

**Consultation Paper**

**on**

**Draft Code of Conduct for Licensed  
Insurance Brokers**

## FOREWORD

- 1 This paper is published by the Insurance Authority ("IA") to consult the public on the Code of Conduct for Licensed Insurance Brokers to be made under section 95 of the Insurance Ordinance. The enclosed draft which is being consulted on has been prepared in anticipation of the IA taking over regulation of insurance intermediaries from the three existing self-regulatory organizations in around mid-2019.
- 2 The IA welcomes written submissions on or before 28 May 2019 by any of the following means:  
  
Mail: Insurance Authority  
19/F, 41 Heung Yip Road  
Wong Chuk Hang  
Hong Kong  
Fax: (852) 3899 9993  
Email: [comment\\_codeandguideline@ia.org.hk](mailto:comment_codeandguideline@ia.org.hk)
- 3 A feedback template is enclosed.
- 4 Any person making a submission on behalf of an organization is requested to provide details of such organization.
- 5 Submissions will be received on the basis that the IA may freely reproduce and publish them, in whole or in part, in any form, and use, adapt or develop any proposal put forward without seeking permission or providing acknowledgement of the party making such proposal.
- 6 Please note that name(s) of respondent(s), their affiliation(s) and comment(s) may be referred to in any forms of documentation the IA may publish or release. If you do not wish your name or affiliation to be disclosed, please expressly state so when you make your submission.
- 7 Any personal data submitted will only be used for consultation and its related purposes in respect of this consultation paper. For access to or correction of any personal data contained in your submission, please contact –

Personal Data Privacy Officer  
Insurance Authority  
19/F, 41 Heung Yip Road  
Wong Chuk Hang  
Hong Kong

# CONTENTS

		Page
	<b>EXECUTIVE SUMMARY</b>	4
CHAPTER 1	BACKGROUND AND INTRODUCTION TO THE BROKERS' CODE	6
CHAPTER 2	KEY PROVISIONS OF THE BROKERS' CODE	8
SCHEDULE 1	NEW DEFINITIONS UNDER SECTION 2(1) AND SECTIONS 90, 92, 93 AND 95 OF THE ORDINANCE	14
ANNEX 1	DRAFT CODE OF CONDUCT FOR LICENSED INSURANCE BROKERS	
ANNEX 2	FEEDBACK TEMPLATE	

## EXECUTIVE SUMMARY

1. The principal function of the Insurance Authority ("IA") 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<sup>1</sup>.
2. The IA proposes to issue a new Code of Conduct for Licensed Insurance Brokers ("Brokers' Code") under section 95 of the Insurance Ordinance (Cap 41) ("the Ordinance") to take effect when it takes over the regulation of insurance intermediaries in mid-2019. At that time the legal provisions of the Insurance Companies (Amendment) Ordinance 2015 (Ord. No.12 of 2015) ("the Amendment Ordinance") relating to the new regulatory regime for licensed insurance intermediaries will commence. These provisions (which will amend the Ordinance) together with rules, regulations, codes, guidelines and other regulatory instruments administered or issued by the IA, such as the new Brokers' Code, will replace the current self-regulatory regime for insurance brokers, including the IA's current Guideline on Minimum Requirements for Insurance Brokers effective from 1 March 2010<sup>2</sup> ("Minimum Requirements"). The Minimum Requirements were drawn up by the IA in the context of the outgoing self-regulatory regime *"to give guidance to insurance brokers or bodies of insurance brokers<sup>3</sup> for compliance with the Ordinance and, in particular, the minimum requirements as specified by the IA"* and are underpinned by current sections 69 and 70 of the Ordinance. Sections 69 and 70 of the Ordinance will be repealed when the IA takes over the regulation of insurance intermediaries hence the need to issue the Brokers' Code.
3. The draft Brokers' Code sets out eight core General Principles of professional conduct, together with accompanying Standards and Practices, which licensed insurance brokers should adopt when carrying on all regulated activities. These General Principles, Standards and Practices reflect the role performed by licensed insurance broker companies as representatives of policy holders or potential policy holders and reinforce the trust and professionalism that is crucial to the dealings between licensed insurance brokers and the insurance buying public. The Brokers' Code thereby serves as an important policy holder protection measure.
4. The Amendment Ordinance also introduces statutory conduct requirements with which licensed insurance intermediaries must comply (including the new sections 90 and 92 of the Ordinance) ("Statutory Conduct Requirements"). Another function of the General Principles, Standards and Practices in the Brokers' Code, therefore, is to inform, supplement and, in certain instances, explain the Statutory Conduct Requirements and, in particular, provide guidance on the conduct which licensed insurance brokers should adopt so that their regulated activities are in compliance with the Statutory Conduct Requirements.
5. The draft Brokers' Code takes account of the requirements in existing codes and guidelines which apply to insurance brokers, other codes and guidelines issued by local

---

<sup>1</sup> Section 4A(1) of the Ordinance.

<sup>2</sup> Please see:

[https://www.ia.org.hk/en/legislative\\_framework/files/guideline\\_on\\_minimum\\_requirements\\_for\\_insurance\\_brokers\\_en\\_g.pdf](https://www.ia.org.hk/en/legislative_framework/files/guideline_on_minimum_requirements_for_insurance_brokers_en_g.pdf)

<sup>3</sup> The bodies of insurance broker referred to are the Hong Kong Confederation of Insurance Brokers and the Professional Insurance Brokers Association.

and overseas regulators and the relevant insurance core principles (“ICPs”) issued by the International Association of Insurance Supervisors (“IAIS”).

6. The draft Brokers’ Code is published for consultation at **ANNEX 1** together with this explanatory consultation paper. Comments are invited, not only on the specific questions identified in this consultation paper but on any other aspect of the proposed Code. A feedback template is included at **ANNEX 2**.
7. References to section numbers in this consultation paper are made to the Ordinance as if the Ordinance incorporates the entire Amendment Ordinance unless otherwise specified. Moreover, for ease of reference the most relevant definitions and sections in the new Ordinance are set out in **SCHEDULE 1** to this consultation paper.
8. The IA would like to express its gratitude to the industry, in particular, to members of the working and discussion groups for their valuable advice and feedback.

## CHAPTER 1 BACKGROUND AND INTRODUCTION TO THE BROKERS' CODE

### **Background**

9. The Amendment Ordinance was passed in 2015. One of the key objectives of the Amendment Ordinance is to replace the self-regulatory system administered by the three self-regulatory organizations ("SROs") and strengthen public confidence in the insurance industry<sup>4</sup>.
10. Accordingly, in around mid-2019, the IA will take over the regulatory functions of the three SROs for insurance intermediaries (including the Hong Kong Confederation of Insurance Brokers ("CIB") and the Professional Insurance Brokers Association ("PIBA")). In order for the IA to commence direct regulation of insurance intermediaries, the sections of the Amendment Ordinance relating to intermediary regulation will be brought into effect by way of a commencement notice. The IA will then become the sole regulator to regulate all insurance intermediaries (including insurance brokers) in Hong Kong.
11. The Amendment Ordinance will, amongst other things, introduce new Statutory Conduct Requirements for licensed insurance intermediaries (new section 90 of the Ordinance). These apply to:
  - a. licensed insurance brokers i.e. licensed insurance broker companies and licensed technical representatives (brokers) (being the technical representatives of licensed insurance broker companies); and
  - b. licensed insurance agents i.e. licensed individual insurance agents, licensed insurance agencies and licensed technical representatives (agents) (being the technical representatives of licensed insurance agencies).
12. In addition, per the new section 92 of the Ordinance, requirements are imposed on licensed insurance broker companies and their responsible officers to establish and maintain proper controls and procedures for securing compliance with the Statutory Conduct Requirements set out in section 90 of the Ordinance.
13. The new section 95 of the Ordinance empowers the IA to publish codes of conduct for giving guidance relating to the practices and standards with which licensed insurance intermediaries are ordinarily expected to comply in carrying on regulated activities and it is pursuant to this section that the Brokers' Code is being published.
14. **SCHEDULE 1** sets out the relevant new definitions and new sections 90, 92, 93 and 95 of the Ordinance in full for ease of reference. When these sections of the Ordinance come into effect, other sections of the Ordinance (which underpin the current self-regulatory regime) will simultaneously be repealed or substantially amended. The sections that will be repealed include sections 69 and 70 in relation to which the Minimum Requirements were issued. The Minimum Requirements therefore need to be replaced. In part, the subject matter in the Minimum Requirements will be replaced by new subsidiary legislation, namely the Insurance (Financial and Other Requirements for Licensed Insurance Broker Companies) Rules, which is the subject of a separate

---

<sup>4</sup> Legislative Council Brief dated 16 April 2014, File Ref: C2/2/50C, [http://www.legco.gov.hk/yr13-14/english/bills/brief/b201404251\\_brf.pdf](http://www.legco.gov.hk/yr13-14/english/bills/brief/b201404251_brf.pdf).

consultation<sup>5</sup>. In addition to this, it is proposed to issue the new Brokers' Code which is the subject matter of this consultation.

### **The Draft Brokers' Code**

15. The Brokers' Code sets out a series of General Principles, Practices and Standards which will apply specifically to licensed insurance brokers in the conduct of their regulated activities. These will serve as **minimum** levels of professional conduct which policy holders and potential policy holders are entitled to expect when dealing with licensed insurance brokers. In addition, the General Principles, Standards and Practices in the Brokers' Code aim to inform, supplement and (in certain instances) explain how the Statutory Conduct Requirements in the new section 90 of the Ordinance will apply to licensed insurance brokers and, in particular, provide guidance on the types of conduct which licensed insurance brokers should adopt to ensure the way they conduct regulated activities is aligned with section 90 (and new section 92 for licensed insurance broker companies).
16. The Brokers' Code has been formulated taking account of the IA's statutory functions, the norms of practice which have emerged from the day-to-day operation of the insurance market, existing codes and guidelines which apply to insurance brokers (such as the Minimum Requirements as well as the codes, guidelines, circulars and other instruments issued over the years by the CIB and PIBA as part of the self-regulatory regime), other codes and guidelines issued by regulatory authorities in Hong Kong and overseas and international standards set out in the ICPs of the IAIS (particularly ICPs 18 and 19 which concern insurance intermediary conduct). In preparing the draft Brokers' Code, the IA has also engaged with the Working Group on Direct Licensing Regime for Insurance Intermediaries (comprising the SROs), and the Discussion Group (Insurance Brokers) (comprising representative bodies for insurance brokers).
17. The draft Brokers' Code will be finalized and gazetted after taking into account the feedback collected during this public consultation.

### **Effective Date**

18. The proposed Brokers' Code is intended to come into operation on the day on which section 74 of the Amendment Ordinance comes into operation. This day (which will be fixed by commencement notice published in the Gazette to be given by the Secretary for Financial Services and the Treasury) will mark the beginning of direct regulation by the IA of insurance intermediaries.

---

<sup>5</sup> Please see the consultation paper at:  
[https://www.ia.org.hk/en/infocenter/consultation\\_financial\\_requirements\\_for\\_broker\\_companies.html](https://www.ia.org.hk/en/infocenter/consultation_financial_requirements_for_broker_companies.html).

## CHAPTER 2 KEY PROVISIONS OF THE BROKERS' CODE

### Structure

19. The Brokers' Code is structured into Parts A to D and Schedule 1<sup>6</sup>.

- **Part A** explains the Brokers' Code, contextualizes it within the insurance regulatory framework and sets out its legal status.
- **Part B** sets out the defined terms used in the Brokers' Code.
- **Part C** is the main part of the Brokers' Code. It starts by listing out the eight General Principles, then details each General Principle and its related Standards and Practices. In relation to each General Principle, the Statutory Conduct Requirement to which the General Principle (and its accompanying Standards and Practices) is most related is also referenced.
- **Part D** sets out the controls and procedures for licensed insurance broker companies.
- **Schedule 1** outlines Additional Standards and Practices for Referral of Business.

### The Legal Status of the Brokers' Code and its Place in the Regulatory Framework

20. The Brokers' Code will be issued under the new section 95 of the Ordinance (**SCHEDULE 1**). Per the new section 95, the Brokers' Code does not have the force of law (i.e. it is not itself legislation) and should not be interpreted in any way that would override the provisions of any legislation. However, the IA may take guidance from the Brokers' Code in considering whether (and without limitation):

- a. there has been an act or omission by a licensed insurance broker which is or is likely to be prejudicial to the interests of policy holders or potential policy holders or the public interest (section 80(1) of the Ordinance); or
- b. a licensed insurance broker is fit and proper to remain licensed (section 95(6) of the Ordinance); or
- c. a licensed insurance broker has satisfied the Statutory Conduct Requirements.

The IA may, in respect of any of the above, consider taking disciplinary action against a licensed insurance broker (such as revocation, suspension or prohibition of or from a license or approval, public or private reprimands and fines). The IA does, however, recognize that licensed insurance brokers differ in scale and complexity of business, that they utilize different channels to communicate and interface with policy holders and potential policy holders and that there may be different ways in which the General Principles and related Standards and Practices in the Brokers' Code may be met. In assessing whether or not to take disciplinary action, therefore, the IA will take into account the relevant context, facts and impact of any matter (this is also in line with the principle-based approach which the Brokers' Code takes – as to which please see paragraph 22 below).

21. Furthermore, while a failure on the part of a licensed insurance intermediary to comply with a code of conduct does not by itself render the intermediary liable to any judicial or

---

<sup>6</sup> There is also a Preface to the Brokers' Code but this does not form part of the Brokers' Code.



other proceedings, in any proceedings under the Ordinance before a court, a code of conduct is admissible in evidence and, if a provision in the code appears to the court to be relevant to a question arising in the proceedings, the court must, in determining the question, take into account any compliance or non-compliance of the provision (section 95(7) of the Ordinance) (**SCHEDULE 1**).

### **Principle-Based Approach**

22. The Brokers' Code reflects a principle-based approach. The General Principles, Standards and Practices in the Brokers' Code do not (and cannot) serve as hard coded rules which prescribe the exact actions which a licensed insurance broker must take in every given situation. This would be neither desirable nor possible without removing from the insurance market its capacity to evolve, adapt and innovate i.e. the very dynamics which make it a market. Rather as principles of conduct, the General Principles, Standards and Practices in the Brokers' Code apply universally across every type of licensed insurance broker company (irrespective of size, scale or specialization), across the full range of channels which brokers use to interface with policy holders and potential policy holders and to new business models adopted by brokers as these evolve. This approach seeks to achieve the optimal balance between flexibility and clarity, so as to make the requirements in the Brokers' Code practical as well as substantive. As under the current self-regulatory regime, additional product specific requirements will be imposed through other regulatory instruments that apply in addition to the Brokers' Code (such as in relation to Investment-Linked Assurance Schemes ("ILAS") and Mandatory Provident Fund products).

#### **Question 1:**

Do you agree with the proposed principle-based approach of the Brokers' Code and that the General Principles and their related Standards and Practices provide a suitable framework for the conduct of licensed insurance brokers?

### **The General Principles, Standards and Practices of the Brokers' Code**

#### ***The General Principles, Standards and Practices***

23. The General Principles, Standards and Practices which make up the Brokers' Code are written in non-statutory language in order to ensure they are easily understandable and can be practically applied. As such, this section of the consultation paper does not purport to provide an exhaustive analysis of each General Principle, Standard and Practice (which the reader is encouraged to read for him or herself). Even though certain General Principles, Standards and Practices are not commented on in this section, it is the case that **all** the General Principles, Standards and Practices are important (and of equal importance) and the Brokers' Code intends that licensed insurance brokers should adopt and comply with **all** the General Principles and their related Standards and Practices as a whole in their carrying on of regulated activities. With that stated, the below commentary is provided on the genesis of certain of the General Principles, Standards and Practices so the reader can be informed of their underlying intent and purpose.

*The broad themes underlying the General Principles, Standards and Practices*

24. The General Principles and their related Standards and Practices serve to codify in writing minimum norms which have already emerged from the day-to-day functioning of the insurance market, as generally expected minimum standards of professional conduct which every licensed insurance broker must follow. Many of these were already reflected in the self-regulatory regime (including the Minimum Requirements) as concepts which have been established through market practice as fundamental principles of conduct underlying the practice and profession of insurance broking. General Principle 1 – Honesty and Integrity, by way of example, requires that a licensed insurance broker should be trustworthy and act honestly, ethically with integrity and utmost good faith. Utmost good faith remains a sacrosanct tradition of the insurance market and for centuries has served as the foundation of trust on which the profession of insurance broking is based. General Principle 2 - Acting in the Best Interests of Clients and Treating Clients Fairly, also serves as an article of faith for insurance brokers as representatives of buyers of insurance. General Principle 3 – Exercising Care, Skill and Diligence, reflects the standard of care insurance professionals are required to meet as a matter of common law. Consistent with this is General Principle 4 – Competence to Advise. In adopting these fundamental concepts as General Principles, Standards and Practices into the Brokers' Code, the IA recognizes them as "tried and tested" fundamental principles of professional conduct for the practice of insurance broking which should be part of the new direct regulatory regime. They provide continuity with the past and licensed insurance brokers should continue to remain accountable for them as foundational policy holder protection measures. Further, by codifying these concepts as General Principles, Standards and Practices in the Brokers' Code itself, they can continue to be universally applied across all insurance brokers and can adapt to new business models as the profession of insurance broking evolves.
25. In addition to the above, a core theme running through the entirety of the Brokers' Code is that of "treating clients fairly". This theme touches upon each General Principle, Standard and Practice in the Brokers' Code and serves as a fundamental objective which licensed insurance brokers should always meet in carrying on their regulated activities. Treating clients fairly reflects the fact that, as licensed insurance brokers serve as the representatives of their clients, it is the clients who should always be at the forefront of a licensed insurance broker's considerations.

Question 2:

Do you agree that the objective of "treating clients fairly" is fundamental to the regulated activities of a licensed insurance broker?

*General Principles, Standards and Practices relating to disclosure*

26. Several of the General Principles, Standards and Practices focus on the minimum disclosure which licensed insurance brokers should make to their clients (being policy holders and potential policy holders). Disclosure requirements are an important part of any regulatory framework as they step in to address matters which the market dynamic cannot self-correct, such as asymmetries of information and knowledge on insurance products as between licensed insurance brokers and clients.

27. General Principle 5 - Disclosure focuses on the disclosures which a licensed insurance broker should make to the client in relation to the brokers' identity, role and the insurance products being recommended. General Principle 6 - Suitability focuses on the suitability assessment the licensed insurance broker should carry out in order to recommend an insurance product that will meet the client's objectives, circumstances, needs and priorities. Broadly, these General Principles, Standards and Practices aim to ensure a licensed insurance broker provides sufficient information (and obtains sufficient information from the client before making a recommendation to a client) so that the client can make an informed decision on their insurance purchases and understand their obligations as a policy holder.

28. General Principle 7 – Conflicts of Interest requires a licensed insurance broker to avoid conflicts of interests or manage them with appropriate disclosure should they arise to ensure the client is treated fairly at all times. Licensed insurance broker companies act for policy holders and potential policy holders, but are (often) remunerated by insurers by way of commission. As under the self-regulatory regime, therefore, the Standards and Practices under General Principle 7 require a licensed insurance broker company which receives remuneration in this form, to give adequate disclosure in relation to their remuneration to its client.

Question 3:

Do you agree that providing clients with adequate disclosure so that they can make informed decisions on their insurance purchases is an important principle to include in the Brokers' Code?

Question 4:

Do you agree that disclosure is an important mechanism for licensed insurance brokers to manage potential conflicts of interests and that standards regarding the disclosure an insurance broker should make in this respect, should be included in the Brokers' Code?

*Client assets*

29. Licensed insurance brokers receive monies on behalf of clients, for example payments of premium from clients or claim payments from insurers. So vital is the proper handling of client monies by licensed insurance brokers as a tenet of policy holder protection, that the main requirements in relation to client monies have statutory backing in the new section 71 of the Ordinance. In addition, several new sections of the Ordinance (namely sections 53T, 64T, 64ZA, 64ZV, 73 and 129) envisage Rules being made (being subsidiary legislation) to prescribe the following in relation to licensed insurance broker companies:

- capital and net assets;
- professional indemnity insurance;
- keeping of separate client accounts;
- keeping of proper books and accounts; and
- submission of audit and related information.

The IA accordingly has prepared and consulted on Insurance (Financial and Other Requirements for Licensed Insurance Broker Companies) Rules<sup>7</sup> which address these matters.

30. Given that the requirements in relation to handling client monies and also the requirements in relation to promptly and properly accounting for client assets have statutory backing, the Brokers' Code merely serves to reinforce the need for strict compliance with these requirements. It does this in General Principle 8 – Client Assets, by requiring licensed insurance brokers to account for client assets (if received by the licensed insurance broker). Further, General Principle 8 supports this by requiring a licensed insurance broker company to have in place sufficient controls and security to prevent unauthorized access to client assets.

*Other matters addressed in the Brokers' Code*

31. The Brokers' Code also sets certain basic minimum requirements on certain obvious issues which are important to the relationship between a licensed insurance broker company and its clients. For example, the Standard and Practice in 5.4 under General Principle 5 of the Brokers' Code sets a requirement for a licensed insurance broker to enter into a written agreement with each client (with the minimum requirements regarding the matters such agreement should cover). This is considered a matter of basic good practice for all licensed insurance broker companies.
32. As a matter of practice, licensed insurance brokers (depending on the scope of their appointment by a client) may have involvement in dealing with claims under insurance policies made by their clients. In recognition of this, the Brokers' Code sets out minimum basic standards and practices which licensed insurance brokers should meet when providing assistance to clients in submitting insurance claims.
33. As representatives of policyholders and potential policy holders licensed insurance brokers must take reasonable steps to carry out clients' instructions accurately and promptly, and notify their clients within a reasonable period of time in case of any delay or failure to carry out the instructions. The Brokers' Code confirms this, at the Standard and Practice in 3.2 under General Principle 3 of the Brokers' Code. It also addresses the minimum steps a licensed insurance broker company should take in the event its appointment is terminated, to ensure the appointment is brought to an end in an orderly manner.

Question 5:

Do you agree that it is good practice for licensed insurance broker companies to enter into written agreements with their clients and that the Brokers' Code should provide for this requirement?

---

<sup>7</sup> Please see:

[https://www.ia.org.hk/en/infocenter/files/Consultation\\_Paper\\_on\\_Draft\\_Rules\\_for\\_Licensed\\_Insurance\\_Broker\\_Companies\\_Eng.pdf](https://www.ia.org.hk/en/infocenter/files/Consultation_Paper_on_Draft_Rules_for_Licensed_Insurance_Broker_Companies_Eng.pdf)

### *Controls and procedures for licensed insurance broker companies*

34. Part D of the Brokers' Code is related to new section 92(1) of the Ordinance (**SCHEDULE 1**) and is applicable to licensed insurance broker companies. Part D provides guidance on the corporate governance, controls and procedures which companies should establish and implement to ensure the General Principles, Standards and Practices in the Brokers' Code are met by the company and the licensed technical representatives (broker) appointed by the company.
35. In short, a licensed insurance broker company should establish and implement an organizational structure which includes adequate controls to ensure the interests of clients are not prejudiced, clear roles and lines of responsibility as well as accountability of its senior management which underpins the objective of fair treatment of the clients. The responsible officer and the senior management who oversee the regulated activities carried on by the company are accountable for ensuring such controls and procedures are in place and effective (indeed it is this level of management which sets the appropriate corporate governance culture for the company to ensure, for example, that the core principle of treating clients fairly is at the heart of company's operation). The extent of the requirements for the corporate governance framework on the company will depend on the nature, size and complexity of the business of the company as well as the medium it uses for solicitation of business and the types of insurance it arranges. The objective of good corporate governance, however, namely to ensure the interests of the clients are not prejudiced and that clients are treated fairly, remains the same across all licensed insurance broker companies.
36. Part D requirements are in addition to other governance requirements set out in any applicable codes and guidelines, including the "Guideline on "Fit and Proper" Criteria for Licensed Insurance Intermediaries under the Insurance Ordinance (Cap. 41)". The requirement that material incidents be reported to the IA is linked to the new fit and proper requirements under the Ordinance which are ongoing (i.e. they do not only apply at the licensing stage).

#### Question 6:

Do you agree that the Brokers' Code should set out requirements for the governance, controls and procedures that a licensed insurance broker company should adopt (as per Part D of the Brokers' Code)? Do you agree that licensed insurance broker companies should follow such requirements to ensure the General Principles, Standards and Practices in the Brokers' Code are complied with by the companies and their appointed licensed technical representatives (broker)?

## SCHEDULE 1

### NEW DEFINITIONS UNDER SECTION 2(1) AND SECTIONS 90, 92, 93 AND 95 OF THE ORDINANCE

#### Section 2(1)— definitions

*licensed individual insurance agent* (持牌個人保險代理) means an individual who is granted a licence under section 64W;

*licensed insurance agency* (持牌保險代理機構) means a person who is granted a licence under section 64U;

*licensed insurance agent* (持牌保險代理人) means—

- (a) a licensed insurance agency;
- (b) a licensed individual insurance agent; or
- (c) a licensed technical representative (agent);

*licensed insurance broker* (持牌保險經紀) means—

- (a) a licensed insurance broker company; or
- (b) a licensed technical representative (broker);

*licensed insurance broker company* (持牌保險經紀公司) means a company which is granted a licence under section 64ZA;

*licensed insurance intermediary* (持牌保險中介人) means—

- (a) a licensed insurance agent; or
- (b) a licensed insurance broker;

*licensed technical representative (agent)* (持牌業務代表 (代理人)) means an individual who is granted a licence under section 64Y;

*licensed technical representative (broker)* (持牌業務代表 (經紀)) means an individual who is granted a licence under section 64ZC;

#### 90. Conduct requirements for licensed insurance intermediaries

When carrying on a regulated activity, a licensed insurance intermediary—

- (a) must act honestly, fairly, in the best interests of the policy holder concerned or the potential policy holder concerned, and with integrity;
- (b) must exercise a level of care, skill and diligence that may reasonably be expected of a prudent person who is carrying on the regulated activity;
- (c) may advise only on matters for which the intermediary is competent to advise;
- (d) must have regard to the particular circumstances of the policy holder or the potential policy holder that are necessary for ensuring that the regulated activity is appropriate to the policy holder or the potential policy holder;
- (e) must make the disclosure of information to the policy holder or the potential policy holder that is necessary for the policy holder or the potential policy holder to be sufficiently informed for the purpose of making any material decision;

- (f) must use its best endeavours to avoid a conflict between the interests of the intermediary and the interests of the policy holder or the potential policy holder;
- (g) must disclose any conflict mentioned in paragraph (f) to the policy holder or the potential policy holder;
- (h) must ensure that the assets of the policy holder or the potential policy holder are promptly and properly accounted for; and
- (i) must comply with other requirements that are prescribed by rules made under sections 94 and 129.

## **92. Conduct requirements for licensed insurance broker companies and their responsible officers**

- (1) A licensed insurance broker company—
  - (a) must establish and maintain proper controls and procedures for securing compliance with the conduct requirements set out in section 90 by the company and the licensed technical representatives (broker) appointed by the company;
  - (b) must use its best endeavours to secure observance with the controls and procedures established under paragraph (a) by the licensed technical representatives (broker) appointed by the company;
  - (c) must ensure that its responsible officer has sufficient authority within the company for carrying out the responsibilities set out in subsection (2); and
  - (d) must provide its responsible officer with sufficient resources and support for carrying out the responsibilities set out in subsection (2).
- (2) A responsible officer of a licensed insurance broker company must use the officer's best endeavours to ensure that the company—
  - (a) has established and maintains proper controls and procedures for securing compliance with the conduct requirements set out in section 90 by the company and the licensed technical representative (broker) appointed by the company; and
  - (b) uses its best endeavours to secure observance with the controls and procedures established under paragraph (a) by the licensed technical representatives (broker) appointed by the company.

## **93. Breach of conduct requirements**

- (1) A failure to comply with a requirement specified in section 90, 91 or 92 does not by itself render any person liable to any judicial proceedings.
- (2) To avoid doubt, this section does not affect—
  - (a) the extent (if any) to which a failure to comply with any other provision of this Ordinance is actionable; or
  - (b) any liability of a person under the common law or any other enactment, regardless of whether the circumstances giving rise to the liability would also constitute a failure mentioned in subsection (1).

## **95. Codes of conduct for licensed insurance intermediaries**

- (1) The Authority may publish, in the Gazette and in any other manner it considers appropriate, codes of conduct for giving guidance relating to the practices and standards with which licensed insurance intermediaries are ordinarily expected to comply in carrying on regulated activities.
- (2) Subsection (1) applies without limiting the powers of the Authority to make rules under section 94.
- (3) A code of conduct may refer to obligations to observe—
  - (a) any other codes or requirements issued or imposed otherwise than by the Authority;
  - (b) continuing obligations, including an obligation to provide or undergo continuous training; and
  - (c) practices and standards concerning any of the matters described in section 94(2).
- (4) The Authority may from time to time amend the whole or any part of any code of conduct published.
- (5) A failure on the part of a licensed insurance intermediary to comply with a code of conduct does not by itself render the intermediary liable to any judicial or other proceedings.
- (6) However, the failure may be taken into account in considering, for a provision of this Ordinance, whether the intermediary is a fit and proper person to remain licensed.
- (7) In any proceedings under this Ordinance before a court—
  - (a) a code of conduct is admissible in evidence; and
  - (b) if a provision in the code appears to the court to be relevant to a question arising in the proceedings, the court must, in determining the question, take into account any compliance or non-compliance of the provision.
- (8) A code of conduct published under this section—
  - (a) may be of general or special application and may be made so as to apply only in specified circumstances; and
  - (b) may make different provisions for different circumstances and provide for different cases or classes of cases.
- (9) A code of conduct published under this section is not subsidiary legislation.



# **Code of Conduct for Licensed Insurance Brokers**

First Edition month 2019

Published by  
**Insurance Authority**  
19<sup>th</sup> Floor, 41 Heung Yip Road  
Wong Chuk Hang, Hong Kong  
Tel: (852) 3899 9983  
Fax: (852) 3899 9993  
E-mail: [enquiry@ia.org.hk](mailto:enquiry@ia.org.hk)  
Website: [www.ia.org.hk](http://www.ia.org.hk)

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior written permission of the publisher.

# **Code of Conduct for Licensed Insurance Brokers**

## **Contents**

### **Preface**

### **Part A Introduction to this Code**

### **Part B Interpretation**

### **Part C General Principles**

### **Section**

- 1. Honesty and Integrity**
- 2. Acting in the Best Interests of Clients and Treating Clients Fairly**
- 3. Exercising Care, Skill and Diligence**
- 4. Competence to Advise**
- 5. Disclosure of Information**
- 6. Suitability**
- 7. Conflicts of Interest**
- 8. Client Assets**

### **Part D Controls and Procedures for Licensed Insurance Broker Companies**

### **Schedule 1 Additional Standards and Practices for Referral of Business**

## **Preface**

There are broadly two types of licensed insurance intermediary in Hong Kong: licensed insurance agents and licensed insurance brokers. Both play an important role in the Hong Kong insurance industry, serving as a vital conduit between the public and the insurance sector. The Code of Conduct in the following pages is for Licensed Insurance Brokers. It sets out fundamental principles of professional conduct which buyers of insurance are entitled to expect in their dealings with licensed insurance brokers, reinforcing the bedrock of trust which serves as the foundation for a healthy, competitive and efficient insurance industry.

The Code does not operate in isolation. It is part of the totality of the duties and obligations owed by licensed insurance brokers in their carrying on of regulated activities under common law (including contract law), the Insurance Ordinance (Cap. 41), other Ordinances and rules, regulations, codes, guidelines, circulars and regulatory instruments including those administered or issued by the Insurance Authority. The context for the Code, within this wider framework, is outlined below.

### **Types of licensed insurance brokers**

The licensing regime under the Insurance Ordinance prescribes two types of licensed insurance brokers: licensed insurance broker companies and licensed technical representatives (broker).

Licensed insurance broker companies give advice on insurance policies to clients and act as agents of clients (serving as both their trusted professional advisors and their representatives) in the course of dealing with matters relating to insurance policies (including procurement, negotiation and arrangement of insurance policies with insurers, and, in some cases, making and settling claims).

Licensed technical representatives (broker) act as representatives of the licensed insurance broker companies which appoint them. In this capacity, they give advice on insurance policies to clients and represent their appointing licensed insurance broker companies to deal with matters relating to insurance policies on behalf of clients.

### **Licensed insurance brokers and their relationship with insurers and clients**

Licensed insurance brokers in the Hong Kong insurance market offer a wide range of insurance services to their clients. Depending on the insurance brokers (and the scope of their agreements with the clients), the services which insurance brokers provide may include advising clients on their insurance needs and on risk management strategies, sourcing the most suitable insurance products to ensure clients' needs are met, negotiating policy terms and conditions with insurers, and assisting clients in dealing with insurance claims. Insurance brokers also serve a wide range of clients, from individuals to corporate clients, including small and medium enterprises, multinational corporations and also insurers (assisting them develop and procure suitable reinsurance).

## DRAFT

Licensed insurance brokers can approach insurers across the market<sup>1</sup> to source the most suitable insurance products for clients and licensed insurance broker companies owe fiduciary duties to clients when acting as agents of the clients. In view of this, the Insurance Ordinance imposes requirements (set out in rules made under section 129 of the Insurance Ordinance) on licensed insurance broker companies in relation to the following aspects:

- (a) capital and net assets;
- (b) professional indemnity insurance;
- (c) keeping of separate client accounts;
- (d) keeping of proper books and accounts.

### **Regulation of licensed insurance brokers in their dealings with policy holders or potential policy holders when carrying on regulated activities**

The Insurance Ordinance (and rules, regulations, codes, guidelines, circulars and other regulatory instruments administered or issued by the Insurance Authority) also includes requirements, which focus on the interactions which licensed insurance brokers have with policy holders and potential policy holders when carrying on regulated activities. These requirements include:

- the statutory conduct requirements, with which licensed insurance brokers must comply in carrying on regulated activities, in sections 90 and 92 of the Insurance Ordinance;
- the relevant requirements set out in the rules, regulations, codes and guidelines made or issued under the Insurance Ordinance as well as circulars and other regulatory instruments issued by the Insurance Authority; and
- the general principles, standards and practices set out in the Code.

### **The aims of the Code**

The Code promulgates principles of conduct and related standards and practices with which licensed insurance brokers are ordinarily expected to comply in carrying on regulated activities. These principles, standards and practices serve as the minimum standards of professionalism to be met by licensed insurance brokers when carrying on regulated activities.

In addition, the Code aims to, in certain instances, inform and explain the statutory conduct requirements in sections 90 and 92 of the Insurance Ordinance as they apply to licensed insurance brokers.

The Code of Conduct for Licensed Insurance Brokers is set out in the following pages.

---

<sup>1</sup> By comparison, licensed insurance agents are appointed by insurers and are restricted to placing insurance with their appointing insurers only.

## **Part A      Introduction to this Code**

### **1.    Framework of this Code**

- 1.1 This Code is issued and published by the Insurance Authority (“IA”) pursuant to section 95 of the Insurance Ordinance (Cap.41) (“the Ordinance”) and sets out a series of general principles which the IA believes to be fundamental principles of conduct which licensed insurance brokers should adopt and follow when carrying on regulated activities (the “General Principles”).
- 1.2 The General Principles are set out in the opening section of Part C of this Code. Part C goes on to provide further explanation of each General Principle and includes standards and practices relating to each General Principle which licensed insurance brokers are ordinarily expected to adopt in carrying on regulated activities (the “Standards and Practices”). The Standards and Practices are either stated specifically in this Code or are incorporated into this Code by reference to other guidelines or codes issued by the IA, other regulators or professional bodies.
- 1.3 Part D of this Code applies only to licensed insurance broker companies and sets out requirements for the controls and procedures which a licensed insurance broker company should adopt to ensure the General Principles and related Standards and Practices in Part C are met by the broker company and the licensed technical representatives (broker) appointed by the broker company.
- 1.4 Neither the General Principles and related Standards and Practices set out in Part C in this Code, nor the controls and procedures set out in Part D of this Code are exhaustive.
- 1.5 Section 90 of the Ordinance stipulates the conduct requirements which licensed insurance brokers are expected to satisfy when carrying on regulated activities. For guidance, each General Principle in this Code identifies the specific Statutory Conduct Requirement to which the General Principle (and its related Standards and Practices) is most relevant. This should not, however, be treated as an exact match. Many of the General Principles are relevant across several different Statutory Conduct Requirements. Rather licensed insurance brokers should look to adopt the General Principles and the related Standards and Practices as a whole in their carrying on of regulated activities.
- 1.6 Section 92 of the Ordinance stipulates requirements in relation to the proper controls and procedures which a licensed insurance broker company must establish (and which its responsible officer must use his best endeavours to establish) for securing compliance with the conduct requirements in Section 90 by its licensed technical representatives (broker). Part D provides guidance as to the controls and procedures needed to comply with Section 92. Again, however, it should be emphasized that this guidance is not exhaustive.

## DRAFT

- 1.7 In formulating the General Principles and their related Standards and Practices in this Code, full account has been taken of the role that licensed insurance brokers play as agents acting for policy holders or potential policy holders.

### **2. Persons to whom this Code applies**

- 2.1 This Code applies to all licensed insurance brokers as defined in the Ordinance, namely licensed insurance broker companies and licensed technical representatives (broker). A reference to “licensed insurance brokers” in this Code, therefore, includes “licensed insurance broker companies” and “licensed technical representatives (broker)”.
- 2.2 Responsible officers and senior management of licensed insurance broker companies should also make specific reference to Part D of this Code which sets out their responsibilities relating to the carrying on of regulated activities by the broker companies.

### **3. This Code and other Guidelines issued by the IA**

This Code is of universal application to the regulated activities carried on by licensed insurance brokers. Accordingly, this Code needs to be complied with in addition to the applicable requirements set out in all other codes and guidelines (and other regulatory instruments) issued by the IA.

### **4. Effect of a Breach of this Code**

- 4.1 A failure by a licensed insurance broker to comply with this Code shall not by itself render the broker liable to any judicial or other proceedings (section 95(5) of the Ordinance).
- 4.2 The IA may, however, take guidance from this Code in considering whether (and without limitation):
- (a) there has been an act or omission by a licensed insurance broker which is or is likely to be prejudicial to the interests of policy holders or potential policy holders or the public interest (section 80(1) of the Ordinance);
  - (b) a licensed insurance broker is fit and proper to remain licensed (section 95(6) of the Ordinance); or
  - (c) a licensed insurance broker has satisfied the Statutory Conduct Requirements.
- 4.3 The IA recognizes that licensed insurance brokers differ in scale and complexity of business, that they utilize different channels to communicate and interface with policy holders and potential policy holders and that there may be different ways in which the General Principles and related Standards and Practices may be met. The IA will therefore take account of the relevant context, facts and impact of any matter in considering whether to take any disciplinary action.

## DRAFT

- 4.4 This Code does not have the force of law and should not be interpreted in a way that would override the provision of any law. However, in any proceedings under the Ordinance before a court, this Code is admissible in evidence, and if a provision in this Code appears to the court to be relevant to a question arising in the proceedings, the court must, in determining the question, take into account any compliance or non-compliance of this Code (section 95(7) of the Ordinance).



## Part B Interpretation

The defined terms in this section shall bear their stated meaning in this Code. Other expressions as used in this Code shall, except where expressly defined in this Code, have the same meanings as in the Ordinance in which the expressions are referred to or used.

### Definitions

For the purpose of this Code,

**“client”** or **“customer”** in this Code bears the same meaning as policy holder<sup>2</sup> and potential policy holder in the Ordinance. The terms are used interchangeably throughout this Code;

**“insurance product”** or **“insurance policy”** means a contract of insurance<sup>3</sup>. The terms are used interchangeably throughout this Code;

**“Statutory Conduct Requirements”** includes the conduct requirements applicable to licensed insurance brokers and/or their responsible officers as identified in sections 90 and 92 of the Ordinance;

**“registered name”**, in relation to a company, means the name under which the company is registered under the Companies Ordinance (Cap. 622).

A reference in this Code to “it” or “its” in relation to a licensed insurance broker shall, except where the context otherwise specifies, be construed as including a reference to “he” or “him” or “his” and “she” or “her” or “hers” and vice versa, as the case may be. Where the context so permits or requires, words importing the singular number include the plural and vice versa.

This Code should be read in conjunction with the relevant provisions of the Ordinance, the relevant subsidiary legislation as well as the relevant codes and guidelines issued by the IA. The matters set forth herein are not exhaustive and do not constitute legal advice or create additional legal obligations beyond those contained in the Ordinance.

---

<sup>2</sup> A policy holder includes a reinsured/cedant.

<sup>3</sup> A contract of insurance includes a contract of reinsurance.

## **Part C General Principles**

The General Principles of this Code are set out below. They take account of the role licensed insurance brokers play as agents acting for policy holders or potential policy holders and serve as principles of conduct to ensure they act in the best interests of clients and that clients are fairly treated. They also take account of the Insurance Core Principles (ICPs) issued by the International Association of Insurance Supervisors (IAIS) and in particular ICPs 18 and 19 which focus on principles which apply to licensed insurance intermediaries and their conduct of business.

### **GP 1. Honesty and Integrity**

A licensed insurance broker should be trustworthy and act honestly, ethically, with integrity and in utmost good faith.

### **GP 2. Acting in the Best Interests of Clients and Treating Clients Fairly**

A licensed insurance broker should always act in the best interests of its clients and treat its clients fairly.

### **GP 3. Exercising Care, Skill and Diligence**

A licensed insurance broker should act with due care, skill and diligence.

### **GP 4. Competence to Advise**

A licensed insurance broker should possess appropriate levels of professional knowledge and experience and only carry on regulated activities in respect of which the broker has the required competence.

### **GP 5. Disclosure of Information**

A licensed insurance broker should provide clients with accurate and adequate information to enable them to make informed decisions.

### **GP 6. Suitability**

A licensed insurance broker's regulated advice should be suitable for the client and take into account the circumstances of that client.

### **GP 7. Conflicts of Interest**

A licensed insurance broker should make every effort to avoid conflicts of interests and when such conflicts cannot be avoided, should manage them with appropriate disclosure to ensure clients are fairly treated at all times.

### **GP 8. Client Assets**

A licensed insurance broker should have sufficient safeguards in place to protect the assets of clients.

## **General Principle 1 – Honesty and Integrity**

---

*A licensed insurance broker should be trustworthy and act honestly, ethically, with integrity and in utmost good faith.*

---

Related Statutory Conduct Requirement: Section 90(a) of the Ordinance – “when carrying on a regulated activity, a licensed insurance intermediary must act honestly, fairly, in the best interests of the policy holder concerned or the potential policy holder concerned, and with integrity.”

### **Standards and Practices**

#### **1.1 Accurate representations and presentation**

- (a) A licensed insurance broker should carry on regulated activities in utmost good faith.
- (b) A licensed insurance broker should not mislead a client and should ensure that any representation made or information provided to a client about any insurers, insurance intermediaries or insurance products is accurate and not misleading.
- (c) A licensed insurance broker should not make inaccurate, misleading or incomplete statements or comparisons to induce a client to replace an existing insurance policy with another insurance policy.
- (d) A licensed insurance broker should not use advertising or marketing materials which contain information that is incomplete, false, disparaging, misleading or deceptive.
- (e) A licensed insurance broker company should not use a name (including a registered name, trade name or brand name) that is likely to deceive, mislead or confuse the client. It should not use a name which may lead the public to believe that it is closely affiliated with an insurer, another insurance intermediary, or a well-known entity unless there is such close affiliation or it has the authority to use the name.

#### **1.2 Offering advantage to director or partner or employee of a client**

Where a licensed insurance broker is appointed or is seeking appointment by a client which is not an individual (e.g. sole proprietorship, partnership, company, etc.) to procure an insurance product for the client, the broker should not offer or give any advantage to any director, partner or employee of the client unless the following two conditions are satisfied:

- (i) the offer or giving of the advantage does not violate any other rules, regulations, codes, guidelines, circulars and other regulatory instruments administered or issued by the IA or any other regulatory authorities which apply to the broker; and
- (ii) the broker obtains the express prior written consent of the client.

### 1.3 Compliance

- (a) A licensed insurance broker should comply with:
- (i) all laws which apply to the broker;
  - (ii) all rules, regulations, codes, guidelines, circulars and other regulatory instruments administered or issued by the IA which apply to the broker;
  - (iii) all requirements of any other regulatory authorities which apply to the broker; and
  - (iv) all rules, guidelines and codes of any professional bodies of which the broker is a member or participant.
- (b) A licensed insurance broker should cooperate with the IA and all other relevant regulatory authorities on any matters concerning the regulated activities carried on by the broker.
- (c) A licensed technical representative (broker) should comply with the requirements in relation to the carrying on of regulated activities set out by the licensed insurance broker company for which the technical representative is acting as agent.
- (d) Where a licensed insurance broker is:
- (i) wound up or adjudicated bankrupt by a court in Hong Kong or elsewhere;
  - (ii) convicted of criminal offence in Hong Kong or elsewhere; or
  - (iii) disciplined by the Monetary Authority, the Securities and Futures Commission, or the Mandatory Provident Fund Schemes Authority,
- the broker should report this to the IA, and, where the broker is a licensed technical representative (broker), his appointing licensed insurance broker company as soon as reasonably practicable.

### 1.4 Undue influence

A licensed insurance broker should not exert undue influence on a client or pressurize a client into making a material decision.

### 1.5 Accuracy and completeness of application and claim forms

In respect of any application, claim or other forms which are required to be completed by or on behalf of a client, a licensed insurance broker should make clear to the client that it is the client's responsibility to ensure the correctness and completeness of the information provided therein and the client should be asked to check the details before signing the forms or related documents. A licensed insurance broker should not complete, amend or submit any application, claim or other forms relating to an insurance policy without confirming the accuracy of the contents of the forms with the client concerned. A licensed insurance broker should not submit any such form knowing it to contain incorrect or incomplete information.

## **General Principle 2 – Acting in the Best Interests of Clients and Treating Clients Fairly**

---

*A licensed insurance broker should always act in the best interests of its clients and treat its clients fairly.*

---

Related Statutory Conduct Requirement: Section 90(a) of the Ordinance – “*when carrying on a regulated activity, a licensed insurance intermediary must act honestly, fairly, in the best interests of the policy holder concerned or the potential policy holder concerned, and with integrity.*”

### **Standards and Practices**

#### **2.1 Acting in the client’s best interests and being impartial, objective and fair**

A licensed insurance broker should:

- (i) act in the client’s best interests, placing the interests of clients before all other considerations;
- (ii) give suitable, impartial and objective advice to the client which takes account of the client’s interests; and
- (iii) treat the client fairly.

#### **2.2 Sourcing insurance products**

- (a) A licensed insurance broker should recommend insurance products which best meet its client’s interests.
- (b) A licensed insurance broker should source a sufficient<sup>4</sup> range of relevant insurance products from a sufficient<sup>5</sup> range of different insurers to ensure its client’s objectives, circumstances, needs and priorities can be suitably met.
- (c) A licensed insurance broker should not prejudice its client’s selection of insurers by being unreasonably dependent on any particular insurer.

#### **2.3 Giving fair and impartial regulated advice<sup>6</sup> in the client’s best interests**

- (a) A licensed insurance broker should, prior to giving regulated advice:
  - (i) make such enquiries as are reasonable to obtain accurate and sufficient information relating to the client; and

---

<sup>4</sup> For the avoidance of doubt, whether the range of relevant insurance products or insurers is sufficient for the purpose of 2.2(b) should be decided by reference to the reasonable standards of a prudent professional licensed insurance broker carrying on regulated activities.

<sup>5</sup> See footnote 4 above.

<sup>6</sup> Giving regulated advice includes making a recommendation on an insurance product.

## DRAFT

- (ii) if it is reasonably apparent that such information, when provided, is inaccurate or insufficient, make reasonable follow-up enquiries to clarify the inaccuracy or to obtain sufficient information.
- (b) When giving regulated advice, a licensed insurance broker should:
  - (i) take into account the information it has obtained from its client, including the client's objectives, circumstances, needs and priorities;
  - (ii) when making a recommendation on an insurance product, consider what available insurance products can meet the client's objectives, circumstances, needs and priorities, based on the insurance products sourced by the broker (see 2.2 above);
  - (iii) have a reasonable basis for the advice to ensure the suitability of the advice given to the client; and
  - (iv) provide the client with adequate information in order to assist the client to make an informed decision.
- (c) The regulated advice given by a licensed insurance broker to a client should be advice that a reasonable licensed insurance broker would consider suitable for the client based on the client's objectives, circumstances, needs and priorities.

## **General Principle 3 – Exercising Care, Skill and Diligence**

*A licensed insurance broker should act with due care, skill and diligence.*

---

Related Statutory Conduct Requirement: Section 90(b) of the Ordinance – “*when carrying on a regulated activity, a licensed insurance intermediary must exercise a level of care, skill and diligence that may reasonably be expected of a prudent person who is carrying on the regulated activity.*”

### **Standards and Practices**

#### **3.1 Meeting the standards expected of a reasonable and prudent licensed insurance broker**

A licensed insurance broker must always carry on regulated activities to a reasonable standard of care and skill and with due diligence. The reasonable standard of care, in this respect, is the standard expected of a prudent professional insurance broker carrying on regulated activities.

#### **3.2 Carrying out client’s instructions**

- (a) A licensed insurance broker should take reasonable steps to carry out a client’s instructions accurately and promptly, and notify the client within a reasonable period of time in case of any delay or failure to carry out the instruction.
- (b) Where a client terminates its appointment of a licensed insurance broker company, the broker company should provide all reasonable cooperation to bring the appointment to an end in an orderly manner, including:
  - (i) advising the client of any outstanding matters being handled by the broker company relating to the insurance policy and clarifying the broker company’s responsibility (if any) for such outstanding matters; and
  - (ii) returning the documents relating to the insurance policy, which the broker company holds as agent for the client, to the client or transferring such documents to a party designated by the client.

#### **3.3 Protecting a client’s privacy and confidentiality**

A licensed insurance broker should ensure that the privacy and confidentiality of all client information is maintained and should not disclose or use such information except:

- (i) in the normal course of carrying on of regulated activities to the extent that the information disclosed is required for the relevant purpose;
- (ii) with the written consent of the client; or
- (iii) for the purpose of complying with any laws or regulations which apply to the broker and require disclosure.

### 3.4 Cooling-off periods

If an insurance policy contains a cooling-off period provision<sup>7</sup>, a licensed insurance broker should adhere to the following practices:

- (i) before the client signs the relevant application form, the broker should inform the client of his right to cancel the insurance policy during the cooling-off period and the duration of the cooling-off period;
- (ii) if the insurance policy is delivered to the broker by the insurer concerned, the broker should deliver the insurance policy to the client within a reasonable time so that the client has sufficient time to review the insurance policy and reflect on his decision to purchase before expiry of the cooling-off period; and
- (iii) the broker should comply with all other requirements regarding the cooling-off right as set out in other applicable rules, regulations, codes, guidelines, circulars and other regulatory instruments administered or issued by the IA.

### 3.5 Assistance in relation to insurance claims

With regard to insurance claims made by a client:

- (i) unless stated otherwise in the client agreement, a licensed insurance broker should (where requested by the client) provide the client with reasonable assistance in submitting any claim under the insurance policy and pass on any relevant information received from the client in relation to the claim to the insurer concerned as soon as practicable; and
- (ii) exercise reasonable care to discharge all obligations in relation to the administration, negotiation and settlement of such claims to the extent that such obligations are within the scope of the broker's services stated in the relevant client agreement.

---

<sup>7</sup> A cooling-off period provision, in relation to an insurance policy, is a provision which allows the policy holder to cancel the policy within a specified period from inception and obtain a refund.



## **General Principle 4 – Competence to Advise**

---

*A licensed insurance broker should possess appropriate levels of professional knowledge and experience and only carry on regulated activities in respect of which the broker has the required competence.*

---

Related Statutory Conduct Requirement: Section 90(c) of the Ordinance – “*when carrying on a regulated activity, a licensed insurance intermediary may advise only on matters for which the intermediary is competent to advise.*”

## **Standards and Practices**

### **4.1 Product knowledge**

A licensed technical representative (broker) should have a good understanding of the key features of the different types of insurance products on which he may give regulated advice.

### **4.2 Being clear about the limits of their knowledge**

A licensed technical representative (broker) should not give advice on matters in relation to which he is not adequately trained or lacks the specific skills or knowledge necessary to carry on the relevant regulated activity. When in doubt, he should seek guidance from the responsible officers or senior management in his appointing licensed insurance broker company.

## **General Principle 5 – Disclosure of Information**

---

*A licensed insurance broker should provide clients with accurate and adequate information to enable them to make informed decisions.*

---

Related Statutory Conduct Requirement: Section 90(e) of the Ordinance – “when carrying on a regulated activity, a licensed insurance intermediary must make the disclosure of information to the policy holder or the potential policy holder that is necessary for the policy holder or the potential policy holder to be sufficiently informed for the purpose of making any material decision.”

### **Standards and Practices**

#### **5.1 Disclosure in relation to identity and capacity**

- (a) Before providing any regulated advice, a licensed insurance broker should provide the following information to his client:
  - (i) the name (the registered name as well as the trade name, if any) of the broker;
  - (ii) the type of licence of the broker, i.e. insurance broker company licence or technical representative (broker) licence;
  - (iii) where the broker is a licensed technical representative (broker), the name of his appointing licensed insurance broker company; and
  - (iv) the fact that it acts on behalf of the client in dealing with insurers on matters relating to insurance policies being procured by the client.
- (b) Where a licensed technical representative (broker) acts for more than one licensed insurance broker company, he should clearly identify to the client which licensed insurance broker company he is representing in relation to each particular insurance transaction.
- (c) To enable a client to verify the information provided by a licensed insurance broker as to its identity and capacity, the broker should:
  - (i) inform the client of its licence number upon request; and
  - (ii) where the broker is a licensed technical representative (broker), ensure the correctness of his name, his licence number, and the name of his appointing licensed insurance broker company shown on his business card if distributed for the purpose of carrying on regulated activities.
- (d) A licensed insurance broker should not hold itself out as an insurer or an agent of an insurer in carrying on regulated activities.

## 5.2 Disclosure in relation to insurance products

- (a) A licensed insurance broker should provide its client with information on the key features of each insurance product recommended or arranged by the broker. The information should include:
- (i) the name of the insurer concerned;
  - (ii) the major policy terms, conditions, conditions precedent, exclusions and warranties clauses;
  - (iii) the level of premium and the period for which the premium is payable;
  - (iv) the fees and charges; and
  - (v) any other information required in accordance with the relevant rules, regulations, codes, guidelines, circulars and other regulatory instruments as specified by the IA from time to time and published on the IA's website.
- (b) When comparing insurance products, the licensed insurance broker should adequately explain the differences and avoid any unfair comparisons.
- (c) Where a licensed insurance broker intends to arrange an insurance policy with an insurer which is not authorized by the IA,<sup>8</sup> the broker should disclose to the client:
- (i) the name and address of the insurer in the jurisdiction where the insurer has issued the policy and (if different) the jurisdiction where the insurer is incorporated;
  - (ii) the fact that insurer is not regulated by the IA and is subject to different laws and regulations;
  - (iii) the financial standing of the insurer (e.g. credit rating); and
  - (iv) the governing law of the insurance policy and the jurisdiction in which disputes under the policy will be determined.

Where the client is an individual, the licensed insurance broker should also obtain written acknowledgement from the client of the disclosures in (i) to (iv).

## 5.3 Disclosure in relation to a policy holder's obligations

- (a) When assisting a client to make an application for insurance or fill out an insurance application form (or other forms in connection with the application), a licensed insurance broker should:
- (i) explain to the client the principle of utmost good faith and ensure that the client understands that non-disclosure of material facts or provision of incorrect information may result in the insurance policy being invalidated or void or claims being repudiated;
  - (ii) indicate the sort of material facts which ought to be disclosed; and

---

<sup>8</sup> Nothing in paragraph 5.2(c) alters the position under section 6(1)(a) of the Ordinance, which requires companies carrying on insurance business in or from Hong Kong to be authorized under section 8 of the Ordinance.

## DRAFT

- (iii) draw the client's attention to any declaration which needs to be made by the client in respect of the application, give the client the opportunity to review it before the declaration is made and ensure the client understands that the client is responsible for the declaration.
- (b) When negotiating or arranging an insurance policy with an insurer on behalf of a client (i.e. prior to the insurance policy being entered into), a licensed insurance broker should:
  - (i) not make any false statements or mislead the insurer;
  - (ii) disclose to the insurer all material information in relation to the insurance policy, which has been provided to the broker by the client; and
  - (iii) disclose all material facts in relation to the prospective insurance policy of which the broker is aware.

### 5.4 Client agreement

- (a) A licensed insurance broker company should enter into a written agreement with each client before arranging an insurance policy for the client ("Client Agreement"), stating:
  - (i) the names of the parties to the agreement;
  - (ii) the appointment of the broker company by the client;
  - (iii) other terms of business as may have been specifically agreed between the parties; and
  - (iv) any other information required in accordance with the relevant rules, regulations, codes, guidelines, circulars and other regulatory instruments as specified by the IA from time to time and published on the IA's website.
- (b) A copy of the Client Agreement should be provided to the client.

### 5.5 Referral business

If a licensed insurance broker accepts business referred by another person, or refers business to another licensed insurance intermediary, the information specified in Schedule 1 should be provided.

## General Principle 6 – Suitability

---

*A licensed insurance broker's regulated advice should be suitable for the client and take into account the circumstances of that client.*

---

Related Statutory Conduct Requirement: Section 90(d) of the Ordinance – “when carrying on a regulated activity, a licensed insurance intermediary must have regard to the particular circumstances of the policy holder or the potential policy holder that are necessary for ensuring that the regulated activity is appropriate to the policy holder or the potential policy holder.”

## Standards and Practices

### 6.1 Suitability assessment

- (a) Before giving regulated advice, a licensed insurance broker should properly carry out a suitability assessment of the client's objectives, circumstances, needs and priorities.
- (b) In carrying out this suitability assessment, a licensed insurance broker should:
  - (i) take reasonable steps to understand the client's objectives, circumstances, needs and priorities;
  - (ii) explain to the client that a proper assessment cannot be made if necessary information for a suitability assessment cannot be obtained;
  - (iii) take into account such objectives, circumstances, needs and priorities when giving regulated advice;
  - (iv) source a sufficient range of relevant insurance products available on the market or explore other insurance options (including customizing insurance programs), and provide suitable insurance options to the client;
  - (v) have a reasonable basis for making a recommendation with respect to a material decision (e.g. a decision in relation to the making of an application or proposal for a contract of insurance) and explain to the client the basis for the recommendation upon the client's request; and
  - (vi) comply with any other relevant requirements in any rules, regulations, codes, guidelines, circulars and other regulatory instruments as specified by the IA from time to time and published on the IA's website.
- (c) The level of suitability assessment should be proportionate and reasonable, taking into account the circumstances of the client and other factors such as the type of insurance product under consideration.

## 6.2 Recommendation

- (a) A licensed insurance broker should use reasonable efforts to ensure that the regulated advice (e.g. advice in relation to the making of an application or proposal for a contract of insurance) given by the broker is suitable for the client on the basis of the information it has obtained from the client, including the client's objectives, circumstances, needs and priorities.
- (b) If, after a licensed insurance broker has carried out a suitability assessment and provided a recommendation, the client insists on making a material decision contrary to the recommendation and which, in the broker's opinion, is not suitable for the client's objectives, circumstances, needs or priorities, the broker should:
- (i) ask the client to give the reasons for the decision;
  - (ii) explain the unsuitability of the decision to the client;
  - (iii) confirm with the client that the decision is the client's own decision; and
  - (iv) document and keep a proper record of:
    - the recommendation made by the broker;
    - the reasons given by the client for his decision;
    - the broker's reasons for considering the client's decision to be unsuitable; and
    - the fact that the decision is the client's own decision.

## **General Principle 7 – Conflicts of Interest**

---

A licensed insurance broker should make every effort to avoid conflicts of interests and when such conflicts cannot be avoided, should manage them with appropriate disclosure to ensure clients are fairly treated at all times.

---

Related Statutory Conduct Requirements:

- Section 90(f) of the Ordinance – *“when carrying on a regulated activity, a licensed insurance intermediary must use its best endeavours to avoid a conflict between the interests of the intermediary and the interests of the policy holder or the potential policy holder”*;
- Section 90(g) of the Ordinance – *“when carrying on a regulated activity, a licensed insurance intermediary must disclose any conflict mentioned in paragraph (f) to the policy holder or the potential policy holder”*.

### **Standards and Practices**

#### **7.1 Avoiding potential conflicts of interest by providing appropriate disclosure in relation to remuneration**

Where a licensed insurance broker company intends to arrange an insurance policy for its client and will receive remuneration paid by the insurer concerned, the broker company should, before arranging the insurance policy, provide adequate disclosure in relation to such remuneration to the client. Such disclosure should include information and be made in accordance with the manner stated in any rules, regulations, codes, guidelines, circulars and other regulatory instruments relating to such remuneration, as specified by the IA from time to time and published on the IA’s website.

#### **7.2 Addressing potential conflicts of interest regarding relationships with insurers**

If a licensed insurance broker has any association or affiliation with an insurer (such as, without limitation, a common shareholder, director and controller) and the licensed insurance broker intends to recommend an insurance product to a client which is offered by that insurer, then the broker should (prior to making the recommendation) disclose its association or affiliation with the insurer to the client.

#### **7.3 Avoid allowing own interests to influence the client’s decision**

- (a) Where a licensed insurance broker also has another business or occupation, it should not allow its interests in that other business or occupation to jeopardize its integrity, independence and competence as a licensed insurance broker.

## DRAFT

- (b) Where another company in the same group of companies as the licensed insurance broker company is providing services in relation to an insurance policy in respect of which the broker is providing regulated activities, the broker should take steps to avoid or manage (through, for example, disclosure) any potential conflict of interest which may arise, so as to ensure the client is treated fairly at all times.



## **General Principle 8 – Client Assets**

---

*A licensed insurance broker should have sufficient safeguards in place to protect the assets of clients.*

---

Related Statutory Conduct Requirement: Section 90(h) of the Ordinance – “when carrying on a regulated activity, a licensed insurance intermediary must ensure that the assets of the policy holder or the potential policy holder are promptly and properly accounted for.”

## **Standards and Practices**

### **8.1 Handling of client assets**

- (a) A licensed insurance broker company must handle client assets (including client monies) in strict compliance with the requirements stipulated in law and the relevant rules, regulations, codes, guidelines, circulars and other regulatory instruments administered or issued by the IA, including without limitation:
  - (i) the requirements set out in Section 71 of the Ordinance;
  - (ii) the requirements set out in the Insurance (Financial and Other Requirements for Licensed Insurance Broker Companies) Rules;
  - (iii) the terms and conditions of its Client Agreement with the client; and
  - (iv) the fiduciary duties it owes to its clients.
- (b) A licensed insurance broker company should have sufficient controls and security in place to prevent unauthorized access to client assets.

## **Part D – Controls and Procedures for Licensed Insurance Broker Companies**

---

*A licensed insurance broker company should have proper controls and procedures in place to ensure that the broker company and its licensed technical representatives (broker) meet the General Principles, Standards and Practices set out in this Code.*

---

Related Statutory Conduct Requirements: Section 92(1) of the Ordinance sets out the relevant conduct requirements for a licensed insurance broker company as follows:

- (a) it must establish and maintain proper controls and procedures for securing compliance with the conduct requirements set out in section 90 by the broker company and the licensed technical representatives (broker) appointed by the broker company;*
- (b) it must use its best endeavours to secure observance with the controls and procedures established under paragraph (a) by the licensed technical representatives (broker) appointed by the broker company;*
- (c) it must ensure that its responsible officer has sufficient authority within the broker company for carrying out the responsibilities set out in section 92(2); and*
- (d) it must provide its responsible officer with sufficient resources and support for carrying out the responsibilities set out in section 92(2).*

### **Corporate Governance**

A licensed insurance broker company should establish and implement an organizational and management structure which includes adequate controls to ensure the interests of clients are not prejudiced. Such organizational structure should include clear roles and lines of responsibility and accountability of its senior management which underpins the objectives of acting in the best interests of clients and fair client treatment. The extent and scope of the broker company's governance structure will depend on the nature, size and complexity of the business as well as the medium it uses for solicitation of business and the types of insurance it arranges.

The requirements below elaborate on the controls and procedures that a licensed insurance broker company is expected to adopt. For the avoidance of doubt, these requirements are in addition to other governance requirements set out in any applicable codes and guidelines, including the "Guideline on "Fit and Proper" Criteria for Licensed Insurance Intermediaries under the Insurance Ordinance (Cap. 41)".

## Controls and Procedures

### 1. Compliance

- (a) A licensed insurance broker company should have proper controls, procedures and adequate supervision to ensure that:
  - (i) persons who are recruited, employed by, associated with, or act for the broker company in relation to the carrying on of regulated activities are and remain fit and proper;
  - (ii) the broker company and its staff, particularly its licensed technical representatives (broker) comply with all laws, rules, regulations, codes, guidelines, circulars and other regulatory instruments relevant to the carrying on of regulated activities in the broker's lines of business;
  - (iii) its licensed technical representatives (broker) comply with the broker company's policies, procedures and other requirements for carrying on regulated activities (monitored, for example, by periodic review of management reports on non-compliance by its senior management and responsible officer); and
  - (iv) its licensed technical representatives (broker) are trained and have a good understanding of the key features of the insurance products on which they may give regulated advice and keeping proper training records.

### 2. Insurer and insurance product due diligence

- (a) A licensed insurance broker company should have in place proper controls and procedures to conduct due diligence<sup>9</sup> on an insurer from which it intends to source insurance products.
- (b) A licensed insurance broker company should have in place proper controls and procedures to assess the nature and key features of insurance products in respect of which the broker company intends to provide regulated advice to clients. The assessment of such insurance products should be made:
  - (i) prior to making recommendation of such insurance products; and
  - (ii) at appropriate periodic intervals thereafter to ensure its due diligence remains up to date.
- (c) A licensed insurance broker company should ensure documentation evidencing the processes in (a) and (b) above are made and maintained.

### 3. Handling of complaints

- (a) A licensed insurance broker company should have proper controls and procedures to handle and resolve complaints about regulated activities carried on

---

<sup>9</sup> The level of diligence required will depend on the type of business and the amount of business the licensed insurance broker company places with the insurer concerned.

## DRAFT

by the broker company or its licensed technical representatives (broker) in a timely and fair manner.

- (b) In order to achieve the objectives in paragraph (a), the licensed insurance broker company should:
  - (i) have designated staff to handle such complaints;
  - (ii) ensure steps are taken to investigate such complaints and to respond promptly to the complainants concerned;
  - (iii) advise complainants of the proper avenue for the complaints (including referral of the matters to the IA) if the complaints cannot be resolved to the complainants' satisfaction by the broker company;
  - (iv) maintain proper records of complaints; and
  - (v) respond to, cooperate and deal with the IA and all other relevant regulatory authorities in the handling of any complaints and provide assistance to the relevant insurers to resolve such complaints.

#### **4. Reporting of material incidents to the IA**

- (a) A licensed insurance broker company should have proper controls and procedures to ensure incidents which are material to its business are reported to the IA as soon as reasonably practicable after it becomes aware of such incidents, including without limitation, the following:
  - (i) a material breach of requirements under the Ordinance or any rules, regulations, codes, guidelines, circulars or regulatory instruments administered or issued by the IA, by the broker company or its licensed technical representatives (broker);
  - (ii) the filing of a petition for winding-up of the broker company;
  - (iii) the bankruptcy of any directors, controllers or licensed technical representatives (broker) of the broker company;
  - (iv) disciplinary action taken against the broker company or its licensed technical representatives (broker) by a regulatory authority (other than the IA) or any professional body in Hong Kong or elsewhere; or
  - (v) criminal charges or conviction of the broker company or its directors, controllers or licensed technical representatives (broker) by any court in Hong Kong or elsewhere.

#### **5. Keeping of proper records**

- (a) A licensed insurance broker company should have proper controls and procedures to ensure proper records are kept for the following matters in relation to the regulated activities of the broker company and its licensed technical representatives (broker):

## DRAFT

- (i) documents received from a client in relation to an insurance application or claim;
- (ii) insurance policies delivered to a client; and
- (iii) instructions given by a client in relation to the client's material decisions such as cancellation or surrender of policy and change of beneficiaries.

### 6. **Accountability of the responsible officer and senior management**

The responsible officer of a licensed insurance broker company, and its other senior management who oversee the business of regulated activities carried on by the broker company, should ensure (and should be accountable for ensuring) that the controls and procedures required by 1 to 5 above are in place and effective.

## **Schedule 1**

### **Additional Standards and Practices for Referral of Business**

#### **Business Referred to a Licensed Insurance Broker by Another Person<sup>10</sup>**

1. Where a client is referred to a licensed insurance broker by another person (a “referrer”), before the broker arranges an insurance policy for the client, the broker should ensure the client is informed that:
  - (a) the broker will be responsible for arranging the insurance policy and, for this purpose, the client should only deal directly with the broker (i.e. the client should not deal with the referrer for arranging the insurance policy);
  - (b) the referrer does not represent the broker and should have no involvement in the arrangement of the insurance policy;
  - (c) the broker disclaims all liability for any advice in relation to the insurance policy given to the client by the referrer;
  - (d) a benefit is to be provided by the broker to the referrer for referring the client to the broker (if the broker intends to provide the referrer with any such benefit, whether monetary or non-monetary); and
  - (e) premium for the insurance policy should be paid either to the broker or the insurer concerned directly and, in no event, to the referrer.

#### **Referral of Business to Another Licensed Insurance Intermediary by a Licensed Insurance Broker**

2. If a licensed insurance broker company intends to refer a client to another licensed insurance intermediary with a view to that intermediary arranging an insurance policy for the client, the broker company should ensure that it obtains prior consent from the client concerned before making the referral.
3. If a licensed technical representative (broker) intends to refer a client to another licensed insurance intermediary with a view to that intermediary arranging an insurance policy for the client, the technical representative should ensure that he complies with the policies, procedures and other applicable requirements of its appointing licensed insurance broker company.

---

<sup>10</sup> Under section 64G of the Ordinance, a person must not carry on a regulated activity in the course of the person’s business or employment or for reward, unless the person is a licensed insurance intermediary or exempt from the licensing requirements. A person who contravenes this licensing requirement commits an offence. The Standards and Practices in this Schedule do not alter the licensing requirements under section 64G of the Ordinance. If a referrer carries on regulated activities and none of the exemptions under the Ordinance apply, then the referrer must be licensed.

**Application of this Schedule**

4. For the avoidance of doubt, this Schedule does not apply where:
- (a) the client is referred to a licensed insurance broker company by its appointed licensed technical representative (broker); or
  - (b) the referral is made to the licensed insurance broker company in the context of the licensed insurance broker company being engaged by another insurance broker for the purpose of arranging an insurance policy for the client.

**Feedback to Consultation Paper on the Draft Code of Conduct for  
Licensed Insurance Brokers**

*(Comments should be sent to the Insurance Authority on or before 28 May 2019.)*

**To: Insurance Authority**

(email: [comment\\_codeandguideline@ia.org.hk](mailto:comment_codeandguideline@ia.org.hk))

**Name of Respondent:**

**Contact Person (if Respondent is an organization):**

**Contact Details:**

Question 1

Do you agree with the proposed principle-based approach of the Brokers' Code and that the General Principles and their related Standards and Practices provide a suitable framework for the conduct of licensed insurance brokers?

Question 2

Do you agree that the objective of "treating clients fairly" is fundamental to the regulated activities of a licensed insurance broker?



Question 3

Do you agree that providing clients with adequate disclosure so that they can make informed decisions on their insurance purchases is an important principle to include in the Brokers' Code?

Question 4

Do you agree that disclosure is an important mechanism for licensed insurance brokers to manage potential conflicts of interests and that standards regarding the disclosure an insurance broker should make in this respect, should be included in the Brokers' Code?

Question 5

Do you agree that it is good practice for licensed insurance broker companies to enter into written agreements with their clients and that the Brokers' Code should provide for this requirement?

Question 6

Do you agree that the Brokers' Code should set out requirements for the governance, controls and procedures that a licensed insurance broker company should adopt (as per Part D of the Brokers' Code)? Do you agree that licensed insurance broker companies should follow such requirements to ensure the General Principles, Standards and Practices in the Brokers' Code are complied with by the companies and their appointed licensed technical representatives (broker)?