

**GUIDELINE  
ON  
OFFERING OF GIFTS**

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## **1. Introduction**

- 1.1 The Insurance Authority (“IA”) issues this Guideline pursuant to section 133 of the Insurance Ordinance (Cap. 41) (the “Ordinance”), its principal function to regulate and supervise the insurance industry for the protection of existing and potential policy holders and its function to promote and encourage the adoption of proper standards of conduct and sound and prudent business practices by authorized insurers and licensed insurance intermediaries. This Guideline also takes into account the Insurance Core Principles, Standards, Guidance and Assessment Methodology (“ICP”) promulgated by the International Association of Insurance Supervisors, in particular ICP 19 which stipulates that the conduct of the business of insurance should ensure that customers are treated fairly.
- 1.2 The offering of Gifts (as defined in Section 2 of this Guideline) or other similar gratuities in the marketing, promotion or distribution of insurance products may unduly influence or otherwise distract customers when it comes to making informed decisions in relation to insurance products and the suitability of such products to meet their insurance needs and other circumstances. In view of this, this Guideline provides guidance on certain restrictions on the use of gifts and rebates which authorized insurers and licensed insurance intermediaries should follow when marketing, promoting or distributing insurance products classed as long term business.

## **2. Interpretation**

- 2.1 In this Guideline, unless the context otherwise specifies:
- (a) “Class A Product” means any contract of insurance in Class A (Life and annuity) of Part 2 of Schedule 1 to the Ordinance.
  - (b) “Class C Product” means any contract of insurance in Class C (Linked long term) of Part 2 of Schedule 1 to the Ordinance. These are usually known as Investment-linked Assurance Scheme products.
  - (c) “Class D Product” means any contract of insurance in Class D (Permanent health) of Part 2 of Schedule 1 to the Ordinance.

- (d) “Customer” bears the same meaning as policy holder or potential policy holder, as those terms are used in the Ordinance.
- (e) “Gift” may include any kind of gift, incentive, enticement or inducement, whether financial or non-financial, but does not include:
  - (i) the payment of fees or commissions to licensed insurance intermediaries; or
  - (ii) any discount of premiums, fees or charges payable under a contract of insurance (i.e. insurance policy), provided that the discount is expressly stated in the quotation, offer letter, promotional materials, insurance policy or the policy schedule, thereby reducing the amount of premium, fee or charge the policy holder is obliged to pay under the terms of the insurance policy.
- (f) “Permitted Gift” means a gift listed in the Annex to this Guideline.
- (g) “Rebate” means:
  - (i) in relation to premiums, any repayment made as a gratuity directly or indirectly to a customer of an amount of premium previously paid by a customer; or
  - (ii) in relation to commissions, any payment made as a gratuity directly or indirectly to a customer by a licensed insurance intermediary of part of the commission received by the licensed insurance intermediary.

2.2 Unless otherwise specified, words and expressions used in this Guideline shall have the same meanings as given to them in the Ordinance.

### **3. Relevant Regulatory Documents and Status of this Guideline**

3.1 This Guideline should be read, where appropriate, in conjunction with the relevant provisions of the Ordinance and all other relevant rules, codes, circulars and guidelines issued by the IA or other regulatory bodies, including but not limited to the following:

- (a) Guideline on Underwriting Class C Business (GL15) issued by the IA;
- (b) Guideline on Underwriting Long Term Insurance Business (other than Class C Business) (GL16) issued by the IA;
- (c) Code of Conduct for Licensed Insurance Agents issued by the IA;
- (d) Code of Conduct for Licensed Insurance Brokers issued by the IA;
- (e) Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission; and
- (f) All relevant rules, codes, circulars and guidelines administered or issued by the Hong Kong Monetary Authority in relation to gifts.

3.2 This Guideline does not have the force of law, in that it is not subsidiary legislation, and should not be interpreted in a way that would override the provision of any law. A non-compliance with the provisions in this Guideline would not by itself render an authorized insurer or licensed insurance intermediary liable to judicial or other proceedings. A non-compliance may, however, for example reflect on the IA's view of the continued fitness and properness of (i) the directors, controllers and key persons in relevant control functions of the authorized insurers to which this Guideline applies and (ii) the licensed insurance intermediaries to which this Guideline applies and (in the case of licensed insurance agencies and licensed insurance broker companies) their directors, controllers and responsible officers. The IA may also take guidance from this Guideline in considering whether there has been an act or omission likely to be prejudicial to the interests of policy holders or potential policy holders (albeit the IA will always take account of the full context, facts and impact of any matter before it in this respect).

#### **4. Scope of Application**

4.1 This Guideline applies to all authorized insurers carrying on long term business and all licensed insurance intermediaries carrying on regulated activities in relation to long term business.

## **5. Restrictions on offering Gifts**

### Class C Products

- 5.1 Authorized insurers and licensed insurance intermediaries should not directly or indirectly offer Gifts to customers when marketing, promoting or distributing Class C Products.

### Class A Products and Class D Products

- 5.2 Authorized insurers and licensed insurance intermediaries should not directly or indirectly offer Gifts to customers when marketing, promoting or distributing Class A Products or Class D Products, unless the requirements in paragraph 5.3 are satisfied.
- 5.3 A Gift for the purposes of paragraph 5.2 may be offered or made to a customer only if, according to a reasonable assessment made by the authorized insurer or licensed insurance intermediary, the Gift would not distract the customer from making an informed decision on whether or not to purchase the product. Accordingly, the responsibility lies with an authorized insurer and licensed insurance intermediary to make an assessment as to whether, in their reasonable opinion, the proposed Gift would distract a customer in making such informed decision. In making such assessment, the authorized insurer or licensed insurance intermediary should take account of all the circumstances in which the Gift is proposed to be offered or made (including the value of the Gift relative to the amount of premium payable by the customer in relation to the product and the manner in which the Gift is to be marketed or offered). This assessment may be made either on a case-by-case basis or, if Gifts are to be offered or made as part of a marketing campaign or programme, at the time the marketing campaign or programme is formulated.

### Permitted Gifts

- 5.4 As an exception to paragraphs 5.1 to 5.3 above, authorized insurers and licensed insurance intermediaries which offer Class A Products, Class C Products or Class D Products may offer Permitted Gifts as shown in the Annex, provided that the criteria referenced in the Annex in relation to each Permitted Gift is strictly adhered to.

## Miscellaneous

- 5.5 The restrictions in paragraphs 5.1 to 5.3 also apply:
- (a) in relation to the marketing, promotion or distribution of a range, group or collection of insurance products, where one or more of those insurance products is a Class A Product, Class C Product or Class D Product; or
  - (b) in relation to the offering or provision of any Gift by an authorized insurer to a licensed insurance broker representing a customer.

## **6. Premium Rebates and Commission Rebates**

- 6.1 Rebates of premiums or commissions should not be offered or paid to customers in relation to long term insurance products.
- 6.2 Paragraph 6.1 does not apply in relation to any rebates which are recorded in the contract of insurance, whether in the insurance policy, the policy schedule, the quotation or offer letter, or in any promotional material (the terms of which are incorporated by reference into the contract of insurance).

## **7. Procedures and Controls**

- 7.1 Authorized insurers, licensed insurance agencies and licensed insurance broker companies should maintain robust internal procedures and controls, including adequate record keeping (with such records to be made available to the IA upon request), to ensure that they and their staff, including but not limited to their licensed individual insurance agents, licensed technical representatives (agent) or licensed technical representatives (broker), where applicable, comply with this Guideline. Authorized insurers should also give due consideration to the requirements of this Guideline when considering their sales practices and their dealings with their licensed insurance agents and the licensed insurance broker companies with which they do business (as the case may be).

## **8. Commencement**

- 8.1 This Guideline shall take effect from 23 September 2019 (“Effective Date”).

## **9. Transitional Provision**

- 9.1 The IA recognizes that the authorized insurers and licensed insurance intermediaries to which this Guideline applies may require time to update their documentation, controls and processes to align with the requirements in this Guideline. A transitional period of 12 months from the Effective Date (i.e. from 23 September 2019 to 22 September 2020) will therefore apply in respect of certain requirements of this Guideline (“Transitional Period”). During this Transitional Period, authorized insurers, licensed insurance agents or licensed insurance brokers shall comply with the provisions in this Guideline unless an alternative requirement is identified in the table below. If an alternative requirement is identified in the table below, during the Transitional Period, the alternative requirement may be followed in place of the identified provision in this Guideline by the authorized insurer or licensed insurance intermediary as referenced in the table below.



Topics	Provisions in this Guideline	Alternative Requirements
Restrictions on offering Gifts	Section 5	<p>During the Transitional Period, as an alternative to the sections of this Guideline referenced in the column headed “Provision in this Guideline”,</p> <p>a) Authorized insurers which were carrying on long term business immediately prior the Effective Date and their licensed insurance agents (including, in the case of licensed insurance agencies, the licensed technical representatives (agent) of the agencies) may continue to comply with the “Guidance Note on Gifts, Promotions and Incentives for Class A and Class C Products” and also, in the case of licensed insurance agents, paragraph 80(1) of the Code of Practice for the Administration of Insurance Agents (7<sup>th</sup> version dated 1 March 2010);</p>
Procedures and Controls	Section 7	<p>b) Licensed insurance broker companies registered immediately prior to the Effective Date with the Hong Kong Confederation of Insurance Brokers (“CIB”) and their licensed technical representatives (broker) may continue to comply with Rule 7.13 of the Membership Regulations of the CIB (version dated 15 July 2015); and</p> <p>c) Licensed insurance broker companies registered immediately prior to the Effective Date with the Professional Insurance Brokers Association (“PIBA”) and their licensed insurance technical representatives (broker) may continue to comply with Rule 5(d) of the Membership Regulations of PIBA (version dated 1 February 2015),</p> <p>and the referenced documents are adopted for the purposes of the Transitional Period.</p>

**Permitted Gifts**

For the purposes of this Annex, “Relevant Products” means a Class A Product, Class C Product or Class D Product.

- (a) Allocation of bonus fund units and other similar product specific bonuses in respect of any Relevant Products (where applicable).
- (b) Gifts that are offered for “relationship building” purposes and are not tied to the marketing, promotion or distribution of any Relevant Products.
- (c) Gifts that can be redeemed at a later date under a customer loyalty programme through the accumulation of points provided that the number of points earned is not directly or indirectly linked to the volume or value of sales (or both) of any Relevant Products or, in the case of a licensed insurance broker, are not directly or indirectly linked to the distribution volume or a pre-determined level of sales of any Relevant Products.
- (d) Provision of sponsorship and support for customer information seminars, compliance support and financial planning software. The level of sponsorship and support should not be in the form of subsidy or cash equivalents and should not be directly or indirectly linked to the distribution volume or a pre-determined level of sales of any Relevant Products.
- (e) Brand building campaigns such as lucky draws that are open to all policy holders and potential policy holders and are not tied to the marketing, promotion or distribution of any Relevant Products.
- (f) Ancillary services that are relevant and reasonably found in any Relevant Products at no extra charge, such as medical check-ups, medical consultancy services or emergency SOS services.

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