



**Consultation Conclusions on the
Draft Guideline on Exercising Power
to Impose Pecuniary Penalty
in Respect of Regulated Persons
Under the Insurance Ordinance (Cap. 41)**

June 2019

Contents

	Page
Introduction	1
Feedback Received and IA's Responses	3
Feedback Outside of Scope of Consultation Exercise	9
Conclusion and Next Steps	10
Schedule 1 – Revised Guideline on Exercising Power to Impose Pecuniary Penalty In Respect of Regulated Persons Under the Insurance Ordinance (Cap. 41)	
Annex 1 – List of Respondents	

Introduction

Background

1. The Insurance Authority (“IA”) will take over the regulation of insurance intermediaries in the second half of 2019, and the new sections of the Insurance Ordinance (Cap. 41) (“the Ordinance”) will commence. The new section 81 of the Ordinance will allow the IA to take a number of disciplinary actions in respect of a person who is or was a regulated person in the event that he/ she/ it is guilty of misconduct or is not fit and proper. One type of disciplinary action that the IA may take is ordering a person to pay a pecuniary penalty not exceeding the amount which is the greater of (i) HK\$10 million; or (ii) 3 times the amount of the profit gained or loss avoided by the person.
2. Pursuant to the new section 83 of the Ordinance, the IA must not exercise its power under section 81 to impose a pecuniary penalty unless it has published, in the Gazette and in any other manner it considers appropriate, guidelines to indicate the way in which it proposes to exercise that power, and has had regard to the guidelines in exercising that power. The new section 83(3) requires the IA to consult the Monetary Authority before publishing such guidelines.

Consultation

3. On 26 October 2018, the IA published a draft Guideline on Exercising Power to Impose Pecuniary Penalty in Respect of Regulated Persons Under the Insurance Ordinance (Cap. 41) (“Guideline”) for public comment under the cover of a consultation paper (“Consultation Paper”). The deadline for submitting consultation feedback on the draft Guideline was 27 December 2018.
4. The IA is now pleased to report the receipt of 15 consultation submissions on the draft Guideline in response to the Consultation Paper, mainly from industry associations, industry concern groups, insurers, professional bodies and public bodies. A list of respondents is at **ANNEX 1**.
5. In addition to the formal consultation, the IA held meetings with many individuals and organizations both before and during the consultation period to discuss and give context to the development of the Guideline. The IA would like to thank all those who participated in the IA’s engagement exercise and consultation.
6. The respondents generally welcomed the draft Guideline and the new direct regulatory regime for insurance intermediaries. The input provided by the respondents has assisted the IA in identifying areas where amendments, clarifications and further guidance on the draft Guideline were merited.

The Revised Guideline and the Purpose of these Consultation Conclusions

7. Following careful consideration of the feedback provided, the IA hereby releases a revised version of the Guideline as **SCHEDULE 1** (“revised Guideline”). For ease of reference and to make it easier to match revisions to the corresponding explanations by the IA, where an amendment has been made to the Guideline, we refer to the corresponding paragraph number in bold in these Consultation Conclusions (for example, [**Guideline paragraph 3.5**]).
8. These Consultation Conclusions summarize the IA’s approach to preparing the revised Guideline. They are not intended to be a comprehensive summary of all consultation submissions received; rather they highlight the major issues raised and IA’s responses.

Feedback Received and IA's Responses

General Observations

9. Submissions received, in general, welcomed the IA becoming the lead regulator to regulate all insurance intermediaries in Hong Kong. The respondents also agreed that it is important to set a unified standard across the industry and to protect the interests of the insuring public. There were, however, views on a few issues including the adoption of a non-tariff based approach, and the application of the maximum penalty of HK\$10 million or 3 times the amount of the profit gained or loss avoided by the person specified in the Ordinance. In addition, a number of respondents requested clarifications as regards how the IA will interpret some of the consideration factors and other respondents requested textual changes to the drafting of the Guideline.

Non-Tariff Based Approach

10. As stated in the Consultation Paper, a pecuniary penalty should be effective, proportionate and fair. In considering the most appropriate approach to exercising its power to impose a pecuniary penalty, the IA had considered but had opted not to adopt the tariff-based approach (i.e. to publish the common types of misconduct and the corresponding maximum fine) currently used by the Self-Regulatory Organizations ("SROs").
11. In this consultation, two respondents had suggested that the IA should adopt a tariff-based approach in order to achieve a smooth transition from the SRO regime to the new direct licensing regime. However, we remain of the view that a tariff-based approach would not be conducive to achieving proportionality and fairness in imposing pecuniary penalties against regulated persons under the new direct licensing regime. For the IA to be fair to a regulated person who is to be the subject of a pecuniary penalty under the new regime, we would need to take into account the facts and circumstances of his/her individual case in setting the penalty. A tariff-based approach at the outset, however, counters the need to consider each misconduct case on its own facts and circumstances in order to determine a fair and proportionate pecuniary penalty. Rather, a tariff-based approach would involve the IA, to a certain extent, pre-judging the fine to be applied irrespective of the facts and circumstances. We should take care not to reduce the diversity of the vibrant insurance market into a "one-size fits all" approach which attempts to reach a uniform answer in every case. It is also difficult to set out an exhaustive list of the types of misconduct under the new regime given the variety in scale of different intermediaries' operations, the diverse range of regulated activities that may give rise to misconduct, as well as the varied grounds under the Ordinance upon which disciplinary action may be taken. For these reasons, the Guideline does not attempt to predetermine any tariffs but instead sets out overarching fining principles that would cater for all the individual circumstances of any given regulated person. Nonetheless, the IA will strive for consistency by maintaining internal records of past actions/ decisions to ensure that we act on an effective, proportionate and fair basis when imposing pecuniary penalties.

Relationship between Pecuniary Penalties and Other Disciplinary Actions

12. One respondent suggested that in cases where the more severe sanction of a suspension or revocation of licence is warranted, no pecuniary penalty should be imposed. However, whether multiple disciplinary actions should be taken depends on the facts and circumstances of each case. An example of where a combination of a suspension and a pecuniary penalty might be appropriate is where a person's misconduct is so serious that the person is no longer fit and proper to be licensed and, at the same time, it would be contrary to public policy to allow the person to financially benefit from their misconduct. A combination of different types of pecuniary penalty and other sanctions such as suspension / revocation is occasionally imposed by other financial regulators as well as under the current SRO regime.
13. Two respondents requested that the IA should rank the level of seriousness of pecuniary penalties against other types of disciplinary action. In the Guideline, we have already stated that a pecuniary penalty is more severe than a reprimand. We do not consider it appropriate to further rank or categorize available disciplinary actions.
14. One respondent asked whether the IA can impose a pecuniary penalty on more than one person with respect to the same misconduct. The answer is yes, if appropriate. The Ordinance does not set a cap on the number of persons to be disciplined per incident, and the maximum pecuniary penalty applies to each person being disciplined.

Non-Exhaustive Factors

15. One respondent expressed the view that the list of factors considered by the IA when imposing a pecuniary penalty should be exhaustive. However, the IA is of the view that it is impossible to cover each and every factor that might be considered in the Guideline as each case has its own specific facts and unique circumstances. We note that the SROs' current penalty guidelines are also not exhaustive. To promote clarity, we have also amended paragraph 3.5 of the Guideline to refer to "*all relevant factors*" in place of "*a number of factors where relevant*". [**Guideline paragraph 3.5.**]

Parties to which the Guideline applies

16. Several respondents requested clarification of "*a person concerned in the management of the regulated activities carried on*" by a licensed insurance agency/ licensed insurance broker company. When considering whether to take disciplinary action against a particular person, the IA will consider, on a case-by-case basis, all the circumstances including the role and involvement of the person in the conduct.

Considerations in Exercising the IA’s Power to Impose a Pecuniary Penalty

Publication of decisions to impose a pecuniary penalty

17. One respondent inquired whether the regulated person will be notified in advance of publication. In circumstances where a respondent will be publicly reprimanded, the IA will notify that person in advance where notification is feasible (it might not be, for example, where the person has absconded).
18. Another respondent welcomed the IA’s policy, as stated in the Guideline, that “*the IA may publicize its decisions to impose a pecuniary penalty against a regulated person as it thinks fit.*” That respondent opined that it is important for the IA to publicize its decisions on imposing pecuniary penalties on regulated persons who had contravened the conduct rules, so as to meet the objective of deterring further misconduct and other regulated persons from violating the rules and guidelines under the Ordinance. We agree with this comment. In our view, the publication of decisions will help regulated persons better understand the regulatory standards expected of them and will promote the transparency of our decisions.

The nature, seriousness and impact of the conduct

19. A respondent suggested that the word “*dishonest*” should be included as one of the factors relating to the nature of the conduct considered by IA when considering the imposition of pecuniary penalty. We agree that dishonest conduct seriously calls into question a person’s fitness and properness and have made the necessary amendment. **[Guideline paragraph 3.5(a)(i).]**
20. We received one submission suggesting that whether prior advice was sought by a regulated person in relation to the compliance of the conduct should be added as a factor to be considered by the IA. Having carefully reflected on such submissions, we do not consider it necessary to amend our Guideline to add such a factor as paragraph 3.5 of the Guideline clearly states the IA will consider all the circumstances of a particular case. This might include whether advice was obtained.
21. On the factor regarding loss or risk of loss caused to others, the qualification at the end of the paragraph “*where the risk was known or ought to have been known by the regulated person*” was added to the draft Guideline by the IA at the specific request of the industry made during soft consultation. However, subsequently, in this public consultation, one respondent from the legal sector submitted that the qualification is too restrictive and that the IA should be able to take into account the loss/ risk whether or not it was reasonably foreseeable. The respondent stated that bad behavior may give rise to large losses irrespective of whether or not a risk “*ought to have been known*”, citing general mis-selling practices as an example. The respondent also referred to the approach taken in the Financial Conduct Authority Handbook¹. Bearing in mind our statutory function to protect existing and potential policy holders, we have made the necessary amendment to the revised Guideline accordingly to address the feedback received. **[Guideline paragraph 3.5(a)(iii).]**

¹ DEPP 6.2 Deciding whether to take action simply reads: “(1)(f) the loss or risk of loss caused to consumers or other market users;” <https://www.handbook.fca.org.uk/handbook/DEPP/6/?view=chapter&timeline=true>.

22. We received several submissions in relation to the consideration factor of “*whether the conduct is widespread in the industry*”. Respondents’ views were divided over whether the conduct in question being widespread in the industry should be an aggravating factor (i.e. where the conduct is considered more serious) or a mitigating factor (i.e. where the conduct is considered less serious). In our view, having considered the feedback received, we consider that if the conduct in question is common in the industry, a heavier penalty might be appropriate to deter those of a like mind. When considering the imposition of pecuniary penalty, the IA will take into account all facts and circumstances of a case, and a balance will be struck between the need for an effective, proportionate and fair pecuniary penalty and the objective of deterring further misconduct or contraventions of rules and guidelines under the Ordinance. We therefore do not intend to amend the wording of the Guideline. **[Guideline paragraph 3.5(a)(v).]**
23. A submission was made that an element of requisite knowledge should be required (i.e. added as a consideration) when the IA considers the amount of benefits gained or losses avoided by the regulated persons or third parties connected with the regulated persons, and whether the conduct is potentially damaging or detrimental to the integrity and stability of the industry and reputation of Hong Kong as an international financial centre. However, in our view knowledge is not necessarily required in these circumstances since the regulated person should be held accountable in these circumstances for public policy reasons.
24. One respondent suggested that the word “*potentially*” should be deleted when considering whether the conduct is “*potentially damaging or detrimental to the integrity and stability of the industry and/or the reputation of Hong Kong*”. We have carefully considered the suggestion but have retained our original wording. The IA’s statutory functions include to facilitate the sustainable market development of the insurance industry, promote the competitiveness of the insurance industry in the global insurance market and assist the Financial Secretary in maintaining the financial stability of Hong Kong. The draft Guideline wording is consistent with these functions. Moreover, in circumstances where conduct has already impacted the integrity and stability of the industry and/ or the reputation of Hong Kong, paragraph 3.5(a)(ii) would likely apply.
25. One respondent suggested that when the IA considers whether the conduct in question facilitated, occasioned or was attributable to any financial crime, an element of knowledge of such facilitation should be required. We do not consider that knowledge on the part of the regulated person should be added as a consideration because, as a matter of safeguarding professional standards and of policy holder protection, a person should be held accountable for any financial crime resulting from his/her own conduct.
26. One respondent suggested that it is unclear how a breach of trust (rather than fiduciary duty) would be relevant. To clarify our intention, we have replaced the word “*trust*” with the words “*trust placed in the regulated person*”. **[Guideline paragraph 3.5(a)(viii).]**

27. In relation to the knowledge of a responsible officer or a person involved in management of a firm of the likelihood of the misconduct occurring, a suggestion was made to replace the words “*might occur*” by “*would likely occur*”. We agree with this suggestion and have made the necessary amendment to the revised Guideline. [**Guideline paragraph 3.5(a)(xi).**]

The behavior of the regulated person since the conduct was identified

28. In relation to whether remedial steps have been taken in a timely manner since the conduct was identified, one respondent pointed out that if the misconduct is committed by the regulated person only, there would be no others involved. Accordingly, we have added the words “*such as*” to the revised Guideline. The intention is to clarify that this is an example of remedial steps to be considered only where applicable. [**Guideline paragraph 3.5(b)(iv).**]
29. One respondent submitted that it is uncertain how the IA will determine the likelihood that the regulated person may engage in the same or similar type of conduct in the future and suggested the setting of objective criteria. We have carefully considered this submission and decided against making any amendments. The retained wording is also consistent with the IA’s existing fining guidelines. In practice, in determining the likelihood that the regulated person may engage in the same or similar type of conduct in the future the IA might, for example, consider whether any compliance gaps or non-compliant behaviors identified have been rectified.
30. One respondent suggested the addition of the consideration “*whether the person shows remorse/ remorse or frank admission*”. However, actions taken are more important than mere expressions of remorse. In any event the Guideline already includes factors such as paragraph 3.5(b)(iii) “*the degree of cooperation with the IA and other authorities*” and 3.5(b)(iv) “*the remedial steps taken in a timely manner*”. Having carefully considered the various suggestions we consider that no amendment to the Guideline is necessary.

The Previous Disciplinary Record and Compliance History of the Regulated Person

31. One respondent suggested adding previous good conduct as a specific factor for consideration. We do not consider this amendment necessary. The IA will consider all the circumstances of a particular case (paragraph 3.5 of the Guideline). Generally, present and past conduct will be considered in determining a pecuniary penalty, but the relevance of matters such as present or past conduct will depend upon the facts and circumstances of a case as viewed through the guidelines.
32. One respondent suggested when the IA considers whether the regulated person has previously undertaken not to engage in the conduct, the timing of giving such undertaking should be taken into account. However, we consider that the timing element of the undertaking has no significant bearing. We do not intend to amend our Guideline to add such a factor.

Other Relevant Factors

33. We received a number of submissions seeking and proposing clarification of the term “*financial jeopardy*”. However, having carefully considered the various submissions and proposals, on balance, we do not consider that it would be helpful to try to define this term narrowly. In practice, what financial jeopardy means will depend on who the regulated person is (for example, an individual or a firm, a sole-proprietorship or a company etc.) and their circumstances. In considering if the proposed pecuniary penalty will put the regulated person in financial jeopardy, the IA will consider all the circumstances of the case. The regulated persons should provide all relevant information to facilitate the IA to make the appropriate assessment.
34. We received several submissions (including several suggested redrafts of Guideline wording) in relation to how cases are to be treated. For example, suggestions were made that the Guideline should make clear that similar cases should be determined consistently; that the IA should look at the totality of penalties imposed by all relevant authorities to ensure it is not disproportionate; in respect of the types of actions and decisions the IA should take into account (a suggestion was made that they should relate to the specific conduct); that the IA should only look at final actions or decision (not subject to any appeals or review); and that in general the IA should not take disciplinary action where conduct is in line with current codes or guidelines. We have carefully considered all such submissions. However, on balance, we consider the suggestions and proposed amendments are overly prescriptive and may fetter the IA’s ability to impose effective, proportionate and fair pecuniary penalties. Hence, the original drafting of the Guideline is retained.

Individuals and Firms

35. One respondent asked whether there will be a difference in the pecuniary penalty for an individual and a firm. There are considerations in the Guideline that only apply to individuals (paragraph 3.5(a)(xiv)) and some that only apply to firms (paragraph 3.5(a)(xiii)). Firms include sole proprietorships, partnerships and companies (paragraph 3.5(a)(xi)).

Scope of Application, Commencement and Amendment (paragraphs 2 and 4)

36. Some respondents suggested that the commencement of the Guideline should be delayed (for example, to the end of 2019 or by three years). However, according to the Ordinance, the revised Guideline must take effect upon commencement of IA’s regulation of insurance intermediaries (“commencement date”).
37. According to the Ordinance, all cases of alleged contravention of applicable rule/requirement that occurred before the commencement date will be followed up and considered by the IA according to the applicable rules/ requirements prevailing at the time when the contravention occurred. In such cases, the Ordinance makes it clear that the range of sanctions (including pecuniary penalties) available to the IA will be the same as those that could have been imposed by the SROs under the old regime². In that sense the Guideline will not have retrospective effect.

² Please see section 113 of the new Schedule 11 to the Ordinance for details.

Feedback Outside Scope of Consultation Exercise

No Formula to Calculate Fines

38. One respondent requested details of the IA's formula for calculating pecuniary penalties. The IA will not adopt a formula since a formula would not give rise to "*effective, proportionate and fair*" pecuniary penalties and would be contrary to the IA's principle-based approach. Instead, the IA will refer to the consideration factors as set out in the Guideline. Please also see paragraphs 10 to 11 above for details of the IA's general approach to pecuniary penalties.

Maximum Cap on Pecuniary Penalties

39. In view of the fact that under new section 81(4)(e) of the Ordinance the maximum pecuniary penalty can be higher than HK\$10 million if that is what three times the amount of the profit gained or loss avoided by the person amounts to, several respondents requested further details on how loss or profit is determined (for the purpose of calculating the maximum pecuniary penalty). One respondent suggested it would be appropriate for there to be a clear cap on the potential penalty and another respondent asked whether, for a technical representative, the amount would relate to the individual's income or the commission to the firm. We have considered these queries carefully but each case will be different and we cannot generalize. The IA is bound by the Ordinance and will adhere to the principle stated in paragraph 3.1(g) in the Guideline that regulated persons should not benefit from their misconduct.

Other Matters that the IA will Respond to Separately

40. Several respondents made submissions or raised queries in relation to investigation / disciplinary proceedings (including details of accusations, burden of proof, confidentiality, investigation costs/ fees, legal representation, references to industry experts, right to make representations, witnesses etc) and requested more details about the review and appeal process/ proceedings (including how to stay fines pending an appeal) and generally in respect of checks and balances on the powers of the IA. These are procedural matters and do not relate to pecuniary penalties or the Guideline. Therefore, the IA does not intend to address many of these queries here, but will do so separately in due course.

Other Matters

41. There were also queries on how the new sections of the Ordinance should be interpreted which queries also fall outside of the scope of this consultation.

Conclusion and Next Steps

42. The Guideline has been revised taking into account the consultation responses helpfully provided by the respondents listed in **ANNEX 1**.
43. The revised Guideline will take effect upon the commencement date. To this end it will be gazetted.

**Market Conduct Division
Insurance Authority
June 2019**

**REVISED GUIDELINE ON EXERCISING POWER
TO IMPOSE PECUNIARY PENALTY
IN RESPECT OF REGULATED PERSONS
UNDER THE INSURANCE ORDINANCE (CAP. 41)**

Insurance Authority

Contents

	<u>Page</u>
1. Introduction	1
2. Scope of Application	1
3. Considerations in Exercising the IA's Power to Impose a Pecuniary Penalty	2
4. Commencement	4

1. Introduction

- 1.1. This Guideline is made pursuant to section 83 of the Insurance Ordinance (Cap. 41) (“the Ordinance”).
- 1.2. Pursuant to section 81(1) of the Ordinance, the Insurance Authority (“the IA”) may impose on a person a pecuniary penalty either on its own or together with other disciplinary sanctions under section 81(4) if:
 - (a) the person is, or was at any time, guilty of misconduct when the person is a regulated person;
 - (b) the person was at any time guilty of misconduct when the person was a regulated person; or
 - (c) the IA is of the opinion that:
 - (i) at the time when the person is a regulated person, the person is not a fit and proper person; or
 - (ii) at a time when the person was a regulated person, the person was not a fit and proper person.
- 1.3. Under section 83 of the Ordinance, the IA must not exercise a power under section 81 to impose a pecuniary penalty unless it has had regard to this Guideline which indicates the way in which it proposes to exercise that power.
- 1.4. This Guideline does not have the force of law and should not be interpreted in a way that would override the provision of any law. The IA may from time to time amend the whole or any part of this Guideline.
- 1.5. This Guideline should be read in conjunction with the relevant provisions of the Ordinance, and any relevant rule, regulation, code and guideline made or issued under the Ordinance.
- 1.6. The factors set out in this Guideline are not exhaustive. This Guideline does not constitute legal advice. You should seek professional advice if you have any question relating to the application or interpretation of the relevant provisions of the Ordinance.

2. Scope of Application

- 2.1. “Regulated person” is defined in section 80(1) of the Ordinance to mean:
 - (a) a licensed insurance intermediary;
 - (b) a responsible officer of a licensed insurance agency/licensed insurance broker company; or
 - (c) a person concerned in the management of the regulated activities carried on by a licensed insurance agency/licensed insurance broker company.

2.2. This Guideline applies when the IA is considering whether to impose a pecuniary penalty on a person who is, or was at the material time, a regulated person.

2.3. Unless otherwise specified, words and expressions used in this Guideline shall have the same meanings as given to them in the Ordinance. For the avoidance of doubt, in this Guideline the term “regulated person” should be read to include both a person who is a regulated person and a person who was a regulated person (as the case may be).

3. Considerations in Exercising the IA’s Power to Impose a Pecuniary Penalty

3.1. The principal purposes of imposing a pecuniary penalty are:

- (a) to protect existing and potential policy holders and the public interest;
- (b) to promote and encourage proper standards of conduct of regulated persons;
- (c) to deter regulated persons who have engaged in misconduct from engaging in further misconduct and to deter other regulated persons from committing misconduct;
- (d) to deter regulated persons from doing any act or omitting to do any act that would render them not ~~being~~ fit and proper persons;
- (e) to deter licensed insurance agencies and licensed insurance broker companies from engaging a person who is not fit and proper to hold the position of technical representative, responsible officer, director or controller;
- (f) to sanction licensed insurance agencies and licensed insurance broker companies which engaged a person who was not fit and proper to hold the position of technical representative, responsible officer, director or controller; and
- (g) to prevent regulated persons guilty of misconduct from benefitting from the misconduct.

3.2. The IA regards a pecuniary penalty as a more severe sanction than a reprimand, and a public reprimand as more severe than a private reprimand.

3.3. As a matter of policy, the IA may publicize its decisions to impose a pecuniary penalty against a regulated person as it thinks fit.

3.4. A pecuniary penalty should be effective, proportionate and fair. The more serious the conduct or the reason for which the regulated person is considered not to be fit and proper, the greater the likelihood that (i) the IA will impose a pecuniary penalty and (ii) the amount of the penalty will be higher.

3.5. When considering whether to impose a pecuniary penalty and the amount of the penalty, the IA will consider all the circumstances of the particular case and, subject to the overriding objective of achieving the principal purposes in paragraph 3.1 above, take into account ~~a number of factors where relevant~~ all relevant factors. The factors listed below are not exhaustive.

(a) *The nature, seriousness and impact of the conduct, including:*

- (i) the nature of the conduct (e.g. whether it was an intentional, reckless, fraudulent, dishonest, negligent or technical breach);
- (ii) the impact of the conduct on the interests of existing or potential policy holders or the public interest;
- (iii) the loss or risk of loss caused to others (especially existing or potential policy holders or the insured public generally) ~~where the risk was known or ought to have been known by the regulated person;~~
- (iv) the duration and frequency of the conduct;
- (v) whether the conduct is widespread in the industry;
- (vi) the amount of benefits gained or losses avoided by the regulated person engaged in that conduct or by any other third parties connected with such regulated person;
- (vii) whether the conduct is potentially damaging or detrimental to the integrity and stability of the industry and/or the reputation of Hong Kong as an international financial centre;
- (viii) whether the conduct involves a breach of fiduciary duty or trust placed in the regulated person;
- (ix) whether there are a number of smaller issues, which individually may not justify a pecuniary penalty, but which do so when taken collectively;
- (x) whether the conduct is or was part of a more serious misconduct;
- (xi) in case of a responsible officer of a firm (i.e. a sole proprietor, partnership or company), or a person involved in the management of regulated activities carried on by a firm, the extent to which the person knew, or reasonably ought to have known, that the conduct had occurred or was occurring or might would likely occur;
- (xii) the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the conduct;
- (xiii) in relation to a firm,
 - whether the conduct reveals serious or systemic weaknesses of the firm's internal control procedures and risk management systems in respect of all or part of the business of regulated activities carried on by the firm;
 - the seniority and industry experience of the staff involved in the conduct and the extent of their involvement; and
 - whether the conduct was engaged in by the firm alone or as a group and in the latter case, the firm's role in that group; and
- (xiv) in relation to an individual,
 - whether the individual abused a position of trust;
 - whether the individual caused or encouraged other regulated persons or other persons to engage in the conduct or the same type of conduct; and
 - the individual's experience in the industry and, if the individual is a person referred to in paragraph 2.1(c) above, the individual's position within the firm.

- (b) *The behavior of the regulated person since the conduct was identified, including:*
- (i) the manner of reporting the conduct by the regulated person (e.g. whether the regulated person has timely and comprehensively reported the conduct to the IA or (where applicable) other relevant regulatory authority or law enforcement agency);
 - (ii) whether the regulated person attempted to conceal the conduct;
 - (iii) the degree of cooperation with the IA and other authorities;
 - (iv) the remedial steps taken in a timely manner since the conduct was identified, ~~including such as~~ any action taken by the regulated person against those involved, and any steps taken to redress the loss caused to policy holders (and other relevant parties) or to prevent recurrence of the conduct; and
 - (v) the likelihood that the regulated person may engage in the same or similar type of conduct in the future.
- (c) *The previous disciplinary record and compliance history of the regulated person, including:*
- (i) previous disciplinary record and compliance history of the regulated person; and
 - (ii) whether the regulated person has previously undertaken not to engage in the conduct.
- (d) *Other relevant factors:*
- (i) the financial resources of the regulated person – a pecuniary penalty should not have the likely effect of putting the regulated person concerned in financial jeopardy;
 - (ii) the IA’s action or decision in previous similar cases (if any);
 - (iii) actions taken or decisions made by other relevant authorities in respect of the conduct;
 - (iv) the result of any civil or criminal action taken against the regulated person in respect of the conduct; and
 - (v) whether the IA has issued any codes or guidelines in relation to the conduct.

4. Commencement

4.1. This Guideline shall take effect from [dd mmm yyyy].

[mm yyyy]

LIST OF RESPONDENTS

(in alphabetical order)

1. AIA International Limited
2. BPL Global
3. Consumer Council
4. DTC Association
5. Hong Kong Association of Banks
6. Hong Kong Confederation of Insurance Brokers
7. Hong Kong Federation of Insurers (2 submissions)
8. Hong Kong Insurance Law Association
9. Hong Kong Insurance Practitioners General Union
10. Independent Commission Against Corruption
11. Institute of Financial Planner of Hong Kong
12. Insurance Industry Regulatory & Development Concern Group
13. Law Society of Hong Kong
14. Professional Insurance Brokers Association