

Code of Conduct – Draft Guidance on “Best Interests Requirement”

Background

New section 89 of the Insurance Companies (Amendment) Bill 2014 (“IIA Bill”) sets out the statutory conduct requirement that licensed insurance intermediaries “must act honestly, fairly, in the best interests of the policy holder concerned or the potential policy holder concerned, and with integrity” (“best interests requirement”). As we have explained to members of the Working Group, for the sake of clarity, we have taken on board the industry's suggestion of adding provisions to clarify that a failure to comply with a conduct requirement does not by itself render any person liable to any judicial proceedings, and will move Committee Stage Amendments to add new section 91A to this effect.

Issues

2. The Bills Committee discussed the concern of the insurance agents that the “best interests requirement” for insurance agents should be different from those for insurance brokers. The Government has stressed that the introduction of the “best interests requirement” will not change the difference between insurance agents and insurance brokers as 2 distinct categories of insurance intermediaries. The very fundamental difference that an insurance agent acts on behalf of his appointing authorized insurer whereas an insurance broker acts on behalf of his client will remain. The Government expects that in drawing up the code of conduct to further elaborate on what constitutes “best interests”, the independent Insurance Authority (“IIA”) will take into account the different roles of insurance agents and brokers. The proposed new section 93(7) stipulates that the code of conduct will be admissible in evidence in any proceedings under the Ordinance before a court, and that “if a provision in the code appears to the court to be relevant to a question arising in the proceedings, the court must, in determining the question, take into account any compliance or non-compliance of the provision”. The Bills Committee does not have any objection to the proposed approach.

Way Forward

3. To serve as a handy reference for IIA when it prepares the relevant Code of Conduct for the industry, a think piece (Annex) was prepared and issued to members of the Working Group on 30 October 2013 for comments. With the conclusion of Bills Committee's scrutiny of the IIA Bill, we would like to invite members again to comment on the proposed principles and provide more illustrative examples to beef up the document.

Financial Services and the Treasury Bureau
19 June 2015

** Version issued to members of the Working Group on 30 October 2013 **

1st Draft

[Note: This is not a legal document. This document is prepared to facilitate discussion among members of the Working Group on Transition to the Independent Insurance Authority (“IIA”). Outcome of discussion facilitated by this document may serve as the basis of recommendations to the future IIA. However, anything stated in this document does not constitute a promise, have binding effect on discussants, nor pre-empt the decisions of the future IIA.]

Possible guidance for insurance agents on acting in the best interests of policyholders

A. Preamble

As far as an insurance agent’s conduct is concerned, the principle of acting in the best interest of policyholders (including prospective policyholders) aims to address the problems of information asymmetry and conflict of interests. Very often, a policyholder does not possess the same amount of information about a product as the manufacturer and agents do. A policyholder relies on the information of a product and advice of the manufacturer or an agent in evaluating whether a product suits his needs and making decisions concerning after-sale administration of an insurance policy (e.g. policy renewal). Advice given in the interest of the prospective policyholders to enable them to make informed decisions will enhance their trust and confidence in insurance products as well as the insurance industry. The remuneration structure for agents and commercial objectives of insurers may however give rise to conflict of interest resulting in misinformed decisions by policyholders. Agents should disclose such a conflict if it arises to enable policyholders to make informed decisions.

B. General guiding principle

B.1 An agent shall act honestly, fairly, professionally and in good faith in accordance with the best interests of his policyholders.

B.2 An agent shall place the policyholder’s interest above his interest.

B.3 An agent shall avoid any conflict of interest and if such a conflict arises, he shall disclose the conflict to the policyholder.

C. Guidance on steps to be taken to fulfill the best interests obligation

At point of sale

C.1 To take reasonable steps to know your policyholder by identifying his financial planning objectives, financial situation and needs.

C.2 To make reasonable inquiries to obtain information from the policyholder if necessary to understand his financial planning objectives, financial situation and needs.

C.3 To evaluate the suitability of a product to a policyholder against his financial planning objectives, financial situation and needs identified in the “know your policyholder process”.

C.4 To assess whether you are professionally competent and whether your understanding of the product is adequate to tender proper advice to your policyholder.

C.5 To explain when and how the premium is payable and how much premium is to be collected.

C.6 To ensure that the policyholder completed the insurance proposal personally.

C.7 To provide the policyholder with all material information honestly to enable the policyholder to make a decision that is in his best interest. This includes –

- (a) explanation of all essential provisions contained in the contract of insurance as far as practicable;
- (b) drawing the policyholder’s attention to any conditions or any exclusions and any warranty applying to the contract of insurance; and
- (c) explanation of clauses and conditions relating to the right of cancellation and, where applicable, the duration of the cancellation period and the conditions for exercising the right to cancel, including information on penalties that may arise thereon.

C.8 To allow time for the policyholders to make an informed decision. An agent shall never urge a policyholder to make hasty decisions.

C.9 To make sure that the policyholder is aware of available channels to seek redress for grievance.

Renewal of policy

C.10 To ensure that the policyholder is informed in writing of the expiry date of the insurance policy not less than one month before the expiry date. [This could be fulfilled through actions by the insurer.]

C.11 To alert the policyholder to changes affecting the policy, which have occurred since the policy inception or the last renewal date.

C.12 To provide the policyholder with honest advice on consequences of non-renewal as well as alternatives to renewal that is in the best interest of the policyholder, having due regard to his financial planning objectives, financial situation and needs at the time of renewal.

D. Breach of the principle of best interest

Breaching the statutory principle of and this guidance on acting in the best interest of policyholders carries no criminal liability but is subject to disciplinary sanctions by the IIA.

E. Illustrative examples on best interest obligation

[Members are invited to provide illustrative scenarios]

Scenario A

An agent has advised a prospective policyholder to acquire a life insurance product that pays the greatest commission to the agent but the product does not meet the insurance need of the prospect because he is holding three life insurance policies already.

Financial Services and the Treasury Bureau

30 October 2013