

PROFESSIONAL INSURANCE BROKERS ASSOCIATION LTD.

MEMBERSHIP REGULATIONS

**(First made in October 2003 and
was amended on 15 April 2013)**

PROFESSIONAL INSURANCE BROKERS ASSOCIATION LIMITED
MEMBERSHIP REGULATIONS

1. Membership

The Association shall consist of company memberships as defined in the Articles of Association of which include corporations.

Members of the Association, being "insurance brokers", professionally represent buyers of insurance contracts with a view of the conclusion of such contracts and owe primary fiduciary responsibility to those buyers. It is also the duty of the insurance broker assist, when appropriate, in the administration and performance of such contracts, and in particular, in the event of a claim.

1A. Nominated Accounts

For the purpose of these regulations, the term "Nominated Accounts" shall mean one or more separate cheque accounts, deposit accounts or other interest bearing facilities offered by institutions duly authorised under the Banking Ordinance, any of such institutions' overseas branches or any bank which would be an "exempted person" for the purpose of paragraph 8 of Schedule I to the Money Lenders Ordinance, each of which shall be designated as a "Nominated Accounts" to hold all money due to third parties, including clients, insurers, re-insurers and other insurance intermediaries.

2. Eligibility of Membership

A company is eligible for membership of the Association provided it has satisfied the Membership Sub-Committee of the Association:-

- (a) that the principal business activity of the company applying for membership is the activity of insurance broking. Other business which are, in the opinion of the Sub-Committee, related to and consistent with the business of insurance broking, are permissible;
- (b) that the company is under the direction and supervision of a designed individual who is a chief executive as defined hereunder and who is a full time director or full-time employee of the company and that the company is controlled by fit and proper person at all times;

- (c) that the company is a registered business situate in HKSAR;
- (d) that the name of the company is not likely to deceive;
- (e) that the company shall have a paid up capital of not less than HK\$100,000.00, and the company shall have a net asset value of not less than HK\$100,000.00;
- (f) that the company maintains adequate accounting records to reflect the transactions of its businesses;
- (g) the member shall maintain a professional indemnity insurance policy with a minimum limit of indemnity for any one claim and in any one insurance period of 12 months, of a sum equal to two years' annual brokerage of the member or HK\$3,000,000.00 whichever is the greater, and the policy shall include provision for one automatic reinstatement to a limit of indemnity of not less than HK\$3,000,000.00 if as a result of a claim(s) the indemnity available shall fall below HK\$3,000,000.00;
- (h) the member shall maintain Nominated Accounts in accordance with the following rules:-
 - (i) funds deposited into Nominated Accounts shall only be used in making payments to the party to whom the funds are due;
 - (ii) no member shall use a Nominated Accounts to secure any other facility with any bank or other financial institution;
 - (iii) interest receivable on Nominated Accounts shall belong to the member, and may only be withdrawn from the Nominated Account once funds have been credited to that Nominated Account by the bank;
 - (iv) the member will be responsible for all bank charges that may be payable on any Nominated Accounts, and not less than quarterly, shall transfer from the member's own funds sufficient money to reimburse such charges incurred on a Nominated Account;
 - (v) within six months of the close of the financial year of a member, its auditors shall provide certification that all monies due to third parties have been deposited in Nominated Accounts and that no monies have been paid out other than in accordance with this Regulation;
 - (vi) funds held in Nominated Accounts may be denominated in any currency but may not be used for the purpose of currency speculation.

Chief Executive

A chief executive is a person who, by application, has been listed in the register of the Association. Only persons whose names are on such a register for the time being shall be allowed to act as a member's representative to the Association.

Eligibility of a person to be a chief executive

Any person shall be eligible to apply for registration as a chief executive provided he/she has satisfied the Association:-

- (a) if he/she holds an insurance qualification approved by the Association and that he/she has a minimum of two years experience occupying a management position in the insurance industry;
- (b) if he/she holds no insurance qualification, that he/she has a minimum of five years relevant experience in the insurance industry of which two years is of executive level;
- (c) that he/she has attained a minimum education level of Form 5 standard;
- (d) that he/she is a fit and proper person and has always, in the opinion of the Association, complied with recognized ethical standard in his/her business dealings, and has not been convicted of any criminal offence, or has not been adjudicated bankrupt or wound-up by the Court, or found guilty of misconduct by a professional body to which he belongs or by the Association in breach of guidelines and regulations which may be from time to time determined by the Association concerning the conduct and integrity of the members;
- (e) that he/she is a resident in HKSAR and is at least 21 years of age;
- (f) that he/she is appointed or employed by a member company of the Association at the time of application to be registered as chief executive.

3. Code of Conduct

- (a) Members of the Association shall at all times conduct their business with utmost good faith and integrity, and provide advice objectively and independently.

- (b) Members shall in all possibility satisfy the insurance requirements of their clients and shall place the interests of those clients above all other considerations.
- (c) Members shall ensure the use of a sufficient number of insurers to satisfy the requirements of their clients.
- (d) Members shall not disclose any information acquired from his client except in the normal course of negotiating, maintaining or renewing a contract of insurance for that client or unless the consent of the said client has been obtained or the information is required by a court of competent jurisdiction.
- (e) Members shall not make or cause to be made advertisements or statement, which in the opinion of the Association, are misleading or extravagant.
- (f) A member who engages in another business or occupation concurrently with the practice of insurance broking shall not allow such outside interest to jeopardise his integrity, independence or competence.
- (g) Members shall not charge or accept any fee that is disproportionate to the service rendered to a client.
- (h) Members shall uphold the institute of the insurance industry and shall not cause the public to lose confidence either in insurance brokers or the insurance industry as a whole.
- (i) In case a member refers its client to an overseas insurer not authorised in HKSAR, the member shall advise its client of the unauthorised status of the insurer and the reasons for recommending such insurer.
- (j) Members shall make it clear to their clients in completing the proposal form, claim form, or any other material document that the clients are solely responsible for the correctness of the answers or statements therein. The client shall always be asked to check the details and be advised that the inclusion of incorrect information may result in a claim being repudiated.
- (k) Members shall keep the Association duly informed of any change in their particulars on registration by serving written noticed thereof to the Association.

- (l) Members shall advise their clients that the Code of Conduct is available and display a notice to this effect in a prominent position in its office.
- (m) Members shall use every possible endeavour to ensure that their employees are fully aware of and comply and observe the Code of Conduct herein.

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
- (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.

4. Monitoring Compliance

- (a) Members shall within 6 months after its financial year end submit documentary proof of continued compliance with the membership requirements, for example, audited certificate as to net worth; evidences of maintaining proper professional indemnity insurance; maintenance of proper books and nominated clients accounts.
- (b) The Association shall have the right to request for specific information from Members and conduct investigation, where considered necessary.

5. Misconduct

The following practices shall be construed as "misconduct" for the purpose of these regulations:-

- (a) The use of methods of solicitation and advertising that are not compatible with the integrity and dignity of the profession of insurance broking.
- (b) The use of any illustration, circular or memorandum that misrepresents or is incomplete as regards the terms, benefits or advantages of any contract of insurance issued or to be issued to a prospective purchaser of insurance.
- (c) The use of any incomplete comparison of any policy or contract of insurance for the purpose of inducing an insured to forfeit or replace a policy or contract of insurance.
- (d) The offer of any payment, allowance or gift as an inducement to any prospective insured to insure through the offerer.
- (e) Holding out to the public or advertising by means of advertisements, cards, circulars, letters, signs or other methods in an irresponsible or untruthful manner.
- (f) Failure to carry on business in a manner consistent with the Code of Conduct within these regulations.

6. Power of the Membership Sub-Committee

The Membership Sub-Committee of the Association shall have the responsibility to grant full membership of the Association in accordance with the regulations.

The Sub-Committee shall have the responsibility to add new provisions under these regulations and make amendments from time to time.

7. Disciplinary Matters

- (a) The Executive Committee of the Association shall appoint a Disciplinary Committee consisting of five members of which a minimum of two and a maximum of three shall be members of the Executive Committee. The Disciplinary Committee shall be constituted for the purposes of enquiring into the matters referred to in paragraphs (d) and (e) and ruling thereon in accordance with paragraph (f) to (i) herein below.

- (b) The initial and subsequent members of the Disciplinary Committee shall be nominated by two or more members of the Executive Committee and elected by a majority vote of the Executive Committee. In the event that more members shall be nominated than there are vacancies in the Disciplinary Committee those nominees with the greatest number of votes shall be deemed elected. Members of the Disciplinary Committee shall continue in office until, and then retire at, the Annual General Meeting of the Association next following their election provided that members of the Disciplinary Committee shall continue in office for the purpose of completing any enquiry that remains part heard at the time of the Annual General Meeting at which they would otherwise retire.
- (c) A Member or Chief Executive who is the subject of an enquiry by the Disciplinary Committee shall have the right to be notified of such enquiry and to make written submissions in related thereto. The Member or Chief Executive shall be given the opportunity to appear and be heard before the Disciplinary Committee and to be given not less than 21 days' notice of any meeting at which such appearance may take place.
- (d) The Executive Committee or any Member or Chief Executive or the Insurance Authority may refer any matter to the Disciplinary Committee for consideration, and the Disciplinary Committee shall have power to consider all matters so referred to it. The Disciplinary Committee shall also have power to consider any matter referred to it by a non-member, and to consider any matter which in its opinion merits such consideration notwithstanding that the same shall not have been referred to it. Any complaint made or information given by any person, body or firm to the Disciplinary Committee in respect of any matter shall be privileged information and shall be maintained confidence.
- (e) Whenever it shall have come to the notice of the Disciplinary Committee that-
- (i) any Member may have been admitted to membership of the Association under any misrepresentation or by the suppression or non-disclosure of any information which may be required of it and which in the opinion of the Disciplinary Committee is material or that the name of any Chief Executive has been entered on the Register of Chief Executive on a similar basis; or
 - (ii) the conduct of any Member or of any Chief Executive or any director or employee of a Member may be injurious to the character and interests or prejudicial to the objects of the Association; or

- (iii) a complaint has been made to the Association by or on behalf of a member of the public concerning the activities or conduct of a Member, Chief Executive or any director or employee of a Member; or
 - (iv) any member or Chief Executive or any director or employee of Member may have violated any of the Articles or any Rules or this Regulations or Bye-Laws of the Association;
 - (v) any Member or Chief Executive has been convicted of a criminal offence involving a finding of fraud or dishonesty or any of the employees or directors of a Member have been sentenced to a period of imprisonment without the opinion of a fine in respect of a matter pertaining to the Member;
 - (vi) any Member has defaulted in payment of any levy or fine imposed on it by the Association; then the Disciplinary Committee shall investigate the matter and if satisfied that a prima facie case has been established in respect thereof and unless the Disciplinary Committee is of the opinion that the matter is of a trivial or technical nature or that there are extenuating circumstances the Disciplinary Committee shall request the Member or Chief Executive to attend a meeting and explain its or his or her conduct in regard to the matter. For the purpose of determining whether a prima facie case has been established the Disciplinary Committee may refer the matter to a sub-committee consisting of up to three Disciplinary Committee members.
- (f) If the Disciplinary Committee shall, at any meeting or at any adjournment thereof, after considering the explanation (if any) of the Member or Chief Executive or, if the Member or Chief Executive fails to attend such meeting, in such Member's or Chief Executive's absence, decide that the complaint is well founded then it may:-
- (i) expel that Member and direct that its name be removed from the Register of Members;
 - (ii) suspend that Member from membership for such period as it may deem expedient;
 - (iii) direct that any person's name be removed from the Register of Chief Executive;

- (iv) direct that any person shall be prohibited from being a director or shareholder of or associated in any manner with the Member;
- (v) take such other disciplinary action as the Disciplinary Committee may regard to be appropriate and in the interests of the Association including the imposition of a fine on or public censure of the Member.

In coming to its decisions the Disciplinary Committee may consider and act upon such evidence as the Disciplinary Committee may in its absolute discretion deem admissible in relation to any matter as it thinks fit

- (g) No resolution of the Disciplinary Committee to expel or suspend a Member from membership shall be carried except by a majority vote of four-fifths of the members of the Disciplinary Committee. A resolution to suspend, or expel a Member, recorded in the Minute Book of the Disciplinary Committee and signed by the Chairman of the meeting deciding on the suspension or expulsion shall be conclusive evidence thereof.
- (h) The Disciplinary Committee may, instead of exercising its powers of expulsion, call upon the Member concerned by written notice to resign, and if within seven clear days from the date of such notice, such Member shall not have submitted notice of its resignation, it may then proceed to expel such Member.
- (i) The Disciplinary Committee shall have power, if it thinks fit, to suspend any Member from membership or suspend the registration of any Chief Executive whose conduct is under investigation until the Disciplinary Committee has enquired into such conduct and has come to a decision thereof. The Member or Chief Executive whose conduct is under investigation shall not be entitled to complain of the length of time required for such investigation and neither the Association nor any of its members or their employees shall be under any obligation whatsoever to compensate a Member or Chief Executive suspended under this Regulation even if the investigation subsequently vindicates the conduct of such Member or Chief Executive.
- (j) Where:-
 - (a) a director of any Member is sentenced for an offence as referred to in paragraph 7(e)(v) above; or

- (b) a Member is expelled from the Association and any act or omission constituting the ground or one of the grounds on which it was so expelled was instigated or connived at by a director of the Member or by a Chief Executive, or, if the act or omission was a continuing act or omission, such director or Chief Executive had or reasonably ought to have had knowledge of the continuance thereof,

the Disciplinary Committee may, if it thinks fit, direct that no Insurance Broker of which such director or Chief Executive is a shareholder or director or with which such director or Chief Executive is associated in any manner shall be admitted to membership of the Association for such period of time as the Disciplinary Committee may direct (if at all) and that the name of such Chief Executive be removed from the Register of Chief Executive; and in the event that such Chief Executive or director or an expelled Member shall also be a director of or associated in any manner with one or more other Members the Disciplinary Committee may direct that such other Member or Members shall also be expelled, unless within such period of time as the Disciplinary Committee shall specify the Chief Executive or director of the expelled Member shall resign as a director of or cease to be so associated with such other Member or Members.

- (k) When the Disciplinary Committee makes a direction affecting any Member or Chief Executive, or any other person, the Association shall serve on that Member or Chief Executive or other person so affected a notification of the direction containing a statement of the Disciplinary Committee's reasons thereof. Service of the notification shall be made by the delivery thereof to the registered address of the Member or Chief Executive as it appears in the Register of Members or the Register of Chief Executive or to the address of any other person last known to the Association.
- (l) (i) Any decision of the Disciplinary Committee shall be subject to appeal in accordance with this Regulation and the Articles of Association but shall otherwise be final and not liable to be set aside or varied by any other authority or body.

- (ii) At any time within twenty-eight days from the service of a notification under paragraph 7(k) the Member or Chief Executive or other person on whom such notification has been served may appeal to the members of the Association in general meeting. Notice of any such appeal shall be given within the said period of twenty-eight days to the Appeal Committee which shall convene a meeting of the members of the Association to consider such appeal on as early a date as is reasonably practicable.
- (iii) Where no appeal is brought or where such an appeal is brought but withdrawn, the direction of the Disciplinary Committee shall take effect on the expiration of the time for appealing or, as the case maybe, on the withdrawal of the appeal.
- (iv) Subject as aforesaid, where an appeal is brought, the decision of the Disciplinary Committee shall take effect if and when the Executive Committee upholds the decision of the Disciplinary Committee.
- (m) (i) Where a Member has been expelled from the Association or the name of a Chief Executive is removed from the Register of Chief Executive pursuant to a decision of the Disciplinary Committee, that former Member or Chief Executive shall not be permitted to rejoin the Association or be re-registered as a Chief Executive unless the Disciplinary Committee on application made to it that behalf otherwise directors.
 - (ii) An application for the admission to membership of an expelled Member or re-registration of a person as a Chief Executive shall not be made to the Disciplinary Committee:-
 - (I) within twelve months of the date of the Member's expulsion or the removal of such person's name from the Register of Chief Executives; or
 - (II) without twelve months of any previous applications thereunder.
- (n) In the event that a Member is expelled or suspended from membership of the Association, the name of any Chief Executive who is employed by who is a director of such Member shall also be removed or suspended from the Register of Chief Executive, as the case may be.