



Overview of Disciplinary Process

Insurance Authority

October 2020

Introduction

The principal function of the Insurance Authority (“IA”), as stipulated under the Insurance Ordinance (Cap. 41)¹ (“IO”), is to regulate and supervise the insurance industry for the promotion of the general stability of the insurance industry and for the protection of existing and potential policy holders. The IA’s functions also include, among other matters, being responsible for supervising authorized insurers’ and licensed insurance intermediaries’ compliance with the provisions of the IO and promoting and encouraging the adoption of proper standards of conduct by authorized insurers and licensed insurance intermediaries².

In this regard, the IA is empowered under the IO to take certain disciplinary actions against licensed insurance intermediaries and certain persons (such as a responsible officer (“RO”) of a licensed insurance agency or a licensed insurance broker company, a person concerned in the management of the regulated activities³ carried on by a licensed insurance agency or a licensed insurance broker company) (each a “Regulated Person⁴”, and together referred to as “Regulated Persons”) in the event of a Regulated Person, for example, being guilty of misconduct or if the IA is of the opinion that the Regulated Person is/was not a fit and proper person⁵. Similarly, the IA is empowered under the IO to take certain disciplinary actions against an authorized insurer in the event the insurer is/was guilty of misconduct or the IA is of the opinion that a person who holds/held the position of a director or controller of the insurer is/was not a fit and proper person⁶.

Purpose of this Document

This document is intended to provide a broad overview of the disciplinary process to be adopted by the IA. As a broad overview, it is not intended to be definitive or exhaustive.

For ease of understanding, the disciplinary process outlined in this document is that applicable to Regulated Persons for matters involving misconduct or which call into question their fitness and properness. In broad terms, however, the same disciplinary process would be adopted in relation to other disciplinary actions including those against authorized insurers.

The IA may adapt or modify the process in respect of a particular case, if (due to the particular circumstances of the case) the IA deems it necessary to do so to ensure the principle of fair procedure is met.

The IA also has powers to prosecute certain offences under the IO, but the procedures for this are not covered in this document.

¹ Section 4A(1) of the IO

² Sections 4A(2)(a), (c) and (d) of the IO

³ “Regulated Activity” is defined under section 3A(a) and Schedule 1A of the IO

⁴ “Regulated Person” is defined in section 80(1) of the IO

⁵ Section 81 of IO

⁶ Section 41P of the IO

Criteria for Determining whether to take Disciplinary Action and the Level of Sanctions

Under Part XI of the IO, the IA is given power to take disciplinary actions against Regulated Persons and impose various sanctions on them as set out under the IO. The IA seeks at all time to impose sanctions that should be effective, proportionate and fair. The IA will consider all circumstances of a case and take into account relevant factors, such as:

- the nature, seriousness and impact of the conduct
- the manner of reporting the incident by the Regulated Person
- the degree of cooperation with the IA by the Regulated Person during the investigation and disciplinary process
- the remedial actions taken by the Regulated Person
- the disciplinary record and compliance history of the Regulated Person

The factors listed above are not exhaustive.

Disciplinary Sanctions that can be Imposed in relation to Regulated Persons

The IA is empowered to impose one or more of the following sanctions in relation to Regulated Persons:

- reprimand (private or public)
- revocation of licence
- suspension of licence
- revocation of approval to be a RO
- suspension of approval to be a RO
- prohibition of application for licence
- prohibition of appointment to be a RO
- fine (up to a maximum of \$10 million or 3 times of the profit gained/loss avoided, whichever is the higher)

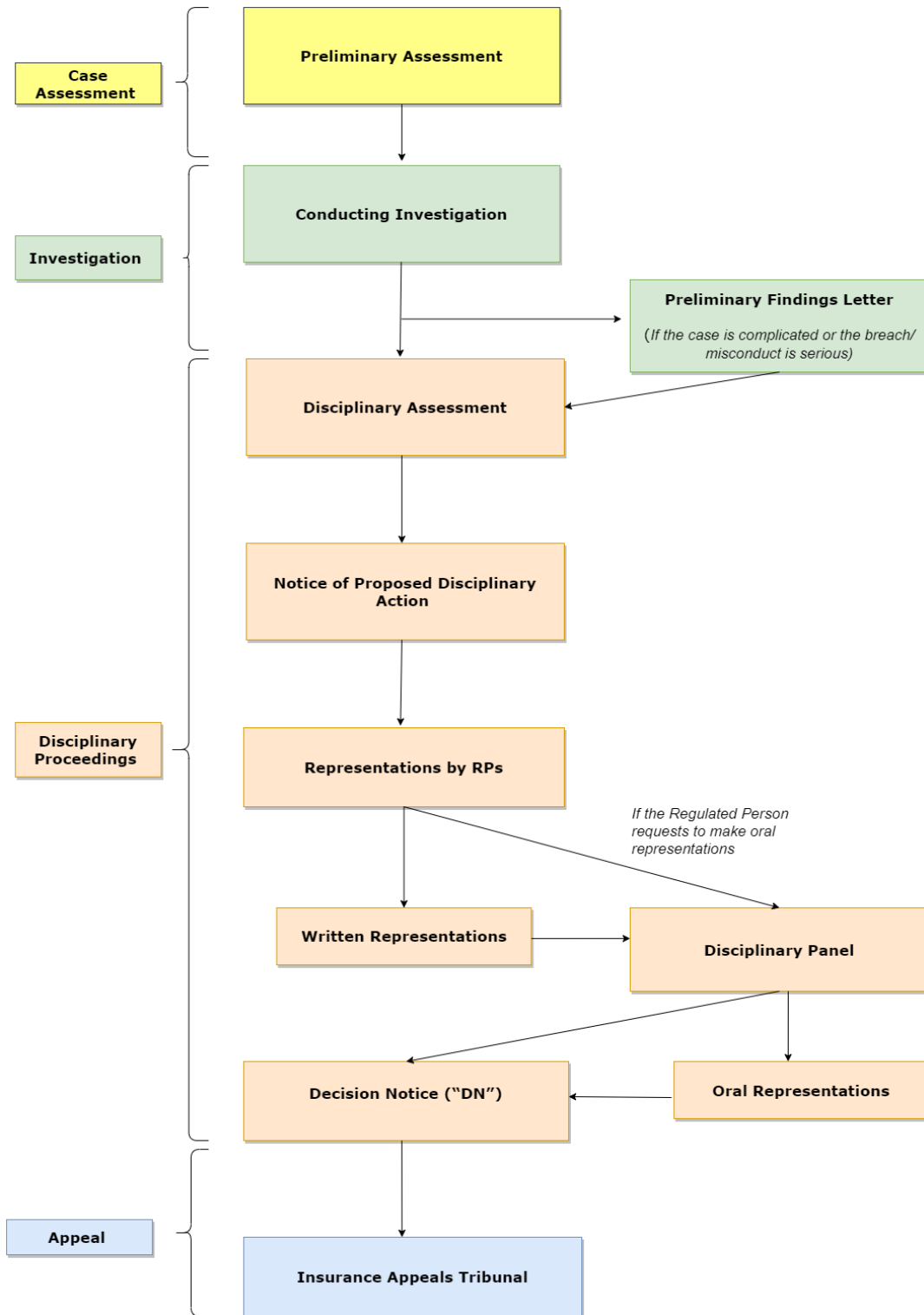
The IA may publicize its decisions to impose a sanction against Regulated Persons as it thinks fit.

To better understand the considerations of the IA when imposing a fine, please refer to the IA's "GL22: Guideline on Exercising Power to Impose Pecuniary Penalty in respect of Regulated Persons under the Insurance Ordinance (Cap 41)"⁷.

⁷ The "GL18: Guideline on Exercising Power to Impose Pecuniary Penalty in respect of Authorised Insurers under the Insurance Ordinance (Cap 41)" should be referred to in the case of disciplinary actions against authorized insurers which involve a pecuniary penalty.

Disciplinary Process in Outline

The flowchart below shows the typical steps which make up the IA's disciplinary process. More detail in relation to each step is provided in the commentary following the flowchart.



Case Assessment

The IA may receive information suggesting misconduct or which calls into question the fitness and properness of a Regulated Person from various sources, including the public (through complaints), other regulatory or law enforcement bodies, reports from auditors, or through inspections of, or reporting by, authorized insurers or Regulated Persons.

In the event information is provided to the IA (or the IA comes across the information) which suggests misconduct or which calls into question the fitness and properness of a Regulated Person, the IA will make an assessment of the information. If the IA considers it necessary, it will gather further information, for example, from the complainant, relevant authorized insurer, licensed insurance broker companies or licensed insurance agencies, to assist with this assessment.

Only if the IA, based on its assessment of the information, considers that it has reasonable cause to believe or reason to enquire whether a Regulated Person may be guilty of misconduct or is not a fit and proper person, may the IA proceed to the next step of appointing investigators to conduct an investigation.

Investigation

The IA's investigation work may include requiring production of documents or information, answers in writing to be given to investigators' questions and attendance of interviews by (for example) the complainants, Regulated Persons under investigation, other witnesses, or a person whom the IA has reasonable cause to believe to be in possession of, amongst other things, information relevant to the investigation. Under certain circumstances, persons may be required to verify their answers by statutory declaration. Failure to comply with a requirement imposed by an investigator without reasonable excuse or with intent to defraud, is an offence under the IO. It is also an offence under the IO for a person, in response to a requirement imposed by an investigator, to provide, intentionally or recklessly, any false or misleading records, documents, answers, explanations or particulars to the investigator.

Details of the allegations will be made known to Regulated Persons under investigation and they will be provided with sufficient opportunity to respond to such allegations throughout the process, whether orally or in writing. Regulated Persons may also seek legal advice and obtain legal representation at any time throughout the process.

If the matter is of a complex or serious nature and the investigation reaches a point that the evidence reveals misconduct by the Regulated Person or that the Regulated Person is not a fit and proper person, the investigator may send a Preliminary Findings Letter to the Regulated Person. The Preliminary Findings Letter will summarize the case based on the preliminary findings of the investigator and invite the Regulated Person to respond within a certain period of time. The Preliminary Findings Letter and the opportunity to respond, provide another avenue for the Regulated Person to address the allegations and may also serve as a means of narrowing the issues in dispute.

In order to conclude the investigation, the investigator will form a view as to whether, based on all the evidence gathered, the allegations are substantiated or not.

If the investigator forms the view that the allegations are substantiated, the case will be passed to another team of officers in the IA (being IA staff who have had no involvement with the investigation) to take the matter forward. If, however, the investigator forms the view that the allegations are not substantiated, the case will be concluded, and the Regulated Person and the complainant (if applicable) will be notified.

Disciplinary Assessment and Notice of Proposed Disciplinary Action (“NPDA”)

The other team of officers in the IA who take on the case from the investigator (should the investigator consider the allegations substantiated), will then conduct their own review of the entire case in order to consider whether, in their view, the allegations have been substantiated based on the evidence. If, based on this review, they form a view that the allegations are substantiated, they will propose disciplinary action(s) and prepare an NPDA, which essentially sets out a statement of the matters alleged against the Regulated Person (i.e. whether the person is believed to have committed an act of misconduct or whether the person’s fitness and properness is called into question), the facts on which the case is based, and the evidence relied upon to support those facts. The NPDA will also state the proposed sanction which the IA considers appropriate to impose, on the basis of the facts stated in the NPDA. A list of documents that the IA has relied upon to come to this view will be included in the NPDA.

During an investigation or disciplinary proceedings, the IA may consult members of the Expert Advisor Panel (“EP”) on technical issues relating to insurance products or market practices as well as the appropriateness of the proposed disciplinary action. Members of the EP are persons with significant expertise on insurance-related matters, positioned to provide opinion to the IA as necessary.

Representations by the Regulated Persons

In the NPDA, the Regulated Person will be informed of his/her/its right to make representations regarding the matters set out in the NPDA. These may be made by way of written or oral representations. It is important that the Regulated Person takes the opportunity to include all representations he/she/it wishes the Disciplinary Panel to consider regarding the case, so that the Disciplinary Panel may take them into account before reaching a decision. If the Regulated Person does not agree with the proposed sanction, he/she/it should explain why in the representations made.

Prior to making representations, the Regulated Person may ask for copies of all documents considered by the IA in relation to the matters stated in the NPDA.

If in addition to (or instead of) written representations, the Regulated Person wishes to make oral representations, the Regulated Person should make this request in writing as soon as practicable.

If the Regulated Person requests to make oral representations, a meeting with the Disciplinary Panel will be arranged. During such meeting, the Disciplinary Panel may seek to clarify issues with the Regulated Person, if it considers that would be of assistance to it in reaching a decision. The IA may also invite other parties to the case to attend the meeting and answer questions, if it considers it necessary to do so in order to reach a decision. Even if such a meeting is not requested by the Regulated Person, the Disciplinary Panel may request to meet with the Regulated Person (and other persons relevant to the case) if it considers it necessary to do so, to ensure that the case is fairly considered, based on the specific circumstances of the case.

After receiving the written representations from the Regulated Person or if the Regulated Person requests to make oral representations, the IA’s Disciplinary Panel will be engaged to decide on the disciplinary actions to be taken by the IA.

The Disciplinary Panel are independent decision-makers appointed by the IA who are not involved in the investigation. The Disciplinary Panel is comprised of Executive Directors and Non-Executive Directors of the Board of the IA, as well as other individuals who are not members or staff of the IA, but who have been appointed by the IA based on their demonstrated relevant experience to perform such role.

If no response to the NPDA is provided by the Regulated Person before the specified deadline stated in the NPDA, the Disciplinary Panel may proceed to make its decision.

Decision Notice

The Disciplinary Panel will review all information gathered in both the investigation and disciplinary stages, including representations made by the Regulated Person in writing and during any meeting with the Disciplinary Panel. The Disciplinary Panel will then make a decision, and direct a decision in writing (“Decision Notice”) to be issued to the Regulated Person. If the decision made is to take disciplinary action, the Decision Notice will include:

- (a) a statement of the reasons for the decision;
- (b) the time when the decision is to take effect;
- (c) in so far as applicable, the duration and terms of the revocation, suspension or prohibition to be imposed under the decision;
- (d) in so far as applicable, the terms in which the person is to be reprimanded under the decision; and
- (e) in so far as applicable, the amount of the pecuniary penalty to be imposed under the decision and the period within which it is required to be paid.

The Decision Notice marks the end of the IA’s disciplinary process. The Regulated Person, however, has the right to apply to the Insurance Appeals Tribunal (“IAT”) for a review of the IA’s decision. The Decision Notice will include information on the Regulated Person’s right to apply to the IAT for a review of the IA’s decision.

The IAT may confirm, vary or set aside the disciplinary decision or remit the matter to the IA. Generally, the IA’s disciplinary decision shall not take effect during IAT’s review (see below for further information on the IAT).

Legal Representation

Regulated Persons who are the subject of the disciplinary process can seek legal advice at any point throughout the process. This may include instructing their lawyers to respond to the NPDA on behalf of the Regulated Persons in writing. If oral representations are to be made, the Regulated Person may seek legal representation but the Regulated Person’s presence in the meeting is also required.

Additional Action

The IA has the power to resolve disciplinary proceedings by agreement, but only if the IA considers it appropriate to do so in the interests of policy holders or potential policy holders or the public interest⁸.

Application for Review by the Insurance Appeals Tribunal

The IAT is an independent quasi-judicial body which has jurisdiction to review, among other matters, disciplinary decisions made by the IA under the IO.

The IAT’s chairperson, who is a former judge or a person qualified for appointing as a High Court judge, shall be appointed by the Chief Executive. An IAT comprises the chairperson and two other members.

Regulated Persons, if aggrieved by the disciplinary decisions of the IA, may apply in writing to the IAT for the decisions to be reviewed within 21 days after the Decision Notice has been served. This period may be extended by applying to the IAT and demonstrating good cause.

⁸ Section 84(1) of IO

Appeal to the Court of Appeal

If the Regulated Person is dissatisfied with the IAT's decision, an appeal can be made to the Court of Appeal. The Regulated Person may appeal on a question of law, a question of fact, or a question of mixed law and fact.

Disclaimer

This document seeks to provide a brief summary of the IA's disciplinary process which is not a legal advice. Regulated Persons should seek their own legal advice when appropriate.