

CHAPTER 12: CODE ON COMMISSION CONTROL AND THE INTERPRETATION OF THE REMUNERATION LEGISLATION

1. INTRODUCTION

- 1.1 Section 49 of the Long-term Insurance Act states:

Limitation of remuneration to intermediaries

No consideration shall be offered or provided by a long-term insurer or a person on behalf of the long-term insurer or accepted by any independent intermediary for rendering services as intermediary as referred to in the regulations, other than commission contemplated in the regulations and otherwise than in accordance with the regulations.

Regulation 3.2(1) of the Remuneration regulations provide for the following:

No consideration shall, directly or indirectly, be provided to, or accepted by or on behalf of, an independent intermediary for services rendered as intermediary, otherwise than by way of the payment of commission in monetary form.

- 1.2 These interpretative notes on section 49 and on the Remuneration Regulations, as well as on employment and business promotion practices, have been developed over time. They recognise the fact that the distinction between general promotional activity, which is obviously permitted, and the reward of a specific broker or broking organisation by what could be regarded as "a consideration" for the placement of business is a fine line. These notes can in no way supersede the legislation as published.
- 1.3 Member offices undertake that particulars of this Code will be made known to their internal staff and all their registered intermediaries. Members' management and appropriate staff will be deemed to have full knowledge of the terms of this Code.

2. STATEMENT OF PRINCIPLES

- 2.1 It is a breach of the regulations for a broking organisation or an individual broker to be in a position where the decision to place business with a particular life office is influenced by any abnormal service or any subsidy or reward of any kind other than commission as laid down in the Regulations

- 2.2 The decision where to place business must be dependent only upon factors such as the product itself, the standing of the life office and the standard of that type of service which would be of importance to the policyholder, and should not be influenced by factors such as entertainment or abnormal reward or abnormal special services.
- 2.3 Life offices and their officials may not do anything which could be construed as an inducement, consideration or reward for the placing of business which is over and above that provided for in the regulations.
- 2.4 A fundamental principle as regards what costs or expenses should be carried by broker organisations or brokers themselves and what might fairly be paid by a life office is as follows:

Any expense incurred or the cost of any function or activity where the benefit is primarily for the broker is to be paid by the broker, whether or not there is also benefit for a life office or offices.

Any expense incurred or the cost of any function or activity where the benefit is primarily for a particular life office may be paid by that office, whether or not there is also benefit for a broker or brokers.

It is presumed that the benefit is primarily for the broker unless the benefit is obviously primarily for a particular life office.

3. **GUIDELINES AND PRACTICE NOTES ON THE INTERPRETATION OF THE REMUNERATION REGULATIONS**

The following guidelines are a summary of specific enquiries and rulings made over a number of years. The guidelines are not exhaustive or exclusive, and in no way derogate from the statement of principles.

3.1 **Normal Business Courtesies**

Normal business courtesies, such as the provision of meals, drinks, etc. for individual brokers or small groups of brokers are permitted as is the provision of promotional or advertising items bearing the name and/or logo of the life office and which are of nominal value and customarily used for promotional purposes, e.g. calendars, diaries, pens, etc.

3.2 **Broker Conferences**

3.2.1 Conferences or meetings of any type organised by and for the sole benefit of brokers must be regarded as broker affairs. At such affairs the broker is the host.

3.2.2 Financial support in cash or otherwise - or any other form of consideration - for broker conferences or meetings is not permitted, either directly or indirectly, nor may life offices contribute in any way

towards the travelling and other expenses of brokers attending such conferences or meetings.

- 3.2.3 Life office officials invited as guests or speakers to attend brokers' events, in South Africa or elsewhere, should under no circumstances carry more than their share of the expenses incurred by the organisers as a result of their own presence at such an event. No payment in excess of conference expenses (e.g. outside speakers' costs, cost of conference hall, meals and entertainment) divided equally by the number of participants may be paid in respect of a life office delegate. Life offices would contravene this principle by bearing the costs of cocktail parties, lunches and functions.
- 3.2.4 Life offices or their officials should not arrange handouts or any sponsored or organised entertainment or contribute towards any specific cost (other than their proportionate share as described above).
- 3.2.5 Life office officials or broker consultants attending conferences or meetings of any kind in a brokers' own offices are not permitted to provide or subsidise, directly or indirectly, any refreshments before, during or after such conference or meetings.

3.3 **External Conferences or Meetings**

- 3.3.1 External conferences or meetings are those organised by bodies other than individual life offices, brokers or broking companies (e.g. MDRT or Multi Rand Forum), or an externally organised education seminar or course.
- 3.3.2 Life offices and life office officials are not permitted to contribute in any way towards the travelling, accommodation and other costs of individual brokers or small groups of brokers attending external conferences, meetings, seminars and courses, nor may life offices or life office officials pay for the entertainment of brokers at such conferences, meetings, seminars or courses other than to the extent of limited normal business courtesies as set out in paragraph 3.1 above.

3.4 **Life Office Seminars, Meetings, Launches and Training Courses**

- 3.4.1 Life offices may arrange seminars, meetings, launches and training courses for brokers within the Republic of South Africa only at any reasonable venue.
- 3.4.2 Where the expenses of such seminars, meetings, launches and courses are for the account of the life office, the life office may

provide for entertainment of the attending brokers proportionate to the business content of the seminar, meeting, launch or course.

- 3.4.3 Launches, meetings seminars and courses for the purposes of training may not extend over a period exceeding two overnight stays by participants, including weekends or public holidays, devoted primarily and predominantly to the purpose of the seminar or course.
- 3.4.4 Life offices are permitted to pay for the travelling expenses, accommodation and directly related costs of brokers attending seminars, meetings, launches and training courses. Any additional costs not directly related to the seminar, meeting, launch or training course, e.g. the broker extending his visit for "holiday" purposes, must be paid for by the broker.
- 3.4.5 Where spouses are permitted to accompany brokers attending seminars, meetings, launches or courses, all the expenses relating to spouses should be for the account of the brokers concerned.

3.5 Broker Visits to Life Office Head Offices

- 3.5.1 Life offices at their discretion, and at their expense, may invite brokers to visit their head offices (in South Africa only) for the purposes of establishing and developing better business relationships between brokers and head office officials and to improve brokers' awareness of the operations performed at the head office of the life offices.
- 3.5.2 The guideline in paragraph 3.4 above relating to seminars, meetings, courses, etc., as regards duration, entertainment, extension of visit, accompanying spouses, etc., applies equally to broker visits to the life office head offices.

3.6 Recognition Programs and Award Presentations

- 3.6.1 Life offices may not give prizes, in cash or in kind, other than certificates, companies' ties, plaques, etc., or items similar to the promotional items referred to in paragraph 3.1 above. Any award or prize which has a significant market value is not permitted.
- 3.6.2 Life offices may incur reasonable expenses for brokers and their spouses in respect of functions at which recognition awards are presented to brokers.
- 3.6.3 If required by the nature of the award, life offices may pay the travelling costs and accommodation costs for not more than two nights for the broker. Travelling and accommodation costs in respect

of the spouse of the broker must be paid by the broker and not the life office.

3.7 Payment of Expenses Attributed to Broker

3.7.1 Any travelling, accommodation or other expense which is required to be paid by the broker shall be paid in cash by the broker immediately when such expense is incurred - or as soon as possible thereafter - and may under no circumstance be debited to the broker's commission account, or be offset against commission payable to the broker.

3.8 Sports Day for Brokers

3.8.1 Life offices may not sponsor sports days arranged by or on behalf of brokers and broking organisations, in total or in part, nor may life offices sponsor or donate prizes for such events, other than minor branded items, such as golf balls, tees, markers, scorecards, etc.

3.9 Life Office Sports Days

3.9.1 Life offices may arrange local sports days for their own account to which brokers, *inter alia*, may be invited, provided that the invitation is of a general nature and not limited to brokers of a single broking house.

3.9.2 Life offices may pay the playing expenses and reasonable food and drink expenses not in excess of what would normally be spent on, for example, a "business courtesy" luncheon for individual brokers.

3.9.3 Prizes may be awarded not exceeding the value laid down for amateur participants by the controlling body for that particular sport. The life office may also provide minor branded items such as golf balls, tees, markers, scorecards, etc. to all participants.

3.9.4 Life offices may not pay for the travelling or accommodation costs of brokers participating in sports events.

3.10 Transport

The provision of motor cars or other transport (or the subsidisation in cash or kind of any part thereof) to assist the broker in the writing of his business or otherwise is not permitted.

3.11 Mortgage Bonds, Loans and Other Financing

3.11.1 The granting of mortgage bonds or any other loan on favourable terms is not permitted. Rates of interest should be

no less than commercial rates. The terms of payment and the margin of security should not be more favourable than those required in normal commercial transactions and should be on the basis of an "arm's length" transaction between the two parties acting independently.

- 3.11.2 The direct or indirect financing of brokers or broker companies or organisations associated with the broker other than at "arm's length" at market related rates, is not permitted. In any event these transactions must not be conducted with the *quid pro quo* of support for the life office concerned. The making of extra payments or granting of extra or subsidised benefits through associated companies, organisations or individuals is not permitted. The effect of this rule is immediate and any existing schemes must ensure that market rates are charged to the broker and that membership of any benefit scheme is not determined by production or similar criteria.

3.12 **Assistance to Brokers**

- 3.12.1 A life office's broker consultant should not be unduly restricted from assisting a broker in completion of business.
- 3.12.2 Assistance to brokers as a matter of courtesy or service on an *ad hoc* basis is a normal practice in the industry but this should not be extended so far that the broker does no more than obtain a signed proposal, with the life office official then being expected to take over and finalise the application.
- 3.12.3 The subsidised provision of office accommodation, furniture, or any other business relating expenses is not permitted. All transactions of this nature must be on an "arm's length" basis at realistic costs.
- 3.12.4 The provision of stationery or promotional material other than in the name of the company, or other than on an "arm's length" basis at realistic charges is not permitted.
- 3.12.5 No life office may pay any consideration for administrative work of whatsoever nature done by the broker. This includes a fee for the collection of premiums regardless of when or on what terms the work was undertaken, or that an agreement for the payment of this fee was entered into.

3.13 Advertising

- 3.13.1 Life offices may not advertise in broker house magazines or other broker internal publications.
- 3.13.2 Life offices may advertise in any survey, supplement or "advertorial" to be published by any newspaper or magazine where such survey relates to specific brokers or broker houses, provided that the advertising rates payable by life offices do not exceed the rates payable by all other advertisers.
- 3.13.3 Life offices are not prevented from advertising in surveys, supplements or articles dealing with the life assurance industry in general, or with the broking industry in general or with broker representative bodies such as SAFSIA, BBF, IBC or LUASA, etc.

3.14 Tickets for Sporting Events

- 3.14.1 Life offices may not pay for the excessive provision of tickets for specific sporting events, or provide season tickets for brokers.
- 3.14.2 Life offices or their officials may invite brokers on an individual basis to attend occasional sporting events, and pay for any tickets and reasonable entertainment expenses
- 3.14.3 Under no circumstances may the tickets or invitations be linked, directly or indirectly, to performance, production or similar criteria, or offered as an incentive or reward for the placing of business. No tickets or invitations of any nature whatsoever may be offered in respect of any functions outside the borders of South Africa.
- 3.14.4 Life offices may not pay for any travelling expenses or accommodation costs for brokers invited to attend sporting events.

3.15 Substitution of Beneficiary

Any life office employee receiving an award or prize, including trips locally or abroad, which is an individual award or prize, or one which is for the employee and spouse/partner, is not permitted to allow an unrelated broker to receive, or benefit from, all or part of such award or prize.

3.16 Marketing Promotions

3.16.1 In the case of a life office conducting a promotion or providing promotional material where no broker's name is featured or no prior commitment is entered into to pay commission to a specific broker or broker house on business generated therefrom, it will not be regarded as a breach of *Regulation 3.4* if commission is paid (at the discretion of the insurer):

- Where the respondent specifies a broker or
- Where a broker claims a proven client relationship, or

Where the office itself is aware of an existing client/broker relationship.

3.16.2 Where a promotion or promotional material features the name of a broker or where there is a prior commitment on business generated to pay commission by such promotion or material to one or more specific brokers, all expenses including publishing and/or distribution costs shall be for the account of the broker. However, the cost of any material which is generally made available by the life office for use by brokers in general need not be recovered.

4. COMPUTER SERVICES**4.1 Computer Services : Software**

4.1.3 It is permissible to provide software free of charge to support the following functions on a broker's computer since the benefit accrues mainly to the life office concerned and not to the broker.

- Quotations
- Rate book enquiries, enquiries on commission, current business and new business
- Surrender values and other policy values.
- Product training.
- Message switching.
- Conservation and lapse lists.
- New business input.
- Access to technical data bases such as lists of legal rulings, underwriting information etc.
- Transfer of commissions.

4.1.4 Software to support functions such as those listed below, which are mainly of benefit to the broker should be charged for on an "arm's length" basis:

- Mail shots including the provision of mailing lists
- Accounting packages
- Payroll packages
- Administrative packages
- Word processing services
- Access to external data bases such as those provided by Beltel

N.B. The Standing Committee on Information Technology (SCIT) recommended that all software produced by life offices and supplied to brokers be provided free of charge. Software produced by other than life offices must still be charged for at normal commercial rates on an arm's length basis.

4.2 **Computer Services : Hardware**

4.2.1 As there can be no limitation on the use made of hardware once it has been installed in a broker's office, hardware provided by a life office should be charged for on an arm's length basis.

5. **COMMISSION ACCOUNTS - INTEREST ON DEBIT BALANCES**

- 5.1 Regulation 3.5(1)(b) to the Long-term Insurance Act requires the reversal of unearned commission as soon as possible.
- 5.2 When two consecutive debit balances have arisen on a broker's monthly commission account, interest on the amount of the second such debit balance shall be levied by the insurer and such interest shall be debited to the broker's next following commission account. Each month thereafter interest shall be levied on the preceding month's debit balance until such time as all debit balances have been cleared.
- 5.3 In the event of any debit balance being cleared by payment of cash, interest will be charged on the next following commission account from the date on which the previous month closed for commission purposes until the date upon which the amount was cleared.
- 5.4 The broking agreement between a life office and a broker shall provide for the charging of interest at a rate determined at the discretion of the life office which is not less than the highest of all commercial banks' prime overdraft rates, nor more than the maximum rate permitted in terms of the Usury Act.
- 5.5 This rule caters for the situation where lapses create a debit balance. The existence of this rule shall not imply that life offices may grant loans to brokers on these terms.

6. COMMISSION REGULATIONS**6.1 Commission on Policies with a Discount**

- 6.1.1 Certain life offices follow the practice of stipulating a contractual premium in their policies while also determining a lower premium that applies if a particular mode of payment is followed.
- 6.1.2 The Board of Directors has agreed that in these cases the commission payable should be based on the actual premium the policy owner will be paying which should be determined from the premium amount and mode of payment specified in the proposal form. The fact that, for example, an initial premium may be paid in cash on a debit order case, will therefore not affect the fact that commission may only be paid on the debit order premium.
- 6.1.3 It will not be necessary to recalculate the commission payable if the mode of payment is changed subsequent to the issue of the policy. Offices are requested to ensure that this administrative concession is not abused.
- 6.1.4 The Registrar of Insurance has notified the LOA that he fully agrees with the approach adopted in this interpretative note.

6.2 Premium Escalations**6.2 Premium Escalations**

- 6.2.1 Where premiums on a policy escalate, commission normally is paid on the escalations. For example, in the case of a whole life policy taken out at an early age, commission on premium escalations could be payable year after year for fifty years or more. The question has arisen: Is it appropriate for a life office to offer broker contracts that allow commission to continue to be paid to the broker after his or her retirement, or that allow the broker to nominate a beneficiary to receive the commission after his or her death?
- 6.2.2 Commission normally is paid in respect of services rendered towards the entering into, maintaining and servicing of a policy, as expressly or impliedly agreed with the broker. Therefore, if a broker ceases to maintain and service a policy, for whatever reason, commission on escalations no longer is earned, and hence no longer is to be paid. This is the case particularly where the broker is a single person, or an entity operated by a single person.
- 6.2.3 In the case of a broker company, close corporation, partnership or association, the life office must establish whether the maintaining and

servicing of a policy can continue, as contractually required, after the death or retirement of a principal. If it can, commission on escalations could continue to be paid.

6.3 Sinking Fund and certain other defined Policies

6.3.1 Regulation 3.(3)(3) also requires that commission on recurring premium sinking fund and certain other defined recurring premium policies be paid on an "as and when" basis over the full term of the policy.

6.3.2 The onus is on the life office to establish whether a broking company, association, partnership or close corporation is able to continue providing service, etc. after the death or retirement of a principal. If continuity of service is a reality, then commission on future premiums may be paid.

7. REPRESENTATIVES OF ONE INSURER WRITING FOR ANOTHER OFFICE IN A FOREIGN COUNTRY

7.1.1 Not all member offices carry on business in independent neighbouring states. One of these offices has now been asked by one of its full-time representatives whether he may write business for another office in one of the independent neighbouring states in which his own office's products are not available.

7.2 The question has been referred to the Remuneration Regulations Standing Committee and the Regional Co-ordinating Standing Committee who agree that from the legal point of view there is nothing to prevent the full-time representative being given permission to do what he wishes, provided:

?? both offices know what is going on;

?? the representative complies with the laws of South Africa when writing for the first office which must be registered to operate in South Africa and complies with the laws of the independent neighbouring state when writing for the second office which must have legal sanction to operate in that country; and the representative only writes such business for the second insurer in the independent neighbouring state as the first insurer is prevented from writing by the laws in that country.

7.3 The Standing Committee on Intermediary Matters (SCIM) considers that allowing a full-time representative to write business for different offices in different countries is an undesirable practice which they would not recommend even though it might not contravene any legislation, but they have not gone so far as to recommend its prohibition.

8. INTERMEDIARY CLAIMS : "REGISTERED WITH THE LOA"

8.1 It is undesirable that an intermediary, be it a full-time representative of a member office or a broker or brokerage with whom or which a member has entered into a broking agreement, should claim "registered with the LOA" on letterheads or on marketing material because:

- such claim could be seen as an attempt at projecting a legitimacy that does not exist;
- such a claim is a falsehood where a brokerage is a corporate entity and not a natural person; and because
- the impression may be created that members of the public have recourse to the LOA when they are dissatisfied with the actions of such brokers.

8.2 Members are requested to ensure that their representatives, on their personalised letterheads or elsewhere, do not make such claims.

8.3 Members are furthermore requested to ensure that brokers or brokerages with whom or which they have contracts do not make such claims. If needs be, a provision to that effect should be inserted in new broking agreements.

9. COMPLIANCE WITH THE CODE

The Chief Executive Officer or Compliance Officer of each member office shall submit an annual certificate of compliance to the LOA Secretariat which shall state the extent to which the Code was complied with during the year under review as well as the specific instances (and reasons) where non-compliance with the Code took place. Such certificate must be submitted at least two weeks before the Annual General Meeting of the Life Offices' Association.

ANNEXURE

INTERPRETATIVE NOTES

1. Paragraph 3.3: External Conferences or meetings

In terms of a Board of Directors decision taken on 28 February 1997, member offices are permitted to provide support, in cash or in kind, for functions, conferences and meetings organised by representative broker/intermediary associations such as IBC, LUASA, SAFSIA, BBF etc. However, the Board of Directors recommends:

- ?? that payment be made to the organisers, and
- ?? that life offices should call for a budget and in general satisfy themselves that any sponsorship would not amount to a breach of Regulation 3 or an inducement in terms of the Code.