

The Hong Kong Federation of Insurers
Guidelines on the Definition of "Insurance Agent"
under the Insurance Companies Ordinance (Cap. 41)
("the Ordinance")

INTRODUCTION

These guidelines, which have been endorsed by the Insurance Authority, are to assist members in determining whether a person submitting business is an insurance agent and thus required to be appointed and registered in accordance with the Code of Practice for Administration of Insurance Agents ("the Code"). Should there be any legal disputes, however, it will be the decision of the courts that shall prevail.

Whilst considering these guidelines, always bear in mind the intentions of the Code and the legislation:

- The public should know who they are dealing with and for whom these people are acting;
- The public should have a clear path of recourse for acts of misrepresentation or negligence, and;
- People giving advice should be adequately qualified to do so.

GUIDELINES

The Ordinance defines an insurance agent as "a person who holds himself out to advise on or arrange contracts of insurance in or from Hong Kong as an agent or sub-agent of one or more insurers". Thus, there are two key elements in the definition of insurance agent, "advising" and "arranging".

1. Advising

This is the most important element of the definition, and should be given the most significance in deciding whether a person is an insurance agent. If any other than the most general forms of advising are present in the person's activities, they should be considered an insurance agent. Below is a list of activities which might be considered as advising. Please note that this list is not exhaustive and there are other similar activities which would constitute giving advice.

- Advising on the suitability of a policy for the specific needs of a client or prospect.
- Interpreting coverages, benefits, exclusions or other language in an insurance policy or promotional materials.
- Giving advice as to the level(s) of coverage required.

2. Arranging

If a person is involved in negotiating an insurance contract or preparing an insurance plan of benefits, the person is almost certainly an insurance agent. If the person merely handles clerical preparation of and delivers certificates against a master contract, that would likely not constitute "arranging".

3. Other Factors

The following factors, to the extent that the information is available, may to a lesser degree assist in deciding whether the person is an insurance agent.

- a) Time Spent - A person who spends a significant proportion of his time soliciting insurance business is probably an insurance agent.
- b) Remuneration - If a significant proportion of a person's overall compensation relates to insurance sales, that strengthens the likelihood that the person is an insurance agent.
- c) Holding-Out - If a person, by title, stationery, company name, or other explicit means conveys to the public that he is an insurance agent, he should be registered.
- d) Self-Declaration - If the person proposing to submit business believes himself to be an insurance agent and seeks appointment and registration, a member should accept that determination even if the member feels that the person may not meet the definition.
- e) Corporate-Entity - Where the overall activities of a corporate entity appear to support the definition of insurance agent, yet no particular person's job description rises to the level where the definition fits, a prudent course of action for the avoidance of doubt may be to advise appointment and registration as a corporate agent only.

Attached are some examples of how the above guidelines might apply in a few specific situations.

These guidelines and examples are merely a starting point. They will be expanded as we gain experience and confront actual situations. Ultimately, the good sense and judgement of our members will be the ultimate test. If we are applying reasonable criteria in a good faith manner, that is the best insulation against sanctions.

Examples

Category	Situation	Likely to be Considered Insurance Agent
Insurer	- Salaried Customer Service staff answering a wide variety of customer inquiries without attempting to solicit business.	No
	- Management personnel not directly involved in sales nor compensated on sales production.	No
	- Employee who makes appointments on behalf of sales people.	No
	- Dedicated Sales staff compensated largely on production.	Yes
	- Employee who, in addition to performing job duties, sells his company's insurance to friends, relatives or others and for which he receives commission.	Yes
Bank	- Loan officer explaining the mortgage requirement for fire insurance and rendering assistance to sales staff in arranging standard cover if mortgagee so chooses.	No
	- Staff distributing brochures without advice.	No
	- Tellers or other employees asking customers if they want insurance and referring them to bank's insurance department or providing a brochure.	No
	- Letter and brochure mailed by bank to customers, asking them to consider an insurance product but referring them to insurers if they need any advice.	No
	- Simple collection of premium with no advice.	No
	- Sales staff giving direct advice.	Yes
Travel Agent	- Displaying brochures of available products.	No
	- Delivering certificates under a non-negotiable master contract.	No
	- Offering general advice such as the importance of travel insurance or that the traveller should consider it.	No
	- Offering specific advice on the coverages, benefits or limitations of a particular policy.	Yes

Category	Situation	Likely to be Considered Insurance Agent
Automobile Dealership	- Salesman refers car buyers to dealership insurance office or department without advice.	No
	- Dealership or salesman refers car buyers to insurer, agent or broker without advice.	No
	- Dealership establishes an insurance office or department.	Yes
	- Dealership or salesman providing specific insurance advice.	Yes
Accountants/ Solicitors/ Financial Advisors	- Recommending the need for insurance and referring a client to an agent or broker without advising or arranging.	No
	- Referring a client to an insurer to effect a fire policy in respect of a property purchase, without advising or arranging.	No
	- Giving direct advice, negotiating and submitting an insurance application.	Yes