



IAIS

INTERNATIONAL ASSOCIATION OF
INSURANCE SUPERVISORS

PUBLIC

INSURANCE CORE PRINCIPLES, STANDARDS, GUIDANCE AND ASSESSMENT METHODOLOGY

CONSULTATION DRAFT 28 JUNE 2017

ICP 18

ICP 18 Intermediaries

The supervisor sets and enforces requirements for the conduct of insurance intermediaries, in order that they conduct business in a professional and transparent manner.

Introductory Guidance

- 18.0.1 There is a diverse range of organisations and individuals carrying out insurance intermediation, and channels through which this is undertaken. In order to ensure consumer protection and to promote a level playing field amongst these actors, this ICP applies to the supervision of those conducting the activity of insurance intermediation. Some of the Standards under this ICP apply to the supervision of the individuals providing insurance intermediation services to customers. Other Standards apply to the organisation within which the insurance intermediation is carried out; where this is the case, it is made clear in the corresponding guidance. Where an insurer's direct sales staff solicit, negotiate or sell insurance as employees of the insurer, the supervisor would apply the Standards to the insurer.
- 18.0.2 Some intermediaries do not have direct contact with the customer but act with other intermediaries to place business with insurers (such as wholesale intermediaries). Even though they do not necessarily deal directly with the purchaser of insurance, they perform one of the functions in the chain of soliciting, negotiating or selling insurance, and are within the scope of this ICP.
- 18.0.3 Where the Standards under this ICP apply to the intermediary as an organisation, the supervisor should hold those responsible for the intermediary's governance to account for implementation of the requirements.
- 18.0.4 Individuals or firms which simply refer (or introduce) potential customers to an insurer or insurance intermediary, without carrying out intermediation, are excluded from the scope of this ICP. Also excluded from the scope are persons, such as tax advisers or accountants, who in conducting another professional activity provide:
- advice on insurance cover on an occasional basis in the course of that other activity; or
 - information of a general nature on insurance products (without advising on the choice of insurance product provider),

provided that the purpose of that professional activity is not to intermediate an insurance contract.

18.0.5 Insurance intermediaries may also perform functions supplemental to intermediation, many of which may be described as outsourced functions of the insurer. These supplemental functions may include underwriting, premium collection, administration, management of insurance claims, loss adjusting and claims appraisal. These functions are excluded from the IAIS definition of insurance intermediation. However, in some jurisdictions these supplemental functions are included in their definition of intermediation. The outsourcing of processes that are relevant to business conduct is addressed in other ICPs (see ICP 19 Conduct of Business and – for insurers – ICP 8 Risk Management and Internal Controls).

18.0.6 Insurance intermediation involves the interface between insurers and customers. Effective assessment of the quality of insurance intermediation to a large extent requires supervisory consideration of policies, processes and procedures that relate to individual customer relationships and individual transactions. Where insurance intermediation is carried out by intermediaries which are part of a group, supervisors should apply these standards to all the entities within the group that conduct insurance intermediation business. Where intermediaries are part of a group, the application of appropriate policies and procedures on insurance intermediation across the group should result in the fair treatment of customers on a group-wide basis, even if legal provisions in some jurisdictions set requirements that are potentially lower than those used by the group.

Proportionality with regard to intermediaries

18.0.7 Intermediation systems and practices are closely linked with jurisdictions' tradition, culture, legal regime and the degree of development of insurance markets. For this reason, supervisory approaches to intermediation also tend to vary. Such diversity should be taken into consideration in implementing this ICP in order to promote the fair treatment of customers.

18.0.8 In implementing this ICP, the supervisor should take into account that there are various business models ranging from sole traders to large enterprises, including specialist wholesale or reinsurance intermediaries.

18.0.9 The nature of the customers with which an intermediary interacts and the complexity of the products offered are also relevant to the supervisory approach. Retail customers, in particular vulnerable consumers, have different needs in terms of consumer protection

than professional ones; life products with an investment element are typically more complex than general personal lines products.

- 18.0.10 In light of market diversity, in implementing this ICP, the supervisor should consider focusing on the activity carried out by the intermediary, to ensure consistency and minimise the opportunity for regulatory arbitrage.
- 18.0.11 Supervisors are faced with balancing the need for consumers to receive an appropriate level of protection and the benefits of innovation and competition. The supervisor should consider whether its licensing and supervisory requirements impose unreasonable barriers to entry for small or emerging intermediary businesses, or inhibit beneficial innovations, and thereby limit the accessibility of insurance coverage to consumers.

Types of intermediaries

- 18.0.12 Intermediaries fall into two categories: i) acting primarily on behalf of the insurer; or ii) acting primarily on behalf of the customer:
- Where the intermediary acts primarily on behalf of the insurer and sells products for, and on behalf of, one or more insurers, they are often referred to as “agent” or “producer”. Intermediaries may act for a single insurer (sometimes referred to as “tied”) or several. The products they can offer may be restricted by agency agreements with the insurer(s) concerned.
 - Where the intermediary acts primarily on behalf of the customer, the intermediary is independent of the insurer(s) whose products he sells. Often referred to as “broker”, or “independent financial adviser”, they are able to select products from those available across the market.

For the purposes of this ICP, where it is relevant to distinguish between the intermediaries described above, the former are referred to as “agents” and the latter are referred to as “brokers”.

- 18.0.13 Some supervisors do not distinguish between agents and brokers in legislation and instead supervise according to the activity performed. It may be possible for an intermediary to have different status depending on the customer relationship and the product or service being offered.
- 18.0.14 Intermediary operations range from large international firms to local sole traders. Intermediary firms sometimes operate as independent enterprises or divisions of insurers or other financial institutions, or as

part of non-financial organisations. Intermediation may also be performed by digital means, such as comparison websites.

- 18.0.15 Insurers use various distribution channels to market and sell insurance products. These can include a variety of partners - such as car dealerships, post offices, mobile phone operators, travel agents, other financial institutions and other retailers - who offer insurance alongside or as an add-on to the primary goods and services in which they trade. In many cases the activities of these distribution channels would constitute intermediation.

Intermediaries' role in promoting public trust and confidence in the insurance sector

- 18.0.16 In most insurance markets, intermediaries serve as important distribution channels of insurance. Their good conduct and professional competence are essential to promote confidence in insurance markets.
- 18.0.17 It is in the interests of supervisors, in promoting fair, safe and stable insurance markets, that the public has trust and confidence in the insurance sector. Insurance intermediaries' interface between consumers and insurers gives them a key role in building and justifying this public trust and confidence.
- 18.0.18 In some jurisdictions, intermediaries' duty to act in a professional and transparent manner is supported by professional bodies and other interested organisations. Such organisations encourage, amongst other things, the obtaining of professional qualifications, continuous professional development, ethical behaviour, the fair treatment of customers and better communication with the public. Such measures are aimed at enhancing public confidence in insurance intermediaries through raising professional standards.

Intermediaries' role in promoting financial awareness

- 18.0.19 Intermediaries can promote consumer protection by assisting consumers to make better informed decisions about the products that they buy. At the heart of consumer protection are asymmetries of information between financial services product providers and the public to whom the products are sold. The adoption of good conduct of business practices by insurers and insurance intermediaries helps to ensure that customers are sufficiently informed on the insurance products they are considering buying, before concluding a contract.
- 18.0.20 Enhancing financial awareness is a further means of ensuring that consumers are aware of the products available to them and

understand their purpose, how they work and their key features, including cost. This understanding helps consumers to compare products and to purchase insurance products that meet their needs. Enhanced financial awareness can be achieved through formal education initiatives and targeted awareness campaigns led by insurers and intermediaries, individually or jointly.

- 18.0.21 The promotion of financial awareness may benefit consumers in jurisdictions where consumer protection standards are weak or levels of financial literacy are low. It is also especially important when dealing with more complex financial products, particularly those with an investment element.
- 18.0.22 Insurance intermediaries are not the only stakeholders in promoting the financial awareness of consumers; governments, supervisors, social interest organisations and insurers have a significant role to play in consumer protection. Other stakeholders, using various communication channels, are also able to play a significant role. Nevertheless, intermediaries' face-to-face dealings with their customers and marketing of products to consumers place them in a position to contribute to strengthening the financial awareness of the public on insurance matters. Supervisors may therefore wish to encourage insurance intermediaries to promote financial awareness.
- 18.0.23 A variety of means may be used by insurance intermediaries to promote financial awareness, such as:
- explaining face-to-face the features of products in which customers may be interested, which may be particularly important where their interest is in complex or long term contracts;
 - providing references to specific websites or other reference material which gives relevant information, or publishing such material themselves;
 - making available, or suggesting other sources of, financial tools such as on-line calculators which estimate premiums or coverage levels; or
 - participating in educational initiatives such as training seminars.
- 18.0.24 In undertaking financial education initiatives, intermediaries should ensure that the personnel involved have sufficient knowledge for this purpose and that material or tools provided are up to date, free from error to the extent practicable, and easily understood. Such initiatives may target specific audiences, such as vulnerable groups.
- 18.0.25 Improved understanding by consumers of the terms and benefits they can expect from insurance products may also lead to a reduction in complaints against intermediaries or the insurers whose products they sell.

- 18.0.26 Intermediaries' initiatives to promote financial awareness, where conducted with professionalism, may help to enhance both their own reputation and that of the insurance sector.

Additional ICPs applicable to the supervision of intermediaries

- 18.0.27 ICP 19 (Conduct of Business) addresses conduct of business supervision in respect of both intermediaries and insurers, whereas this ICP addresses other aspects of supervision that are specific to intermediaries. Other ICPs that apply, generally or in part, to the supervision of intermediaries are:

- ICP 21 Countering Fraud in Insurance; and
- ICP 22 Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT).

Supervisory cooperation

- 18.0.28 In some jurisdictions, the supervision of insurance intermediaries is the responsibility of a different authority than the insurance conduct of business supervisory authority. Even where the same authority is responsible for conduct of business and intermediary supervision, the supervisory responsibilities are often undertaken within different departments. Where different authorities or departments are involved, the insurance intermediary supervisor should communicate, and cooperate where possible, with other relevant authorities and departments to ensure an understanding of all the risks relevant to their supervision of insurance intermediaries.

18.1 The supervisor requires insurance intermediaries operating in its jurisdiction to be licensed.

- 18.1.1 In some jurisdictions other terminology such as “authorisation” or “registration”, are used in place of “licensing”. For the purposes of this ICP these terms are collectively referred to as “licensing”.
- 18.1.2 The supervisor may choose to license intermediaries at the entity level or the individual level, or both. In some jurisdictions insurance intermediation activities carried out by the insurer's direct sales staff or its authorised representatives are covered by the insurer's licence; in others these may require separate intermediary licensing.
- 18.1.3 Where licensing is at the entity level the supervisor may consider whether the entity has in place procedures to ensure that the individuals who conduct insurance intermediation under its responsibility meet appropriate standards of professionalism and competence. The supervisor may also wish to set its own

requirements for approval of individuals, within an insurance intermediary, who conduct intermediary business.

18.1.4 Different types of insurance business involve different levels of complexity and risks and may require different levels of skill and experience in their intermediation. The supervisor may wish to specify in the licence the range of intermediation activities that it permits the insurance intermediary to undertake, taking into account, for example, the intermediary's proposed business plan and areas of expertise.

18.1.5 The licensing process should be designed to enable the supervisor to reject a licence application where it considers that the applicant will be incapable of delivering fair consumer outcomes or where it cannot be effectively supervised. For these purposes the supervisor may require an application, together with additional information that includes items such as:

- details of ownership, including all information necessary to provide a full understanding of the insurance intermediary's ownership and control structure;
- a business plan, including details of proposed business and financial projections;
- the proposed sources and method of capitalisation;
- information on personnel, in particular on proposed holders of key functions;
- details of any significant third party service providers;
- details of the proposed auditor, where applicable;
- details of professional indemnity insurance cover, including amount and limitations, or comparable guarantee, where applicable;
- business continuity plans;
- if incorporated, relevant information on incorporation such as memorandum and articles of association and certificate of incorporation;
- details of policies, procedures and controls in key areas such as:
 - new business;
 - client money;
 - complaints;
 - conflicts of interest;
 - compliance;

- o combating financial crime (including AML/CFT and fraud); and
- a copy of the policy and supporting documents that govern the insurance intermediary's conduct of business, or confirmation of agreement to conduct of business rules published by the supervisor.

The supervisor may require additional information to complete the licensing process, upon request.

- 18.1.6 The supervisor may set minimum financial resource requirements, for example, to discourage market entrants with insufficient financial resources to withstand shocks. Where this is the case, such requirements might take into account risk factors such as the nature of the business to be intermediated, whether the intermediary operates client accounts, the level of any professional indemnity insurance and the level of operating expenses, to ensure that an appropriately risk-based financial resource requirement is set.
- 18.1.7 The supervisor should only issue a licence if the applicant meets the initial licensing conditions.
- 18.1.8 In specific and limited circumstances, the supervisor may choose to make exceptions to certain licensing requirements. The supervisor should ensure that any such exceptions do not encourage regulatory arbitrage or increase the risk to consumers.
- 18.1.9 The supervisor should consider what licensing requirements are applicable to intermediaries operating on a cross-border basis from outside the jurisdiction. These requirements should be transparent to consumers, as well as to intermediaries, so that they can make an informed decision when choosing to deal with intermediaries from other jurisdictions.
- 18.1.10 The supervisor may consider the possibility of issuing periodically renewable licences. An advantage of doing so would be to ensure formal periodic reassessment of compliance with the regulatory licensing requirements.

18.2 The supervisor ensures that insurance intermediaries licensed in its jurisdiction are subject to ongoing supervisory review.

- 18.2.1 The supervisor should require that initial licensing conditions, as applicable, are maintained subsequent to the licence being issued and that ongoing regulatory requirements are met. Where another authority is responsible for setting the licensing requirements, the supervisor should communicate, and cooperate where possible, with this authority.

18.2.2 The supervisor may choose to take a risk-based approach in reviewing on a targeted basis whether insurance intermediaries fulfil their licensing and conduct of business requirements on an ongoing basis. Under such an approach, supervisory review should take into account the differing size of intermediaries, their likely impact on the market and the riskiness and complexity of their business.

18.2.3 In addition to monitoring ongoing compliance, the supervisor should require that any breaches in licensing conditions or other supervisory requirements are reported promptly by the intermediary.

Direct supervision

18.2.4 Direct ongoing supervision may take various forms, both off-site monitoring and on-site inspection, as necessary, as well as other supervisory tools. Further information on this topic is available in ICP 9 Supervisory Review and Reporting, but may require adaptation to make it appropriate for the specific nature of intermediary business. The balance between off-site and on-site approaches will typically be influenced by the number and nature of intermediaries in the market, as well as the supervisor's resources. The supervisor may take these factors into account when determining the balance between a proactive and reactive approach to ongoing supervision.

18.2.5 Off-site monitoring may include supervisory reporting, analysis of complaints, thematic reviews and other forms of information. The supervisor may specify information to be provided for off-site monitoring purposes, including information to be reported routinely or on an ad-hoc basis. Supervisory reporting requirements may include, but are not limited to:

- financial statements, audited where applicable, or other certification of the financial soundness of the intermediary;
- auditor's management letter, where applicable;
- confirmation of professional indemnity cover (including exclusions or limitations) or comparable guarantee;
- information on the sources of and placement of business;
- summary of movements on client money accounts, where applicable;
- changes in key functions and significant owners;
- financial links with insurers and other intermediaries (such as through related party structures or service contracts);
- types of products sold;
- business partners;

- staff compensation policy
- incentive arrangements;
- claims data;
- complaints data; and
- details of advertising and marketing expenditure relating to particular types of products or distribution channels.

18.2.6 Where the intermediary is an employee of the insurer, the supervisor may determine that information provided by the insurer as part of the insurer's regular reporting responsibilities is sufficient, without requiring separate reporting in respect of the intermediation activities conducted by the employee of the insurer.

18.2.7 The supervisor may also use regular formal meetings with intermediaries as a means of supplementing these off-site and on-site processes and procedures. Where appropriate, the supervisor may use other tools, such as "mystery shopping", to evaluate whether the implementation of intermediaries' internal policies and procedures is resulting in fair outcomes for customers.

18.2.8 Where applicable, the supervisor should apply supervisory review processes and procedures to insurance intermediaries at the level at which licensing takes place (entity or individual level) or at the insurer level. Reporting requirements in respect of an insurer's direct sales staff would be the responsibility of the insurer.

18.2.9 On-site inspections may consider areas such as:

- corporate governance and internal controls;
- procedures and controls for combating financial crime;
- review of client money accounts where applicable;
- review of customer files;
- review of complaints;
- review of disclosure to customers and terms of business agreements;
- review of documentation of advice given and the reasons for that advice; and
- other relevant elements such as the strategy, business activities and business models, the treatment of customers, and compliance with supervisory requirements.

-
- 18.2.10 Analysis of complaints may be a valuable source of information for the supervisor, as well as for insurers and intermediaries, in identifying possible risks of poor conduct in the area of intermediation.
- 18.2.11 The supervisor may take a risk-based approach, where greater attention is focused on higher risk areas. Examples include where:
- intermediation includes the provision of advice;
 - the nature of the business intermediated is more complex;
 - customers are less sophisticated; and
 - there is an increased likelihood of conflicts of interest.

Indirect supervision

- 18.2.12 In some jurisdictions intermediaries are supervised indirectly through the supervision of the insurers. The supervisor will need to take into account the extent to which such an approach achieves effective supervision. Regardless of the approach, it is ultimately the supervisor's responsibility that intermediaries are effectively supervised.
- 18.2.13 An indirect approach may be more appropriate for agency intermediation rather than the broker model.
- 18.2.14 Indirect supervision can relate to circumstances where the insurer relies upon an intermediary to perform processes on its behalf. In such cases, written agreements could be checked by the supervisor to assess the respective responsibilities. For example, insurers are expected to obtain appropriate documentation regarding their customers to demonstrate that appropriate customer due diligence and/or fact-finding procedures have been carried out. Insurers will be assessed on the adequacy of the processes carried out and documentation obtained, including where the insurer relies upon intermediaries to perform this work and supply the documentation required.
- 18.2.15 Where the supervision of intermediaries is undertaken indirectly, the supervisor should assess the insurer's processes to monitor the work undertaken by an intermediary on its behalf.

Self-regulatory organisations

- 18.2.16 A self-regulatory organisation (SRO) can be described as a non-government organisation that has the power to create and enforce industry or professional regulations and standards. The self-regulatory functions of an SRO can contribute to the supervision of intermediaries through the requirements for, and enforcement of, professional standards for its members.

18.2.17 In jurisdictions with an SRO for intermediaries, the supervisor should assess whether the SRO meets appropriate standards before placing any reliance on the SRO's self-regulatory functions. The supervisor's assessment should consider matters such as whether the SRO:

- has sufficient independence;
- has appropriate powers and resources to fulfil its mission and provide effective self-regulation;
- performs its self-regulatory functions adequately;
- establishes and maintains standards that are sufficiently robust; and
- takes appropriate action to deal with any shortcomings.

18.2.18 An SRO's regulations and standards may not address all the aspects of the supervision of insurance intermediaries for which the supervisor has responsibility. Therefore, whilst the supervisor may choose to place some reliance on the self-regulatory functions of an SRO, the supervisor should retain overall responsibility for supervision.

Other

18.2.19 In addition to direct and indirect supervision of intermediaries, the supervisor may use the supervision of insurers to gather information on and, to some extent, monitor intermediaries' activities. This may include, for example, identifying whether particular intermediaries or particular matters are the subject of regular or frequent complaints.

18.3 The supervisor requires insurance intermediaries to maintain appropriate levels of professional knowledge and experience, integrity and competence.

Professional knowledge and experience

18.3.1 It is important that individuals carrying out the activity of insurance intermediation have adequate professional knowledge. Professional knowledge can be gained from experience, education and/or training. The attainment of relevant professional qualifications may demonstrate that a certain level of professional knowledge has been achieved. [Need to agree how we refer to "individuals carrying out the activity of insurance intermediation" in this section]

18.3.2 The supervisor should require that individuals carrying out the activity of insurance intermediation have professional qualifications and experience appropriate for the business which they intermediate. More complex products or customer needs may require higher or

more specialised qualification and experience. The qualifications and experience of individuals should also be appropriate for the type of intermediation being carried out, whether acting as agent or acting as a broker. Once professional qualifications have been achieved, it is important that individuals who continue to carry out the activity of insurance intermediation keep their professional knowledge up to date. In some jurisdictions, there are supervisory or statutory requirements that individuals carrying out the activity of intermediation should spend a specified minimum amount of time on continuous professional development. In some jurisdictions, professional bodies impose such a requirement on their members.

- 18.3.3 The supervisor may consider recognising the qualifications of specified professional bodies. Where a jurisdiction has no such professional body, consideration could be given to encouraging or recognising qualifications obtained through professional bodies in other jurisdictions. The supervisor may also consider recognising such qualifications where these are considered to be equivalent to, or exceed, the qualifications available within the jurisdiction.
- 18.3.4 Intermediaries should be knowledgeable regarding the status of the insurers whose products they sell. For example, they should be satisfied that the insurer is licensed to sell insurance in the relevant jurisdiction, as a branch or subsidiary, and should be aware of the financial status and credit rating of the insurer and the applicability of any policyholder protection schemes to that insurer's products.

Integrity

- 18.3.5 It is essential that those carrying out the activity of insurance intermediation act with integrity and high ethical standards. These relate to the behaviour of the individuals concerned, such as:
- being honest, trustworthy and open;
 - being reliable, dependable and respectful;
 - not taking unfair advantage;
 - not accepting or offering gifts where this might imply an improper obligation.
- 18.3.6 The supervisor may require individuals carrying out the activity of insurance intermediation to be subject either to internal policies and procedures, or to the ethical standards of professional bodies, that require integrity.
- 18.3.7 The supervisor may establish its own expectations on integrity through, for example, the publication of codes of conduct with which such individuals are required to comply. Codes of conduct should be

complementary to the relevant legislation and may address any aspect of dealings between insurance intermediaries and their customers.

- 18.3.8 Intermediary firms should have procedures to assess the integrity of those intermediating on their behalf. Such procedures should include pre-employment checks as well as ongoing requirements. Pre-employment checks should include, amongst other things, employment history, any civil liability, criminal convictions or pending legal proceedings.

Competence

- 18.3.9 The supervisor should require individuals carrying out the activity of insurance intermediation to act only in respect of business for which they have the required competence.
- 18.3.10 The supervisor should require insurance intermediaries to implement policies and procedures to assess the competence of individuals carrying out the activity of insurance intermediation. Assessment would be particularly important in the case of new employees or where staff are assigned different or more challenging responsibilities. Competence should also be monitored as an ongoing process for all relevant staff. This may include actions such as:
- observed interviews with customers;
 - review of customer files;
 - internal interviews; and/or
 - coaching.
- 18.3.11 An on-site inspection may provide an opportunity for the supervisor to assess competence, such as through file reviews and interviews of selected staff.

Role of professional standards

- 18.3.12 SROs and other professional bodies can be instrumental in promoting professional standards where they issue standards or codes with which their members are required to comply. Standards required by relevant SROs or other professional bodies might include areas such as:
- acting with high ethical standards and integrity;
 - acting in the best interests of each client;
 - providing a high standard of service; and

- treating customers fairly.

18.3.13 Members of an SRO or other professional body who are found to be in breach of its professional standards may be subject to disciplinary procedures such as suspension of, or exclusion from, membership.

18.3.14 In jurisdictions where there is reliance on the membership of a professional body, the supervisor may consider confirming that such a body has an effective disciplinary scheme in force. The supervisor may nevertheless decide not to depend on such professional processes entirely and deal with issues of an individual's professional conduct directly.

18.4 The supervisor requires that insurance intermediaries apply appropriate governance.

18.4.1 Insurance intermediaries should be subject to governance requirements. An insurance intermediary's governance framework may vary, depending upon the nature and scale of the intermediary and the complexity of its business, and may be subject to general company law. The requirements may therefore differ between different intermediary organisations. However, the minimum governance requirements for each intermediary should be sufficient to provide for sound and prudent management of the business and to support the fair treatment of customers.

18.4.2 Good governance may be promoted by the supervisor, as well as other authorities, professional bodies and SROs, by publishing guidance (for example, a Code of Practice) for insurance intermediaries on their obligations in respect of governance-related matters. Guidance that may help intermediaries meet governance requirements may include matters such as:

- ensuring that those responsible for the intermediary organisation's governance have the competence and integrity to fulfil their respective roles;
- ensuring appropriate standards for conduct of business;
- ensuring there is regular monitoring of consumer outcomes;
- ensuring that the making of key decisions is subject to sufficient discussion at Board level or with key persons in control functions as appropriate;
- ensuring adequate human resources to conduct the business;
- ensuring an appropriate level of internal controls of the business;

- maintaining adequate files and records and ensuring their availability for inspection;
- maintaining appropriate controls over outsourced functions; and
- compliance with all relevant legislation, including non-insurance legislation such as in respect of anti-money laundering, fraud, etc.

18.4.3 In setting governance requirements the supervisor should consider the application of such requirements to sole traders and small entities operating as insurance intermediaries. Expectations on governance requirements for sole traders and small businesses will differ to those expected of larger entities. Key areas where requirements may vary include internal controls, segregation of duties, compliance functions and maintaining training and competence requirements. Regardless,, the supervisor should be satisfied that a sound level of governance is achieved and that there are no unacceptable risks, with the overriding objective that customers are appropriately protected.

18.4.4 Relevant to governance, intermediaries are required to establish and implement policies and procedures on the fair treatment of customers that are an integral part of their business culture (see Standard 19.2).

18.4.5 The governance of an insurer's direct sales staff is the responsibility of the insurer, and the governance of insurers is the subject of ICP 7 Corporate Governance. Although ICP 7 is otherwise not directly applicable to intermediaries, it may be a useful source of information for intermediary supervisors.

18.5 The supervisor requires insurance intermediaries to disclose to customers, at a minimum:

- **the terms and conditions of business between themselves and the customer;**
- **the relationship they have with the insurers with whom they deal; and**
- **information on the basis on which they are remunerated where a potential conflict of interest exists.**

18.5.1 In addition to disclosing matters relating to intermediaries themselves, intermediaries are required to disclose information on insurance products offered to customers (see Standards 19.5 and 19.6).

18.5.2 In setting disclosure requirements, the supervisor may take into account that there are differences in:

- the nature of different insurance products;
- the level of sophistication of different customers; and

- the way in which different types of insurance are transacted (for example, differences between commercial and personal (retail) lines).

The nature, timing and detail of disclosures may differ according to the circumstances. Nevertheless, disclosure requirements should provide adequate information to customers, taking into account these factors.

Terms of business

18.5.3 A terms of business agreement may be a convenient means by which an insurance intermediary can provide important information to a customer and satisfy many of the disclosure requirements. Such a document may include information such as:

- by whom they are licensed and supervised;
- the type of business for which they are licensed;
- whether they act as agents or brokers;
- information on the basis on which they are remunerated;
- the services provided, including whether they offer products from a full range of insurers, from a limited range or from a single insurer;
- charging arrangements;
- cancellation rights;
- notification of complaints;
- client money arrangements, including treatment of interest;
- confidentiality of information provided; and
- relevant laws.

18.5.4 Insurance intermediaries should provide information on terms of business to customers and do so prior to an insurance contract being entered into. Where there is an ongoing business relationship between an intermediary and a customer, or once terms of business information has initially been provided in the case of policy renewals, the intermediary should review whether reiterating this information is necessary. Further information on terms of business might only be necessary where there are changes to the terms.

18.5.5 When insurance cover needs to be arranged immediately it may not be possible to provide documentation of terms of business at the point of arranging the contract. In such situations the information may be

provided orally and followed up with written documentation within a reasonable period of time.

- 18.5.6 The supervisor may recommend, or require, that a copy of the terms of business, signed by the customer, is retained as part of the insurance intermediary's records. Where insurance is intermediated over the internet, the customer may be required to acknowledge the terms of business before a policy can be proceeded with. Electronic records should also be retained by the intermediary.

Intermediary status

- 18.5.7 An insurance intermediary's status may provide information to a customer on the extent of products from which recommendations are made and provide an indication of potential conflicts of interest. Where the insurance intermediary is only able to select products from a single insurer or from a limited range, the customer may wish to carry out their own research to see whether they can obtain better terms or a more suitable product elsewhere in the market.
- 18.5.8 It is particularly important that insurance intermediaries provide customers with information on their relationship with the insurers with whom they deal, specifically whether they are a broker or an agent, work with one or more insurance companies, and whether they are authorised to conclude insurance contracts on behalf of an insurer or not.
- 18.5.9 Potential conflicts of interest can arise if an intermediary is part of a wider insurance group or if the intermediary has a financial interest, such as a shareholding, in an insurer or insurance group. Such relationships should be disclosed to customers.
- 18.5.10 Information on the insurance intermediary's status may be provided as part of a terms of business agreement or separately. Because of its importance, this information may also be highlighted verbally to the customer.

Remuneration

- 18.5.11 Insurance intermediaries are generally remunerated by way of fees and commissions, such as:
- fees paid directly by the customer;
 - fees or commissions paid indirectly by the customer, by way of deduction from premiums or funds invested; or
 - fees or commissions paid by the insurer.

-
- 18.5.12 Where insurers' direct sales staff carry out insurance intermediation as employees of the insurer, they may be salaried as well as receive any applicable commission.
- 18.5.13 Information on charging structures may be important information to customers. For example, for insurance products with an investment element, information on any fees or other costs deducted from the initial amount invested, as well as on fees or commissions deducted from the investment thereafter will be important. For non-life insurance and pure life insurance products, where fees are not usually paid directly by the customer, such information may have less of a direct impact but may have a bearing on the independence of any advice that is provided.
- 18.5.14 Information on charging may be provided as part of a terms of business agreement, or separately. As fees and commissions vary by product and between product providers, they may need to be provided separately for each product recommended, often by inclusion in product documentation. Given their significance to some types of product, this information might also be highlighted verbally to the customer.
- 18.5.15 The supervisor may also require that customers are provided with further information on fees and commissions upon a customer's request, including the level of fees and commissions. The intermediary should make the customer aware of his/her right to request information on fees and commissions. Communication should be clear and not misleading. In view of the impact of fees and commissions upon insurance products with an investment element, the supervisor may require that disclosure of fees and commissions is provided to customers prior to contracts being entered into in respect of all such products.
- 18.5.16 Some forms of remuneration of insurance intermediaries potentially lead to a conflict of interest. For example, an intermediary may be tempted to recommend a product which provides higher fees or commissions than another. Potential conflicts of interest for intermediaries may exist in a variety of circumstances (see Standard 19.8).
- 18.5.17 The supervisor should be satisfied that the intermediary has robust procedures in place to identify and avoid, or manage, conflicts of interest, and deliver outcomes aligned with customers' best interests. Where they cannot be avoided, or managed satisfactorily, this would result in the intermediary declining to act. Conflicts of interest may be managed in different ways; for example, through appropriate disclosure and informed consent from customers. Other examples include:

- prohibitions on certain types of financial interest; and
- structural changes to the distribution model, such as by prohibiting the payment or receipt of commission on investment products in favour of a fee-based approach.

Additionally, circumstances in which conflicts of interest may arise may be covered in the codes of conduct issued by SROs or other professional bodies.

- 18.5.18 The supervisor should be aware of the use of non-monetary benefits, including, for example, “soft” commissions, offered by insurers to intermediaries. These may include less tangible inducements such as professional support, IT support, or corporate entertainment at sporting or cultural events. Such inducements may lead to conflicts of interest and are less transparent than fees or commissions and also need to be avoided, managed or prohibited as appropriate.

18.6 The supervisor requires an insurance intermediary who handles client monies to have safeguards in place to protect these funds.

- 18.6.1 In the course of carrying out its business, an insurance intermediary may:
- receive monies from a client for the payment of premiums to an insurer; and/or
 - receive monies from an insurer in respect of claims or refunded premiums for onward payment to a client.
- 18.6.2 Some jurisdictions have specific legal requirements in respect of the cash flows where monies are transferred via an intermediary from the customer to the insurer, and vice versa, including in determining whether the customer or the insurer is at risk in respect of such funds.
- 18.6.3 Where funds are held at the risk of the client, they may be referred to as “client monies” or “client’s money”. The intermediary should have adequate policies and procedures in place for the safeguarding of such funds in the interests of their customers.
- 18.6.4 In some jurisdictions, premiums are deemed to have been paid to the insurer as soon as the customer pays premiums to the intermediary. In these circumstances the insurer, rather than the customer, bears the risk of allowing intermediaries to collect premiums on its behalf.
- 18.6.5 The supervisor may require that an insurance intermediary’s client money policies and procedures cover matters such as the following:
- client accounts are separate and clearly distinguishable from the intermediary’s own bank accounts;

- client accounts are held with licensed banks within the jurisdiction, or specified other jurisdictions;
- disallowing monies other than client monies within the account, except in specific circumstances such as to achieve or maintain a minimum balance, to receive interest, or to receive commission due to the intermediary;
- monies are paid into the account promptly;
- adequate financial systems and controls are maintained, including authorisation of payments from the account;
- adequate books and records are maintained and subject to audit;
- reconciliations are performed on a regular basis and reviewed;
- discrepancies on the account are followed up promptly and resolved satisfactorily;
- for each client, payments from a client account are not made before sufficient monies paid into the account have cleared, thus ensuring that any balance held in respect of each client is not negative; and
- the treatment of interest.

18.6.6 In the interest of safeguarding clients' money, it is important that client accounts cannot be used to reimburse creditors of the insurance intermediary in the event of its insolvency.

18.6.7 Where insurance intermediaries operate client accounts, the supervisor may require that the terms and conditions of such accounts are disclosed to their customers, including whether funds held in such accounts are at the risk of clients or at the risk of the insurer.

18.7 Where appropriate, the supervisor takes supervisory measures against licensed insurance intermediaries.

18.7.1 The supervisor should initiate measures to prevent or respond to poor conduct or breaches of regulatory requirements by an intermediary, with a view to mitigating adverse outcomes for customers. Where necessary, the supervisor may use sanctions.

18.7.2 The supervisory framework should allow for the exercise of judgement and discretion, and provide flexibility in the use of preventive measures, corrective measure and sanctions.

- 18.7.3 In some instances, the supervisor may need to work with other relevant authorities or bodies in order to take or enforce supervisory measures or sanctions against an intermediary.

Preventive measures

- 18.7.4 Where the supervisor assesses that there may be a significant risk of an insurance intermediary breaching supervisory requirements or to consumer or policyholder interests in general, it should require insurance intermediaries to take appropriate measures to mitigate both market-wide risks as well as risks from specific entities or individuals.
- 18.7.5 In this regard, the supervisor may take proactive measures, such as publishing guidance on good practices or warnings to the industry or consumers.

Corrective measures

- 18.7.6 Where the insurance intermediary fails to meet supervisory requirements, or where consumers may otherwise be at risk, the supervisor should require corrective measures to be taken by the insurance intermediary. This may occur, for example, where:
- there are poor consumer outcomes;
 - required information is not provided to customers;
 - policies and procedures are inadequate (particularly where this results in inadequate due diligence work);
 - internal controls, file keeping or documentation are inadequate;
 - conflicts of interest are not adequately identified or managed; or
 - there are concerns over business continuity.
- 18.7.7 Supervisory measures should apply at either the entity level or individual level, as appropriate. These may include, for example:
- requiring the implementation of enhanced policies and procedures;
 - requiring further training;
 - restricting business activities;
 - removing key persons in control functions;

- suspending or barring specific individuals from engaging in intermediary business or being responsible for the corporate governance of an intermediary organisation; or
- suspending, revoking or not renewing the licence.

Sanctions

18.7.8 Where appropriate, the supervisor should impose sanctions on entities or individuals. The range of sanctions may include, for example:

- imposing fines;
- barring individuals from acting in key roles or holding similar roles in the future; or
- requiring remediation, including compensation to policyholders where appropriate.

18.7.9 Sanctions imposed should be commensurate with the nature and severity of the shortcomings. Minor offences may be dealt with through oral or written communications with the intermediary's management and then followed up, whereas more significant deficiencies may warrant immediate or more significant action.

18.7.10 Jurisdictions should provide due process for an intermediary to appeal supervisory measures.

18.8 The supervisor checks that the intermediary is taking the measures required and escalates such measures if its concerns are not being addressed.

18.8.1 The supervisor should review the results of measures that it has required of an intermediary and the effectiveness of the actions taken.

18.8.2 If the action taken by the intermediary does not adequately address the supervisor's concern, the supervisor should require further measures.

18.8.3 Supervisory measures should be escalated in line with the supervisor's concern about the intermediary and the risk to consumers.

18.9 The supervisor takes measures against individuals or entities that conduct insurance intermediation without the necessary licence.

18.9.1 The supervisor should have in place mechanisms to identify when unlicensed insurance intermediation is being carried out. Examples of such mechanisms include monitoring media and advertising,

review of consumer complaints and encouraging industry and other stakeholders to notify the supervisor of suspicious activity.

- 18.9.2 When unlicensed intermediation is identified, the supervisor should act to address the issue. Examples include seeking court orders to require the unlicensed individual or entity to stop the activity, informing law enforcement authorities of criminal and/or civil concerns, and publicising the fact that the individual/entity is not licensed to conduct insurance intermediation.