

Memorandum of Understanding between the Insurance Authority and the Insurance Complaints Bureau

I. Introduction

1. This Memorandum of Understanding ("MoU") sets out a framework between the Insurance Authority ("IA") and the Insurance Complaints Bureau ("ICB") (each referred to as a "Party", together as "Parties") to enable the IA (with consent from the complainant) to refer relevant claim-related complaints to the ICB for adjudication.

II. Functions of the IA

2. The principal function of the IA under the Insurance Ordinance (Cap. 41) ("IO") is to regulate and supervise the insurance industry for the promotion of the general stability of the insurance industry and for the protection of existing and potential policy holders. Without prejudice to this primary function, the IA is responsible for supervising authorized insurers' and licensed insurance intermediaries' compliance with the provisions of the IO. The IA is also responsible for promoting and encouraging the adoption of proper standards of conduct and sound and prudent business practices by authorized insurers and for promoting and encouraging the adoption of proper standards of conduct by, and regulating the conduct of licensed insurance intermediaries.
3. In pursuance of its functions, if the IA has reasonable cause to believe that a provision of the IO has been contravened, or misconduct may have occurred, or that a certain person is or was not fit and proper, it has the power to investigate the matter under the IO. Following investigation, the IA has power to prosecute certain contraventions of the IO which amount to criminal offences and, if an authorized insurer or licensed insurance intermediary is found guilty of misconduct or an absence of fitness and properness is established, the IA may take disciplinary action against the authorized insurer or licensed insurance intermediary. The disciplinary actions which the IA may take in this respect are to

reprimand, fine, suspend or revoke the authorization of an authorized insurer or the license of a licensed insurance intermediary or prohibit a person from applying to be an authorized insurer or licensed insurance intermediary.

4. The IA handles complaints against authorized insurers and licensed insurance intermediaries within the scope of its powers under the IO as part of its function of regulating the conduct in the insurance industry. The IA will perform fact-finding on a complaint, assess the facts of the complaint objectively and fairly for the purpose of considering whether there is reasonable cause to believe that a provision IO has been contravened, or there has been misconduct or an absence of fitness and properness. If a complaint is considered by the IA to be substantiated, the IA may address the matter by supervisory action or it may invoke its investigation powers and then prosecute or take disciplinary action as necessary.
5. In handling complaints, however, the IA is not empowered to interfere with commercial decisions of an authorized insurer or licensed insurance intermediary, or to adjudicate disputes between authorised insurers/ licensed insurance intermediaries and policy holders, or to order an authorized insurer to pay a claim under an insurance policy, or to order an authorized insurer or licensed insurance intermediary to pay compensation to a complainant or any third party. As such, where a complaint does not involve any contravention of the IO or any misconduct on the part of an authorized insurer or licensed insurance intermediary or impugn the fitness and properness of certain persons, but merely involves a commercial dispute between the complainant and the insurer and/or intermediary, for example a dispute regarding the non-payment of a claim under an insurance policy, the IA's power to handle the complaint is limited, as it does not have power to intervene or adjudicate the dispute or require the claim to be paid.

III. Functions of the ICB

6. The ICB provides a cost-effective and efficient alternative dispute resolution mechanism to help resolve all insurance disputes of monetary nature arising from personal insurance policies with members of the ICB (being authorized insurers in Hong Kong). In accordance with its terms of reference, the ICB may handle certain claim-related complaints under

insurance policies by way of adjudication or non-claim related complaints under insurance policies by way of mediation.

IV. Purpose of this MoU

7. If a complainant submits a complaint to the IA disputing the non-payment of a claim under an insurance policy, where the complaint is within the ICB's terms of reference and the necessary consent is provided by the complainant, the IA wishes to be able to refer the complaint to the ICB for adjudication. This MoU sets out a framework between the IA and the ICB to enable the IA (with consent from the complainant) to refer such complaints to the ICB for adjudication.

V. Status of this MoU

8. The Parties acknowledge and agree the following overriding principles:
 - (a) this MoU operates subject to applicable laws, rules and regulations and does not modify or supersede any laws, rules or regulations;
 - (b) this MoU does not detract or affect the functions and powers of the IA under the relevant laws, rules and regulations, including the IO, or the functions and powers of the ICB under its Articles of Association and terms of reference;
 - (c) this MoU is a public document and the contents hereof may be disclosed and copies may be furnished by either Party hereto to any third party without the consent of the other;
 - (d) this MoU does not amount to a delegation of any of the powers, duties and obligations of the Parties;
 - (e) this MoU does not create, directly or indirectly, any rights, obligations or liabilities, enforceable by the Parties or by any third party, and is not legally binding; and

- (f) this MoU does not affect any arrangements under any other memorandum of understanding that either Party has entered into or may enter into with any other party,

and this MoU shall be construed accordingly.

VI. Referral of claim-related complaints to the ICB for adjudication

9. A claim-related complaint refers to a complaint of a monetary nature where the complainant disputes, and is dissatisfied with, the decision made by an authorized insurer with regards to a claim made under an insurance policy. For instance, where the insurer has rejected payment of the claim, either in part or in whole, on the basis that the claim is not covered according to the terms, conditions and exclusions of the insurance policy, or the insurer has avoided the insurance policy on grounds of material non-disclosure or misrepresentation.

10. In the event that a claim-related complaint:

- (a) is submitted to the IA;
- (b) in the IA's opinion, the complaint may be adjudicated by the ICB in accordance with its terms of reference; and
- (c) the complainant has provided consent for the IA to refer the complaint to the ICB for consideration,

the IA may refer the complaint to the ICB for handling.

11. In this respect, the ICB shall only accept the referral where it is able to handle the complaint in accordance with its terms of reference.

12. During the progress of handling a complaint referred to it by the IA, where the ICB considers issues may arise in relation to potential contraventions of the IO, misconduct or

fitness and properness relating to authorized insurers and/or licensed insurance intermediaries, the ICB will notify the IA in writing as soon as reasonably practicable and the Parties will discuss as soon as reasonably practicable how best to handle such complaint.

13. The ICB will update the IA on the progress of the complaint, where appropriate, and at the conclusion of the complaint.

VII. Confidentiality and Use of Information

14. Any non-public information (including the information subject to the secrecy obligations under section 53A of the IO) exchanged between the Parties under this MoU (including referrals made under this MoU, and the contents of such referrals) will be treated as confidential and used by the recipient only in accordance with applicable laws and this MoU for the purposes stated in any written referrals or request for information or assistance. Except as otherwise required or permitted by law, the information so exchanged shall not be disclosed to any third party without the prior consent of the Party providing the information.
15. Each Party will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of information exchanged pursuant to applicable law and under this MoU.

VIII. Liaison between the Parties

16. Each Party will appoint a person or persons to be its principal point(s) of contact to ensure the smooth co-ordination of referrals of complaints made under this MoU. Either Party may change its principal point(s) of contact by giving written notice to the other Party.
17. The Parties will, subject to any restrictions on disclosure of information (whether under law, a confidentiality agreement or otherwise), conduct meetings to discuss matters of mutual interest relating to the operation of this MoU, complaints handling and changes in the scope to the ICB's terms of reference to ensure comprehensive, fair and impartial handling of complaints by policy holders.

18. Subject to practical needs and availability of resources, the Parties also agree to cooperate in offering training on complaints-handling to insurance industry participants and to consider staff secondment opportunities as and when appropriate.
19. Where a matter is not dealt with explicitly in this MoU, the Parties agree to work together to resolve it quickly in accordance with the principles of cooperation and collaboration.

Effective Date and Amendments

20. This MoU takes effect on 1 November 2021.
21. Either Party may at any time request for a specific amendment, whether by supplement or otherwise, to this MoU, or may consult the other Party regarding the need for any amendment or supplement to this MoU.
22. An amendment or supplement to this MoU takes effect only by written agreement of the Parties.

Signed for and on behalf of
INSURANCE AUTHORITY

Signed for and on behalf of
THE INSURANCE COMPLAINTS BUREAU

Clement Cheung
Chief Executive Officer
Date:

Pamela W S Chan
Chairman
Date: