

**GUIDELINE ON EXERCISING POWER
TO IMPOSE PECUNIARY PENALTY
IN RESPECT OF
REGULATED PERSONS UNDER THE
INSURANCE ORDINANCE
(CAP. 41)**

Insurance Authority

Contents

	<u>Page</u>
1. Introduction	1
2. Scope of Application	1
3. Considerations in Exercising the IA’s Power to Impose a Pecuniary Penalty	2
4. Commencement	5

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;

- (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 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.

- 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 all relevant factors. 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, dishonest, 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);
- (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 placed in the regulated person;
- (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 would likely occur;
- (xii) the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the conduct;
- (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, such as 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 23 September 2019.

July 2019