



## **CONSULTATION ON DRAFT CODES OF CONDUCT FOR LICENSED INSURANCE AGENTS AND LICENSED INSURANCE BROKERS**

### **SUBMISSION**

1. On 28 March 2019, the Insurance Authority ("IA") published consultation papers (the "Agents' Code Consultation Paper" and the "Brokers' Code Consultation Paper" and together the "Consultation Papers") for public comment relating to the introduction of two codes of conduct regulating the activities of licensed insurance agents and licensed insurance brokers, namely:
  - (i) Draft Code of Conduct for Licensed Insurance Agents ("Draft Agents' Code"); and
  - (ii) Draft Code of Conduct for Licensed Insurance Brokers ("Draft Brokers' Code").
  
2. The Law Society has reviewed the Draft Agents' Code and the Draft Brokers' Code (together the "Draft Codes"). The consultation sets out questions which seek only Yes/No answers but we consider that the questions over-simplify and do not address the substantive issues raised by the Consultation Papers and the Draft Codes which require more detailed consideration. We therefore do not include a response to those questions but set out below our general observations on the two Draft Codes, our comments on the following major issues and, in the Schedule, our detailed comments on certain specific provisions of the Draft Codes:
  - (i) "best interests" requirement;
  - (ii) disclosure;
  - (iii) legal status of the Agents' Code and Brokers' Code.

3. Save where expressly identified, all comments apply to the equivalent provisions in both the Draft Codes. It is noted that the relevant provisions of the Insurance Ordinance (Cap.41) ("Ordinance") are not yet in operation at the time of this Submission and this Submission is made on the assumption that all relevant provisions of the Ordinance will be brought into operation on or before the promulgation of the Draft Codes as codes of conduct regulating the activities of licensed insurance agents and licensed insurance brokers.

### **General Observations**

4. Licensed insurance agents (as representatives of insurers) and licensed insurance brokers (as representatives of policy holders or potential policy holders) have different roles in the insurance industry. We appreciate that two separate codes of conduct are drafted and proposed to be issued in order to ensure that these different roles are kept separate and distinct, even though the legislation in some instances imposes burdens on insurance intermediaries without distinguishing between insurance agents and insurance brokers.
5. We note that the IA, on 29 April 2019, released the Consultation Conclusions on Draft Insurance (Maximum Number of Authorized Insurers) Rules and decided to maintain the cap at 4, meaning that a licensed individual insurance agent or insurance agency may represent up to 4 authorized insurers, of which no more than 2 can be insurers authorized to carry on long term business.
6. We also note that the IA, on 29 April 2019, released the Consultation Conclusions on Draft Insurance (Financial and Other Requirements for Licensed Insurance Broker Companies) Rules.

### **Comments on Major Issues**

#### **"Best interests" requirement**

7. Section 90(a) of the Ordinance states *"When carrying on a regulatory activity, a licensed intermediary must act honestly, fairly, in the best*

*interests of the policy holder concerned or the potential policy holder concerned, and with integrity."*

8. It is stated that the Draft Agents' Code and the Draft Brokers' Code aim, amongst others, to inform, supplement and (in certain instances) explain how the Statutory Conduct Requirements in section 90 of the Ordinance will apply to licensed insurance agents and licensed insurance brokers and, in particular, provide guidance on the types of conduct which licensed insurance agents and licensed insurance brokers should adopt to ensure the way they conduct regulated activities is aligned with section 90 (and section 91 for licensed insurance agencies and section 92 for licensed insurance broker companies).
9. The Draft Agents' Code provides that a licensed insurance agent should only recommend insurance products which *best* meet the client's interests, from the range of insurance products offered by the licensed insurance agents' principal insurer(s) (being those products that a reasonable licensed insurance agent would consider suitable for the client based on the client's objectives, circumstances, needs and priorities).
10. In comparison, the Draft Brokers' Code provides that a licensed insurance broker should recommend insurance products which *best* meet its client's interests; and should source a sufficient range of relevant insurance products from a sufficient range of insurers (whether the range of relevant insurance products or insurers is sufficient should be decided by reference to the reasonable standards of a prudent professional licensed insurance broker carrying on regulated activities) to ensure its client's objectives, circumstances, needs and priorities can be suitably met. A licensed insurance broker should not prejudice its client's selection of insurers by being unreasonably dependent on any particular insurer.
11. A licensed insurance agent or a licensed insurance broker may be able to satisfy the "best interests" requirement as explained by the Draft Codes; however, as the Draft Codes do not override the express words of section 90(a) of the Ordinance and as "best interests" is not defined in the Ordinance, there could be situations where the licensed insurance agent or the licensed insurance broker is not in breach of the relevant Code, but is in breach of the law.

12. It is also noted that section 90(a) of the Ordinance does not distinguish the obligations of a licensed insurance agent from those of a licensed insurance broker, yet the IA is seeking to impose different standards on licensed insurance agents and licensed insurance brokers. This appears to be inconsistent with the provisions of section 90(a), even if those different standards may reflect the functional differences between a licensed insurance agent and a licensed insurance broker. Whilst, the fact that the Bills Committee Report<sup>1</sup> notes that the Administration expects the IA to take into account the different roles of insurance agents and insurance brokers, section 90(a) does not permit the IA to apply different standards and requirements through the Codes, which are not subsidiary legislation, though to the extent that it is an ambiguous statutory provision, the Codes may assist the interpretation of that provision.

## **Disclosure**

13. Section 90(e) of the Ordinance states "*When carrying on a regulatory activity, a licensed 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.*"
14. In the judgment of *Hobbins v Royal Skandia Life Assurance Ltd* HCCL 15/2010, the Court observed that as the minimum good practice for insurance brokers, they should disclose the fact that they would be receiving commission from the insurers; it was also necessary for that commission not to exceed the amount normally paid in the insurance market. It should be noted that where the commission would exceed that amount, the insurance broker should make full disclosure of the commission arrangement (including the quantum) to its client and obtain the client's express written consent before soliciting or accepting the commission.
15. It seems unlikely that the new statutory provision would seek to impose a lesser burden on a licensed insurance broker than the Common Law and it is our view that serious consideration should be given to providing guidance to the licensed insurance brokers on the extent of disclosure

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<sup>1</sup> (see <https://www.legco.gov.hk/yr13-14/english/bc/bc06/reports/bc060708cb1-1055-e.pdf>)

required in relation to the commission to be received with regard to a particular policy when acting for a policy holder or proposed policy holder, including guidance on when the actual amount or percentage of commission should be disclosed.

16. Despite licensed insurance agents being the agents of their appointing insurers, similarly it is our view that serious consideration should be given to providing guidance to licensed insurance agents on the extent of disclosure required in relation to the commission to be received or that would be received from the various appointing insurers with regard to a particular policy when acting for more than one long term or general insurer.

### **Legal status of the Codes**

17. The current drafting of Paragraph 4.4 of the Part A of the Draft Codes is as follows:

*"This Code does not have the force of law 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 be relevant to a question arising in the proceedings, the court must, in determining the question, take into account any compliance or non-compliance of this Code (section 95(7) of the Ordinance)."*

18. Pursuant to section 95(6) of the Ordinance, the failure (on the part of a licensed insurance intermediary to comply with the code of conduct) may be taken into account in considering, for a provision of the Ordinance, whether the intermediary is a fit and proper person to remain licensed.
19. Though section 95(5) of the Ordinance states that a failure on the part of a licensed insurance intermediary to comply with a code of conduct does not by itself render the intermediary liable to any judicial or other proceedings, clearly if there are any other grounds for proceedings, the failure to comply with the code may be used in support of those grounds for proceedings and therefore the terms of the code must be written clearly and without ambiguity to ensure that a licensed insurance

intermediary does not inadvertently fail to comply with the code with the consequent risk that that failure may be used in support of proceedings brought on another ground.

20. Section 95(7) of the Ordinance sets out that provision(s) in the code of conduct are admissible in evidence; and the court must, in determining a question arising in any proceedings in which any such provision appears to the court to be relevant, and take into account any compliance or non-compliance of the provision.
21. Section 95(9) of the Ordinance provides that a code of conduct published under this section **is not subsidiary legislation**. (Our emphasis)
22. It is arguable that notwithstanding the text of the proposed Paragraph 4.4 of Part A of the Draft Codes, by reference to the above-quoted sub-sections of the Ordinance, the Codes of Conduct do (or may) have legal effect.
23. To remove any doubt, we suggest that in the Draft Codes, which are formulated under section 95 of the Ordinance, the wording in section 95(9) be followed, i.e. *“The Code of Conduct is not subsidiary legislation.”*
24. Further, and in line with section 95(4) of the Ordinance, it should also be added that –

*“The IA may from time to time amend the whole or any part of any code of conduct published.”*

25. It should further be noted that, though it is stated that the Draft Codes set out a series of general principles of conduct which licensed insurance intermediaries should adopt when carrying on regulated activities, the provisions of section 95 of the Ordinance referred to above make it clear that a failure by a licensed insurance intermediary to comply with a code may have significant and serious consequences for the licensed insurance intermediary. It is also noted that there are frequent references in the Draft Codes to “other applicable rules, regulations, codes, guidelines, circulars and other regulatory instruments administered or issued by the IA”, which is itself an uncertain list of obligations but which thereby results in breach of any of those rules, regulations, codes, circulars and regulatory

instruments having the same effect as a breach of the relevant code. It is important that the requirements of and obligations under the Draft Codes are clear and unambiguous and can be followed precisely and with certainty and that a “principle-based approach” to drafting the general principles of conduct, breach of which may have the stated consequences, is inappropriate.

### **Concluding Remarks**

26. It is acknowledged that in drafting the Draft Codes the IA is seeking to maintain flexibility and to balance the legitimate interests and expectations of the insuring public in the standards of conduct to be expected from licensed insurance intermediaries with the practical and commercial requirements of licensed insurance intermediaries and insurers. However, it should not do so at the expense of legal certainty and the principles of natural justice and it is important that both licensed insurance intermediaries and the insuring public should be clear as to the standards of conduct that can be expected from, and must be provided by, licensed insurance intermediaries. Further refinement of the Draft Codes is therefore required.

**The Law Society of Hong Kong  
18 June 2019**

## SCHEDULE

- (1) A number of the following observations and comments apply in multiple provisions within the Consultation Papers and Draft Codes and are not repeated in every instance. Nevertheless, the relevant observation or comment will apply in such instances.
- (2) Chapter 1, Paragraph 10 of the Consultation Papers: The IA may already directly authorize insurance brokers as an alternative to their authorization by bodies of insurance brokers (see section 69(1) of the Ordinance), while the self-regulatory organization for licensed insurance agents is the Hong Kong Federation of Insurers (“HKFI”, which delegates that function to the HKFI’s Insurance Agents Registration Board). The coming into operation of the Draft Brokers’ Code will therefore mark the beginning of the exclusive powers of direct regulation by the IA of insurance brokers (see Paragraph 18 of the Brokers’ Code Consultation Paper).
- (3) Chapter 1, Paragraph 15 of the Brokers’ Code Consultation Paper/Paragraph 17 of the Agents’ Code Consultation Paper: It is noted that the General Principles, Practices and Standards which will apply to licensed insurance intermediaries will serve as **minimum** levels of professional conduct. However, it is therefore evident that licensed insurance intermediaries will be expected to comply with higher levels of professional conduct in certain instances, details of which are not specified and breach of which may have adverse consequences for the insurance intermediary.
- (4) Chapter 1, Paragraph 20 of the Brokers’ Code Consultation Paper/Paragraph 22 of the Agents’ Code Consultation Paper: It is noted that the IA recognizes that licensed insurance intermediaries differ in scale and complexity of business, that they utilize different channels to communicate and interface with policy holders and potential policy holders and that there may be different ways in which the General Principles and related Standards and Practices in the Draft Codes may be met. However, this cannot justify treating different insurance intermediaries differently for the same breach of the same provision, which would be contrary to natural justice and will result in there not being a “level playing field” and may result in unfair and arbitrary treatment of different insurance intermediaries.



- (5) Chapter 2, Paragraph 24 of the Brokers' Code Consultation Paper: It is useful to observe that a contract of insurance is a contract of utmost good faith between the insurer and the policy holder and that these parties must act in utmost good faith towards each other. The role of the insurance intermediary is to assist with their principal complying with the obligation of utmost good faith although it does not create an independent obligation on insurance intermediaries themselves except insofar as they represent their principals; any breach of utmost good faith by an insurance intermediary may result in loss or damage to its principal but not directly to the insurance intermediary itself. A licensed insurance intermediary should ensure that its principal understands the obligation of the principal to act with utmost good faith.
- (6) Chapter 2, Paragraphs 30 and 35 of the Brokers' Code Consultation Paper/Paragraph 33 of the Agents' Code Consultation Paper: The reference to "sufficient controls" and "adequate controls", should be clarified and could be defined by reference to a documented risk assessment carried out by the insurer (for insurance agents) and by insurance brokers in a manner similar to Guideline 3 from the IA on Anti-Money Laundering and Counter-Terrorist Financing, chapter 2. It should also be noted that it may only be evident that the controls are insufficient or inadequate when they fail.
- (7) Chapter 2, Paragraph 31 of the Brokers' Code Consultation Paper: It is unclear what are "obvious issues". It is suggested that the word "obvious" be deleted and the sentence be read as "*The Brokers' Code also sets certain basic minimum requirements on certain issues which are important to the relationship between a licensed insurance broker company and its client.*"
- (8) Draft Codes, Copyright Notice: As the codes are public regulatory instruments which are admissible in court, and which should be distributed widely among insurance intermediaries as a matter of practice, consider whether it is appropriate to prohibit the copying etc of any provisions of the codes without IA permission. (We note that similar copyright notices appear in some but not all codes issued by the Securities and Futures Commission, but not in those issued by the Hong Kong Monetary Authority.)

- (9) Draft Codes, Preface: As there are only two types of licensed insurance intermediary in Hong Kong, the use of the word “broadly” is unclear. The Codes also set out fundamental principles of professional conduct which buyers and sellers of insurance are entitled to expect in their dealings with licensed insurance intermediaries. It is generally unsatisfactory that a licensed insurance intermediary is required to comply with multiple laws, rules, regulations, codes, guidelines, circulars and regulatory instruments addressing similar or overlapping obligations and it would be preferable if all regulatory obligations addressing a particular issue could be set out in one code or guideline. It should also be noted that breach of any of the specified laws, rules, regulations, codes, guidelines, circulars and regulatory instruments will constitute a breach of this Code with the noted potential consequences, even if the underlying obligation did not have such consequences.
- (10) Draft Codes, Licensed insurance brokers and their relationship with insurers and clients/Licensed insurance agents and the principal-agent relationship: The descriptions of the activities of licensed insurance intermediaries may appear somewhat prescriptive; reference to “regulated activities” may be a safer and broader description and there may be other models for the appointment of insurance intermediaries or functions that an insurance intermediary may perform for its principal. A licensed insurance broker should (not “can”) approach insurers across the market to source the most suitable insurance products for clients. Licensed insurance broker companies owe contractual as well as fiduciary duties to clients when acting as agents of the clients.
- (11) Draft Codes, Part A, Paragraph 1.2: It would be preferable if the applicable provisions could be collated in one code or identified specifically.
- (12) Draft Codes, Part A, Paragraphs 1.4 and 1.6, and Part B: It would be helpful to provide an exhaustive list of General Principles, related Standards and Practices or the relevant controls and procedures, to assist a licensed insurance intermediary to comply with all relevant standards and obligations of which it may not be aware.
- (13) Draft Agents’ Code, Part B: It is confusing to refer to policy holders and

potential policy holders as “clients” in relation to a licensed insurance agent; such persons are not the client of the insurance agent, even if the insurance agent is required to act in their best interests.

- (14) Draft Agents’ Code, Part C, General Principles: Please refer to paragraph 12 of the main submission. A licensed insurance agent is required to act in the best interests of the policy holder concerned, which is more onerous than ensuring the policy holder’s interests are protected as stated in General Principle 2.
- (15) Draft Codes, Part C, GP1: The obligation on a licensed insurance broker to act in utmost good faith should be removed. The obligations of an insurance intermediary with regard to its principal are governed by the terms its appointment and its Common Law fiduciary duties.
- (16) Draft Codes, Part C, GP5: Both licensed insurance agents and licensed insurance brokers should provide their principals (in the case of agents) and insurers (in the case of brokers) with accurate and adequate information to enable the principal/insurer to make informed decisions. In this regard, brokers should provide both their principals and the insurers with accurate and adequate information.
- (17) Draft Agents’ Code, Part C, GP8: Licensed insurance agents will hold money paid by policy holders and potential policy holders for their principals, and the principals will be responsible for safeguarding that money insofar as that money belongs to policy holders and potential policy holders.
- (18) Draft Agents’ Code, Part C, General Principle 1, Paragraph 1.1(a): Please refer to paragraph 12 of the main submission. It is noted that the obligation on a licensed insurance agent to act in the best interests of the policy holder or potential policy holder is omitted, despite this being an express statutory obligation which is stated in the case of licensed insurance brokers in the Draft Brokers’ Code.
- (19) Draft Brokers’ Code, Part C, Paragraph 1.1(b)(c) and (d): It should be noted that the information provided by a licensed insurance broker to its client may be provided to the broker by the insurer or reinsurer and it may not be possible or practical for the broker to ensure that that information is

accurate and not misleading. It may be appropriate to qualify the relevant obligations by stating that inaccurate or incomplete information shall not be knowingly provided to a client and a licensed insurance broker shall not intentionally or recklessly mislead a client.

- (20) Draft Agents' Code, Part C, Paragraph 1.1(d)/Draft Brokers' Code, Part C, Paragraph 1.1(e): The phrase "closely affiliated" should be described more clearly.
- (21) Draft Codes, Part C, Paragraph 1.2: The exemption to offering an advantage to a director, partner or employee of a client should conform to the requirements of the Prevention of Bribery Ordinance. A licensed insurance agent arranges the sale of insurance products and does not seek to offer or arrange the "purchase" of an insurance product.
- (22) Draft Codes, Part C, Paragraph 1.3(b): The requirement to co-operate with the IA should be subject to relevant safeguards relating to the privilege against self-incrimination.
- (23) Draft Codes, Part C, Paragraph 1.3(c): There is an assumption that the licensed insurance broker, appointing insurer and appointing agency will specify requirements in relation to the carrying on of regulated activities by the relevant licensed technical representative or licensed insurance agent.
- (24) Draft Codes, Part C, Paragraph 1.3(d): it may not be possible or practical for the licensed insurance agent or licensed insurance broker to notify the relevant appointing insurer, appointing agency, the IA or the appointing licensed insurance broker company in all the circumstances specified.
- (25) Draft Codes, Part C, Paragraph 1.4: Clarification on what would constitute undue influence or pressurizing a client into making a material decision would be appropriate.
- (26) Draft Agents' Code, Part C, Paragraph 1.5: A licensed insurance agent will receive, rather than submit, an application, claim or other form from a licensed insurance broker on behalf of its client or policy holder or potential policy holder and ordinarily receipt of such form by the insurance agent will constitute receipt of such form by the relevant insurer

concerned. The licensed insurance agent will then forward that form on to its principal, the insurer concerned, in accordance with the insurer's requirements. A licensed insurance agent should not be responsible for confirming the accuracy of the information received by the agent provided by a licensed insurance broker on behalf of its client or from a policy holder or potential policy holder.

- (27) Draft Codes, Part C, General Principle 2 and Paragraph 2.1: Please refer to paragraph 12 of the main submission. It is unclear why the statutory obligations of acting fairly and in the best interests of the policy holder or potential policy holder concerned have been varied: a licensed insurance broker should always act fairly and in the best interests of its clients, while a licensed insurance agent should always act fairly and in the best interests of the policy holder or potential policy holder concerned. Insofar as the proposed General Principle specifies a different or lesser obligation, it will be contrary to section 90(a) of the Ordinance.
- (28) Draft Brokers' Code, Part C, Paragraph 2.2: In sub-paragraph (a), the specified obligation should refer to the client's best interests. It is noted in sub-paragraph (b) that an insurance broker is only required to source a sufficient range of relevant insurance products from a sufficient range of different insurers, with "sufficient" being defined by reference to the reasonable standards of a prudent professional licensed insurance broker carrying on regulated activities. Such reasonable standards should be clarified as otherwise the standards of the relevant licensed insurance broker itself may determine what is reasonable. In sub-paragraph (c), a client's selection of insurers may be unduly restricted if the relevant licensed insurance broker only sources such "sufficient range" of insurance products from such "sufficient range" of different insurers. Further clarification is required as to what would constitute a licensed insurance broker being "unreasonably dependent" on a particular insurer.
- (29) Draft Agents' Code, Part C, Paragraph 2.2(a)(ii)/Draft Brokers' Code, Paragraph 2.3(a)(ii): Relevant information should be explicitly inaccurate or insufficient to require the licensed insurance intermediary to make further enquiries.
- (30) Draft Agents' Code, Part C, Paragraph 2.2(b) and Note 5: The client will not be the licensed insurance agent's client. A licensed insurance agent

should notify a policy holder or potential policy holder that the agent may only be familiar with and will only refer to the products of its appointing principal insurer when giving regulated advice, and that it may be restricted from referring to the products of any other insurer (including another principal) when giving regulated advice, subject always to the agent acting in accordance with the obligations of section 90(a) of the Ordinance.

- (31) Draft Agents' Code, Part C, Paragraph 2.2(c)/Draft Brokers' Code, Paragraph 2.3(c): Please refer to paragraph 12 of the main submission. The overriding obligations are those set out in section 90(a) of the Ordinance and if the advice that a reasonable licensed insurance agent or a reasonable licensed insurance broker would result in the relevant licensed insurance agent or licensed insurance broker failing to satisfy those obligations, the standard specified will not be acceptable. In any event, it is unclear how the advice that a reasonable licensed insurance agent or a reasonable licensed insurance broker would give would be determined.
- (32) Draft Agents' Code, Part C, Paragraph 3.2: The use of the word "client" is confusing in the Draft Agents' Code as the client (a policy holder or potential policy holder) is not the client of a licensed insurance agent and a licensed insurance agent will not carry out a client's instructions, other than the normal requests of a potential buyer to a seller wishing to effect a sale to the potential buyer or to implement an existing contract. This paragraph should be deleted.
- (33) Draft Brokers' Code, Part C, Paragraph 3.2(b): It is suggested that the two sub-paragraphs also refer to an application as well as to an insurance policy. Though it is a matter for the client agreement or commission agreement, the repayment of commission paid for services not yet provided in the future should be considered.
- (34) Draft Codes, Part C, Paragraph 3.3: "Client information" is undefined but should be limited to confidential information belonging to and provided by the client (or, in the case of a licensed insurance agent, from the client's licensed insurance broker). No restriction should be imposed on information relating to the client which is publicly available or which is provided to the licensed insurance intermediary by other parties unconnected to the client.

- (35) Draft Agents' Code, Part C, Paragraph 3.4(i): If a client signs the relevant application form at the offices of the licensed insurance broker or elsewhere, it will not be possible for the licensed insurance agent to inform the client of his right to cancel the policy during the cooling-off period before he signs the application form. In any event, if the client has been informed of his right to cancel the insurance policy during the cooling-off period by his licensed insurance broker before signing the application form, it would seem unnecessary to impose an equivalent obligation on the licensed insurance agent.
- (36) Draft Codes, Part C, Paragraph 3.4(ii): An insurance policy should also be delivered by a licensed insurance agent to an appointed licensed insurance broker of the client within a reasonable time, while an insurance policy may be delivered to a licensed insurance broker by an insurer or by its licensed insurance agent and the insurance broker should deliver the insurance policy to the client within a reasonable time. In all cases, guidance on what would be a reasonable time should be given.
- (37) Draft Brokers' Code, Part C, Paragraph 3.5(ii): If a licensed insurance broker has been appointed by its client to assist with the administration, negotiation and settlement of claims, the insurance broker will also have to comply with the requirements of section 90(a) of the Ordinance, which are more onerous than exercising reasonable care, when providing those services.
- (38) Draft Codes, Part C, Paragraphs 4.1 and 4.2: In addition to the relevant licensed individual insurance agent and licensed technical representative having a good understanding of the key features of the relevant insurance products on which he may give regulated advice, it may be appropriate to require the responsible officers and senior management of the licensed insurance agency and licensed insurance broker to have equivalent understanding, particularly if those responsible officers and senior management are to provide the guidance referred to in Paragraph 4.2. The term "senior management" for these purposes requires clarification.
- (39) Draft Agents' Code, Part C, Paragraph 5.1: In sub-paragraph (a) it may be appropriate for the licensed insurance agent to inform the client (not "his" client) that, though the agent will act in the best interests of the client, the

agent acts for and will take instructions from the insurer (and not the client) on matters relating to the insurance policy purchased or being applied for by the client. In sub-paragraph (b) it may be appropriate for the licensed insurance agent to inform the client of the names of the other insurers that the agent represents with reasons why the agent is not recommending their products. In sub-paragraph (c) it may be appropriate to require a licensed individual insurance agent or licensed technical representative to set out his licence number and the licence number of his appointing insurer or appointing agency on his business card and to provide his business card to the client.

- (40) Draft Codes, Part C, Paragraph 5.2(b): The phrase “unfair comparisons” should be clarified (an example may be taken from the IA’s letter to insurance brokers dated 2 November 1995, including comparisons on price, service, investment returns, the extent of cover and the range of policy conditions).
- (41) Draft Brokers’ Code, Part C, Paragraph 5.2(c): In sub-paragraph (iii), if an unauthorized insurer does not have a credit rating, it may be difficult for the licensed insurance broker to verify the financial standing of an insurer. It may be appropriate to require the licensed insurance broker to inform the client that in the event of a claim or a dispute, the claim may have to be made overseas and the dispute resolved and/or litigated overseas.
- (42) Draft Agents’ Code, Part C, Paragraph 5.3(iii)/Draft Brokers’ Code, Part C, Paragraph 5.3(a)(iii): The relevant licensed insurance intermediary cannot ensure the client’s understanding and can only inform the client of his responsibility for the declaration.
- (43) Draft Agents’ Code, Part C, Paragraph 6.1: In sub-paragraph (a), it appears unnecessary for the licensed insurance agent to carry out a suitability assessment if the client’s licensed insurance broker has already carried out such an assessment. In sub-paragraph (b)(iv), it should be made clear that this obligation only extends to the products offered by the licensed insurance agent’s insurer principals. In sub-paragraph (b)(v), where the licensed insurance agent acts for more than one life insurer principal or more than one general insurer principal, and the level of compensation from insurers offering a relevant policy differ the agent should also disclose the amount or percentage of commission he will



receive from the relevant insurer principal on the sale of the product recommended and the commission he would receive from his other insurer principals who offer equivalent products which he does not recommend.

- (44) Draft Brokers' Code, Part C, Paragraph 6.1: In sub-paragraph (b)(iv), the phrase "sufficient range" of relevant insurance products available on the market should be clarified. In sub-paragraph (b)(v), the licensed insurance broker should also disclose the amount or percentage of commission and other benefits (if any) he will receive from the relevant insurer on the purchase of the product recommended.
- (45) Draft Codes, Part C, Paragraph 6.1(c): Please refer to paragraph 12 of the main submission. The obligation under this sub-paragraph is subject to the over-riding obligations in section 90(a) of the Ordinance. Guidance should be given on what would be proportionate and reasonable in determining the level of suitability assessment to be carried out. It is further suggested that the words "circumstances" appearing in paragraph 6.1(c) be replaced by "best interests". The sentence be read as, "*The level of suitability assessment should be proportionate and reasonable, taking into account the best interests of the client and other factors such as the type of insurance product under consideration.*"
- (46) Draft Codes, Part C, Section 7 Heading: Where a conflict of interest exists and cannot be avoided, the licensed insurance intermediary should disclose that conflict to the client and manage the conflict as appropriate to ensure that the insurance intermediary acts in the best interests of the client and the client is treated fairly at all times.
- (47) Draft Codes, Part C, Paragraph 7.1: Where a licensed insurance agent acts for more than one life insurer principal or more than one general insurer principal and the level of compensation from insurers offering a relevant policy differs, the agent should also disclose the amount or percentage of commission he will receive from the relevant insurer principal on the sale of any product recommended and the commission he would receive from his other insurer principals who offer equivalent products which are not recommended. The phrase "adequate disclosure" by a licensed insurance broker is not sufficiently clear if the broker will be paid commission by the insurer whose products he recommends to his client to purchase; the

IA could specify the extent of the disclosure relating to commission that should be made.

- (48) Draft Agents' Code, Part C, paragraph 7.2: A licensed insurance agent should disclose to the client that he represents and is the agent of more than one insurer and provide the names of those insurers and whether they are life, general or composite insurers.
- (49) Draft Codes, Part C, Paragraph 7.3: Any interests of the licensed insurance intermediary in another business or occupation should not affect or prejudice any regulated activity carried on by that intermediary for the client and notwithstanding that other business or occupation the intermediary should act fairly and in the best interests of the client.
- (50) Draft Codes, Part C, Paragraph 8.1: A licensed insurance agent or licensed insurance broker should also be responsible for any client assets (including client monies) received by its technical representative. If a licensed insurance agent or licensed insurance broker is paid claim monies by an insurer, the agent or broker should handle the monies as instructed by the insurer and, subject to those instructions, should pay those claim monies to the client promptly.
- (51) Draft Codes, Part D: The term "senior management" should be clarified. Even if the licensed insurance intermediary's governance structure may depend on the matters specified, the integrity of the intermediary must not be compromised and it must act in accordance with the requirements of section 90 of the Ordinance. Similarly guidance should be given on what would constitute "proper controls".
- (52) Draft Codes, Part D, Paragraph 1(a)(iv): A technical representative should have a good understanding of all the features, and not just the key features, of the insurance products on which they give regulated advice (see also Draft Brokers' Code, Part D, Paragraph 2(b)).
- (53) Draft Brokers' Code, Part D, Paragraph 2(a) and Note 9: The nature and extent of the due diligence on an insurer should be consistent, including matters of licensing, corporate governance and management, financial strength, service standards and claims paying ability and speed. Any such due diligence should be carried out on an insurer (not only on any

insurance products on which regulated advice is given) before any business is placed with an insurer and should be reviewed at periodic intervals.

- (54) Draft Agents' Code, Part D, Paragraphs 2(b)(v) and 3(a)/ Draft Brokers' Code, Part D, Paragraphs 3(b)(v) and 4(a): In the absence of a statutory obligation, a licensed insurance intermediary should not be deprived of the relevant safeguards relating to the privilege against self-incrimination.
- (55) Draft Agents' Code, Schedule 1, Paragraphs 1 and 3: Though the statements set out appear correct and this may be good practice and helpful guidance in most cases, it is unclear that they are appropriate for inclusion in the Draft Agents' Code. In the absence of restriction by a principal, and provided that no regulated activity is carried on by a person who is not appropriately licensed, a licensed insurance agent should be permitted to accept a referral of a client or refer a client to another licensed insurance intermediary without restriction. The same comment applies to Draft Brokers' Code, Schedule 1, Paragraph 3.
- (56) Draft Agents' Code, Schedule 1, Paragraph 2/ Draft Brokers' Code, Schedule 1, Paragraph 1: In sub-paragraph (d), if the referrer is the agent of the client, the licensed insurance intermediary should also disclose the amount of the benefit or the percentage to be provided to the referrer.
- (57) Draft Brokers' Code, Schedule 1, Paragraph 2: Given that the licensed insurance broker company is the appointed agent of the client, it would seem appropriate that any consent to refer the client to another licensed intermediary should be in accordance with the terms of that appointment and should be in writing.
- (58) Draft Codes, Schedule 1, Paragraph 4(b): The Schedule should not apply where a referral is made to the licensed insurance broker or the licensed insurance agent by another licensed insurance broker or licensed insurance agent, provided that the prior written agreement of the client to the referral has been obtained (in the case of a referral from a licensed insurance broker) and the referral is made in accordance with the terms of the licensed insurance broker's appointment or the licensed insurance agent's appointment (as the case may be).

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