



Insurance Prudential Rules

ICR Intermediary Conduct

**Non-Bank Financial
Institutions Regulatory Authority**

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Contents

1. Introduction.....	3
1.1. Insurance Prudential Rules.....	3
1.2. Purpose	3
2. Authority	3
3. Scope of Application.....	4
4. Definitions.....	4
5. Agreements between NBFIs and Intermediaries	6
6. Registration of Representatives	6
6.1. Registration of Representatives	6
6.2. Register of Representatives.....	7
6.3. Objections by Regulatory Authority.....	7
7. Requirements for Representatives	7
7.1. Fit and Proper Requirements.....	8
7.2. Experience Requirements.....	9
7.3. Continuous Professional Development.....	9
7.4. Services under Supervision	10
7.5. Additional Requirements.....	10
7.6. Responsibility for Representatives.....	10
8. Duties of NBFIs and Representatives	11
8.1. General Duties.....	11
8.2. Specific Duties of Representatives to Clients	11
8.3. Other Duties.....	13
8.4. Ongoing Compliance Requirements	14
8.5. Provision of Information and Maintenance of Records	14
9. Code of Conduct	15
9.1. Effect of Breach of the Code of Conduct.....	16
10. Disqualification	18
11. Breach of this Prudential Rule.....	18
12. Transitional Arrangements	18
13. Exemptions	19

1. Introduction

1.1. Insurance Prudential Rules

1. The NBFIRA's Insurance Prudential Rules (IPRs) set out the prudential requirements for regulated insurers and intermediaries operating in Botswana. Other key Prudential Rules are:
 - IPR 1L – Prescribed Valuation Method (PVM) for Long Term Insurance Liabilities
 - IPR 1G – PVM for General Insurance Liabilities
 - IPR 2L – PVM and Admissibility for Long Term Insurance-Related Assets
 - IPR 2G – PVM and Admissibility for General Insurance-Related Assets
 - IPR 3L – Prescribed Capital Target (PCT) for Long Term Insurers
 - IPR 3G – PCT for General Insurers
 - ICR – Intermediary Conduct
 - PPR – Policyholder Protection

1.2. Purpose

2. The objective of this Prudential Rule is to assist intermediaries in the effective discharging of their professional duties towards both insurers and consumers. An intermediary's responsibility towards an insurer arises from his involvement in providing intermediary services, such as selling of insurance products and collecting premiums, as either a tied agent or independent third party. An intermediary's responsibility towards consumers arises from his involvement in providing financial advice, where the intermediary provides a financial service to a consumer for or on the behalf of a Non-Bank financial institution.

2. Authority

3. This Prudential Rule is made under the Non-Bank Financial Institutions Regulatory Authority Act (Cap. 46:08). This Prudential Rule does not replace any legislative provisions, regulations or codes of the Regulatory Authority.
4. This Prudential Rule is supplementary to the Non-Bank Financial Institutions Regulatory Authority Act (Cap. 46:08) and should be interpreted in light of provisions in the Insurance Industry Act



[reference] and the Retirement Funds Act [reference]. In the case of apparent conflict between this Prudential Rule and any relevant Act, the provisions of an Act should be interpreted in a way that establishes unity between the provisions of this Prudential Rule and conflicting provisions of any relevant Act.

5. This Prudential Rule should be read in conjunction with the following legislation and regulation:
 - Non-Bank Financial Institutions Regulatory Authority Act (Cap. 46:08);
 - Insurance Industry Act (Cap. [to be updated]);
 - Insurance Regulations;
 - Retirement Funds Act (Cap. [to be updated]);
 - Retirement Funds Regulations;
 - Policy Holder Protection Rules (IPR 5).

3. Scope of Application

6. The provisions in this Prudential Rule apply to intermediaries operating in the insurance and retirement fund industries. The following types of intermediaries fall within the scope of Prudential Rule IPR 4:
 - Insurance Brokers
 - Insurance Agents
 - Representatives

4. Definitions

7. “categories of products” means risk only life insurance; with profits life insurance; investments; general insurance personal lines; general insurance commercial lines; medical aid fund business; retirement fund business and micro insurance;
8. “category of representative” refers to the following categories of representative
 - i. Category I- may be authorised to render services relating to all categories of products;

- ii. Category II – may only be authorised to render services relating to micro insurance business;
9. “general insurance commercial lines” means general insurance policies in respect of which the policyholder is not a natural person;
 10. “general insurance personal lines” means general insurance policies in respect of which the policyholder is a natural person;
 11. “Insurance Industry Act” means the Insurance Industry Act, [reference], and a word or expression to which a meaning has been given in this Act, has that meaning;
 12. “investments business” means insurance policies that have an investment component;
 13. “micro insurance business” means micro insurance policies as per the [Insurance Industry Act];
 14. “non-bank financial institution (NBFI)” means an insurer, insurance agent, insurance broker or fund as per the Retirement Funds Act; ;
 15. “retirement fund business” means business relating to funds, including pension, provident and individual retirement funds as per the Retirement Fund Act [reference];
 16. “representative” means as defined in the Insurance Industry Act [reference] or a person who renders services as an intermediary of behalf of a fund as per the Retirement Funds Act [reference];
 17. “regulated products” means insurance, retirement fund or medical aid fund products;
 18. “risk only life insurance” mean insurance policies that do not have an investment component;
 19. “services under supervision” means services rendered by a representative who does not meet the prescribed minimum experience, qualification and/or regulatory examination requirements and which services are rendered under the guidance, instructions and supervision of a fully registered representative, who meets the necessary minimum qualifying criteria as determined by the Regulatory Authority;
 20. “with profits life insurance” means insurance policies where bonuses are declared at management’s discretion.

5. Agreements between NBFIs and Intermediaries

21. The NBFIs must furnish the intermediary with a written agreement, setting out the terms and conditions of the services offered by the intermediary. This includes insurance brokers, insurance agents and representatives. Records of all mandatory agreements with intermediaries must be maintained by the NBFIs.
22. If the insurance broker is entitled to collect premiums on behalf of the insurer as per section 80 of the Insurance Industry Act [*reference*], the agreement between the insurer and the insurance broker shall describe the responsibilities of the insurance broker in this regard, including the time period in which premiums must be remitted to the insurer.
23. The agreement between the insurer and the insurance agent should stipulate the categories of products that may be sold and the services provided by the insurance agent, including whether the insurance agent is entitled to collect premiums on behalf of the insurer and the time period in which premiums are to be remitted to the insurer.
24. An insurer may only enter into an agreement with an insurance broker or insurance agent licensed by NBFIRA.

6. Registration of Representatives

6.1. *Registration of Representatives*

25. Representatives are not required to be licensed individually by the Regulatory Authority. The NBFIs employing the representative is required as far as practicable to ensure that all representatives providing intermediary services on their behalf meet the appropriate minimum qualification, experience and fit and proper requirements. A person wishing to act as a representative for an NBFIs must submit IAF3 Form 4 to the NBFIs. The form must be completed by the applicant without the assistance of the NBFIs. The NBFIs must maintain copies of all the representative application forms for inspection by the Regulatory Authority.
26. Applicants must at the date of appointment by the NBFIs comply with the applicable minimum education, qualification, experience and fit and proper requirements, as defined by this Prudential Rule.

27. Representatives who, upon resignation, undertake employment for an alternate NBFi will be required to resubmit the relevant application form with the alternate NBFi.

6.2. Register of Representatives

28. All NBFIs shall maintain a Register of Representatives detailing:
- the category of representative in which the representative acts for the NBFi;
 - the categories of products in which such a representative is competent and fit and proper to render intermediary services; and
 - the name, business and personal addresses of each representative.
29. NBFIs are required to submit an updated Register of Representatives in their employ within 15 days of the end of every quarter to the Regulatory Authority, together with a declaration by the NBFi that all representatives meet the necessary experience, qualification and fit and proper requirements.

6.3. Objections by Regulatory Authority

30. The Regulatory Authority, in receiving a Register of Representatives from the NBFi, may object to a representative.
31. Where the Regulatory Authority objects to a representative, reasons for objection will be provided to the NBFi in writing. Where an objection has been raised, the NBFi may resubmit the name of a representative where the NBFi has satisfactorily addressed the concerns raised by the Regulatory Authority. The objection to a representative will remain in force until the NBFi has resubmitted the name of the representative and the Regulatory Authority accepts the representative onto the Register of Representatives.

7. Requirements for Representatives

32. The Regulatory Authority may prescribe minimum competence and fit and proper requirements for representatives, including:
- fit and proper requirements;
 - minimum education requirements;



- minimum qualification requirements, including Regulatory Examinations, which may be prescribed by the Regulatory Authority;
 - experience requirements; and
 - continuous professional development requirements, which may be prescribed by the Regulatory Authority.
33. Different requirements may be prescribed for representatives rendering services for different categories of product.
34. These requirements will apply to insurance brokers and insurance agents to the where they perform the functions of a representative.

7.1. Fit and Proper Requirements

35. The representative must meet the following fit and proper requirements. The representative will be considered to fail to meet fit and proper requirements, if that person (whether in Botswana or elsewhere): within a period of five years of date of application or appointment:
- has been found by a court of law to have acted fraudulently, dishonestly, unprofessionally or dishonourably or in breach of fiduciary duty, has been convicted of a criminal offence, or is the subject of unresolved criminal charges that brings the honesty and integrity of the person into question;
 - is an undischarged bankrupt, is currently subject to bankruptcy proceedings or has been declared bankrupt;
 - has been denied membership of any professional body due to reasons other than insufficient qualification or experience, or has been disqualified, censured or disciplined by any professional body due to serious misconduct, that brings the honesty and integrity of the person into question;
 - has had its authorisation to carry on business refused, suspended or withdrawn by any regulatory or supervisory body due to an act of dishonesty, negligence or incompetence that brings the honesty and integrity of the person into question;
 - has at any time been disqualified or prohibited by a court of law from taking part in the management of a company or a

regulatory or supervisory body, irrespective if that qualification has been lifted or not.

36. An insurance agent, insurance broker or representative must in the application to the Regulatory Authority, or NBFIR in the case of representatives, be candid and accurate and must disclose all facts to information that may be relevant for the decision of the Regulatory Authority or NBFIR as the case may be.

7.2. Experience Requirements

37. The minimum experience requirements:

- must have involved the active and on-going gaining of knowledge, skills and expertise required in terms of any requirements determined by the Regulatory Authority;
- may have been gained while working under supervision;
- may have been gained inside or outside of Botswana;
- may have been gained in intermittent periods, not more than 5 years prior to application and may include experience gained before the implementation of any Act or regulation issued by the Regulatory Authority with regard to requirements for intermediaries;
- may have been gained simultaneously in multiple categories, provided that proof of such experience can be provided.

7.3. Continuous Professional Development

38. The purpose of Continuous Professional Development (CPD) is to assist the representative to:

- develop and maintain professional competence in order to provide services of a high quality that is in the public interest and that will support the professionalization of the financial services industry in Botswana;
- understand that the primary responsibility of competence vests in the individual, and that they have an obligation to develop and maintain their professional competence;
- render services with due care, competence and diligence with an on-going duty to maintain knowledge and skill at a level

required to ensure that the client receives a competent and professional service based upon up-to-date developments in legislation and the financial services industry.

39. The CPD programme must contain material that is relevant to the category of business sold by the representative.

7.4. *Services under Supervision*

40. The Regulatory Authority may exempt representatives from the experience and CPD requirements where the representative will render services under supervision. No exemption will be allowed where the applicant has failed to complete the minimum qualifications and fit and proper requirements.
41. Category I representatives will require at least one calendar year of experience of services under supervision to render services independently. The Regulatory Authority may prescribe requirements for services under supervision for Category II representatives. Rendering of services during this initial period will need to be co-signed by a fully accredited representative.

7.5. *Additional Requirements*

42. The Regulatory Authority may prescribe additional requirements relating to competence and fit and proper requirements referred to section 7.1, from time to time.
43. In addition, the Regulatory Authority may by notice declare a particular business practice to be undesirable.

7.6. *Responsibility for Representatives*

44. The NBFIRA must be satisfied that its representatives are, when rendering intermediary services on its behalf, competent to act and comply with the relevant competence and fit and proper requirements in this Prudential Rule, as well as applicable provisions in the relevant financial services laws.

8. Duties of NBFIs and Representatives

8.1. General Duties

45. The representative must at all times render services honestly, fairly, with due skill, care and diligence and in the interests of clients and the integrity of the insurance and retirement fund as a whole. All representatives must adhere to the following requirements in rendering services:

- **Knowledge, competence and proficiency:** The representative is required to fulfil knowledge, competence and proficiency requirements required by this Prudential Rule and as may be determined by the NBFI.
- **Honesty and fairness:** A representative should conduct his business honestly, fairly, in good faith and with integrity at all times.
- **Diligence:** In conducting his business, a representative should act with due skill, care and diligence and give advice only on those matters in which he is competent to deal with.
- **Compliance:** A representative should comply with all regulatory requirements applicable to the conduct of his business activities.

8.2. Specific Duties of Representatives to Clients

46. In rendering of services to a client, representatives are duty bound to the following undertakings between themselves and a client:

- **Identification:** Representatives are required to present the information on the identity cards and details of the NBFIs he is representing at initial contact with the client.
- **Information on suppliers:** Representatives are required to furnish clients with full particulars of the relevant NBFIs and, where such information is provided orally, must confirm such information in writing.
- **Representations:** must be factually correct, provided in plain language, avoid uncertainty or confusion and not be misleading.
- **Advice:** When advising clients, the representative should objectively take the client's interests and needs into

consideration. A representative must also maintain a record of advice furnished to a client reflecting the basis upon which advice was provided.

- **Disclosures:** A representative should make adequate disclosure of relevant material information in his dealings with clients. The general principles of disclosure include the following:
 - the representative must be able to prove that disclosure was made;
 - disclosure must be adequate and appropriate in the circumstances of the relevant marketing, taking into account the level of knowledge of the client;
 - disclosure must be made at the appropriate time, using appropriate medium;
 - disclosure need not be duplicated or repeated to the same client unless material or significant changes affecting that client occur, in which case a disclosure of the changes to the client must be made to the client without delay before a transaction is concluded;
 - disclosure records and documentation pertaining thereto must, in any particular case, be kept for a minimum period of six years after termination of the relevant policy or after completion of the relevant marketing process; and
 - copies of disclosures and recommendations must be furnished to the client on request.
 - **Conflicts of interest:** the representative must disclose to the client the existence of any circumstance which gives rise to an actual or potential conflict of interest in relation to the representative, and take all reasonable steps to ensure fair treatment of the client. The legal status of the representative, the contractual relationships between the NBFIR (for whom the representative acts) and the insurer, including whether the insurance broker, insurance agent or representative holds more than 5% of an insurer's shares, whether the representative receives more than 30% of its total commission and remuneration from a particular insurer must be disclosed;
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- **Client information:** A representative or NBFI may not disclose any confidential information acquired or obtained from a client to a third-party without the express written consent of the client.
 - **Contracting:** In making contracting arrangements, the representative and NBFI is required to act honourably, professionally and with due regard to the convenience of the client. The representative shall also be required to provide a reasonable and appropriate general explanation of the nature and material terms of the relevant contract.
 - **Complaints:** A representative is required to request that any complaints against him or the NBFI be lodged in writing. A representative must deal with all complaints in good conscience, handling complaints in a timely and fair manner. Where a representative is unable to resolve a problem to the satisfaction of the client, the representative is required to advise the client on further steps available to the client in terms of any Act, Regulation or any other law.
47. The requirements in this sub-section and sub-section 8.1 will apply to insurance brokers and insurance agents to the extent that perform the functions of a representative.

8.3. *Other Duties*

48. Insurance brokers and insurance agents have the following duties in relation to the services they provide to clients and insurers:
- **Custody of financial products and funds:** An insurance agent, insurance broker or representative who receives or holds financial products or funds on behalf of client is required to account for such products or funds properly and promptly.
 - **Collection and remit of premiums:** Where the insurance broker or insurance agent is responsible for the collection of premiums, the representative must comply with the agreement with the NBFI setting out the conditions and responsibilities in this regard.

8.4. Ongoing Compliance Requirements

49. The NBFI must establish and maintain procedures to be followed to ensure compliance with the relevant financial services laws and Prudential Rules. The NBFI is responsible for establishing and maintaining these procedures for its representatives.
50. The NBFI must take all reasonable steps to ensure on-going adherence to procedures established under paragraph 49 and the maintenance of appropriate standards of conduct by representatives.
51. The NBFI must ensure that any representative who no longer complies with the requirements in the relevant Act, Regulations and Prudential Rules is prohibited from rendering any new intermediary services by withdrawing authority to act on behalf of the NBFI.
52. The NBFI must inform the Regulatory Authority within 30 days of withdrawing authority of a representative under paragraph 51.

8.5. Provision of Information and Maintenance of Records

53. The NBFI must have appropriate procedures and systems in place to:
 - record all verbal and written communications relating to the direct marketing to a client as are contemplated in these Prudential Rules;
 - store and retrieve transaction documentation and all other documentation relating to the client;
 - keep the client records and documentation safe from destruction;
 - where the NBFI is not the insurer, pass client information on to the insurer. The NBFI is required to provide the insurer with the names, any beneficiaries, identification numbers and the physical address of the client, premium value, claims history, copy of the master policy and any other information that may be prescribed by the insurer.
54. The NBFI must maintain records for a minimum period of six years regarding:
 - known premature cancellations of transactions or financial products by clients of the NBFI;

- complaints received against the NBFIs or their representatives together with an indication whether or not any such complaint has been resolved;
- the continued compliance with the requirements of this Prudential Rule;
- cases of non-compliance with the financial services laws and the reasons for such non-compliance; and
- the continued compliance by representatives with the requirements of this Prudential Rule.

9. Code of Conduct

55. Every NBFIF that has a mandatory agreement with a representative must draw up a code of conduct for the NBFIF and their representatives. The code of conduct must be drafted in such a manner as to ensure that clients being rendered intermediary services will be able to make informed decisions, that their reasonable financial needs regarding financial products will be appropriately and suitably satisfied.
56. The provisions of such a code should oblige NBFIFs and their representatives to:
- act honestly and fairly, and with due skill, care and diligence, in the interests of clients and the integrity of the financial services industry;
 - have and employ effectively the resources, procedures and appropriate technological systems for the proper performance of professional activities;
 - seek from clients appropriate and available information regarding their financial situations, financial product experience and objectives in connection with the financial service required;
 - act with circumspection and treat clients fairly in a situation of conflicting interests; and
 - comply with all applicable statutory or common law requirements applicable to the conduct of business.

57. A code of conduct must in particular contain provisions relating to:
- the making of adequate disclosures of relevant material information, including disclosures of actual or potential own interests, in relation to dealings with clients;
 - adequate and appropriate record-keeping;
 - avoidance of fraudulent and misleading advertising, canvassing and marketing;
 - proper safe-keeping, separation and protection of funds and transaction documentation of clients;
 - where appropriate, suitable guarantees or professional indemnity or fidelity insurance cover, and mechanisms for adjustments of such guarantees or cover by the Regulatory Authority in any particular case;
 - the control or prohibition of incentives given or accepted by a provider; and
 - any other matter which is necessary or expedient to be regulated in such code for the better achievement of the objects of financial services laws and Prudential Rules.
58. A copy of the Code of Conduct must be submitted to the Regulatory Authority within 30 days of any changes made to the Code of Conduct.
59. The Compliance Officer or Principal Officer of each NBFi shall ensure that all directors, managers, agents and employees who are connected with intermediary functions of the NBFi are made aware of and comply with the provisions of a Code of Conduct.
60. A copy of the Code of Conduct shall be prominently displayed in areas of access to the public of each office of the NBFi and its representatives.

9.1. *Effect of Breach of the Code of Conduct*

61. Breach of any of the requirements of the Code of Conduct will, in the absence of any extenuating circumstances, reflect adversely on the compliance with fit and proper requirements or suitability of the NBFi or its representatives.

62. When considering a representative's failure to comply with the Code of Conduct, the Regulatory Authority will adopt a pragmatic approach taking into account all relevant circumstances and any remedial measures implemented by the NBFIRA in order to address the breach.

10. Disqualification

63. The Regulatory Authority may disqualify a representative from operating in Botswana. The NBFIR is required to suspend the employment of the disqualified representatives with immediate effect.
64. Disqualification of a representative by the Regulatory Authority shall remain effective for the period set out in the notice of disqualification by the Regulatory Authority and the Regulatory Authority issues no objections to the reinstatement of the representative on the Register of Representative. Reinstatement to the Register of Representatives may not take place if the representative fails to comply with the competence and fit and proper requirements determined by the Regulatory Authority.
65. Disqualification of a representative should not prejudice the clients of the representative, as such the NBFIR shall undertake an immediate audit of all services rendered by the disqualified representative. This audit report will be submitted for review by the Regulatory Authority within a period determined by the Regulatory Authority of the suspension.
66. The NBFIR will provide sufficient written communication of disqualification of the representative to all clients of the representative in possession of current policies within 30 days. Note that this provision does not apply to Category II representatives.

11. Breach of this Prudential Rule

67. The Compliance Officer or Principal Officer of the NBFIR shall ensure that all directors, managers, agents and employees who are connected with intermediary functions are aware of this Prudential Rule and comply with the provisions of this Prudential Rule.
68. Breach of any provisions in this Prudential Rule will result in actions from the Regulatory Authority and civil penalties, where appropriate.

12. Transitional Arrangements

69. The Regulatory Authority may prescribe relevant transitional arrangements with regard to the implementation of the provisions of this Prudential Rule.

13. Exemptions

The Regulatory Authority make an issue a notice exempting any NBF or representative from all or any of the provisions of this Prudential Rule subject to such terms and conditions as he or she may think fit.