

Guidance Note on Dealing with Referral Business

According to Membership Regulation 3.5, the General Committee is issuing this Guidance Note on Dealing with Referral Business in order to clarify the existing regulations for the benefits of Members.

Definitions

Insurance Brokers may receive referral business from a third party, namely “Referrer”.

For sake of clarity and in the context of insurance broking business, “Referrers” mean:

- those persons who are not registered as Chief Executive or Technical Representatives of the Members concerned and/or
- those persons or companies who are not authorized insurance brokers in Hong Kong and/or
- those authorized insurance brokers in Hong Kong who are not permitted to be engaged in the particular line of business to which the referral relates,

but introduce any insurance business to the Members.

Any duly authorized representative of a client, i.e. trustee or person given the power of attorney to effect insurance contracts (such as a banker, lawyer, or accountant), shall be considered to be “the client” for purposes of this Guidance Note.

Concerns

When Members are dealing with referral business, CIB is concerned with the following:

1. Whether the Referrers have held themselves out as Members’ representative in or from Hong Kong but when in fact they are not,
2. Whether the Members have, by their own conduct:
 - 2.1 Permitted such persons to act as their Technical Representatives but failed to register them; or
 - 2.2 Encouraged or permitted un-authorized practice of insurance broking in or from Hong Kong.

To avoid being entangled in any possible regulatory, statutory or legal issues arising therefrom, Members should develop and adopt appropriate procedures, including but not limited to the following:

(a) Dealing Directly with Clients

Once business has been referred, all further dealings, i.e. advising on insurance matters or arranging and/or negotiating insurance contracts, with clients in or from

Hong Kong must be handled by the Member's Chief Executive and/or Technical Representatives who have been duly registered.

Having said so, in case those overseas referrers are deemed to be able to legally practise as insurance intermediaries in respective jurisdictions, the proposition of Member having to deal directly with Client will not be applicable.

Whenever it has come to the Members' knowledge that the Referrers do negotiate or arrange insurance contracts or advise on insurance matters in or from Hong Kong, the Members should draw a clear line between themselves and the Referrers. Wherever appropriate they should explicitly and in writing:-

- explain to clients the fact that the Referrers do not represent the Members;
- disclaim liability of any conduct by the Referrers.

Members should keep adequate records, sufficient to account for its effort in direct dealings with this type of clients or in conducting due diligence on the legal capability of referrers to practise as insurance intermediaries in respective jurisdictions. Such record should be able to be reproduced as evidence as required to facilitate investigation.

Members who have failed to do so would be considered to have relied upon the Referrers in advising clients or prospective clients on matters of insurance and/or in negotiating or arranging insurance contracts in or from Hong Kong.

Such matters will be attended by the Disciplinary Committee for a charge against the Member and/or its Chief Executive and/or its Technical Representative of breaching Membership Regulation 7.6 which provides that:

“A Member shall ensure that any person who provides advice to a policy holder or potential policy holder on insurance matters for the Member, or negotiates or arranges contracts of insurance in or from Hong Kong on behalf of the Member for a policy holder or potential policy holder shall be registered with the Confederation as its Chief Executive or its Technical Representatives.”

The fact that the Referrer is an insurance agent does not obviate the need for Members to deal directly with clients. This is because in these circumstances, insurance agents act for insurers but not for the insurance broker.

A Referrer who is not an authorized person but acting as an insurance intermediary in or from Hong Kong is acting illegally in breach of the Insurance Companies Ordinance.

The need for Members to deal directly with clients is particularly important when the business referred is in relation to long term insurance business. The Guidance Note on Prevention of Money Laundering and Terrorist Financing issued by the Insurance Authority (“IA”) has specified that customer identification is one of the key responsibilities of insurance institutions. Any Member, or its Chief Executive or Technical Representatives, who has failed to comply with the said IA’s Guidance Note will need to explain the reason for such non-compliance if called upon to do so by the Disciplinary Committee in an investigation.

(b) Handling of Insurance Premium and/or Clients' Monies

Handling of insurance premium and/or clients' monies in relation to insurance contracts is considered a constituent of the negotiation and/or arrangement of insurance contracts.

While ultimately the client may wish to settle premium via a Referrer or other third party, Members should alert clients of the appropriate means of settling premium payment, i.e. remitting funds directly to brokers or insurers or making cheques payable to brokers or insurers but not to any other party.

Where Members offer any credit periods to Referrers for premium settlement, or where Members allow or instruct Referrers to keep clients' monies intended for premium settlement, and the same is revealed in either their books of accounts or any other documentation, this may be considered to be sufficient proof that the Members have breached either:

- (1) the Code of Conduct for failing to place the interests of clients before all other considerations as a result of having potentially exposed clients to risks arising from Referrers defaulting or unnecessarily delaying premium settlement with insurers; and/or
- (2) Membership Regulation 7.6 (i.e. requirement to register person who negotiates or arranges contracts of insurance).

Charges will be brought against the Member and/or its Chief Executive and/or its Technical Representative which will be attended by the Disciplinary Committee.

In this regard, defalcation or failure of Referrers to account for any monies collected by them from clients may also render the Member liable for losses sustained by the clients.

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