



**Financial Services
Commission**

Insurance Guidance Note No. 7
Insurance Companies Ordinance 1987
Guidance Notes On Disclosure Of Information
Relating To Non-Life Insurance Contracts

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Published by:

Financial Services Commission
PO Box 940, Suite 943, Europort, Gibraltar
Tel (+350) 40283
Fax (+350) 40282
E-Mail: info@fsc.gi
www.fsc.gi

Introduction

1. These notes outline the effect of Section 70B of, and Schedule 12 to, the Insurance Companies Ordinance 1987. This section and Schedule implement the disclosure provisions of Articles 31 and 43 of the Third Non-Life Directive (92/49/EEC).
2. The notes should not be taken as an authoritative statement of the effect of the new legislation. For these companies should refer to the Ordinance, the Regulations and the relevant Directive, taking legal advice as appropriate.

Disclosure Requirements Of The Third Non-Life Directive

3. The disclosure requirements are contained within Articles 31 and 43 of the Third Non-Life Directive. Article 43 only applies to cross-border insurance business and states that:
 - (a) before any contract, other than a contract for large risks, is concluded the policyholder must be informed of the EEA State in which the establishment which will cover the risk is situated; and this information must be included in any document issued to the policyholder by the company;
 - (b) the address of the establishment which will cover the risk must be disclosed on any document which grants cover or binds the policyholder;
 - (c) in the case of insurance for relevant motor vehicle risks, EEA States may require the name and address of the claims representative to be disclosed in any document which grants cover or binds the policyholder.
4. Article 31 applies to both domestic and cross-border business and states that before the contract is concluded the insurer shall disclose the following:
 - (a) either
 - (i) the law applicable to the contract; or
 - (ii) that there is a choice of law, and the law the insurer proposes to choose; and
 - (b) the arrangements for handling policyholder complaints, including the existence of any complaints body.

Implementation Of Disclosure Requirements For Non-Life Insurance In Gibraltar

5. Paragraph 3 of Schedule 12 implements the requirements of Article 31 of the Third Non-Life Directive, while paragraph 4 implements the requirements of Article 43 of the Directive. Neither of these paragraphs applies to contracts of reinsurance or to any general insurance business by small mutuals or non-EEA insurers as these insurers are not covered by the Third Non-Life Directive. There are no disclosure requirements for insurance business by small mutuals or non-EEA insurers. Paragraphs 3 and 4 of the Schedule apply to Gibraltar insurers and EEA insurers when the risk to be covered by the contract is situated in Gibraltar.

Timing And Method Of Disclosure

6. Paragraphs 3 and 4 of the Schedule provide that the information must be disclosed before the contract is concluded. The information may be disclosed in any form. However, if it is disclosed in a form other than in writing the

information must be confirmed to the policyholder in writing as soon as is practicable. This means at the earliest time at which written information is provided by the insurer to the policyholder. i.e. the information may be included within or supplied at the same time as the proposal form or policy is provided to the policyholder. Disclosure may also be made by any person on behalf of the insurer, for example a broker or some other intermediary. However, it remains the insurer's responsibility to ensure the information is disclosed. The requirements for domestic and cross-border insurance business are dealt with separately below.

Renewal And Assignment Of Contracts

7. Where an insurance contract is renewed under existing terms and conditions, and the information required to be disclosed by paragraphs 3 and 4 (as appropriate) of the Schedule has previously been disclosed and remains unchanged, disclosure of that information need not be repeated, provided no new proposal form is completed or policy documents issued. Where a new proposal form is completed or new policy documents issued, all the information required by paragraphs 3 and 4 (as appropriate) should be disclosed, irrespective of whether the information has changed. Where the information previously disclosed under the Schedule is changed, only the changed information need be disclosed, on renewal. Similarly, where a contract is assigned, for example, a contract guaranteeing a property against defective materials as a result of a change in ownership of the property, disclosure of the information required by paragraph 3 and 4 (as appropriate) of the Schedule need not be repeated.
8. However, any requirement for the disclosure of information in all documents or any particular type of document issued by the insurer, will apply in the same way to documents issued on renewal or assignment of the contract.

Domestic Business (Insurance Business Carried On By Gibraltar Insurers In Gibraltar)

9. Only the requirements of paragraph 3 of the Schedule apply to domestic business. Paragraph 3 applies where the other party, or parties, to the contract is an individual. Therefore, where the effecting of the contract constitutes domestic business and the other party to the contract is a partnership, or any business entity other than a sole trader, the insurer is not subject to any disclosure requirements. The information which must be disclosed to policyholders who are individuals before the contract is concluded is:
 - (a) **Complaints Procedures**
 10. This should indicate the company arrangements for dealing with complaints (including the address to which any complaints should be sent) as well as the name and address of any independent body to which a policyholder may appeal. The fact that the existence of any such complaints body does not affect the right of the policyholder to take legal action against the insurer should also be disclosed.
 - (b) **Choice Of Law**
 11. In the majority of cases, there will be no restriction upon the law that can be chosen to apply to a contract of insurance. The choice of contract law should be agreed amongst all the parties to the contract. Therefore, in such cases, the information to be disclosed will be (a) that the parties to the contract have the right under Gibraltar law to choose the law which should apply, and (b) the law that the insurer proposes should apply to the contract. If, for any reason, the



parties to the contract are not free to choose the law that will apply to the contract, the insurer should indicate the fact that there is no choice and inform the policyholder of the law that must apply. The choice of contract law should not be taken to include a choice of tax law.

Cross-Border Business (Insurance Business Carried On Or Provided In Gibraltar By EEA Insurers And Insurance Provided In Gibraltar By Gibraltar Insurers)

12. Both paragraph 3 and 4 of the Schedule apply to cross-border business. Therefore, where the effecting of the contract constitutes cross-border business and the other party, or parties, to the contract is an individual, the insurer must disclose, before the contract is concluded, the information described in paragraphs 10 and 11 above. In addition, irrespective of whether the other party, or parties, to the contract is an individual, the following information must be disclosed to the other party before the contract is concluded:

(a) EEA State of insurer

The insurer must say, unless the contract is for large risks, the EEA State in which the establishment (head office or branch) which will cover the risk is situated. This information should also be disclosed in any document issued by the insurer to the other party, or parties, to the contract.

(b) Address of insurer

The insurer must include the address of the establishment (head office or branch) which will cover the risk in any document issued by it which grants cover or which binds, or may bind, the policyholder. Please note that, unlike the requirement to disclose the EEA State of the insurer, this requirement applies to contract for large risks.

(c) Name and Address of Claims Representative for motor policies

Only insurers providing relevant motor vehicle risks insurance into Gibraltar on a services basis are required to appoint a claims representative. Such insurers, when effecting a contract which constitutes the provision of relevant motor vehicle risks insurance in Gibraltar, must include the name and address of such an appointed claims representative in any document issued which grants cover or which binds, or may bind, the policyholder.