

Consultation Paper
on the
Draft Guideline on Exercising Power
to Impose Pecuniary Penalty
in Respect of Regulated Persons
Under the Insurance Ordinance (Cap. 41)

FOREWORD

- 1 This paper is published by the Insurance Authority (“IA”) to consult the public on the draft Guideline on Exercising Power to Impose Pecuniary Penalty in Respect of Regulated Persons under the Insurance Ordinance (Cap. 41). 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 mid-2019.
- 2 The IA welcomes written submissions on or before 27 December 2018 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
- 3 Any person making a submission on behalf of an organization is requested to provide details of such organization.
- 4 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.
- 5 Please note that name(s) of respondent(s), their affiliation(s) and the contents of their submissions may be referred to in any forms of documentation the IA may publish or release. If you do not wish your name, affiliation and/ or submission to be disclosed, please expressly state so when you make your submission.
- 6 Any personal data submitted will only be used for consultation and its related purposes. For access to or correction of any personal data contained in your submission, please contact –

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

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EXECUTIVE SUMMARY

1. It is planned that in mid-2019, the Insurance Authority (“IA”) will take over the regulation of insurance intermediaries and the corresponding legal provisions of the Insurance Companies (Amendment) Ordinance 2015 (Ord. No.12 of 2015) (“the Amendment Ordinance”) will commence.
2. The new section 81 of the Insurance Ordinance (Cap. 41) (the “Ordinance”) will empower the IA to take a number of disciplinary actions in respect of a person who is or was a regulated person in the event that he/ she/ it is guilty of misconduct or is not fit and proper.
3. One type of disciplinary action that the IA may take is ordering a person to pay a pecuniary penalty not exceeding the amount which is the greater of (i) HK\$10 million; or (ii) 3 times the amount of the profit gained or loss avoided by the person.
4. Pursuant to the new section 83 of the Ordinance, the IA must not exercise its power under section 81 to impose a pecuniary penalty unless it has published, in the Gazette and in any other manner it considers appropriate, guidelines to indicate the way in which it proposes to exercise that power, and has had regard to the guidelines in exercising that power.
5. The draft Guideline on Exercising Power to Impose Pecuniary Penalty in Respect of Regulated Persons under the Insurance Ordinance (Cap. 41) (“Guideline”) is enclosed as **ANNEX 1** for public consultation.
6. This Guideline is largely modelled on the Guideline on Exercising Power to Impose Pecuniary Penalty in Respect of Authorized Insurers under the Insurance Ordinance (Cap. 41) (GL18), and has been developed upon taking into account the current regime under the three self-regulatory organizations (“SROs”), relevant guidelines issued by local and overseas regulatory authorities and feedback provided by the industry.
7. For ease of reference, 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.
8. **CHAPTER 1** explains the background to the draft Guideline and **CHAPTER 2** contains a discussion of the draft Guideline including the IA’s proposed approach to exercising its power to impose a pecuniary penalty. In a nutshell, the penalty should be effective, proportionate and fair. The IA will consider all circumstances of the case and take into account a number of factors including the nature, seriousness and impact of the conduct, behavior of the person, and past disciplinary and compliance records of the person. Whether the fine will put the person in financial jeopardy is also a factor for consideration.
9. 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.

CHAPTER 1 INTRODUCTION

Background

1. Upon commencement of the new regulatory regime for insurance intermediaries under the Ordinance, the IA will take over the regulatory functions of the three SROs for insurance intermediaries (i.e. the Insurance Agents Registration Board (“IARB”), the Hong Kong Confederation of Insurance Brokers (“CIB”) and Professional Insurance Brokers Association (“PIBA”)) and become the sole regulator to regulate all insurance intermediaries in Hong Kong. The new regulatory regime is planned to commence in mid-2019.
2. Under the new regulatory regime, the IA is empowered to take a range of disciplinary actions against a person who is or was a regulated person. The new section 81 of the Ordinance, which gives the IA disciplinary powers over such persons, is set out in full in **SCHEDULE 1**. The term “regulated person” is defined in the new section 80(1) of the Ordinance (see **SCHEDULE 1**). However, to make it easier to understand to whom the Guideline applies, the definition is also set out in paragraphs 2.1 and 2.2 of the draft Guideline. The new section 81 of the Ordinance applies to both current and former regulated persons (and, where used in this consultation paper and in the Guideline, the term “regulated person” covers both current and former regulated persons).
3. There are effectively two circumstances in which the IA may take disciplinary action(s) in respect of a person who is or was a regulated person.
 - a. The first is when the regulated person is/was guilty of misconduct, which is defined in the new section 80(1) of the Ordinance¹.
 - b. The second is when the regulated person fails or failed to be fit and proper. The new section 64ZZA sets out the matters the IA must have regard to in determining whether a person is a fit and proper person².
4. One of the disciplinary actions the IA may take is imposing a pecuniary penalty not exceeding the greater of HK\$10 million or three times the amount of the profit gained or loss avoided³.
5. The IA must not exercise a power under the new section 81 without first giving the person in respect of whom the power is to be exercised a reasonable opportunity of being heard

¹ Please see SCHEDULE 1.

² In addition, the IA is currently consulting on its draft Guideline on “Fit and Proper” Criteria for Licensed Insurance Intermediaries under the Insurance Ordinance (Cap. 41) which will outline the non-exhaustive criteria and matters that the IA will normally consider in determining whether a person is fit and proper. Please see the relevant consultation paper for details.

³ Please see the new section 81(4)(e) of the Ordinance set out in SCHEDULE 1.

(and where relevant⁴, the IA must also consult the Monetary Authority). To this end, the IA will issue a Notice of Proposed Disciplinary Action (“NPDA”). The NPDA will set out the IA’s initial findings and proposed disciplinary action(s) (where applicable, including the proposed amount of the pecuniary penalty). The person concerned may then make representations, written or oral, on the initial findings and proposed disciplinary action(s). If, after taking into account the representations made (if any), the IA decides to proceed with exercising a power under the new section 81 in respect of a person, the IA must inform the person of its decision to do so by a Notice of Decision (“NOD”) in writing and where applicable the NOD must include, amongst other information, the amount of the pecuniary penalty to be imposed under the decision and the period within which it is required to be paid⁵. Any person in respect of whom a decision is made, may apply to the Insurance Appeals Tribunal (“IAT”), for a full merits review of such decision.

6. Pursuant to the new section 83(1) of the Ordinance⁶, the IA must not exercise the power to impose a pecuniary penalty unless it has published, in the Gazette and in any other manner it considers appropriate, guidelines to indicate the way in which it proposes to exercise that power, and in exercising that power, it has had regard to the guidelines so published. Moreover, the new section 83(3) requires the IA to consult the Monetary Authority before publishing such guideline.

Consultation

7. This paper is published by the IA, in preparation for the takeover of regulation of insurance intermediaries, to consult the public on the draft Guideline. The draft Guideline has been prepared by the IA on the basis of the following:
 - a. the Ordinance and the Amendment Ordinance;
 - b. the existing guidelines adopted by the SROs in relation to disciplinary actions and penalties;
 - c. the Guideline on Exercising Power to Impose Pecuniary Penalty in Respect of Anti-Money-Laundering And Counter-Terrorist Financing (GL3A)⁷ issued by the IA in relation to authorized insurers, reinsurers, appointed insurance agents and authorized insurance brokers carrying on or advising on long term business;
 - d. the Guideline on Exercising Power to Impose Pecuniary Penalty in Respect of

⁴ The IA must consult the Monetary Authority before exercising a power under the new section 81 of the Ordinance in respect of (i) an authorized institution; (ii) a person who is or was a regulated person and is or was employed by an authorized institution; or (iii) a person who is or was a regulated person and is or was appointed as an agent by an authorized institution, in relation to any regulated activity carried on by the institution (see the new section 82(4) of the Ordinance set out in SCHEDULE 1).

⁵ See the new section 82(3)(e) of the Ordinance set out in SCHEDULE 1.

⁶ Please see SCHEDULE 1.

⁷ https://www.ia.org.hk/en/legislative_framework/files/GL3A.pdf

Authorized Insurers under the Insurance Ordinance (Cap. 41) (GL18)⁸; and

- e. relevant guidelines issued by local and overseas regulatory authorities and their practices.
8. In preparing this draft Guideline the IA has engaged with the Working Group on Direct Licensing Regime for Insurance Intermediaries (comprising the SROs), and the Discussion Group (Insurance Agents) (comprising representative bodies for insurance agents).
9. Furthermore, as required by the new section 83(3) of the Ordinance, the IA has duly consulted the Monetary Authority.
10. The draft Guideline will be finalized after taking into account the feedback collected during this consultation and will then be published in the Gazette.

Effective Date

11. The Guideline will take effect upon commencement of regulation by the IA of insurance intermediaries (“commencement date”).
12. However, all cases of alleged contravention of applicable rule/ requirement that occurred before the commencement date will be followed up and considered by the IA according to the applicable rules/ requirements prevailing at the time when the contravention occurred. In such cases the range of sanctions (including pecuniary penalties) available to the IA will be the same as those that could have been imposed by the SROs under the old regime⁹.

⁸ https://www.ia.org.hk/en/legislative_framework/files/GL18.pdf

⁹ Please see section 113 of the new Schedule 11 to the Ordinance for details.

CHAPTER 2 DISCUSSION OF THE DRAFT GUIDELINE

General Approach

13. Section 4A(1) of the Ordinance reads: “*The principal function of the Authority shall be 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.*”
14. Furthermore, whilst always taking into account the need to protect existing and potential policy holders, the IA recognizes the need to take a balanced approach and appreciates the importance of pecuniary penalties being effective, proportionate and fair. The IA therefore proposes to take into account a range of relevant factors including whether a pecuniary penalty may cause financial hardship to the regulated person concerned. Finally, pecuniary penalties will be imposed by the IA following a thorough process of review/investigation and the decision to take disciplinary action will be taken independently and objectively.

Key Features

15. The draft Guideline sets out the major considerations that the IA proposes to take into account when determining whether to impose a pecuniary penalty and the amount of the penalty. They include –
 - a. the principal purposes of imposing a pecuniary penalty;
 - b. the fact that the IA regards a pecuniary penalty as a more severe sanction than a reprimand, and a public reprimand as more severe than a private reprimand;
 - c. that as a matter of policy, the IA may publicize its decisions to impose a pecuniary penalty; and
 - d. that a pecuniary penalty should be effective, proportionate and fair. The more serious the conduct, the greater likelihood that the IA will impose a pecuniary penalty and that the amount of the penalty will be higher.
16. The Guideline has been drafted to take into account the fact that regulated persons can be individuals (i.e. natural persons) or firms (i.e. sole proprietors, partnerships or companies). As a result slightly different factors apply and this is why the draft Guideline contains subparagraphs that apply solely to individuals or firms.
17. The IA proposes that when considering whether to impose a pecuniary penalty and the amount of the penalty, it will consider all the circumstances of the particular case and take into account a number of factors where relevant including the following non-exhaustive factors (in respect of which non-exhaustive examples have been given):
 - a. the nature, seriousness and impact of the conduct;

- b. the behavior of the person since the conduct was identified;
 - c. the previous disciplinary record and compliance history of the person; and
 - d. other relevant factors.
18. The IA is conscious of the potential consequences that high fine levels may have on a person. To address such concern, the following factor has been included in the draft Guideline—
- (d) *Other relevant factors:*
 - (i) *the financial resources of the regulated person – a pecuniary penalty should not have the likely effect of putting the regulated person concerned in financial jeopardy;*
19. Furthermore, the IA will consider the results of criminal actions (not just civil actions) taken against a regulated person before imposing a pecuniary penalty. Accordingly, the IA proposes to include the following factor in the Guideline:
- (d) *Other relevant factors:*
 - (iv) *the result of any civil **or criminal action** taken against the regulated person in respect of the conduct;*
20. Finally, the IA has decided not to adopt a tariff-based approach (e.g. a list/ menu of the types of conduct for which a person may be disciplined and set certain levels of fine for each type of conduct). In view of the diverse range of regulated activities that will be carried on by licensed insurance intermediaries and the wide variety of types of licensed insurance intermediary (ranging from licensed individual agents tied to major insurers, bank staff directly selling insurance products and employees of major international insurance broking firms) all of which will be covered by the Guideline, a tariff-based approach would unlikely achieve effective, proportionate or fair outcomes.

SCHEDULE 1

80. Interpretation

(1) In this Part—

controller (控權人) has the meaning given by section 64F;

misconduct (不當行為) means—

- (a) a contravention of a provision of this Ordinance;
- (b) a contravention of a term or condition of a licence granted under this Ordinance;
- (c) a contravention of any other condition imposed under a provision of this Ordinance; or
- (d) an act or omission relating to the carrying on of any regulated activity which, in the Authority's opinion, is or is likely to be prejudicial to the interests of policy holders or potential policy holders or the public interest,

and guilty of misconduct (犯不當行為) is to be construed accordingly;

regulated person (受規管人士) means—

- (a) a licensed insurance intermediary;
- (b) a responsible officer of a licensed insurance agency;
- (c) a responsible officer of a licensed insurance broker company;
- (d) a person concerned in the management of the regulated activities carried on by a licensed insurance agency; or
- (e) a person concerned in the management of the regulated activities carried on by a licensed insurance broker company.

(2) For the purposes of paragraph (d) of the definition of misconduct in subsection (1), the Authority must not form an opinion that an act or omission is or is likely to be prejudicial to the interests of policy holders or potential policy holders or the public interest, unless it has had regard to those provisions set out in any code of conduct published under section 95 or any code or guideline published under section 133, that are in force at the time of the occurrence of, and applicable in relation to, the act or omission.

(3) If—

- (a) a licensed insurance agency is, or was at any time, guilty of misconduct; or
- (b) a former licensed insurance agency was at any time guilty of misconduct,

as a result of a conduct occurring with the consent or connivance of, or attributable to neglect on the part of, a person specified in subsection (4), the conduct is also to be regarded as misconduct on the part of the person, and guilty of misconduct (犯不當行為) is to be construed accordingly.

(4) The person specified for subsection (3) is—

- (a) a responsible officer or former responsible officer of the agency; or
- (b) a person concerned in the management of the regulated activities carried on by the agency.

(5) If—

- (a) a licensed insurance broker company is, or was at any time, guilty of misconduct; or
- (b) a former licensed insurance broker company was at any time guilty of misconduct,

as a result of a conduct occurring with the consent or connivance of, or attributable to neglect on the part of, a person specified in subsection (6), the conduct is also to be regarded as misconduct on the part of the person, and guilty of misconduct (犯不當行為) is to be construed accordingly.

(6) The person specified for subsection (5) is—

- (a) a responsible officer or former responsible officer of the company; or
- (b) a person concerned in the management of the regulated activities carried on by the company.

81. Disciplinary action in respect of regulated persons

(1) The Authority may exercise any of the powers specified in subsection (4) in respect of a person if—

- (a) the person is, or was at any time, guilty of misconduct when the person is a regulated person;
- (b) the person was at any time guilty of misconduct when the person was a regulated person; or
- (c) the Authority is of the opinion that—
 - (i) at the time when the person is a regulated person, the person is not a fit and proper person; or
 - (ii) at a time when the person was a regulated person, the person was not a fit and proper person.

(2) The Authority may also exercise any of the powers specified in subsection (4)(a) in respect of a person who is a licensed insurance intermediary if—

(a) for a person who is an individual—

(i) the person enters into a voluntary arrangement with creditors, or has a bankruptcy order made against the individual, under the Bankruptcy Ordinance (Cap. 6);

(ii) the person is convicted of an offence in Hong Kong or elsewhere, which in the opinion of the Authority impugns the fitness and properness of the person to remain licensed; or

(iii) the person has been found by a court to be mentally incapacitated, or is detained in a mental hospital, under the Mental Health Ordinance (Cap. 136), which in the opinion of the Authority impugns the fitness and properness of the person to remain licensed;

(b) for a person that is a partnership—

(i) any of the partners of the person enters into a voluntary arrangement with creditors, or has a bankruptcy order made against the partner, under the Bankruptcy Ordinance (Cap. 6);

(ii) any of the partners of the person is convicted of an offence in Hong Kong or elsewhere, which in the opinion of the Authority impugns the fitness and properness of the person to remain licensed; or

(iii) any of the partners of the person has been found by a court to be mentally incapacitated, or is detained in a mental hospital, under the Mental Health Ordinance (Cap. 136), which in the opinion of the Authority impugns the fitness and properness of the person to remain licensed;

(c) for a person that is a company—

(i) a receiver or manager of the property or business of the person is appointed;

(ii) the person enters into a scheme of arrangement with its creditors;

(iii) the person goes into liquidation;

(iv) the person is convicted of an offence in Hong Kong or elsewhere, which in the opinion of the Authority impugns the fitness and properness of the person to remain licensed;

(v) any of the directors of the person is convicted of an offence in Hong Kong or elsewhere, which in the opinion of the Authority impugns the fitness and properness of the person to remain licensed; or

(vi) any of the directors of the person has been found by a court to be mentally incapacitated, or is detained in a mental hospital, under the Mental Health Ordinance (Cap. 136), which in the opinion of the Authority impugns the fitness and properness of the person to remain licensed; or

(d) for a person that is a sole proprietorship, partnership or company—any of the controllers of the person is convicted of an offence in Hong Kong or elsewhere, which in the opinion of the Authority impugns the fitness and properness of the person to remain licensed.

(3) The Authority may also exercise any of the powers specified in subsection (4)(b) in respect of a person who is a responsible officer of a licensed insurance agency or a licensed insurance broker company if—

(a) the person is convicted of an offence in Hong Kong or elsewhere; and

(b) in the opinion of the Authority, the conviction impugns the fitness and properness of the person to remain as a responsible officer.

(4) The following powers are specified for subsections (1), (2) and (3)—

(a) for a person who is a licensed insurance intermediary—

(i) to revoke the licence of the person;

(ii) to suspend the licence of the person, for a period or until the occurrence of an event that the Authority specifies;

(b) for a person who is a responsible officer—

(i) to revoke the approval of the person as a responsible officer;

(ii) to suspend the approval of the person as a responsible officer for a period or until the occurrence of an event that the Authority specifies;

(c) for a person who is or was a regulated person—

(i) to prohibit the person from applying to be licensed for a period or until the occurrence of an event that the Authority specifies;

(ii) to prohibit the person from being appointed as a responsible officer for a period or until the occurrence of an event that the Authority specifies;

(d) for a person who is or was a regulated person—to reprimand the person publicly or privately;

(e) for a person who is or was a regulated person—to order the person to pay a pecuniary penalty not exceeding the amount which is the greater of—

(i) \$10 million; or

(ii) 3 times the amount of the profit gained or loss avoided by the person as a result of the misconduct, or of the other conduct of the person which leads the Authority to form the opinion referred to in subsection (1)(c).

(5) If the Authority has exercised its power under subsection (1), (2) or (3), it may disclose to the public details of its decision, the reasons for which the decision was made, and any material facts relating to the case.

(6) The Authority, in forming an opinion for subsection (1)(c), may, among other matters (including those specified in section 64ZZA), take into account the present or past conduct of the person.

82. Procedural requirements in respect of exercise of powers under section 81

(1) The Authority must not exercise a power under section 81 without first giving the person in respect of whom the power is to be exercised a reasonable opportunity of being heard.

(2) If the Authority decides to exercise a power under section 81 in respect of a person, the Authority must inform the person of its decision to do so by notice in writing.

(3) The notice must include—

(a) a statement of the reasons for the decision;

(b) the time when the decision is to take effect;

(c) in so far as applicable, the duration and terms of the revocation, suspension or prohibition to be imposed under the decision;

(d) in so far as applicable, the terms in which the person is to be reprimanded under the decision; and

(e) in so far as applicable, the amount of the pecuniary penalty to be imposed under the decision and the period within which it is required to be paid.

(4) The Authority must consult the Monetary Authority before exercising a power under section 81 in respect of—

(a) an authorized institution;

(b) a person who—

(i) is, or was, a regulated person; and

(ii) is, or was, employed by an authorized institution; or

(c) a person who—

(i) is, or was, a regulated person; and

(ii) is, or was, appointed as an agent by an authorized institution, in relation to any regulated activity carried on by the institution.

(5) In subsection (1), a reference to an opportunity of being heard is a reference to an opportunity to make written representations or oral representations.

83. Guidelines for exercise of power to impose pecuniary penalty under section 81

(1) The Authority must not exercise a power under section 81 to impose a pecuniary penalty unless—

(a) it has published, in the Gazette and in any other manner it considers appropriate, guidelines to indicate the way in which it proposes to exercise that power; and

(b) in exercising that power, it has had regard to the guidelines so published.

(2) The guidelines are not subsidiary legislation.

(3) The Authority must consult the Monetary Authority before publishing any guideline under subsection (1).

85. Order for payment of pecuniary penalty

(1) A person ordered to pay a pecuniary penalty under section 81 must pay the penalty to the Authority within 30 days, or a longer period that the Authority specifies by notice under section 82(3)(e), after the order has taken effect.

(2) The Court of First Instance may, on an application of the Authority, register an order to pay a pecuniary penalty made under section 81 in the Court.

(3) On registration, the order is to be regarded as an order of the Court of First Instance made within the civil jurisdiction of the Court for the payment of money.

(4) For making an application under subsection (2), the Authority must produce to the Registrar of the High Court a notice in writing requesting that the order be registered, together with the original and a copy of the order.

(5) A pecuniary penalty paid to or recovered by the Authority under an order made under section 81 must be paid by the Authority into the general revenue.

DRAFT

GUIDELINE ON EXERCISING POWER

TO IMPOSE PECUNIARY PENALTY

IN RESPECT OF

REGULATED PERSONS UNDER THE

INSURANCE ORDINANCE

(CAP. 41)

Insurance Authority

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1. Introduction

- 1.1. This Guideline is made pursuant to section 83 of the Insurance Ordinance (Cap. 41) (“the Ordinance”).
- 1.2. Pursuant to section 81(1) of the Ordinance, the Insurance Authority (“the IA”) may impose on a person a pecuniary penalty either on its own or together with other disciplinary sanctions under section 81(4) if:
 - (a) the person is, or was at any time, guilty of misconduct when the person is a regulated person;
 - (b) the person was at any time guilty of misconduct when the person was a regulated person; or
 - (c) the IA is of the opinion that:
 - (i) at the time when the person is a regulated person, the person is not a fit and proper person; or
 - (ii) at a time when the person was a regulated person, the person was not a fit and proper person.
- 1.3. Under section 83 of the Ordinance, the IA must not exercise a power under section 81 to impose a pecuniary penalty unless it has had regard to this Guideline which indicates the way in which it proposes to exercise that power.
- 1.4. This Guideline does not have the force of law and should not be interpreted in a way that would override the provision of any law. The IA may from time to time amend the whole or any part of this Guideline.
- 1.5. This Guideline should be read in conjunction with the relevant provisions of the Ordinance, and any relevant rule, regulation, code and guideline made or issued under the Ordinance.
- 1.6. The factors set out in this Guideline are not exhaustive. This Guideline does not constitute legal advice. You should seek professional advice if you have any question relating to the application or interpretation of the relevant provisions of the Ordinance.

2. Scope of Application

- 2.1. “Regulated person” is defined in section 80(1) of the Ordinance to mean:
 - (a) a licensed insurance intermediary;

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- (b) a responsible officer of a licensed insurance agency/licensed insurance broker company; or
- (c) a person concerned in the management of the regulated activities carried on by a licensed insurance agency/licensed insurance broker company.

2.2. This Guideline applies when the IA is considering whether to impose a pecuniary penalty on a person who is, or was at the material time, a regulated person.

2.3. Unless otherwise specified, words and expressions used in this Guideline shall have the same meanings as given to them in the Ordinance. For the avoidance of doubt, in this Guideline the term “regulated person” should be read to include both a person who is a regulated person and a person who was a regulated person (as the case may be).

3. Considerations in Exercising the IA’s Power to Impose a Pecuniary Penalty

3.1. The principal purposes of imposing a pecuniary penalty are:

- (a) to protect existing and potential policy holders and the public interest;
- (b) to promote and encourage proper standards of conduct of regulated persons;
- (c) to deter regulated persons who have engaged in misconduct from engaging in further misconduct and to deter other regulated persons from committing misconduct;
- (d) to deter regulated persons from doing any act or omitting to do any act that would render them not being fit and proper persons;
- (e) to deter licensed insurance agencies and licensed insurance broker companies from engaging a person who is not fit and proper to hold the position of technical representative, responsible officer, director or controller;
- (f) to sanction licensed insurance agencies and licensed insurance broker companies which engaged a person who was not fit and proper to hold the position of technical representative, responsible officer, director or controller; and
- (g) to prevent regulated persons guilty of misconduct from benefitting from the misconduct.

3.2. The IA regards a pecuniary penalty as a more severe sanction than a reprimand, and a public reprimand as more severe than a private reprimand.

3.3. As a matter of policy, the IA may publicize its decisions to impose a pecuniary penalty against a regulated person as it thinks fit.

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- 3.4. A pecuniary penalty should be effective, proportionate and fair. The more serious the conduct or the reason for which the regulated person is considered not to be fit and proper, the greater the likelihood that (i) the IA will impose a pecuniary penalty and (ii) the amount of the penalty will be higher.
- 3.5. When considering whether to impose a pecuniary penalty and the amount of the penalty, the IA will consider all the circumstances of the particular case and, subject to the overriding objective of achieving the principal purposes in paragraph 3.1 above, take into account a number of factors where relevant. The factors listed below are not exhaustive.
- (a) *The nature, seriousness and impact of the conduct, including:*
- (i) the nature of the conduct (e.g. whether it was an intentional, reckless, fraudulent, negligent or technical breach);
 - (ii) the impact of the conduct on the interests of existing or potential policy holders or the public interest;
 - (iii) the loss or risk of loss caused to others (especially existing or potential policy holders or the insured public generally) where the risk was known or ought to have been known by the regulated person;
 - (iv) the duration and frequency of the conduct;
 - (v) whether the conduct is widespread in the industry;
 - (vi) the amount of benefits gained or losses avoided by the regulated person engaged in that conduct or by any other third parties connected with such regulated person;
 - (vii) whether the conduct is potentially damaging or detrimental to the integrity and stability of the industry and/or the reputation of Hong Kong as an international financial centre;
 - (viii) whether the conduct involves a breach of fiduciary duty or trust;
 - (ix) whether there are a number of smaller issues, which individually may not justify a pecuniary penalty, but which do so when taken collectively;
 - (x) whether the conduct is or was part of a more serious misconduct;
 - (xi) in case of a responsible officer of a firm (i.e. a sole proprietor, partnership or company), or a person involved in the management of regulated activities carried on by a firm, the extent to which the person knew, or reasonably ought to have known, that the conduct had occurred or was occurring or might occur;
 - (xii) the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the conduct;

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- (xiii) in relation to a firm,
 - whether the conduct reveals serious or systemic weaknesses of the firm’s internal control procedures and risk management systems in respect of all or part of the business of regulated activities carried on by the firm;
 - the seniority and industry experience of the staff involved in the conduct and the extent of their involvement; and
 - whether the conduct was engaged in by the firm alone or as a group and in the latter case, the firm’s role in that group; and
 - (xiv) in relation to an individual,
 - whether the individual abused a position of trust;
 - whether the individual caused or encouraged other regulated persons or other persons to engage in the conduct or the same type of conduct; and
 - the individual’s experience in the industry and, if the individual is a person referred to in paragraph 2.1(c) above, the individual’s position within the firm.
- (b) *The behavior of the regulated person since the conduct was identified, including:*
- (i) the manner of reporting the conduct by the regulated person (e.g. whether the regulated person has timely and comprehensively reported the conduct to the IA or (where applicable) other relevant regulatory authority or law enforcement agency);
 - (ii) whether the regulated person attempted to conceal the conduct;
 - (iii) the degree of cooperation with the IA and other authorities;
 - (iv) the remedial steps taken in a timely manner since the conduct was identified, including any action taken by the regulated person against those involved, and any steps taken to redress the loss caused to policy holders (and other relevant parties) or to prevent recurrence of the conduct; and
 - (v) the likelihood that the regulated person may engage in the same or similar type of conduct in the future.
- (c) *The previous disciplinary record and compliance history of the regulated person, including:*
- (i) previous disciplinary record and compliance history of the regulated person; and
 - (ii) whether the regulated person has previously undertaken not to engage in the conduct.

(d) *Other relevant factors:*

- (i) the financial resources of the regulated person – a pecuniary penalty should not have the likely effect of putting the regulated person concerned in financial jeopardy;
- (ii) the IA’s action or decision in previous similar cases (if any);
- (iii) actions taken or decisions made by other relevant authorities in respect of the conduct;
- (iv) the result of any civil or criminal action taken against the regulated person in respect of the conduct; and
- (v) whether the IA has issued any codes or guidelines in relation to the conduct.

4. Commencement

4.1. This Guideline shall take effect from [dd mmm yyyy].

[mm yyyy]