

**Consultation Paper**

**on**

**Draft Code of Conduct for Licensed  
Insurance Agents**

## FOREWORD

- 1 This paper is published by the Insurance Authority (“IA”) to consult the public on the Code of Conduct for Licensed Insurance Agents to be made under section 95 of the Insurance Ordinance. The enclosed draft which is being consulted on has been prepared in anticipation of the IA taking over regulation of insurance intermediaries from the three existing self-regulatory organizations in around mid-2019.
- 2 The IA welcomes written submissions on or before 28 May 2019 by any of the following means:  
  
Mail: Insurance Authority  
19/F, 41 Heung Yip Road  
Wong Chuk Hang  
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Fax: (852) 3899 9993  
Email: [comment\\_codeandguideline@ia.org.hk](mailto:comment_codeandguideline@ia.org.hk)
- 3 A feedback template is enclosed.
- 4 Any person making a submission on behalf of an organization is requested to provide details of such organization.
- 5 Submissions will be received on the basis that the IA may freely reproduce and publish them, in whole or in part, in any form, and use, adapt or develop any proposal put forward without seeking permission or providing acknowledgement of the party making such proposal.
- 6 Please note that name(s) of respondent(s), their affiliation(s) and comment(s) may be referred to in any forms of documentation the IA may publish or release. If you do not wish your name or affiliation to be disclosed, please expressly state so when you make your submission.
- 7 Any personal data submitted will only be used for consultation and its related purposes in respect of this consultation paper. For access to or correction of any personal data contained in your submission, please contact –

Personal Data Privacy Officer  
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## EXECUTIVE SUMMARY

1. The principal function of the Insurance Authority (“IA”) is to regulate and supervise the insurance industry for the promotion of the general stability of the insurance industry and for the protection of existing and potential policy holders<sup>1</sup>.
2. The IA proposes to issue a new Code of Conduct for Licensed Insurance Agents (“Agents’ Code”) under section 95 of the Insurance Ordinance (Cap 41) (“the Ordinance”) to take effect when it takes over the regulation of insurance intermediaries in mid-2019. At that time the legal provisions of the Insurance Companies (Amendment) Ordinance 2015 (Ord. No.12 of 2015) (“the Amendment Ordinance”) relating to the new regulatory regime for licensed insurance intermediaries will commence. These provisions (which will amend the Ordinance) together with rules, regulations, codes, guidelines and other regulatory instruments administered or issued by the IA, such as the new Agents’ Code, will replace the current self-regulatory regime for insurance agents, including the current Code of Practice for the Administration of Insurance Agents (7<sup>th</sup> version dated 1 March 2010) issued by the Hong Kong Federation of Insurers (“the HKFI Code”), which by reason of the repeal of section 67 of the Ordinance will no longer be applicable to the conduct of licensed insurance agents after the IA takes over their regulation.
3. The draft Agents’ Code sets out eight core General Principles of professional conduct, together with accompanying Standards and Practices, which licensed insurance agents should adopt when carrying on all regulated activities (including when soliciting applications from potential policy holders for insurance products). These General Principles, Standards and Practices reflect the appointment of licensed individual insurance agents and licensed insurance agencies as agents by authorized insurers. At the same time, the General Principles, Standards and Practices reinforce the trust and professionalism that is crucial to the dealings between licensed insurance agents and the insurance buying public. The Agents’ Code thereby serves as an important policy holder protection measure.
4. The Amendment Ordinance also introduces statutory conduct requirements with which licensed insurance intermediaries must comply (in the new sections 90 and 91 of the Ordinance) (“Statutory Conduct Requirements”). Another function of the General Principles, Standards and Practices in the Agents’ Code, therefore, is to inform, supplement and, in certain instances, explain the Statutory Conduct Requirements and, in particular, provide guidance on the conduct which licensed insurance agents should adopt so that their regulated activities are in compliance with the Statutory Conduct Requirements.
5. The draft Agents’ Code takes account of the requirements in existing codes and guidelines which apply to insurance agents (such as the HKFI Code), other codes and guidelines issued by local and overseas regulators and the relevant insurance core principles (“ICPs”) issued by the International Association of Insurance Supervisors (“IAIS”).
6. The draft Agents’ Code is published for consultation at **ANNEX 1** together with this explanatory consultation paper. Comments are invited, not only on the specific questions

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<sup>1</sup> Section 4A(1) of the Ordinance.

identified in this consultation paper but on any other aspect of the proposed Code. A feedback template is included at **ANNEX 2**.

7. References to section numbers in this consultation paper are made to the Ordinance as if the Ordinance incorporates the entire Amendment Ordinance unless otherwise specified. Moreover, for ease of reference, the most relevant definitions and sections in the new Ordinance are set out in **SCHEDULE 1** to this explanatory consultation paper.
8. The IA would like to express its gratitude to the industry, in particular, to members of the working and discussion groups for their valuable advice and feedback.

## CHAPTER 1 BACKGROUND AND INTRODUCTION TO THE AGENTS' CODE

### Background

9. The Amendment Ordinance was passed in 2015. One of the key objectives of the Amendment Ordinance is to replace the self-regulatory system administered by the three self-regulatory organizations ("SROs") and strengthen public confidence in the insurance industry<sup>2</sup>.
10. Accordingly, in around mid-2019, the IA will take over the regulatory functions of the three SROs for insurance intermediaries (including the Insurance Agents Registration Board ("IARB")). In order for the IA to commence direct regulation of insurance intermediaries, the sections of the Amendment Ordinance relating to intermediary regulation will be brought into effect by way of a commencement notice. The IA will then become the sole regulator to regulate all insurance intermediaries (including insurance agents and agencies) in Hong Kong.
11. The Amendment Ordinance will, amongst other things, introduce new Statutory Conduct Requirements for licensed insurance intermediaries (new section 90 of the Ordinance). These apply to:
  - a. licensed insurance agents i.e. licensed individual insurance agents, licensed insurance agencies and licensed technical representatives (agents) (being the technical representatives of licensed insurance agencies); and
  - b. licensed insurance brokers i.e. licensed insurance broker companies and licensed technical representatives (brokers) (being the technical representatives of licensed insurance broker companies).
12. In addition, per the new section 91 of the Ordinance, requirements are imposed on licensed insurance agencies and their responsible officers to establish and maintain proper controls and procedures for securing compliance with the Statutory Conduct Requirements set out in section 90 of the Ordinance, by the agency and its technical representatives (agent).
13. The new section 95 of the Ordinance empowers the IA to publish codes of conduct for giving guidance relating to the practices and standards with which licensed insurance intermediaries are ordinarily expected to comply in carrying on regulated activities and it is pursuant to this section that the Agents' Code is being published.
14. **SCHEDULE 1** sets out the relevant new definitions and new sections 90, 91, 93 and 95 of the Ordinance in full for ease of reference. When these sections of the Ordinance come into effect, other sections of the Ordinance (which underpin the current self-regulatory regime) will simultaneously be repealed or substantially amended. The sections that will be repealed include section 67 of the Ordinance, under which the HKFI Code was issued. The HKFI Code therefore needs to be replaced (this being one of the reasons why the new Agents' Code is to be issued).

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<sup>2</sup> Legislative Council Brief dated 16 April 2014, File Ref: C2/2/50C, [http://www.legco.gov.hk/yr13-14/english/bills/brief/b201404251\\_brf.pdf](http://www.legco.gov.hk/yr13-14/english/bills/brief/b201404251_brf.pdf).

## **The Role of Licensed Insurance Intermediaries**

15. As indicated, the new regulatory regime brought in by the Amendment Ordinance reflects the fact that there are two kinds of licensed insurance intermediaries in Hong Kong: licensed insurance agents (being licensed individual insurance agents, licensed insurance agencies and licensed technical representatives (agents)) and licensed insurance brokers (being licensed insurance broker companies and licensed technical representatives (brokers)). Licensed individual insurance agents and licensed insurance agencies serve as the agents of and can represent up to a capped maximum number of authorized insurer(s). Their main role is to solicit applications for the insurance products offered by the authorized insurer(s) they represent. By contrast, licensed insurance broker companies serve as the agents of, and act for, policy holders and potential policy holders. Licensed insurance broker companies are free to deal with any number of authorized insurers on behalf of the policy holders and potential policy holders the broker represents.
16. Both licensed insurance agents and licensed insurance brokers serve a vital function in connecting policy holders and potential policy holders to insurers to fulfil their insurance needs. However, the difference in their functions and capacities needs to be reflected in the principles, standards and practices that apply to their conduct. For this reason, the IA aims to issue separate codes of conduct for licensed insurance agents and licensed insurance brokers. The subject of this consultation is the proposed Agents' Code.

## **The Draft Agents' Code**

17. The proposed Agents' Code sets out a series of General Principles, Practices and Standards which will apply specifically to licensed insurance agents in the conduct of their regulated activities. These will serve as **minimum** levels of professional conduct which policy holders and potential policy holders are entitled to expect when dealing with licensed insurance agents. In addition, the General Principles, Standards and Practices in the Agents' Code aim to inform, supplement and (in certain instances) explain how the Statutory Conduct Requirements in the new section 90 of the Ordinance will apply to licensed insurance agents and, in particular, provide guidance on the types of conduct which licensed insurance agents should adopt to ensure the way they conduct regulated activities is aligned with section 90 (and new section 91 for licensed insurance agencies).
18. The Agents' Code has been formulated taking account of the IA's statutory functions, the norms of practice which have emerged from the day-to-day operation of the insurance market, existing codes and guidelines which apply to insurance agents (such as the HKFI Code), other codes and guidelines issued by regulatory authorities in Hong Kong and overseas and international standards set out in the ICPs of the IAIS (particularly ICPs 18 and 19 which concern insurance intermediary conduct). In preparing the draft Agents' Code, the IA has also engaged with the Working Group on Direct Licensing Regime for Insurance Intermediaries (comprising the SROs), and the Discussion Group (Insurance Agents) (comprising representative bodies for insurance agents).
19. The draft Agents' Code will be finalized and gazetted after taking into account the feedback collected during this public consultation.

**Effective Date**

20. The proposed Agents' Code is intended to come into operation on the day on which section 74 of the Amendment Ordinance comes into operation. This day (which will be fixed by commencement notice published in the Gazette to be given by the Secretary for Financial Services and the Treasury) will mark the beginning of direct regulation by the IA of insurance intermediaries.



## CHAPTER 2 KEY PROVISIONS OF THE AGENTS' CODE

### Structure

21. The Agents' Code is structured into Parts A to D and Schedule 1.

- **Part A** explains the Agents' Code, contextualizes it within the insurance regulatory framework and sets out its legal status.
- **Part B** sets out the defined terms used in the Code.
- **Part C** is the main part of the Agents' Code. It starts by listing out the eight General Principles, then details each General Principle and its related Standards and Practices. In relation to each General Principle, the Statutory Conduct Requirement to which the General Principle (and its accompanying Standards and Practices) is most related is also referenced.
- **Part D** sets out the controls and procedures for licensed insurance agencies.
- **Schedule 1** outlines Additional Standards and Practices for Referral of Business.

### The Legal Status of the Agents' Code and its Place in the Regulatory Framework

22. The Agents' Code will be issued under the new section 95 of the Ordinance (**SCHEDULE 1**). Per the new section 95, the Code does not have the force of law (i.e. it is not itself legislation) and should not be interpreted in any way that would override the provisions of any legislation. However, the IA may take guidance from the Code in considering whether (and without limitation):

- a. there has been an act or omission by a licensed insurance agent which is or is likely to be prejudicial to the interests of policy holders or potential policy holders or the public interest (section 80(1) of the Ordinance); or
- b. a licensed insurance agent is fit and proper to remain licensed (section 95(6) of the Ordinance); or
- c. a licensed insurance agent has satisfied the Statutory Conduct Requirements.

The IA may, in respect of any of the above, consider taking disciplinary action against a licensed insurance agent (such as revocation, suspension or prohibition of or from a license or approval, public or private reprimands and fines). The IA does, however, recognize that licensed insurance agents differ in scale and complexity of business, that they utilize different channels to communicate and interface with policy holders and potential policy holders and that there may be different ways in which the General Principles and related Standards and Practices in the Code may be met. In assessing whether or not to take disciplinary action, therefore, the IA will take into account the relevant context, facts and impact of any matter (this is also in line with the principle-based approach which the Code takes – see section 24 below).

23. Furthermore, the new section 95(5) of the Ordinance (**SCHEDULE 1**) clarifies that while a failure on the part of a licensed insurance intermediary to comply with a code of conduct does not by itself render the intermediary liable to any judicial or other proceedings, in any proceedings under the Ordinance before a court, a code of conduct is admissible in evidence and, if a provision in the code appears to the court to be relevant to a question

arising in the proceedings, the court must, in determining the question, take into account any compliance or non-compliance of the provision (section 95(7) of the Ordinance).

### **Principle-Based Approach**

24. The Agents' Code reflects a principle-based approach. The General Principles, Standards and Practices in the Agents' Code do not (and cannot) serve as hard coded rules which prescribe the exact actions which a licensed insurance agent must take in every given situation. This would be neither desirable nor possible without removing from the insurance market its capacity to evolve, adapt and innovate i.e. the very dynamics which make it a market. Rather as principles of conduct, the General Principles, Standards and Practices in the Agents' Code apply universally across every type of licensed insurance agent (irrespective of size, scale or specialization), across the full range of channels which agents use to interface with policy holders and potential policy holders and to new business models adopted by agents as these evolve. This approach seeks to achieve the optimal balance between flexibility and clarity, so as to make the requirements in the Agents' Code practical as well as substantive. As under the current SRO regime, additional product specific requirements will be imposed (such as in relation to Investment-Linked Assurance Schemes).

#### **Question 1:**

Do you agree with the proposed principle-based approach of the Agents' Code and that the General Principles and their related Standards and Practices provide a suitable framework for the conduct of licensed insurance agents?

### **The General Principles, Standards and Practices of the Agents' Code**

#### *The General Principles, Standards and Practices*

25. The General Principles, Standards and Practices which make up the Agents' Code are written in non-statutory language in order to ensure they are easily understandable and can be practically applied. As such, this section of the consultation paper does not purport to provide an exhaustive analysis of each General Principle, Standard and Practice (which the reader is encouraged to read for him or herself). Even though certain General Principles, Standards and Practices are not commented on in this section, it is the case that all the General Principles, Standards and Practices are important (and of equal importance) and the Code intends that licensed insurance agents should adopt and comply with all the General Principles and their related Standards and Practices as a whole in their carrying on of regulated activities. With that stated, the below commentary is provided on the genesis of certain of the General Principles, Standards and Practices so the reader can be informed of their underlying intent and purpose.

#### *The broad themes underlying the General Principles, Standards and Practices*

26. Certain General Principles and their related Standards and Practices serve to codify in writing minimum norms which have already emerged from the day-to-day functioning of the insurance market, as generally expected minimum standards of professional conduct which every licensed insurance agent must follow (General Principle 1 - Honesty and Integrity, General Principle 3 - Exercising Care, Skill and Diligence and General Principle 4 - Competence to Advise, being examples). Other General Principles address specific

matters which the market dynamic cannot self-correct, such as asymmetries of information and knowledge on insurance products as between licensed insurance agents and clients (see for example, General Principle 5 – Disclosure and General Principle 6 – Suitability). Further General Principles serve as imperative policy holder protection measures (General Principle 8, for example, regarding safeguarding Client Assets).

27. A core theme running through the entirety of the Code is that of “treating clients fairly”. This theme touches upon each General Principle, Standard and Practice in the Code and serves as a fundamental objective which licensed insurance agents should always meet in carrying on their regulated activities.

Question 2:

Do you agree that the objective of “treating clients fairly” is fundamental to the regulated activities of a licensed insurance agent?

*The Client’s Best Interests*

28. General Principle 2 - Acting Fairly and in the Client’s Best Interests, serves a particularly important function in providing guidance to licensed insurance agents as to the practices they should adopt in order to comply with the Statutory Conduct Requirement in section 90(a) of the Ordinance, which requires a licensed insurance intermediary to act “*in the best interests of the policy holder concerned or the potential policy holder concerned*”. As stated, licensed individual insurance agents and licensed insurance agencies serve as agents of insurers and therefore owe fiduciary duties to the authorized insurers they represent. Given the new Statutory Conduct Requirement in section 90(a) requiring licensed insurance agents to act in the policy holders’ best interests, it was considered important to provide licensed insurance agents with guidance on the steps they should adopt to satisfy this Statutory Conduct Requirement without compromising their role as the agent of insurers. General Principle 2 (and its related Standards and Practices) achieves this by providing, for example, that a licensed insurance agent should only recommend insurance products which *best* meet the client’s *interests*, from the range of insurance products offered by the licensed insurance agents’ principal insurer(s) (being those products that a reasonable licensed insurance agent would consider suitable for the client based on the client’s objectives, circumstances, needs and priorities). In this way, licensed individual insurance agents and licensed insurance agencies are required to act in the best of interests of policy holders, without compromising their role as agents of the insurer.

Question 3:

Do you agree that licensed insurance agents should comply with the Standards and Practices set out in General Principle 2 in order to act in the client’s best interests?

*Disclosure Requirements*

29. General Principle 7 on Conflicts of Interests, also serves an important dual function. Primarily, in setting out minimum requirements on avoiding and managing conflicts of interest, it serves as a vital policy holder protection measure. Secondly, it reconciles the

position of licensed individual insurance agents and licensed insurance agencies acting as the agents of authorized insurer(s), with the role they play in providing assistance and service to policy holders and potential policy holders in sourcing suitable insurance for them. It does this by providing practical guidance on the disclosures which should be made to policy holders and potential policy holders in relation to the licensed insurance agent's capacity.

30. The reality is that the legal capacity in which in a licensed individual insurance agent or licensed insurance agency acts (as agent for insurers) and what this means, may not always be obvious to policy holders and potential policy holders. This may lead to the wrong assumptions being drawn as to whom the agent represents (and conflicts of interest may potentially arise as a result). Clarity and transparency in the form of simple and clear disclosure is therefore vital. General Principle 7 seeks to achieve this, by requiring licensed individual insurance agents and licensed insurance agencies to disclose that:

- they are appointed by their appointing insurer to promote and advise on the insurance products offered by the insurer; and
- the insurance products they can promote and advise on are limited to the insurance products offered by their appointing insurer.

Question 4:

Do you agree that the Code should address the disclosures a licensed insurance agent should make in order to manage potential and actual conflicts of interest, as set out in General Principle 7?

31. General Principle 5 also includes disclosure requirements which licensed insurance agents must follow. Certain of these disclosures complement the disclosures on the licensed insurance agent's capacity required under General Principle 7 (for example, the disclosure requirements in relation to the licensed insurance agent's identity and the names of the insurers they represent). Other disclosure requirements in General Principle 5, focus on the disclosures which licensed insurance agents should make to policy holders and potential policy holders in relation to the insurance products and the obligations of the policy holders and potential policy holders when applying for such products. General Principle 5 (and Schedule 1) also sets out standards and practices which a licensed insurance agent must follow in relation to clients (i.e. policy holders and potential policy holders) which are referred to the agent, or when the agent refers a client to another licensed insurance intermediary. Collectively, these disclosure requirements aim to ensure that transparency and clarity is provided to clients so they can make informed decisions regarding insurance purchases. They thereby serve as important protection measures for policy holders.

Question 5:

Do you agree that licensed insurance agents should make proper disclosure in relation to their identity and capacity, in relation to the insurance products they recommend and in relation to the other matters stated under General Principle 5?

### *Controls and procedures for licensed insurance agencies*

32. Part D is related to new section 91(1) of the Ordinance (**SCHEDULE 1**) and is applicable to licensed insurance agencies (i.e. sole proprietorships, partnerships or companies). It provides guidance on the corporate governance, controls and procedures which agencies should establish and implement to ensure the General Principles, Standards and Practices in the Agents' Code are met by the agency and the technical representatives (agent) appointed by the agency.
33. In short, a licensed insurance agency should establish and implement an organizational structure which includes adequate controls to ensure the interests of clients are not prejudiced, clear roles and lines of responsibility as well as accountability of its senior management which underpins the objective of fair treatment of the clients. The responsible officer and the senior management who oversee the regulated activities carried on by the agency are accountable for ensuring such controls and procedures are in place and effective (indeed it is this level of management which sets the appropriate corporate governance culture for the agency to ensure, for example, that the core principle of treating clients fairly is at the heart of agency's operation). The extent of the requirements for the corporate governance framework on the agency will depend on the nature, size and complexity of the business of the agency as well as the medium it uses for solicitation of business and the types of insurance it arranges. The objective of good corporate governance, however, namely to ensure the interests of the clients are not prejudiced and that clients are treated fairly, remains the same across all agencies.
34. Part D requirements are in addition to other governance requirements set out in any applicable codes and guidelines, including the "Guideline on "Fit and Proper" Criteria for Licensed Insurance Intermediaries under the Insurance Ordinance (Cap. 41)". The requirement that material incidents be reported to the IA is linked to the new fit and proper requirements under the Ordinance which are ongoing (i.e. they do not only apply at the licensing stage).

#### Question 6:

Do you agree that the Code should set out requirements for the governance, controls and procedures that a licensed insurance agency should adopt (as per Part D of the Code)? Do you agree that licensed insurance agencies should follow such requirements to ensure the General Principles, Standards and Practices in the Agents' Code are complied with by the agencies and their appointed licensed technical representatives (agent)?

## SCHEDULE 1

### NEW DEFINITIONS UNDER SECTION 2(1) AND SECTIONS 90, 91, 93 AND 95 OF THE ORDINANCE

#### Section 2(1)— definitions

*licensed individual insurance agent* (持牌個人保險代理) means an individual who is granted a licence under section 64W;

*licensed insurance agency* (持牌保險代理機構) means a person who is granted a licence under section 64U;

*licensed insurance agent* (持牌保險代理人) means—

- (a) a licensed insurance agency;
- (b) a licensed individual insurance agent; or
- (c) a licensed technical representative (agent);

*licensed insurance broker* (持牌保險經紀) means—

- (a) a licensed insurance broker company; or
- (b) a licensed technical representative (broker);

*licensed insurance broker company* (持牌保險經紀公司) means a company which is granted a licence under section 64ZA;

*licensed insurance intermediary* (持牌保險中介人) means—

- (a) a licensed insurance agent; or
- (b) a licensed insurance broker;

*licensed technical representative (agent)* (持牌業務代表 (代理人)) means an individual who is granted a licence under section 64Y;

*licensed technical representative (broker)* (持牌業務代表 (經紀)) means an individual who is granted a licence under section 64ZC;

#### 90. Conduct requirements for licensed insurance intermediaries

When carrying on a regulated activity, a licensed insurance intermediary—

- (a) must act honestly, fairly, in the best interests of the policy holder concerned or the potential policy holder concerned, and with integrity;
- (b) must exercise a level of care, skill and diligence that may reasonably be expected of a prudent person who is carrying on the regulated activity;
- (c) may advise only on matters for which the intermediary is competent to advise;
- (d) must have regard to the particular circumstances of the policy holder or the potential policy holder that are necessary for ensuring that the regulated activity is appropriate to the policy holder or the potential policy holder;
- (e) must make the disclosure of information to the policy holder or the potential policy holder that is necessary for the policy holder or the potential policy holder to be sufficiently informed for the purpose of making any material decision;

- (f) must use its best endeavours to avoid a conflict between the interests of the intermediary and the interests of the policy holder or the potential policy holder;
- (g) must disclose any conflict mentioned in paragraph (f) to the policy holder or the potential policy holder;
- (h) must ensure that the assets of the policy holder or the potential policy holder are promptly and properly accounted for; and
- (i) must comply with other requirements that are prescribed by rules made under sections 94 and 129.

**91. Conduct requirements for licensed insurance agencies and their responsible officers**

(1) A licensed insurance agency—

- (a) must establish and maintain proper controls and procedures for securing compliance with the conduct requirements set out in section 90 by the agency and the licensed technical representatives (agent) appointed by the agency;
- (b) must use its best endeavours to secure observance with the controls and procedures established under paragraph (a) by the licensed technical representatives (agent) appointed by the agency;
- (c) must ensure that its responsible officer has sufficient authority within the agency for carrying out the responsibilities set out in subsection (2); and
- (d) must provide its responsible officer with sufficient resources and support for carrying out the responsibilities set out in subsection (2).

(2) A responsible officer of a licensed insurance agency must use the officer's best endeavours to ensure that the agency—

- (a) has established and maintains proper controls and procedures for securing compliance with the conduct requirements set out in section 90 by the agency and the licensed technical representatives (agent) appointed by the agency; and
- (b) uses its best endeavours to secure observance with the controls and procedures established under paragraph (a) by the licensed technical representatives (agent) appointed by the agency.

**93. Breach of conduct requirements**

(1) A failure to comply with a requirement specified in section 90, 91 or 92 does not by itself render any person liable to any judicial proceedings.

(2) To avoid doubt, this section does not affect—

- (a) the extent (if any) to which a failure to comply with any other provision of this Ordinance is actionable; or
- (b) any liability of a person under the common law or any other enactment, regardless of whether the circumstances giving rise to the liability would also constitute a failure mentioned in subsection (1).

## **95. Codes of conduct for licensed insurance intermediaries**

- (1) The Authority may publish, in the Gazette and in any other manner it considers appropriate, codes of conduct for giving guidance relating to the practices and standards with which licensed insurance intermediaries are ordinarily expected to comply in carrying on regulated activities.
- (2) Subsection (1) applies without limiting the powers of the Authority to make rules under section 94.
- (3) A code of conduct may refer to obligations to observe—
  - (a) any other codes or requirements issued or imposed otherwise than by the Authority;
  - (b) continuing obligations, including an obligation to provide or undergo continuous training; and
  - (c) practices and standards concerning any of the matters described in section 94(2).
- (4) The Authority may from time to time amend the whole or any part of any code of conduct published.
- (5) A failure on the part of a licensed insurance intermediary to comply with a code of conduct does not by itself render the intermediary liable to any judicial or other proceedings.
- (6) However, the failure may be taken into account in considering, for a provision of this Ordinance, whether the intermediary is a fit and proper person to remain licensed.
- (7) In any proceedings under this Ordinance before a court—
  - (a) a code of conduct is admissible in evidence; and
  - (b) if a provision in the code appears to the court to be relevant to a question arising in the proceedings, the court must, in determining the question, take into account any compliance or non-compliance of the provision.
- (8) A code of conduct published under this section—
  - (a) may be of general or special application and may be made so as to apply only in specified circumstances; and
  - (b) may make different provisions for different circumstances and provide for different cases or classes of cases.
- (9) A code of conduct published under this section is not subsidiary legislation.



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# **Code of Conduct for Licensed Insurance Agents**

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- 3. Exercising Care, Skill and Diligence**
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## **Preface**

There are broadly two types of licensed insurance intermediary in Hong Kong: licensed insurance agents and licensed insurance brokers. Both play an important role in the Hong Kong insurance industry, serving as a vital conduit between the public and the insurance sector. The Code of Conduct in the following pages is for Licensed Insurance Agents. It sets out fundamental principles of professional conduct which buyers of insurance are entitled to expect in their dealings with licensed insurance agents, reinforcing the bedrock of trust which serves as the foundation for a healthy, competitive and efficient insurance industry.

The Code does not operate in isolation. It is part of the totality of the duties and obligations which apply to licensed insurance agents in their carrying on of regulated activities under common law (including contract law), the Insurance Ordinance (Cap. 41), other Ordinances and rules, regulations, codes, guidelines, circulars and regulatory instruments including those administered or issued by the Insurance Authority. The context for the Code, within this wider framework, is outlined below.

### **Types of licensed insurance agents**

The licensing regime under the Insurance Ordinance prescribes three types of licensed insurance agents: licensed individual insurance agents, licensed insurance agencies and licensed technical representatives (agent).

Licensed individual insurance agents and licensed insurance agencies act as agents of the authorized insurers which appoint them (i.e. the insurers are their principals). In this capacity, they promote, advise on and arrange insurance policies offered by their appointing insurers.

Licensed technical representatives (agent) act as agents of the licensed insurance agencies which appoint them (i.e. the agencies are their principals). In this capacity, they promote, advise on and arrange insurance policies offered by the appointing insurers of their agency.

### **Licensed insurance agents and the principal-agent relationship**

The role licensed insurance agents perform on behalf of their principals is founded on the principal-agent relationship at common law. Insurance agents owe their principals contractual and fiduciary obligations. In return, principals remunerate their agents and are vicariously liable for the actions taken by their agents within the scope of their authority. It is in the interests of principals, therefore, to implement adequate controls and procedures to administer their insurance agents. These controls and procedures can also serve as effective and important measures for policy holder protection from a regulatory perspective. The Code reflects this alignment, by including provisions which require compliance by licensed insurance agents with the requirements set out by their principals.

The Insurance Ordinance also has provisions relating to the principal-agent relationship between insurers and their licensed individual insurance agents and

licensed insurance agencies. Primarily, the vicarious liability of insurers for the actions of their appointed licensed individual insurance agents and licensed insurance agencies at common law, is reinforced by section 68 of the Insurance Ordinance. Secondly, the number of appointing insurers, for which a licensed individual insurance agent or licensed insurance agency can act, is limited to a cap<sup>1</sup> set under the Insurance Ordinance. Within this cap, whether a licensed individual insurance agent or licensed insurance agency can accept an appointment by another insurer, and the duties and obligations the agent or agency owes to each respective insurer, remain matters governed by common law principles and the provisions in their respective agency agreements<sup>2</sup>.

### **Regulation of licensed insurance agents in their dealings with policy holders or potential policy holders when carrying on regulated activities**

The Insurance Ordinance (and rules, regulations, codes, guidelines, circulars and other regulatory instruments administered or issued by the Insurance Authority) also includes requirements, which focus on the interactions which licensed insurance agents have with policy holders and potential policy holders when carrying on regulated activities. These requirements include:

- the statutory conduct requirements, with which licensed insurance agents must comply in carrying on regulated activities, in sections 90 and 91 of the Insurance Ordinance;
- the relevant requirements set out in the rules, regulations, codes and guidelines made or issued under the Insurance Ordinance as well as circulars and other regulatory instruments issued by the Insurance Authority; and
- the general principles, standards and practices set out in the Code.

### **The aims of the Code**

Primarily, the Code promulgates principles of conduct and related standards and practices with which licensed insurance agents are ordinarily expected to comply in carrying on regulated activities. These principles, standards and practices serve as the minimum standards of professionalism to be met by licensed insurance agents when carrying on regulated activities.

Secondly, the Code supplements the duties and obligations which licensed insurance agents owe their principals (arising from their principal-agent relationship) by providing that agents should comply with the requirements set out by their principals regarding their carrying on of regulated activities.

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<sup>1</sup> Sections 64I of the Insurance Ordinance sets out the restriction in relation to the prescribed maximum number of appointing insurers which licensed individual insurance agents and licensed insurance agencies can represent. Section 64L of the Insurance Ordinance limits licensed technical representatives (agent) to serving only one licensed insurance agency in that capacity (hence, in effect, they are also subject to the licensed insurance agency's cap on the number of appointing insurers the agency can represent).

<sup>2</sup> For example, consent from existing appointing insurers would normally be required before accepting another appointment.

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Thirdly, the Code aims to, in certain instances, explain the statutory conduct requirements in sections 90 and 91 of the Insurance Ordinance as appropriate. For example, section 90(a) of the Insurance Ordinance requires a licensed insurance agent, when carrying on a regulated activity, to act in the best interests of policy holders and potential policy holders. The Code (in particular the standards and practices under General Principle 2) provides guidance on the conduct requirements a licensed insurance agent should adopt in order to meet the section 90(a) requirements.

The Code of Conduct for Licensed Insurance Agents is set out in the following pages.

## **Part A Introduction to this Code**

### **1. Framework of this Code**

- 1.1 This Code is issued and published by the Insurance Authority (“IA”) pursuant to section 95 of the Insurance Ordinance (Cap. 41) (“the Ordinance”) and sets out a series of general principles which the IA believes to be fundamental principles of conduct which licensed insurance agents should adopt and follow when carrying on regulated activities (the “General Principles”).
- 1.2 The General Principles are set out in the opening section of Part C of this Code. Part C goes on to provide further explanation of each General Principle and includes standards and practices relating to each General Principle which licensed insurance agents are ordinarily expected to adopt in carrying on regulated activities (the “Standards and Practices”). The Standards and Practices are either stated specifically in this Code or are incorporated into this Code by reference to other guidelines or codes issued by the IA, other regulators or professional bodies.
- 1.3 Part D of this Code applies only to licensed insurance agencies and sets out requirements for the controls and procedures which a licensed insurance agency should adopt to ensure the General Principles and related Standards and Practices in Part C are met by the agency and the licensed technical representatives (agent) appointed by the agency.
- 1.4 Neither the General Principles and related Standards and Practices set out in Part C in this Code, nor the controls and procedures set out in Part D of this Code are exhaustive.
- 1.5 Section 90 of the Ordinance stipulates the conduct requirements which licensed insurance agents are expected to satisfy when carrying on regulated activities. For guidance, each General Principle in this Code identifies the specific Statutory Conduct Requirement to which the General Principle (and its related Standards and Practices) is most relevant. This should not, however, be treated as an exact match. Many of the General Principles are relevant across several different Statutory Conduct Requirements. Rather licensed insurance agents should look to adopt the General Principles and the related Standards and Practices as a whole in their carrying on of regulated activities.
- 1.6 Section 91 of the Ordinance stipulates requirements in relation to the proper controls and procedures which a licensed insurance agency must establish (and which its responsible officer must use his best endeavours to establish) for securing compliance with the conduct requirements in Section 90 by its licensed technical representatives (agent). Part D provides guidance as to the controls and procedures needed to comply with Section 91. Again, however, it should be emphasized that this guidance is not exhaustive.
- 1.7 In formulating the General Principles and their related Standards and Practices in

this Code, full account has been taken of the role that licensed insurance agents play as agents acting for authorized insurers or licensed insurance agencies, as the case may be.

## **2. Persons to whom this Code applies**

- 2.1 This Code applies to all licensed insurance agents as defined in the Ordinance, namely licensed individual insurance agents, licensed insurance agencies and licensed technical representatives (agent). A reference to “licensed insurance agents” in this Code, therefore, includes “licensed individual insurance agents”, “licensed insurance agencies” and “licensed technical representatives (agent)”.
- 2.2 Responsible officers and senior management of licensed insurance agencies should also make specific reference to Part D of this Code which sets out their responsibilities relating to the carrying on of regulated activities by the insurance agencies.

## **3. This Code and other Guidelines issued by the IA**

This Code is of universal application to the regulated activities carried on by licensed insurance agents. Accordingly, this Code needs to be complied with in addition to the applicable requirements set out in all other codes and guidelines (and other regulatory instruments) issued by the IA.

## **4. Effect of a Breach of this Code**

- 4.1 A failure by a licensed insurance agent to comply with this Code shall not by itself render the agent liable to any judicial or other proceedings (section 95(5) of the Ordinance).
- 4.2 The IA may, however, take guidance from this Code in considering whether (and without limitation):
- (a) there has been an act or omission by a licensed insurance agent which is or is likely to be prejudicial to the interests of policy holders or potential policy holders or the public interest (section 80(1) of the Ordinance);
  - (b) a licensed insurance agent is fit and proper to remain licensed (section 95(6) of the Ordinance); or
  - (c) a licensed insurance agent has satisfied the Statutory Conduct Requirements.
- 4.3 The IA recognizes that licensed insurance agents differ in scale and complexity of business, that they utilize different channels to communicate and interface with policy holders and potential policy holders and that there may be different ways in which the General Principles and related Standards and Practices may be met. The IA will therefore take account of the relevant context, facts and impact of any matter in considering whether to take any disciplinary action.
- 4.4 This Code does not have the force of law and should not be interpreted in a way



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that would override the provision of any law. However, in any proceedings under the Ordinance before a court, this Code is admissible in evidence, and if a provision in this Code appears to the court to be relevant to a question arising in the proceedings, the court must, in determining the question, take into account any compliance or non-compliance of this Code (section 95(7) of the Ordinance).

## Part B Interpretation

The defined terms in this section shall bear their stated meaning in this Code. Other expressions as used in this Code shall, except where expressly defined in this Code, have the same meanings as in the Ordinance in which the expressions are referred to or used.

### Definitions

For the purpose of this Code,

**“appointing agency”**, in relation to a licensed technical representative (agent), means the licensed insurance agency which appoints the licensed technical representative (agent) as its agent to carry on regulated activities;

**“appointing insurer”**, in relation to a licensed individual insurance agent or a licensed insurance agency, means the authorized insurer which appoints the licensed individual insurance agent or licensed insurance agency (as appropriate) as its agent to carry on regulated activities;

**“client”** or **“customer”** in this Code bears the same meaning as policy holder and potential policy holder in the Ordinance. The terms are used interchangeably throughout this Code;

**“insurance product”** or **“insurance policy”** means a contract of insurance. The terms are used interchangeably throughout this Code;

**“Statutory Conduct Requirements”** includes the conduct requirements applicable to licensed insurance agents and/or their responsible officers as identified in sections 90 and 91 of the Ordinance;

**“registered name”**, in relation to a company, means the name under which the company is registered under the Companies Ordinance (Cap. 622).

A reference in this Code to “it” or “its” in relation to a licensed insurance agent shall, except where the context otherwise specifies, be construed as including a reference to “he” or “him” or “his” and “she” or “her” or “hers” and vice versa, as the case may be. Where the context so permits or requires, words importing the singular number include the plural and vice versa.

This Code should be read in conjunction with the relevant provisions of the Ordinance, the relevant subsidiary legislation as well as the relevant codes and guidelines issued by the IA. The matters set forth herein are not exhaustive and do not constitute legal advice or create additional legal obligations beyond those contained in the Ordinance.

## **Part C General Principles**

The General Principles of this Code are set out below. They take account of the role licensed insurance agents play as agents acting for authorized insurers and serve as principles of conduct to ensure clients are treated fairly and their interests are protected. They also take account of the Insurance Core Principles (ICPs) issued by the International Association of Insurance Supervisors (IAIS) and in particular ICPs 18 and 19 which focus on principles which apply to licensed insurance intermediaries and their conduct of business.

### **GP 1. Honesty and Integrity**

A licensed insurance agent should be trustworthy and act honestly, ethically and with integrity.

### **GP 2. Acting Fairly and in the Client's Best Interests**

A licensed insurance agent should always treat clients fairly and act in their best interests.

### **GP 3. Exercising Care, Skill and Diligence**

A licensed insurance agent should act with due care, skill and diligence.

### **GP 4. Competence to Advise**

A licensed insurance agent should possess appropriate levels of professional knowledge and experience and only carry on regulated activities in respect of which the agent has the required competence.

### **GP 5. Disclosure of Information**

A licensed insurance agent should provide clients with accurate and adequate information to enable them to make informed decisions.

### **GP 6. Suitability**

A licensed insurance agent's regulated advice should be suitable for the client and take into account the circumstances of that client.

### **GP 7. Conflicts of Interest**

A licensed insurance agent should make every effort to avoid conflicts of interests and when such conflicts cannot be avoided, should manage them with appropriate disclosure to ensure clients are fairly treated at all times.

### **GP 8. Client Assets**

A licensed insurance agent should have sufficient safeguards in place to protect the assets of clients.

## **General Principle 1 – Honesty and Integrity**

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*A licensed insurance agent should be trustworthy and act honestly, ethically and with integrity.*

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Related Statutory Conduct Requirement: Section 90(a) of the Ordinance – “*when carrying on a regulated activity, a licensed insurance intermediary must act honestly, fairly, in the best interests of the policy holder concerned or the potential policy holder concerned, and with integrity.*”

### **Standards and Practices**

#### **1.1 Accurate representations and presentation**

- (a) A licensed insurance agent should not mislead a client and should ensure that any representation made or information provided to a client about any insurers, insurance intermediaries or insurance products is accurate and not misleading.
- (b) A licensed insurance agent should not make inaccurate, misleading or incomplete statements or comparisons to induce a client to replace an existing insurance policy with another insurance policy.
- (c) A licensed insurance agent should not use advertising or marketing materials which contain information that is incomplete, false, disparaging, misleading or deceptive.
- (d) A licensed insurance agency should not use a name (including a registered name, trade name or brand name) that is likely to deceive, mislead or confuse the client. It should not use a name which may lead the public to believe that it is closely affiliated with an insurer, another insurance intermediary, or a well-known entity unless there is such close affiliation or it has the authority to use the name.

#### **1.2 Offering advantage to director or partner or employee of a client**

Where a licensed insurance agent is seeking to offer or arrange the purchase of an insurance product by a client which is not an individual (e.g. sole proprietorship, partnership, company, etc.), the agent should not offer or give any advantage to any director, partner or employee of the client unless the following two conditions are satisfied:

- (i) the offer or giving of the advantage does not violate any other rules, regulations, codes, guidelines, circulars and other regulatory instruments administered or issued by the IA or any other regulatory authorities which apply to the agent; and
- (ii) the agent obtains the express prior written consent of the client.

#### **1.3 Compliance**

- (a) A licensed insurance agent should comply with:

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- (i) all laws which apply to the agent;
  - (ii) all rules, regulations, codes, guidelines, circulars and other regulatory instruments administered or issued by the IA which apply to the agent;
  - (iii) all requirements of any other regulatory authorities which apply to the agent; and
  - (iv) all rules, guidelines and codes of any professional bodies of which the agent is a member or participant.
- (b) A licensed insurance agent should cooperate with the IA and all other relevant regulatory authorities on any matters concerning the regulated activities carried on by the agent.
- (c) A licensed insurance agent should comply with the requirements in relation to the carrying on of regulated activities set out by its appointing insurer or appointing agency (as appropriate).
- (d) Where a licensed insurance agent is:
- (i) wound up or adjudicated bankrupt by a court in Hong Kong or elsewhere;
  - (ii) convicted of criminal offence in Hong Kong or elsewhere; or
  - (iii) disciplined by the Monetary Authority, the Securities and Futures Commission or the Mandatory Provident Fund Schemes Authority,
- the agent should report this to its appointing insurer or appointing agency (as appropriate) and the IA as soon as reasonably practicable.

### 1.4 Undue influence

A licensed insurance agent should not exert undue influence on a client or pressurize a client into making a material decision.

### 1.5 Accuracy and completeness of application and claim forms

In respect of any application, claim or other forms which are required to be completed by or on behalf of a client, a licensed insurance agent should make clear to the client that it is the client's responsibility to ensure the correctness and completeness of the information provided therein and the client should be asked to check the details before signing the forms or related documents. A licensed insurance agent should not complete, amend or submit any application, claim or other forms relating to an insurance policy without confirming the accuracy of the contents of the forms with the client concerned. A licensed insurance agent should not submit any such form knowing it to contain incorrect or incomplete information.

## **General Principle 2 – Acting Fairly and in the Client’s Best Interests**

*A licensed insurance agent should always treat clients fairly and act in their best interests.*

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Related Statutory Conduct Requirement: Section 90(a) of the Ordinance – “*when carrying on a regulated activity, a licensed insurance intermediary must act honestly, fairly, in the best interests of the policy holder concerned or the potential policy holder concerned, and with integrity.*”

### **Standards and Practices**

#### **2.1 Acting fairly, impartially and in the client’s best interests**

- (a) A licensed insurance agent should:
- (i) treat the client fairly;
  - (ii) pay due regard to client’s interests; and
  - (iii) give suitable, impartial and objective advice to the client which takes account of those interests.
- (b) A licensed insurance agent should only recommend insurance products<sup>3</sup> which best meet the client’s interests, from the range of insurance products offered by its appointing insurer or appointing agency (as appropriate).

#### **2.2 Giving fair and impartial regulated advice<sup>4</sup> in the client’s best interests**

- (a) A licensed insurance agent should, prior to giving regulated advice:
- (i) make such enquiries as are reasonable to obtain accurate and sufficient information relating to the client; and
  - (ii) if it is reasonably apparent that such information, when provided, is inaccurate or insufficient, make reasonable follow-up enquiries to clarify the inaccuracy or to obtain sufficient information.
- (b) When giving regulated advice, a licensed insurance agent should:
- (i) take into account the information it has obtained from its client, including the client’s objectives, circumstances, needs and priorities;
  - (ii) when making a recommendation on an insurance product, consider what available insurance products<sup>5</sup> can meet the client’s objectives,

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<sup>3</sup> In this respect, the insurance products which best meet the client’s interests would be those that a reasonable licensed insurance agent would consider suitable for the client based on the client’s objectives, circumstances, needs and priorities.

<sup>4</sup> Giving regulated advice includes making a recommendation on an insurance product.

<sup>5</sup> If a licensed individual insurance agent or licensed insurance agency is restricted by the provisions of

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- circumstances, needs and priorities, based on the product range offered by its appointing insurer or appointing agency (as appropriate);
- (iii) have a reasonable basis for the advice to ensure the suitability of the advice given to the client; and
  - (iv) provide the client with adequate information in order to assist the client to make an informed decision.
- (c) The regulated advice given by a licensed insurance agent to a client should be advice that a reasonable licensed insurance agent would consider suitable for the client based on the client's objectives, circumstances, needs and priorities.

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its agency agreement to offer only insurance products from one appointing insurer, the individual insurance agent or insurance agency (in this case, also licensed technical representatives (agent) appointed by the agency) needs only consider which available insurance products from that appointing insurer's product range can meet the client's objectives, circumstances, needs and priorities.

## **General Principle 3 – Exercising Care, Skill and Diligence**

*A licensed insurance agent should act with due care, skill and diligence.*

Related Statutory Conduct Requirement: Section 90(b) of the Ordinance – “*when carrying on a regulated activity, a licensed insurance intermediary must exercise a level of care, skill and diligence that may reasonably be expected of a prudent person who is carrying on the regulated activity.*”

### **Standards and Practices**

#### **3.1 Meeting the standards expected of a reasonable and prudent licensed insurance agent**

A licensed insurance agent must always carry on regulated activities to a reasonable standard of care and skill and with due diligence. The reasonable standard of care, in this respect, is the standard expected of a prudent professional insurance agent carrying on regulated activities.

#### **3.2 Carrying out client’s instructions**

A licensed insurance agent should take reasonable steps to carry out a client’s instructions accurately and promptly, and notify the client within a reasonable period of time in case of any delay or failure to carry out the instruction.

#### **3.3 Protecting a client’s privacy and confidentiality**

A licensed insurance agent should ensure that the privacy and confidentiality of all client information is maintained and should not disclose or use such information except:

- (i) in the normal course of carrying on of regulated activities to the extent that the information disclosed is required for the relevant purpose;
- (ii) with the written consent of the client; or
- (iii) for the purpose of complying with any laws or regulations which apply to the agent and require disclosure.

#### **3.4 Cooling-off periods**

If an insurance policy contains a cooling-off period provision<sup>6</sup>, a licensed insurance agent should adhere to the following practices:

- (i) before the client signs the relevant application form, the agent should inform the client of his right to cancel the insurance policy during the cooling-off period and the duration of the cooling-off period;

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<sup>6</sup> A cooling-off period provision, in relation to an insurance policy, is a provision which allows the policy holder to cancel the policy within a specified period from inception and obtain a refund.



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- (ii) if the agent is obliged to deliver the insurance policy to the client, he should deliver it within a reasonable time so that the client has sufficient time to review the insurance policy and reflect on his decision to purchase before expiry of the cooling-off period; and
- (iii) the agent should comply with all other requirements regarding the cooling-off right as set out in other applicable rules, regulations, codes, guidelines, circulars and other regulatory instruments administered or issued by the IA.

## **General Principle 4 – Competence to Advise**

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*A licensed insurance agent should possess appropriate levels of professional knowledge and experience and only carry on regulated activities in respect of which the agent has the required competence.*

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Related Statutory Conduct Requirement: Section 90(c) of the Ordinance – “*when carrying on a regulated activity, a licensed insurance intermediary may advise only on matters for which the intermediary is competent to advise.*”

### **Standards and Practices**

#### **4.1 Product knowledge**

A licensed individual insurance agent and a licensed technical representative (agent) should have a good understanding of the key features of the different types of insurance products on which he may give regulated advice.

#### **4.2 Being clear about the limits of their knowledge**

A licensed individual insurance agent and a licensed technical representative (agent) should not give advice on matters in relation to which he is not adequately trained or lacks the specific skills or knowledge necessary to carry on the relevant regulated activity. When in doubt, he should seek guidance from the appropriate personnel in the appointing insurer or the responsible officer or senior management in the appointing agency, as appropriate.

## **General Principle 5 – Disclosure of Information**

*A licensed insurance agent should provide clients with accurate and adequate information to enable them to make informed decisions.*

Related Statutory Conduct Requirement: Section 90(e) of the Ordinance – “when carrying on a regulated activity, a licensed insurance intermediary must make the disclosure of information to the policy holder or the potential policy holder that is necessary for the policy holder or the potential policy holder to be sufficiently informed for the purpose of making any material decision.”

### **Standards and Practices**

#### **5.1 Disclosure in relation to identity and capacity**

- (a) Before providing any regulated advice, a licensed insurance agent should provide the following information to his client:
- (i) the name (the registered name as well as the trade name, if any) of the agent;
  - (ii) the type of licence of the agent, i.e. individual insurance agent licence, insurance agency licence or technical representative (agent) licence;
  - (iii) the name of the appointing insurer or appointing agency (as appropriate) of the agent; and
  - (iv) where the agent is a licensed technical representative (agent), the name of the appointing insurer of the technical representative (agent)'s appointing agency.
- (b) Where a licensed individual insurance agent or licensed insurance agency acts for more than one appointing insurer, the agent or agency as well as the licensed technical representatives (agent) appointed by the agency should clearly identify to the client which appointing insurer the agent or agency is representing in relation to each particular insurance transaction.
- (c) To enable a client to verify the information provided by a licensed insurance agent as to its identity and capacity, the agent should:
- (i) inform the client of its licence number upon request; and
  - (ii) where the agent is a licensed individual insurance agent or licensed technical representative (agent), ensure the correctness of his name, his licence number, and the name of his appointing insurer or appointing agency (as appropriate) shown on his business card if distributed for the purpose of carrying on regulated activities.

#### **5.2 Disclosure in relation to insurance products**

- (a) A licensed insurance agent should provide information on the key features of each insurance product recommended or arranged by the agent to the client concerned, and only use the relevant marketing materials approved by the insurer concerned. The information should include:

- (i) the name of the insurer concerned;
  - (ii) the major policy terms, conditions, conditions precedent, exclusions and warranties clauses;
  - (iii) the level of premium and the period for which the premium is payable;
  - (iv) the fees and charges; and
  - (v) any other information required in accordance with the relevant rules, regulations, codes, guidelines, circulars and other regulatory instruments as specified by the IA from time to time and published on the IA's website.
- (b) When comparing insurance products, the licensed insurance agent should adequately explain the differences and avoid any unfair comparisons.

### **5.3 Disclosure in relation to a policy holder's obligations**

When assisting a client to make an application for insurance or fill out an insurance application form (or other forms in connection with the application), a licensed insurance agent should:

- (i) explain to the client the principle of utmost good faith and ensure that the client understands that non-disclosure of material facts or provision of incorrect information may result in the insurance policy being invalidated or void or claims being repudiated;
- (ii) indicate the sort of material facts which ought to be disclosed; and
- (iii) draw the client's attention to any declaration which needs to be made by the client in respect of the application, give the client the opportunity to review it before the declaration is made and ensure the client understands that the client is responsible for the declaration.

### **5.4 Referral business**

If a licensed insurance agent accepts business referred by another person, or refers business to another licensed insurance intermediary, the information specified in Schedule 1 should be provided.

## **General Principle 6 – Suitability**

*A licensed insurance agent's regulated advice should be suitable for the client and take into account the circumstances of that client.*

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Related Statutory Conduct Requirement: Section 90(d) of the Ordinance – “*when carrying on a regulated activity, a licensed insurance intermediary must have regard to the particular circumstances of the policy holder or the potential policy holder that are necessary for ensuring that the regulated activity is appropriate to the policy holder or the potential policy holder.*”

### **Standards and Practices**

#### **6.1 Suitability assessment**

- (a) Before giving regulated advice, a licensed insurance agent should properly carry out a suitability assessment of the client's objectives, circumstances, needs and priorities.
- (b) In carrying out this suitability assessment, a licensed insurance agent should:
  - (i) take reasonable steps to understand the client's objectives, circumstances, needs and priorities;
  - (ii) explain to the client that a proper assessment cannot be made if necessary information for a suitability assessment cannot be obtained;
  - (iii) take into account such objectives, circumstances, needs and priorities when giving regulated advice;
  - (iv) explore available insurance options and provide suitable options to the client;
  - (v) have a reasonable basis for making a recommendation with respect to a material decision (e.g. a decision in relation to the making of an application or proposal for a contract of insurance) and explain to the client the basis for the recommendation upon the client's request; and
  - (vi) comply with any other relevant requirements in any rules, regulations, codes, guidelines, circulars and other regulatory instruments as specified by the IA from time to time and published on the IA's website.
- (c) The level of suitability assessment should be proportionate and reasonable, taking into account the circumstances of the client and other factors such as the type of insurance product under consideration.

#### **6.2 Recommendation**

- (a) A licensed insurance agent should use reasonable efforts to ensure that the regulated advice (e.g. advice in relation to the making of an application or proposal for a contract of insurance) given by the agent is suitable for the client on the basis of the information it has obtained from the client, including the client's objectives, circumstances, needs and priorities.

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- (b) If, after a licensed insurance agent has carried out a suitability assessment and provided a recommendation, the client insists on making a material decision contrary to the recommendation and which, in the agent's opinion, is not suitable for the client's objectives, circumstances, needs or priorities, the agent should:
- (i) ask the client to give the reasons for the decision;
  - (ii) explain the unsuitability of the decision to the client;
  - (iii) confirm with the client that the decision is the client's own decision; and
  - (iv) document and keep a proper record of:
    - the recommendation made by the agent;
    - the reasons given by the client for his decision;
    - the agent's reasons for considering the client's decision to be unsuitable; and
    - the fact that the decision is the client's own decision.

## **General Principle 7 – Conflicts of Interest**

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A licensed insurance agent should make every effort to avoid conflicts of interests and when such conflicts cannot be avoided, should manage them with appropriate disclosure to ensure clients are fairly treated at all times.

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Related Statutory Conduct Requirements:

- Section 90(f) of the Ordinance – *“when carrying on a regulated activity, a licensed insurance intermediary must use its best endeavours to avoid a conflict between the interests of the intermediary and the interests of the policy holder or the potential policy holder”*;
- Section 90(g) of the Ordinance – *“when carrying on a regulated activity, a licensed insurance intermediary must disclose any conflict mentioned in paragraph (f) to the policy holder or the potential policy holder”*.

### **Standards and Practices**

#### **7.1 Avoiding potential conflicts of interest and providing transparency through appropriate disclosure of principal-agent relationship**

To avoid potential conflicts of interest and to provide transparency as to the role and functions of a licensed insurance agent, given the capacity of the agent being a representative of his appointing insurer or appointing agency (as appropriate), the agent should disclose to his client the fact that:

- (i) he is appointed by his appointing insurer or appointing agency (as appropriate) to promote and advise on the insurance products offered by the insurer or agency (as appropriate); and
- (ii) the insurance products he can promote and advise on are limited to the insurance products offered by his appointing insurer or appointing agency (as appropriate).

#### **7.2 Disclosure of relevant restrictions in the agency agreement**

Where a licensed individual insurance agent or licensed insurance agency acts for more than one authorized insurer, but the terms of the relevant agency agreement with any of its appointing insurers prevents the individual insurance agent or insurance agency from promoting particular insurance products on behalf of its other appointing insurers, the individual insurance agent or insurance agency (in this case, also licensed technical representatives (agent) appointed by the insurance agency) should disclose that restriction to the client and explain that, in line with the restriction, it will only be promoting and advising on insurance products of that particular appointing insurer.

**7.3 Avoid allowing own interests to influence the client's decision**

Where a licensed insurance agent also has another business or occupation, it should not allow its interests in that other business or occupation to jeopardize its integrity and competence as a licensed insurance agent.



## **General Principle 8 – Client Assets**

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*A licensed insurance agent should have sufficient safeguards in place to protect the assets of clients.*

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Related Statutory Conduct Requirement: Section 90(h) of the Ordinance – “*when carrying on a regulated activity, a licensed insurance intermediary must ensure that the assets of the policy holder or the potential policy holder are promptly and properly accounted for.*”

### **Standards and Practices**

#### **8.1 Handling of premiums**

- (a) A licensed insurance agent should only ever receive payment of premiums, where it is within the scope of the agent’s authority as granted by its appointing insurer or appointing agency (as appropriate).
- (b) If a licensed insurance agent is authorized to receive premium payment by its appointing insurer or appointing agency (as appropriate), the agent should handle the payment in strict conformity with the requirements set out by its appointing insurer or appointing agency (as appropriate). In this regard, a licensed insurance agent should disburse the payment to the appointing insurer or appointing agency (as appropriate) and maintain proper records of premiums received in accordance with such requirements.
- (c) A licensed insurance agent should properly safeguard premiums received from clients and should avoid the mixing of premiums with the agent’s personal funds.
- (d) A licensed insurance agent should refuse to receive payment of premiums by way of cash, unless its appointing insurer or appointing agency (as appropriate) has provided specific authority to the agent to receive cash payment and such authority is subject to specific controls and limits, including limits on the amount of premium the agent may collect in cash.

## **Part D – Controls and Procedures for Licensed Insurance Agencies**

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*A licensed insurance agency should have proper controls and procedures in place to ensure that the agency and its licensed technical representatives (agent) meet the General Principles, Standards and Practices set out in this Code.*

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Related Statutory Conduct Requirements: Section 91(1) of the Ordinance sets out the relevant conduct requirements for a licensed insurance agency as follows:

- (a) it must establish and maintain proper controls and procedures for securing compliance with the conduct requirements set out in section 90 by the agency and the licensed technical representatives (agent) appointed by the agency;*
- (b) it must use its best endeavours to secure observance with the controls and procedures established under paragraph (a) by the licensed technical representatives (agent) appointed by the agency;*
- (c) it must ensure that its responsible officer has sufficient authority within the agency for carrying out the responsibilities set out in section 91(2); and*
- (d) it must provide its responsible officer with sufficient resources and support for carrying out the responsibilities set out in section 91(2).*

### **Corporate Governance**

A licensed insurance agency should establish and implement an organizational and management structure which includes adequate controls to ensure the interests of clients are not prejudiced. Such organizational structure should include clear roles and lines of responsibility and accountability of its senior management which underpins the objective of fair treatment of the clients. The extent and scope of the agency's governance structure will depend on the nature, size and complexity of the business as well as the medium it uses for solicitation of business and the types of insurance it arranges.

The requirements below elaborate on the controls and procedures that a licensed insurance agency is expected to adopt. For the avoidance of doubt, these requirements are in addition to other governance requirements set out in any applicable codes and guidelines, including the "Guideline on "Fit and Proper" Criteria for Licensed Insurance Intermediaries under the Insurance Ordinance (Cap. 41)".

### **Controls and Procedures**

#### **1. Compliance**

- (a) A licensed insurance agency should have proper controls, procedures and adequate supervision to ensure that:*

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- (i) persons who are recruited, employed by, associated with, or act for the agency in relation to the carrying on of regulated activities are and remain fit and proper;
- (ii) the agency and its staff, particularly its licensed technical representatives (agent) comply with all laws, rules, regulations, codes, guidelines, circulars and other regulatory instruments relevant to the carrying on of regulated activities in the agency's lines of business;
- (iii) its licensed technical representatives (agent) comply with the agency's policies, procedures and other requirements for carrying on regulated activities (monitored, for example, by periodic review of management reports on non-compliance by its senior management and responsible officer); and
- (iv) its licensed technical representatives (agent) are trained and have a good understanding of the key features of the insurance products on which they may give regulated advice and keeping proper training records.

### **2. Handling of complaints**

- (a) A licensed insurance agency should have proper controls and procedures to handle and resolve complaints about regulated activities carried on by the agency or its licensed technical representatives (agent) in a timely and fair manner.
- (b) In order to achieve the objectives in paragraph (a), the licensed insurance agency should:
  - (i) have designated staff to handle such complaints;
  - (ii) ensure steps are taken to investigate such complaints and to respond promptly to the complainants concerned;
  - (iii) advise complainants of the proper avenue for the complaints (including referral of the matters to the relevant authorized insurer and the IA) if the complaints cannot be resolved to the complainants' satisfaction by the agency;
  - (iv) maintain proper records of complaints; and
  - (v) respond to, cooperate and deal with the IA and all other relevant regulatory authorities in the handling of any complaints and provide assistance to its appointing insurers to resolve such complaints.

### **3. Reporting of material incidents to the IA**

- (a) A licensed insurance agency should have proper controls and procedures to ensure incidents which are material to its business are reported to the IA as soon as reasonably practicable after it becomes aware of such incidents, including without limitation, the following:
  - (i) a material breach of requirements under the Ordinance or any rules, regulations, codes, guidelines, circulars or regulatory instruments administered or issued by the IA, by the agency or its licensed technical representatives (agent);
  - (ii) the filing of a petition for winding-up of the agency;

- (iii) the bankruptcy of any directors, controllers, partners or licensed technical representatives (agent) of the agency;
- (iv) disciplinary action taken against the agency or its licensed technical representatives (agent) by a regulatory authority (other than the IA) or any professional body in Hong Kong or elsewhere; or
- (v) criminal charges or conviction of the agency or its directors, controllers, partners or licensed technical representatives (agent) by any court in Hong Kong or elsewhere.

#### **4. Keeping of proper records**

- (a) A licensed insurance agency should have proper controls and procedures to ensure proper records are kept for the following matters in relation to the regulated activities of the agency and its licensed technical representatives (agent):
  - (i) documents received from a client in relation to an insurance application or claim;
  - (ii) insurance policies delivered to a client; and
  - (iii) instructions given by a client in relation to the client's material decisions such as cancellation or surrender of policy and change of beneficiaries.

#### **5. Accountability of the responsible officer and senior management**

The responsible officer of a licensed insurance agency, and its other senior management who oversee the business of regulated activities carried on by the agency, should ensure (and should be accountable for ensuring) that the controls and procedures required by 1 to 4 above are in place and effective.

## Schedule 1

### Additional Standards and Practices for Referral of Business

#### Referral Business<sup>7</sup>

1. A licensed insurance agent should not accept a referral of a client from another person (a “referrer”), or refer a client to another licensed insurance intermediary, unless the agent complies with the policies, procedures and other applicable requirements of its appointing insurer or appointing agency (as appropriate).

#### Business Referred to a Licensed Insurance Agent by Another Person

2. Where a client is referred to a licensed insurance agent by a referrer, before the agent arranges an insurance policy for the client, the agent should ensure the client is informed that:
  - (a) the agent will be responsible for arranging the insurance policy and, for this purpose, the client should only deal directly with the agent (i.e. the client should not deal with the referrer for arranging the insurance policy);
  - (b) the referrer does not represent the agent and should have no involvement in the arrangement of the insurance policy;
  - (c) the agent disclaims all liability for any advice in relation to the insurance policy given to the client by the referrer;
  - (d) a benefit is to be provided by the agent to the referrer for referring the client to the agent (if the agent intends to provide the referrer with any such benefit, whether monetary or non-monetary); and
  - (e) premium for the insurance policy should be paid either to the agent (if permitted by General Principle 8) or the insurer concerned directly and, in no event, to the referrer.

#### Referral of Business to Another Licensed Insurance Intermediary by a Licensed Insurance Agent

3. If a licensed insurance agent intends to refer a client to another licensed insurance intermediary with a view to that intermediary arranging an insurance policy for the client, the agent should ensure that it complies with the policies, procedures and other applicable requirements of its appointing insurer or appointing agency (as appropriate).

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<sup>7</sup> Under section 64G of the Ordinance, a person must not carry on a regulated activity in the course of the person’s business or employment or for reward, unless the person is a licensed insurance intermediary or exempt from the licensing requirements. A person who contravenes this licensing requirement commits an offence. The Standards and Practices in this Schedule do not alter the licensing requirements under section 64G of the Ordinance. If a referrer carries on regulated activities and none of the exemptions under the Ordinance apply, then the referrer must be licensed.

**Application of this Schedule**

4. For the avoidance of doubt, this Schedule does not apply where:
  - (a) the client is referred to a licensed insurance agency by its appointed licensed technical representative (agent); or
  - (b) the referral is made to the licensed insurance agent by a licensed insurance broker (acting as the agent of a client) for the purpose of arranging an insurance policy for that client with the agent's appointing insurer.

**Feedback to Consultation Paper on the Draft Code of Conduct for  
Licensed Insurance Agents**

*(Comments should be sent to the Insurance Authority on or before 28 May 2019.)*

**To: Insurance Authority**

(email: [comment\\_codeandguideline@ia.org.hk](mailto:comment_codeandguideline@ia.org.hk))

**Name of Respondent:**

**Contact Person (if Respondent is an organization):**

**Contact Details:**

Question 1

Do you agree with the proposed principle-based approach of the Agents' Code and that the General Principles and their related Standards and Practices provide a suitable framework for the conduct of licensed insurance agents?

Question 2

Do you agree that the objective of "treating clients fairly" is fundamental to the regulated activities of a licensed insurance agent?

Question 3

Do you agree that licensed insurance agents should comply with the Standards and Practices set out in General Principle 2 in order to act in the client's best interests?

Question 4

Do you agree that the Code should address the disclosures a licensed insurance agent should make in order to manage potential and actual conflicts of interest, as set out in General Principle 7?

Question 5

Do you agree that licensed insurance agents should make proper disclosure in relation to their identity and capacity, in relation to the insurance products they recommend and in relation to the other matters stated under General Principle 5?

Question 6

Do you agree that the Code should set out requirements for the governance, controls and procedures that a licensed insurance agency should adopt (as per Part D of the Code)? Do you agree that licensed insurance agencies should follow such requirements to ensure the General Principles, Standards and Practices in the Agents' Code are complied with by the agencies and their appointed licensed technical representatives (agent)?