

Work Plan for Discussions of the Codes and Guidelines that may be issued by the independent Insurance Authority (“IIA”)

Purpose

This paper seeks Members’ views on the proposed work plan for discussions of the codes and guidelines that may be issued by IIA.

The Work Plan

2. At the meeting of the Working Group (“WG”) held on 4 December 2014, we invited Members’ comments (via WG Paper No. 3/2014 at **Appendix**) on the proposed list of codes and guidelines that IIA may issue. Members indicated interest in discussing the substance to be included in the codes and guidelines. While we should not pre-empt IIA’s authority to formulate codes and guidelines in the future, we may gather views of the WG members to facilitate IIA’s work in this respect. On this basis, we suggest the following work plan to discuss the relevant codes and guidelines -

Schedule of IIA WG	Codes & Guidelines	Reference
Jan 2016	<i>Pecuniary penalty</i>	<ul style="list-style-type: none"> ● Existing guidelines of SROs ● Guidelines on anti-money laundering
Mar 2016	<p><i>“Fit and proper” requirements</i></p> <ul style="list-style-type: none"> ● Educational or other qualifications and experience ● Ability to carry on a regulated activity competently, honestly and fairly ● Reputation, character, reliability and integrity 	<ul style="list-style-type: none"> ● Guidance Note on “Fit and Proper” Criteria under the Insurance Companies Ordinance (GN4) ● Minimum Requirements for Insurance Brokers issued by IA ● Existing guidelines of SROs

Schedule of IIA WG	Codes & Guidelines	Reference
	<ul style="list-style-type: none"> ● Financial status or solvency 	
	<p><i>Guideline on CPD requirements</i></p>	<ul style="list-style-type: none"> ● IIQAS requirements ● Existing guidelines of SROs
<p>May to Dec 2016</p>	<p><i>Code of conduct for licensed insurance intermediaries</i></p> <ul style="list-style-type: none"> ● Acting honestly, fairly, in the best interests of the policy holder concerned or the potential policy holder concerned, and with integrity ● Care, skill and diligence ● Advice on matters within competence ● Having regard to policy holder’s particulars as is necessary ● Disclosure of necessary information to the policy holder ● Conflict of Interest ● Prompt and proper accounting for policy holder assets 	<ul style="list-style-type: none"> ● Minimum Requirements for Insurance Brokers issued by IA ● Existing guidelines of SROs ● MPFA Guidelines on Conduct Requirements for Registered Intermediaries ● Guidelines issued by overseas regulators e.g. Regulatory Guide issued by the Australian Securities & Investments Commission, Handbook issued by the UK Financial Conduct Authority, etc.

Way Forward

3. Subject to Members’ comments on the proposed work plan, we will prepare the relevant documents to facilitate discussion. References will be made to existing guidelines issued by the three Self-Regulatory Organisations, new requirements under the law and guidelines issued by other regulators.

Financial Services and the Treasury Bureau

19 October 2015

Codes and Guidelines that may be issued by the independent Insurance Authority (“IIA”)

Purpose

This paper lists the existing codes and guidelines applicable to insurance intermediaries vis-à-vis the codes and guidelines that the IIA may issue. This should not be seen as committing the IIA to or pre-empting it from making any decision after its establishment.

Background

2. The IIA will issue codes and guidelines to help licensed insurance intermediaries comply with applicable regulatory requirements so that they are fit and proper persons to remain licensed. Under the new section 93 in the Insurance Companies (Amendment) Bill 2014 (“the Bill”), the IIA has specific power to publish codes of conduct for the purpose of giving guidance relating to the practices and standards with which licensed insurance intermediaries are expected to comply. In addition, the IIA has a general power under the new section 131 in the Bill to issue codes and guidelines to provide guidance in relation to any matters relating to any of its functions and in relation to the operation of any provision of the amended Insurance (Companies) Ordinance. These codes and guidelines are not subsidiary legislation and failure to comply with them does not by itself render the intermediary concerned liable to any judicial or other proceedings.

3. Under the new section 82 in the Bill, the IIA should issue guidelines to indicate the way in which it proposes to exercise its power to impose pecuniary penalty under the new section 80. Such guidelines are also not subsidiary legislation.

4. It is important to specify in the relevant codes and guidelines whether certain provisions are applicable to insurance agents or insurance brokers only. It is up to the IIA to decide the appropriate means for achieving this target, e.g. whether separate guidelines or a composite guideline should be issued.

Advice Sought

5. Members of the Working Group may comment on –

- (a) whether there are any other existing codes and guidelines that should also be included in the table at **Annex** for the future reference of the IIA; and

- (b) whether there are any gaps or areas of improvement in the existing codes and guidelines which the IIA should look into in order to formulate its codes and guidelines under the statutory licensing regime.

Financial Services and the Treasury Bureau
July 2014

Codes & Guidelines	Reference (Existing Codes & Guidelines)
<p><i>Code of conduct for licensed insurance intermediaries (s.93)</i></p> <p>I. Acting honestly, fairly, in the best interests of the policy holder concerned or the potential policy holder concerned, and with integrity (s.89(a))</p> <ul style="list-style-type: none"> ■ Accurate representations ■ Advertising and marketing material ■ Rebates, gifts and incentives ■ Needs analysis and risk matching ■ Confidentiality of policy holder information ■ Best practices at point of sale ■ Referral of business ■ Cooling-off period ■ Delivery of policy <p>II. Care, skill and diligence (s.89(b))</p> <ul style="list-style-type: none"> ■ Understanding insurance products and relevant concepts ■ Record keeping ■ Prompt execution ■ Care for policy holder with special needs ■ Blank or incomplete forms <p>III. Advice on matters within competence (s.89(c))</p> <ul style="list-style-type: none"> ■ Adequate training, skills and knowledge <p>IV. Having regard to policy holder’s particulars as is necessary (s.89(d))</p> <ul style="list-style-type: none"> ■ Know your policy holder ■ Policy replacement ■ Proper advice on product suitability <p>V. Disclosure of necessary information to the policy holder (s.89(e))</p> <ul style="list-style-type: none"> ■ Clear, accurate and relevant information ■ Information about the appointing insurer/product manufacturer ■ Information about the insurance intermediary ■ Information about remuneration of intermediaries <ul style="list-style-type: none"> ◆ For brokers: all products ◆ For agents: only ILAS products ■ Information about products ■ Information about fees and charges 	<ul style="list-style-type: none"> ● IA – Minimum Requirements for Insurance Brokers ● HKFI – Code of Practice for the Administration of Insurance Agents ● HKFI – Code of Practice on Person-to-Person Marketing Calls ● HKFI – Guidance Note on Gifts ● HKFI – Guidance Note on Gifts, Promotions and Incentives for Class A and Class C Products ● HKFI – Initiative on Needs Analysis ● HKFI – Updated Requirements Relating to the Sale of Investment Linked Assurance Scheme (“ILAS”) to Enhance Customer Protection ● HKFI – Code of Practice for Life Insurance Replacement ● HKFI – Cooling-off Period ● IARB – Guidelines on Handling of Premiums ● IARB – Guidelines on Misconduct ● CIB – Membership Regulations ● CIB – Code of Conduct ● CIB – Guidance Note on Dealing with Referral Business ● CIB – Guidance Note on Proper Delivery of Long Term Insurance Policy ● CIB – Guidance Note on Conducting “Know Your Client” Procedures for Long Term Insurance Business (Including Linked Long Term Insurance) ● CIB – Regulations for Insurance Brokers Engaged in Advising on Linked Long Term Insurance or Arranging or Negotiating Policies of Linked Long Term Insurance

Codes & Guidelines	Reference (Existing Codes & Guidelines)
<p>VI. Conflict of Interest (s.89(f-g))</p> <ul style="list-style-type: none"> ■ Identifying conflict of interest ■ Disclosure of conflict of interest <p>VII. Prompt and proper accounting for policy holder assets (s.89(h))</p> <ul style="list-style-type: none"> ■ Handling of policy holder assets [if applicable] ■ Handling of premiums 	<ul style="list-style-type: none"> ● CIB – Guidance Note on Client Agreement for Linked Long Term Insurance Business ● PIBA – Membership Regulations ● PIBA– Code of Conduct for Insurance Brokers Conducting Investment Linked Business ● PIBA – Circular letter: Cross-Border (People’s of Republic of China (PRC)) Selling ● PIBA – Circular letter: Imprinting Registration Number on Name Cards ● PIBA – Circular letter: Guidelines on name card and stationery ● PIBA – Circular letter: Using Erasable Ink Pen
<p><i>Responsible officers (s.90&91)</i></p> <p>I. Proper controls and procedures for securing compliance with conduct requirements for licensed insurance intermediaries by the agency and its licensed technical representatives (TRs) (s.90(1)(a))</p> <ul style="list-style-type: none"> ■ Internal controls <p>II. Observance with the controls and procedures by the TRs (s.90(1)(b))</p> <ul style="list-style-type: none"> ■ Training <p>III. Sufficient authority of responsible officer (s.90(1)(c))</p> <p>IV. Sufficient resources and support provided to responsible officer for carrying out his responsibilities (s.90(1)(d), 90(2))</p> <ul style="list-style-type: none"> ■ Obligations of responsible officers ■ Complaints handling 	<ul style="list-style-type: none"> ● IA – Minimum Requirements for Insurance Brokers ● HKFI – Code of Practice for the Administration of Insurance Agents ● HKFI – Code of Conduct for Insurers ● IARB – Guidelines on Misconduct ● CIB – Membership Regulations ● CIB – Code of Conduct ● PIBA – Membership Regulations
<p><i>“Fit and proper” requirements (s.64ZZA)</i></p> <p>I. Educational or other qualifications and experience (s.64ZZA(1)(a))</p> <ul style="list-style-type: none"> ■ Age, academic qualifications and relevant experience <p>II. Ability to carry on a regulated activity competently, honestly and fairly (s.64ZZA(1)(b))</p> <ul style="list-style-type: none"> ■ Competence (qualifications and experience) <ul style="list-style-type: none"> ◆ Guideline on competence ■ Continuing professional development 	<ul style="list-style-type: none"> ● IA – Minimum Requirements for Insurance Brokers ● HKFI – Code of Practice for the Administration of Insurance Agents ● IARB – Guidance Note on Compliance with the Requirements of the Continuing Professional Development (CPD) Programme for Registered Persons Who are Registered as Engaging in Restricted Scope Travel Business

Codes & Guidelines	Reference (Existing Codes & Guidelines)
<p>requirements</p> <ul style="list-style-type: none"> ◆ Guideline on CPD requirements <p>III. Reputation, character, reliability and integrity (s.64ZZA(1)(c))</p> <ul style="list-style-type: none"> ■ Guilty of fraud ■ Criminal offence ■ Disciplinary action taken by professional or regulatory bodies <p>IV. Financial status or solvency (s.64ZZA(1)(d))</p> <ul style="list-style-type: none"> ■ Bankruptcy, receivership or liquidation 	<p>(RSTB) only</p> <ul style="list-style-type: none"> ● CIB – Membership Regulations ● CIB – IIQAS CPD Programme Administrative Framework ● PIBA – Membership Regulations ● PIBA – Circular letter: Dual Registration of Chief Executive and Technical Representative ● PIBA – Guideline on Insurance Intermediaries Quality Assurance Scheme (IIQAS) Continuing Professional Development (CPD) Programme
<p><i>Pecuniary penalty (s.82)</i></p> <p>I. Factors for determining of the quantum</p> <ul style="list-style-type: none"> ■ Nature, seriousness and impact of the contravention ■ Conduct of the insurance intermediary after the contravention ■ Previous disciplinary record and compliance history of the insurance intermediary ■ Other factors such as profit gained and mitigating circumstances ■ Whether the penalty will put the person in financial jeopardy 	<ul style="list-style-type: none"> ● CIB – Penalty Guidelines ● PIBA – Penalty Guidelines
<p><i>Guidelines on handling complaints of policy holders/potential policy holders</i></p>	

Note:

IA – Insurance Authority

HKFI – The Hong Kong Federation of Insurers

IARB – Insurance Agents Registration Board

CIB – The Hong Kong Confederation of Insurance Brokers

PIBA – Professional Insurance Brokers Association