

LEGAL NOTICE NO.....

THE INSURANCE ACT

(Cap. 487)

INSURANCE (AGENTS) GUIDELINES, 2018

IN EXERCISE of the powers conferred by section 3A(a), (b) and (g) of the Insurance Act, the Insurance Regulatory Authority issues the following guidelines—

GUIDELINES FOR INSURANCE AGENTS, 2018

1. These guidelines may be cited as the Insurance Citation. (Agents) Guidelines, 2018
2. These guidelines set the principles guiding the operations of insurance agents. Introduction
3. The purpose of these guidelines is to regulate the operation of insurance agents. Objectives.
4. These guidelines shall apply to insurers and insurance agents. Application
5. A person shall not act as an insurance agent of an insurer unless the person:

Prohibitions

- (1) holds a licence issued by the Authority ;
and
 - (2) has entered into a written agency agreement with the insurer.
6. An insurance agent and an insurer shall enter into an agency agreement as prescribed in the model contract in appendix 1 of these guidelines. In applying the model contract the parties may modify its content depending on their unique situation provided that such modification shall not adversely vary the provisions of the model contract.
 7. An insurer shall not allow any person to act as an insurance agent unless the person holds a licence issued by the Authority.
 8. An Agent shall not allow any individual to act as its Principal Officer or any person to act as an agent on its behalf unless the person is licensed by the Authority.
 9. A Principal Officer shall not work for more than one Agent.
 10. A director or employee of an Agent shall not act as an agent of any other Agent or broker.
 11. An Agent shall notify the Authority in writing, within 7 days:

- (1) Whenever there is any change in the address or particulars of the Principal Officer or the agent;
 - (2) When the Principal Officer terminates employment with the Agent; and
 - (3) Whenever the Agent ceases to act for an insurer.
 12. Every agent, Principal Officer and insurer shall furnish the Authority with such information and returns at such time and in such manner as the Authority may require.
 13. Where an agent, Principal Officer, or insurer fails to furnish the Authority with any information or file any return, they shall be liable to a penalty of Kenya Shillings Twenty Thousand.
 14. An insurer shall establish and maintain an effective agency management system to manage the activities of its agents.
 15. An insurer shall maintain a register containing the names, principal officers, addresses of all its agents and such other particulars as may be required by the Authority.
 16. Where an insurer terminates the agency agreement due to fraud or misconduct, the insurer shall within 7 days from the date of termination report to the Authority.
 17. An insurer shall be bound by the actions of their agents in an insurance transaction.
- Notification of changes
- Information to be furnished
- Responsibilities of Insurer

18. An insurer shall ensure and maintain evidence that their agents comply with the provision of these guidelines.

19. An Agent who is not a natural person, shall ensure that the Principal Officer:

- (1) is an employee of the agent;
- (2) shall be responsible for the general control, direction and supervision of the agent; and
- (3) meets the fit and proper criteria;

Responsibilities of an agent

20. An insurance agent shall :-

- (a) identify himself as an insurance agent acting on behalf of the insurer he represents;
- (b) provide evidence of current registration;
- (c) make every reasonable effort to ensure that the product proposed is suitable to the needs and resources of the prospective policy holder as disclosed to the insurance agent;
- (d) give advice only on those matters in which he is competent to deal with or otherwise seek advice from his insurer when necessary;
- (e) explain the proposed cover and exclusions to the prospect;
- (f) treat all information provided by the prospects as confidential and only use such information for the intended purpose;
- (g) not make inaccurate or misleading statements about any insurer or their products, or any other intermediaries;

- (h) give a breakdown of premium and statutory charges payable by the policyholder;
- (i) not rebate part of its commission as an inducement to place the business with the insurer;
- (j) explain to the prospects that it is their responsibility to fill and sign a proposal form; and
- (k) explain to the prospect the consequences of fraud, non-disclosure and inaccuracies to the prospective policy holder and draw his attention to the relevant statements in the proposal form.

21. In addition to the above responsibilities a life insurance agent shall: -

- (1) explain the long term nature of the policy and the consequences of early discontinuance and surrender;
- (2) where a policy offers participation in profits, or is investment-linked, explain the specific difference between guaranteed and projected benefits;
- (3) where projected benefits are illustrated, explain the assumptions on which the illustrations are based, including any future bonus or dividend declaration, and that projected benefits are not guaranteed;
- (4) in the case of participating (with-profit) business, explain that any bonuses or dividends declared in the future may be lower or higher than those currently quoted

and that past performance may not be a guide to future performance;

- (5) in the case of linked long term business, explain that unit value and the value of the policyholder's benefits may fluctuate;
- (6) unless specifically authorised by an insurer, use only such sales proposals and illustrative figures that are supplied by the insurer and shall use the whole illustration in respect of the policy being discussed, and no other, and shall not add to it or select only the most favourable aspects of it; and
- (7) if authorised by an insurer to prepare certain illustrations himself, prepare them using only the assumptions authorised by the insurer.

22. An Agent for takaful shall:

- (1) explain the concept of takaful and the differences between takaful and conventional insurance.
- (2) explain the exclusions and prohibitions from a sharia perspective;
- (3) in the case of family takaful, explain the long term nature of the certificate and the consequences of early discontinuance.

23. Where the Authority determines non-compliance with the provisions of these guidelines, it may take any intervention prescribed in the Act.

24. Insurers shall on a quarterly basis submit to the Authority the details of the operations of the agents in a prescribed form.

Takaful
agents

25. Where the Authority determines that the regulated entity has not met the requirements of this guideline, the Authority may impose any or all of the administrative sanctions to correct the situation in accordance with the provisions of the Insurance Act. The Authority shall therefore take appropriate action to rectify the situation where there is violation of the provisions of these guidelines, including but not limited to—
- Enforcement
- (1) Direct the regulated entity to take appropriate remedial action.
 - (2) Withdraw, suspend or revoke the sale of the insurance product;
 - (3) Impose additional reporting requirements and monitoring activities;
 - (4) Withdraw or impose conditions on the business license taking into account the nature of the breach and;
 - (5) Monetary penalties.
- Reporting requirement
- Administrative Sanctions

Issued on the 2018.

**ABDIRAHIN H ABDI
KIPTUM**

GODFREY

K

*Chairman,
of*

*Insurance Regulatory Authority
Authority
Authority*

Ag. CEO & Commissioner

*Insurance
Insurance Regulatory*

APPENDIX 1

AGENCY AGREEMENT

BETWEEN

ABC INSURANCE AGENCY

&

XYZ INSURANCE COMPANY LTD

THIS AGREEMENT is made on this _____ day of _____ 20—(commencement date) between the **ABC Insurance Agency** of Post Office Box Number xxxxxxxx xxxxxxxx (Hereinafter referred to as “**Agent**”) on **ONE PART** and the **XYZ Insurance Company Ltd**, of Post Office Box Number xxxxxxxx xxxx (Hereinafter referred to as “**company**”) on the **OTHER PART**

Whereas

- a. The company is a duly registered insurance company carrying on insurance business in the Republic of Kenya and the agent is an independent contractor with a considerable knowledge in the provision of insurance services.

- b. The company is desirous of engaging the services of the agent and the agent has accepted such engagement on the terms and conditions herein.

1.0. General terms of agreement

- 1.1 This agreement specifies the terms and conditions under which an Agent may represent the Company in an insurance transaction.
- 1.2 This agreement shall not be assignable by either party.
- 1.3 The Company reserves the rights to accept any proposal for new business or renewal request submitted by the Agent.

2.0 Miscellaneous Provisions

- 2.1. The contract constitutes the entire agreement between the parties hereto and supersedes any and all prior contracts and relations between the parties on the company's business other than debts owed or guarantees of payments made by either party.
- 2.2. The headings in the contract shall not affect its interpretation.
- 2.3. If any terms or provision in the contract shall be held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of this contract but the validity and enforceability of the remainder of the contract shall not be affected.

2.4. Whenever required by context, the use of the singular number shall be construed to include the plural, and the use of the plural the singular and the use of any gender shall include both genders.

3.0 Law and Jurisdiction

This agreement shall be construed according to Kenyan Law and any disputes arising in respect of it shall be determined under the Kenyan law.

4.0 Variation

Any variation to the terms of this agreement must be confirmed in writing by both parties and shall not negate the content of this contract.

5.0 Authority

5.1 The Company hereby appoints the agent subject to the terms and conditions of this agreement for distribution of its insurance products.

5.2 The Agent has no authority on behalf of the company to alter, modify, or discharge any insurance contract.

5.3 The Agent has no authority to alter, modify, delete from or add any Company documents and shall not without the written consent of the Company publish or advertise any material regarding the Company.

6.0 Duties of the Agent

The Agents shall perform the following duties;

- (1) solicit and procure business on behalf of the company;
- (2) maintain confidentiality of all the information received from the client;
- (3) convey all information received from the client to the company; and
- (4) uphold the image and brand of the Company.

7.0 Duties of the company

In its dealings with the Agent, the Company shall act in good faith and in particular shall:

- (1) inform the Agent and the prospect within a reasonable time of its acceptance or refusal of any transaction;
- (2) give a renewal notice to the client and the existing Agent and only renew on the instruction of the client;
- (3) where the Agent ceases to represent the Company in case of general insurance business, the business introduced by the Agent shall be treated as direct business and no further commission shall be paid to any other person.

8.0 Commission

- 8.1. In consideration of the obligations undertaken or agreed to be undertaken by the Agent under this agreement, the Company shall, during the term of this agreement, pay the agent commission as agreed with the Company.
- 8.2. In case of termination of this agreement, a life Agent shall be entitled to;
- (a) in case of death , retirement or incapacitation, the commission due to the Agent for the next 36 months from the time of death or incapacitation;
 - (b) In case of resignation, the commission due to the Agent for the next 6 months.
 - (c) in case of dismissal on grounds of non-performance, the commission due to the Agent for the next 12 months.
 - (d) in case of dismissal on grounds of fraud, criminal offense, misappropriation of funds, misrepresentation, unexplained absenteeism for more than one month, no commission shall be paid to the Agent.
 - (e) in any other case the commission accrued at the time of termination; and
 - (f) any other benefits and entitlements at the time of termination.

9.0. **Termination**

- 9.1. This agreement may be terminated by either party giving the other at least 30 days prior written notice of the intention to terminate this agreement.
- 9.2. This agreement may be terminated by the Company on grounds of non-performance and unexplained absenteeism for a period exceeding one month.
- 9.3. This agreement may be terminated without notice if any of the following events occur:-
 - (a) if either party commits a breach or fails to observe or perform any of the terms, conditions or provisions of this agreement;
 - (b) if the Agent fails to comply with any of the regulations, rules, requirements, guidelines issued under the Insurance Act;
 - (c) if the Agent's registration with the Authority is cancelled or suspended or not renewed upon its expiry;
 - (d) if a bankruptcy petition has been filed in court against the Agent and not withdrawn or dismissed or if a bankruptcy order is made against the Agent;
 - (e) if the Agent is a company or in case of the Company, a liquidation order or order for the appointment of a receiver or statutory manager

is made by the court or the Authority as applicable;

(f) if either party enters into a compromise or a scheme of arrangement with creditors;

(g) if either party is involved in fraud;

(h) if performance of the contract is frustrated;
and

(i) if either party is convicted of criminal offense.

9.4. If the Agent is unable to perform his obligations due to illness or any other cause and is temporarily or permanently incapacitated, a notice not less than six months shall be issued before termination.

9.5. Termination of this agreement shall not affect the rights, obligations and liabilities of either party in respect of any act or omission which occurred before the termination.

10.0. **Confidentiality**

Any information relating to either party made available to the other shall not be used or disclosed to any third party by the other party or its employees without prior consent of the other party.

11.0. **Security Deposit**

11.1. The Company shall every month retain 2% of the agent's commission per policy as a security

deposit subject to a maximum of Kenya shillings 500 per month.

11.2. This security deposit shall be retained by the Company for a period of six months after the termination of the agent's contract.

11.3. In the event that the security deposit is not applied within the six months period, it shall be released to the agent upon signing of a discharge voucher or where it is partially applied, the balance at the end of six months shall be refunded by the Company.

12.0. **Disclosure**

Agents shall treat all information as confidential. The Agent shall be under a duty to disclose such information to the Company if he is aware that such could affect the acceptance of any application for a policy.

13.0. **Licenses**

The Agent shall at all times maintain valid and current business licences and shall at all times operate within the laws and regulations governing the industry.

14.0. **Record Keeping**

An Agent shall keep and maintain in connection with the business such books, records, accounts and other documents as the Company shall from time to time direct.

15.0. **Dispute Resolution**

15.1. Both parties shall make every effort to resolve amicably by direct informal negotiations any disagreement or dispute arising between them under or in connection with the agreement.

15.2. Any dispute which cannot be amicably settled between parties within thirty (30) days shall be referred to mediation by the Authority.

16.0. **Waiver**

The delay or failure by either party to exercise any of their rights in any one instance will not prevent the party from exercising their rights at that time or at any other time.

17.0. **Amendment**

The provisions of this agreement may only be added, modified or varied by the written consent of the parties to this agreement.

18.0. **Notices**

Any notice made by either party to the other under or in connection with this agreement shall be in writing.

IN WITNESS, whereof the parties thereto have caused this Agreement to be executed the day and year first before written.

SIGNED for and on behalf of the ABC;

Binding signature of the **ABC**: Signature:

Name:

(Principal Officer)

Date:

In the presence of:

Signature:

Name:

Date:

SIGNED for and on behalf of XYZ;

Binding signature of **XYZ:** Signature:

Name:

(Principal Officer)

Date:

In the presence of:

Signature:

Name:

Date:
