



**Financial Services
Commission**

Insurance Guidance Note No. 8
Insurance Companies Ordinance 1987
Guidance Notes On Disclosure Of Information
Relating To Life Assurance Contracts

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Introduction

1. These notes outline the effect of section 70B of, and Schedule 12 to, the Insurance Companies Ordinance 1987 (“the Ordinance”). This section and Schedule implement the disclosure provisions of Article 31 and Annex II of the Third Life Directive (92/96/EEC).
2. The notes offer guidance to insurers as to the methods by which they may best comply with the new legislation. In some cases, they suggest the supply of information in addition to the requirements of that legislation. However, these guidance notes cannot be taken as an authoritative statement, and insurers should refer to the Ordinance, the Regulations and the relevant Directive, taking legal advice where appropriate.

Disclosure Requirements Of The Third Life Directive

3. The third life Directive requires that at least the information in Part A of Annex II of that Directive (detailed information about the insurer and the insurance policy) is communicated to the policyholder before the contract is entered into. The policyholder must also be informed, during the term of the contract, of any change in the information listed in Part B of Annex II to the Directive (detailed information about the insurer and the insurance policy, including the state of bonuses). EEA States can only require information in addition to that in Annex II of the Directive to be disclosed by insurers if it is “necessary for a proper understanding by the policyholder of the essential elements of the commitment”. The information in Annex II to the Directive is to be provided in writing in the language of the EEA State of commitment, unless the party to receive the information requests that it be supplied in another language and the law of the EEA State of commitment allows the policyholder to make such a request, or to choose the law applicable to the contract.

Implementation Of Pre-contractual Disclosure Requirements For Life Insurance In Gibraltar.

Insurance Business Covered

4. Paragraph 1 of Schedule 12 to the Ordinance contains the pre-contractual disclosure requirements introduced by the third life Directive. Subject to paragraph 5 below, this paragraph applies to contracts of direct long term insurance effected by a head office, or branch, of an insurance company -
 - (a) situated in Gibraltar;
 - (b) situated in a EEA State where one or more of the other parties to the contract is habitually resident in Gibraltar.
5. Paragraph 1 of Schedule 12 to the Ordinance does not apply to -
 - (a) contracts effected by companies outside the scope of the third life Directive, that is, non-EEA insurers and insurers with a head office in Gibraltar which are not Gibraltar insurers;
 - (b) contracts which constitute investment business, as defined by the Financial Services Ordinance, effected by companies which are authorised persons within the meaning of that Ordinance.

Before The Contract Is Entered Into

6. All the information required by paragraph 1 of Schedule 12 to the Ordinance is to be disclosed in writing before the contract is entered into. In many cases, the precise time at which the contract is entered into is not clearly defined or

predictable. As best practice, insurers should disclose the information early in the selling process and whenever a product recommendation is made or a proposal form completed by the policyholder. The information disclosed before the contract is entered into may be supplied in a format which is not specific to the policyholder. In such cases, it is best practice to supply the client specific details to the policyholder either before, or when, the cancellation notice is issued (e.g. contained in the policy documents), or as soon as possible after entering into any contract that is not subject to a cancellation period.

Language In Which Disclosure Is To Be Made

7. The insurer's legal obligations are satisfied if the information is supplied either in:
- (i) English; or
 - (ii) an EEA State language requested by the other party to the contract.

The insurer may, but is not obliged to, provide the information in some other language requested by the policyholder only if it is in addition to supplying it in a language that complies with one of the options described above.

Information To Be Disclosed

8. Some of the pieces of information to be disclosed by insurers are only relevant to investment business and need not be disclosed for contracts the effecting of which constitutes non-investment business. Therefore, the paragraphs of the guidance notes marked with a star will only apply to any contract which falls within the definition of investment business entered into, or proposed by, persons exempted under Section 4 of and Schedule 4 to the Financial Services Ordinance. We take the view that the following pieces of information, where relevant, should be disclosed:

Name and legal form of the insurer

9. In the case of companies, the full name of the company and its legal form should be disclosed. The possible legal forms are listed in Article 8 of the first life Directive as amended by Article 5 of the third life Directive. Other information about the nature of the company (e.g. that it is a mutual) may be provided in addition to, but not in place of, disclosure of one of the legal forms listed in Article 5.

The location of the insurer

10. In the case of companies, the territory (whether Gibraltar or an EEA State) in which the company's head office is situated and, in addition, where the contract is to be entered into through a branch of the company, the territory (whether Gibraltar or an EEA State) in which that branch is situated.

Address of the insurer

11. In the case of companies, the address of the company's head office and, where the contract is entered into through a branch, the address of that branch shall also be disclosed. The term "head office" is distinct from, and does not necessarily include, a registered office.

Definition of each benefit and option

12. Only a brief outline of the main benefits automatically provided by, and the options under, the terms of the contract need be disclosed, provided that it is indicated that further information is available on request. In the case of unit linked contracts, policyholders should be supplied with a summary of the potential links as described in paragraph 19 below.

Term of the contract

13. The date upon which the policy expires, on the basis that neither party has exercised any right to terminate the contract. This need not take account of any option a policyholder may have with regard to extending the term of the contract.

Means of terminating the contract

14. This should indicate the ways and circumstances in which either the policyholder, or the insurer, may terminate the contract before the term of the contract has been completed. Where appropriate, the fact that there will be, or may be, financial penalties where a contract is terminated early should be disclosed.

Method of payment of premiums and duration of payments

15. The amount of the payments, the dates for payment, and the length of time during which premiums are payable, shall be disclosed. The means by which any such payments may be effected, e.g. cash, cheque, direct debit, etc., should also be disclosed in order to ensure that the policyholder will be able to make the necessary payments by the method required.

Method of calculation and distribution of bonuses *

16. This will only be applicable to contracts that provide for the payment of bonuses to policyholder ("with profits policies").

The insurer should state -

- (a) how it distributes profits which are allocated for the payment of bonuses (for example, by an increase in benefits or a decrease in premiums);
- (b) whether increased benefits resulting from bonuses are payable (subject to any adjustments) even if the contract is terminated early by either party to the contract;
- (c) where the bonus acts to increase benefits, whether increases are likely to be made each year, or only when the policy monies become payable to the policyholder;
- (d) the basis upon which bonuses are allotted to policyholders (for example, sum assured, premiums paid, value of existing bonuses);
- (e) whether policies share equitably in the distribution of all the profits of the long term fund, or only certain elements of these profits because, for example, certain assets are to be hypothecated to the type of contract concerned, so that the bonuses distributed to the policyholder will be restricted to the profits earned on those assets.

Surrender and paid up values of policies *

17. An insurer shall supply -
- (a) details of the surrender value of the policy; or
 - (b) the actual or projected surrender value on each anniversary of the date of the policy was entered into together with a statement that the insurer is contractually obliged to pay these surrender values or, if this is not the case, a summary of the assumptions used to calculate the surrender values; or
 - (c) in the event that there is no surrender value, a statement to that effect.

Information on premiums for each supplementary benefit *

18. “Supplementary benefits” mean those benefits, whether compulsory or not, which are separately identified “riders” under the contract (e.g. waiver of premium, family income benefit or accidental death benefit). If there is an identifiable premium for the supplementary benefit, then this should be disclosed. However, if the contract is written as an indivisible single policy (as in the case of some unit linked policies), then general information should be provided which gives an indication of the proportion of the cost attached to providing these additional benefits.

Definition of units to which benefits are linked *

19. A summary of the internal or external funds, or other reference values to which benefits are, or may be, linked under the contract should be disclosed. As best practice, insurers should also disclose the procedures, and any charge levied, for switching between funds. There should be a description of all charges levied through -
- (a) a deduction from the premium invested in units;
 - (b) the existence of a bid/offer spread on the units; or
 - (c) as a deduction from the funds in which the units are established.

Nature of the underlying assets for unit linked policies *

20. An indication of the types of assets that will be held (such as property, equities, gilts and bonds, currency deposits or cash) shall be disclosed. The location of the investments should be indicated. It is sufficient to state that the investments are in Gibraltar, the UK, Europe, Far East, etc.

Arrangements for the cooling-off period

21. If the policy is one to which section 72 of the Ordinance applies, and which is not exempted by either that section or regulation 4 of the Insurance Companies (Forms) Regulations 1996 from the requirement to give the policyholder the right to cancel the policy, the insurer shall notify the policyholder that he or she -
- (a) has the right to cancel the insurance policy under the Ordinance; and
 - (b) will receive written notification of that right to cancel and how it may be exercised.

If the policy is either outside the scope of, or exempted from, the requirements of section 72 of the Ordinance, the insurer shall notify the policyholder of, as appropriate, either -

- (i) that there is no right to cancel the policy; or
- (ii) the length of the cancellation period, the way in which the right to cancel may be exercised, and the consequences of doing so.

Information on tax arrangements

22. General information should be provided in relation to the tax position with regard to the following events (where relevant to the particular contract concerned) which may occur during the term of the contract:
- (i) payment of premiums (e.g. for pensions - is the contract written in a “gross” or “net” fund?);
 - (ii) early or part surrender of the policy;
 - (iii) assignment of the policy;

- (iv) lapse of the policy;
- (v) payment of benefits under the policy (e.g. claims on death, annuity payments, etc.).

In the case of assignment, early or part surrender, or lapse of the policy, it would be sufficient to inform the policyholder that any of these events may result in the alteration or loss of any preferential tax treatment associated with the policy, and that professional advice should be sought as to the full tax implications.

Complaints procedures

23. This should indicate both the company's arrangements for dealing with complaints (including the address to which any complaints should be sent) and, if appropriate, the name and address of any independent body to which a policyholder may appeal. The fact that the existence of a complaints procedure does not affect the right of the policyholder to take legal action against the insurer should also be disclosed.

Law applicable to the contract

24. In the majority of cases where the policyholder is habitually resident in Gibraltar, there will be no legal 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. In such case, the insurer must state -
- (a) that the parties to the contract have the right to choose the law applicable; and
 - (b) the law that the insurer proposes should apply.

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 to the contract. The choice of contract law should not be taken to include a choice of tax law.

Implementation Of Post-Contractual Disclosure Requirements For Life Insurance In Gibraltar

Insurance business covered

25. Paragraph 2 of Schedule 12 to the Ordinance contains the post-contractual disclosure requirements introduced by the third life Directive. Subject to paragraph 26 below, paragraph 2 of the Schedule applies to contracts of direct long term insurance entered into by a head office, or branch, of an insurance company -
- (a) situated in Gibraltar;
 - (b) situated in an EEA State, where one or more of the other parties to the contract is habitually resident in Gibraltar.
26. Paragraph 2 of the Schedule does not apply to contracts entered into before 1 July 1996, or any contract entered into by companies outside the scope of the third life Directive, that is non-EEA insurers and insurers with a head office in Gibraltar which are not Gibraltar insurers. However, it is best practice in these cases to disclose the information required.

Distribution Of Notices

27. The notice giving details of the change or state of bonuses may be distributed to policyholders by any means, and the information shall be considered to have been disclosed if it is sent by post, or otherwise delivered to the last known address of the policyholder.

Information To Be Disclosed

28. When it becomes necessary for an insurer to issue a notice in order to comply with the requirements of paragraph 2 of the Schedule, only the information material to the change or the state of bonus, as appropriate, need be disclosed.

Changes In Policy Conditions

29. Where there is a change in policy conditions, or in the law applicable to the contract, which results in a change in any of the information listed below, i.e.:
- name or legal form of the insurer;
 - address of the insurer;
 - definition of each benefit under the contract;
 - term of the contract;
 - means of terminating the contract;
 - means and duration of payment of premiums;
 - method of calculation and distribution of bonuses;
 - surrender and paid up values of policies;
 - information on premiums for each benefit;
 - definition of units to which benefits are linked;
 - nature of the underlying assets for unit linked policies,
- the insurer should issue a written notice disclosing the new information and, either, provide the policyholder with a copy of the previously disclosed information, or refer the policyholder to the relevant previous document. In general, it should not be necessary to disclose a change in surrender or paid up values unless there is some other change to the policy conditions which renders the values previously disclosed inappropriate (e.g. an increase in premiums or extension of the term of the contract).
30. The new information should be disclosed in accordance with the requirements, for pre-contractual disclosure of that information as described above.

Timing Of Issue Of Notices

31. Notices disclosing a change in the information listed above should be issued either:
- (i) before the change occurs and give notice of the date from which the change will be effective; or
 - (ii) as soon as practicable after the change has occurred.

The information need not necessarily be included in a client specific notice. For instance, it may be included in a general leaflet, or otherwise sent as part of a group mailing, provided the importance of the information is apparent to the policyholder.

Bonuses

32. The requirement to issue written bonus notices only extends to contracts that permit the payment of bonuses. Bonuses that are guaranteed and the value of which are known before the contract is entered into are not covered. All bonus notices should be based on the assumption that the policyholder maintains the policy until maturity and this should be stated in the notice.

Timing Of The Issue Of Bonus Notices

33. Bonus notices must be issued at least once in every calendar year, other than the calendar year in which the contract is entered into. This means that there will be considerable flexibility for insurers to vary the date upon which bonus notices are issued in any given year. Where a contract is entered into before the bonus notice for that year is issued, insurers should, where practicable, issue to policyholders a bonus notice for that year.

Form Of Bonus Notices

34. Bonus notices may take one of the following forms:
- (a) a client specific notice that indicates the amount of the bonus allotted to that policyholder;
 - (b) a client specific notice which indicates the total value of the investment, including the value of any bonus allotted, and the rate of bonus over the period of time to which the bonus notice relates; or
 - (c) a non-client specific notice that provides sufficient information to enable policyholders to calculate the amount of bonus allotted to them and indicates the method for the calculation. Such a notice could take the form of a table of values for the bonus for given sums assured and years of commencement of the contract, or indicate the amount of the bonus as a proportion of the sum assured.
35. Where a notice of the type described under options (a) or (c) above is issued the amount of bonus disclosed may be either the cumulative total of bonus accrued since the contract was entered into, or the amount of the increase in bonus accrued since issue of the previous bonus notice to the policyholder. In both cases, the period of time to which the bonus notice relates should be clearly stated.
36. In the case of insurance contracts that provide benefits for an occupational pension scheme, the insurer need only supply the bonus information to the trustee or employer who is the other party to the contract. It remains the responsibility of any trustee or manager to pass the information on to the scheme participants.