



# **Consultation Conclusions on the Draft Code of Conduct for Licensed Insurance Brokers**

**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 Brokers (“Brokers’ Code”) for public comment under the cover of a consultation paper (“Consultation Paper”). The draft Brokers’ Code set out guidance on the practices and standards which licensed insurance brokers 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 28 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 Brokers’ Code and their input has assisted the IA in identifying several areas where the draft Brokers’ 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 Brokers’ 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 however 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 Brokers’ 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 Brokers’ Code, the IA also consulted on a Code of Conduct for Licensed Insurance Agents (“Agents’ Code”). Certain feedback received on the Agents’ Code was also relevant to the Brokers’ 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 brokers and licensed insurance agents 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 Brokers' Code and that the General Principles and their related Standards and Practices provide a suitable framework for the conduct of licensed insurance brokers?

#### *Feedback received*

7. The principle-based approach of the Brokers' 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.

#### *IA's response*

8. We are pleased to note the broad support of the principle-based approach. The principle-based approach gives insurance brokers the flexibility in formulating a detailed set of appropriate conduct procedures which can best suit their business models or operational needs. The IA will set out product-specific requirements in guidelines or other regulatory instruments when considered necessary.

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

#### *Feedback received*

9. Respondents generally agreed with this proposition. One respondent underlined that the client should always be at the forefront of a licensed insurance broker's considerations. Another respondent opined that the gap in expertise between clients and their brokers means that it is reasonable to expect brokers to have a duty of care for their clients, which is well summed up by the objective of treating clients fairly.

#### *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 broker. 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. Further, the principle of fair client treatment is aligned with the fiduciary duties licensed insurance brokers owe as agents of their clients.

Question 3 - Do you agree that providing clients with adequate disclosure so that they can make informed decisions on their insurance purchases is an important principle to include in the Brokers' Code?

*Feedback received*

11. There was general agreement to the proposition in Question 3. Several respondents, however, raised issues concerning practical implementation and suggested that the IA should be mindful not to introduce a regime requiring excessive disclosure of information. There were also questions about certain disclosure requirements including their applicability to reinsurance.

*IA's response*

12. The principle of disclosure as referenced in question 3 is to ensure that clients make fully informed decisions when buying insurance or making other insurance related decisions. Disclosure is needed to achieve this objective. As such, it is a principle which applies universally (whether the client is an individual or a corporate and no matter the type of insurance being purchased). The Standards and Practices under **General Principle 5** have been crafted with this objective in mind. It is recognized that individual situations differ and the principle-based nature of the Brokers' Code accommodates this, but the objective of empowering clients to make informed decisions about insurance remains the same in every situation.

Question 4 - Do you agree that disclosure is an important mechanism for licensed insurance brokers to manage potential conflicts of interest and that standards regarding the disclosure an insurance broker should make in this respect, should be included in the Brokers' Code?

*Feedback received*

13. A majority of respondents agreed that disclosure is an appropriate mechanism to manage potential conflicts of interest. Some respondents sought clarification on the relevant disclosure requirements including the manner and level of the disclosure required.

*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).

Question 5 - Do you agree that it is good practice for licensed insurance broker companies to enter into written agreements with their clients and that the Brokers' Code should provide for this requirement?

*Feedback received*

15. A majority of respondents agreed that it is a good practice for licensed insurance broker companies to enter into written agreements with their clients. Several respondents confirmed that this is routinely done especially for insurance covering large risks. However, some respondents considered it unnecessary for the client agreement to have to be signed and indeed indicated that this was unfeasible in many situations.

*IA's response*

16. Again we are pleased at the broad support for written client agreements. We would like to clarify that the proposed requirement did not require a client agreement to have to be signed by the client, only that it be in written form. We have revised the wording to make this clear.

Question 6 - Do you agree that the Brokers' Code should set out requirements for the governance, controls and procedures that a licensed insurance broker company should adopt (as per Part D of the Brokers' Code)? Do you agree that licensed insurance broker companies should follow such requirements to ensure the General Principles, Standards and Practices in the Brokers' Code are complied with by the companies and their appointed licensed technical representatives (broker)?

*Feedback received*

17. A number of respondents agreed with this proposition. Larger brokers which responded stated that the relevant requirements should apply to all brokers irrespective of size and that the IA should monitor compliance with such requirements by all brokers. While we received some suggestions to prescribe detailed requirements for certain aspects, there were views that the proposed requirements were too detailed for small brokers.

*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 broker companies should have a minimum level of corporate governance and controls and procedures in place is therefore important. Part D of the draft Brokers' Code, which is now Section IX of Part C in the final Brokers' Code, sets base-line standards and practices for corporate governance, controls and procedures which all licensed insurance broker companies should meet. Changes have been made to this section in recognition of the feedback received.

## **II. Feedback on each section of the Brokers' Code**

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

### **A. Introduction to the Brokers' Code**

20. The Introduction to the Brokers' Code, sets out the approach taken in drafting the Brokers' Code, the legal basis for the Brokers' 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 Brokers' Code.

#### *Feedback received*

21. A number of respondents commented on the several references in the draft Brokers' Code to it being "non-exhaustive". It was suggested that Brokers' Code should contain all requirements licensed insurance brokers 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 brokers to double jeopardy. That said, certain respondents requested that the draft Brokers' 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 broking.

22. As regards the application of the draft Brokers' Code, one respondent asked the IA to consider carving outs for reinsurance brokers from certain of the Standards and Practices. Several respondents made a similar point in relation to Lloyd's coverholders.

23. One respondent suggested that when the IA takes guidance from the draft Brokers' 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*

24. The Brokers' Code is published under section 95 of the Ordinance. In line with this, the purpose of the Brokers' 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 Brokers' 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 brokers, 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 Brokers' Code also sets out guidance on the practices and standards for the corporate governance, and controls and procedures which a licensed insurance broker company should adopt in relation to its regulated activities. This approach makes the Brokers' Code "principle-based" which (as indicated in Part I above) has received general support.

25. We disagree with the comment that the principle-based approach of the Brokers' Code would lead to a breach of natural justice, with the same breach by different brokers giving rise to different treatment. Rather, as denoted in the Introduction to the Brokers' 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.
26. We have taken on board the comments about the references in the draft Brokers' Code to it being not exhaustive. Following amendment, the Brokers' Code is now more specific about the matters on which it is non-exhaustive. As many of the Standards and Practices in the Brokers' 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.
27. There are, in addition to the Brokers' 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 brokers must comply (in addition to the Brokers' Code) when carrying on regulated activities in relation to long-term products. The same goes for the Guideline in relation to anti-money laundering and counter-terrorist financing. Licensed insurance brokers need to comply with



such Guidelines as well as the Brokers' Code. Hence, in this regard as well, the Brokers' Code cannot be exhaustive.

28. Similarly, setting out a full list of all laws which apply to licensed insurance brokers in the Brokers' Code is neither its function nor is it desirable. The Brokers' Code cannot set or alter the scope of the laws which apply to licensed insurance brokers. It can, however, highlight certain laws which are particularly pertinent to the practices and standards with which licensed insurance brokers 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 properness under the insurance regulatory regime.

29. With regards to the application of the Brokers' Code, the universality of the Brokers' Code and particularly the General Principles, mean that it does and should apply to all licensed insurance brokers, including reinsurance brokers and Lloyd's coverholders and to both general and life business. Many of the Standards and Practices are situation specific (For example, some only apply in situations where the broker is giving regulated advice), but they are of universal application in the sense that they apply to all licensed insurance brokers faced with the situation denoted in the relevant Standard and Practice. However, we have made amendments to certain Standards and Practices in order to ensure they do not inadvertently operate to prohibit particular licensed insurance brokers from operating (such as Lloyd's coverholders). Further (as the Introduction to the Brokers' Code states) recognition will be always given to the different ways in which the provisions of the Brokers' Code are met and implemented. This is fair, given the different types of businesses licensed insurance brokers carry on and the variations in their size and scale, which will obviously necessitate differences in the way in which brokers implement the Brokers' Code.

## **B. Interpretation**

### *Feedback received*

30. There were some comments received on the terms defined in the Interpretation section of the Brokers' Code (for example, one response took issue with the use of the word "including" in the definition of "Statutory Conduct Requirements", which meant the definition was not exhaustive). It was also commented that the use of the word "policy holder" did not fit well in the context of reinsurance, as market terminology did not equate "policy holder" with "reinsured/cedant".

31. There were also comments on certain terms used throughout the Brokers' 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 broker company was used in the draft Brokers’ Code, clarity was requested as to who was considered as being part of the senior management.

#### *IA’s response*

32. The point made about the definition of Statutory Conduct Requirements has been taken on board. The definition has been recrafted to exhaustively cover the conduct requirements in sections 90 and 92 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.
33. The definition of “policy holder” in the Ordinance would include a reinsured or a cedant and this has always been the case. Whilst we fully appreciate this does not align with the everyday terminology used in the market, since the Brokers’ Code is issued under the Ordinance it should adopt the Ordinance’s defined terms (otherwise this could create uncertainty and confusion). That said, the footnote which clarifies that a contract of insurance includes a contract or reinsurance assists in contextualizing the Brokers’ Code as being equally applicable in a reinsurance context as it is in an insurance context.
34. The phrase “client’s objectives, circumstances, needs and priorities” has now been replaced with the defined term of “client’s circumstances” to denote the matters a licensed insurance broker 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 broker by the client as being priorities which the broker 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.
35. With regards to “senior management”, in **Standard and Practice 4.2** a licensed technical representative (broker) is required to seek guidance from, *inter alia*, the senior management of the licensed insurance broker company, 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 licensed insurance broker companies is accountable for ensuring that the licensed insurance broker company has in place the controls and procedures set out in the section of the Brokers’ 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 broker company who perform the functions of management in the broker company in relation to the regulated activities carried on by the broker company.
- The definition recognizes that the exact composition of senior management will depend on the size of the licensed insurance broker company 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 broker companies and secondly in larger broker companies.

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

#### *Feedback received*

36. Several respondents suggested the removal of the requirement from licensed insurance brokers to have to act in "*utmost good faith*", on the basis that the duty of utmost good faith is owed as between the prospective policy holder and the insurer (with the main manifestation being the duty to disclose all material facts before the insurance policy is entered into). The duty owed by a broker to a client, by contrast, is a fiduciary one which is characterized by "good faith".
37. Respondents also commented that marketing materials are mostly developed by insurers and therefore it was impossible or impractical for brokers to ensure such materials are complete, per **Standard and Practice 1.1(d)**.
38. Guidance was also sought by respondents on the meaning of "*advantage*" (**Standard and Practice 1.2** draft Brokers' Code). It was evident that this came from PBO. However, without naming the PBO or aligning the provisions more closely with the PBO, the provision was unclear. It was suggested, therefore, that this provision be "beefed up" to align with the PBO.
39. In relation to the requirement to report criminal offences, several respondents suggested that there should be an exception for "minor offences" (**Standard and Practice 1.3(d)** draft Brokers' Code). Other respondents sought clarification on the terms "*undue influence*" and "*pressurize a client*" (**Standard and Practice 1.4** draft Brokers' Code).
40. With respect to **Standard and Practice 1.5** of the draft Brokers' Code, one respondent explained that insurers may contractually require policy holders

to submit claim forms within a specified time period, and failure to do so may jeopardize the claim. As such, sometimes it is necessary to submit forms with incomplete information to preserve the right to claim.

*IA's response*

41. The duty of utmost good faith appears in current codes/rules of membership of both broker self-regulatory organizations ("SROs") (The Hong Kong Confederation of Insurance Brokers and Professional Insurance Brokers Association). "Utmost good faith" is a principle which sets the insurance industry apart from other financial services. It serves as a symbol of the bedrock of trust on which the insurance is founded. To preserve this symbol, the term was used in the draft Brokers' Code. We do, however, appreciate that in the strict legal sense utmost good faith applies as between an insured and an insurer (and under Hong Kong law, the main manifestation of this remains the duty to disclose all material facts prior to binding cover). We also appreciate that the broker's duty to the client is based, in legal terms, on the fiduciary duty of "good faith". In recognition of this (albeit with no small measure of regret) we have changed the reference of "utmost good faith" to "good faith". In doing this, however, we make it known that utmost good faith remains a sacrosanct tradition of the insurance market. Long may this continue.
42. As regards the suggestion that licensed insurance brokers do not develop their own marketing materials, we believe this to be underestimation of the work many insurance brokers do. It is certainly the case that a number of insurance brokers develop their own marketing materials. Where they do this, it is incumbent on them to ensure such materials contain only accurate information. **Standard and Practice 1.1(d)** has been revised to reflect this.
43. We take on board the requirement to exclude "minor offences" from the reporting requirement related to criminal offences (**Standard and Practice 1.2(d)**) and the amendment has been made. A definition of "minor offences" has thereby been included in the Interpretation section.
44. 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 brokers. **Standard and Practice 1.4(b)** is not considered part of the Brokers' Code as it merely serves to draw the attention of licensed insurance brokers to situations where particular consideration should be given to the PBO in the carrying on of regulated activities. Brokers 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.

45. 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 broker 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 broker should be mindful of the frequency, timing and manner of such reminders.
46. 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 55 below).

#### **D. General Principle 2 – Acting in the Best Interest of Clients and Treating Clients Fairly**

##### *Feedback received*

47. 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 brokers. Much of the other feedback on General Principle 2 was therefore focused on requests for elaboration of certain terminology such as “*client’s priorities*” (as mentioned in **Standards and Practices 2.2 and 2.3** of the draft Brokers’ Code). Feedback was also received on the practicalities of **Standard and Practice 2.2(b)** of the draft Brokers’ Code which requires a licensed insurance broker to source a sufficient range of insurance products from a sufficient range of insurers. It was noted, for example, that certain insurance products are offered only by a limited number of insurers. In addition, a respondent sought clarification on whether an insurance broker being a Lloyd’s coverholder with binding authority would have practical issues for compliance with **Standard and Practice 2.2(c)** of the draft Brokers’ Code (which states that a licensed insurance broker should not be “unreasonably dependent on any particular insurer”) and that would prohibit the operation of Lloyd’s coverholders.

##### *IA’s response*

48. The phrase “*client’s priorities*” has been replaced with “*client’s circumstances*” which is now a defined term (and includes within it a definition of “*priorities*”).

49. The comments regarding the practicalities concerning the “sourcing” requirements are noted. However, as stated the Brokers’ Code takes a principle-based approach and the “sufficiency” requirement is itself principle-based and capable of being applied to the situations referenced in the feedback. To ease any concerns, a clarifying footnote has been included, which specifically recognizes that certain insurance products may be so specialist that they are only offered by few, or even one, insurer (and hence placing business with that insurer would satisfy the sufficiency requirements in those circumstances).
50. As regards the issue of Lloyd’s coverholders, as stated in paragraph 29 above, the Brokers’ Code is of universal application and therefore would also apply to a Lloyd’s broker who is granted a binding authority from a Lloyd’s syndicate to bind cover (i.e. who acts as a Lloyd’s coverholder). As such, although certain arrangements specific to the Lloyd’s coverholder model may need to be implemented, the Brokers’ Code is not incompatible with the way in which Lloyd’s coverholders operate. **Standard and Practice 2.2(c)**, requires that brokers should not prejudice their client’s selection of insurers by being unreasonably dependent on any particular insurer. The fact that a Lloyd’s coverholder has a binding authority from a Lloyd’s syndicate, would not be incompatible with this, as the coverholder is not obliged to exclusively place business through the binder and is expected to source a sufficient range of available insurance quotes from different insurers. If, after doing this the insurance policy under the binding authority is the coverage recommended by Lloyd’s coverholder, the coverholder should also disclose its association, i.e. relationship with the syndicate under the relevant binding authority agreement to the client, and any potential conflicts of interest (For example, profit commission) arising from such relationship to the client in accordance with **General Principle 7**.

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

### *Feedback received*

51. Feedback was received on the specific requirements in **Standards and Practices 3.2(b)(i) and (ii)** of the draft Brokers’ Code concerning the situation of where a client terminates a licensed insurance broker’s appointment (particularly regarding the transfer of documents). These were, it was felt, too intrusive to the day-to-day handling of matters by brokers and may give rise to data protection issues. Several respondents asked to exempt from the confidentiality obligation under **Standard and Practice 3.3** of the draft Brokers’ Code, information that is already in the public domain. With respect to **Standard and Practice 3.5** of the draft Brokers’ Code (regarding assistance in relation to insurance claims) one respondent commented that brokers should only be responsible to assist the client with claims during the insurance period for the policy where the broker acted as the placing broker.

*IA's response*

52. In view of the feedback on the requirements regarding termination of an appointment we have deleted the prescriptive **Standards and Practices 3.2(b)(i) and (ii)** of the draft Brokers' Code, so that the requirement now focuses on the broker providing all reasonable cooperation to bring the appointment to an end in an orderly manner. This aligns with the principle-based approach of the Brokers' Code, whilst setting a clear standard of care ("all reasonable co-operation") which a broker has to meet in this situation.
53. Protecting clients' privacy and confidentiality is pivotal in the exercise of care, skill and diligence that may reasonably be expected of licensed insurance brokers 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 brokers to comply with the PDPO and follow related guidance issued by the Privacy Commissioner. In particular, brokers 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 brokers. 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 Brokers' Code. It is open to brokers to include this, for example, in the client agreements.
54. We have taken on board the comment regarding limiting the obligation to assist with claims to the insurance period of the contract of insurance arranged by the broker (subject to any other terms and conditions in the arrangement with the broker). This has been reflected in **Standard and Practice 3.7**.
55. As indicated in paragraph 46 above, the standard and practice concerning the handling of application and claims forms has been revised and is now located in **Standard and Practice 3.2**. It sets out certain obvious (but still important) steps a licensed insurance broker should take in this situation i.e. inform the client about the need to ensure the information provided in the form is accurate and complete and obtain the client's authority before completing, amending or submitting such forms to the insurer.
56. 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 broker company should comply with the record keeping requirements in all laws, rules, regulations, codes and guidelines applicable to the broker company. This would include the specific requirements in the Brokers' Code (see **Standards and Practices**

**3.6(ii), 5.2(c), 5.4(c) and 6.2(b)**), 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. It would also include the specific record keeping requirements in the Insurance (Financial and Other Requirements for Licensed Insurance Broker Companies) Rules.

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

### *Feedback received*

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

### *IA’s response*

58. We have amended the provision such that the requirement is for a licensed technical representative (broker) 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).

59. The requisite skills and knowledge a licensed technical representative (broker) is expected to have will depend on the particular situation and the particular regulated activities being carried on. We have, in **Footnote 11** of the Brokers’ Code, 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*

60. In relation to General Principle 5, feedback was received on three main issues.

61. Primarily, responses were received from several industry bodies on **Standard and Practice 5.5** of the draft Brokers’ Code, which required particular disclosures to be made by licensed insurance brokers when receiving referral business (the disclosures were set out in the Schedule to



the draft Brokers' 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 Brokers' 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.

62. Secondly, several responses were received on **Standard and Practice 5.4** which required licensed insurance broker companies to enter into written client agreements. Whilst there was broad support for this requirement, it was suggested that such agreements were not needed for the arrangement of simple general insurance products (otherwise this would increase the administrative burden on smaller insurance brokers). Views were also expressed on the practicality and manner in which client agreements could be entered into (particularly with non face-to-face business).

63. Thirdly, feedback was received regarding the disclosure requirements when a licensed insurance broker places business with an insurer which is not an authorized insurer (i.e. placing business offshore). It was suggested that the existing form issued by the two broker SROs be continued to be used for this purpose. Concern was also raised over the practicality of giving disclosure on a foreign insurer's financial standing, particularly as not all such insurers have credit ratings.

#### *IA's response*

#### Referral Business

64. The phrase "Referral of Business" as it is used in the Brokers' Code, denotes when a person refers a prospective client to an insurance broker, in order for the insurance broker to arrange an insurance policy for the client. Referrals can operate as a means of connecting prospective policy holders to insurance brokers to source insurance. Referrals are, however, not entirely free from regulatory concern.

65. 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 broker 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.

66. To address these concerns, the draft Brokers' Code released for consultation, sought to introduce standards and practices setting out steps a licensed insurance broker should take when receiving referrals. The standards and practices adopted in the draft Brokers' Code drew heavily from the "Guidance Note on Dealing with Referral Business" issued by The Hong Kong Confederation of Insurance Brokers on 7<sup>th</sup> May 2010 (which should be familiar to a large section of insurance brokers).
67. 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***

68. 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 rebates<sup>1</sup> 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 Brokers' Code, since the Brokers' Code applies across regulated activities in relation to all insurance products.
69. The standards and practices for referral business in the Brokers' Code, do not affect the restrictions on premium rebates in the Guidelines on long-term business and medical insurance business. As the Brokers' Code makes clear, licensed insurance brokers have to comply with the Brokers' Code and other applicable Guidelines issued by the IA.

**Client agreements**

70. As indicated in Part I of these Consultation Conclusions, we are pleased at the general support received for the requirement for licensed insurance brokers to have to enter into written client agreements. Policy holders should

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<sup>1</sup> 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.

know the terms and conditions on which they do business with the insurance brokers they instruct. For this same reason, it would weaken the professionalism of licensed insurance brokers if carve-outs were made to this requirement in respect of “simple general insurance products”. As such, in the Brokers’ Code, the requirement for there to be a client agreement is of universal application.

71. However, the requirement has been entirely recrafted in order to enable such agreements to be formed practically and in line with the mechanisms by which licensed insurance brokers conduct business. As indicated in Part I of these Consultation Conclusions, it was never mandatory for client agreements to have to be signed (only that they be in writing). That said, signature remains one way of entering into a client agreement. The re-drafted **Standard and Practice 5.4**, however, sets out other means by which a client agreement may be entered into i.e. by the provision of the broker’s terms of business to the client, with the client confirming his agreement (by, for example, e-mail) or accepting those terms and conditions by conduct (by proceeding to instruct the broker or paying premium for the insurance policy arranged). By expressly stating the broad mechanisms by which such client agreements may be entered into (which align with contract law), the result is a Standard and Practice which does not materially increase the administrative burden of compliance on licensed insurance brokers, whilst at the same time placing them on par with other professionals (such as solicitors and accountants).

72. Currently, the two broker SROs require additional information to be stated in client agreements for investment-linked assurance scheme (“ILAS”) policies. As the Brokers’ Code is principle-based and applies across all products, it does not include these product-specific requirements. However, the provision of such additional information in the client agreement when an ILAS policy is being arranged would, we consider, be part of the requirement to treat the client fairly (as well as enabling the broker to meet the Standard and Practice on client agreements). To that end, we consider it appropriate to publish an information note on such client agreement in relation to ILAS policies on the IA’s website.

Regulated Advice in relation to / arranging insurance policies with non-authorized insurers

73. The two broker SROs have long had requirements in place regarding the placement of insurance with non-authorized insurers and information which should be provided to clients in this scenario. These requirements have included specified templates that should be followed. The requirements in **Standard and Practice 5.2(c)** of the Brokers’ Code are not materially different from the SRO requirements. The preference, however, is not to include template wording as part of the Brokers’ Code, so as to give licensed insurance broker’s leeway on the manner of implementation.

74. As regards the requirement for a licensed insurance broker to disclose information on the financial standing of the non-authorized insurer, this is a matter which should fall within the scope of information given by a licensed insurance broker (and one which would be important for clients to take into account). As to the type of information this should entail, it was noted that not all insurers have credit ratings. We are aware of this. Indeed, if a non-authorized insurer does not have a credit rating, this is precisely the type of information which the client should be told about to satisfy the requirement to provide information on the insurer's "financial standing" (this point has been made in the Brokers' Code).

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

75. 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 provided in a licensed technical representative (broker)'s business card, is not mandated to be in his/her e-mail sign off. We would, however, encourage such inclusion as best practice although not as a Brokers' Code provision. (We have also updated the requirement on business cards to include e-business cards.) (**Standard and Practice 5.1(d)**);
- Instead of having to "ensure" the client understands the consequences of a breach of the duty of "utmost good faith", a licensed insurance broker 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 14**).
- As the Brokers' 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 Brokers' Code) has been amended so that such comparisons are not "misleading" (aligning with **General Principle 1**).
- The requirement for a licensed insurance broker not to hold itself out as an agent of an insurer in carrying on regulated activities has been removed, as (on reflection) a licensed insurance broker does not hold

itself out as being an agent of an insurer, rather than the client, save in very exceptional circumstances.

## **H. General Principle 6 – Suitability of Advice**

76. Much of the feedback on **Standard and Practice 6.1 – Suitability assessment**, focused on the breadth of its application. By applying to all situations, it was suggested that this Standard and Practice somehow prevented a broker from assessing the general suitability of a product to a certain set of consumers (particularly SME and individual customers). Further, it was suggested that the Standard and Practice should not apply to situations where an insurance broker works with an insurer to design an insurance policy. It was questioned whether these requirements were applicable in respect of sophisticated reinsurance clients. It was also queried whether lower requirements would apply where brokers provide execution only services. It was noted that additional suitability requirements should apply in respect of ILAS and annuity products. One respondent also suggested that we remove the words “*proportionate and reasonable*” as they suggested a lower standard of care should apply.

77. Several comments were also received on **Standard and Practice 6.2(b)** which requires a licensed insurance broker to take certain steps when the broker makes a recommendation, but the client does not follow the recommendation. In summary, the comments considered elements of the requirement to be too prescriptive.

### *IA’s response*

78. **Standard and Practice 6.1** provides that a licensed insurance broker should carry out an appropriate suitability assessment before giving regulated advice. As such, the scope of its application is limited to situations where regulated advice is being given (not all regulated activities).

79. **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 broker 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.

80. **Standard and Practice 6.1** does not exclude situations where a broker works with an insurer to design an insurance policy to target a particular client segment. Indeed, the broad objectives, needs and priorities of that client segment would be at the heart of the design process. In other words,

to design a suitable product for a particular market segment, the suitability assessment of the circumstances of clients within that segment would be one of the most important considerations. When giving advice to a particular client within that segment, the insurance broker would then be well placed to explain why, by reference to the particular circumstances of that particular client, the product which has been designed is suitable for the client (in comparison, to other insurance products which target that segment).

81. Similarly, **Standard and Practice 6.1** would apply when a broker is manuscripting (i.e. working with an insurer/reinsurer to design) a bespoke insurance/reinsurance coverage for a particular client (as may be the case, for example, with a large commercial client). This would fall within one of the “insurance options” available (as indicated in the Standard and Practice). In this situation, the cover being designed and the advice given would need to be tailored to the specific circumstances of the client, which the broker would need to have assessed.
82. 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 Brokers’ 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 18**.
83. 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 broker to keep a record of the recommendation made, the reasons (if any) provided by the client for not following the recommendation, the broker’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 broker to make such a record in these situations.

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

### *Feedback received*

84. Several respondents commented on the requirement for a licensed insurance broker company to provide adequate disclosure in relation to the remuneration it will receive from an insurer when arranging an insurance policy. Some suggested that it was not clear whether the amount of such commission should be disclosed, with others suggesting that this should be the case. Guidance was requested on the disclosure to be given, including guidance on when the actual amount or percentage of commission should be disclosed. Respondents also made specific suggestions to strengthen the drafting of certain elements of the provision.

### *IA's response*

85. **Standard and Practice 7.1** sets the minimum requirement for disclosure in relation to the remuneration a licensed insurance broker company will receive from an insurer. The disclosure made needs to be “adequate” in this respect. Where there are any other rules, regulations, codes and guidelines administered or issued by the IA or other regulatory authorities governing remuneration disclosure (for example, the specific disclosure requirements on remuneration in relation to ILAS products, in the Guidelines issued by the IA in relation to such products), broker companies are required to comply with such requirements. Where no such other rules, regulations, codes and guidelines apply, if a broker company continues to adopt and follow the remuneration disclosure requirements currently prescribed by the two broker SROs, this would assist it in complying with the “adequate” disclosure requirement under the Brokers’ Code. In summary the current SRO requirements provide that brokers should:

- (i) provide clients with a written statement disclosing the fact that the brokers are remunerated for their services by the receipt of remuneration paid by insurers; and
- (ii) disclose the maximum percentage of the premium paid (or to be paid) as remuneration or the maximum amount of the remuneration paid (or to be paid) by the insurers concerned for arranging the insurance policies concerned upon clients’ request.

It should also be noted that the SRO requirements state: “where the commission is higher than the range of brokerage customarily paid for the particular class of insurance or includes any other form of remuneration including but not limited to volume or profit commissions, service fees or marketing allowances paid by the insurers, then additional measures for disclosure and express consent may be required to comply with the provisions of the PBO.” Please also see circular from the Commissioner of Insurance dated 10<sup>th</sup> April 2006 which remains on the IA’s website, in relation to matters such as volume commission.

86. The IA will from time to time review the remuneration disclosure requirements and make changes as when necessary.

## **J. General Principal 8 – Client Assets**

### *Feedback received*

87. One respondent commented on the scope of the requirement with regard to safeguarding client assets, indicating concern that this extended to assets which were not even in the broker's possession, but still in the client's control (taken to the extreme it required a broker to provide a security guard service for a client's property).

### *IA's response*

88. Whilst we consider the manner in which the requirement has been interpreted (paragraph 87 above) as not being capable of such broad interpretation (given the context of regulated activities in which it applies), in order to alleviate any concern, we have limited to the scope of **General Principle 8** to client assets received by the broker or which are in the broker's possession.

## **K. Corporate Governance and Controls and Procedures**

### *Feedback received*

89. In addition to the feedback received in response to the specific question posed on the need for corporate governance for broker companies (see Part I above), the feedback on the specific provisions of this section of the draft Brokers' Code included the following:

90. There was a request to remove the reference to "*fit and proper*" in paragraph 1(a)(i) (applicable to "persons who are recruited, employed by, associated with or act for the broker company") since fit and proper criteria should only be applicable to directors and technical representatives (broker) of broker companies per the Fit and Proper Guideline issued by the IA.

91. Several respondents raised concerns about the practicality of the requirements in relation to conducting due diligence on insurance products and insurers from which it intends to source insurance products. Many brokers, it was asserted, do not have resources to do this. Others questioned the necessity since insurers are regulated by the IA. Guidance was requested on the requirement in paragraph 2(b)(ii) to carry out such due diligence at "*appropriate periodic intervals*" and one respondent asked whether these requirements could be integrated as part of the placement



process. It was also suggested that the due diligence requirements should only be suitable to certain types of insurance products.

92. On the requirements for handling of complaints one respondent commented that their clients are sophisticated parties who are better resourced than the broker in handling any issue and whilst it is desirable to have a proper complaints handling procedure, it is common practice for the clients to approach the technical representatives directly when issues arise. It was also commented that these procedures should not set aside the safeguards relating to privilege against self-incrimination.
93. As regards the keeping of records requirements concerns were expressed about the capacity of, presumably, smaller brokers to keep the documents which were listed in the requirements.
94. As regards the requirement to report material incidents, 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*

95. Section 64ZZA of the Ordinance sets out the matters to which the IA must have regard when determining whether a person is a fit and proper person for the purposes of licensing. In determining whether a person (say a broker company) is fit and proper, the IA may consider information relating to any other person who is or is to be employed by, or associated with the broker company for the purposes of carrying on regulated activities (section 64ZZA(2)(a) of the Ordinance). Hence the reference to “persons who are recruited, employed by, associated with or act for the broker company” in paragraph 1(a)(i). However, rather than using the words “*fit and proper*” in relation to such persons, we have amended the provision such that the broker company should ensure such persons have “the integrity and competence to discharge their duties and responsibilities”.
96. Part of a broker’s skill-set is to understand the insurance contracts he is arranging and the differences between different insurance products, so that the broker knows which one is best to address his client’s circumstances. Whilst gaining this understanding by assessing the coverages available in the market may not be known by the name “due diligence”, this is exactly what it is. As such, this requirement merely puts a name to an exercise that brokers would (and should) already be doing as part of their broking practice. We have not prescribed the manner in which such due diligence should be carried out, so a broker may make it part of their placement process (and this has been clarified by way of footnote). Similarly, with regards to insurers with which they place business, it is certainly not unknown for brokers to explain to their clients the relative merits of one insurer versus another (i.e. a particular insurer’s expertise and track record in a particular line of business, response time in claims handling, financial strength, reputation

etc.). The due diligence requirement here, is merely to ensure that the broker has a reasonable basis for making such statements. Such due diligence can include first-hand experience of the broker in dealing with the insurer concerned.

97. Insurance (and insurance broking) is a service industry and like any service industry, its reputation is impacted by the manner in which it handles complaints. Whilst we accept that some clients are sophisticated enough to handle their own issues (as one respondent in the feedback suggested), it is a vital part of a licensed insurance broker company 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 a broker (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. Nothing in the provisions relating to complaints handling in any way purports to (or can) infringe on the safeguards regarding self-incrimination.
98. The requirement for controls and procedures for keeping of records (paragraph 4) has been re-crafted to dovetail with the general record keeping requirement in **Standard and Practice 3.5**.
99. Finally, we welcome the suggestion made to clarify the reporting of incidents requirement (paragraph 5). 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 a similar approach to ASIC in Australia in setting out the considerations of what constitutes “material” (e.g. adverse impact to the broker company’s ability to carry on regulated activities, an incident which indicates the broker company’s controls or procedures are inadequate, an incident which has caused or may cause a client or the broker company loss). This encompasses not only breaches, but for example, cyber incidents which impact the broker company. A good test would be for a broker company 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 a broker company is unsure, reporting is encouraged. Licenced technical representatives (broker) from a licenced insurance broker company are required, under Standard and Practice 1.2(d)(ii) to report certain incidents to their appointing broker company.

## **Conclusions and Next Steps**

100. The Brokers' Code has been revised taking into account the consultation responses helpfully provided by the respondents listed in Annex C.
101. The final form of the Brokers' 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.
102. The Brokers' 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 brokers require time to update their systems and processes to align with those requirements in the Brokers' 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 Brokers' 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 Brokers' Code which are different from the requirements under the self-regulatory regime which applied prior to 23 September 2019. Licensed insurance brokers are, however, expected to achieve full alignment with the provisions of the Brokers' Code by 1 January 2020 (and, of course, early adoption is always encouraged).
103. Once again, we would like to thank all respondents for their informative feedback and engagement.

**Market Conduct Division  
Insurance Authority  
September 2019**

**Final Form of Code of Conduct for Licensed Insurance Brokers**

**Code of Conduct for  
Licensed Insurance Brokers**

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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 Brokers. It sets out fundamental principles of professional conduct which buyers of insurance are entitled to expect in their dealings with licensed insurance brokers, 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 owed by licensed insurance brokers 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 brokers**

The licensing regime under the Insurance Ordinance prescribes two types of licensed insurance brokers: licensed insurance broker companies and licensed technical representatives (broker).

Licensed insurance broker companies give advice on insurance policies to clients and act as agents of clients (serving as both their trusted professional advisors and their representatives) in the course of dealing with matters relating to insurance policies (including procurement, negotiation and arrangement of insurance policies with insurers, and, in some cases, making and settling claims).

Licensed technical representatives (broker) act as representatives of (i.e. on behalf of) the licensed insurance broker companies which appoint them. In this capacity, they give advice on insurance policies to clients and represent their appointing licensed insurance broker companies to deal with matters relating to insurance policies on behalf of clients.

### **Licensed insurance brokers and their relationship with insurers and clients**

Licensed insurance brokers in the Hong Kong insurance market offer a wide range of insurance services to their clients. Depending on the insurance brokers (and the scope of their agreements with the clients), the services which insurance brokers provide may include advising clients on their insurance needs and on risk management strategies, sourcing the most suitable insurance products to ensure clients' needs are met, negotiating policy terms and conditions with insurers, and assisting clients in dealing with insurance claims. Insurance brokers also serve a wide range of clients, from individuals to corporate clients, including small and medium enterprises, multinational corporations and also insurers (assisting them develop and procure suitable reinsurance).

Licensed insurance brokers can approach insurers across the market<sup>1</sup> to source the most suitable insurance products for clients and licensed insurance broker companies owe fiduciary duties to clients when acting as agents of the clients. In view of this, the Insurance Ordinance imposes requirements (set out in rules made under section 129 of the Insurance Ordinance) on licensed insurance broker companies in relation to the following aspects:

- (a) capital and net assets;
- (b) professional indemnity insurance;
- (c) keeping of separate client accounts;
- (d) keeping of proper books and accounts.

### **Regulation of licensed insurance brokers 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 brokers have with policy holders and potential policy holders when carrying on regulated activities. These requirements include:

- the statutory conduct requirements, with which licensed insurance brokers must comply in carrying on regulated activities, in sections 90 and 92 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**

The Code of Conduct promulgates principles of conduct and related standards and practices with which licensed insurance brokers 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 brokers when carrying on regulated activities.

In addition, the Code of Conduct aims, in certain instances, to inform and explain the statutory conduct requirements in sections 90 and 92 (and in any rules made by the Insurance Authority under section 94) of the Insurance Ordinance as they apply to licensed insurance brokers.

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

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<sup>1</sup> By comparison, licensed insurance agents are appointed by insurers and are restricted to placing insurance with their appointing insurers only.



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

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

- 1.1 This Code of Conduct for Licensed Insurance Broker (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 brokers 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 brokers 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 broker companies. This section sets out guidance on the practices and standards for corporate governance, controls and procedures which should be adopted by a licensed insurance broker company in relation to the regulated activities carried on by the broker company.
- 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 brokers 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 brokers should look to adopt the General Principles as a whole in their carrying on of regulated activities.
- 1.6 Section 92 of the Ordinance stipulates requirements in relation to the proper controls and procedures which a licensed insurance broker company 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 (broker). The section of this Code on

“Corporate Governance and Controls and Procedures” provides guidance as to the controls and procedures a licensed insurance broker company should implement in relation to section 92 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 brokers play as agents acting for policy holders or potential policy holders.

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

- 2.1 This Code applies to all licensed insurance brokers as defined in the Ordinance, namely licensed insurance broker companies and licensed technical representatives (broker). A reference to “licensed insurance brokers” in this Code, therefore, includes “licensed insurance broker companies” and “licensed technical representatives (broker)”.
- 2.2 Responsible officers and senior management of licensed insurance broker companies 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 broker companies.

## **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 brokers 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 brokers 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 brokers should comply with requirements of other regulatory authorities which apply to the brokers 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 brokers, such as the Monetary Authority (for example, in the case of a licensed insurance broker company which is a subsidiary of an authorized institution) or the Privacy Commissioner for Personal Data (in relation to personal

data collected or used by the broker 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 broker to comply with this Code shall not by itself render the broker 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 broker is fit and proper to remain licensed (section 95(6) of the Ordinance);
- (c) whether a licensed insurance broker or responsible officer of a licensed insurance broker company 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 brokers 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,

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

**“client agreement”** means the agreement entered into between the licensed insurance broker company and the client as referenced in Standard and Practice 5.4;

**“client’s circumstances”**, in relation to regulated advice provided by a licensed insurance broker to a client, means the objectives, needs and priorities of and other information from or about the client which a reasonable licensed insurance broker 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 broker by the client as being priorities which the broker should consider when recommending an insurance policy to the client. As guidance, examples of client’s circumstances include:

- a) where the broker 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 broker is required to collect in a financial needs analysis assessment; and
- b) where the broker 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<sup>2</sup>. 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;

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<sup>2</sup> A contract of insurance includes a contract of reinsurance.

**“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 broker company means those persons who perform the functions of managing the regulated activities carried on by the broker company. The exact composition of the senior management will depend on the size of the broker company, 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 broker company, and who report directly to the board or the responsible officer of the broker company, are likely to be considered part of the senior management; and
- b) in large broker companies, 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 broker company, is also likely to be considered part of the senior management;

**“Statutory Conduct Requirements”** means the conduct requirements applicable to licensed insurance brokers and/or their responsible officers as identified in sections 90 and 92 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 brokers are required to comply.

A reference to “should” in this Code in relation an action, denotes that the licensed insurance broker 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 broker 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 brokers play as agents acting for policy holders or potential policy holders and serve as principles of conduct to ensure they act in the best interests of clients and that clients are fairly treated. 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 broker should act honestly, ethically, with integrity and in good faith.

### **GP 2. Acting in the Best Interests of Clients and Treating Clients Fairly**

A licensed insurance broker should always act in the best interests of its clients and treat its clients fairly.

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

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

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

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

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

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

### **GP 6. Suitability of Advice**

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

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

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

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

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

## Section I

### General Principle 1 – Honesty and Integrity

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*A licensed insurance broker should act honestly, ethically, with integrity and in good faith.*

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

### Standards and Practices

#### 1.1 Accurate representations and presentation

- (a) A licensed insurance broker when carrying on regulated activities should always act with good faith towards its client.
- (b) A licensed insurance broker 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.
- (c) A licensed insurance broker 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.
- (d) Where a licensed insurance broker company develops its own advertising or marketing materials for use in carrying on regulated activities, it should ensure such materials contain only accurate information and are not disparaging, misleading or deceptive.
- (e) A licensed technical representative (broker) should only use advertising or marketing materials supplied or approved by its appointing licensed insurance broker company.
- (f) A licensed insurance broker company 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 broker should comply with:
  - (i) all laws which apply to the broker;
  - (ii) all rules, regulations, codes and guidelines administered or issued by the IA which apply to the broker; and

- (iii) all requirements of other regulatory authorities which apply to the broker in connection with the regulated activities carried on by the broker.
- (b) A licensed insurance broker should cooperate with the IA and all other relevant regulatory authorities on any matters concerning the regulated activities carried on by the broker.
- (c) A licensed technical representative (broker) should comply with the requirements, policies and procedures in relation to the carrying on of regulated activities set by the licensed insurance broker company for which the technical representative is acting as agent.
- (d) Where a licensed insurance broker 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 broker should, as soon as reasonably practicable, report this to:
  - (i) the IA in writing; and
  - (ii) where the broker is a licensed technical representative (broker), his appointing licensed insurance broker company in a manner specified by the broker company.

### 1.3 Harassment, Coercion or Undue Influence

A licensed insurance broker 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<sup>3</sup>.

### 1.4 Prevention of Bribery

- (a) A licensed insurance broker 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 broker.
- (b) Without limitation to 1.4(a) above, the PBO may prohibit a licensed insurance broker company (including where it acts through its licensed technical representatives (broker)) from:
  - (i) soliciting or accepting an advantage from a person as an inducement or reward for the broker company taking any action in relation to the affairs or

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<sup>3</sup> 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 brokers should, however, be mindful of the frequency, timing and manner of such reminders.



business of a client of the broker company, without the broker company first obtaining the requisite permission<sup>4</sup> from that client; or

- (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 brokers 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).*

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<sup>4</sup> 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 in the Best Interests of Clients and Treating Clients Fairly

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*A licensed insurance broker should always act in the best interests of its clients and treat its clients fairly.*

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

### Standards and Practices

#### 2.1 Acting in the client’s best interests and being impartial, objective and fair

A licensed insurance broker should:

- (i) place the interests of clients before all other considerations;
- (ii) treat the client fairly; and
- (iii) give suitable, impartial and objective advice to its client which takes account of the client’s interests.

#### 2.2 Sourcing insurance products

- (a) A licensed insurance broker should recommend insurance products which best meet its client’s interests<sup>5</sup>.
- (b) A licensed insurance broker should source a sufficient<sup>6</sup> range of available insurance products, suitable to its client’s circumstances, from a sufficient range of different insurers before recommending an insurance product to a client.
- (c) A licensed insurance broker should not prejudice its client’s selection of insurers by being unreasonably dependent on any particular insurer.

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<sup>5</sup> In this respect, the insurance products which best meet the client’s interests would be those that a reasonable licensed insurance broker would consider suitable for the client based on the client’s circumstances.

<sup>6</sup> The range of insurance products and insurers which is “sufficient” for the purpose of 2.2(b) will depend on the type of insurance product being sourced and the extent to which it is available in the insurance market. It is recognized that certain insurance products are so specialist that they may be offered by only a few insurers. These and other practicalities are to be taken into account in considering the sufficiency of the sourcing process. Ultimately, whether the range of relevant insurance products or insurers is sufficient should be decided by reference to the standards of a reasonable and prudent professional licensed insurance broker carrying on regulated activities.

### 2.3 Giving fair and impartial regulated advice<sup>7</sup> in the client's best interests

- (a) A licensed insurance broker 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 broker 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 broker 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;
  - (ii) when making a recommendation on an insurance product, consider what available insurance products can reasonably meet the client's circumstances, based on the insurance products sourced by the broker (see Standard and Practice 2.2 above); 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 broker to a client should be advice that a reasonable licensed insurance broker would consider suitable for the client based on the information obtained from the client, including the client's circumstances.

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<sup>7</sup> Giving regulated advice includes making a recommendation on an insurance product.

## Section III

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

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

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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 broker

A licensed insurance broker 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 broker carrying on regulated 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 on behalf of the client by a licensed insurance broker or with the assistance of a broker, the broker:

- (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 authority 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 broker knows that the form contains inaccurate information<sup>8</sup>.

##### 3.3 Carrying out client’s instructions

- (a) A licensed insurance broker 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.

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<sup>8</sup> If a licensed insurance broker 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 broker may submit the form, but should inform the insurer that it will clarify the information. The broker should then clarify the information with the client, so any inaccuracy can be corrected as soon as reasonably possible.

- (b) Where a client terminates its appointment of a licensed insurance broker company, the broker company should provide all reasonable cooperation to bring the appointment to an end in an orderly manner.

### **3.4 Protecting a client's privacy and confidentiality**

- (a) A licensed insurance broker 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 broker and which require disclosure to be made.
- (b) With regards to personal data of a client that is collected by a licensed insurance broker in the course of the carrying on of regulated activities, the broker must comply with the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO") and should follow the related guidance<sup>9</sup> 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 broker company should keep proper records in relation to the regulated activities it carries out, so as to comply with the record keeping requirements of all laws, rules, regulations, codes and guidelines applicable to the licensed insurance broker company.
- (b) A licensed technical representative (broker) should act in accordance with all requirements, policies and procedures of the licensed insurance broker company he represents relating to the keeping of proper records established by the broker company in order for it to comply with Standard and Practice 3.5(a).

### **3.6 Cooling-off period**

If an insurance policy contains a cooling-off period provision<sup>10</sup>, a licensed insurance broker 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 broker should inform the client of his right to cancel the insurance policy during the cooling-off period and that the client

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<sup>9</sup> 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.

<sup>10</sup> A cooling-off period provision, in relation to an insurance policy, is a provision which allows the policy holder to cancel the policy within a specified period from inception and obtain a refund.

should notify the insurer concerned during the cooling-off period if he wishes to exercise such right; and

- (ii) if the insurance policy is delivered to the broker by the insurer concerned, the broker should deliver the insurance policy to the client 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.

### **3.7 Assistance in relation to insurance claims**

With regard to insurance claims made by a client:

- (i) unless stated otherwise in the client agreement, a licensed insurance broker should (where requested by the client) provide the client with reasonable assistance in submitting any claim under an insurance policy which was negotiated or arranged by the broker on behalf of the client and pass on any relevant information received from the client in relation to the claim to the insurer concerned as soon as practicable; and
- (ii) exercise due care to discharge all obligations in relation to the administration, negotiation and settlement of such claims to the extent that such obligations are within the scope of the broker's services stated in the relevant client agreement.

## Section IV

### General Principle 4 – Competence to Advise

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

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

### Standards and Practices

#### 4.1 Product knowledge

A licensed technical representative (broker) 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 technical representative (broker) should not carry on regulated activities on matters in relation to which he lacks the specific skills or knowledge<sup>11</sup> necessary to carry on the relevant regulated activity. When in doubt, he should seek guidance from the responsible officer or senior management in his appointing licensed insurance broker company.

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<sup>11</sup> The requisite skills or knowledge a licensed technical representative (broker) 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

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

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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 broker should provide the following information to its client:
- (i) the name (the registered name as well as the trade name, if any) of the broker;
  - (ii) the licence number of the broker;
  - (iii) the type of licence of the broker, i.e. insurance broker company licence or technical representative (broker) licence;
  - (iv) where the broker is a licensed technical representative (broker), the name of his appointing licensed insurance broker company; and
  - (v) the fact that the broker acts on behalf of the client in dealing with insurers on matters relating to insurance policies being procured by the client.
- (b) Where a licensed technical representative (broker) acts for more than one licensed insurance broker company, he should clearly identify to the client which licensed insurance broker company he is representing in relation to each particular insurance transaction.
- (c) A licensed insurance broker 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 technical representative (broker) 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 technical representative for the purpose of carrying on regulated activities:
- (i) the name as shown on his Hong Kong identity card or passport<sup>12</sup>;
  - (ii) licence number;

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<sup>12</sup> The licensed technical representative (broker) 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.



- (iii) type of licence; and
- (iv) the name of his appointing licensed insurance broker company.

## 5.2 Disclosure in relation to insurance products

- (a) A licensed insurance broker should provide its client with all relevant information on the key features of each insurance product recommended or arranged by the broker. 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 broker 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(c)).
- (c) Where a licensed insurance broker intends to give regulated advice on or arrange an insurance policy with an insurer which is not authorized by the IA<sup>13</sup>, the broker should disclose to the client:
  - (i) the name and address of the insurer in the jurisdiction where the insurer has issued the policy and (if different) the jurisdiction where the insurer is incorporated;
  - (ii) the fact that the insurer is not regulated by the IA and is subject to different laws and regulations;
  - (iii) the financial standing of the insurer (for example, whether the insurer has a credit rating and, if so, what the credit rating is); and
  - (iv) the governing law of the insurance policy and the jurisdiction in which disputes under the policy will be determined.

Where the client is an individual, the licensed insurance broker should also obtain written acknowledgement from the client of the disclosures in (i) to (iv) (and keep a record of such acknowledgement).

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<sup>13</sup> Nothing in paragraph 5.2(c) alters the position under section 6(1)(a) of the Ordinance, which requires companies carrying on insurance business in or from Hong Kong to be authorized under section 8 of the Ordinance.

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

- (a) When a client is making an application for insurance with the assistance of a licensed insurance broker, the broker 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 insurer<sup>14</sup>; 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.
- (b) When negotiating or arranging an insurance policy with an insurer on behalf of a client (i.e. prior to the insurance policy being entered into), a licensed insurance broker should:
  - (i) not make any false statements or mislead the insurer;
  - (ii) disclose to the insurer all material facts in relation to the insurance policy, which have been provided to the broker by the client; and
  - (iii) disclose to the insurer all material facts in relation to the prospective insurance policy of which the broker is aware.

### 5.4 Client agreements and terms of business with clients

- (a) A licensed insurance broker company should enter into an agreement with a client<sup>15</sup>, setting out in writing the terms and conditions of business on which the licensed insurance broker will carry on regulated activities for the client.
- (b) The client agreement may be entered into:
  - (i) by the client signing the agreement which sets out the written terms and conditions;
  - (ii) by the client providing written consent to the broker's written terms and conditions of business (including by e-mail or other electronic mechanism); or
  - (iii) by conduct (with the broker company providing the client with its written terms and conditions of business for carrying on regulated activities for the client's review, and the client proceeding or continuing with the instruction to the

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<sup>14</sup> The broker 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.

<sup>15</sup> In respect of the requirements relating to a client agreement, "client" refers to the client with whom the client agreement is being entered into (e.g. if the client is entering into an insurance policy under which other insured persons as well as the client are to be covered, and the client is representing all insured persons in entering into the insurance policy, there is no need for the client agreement to be with those other insured persons).

broker company to carry on regulated activities, or otherwise indicating acceptance of such written terms and conditions of business, for example, by paying the premium for the insurance product arranged by the broker company).

- (c) A copy of the client agreement should be provided to the client as soon as reasonably practicable and the broker company should keep a record of the client agreement.

### **5.5 Disclosure in relation to a client referred by another person<sup>16</sup>**

- (a) Where a client is referred to a licensed insurance broker by another person (referrer), in addition to complying with the policies, procedures or requirements relating to referrals that the licensed insurance broker company has in place, before the broker arranges an insurance policy for the client, the broker should inform the client that:
  - (i) the broker will be responsible for arranging the insurance policy and, for this purpose, the client should only deal directly with the broker (i.e. the client should not deal with the referrer for arranging the insurance policy);
  - (ii) the referrer does not represent the broker and should have no involvement in the arrangement of the insurance policy;
  - (iii) the broker 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 broker or the insurer concerned (and not to the referrer).
- (b) Standard and Practice 5.5(a) does not apply where:
  - (i) the client is referred to a licensed insurance broker company by its appointed licensed technical representative (broker); or
  - (ii) the referral is made to the licensed insurance broker company in the context of the licensed insurance broker company being engaged by another insurance broker for the purpose of arranging an insurance policy for the client.

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<sup>16</sup> Under section 64G of the Ordinance, a person must not carry on a regulated activity in the course of the person's business or employment, or for reward, unless the person is a licensed insurance intermediary or exempt from the licensing requirements 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

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

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

### Standards and Practices

#### 6.1 Suitability assessment

- (a) Before giving regulated advice, a licensed insurance broker 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 broker 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 broker should:
  - (i) take reasonable steps to understand the client's circumstances;
  - (ii) source a sufficient<sup>17</sup> range of relevant insurance products available on the market from a sufficient range of different insurers or explore other insurance options, and consider the available insurance options 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 broker to achieve the objective in Standard and Practice 6.1(a) above, the licensed insurance broker 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.<sup>18</sup>

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<sup>17</sup> See footnote 6 above.

<sup>18</sup> 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 broker 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 broker 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 broker 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 broker's opinion, is not suitable for the client's circumstances, the broker should document and keep a proper record of:
- the recommendation made by the broker to the client;
  - the reasons provided by the client (if any) to the broker for taking a decision which does not follow the recommendation;
  - the explanation given by the broker to the client for considering the client's decision to be unsuitable; and
  - the fact that the decision is the client's own decision.

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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 a 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

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

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Related Statutory Conduct Requirements:

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

### Standards and Practices

#### 7.1 Avoiding potential conflicts of interest by providing appropriate disclosure in relation to remuneration

Where a licensed insurance broker company intends to arrange an insurance policy for its client and will receive remuneration paid by the insurer concerned, the broker company should, before arranging the insurance policy, provide adequate disclosure in relation to such remuneration to the client. Such disclosure should include information and be made in accordance with the manner stated in any rules, regulations, codes or guidelines administered or issued by the IA or other regulatory authorities.

#### 7.2 Addressing potential conflicts of interest regarding relationships with insurers

If a licensed insurance broker has any association or affiliation with an insurer (such as, without limitation, a common shareholder, director and controller) and the licensed insurance broker intends to recommend an insurance product to a client which is offered by that insurer, then the broker should (prior to making the recommendation) disclose its association or affiliation with the insurer to the client.

#### 7.3 Avoid allowing own interests to influence the client’s decision

- (a) Where a licensed insurance broker has another business or occupation, the broker 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 broker 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 broker's interests in the other business or occupation.

- (b) Where another company in the same group of companies<sup>19</sup> as the licensed insurance broker company is providing services in relation to an insurance policy in respect of which the broker is providing regulated activities, the broker should take steps to avoid or manage (through, for example, disclosure) any potential conflicts of interest which may arise, so as to ensure the client is treated fairly at all times.

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<sup>19</sup> "group of companies" has the meaning assigned to it in section 2 of the Companies Ordinance (Cap. 622).

## **Section VIII**

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

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

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

### **Standards and Practices**

#### **8.1 Handling of client assets**

- (a) A licensed insurance broker company must handle client monies (and any other client assets received by the broker in the course of carrying on regulated activities) in strict compliance with the requirements stipulated in law and the relevant rules, regulations, codes and guidelines administered or issued by the IA, including without limitation:
  - (i) the requirements set out in Section 71 of the Ordinance;
  - (ii) the requirements set out in the Insurance (Financial and Other Requirements for Licensed Insurance Broker Companies) Rules;
  - (iii) the terms and conditions of its client agreement with the client; and
  - (iv) the fiduciary duties it owes to its clients.
- (b) A licensed insurance broker company should have sufficient controls and security in place to prevent unauthorized access to client assets.



## Section IX

### Corporate Governance and Controls and Procedures

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

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Related Statutory Conduct Requirements: Section 92(1) of the Ordinance sets out the relevant conduct requirements for a licensed insurance broker company 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 broker company and the licensed technical representatives (broker) appointed by the broker company;*
- (b) it must use its best endeavours to secure observance with the controls and procedures established under paragraph (a) by the licensed technical representatives (broker) appointed by the broker company;*
- (c) it must ensure that its responsible officer has sufficient authority within the broker company for carrying out the responsibilities set out in section 92(2); and*
- (d) it must provide its responsible officer with sufficient resources and support for carrying out the responsibilities set out in section 92(2).*

### Corporate Governance

A licensed insurance broker company 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 objectives of acting in the best interests of clients and treating clients fairly. The extent and scope of the broker company'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 broker company 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 broker company should have proper controls, procedures and adequate supervision to ensure that:
- (i) persons who are recruited, employed by, associated with, or act for the broker company in relation to the carrying on of regulated activities have the integrity and competence to discharge their duties and responsibilities;
  - (ii) the broker company and its staff, particularly its licensed technical representatives (broker) comply with all laws, rules, regulations, codes and guidelines relevant to the carrying on of regulated activities in the broker's lines of business;
  - (iii) its licensed technical representatives (broker) comply with the broker company'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 (broker) 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. Insurance product and insurer due diligence

- (a) A licensed insurance broker company should have in place proper controls and procedures to assess the nature and key features of insurance products<sup>20</sup> in respect of which the broker company intends to provide regulated advice to clients. The assessment of such insurance products should be made:
- (i) prior to making any recommendation of such insurance products; and
  - (ii) at appropriate periodic intervals thereafter to ensure its due diligence remains up to date.
- (b) Where the regulated advice to be given by a licensed insurance broker company is to include advice on the relative merits of particular insurers (for example, an insurer's expertise and track record in a particular line of business, response time

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<sup>20</sup> The objective of product due diligence is to reinforce the standards and practices in this Code in relation to product knowledge (Standard and Practice 4.1) and sourcing of insurance products (Standards and Practices 2.2(b) and 6.1). The level of due diligence required will depend, in part, on the type of insurance product concerned. The Code does not prescribe the specific manner in which the due diligence should be carried out. By way of example, a broker company may carry out the due diligence prior to the first time it carries on regulated activities in respect of the product and, thereafter, where the terms and conditions of the product are materially revised. The broker company may also build in the product due diligence process as part of its placement process or as part of its suitability assessment process.

in claims handling, financial strength etc.), the broker company should have in place proper controls and procedures to conduct due diligence on such insurers in order to have a reasonable basis for providing such advice.

- (c) A licensed insurance broker company should ensure documentation evidencing the processes in (a) and (b) above are made and maintained.

### **3. Handling of complaints**

- (a) A licensed insurance broker company should have proper controls and procedures to handle and resolve complaints about regulated activities carried on by the broker company or its licensed technical representatives (broker) in a timely, fair and proper manner.
- (b) In order to achieve the objectives in paragraph (a), the licensed insurance broker company 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 IA) if the complaints cannot be resolved to the complainants' satisfaction by the broker company;
  - (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 the relevant insurers to resolve such complaints.

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

A licensed insurance broker company 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 (broker)) 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 licensed insurance broker company.

### **5. Reporting of incidents to the IA**

- (a) A licensed insurance broker company 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 broker company;

- (ii) the bankruptcy of any directors, controllers or licensed technical representatives (broker) of the broker company;
  - (iii) a disciplinary action taken against the broker company or its licensed technical representatives (broker) 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 broker company or its directors, controllers or licensed technical representatives (broker) by any court in Hong Kong or elsewhere;
- (b) A licensed insurance broker company 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 broker company or its licensed technical representatives (broker); and
  - (ii) any material incidents which happen to the broker company.
- (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 broker company's ability to carry on regulated activities;
    - it indicates that the broker company's controls or procedures are inadequate to ensure compliance by the broker company or its technical representatives (broker) 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 broker company itself;
  - (ii) a licensed insurance broker company 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 broker company is not sure whether a breach or incident is material, the broker is encouraged to report the breach or incident to the IA.

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

The responsible officer of a licensed insurance broker company, and its other senior management who oversee the business of regulated activities carried on by the broker company, should ensure (and should be accountable for ensuring) that the controls and procedures required by 1 to 5 above are in place and effective.

**Final Form of Code of Conduct for Licensed Insurance Brokers with Track Changes**

**Code of Conduct for  
Licensed Insurance Brokers**

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# ~~Code of Conduct for Licensed Insurance Brokers~~

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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 Brokers. It sets out fundamental principles of professional conduct which buyers of insurance are entitled to expect in their dealings with licensed insurance brokers, 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 owed by licensed insurance brokers 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 brokers

The licensing regime under the Insurance Ordinance prescribes two types of licensed insurance brokers: licensed insurance broker companies and licensed technical representatives (broker).

Licensed insurance broker companies give advice on insurance policies to clients and act as agents of clients (serving as both their trusted professional advisors and their representatives) in the course of dealing with matters relating to insurance policies (including procurement, negotiation and arrangement of insurance policies with insurers, and, in some cases, making and settling claims).

Licensed technical representatives (broker) act as representatives of (i.e. on behalf of) the licensed insurance broker companies which appoint them. In this capacity, they give advice on insurance policies to clients and represent their appointing licensed insurance broker companies to deal with matters relating to insurance policies on behalf of clients.

### Licensed insurance brokers and their relationship with insurers and clients

Licensed insurance brokers in the Hong Kong insurance market offer a wide range of insurance services to their clients. Depending on the insurance brokers (and the scope of their agreements with the clients), the services which insurance brokers provide may include advising clients on their insurance needs and on risk management strategies, sourcing the most suitable insurance products to ensure clients' needs are met, negotiating policy terms and conditions with insurers, and assisting clients in dealing with insurance claims. Insurance brokers also serve a wide range of clients, from individuals to corporate clients, including small and medium enterprises, multinational corporations and also insurers (assisting them develop and



procure suitable reinsurance).

Licensed insurance brokers can approach insurers across the market<sup>1</sup> to source the most suitable insurance products for clients and licensed insurance broker companies owe fiduciary duties to clients when acting as agents of the clients. In view of this, the Insurance Ordinance imposes requirements (set out in rules made under section 129 of the Insurance Ordinance) on licensed insurance broker companies in relation to the following aspects:

- (a) capital and net assets;
- (b) professional indemnity insurance;
- (c) keeping of separate client accounts;
- (d) keeping of proper books and accounts.

### **Regulation of licensed insurance brokers 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 brokers have with policy holders and potential policy holders when carrying on regulated activities. These requirements include:

- the statutory conduct requirements, with which licensed insurance brokers must comply in carrying on regulated activities, in sections 90 and 92 of the Insurance Ordinance;
- the relevant requirements set out in the rules, regulations, codes and guidelines made or issued under the Insurance Ordinance ~~as well as circulars and other regulatory instruments issued by the Insurance Authority~~; and
- the general principles, standards and practices set out in the Code of Conduct.

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

The Code of Conduct promulgates principles of conduct and related standards and practices with which licensed insurance brokers 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 brokers when carrying on regulated activities.

In addition, the Code of Conduct aims ~~to~~, in certain instances, to inform and explain the statutory conduct requirements in sections 90 and 92 (and in any rules made by the Insurance Authority under section 94) of the Insurance Ordinance as they apply to licensed insurance brokers.

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

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<sup>1</sup> By comparison, licensed insurance agents are appointed by insurers and are restricted to placing insurance with their appointing insurers only.

## Part A Introduction to this Code

### 1. Framework of this Code

1.1 This Code of Conduct for Licensed Insurance Broker (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 brokers should adopt and follow when carrying on regulated activities (the “General Principles”). ~~The General Principles are set out in the opening section 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 brokers 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 brokers are ordinarily expected to adopt in carrying on regulated activities.

1.3 The section in Part DC of this Code on “Corporate Governance and Controls and Procedures” applies only to licensed insurance broker companies ~~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 broker company should adopt in relation to ensure the General Principles and related Standards and Practices in Part C are met regulated activities carried on by the broker company and the licensed technical representatives (broker) appointed by the broker company.

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 brokers 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 brokers 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 92 of the Ordinance stipulates requirements in relation to the proper controls and procedures which a licensed insurance broker company 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 (broker). ~~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 92. Again, however, its licensed insurance broker company should implement in relation to section 92 of the Ordinance~~be emphasized that this guidance is not exhaustive.
- 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 brokers play as agents acting for policy holders or potential policy holders.

## 2. Persons to whom this Code applies

- 2.1 This Code applies to all licensed insurance brokers as defined in the Ordinance, namely licensed insurance broker companies and licensed technical representatives (broker). A reference to “licensed insurance brokers” in this Code, therefore, includes “licensed insurance broker companies” and “licensed technical representatives (broker)”.
- 2.2 Responsible officers and senior management of licensed insurance broker companies 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 broker companies.

## 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 brokers. ~~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 ~~(and other regulatory instruments) issued by the IA. issued by the IA. For example, in addition to the provisions in this Code, licensed insurance brokers 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 brokers should comply with requirements of other regulatory authorities which apply to the brokers 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 brokers, such as the Monetary Authority (for example, in the case of a licensed insurance broker company which is a subsidiary of an authorized institution) or the Privacy Commissioner for Personal Data (in relation to personal data collected or used by the broker 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 broker to comply with this Code shall not by itself render the broker 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 broker 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 broker is fit and proper to remain licensed (section 95(6) of the Ordinance); ~~or~~
- (c) ~~whether~~ a licensed insurance broker or responsible officer of a licensed insurance broker company 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 brokers 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,

**“client”** ~~or “customer”~~ in this Code bears the same meaning as policy holder<sup>2</sup> and potential policy holder in the Ordinance. ~~The terms are used interchangeably throughout;~~

**“client agreement”** means the agreement entered into between the licensed insurance broker company and the client as referenced in Standard and Practice 5.4;

**“client’s circumstances”**, in relation to regulated advice provided by a licensed insurance broker to a client, means the objectives, needs and priorities of and other information from or about the client which a reasonable licensed insurance broker 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 broker by the client as being priorities which the broker should consider when recommending an insurance policy to the client. As guidance, examples of client’s circumstances include:

- a) where the broker 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 broker is required to collect in a financial needs analysis assessment; and
- b) where the broker 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<sup>3</sup>. The terms are used interchangeably throughout this Code;

**“life insurance policy”** means a contract of insurance which is classed as long term

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<sup>2</sup> A policy holder includes a reinsured/cedant.

<sup>3</sup> A contract of insurance includes a contract of reinsurance.

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 broker company means those persons who perform the functions of managing the regulated activities carried on by the broker company. The exact composition of the senior management will depend on the size of the broker company, 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 broker company, and who report directly to the board or the responsible officer of the broker company, are likely to be considered part of the senior management; and
- b) in large broker companies, 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 broker company, is also likely to be considered part of the senior management;

**“Statutory Conduct Requirements”** ~~includes~~means the conduct requirements applicable to licensed insurance brokers and/or their responsible officers as identified in sections 90 and 92 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 brokers are required to comply.

A reference to “should” in this Code in relation an action, denotes that the licensed insurance broker 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 broker 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 brokers play as agents acting for policy holders or potential policy holders and serve as principles of conduct to ensure they act in the best interests of clients and that clients are fairly treated. 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 broker should ~~be trustworthy and~~ act honestly, ethically, with integrity and in ~~utmost~~ good faith.

### GP 2. Acting in the Best Interests of Clients and Treating Clients Fairly

A licensed insurance broker should always act in the best interests of its clients and treat its clients fairly.

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

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

### GP 4. Competence to Advise

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

### GP 5. Disclosure of Information

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

### GP 6. Suitability of Advice

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

### GP 8. Client Assets

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

## Section I

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

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*A licensed insurance broker should ~~be trustworthy and~~ act honestly, ethically, with integrity and in ~~utmost~~ good faith.*

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

### **Standards and Practices**

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

- (a) A licensed insurance broker ~~should carry~~when carrying on regulated activities ~~in utmost~~should always act with good faith towards its client.
- (b) A licensed insurance broker 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.
- (c) A licensed insurance broker 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.
- (d) ~~A~~Where a licensed insurance broker ~~should not use~~ company develops its own advertising or marketing materials ~~which for use in carrying on regulated activities, it should ensure such materials~~ contain only accurate information ~~that is incomplete, false, and are not~~ disparaging, misleading or deceptive.
- (e) A licensed technical representative (broker) should only use advertising or marketing materials supplied or approved by its appointing licensed insurance broker company.
- (f) A licensed insurance broker company 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 broker is appointed or is seeking appointment by a client which is not an individual (e.g. sole proprietorship, partnership, company,~~

etc.) to procure an insurance product for the client, the broker 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 broker; and~~
- ~~(ii) the broker obtains the express prior written consent of the client.~~

#### **4.31.2 Compliance**

(a) A licensed insurance broker should comply with:

- (i) all laws which apply to the broker;
- (ii) all rules, regulations, codes, and guidelines, ~~circulars and other regulatory instruments~~ administered or issued by the IA which apply to the broker; and
- (iii) all requirements of any other regulatory authorities which apply to the broker; and all rules, guidelines and codes of any professional bodies of which in connection with the regulated activities carried on by the broker is a member or participant.

(b) A licensed insurance broker should cooperate with the IA and all other relevant regulatory authorities on any matters concerning the regulated activities carried on by the broker.

(c) A licensed technical representative (broker) should comply with the requirements, policies and procedures in relation to the carrying on of regulated activities set ~~out~~ by the licensed insurance broker company for which the technical representative is acting as agent. –

(d) Where a licensed insurance broker 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 broker should, as soon as reasonably practicable, report this to:-

(i) the IA, in writing; and, –

(ii) where the broker is a licensed technical representative (broker), his appointing licensed insurance broker company as soon as reasonably practicable in a manner specified by the broker company.

#### **4.4–1.3 Harassment, Coercion or Undue Influence**

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

contract of insurance or to make a material decision<sup>4</sup>.

#### ~~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 broker 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 broker 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 broker should not submit any such form knowing it to contain incorrect or incomplete information.~~

#### 1.4 Prevention of Bribery

(a) A licensed insurance broker 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 broker.

(b) Without limitation to 1.4(a) above, the PBO may prohibit a licensed insurance broker company (including where it acts through its licensed technical representatives (broker)) from:

- (i) soliciting or accepting an advantage from a person as an inducement or reward for the broker company taking any action in relation to the affairs or business of a client of the broker company, without the broker company first obtaining the requisite permission<sup>5</sup> from that client; or
- (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 brokers 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).

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<sup>4</sup> 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 brokers should, however, be mindful of the frequency, timing and manner of such reminders.

<sup>5</sup> 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 in the Best Interests of Clients and Treating Clients Fairly**

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*A licensed insurance broker should always act in the best interests of its clients and treat its clients fairly.*

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

### **Standards and Practices**

#### **2.1 Acting in the client’s best interests and being impartial, objective and fair**

A licensed insurance broker should:

- (i) ~~act in the client’s best interests, placing place~~ the interests of clients before all other considerations;
- (ii) ~~treat the client fairly; and~~
- (iii) give suitable, impartial and objective advice to ~~theits~~ client which takes account of the client’s interests; ~~and treat the client fairly.~~

#### **2.2 Sourcing insurance products**

- (a) A licensed insurance broker should recommend insurance products which best meet its client’s interests<sup>6</sup>.
- (b) A licensed insurance broker should source a sufficient<sup>7</sup> range of ~~relevant available~~ insurance products, ~~suitable to its client’s circumstances,~~ from a sufficient<sup>8</sup> range of different insurers ~~to ensure its client’s objectives, circumstances, needs and~~

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<sup>6</sup> ~~In this respect, the insurance products which best meet the client’s interests would be those that a reasonable licensed insurance broker would consider suitable for the client based on the client’s circumstances.~~

<sup>7</sup> ~~The range of insurance products and insurers which is “sufficient” for the purpose of 2.2(b) will depend on the type of insurance product being sourced and the extent to which it is available in the insurance market. It is recognized that certain insurance products are so specialist that they may be offered by only a few insurers. These and other practicalities are to be taken into account in considering the sufficiency of the sourcing process. Ultimately, whether the range of relevant insurance products or insurers is sufficient for the purpose of 2.2(b) should be decided by reference to the reasonable standards of a reasonable and prudent professional licensed insurance broker carrying on regulated activities.~~

<sup>8</sup> ~~See footnote 4 above.~~

~~priorities can be suitably met~~ before recommending an insurance product to a client.

- (c) A licensed insurance broker should not prejudice its client's selection of insurers by being unreasonably dependent on any particular insurer.

### 2.3 Giving fair and impartial regulated advice<sup>9</sup> in the client's best interests

- (a) A licensed insurance broker 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 broker 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.

- (b) When giving regulated advice, a licensed insurance broker 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 products can reasonably meet the client's ~~objectives, circumstances, needs and priorities,~~ based on the insurance products sourced by the broker (see Standard and Practice 2.2 above); 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 broker to a client should be advice that a reasonable licensed insurance broker would consider suitable for the client based on the information obtained from the client, including the client's ~~objectives, circumstances, needs and priorities.~~

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<sup>9</sup> Giving regulated advice includes making a recommendation on an insurance product.

## **Section III**

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

**A licensed insurance broker 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 broker**

A licensed insurance broker ~~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 broker carrying on regulated 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 on behalf of the client by a licensed insurance broker or with the assistance of a broker, the broker:

- (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 authority 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 broker knows that the form contains inaccurate information<sup>10</sup>.

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

- (a) A licensed insurance broker 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.

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<sup>10</sup> If a licensed insurance broker 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 broker may submit the form, but should inform the insurer that it will clarify the information. The broker should then clarify the information with the client, so any inaccuracy can be corrected as soon as reasonably possible.

- (b) Where a client terminates its appointment of a licensed insurance broker company, the broker company should provide all reasonable cooperation to bring the appointment to an end in an orderly manner, ~~including:~~
- ~~(i) advising the client of any outstanding matters being handled by the broker company relating to the insurance policy and clarifying the broker company's responsibility (if any) for such outstanding matters; and~~
  - ~~(ii) returning the documents relating to the insurance policy, which the broker company holds as agent for the client, to the client or transferring such documents to a party designated by the client.~~

### 3.34 **Protecting a client's privacy and confidentiality**

- ~~(i) (a) A licensed insurance broker 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 broker and which require disclosure to be made.
- ~~(b) With regards to personal data of a client that is collected by a licensed insurance broker in the course of the carrying on of regulated activities, the broker must comply with the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO") and should follow the related guidance<sup>11</sup> issued by the Privacy Commissioner for Personal Data ("Privacy Commissioner") concerning collection, retention, use and security of the personal data.~~

### 3.45 **Record Keeping**

- ~~(a) A licensed insurance broker company should keep proper records in relation to the regulated activities it carries out, so as to comply with the record keeping requirements of all laws, rules, regulations, codes and guidelines applicable to the licensed insurance broker company.~~
- ~~(b) A licensed technical representative (broker) should act in accordance with all requirements, policies and procedures of the licensed insurance broker company he represents relating to the keeping of proper records established by the broker company in order for it to comply with Standard and Practice 3.5(a).~~

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<sup>11</sup> 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 provision<sup>12</sup>, a licensed insurance broker should adhere to the following practices:

- (i) before the ~~client signs the relevant application form~~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 broker 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 insurance policy is delivered to the broker by the insurer concerned, the broker should deliver the insurance policy to the client ~~within a reasonable time~~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; and
- ~~(iii) the broker 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.~~

### 3.57 Assistance in relation to insurance claims

With regard to insurance claims made by a client:

- (i) unless stated otherwise in the client agreement, a licensed insurance broker should (where requested by the client) provide the client with reasonable assistance in submitting any claim under ~~the an~~ insurance policy which was negotiated or arranged by the broker on behalf of the client and pass on any relevant information received from the client in relation to the claim to the insurer concerned as soon as practicable; and
- (ii) exercise reasonable due care to discharge all obligations in relation to the administration, negotiation and settlement of such claims to the extent that such obligations are within the scope of the broker's services stated in the relevant client agreement.

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<sup>12</sup> A cooling-off period provision, in relation to an insurance policy, is a provision which allows the policy holder to cancel the policy within a specified period from inception and obtain a refund.

## **Section IV**

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

*A licensed insurance broker should possess appropriate levels of professional knowledge and experience and only carry on regulated activities in respect of which the broker 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 technical representative (broker) 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 ~~give~~ carry on regulated ~~advice~~ activities.

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

A licensed technical representative (broker) should not ~~give advice~~ carry on regulated activities on matters in relation to which he ~~is not adequately trained or~~ lacks the specific skills or knowledge<sup>13</sup> necessary to carry on the relevant regulated activity. When in doubt, he should seek guidance from the responsible officers or senior management in his appointing licensed insurance broker company.

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<sup>13</sup> The requisite skills or knowledge a licensed technical representative (broker) 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 broker should provide clients with accurate and adequate information to enable them to make informed decisions.*

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

### **Standards and Practices**

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

- (a) ~~Before providing any regulated advice, a~~ licensed insurance broker should provide the following information to ~~his~~ client:
- (i) the name (the registered name as well as the trade name, if any) of the broker;
  - (ii) the licence number of the broker;
  - ~~(ii)~~(iii) the type of licence of the broker, i.e. insurance broker company licence or technical representative (broker) licence;
  - ~~(iii)~~(iv) where the broker is a licensed technical representative (broker), the name of his appointing licensed insurance broker company; and
  - ~~(iv)~~(v) the fact that ~~the broker~~ acts on behalf of the client in dealing with insurers on matters relating to insurance policies being procured by the client.
- (b) Where a licensed technical representative (broker) acts for more than one licensed insurance broker company, he should clearly identify to the client which licensed insurance broker company he is representing in relation to each particular insurance transaction.
- (c) ~~To enable a client to verify the information provided by a~~ licensed insurance broker ~~as to its identity and capacity, the broker 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.:
- ~~(i) inform the client of its licence number upon request; and~~
  - ~~(ii) where the broker is a licensed technical representative (broker), ensure the correctness of his name, his licence number, and the name of his appointing licensed insurance broker company shown on his business card if distributed for the purpose of carrying on regulated activities.~~
- (d) A licensed insurance technical representative (broker) 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 technical representative for the

~~purpose of carrying on regulated activities; not hold itself out as an insurer or an agent of an insurer in carrying on regulated activities.~~

- ~~(i) the name as shown on his Hong Kong identity card or passport<sup>14</sup>;~~
- ~~(ii) licence number;~~
- ~~(iii) type of licence; and~~
- ~~(iv) the name of his appointing licensed insurance broker company.~~

## 5.2 Disclosure in relation to insurance products

- (a) A licensed insurance broker should provide its client with all relevant information on the key features of each insurance product recommended or arranged by the broker. – 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);
  - (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 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 broker should adequately explain the similarities and differences between the products. Any comparison made should be accurate and avoid any unfair comparisons. not misleading (See also Standard and Practice 1.1(c)).
- (c) Where a licensed insurance broker intends to give regulated advice on or arrange an insurance policy with an insurer which is not authorized by the IA,<sup>15</sup> ~~the~~ a the broker should disclose to the client:
  - (i) the name and address of the insurer in the jurisdiction where the insurer has issued the policy and (if different) the jurisdiction where the insurer is incorporated;
  - (ii) the fact that the insurer is not regulated by the IA and is subject to different laws and regulations;
  - (iii) the financial standing of the insurer (e.g. for example, whether the insurer has a credit rating and, if so, what the credit rating is); and

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<sup>14</sup> The licensed technical representative (broker) 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.

<sup>15</sup> Nothing in paragraph 5.2(c) alters the position under section 6(1)(a) of the Ordinance, which requires companies carrying on insurance business in or from Hong Kong to be authorized under section 8 of the Ordinance.

- (iv) the governing law of the insurance policy and the jurisdiction in which disputes under the policy will be determined.

Where the client is an individual, the licensed insurance broker should also obtain written acknowledgement from the client of the disclosures in (i) to (iv) (and keep a record of such acknowledgement).

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

- (a) When ~~assisting~~ a client ~~to make~~ is making an application for insurance ~~or fill out an insurance application form (or other forms in connection with the application); assistance of~~ a licensed insurance broker, the broker 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 insurer<sup>16</sup>; 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~~.
- (b) When negotiating or arranging an insurance policy with an insurer on behalf of a client (i.e. prior to the insurance policy being entered into), a licensed insurance broker should:
  - (i) not make any false statements or mislead the insurer;
  - (ii) disclose to the insurer all material information facts in relation to the insurance policy, which ~~has~~ have been provided to the broker by the client; and
  - (iii) disclose to the insurer all material facts in relation to the prospective insurance policy of which the broker is aware.

### 5.4 Client agreements and terms of business with clients

- (a) A licensed insurance broker company should enter into an written agreement with ~~each a client~~<sup>17</sup>, before arranging an insurance policy setting out in writing the terms and conditions of business on which the licensed insurance broker will carry

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<sup>16</sup> The broker 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.

<sup>17</sup> In respect of the requirements relating to a client agreement, "client" refers to the client with whom the client agreement is being entered into (e.g. if the client is entering into an insurance policy under which other insured persons as well as the client are to be covered, and the client is representing all insured persons in entering into the insurance policy, there is no need for the client agreement to be with those other insured persons).

on regulated activities for the client (“Client Agreement”), stating:

- (i) the names of the parties to the agreement;
- (ii) the appointment of the broker company by the client;
- (iii) other terms of business as may have been specifically agreed between the parties; 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) The client agreement may be entered into:

- (i) by the client signing the agreement which sets out the written terms and conditions;
- (ii) by the client providing written consent to the broker’s written terms and conditions of business (including by e-mail or other electronic mechanism); or
- (iii) by conduct (with the broker company providing the client with its written terms and conditions of business for carrying on regulated activities for the client’s review, and the client proceeding or continuing with the instruction to the broker company to carry on regulated activities, or otherwise indicating acceptance of such written terms and conditions of business, for example, by paying the premium for the insurance product arranged by the broker company).

(b)(c) A copy of the Client Agreement should be provided to the client as soon as reasonably practicable and the broker company should keep a record of the client agreement.

## **5.5 Disclosure in relation to a client referred by another person<sup>18</sup>**

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

- (i) the broker will be responsible for arranging the insurance policy and, for this purpose, the client should only deal directly with the broker (i.e. the client should not deal with the referrer for arranging the insurance policy);
- (ii) the referrer does not represent the broker and should have no involvement in the arrangement of the insurance policy;
- (iii) the broker disclaims all liability for any advice in relation to the insurance policy given to the client by the referrer; and

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<sup>18</sup> Under section 64G of the Ordinance, a person must not carry on a regulated activity in the course of the person’s business or employment, or for reward, unless the person is a licensed insurance intermediary or exempt from the licensing requirements 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.

(iv) premium for the insurance policy should be paid directly either to the broker or the insurer concerned (and not to the referrer).

(b) Standard and Practice 5.5(a) does not apply where:

(i) the client is referred to a licensed insurance broker company by its appointed licensed technical representative (broker); or

(ii) the referral is made to the licensed insurance broker company in the context of the licensed insurance broker company being engaged by another insurance broker for the purpose of arranging an insurance policy for the client.

### **5.5 Referral business**

~~If a licensed insurance broker 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 broker'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 broker 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 broker 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 broker should:
- (i) take reasonable steps to understand the client's ~~objectives, circumstances, needs and priorities~~;
  - ~~(ii) explain to the client that a proper assessment cannot be made if necessary information for a suitability assessment cannot be obtained;~~
  - ~~(iii) take into account such objectives, circumstances, needs and priorities when giving regulated advice;~~
  - ~~(iv)~~ (ii) source a sufficient<sup>19</sup> range of relevant insurance products available on the market from a sufficient range of different insurers or explore other insurance options ~~(including customizing insurance programs), and provide suitable,~~ and consider the available insurance options ~~to~~ in view of the client's circumstances;
  - ~~(v)~~ (iii) take into account the client's circumstances when giving regulated advice to the client and have a reasonable basis for such advice; and 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
  - (iv) if a client does not provide information for the ~~basis~~ suitability assessment which is necessary for the ~~recommendation upon~~ licensed insurance broker to

<sup>19</sup> See footnote 7 above.



achieve the client's request; objective in Standard and Practice 6.1(a) above, the licensed insurance broker should explain that its regulated advice may not be suitable to address the client's circumstances unless such information is provided.

~~(vi) comply with any other relevant requirements in any rules, regulations, codes, guidelines, circulars and other regulatory instruments as specified by the IA from time to time and published on the IA's website.~~

(c) The level of suitability assessment should be proportionate and reasonable, taking into account the client's circumstances ~~of the client~~ and other factors such as the type of insurance product under consideration.<sup>20</sup>

## 6.2 Recommendation

(a) ~~A~~The regulated advice given by a licensed insurance broker ~~should use reasonable efforts to ensure that the regulated advice~~a client (e.g. advice in relation to the making of an application or proposal for a contract of insurance) ~~given by the~~should be advice that a reasonable licensed insurance broker ~~is~~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 broker has carried out a suitability assessment and provided regulated advice—a recommendation, the client insists on making a material decision contrary to the recommendation included in the advice and which, in the broker's opinion, is not suitable for the client's ~~objectives, circumstances, needs or priorities~~, the broker 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 broker to the client;
- the reasons provided~~given~~ by the client (if any) to the broker for ~~histaking~~a decision which does not follow the recommendation;
- the explanation given by the broker's ~~reasons~~ to the client for considering the client's decision to be unsuitable; and
- the fact that the decision is the client's own decision.

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<sup>20</sup> 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 a 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 broker should ~~make every effort~~ use best endeavours to avoid conflicts of interests and when such conflicts cannot be avoided, the broker 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 by providing appropriate disclosure in relation to remuneration**

Where a licensed insurance broker company intends to arrange an insurance policy for its client and will receive remuneration paid by the insurer concerned, the broker company should, before arranging the insurance policy, provide adequate disclosure in relation to such remuneration to the client. Such disclosure should include information and be made in accordance with the manner stated in any rules, regulations, codes, or guidelines, ~~circulares and administered or issued by the IA or~~ other regulatory ~~authorities instruments relating to such remuneration, as specified by the IA from time to time and published on the IA’s website.~~

#### **7.2 Addressing potential conflicts of interest regarding relationships with insurers**

If a licensed insurance broker has any association or affiliation with an insurer (such as, without limitation, a common shareholder, director and controller) and the licensed insurance broker intends to recommend an insurance product to a client which is offered by that insurer, then the broker should (prior to making the recommendation) disclose its association or affiliation with the insurer to the client.

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

- (a) Where a licensed insurance broker ~~also~~ has another business or occupation, ~~it~~ the broker should ~~not allow~~ avoid any conflict arising between its interests in that other business or occupation ~~to jeopardize its integrity, independence and~~

competence and the interests of the client when carrying on regulated activities. In the event the broker 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 broker's interests in the other business or occupation. a licensed insurance broker.

- (b) Where another company in the same group of companies<sup>21</sup> as the licensed insurance broker company is providing services in relation to an insurance policy in respect of which the broker is providing regulated activities, the broker should take steps to avoid or manage (through, for example, disclosure) any potential conflicts<sub>s</sub> of interest which may arise, so as to ensure the client is treated fairly at all times.

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<sup>21</sup> "group of companies" has the meaning assigned to it in section 2 of the Companies Ordinance (Cap. 622).

## **Section VIII**

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

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

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

### **Standards and Practices**

#### **8.1 Handling of client assets**

- (a) A licensed insurance broker company must handle client ~~assets (including client monies)~~ monies (and any other client assets received by the broker in the course of carrying on regulated activities) in strict compliance with the requirements stipulated in law and the relevant rules, regulations, codes, and guidelines, ~~circulares and other regulatory instruments~~ administered or issued by the IA, including without limitation:
- (i) the requirements set out in Section 71 of the Ordinance;
  - (ii) the requirements set out in the Insurance (Financial and Other Requirements for Licensed Insurance Broker Companies) Rules;
  - (iii) the terms and conditions of its ~~C~~client Agreement with the client; and
  - (iv) the fiduciary duties it owes to its clients.
- (b) A licensed insurance broker company should have sufficient controls and security in place to prevent unauthorized access to client assets.

## **Part D – Section IX**

### **Corporate Governance and Controls and Procedures for Licensed Insurance Broker Companies**

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

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Related Statutory Conduct Requirements: Section 92(1) of the Ordinance sets out the relevant conduct requirements for a licensed insurance broker company 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 broker company and the licensed technical representatives (broker) appointed by the broker company;*
- (b) it must use its best endeavours to secure observance with the controls and procedures established under paragraph (a) by the licensed technical representatives (broker) appointed by the broker company;*
- (c) it must ensure that its responsible officer has sufficient authority within the broker company for carrying out the responsibilities set out in section 92(2); and*
- (d) it must provide its responsible officer with sufficient resources and support for carrying out the responsibilities set out in section 92(2).*

### **Corporate Governance**

A licensed insurance broker company 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 objectives of acting in the best interests of clients and ~~fair client treatment~~ treating clients fairly. The extent and scope of the broker company'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 broker company 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 broker company should have proper controls, procedures and adequate supervision to ensure that:
- (i) persons who are recruited, employed by, associated with, or act for the broker company 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 broker company and its staff, particularly its licensed technical representatives (broker) comply with all laws, rules, regulations, codes, ~~and guidelines, circulars and other regulatory instruments~~ relevant to the carrying on of regulated activities in the broker's lines of business;
  - (iii) its licensed technical representatives (broker) comply with the broker company'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 (broker) 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. ~~Insurer and~~ Insurance product and insurer due diligence

- (a) A licensed insurance broker company should have in place proper controls and procedures to ~~conduct due diligence<sup>22</sup> on an insurer from which it intends to source insurance products.~~
- ~~(b) A licensed insurance broker company should have in place proper controls and procedures to~~ assess the nature and key features of insurance products<sup>23</sup> in respect of which the broker company intends to provide regulated advice to clients. The assessment of such insurance products should be made:

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<sup>22</sup> ~~The level of diligence required will depend on the type of business and the amount of business the licensed insurance broker company places with the insurer concerned.~~

<sup>23</sup> The objective of product due diligence is to reinforce the standards and practices in this Code in relation to product knowledge (Standard and Practice 4.1) and sourcing of insurance products (Standards and Practices 2.2(b) and 6.1). The level of due diligence required will depend, in part, on the type of insurance product concerned. The Code does not prescribe the specific manner in which the due diligence should be carried out. By way of example, a broker company may carry out the due diligence prior to the first time it carries on regulated activities in respect of the product and, thereafter, where the terms and conditions of the product are materially revised. The broker company may also build in the product due diligence process as part of its placement process or as part of its suitability assessment process.

- (i) prior to making any recommendation of such insurance products; and
- (ii) at appropriate periodic intervals thereafter to ensure its due diligence remains up to date.

(b) Where the regulated advice to be given by a licensed insurance broker company is to include advice on the relative merits of particular insurers (for example, an insurer's expertise and track record in a particular line of business, response time in claims handling, financial strength etc.), the broker company should have in place proper controls and procedures to conduct due diligence on such insurers in order to have a reasonable basis for providing such advice.

- (c) A licensed insurance broker company should ensure documentation evidencing the processes in (a) and (b) above are made and maintained.

### 3. Handling of complaints

- (a) A licensed insurance broker company should have proper controls and procedures to handle and resolve complaints about regulated activities carried on by the broker company or its licensed technical representatives (broker) in a timely ~~and~~, fair and proper manner.

- (b) In order to achieve the objectives in paragraph (a), the licensed insurance broker company 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 IA) if the complaints cannot be resolved to the complainants' satisfaction by the broker company;
- (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 the relevant insurers to resolve such complaints.

### 4. Keeping of records

A licensed insurance broker company 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 (broker)) 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 licensed insurance broker company.

## 5. Reporting of ~~material~~ incidents to the IA

- (a) A licensed insurance broker company should report the following incidents to the IA and should have proper controls and procedures to ensure such incidents ~~which are material to its business~~ are reported to the IA, as soon as reasonably practicable ~~after it becomes aware of such incidents, including without limitation, the following:-~~:
- ~~(i) a material breach of requirements under the Ordinance or any rules, regulations, codes, guidelines, circulars or regulatory instruments administered or issued by the IA, by the broker company or its licensed technical representatives (broker);~~
  - ~~(ii) the filing of a petition for winding-up of the broker company;~~
  - ~~(iii) the bankruptcy of any directors, controllers or licensed technical representatives (broker) of the broker company;~~
  - ~~(iv) — (iii) a disciplinary action taken against the broker company or its licensed technical representatives (broker) by a regulatory authority (other than the IA) or any professional body in Hong Kong or elsewhere the Monetary Authority, the Securities and Futures Commission or the Mandatory Provident Fund Schemes Authority; or~~
  - ~~(v) — (iv) a criminal charges or conviction (other than a minor offence) of the broker company or its directors, controllers or licensed technical representatives (broker) by any court in Hong Kong or elsewhere-;~~
- (b) A licensed insurance broker company 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 broker company or its licensed technical representatives (broker); and
  - (ii) any material incidents which happen to the broker company.
- (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 broker company's ability to carry on regulated activities;
    - it indicates that the broker company's controls or procedures are inadequate to ensure compliance by the broker company or its technical representatives (broker) 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 broker company itself;
  - (ii) a licensed insurance broker company 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 broker company is not sure whether a breach or incident is material, the broker is encouraged to report the breach or incident to the IA.

#### **5. ~~Keeping of proper records~~**

- ~~(a) A licensed insurance broker company should have proper controls and procedures to ensure proper records are kept for the following matters in relation to the regulated activities of the broker company and its licensed technical representatives (broker):~~
- ~~— (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.~~

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

The responsible officer of a licensed insurance broker company, and its other senior management who oversee the business of regulated activities carried on by the broker company, should ensure (and should be accountable for ensuring) that the controls and procedures required by 1 to 5 above are in place and effective.

## **Schedule 1**

### **Additional Standards and Practices for Referral of Business**

#### **Business Referred to a Licensed Insurance Broker by Another Person<sup>24</sup>**

- ~~1. Where a client is referred to a licensed insurance broker by another person (a “referrer”), before the broker arranges an insurance policy for the client, the broker should ensure the client is informed that:—
  - ~~(a) the broker will be responsible for arranging the insurance policy and, for this purpose, the client should only deal directly with the broker (i.e. the client should not deal with the referrer for arranging the insurance policy);~~
  - ~~(b) the referrer does not represent the broker and should have no involvement in the arrangement of the insurance policy;—~~
  - ~~(c) the broker 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 broker to the referrer for referring the client to the broker (if the broker 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 broker or the insurer concerned directly and, in no event, to the referrer.~~~~

#### **Referral of Business to Another Licensed Insurance Intermediary by a Licensed Insurance Broker**

- ~~2. If a licensed insurance broker company intends to refer a client to another licensed insurance intermediary with a view to that intermediary arranging an insurance policy for the client, the broker company should ensure that it obtains prior consent from the client concerned before making the referral.~~
- ~~3. If a licensed technical representative (broker) intends to refer a client to another licensed insurance intermediary with a view to that intermediary arranging an insurance policy for the client, the technical representative should ensure that he complies with the policies, procedures and other applicable requirements of its appointing licensed insurance broker company.~~

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<sup>24</sup> Under section 64G of the Ordinance, a person must not carry on a regulated activity in the course of the person’s business or employment or for reward, unless the person is a licensed insurance intermediary or exempt from the licensing requirements. A person who contravenes this licensing requirement commits an offence. The Standards and Practices in this Schedule do not alter the licensing requirements under section 64G of the Ordinance. If a referrer carries on regulated activities and none of the exemptions under the Ordinance apply, then the referrer must be licensed.

## **Application of this Schedule**

4. ~~For the avoidance of doubt, this Schedule does not apply where:~~

- ~~(a) the client is referred to a licensed insurance broker company by its appointed licensed technical representative (broker); or~~
- ~~(b) the referral is made to the licensed insurance broker company in the context of the licensed insurance broker company being engaged by another insurance broker for the purpose of arranging an insurance policy for the client.~~

## Annex C

### List of Respondents (in alphabetical order)

1. AIB Insurance Brokers Limited
2. AON Hong Kong Limited
3. Apex Insurance Brokers Limited
4. Apex Insurance Management Limited
5. Consumer Council
6. Hon Holden Chow Ho-Ding
7. Hong Kong Insurance Intermediaries Association Limited
8. Hong Kong Insurance Practitioners General Union
9. Huarong Wealth Management Limited
10. Independent Commission Against Corruption
11. Insurance Industry Regulatory & Development Concern Group
12. KSY Speciality Limited
13. Lau Ming Fai
14. Lloyd's
15. Lockton Companies (Hong Kong) Limited
16. MI Insurance Brokers Limited
17. Marsh & McLennan Companies (MMC) on behalf of  
Marsh Brokers (Hong Kong) Limited  
Marsh (Hong Kong) Limited  
Bowring Marsh (Hong Kong) Limited  
Guy Carpenter & Company, Limited  
Jardine Lloyd Thompson Limited  
Jardine ShunTak Insurance Brokers Limited
18. Old Mutual International Isle of Man Limited
19. Privacy Commissioner for Personal Data
20. Professional Insurance Brokers Association
21. The Chartered Insurance Institute Hong Kong Ltd
22. The Hong Kong Association of Banks
23. The DTC Association (The Hong Kong Association of Restricted Licence  
Banks and Deposit-taking Companies)
24. The Hong Kong Confederation of Insurance Brokers
25. The Hong Kong Federation of Insurers
26. The Institute of Financial Planners of Hong Kong
27. The Law Society of Hong Kong
28. 專業同盟(保險)