Cooling-off Period | 15 |
| 10.2. Debit Orders | 15 |
| 10.3. Receipt for Premium Paid in Cash, and Validity of Policy | 15 |
| 10.4. Option for Payment of Policy Benefits in Money | 15 |
| 10.5. Rejection of Claims | 15 |
| 10.6. Signing of Blank or Incomplete Forms | 16 |
| 10.7. Void Provisions | 16 |
| 10.8. Waiver of Rights | 17 |
| 11. Breach of this Administrative Rule | 18 |
| 12. Short Title and Commencement | 19 |
| 13. Appendix A: Code of Conduct | 20 |

1. Introduction

1.1. Insurance Administrative Rules

1. The Regulatory Authority's Insurance Administrative Rules set out the prudential requirements for regulated insurance entities and insurance market conduct in Botswana.
2. This note sets out the material that forms the basis of the policyholder protection rules (PPR).

1.2. Purpose

3. The purpose of the policyholder protection rules is to ensure that a consumer is provided with sufficient information to make an informed choice about products before the purchase is made. It also aims to provide for certain measures to ensure consumer protection by ensuring that parties involved conduct business fairly and with due care. Consumer protection is provided through effective disclosure and consumer education.
4. These Administrative Rules apply to all insurance entities including intermediaries licensed in Botswana.
5. Non-compliance with these rules will result in the Regulatory Authority taking the necessary regulatory intervention on the non-complying entities or individuals.

2. Definitions

1. For these purposes, unless the context indicates otherwise:
2. "Act" means the Insurance Industry Act (2015), and a word or expression to which a meaning has been given in the Act, has that meaning;
3. "cancellation" in respect of a policy or any part thereof, means an unilateral act of discontinuance of the policy, or any such part thereof, by the policyholder in accordance with these Rules;
4. "effective date" in relation to the entering into of any policy, means the date on which any such policy is entered into or varied;
5. "ensure" in relation to a person or body and any matter mentioned in a provision of these Rules, means to take any necessary steps in order that the clear objective of the provision is achieved;
6. "insurance transaction" means the entering into or termination of a policy and includes variations resulting in a change to the premium, benefits or the term of a policy excluding any contractually pre-determined or determinable variation;

3. Disclosure

1. In order to protect insurance policyholders the Regulatory Authority requires insurance entities and representatives to communicate or disclose certain information to the consumers.
2. Occasions in which disclosures will be required include:
 - a. At the point of sale;
 - b. Before policy renewals, non-renewals, and cancellations;
 - c. During the submission of claims;
 - d. Periodically during insurance policies; and
 - e. When an amendment is made to a policy where items such as loadings, excesses, benefits and special terms or conditions have been changed.
3. All disclosures must be made at the commencement of the representative's dealings with the policyholder (including prospective policyholders) in respect of an insurance transaction (quotation/new business/endorsement/renewal etc).
4. Full details of the **insurance broker or insurance agent** (e.g. business or trade name, postal and physical address, head offices, telephone numbers etc) must be disclosed to a (potential) policyholder.
5. Type of intermediary services that the representative is qualified to perform.
6. As per the Insurance Intermediary Conduct Rules the representative must disclose to the policyholder the existence of any circumstance which gives rise to an actual or potential conflict of interest in relation to the intermediary (ownership links, monetary inducements).
7. Similar details of the **insurer** (e.g. business or trade name, postal and physical address, head offices, telephone numbers etc) must also be disclosed to a (potential) policyholder.

3.1. Policyholder Contract Disclosures

8. The following should be disclosed in a policyholder contract, where relevant:
 - a. Name, class or type of policy involved and a reasonable and appropriate general explanation of the principles of the relevant contract and any information that would reasonably be expected to enable the policyholder to make an informed decision;
 - b. The nature and extent of benefits for the policyholder, manner of deriving or obtaining, or payment or furnishing thereof;
 - c. Any restrictions on or penalties for early termination or withdrawal from the policy, or other effects, if any, of such termination or withdrawal;
 - d. Charges and fees to be levied against the policy including the amount and frequency thereof and, where the policy has an investment component, the net investment amount ultimately invested for the benefit of the policyholder;
 - e. Commission, consideration, fees, charges, brokerages or any other remuneration payable to the intermediary (if any) by the policyholder or by any other person;
 - f. On request, the past investment performance of the policy, where applicable, over periods and at intervals which are reasonable with regard to the type of policy involved;

- g. Nature and extent of monetary obligations assumed by the policyholder (including any anticipated or contractual escalations, increases or additions), manner of compliance therewith and consequences of non-compliance or non-payment of premium;
- h. Where provision is made for increase of premiums, abbreviated disclosures of such contractual increases;
- i. Concise details of any special terms and conditions, exclusions, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided;
- j. Any guaranteed minimum benefits or other guarantees where appropriate;
- k. Details of surrender value calculation methodology and an illustration of these values for the first five years of the policy;
- l. Calculation of policyholder accounts, to enable the policyholder to track the value of the contract;
- m. What cooling-off rights are offered and procedures for exercise thereof;
- n. Any material investment or other risks associated with the policy;
- o. Details of manner of instituting claims under the relevant policy;
- p. Details of required claims notification procedures;
- q. Name and details of the principal officer; and
- r. Details of manner of lodging complaints, and particulars of the dispute resolution committee, including that this committee is available for advice on complaints in respect of claims or other matters which have not been satisfactorily resolved by the relevant insurer;

3.2. General Format of Policies

- 9. An insurer shall ensure that a policy is only issued to a policyholder concerned if the provisions of the policy are recorded, as regards layout, letter types and spacing, in an easily readable manner and if the wording of every provision of the policy has a reasonably precise ascertainable meaning.
- 10. If a disclosure is made orally, it must be followed up in writing within 30 days.
- 11. An insurer must within a reasonable period in writing inform a policyholder of a policy issued by the insurer on or after the commencement date, of details of any available internal complaint resolution systems and procedures, as well as full particulars relating to the Regulatory Authority.

3.3. Summary, Inspection and Copy of Policy

- 12. A person who enters into or varies a policy, other than a fund policy and a reinsurance policy, shall be provided in writing or in another form prescribed by the Regulatory Authority, by the insurer concerned, with information, in the form of a summary, relating to at least the following matters, namely:

- a. Those of the representations made by or on behalf of that person to the insurer which were regarded by that insurer as material to its assessment of the risks under the policy;
 - b. The premiums payable and the policy benefits to be provided under the policy; and
 - c. The events in respect of which the policy benefits are to be provided and the circumstances (if any) in which those benefits are not to be provided,
- and shall be provided with that information as soon as possible, but not later than 60 days after the parties enter into or agree to vary the policy.
13. The summary referred to in paragraph 12 shall be *prima facie* proof of the agreement, but shall:
- a. Not be deemed to be part of the policy;
 - b. In the absence of evidence to the contrary, be deemed to be exhaustive of the matters which are material to the assessment of the risks under the policy.
14. The policyholder shall be entitled to be provided with a copy of the full policy.

3.3.1. Lost or Destroyed Policy

15. If a policy is lost or destroyed and the loss or destruction is proved, the insurer liable under the policy shall, issue to the policyholder:
- a. A correct and certified copy of the policy upon which shall be inscribed any endorsement made by the insurer on the original policy after its issue; and
 - b. A correct and certified copy of any record in the possession of the insurer of any dealings with the policy after its issue.
16. A certified copy of a policy issued under paragraph 15 shall, for all purposes, take the place of the policy lost or destroyed.

3.4. Rules on Fund Policies

17. An insurer shall issue and deliver a fund policy to the principal officer of the fund, the trustees of the fund or any other person managing the fund, not later than six months, or such shorter time as may be determined by the Regulatory Authority, after the effective date, or the commencement date of such policy if such policy commences after the effective date.
18. An insurer may, with the approval of the Regulatory Authority and subject to such conditions as the Regulatory Authority may determine, postpone the issue of a fund policy.
19. The insurer's application for such approval shall be submitted in the form determined by the Regulatory Authority.

20. A fund policy shall incorporate the conditions relating to discontinuance and shall include the following:
- a. If the fund is to receive a cash sum, the basis of calculation of such cash sum and the conditions applicable to the payment thereof;
 - b. If the fund is to receive assets, the basis on which the value of such assets will be determined and the conditions applicable to the transfer thereof;
 - c. If the fund is to receive a paid-up policy, the basis of calculation of the paid-up value and the conditions applicable to the payment of the paid-up benefits;
 - d. If the fund is to receive any benefit other than that contemplated in subsections (a) and (c), full details of such benefit; and
 - e. Where applicable, full details of all charges to be levied on termination.

3.5. *Misrepresentation and Failure to Disclose Material Information*

21. Consumers must be informed that material misrepresentations of information on their part will lead to the denial of claims or even criminal prosecution. All applications must contain prominent warnings to consumers of the risks of omitting information or providing false information.
22. The representation or non-disclosure shall be regarded as material if a reasonable, prudent person would consider that the particular information constituting the representation or which was not disclosed, as the case may be, should have been correctly disclosed to the insurer so that the insurer could form its own view as to the effect of such information on the assessment of the relevant risk.
23. Notwithstanding anything to the contrary contained in a policy, whether entered into before or after the commencement of this Rule:
- a. The policy shall not be invalidated;
 - b. The obligation of the insurer thereunder shall not be excluded or limited; and
 - c. The obligations of the policyholder shall not be increased, on account of any representation made to the insurer which is not true, or failure to disclose information, whether or not the representation or disclosure has been warranted to be true and correct, unless that representation or non-disclosure is such as to be likely to have materially affected the assessment of the risk under the policy concerned at the time of its issue or at the time of any variation thereof.

3.6. *Keeping of Information*

24. From the date upon which this Rule comes into force, an insurer shall maintain records of policies issued in accordance with this Rule, containing the following information:
- a. The full name of the insured;
 - b. The full name of the policyholder;
 - c. The last known address of the policyholder relevant contact details;
 - d. The date of birth (or year of birth) or year of manufacturing of the insured entity; and
 - e. The policy identification number.

4. The Use of Policyholder Information

4.1. Privacy of Information

1. Insurance companies use policyholders' information when reviewing policy applications, determining rates, processing billings, handling claims, and marketing their products. It could be dangerous if this information was obtained by inappropriate entities.
2. The types of personal information that can cause damage to consumers if mishandled include, but is not limited to:
 - a. Bank account numbers and balances;
 - b. Credit reports;
 - c. Medical records;
 - d. Identity;
 - e. Claim and premium payment histories; and
 - f. Religious, political, or philosophical beliefs.
3. Potential harms that can befall consumers if their non-public personal information falls into inappropriate hands include, but is not limited to:
 - a. Identity theft;
 - b. Unwanted marketing;
 - c. Harm to their personal reputations; and
 - a. Blacklisting by other insurance companies.
4. The Regulatory Authority requires insurers and intermediaries to set policies and procedures on the handling of customer information paying due regard to the protection of private information of customers.
5. To safeguard the privacy of consumer information, insurers are prohibited from obtaining information under false pretences, and Regulatory Authority requires insurers, insurance brokers and insurance agents to:
 - a. Maintain procedures to safeguard policyholder information such as information security programs;
 - b. Inform consumers of the company's privacy policies and practices; and
 - c. Allow consumers, without penalty, to opt out of allowing their information to be disseminated to unaffiliated third parties.
6. An insurer, insurance broker and insurance agent should adjust its information security program whenever changes occur in the relevant technology, sensitivity of the consumer information, internal or external threats to this information, and the insurer's business arrangements (such as mergers, alliances, outsourcing, and consumer information systems).

5. Discrimination

1. Rates and rating practices should not be unfairly discriminatory. If rates produce higher premiums for certain policyholders or demographic groups that are not justified by an increased risk for these policyholders or groups then these rates are unfairly discriminatory.
2. The Regulatory Authority requires that differences in premium rates for different policyholders be based on “fair” discriminatory factors. A discriminatory factor may be deemed to be fair when it meets the following criteria:
 - a. It is statistically justifiable (based on statistical results from either the Botswana or a similar market);
 - b. It is not in contradiction to the laws of the Republic of Botswana;
 - c. It is socially acceptable; and
 - d. A Valuator has signed it off as per the Act.

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6. Administration of Policyholder Accounts

1. The poor administration of policyholder accounts can lead to the improper calculation or denial of life insurance benefits, policyholder bonuses as well as the improper investment of policyholder funds and errors or delays in the payment of claims.
2. Insurance companies are responsible for maintaining accurate accounting of various funds held in policyholder accounts. These include:
 - a. Cash surrender values, benefit amounts, outstanding loan balances, and other account values in permanent life policies, as well as the allocation of such funds to the proper investment portfolios.
 - b. Policyholder bonuses that have been paid or are payable, as in some insurance policies that provide for participation in profits.

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7. Policy Loans and Cessions

1. The insurer shall disclose to the policyholder:
 - a. On entering into a policy loan:
 - i. The interest of the loan at the time of entering into;
 - ii. Whether the interest rate on the loan fluctuates (if applicable); and
 - iii. The repayment arrangements of the loan e.g. the amount the policyholder undertakes to pay in discharge of his obligations;
 - b. Quarterly the amount of the policy loan and accrued interest in relation to the value of the policy;
 - c. Quarterly the interest rate applicable to the policy loan and any change thereto;
 - d. When the loan is about to equal the value of the policy;
 - e. When the benefits under the policy cease as a result of the policy loan equalling the value of the policy; and
 - f. On receipt of notification of a cession:
 - i. The fact that the cession is recorded in the insurer's records;
 - ii. The nature of the cession i.e. whether it is an outright cession or a cession in securing a debt; and
 - iii. The name of the cessionary.

8. Rules on With Profit Policies

1. The Regulatory Authority requires all firms conducting with-profit business to make publicly available a Principles and Practices of Financial Management (PPFM) document, setting out how the insurer manages its with-profits business.
2. The Board of Directors of a firm carrying on with-profits business has to certify to Regulatory Authority each year that the with-profits funds have been managed in accordance with the PPFM.
3. The with-profits principles within the PPFM must:
 - a. Be enduring statements of the overarching standards the firm adopts in managing with-profits funds;
 - b. Describe the business model used by the firm in meeting its duties to with-profits policyholders and in responding to longer-term changes in the business and economic environment;
 - c. Describe the firm's approach to managing with-profits funds and to responding to changes in the business and economic environment in the shorter term; and
 - d. Contain sufficient detail to enable a knowledgeable observer to understand the material risks and rewards from effecting or maintaining a with-profits policy with the firm.
4. The with-profits principles are not expected to change frequently. If it is changed, policyholders must be informed at least three months in advance, unless the Regulatory Authority has granted a waiver of this requirement.
5. A scheme carrying on with-profits business is required to appoint an Valuator to advise on key aspects involving the use of discretion as this relates to the fair treatment of with-profits policyholders.
6. Changes may not be made to the principles or practices set out in the PPFM if they would result in the PPFM being inconsistent with the terms of the scheme, unless the scheme is also modified to correct that inconsistency.
7. If there is any inconsistency between the PPFM and the terms of the scheme, the terms of the scheme will apply.
8. In the PPFM, the following should be disclosed with an explanation of how the firm handles them with regards to with-profits policyholders:
 - a. Amount payable under a with-profits policy:
 - i. Methods used to guide the determination of amount payable;
 - ii. Annual bonuses;
 - iii. Final bonus; and
 - iv. Smoothing.

- b. Investment strategy;
 - c. Charges and expenses;
 - d. Cost of guarantees;
 - e. Business risk;
 - f. Inherited estate (working capital of the fund and supporting its operation); and
 - g. Equity between the with-profits fund and shareholders.
9. The disclosures in paragraph 8 above will be used to decide how much the benefit amount will be in a with-profits policy.
10. It is important for the firm conducting with-profits business to be fair when calculating surrender values while ensuring that the interests of the remaining policyholders are protected against the impact of policyholders voluntarily exiting the fund.
11. With-profit policyholders should receive a benefit statement annually from the fund.

9. Free Choice in Certain Circumstances

1. If a party to a contract in terms of which money is loaned, goods are leased or credit is granted, requires, whether as a condition thereof or otherwise, that a policy or its policy benefits be made available and used for the purpose of protecting the interests of a creditor, the person who is so required to make that policy or those policy benefits available shall be entitled, and shall be given prior written notification of that entitlement, to a free choice:
 - a. As to whether he or she wishes to enter into a new policy and make it available for that purpose, or wishes to make available an existing policy of the appropriate value for that purpose, or wishes to utilise a combination of those options; and
 - b. If a new policy is to be entered into:
 - i. as to the insurer with which the policy is entered into and as to the insurance broker, insurance agent, representative (if any) who is to render services in connection with the transaction;
 - ii. as to whether or not the policy benefits concerned are to be provided in an event other than the death or disability of the life insured; and
 - iii. as to whether or not the value of the policy benefits to be provided thereunder, when taken in the aggregate with the value of the policy benefits provided under any other policy which is also to be made available and used for that purpose, shall exceed the value of that debt or other obligation; and
 - c. If an existing policy is to be made available:
 - i. As to the insurance broker, insurance agent or representative (if any) who is to render services contemplated in connection with the transaction; and
 - ii. As to whether or not a variation of the policy required for that purpose shall be such as to cause:
 - aa. Policy benefits to be provided in an event other than the death or disability of the life insured; or
 - bb. The value of the policy benefits to be provided thereunder, when taken in the aggregate with the value of the policy benefits provided under any other policy which is also to be made available and used for that purpose, to exceed the value of that debt or other obligation.
2. The provisions of paragraph 1 shall be deemed not to have been complied with unless the policyholder whose policy is to be made available has confirmed in writing, before the policy is used for the purpose of securing the debt concerned or other obligation, that he or she:
 - a. Was given prior written notification of his or her entitlement to the freedom of choice referred to in that subsection;
 - b. Exercised that freedom of choice; and
 - c. Was not subject to any coercion or inducement as to the manner in which he or she exercised that freedom of choice.
3. If the provisions of paragraph 1 are not complied with, the security provided by the policy made available and used for the purpose shall be void and the policy benefits shall be provided to the person who made it available.
4. Paragraph 1 shall not apply to a long-term insurer if it lends money to one of its policyholders upon the security of a long-term policy issued by itself.

10. Miscellaneous

10.1. Cancellation of Policies and Cooling-off Period

1. An insurance policy may be cancelled by the policyholder within 30 days of the receipt of the policy document by the owner, where no benefit has been paid or claimed or an insured event has not occurred. The insurer shall forthwith refund any premium which has been paid in respect of the policy which shall thereupon be cancelled.
2. Where such a cancellation occurs, as in paragraph 1 above, all premiums or moneys paid by the policyholder to the insurer up to the date of receipt of the cancellation notice or received at any date thereafter in respect of the cancelled or varied policy, shall be refunded to the policyholder, subject to the deduction of the cost of any risk cover actually enjoyed and any market loss where the market value of the investments made has decreased in the intervening period due to prevailing market conditions.
3. Where a particular policy can in law not be cancelled, or by virtue of its terms and nature not capable of being cancelled, such fact shall be disclosed to the policyholder by the intermediary or the insurer before entering into of any insurance transaction in respect of the policy.

10.2. Debit Orders

4. An insurance party involved:
 - a. Shall ensure that any debit order to be signed by a policyholder for the payment of premiums to any such party, shall not be drafted to be in favour of any other person (whether conjointly with the insurance party involved or as an alternative) but such first mentioned party;
 - b. Shall not unilaterally terminate any current debit order signed by a policyholder without having informed the policyholder in writing of the intention so to terminate the debit order at least 30 days before the effective date of such envisaged termination.

10.3. Receipt for Premium Paid in Cash, and Validity of Policy

5. When a premium is paid in bank notes or coins, the recipient thereof shall give to the payer a written receipt for it.
6. The receipt shall state the name, address and telephone number of the recipient, the policy number and the name of the insurer on whose behalf the premium is received.

10.4. Option for Payment of Policy Benefits in Money

7. The policyholder is entitled to demand that a policy benefit which is expressed otherwise than as a sum of money must be provided as a sum of money, in which case the sum of money must be equal in value to the cost the insurer would have incurred had the policy benefit been provided otherwise than as a sum of money.

10.5. Rejection of Claims

8. An insurance party involved shall ensure that where any decision has been made as to the rejection of any claim under a policy, or as regards the quantum of a claim which is in

dispute, the policyholder concerned is in writing informed of the reasons for the decision within 10 days of taking the decision and that the policyholder may within a period of not less than 90 days after the date of the relevant decision make representations to the relevant insurer in respect of such decision. The 90 days referred to may not be included in any time-barring period contained in the policy for the institution of legal action.

9. If a claim is rejected or a quantum is disputed as contemplated in paragraph 8 on behalf of an insurer by a person other than the insurer, such other person must provide the rejection notice contemplated in that paragraph, provided that such rejection notice must also contain the name and contact details of the insurer and state that any recourse or enquiries must be directed directly to that insurer.

10.6. Signing of Blank or Incomplete Forms

10. No insurance party involved may require, permit or allow a policyholder to sign any blank or partially completed form necessary for the purpose of entering into a policy, where another person will be required, permitted or allowed to fill in other required detail, or enter into any policy where any such signing and providing of detail have occurred.

10.7. Void Provisions

11. A provision of a policy is void to the extent that it provides expressly or by implication:
 - a. That in connection with any claim made under the policy, the policyholder may be obliged to undergo a polygraph, lie detector or truth verification, or any other similar, test or procedure which is furnished or made available by the insurer or any other person in terms of an arrangement with the insurer and which is conducted under the control of the insurer or such other person;
 - b. For an inducement of any nature for a policyholder to voluntarily agree to undergo a test or procedure envisaged in subsection (a) of this Rule where the policyholder submits a claim under the policy;
 - c. That where a policyholder under other circumstances than those contemplated in subsection (b) of this Rule voluntarily agrees to undergo a test or procedure envisaged in subsection (a) of this Rule where the policyholder submits a claim under the policy, and the policyholder fails to pass such test, the claim will be rejected or the policy will become void merely as a result of such failure to pass the test or procedure;
 - d. That in the event of any dispute arising under the policy, the dispute can only be resolved by means of arbitration; and
 - e. That an insurer may reject a claim because a premium was not paid on due date, if payment was made during the period of grace referred to in the Act, whether or not the payment was made prior to the event giving rise to the claim.
12. Sub-paragraph 11d shall not be construed as rendering void a provision of a policy that the parties may, after a dispute under the policy has arisen, voluntarily agree to submit the dispute to arbitration or, in the absence of such a provision, as voiding any agreement between the parties to that effect.

10.8. Waiver of Rights

13. No insurance party involved may request or induce in any manner a policyholder to waive any right or benefit conferred on the policyholder by or in terms of a provision of these Rules, or recognise, accept or act on any such waiver, and any such waiver is null and void.

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11. Breach of this Administrative Rule

1. The principal officer shall ensure that all directors, managers, agents, employees and representatives affected by this Administrative Rule are aware of this Rule and comply with the provisions of this Rule.
2. Breach of any provisions in this Administrative Rule will result in necessary regulatory intervention being taken by the Regulatory Authority.

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12. Short Title and Commencement

1. These rules are called the Policyholder Protection Rules (PPR) and came into operation on 17th May 2019.

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13. Appendix A: Code of Conduct

1. Every insurer, insurance broker or insurance agent must establish a code of conduct for policyholder protection. The code of conduct should indicate a commitment to the following general principles:
 - a. **Advertising and marketing should be fair, clear and not misleading:** All advertising and marketing communications should be fair, clear and not misleading.
 - b. **Treat policyholders honestly, fairly and professionally:** Insurers, insurance brokers, insurance agents and representatives should use their best endeavours to fulfil a duty of care towards, and act in the best interests of, policyholders. Representatives should take all necessary steps to ensure that the contract is appropriate for the policyholder to whom it is being sold.
 - c. **Policyholders must be able to take decisions on an informed basis:** The insurer is responsible for ensuring that appropriate information is prepared for and provided to the policyholder. The representative is responsible for ensuring that this information is provided to the policyholder before the sale. The insurer is also responsible, either directly or via the representative, for making relevant post-contractual information available on a regular basis, in order to: (i) notify any material changes in the features of the contract; and (ii) enable the policyholder to track the value of the contract.
 - d. **Minimise conflicts of interest between insurers and representatives:** Insurers and representative may not place their interests above those of their clients. Conflicts of interest in the advertising, marketing, distribution and sale of insurance contracts should be avoided whenever possible. Where the risk of conflict does arise, insurers and representative should manage conflicts so as to minimise the risk of harm to the policyholder and other persons with an interest in the contract.
2. The code of conduct should indicate that the principles relating to representatives will apply to insurance brokers and insurance agents to the where they perform the functions of a representative.