

---

## STATEMENT OF DISCIPLINARY ACTION

---

### **Introduction**

1. The Insurance Authority (“IA”) has taken disciplinary action against an insurance agent by revoking the agent’s licence and prohibiting her from applying to be licensed for 11 months. The disciplinary action is imposed because the agent has been found not fit and proper on the basis of her conduct between October 2018 and September 2019, concerning the way she handled certain premium received from her client.

### **Brief Facts and Applicable Rules**

2. On 2 October 2018, the insurance agent who is the subject of this disciplinary matter received HK\$21,361.40 from her client. The monies were received into the agent’s own personal bank account. The payment was made so that the agent could pay the monies onto her appointing insurer in order to reinstate the client’s insurance policy which had lapsed on 28 September 2018.

3. The agent did not, however, pay the premium onto her appointing insurer until 3 September 2019, some 11 months later and only after her client had discovered that the insurance policy had not been reinstated when the client directly contacted the insurer.

4. Since the facts of this disciplinary case took place prior to 23 September 2019 (the date on which the current regulatory regime for insurance intermediaries came into force), the IA has considered the actions of the insurance agent against the applicable rules in place at the time, namely

- (a) the Code of Practice for the Administration of Insurance Agents (Seventh Edition) (with special addendums and housekeeping amendments issued by the Hong Kong Federation of Insurers in May 2018) (“Code of Practice”); and
- (b) the Guideline on Handling Premiums issued by the Insurance Agents Registration Board (“IARB”) on 1 June 1999 and revised in June 2004 (“Guideline on Handling Premiums”).

### **Summary of findings and analysis**

5. The Guideline on Handling Premiums in place at the time, required appointing insurers to set clear rules for any authority to collect premium they provided to their insurance agents and to ensure that these rules avoided the mixing of customers’ money with the agents’ personal funds. Pursuant to this, the insurance agent’s appointing insurer

had required that any premium collected by its insurance agents to be kept completely separate from the agents' own funds and to be remitted to the appointing insurer within 2 to 3 days. In receiving client monies into her own bank account in the first place (thereby mixing it with her own funds), therefore, and then in failing to pay that premium onto her appointing insurer within 2 to 3 days, the agent clearly breached the requirements of her appointing insurer.

6. It is, however, the insurance agent's conduct during the 11-month period during which she failed to pay the premium onto her appointing insurer which seriously call into question her fitness and properness to be an insurance agent.

7. Firstly, there is the length of delay in paying on the premium to the insurer to consider. Eleven months is a substantial period of time. Had the premium been paid to the appointing insurer within the 2 to 3 days period required by her appointing insurer, then the client's reinstatement application could have progressed smoothly and been completed long before it actually was (in September 2019). Instead, during this 11 months period, the reinstatement of the client's insurance policy remained incomplete. Her client was therefore left without the certainty of her insurance coverage being reinstated for a considerable period of time. On any view, therefore, the agent's failure to pay the premium onto her appointing insurer for such a long period of time constituted misconduct and her actions fell significantly short of the competence required of an insurance agent.

8. Secondly, according to the agent, shortly after she had received the premium into her bank account, she withdrew it and kept the cash in a cabinet at her office at the insurer. She stated that she had asked a colleague to access the cabinet and pay the monies to the insurer on her behalf. The agent indicated, however, that she had failed to follow this up. Taking the agent's version of events at face value, the IA found that the agent's acts called into question her judgement and competence as an insurance agent. These were monies paid to her by to her by her client. Keeping the monies as cash unattended in a cabinet where colleagues could access it, demonstrates a failure to take sufficient precautions to safeguard her client's monies. More importantly, however, the IA considered it to be incredible and beyond mere negligence that the agent could spare no time whatsoever during the 11 months period to have returned to the office and taken care of the premium payment herself. Again, therefore, the agent's conduct fell well below the standards of competence one would expect from a professional insurance agent.

9. Thirdly, the IA took note of the following representations and statements which the agent made to her client and appointing insurer during the 11 months period prior to her eventually paying on the monies to the insurer:

- (a) On 19 October 2018, the agent informed her client that she had settled the premium with her appointing insurer. This representation, however, was not true and the agent must have known it to be untrue as she had not paid the premium onto her appointing insurer at that time.

- (b) On three separate occasions the appointing insurer notified the agent that the premium to reinstate the insurance policy had not been paid. The agent responded to these notifications by stating that the client would be paying by internet banking. The agent's statements in this respect were clearly misleading and inaccurate. The client had already paid the premium to the agent. The client would not, therefore, be paying (again) by internet banking. The agent must have known this.
- (c) On 11 January 2018, when the appointing insurer informed the agent that it had cancelled the reinstatement application for non-payment of premium, at no point did the agent inform her client of this. This left the client with the mistaken belief that the insurance policy had been reinstated when this was not the case. In August 2019, the client eventually found out the true position by directly contacting the appointing insurer. The client asked the agent for an explanation. The agent apologized and admitted her negligence in not following up the matter and also indicated that she had not received any further notification from the insurer about the non-payment. This was also plainly untrue, however, given that the insurer had informed the agent about the reinstatement application having been cancelled.

10. This series of misrepresentations made to her client and her appointing insurer, in the knowledge that the representations she was making were untrue, demonstrate a clear lack of integrity and ethics in the agent's conduct. In making these inaccurate and misleading statements, the agent was not conducting insurance business in good faith.

11. The agent cited certain issues ongoing in her personal and family life at the time, as reasons for her not being able to fully focus on her work. The IA has sympathy with these issues (and as indicated below has taken them into account in setting the appropriate disciplinary action). However, they do not and cannot serve as a justifiable excuse or constitute a valid explanation for the substantial 11 months delay in paying her client's premium onto the insurer (a matter which would not have taken considerable effort to perform) or indeed for the series misrepresentations which the agent made. Insurance agents (as is the case with all professionals) are obliged to comply with minimum standards of ethical conduct that are applicable to their profession, in spite of the personal difficulties they may encounter in their day-to-day personal life. A person of true integrity remains true to their professional ethical principles at all times, especially when faced with challenging situations, personal or otherwise. Indeed, this is the definition of integrity.

12. Taking all the relevant matters into account, the IA considered that the agent had, by her words and actions:

- (a) manifested a material lack of understanding of the duties and ethical responsibilities of an insurance agent, in breach of section 59 of the Code of Practice;

- (b) failed to conduct business in good faith and with integrity, in breach of section 78 of the Code of Practice; and
- (c) made inaccurate or misleading statements in relation to the status of the insurance policy, in breach of section 80 of the Code of Practice.

Taking account of these matters, per sections 58(g) and (k) of the Code of Practice, the IA also considered that the agent had rendered herself not fit and proper to be an insurance agent. The agent was therefore deserving of disciplinary action.

### **Disciplinary action**

13. The IA considered that the level of disciplinary action needed to be proportionate to the seriousness of the agent's conduct which demonstrated a lack of professional integrity and unethical behaviour rendering her not fit and proper to be an insurance agent. The disciplinary action also needed to reflect the considerable and inexcusable delay in failure to pay on the premium to the appointing insurer which resulted in risk and uncertainty for her client with regards to the status of the insurance policy. In effect, due to the agent's conduct, the client was left without insurance coverage for a considerable period of time without the client even knowing it. The IA also considered that there was a need for the disciplinary action to serve as a necessary deterrent. Considering these factors, the IA considered that a revocation of licence and prohibition on applying to be licensed again for a length of time was appropriate. Taking account of the seriousness of the conduct involved, a prohibition of 12 months was considered not to be inappropriate in this case and this was the IA's starting point.

14. The IA also took into account the mitigating factors in this case, namely:

- (a) that the agent had apologized for her actions and eventually shown remorse;
- (b) the personal and familial difficulties cited by the agent;
- (c) the previous clean disciplinary record of the agent; and
- (d) the fact that the agent had not benefited financially from her conduct in this case.

15. These mitigating factors afforded a discount in the length of prohibition to bring it below 12 months. With that stated, the length of the prohibition still needed to reflect the seriousness of the conduct being penalized. It needed to be sufficient to enable the agent to reflect on her conduct, appreciate and take seriously the importance of upholding professional ethics at all times when carrying on regulated activities as an insurance agent, and ensure that her character is sufficiently robust to meet these professional standards should she apply to be licensed again.

16. The IA has therefore imposed the following disciplinary action:

**The agent's licence is revoked and she is prohibited from applying to be licensed as a licensed insurance intermediary with the IA for a period of eleven (11) months.**

**Date: 27 January 2023**