



AIFC PRUDENTIAL RULES FOR INSURANCE INTERMEDIARIES

(PRU INT)

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Guidance: Purpose of this Rulebook

The purpose of this Rulebook, “PRU(INT)”, is to complement the regulatory framework established by the Financial Services Framework Regulations (“the Framework Regulations”). It sets out the requirements for Insurance Intermediaries to hold adequate capital and financial resources, and professional indemnity insurance, sufficient to cover the risks arising from their business.

If the Rules operate as intended, an Insurance Intermediary should have a sufficient buffer of assets in excess of its liabilities, and other financial protections, so that there is only a very remote chance that it will become insolvent and thereby cause a loss to its customers and the wider financial markets (although the Rules do not guarantee that this will never happen).

The Rules also provide a legal basis on which the AFSA may take action against an Insurance Intermediary which it considers does not have sufficient capital and financial resources and other financial protections - for example by requiring it to stop transacting any new business, so as to minimise the losses to clients and/or potential market participants that might result from a failing Insurance Intermediary. Such action would also further the AFSA's objectives to avert any potential harm to wider market stability and manifestation of systemic risk.

1. APPLICATION

1.1 Introduction

- (1) This Chapter sets out the scope of application of these PRU(INT) Rules.
- (2) These PRU(INT) Rules create:
 - (a) a general financial resources requirement in accordance with Chapter 2;
 - (b) a minimum capital requirement in accordance with Chapter 3; and
 - (c) a requirement to maintain professional indemnity insurance in accordance with Chapter 4.
- (3) Chapter 5 imposes reporting and notification requirements that relate to the matters covered by these PRU(INT) Rules.

1.2 Commencement

These PRU(INT) Rules commence on 1 January 2018.

1.3 Application of these PRU(INT) Rules

- (1) These PRU(INT) Rules apply to Insurance Intermediaries.
- (2) If an Insurance Intermediary holds both an Authorisation to carry on Insurance Mediation and an Authorisation to carry on PRU Investment Business or other Non-PRU(INV) Investment Business, it will be subject to these PRU(INT) Rules in relation to the whole of its business, including its PRU Investment Business and other Non-PRU(INV) Investment Business. However, the AFSA may direct that the Insurance Intermediary will be deemed to satisfy:
 - (a) some or all of these PRU(INT) Rules where it satisfies the rules that apply to it by reason of the Authorisation to carry on PRU Investment Business or other Non-PRU(INV) Investment Business; or
 - (b) some or all of these PRU(INT) Rules that apply to it by reason of the Authorisation to carry on PRU Investment Business or other Non-PRU(INV) Investment Business where it satisfies these PRU(INT) Rules.

- (3) Where an Insurance Intermediary is also regulated by another Financial Services Regulator (in addition to being regulated by the AFSA), it must comply with these PRU(INT) Rules and with the rules of any other Financial Services Regulator, in each case to the extent applicable.

2. GENERAL FINANCIAL RESOURCES REQUIREMENTS

2.1 General

2.1.1 Governing Body's responsibilities

- (1) An Insurance Intermediary's Governing Body must consider whether the minimum Capital Resources and professional indemnity insurance required by these PRU(INT) Rules are adequate to ensure that there is no significant risk that the firm's liabilities cannot be met as they fall due. The firm must obtain additional Capital Resources and professional indemnity insurance if its Governing Body considers that the minimum required does not adequately reflect the risks of its business.
- (2) The Governing Body is also responsible for:
 - (a) ensuring that the management of the firm's financial resources (including the firm's Capital Resources, liquid assets and professional indemnity insurance) is part of the firm's overall risk management, and is aligned with the nature, scale and complexity of its business and its risk profile;
 - (b) ensuring that the firm complies with these PRU(INT) Rules; and
 - (c) monitoring the adequacy and appropriateness of the firm's systems and controls and the firm's compliance with them.

2.1.2 Systems and controls

- (1) An Insurance Intermediary must have adequate systems and controls to enable it to calculate and monitor its Capital Resources, liquid assets and professional indemnity insurance, and its compliance with the requirements of these PRU(INT) Rules.
- (2) The systems and controls must be in writing and must be appropriate for the nature, scale and complexity of the firm's business and its risk profile.
- (3) The systems and controls must enable the firm to demonstrate its compliance with these PRU(INT) Rules at all times.

- (4) The systems and controls must enable the firm to manage its Capital Resources, liquid assets and professional indemnity insurance in anticipation of events or changes in market conditions.

2.2 Financial Resources

- (1) An Insurance Intermediary must at all times have Capital Resources and professional indemnity insurance of at least the minimum kinds and amounts required by, and calculated in accordance with, these PRU(INT) Rules.

- (2) An Insurance Intermediary must have, at all times:

- (a) sufficient liquid assets; and

- (b) Capital Resources and professional indemnity insurance (including those required by paragraph (1)),

that are adequate in relation to the nature, scale and complexity of its business and its risk profile to ensure that there is no significant risk that its liabilities cannot be met as they fall due.

- (3) If the AFSA is not satisfied that an Insurance Intermediary is in compliance with paragraph (2) then it may impose a requirement on that Insurance Intermediary to hold additional amounts of Capital Resources, liquid assets and professional indemnity insurance, and the Insurance Intermediary must comply with that requirement.

3. MINIMUM CAPITAL REQUIREMENT

3.1 References to Capital Resources

- (1) In these PRU(INT) Rules, "Capital Resources" must be calculated as the sum of the following capital elements, subject to deductions listed in (2) below:
 - (a) the ordinary equity share capital of the Insurance Intermediary, to the extent fully paid up;
 - (b) share premium accounts related to the equity share capital referred in paragraph (a); and
 - (c) any retained earnings and reserves created out of earnings of past periods of the Insurance Intermediary, and accumulated other comprehensive income, as defined in the International Financial Reporting Standards, to the extent shown in its audited financial statements and accounts.

- (2) In determining its Capital Resources, an Insurance Intermediary must deduct the following items from the sum of the capital elements in (1) above:
 - (a) any interim losses incurred by the Insurance Intermediary in the current financial year, irrespective of whether or not shown in audited financial statements and accounts;
 - (b) each of the following, to the extent that its value contributes to the sum of the capital elements in (1) above:
 - (i) goodwill and other intangible assets as defined in the International Financial Reporting Standards;
 - (ii) tangible fixed assets, including equipment and vehicles;
 - (iii) deferred tax assets that rely on future profitability;
 - (iv) defined benefit pension fund assets of the Insurance Intermediary;
 - (v) investments by the Insurance Intermediary or by any of its Subsidiaries in the Insurance Intermediary's own shares;

- (vi) holdings of equity shares of Affiliates or Related Persons which give rise to a reciprocal cross holding with the Insurance Intermediary which has the effect of artificially inflating the Capital Resources of the Insurance Intermediary; and
 - (vii) holdings of other investments and assets that are not readily realisable into cash; and
- (c) any amount to be deducted from Capital Resources as directed by the AFSA.

3.2 Minimum Capital Requirement

- (1) An Insurance Intermediary must at all times have and maintain Capital Resources of an amount not less than its Minimum Capital Requirement.
- (2) The Minimum Capital Requirement:
 - (a) for an Insurance Intermediary that is not permitted to hold Client Money, is the greater of:
 - (i) USD 7,000 ; and
 - (ii) 2.5 per cent of the annual income of the Insurance Intermediary.
 - (b) for an Insurance Intermediary that is permitted to hold Client Money, is the greater of:
 - (i) USD 13,000; and
 - (ii) 5 per cent of the annual income of the Insurance Intermediary.
- (3) The "annual income" of an Insurance Intermediary means the income of the Insurance Intermediary arising from its Insurance Intermediation activities, but excluding premiums received from clients which are due to be paid on to the insurance produce provider.
- (4) Annual income shall be assessed by reference to the Insurance Intermediary's most recent annual financial statements or, in the case of an Insurance Intermediary whose most recent financial statements do not represent a full financial year as an Insurance Intermediary, by reference to the business plan of the Insurance Intermediary submitted as part of its application for authorisation as an Insurance Intermediary.

4. PROFESSIONAL INDEMNITY INSURANCE

4.1 Firms must take out and maintain professional indemnity insurance

- (1) Subject to Rule 4.1(2), an Insurance Intermediary must take out and maintain professional indemnity insurance cover that is appropriate to the nature, scale, complexity and risk profile of its business and activities in accordance with this Chapter 4.
- (2) An Insurance Intermediary need not take out or maintain professional indemnity insurance if the AFSA gives written approval for some other form of financial protection, such as a guarantee provided by another Authorised Firm, that the AFSA considers to provide at least the same financial strength and legal certainty as professional indemnity insurance otherwise required under this Chapter 4.

4.2 Who is suitable to provide professional indemnity insurance?

- (1) Before an Insurance Intermediary takes out or renews a professional indemnity insurance policy with an insurer, the Insurance Intermediary must be satisfied, on reasonable grounds after conducting an appropriate assessment, that the insurer is a suitable Person to provide the insurance policy to the Insurance Intermediary and that the insurer is financially sound and capable to meet any liabilities related to claims.
- (2) If, at any time after the Insurance Intermediary has taken out or renewed a professional indemnity insurance policy with an insurer, the AFSA considers that the insurer is, or is likely to become, unsuitable to provide the insurance policy, the AFSA may, by written notice given to the Insurance Intermediary, require the Insurance Intermediary to cancel the insurance policy and take out equivalent professional indemnity insurance with another insurer in accordance with this Rule.
- (3) If the Insurance Intermediary is given a notice under Rule 4.2(2), the Insurance Intermediary must comply with the notice within:
 - (a) the time stated in the notice; or
 - (b) if the AFSA allows additional time to comply with the notice, the additional time.

4.3 Requirements for professional indemnity insurance policies

- (1) A professional indemnity insurance policy taken out or renewed by an Insurance Intermediary for this part must make provision for:
 - (a) an appropriate level of cover in relation to claims for which the Insurance Intermediary may be liable as a result of its conduct or the conduct of its Employees and agents, taking into account the aggregate limit of indemnity, the limit of indemnity for individual claims, the excess that applies in relation to any individual claim under the policy, and the extent to which the benefit of the policy is shared with any other entity;
 - (b) appropriate cover in relation to legal defence costs;
 - (c) continuous cover for claims arising from work carried out from when the Insurance Intermediary was Authorised to conduct Insurance Intermediation in or from the AIFC; and
 - (d) awards made against the Insurance Intermediary under any applicable consumer protection or ombudsman scheme.
- (2) The Insurance Intermediary must not take out professional indemnity insurance that makes provision for the payment of fines imposed by the AFSA.

5. REPORTING AND NOTIFICATION REQUIREMENTS

5.1 Introduction

This Chapter sets out the prudential reporting requirements for an Insurance Intermediary.

5.2 Preparing Returns

- (1) An Insurance Intermediary must submit quarterly and annual prudential returns to the AFSA using the templates prescribed for this purpose by the AFSA from time to time.
- (2) Annual prudential returns of an Insurance Intermediary must contain a certification by the same auditor that is responsible for auditing the Insurance Intermediary's annual financial statements. The certification must relate to the annual prudential returns and each set of unaudited quarterly returns that have been submitted to the AFSA by the PRU Investment Firm in the previous year.

5.3 Signing Returns

- (1) A prudential return must be signed by 2 individuals, and in each case:
 - (a) one of those individuals must be the individual approved to exercise the Finance Officer Function; and
 - (b) the other individual must be either the individual approved to exercise the Senior Executive Officer Function for the Insurance Intermediary or one of the individuals approved to exercise the Director Function for the Insurance Intermediary.
- (2) In paragraph (1), Senior Executive Officer Function and Director Function have the same meanings as in GEN.

5.4 Reductions in paid-up share capital and other capital instruments

An Insurance Intermediary must not reduce its paid-up share capital, or repay or redeem any part of any capital instrument the liabilities under which are included in its Capital Resources in accordance with Chapter 3, without the AFSA's written approval.

5.5 Breaches of PRU(INT)

If an Insurance Intermediary becomes aware, or has reasonable grounds to believe, that it is or may be (or may be about to be) in breach of any of the rules in PRU(INT), it must:

- (a) notify the AFSA in writing about the breach and the relevant circumstances immediately and not later than within 1 Business Day; and
- (b) not make any cash transfers or payments or transfer of liquid assets to its Affiliates or Related Persons, whether by way of dividends or otherwise, without the AFSA's written permission.

Guidance

In dealing with a breach, or possible breach, of this part, the AFSA's primary concern will be the interests of existing and prospective policyholders and Clients. The AFSA recognises that there will be circumstances in which a problem may be resolved quickly, for example by support from a Parent Entity, without jeopardising the interests of policyholders and Clients. In such circumstances, it will be in the interests of all parties for there to be minimum disruption to the firm's business. The AFSA's normal approach will be to seek to work cooperatively with firms to deal with any problems. There will, however, be circumstances in which it is necessary to take regulatory action to avoid exposing further policyholders and Clients to the risk of the firm's Failure, and the AFSA will not hesitate to take appropriate action if it considers this necessary.