



FINANTSINSPEKTSIOON

REQUIREMENTS FOR ENGAGING IN INSURANCE INTERMEDIATION

These advisory guidelines (hereinafter: Guidelines) have been enacted by 2 August 2007 Resolution No 1.1-7/42 of the Management Board of the Financial Supervision Authority.

1. Competence

In accordance with Section 3 of the Financial Supervision Authority Act (hereinafter: FSAA), the Financial Supervision Authority conducts national financial supervision in order to enhance the stability, reliability, transparency and efficiency of the financial sector, to reduce systemic risks and to promote prevention of the abuse of the financial sector for criminal purposes, with a view to protecting the interests of clients and investors by safeguarding their financial resources, and thereby supporting the stability of the Estonian monetary system.

In accordance with Section 57 of the FSAA, the Financial Supervision Authority has the right to issue advisory guidelines to explain legislation regulating the activities of the financial sector and to provide guidance to subjects of financial supervision.

2. Purpose and scope of application of the Guidelines

2.1. Purpose of the Guidelines

- 2.1.1. The purpose of the Guidelines is to explain requirements set for the intermediation of an insurance contract by virtue of Sections 141 and 148 of the Insurance Activities Act and partly also Sections 54-55 of the Law of Obligations Act. By explaining the law, the Guidelines create in the insurance intermediation market conditions where entities engaging in insurance intermediation are able to understand the requirements set provided in the above Acts in a uniform manner.
- 2.1.2. Explaining the obligations of an insurance intermediary set in the Insurance Activities Act creates preconditions for an increase in the transparency of the service and help a consumer to better understand the nature of the service, generally recognised skill and good practice in the relevant professional activity of an insurance intermediary which create greater

preconditions for avoiding potential disputes when rights are exercised and obligations performed in good faith in the context of a legal relationship.

- 2.1.3. Representation of a client's interests by an insurance broker refers to the representation of a client provided in the Insurance Activities Act (hereinafter: IAA) and the performance of the insurance broker's obligations during this representation.
- 2.1.4. Information disclosed in Clause 4.3 of the Guidelines refer respectively, with respect to an insurance broker, to the notification requirements provided imperatively in Section 141 of the Insurance Activities Act, with respect to an insurance agent, to the notification requirements provided imperatively in Section 148 of the Insurance Activities Act. With respect to insurance contracts directed at a consumer by a means of communication, additionally Sections 54-55 of the Law of Obligations Act shall be taken into account in accordance with their provisions.
- 2.1.5. A separate emphasis on the duties of diligence and loyalty in Clauses 3, 5 and 6 of the Guidelines mean that the use of an insurance broker by a client creates for the client added assurance when concluding an insurance contract for the protection of his or her interests compared to the conclusion of an insurance contract by proxy of an insurance agent or directly with an insurer.

2.2. Scope of application of the Guidelines

- 2.2.1. The Guidelines shall apply to insurance brokers entitled to operate in Estonia. To insurance agents entitled to operate in Estonia, there shall apply Clauses 4, except 4.1.3., and 7.1.-7.4. and 8.
- 2.2.2. Application of the Guidelines shall take into account requirements deriving from legislation. In case of imperative requirements deriving from legislation, provisions in legislation shall be taken into account. Principles described in the Guidelines are advisory in terms of compliance by insurance intermediaries, but in performing the obligations provided in the Insurance Activities Act and Law of Obligations Act an insurance intermediary shall take into account in its daily work also the guiding explanations by the Financial Supervision Authority.
- 2.2.3. In case of problems with implementation and interpretation in the application of the Guidelines, the principle of reasonableness shall be taken into account in light of the purpose of these Guidelines and in good faith with the generally recognised professional skill expected of an insurance intermediary.

3. Insurance broker's general duty of loyalty, actions in a situation of conflict of interests

- 3.1. An insurance broker shall be guided in the provision of an insurance brokerage service by the interests of the client. If a client gives an insurance broker an instruction for execution that does not accord in the estimation of the insurance broker with the client's interest, the insurance broker's duty of loyalty toward the client shall be deemed to have been discharged if the insurance broker has explained to the client the potential damage to his or her interests.

- 3.2. An insurance broker shall advise a client in the choice of an insurance contract objectively and independently. For the purposes of these Guidelines, a situation shall be deemed objective and independent where an insurance broker, employing his or her best professional skill, evaluates the content of an insurance contract in accordance with the client's insurable interest, not allowing himself to be influenced, above all, by the relations between the insurance broker and the insurer under the law of obligations, including contracts by which the fee paid for the intermediation of insurance contracts is agreed.
- 3.3. When a situation of conflict of interests arises, an insurance broker shall be obligated to notify a client of this immediately and in a situation of an unavoidable conflict of interests act in the client's best interests or forego the provision of service. For the purposes of the Guidelines, the creation of conflict of interests shall be deemed to not include a situation where an insurance broker executes in an instruction given by a client.
- 3.4. An insurance broker's obligations provided in these Guidelines not deriving directly from an imperative requirement in legislation may be performed by the insurance broker partly or left unperformed, if it derives from:
- 3.4.1. an agreement between the insurance broker and a client;
 - 3.4.2. the circumstance that a client (except for a consumer for the purposes of Section 34 of the Law of Obligations Act) is sufficiently expert;
 - 3.4.3. the uniformity of the insurance service (its standardisation¹);
 - 3.4.4. the circumstance that an objective deriving from an obligation has been accomplished equivalently in a manner different from the Guidelines.
- 3.5. Application of Clause 3.4 of the Guidelines shall take into account the "comply or explain" principle, in accordance with which an insurance broker must, if needed, be able to state grounds to a person entitled thereto why he or she is not implementing a clause in the Guidelines or does it partially. For the purposes of these Guidelines, an entitled person may be a client of an insurance broker, a competent supervisory agency, a judicial authority and the like.
- 3.6. If an insurance broker, using his or her professional skill and technical/legal solutions, manages the contractual relations between a policy holder and an insurer and provides a relevant service going beyond the provision of a regular insurance broker's service², the administration of such contract shall be kept strictly separate from insurance brokerage. Keeping separate means the attainment of a situation where, in the event of such activity, a client has to have, upon receiving an insurance offer, a clear understanding that the broker does not provide a broker's service for the purposes of the Insurance Activities Act.

4. Requirements for ascertaining an insurable interest

¹ For instance, motor third party liability insurance

² For instance, trilateral contracts where a broker has found for the provider of a certain service (for instance, a security company, real estate management company) one of the most suitable insurance coverage providers, and the broker arranges on behalf of the service provider the offering, amendment, renewal or administration of insurance contracts.

- 4.1. To ascertain a client's insurable interest, an insurance broker shall:
- 4.1.1. ascertain during consultancy activities the risks against which the client wishes to insure;
 - 4.1.2. ask the client about the extent of the desired insurance cover and the excess rate suitable for the client;
 - 4.1.3. ascertain whether contracts matching the client's insurable interest are on offer;
 - 4.1.4. explain to the client differences in the terms and conditions of insurance, including limitations and exceptions, relevant to the client with respect to a specific insurance type;
 - 4.1.5. ascertain the client's additional interests compared to the provisions concerning an insurance type in the general terms and conditions of insurance;
 - 4.1.6. explain to the client that when there are insured additional risks compared to the provisions concerning an insurance type in the general terms and conditions of insurance this may occur by the addition of supplementary insurance coverage by an insurer, attracting a supplementary insurance premium;
 - 4.1.7. communicates with the client on other issues relating to the conclusion of an insurance contract that may have a significant impact on a decision on the conclusion of the contract.
- 4.2. In ascertaining a client's insurable interest, insurance intermediaries shall generally presume the client not to be exposed to insurance activities daily, as a result of which he or she need not know how to express his or her insurable interest clearly.
- 4.3. Information conveyed by a client to an insurance intermediary concerning an insurable interest shall be recorded by the insurance intermediary in a format reproducible in writing.

5. Proposal of a sufficient number of insurance contracts by an insurance broker

- 5.1. The requirement of a sufficient number of insurance contracts under Clause 141 (1) 5) of the Insurance Activities Act shall be deemed to have been met by an insurance broker if he or she has submitted to a client in a format reproducible in writing insurance offers by at least three insurers (unless agreed otherwise with the client).
- 5.2. If fewer than three insurance offers are submitted by an insurance broker, this may be caused by an instruction by a client, the specificity of the insured risk, the limited number of contracts on offer for the insurance type by issuers, an insurer's omission to make an offer or some other similar cause.

6. Proposal of the best insurance contract by an insurance broker

- 6.1. An insurance broker, using his best professional skill, shall be obligated to recommend to a client, in a format reproducible in writing, from amongst the insurance offers submitted, the insurance offer best matching the client's insurable interest and requirements as expressed to the insurance broker.

- 6.2. The selection of the best insurance offer shall be based on the insurance contract together with all of its important terms and conditions evaluated against a client's insurable interest. Unless a client has given an insurance broker other kinds of instructions, the basis for the selection of the best insurance offer shall not be an individual component of an insurance contract offered, for instance, the amount of the insurance premium, the amount of excess or some other such individual important indicator if overall this is not the best offer in light of the client's insurable interest and requirements as expressed to the insurance broker.
- 6.3. Considerations for the selection of the best insurance contract shall be conveyed to a client clearly and unambiguously, except if due to the standardisation of the insurance service, the similarity of insurance contracts on offer or other similar circumstances it is not possible to convey such considerations unambiguously³.

7. Requirements for notifying a client

- 7.1. Information given by an insurance intermediary to a client, including information conveyed for the purposes of advertising, shall not be misleading. Misleading information is information that creates or may create an incorrect idea of actual circumstances.
- 7.2. A client, for the purposes of Clause 7, is a person who is generally well-informed, attentive and reasonable, who knows his or her insurable interest and conveys to an insurance intermediary correct information about his or her interest and object of insurance and, if needed, requests further information.
- 7.3. When giving a client advice and recommendations, an insurance broker shall take into account that the more complex an insurance contract is or the more inexperienced a client is, and the more thoroughly advice and recommendations have to be explained to a client.
- 7.4. An insurance intermediary shall explain to a client important terms and conditions in an insurance contract. For the purposes of these Guidelines, important are terms and conditions which may impact on the business conduct of the client of the information and regarding which the client may be presumed to have a reasonable interest, for instance, the price of the service, a list of the risks covered by the contract, any limitations and exceptions relating to the contract and bases for non-compensation and the like.
- 7.5. For an insurance broker, it is advisable to convey a presentation on the important terms and conditions of an insurance contract comparatively, with comparable terms and conditions adopted as the basis of comparison by the insurance broker.
- 7.6. Exceptions relating to an insurance contract shall be singled out by an insurance broker for a client in a separate document, that is, the requirement shall not be deemed to have been met by an insurance broker if exceptions are conveyed together with a presentation of the terms and conditions of insurance compiled by an insurer. An insurance broker shall make efforts to explain the precise content of limitations and exceptions in the terms and conditions of an insurer.

³ For instance, motor third party liability insurance.

8. Requirements for the disclosure of a commission fee

- 8.1. A commission fee on an insurance contract paid by an insurer to an insurance intermediary is disclosed; the amount of the commission fee shall be clearly understandable to a client, written out in detail and easily found amongst documents presented to the client.
- 8.2. The amount of a commission fee shall be disclosed to a client separately for each insurance contract intermediated in order to ensure the comparability of the amounts of the commission fees.
- 8.3. The amount of a commission fee shall be disclosed for all insurers from amongst whom an insurance broker recommends the best offer for a client's insurable interest.
- 8.4. An insurance broker shall be forbidden to conclude with insurers any agreements whatsoever that aim to distort the amount of a commission fee disclosed to a client or to obtain from an insurer a commission fee on bases other than per each contract intermediated.

9. Requirements for saving client files

- 9.1. An insurance broker shall be obligated to create for each client a client file and save this either in hard copy, electronically or in any other format, so that later it may be evaluated whether the insurance broker has met all the requirements under the Insurance Activities Act and Law of Obligations Act in providing a service.
- 9.2. A client file for the purposes of these Guidelines shall include, amongst other things, insurance offers, consultancy documents, declarations of intention and inquiries by a client, concluded contracts or other important information regarding a specific client relationship, presented in aggregate by an insurance broker to a client
- 9.3. A client file need not be located in one place in an insurance broker; however, an insurance broker shall be able to produce it upon request by an entitled person and within a reasonable amount of time.

10. Entry into force of the Guidelines

The Guidelines shall enter into force on 1 February 2008.

