Guidance Note on Gifts, Promotions and Incentives for Class A and Class C Products

1. Introduction

1.1. In September 2009, the Securities and Futures Commission ("SFC") launched a consultation process on its package of proposals to strengthen the regulatory regime for investment products and conduct of intermediaries. In May 2010 the SFC published its Consultation Conclusions on Proposals to Enhance Protection for the Investing Public ("SFC Consultation Conclusions") maintaining its view that there should be restrictions on the offering of gifts when distributors promote a specific investment product to investors.

1.2. Following the SFC Consultation Conclusions, the SFC amended its Code of Conduct for Persons Licensed by or Registered with the SFC ("SFC Code of Conduct") to include, with effect from September 2010, a specific prohibition on licensed or registered persons offering any gift other than a discount of fees or charges when promoting a specific investment product.

1.3. The Hong Kong Monetary Authority ("HKMA"), through its circulars dated 13 July 2009 and 14 March 2011 (the "HKMA ILAS Circulars"), introduced a similar restriction on authorised institutions offering financial or other incentives (e.g. gifts) from promoting investment-linked assurance scheme ("ILAS") products.

1.4. The Insurance Authority ("IA") has asked the Life Insurance Council of the Hong Kong Federation of Insurers ("HKFI") to produce this Guidance Note updating its requirements for the sale and promotion of Class A products that have a significant investment or savings component and Class C products ("Insurance Investment Products") by authorised insurers who are HKFI members ("Member Companies").

2. Purpose

2.1 This Guidance Note:

2.1.1 confirms that the restriction on the offering of any gift (other than a discount of fees or charges) applies to Member Companies promoting a specific Insurance Investment Product to a policyholder or prospective policyholder;

2.2.2 clarifies the position with regard to Member Companies offering incentives or inducements to insurance brokers for selling Insurance Investment Products.

3. Prohibition on Use of Gifts

3.1 In promoting a specific Insurance Investment Product to a policyholder or prospective policyholder, a Member Company should not offer any gift other than a discount of fees or charges.

3.2 This Guidance Note applies only to Insurance Investment Products. It does not apply to stand-alone risk protection insurance products including, without limitation, those that have only a small investment or savings component such as medical, term or critical illness insurance. Where a gift is offered for this type of product, the gift should be relevant to that product (e.g. a free medical check-up) and should not be excessive relative to the amount of premium payable for that product.

4. Effective Date

4.1. This Guidance Note applies with effect from 1 January 2012.

4.2. This Guidance Note does not apply to gifts offered or bonus or incentive schemes in operation before 1 January 2012. Bonus or incentive schemes in force on or after 1 April 2012 must comply with this Guidance Note.

5. Use of gifts, promotions and incentives for Insurance Investment Products

Both the SFC Consultation Conclusions and the HKMA ILAS Circulars provide guidance on the reason for prohibiting the offering of gifts for the promotion of investment products. The SFC Consultation Conclusions state that the restriction on the offering of a gift to promote a specific investment product is required to help protect investors from being distracted by the gift without paying sufficient attention to the features and risks of that investment product. The HKMA ILAS Circulars state that the rationale for the restriction on the offering of gifts for the promotion of ILAS products is to avoid distracting customers' attention from the nature and risks associated with ILAS products. The same rationale applies to the restriction on Member Companies' offering a gift (other than a discount of fees or charges) to promote a specific Insurance Investment Product. This Guidance Note should be read in that light.

6. What types of gifts, promotions and incentive are permitted?

6.1. Gifts, promotions or incentives that do not influence or seek to influence the selection by the policyholder, prospective policyholder or independent distributor of a specific Insurance Investment Product are permitted. These include, but are not limited to:

6.1.1. allocation of bonus fund units, reduction in charges or fees or other similar product specific bonuses or discounts;

6.1.2. gifts that are offered for "relationship building" purposes;

6.1.3. gifts that can be redeemed at a later date under a customer loyalty programme through the accumulation of points provided the number of points earned are not directly or indirectly linked to the volume or value of sales (or both) of a specific Insurance Investment Product or, in the case of an insurance broker, are not directly or indirectly linked to the distribution volume or a pre-determined level of sales of a specific Insurance Investment Product;

6.1.4. providing sponsorship and support for client information seminars, compliance support and financial planning software. The level of sponsorship and support should not be in the form of subsidy or cash equivalent and should not be directly or indirectly linked to the distribution volume or a pre-determined level of sales of a specific Insurance Investment Product;

6.1.5. providing training to satisfy continuous professional development requirements. The same conditions as described in 6.1.4 would also apply ; and

6.1.6. brand building campaigns such as lucky draws that are open to all policyholders or prospective policyholders and are not tied to the purchase of a specific Insurance Investment Product;

6.1.7. ancillary services that are relevant and commonly found in life insurance products at no extra cost, such as medical check-ups, medical consultancy services or emergency SOS services; however, these should not be excessive relative to the amount of premium payable for the product.

In providing any of the permitted gifts, promotions or incentives set out in paragraph 6.1 above to an insurance broker, Member Companies should ensure they do not create a conflict of interest in the duty that insurance broker owes to the policyholder (or potential policyholder).

7. Insurance Intermediaries

Insurance intermediaries (i.e. insurance agents and insurance brokers) should note as regards the offering of gifts in connection with Insurance Investment Products they are obliged to comply with the rules and regulations of the relevant regulatory authorities or approved bodies applicable to them including, without limitation, those set out below.

7.1. *Insurance Agents*

7.1.1. Paragraph 80(l) of the Code of Practice for the Administration of Insurance Agents states that a Registered Person [i.e. insurance agents, insurance agencies and their responsible officers and technical representatives] shall:
"not pay or offer to pay any rebate of premium, commission or other incentive not specified in the policy as an inducement to any potential long term insurance policyholder unless specifically authorised by a Principal [i.e. the relevant insurer]."

7.2. *Insurance Brokers*

7.2.1. Rule 5 of the Rules and Regulations of the Professional Insurance Brokers Association ("PIBA") states that the offer of any payment, allowance or gift as an inducement to any prospective insured to insure through the offerer should be construed as a misconduct under the Rules and Regulations of PIBA.

7.2.2. Rule 7.13 of the Membership Regulations of the Hong Kong Confederation of Insurance Brokers ("CIB") prohibits its members from offering and/or giving any gift when promoting specific insurance products to clients. However, this regulation does <u>not</u> prohibit CIB members from offering any discount on fees or charges or rebating brokerage or commission and it does not prohibit the offering of a gift for brand promotion, relationship building or other purposes not related to promotion of a specific insurance product.

7.2.3. Member Companies should note that an insurance broker is the agent of the policyholder (or potential policyholder) and not the agent of the insurer. The insurance broker acts on behalf of the policyholder (or potential policyholder) in arranging insurance to meet their insurance needs and is independent from the insurer.

Summary

Member Companies must maintain robust internal procedures to ensure they comply with this Guidance Note and that they give due consideration to the requirements of this Guidance Note when considering their sales practices and those of their insurance agents and brokers with which it deals. Member Companies (and their management, directors and controllers) who breach may no longer satisfy the "fit and proper" requirement under the Insurance Companies Ordinance and may be liable to regulatory action.

Life Insurance Council, The Hong Kong Federation of Insurers
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