

INSURANCE REGULATORS TEAM UP TO STRENGTHEN CONSUMER PROTECTION

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On May 3, 2018, the Canadian Council of Insurance Regulators (“**CCIR**”) and the Canadian Insurance Services Regulatory Organizations (“**CISRO**”) released a joint draft guidance paper (the “**Guidance**”) setting out their expectations for insurers and intermediaries relating to their conduct of insurance business and fair treatment of consumers based on the Insurance Core Principles of the International Association of Insurance Supervisors (the “**IAIS Standards**”).

The Guidance defines fair treatment of consumers quite broadly, using concepts such as ethical behaviour, good faith and the prohibition of abusive practices. In defining their expectations, CCIR and CISRO focus on the following twelve recommendations:

- Culture: create a customer-centric culture pursuant to which certain indicators are established that are measured, monitored and used to create a cycle of continuous improvement;
- Conflicts of Interest: flesh out any conflicts of interest and either effectively manage them in a way that is not detrimental to the customer, or decline to act;
- Outsourcing: monitor and maintain control and accountability with respect to any outsourced functions;
- Design of Products: tailor new insurance products or adaptations to the interests of the target consumer using adequate information and use policies, procedures and controls to monitor the product after its launch to ensure it meets the needs of consumers;
- Distribution Strategies: use policies, procedures and controls to ensure that distribution models are appropriate, ensure continued oversight and accountability;
- Disclosure to Customer: provide customers with appropriate and adequate information to ensure that they can make informed decisions and ensure that information is clear and accessible in written format;
- Product Promotion: provide accurate, clear and not misleading promotional material that is first reviewed by independent functions and ensure proper notification to customers if any information being relied on is materially inaccurate or misleading;
- Advice: obtain information from the customer to ensure advice is tailored to their needs and provide clear, quality advice communicated in written format with a record kept in a client file which is reviewed

by insurers and distribution firms to assess the advice provided;

- Disclosure to Policyholder: disclosure processes ensure that policyholders can determine whether products continue to meet their needs and includes timely reminders of options and notification of, and consent to, changes to terms and conditions;
- Claims Handling and Settlement: maintain written documentation of claims handling, provide relevant information to customers with respect to claims such as procedures, typical timeframes and status and follow a balanced, impartial, clear and diligent resolution process;
- Complaints Handling and Dispute Resolution: complaints are handled diligently and fairly using a simple and accessible procedure which is clearly communicated to the customer and analyze complaints received to identify any trends or recurring risks; and
- Protection of Personal Information: ensure policies and procedures and sufficient safeguards are in place to protect the privacy of personal information, including internal control mechanisms reflecting best practices and compliance with legislation.

The Guidance marks a pivotal step in an industry-wide effort to streamline provincial practices with international standards. While CCIR and CISRO recognize that each province has its own legal regime and regulatory approach, the Guidance aims to synchronize expectations for the fair treatment of consumers on a national and international scale. Importantly, the draft recommendations remain broad enough to allow for the implementation of tailored strategies, policies, procedures and controls based on the nature of the consumer, the type of insurance provided and the distribution strategy. Written submissions can be made until June 18, 2018. A CCIR-CISRO working group will then review public feedback with the goal of releasing the final guidance in the fall of 2018.

The Guidance arrives at a time when consumer protection has become of central importance to regulatory bodies in the financial sector. For example, the Financial Consumer Agency of Canada (“**FCAC**”) published a [Report on Best Practices in Financial Consumer Protection](#) in May, 2018 identifying 11 best practices for a strong financial consumer protection framework. In addition, the Financial Services Commission of Ontario (“**FSCO**”) published a proposed *Treating Financial Services Consumers Fairly Guideline* in May, 2018 in order to ensure a common understanding about what it means to treat consumers fairly throughout a financial product’s life cycle. The final version of the FSCO guideline is expected to be published later in 2018.

Given the various recommendations and expectations from international, national and provincial/territorial sources, insurance companies and other financial institutions will need to carefully consider the particular guidance applicable to them (once finalized) to ensure compliance by, among other things, adopting and maintaining adequate policies and procedures tailored to their specific structure and customer base.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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