

## **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) when promoting investment-linked assurance scheme ("ILAS") products.
- 1.4. In January 2012, at the request of the Insurance Authority, the Life Insurance Council of the Hong Kong Federation of Insurers ("HKFI") issued a Guidance Note on Gifts, Promotions and Incentives for Class A and Class C Products (the "2012 Guidance Note"). The 2012 Guidance Note updated the requirements for the sale and promotion of Class A products which have a significant investment or savings component and Class C products by authorised insurers who are HKFI members ("Member Companies").
- 1.5. This Guidance Note further updates the requirements for the sale and promotion of (i) Class A products which have a significant savings component; and (ii) Class C products ("Insurance Investment / Savings Products") by Member Companies and supersedes the 2012 Guidance Note.
- 1.6. In principle, Member Companies are expected to respect the principles, intention and spirit of the requirements stipulated in this Guidance Note and be accountable for major deviations.

### **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 Insurance Investment / Savings Products to a policyholder or prospective policyholder; and
  - 2.2.2. clarifies the position with regard to Member Companies offering incentives or inducements to insurance brokers for selling Insurance Investment / Savings Products.

3. ***Prohibition on the Use of Gifts***

- 3.1. A Member Company should not offer any gift (other than a discount of fees or charges) to a policyholder, prospective policyholder or insurance broker in connection with the promotion or sale of any Insurance Investment / Savings Product.
- 3.2. This Guidance Note applies only to Insurance Investment / Savings Products. For the purposes of this Guidance Note, a Class A product will be considered to have a significant savings component if the amount payable to the policyholder on maturity is at least 100% of the total amount of the premiums paid by the policyholder under the policy.
- 3.3. This Guidance Note does not apply to stand-alone risk protection insurance products including, without limitation, those that have only a small savings component such as medical, term or critical illness insurance. Where a gift is offered for these types of products, the gift should be relevant to those products (e.g. a free medical check-up) and should not be excessive relative to the amount of premium payable for those products.

4. ***Effective Date***

- 4.1. This Guidance Note applies with effect from 1 January 2014.
- 4.2. This Guidance Note does not apply to gifts offered or bonus or incentive schemes in operation before 1 January 2014. Bonus or incentive schemes in force on or after 1 January 2014 must comply with this Guidance Note.

5. ***Rationale for the Prohibition on the Use of Gifts***

- 5.1. 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.
- 5.2. 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.
- 5.3. 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.
- 5.4. The same rationale applies to the restriction on Member Companies offering a gift (other than a discount of fees or charges) to promote any Insurance Investment / Savings Product. This Guidance Note should be read in that light.

## 6. ***What Types of Gifts, Promotions and Incentives are Permitted?***

- 6.1. Gifts, promotions or incentives that do not influence or seek to influence the selection by the policyholder, prospective policyholder or insurance broker of any Insurance Investment / Savings 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 offered in respect of any Insurance Investment / Savings Product (where applicable);
  - 6.1.2. gifts that are offered for "relationship building" purposes and are not tied to the purchase of any Insurance Investment / Savings Product;
  - 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 any Insurance Investment / Savings 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 any Insurance Investment / Savings 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 any Insurance Investment / Savings Product;
  - 6.1.5. providing training to satisfy continuous professional development requirements (when the same conditions as described in 6.1.4 would also apply);
  - 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 any Insurance Investment / Savings Product; and
  - 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 to an insurance broker, Member Companies should ensure they do not create a conflict of interest in the duty that the insurance broker owes to the policyholder (or potential policyholder).

- 6.2. For the avoidance of doubt, gifts, promotions or incentives offered to a policyholder, prospective policyholder or insurance broker in connection with the sale or promotion of a range, group or collection of insurance products are not permitted if these:
- 6.2.1. include (a) a Class A product that has a significant savings component; and/or (b) a Class C product; and
  - 6.2.2. will influence or seek to influence the selection by the policyholder, prospective policyholder or insurance broker of any Insurance Investment / Savings Product.

## 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 / Savings 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 Membership 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 Membership 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 not 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 they deal. Member Companies (and their management, directors and controllers) who are in breach may no longer satisfy the "fit and proper" requirement under the Insurance Companies Ordinance and may be liable to regulatory action.