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## STATEMENT OF DISCIPLINARY ACTION

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### The Disciplinary Action

1. The Insurance Authority (“**IA**”) has taken the following disciplinary actions against Convoy Financial Services Limited (“**CF Services**”) and Convoy Financial Solutions Limited (“**CF Solutions**”) (collectively referred to as the “**Companies**” in this statement) pursuant to section 113 of Schedule 11 to and section 81 of the Insurance Ordinance (Cap. 41) (“**IO**”):-
  - (a) the Companies are each ordered to pay a pecuniary penalty of \$95,000; and
  - (b) the Companies are publicly reprimanded.

### Summary of Facts

2. The Companies were insurance broker companies at the material time. Both were wholly owned subsidiaries of Convoy Global Holdings Limited.
3. Prior to 23 September 2019, under the prevailing self-regulatory regime for insurance broker companies, CF Services was a member of the Professional Insurance Brokers Association (“**PIBA**”) and CF Solutions was a member of the Hong Kong Confederation of Insurance Brokers (“**CIB**”).
4. Each Company was therefore required to comply with the following requirements:
  - a. **Client Account Requirement:** to keep a separate client account maintained at an authorized institution and deposit any client monies received into its client account without delay and not deposit any non-client monies into the client account. The Client Account Requirement pre-23 September 2019 applied to both of the Companies by reason of paragraph 3(D) of the Guideline on Minimum Requirements for Insurance Brokers (“**Minimum Requirements**”) and in the case of CF Solutions, per paragraph 5.3 of CIB’s Membership Regulations; and
  - b. **Record Keeping Requirement:** to keep proper books and records as will sufficiently explain and reflect the Company’s financial position, enable financial statements to be prepared from time to time which give a true and fair view of the Company’s financial position, and in such a manner as will enable them to be conveniently and properly audited. The Record Keeping Requirement pre-23 September 2019 applied to both of the Companies by reason of paragraph 3(E) of the Minimum Requirements and in the case of CF Solutions, per paragraph 5.4 of CIB’s Membership Regulations.

5. On and from 23 September 2019, when the new direct regulatory regime for licensed insurance intermediaries came into effect, both Companies became (and still are) licensed insurance broker companies subject to that regime. The Client Account Requirement was essentially replicated and continued to apply in relation to licensed insurance broker companies under the new direct regulatory regime by reason of section 71(1) of the IO and Rule 6 of the Insurance (Financial and Other Requirements for Licensed Insurance Broker Companies) Rules (Cap. 41L) made under section 129 of the IO (“**Broker Rules**”). The Record Keeping Requirement also was essentially replicated and continued to apply to licensed insurance broker companies under the new direct regulatory regime by reason of Rule 7 of the Broker Rules.
6. In January 2018, one of CF Services’ client accounts which was linked to its online sales platform was closed. As a result, CF Services began to utilize CF Solutions’ client account (which was also linked to the sales platform) for the purpose of receiving CF Services’ client monies. This was originally intended to be only a temporary measure, with the intention being to transfer the monies across to another CF Services’ client account on a daily basis. However, it turned out neither to be temporary nor did the daily transfers take place. Instead, during the period from January 2018 to 11 November 2019 a total of \$1,870,060.40 of CF Services’ client monies (affecting 6,854 policies) were paid into CF Solutions’ client account. By allowing its client monies to be paid into CF Solutions’ client account, CF Services contravened the Client Account Requirement. Similarly, by allowing monies which were not monies from its own clients to be paid into its client account, CF Solutions contravened the Client Account Requirement.
7. Further, during the period from February 2018 to April 2020, a total of \$100,974.76 of CF Solutions’ client monies were paid into CF Services’ client account affecting 79 policies. The cause of this stemmed from CF Services’ client account details being erroneously stated in the relevant payment and renewal notices issued to clients of CF Solutions. By allowing its client monies to be paid into CF Services’ client account, CF Solutions contravened the Client Account Requirement. Similarly, by allowing monies which were not monies from its own clients to be paid into its client account, CF Services contravened the Client Account Requirement.
8. Related to these failures, the respective auditors of both Companies confirmed in their compliance reports that accompanied with the Companies’ financial statements for the financial years ended 31 December 2018 and 31 December 2019 that each Company had failed to reconcile its bank accounts with sufficient regularity or maintain sufficient and proper accounting and other records to reflect that their respective client monies had been kept in their respective client accounts in a manner that would enable an audit to be properly carried out, as the Record Keeping Requirement demanded. Indeed, these failures were only finally remediated once the Companies started to perform monthly reconciliation of their bank accounts in August 2020.

## **Contraventions**

9. As a result of the failures summarized in paragraphs 1 to 8 above, between January 2018 and July 2020:
  - (a) In relation to the Client Monies Requirement, CF Services and CF Solutions breached Paragraph 3(D) of the Minimum Requirements (with CF Solutions also breaching paragraphs 3.7 and 5.3 of the CIB's Membership Regulations) and then section 71(1) of the IO and Rule 6(7) of the Broker Rules; and
  - (b) In relation to the Record Keeping Requirement, CF Services and CF Solutions breached Paragraph 3(E) of the Minimum Requirements (with CF Solutions also breaching paragraphs 3.7 and 5.4 of the CIB's Membership Regulations) and then Rule 7(1) of the Broker Rules.
10. Consequently, the IA has taken the disciplinary actions against both CF Services and CF Solutions as stated in paragraph 1 above.
11. In deciding these disciplinary actions, the IA had regard to the relevant penalty guidelines issued by PIBA and CIB, as applicable, and the Guideline on Exercising Power to Impose Pecuniary Penalty in Respect of Regulated Persons under the Insurance Ordinance (Cap. 41)<sup>1</sup>, and took into account of all relevant circumstances of the case including (but not limited) the need to send a strong message to the insurance broking profession and the public on the importance which the IA places on compliance with the Client Account and Record Keeping Requirements to deter similar contraventions going forward.

## **Conclusion**

12. The Client Account Requirement and the Record Keeping Requirement are fundamental and imperative policyholder protection measures. Licensed insurance broker companies serve as agents of, and owe fiduciary duties to the policyholders they serve. Given this fiduciary relationship, when a licensed insurance broker company collects and holds monies on behalf of its clients, it holds those monies on trust for its clients. The Client Account Requirement reinforces this by requiring those monies to be kept in a separate account, thereby operationally ring-fencing those monies from the broker companies' own assets (which is particularly important in the event of an insolvency, to ensure client monies held on trust can be easily identified and reserved only for the clients). The Record Keeping Requirement complements this by seeking to ensure a broker company's accounting records reflect, inter alia, that the client monies it receives are paid into its client account (and that only client monies are held in the client account). The contraventions by CF Services and CF Solutions effectively removed this fundamental policyholder protection from their clients and thereby prejudiced their clients' interests for an extended period of time.
13. The IA adopts a zero-tolerance policy against such failures which serve to undermine the trust on which the insurance market must be founded. The Client Account Requirement under the new direct regulatory regime (per section 71(1) of the IO), if contravened, may render a broker

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<sup>1</sup> Published under section 85 of the IO setting out the considerations the IA will take into account in exercising its power to impose a pecuniary penalty.

company subject to criminal sanctions<sup>2</sup> going forward, which reflects the importance of the requirement. It is imperative, therefore, for licensed insurance broker companies to comply with these requirements at all times and the IA will not hesitate to take proportionate action in the event of contravention.

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<sup>2</sup> Pursuant to section 71(1) of the IO a licensed broker company must hold any of the client monies separate from the company's monies and pay them, as soon as practicable after receiving the monies, into an account maintained by the company with an authorized institution for holding the specified monies. A contravention of section 71(1) of the IO amounts to an offence which is liable to a fine of \$1,000,000 and imprisonment for 5 years on conviction on indictment, or a fine at level 6 (i.e. \$100,000 at present) and to imprisonment for 6 months on summary conviction.