

Insurance Intermediaries Rule 5 of 2008

Insurance Intermediaries Advertisements and Other Promotional Activities

Rule pursuant to article 4 of the Act

1. (1) This Insurance Intermediaries Rule on insurance intermediaries advertisements and other promotional activities issued by insurance intermediaries (“this Rule”) is made by the Authority pursuant to, and for the purposes of, article 4 of the Act.

(2) This Rule shall come into force on the 1st October 2008.

Application

2. This Rule applies, on continuing basis, to -

(a) a person enrolled in the Agents List, Managers List or Brokers List and carrying out insurance intermediaries activities (the “enrolled person”);

(b) a person registered in the Tied Insurance Intermediaries Company Register of an authorised company and carrying out tied insurance intermediaries activities on behalf of the company and a person enrolled with the Authority by a European insurance undertaking (the “tied insurance intermediary”).

Scope

3. The scope of this Rule is to determine guidelines on insurance intermediaries advertisements and other promotional activities issued by enrolled persons or tied insurance intermediaries in Malta so that clients’ right to information which is not misleading is protected against unethical practice and insurance intermediaries advertisements and other promotional activities so issued are carried out according to generally accepted ethical practice.

Definitions

4. In this Rule, unless the context otherwise requires -

“advertisement” means an insurance intermediaries advertisement as defined in subarticle (1) of article 2 of the Act and includes a promotional activity and “advertisement issued” includes a promotional activity undertaken;

“identity” -

(a) in relation to an enrolled person or tied insurance intermediary:

(i) where the enrolled person or tied insurance intermediary is an individual, means the full name of the individual; and

(ii) where the enrolled person or tied insurance intermediary is not an individual, means the registered name of the company or undertaking or the name of the organisation;

(b) in relation to an authorised company:

(i) where the company is a local company, means the registered name of the company;

(ii) where the company is a foreign company or a European insurance undertaking, means the name of the company; and -

(aa) if the company carries on business of insurance through a branch and the business is carried on by an insurance manager, includes the name of the insurance manager;

(bb) if the company carries on business of insurance through an insurance agent, includes the name of the insurance agent,

and, in each case, includes any other relevant particulars or material information which a person deems appropriate to add for the proper identification of the person in different circumstances or for different purposes;

“issue”, in relation to an advertisement, includes causing or permitting an advertisement to be issued.

Advertisements to conform with guidelines

5. (1) The consent of the Authority is not required before any advertisement is issued. However, article 4 of the Act requires any advertisement issued to conform with guidelines determined by an insurance intermediaries rule; hence the object of this Rule.

(2) The guidelines governing advertisements referred to in paragraph (1) of this article as determined by this Rule are -

(a) in relation to advertisements issued by a person enrolled in the Agents List, Managers List or Brokers List and carrying out insurance intermediaries activities, those set out in article 6 of this Rule;

(b) in relation to advertisements issued by a tied insurance intermediary, those set out in article 7 of this Rule.

(3) Any requirement determined by this Rule to be included in any advertisement shall be shown prominently, clearly and intelligibly.

(4) Every enrolled person or tied insurance intermediary shall keep a record of all advertisements issued by the enrolled person or tied insurance intermediary including the date of issue and details of publication in which the advertisement was published.

(5) Advertisers should not unfairly attack or discredit other businesses or their products.

Guidelines governing advertisements issued by enrolled persons

6. (1) Any statement made by or on behalf of an enrolled person when issuing an advertisement shall not be misleading or unrealistic.

(2) Advertisements issued by or on behalf of an enrolled person shall distinguish between contractual benefits, that is benefits which the contract of insurance is bound to provide, and non-contractual benefits, that is the amount of benefits which the contract might provide assuming the insurer's particular forecast is correct.

(3) Where advertisements include a forecast of non-contractual benefits, an enrolled person shall restrict the forecast to that provided by the insurer concerned.

(4) A person enrolled in the Brokers List shall not issue any advertisement on behalf of any insurer. However, in exceptional circumstances, an enrolled broker may issue an advertisement on behalf of an insurer provided that -

(a) the prior approval of the Authority and the insurer is obtained in writing;

(b) the insurer is an authorised company; and

(c) the identity of the insurer appears in the advertisement.

(5) (a) In the case of a person enrolled in the Managers List (the “insurance manager”) holding an appointment from a company enrolled in the Brokers List (the “insurance broker”), where an insurance manager issues any advertisement relating to the activity carried out by the insurance broker, the insurance broker shall approve the advertisement before publication, accept responsibility for it and ensure that it fulfils or complies with all the legal and regulatory requirements by or under the Act.

(b) Where an advertisement is issued in accordance with paragraph (1) of this article, the insurance broker shall ensure that the advertisement -

(i) identifies in same prominence both the insurance broker and the insurance manager which issued it; and

(ii) contains a statement that the insurance manager and insurance broker are enrolled under the Insurance Intermediaries Act, 2006.

(6) Any advertisement issued by an enrolled person shall state that the person issuing the advertisement is enrolled to:

(a) carry on business of insurance broking and regulated by the Malta Financial Services Authority;

(b) act as an insurance agent and regulated by the Malta Financial Services Authority;

(c) act as an insurance manager and regulated by the Malta Financial Services Authority.

Guidelines governing advertisements issued by tied insurance intermediaries

7. (1) A tied insurance intermediary shall not issue an advertisement -

(a) except with the consent of the company to which the business advertised relates; and

(b) unless the company to which the business advertised relates:

(i) is the company which has enrolled the tied insurance intermediary with the Authority in the Tied Insurance Intermediaries List; and

(ii) accepts responsibility for the material content of the advertisement.

(2) Every advertisement issued by a tied insurance intermediary shall -

(a) be constructed in a manner as to leave no doubt whatsoever that the person issuing the advertisement has been enrolled by the company with the Authority to carry out, on behalf of the company, tied insurance intermediaries activities forming the object of the advertisement; and

(b) include the identity of both the company to which the business advertised refers and the tied insurance intermediary issuing the advertisement.

(3) In every advertisement issued by a tied insurance intermediary the identity of the company to which the business advertised relates shall take the same prominence in all respects as the identity of the tied insurance intermediary issuing the advertisement.

(4) A company shall not give its consent to the issue of an advertisement by any tied insurance intermediary except where the advertisement appears to the authorised company that it conforms with guidelines determined by this Rule and Insurance Rule 14 of 2008 on Insurance Advertisements and Other Promotional Activities.

(5) Any advertisement issued by a tied insurance intermediary shall state that the tied insurance intermediary that has issued the advertisement is enrolled to carry out tied insurance intermediaries activities and regulated by the Malta Financial Services Authority.

Image advertisements

8. (1) Any enrolled person or tied insurance intermediary may issue an image advertisement.

(2) For the purpose of this article, “image advertisement”, in relation to an enrolled person or a tied insurance intermediary, means a communication that consists of only one or more of the following -

(a) the identity of the enrolled person or tied insurance intermediary;

(b) a logo or other image associated with the enrolled person or tied insurance intermediary;

(c) a contact point (address or telephone number);

(d) a reference to the type of activity (for example, an insurance broker) carried out by the enrolled person or tied insurance intermediary, as applicable.

Advertisements issued in countries outside Malta

9. (1) Any advertisement issued by any enrolled person or tied insurance intermediary in any country outside Malta shall conform with any insurance advertising laws or regulations of the country where the advertisement is issued.

(2) Where in a country outside Malta there are no laws or regulations which govern insurance advertisements, any advertisement issued by any enrolled person or tied insurance intermediary shall, as far as practicable, conform with the requirements of this Rule.

Registered Persons

10. Any person registered in the Agents Register, Managers Register or Brokers Register is prohibited from issuing any advertisement in his/her name or on his/her behalf.

Repeals and Savings

11. (1) The requirements of this Rule are without prejudice to the requirements of Insurance Rule 14 of 2008 on the Insurance Advertisements and Other Promotional Activities.

(2) Without prejudice to article 4(2) of the Preliminary provisions, and saving the provisions of paragraph (3) of this article, Insurance Intermediaries Directive 5 of 1999 on Insurance Intermediaries Advertisements and Other Promotional Activities, is hereby repealed.

(3) Every action, directive, instruction, guideline or order whatsoever taken or commenced thereunder or under Insurance Directive 14 of 1999 on Insurance Advertisements and Other Promotional Activities, in so far as they apply to insurance agents and insurance managers, shall continue to be valid and in force, as if such action, directive, instruction, guideline or order were taken or commenced under this Rule.