



PRIVATE & CONFIDENTIAL

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To : All Members
From : Jase Yiu – Chief Administrative Executive
Date : 17 October 2012
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Dear Chief Executives / Members,

Implementation of "Remuneration Disclosure" effected from 15 April 2013

Update

Further to our memos dated 11 January (MEMO/004/2012) and 27 April 2012 (MEMO/020/2012) respectively on the issue of remuneration disclosure, we would like to advise you of its latest development as follows:-

1. In response to the landmark judgment of Judge Reyes given in a High Court case *Hobbins* in early 2012, PIBA has sought legal advice on the appropriate course of action to be taken. The Hong Kong Confederation of Insurance Brokers ("CIB") and the Hong Kong Federation of Insurers ("HKFI") have taken similar action in this regard. Exchange of legal advices sought and discussions among the three organizations took place afterwards, and eventually a Joint Task Force ("JTF") was formed in late April this year at the request of the Insurance Authority in an attempt to work out an agreeable and practical solution to this matter.
2. With fruitful exchange of ideas and views around the table in a series of JTF meetings, consensus has been reached among the parties that, as a minimum good practice for remuneration disclosure, a broker member should prepare and include in its client agreement a Form of Disclosure in the following manner:

[Broker Name] (the "Company") is remunerated for its services by the receipt of commission paid by insurers. Your agreement to proceed with this insurance transaction shall constitute your consent to the receipt of commission by the Company.
3. Unless the insurance brokers have already entered into some kind of a compliant client agreement setting out clearly therein the express levels of fee or commission, they are to include a Form of Disclosure in specific documents to clients.
4. For insurance business transacted electronically, e.g. web-based or telemarketing, such wordings should appear on broker member's entrance webpage or be included in its telemarketing script respectively.

Implementation of "Remuneration Disclosure"

5. To implement "Remuneration Disclosure", which applies to all lines of insurance business, a resolution was passed at PIBA 5th EC Meeting held on 16 October 2012 to amend and add a new paragraph 3A into PIBA's Membership Rules and Regulations by virtue of Article 66 of the Articles of Association of PIBA (bilingual copy of which is enclosed).

Timeliness for implementation

6. Our broker members will have about six months for preparation before such implementation takes effective, namely on **15 April 2013**.

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香港中環德輔道中141號中保集團大廈2507-8室 Room 2507-8, China Insurance Group Building, 141 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2869 8515 傳真 Fax: (852) 2770 2372 網址 Website: www.piba.org.hk 電郵 E-mail: info@piba.org.hk



香港專業保險經紀協會

PROFESSIONAL INSURANCE BROKERS ASSOCIATION

7. Simultaneously, in line with the actions taken by CIB and PIBA, HKFI will require their insurer members to add appropriate clauses on their own documents for remuneration disclosure, after which Brokers Declaration as recommended by HKFI (in October 2011) will no longer be required.
8. In cases where commission is higher than the range of brokerage commission customarily paid for a particular class of insurance or there is also other form of remuneration paid by insurers (including but not limited to volume or profit commissions, service fees or marketing allowances), then further disclosure and express consent from clients may be required for the purpose of complying with the provisions of the Prevention of Bribery Ordinance ("PBO").
9. For compliance with PBO, broker members' attention is drawn to PIBA's methodology of disclosure as circulated in 2011 and in any event, in case of doubt, broker members should seek their own legal advice.
10. Meanwhile, PIBA and CIB are working together on an enhanced and uniformed methodology for voluntary adoption by broker members of both associations.
11. Broker members are advised to start preparing for the implementation of Remuneration Disclosure, which may include, but not limited to:-
 - (1) Joint compliance, legal and operational executive review of the implications;
 - (2) Legal compliance consideration and recommendation for internal operational compliance;
 - (3) Approval from management of the company or relevant authority within your establishment;
 - (4) Consideration and agreement of a detailed implementation plan;
 - (5) Briefing, agreement and implementation of IT system programming and other logistics, e.g. printing and stationery;
 - (6) Staff training seminars;
 - (7) Client's briefing seminars (if necessary).
12. PIBA and CIB are organizing briefing sessions for broker members of both associations on these matters so as to make them a better preparation for the implementation. Details of the briefing sessions will be announced as soon as practicable.
13. In the meantime, if there are any enquires in respect of this new requirement, please send to PIBA Secretariat (by fax: 2770 2372 or email: info@piba.org.hk). Any enquires will be carefully considered and addressed either via memo or at the briefing sessions.

Best Regards,


Jase Yiu
Chief Administrative Executive

Encl: **Remuneration Disclosure Practice** (Bilingual copy)

cc Office of the Commissioner of Insurance
The Hong Kong Federation of Insurers
The Hong Kong Confederation of Insurance Brokers

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香港中環德輔道中141號中保集團大廈2507-8室 Room 2507-8, China Insurance Group Building, 141 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2869 8515 傳真 Fax: (852) 2770 2372 網址 Website: www.piba.org.hk 電郵 E-mail: info@piba.org.hk



3A. Remuneration Disclosure

(a) In respect of compliant client agreements

Where there exists a form of client agreement whether as a broker service agreement, brokers terms of business agreement or similar and where such agreement has been signed by the client and sets out clearly therein the express levels of fee or brokerage remuneration to be received by the Member then the provisions of 3A(b) and (c) below are deemed to have been complied with subject to the following:

- (i) related correspondence containing the remuneration terms is acceptable provided it is signed by the client;
- (ii) this provision shall apply to insurance transactions which occur within a period of three years from the date of signing of the relevant client agreement and/or related correspondence; and
- (iii) deemed compliance in respect of 3A(b) and (c) below will not apply where the client agreement and/or related correspondence does not clearly specify that any brokerage to be received under the terms of the client agreement and/or related correspondence will be paid to the Member by the Insurer.

(b) In respect of General Insurance Business which is not deemed to comply with 3A(a)

Members shall include the Form of Disclosure set out below

- (i) in client agreements whether as a broker service agreement, brokers terms of business or similar, and where the validity period does not exceed three years and the express levels of fee or brokerage remuneration to be received by the Member are not included; or
- (ii) for each and every other insurance transaction, in either the formal proposal or the quotation, cover note, the premium debit note or covering letter, whichever be issued earlier by the Member to the client.

The required Form of Disclosure shall be as follows:-

"[Broker Name] (the "Company") is remunerated for its services by the receipt of commission paid by insurers. Your agreement to proceed with this insurance transaction shall constitute your consent to the receipt of commission by the Company."

(c) In respect of Long Term Insurance Business which is not deemed to comply with 3A(a)

Members shall include the Form of Disclosure set out below

- (i) in client agreements whether as a broker service agreement, brokers terms of business or similar, and where the validity period does not exceed three years and the express levels of fee or brokerage remuneration to be received by the Member are not included; or
- (ii) in the questionnaire used by the Member for conducting the "needs analysis" of the client, which shall be copied to the client prior to any life insurance application form being filled in; or

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- (iii) for each and every other Long Term Insurance transaction, in either the formal proposal, quotation, premium debit note or covering letter, whichever document is the first one issued and sent by the Member to the client.

The Form of Disclosure shall be as follows:-

"[Broker Name] (the "Company") is remunerated for its services by the receipt of commission paid by insurers. Your agreement to proceed with this insurance transaction shall constitute your consent to the receipt of commission by the Company."

- (d) In respect of Insurance Business transacted electronically

- (i) In respect of web-based insurance transactions, Members shall build into their systems at the entrance webpage for online application, display of the following Form of Disclosure and users are required to check a box as having read it before they are allowed to proceed with the application;

"[Broker Name] (the "Company") is remunerated for its services by the receipt of commission paid by insurers. Your agreement to proceed with this insurance transaction shall constitute your consent to the receipt of commission by the Company."

- (ii) In respect of telemarketing insurance transactions, inwards or outwards, Members shall include the following Form of Disclosure in the telemarketing script, record at a good quality all telemarketing calls, and make the telephone recordings available to relevant self-regulatory organization and/or relevant insurers for compliance audit when required.

"[Broker Name] (the "Company") is remunerated for its services by the receipt of commission paid by insurers. Your agreement to proceed with this insurance transaction shall constitute your consent to the receipt of commission by the Company."

Note 1: When a client asks the Member about the extent of remuneration, it is incumbent upon the Member to provide that information to the best of its knowledge, either in a maximum percentage of the premium paid (or to be paid) for the policy concerned or in a maximum dollar amount. A Member who declines to provide such details of remuneration following a request would be committing a breach of this requirement.

Note 2: Where the commission is higher than the range of brokerage commission customarily paid for the particular class of insurance or includes any other form of remuneration including but not limited to volume or profit commissions, service fees or marketing allowances paid by the insurers, then additional measures for disclosure and express consent may be required to comply with the provisions of the Prevention of Bribery Ordinance. See Note 4.

Note 3: In cases where the insurer sets a net premium and it is the Member who is charging the client a commission as remuneration for work done, as it is not received out of the premium charged by the insurer, the Prevention of Bribery Ordinance issues do not arise but disclosure is still required.

Note 4: Members may wish to seek their own legal guidance when addressing all or any of the issues above.

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[中譯本，解釋以英文版本作準]

3A. 酬金披露

(a) 有關合規客戶協議

若存在某種形式的客戶協議，不論是經紀服務協議、經紀商務條款協議或類似協議，以及若該協議經由客戶簽署並在其中清楚列明會員公司將收取的費用或經紀酬金的明確水平，則在符合下列條文規定下，下文 3A(b)及(c)項的條文即視作已獲遵從：

- (i) 載有酬金條款的有關往來文書是可接受的，惟其須由客戶簽署；
- (ii) 此項條文應適用於在相關客戶協議及/或有關往來文書的簽署日期起計三年期間內發生的保險交易；及
- (iii) 若客戶協議及/或有關往來文書沒有清楚指明，根據客戶協議及/或有關往來文書的條款須予收取的任何經紀佣金將會由保險公司支付予會員公司，則有關下文 3A(b)及(c)項的條文，仍須遵守。

(b) 有關不被視作遵從 3A(a)項條文的「一般保險業務」

會員公司須將下文列出的「披露條款」包括：

- (i) 在客戶協議內，不論是經紀服務協議、經紀商務條款協議或類似協議，而若有關協議的有效期不超過三年，且其中並未列出會員公司將收取的費用或經紀佣金的明確水平；或
- (ii) 就每宗其他保險交易而言，在正式建議書、報價單、臨時保單、保費繳付通知書或附函內，以會員公司較早向客戶發出者為準。

所規定的「披露條款」內容如下：

「[經紀公司名稱]（「該公司」）藉向保險公司收取的佣金，作為其所提供服務的酬金。閣下同意進行是項保險交易，即構成閣下同意該公司收取佣金。」

(c) 有關不被視作遵從 3A(a)項條文的「長期保險業務」

會員公司須將下文列出的「披露條款」包括：

- (i) 在客戶協議內，不論是經紀服務協議、經紀商務條款協議或類似協議，而若有關協議的有效期不超過三年，且其中並未列出會員公司將收取的費用或經紀酬金的明確水平；或
- (ii) 在會員公司為客戶進行「需要分析」時所使用的問卷內，而會員公司須在客戶填寫任何壽險申請書之前已向客戶提供該問卷副本；或

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香港中環德輔道中141號中保集團大廈2507-8室 Room 2507-8, China Insurance Group Building, 141 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2869 8515 傳真 Fax: (852) 2770 2372 網址 Website: www.piba.org.hk 電郵 E-mail: info@piba.org.hk



- (iii) 就每宗其他長期保險交易而言，在正式建議書、報價單、保費繳付通知書或附函內，以會員公司最先向客戶發出及送交者為準。

「披露條款」內容如下：

「[經紀公司名稱]（「該公司」）藉向保險公司收取的佣金，作為其所提供服務的酬金。閣下同意進行是項保險交易，即構成閣下同意該公司收取佣金。」

(d) 有關以電子商貿方式處理的「保險業務」

- (i) 就網上保險交易而言，會員公司須在其系統的網上投保介面的入口網頁上，建立並展示以下的「披露條款」，而用戶須先剔選空格以示已閱讀該「披露條款」，方可獲准進行投保程序；

「[經紀公司名稱]（「該公司」）藉向保險公司收取的佣金，作為其所提供服務的酬金。閣下同意進行是項保險交易，即構成閣下同意該公司收取佣金。」

- (ii) 就電話促銷的保險交易而言，不論是客戶撥入或會員公司撥出的電話，會員公司須將以下「披露條款」包含在電話促銷文稿內，對所有電話促銷對話進行質素良好的錄音，並在有需要時向相關自律監管機構及/或相關保險公司提供電話錄音記錄，以進行合規審核。

「[經紀公司名稱]（「該公司」）藉向保險公司收取的佣金，作為其所提供服務的酬金。閣下同意進行是項保險交易，即構成閣下同意該公司收取佣金。」

註一：當客戶向會員公司查詢酬金的額度時，會員公司有責任，以就有關保單已繳付(或將繳付)保費的最高百分比或最高金額形式，提供盡其所知的該等資料。倘若在客戶作出查詢後，會員公司拒絕提供該等酬金的詳情，即屬違反此規定。

註二：若佣金高於就特定保險類別慣常支付的經紀佣金的幅度，或者若佣金包含其他形式的酬金，包括但不限於由保險公司支付的業績或利潤佣金、服務費或市場推廣津貼，則可能須要採取額外披露措施及取得明確的同意，以符合《防止賄賂條例》的條文。見註四。

註三：倘若保險公司設定淨保費，而會員公司向客戶收取佣金，作為其所執行工作的酬金，由於所收取的佣金並非出自保險公司所收取的保費，故不會引發涉及《防止賄賂條例》的問題，惟仍須作出披露。

註四：會員公司在處理以上所有或任何事項時可自行尋求法律指引。

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