



INSURANCE COMMISSION
OF THE BAHAMAS

Issued Date: December 1, 2021

GUIDELINES FOR THE CONDUCT OF BUSINESS

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1. INTRODUCTION

The Insurance Commission of The Bahamas is mandated to, among its other functions, maintain surveillance over the insurance marketplace, and to promote and encourage sound and prudent insurance management and business practices.

Pursuant to section 24 of the Insurance Act, 2005 the sale of insurance products may only take place through a registered insurance intermediary. Intermediaries, therefore, are required to adhere to the highest principles and standards for carrying on insurance business. These principles and standards are prescribed by the International Association of Insurance Supervisors (IAIS) and outline the internationally accepted core principles and standards for insurance regulation. The following Insurance Core Principles (ICPs) provide regulatory guidance on supervising intermediaries:

- ICP 18 - Intermediaries
- ICP 19 - Conduct of Business

Accordingly, given the role that intermediaries play in the insurance industry as the mandatory distribution channel for the sale of insurance products and services in The Bahamas, this guideline also considers the following core principles.

- ICP 21 - Countering Fraud in Insurance
- ICP 22 - Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT).

Intermediaries must act with due skill, care, and diligence. They are expected to avoid conflicts of interest, ensure the fair treatment of clients, and take all the necessary actions to complement the insurance placement process.

1.2 Purpose

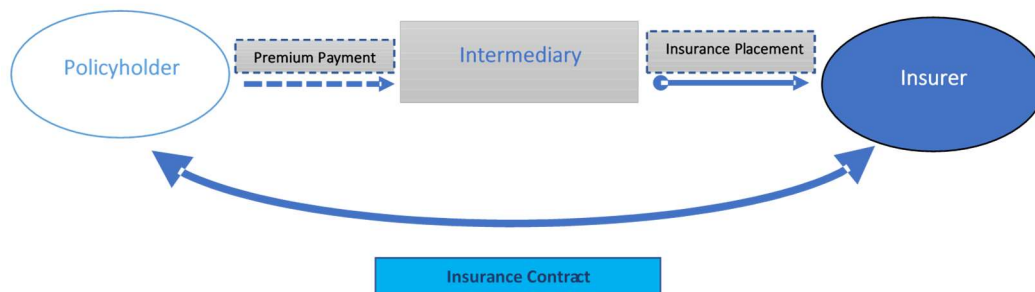
This guideline outlines the legal requirements and professional standards in which intermediaries must conduct insurance business in The Bahamas. This guideline also outlines the Commission's minimum standards for intermediaries engaged in selling insurance products and services and settling claims with the insurance-buying public.

1.3 Scope

This guideline applies to all insurance intermediaries, inclusive of salespersons, agents, brokers, and sub-agents who facilitate the placement of insurance business in The Bahamas on behalf of an insurer. While this guideline is primarily applicable to intermediaries, insurers must also familiarize themselves with its content given their duty to manage and implement systems, processes and procedures that ensures ongoing compliance with the Insurance Act, 2005.

2. MINIMUM STANDARDS FOR CONDUCTING INSURANCE BUSINESS

Intermediaries serve as the primary distribution channel for the sale of insurance products and services. Intermediaries may transact insurance business on behalf of the insurer or the client. These intermediaries include salespersons, agents, sub-agents, and brokers. Section 121 of the Act outlines the general conditions under which insurance intermediaries may conduct business.



While the figure above broadly illustrates the structure of the insurance industry in The Bahamas, the placement of insurance business for each segment of the industry is as follows:

- Life and health insurance companies use salespersons and their representative agents and sub-agents to accept premium payments and facilitate insurance placement. Life and health insurance companies may establish this relationship through a sales force, each individually registered with the Commission.
- Property and Casualty (General) insurance companies may only sell their products through registered agents, sub-agents, and brokers. Registered agents, sub-agents, and brokers selling general insurance products may use “employed” or “commissioned” agents or brokers who must be registered with the Commission.

Insurers must submit annually a list of all salespersons or technical representatives employed or commissioned by the company, sub-agency, agency, or broker. This list must be submitted in accordance with the prescribed form issued by the Commission.

Pursuant to section 140 of the Act, an insurer must establish and maintain a system that is designed to ensure that any agency relationship it maintains complies with the requirements of the Act. Additionally, Regulations 16(1) of the Insurance (General) Regulations, 2010 require an insurance company’s board of directors to develop and implement systems, processes, and procedures to conduct insurance business in a sound and prudent manner. Therefore, insurers and intermediaries must harmonize their systems, processes, and procedures in accordance with the following minimum standards for conducting insurance business:

- Conduct business with integrity
- Conduct business with skill, care, and diligence
- Take reasonable care to organize and manage affairs responsibly and effectively
- Maintain adequate financial records
- Observe proper standard of market conduct
- Ensure communication with clients is clear, fair, and not misleading
- Manage conflicts of interest fairly
- Engage the Commission in an open and cooperative manner

The Commission will assess whether the key insurance activities of an intermediary comply with the above minimum standards.

3. FITNESS AND PROPRIETY AND CORPORATE GOVERNANCE

The Commission's Fitness and Propriety regime is an integrated approach, designed to protect clients and to maintain the integrity of the jurisdiction. Section 207 (1)(c) of the Act requires that every registered insurer establish proper screening procedures to ensure high ethical and technical standards when hiring staff or appointing Agents. It is the responsibility of the insurer's board and senior management to ensure operations are conducted in a sound and prudent manner. The insurer must ensure that all intermediaries are sufficiently competent and knowledgeable in their role.

Insurers and intermediaries should familiarize themselves with the Commission's requirements outlined in the *Guideline for Assessing General Fitness and Propriety*¹.

3.1 Honesty and Integrity

An intermediary's conduct towards insurers, policyholders, other intermediaries, and the Commission must be characterized by honesty and integrity.

- Intermediaries must seek to not provide inaccurate, misleading, or incomplete information to clients or the Commission.
- Intermediaries must not exert undue influence or pressure on the client during the decision-making process.
- Intermediaries must not submit any application or claim knowing that material information contained within is incorrect or misleading.

3.2 Acting Fairly and in the client's best interests

All intermediaries must treat clients fairly and consider the client's needs which is paramount. Intermediaries should only recommend products that meet the client's interests. This includes any advice offered. All counsel must be advice that any reasonable registered intermediary would consider suitable for the client.

Brokers, acting in their capacity on behalf of the policyholder, should source a sufficient range of relevant products to meet the client's needs.

3.3 Exercising Skill, Care and Diligence

Intermediaries must have the relevant knowledge, experience, skills, capability, and sound judgment. Intermediaries must:

- Meet the standards of a reasonable, prudent registered intermediary
- Take reasonable steps to carry out the client's instructions accurately and promptly
- Observe any law, regulation, or policy designed to protect the public against financial loss due to dishonesty, incompetence, or malpractice by anyone employed in insurance, investment, financial services, or in the management of any company or due to bankruptcy.
- Ensure that all staff, agents, sub-agents, and salespersons are competent in their roles, properly supervised, and adequately trained.

¹ *Guideline for Assessing General Fitness and Propriety* may be found on the Commission's website: <https://insurancecommissionbahamas.com/wp-content/uploads/2021/06/Guidelines-for-Assessing-General-Fitness-and-Propriety.pdf>

3.4 Competence to Advise

Intermediaries must carefully consider the specific roles of individuals employed or sourced to conduct business on their behalf. Individuals or companies engaged in business with the intermediary must be hired based on their qualifications for the role.

Any individual or company engaged in any business activity with an intermediary must have a good understanding of key features of the distinct types of insurance products. Intermediaries must not advise on matters of which they are not sufficiently trained or lack sufficient skill.

Agents and Brokers who receive clients through referral should also advise them of the following:

- The agent or broker is responsible for arranging the insurance policy and not the individual or company making the referral.
- The referrer does not represent the agent or broker and should not have any involvement in the arrangement of the insurance policy.
- The agent or broker is not liable for any advice provided by the referrer in relation to the insurance policy.
- Premium should be paid directly to the agent, broker, or insurer under the agreed terms outlined.

3.5 Corporate Governance

Regulation 121² require all corporate intermediaries to disclose their managers and controllers to the Commission. Corporate intermediaries are required to identify all officers of the company who are authorized to act on the intermediary's behalf.

All corporate intermediaries must implement and document a comprehensive corporate governance framework that is appropriate to the nature, scale, complexity, and risk profile of the intermediary.

An intermediary's corporate governance structure is informed and guided by the affiliated insurer who sponsors the intermediary. The insurer ensures that:

- a) There is effective communication between the intermediary and the client
- b) There is appropriate segregation of key duties and functions
- c) Clients of the intermediary are treated fairly
- d) Books and records are maintained effectively and reliably
- e) Appropriate safeguards are in place to prevent, detect, and report suspicious activity associated with money laundering, financial crime, terrorist financing, and the proliferation of weapons of mass destruction
- f) There are adequate safeguards, both physically and electronically, to protect client information from loss or misuse.

² Insurance (General) Regulations 2010, Disclosure of Managers

4. BOOKS AND RECORDS

All corporate intermediaries registered by the Commission are required to submit audited financial statements within four months of the end of the company's fiscal year. Intermediaries unable to submit within those four months must seek a written request for extension from the Commission, which must be requested prior to the submission date.

In accordance with the Commission's policy for financial reporting requirements for insurance intermediaries, the intermediary may request an exemption from audit requirements depending on the size, nature, and complexity of their operations³. Individuals or companies receiving an audit exemption from the Commission must submit the following:

- Review Report
- Compilation Report

4.1 Record-keeping and Accounting

All applicable intermediaries must keep all financial records related to their operations within the jurisdiction. Registrants and licensees may employ cloud-based application software to carry on insurance business in or from within The Bahamas. Information held in this regard, whether in physical or electronic forms, is subject to the Data Protection Act, 2007. Therefore, registrants and licensees should have adequate financial systems and controls to maintain record-keeping measures associated with receiving, storing, and accessing client data.

Pursuant to section 141 of the Act, the Commission may request to examine any records of the intermediary. These records must be made available and may include:

- All policies issued by the intermediary on behalf of the insurer
- The aggregate amount of premiums received on policies
- A copy of all financial statements
- An analysis of any outstanding premiums owed to the insurer
- Any other books, vouchers, receipts, and documents required to verify the information provided to the Commission in accordance with the Act.

The Commission may request to examine an intermediary's records at any time. Once the intermediary receives the Commission's request, it will facilitate the examination, provide any information requested, and produce any records in its possession.

4.2 Monthly Records – Brokers

Every registered broker must keep account of all receipts and expenses relating to the class(es) of insurance business to which they are permitted to carry on insurance business. These accounts must be completed no later than twenty-one days after the end of each month.

4.3 Monthly Records – Agents

All agents and sub-agents must keep monthly records of all policies issued or renewed by them. These records will determine the amount due to or by them from their principals. These accounts must be completed no later than twenty-one days after the end of the month.

³ Insurance Intermediaries Compliance with the Financial Reporting Requirements specified by Regulations 139 and 140 of the Insurance (General) Regulations 2010:
<https://insurancecommissionbahamas.com/wp-content/uploads/2019/03/ICB-Policy-for-Financial-Reporting-Requirement-25March15.pdf>

5. PROPER STANDARDS OF MARKET CONDUCT

The way an intermediary conducts business must not detract from the integrity, effectiveness, and reputation of the jurisdiction. The Commission expects all registered intermediaries to act effectively and expeditiously. Fair and courteous dealings with all clients will contribute materially to this end. Conduct otherwise can cause reputational harm to the intermediary, its clients and to the industry.

The agreement between an intermediary and a client is a fiduciary relationship. To preserve the integrity of the insurance industry intermediaries must maintain the trust of their clients. Clients must be dealt with fairly and be kept informed of the intermediary's terms of business. This includes information about whom they represent and which class(es) of business they are registered to be engaged.⁴

5.1 Terms of Business

Intermediaries must treat clients fairly and ensure they are kept informed. The policy contract should be delivered to the client within the prescribed timeframe⁵. The intermediary should agree on terms of business with its clients in writing. The following provisions should be included:

- a) Name and address of the insurer underwriting the risk.
- b) A clear description of premium and payment terms.
- c) The terms under which the agreement can be terminated or canceled and the consequences of termination.
- d) Inform the client of the insurer's complaints handling process, including contact information.
- e) Address the claims process, including information on how claims are logged and processed.

5.2 Certificate of Registration

All corporate intermediaries must ensure that their Certificate of Registration is clearly displayed at their physical premises and available for inspection by clients.

All salespersons must present their registration identification when engaging clients for the sale of insurance products and services. Should the registration identification be lost or stolen, the registered salesperson must notify the Commission immediately.

5.3 Salespersons Relationship

Salespersons are registered and employed in affiliation with:

- A registered long-term insurer
- A registered agent
- A registered broker
- A registered sub-agent

Salespersons may only solicit business from clients in respect of the products of their sponsoring entity.

⁴ Insurance (General) Regulations 2010, Regulation 128 – Disclosure Rules,

⁵ Insurance Act 2005, Section 211, Insurance policy documents to be issued expeditiously states that policy documents should be forwarded to the client within ninety days of entering a contract or such other time as the Commission may consider reasonable.

When a salesperson's relationship is terminated, both insurers and intermediaries must file the appropriate forms with the Commission.

5.4 Professional Guarantees

As required, intermediaries must acquire and maintain sufficient guarantee/cover as follows:

Errors and Omission Policy

Registered adjusters, risk managers and consultants must secure Errors and Omission Insurance cover as follows:

- Individual adjuster, risk manager or consultant - \$500,000 minimum
- Partnership or companies - \$2,000,000 minimum

Fidelity Insurance⁶

Registered insurance agents, who are also limited companies, must:

- Maintain fidelity insurance against losses arising from dishonesty of employees, directors, and officers for not less than:
 - \$20,000 for any one employee
 - \$50,000 for any one officer or director
 - \$200,000 for any one occurrence in the aggregate including collusion.
- Maintain some other form of financial guarantee in a manner approved by the Commission of at least \$200,000.

Intermediaries must immediately notify the Commission if any of the policy coverages are withdrawn, cancelled, or not renewed. An intermediary will cease to solicit new business until the policy is reinstated.

Professional Indemnity Insurance⁷

Registered agents and brokers must have and maintain a professional indemnity insurance policy with a minimum limit of indemnity for any one claim in each insurance period. The limit of indemnity must be one of the following:

- a) An amount equal to the aggregate insurance brokerage/commission income⁸ relating to the average for the three years immediately preceding the start date of the professional indemnity cover. *Only applicable to a broker who has been in business more than three years.

⁶ Every company that is registered as a broker and agent shall maintain both a professional indemnity policy and fidelity insurance.

⁷ The Commission may require professional indemnity insurance cover in an amount exceeding what is required in a, b, or c to meet the requirements of an individual broker. The professional indemnity insurance should also include the activities of sub-agents (if any). If the available indemnity falls below the originally prescribed amount at any point, the broker must reinstate the cover to an amount equal to (but not less than) the original cover prior to the loss.

⁸ Insurance brokerage/commission income refers to any income derived from advising on or arranging any contract which contains an element of insurance, irrespective of the extent of the insurance element.

- b) An amount equal to the projected insurance brokerage/commission income for twelve months for the period of the professional indemnity insurance cover. *Applicable to a broker who has been in business for less than three years.
- c) An amount of not less than five hundred thousand dollars (\$500,000) and not more than five million dollars (\$5,000,000).

5.5 Agency Agreement

Agents must provide the Commission with evidence that there is an agency agreement between the agent and the insurer for whom the agent acts. The agency agreement must include all business by any sub-agent attached to the agency.

If the agency agreement is withdrawn, the insurer and agent must notify the Commission immediately and cease soliciting new business until the agreements are reinstated.

5.6 Informed Decisions

Intermediaries must take all reasonable steps to ensure clients are provided with all relevant information prior to making informed decisions when conducting insurance business. Intermediaries must avoid making misleading or deceptive representations.

5.7 Confidentiality

Intermediaries must hold all client information in the strictest of confidence. Unless authorized by the client or required by law to do so, an intermediary may only share information necessary to conduct negotiations on the client's behalf. Client information should not be divulged other than in accordance with the Data Protection (Privacy of Personal Information) Act, Chapter 324A.

Should client information need to be outsourced as part of the insurance placement process or claims handling process, intermediaries must take the appropriate steps to require and confirm that service providers protect confidential information. Agreements with service providers should outline the remedial actions to be taken in the event of intentional or inadvertent disclosure to unauthorized individuals or entities.

5.8 Conflicts of Interest

Intermediaries must have documented policies and procedures in place for addressing and avoiding conflicts of interest. Where a conflict of interest does arise, the intermediary must disclose it to the client and immediately decline to act if the conflict cannot be mitigated to the client's satisfaction.

5.9 Cooperation with the Commission

Intermediaries must deal openly and cooperate with the Commission in a transparent manner. An intermediary must notify the Commission of any proposed material changes to its business plan and should request approval, where required, by the Commission on any significant developments relevant to its operations, its staffing or its systems and controls.

The Commission must be notified immediately when:

- i. An agency or sub-agency agreement, or a letter of sponsorship is terminated; or

- ii. Any responsible officer, technical representative or salesperson is terminated. Notice should be given by using the prescribed forms issued by the Commission⁹. When the employee finds new employment, both the employee and the new employer must also advise the Commission of the engagement using the prescribed form issued by the Commission¹⁰.

⁹ Form 12 A – Employee; Form 12B – Employer.

¹⁰ Form 13

6. OTHER RESPONSIBILITIES OF THE INTERMEDIARY

6.1 Premium Receipts¹¹

All intermediaries receiving premium payments from policyholders must issue a receipt to clients. Records must clearly indicate the date of the payment and the policy towards which it relates. The receipt should also include:

- Full name of the policyholder (owner)
- Date of payment
- Policy Number
- Amount of premium paid

6.2 Turning over Client Funds

Intermediaries who negotiate or renew insurance products and receive money or any substitute for money as premium are said to hold such premiums in trust for the insurer. Failure to turn over an insurer's due premiums is a breach of trust.

Pursuant to Section 135 (2) of the Act, "if [the intermediary] fails to pay the premium he receives... over to the insurer in accordance with the terms agreed with the insurer, less his commission and any other deductions...he is entitled, his failure shall be deemed prima facie evidence that he is guilty".

6.3 Premium Trust Account¹²

All intermediaries must have adequate safeguards to protect client funds. Client funds include premiums paid, claims money, premium refunds, and assigned professional fees due from clients. Intermediaries who collect client funds are fiduciaries of both the insurer and the client.

The Commission's Guidelines for Premium Trust Accounts, which should be read in conjunction with this guideline, outline the minimum standards that must be upheld by all intermediaries entrusted with client funds as well as their fiduciary obligations.

6.4 Advertisements

Section 134 of the Act mandates that intermediaries do not make any statement, issue, or allow any advertisement (whether orally or by written statement, circular, descriptive booklet, or any other document) to be issued via any broadcasting medium that mislead the public. To do so is a contravention of the Act.

Advertisements -

- a. may not contain any statement, promise or possibility that is untrue, misleading, or extravagant,
- b. may not be designed in such a way as to distort important information,
- c. must be clearly recognizable as an advertisement, and
- d. must be straightforward and easily understood.

¹¹ Insurance Act 2005, Section 189, Issue of premium receipt book – reference includes premium receipt books for industry policies.

¹² The Commission's *Guideline for Premium Trust Account* may be found on the Commission's website: <https://insurancecommissionbahamas.com/wp-content/uploads/2020/06/Guideline-for-Premium-Trust-Accounts.pdf>

6.5 Rebates

Section 137 of the Act prohibits both insurers and intermediaries from offering rebates. Intermediaries must not directly or indirectly make any agreement as to the premium to be paid for a policy other than what is set out in the policy. Intermediaries may not offer any part of the premium (in whole or in part) as payment for the premium stipulated by the policy. This includes all other considerations intended to be a rebate of premium.

To offer a rebate is in contravention of the Act. The offender is guilty of an offense pursuant to section 137(2) of the Act.

6.6 Gifts and Other Benefits

Intermediaries must not offer or receive, nor permit any officer or staff in their employ to offer or receive any gift or benefit (direct or indirect) that may influence the advice the intermediary may offer a client.

7. ENFORCEMENT

Breaching (a) any provision of the Act and its Regulations, (b) any provision of any statutory instrument, or (c) any directive or requirement from the Commission or any inspector appointed by the Commission is an offence. When an offence is proven to have been committed under the direction of any director, principal (responsible) officer, actuary or auditor of the company, or any key person in a controlled function, the person proven to have committed the offence or the one who allowed the offence to occur, is considered guilty.

An intermediary who willfully orders, makes, or allows any entry or removal in, or omits an entry from the collection book or the record of premium receipts with the intent to falsify the information is guilty of an offence and subject to the penalties specified in the law or imposed by the Commission.

The Commission may mandate that the intermediary pay a fine. If an offence is committed where there is no penalty specified by law, the offence is punishable on summary conviction as follows:

- An individual may receive a fine not exceeding \$5,000. If the offence continues, the Commission may impose a further fine of \$500 per day for as long as the offence continues.
- A company may receive a fine not exceeding \$10,000. If the offence continues, the Commission may impose a further fine of \$1,000 per day for as long as the offence continues.

Such orders from the Commission must be in writing and must specify the offence and the penalty for which it is imposed. A copy of the order must also be provided. Once the penalty is paid, the intermediary will no longer be liable for further prosecution for the offence.

The Commission may also impose any of the following penalties for an offence:

- Public reprimand
- A ban on carrying out certain operations
- Temporary suspension of a manager
- Removal of a director, responsible officer, or other senior manager
- Imposing conditions on registration
- Revocation of approval of anyone identified as a key person in a controlled function.

Penalties from the Commission are enforceable in the same manner as an order from the Courts.

8. DEFINITIONS

Advertisement	every form of advertising, whether publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or cinematograph films or by way of sound broadcasting, television, or any other electronic media.
Agent	a body corporate appointed by a registered insurer and not being an employee of the insurer, who solicits applications for insurance, collects money by way of premiums and acting in accordance with the relevant agency agreement may bind the registered insurer for whom the agent acts in the issue of insurance cover.
Broker	a body corporate which acting with complete freedom as to their choice of undertaking and for commission or other compensation bring together, with a view to the insurance or reinsurance of risks, persons seeking insurance or reinsurance and insurance or reinsurance undertakings, carry out work preparatory to the conclusion of contracts of insurance or reinsurance, and where appropriate, assist in the administration and performance of such contracts.
Carry on Insurance Business	<p>Carry on of insurance business in The Bahamas and its derivatives includes –</p> <ol style="list-style-type: none"> a. Opening or maintaining a place of business or an office, or appointing or using a representative in The Bahamas, whether insurance business is being arranged in or from The Bahamas. b. The use in The Bahamas of any business description or business title, in any language whatever, of the words “insurance,” “assurance,” “indemnity,” “guarantee,” “underwriting,” “reinsurance,” “surety,” “casualty,” or any of their derivatives, or any expression which connotes or is intended to connote insurance business. c. The making in The Bahamas of any representation in any handbill, letter, letterhead, circular, advertisement, paper, notice, or in any manner whatsoever offering, either directly or indirectly, to arrange contracts of insurance. and d. The assumption of the obligation of a company to cover risks or liabilities in any class of insurance business.
Class of Insurance Business	any class of insurance business specified in subsection (1) of section 3 of Chapter 347 (The Insurance Act, 2005).
Insurance Intermediary	a broker, agent, sub-agent, adjuster, risk manager, consultant, or such other persons who give advice by way of directly offering, advertising or on a person-to-person basis in respect of an insurance product and includes the promotion of such product or the facilitation of an agreement or contract between an insurer and a customer.

Insurance Business	<p>Insurance Business means –</p> <ul style="list-style-type: none"> a. The assumption of the obligations of a company in any class of insurance business. b. The assumption of the business of insuring risk or liabilities. c. The renewal and issuing of documents of renewal or existing insurances and liabilities. d. The receiving of first, subsequent or renewal premiums including reinsurance. e. Reinsurance business; and f. Pension business and other business directly connected to insurance business.
Insured	the party named on or in a policy or certificate.
Rebate	a part of the commission or anything else of value is given to the insured as an inducement to buy a policy.
Salesperson	a licensed individual engaged by either a registered insurer or registered insurance intermediary to sell insurance products and whose primary responsibility is to solicit applications relative thereto.
Sub-agent	any person appointed by an agent with the authority of the company that is the agent’s principal, and not being an employee of the agent, to solicit applications for insurance or to negotiate insurance through that agent.
Technical Representative	An individual, other than one performing clerical or non-insurance related functions, and who is employed by an insurer, broker, or agent, who provides advice to a policyholder or potential policyholder on insurance matters or negotiates or arranges contracts of insurance on behalf of an insurer, broker, or agent.