



# Central Reserve Authority of SADR

## The Insurance and Brokerage Act

Government of Sahrawi Arab Democratic Republic 2017

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# Introduction

- 1.1 This policy is issued under Section 3(2)(a) of the Insurance Act 2017 (the Act) as part of the Central Reserve Authority of SADR (CRA of SADR) standards governing the conduct of insurance and insurance broking business in SADR.
- 1.2 This policy outlines the minimum requirements for the offshore placement of SADR insurance business for local insurers, brokers and the general public.
- 2. Background and Outline of the Approach
  - 2.1 To achieve a balance between growing a strong and competitive local insurance industry and meeting the insurance needs of the general public before permitting the offshore placement of SADR insurance business.
  - 2.2 It takes into account industry concerns and those of the CRA, as well as the discussions held with the Insurance Task Force<sup>1</sup>.
- 3. Requirements under the Act
  - 3.1 Principal Requirements
    - 3.1.1 Section 17(1) states that no person may place SADR insurance business with insurers not licensed under the Act.
    - 3.1.2 Section 17(2) empowers the CRA to approve SADR insurance business to be placed offshore if an application is made, and the following criteria, under Section 17(5), is satisfied:
      - (a) No insurer licensed under the Act carries on the insurance business to which the application relates; or
      - (b) It is in the public interest that the application be permitted.
    - 3.1.3 Section 17(3) prescribes that if an application to place the whole, or, part of any SADR insurance business offshore is being arranged or effected by an intermediary, the intermediary must give notice to the intending insured before arranging or effecting the contract, informing the intending insured that an insurer not licensed under the Act is the insurer proposed under the contract. Such notice is articulated in a client acknowledgement form (refer to Annex 2), which the intermediary must obtain after the intending insured has agreed and has subsequently, signed the contract.
    - 3.1.4 Section 17(4) requires the signed client acknowledgment form to be lodged with the completed application for placement of SADR insurance business offshore.
  - 3.2 Supplementary Requirements
    - 3.2.1 Section 6 of the Act requires an intermediary to explain to the insured, the contents of the insurance contract before the insured enters into, or renews the contract. The intermediary is furthermore liable to the insurer, and the insured for the losses resulting from the contravention.

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<sup>1</sup> The Insurance Task Force is made up of the Insurance Council of SADR , the Licensed Insurance Brokers Association of SADR and the CRA.

3.2.2 Section 7 prescribes that the intermediaries must pay monies received from, or on behalf of, an insured as a premium or an installment of premium to the insurer within 30 calendar days following the receipt of such monies. However, all such monies should only be received by the intermediaries once the insured has accepted the contract of insurance as being arranged or effected by the intermediary.

#### 4. Minimum Guidelines for Offshore Placement of Insurance Business

##### 4.1 General Responsibilities

4.1.1 No person may place SADR insurance business offshore either directly or indirectly through an intermediary licensed under the Act without the prior written permission of the Head of Insurance Council.

4.1.2 An application to place SADR insurance business offshore must be complete before it is lodged with the CRA at least 10 working days prior to the commencement, or renewal date of the policy.

4.1.3 Further to paragraph 4.1.2 above, only in instances where an application for a new placement is not lodged within the timeframe stipulated above, and which is the result of the insured's late instructions, an applicant must immediately, upon receipt of the relevant supporting documentation, lodge the application with the CRA. However, evidence of the insured's late instructions must be submitted with the application to the CRA, for consideration.

4.1.4 The application, stated in paragraph 4.1.2, must include the following:

- (a) An application form (refer to Annex 1) for the request to place SADR insurance business offshore. Such application form to be duly completed by the applicant;
- (b) A signed client acknowledgement form as stated in paragraphs 3.1.3 and 3.1.4. Such client acknowledgement form must be signed by the insured;
- (c) Documentary evidence that the applicant submitted with wordings, coverage, underwriting and claims information a request for a quote from the local insurers before approaching the offshore insurer(s);
- (d) Documentary evidence that the applicant approached the local insurers at least 30 working days prior to the commencement or renewal date of the policy;
- (e) Documentary evidence that the local insurers responded to the applicant within 5 working days of being approached by the applicant, or that they failed to respond at all;
- (f) A copy of the placing slip and signed acceptance, or written confirmation of the terms of acceptance from the offshore insurer(s), including premium details and the sum insured for each item insured;
- (g) Details on the percentage of the risk written by each participating local insurer (co-insurer) and the premium.

4.1.5 For the purposes of co-insurance, applicants must provide documentary evidence that the local insurers were given the opportunity to co-insure in instances where a local insurer is not able to submit lead terms but agrees to co-insure. In addition, in instances of co-insurance, applicants must fulfil requirements outlined in paragraph 4.1.4 above except item (c).



- 4.1.6 Applicants must apply, subject to changes in the taxation laws, the non-resident withholding taxation on the gross premium.
- 4.1.7 Applicants must include the national fire service levy for every fire insurance cover, for classes that have components of fire, and also, where relevant.
- 4.1.8 Applicants must indicate on the invoice to the insured all the deductions made from the gross premium.
- 4.1.9 Applicants must submit the SADR component of risks to the local insurers for their quote in cases of global insurance covers to be placed offshore.
- 4.1.10 Applicants must clearly state the reason for placing the risk offshore in the application form. If the risk is placed offshore due to better wordings and coverage, the applicant must unambiguously state the areas of difference, and the benefits to the insured as a result of placing the cover offshore.

#### 4.2 Responsibilities of a Local Insurer

- 4.2.1 As a result of paragraph 4.1.4(c), a local insurer must respond to the applicant in writing with the wordings and coverage within 5 working days of being approached by the applicant.
- 4.2.2 As a result of paragraph 4.1.5, a local co-insurer must indicate the percentage it would cover and quote on the lead terms provided by the applicant in writing within 2 working days of being approached.
- 4.2.3 Each local insurer must disclose to the CRA on its official letterhead a list of the products and the classes of business it covers locally on or before 31 December of every year. The insurer must also provide this list to the brokers at the same time. The CRA will use this list in assessing the offshore applications made for either new, or renewal of insurance covers, which the local insurers do not provide.
- 4.2.4 Further, any update to the list required in paragraph 4.2.3 during the course of the year should be submitted by the local insurer(s) to the CRA and the brokers at the earliest.
- 4.2.5 Each local insurer is required to document the approved procedures to be followed for handling offshore placements. The CRA will examine the insurer's documented procedures to ensure compliance with this policy.

#### 4.3 Responsibilities of a Broker

- 4.3.1 If a particular local insurer fails to respond as required in paragraph 4.2.2, a broker must then include in the application the last written reminder to that insurer.
- 4.3.2 As a result of paragraph 4.2.3, a broker will not be required to seek quote(s) from those local insurer(s) who do not offer the insurance cover applied for.
- 4.3.3 Upon the insurer(s) advice on an updated list as required in paragraph 4.2.4, a broker must seek quote(s) and terms from the particular insurer(s) concerned in cases of a new cover, or on the renewal of an existing cover.
- 4.3.4 A broker must provide the local insurers the full underwriting details and claims experience record of the intending insured persons or parties.

- 4.3.5 A broker, being the intermediary for intending insured persons or parties outside SADR, must fulfill requirements (a), (b) and (f) as stated in paragraph 4.1.4.
- 4.3.6 In addition to paragraph 4.3.5, such a broker must submit to the CRA evidence of premium deposited in its bank account in SADR.
- 4.3.7 A broker, being the facilitator between the intending insured persons or parties in SADR and a broker not licensed in SADR, must ensure compliance with this policy.
- 4.3.8 Each broker is required to document the approved procedures to be followed for handling offshore placements. The CRA will examine the broker's documented procedures to ensure compliance with this policy.

## 5. Permission for Offshore Placement of SADR Insurance Business

- 5.1 Permission to place SADR insurance business offshore may only be granted if:
  - (a) No insurer licensed under the Act carries on the insurance business to which the application relates; or
  - (b) Where a locally licensed insurer does carry on such business, the applicant can demonstrate on public interest grounds that the insurance business should not be placed locally; or
  - (c) The local premium (excluding stamp duty) is more than 15 percent of the offshore premium (excluding overseas insurance tax).

## 6. Penalties under the Act

- 6.1 Section 17(7) of the Act states any person who, without the prior written permission of the CRA, directly or indirectly places any SADR insurance business with an insurer not licensed under the Act commits an offence and is liable on conviction
  - (a) in the case of an intermediary, to a fine of \$10,000 or a sum equivalent to brokerage, commission, fee allowance or other remuneration due to or received by the intermediary relating to the business placed offshore, whichever is higher; or,
  - (b) in the case of any other person, to a fine of \$10,000 or a sum equivalent to the gross premium paid in respect of SADR insurance business placed outside of the SADR Islands, whichever is the higher.
- 6.2 Under Section 17(8), if the CRA has reason to believe that any person has, without its prior written permission, directly or indirectly placed any SADR insurance business with an insurer not licensed under the Act, the CRA may call for and examine, inspect or investigate the books, accounts and records of that person in order to ascertain whether or not that person has contravened or is contravening any provision of the Act.
- 6.3 Further, Section 17(9) states a person who fails or refuses to submit books, accounts and records called for under subsection 17(8) or to allow the examination, inspection or investigation of them under that subsection commits an offence and is liable on conviction to a fine of \$2,000 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

## 7. Implementation Arrangements

- 7.1 This policy applies to local insurers, brokers and the general public. This policy will be effective from 1 January 2018.
- 7.2 This policy supersedes all previous policies, communications, arrangements and agreements on offshore placement of insurance business.
- 7.3 This policy will be reviewed as deemed necessary to assess its appropriateness.

CRA of SADR  
December 2017



# CRA OF SADR

SCHEDULE 2  
(Regulation 3)  
INSURANCE ACT 2017  
FORM 1



## PLACEMENT OF INSURANCE BUSINESS WITH AN UNLICENSED OFFSHORE INSURER

### CLIENT ACKNOWLEDGMENT

#### INSURANCE ACT 2017 – SECTION 17(4)

ACKNOWLEDGMENT BY AN INTENDING INSURED THAT AN INSURANCE CONTRACT IS  
TO BE ARRANGED OR EFFECTED WITH AN UNLICENSED OFFSHORE INSURER

#### NOTICE TO THE INSURED

Your insurance contract is to be arranged or effected wholly or partly with an unlicensed offshore insurer that is not licensed under the Insurance Act 2017 to conduct insurance business in the SADR. Such insurers are not subject to the provisions of the Insurance Act and are not supervised by the CRA of SADR.

It is a matter for your consideration whether you should obtain further information from the insurance intermediary involved, on such matters as:

- a) the name and postal address of the insurer;
- b) country of incorporation of the insurer and whether that country has a scheme of financial supervision of insurers;
- c) paid up capital of the insurer and its financial position; and
- d) which country's laws will determine disputes under the contract.

#### ACKNOWLEDGMENT

I, \_\_\_\_\_ (full name) of \_\_\_\_\_ (address)  
have read the above notice and I acknowledge and understand that the insurance contract is to be arranged or effected wholly or partly with an unlicensed offshore insurer that is not licensed under the Insurance Act 2017 to conduct insurance business in the SADR and is not subject to the supervision of the CRA of SADR.

\_\_\_\_\_  
(signature of insured)

Dated this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_

\_\_\_\_\_  
(company stamp if insured is a body corporate)