



Consultation Conclusions on the Draft Code of Conduct for Licensed Insurance Agents

September 2019

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Introduction

1. On 28 March 2019, the Insurance Authority (“IA”) published a draft Code of Conduct for Licensed Insurance Agents (“Agents’ Code”) for public comment under the cover of a consultation paper (“Consultation Paper”). The draft Agents’ Code set out guidance on the practices and standards which licensed insurance agents are ordinarily expected to adopt in carrying on regulated activities upon the commencement of the new regulatory regime for insurance intermediaries on 23 September 2019.
2. The consultation ended on 28 May 2019. The IA is pleased to have received 24 written submissions from different stakeholders including insurance industry bodies, insurers, insurance intermediaries, professional bodies and public bodies. A list of respondents is at Annex C.
3. Respondents generally welcomed the draft Agents’ Code and their input has assisted the IA in identifying several areas where the draft Agents’ Code could be strengthened and improved (which it has been). Following consideration of all the feedback received, the IA hereby releases a final version of the Agents’ Code, which is intended to be issued under section 95 of the Insurance Ordinance (Cap. 41) (“the Ordinance”).
4. A review of the Consultation Conclusions that follow demonstrates the full extent to which the feedback has been taken on board. These Consultation Conclusions do not comprehensively cover all the consultation submissions received. Rather they highlight the major issues raised in the feedback and the IA’s responses to these. Revisions to the Agents’ Code which are clear on their face or purely stylistic are not discussed in these Consultation Conclusions.
5. At the same time as consulting on the draft Agents’ Code, the IA also consulted on a Code of Conduct for Licensed Insurance Brokers (“Brokers’ Code”). Certain feedback received on the Brokers’ Code was also relevant to the Agents’ Code and *vice versa*. Certain amendments to both codes have resulted from this cross-over in feedback. This has ensured the codes are as aligned as possible, but as different as necessary in view of the different roles which licensed insurance agents and licensed insurance brokers perform.

Feedback Received and Insurance Authority's Response

I. Consultation Questions

6. Part I summarizes the major feedback from respondents on the six questions posed by the IA in the Consultation Paper and the IA's responses. The IA's responses to the feedback on respective General Principles are summarized in Part II.

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?

Feedback received

7. The principle-based approach of the Agents' Code received general support from respondents. One respondent commented that most codes of conduct are based on general principles, and specific rules are then derived from those general principles. There were views that prescriptive rules might contain loopholes or not be relevant to every situation and would hinder the ability of the insurance industry to evolve, adapt and innovate. It was also commented that references in the Agents' Code to signing and filling out forms did not contemplate telemarketing or online sales and further clarification was needed in this respect.

IA's response

8. We are pleased to note the broad support of the principle-based approach. The principle-based approach gives insurers and insurance agencies the flexibility in formulating a detailed set of appropriate conduct procedures for agents which can best suit their models or operational needs. The IA will set out product-specific requirements in guidelines or other regulatory instruments when considered necessary. As regards the comments concerning telemarketing or online sales, the Agents' Code is intended to be applicable across all different channels of distribution which agents use to interface with policy holders and, in this respect, the Agents' Code is technology neutral. Several amendments have been made throughout the Agents' Code to reinforce this (for example, taking out any indication which could be interpreted as a requirement for "wet" signature).

Question 2 - Do you agree that the objective of "treating clients fairly" is fundamental to the regulated activities of a licensed insurance agent?

Feedback received

9. Respondents generally agreed with this proposition. One respondent recommended that the IA adopt a nuanced approach and that "*fair treatment*" of customers should be considered on a case-by-case basis, depending on the relevant facts and circumstances (particularly, in the

context of a highly competitive insurance market, a changing legal and regulatory landscape, new opportunities, differing business needs and evolving customer expectations).

IA's response

10. We are pleased that there is general agreement regarding the objective of “*treating clients fairly*” being fundamental to the regulated activities of a licensed insurance agent. Indeed, the principle of treating clients fairly, and customer-centricity generally, lie at the heart of many of the changes we are witnessing in the market. As stated in the Introduction to the Agents’ Code, the IA will take into account that licensed insurance agents differ in scale and complexity of business and that they use different channels. The “nuanced approach” indicated in the feedback is denoted in the Introduction to the Agents’ Code, where it expressly states that the IA will take account of the relevant context, facts and impact of any matter in considering whether the provisions of the Agents’ Code have been satisfied (which would include satisfaction of the requirement to treat clients fairly).

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?

Feedback received

11. There was general agreement to the proposition in Question 3. Several respondents, however, raised specific issues and made suggestions in relation to the drafting of **General Principle 2** and its practical implementation. There were also questions regarding the interplay between **General Principle 2** and the Statutory Conduct Requirements in section 90(a) of the Ordinance.

IA's response

12. We are pleased to note the general agreement to the proposition in Question 3. The other main matters raised in the feedback are addressed in detail in relation to **General Principle 2** in Part II below.

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?

Feedback received

13. A majority of respondents agreed that disclosure is an appropriate mechanism to manage potential conflicts of interest. There were questions, however, on the amount of disclosure indicated under **General Principle 7** and clarification was requested on the manner, type and level of disclosure required to be given.

IA's response

14. We are pleased to note the general agreement on this question. Certain amendments have been made to the Standards and Practices in **General Principle 7** to enhance the clarity of the relevant disclosure requirements (see Part II for details). The disclosure requirements under **General Principle 7** have been crafted in recognition of the reality that it is not always obvious to policy holders that licensed individual insurance agents and licensed insurance agencies act as agents of insurers (and what this actually means with regards to the insurance products they can offer). So as to avoid any wrong assumptions being drawn in this respect, it is imperative that simple and clear disclosure as to capacity is provided to policy holders. **General Principle 7** addresses this.

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?

Feedback received

15. There was general agreement with the proposition in Question 5. Clarification was sought on the certain of the details of the items to be disclosed.

IA's response

16. We are pleased that there is general agreement to Question 5. The questions regarding further clarification have been taken on board and amendments have been made to **General Principle 5** (see further Part II below).

Question 6 - Do you agree that the Agents' Code should set out requirements for the governance, controls and procedures that a licensed insurance agency should adopt (as per Part D of the Agents' 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 companies and their appointed licensed technical representatives (agent)?

Feedback received

17. A number of respondents agreed with this proposition. One respondent suggested that this part of the Agents' Code should be more comprehensive and should cover matters such as performance management, segregation of duties, risk management, information security etc. Several respondents also indicated, in relation to corporate governance and other matters, the importance of licensed insurance

agents following the compliance requirements set by their appointing insurers or appointing agency (as applicable).

IA's response

18. Corporate governance is an important aspect of policy holder protection. A failure to have proper governance and controls and procedures in place can cause considerable harm to policy holders and potential policy holders. That all licensed insurance agencies should have a minimum level of corporate governance and controls and procedures in place is therefore important. Part D of the draft Agents' Code, which is now Section IX of Part C in the final Agents' Code, sets base-line standards and practices for corporate governance, controls and procedures which all licensed insurance agencies should meet. Changes have been made to this section in recognition of the feedback received. We agree with the observation regarding the need for licensed insurance agents to follow the compliance requirements set by their appointing insurers or appointing agencies (as applicable). Further comment is made on this in Part II below.

II. **Feedback on each section of the Agents' Code**

19. Part II summarizes the main feedback received from respondents on each section of the Agents' Code and explains any consequential revisions made.

A. Introduction to the Agents' Code

20. The Introduction to the Agents' Code, sets out the approach taken in drafting the Agents' Code, the legal basis for the Agents' Code, its structure, its position in the wider insurance regulatory framework, its relationship to the Statutory Conduct Requirements, its application and the effect of a breach of the Agents' Code.

Feedback received

21. A number of respondents commented on the several references in the draft Agents' Code to it being "*non-exhaustive*". It was suggested that the Agents' Code should contain all requirements licensed insurance agents had to satisfy. It was also suggested where "*other regulators or professional bodies*" were referenced, they should be named or the reference should be removed, so as not to expose licensed insurance agents to double jeopardy. That said, certain respondents requested that the draft Agents' Code include specific reference to the Personal Data (Privacy) Ordinance (Cap. 468) ("PDPO") and related guidance issued by the Privacy Commissioner for Personal Data ("Privacy Commissioner"), and the Prevention of Bribery Ordinance (Cap. 201) ("PBO") and guidance issued by the Independent Commission Against Corruption ("ICAC"), as these were areas where particular care needed to be taken in the business of insurance intermediation.
22. One respondent suggested that when the IA takes guidance from the draft Agents' Code in respect of "*errors and omissions*", "*fit and proper*" and "*statutory conduct requirements*", the IA should take a holistic view and consider all aspects. Another respondent cautioned against treating insurance intermediaries differently for the same breach of the same provision as this would be contrary to natural justice.

IA's response

23. The Agents' Code is published under section 95 of the Ordinance. In line with this, the purpose of the Agents' Code is to give "*guidance relating to the practices and standards with which licensed insurance intermediaries are ordinarily expected to comply in carrying on regulated activities*". The practices and standards in the Agents' Code aim to find the right balance between being sufficiently high-level to be universally applicable to the full diversity of regulated activities carried on by all licensed insurance agents, and specific enough to provide certainty as to what is required. For this reason, the practices and standards are divided into eight General Principles which are of universal application and Standards and Practices

which have more detailed application and which (in some cases) are situation specific. For example, certain Standards and Practices are stated only to apply to the giving of regulated advice (rather than the full range of regulated activities). The Agents' Code also sets out guidance on the practices and standards for the corporate governance and controls and procedures which a licensed insurance agency should adopt in relation to its regulated activities. This approach makes the Agents' Code "principle-based" which (as indicated in Part I above) has received general support.

24. We disagree with the comment that the principle-based approach of the Agents' Code would lead to a breach of natural justice, with the same breach by different agents giving rise to different treatment. Rather, as denoted in the Introduction to the Agents' Code, each case will be looked at on its own merits with full account being taken of the particular "context, facts and impact of any matter", as fair procedure would demand. Indeed, it is over-rigidity of application that could result in unfairness. A principle-based approach mitigates against this.
25. We have taken on board the comments about the references in the draft Agents' Code to it being not exhaustive. Following amendment, the Agents' Code is now more specific about the matters on which it is non-exhaustive. As many of the Standards and Practices in the Agents' Code are situation-specific, they are not exhaustive as it is impossible to lay down a Standard and Practice for every given situation involving regulated activities. The General Principles, however, being both "general" and "principles" are of such universal application that they are absented from the claim to being non-exhaustive. We have also taken on board the need to be more specific about references to "other regulatory bodies" (these have now been named). References to "professional bodies" have also been removed.
26. There are, in addition to the Agents' Code, a series of Guidelines issued by the IA which are more focused on particular classes of business or types of insurance products. These Guidelines set out specific requirements in relation to regulated activities carried on by intermediaries in respect of specific classes of business or types of insurance products to which the Guidelines are applicable. For example, there are Guidelines issued in relation to long-term products on the subject of financial needs analysis, cooling off period, investment linked assurance scheme products, gifts and policy replacement. All these Guidelines have specific requirements with which licensed insurance agents must comply when carrying on regulated activities in relation to long-term products (in addition to the Agents' Code). The same goes for the Guideline in relation to anti-money laundering and counter-terrorist financing. Licensed insurance agents need to comply with such Guidelines as well as the Agents' Code. Hence, in this regard as well, the Agents' Code cannot be exhaustive.
27. Similarly, setting out a full list of all laws which apply to licensed insurance agents in the Agents' Code is neither its function nor is it desirable. The Agents' Code cannot set or alter the scope of the laws which apply to

licensed insurance agents. It can, however, highlight certain laws which are particularly pertinent to the practices and standards with which licensed insurance agents are ordinarily expected to comply in carrying on regulated activities. The responses referring to the PDPO and the PBO are noted in this respect and have been factored in with regards to certain Standards and Practices. The point about “*double jeopardy*” is also noted, but where (for example) a breach of the PBO occurs in carrying on regulated activities, this is a matter which should not only be addressed as an offence under the PBO, but would also give rise to issues of fitness and propriety under the insurance regulatory regime.

28. With regards to the application of the Agents’ Code, the universality of the Agents’ Code and particularly of the General Principles, means that it does and should apply to all licensed insurance agents and to both general and long term business. Many of the Standards and Practices are situation specific (e.g. some only apply in situations where the agent is giving regulated advice), but they are of universal application in the sense that they apply to all licensed insurance agents faced with the situation denoted in the relevant Standard and Practice. Further (as the Introduction to the Agents’ Code states) recognition will be always given to the different ways in which the provisions of the Agents’ Code are met and implemented. This is fair, given the different types of businesses licensed insurance agents carry on and the variations in their size and scale, which will obviously necessitate differences in the way in which the Agents’ Code is implemented.

B. Interpretation

Feedback received

29. There were some comments received on the terms defined in the Interpretation section of the Agents’ Code. For example, one respondent noted that we had not mentioned the new section 94 of the Ordinance or what the effect of non-compliance with the rules issued under that section might be. Another respondent expressed the view that it is confusing to refer to policy holders and potential policy holders as “clients” or “customers” in relation to an agent since such persons are not the clients of the agent – even if the agent is required to act in their best interests.

30. There were also comments on certain terms used throughout the Agents’ Code which had not been defined, but which (according to the comments) needed defining. Where the phrase “client’s objectives, circumstances, needs and priorities” was used, for example, respondents requested clarity on this phrase (with examples being given) and also specifically on what was meant by “priorities”. Similarly, where the phrase “senior management” of a licensed insurance agency was used in the draft Agents’ Code, clarity was requested as to who was considered as being part of the senior management.

IA's response

31. The point made about section 94 of the Ordinance has been taken on board. The definition of Statutory Conduct Requirements has been recrafted to exhaustively cover the conduct requirements in sections 90 and 91 of the Ordinance and the practices and standards specified in any rules made by the IA under section 94 of the Ordinance (no such rules have been issued yet, but by including these within the definition, the definition will not have to be updated, should such rules be issued). The definition is now exhaustive.
32. As regards the use of the term "*client*", it is true that, as a matter of law, an insurance agent is the agent of the insurer, and not of the policy holder. However, as a matter of law, the policy holder is also very much a client of the insurer which the insurance agent represents. As a representative of the insurer, therefore, a licensed insurance agent deals with a policy holder as a client. Further, this is consistent with the language of the insurance market. When a licensed insurance agent refers to his or her "*client*", the reference is not to the insurer which the agent represents, but to the policy holder (or potential policy holder) who the agent is assisting to arrange an insurance policy.
33. The phrase "client's objectives, circumstances, needs and priorities" has now been replaced with the defined term "client's circumstances" to denote the matters a licensed insurance agent would need to take into account when giving regulated advice. Within the definition, the meaning of the term "priorities" is spelt out as "the stated priorities of the client in seeking such insurance and any particular risks or matters which are specifically brought to the attention of the agent by the client as being priorities which the agent should consider when recommending an insurance policy to the client." As requested, guidance is also provided by way of two examples of what "client's circumstances" might cover: one for a life insurance policy and one for a general insurance policy.
34. With regards to "senior management", in **Standard and Practice 4.2** a licensed technical representative (agent) is required to seek guidance from, *inter alia*, the senior management of his appointing agency, when he has doubts about whether he has the requisite skill or knowledge in relation to any particular regulated activity he is carrying on. Furthermore, senior management of a licensed insurance agency is accountable for ensuring that the agency has in place the controls and procedures set out in the section of the Agents' Code on "Corporate Governance and Controls and Procedures". Senior management is a term which is easier to understand than it is to define. However, given the feedback, we have crafted a definition which covers the following:
- "Senior management" denotes the personnel in the licensed insurance agency who perform the functions of management in the agency in relation to the regulated activities carried on by the agency.

- The definition recognizes that the exact composition of senior management will depend on the size of the licensed insurance agency concerned.
- It also makes clear that whether a person is part of the senior management will depend on the actual functions and duties of the person and not the person's position or title.
- Finally, the definition includes (as guidance) two examples of the personnel who would be considered as part of the senior management, firstly in respect of all licensed insurance agencies and secondly in larger agencies.

C. General Principle 1 – Honesty and Integrity

Feedback received

35. Much of the feedback on **General Principle 1** focused on the Standard and Practice relating to the offering of advantages. Guidance was sought by respondents on the meaning of “advantage” (**Standard and Practice 1.2** of the draft Agents’ Code) and whether the term came from the PBO (as the PBO had not been named, this was unclear). Indeed, the general thrust of the feedback was that this provision should be aligned with the PBO, rather than just being focused on the specific situation envisaged in the draft. It was also commented that the PBO applied not only to licensed insurance agents but also to any staff who supported licensed insurance agents in carrying on regulated activities. One respondent wanted clarification on the interplay between the requirements relating to the offering of “advantages” and the requirements relating to gifts stated in the Guidelines issued by the IA.
36. As regards the requirements in relation to **Standard and Practice 1.3** of the draft Agents’ Code (Compliance), feedback was received from insurers (and those representing them) of the need to highlight the explicit duty under contract and at common law on an insurance agent to have to obtain consent from existing appointing insurers before accepting an additional appointment from a new insurer. With regards to the requirements to report certain matters impacting a licensed insurance agent (winding up, bankruptcy, criminal conviction, disciplinary action by other regulatory body), respondents highlighted that monitoring these events and reporting these events might present practical issues. A question was also raised about the consequences of reporting such matters to the IA. Specifically with regards to the reporting of criminal offences, it was suggested an exception be made for minor criminal offences.
37. Respondents sought clarification on the term “undue influence” and the meaning of pressuring clients into making material decisions (**Standard and Practice 1.4** of the draft Agents’ Code). One respondent considered the requirements too vague, suggesting that agents might inadvertently

contravene the requirement by, for example, reminding potential policy holders of the expiry of a promotion period.

IA's response

38. As regards the feedback on the provision relating to the offering of an advantage, we have taken this on board and have recrafted the provision so that its focus is on the need to be familiar with and not contravene the PBO and to follow related guidance issued by the ICAC concerning matters in relation to carrying on regulated activities (now **Standard and Practice 1.4**). The same requirements apply to all employees of licensed insurance agents. **Standard and Practice 1.4(b)** is not considered part of the Agents' Code as it merely serves to draw the attention of licensed insurance agents to situations where particular consideration should be given to the PBO in the carrying on of regulated activities. Agents should make reference to the PBO itself in this respect. The PBO, of course, should be complied with in addition to other specific requirements on gifts stated in the Guidelines issued by the IA.
39. In view of the feedback, we have also made changes to the compliance provisions under General Principle 1 (now in **Standard and Practice 1.2**). In the Preface to the Agents' Code, we had already noted the duties which agents owe their appointing insurers under contract and common law and the liability of insurers for their agents' actions both at common law and under section 68 of the Ordinance. We had also noted how the controls and procedures which insurers put in place to administer their insurance agents in view of these contractual and common law duties and liabilities, also serve as important policy holder protection measures from a regulatory perspective. For this reason, the Agents' Code (and this Standard and Practice in particular) leverages on these duties and obligations and their related controls and procedures. It does this by requiring licensed individual insurance agents and licensed insurance agencies to comply with the requirements of their appointing insurers and the duties they owe to their appointing insurers under contract and common law in relation to the carrying on of regulated activities. In view of the feedback, we have also made clear that this would include the duty owed under contract and at law, by a licensed insurance agency or licensed individual insurance agent to obtain prior consent from its appointing insurer before accepting an appointment by another insurer.
40. We have also made certain adjustments to the reporting requirements, now in **Standard and Practice 1.2(d)**. We have taken on board the request to exclude "minor offences" from the reporting requirement related to criminal offences. A definition of "minor offences" has been included in the Interpretation section for this purpose. Further, we have indicated that the notifications should be made "as soon as reasonably practicable", thus addressing the concerns regarding the practicality of the requirement. As regards the possible consequences of reporting such matters, as the Introduction to the Agents' Code indicates, the IA will take account of the

relevant context, facts, and impact of any such matter which is reported to it.

41. In view of the comments on the Standard and Practice regarding “undue influence” and the words “pressurize a client”, we have re-crafted this provision (now **Standard and Practice 1.3**) to ensure a better understanding of the behavior it prohibits. It now provides that a licensed insurance agent should not harass, coerce or use undue influence to induce a client to enter into a contract of insurance or to make a material decision. Harassment is a recognized tort in Hong Kong and denotes the level of pressure that should play no part in regulated activities. The same applies with coercion and undue influence. Whether these actions occur will depend on the facts and circumstances of each case. However, as general guidance, we have included a footnote to clarify that simply reminding a client of a promotion which may be of interest to the client would not generally be considered to infringe the standard and practice. That said, the licensed insurance agent should be mindful of the frequency, timing and manner of such reminders.
42. We have also made other textual amendments to the Standards and Practices under **General Principle 1**, based on the feedback received. **Standard and Practice 1.1(c)** has been amended to confirm that a licensed insurance agent should only use the relevant marketing materials supplied or approved by its appointing insurer or appointing agency (as applicable). As regards the requirements in relation to completing application, claim and other forms, these have been moved to **Standard and Practice 3.2** (which is discussed in paragraph 51 below).

D. General Principle 2 – Acting Fairly and in the Client’s Best Interests

Feedback received

43. As stated in Part I, respondents generally agreed that the principle of treating clients fairly is fundamental to the carrying on of regulated activities by licensed insurance agents. However, one respondent was concerned that because the Agents’ Code does not override the Ordinance, there might be circumstances where a licensed insurance agent might comply with the Agents’ Code and yet still breach the Ordinance – in particular section 90(a) of the Ordinance which reads: “*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*”. It was also noted that the IA should not set different standards for agents and brokers, when it came to section 90(a) of the Ordinance.
44. Feedback on **General Principle 2** was focused on requests for elaboration of certain terminology such as “client’s objectives, circumstances, needs and priorities” (as mentioned in **Standards and**

Practices 2.1 to 2.2 of the draft Agents' Code and related footnotes). Feedback was also received on the practicalities of **Standard and Practice 2.2** (Giving fair and impartial regulated advice in the client's best interests).

IA's response

45. In line with section 95 of the Ordinance under which the Agents' Code is issued, the General Principles, Standards and Practices in the Agents' Code collectively serve as guidance on the practices and standards which licensed insurance agents are ordinarily expected to adopt in carrying on regulated activities. That many of these practices and standards differ from the practices and standards ordinarily expected of insurance brokers, emerges from the fact that insurance brokers and insurance agents are different. Insurance brokers act on behalf of policy holders. Insurance agents serve as agents of insurers. The new licensing and conduct regime under the Ordinance recognizes and preserves this difference (as the separate forms of licences demonstrate). Whilst the Statutory Conduct Requirements stated, inter alia, in section 90 of the Ordinance apply to all licensed insurance intermediaries, the manner in which licensed insurance agents and licensed insurance brokers satisfy these Standard Conduct Requirements may be different, given their differing roles. Similarly, the practices and standards set out respectively in the Agents' Code and the Brokers' Code, need to (and indeed do) take full account of the differing roles licensed insurance agents and licensed insurance brokers perform. To do otherwise would seek to override the difference between brokers and agents which, as stated, the Ordinance fully recognizes and preserves.
46. As regards other feedback received in **Standard and Practice 2.1**, the phrase "client's objectives, circumstances, needs and priorities" has been replaced with "client's circumstances" which is now a defined term (and includes within it a definition of "priorities"), thereby providing the elaboration requested (see further paragraph 33 above). We have also amended **Standard and Practice 2.1(b)** by inserting the words "which the agent is authorised to promote", in recognition of the fact that insurers may not authorise their appointed agents to promote all of the insurance products they (i.e. insurers) offer (a new **Footnote 14**, in **General Principle 6**, has been inserted to reflect the same point).
47. As regards the feedback on **Standard and Practice 2.2**, we have made several textual amendments to clarify the requirements in light of the feedback received to enhance its clarity and practicality.

E. General Principle 3 – Exercising Care, Skill and Diligence

Feedback received

48. Feedback received in relation to requirements concerning the completion of application, claim and other forms (which were in Standard and Practice 1.5 of the draft Agents' Code) is addressed here as these requirements have been re-located to **Standard and Practice 3.2**. Certain feedback took issue with the language used in relation to these forms (suggesting that insurance agents receive such forms and forward them on to insurers, rather than "submitting" them to insurers). Other feedback suggested that licensed insurance agents act for potential policy holders when completing such forms.
49. Several respondents asked to exempt from the confidentiality obligation under **Standard and Practice 3.3**, information that is already in the public domain. We also received a number of comments and suggestions in relation to record keeping requirements.

IA's response

50. In line with the feedback received on General Principle 1, regarding the need to recognize that a licensed insurance agent may also employ or engage persons to support the agent's carrying on of regulated activities, we have included a new **Standard and Practice 3.1(b)**. This requires a licensed insurance agent to ensure such persons are competent to discharge their duties and to supervise such persons diligently in performing such duties. If such a person's work impacts the regulated activities carried on by the agent, the agent is and remains responsible for such activities. (It remains the case that if such staff are not licensed, then they should not carry on regulated activities).
51. In light of the feedback received on the requirements regarding the submission of application, claim and other forms, we have relocated these requirements to **Standard and Practice 3.2** and made several amendments to them to enhance their clarity and practicality. **Standard and Practice 3.2** now sets out certain obvious (but still important) steps a licensed insurance agent should take when it comes to application, claim or other forms i.e. inform the client about the need to ensure the information provided in the form is accurate and complete. We have, again in response to the feedback, added **Footnote 7** to recognize that there may be situations where licensed insurance agents may need to submit forms that include information that may be inaccurate, where it is necessary to preserve a client's right to make a claim (this scenario might arise for example where there is time pressure to comply with a notification conditions precedent) and the steps that should be taken in these circumstances.

52. As to the question regarding whether a licensed insurance agent acts for the policy holder when it comes to completing forms, we comment as follows: From the regulatory viewpoint, licensed insurance agents act as agents of insurers. It is beyond the power of the IA to change this by means of a code of conduct. As such, the wording in **Standard and Practice 3.2** addresses situations where such forms are completed “with the assistance of” a licensed insurance agent (which is aligned with the role that licensed insurance agents perform as agents of insurers). As regards the use of the word “submitted”, we do not consider that this verb takes on any peculiar meaning in the context of insurance. It is used here merely to reflect a situation where a licensed insurance agent passes a form to its appointing insurer.
53. Protecting clients’ privacy and confidentiality is pivotal in the exercise of care, skill and diligence that may reasonably be expected of licensed insurance agents when carrying on regulated activities. We believe it is important to include reference (now **Standard and Practice 3.4**), to the requirement for licensed insurance agents to comply with the PDPO and follow related guidance issued by the Privacy Commissioner. In particular, agents should be familiar with and adhere to the Privacy Commissioner’s “Guidance on the Proper Handling of Customers’ Personal Data for the Insurance Industry” and “New Guidance on Direct Marketing” which are relevant to carrying on of regulated activities by agents. As regards the confidentiality obligations in **Standard and Practice 3.4**, the requested carve-out for information already in the public domain is one which is commonly used in confidentiality/non-disclosure agreements. In other words, as a matter of practice, such carve-out should be one applied with the consent of the client rather than by provision of the Agents’ Code.
54. Finally, in view of feedback received on the Corporate Governance and Controls and Procedures requirements with regards to record keeping (i.e. that they were not requirements for record keeping but merely requirements to have controls and procedures in place with regards to record keeping), we have included a record keeping requirement in **Standard and Practice 3.5**. This infers that a licensed insurance agent should comply with the record keeping requirements of its principal – i.e. the appointing insurer or the appointing agency (as the case may be) – and should submit such records to them as soon as reasonably practicable. It should be noted, that certain Standards and Practices in the Agents’ Code also include very specific record keeping requirements with which licensed insurance agents should comply (see **Standards and Practices 3.6(ii), 6.2(b) and 8.1(b)(iii)**). Licensed insurance agents should also comply with other specific record requirements stated in the Guidelines issued by the IA related to life insurance products in particular, and in the anti-money laundering and counter-terrorist financing legislation and related Guideline.

F. General Principle 4 – Competence to Advise

Feedback received

55. Feedback was received suggesting that the scope of matters on which licensed individual insurance agents and licensed technical representatives (agent) should have a good understanding should be broader. Clarification was also sought on how the “requisite skills and knowledge” of a licensed individual insurance agent and a licensed technical representative (agent) should be assessed in respect of the regulated activities being performed (and whether guidance could be provided on this).

IA’s response

56. We have amended the provision such that the requirement is for a licensed individual insurance agent and a licensed insurance technical representative (agent) to have a good understanding not only of the “nature and key features” of different types of insurance products, but also of the risks covered and associated with such products in respect of which regulated activities may be carried on (as these are matters which are likely to be part of any discussions with a client looking to purchase the product).

57. The requisite skills and knowledge a licensed individual agent and a licensed technical representative (agent) is expected to have will depend on the particular situation and the particular regulated activities being carried on. We have, in **Footnote 10**, given guidance on the factors which would go into these considerations. These factors include the complexity (or simplicity) of the insurance product or transaction which is the subject of the regulated activities, whether the insurance product is of a specialist nature, the level of the person’s experience and the relevance of the person’s qualifications.

G. General Principle 5 – Disclosure of Information

Feedback received

58. In relation to General Principle 5, feedback was primarily received from several industry bodies on **Standard and Practice 5.4** of the draft Agents’ Code, which required particular disclosures to be made by licensed insurance agents when receiving referral business (the disclosures were set out in the Schedule to the draft Agents’ Code). This feedback cautioned that introducing standards and practices for referral business may drive unchecked premium rebating, a practice which would erode professional standards and harm the development of a healthy insurance industry. It was pointed out that this is particularly the case as the draft Agents’ Code did not address the issue of premium rebating, thereby giving the impression of legitimizing premium rebating via a referrer. Whilst

the feedback recognized that there was a need to provide clear guidance on referrals and the parameters within which referrals might take place, it was suggested that this topic needed further discussion and study to ensure it would not inadvertently generate unrestrained premium rebating.

IA's response

Referral Business

59. The phrase "Referral of Business" as it is used in the Agents' Code, denotes when a person refers a prospective client to an insurance agent, in order for the insurance agent to arrange an insurance policy for the client. Referrals can operate as a means of connecting prospective policy holders to insurance agents to source insurance. Referrals are, however, not entirely free from regulatory concern.
60. If the person making the referral is not a licensed insurance intermediary, then it is vital that the person does not carry on any regulated activities. Carrying on regulated activities without a license (and assuming an exemption does not apply) is an offence under the Ordinance. It would also disadvantage the prospective policy holder if he or she relies on advice from someone unqualified to give it. Linked to this are concerns arising from the insurance agent paying a referral fee to the person who made the referral, particularly if such person is not licensed. Such payment must not in any way serve to incentivize unlicensed persons to carry on regulated activities.
61. To address these concerns, the draft Agents' Code released for consultation, sought to introduce standards and practices setting out steps a licensed insurance agent should take when receiving referrals.
62. We do agree (as stated in the feedback provided) that the entire issue of referrals needs further consideration. The IA intends, after it has taken on the regulation of licensed insurance intermediaries, to monitor this issue to assess whether further regulatory steps are needed to address it. Based on the feedback received, we have made certain amendments to the standards and practices on referrals (and have also moved them under **General Principle 5**, rather than in a Schedule). These amendments ensure that there are appropriate standards and practices on referrals to protect policy holders, pending further engagement with the industry on this issue.

Premium rebates in relation to long-term products and medical products

63. The feedback on referrals also raised the topic of premium rebates (i.e. the promise of paying back a certain amount of premium to policy holders

if they enter into the policy). Restrictions on premium rebates¹ apply in relation to long-term products and medical insurance products. These restrictions are stated in the Guidelines relating to long-term and medical insurance business. They are not stated in the Agents' Code, since the Agents' Code applies across regulated activities in relation to all insurance products.

64. The standards and practices for referral business in the Agents' Code do not affect the restrictions on premium rebates in the Guidelines on long-term business and medical insurance business. As the Agents' Code makes clear, licensed insurance agents have to comply with the Agents' Code and other applicable Guidelines issued by the IA.

Other matters in relation to General Principle 5 - Disclosure of Information

65. Other clarifications and revisions have been made to the Standards and Practices in **General Principle 5** in view of the feedback received.

- We have revised our requirement so that a licence number must be provided in any event and not just upon request (**Standard and Practice 5.1(a)(ii)**).
- The information that needs to be shown on the business card of a licensed individual insurance agent and a licensed technical representative (agent), is not mandated to be in his/her e-mail sign off. We would, however, encourage such inclusion as best practice although not as an Agents' Code provision. (We have also updated the requirement on business cards to include e-business cards) (**Standard and Practice 5.1(d)**).
- As the Agents' Code is principle-based, guidance notes on the information disclosure requirements relating to long term business will be separately published on the IA's website.
- The request to clarify what is meant by not making "unfair comparisons" (**Standard and Practice 5.2(b)** of the draft Agents' Code) has led to the requirement being amended so that such comparisons are not "misleading" (aligning with **General Principle 1**).

¹ The whole issue of premium rebates has its complexities. From one point of view, premium rebates are beneficial to policy holders, in that they receive money back. However, on the other hand, the practice of unchecked premium rebating can be considerably harmful to policy holders. For example, a premium rebate can be utilized as a pure inducement to a prospective policy holder to buy a policy, focusing the policy holder's attention on the inducement in the sales process, rather than the terms and conditions of the policy being purchased (so the policy holder would not be making an informed decision). Widespread use of premium rebates, therefore, reduces the focus on quality advice and can increase the prospect of mis-selling (thereby debilitating the standards across the market). Further, with premium rebates only being offered to some clients and not others, this creates unfairness to certain policy holders whose premium is essentially being used to cross-subsidize premium rebates to others.

- Instead of having to “ensure” the client understands the consequences of a breach of the duty of “utmost good faith”, a licensed insurance agent should simply “explain” this to the client (we cannot, after all, mandate a person’s understanding). Guidance has been given on how this should be done and what a material fact is (**Standard and Practice 5.3** and **Footnote 12**).

H. General Principle 6 – Suitability of Advice

66. The feedback on the requirements relating to suitability assessment under **General Principle 6**, focused on whether it applied to all situations and all insurance products (i.e. did it apply in relation to general insurance and, in particular, travel insurance). It was also queried how the requirements applied where business was conducted through e-Platforms. It was also noted that it appears unnecessary for a licensed insurance agent to carry on a suitability assessment where this has already been carried out by the client’s licensed insurance broker.

67. Feedback was also received on **Standard and Practice 6.2(b)**, regarding the steps a licensed insurance agent was required to take if a client did not follow the agent’s recommendation and instead chose to make a material decision which the agent did not consider suitable. The thrust of the feedback was that the requirements were too prescriptive.

IA’s response

68. **Standard and Practice 6.1** provides that a licensed insurance agent should carry out an appropriate suitability assessment before giving regulated advice. The scope of its application is limited to situations where regulated advice is being given (not all regulated activities). As such, with regards to the specific situation raised in the feedback concerning whether it was necessary for a licensed insurance agent to carry on a suitability assessment where this has already been carried out by the client’s licensed insurance broker, the issue would depend on whether the agent is providing any regulated advice. If the agent provides regulated advice then Standard and Practice 6.1 would apply to the agent.

69. **Standard and Practice 6.1** has been amended so as to make the suitability assessment outcome-focused i.e. “The objective of such suitability assessment is to ensure that a licensed insurance agent obtains sufficient information in relation to the client’s circumstances on which to base its regulated advice to the client”. By making this Standard and Practice outcome-focused, it clarifies how the Standard and Practice is applicable to every situation in which regulated advice is provided. Whether in circumstances of a corporate insurance placement or in advising on the most appropriate medical insurance product to purchase, the advice would need to take account of the “client’s circumstances” (as newly defined) and be based on that information.

70. The suitability assessment, therefore, is universally applicable (and, for the avoidance of doubt, would apply to regulated advice given in relation to general insurance products). However, given the range of clients and the range of insurance related advice the Standard and Practice encompasses, it is recognized that the assessment should be proportionate and reasonable to the specifics of the placement or insurance policy being arranged (and this is specified). In the case of a long-term product and particularly an ILAS product, the particular requirements on suitability assessment in the Guidelines applicable to those products would also need to be complied with (as the “Introduction” to the Agents’ Code makes clear). For other insurance policies, the extent of the suitability assessment needed would depend on the complexity of the policy and the client’s circumstances. Further, the Standard and Practice does not prescribe the manner in which a suitability assessment should be carried out. For travel products, by way of example, the suitability assessment may be conducted as part of the application process (where the client’s circumstances would be the trip details, the ages of the persons travelling, the length of the journey etc.), including if the application was being made by way of an e-Platform. This has been clarified by way of **Footnote 15**.

71. As regards **Standard and Practice 6.2(b)**, the requirement has been shortened so as to focus only on the need for the licensed insurance agent to keep a record of the recommendation made, the reasons (if any) provided by the client for not following the recommendation, the agent’s explanation for considering the decision not to follow the recommendation to be unsuitable and the fact that the decision is the client’s own decision. It is important for a professional insurance agent to make such a record in these situations.

I. General Principle 7 – Conflicts of Interest

Feedback received

72. The feedback on **General Principle 7** included several suggestions to amend the wording of the certain provisions. For example, it was suggested that “make every effort” should be replaced with “use best endeavours”. It was also suggested that **Standard and Practice 7.2** should reflect that the restrictions envisaged may not only be imposed in the agency agreement, but by means of other mechanisms (which the Standard and Practice should capture). It was also suggested that **Standard and Practice 7.3** be strengthened so as expressly to require disclosure of the conflict in the situation covered by the Standard and Practice.

IA’s response

73. We have taken the feedback on strengthening the drafting of certain elements of **General Principle 7**, on board. In **General Principle 7** itself,

“make every effort” has been replaced with “use best endeavours”. We have also clarified that **Standard and Practice 7.2** (Disclosure of relevant restrictions in the agency agreement) applies in respect of restrictions contained in the agency agreement or where such restrictions are included elsewhere in the appointment of the agent by the insurer. **Standard and Practice 7.3** (which relates to potential conflicts arising where the licensed insurance agent has another business of occupation) has also been supplemented to require the licensed insurance agent to disclose the conflict (where such conflict cannot be avoided) and at all times to act fairly in relation to the client, placing the client’s interests ahead of the agent’s interests in the other business or occupation.

J. General Principle 8 – Client Assets

Feedback received

74. The feedback received on **General Principle 8** focused on the clarity of the wording, and several suggestions were made to strengthen and clarify its substance.

IA’s response

75. The feedback provided has been taken on board. The imperative of licensed insurance agents complying with the requirements and controls of its appointing insurers, and how such requirements and controls serve as important policy holder protection measures, has been explained in the Preface to the Agents’ Code (and further referenced in these Consultation Conclusions). Of no situation is this more important than when it comes to the handling premiums by the licensed insurance agent. The requirement for the licensed insurance agent to handle such payment and disburse it to the appointing insurer or appointing agency (as applicable) in strict conformity with the requirements, controls and timing set out by its appointing insurer or appointing agency (as applicable), is now categorically stated. The same goes for the requirement for licensed insurance agents not to mix premiums with their personal funds. We have also added a new requirement, **Standard and Practice 8.1(b)(iii)**, that agents should maintain proper records of premiums received when authorized to receive premium payments, by an appointing insurer or appointing agency. The requirements in **Standard and Practice 8.1(c)** regarding the handling of premiums by way of cash have also been strengthened to make clear that these situations should be limited to where it is not reasonably feasible for the agent to accept payment by any other means.

K. Corporate Governance and Controls and Procedures

Feedback received

76. In addition to the feedback received in response to the specific question posed on the need for corporate governance for licensed insurance agencies (see Part I above), other feedback was received on the specific provisions of this section. Several suggestions focused on the burden on resources that these requirements would place on (particularly smaller) licensed insurance agencies, with it being noted that the controls and procedures in this section should be ‘lower’ than those applicable to licensed insurance broker companies. It was also suggested that licensed insurance agencies carrying on only restricted scope travel insurance should be exempted from the requirements in this section.
77. Feedback was also received in relation to the requirements on handling of complaints, including requests that we define “complaint” and that, in **paragraph 2(b)(ii)**, we insert the wording “and to take any remedial action as appropriate”. It was also noted that the manner in which insurance agencies respond to complaints should be subject to their agreement with their appointing insurer.
78. Feedback was received in relation to record keeping requirements (now **paragraph 3**), with particular note being made of the fact that such requirements should also apply to appointing insurers, particularly in relation to the documents referenced.
79. As regards the requirement to report material incidents (now **paragraph 4**), feedback was received on the lack of clarity as to what was considered “material”, with one respondent suggesting we should consider providing guidance similar to that provided by the Australian Securities and Investments Commission (“ASIC”) on what “material” means in this context.

IA’s response

80. As has been already stated, corporate governance is an important aspect of policy holder protection and it is imperative that all licensed insurance agencies should have a minimum level of corporate governance and controls and procedures in place. To that end, this section of the Agents’ Code sets base-line standards and practices for corporate governance which all licensed insurance agencies should meet, irrespective of the regulated activities carried on. It is expressly recognized that licensed insurance agencies come in a variety of sizes and forms and that compliance can be achieved in a number of ways and that 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 promotes, advises on

or arranges”. Further, a comparison with the corporate governance requirements in the Brokers’ Code, would demonstrate that the corporate governance requirements in the Agents’ Code are different. The difference does not mean “lower” standards, as the feedback suggests, but merely that the standards reflect the different roles which licensed insurance agencies and licensed insurance broker companies perform.

81. Insurance is a service industry and like any service industry, its reputation is impacted by the manner in which it handles complaints. It is a vital part of a licensed insurance agency’s business, that it has in place a process for handling complaints and in engaging with the IA in this respect (as complaints may well involve the regulator). In many ways, the reputation of an agency (and the insurance industry more generally) depends on the way it resolves problems when they arise. Having in place an effective complaints handling procedure is therefore vital. The word “complaint” does not, in our view, require further definition for the purpose of its inclusion in a code of conduct. We have, however, amended **paragraph 2** to require the agency not only to respond to the complaint, but also “to take any remedial action as appropriate”.
82. In view of the feedback on the record keeping requirement (and how the onus should be placed on authorized insurers in this respect), we have included a new record keeping requirement in **Standard and Practice 3.5** (see paragraph 54 above) requiring licensed insurance agents to comply with the requirements of its appointing insurer/appointing agency in relation to record keeping and submit such records to the appointing insurer/appointing agency as soon as reasonably practicable. The record-keeping requirement in the Corporate Governance section has therefore been recrafted as a general record keeping provision, requiring a licensed insurance agency to establish proper controls and procedures to comply with all record keeping requirements relevant to its regulated activities set out in laws, rules, regulations, codes and guidance.
83. Finally, we welcome the suggestion made to clarify the reporting of incidents requirement (now **paragraph 4**). This is now divided into specified incidents which must be reported (winding up petition, bankruptcy, disciplinary action by named regulators, criminal conviction) and incidents and breaches which need to be reported if they are “material”. As suggested in the feedback, we have adopted an approach similar to ASIC in Australia in setting out the considerations of what constitutes “material” (e.g. adverse impact to the agency’s ability to carry on regulated activities, an incident which indicates the agency’s controls or procedures are inadequate, an incident which has caused or may cause a client or the agency loss). This encompasses not only breaches, but for example, cyber incidents which impact the agency. A good test would be for an agency to ask itself in relation to an incident, “if we do not report it now, but the matter is later discovered, what would our justification for not reporting it be?” If an agency is unsure, reporting is encouraged. Licenced

insurance agents (which term includes licensed insurance agencies) are required, under Standard and Practice 1.2(d)(ii) to report certain incidents to their principals (including appointing insurers).

Conclusion and Next Steps

84. The Agents' Code has been revised taking into account the consultation responses helpfully provided by the respondents listed in Annex C.
85. The final form of the Agents' Code is set out in Annex A. Changes made to the original draft (i.e. the version that was annexed to the Consultation Paper) are shown in marked up version in Annex B for reference.
86. The Agents' Code will be gazetted and will come into operation immediately upon commencement of the new regulatory regime for insurance intermediaries on 23 September 2019. The IA, however, appreciates that that licensed insurance agents require time to update their systems and processes to align with those requirements in the Agents' Code which are new. As such, the IA will take full account of this (and adopt an attitude of flexibility) in considering any matter involving the provisions of the Agents' Code, and whether they have been observed, during the first few months of its operation. This will be particularly the case for those provisions in the Agents' Code which are different from the requirements under the self-regulatory regime which applied prior to 23 September 2019. Licensed insurance agents are, however, expected to achieve full alignment with the provisions of the Agents' Code by 1 January 2020 (and, of course, early adoption is always encouraged).
87. Once again, we would like to thank all respondents for their informative feedback and engagement.

**Market Conduct Division
Insurance Authority
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Final Form of Code of Conduct for Licensed Insurance Agents

**Code of Conduct for
Licensed Insurance Agents**

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Preface

There are 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 of Conduct 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 and guidelines, including those administered or issued by the Insurance Authority. The context for the Code of Conduct, 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 agencies.

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 of Conduct 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 represent, is limited to a cap¹ 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.

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 and guidelines 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; and
- the general principles, standards and practices set out in the Code of Conduct.

The aims of the Code of Conduct

Primarily, the Code of Conduct 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 of Conduct 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.

Thirdly, the Code of Conduct aims, in certain instances, to inform and explain the statutory conduct requirements in sections 90 and 91 (and in any rules made by the

¹ Section 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).

Insurance Authority under section 94) of the Insurance Ordinance with which licensed insurance agents are required to comply. 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 of Conduct (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 of Conduct for Licensed Insurance Agents (this “Code”) is issued and published by the Insurance Authority (“IA”) pursuant to section 95 of the Insurance Ordinance (Cap. 41) (“the Ordinance”).
- 1.2 This Code sets out, in the opening section of Part C of this Code, 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”). Part C goes on to provide further explanation of each General Principle and includes standards and practices relating to each General Principle (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 or other regulators. Together, the General Principles, Standards and Practices in this Code collectively serve as guidance on the practices and standards which licensed insurance agents are ordinarily expected to adopt in carrying on regulated activities.
- 1.3 The section in Part C of this Code on “Corporate Governance and Controls and Procedures” applies only to licensed insurance agencies. This section sets out guidance on the practices and standards for corporate governance, controls and procedures which should be adopted by a licensed insurance agency in relation to the regulated activities carried on by the agency.
- 1.4 Neither the Standards and Practices nor the corporate governance, controls and procedures in this Code are exhaustive. Further, certain Standards and Practices are specifically stated as being only applicable to regulated advice and not other regulated activities.
- 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. As such, licensed insurance agents should look to adopt the General Principles 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). The section of this Code on “Corporate

Governance and Controls and Procedures” provides guidance as to the controls and procedures an agency should implement in relation to section 91 of the Ordinance.

- 1.7 In formulating the General Principles, Standards and Practices, corporate governance and controls and procedures 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 make specific reference to the section of this Code on “Corporate Governance and Controls and Procedures” which sets out their responsibilities relating to the corporate governance, controls and procedures that need to be established and maintained in relation to the carrying on of regulated activities by the agencies.

3. This Code and other Guidelines issued by the IA (and requirements of other regulatory authorities)

- 3.1 This Code is of universal application to the regulated activities carried on by licensed insurance agents in relation to both general and life insurance policies and is not a replacement for other codes and guidelines issued by the IA. This Code needs to be complied with in addition to the applicable requirements set out in all other codes and guidelines issued by the IA. For example, in addition to the provisions in this Code, licensed insurance agents need to comply with requirements which apply to them in the guidelines issued by the IA on anti-money laundering and counter-terrorist financing and (specifically relating to life insurance policies) on financial needs analysis, cooling-off period, investment-linked assurance scheme products, gifts and policy replacement.
- 3.2 In addition (as denoted in Standard and Practice 1.2) licensed insurance agents should comply with requirements of other regulatory authorities which apply to the agents regarding the regulated activities they carry on. In this respect, “other regulatory authorities” (or “other relevant regulatory authorities”) as referenced in this Code refers to regulatory authorities other than the IA which have jurisdiction over matters relating to the carrying on of regulated activities by licensed insurance agents, such as the Monetary Authority (for example, in the case of a licensed insurance agency which is an authorized institution) or the Privacy Commissioner for Personal Data (in relation to personal data collected or used

by the agent in carrying on regulated activities).

4. Status of this Code and 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:

- (a) whether there has been an act or omission relating to the carrying on of any regulated activity, which in the IA's opinion 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) whether a licensed insurance agent is fit and proper to remain licensed (section 95(6) of the Ordinance);
- (c) whether a licensed insurance agent or responsible officer of a licensed insurance agency has satisfied the Statutory Conduct Requirements; or
- (d) any other matters under the Ordinance to which this Code may be relevant.

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, Standards and Practices, corporate governance and controls and procedures may be met or implemented. The IA will therefore take account of the relevant context, facts and impact of any matter in considering whether the provisions of this Code have been satisfied and, if not, whether to take any disciplinary action.

4.4 This Code does not have the force of law, in that it is not subsidiary legislation, and should not be interpreted in a way 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 with this Code (section 95(7) of the Ordinance).

4.5 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 do not constitute legal advice or create additional legal obligations beyond those contained in the Ordinance.

4.6 The IA may from time to time amend the whole or any part of this Code.

4.7 This Code comes into effect on 23 September 2019.

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 or stated otherwise 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 applicable) as its agent to carry on regulated activities;

“client” in this Code bears the same meaning as policy holder and potential policy holder in the Ordinance;

“client’s circumstances”, in relation to regulated advice provided by a licensed insurance agent to a client, means the objectives, needs and priorities of and other information from or about the client which a reasonable licensed insurance agent would need to take into account in order to provide such advice. “Priorities” in this context means the stated priorities of the client in seeking such insurance and any particular risks or matters which are specifically brought to the attention of the agent by the client as being priorities which the agent should consider when recommending an insurance policy to the client. As guidance, examples of client’s circumstances include:

- a) where the agent is giving regulated advice in relation to the making of an application or proposal for a life insurance policy, the needs, financial situation, ability and willingness to pay premium and other information which the agent is required to collect in a financial needs analysis assessment; and
- b) where the agent is giving regulated advice in relation to the making of an application or proposal for a general insurance policy, the property, liability or other risks for which the client is seeking insurance coverage, the amount of and the period of coverage required;

“general insurance policy” means a contract of insurance which is classed as general business under the Ordinance;

“insurance product” or **“insurance policy”** means a contract of insurance. The terms

are used interchangeably throughout this Code;

“life insurance policy” means a contract of insurance which is classed as long term business under the Ordinance;

“minor offence” means an offence punishable by a fixed penalty under the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237), the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240), the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance (Cap. 570), the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600) or the Motor Vehicle Idling (Fixed Penalty) Ordinance (Cap. 611), or an offence of similar nature committed in a place outside Hong Kong;

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

“senior management”, in relation to a licensed insurance agency means those persons who perform the functions of managing the regulated activities carried on by the agency. The exact composition of the senior management will depend on the size of the agency, its organizational structure and the authority of the persons concerned. Whether a person is part of the senior management will depend on the actual functions and duties of the person and not simply the person’s position and title. The following examples are provided, solely as guidance for determining persons in senior management:

- a) persons responsible for overseeing the overall operations and functions of the regulated activities carried on by the agency, and who report directly to the board or the responsible officer of the agency, are likely to be considered part of the senior management; and
- b) in large agencies, a person responsible for oversight of a business line (life, general, commercial, consumer etc.) or function (operations, compliance etc.) related to the regulated activities carried on by the agency, is also likely to be considered part of the senior management;

“Statutory Conduct Requirements” means the conduct requirements applicable to licensed insurance agents and/or their responsible officers as identified in sections 90 and 91 of the Ordinance and the standards and practices specified in any rules made by the IA under section 94 of the Ordinance with which licensed insurance agents are required to comply.

A reference to “should” in this Code in relation an action, denotes that the licensed insurance agent is required to take the action in order to satisfy the relevant General Principle, Standard and Practice, corporate governance and control and procedure.

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.

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 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 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 of Advice

A licensed insurance agent's regulated advice should be suitable for the client taking into account the client's circumstances.

GP 7. Conflicts of Interest

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

GP 8. Client Assets

A licensed insurance agent should have sufficient safeguards in place to protect client assets received by the agent or which are in the agent's possession.

Section I

General Principle 1 – Honesty and Integrity

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

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 or deceive 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 or deceptive.
- (b) A licensed insurance agent should not make inaccurate, misleading or deceptive statements or comparisons to induce a client to enter into an insurance policy or replace an existing insurance policy with another insurance policy.
- (c) When advertising, marketing or promoting an insurance product, a licensed insurance agent should only use materials supplied or approved by its appointing insurer or appointing agency (as applicable).
- (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 Compliance

- (a) A licensed insurance agent should comply with:
 - (i) all laws which apply to the agent;
 - (ii) all rules, regulations, codes and guidelines administered or issued by the IA which apply to the agent; and
 - (iii) all requirements of other regulatory authorities which apply to the agent in connection with the regulated activities carried on by the agent.
- (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 duties under contract and at law in relation to the carrying on of regulated activities that it owes to its appointing

insurer or appointing agency (as applicable). These would include, without limitation, the duty owed by a licensed insurance agency or a licensed individual insurance agent to obtain prior consent from its appointing insurer before accepting an appointment by another authorized insurer. A licensed insurance agent should also comply with the policies, procedures and other applicable requirements of its appointing insurers or appointing agency (as applicable) in relation to the carrying on of regulated activities.

(d) Where a licensed insurance agent is:

- (i) wound up or adjudicated bankrupt by a court in Hong Kong or elsewhere;
- (ii) convicted of a criminal offence (other than a minor 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, as soon as reasonably practicable, report this to:

- (i) the IA in writing; and
- (ii) its appointing insurer or appointing agency (as applicable) in a manner specified by the insurer or agency.

1.3 Harassment, Coercion or Undue Influence

A licensed insurance agent should not harass, coerce or use undue influence to induce a client to enter into a contract of insurance or to make a material decision².

1.4 Prevention of Bribery

- (a) A licensed insurance agent should be familiar with and not contravene, and should ensure that its employees are familiar with and do not contravene, the Prevention of Bribery Ordinance (Cap. 201) (“PBO”) and should follow all relevant guidance issued by the Independent Commission Against Corruption concerning matters in relation to the carrying on of regulated activities by the agent.
- (b) Without limitation to 1.4(a) above, the PBO may prohibit a licensed insurance agent from:
 - (i) soliciting or accepting an advantage from a person as an inducement or reward for taking any action in relation to the affairs or business of his appointing insurer or appointing agency (as applicable), without first obtaining the requisite permission³ from the appointing insurer or appointing agency (as applicable);

² Reminding a client of a promotion which may be of interest to the client would not generally be considered to infringe Standard and Practice 1.3. Licensed insurance agents should, however, be mindful of the frequency, timing and manner of such reminders.

³ For the purposes of 1.4(b)(i) and (b)(ii) above, “requisite permission” means permission which satisfies the requirements in section 9(5) of the PBO.

- (ii) offering an advantage to another person who is an agent (as defined in the PBO) as an inducement or reward for that agent taking any action in connection with the affairs or business of that agent's principal, without the requisite permission being given by the principal.

Note: 1.4(b) is not a Standard and Practice in this Code, but serves to draw the attention of licensed insurance agents to situations where particular consideration should be given to the PBO in the carrying on of regulated activities. Please also note that (i) and (ii) above do not include all the elements of relevant offences under the PBO. Further, 1.4(b) does not constitute legal advice or any form of legal interpretation of the PBO. Full reference should be made to the PBO itself (in particular section 9 of the PBO and the definitions and meanings of the terms used therein).

Section II

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.

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, when conducting regulated activities in respect of a client, should:
 - (i) treat the client fairly; and
 - (ii) give suitable, impartial and objective advice to the client which takes account of the client’s interests.
- (b) A licensed insurance agent should only recommend insurance products⁴ which best meet the client’s interests, from the range of insurance products offered by its appointing insurer or appointing agency (as applicable) which the agent is authorized to promote.

2.2 Giving fair and impartial regulated advice⁵ 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 information relating to the client, to the extent such information is necessary in order for the agent to provide regulated advice; and
 - (ii) if it is reasonably apparent that such information is incomplete or inaccurate (e.g. if there are any inconsistencies in the information provided), make reasonable follow-up enquiries to obtain complete and accurate 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 circumstances and have a reasonable basis for the advice;

⁴ 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 circumstances.

⁵ Giving regulated advice includes making a recommendation on an insurance product.

- (ii) when making a recommendation on an insurance product, consider what available insurance products ⁶ can reasonably meet the client's circumstances, based on the product range offered by its appointing insurer or appointing agency (as appropriate); and
 - (iii) 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 information obtained from the client, including the client's circumstances.

⁶ See footnote 14.

Section III

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) A licensed insurance agent should 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.
- (b) Where a licensed insurance agent employs or engages another person to provide support to the agent in its carrying on of regulated activities, the agent should ensure the person has the integrity and competence to discharge the duties for which the person is employed or engaged and supervise that person diligently in performing such duties. In so far as the person’s work impacts the regulated activities carried on by the agent, the agent is and remains responsible for such activities.

3.2 Handling of application and claim forms

Where any application, claim or other forms which are required to be completed by a client, are being completed or submitted with the assistance of a licensed insurance agent, the agent:

- (i) should inform the client that it is the client’s responsibility to ensure the information provided in the form, or in the document(s) provided in support of the form, is accurate and complete;
- (ii) should not complete, amend or submit to the insurer concerned any such form without obtaining the client’s agreement and confirming the completeness and accuracy of the contents with the client; and
- (iii) should not submit any such form to the insurer concerned if the agent knows that the form contains inaccurate information⁷.

⁷ If a licensed insurance agent considers that information in a form may be inaccurate, but the form must be submitted to preserve the client’s right to make a claim (e.g. to comply with a condition precedent), the agent may submit the form, but should inform the insurer that it will clarify the

3.3 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 as soon as practicable in case of any delay or failure to carry out the instruction.

3.4 Protecting a client's privacy and confidentiality

- (a) A licensed insurance agent should treat all information in relation to a client as confidential and should not use it or disclose it other than (i) for the purposes of carrying on the regulated activities for which such information has been provided, (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 which require disclosure to be made.
- (b) With regards to personal data of a client that is collected by a licensed insurance agent in the course of the carrying on of regulated activities, the agent must comply with the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO") and should follow the related guidance⁸ issued by the Privacy Commissioner for Personal Data ("Privacy Commissioner") concerning collection, retention, use and security of the personal data.

3.5 Record Keeping

- (a) A licensed insurance agent should act in accordance with all requirements, policies and procedures of its appointing insurer or appointing agency (as the case may be) relating to the keeping of proper records concerning the regulated activities carried out on behalf of the appointing insurer or appointing agency (as the case may be).
- (b) Where in accordance with the record-keeping requirements of a licensed insurance agent's appointing insurer or appointing agency (as the case may be), such records are to be submitted by the agent to the appointing insurer or appointing agency (as the case may be), the agent should submit such records as soon as reasonably practicable.

information. The agent should then clarify the information with the client, so any inaccuracy can be corrected as soon as reasonably possible.

⁸ The Privacy Commissioner has issued "Guidance on the Proper Handling of Customers' Personal Data for the Insurance Industry" to assist the insurance industry to comply with the requirements under the PDPO. The Privacy Commissioner has also issued "New Guidance on Direct Marketing" to provide guidance on compliance with the requirements for direct marketing under the PDPO.

3.6 Cooling-off period

If an insurance policy contains a cooling-off period provision⁹, a licensed insurance agent should adhere to the following practices:

- (i) before the client's application for the insurance policy is signed or, in the case of an application without a signature before the application process for the insurance policy is completed, the agent should inform the client of his right to cancel the insurance policy during the cooling-off period and that the client should notify the insurer concerned during the cooling-off period if he wishes to exercise such right; and
- (ii) if the agent is obliged to deliver the insurance policy to the client, he should deliver it as soon as reasonably practicable (and keep a record of the date of such delivery) 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.

⁹ 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.

Section IV

General Principle 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.

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 nature and key features of, and the risks covered by and associated with, the different types of insurance products in respect of which he may carry on regulated activities.

4.2 Being clear about the limits of their knowledge

A licensed individual insurance agent and a licensed technical representative (agent) should not carry on regulated activities on matters in relation to which he lacks the specific skills or knowledge¹⁰ 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 his appointing agency, as applicable.

¹⁰ The requisite skills or knowledge a licensed individual insurance agent or licensed technical representative (agent) is expected to have will depend on the particular situation involving the regulated activities being carried on. Factors to be considered would include the complexity (or simplicity) of the insurance product or transaction which is the subject of the regulated activities, whether the insurance product is of a specialist nature, the level of the person’s experience and the relevance of the person’s qualifications.

Section V

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) A licensed insurance agent should provide the following information to its client:
- (i) the name (the registered name as well as the trade name, if any) of the agent;
 - (ii) the licence number of the agent;
 - (iii) the type of licence of the agent, i.e. individual insurance agent licence, insurance agency licence or technical representative (agent) licence;
 - (iv) the name of the appointing insurer or appointing agency (as applicable) of the agent; and
 - (v) 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) A licensed insurance agent should provide the information in Standard and Practice 5.1(a) and (b) above before or (if this is not feasible) as soon as reasonably practicable after commencing any regulated activity in relation to the client.
- (d) A licensed individual insurance agent or a licensed technical representative (agent) should ensure the following information is correctly shown on his business card (including any digital business card) if a business card is distributed by the agent/technical representative for the purpose of carrying on regulated activities:
- (i) the name as shown on his Hong Kong identity card or passport¹¹;

¹¹ The licensed technical representative (agent) may also state any other name by which he is commonly known on his business card even if this is not shown on his Hong Kong identity card or passport.

- (ii) licence number;
- (iii) type of licence; and
- (iv) the name of his appointing insurer or appointing agency (as applicable).

5.2 Disclosure in relation to insurance products

- (a) A licensed insurance agent should provide all relevant information on the key features of each insurance product recommended or arranged by the agent to the client concerned. The information should include:
 - (i) the name of the insurer concerned;
 - (ii) the major policy terms and conditions (e.g. coverage, policy period, conditions precedent, exclusions and warranties and any other clauses which would reasonably be considered to adversely impact the client's decision to enter into the insurance policy);
 - (iii) the level of premium and the period for which the premium is payable; and
 - (iv) the fees and charges (other than premium) to be paid by the client, if any.
- (b) When comparing insurance products, a licensed insurance agent should adequately explain the similarities and differences between the products. Any comparison made should be accurate and not misleading (See also Standard and Practice 1.1(b)).

5.3 Disclosure in relation to a policy holder's obligations

When a client is making an application for insurance with the assistance of a licensed insurance agent, the agent should explain to the client:

- (i) the principle of utmost good faith and remind the client that non-disclosure of material facts or provision of incorrect information to an insurer may result in the insurance policy being invalidated or avoided or claims being repudiated by the insurer;
- (ii) the sort of material facts which ought to be disclosed by the client to the insurer¹²; and
- (iii) any declaration which needs to be made by the client in respect of the application and give the client the opportunity to review it before the client signs or makes the declaration.

¹² The agent may explain that a material fact is one that would influence a prudent insurer's judgement as to whether to insure the risk at all, the premium to charge, or the terms on which to insure and provide some examples relevant to the insurance policy which is the subject of the application to highlight the meaning.

5.4 Disclosure in relation to a client referred by another person¹³

- (a) Where a client is referred to a licensed insurance agent by another person (referrer), in addition to complying with the policies, procedures or requirements relating to referrals that its appointing insurer or appointing agency (as applicable) has in place, before the agent arranges an insurance policy for the client, the agent should inform the client that:
- (i) 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);
 - (ii) the referrer does not represent the agent and should have no involvement in the arrangement of the insurance policy;
 - (iii) the agent disclaims all liability for any advice in relation to the insurance policy given to the client by the referrer; and
 - (iv) premium for the insurance policy should be paid directly either to the insurer concerned or, if permitted (see Standard and Practice 8.1), to the agent (and not to the referrer).
- (b) Standard and Practice 5.4(a) does not apply where:
- (i) the client is referred to a licensed insurance agency by its appointed licensed technical representative (agent); or
 - (ii) 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.

¹³ 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 under the Ordinance. A person who contravenes the licensing requirements commits an offence. The Standards and Practices in this Code do not alter the 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.

Section VI

General Principle 6 – Suitability of Advice

A licensed insurance agent's regulated advice should be suitable for the client taking into account the client's circumstances.

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 carry out an appropriate suitability assessment in relation to the client's circumstances. The objective of such suitability assessment is to ensure that a licensed insurance agent obtains sufficient information in relation to the client's circumstances on which to base its regulated advice to the client.
- (b) To achieve the objective of a suitability assessment, a licensed insurance agent should:
 - (i) take reasonable steps to understand the client's circumstances;
 - (ii) consider the available insurance options ¹⁴ in view of the client's circumstances;
 - (iii) take into account the client's circumstances when giving regulated advice to the client and have a reasonable basis for such advice; and
 - (iv) if a client does not provide information for the suitability assessment which is necessary for the licensed insurance agent to achieve the objective in Standard and Practice 6.1(a) above, the licensed insurance agent should explain that its regulated advice may not be suitable to address the client's circumstances unless such information is provided.
- (c) The level of suitability assessment should be proportionate and reasonable, taking into account the client's circumstances and other factors such as the type of insurance product under consideration.¹⁵

¹⁴ The insurance products explored by a licensed insurance agent should be based on the range of insurance products offered by its appointing insurer or appointing agency (as applicable) which the agent is authorized to promote.

¹⁵ Reference should also be made to the guidelines issued by the IA in relation to life insurance policies which set out specific requirements in relation to suitability assessments for these policies (e.g. financial needs analysis). For insurance products which are not subject to specific requirements for suitability assessment set out in guidelines or other rules or regulations, the extent of such assessment depends

6.2 Recommendation

- (a) The regulated advice given by a licensed insurance agent to a client (e.g. advice in relation to the making of an application or proposal for a contract of insurance) should be advice that a reasonable licensed insurance agent would consider suitable for the client based on the information obtained from the client, including the client's circumstances.
- (b) If, after a licensed insurance agent has carried out a suitability assessment and provided regulated advice, the client insists on making a material decision contrary to the recommendation included in the advice and which, in the agent's opinion, is not suitable for the client's circumstances, the agent should document and keep a proper record of:
- the recommendation made by the agent to the client;
 - the reasons provided by the client (if any) to the agent for taking a decision which does not follow the recommendation;
 - the explanation given by the agent to the client for considering the client's decision to be unsuitable; and
 - the fact that the decision is the client's own decision.

on the nature and complexity of the products concerned and the client's circumstances. For travel insurance, by way of example, the suitability assessment may be conducted as part of the application process (where the client's circumstances would be the trip details, the ages of the persons travelling, the length of the journey etc.)

Section VII

General Principle 7 – Conflicts of Interest

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

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 its appointing insurer or appointing agency (as applicable), the agent should disclose to the client the fact that:

- (i) the agent is appointed by its appointing insurer or appointing agency (as applicable) to promote, advise on or arrange the insurance products offered by the insurer or agency (as applicable); and
- (ii) the insurance products the agent can promote, advise on or arrange are limited to the insurance products offered by its appointing insurer or appointing agency (as applicable).

7.2 Disclosure of relevant restrictions arising from the agent’s terms and conditions with its principal

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

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

Where a licensed insurance agent has another business or occupation, the agent should avoid any conflict arising between its interests in that other business or occupation and the interests of the client when carrying on regulated activities. In the event the agent is unable to avoid such conflict, it should disclose the conflict to the client as soon as practicable and, at all times, act fairly in relation to the client, placing the client's interests ahead of the agent's interests in the other business or occupation.

Section VIII

General Principle 8 – Client Assets

A licensed insurance agent should have sufficient safeguards in place to protect client assets received by the agent or which are in the agent's possession.

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 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 applicable).
- (b) If a licensed insurance agent is authorized to receive premium payment by its appointing insurer or appointing agency (as applicable), the agent should:
 - (i) handle the payment and disburse it to the appointing insurer or appointing agency (as applicable) in strict conformity with the requirements, controls and timing set out by its appointing insurer or appointing agency (as applicable);
 - (ii) safeguard any premiums received and not mix such premiums with the agent's personal funds; and
 - (iii) maintain proper records of premiums received in accordance with the requirements and controls stated in (i) above.
- (c) As regards payment of premiums by way of cash, in addition to Standard and Practice 8.1(a) and (b) above, the following restrictions apply, namely:

A licensed insurance agent should not receive payment of premiums by way of cash, unless:

- (i) it is not reasonably feasible for the agent to accept payment by any other means; and
- (ii) the appointing insurer or appointing agency (as applicable) of the agent authorizes the agent to receive cash payment, the payment is within the limits of such authority and the payment is handled strictly in accordance with the requirements and controls to which such authority is subject.

Section IX

Corporate Governance and Controls and Procedures

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.

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 and procedures 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 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 promotes, advises on or 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:
 - (i) persons who are recruited, employed by, associated with, or act for the agency in relation to the carrying on of regulated activities have the integrity and competence to discharge their duties and responsibilities;
 - (ii) the agency and its staff, particularly its licensed technical representatives (agent) comply with all laws, rules, regulations, codes and guidelines 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 the responsible officer and senior management periodically reviewing management reports on non-compliance issues); and
 - (iv) its licensed technical representatives (agent) are trained and have a good understanding of the nature and key features of, and the risks covered by and associated with, the insurance products in respect of which they may carry on regulated activities and keep 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, fair and proper 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, to respond promptly to the complainants concerned and to take any remedial action as appropriate;
 - (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 other relevant regulatory authorities in the handling of complaints and provide assistance to its appointing insurers to resolve such complaints.

3. Keeping of records

A licensed insurance agency should establish proper controls and procedures to ensure that records in relation to the regulated activities it carries out (including the regulated activities carried out on its behalf, by its licensed insurance technical representatives (agent)) are kept, so as to comply with the record keeping requirements of all laws, rules, regulations, codes and guidelines applicable to the carrying on of regulated activities by the agency.

4. Reporting of incidents to the IA

- (a) A licensed insurance agency should report the following incidents to the IA, and should have proper controls and procedures to ensure such incidents are reported to the IA, as soon as reasonably practicable:
- (i) the filing of a petition for winding-up of the agency;
 - (ii) the bankruptcy of any directors, controllers, partners or licensed technical representatives (agent) of the agency;
 - (iii) a disciplinary action taken against the agency or its licensed technical representatives (agent) by the Monetary Authority, the Securities and Futures Commission or the Mandatory Provident Fund Schemes Authority; or
 - (iv) a criminal conviction (other than a minor offence) of the agency or its directors, controllers, partners or licensed technical representatives (agent) by any court in Hong Kong or elsewhere.
- (b) A licensed insurance agency should also report to the IA, as soon as reasonably practicable:
- (i) any material breaches of requirements under the Ordinance or any rules, regulations, codes or guidelines administered or issued by the IA, by the agency or its licensed technical representatives (agent); and
 - (ii) any material incidents which happen to the agency.
- (c) For the purposes of (b) above,
- (i) a breach or incident is material if:
 - it adversely impacts or is likely to adversely impact the agency's ability to carry on regulated activities;
 - it indicates that the agency's controls or procedures are inadequate to ensure compliance by the agency or its technical representatives (agent) with the requirements under the Ordinance or any rules, regulations, codes or guidelines administered or issued by the IA; or
 - it has caused or may cause loss to a client or to the agency itself;
 - (ii) a licensed insurance agency should establish a process for assessing whether a breach or an incident is material in accordance with the factors stated in (i) above and have proper controls and procedures to ensure the reporting of such material breaches or incidents to the IA; and

(iii) if a licensed insurance agency is not sure whether a breach or incident is material, the agency is encouraged to report the breach or incident to the IA.

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.

Annex B

Final Form of Code of Conduct for Licensed Insurance Agents with Track Changes

**Code of Conduct for
Licensed Insurance Agents**

First Edition ~~_month~~September 2019

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~~Code of Conduct for Licensed Insurance Agents~~

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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 of Conduct 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, and guidelines, ~~circulares and regulatory instruments~~ including those administered or issued by the Insurance Authority. The context for the Code of Conduct, 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 agencyies.

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 of Conduct 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/represent, is limited to a cap¹ 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 agreements².

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, and guidelines, ~~circulares 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 circulares and other regulatory instruments issued by the Insurance Authority~~; and
- the general principles, standards and practices set out in the Code of Conduct.

The aims of the Code of Conduct

Primarily, the Code of Conduct 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 of Conduct supplements the duties and obligations which licensed insurance agents owe their principals (arising from their principal-agent relationship)

¹ 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).

² ~~For example, consent from existing appointing insurers would normally be required before accepting another appointment.~~

by providing that agents should comply with the requirements set out by their principals regarding their carrying on of regulated activities.

Thirdly, the Code of Conduct aims ~~to~~, in certain instances, to inform and explain the statutory conduct requirements in sections 90 and 91 ~~of (and in any rules made by the Insurance Authority under section 94) of the~~ Insurance Ordinance ~~as appropriate with which licensed insurance agents are required to comply~~. 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 of Conduct (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 of Conduct for Licensed Insurance Agents (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~~

1.2 This Code sets out, in the opening section of Part C of this Code, 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”). ~~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,~~ or other regulators. Together, the General Principles, Standards and Practices in this Code collectively serve as guidance on the practices and standards which licensed insurance agents are ordinarily expected to adopt in carrying on regulated activities.

1.3 The section in Part ~~D~~C of this Code on “Corporate Governance and Controls and Procedures” applies only to licensed insurance agencies ~~and~~. This section sets out requirements for guidance on the practices and standards for corporate governance, controls and procedures which should be adopted by a licensed insurance agency ~~should adopt in relation~~ 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~~ regulated activities carried on by the agency.

1.4 Neither the ~~General Principles and related~~ Standards and Practices ~~set out in Part C in this Code,~~ nor the corporate governance, controls and procedures ~~set out in Part D of this Code~~ are exhaustive. Further, certain Standards and Practices are specifically stated as being only applicable to regulated advice and not other regulated activities.

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~~As such, 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~~section 90 by its licensed technical representatives (agent). ~~Part D~~The section of this Code on “Corporate Governance and Controls and Procedures” provides guidance as to the controls and procedures ~~needed to comply with Section 91. Again, however, it an agency~~ should be emphasized that this guidance is not exhaustive implement in relation to section 91 of the Ordinance.
- 1.7 In formulating the General Principles ~~and their related~~, Standards and Practices, corporate governance and controls and procedures 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~~the section of this Code on “Corporate Governance and Controls and Procedures” which sets out their responsibilities relating to the corporate governance, controls and procedures that need to be established and maintained in relation to the carrying on of regulated activities by the ~~insurance~~ agencies.

3. This Code and other Guidelines issued by the IA (and requirements of other regulatory authorities)

- 3.1 This Code is of universal application to the regulated activities carried on by licensed insurance agents. ~~Accordingly, this in relation to both general and life insurance policies and is not a replacement for other codes and guidelines issued by the IA. This~~ Code needs to be complied with in addition to the applicable requirements set out in all other codes and guidelines issued by the IA. For example, in addition to the provisions in this Code, licensed insurance agents need to comply with requirements which apply to them in the guidelines issued by the IA on anti-money laundering and counter-terrorist financing and (specifically relating to life insurance policies) on financial needs analysis, cooling-off period, investment-linked assurance scheme products, gifts and policy replacement. (and other regulatory instruments) issued by the IA.

3.2 In addition (as denoted in Standard and Practice 1.2) licensed insurance agents should comply with requirements of other regulatory authorities which apply to the agents regarding the regulated activities they carry on. In this respect, “other regulatory authorities” (or “other relevant regulatory authorities”) as referenced in this Code refers to regulatory authorities other than the IA which have jurisdiction over matters relating to the carrying on of regulated activities by licensed insurance agents, such as the Monetary Authority (for example, in the case of a licensed insurance agency which is an authorized institution) or the Privacy Commissioner for Personal Data (in relation to personal data collected or used by the agent in carrying on regulated activities).

4. Status of this Code and 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) ~~whether~~ there has been an act or omission ~~by a licensed insurance agent relating to the carrying on of any regulated activity,~~ which ~~in the IA’s opinion~~ 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) ~~whether~~ a licensed insurance agent is fit and proper to remain licensed (section 95(6) of the Ordinance); ~~or~~
- (c) ~~whether~~ a licensed insurance agent ~~or responsible officer of a licensed insurance agency~~ has satisfied the Statutory Conduct Requirements; ~~or~~
- (d) ~~any other matters under the Ordinance to which this Code may be relevant.~~

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, ~~corporate governance and controls and procedures~~ may be met ~~or implemented~~. The IA will therefore take account of the relevant context, facts and impact of any matter in considering whether ~~the provisions of this Code have been satisfied and, if not, whether~~ to take any disciplinary action.

4.4 This Code does not have the force of law, ~~in that it is not subsidiary legislation,~~ and should not be interpreted in a way 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~~ with this Code (section 95(7) of the Ordinance).

4.5 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 do not constitute legal advice or create additional legal obligations beyond those contained in the Ordinance.

4.6 The IA may from time to time amend the whole or any part of this Code.

4.7 This Code comes into effect on 23 September 2019.

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 or stated otherwise 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 appropriateapplicable) 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;~~

“client’s circumstances”, in relation to regulated advice provided by a licensed insurance agent to a client, means the objectives, needs and priorities of and other information from or about the client which a reasonable licensed insurance agent would need to take into account in order to provide such advice. “Priorities” in this context means the stated priorities of the client in seeking such insurance and any particular risks or matters which are specifically brought to the attention of the agent by the client as being priorities which the agent should consider when recommending an insurance policy to the client. As guidance, examples of client’s circumstances include:

- a) where the agent is giving regulated advice in relation to the making of an application or proposal for a life insurance policy, the needs, financial situation, ability and willingness to pay premium and other information which the agent is required to collect in a financial needs analysis assessment; and
- b) where the agent is giving regulated advice in relation to the making of an application or proposal for a general insurance policy, the property, liability or other risks for which the client is seeking insurance coverage, the amount of and the period of coverage required;

“general insurance policy” means a contract of insurance which is classed as general business under the Ordinance;

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

“**life insurance policy**” means a contract of insurance which is classed as long term business under the Ordinance;

“**minor offence**” means an offence punishable by a fixed penalty under the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237), the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240), the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance (Cap. 570), the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600) or the Motor Vehicle Idling (Fixed Penalty) Ordinance (Cap. 611), or an offence of similar nature committed in a place outside Hong Kong;

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

“**senior management**”, in relation to a licensed insurance agency means those persons who perform the functions of managing the regulated activities carried on by the agency. The exact composition of the senior management will depend on the size of the agency, its organizational structure and the authority of the persons concerned. Whether a person is part of the senior management will depend on the actual functions and duties of the person and not simply the person’s position and title. The following examples are provided, solely as guidance for determining persons in senior management:

- a) persons responsible for overseeing the overall operations and functions of the regulated activities carried on by the agency, and who report directly to the board or the responsible officer of the agency, are likely to be considered part of the senior management; and
- b) in large agencies, a person responsible for oversight of a business line (life, general, commercial, consumer etc.) or function (operations, compliance etc.) related to the regulated activities carried on by the agency, is also likely to be considered part of the senior management;

“**Statutory Conduct Requirements**” ~~includes~~means the conduct requirements applicable to licensed insurance agents and/or their responsible officers as identified in sections 90 and 91 of the Ordinance; and the standards and practices specified in any rules made by the IA under section 94 of the Ordinance with which licensed insurance agents are required to comply.

A reference to “should” in this Code in relation an action, denotes that the licensed insurance agent is required to take the action in order to satisfy the relevant General Principle, Standard and Practice, corporate governance and control and procedure.

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 of Advice

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

GP 7. Conflicts of Interest

A licensed insurance agent should ~~make every effort~~use best endeavours to avoid conflicts of interests and when such conflicts cannot be avoided, the agent should manage them with appropriate disclosure to ensure clients are ~~fairly~~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~~client assets received by the agent or which are in the agent's possession.

Section I

General Principle 1 – Honesty and Integrity

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

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 or deceive 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 or deceptive.
- (b) A licensed insurance agent should not make inaccurate, misleading or incomplete deceptive statements or comparisons to induce a client to enter into an insurance policy or replace an existing insurance policy with another insurance policy.
- (c) When advertising, marketing or promoting an insurance product, a licensed insurance agent should not only use advertising or marketing materials supplied or approved by its appointing insurer or appointing agency (as applicable). 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.~~

~~4.3~~ 1.2 **Compliance**

- (a) A licensed insurance agent should comply with:
- (i) all laws which apply to the agent;
 - (ii) all rules, regulations, codes, and guidelines, ~~circulares and other regulatory instruments~~ administered or issued by the IA which apply to the agent; and
 - (iii) all requirements of any other regulatory authorities which apply to the agent in connection with the regulated activities carried on by 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~~ duties under contract and at law in relation to the carrying on of regulated activities ~~set out by that it owes to~~ its appointing insurer or appointing agency (as ~~appropriate~~ applicable). These would include, without limitation, the duty owed by a licensed insurance agency or a licensed individual insurance agent to obtain prior consent from its appointing insurer before accepting an appointment by another authorized insurer. A licensed insurance agent should also comply with the policies, procedures and other applicable requirements of its appointing insurers or appointing agency (as applicable) in relation to the carrying on of regulated activities.
- (d) Where a licensed insurance agent is:
- (i) wound up or adjudicated bankrupt by a court in Hong Kong or elsewhere;
 - (ii) convicted of a criminal offence (other than a minor 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, as soon as reasonably practicable, report this to:
- (i) the IA in writing; and
 - (ii) its appointing insurer or appointing agency (as ~~appropriate~~ applicable) in a manner specified by the insurer or agency.) and the IA as soon as reasonably practicable

~~4.4~~ 1.3 **Harassment, Coercion or Undue Influence**

A licensed insurance agent should not ~~exert~~ harass, coerce or use undue influence onto induce a client ~~or pressurize a client~~ to enter into making a contract of

insurance or to make a material decision³.

1.4 Prevention of Bribery

- (a) A licensed insurance agent should be familiar with and not contravene, and should ensure that its employees are familiar with and do not contravene, the Prevention of Bribery Ordinance (Cap. 201) (“PBO”) and should follow all relevant guidance issued by the Independent Commission Against Corruption concerning matters in relation to the carrying on of regulated activities by the agent.
- (b) Without limitation to 1.4(a) above, the PBO may prohibit a licensed insurance agent from:
- (i) soliciting or accepting an advantage from a person as an inducement or reward for taking any action in relation to the affairs or business of his appointing insurer or appointing agency (as applicable), without first obtaining the requisite permission⁴ from the appointing insurer or appointing agency (as applicable);
 - (ii) offering an advantage to another person who is an agent (as defined in the PBO) as an inducement or reward for that agent taking any action in connection with the affairs or business of that agent’s principal, without the requisite permission being given by the principal.

Note: 1.4(b) is not a Standard and Practice in this Code, but serves to draw the attention of licensed insurance agents to situations where particular consideration should be given to the PBO in the carrying on of regulated activities. Please also note that (i) and (ii) above do not include all the elements of relevant offences under the PBO. Further, 1.4(b) does not constitute legal advice or any form of legal interpretation of the PBO. Full reference should be made to the PBO itself (in particular section 9 of the PBO and the definitions and meanings of the terms used therein).

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.~~

³ Reminding a client of a promotion which may be of interest to the client would not generally be considered to infringe Standard and Practice 1.3. Licensed insurance agents should, however, be mindful of the frequency, timing and manner of such reminders.

⁴ For the purposes of 1.4(b)(i) and (b)(ii) above, “requisite permission” means permission which satisfies the requirements in section 9(5) of the PBO.

Section II

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.

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, when conducting regulated activities in respect of a client, should:
- (i) treat the client fairly; and
 - ~~(ii) pay due regard to client’s interests; and~~
 - ~~(iii)~~(ii) give suitable, impartial and objective advice to the client which takes account of the client’s interests.
- (b) A licensed insurance agent should only recommend insurance products⁵ which best meet the client’s interests, from the range of insurance products offered by its appointing insurer or appointing agency (as ~~appropriate applicable~~) which the agent is authorized to promote.

2.2 Giving fair and impartial regulated advice⁶ 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, to the extent such information is necessary in order for the agent to provide regulated advice; and
 - (ii) if it is reasonably apparent that such information, ~~when provided~~, is incomplete or inaccurate or insufficient, (e.g. if there are any inconsistencies in the information provided), make reasonable follow-up enquiries ~~to clarify the inaccuracy or~~ to obtain sufficient complete and accurate information.

⁵ 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.~~

⁶ Giving regulated advice includes making a recommendation on an insurance product.

- (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~~ have a reasonable basis for the advice;
 - (ii) when making a recommendation on an insurance product, consider what available insurance products⁷ can reasonably meet the client's ~~objectives, circumstances, needs and priorities~~, based on the product range offered by its appointing insurer or appointing agency (as appropriate); and
 - ~~(iii) have a reasonable basis for the advice to ensure the suitability of the advice given to the client; and~~
 - ~~(iv)(iii)~~ 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 information obtained from the client, including the client's ~~objectives, circumstances, needs and priorities~~.

⁷ ~~If a licensed individual insurance agent or licensed insurance agency is restricted by the provisions of 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. See footnote 15.~~

Section III

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) A licensed insurance agent ~~must~~should 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.

(b) Where a licensed insurance agent employs or engages another person to provide support to the agent in its carrying on of regulated activities, the agent should ensure the person has the integrity and competence to discharge the duties for which the person is employed or engaged and supervise that person diligently in performing such duties. In so far as the person’s work impacts the regulated activities carried on by the agent, the agent is and remains responsible for such activities.

3.2 Handling of application and claim forms

Where any application, claim or other forms which are required to be completed by a client, are being completed or submitted with the assistance of a licensed insurance agent, the agent:

- (i) should inform the client that it is the client’s responsibility to ensure the information provided in the form, or in the document(s) provided in support of the form, is accurate and complete;
- (ii) should not complete, amend or submit to the insurer concerned any such form without obtaining the client’s agreement and confirming the completeness and accuracy of the contents with the client; and
- (iii) should not submit any such form to the insurer concerned if the agent knows that the form contains inaccurate information⁸.

⁸ If a licensed insurance agent considers that information in a form may be inaccurate, but the form must be submitted to preserve the client’s right to make a claim (e.g. to comply with a condition precedent), the agent may submit the form, but should inform the insurer that it will clarify the

3.3 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~~ as soon as practicable in case of any delay or failure to carry out the instruction.

3.34 Protecting a client's privacy and confidentiality

~~(+) (a) A licensed insurance agent should ensure that the privacy and confidentiality of~~ all client information is maintained in relation to a client as confidential and should not use it or disclose it other than or use such information except: (i) for the normal course purposes of carrying on of the regulated activities to the extent that the for which such information has been provided-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 which require disclosure to be made.

(b) With regards to personal data of a client that is collected by a licensed insurance agent in the course of the carrying on of regulated activities, the agent must comply with the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO") and should follow the related guidance⁹ issued by the Privacy Commissioner for Personal Data ("Privacy Commissioner") concerning collection, retention, use and security of the personal data.

3.5 Record Keeping

(a) A licensed insurance agent should act in accordance with all requirements, policies and procedures of its appointing insurer or appointing agency (as the case may be) relating to the keeping of proper records concerning the regulated activities carried out on behalf of the appointing insurer or appointing agency (as the case may be).

(b) Where in accordance with the record-keeping requirements of a licensed insurance agent's appointing insurer or appointing agency (as the case may be), such records are to be submitted by the agent to the appointing insurer or appointing agency (as the case may be), the agent should submit such records as soon as reasonably practicable.

information. The agent should then clarify the information with the client, so any inaccuracy can be corrected as soon as reasonably possible.

⁹ The Privacy Commissioner has issued "Guidance on the Proper Handling of Customers' Personal Data for the Insurance Industry" to assist the insurance industry to comply with the requirements under the PDPO. The Privacy Commissioner has also issued "New Guidance on Direct Marketing" to provide guidance on compliance with the requirements for direct marketing under the PDPO.

3.6 Cooling-off periods

If an insurance policy contains a cooling-off period provision¹⁰, a licensed insurance agent should adhere to the following practices:

- (i) before the client's application for the insurance policy is signed or, in the case of an application without a signature before the application process for the insurance policy is completed, 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 that the duration of client should notify the insurer concerned during the cooling-off period; if he wishes to exercise such right; and
- (ii) if the agent is obliged to deliver the insurance policy to the client, he should deliver it within as soon as reasonably practicable (and keep a reasonable time record of the date of such delivery) 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.~~

¹⁰ 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.

Section IV

General Principle 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.

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 nature and key features of, and the risks covered by and associated with, the different types of insurance products on in respect of which he may givecarry on regulated adviceactivities.

4.2 Being clear about the limits of their knowledge

A licensed individual insurance agent and a licensed technical representative (agent) should not give advicecarry on regulated activities on matters in relation to which he is not adequately trained or lacks the specific skills or knowledge¹¹ 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 thehis appointing agency, as appropriateapplicable.

¹¹ The requisite skills or knowledge a licensed individual insurance agent or licensed technical representative (agent) is expected to have will depend on the particular situation involving the regulated activities being carried on. Factors to be considered would include the complexity (or simplicity) of the insurance product or transaction which is the subject of the regulated activities, whether the insurance product is of a specialist nature, the level of the person’s experience and the relevance of the person’s qualifications.

Section V

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~~ A licensed insurance agent should provide the following information to ~~his~~its client:
- (i) the name (the registered name as well as the trade name, if any) of the agent;
 - (ii) the licence number of the agent;
 - ~~(ii)~~(iii) the type of licence of the agent, i.e. individual insurance agent licence, insurance agency licence or technical representative (agent) licence;
 - ~~(iii)~~(iv) the name of the appointing insurer or appointing agency (as ~~appropriate~~ applicable) of the agent; and
 - ~~(iv)~~(v) 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) A licensed insurance agent should provide the information in Standard and Practice 5.1(a) and (b) above before or (if this is not feasible) as soon as reasonably practicable after commencing any regulated activity in relation to the client.
- (d) A licensed individual insurance agent or a licensed technical representative (agent) should ensure the following information is correctly shown on his business card (including any digital business card) if a business card is distributed by the agent/technical representative for the purpose of carrying on regulated activities:

- ~~(i) the name as shown on his Hong Kong identity card or passport¹²;~~
 - ~~(ii) licence number;~~
 - ~~(iii) type of licence; and~~
 - ~~(iv) the name of his appointing insurer or appointing agency (as applicable).~~
- ~~(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 all relevant 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, and conditions (e.g. coverage, policy period, conditions precedent, exclusions and warranties clauses, and any other clauses which would reasonably be considered to adversely impact the client's decision to enter into the insurance policy), ~~conditions precedent, exclusions and warranties clauses;~~
 - (iii) the level of premium and the period for which the premium is payable; and
 - (iv) the fees and charges (other than premium) to be paid by the client, if any; ~~and~~
 - ~~(iv) 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 a~~ licensed insurance agent should adequately explain the similarities and differences between the products. ~~and avoid any unfair comparisons. Any comparison made should be accurate and not misleading (See also Standard and Practice 1.1(b)).~~

5.3 Disclosure in relation to a policy holder's obligations

¹² The licensed technical representative (agent) may also state any other name by which he is commonly known on his business card even if this is not shown on his Hong Kong identity card or passport.

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

- (i) ~~explain to the client~~ the principle of utmost good faith and ~~ensure that remind~~ the client ~~understands~~ that non-disclosure of material facts or provision of incorrect information to an insurer may result in the insurance policy being invalidated or ~~void~~avoided or claims being repudiated by the insurer;
- (ii) ~~indicate~~ the sort of material facts which ought to be disclosed by the client to the insurer¹³; and
- (iii) ~~draw the client's attention to~~ any declaration which needs to be made by the client in respect of the application, and give the client the opportunity to review it before the client signs or makes the declaration ~~is made and ensure the client understands that the client is responsible for the declaration.~~

5.4 Disclosure in relation to a client referred by another person¹⁴

(a) Where a client is referred to a licensed insurance agent by another person (referrer), in addition to complying with the policies, procedures or requirements relating to referrals that its appointing insurer or appointing agency (as applicable) has in place, before the agent arranges an insurance policy for the client, the agent should inform the client that:

- (i) 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);
- (ii) the referrer does not represent the agent and should have no involvement in the arrangement of the insurance policy;
- (iii) the agent disclaims all liability for any advice in relation to the insurance policy given to the client by the referrer; and
- (iv) premium for the insurance policy should be paid directly either to the insurer concerned or, if permitted (see Standard and Practice 8.1), to the agent (and not to the referrer).

(b) Standard and Practice 5.4(a) does not apply where:

¹³ The agent may explain that a material fact is one that would influence a prudent insurer's judgement as to whether to insure the risk at all, the premium to charge, or the terms on which to insure and provide some examples relevant to the insurance policy which is the subject of the application to highlight the meaning.

¹⁴ 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 under the Ordinance. A person who contravenes the licensing requirements commits an offence. The Standards and Practices in this Code do not alter the 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.

- (i) the client is referred to a licensed insurance agency by its appointed licensed technical representative (agent); or
- (ii) 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.

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.~~

Section VI

General Principle 6 – Suitability of Advice

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

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 an appropriate suitability assessment ~~of in relation to~~ the client's ~~objectives, circumstances, needs and priorities~~. The objective of such suitability assessment is to ensure that a licensed insurance agent obtains sufficient information in relation to the client's circumstances on which to base its regulated advice to the client.
- (b) ~~In carrying out this~~ To achieve the objective of a suitability assessment, a licensed insurance agent should:
- (i) take reasonable steps to understand the client's ~~objectives, circumstances, needs and priorities~~;
 - (ii) ~~explain to client that a proper assessment cannot be made if necessary information for a suitability assessment cannot be obtained~~ consider the available insurance options¹⁵ in view of the client's circumstances;
 - (iii) take into account ~~such objectives, the client's~~ circumstances, ~~needs and priorities~~ when giving regulated advice to the client and have a reasonable basis for such advice; and
 - ~~(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~~

¹⁵ The insurance products explored by a licensed insurance agent should be based on the range of insurance products offered by its appointing insurer or appointing agency (as applicable) which the agent is authorized to promote.

~~(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.~~

~~(iv) if a client does not provide information for the suitability assessment which is necessary for the licensed insurance agent to achieve the objective in Standard and Practice 6.1(a) above, the licensed insurance agent should explain that its regulated advice may not be suitable to address the client's circumstances unless such information is provided.~~

- (c) The level of suitability assessment should be proportionate and reasonable, taking into account the client's circumstances ~~of the client~~ and other factors such as the type of insurance product under consideration.¹⁶

6.2 Recommendation

(a) ~~A~~The regulated advice given by a licensed insurance agent to a client 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~~should be advice that a reasonable licensed insurance agent would consider suitable for the client based on the ~~basis of the~~ information it has obtained from the client, including the client's ~~objectives, circumstances, needs and priorities.~~

(b) If, after a licensed insurance agent has carried out a suitability assessment and provided ~~a recommendation~~regulated advice, the client insists on making a material decision contrary to the recommendation included in the advice and which, in the agent's opinion, is not suitable for the client's ~~objectives, circumstances, needs or priorities~~, the agent should document and keep a proper record of:

~~(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 to the client;
- the reasons ~~given~~provided by the client (if any) to the agent for taking for his a decision which does not follow the recommendation;

¹⁶ Reference should also be made to the guidelines issued by the IA in relation to life insurance policies which set out specific requirements in relation to suitability assessments for these policies (e.g. financial needs analysis). For insurance products which are not subject to specific requirements for suitability assessment set out in guidelines or other rules or regulations, the extent of such assessment depends on the nature and complexity of the products concerned and the client's circumstances. For travel insurance, by way of example, the suitability assessment may be conducted as part of the application process (where the client's circumstances would be the trip details, the ages of the persons travelling, the length of the journey etc.)

- the ~~agent's reasons~~ explanation given by the agent to the client for considering the client's decision to be unsuitable; and
- the fact that the decision is the client's own decision.

Section VII

General Principle 7 – Conflicts of Interest

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

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~~ its appointing insurer or appointing agency (as ~~appropriate~~ applicable), the agent should disclose to ~~his~~ the client the fact that:

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

7.2 Disclosure of relevant restrictions in arising from the agency agreement agent’s terms and conditions with its principal

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 or appointment by any of its appointing insurers ~~prevents~~ restricts the individual insurance agent or insurance agency from promoting, advising on or arranging particular insurance products on behalf of its other appointing insurers, the ~~individual insurance~~ agent or ~~insurance~~ agency (~~in this case,~~ also including the 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 or arranging 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, ~~the agent~~ should ~~not allow~~ avoid any conflict arising between its interests in that other business or occupation ~~to jeopardize its integrity and competence and the interests of the client when carrying on regulated activities. In the event the agent is unable to avoid such conflict, it should disclose the conflict to the client as soon as practicable and, at all times, act fairly in relation to the client, placing the client's interests ahead of the agent's interests in the other business or occupation as a licensed insurance agent.~~

Section VIII

General Principle 8 – Client Assets

A licensed insurance agent should have sufficient safeguards in place to protect ~~the assets of clients.~~ client assets received by the agent or which are in the agent's possession.

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~~applicable).
- (b) If a licensed insurance agent is authorized to receive premium payment by its appointing insurer or appointing agency (as ~~appropriate~~applicable), the agent should; ~~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~~ (i) handle the payment and disburse it to the appointing insurer or appointing agency (as applicable) in strict conformity with the requirements, controls and timing set out by its appointing insurer or appointing agency (as applicable);
- (ii) safeguard any premiums received from clients and should avoid the mixing of and not mix such premiums with the agent's personal funds; and
- ~~(d)~~ (iii) maintain proper records of premiums received in accordance with the requirements and controls stated in (i) above.
- (c) As regards payment of premiums by way of cash, in addition to Standard and Practice 8.1(a) and (b) above, the following restrictions apply, namely:
- A licensed insurance agent should ~~refuse to~~not receive payment of premiums by way of cash, unless ~~its;~~
- (i) it is not reasonably feasible for the agent to accept payment by any other means; and
- (ii) the appointing insurer or appointing agency (as applicable) of the agent ~~authorizes appropriate~~ has provided specific authority to the agent to receive

cash payment ~~and, the payment is within the limits of such authority and the payment is handled strictly in accordance with the requirements and controls to which such authority is subject to specific controls and limits, including limits on the amount of premium the agent may collect in cash.~~

Part D Section IX

Corporate Governance and Controls and Procedures for Licensed Insurance Agencies

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.

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 and procedures 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 promotes, advises on or 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:
- (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;~~ have the integrity and competence to discharge their duties and responsibilities;
 - (ii) the agency and its staff, particularly its licensed technical representatives (agent) comply with all laws, rules, regulations, codes, ~~and~~ 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 the responsible officer and senior management periodically reviewing~~ management reports on non-compliance issues by its senior management and responsible officer); and
 - (iv) its licensed technical representatives (agent) are trained and have a good understanding of the nature and key features of, and the risks of covered by and associated with, the insurance products ~~on in respect of~~ which they may give carry on regulated advice activities 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 and proper 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 and to take any remedial action as appropriate;
 - (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. Keeping of records

A licensed insurance agency should establish proper controls and procedures to ensure that records in relation to the regulated activities it carries out (including the regulated activities carried out on its behalf, by its licensed insurance technical representatives (agent)) are kept, so as to comply with the record keeping requirements of all laws, rules, regulations, codes and guidelines applicable to the carrying on of regulated activities by the agency.

4. Reporting of ~~material~~ incidents to the IA

- (a) A licensed insurance agency should report the following incidents to the IA, and should have proper controls and procedures to ensure such incidents are reported to the IA, as soon as reasonably practicable~~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;

~~(iiiiv) a disciplinary action taken against the agency or its licensed technical representatives (agent) by the Monetary Authority, the Securities and Futures Commission or the Mandatory Provident Fund Schemes Authority a regulatory authority (other than the IA) or any professional body in Hong Kong or elsewhere; or~~

(iv) a criminal charges or conviction (other than a minor offence) of the agency or its directors, controllers, partners or licensed technical representatives (agent) by any court in Hong Kong or elsewhere.

(b) A licensed insurance agency should also report to the IA, as soon as reasonably practicable:

(i) any material breaches of requirements under the Ordinance or any rules, regulations, codes or guidelines administered or issued by the IA, by the agency or its licensed technical representatives (agent); and

(ii) any material incidents which happen to the agency.

(c) For the purposes of (b) above,

(i) a breach or incident is material if:

- it adversely impacts or is likely to adversely impact the agency's ability to carry on regulated activities;
 - it indicates that the agency's controls or procedures are inadequate to ensure compliance by the agency or its technical representatives (agent) with the requirements under the Ordinance or any rules, regulations, codes or guidelines administered or issued by the IA; or
 - it has caused or may cause loss to a client or to the agency itself;
- (ii) a licensed insurance agency should establish a process for assessing whether a breach or an incident is material in accordance with the factors stated in (i) above and have proper controls and procedures to ensure the reporting of such material breaches or incidents to the IA; and
- (iii) if a licensed insurance agency is not sure whether a breach or incident is material, the agency is encouraged to report the breach or incident to the IA.

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 4

Additional Standards and Practices for Referral of Business

Referral Business¹⁷

- ~~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~~

¹⁷ 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.

~~other applicable requirements of its appointing insurer or appointing agency (as appropriate).~~

~~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~~

Annex C

List of Respondents (in alphabetical order)

1. AIA International Limited
2. American Express International, Inc.
3. AON Hong Kong Limited
4. Apex Insurance Advisers Limited
5. Apex Insurance Agencies Limited
6. Apex Insurance Services Limited
7. Consumer Council
8. FWD Life Insurance Company (Bermuda) Limited
9. Hon Holden Chow Ho-Ding
10. Hong Kong General Insurance Affairs Association Limited
11. Hong Kong Insurance Intermediaries Association Limited
12. Hong Kong Insurance Practitioners General Union
13. Independent Commission Against Corruption
14. Insurance Industry Regulatory & Development Concern Group
15. Privacy Commissioner for Personal Data
16. The Chartered Insurance Institute Hong Kong Limited
17. The Hong Kong Association of Banks
18. The DTC Association (The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies)
19. The Hong Kong Federation of Insurers
20. The Institute of Financial Planners of Hong Kong
21. The Law Society of Hong Kong
22. Yim Yee-kei
23. 專業同盟(保險)

In addition to the above, there is a respondent who requested non-disclosure of his/her name.