

Insurance Companies Ordinance (Chapter 41)

Minimum Requirements
specified under section 69(2) and section 70(2)

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(I) **INTRODUCTION**

The Insurance Companies Ordinance (“Ordinance”) has brought into the regulatory regime a framework for the supervision of the self regulation by the insurance industry of insurance agents and brokers since 30 June 1995.

Apart from the provisions dealing with the self regulatory system of insurance agents, the Ordinance empowers, under sections 69 and 70, the Insurance Authority ("IA") to authorize/approve an insurance broker/a body of insurance brokers.

Under the Ordinance, an insurance broker means a person who carries on the business of negotiating or arranging contracts of insurance in or from Hong Kong as the agent of the policy holder or potential policy holder or advising on matters related to insurance.

In the above context, a contract of insurance is a contract which contains an element of insurance. Henceforth, any person acting as the agent of the policy holder or potential policy holder in advising on or arranging any contract which contains an element of insurance, irrespective of the extent of such insurance element, is deemed to carry on insurance broking business and is required either to obtain authorization from the IA under section 69 of the Ordinance or become a member of a body of insurance brokers approved by the IA under section 70 of the Ordinance.

The IA, before authorizing an insurance broker under section 69, is required to satisfy himself that the applicant insurance broker complies at least with the specified minimum requirements. Similarly, the IA, before approving a body of insurance brokers under section 70, is required to satisfy himself that the applicant body has adequate provisions in its regulation for members of the body to comply with the specified minimum requirements. The minimum requirements specified by the IA are for : -

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

and that the applicant insurance broker is fit and proper to be an insurance broker and that, in the case of the applicant body of insurance brokers, the applicant body has adequate rules and regulations to ensure that its constituent members are fit and proper to be insurance brokers.

Pursuant to the above, the following guidelines are drawn up to give guidance to insurance brokers or bodies of insurance brokers for compliance with the Ordinance and, in particular, the minimum requirements as specified by the IA. Failure to comply with these guidelines may result in a person or body of insurance brokers not being authorized or approved or having his/its authorization/approval withdrawn, as the case may be.

The guidelines will be kept under regular review in the light of market developments to ensure that the interests of policy holders and potential policy holders are adequately protected.

Insurance brokers should also be aware that other legislation may affect their business activities, in particular the Protection of Investors Ordinance ("PIO"). In certain cases an insurance product will constitute an investment arrangement under the PIO, and must therefore be authorized by the Securities and Futures Commission before it can be offered to the public in Hong Kong.

Words and expressions used in the guidelines shall have the same meaning as are ascribed to them in the Ordinance.

For the purpose of these guidelines :

- (a) Chief Executive ("C.E.") in relation to
 - (i) an insurance broker means a person who, alone or jointly with others, is responsible for the conduct of the insurance broking business of such insurance broker, not being a person who-
 - (1) is also responsible for the conduct of other business; and
 - (2) has a subordinate responsible for the whole of the insurance broking business; or

- (ii) an insurance broker formed outside Hong Kong means a person who, alone or jointly with others, is responsible for the conduct of the whole of the insurance broking business of such insurance broker carried on within Hong Kong, not being a person who-
 - (1) is also responsible for the conduct of insurance broking business carried on by the insurance broker elsewhere; and
 - (2) has a subordinate responsible for the whole of the insurance broking business carried on by the insurance broker within Hong Kong.

- (b) “Line of Insurance Business” means:
 - (i) General Business;
 - (ii) Long Term (excluding Linked Long Term) Business; and/or
 - (iii) Long Term (including Linked Long Term) Businessas defined in the Insurance Companies Ordinance.

- (c) “Policy replacement” means any transaction involving the purchase of long term insurance if within 12 months before or after a new policy is effected, an existing long term insurance policy:
 - (i) has lapsed;
 - (ii) is surrendered; or

- (iii) is converted to paid-up or extended-term insurance.

This list is not conclusive and may be expanded from time to time to include other forms of replacement. For the avoidance of doubt, internal replacement i.e. both the existing and new policies are issued by the same insurer, is covered by these guidelines.

- (d) “Technical Representative” in relation to an insurance broker means a person who provides advice to a policy holder or potential policy holder on insurance matters for an insurance broker, or negotiates or arranges contracts of insurance in or from Hong Kong on behalf of an insurance broker for a policy holder or potential policy holder.
- (e) “Twisting” means the making of inaccurate or misleading statements or comparisons to induce a policyholder to replace existing long term insurance policy with other long term insurance policy to the policyholder’s disadvantage.

(II) **AUTHORIZATION/APPROVAL OF INSURANCE BROKERS/BODIES OF INSURANCE BROKERS**

(A) **Insurance Brokers authorized under section 69**

A person, whether a sole proprietorship, partnership or limited company, can apply to the IA to become an authorized insurance broker. An insurance broker, at the time of his application for authorization and any subsequent renewal of authorization, is required to satisfy the IA that he has complied and has continued to comply with all relevant statutory provisions and, amongst others, the minimum requirements as specified by the IA and contained herein.

(a) **Nomination of Chief Executive**

An insurance broker is required to nominate a C.E. The C.E. shall be a fit and proper person and shall meet the minimum requirements of qualifications and experience as specified by the IA.

Without limiting the generality of the definition of C.E. :

- (i) in respect of a sole proprietorship, the sole proprietor shall be deemed to be the C.E. and shall assume full responsibilities over the conduct of the brokerage business of that proprietorship;

- (ii) in respect of a partnership, the C.E. shall be one of the partners under whom the business of the partnership is supervised or conducted and shall assume full responsibilities over the conduct of brokerage business of that partnership;
- (iii) in respect of a limited company, the C.E. shall either be a full time director or full time employee under whom the business of the company in Hong Kong is supervised or conducted.

(B) Bodies of Insurance Brokers approved under section 70

A body of insurance brokers can apply under section 70 for approval to become an approved body of insurance brokers. A body of insurance brokers, at the time of its application for approval or any subsequent renewal of approval, is required to satisfy the IA that it has complied and has continued to comply with all relevant statutory provisions and, amongst others, that it has maintained an appropriate set of rules and regulations for its members to comply with the minimum requirements as specified by the IA and contained herein.

An appropriate set of rules and regulations shall, amongst other things, include the eligibility of membership, membership rules, code of conduct for members and disciplinary procedures.

(III) MINIMUM REQUIREMENTS FOR COMPLIANCE BY INSURANCE BROKERS AND CONSTITUENT MEMBERS OF BODIES OF INSURANCE BROKERS

(A) ***Qualifications and Experience***

An insurance broker or the C.E. nominated by him is required to have a minimum education standard of Form 5 or equivalent and be aged 21 or above. He is required to have: -

EITHER (i) an acceptable insurance qualification, a minimum of two years' experience in the insurance industry occupying a management position and, if he intends to be engaged in the long term (including linked long term) insurance broking business, passed the Investment-linked Long Term Insurance paper (Paper (d) as referred to in (ii) below) of the Insurance Intermediaries Qualifying Examination recognized by the IA ("the Qualifying Examination"), unless exempted under (ii)(2) below. An acceptable insurance qualification may be a/an:

- (1) Associate or Fellow of the Chartered Insurance Institute (ACII/FCII);
- (2) Senior Associate or Fellow of the Australian and New Zealand Institute of Insurance and Finance (ANZIIF (Snr Assoc) / ANZIIF (Fellow));
- (3) Fellow of the Life Management Institute (FLMI);
- (4) Chartered Life Underwriter (CLU);

- (5) Chartered Property Casualty Underwriter (CPCU);
 - (6) Hong Kong Diploma in Insurance Studies of the Insurance Institute of Hong Kong;
 - (7) Fellow of the Institute of Actuaries of England (FIA);
 - (8) Fellow of the Faculty of Actuaries in Scotland (FFA);
 - (9) Fellow of the Institute of Actuaries of Australia (FIAA);
- or
- (10) Fellow of the Society of Actuaries of the United States of America (FSA);

or other qualifications considered acceptable to the IA;

- OR (ii) in the event he has no acceptable insurance qualification as mentioned in (i) above, a minimum of five years' experience in the insurance industry of which 2 years is at management position and passed the relevant papers of the Qualifying Examination unless exempted. The Qualifying Examination consists of the following papers:

- Paper (a) compulsory paper – Principles and Practice of Insurance;
- Paper (b) qualifying paper – General Insurance;
- Paper (c) qualifying paper – Long Term Insurance; and
- Paper (d) qualifying paper – Investment-linked Long Term Insurance.

(1) An individual shall be exempted from Papers (a), (b) and (c) as appropriate of the Qualifying Examination if he was engaged in the insurance intermediary business in Hong Kong immediately before 1 January 2000 and is in possession of one of the following:

(a) proven relevant experience in insurance business in Hong Kong for a cumulative period of at least five years within the six-year period immediately before 1 January 2000; or

(b) the Certificate of Proficiency in General Insurance Studies issued by the Hong Kong Federation of Insurers.

(2) An individual shall be exempted from Paper (d) of the Qualifying Examination if he

(a) is in possession of any of the following recognized professional qualifications in insurance, investment or actuarial science:

(1) a Chartered Life Underwriter (CLU) with an elective paper "HS 328 Investments" in the CLU qualifying examination successfully passed;

(2) a Chartered Financial Consultant (ChFC);

- (3) a Certified Financial Planner (CFP);
- (4) a Fellow of the Institute of Actuaries of England (FIA);
- (5) a Fellow of the Faculty of Actuaries in Scotland (FFA);
- (6) a Fellow of the Institute of Actuaries of Australia (FIAA);
- (7) a Fellow of the Society of Actuaries of the United States of America (FSA);
- (8) any person passed the Foundation Programme Examination of the Hong Kong Securities Institute (FPE); or
- (9) any person passed the Diploma Programme Examination of the Hong Kong Securities Institute (DPE);

or other qualifications acceptable to the IA; or

- (b) was engaged in long term insurance intermediary business in Hong Kong immediately before 1 January 2002 and has fulfilled all of the following:

- (1) has proven long term insurance experience in Hong Kong for a cumulative period of at least seven years within the eight-year period immediately before 1 January 2002; and

- (2) has proven experience in Hong Kong in selling at least four linked long term policies per annum and 50 linked long term policies in total within the five-year period immediately before 1 January 2002.

(a) In respect of (i) above, the following applies:

- (1) Subject to (3) below, an insurance broker or his C.E. who has met, inter alia, the experience requirement and any one of the qualification requirements specified in (i)(1) to (6) above is eligible to carry on or conduct both general and long term (excluding linked long term) insurance broking business.
- (2) An insurance broker or his C.E. who has met, inter alia, the experience requirement and any one of the qualification requirements specified in (i)(7) to (10) above is eligible to carry on or conduct both general and long term (including linked long term) insurance broking business.

- (3) An insurance broker or his C.E. who was engaged in long term insurance intermediary business in Hong Kong immediately before 1 January 2002 and continues / intends to be engaged in linked long term insurance intermediary business thereafter shall, unless exempted under section (ii)(2) above, pass Paper (d) of the Qualifying Examination on or before 31 December 2003.
- (4) An insurance broker or his C.E. who has ceased to be engaged in insurance-related work in the insurance industry in Hong Kong for two consecutive years shall, inter alia, pass Paper (d) of the Qualifying Examination again before he can be authorized or registered as an insurance broker or the C.E. of an insurance broker to carry on or conduct long term (including linked long term) insurance broking business again, unless he has met the requirements specified in (i) and has been exempted under (ii)(2)(a) above as appropriate.
- (5) An individual, who has passed Paper (d) of the Qualifying Examination, but if for two consecutive years during which he has not been engaged in insurance-related work in the insurance industry in Hong Kong, shall inter alia, re-sit and pass Paper (d) of the Qualifying Examination again before he can be authorized or registered as an insurance broker or the C.E. of an insurance broker to carry on or conduct long term (including linked long

term) insurance broking business, unless he has met the requirements specified in (i) and has been exempted under (ii)(2)(a) above as appropriate.

(b) In respect of (ii) above, the following applies:

(1) Subject to (4) below, an insurance broker or his C.E., who has met, inter alia, the experience and Qualifying Examination requirements, is only eligible to be engaged in the Line of Insurance Business in respect of which he has passed the Qualifying Examination, unless exempted under (ii) above as appropriate. In addition to passing the compulsory paper on Principles and Practice of Insurance, he is required to pass the General Insurance paper and Long Term Insurance paper for his engaging in General Business and Long Term (excluding Linked Long Term) Business respectively. He is required to pass, in addition to the compulsory paper, both Long Term Insurance and Investment-linked Long Term Insurance papers for his engaging in Long Term (including Linked Long Term) Business.

(2) An insurance broker or his C.E. who has met, inter alia, the experience requirement and has been exempted under (ii)(1)(a) above is only eligible to be engaged in the Line of Insurance Business (General Business and Long Term (excluding Linked

Long Term) Business only) in which he has been engaged or substantially engaged for five years within the six-year period immediately before 1 January 2000.

- (3) An insurance broker or his C.E. who has met, inter alia, the experience requirement and has been exempted under (ii)(1)(b) above is eligible to carry on or conduct general insurance broking business only.
- (4) An insurance broker or his C.E. who was engaged in long term insurance intermediary business in Hong Kong immediately before 1 January 2002 and continues / intends to be engaged in linked long term insurance intermediary business thereafter shall, unless exempted under (ii)(2) above, pass Paper (d) of the Qualifying Examination on or before 31 December 2003.
- (5) An insurance broker or his C.E. who has ceased to be engaged in insurance-related work in the insurance industry in Hong Kong for two consecutive years shall, inter alia, pass the relevant papers of the Qualifying Examination again before he can be authorized or registered as an insurance broker or the C.E. of an insurance broker again, unless he has met the requirements specified in (i) and has been exempted under (ii)(2)(a) above as appropriate.

- (6) An individual, who has passed the Qualifying Examination, but if for two consecutive years during which he has not been engaged in insurance-related work in the insurance industry in Hong Kong, shall inter alia, re-sit and pass the relevant papers of the Qualifying Examination again before he can be authorized or registered as an insurance broker or the C.E. of an insurance broker, unless he has met the requirements specified in (i) and has been exempted under (ii)(2)(a) above as appropriate.

An insurance broker or his C.E. shall attend continuing professional development programmes in such manner and form as specified by the IA.

An insurance broker which is not an individual is only eligible to be engaged in the Line of Insurance Business which its C.E. is eligible to be engaged in.

(B) Capital and Net Assets

An unincorporated insurance broker shall maintain in his insurance brokerage business a minimum net assets value of HK\$100,000 at all times.

An incorporated insurance broker shall maintain a minimum net assets value and a minimum paid up share capital of HK\$100,000 at all times.

The minimum net assets value is to be determined by excluding all intangible assets and in accordance with accounting principles generally accepted in Hong Kong.

(C) **Professional Indemnity Insurance**

An insurance broker is required to maintain a professional indemnity insurance policy with a minimum limit of indemnity for any one claim and in any one insurance period of 12 months. The minimum limit of indemnity shall be -

(i) a sum equal to -

- two times the aggregate insurance brokerage income relating to 12 months immediately preceding the date of commencement of the professional indemnity insurance cover (applicable to insurance broker who has been in business for more than one year);
- two times the projected insurance brokerage income for 12 months for the period of the professional indemnity insurance cover (applicable to insurance broker who has been in business for less than one year); or

- (ii) a sum of HK\$3,000,000

whichever sum shall be greater, up to a maximum of HK\$75,000,000. Cover in excess of this prescribed amount may, of course, be arranged to meet the requirements of individual broker. If as a result of a claim(s), the indemnity available shall fall below the amount determined in (i) above, the broker shall effect a reinstatement of cover up to not less than such minimum determined amount. Where the limit of indemnity has been determined in accordance with (ii) above, the policy shall include provision for one automatic reinstatement to a limit of indemnity of not less than HK\$3,000,000.

Insurance brokerage income, in this context, means brokerage income derived from advising on or arranging any contract which contains an element of insurance, irrespective of the extent of such insurance element.

(D) **Keeping of Separate Client Accounts**

An insurance broker is required to keep client monies in a client account separate from his own monies. He is not allowed to use client monies for any purpose other than for the purposes of the client. The "client account" shall be designated as such and held by the insurance broker for his client. There shall also be evidence that the provisions of section 71 of the Ordinance have been notified to and acknowledged by the financial institution with which the "client account" is maintained: -

- (i) A "client account" means a current or deposit account maintained with a financial institution duly authorized under the Banking Ordinance in the name of the insurance broker in the title of which the word "client" appears.
- (ii) An insurance broker shall keep at least one client account and may keep as many such accounts as he thinks fit.
- (iii) An insurance broker who receives or holds monies on behalf of his client in relation to insurance broking business shall, without delay, deposit such monies into the client account.

Without limiting the generality of the above requirements, the following are to give brief guidance on the circumstances under which monies shall be deposited into or withdrawn from a client account.

(a) Deposit into client account

There shall be paid into a client account: -

- (i) monies received from client for the purpose of purchasing contracts of insurance;

- (ii) monies received on behalf of client from insurers, reinsurers, insurance intermediaries and any other third parties relating to the settlement of insurance claims;
- (iii) monies received for the purposes of the client which are incidental to the ordinary transactions of insurance broking business; and
- (iv) monies required to be deposited for settlement of bank charges incurred on a client account.

(b) Withdrawal from client account

Withdrawals from a client account shall be restricted to:-

- (i) premium monies required to be paid on behalf of client to insurers, reinsurers or other insurance intermediaries for the purchase of contracts of insurance;
- (ii) claim monies received on behalf of client and required to be paid to the claimant or the person entitled to receive them;

- (iii) payments made for the purposes of the client which are incidental to the ordinary transactions of insurance broking business;
- (iv) monies drawn on client's written authority;
- (v) interests received from deposits placed with client account;
- (vi) monies required to be withdrawn for settlement of bank charges incurred on a client account; and
- (vii) monies which may by mistake or accident have been paid into the account in contravention of paragraph (D)(a).

For the avoidance of doubt, monies incidental to ordinary insurance broking business , as referred to in para. (D)(a)(iii) and para. (D)(b)(iii) above, are -

- (i) premiums, renewal premiums, additional premiums and return premiums of all kinds;
- (ii) claims and other monies due under contracts of insurance;
- (iii) refunds to clients;

- (iv) policy loans and associated interests;
- (v) fees, charges, levies relating to contracts of insurance; and
- (vi) discounts, commissions and brokerage.

(E) **Keeping Proper Books and Accounts**

- (a) (i) An unincorporated insurance broker shall cause to be kept such accounting and other records as will sufficiently explain the transactions, and reflect the financial position of the insurance broking business carried on by him, and will enable financial statements of such insurance broking business to be prepared from time to time which give a true and fair view of the financial position and results of the insurance broker;
- (ii) An incorporated insurance broker shall cause to be kept such accounting and other records as will sufficiently explain the transactions, and reflect the financial position of the insurance broker, and will enable financial statements to be prepared from time to time which give a true and fair view of the financial position, and results of the insurance broker; and

- (iii) An insurance broker, whether incorporated or unincorporated, shall cause those records to be kept in such a manner as will enable them to be conveniently and properly audited.
- (b) The records referred to in (a) above shall be kept -
- (i) in writing or in such a manner as to enable them to be readily accessible and readily converted into written form; and
 - (ii) in sufficient detail to show separately particulars of -
 - (1) all transactions by the broker with, or for the account of -
 - insurance and reinsurance companies;
 - clients of the insurance broker; and
 - the insurance broker himself;
 - (2) all income received from brokerage, commissions, interest and other sources, and all expenses, commissions and interest paid by the insurance broker; and
 - (3) all the assets and liabilities (including contingent liabilities) of the insurance broker.

- (c) An insurance broker shall retain for a period of not less than 7 years the records referred to in (a) above.

(IV) FUNDAMENTAL PRINCIPLES RELATING TO THE TEST ON FITNESS AND PROPRIETY OF AN INSURANCE BROKER

An insurance broker, apart from compliance with the above minimum requirements, is required to satisfy the IA that he is and will continue to be fit and proper to be authorized as an insurance broker. For this purpose, an insurance broker is deemed to be not fit and proper if

- (i) in the case of a sole proprietorship or partnership, the proprietor or any of the partners (including the C.E.) is not a fit and proper person to hold such position;
- (ii) in the case of a limited company, any of its C.E., directors or controllers (within the same meaning as defined in section 9 of the Insurance Companies Ordinance) is not fit and proper to hold the position held by him;
- (iii) the C.E. or any of his/its Technical Representatives is not confirmed and registered pursuant to these guidelines.

In this connection, the fundamental principles relating to the test on fitness and propriety of an insurance broker include the following: -

(A) **Utmost Good Faith**

- (a) An insurance broker shall be of good character and reputation.
- (b) He shall, at all times, conduct his business with utmost good faith and integrity.
- (c) He shall be independent and impartial in providing advice to his clients.
- (d) He shall not give any misleading information or make any false statements.
- (e) He shall not describe himself as an insurer or agent of an insurer.
- (f) He shall use his best endeavour to avoid conflict of interest and shall not allow his other business interests, if any, to jeopardize his integrity, independence or competence.
- (g) He shall not be engaged in twisting.

(B) **Due Care and Diligence**

- (a) An insurance broker shall exercise due care and diligence in understanding and satisfying the insurance needs and requirements of his client.

- (b) He shall take all reasonable steps to ensure that his C.E., Technical Representatives and employees, who are dealing with the policy holder or potential policy holder, are competent as well as fit and proper persons. He shall also ensure that his C.E. or Technical Representatives are eligible to be engaged in the Line of Insurance Business which he (the insurance broker) is eligible to be engaged in. He shall not employ any insurance broker whose authorization has been withdrawn by the IA, or any person whose membership as appointed insurance agent or insurance broker is currently suspended or deregistered by the Insurance Agents Registration Board or by any approved body of insurance brokers.
- (c) He shall not appoint any C.E. or Technical Representative who is not a fit and proper person.
- (d) He shall terminate the appointment of his C.E. or Technical Representative who has been determined by the IA or an approved body of insurance brokers not to be fit and proper.
- (e) He shall explain the principle of utmost good faith to his client and make it clear that all answers and statements given in completing the proposal form, claim form, or any other material document are the client's own responsibility.

- (f) He shall advise his client that incorrect answers or information given in completing the proposal form, claim form or any other material document may result in the contract of insurance being invalidated or void or claims being repudiated.
- (g) He shall explain the terms of the insurance contracts to his client and shall advise his client of any exclusion clauses provided in the contract.
- (h) He shall comply with all guidelines, codes of practice or similar guidance materials to which he is subject.
- (i) He shall comply with the requirements as specified in the Code of Conduct for MPF Intermediaries ("MPF Code") issued by the Mandatory Provident Fund Schemes Authority ("MPFA") where he is engaged in selling or advising on Mandatory Provident Fund schemes or their constituent or underlying funds.
- (j) He shall take adequate measures to ensure that each of his directors and employees:
 - (i) has registered as an MPF intermediary with the MPFA; and
 - (ii) complies with the requirements as specified in the MPF Code

where the director or employee is engaged in selling or advising on Mandatory Provident Fund schemes or their constituent or underlying funds.

(C) **Priority of Client's Interests**

- (a) An insurance broker shall place the interests of his client above all other considerations in providing advice to, or arranging contracts of insurance for his client.
- (b) He shall not prejudice his client's selection of insurers by unreasonably limiting the choices of insurers.
- (c) He shall not be unreasonably dependent on any particular insurer in transacting insurance broking business.

(D) **Information from Client**

An insurance broker shall not disclose any information acquired from his client except: -

- (a) in the normal course of negotiating, maintaining or renewing a contract of insurance for that client to the extent that the information disclosed is required for such purposes;

- (b) to other professional or commercial organizations in connection with the contract of insurance for that client including but not limited to loss adjusters and surveyors, security consultants and installation companies, property and engineering surveyors consultants and vendors, consulting engineers and architects.
- (c) with the written consent of that client; or
- (d) with court order or to comply with obligations imposed upon him by law.

(E) **Information for Client**

- (a) An insurance broker shall make adequate and accurate disclosure of relevant material information in dealing with his client.
- (b) If he, at the request of his client or as a result of the absence of suitable products available locally, refers or arranges a contract of insurance with an unauthorized foreign insurer, he shall advise his client of the unauthorized status of the insurer and obtain a written acknowledgement of the fact from the client. Where the client is a corporate entity, he may, in lieu of obtaining a written acknowledgement of the fact, include a notice to the corporate client in the cover note or placement confirmation. The notice and acknowledgement shall follow the Specimen Notice to client and Acknowledgement from client at Annexure A and Annexure B

respectively. The notice to corporate client shall follow the Specimen Notice at Annexure C.

- (c) He shall disclose his association, if any, he may have with any insurer to whom he is recommending his client and which may result in a potential conflict of interests. Without limiting the generality of the statement, an insurance broker must disclose his association with the insurer arising from common shareholder/director/controller.
- (d) If he is the director/C.E./Technical Representative/employee of more than one insurance broker, he shall disclose the capacity in which he is acting in dealing with his clients.
- (e) He shall disclose his registration number assigned by the IA or an approved body of insurance brokers (as the case may be) if so requested. He shall also identify his registration number on his business cards if they are distributed.
- (f) He shall ensure that the Customer Protection Declaration (Annexure D) has been completed before the client agrees or makes a decision in relation to the purchase of a new long term insurance policy. In the course of completing the Customer Protection Declaration, he shall follow the Explanatory Notes attached to the Customer Protection Declaration. If any long term insurance policy replacement is recommended, he shall explain the important consequences and ensure that the client fully

understands the important consequences. In the event that he explains there is no disadvantage attached to the replacement, he shall give the reason for this conclusion in writing in the Customer Protection Declaration as fully as possible. He shall then forward the completed Customer Protection Declaration to the insurer issuing the new long term insurance policy.

- (g) He shall deliver any new long term insurance policy together with a copy of the Customer Protection Declaration (if applicable) issued by the insurer through him to his client without delay.

(F) Capabilities

- (a) An insurance broker shall be capable to perform his functions efficiently.
- (b) He shall be mentally sound.
- (c) He has not been convicted of any criminal offence which may affect his fitness, suitability or propriety to act as an insurance broker or found guilty of misconduct by a professional body to which he belongs or has belonged.
- (d) He shall comply with all statutory obligations.

In considering whether the appointment of C.E. and Technical Representative can be confirmed by the IA or an approved body of insurance brokers, as the case may be, and registered in the sub-register under the Register of Insurance Brokers kept by the IA or an approved body of insurance brokers, the following shall, inter alia, be taken into account:-

- (1) whether the prospective C.E. or Technical Representative is fit and proper to act as an insurance broker if he were to apply to be authorized as such. In this connection, the provisions under section (IV)(A)-(F) may, as appropriate, apply to the prospective C.E. or Technical Representative as if he were an insurance broker;
- (2) whether the prospective C.E. has met the requirements specified in section (III)(A);
- (3) whether the prospective Technical Representative: (i) has attained the age of 18; and (ii) has the minimum education standard of Form 5 or equivalent unless he was engaged in the insurance intermediary business in Hong Kong immediately before 1 January 2000 and has not since ceased to be engaged in insurance-related work in the insurance industry in Hong Kong for two consecutive years; and
- (4) whether the prospective Technical Representative has passed the relevant papers of the Qualifying Examination as if he were an insurance broker unless he is in possession of an acceptable insurance

qualification specified under section (III)(A)(i)(1) to (10) or other qualifications considered acceptable to the IA and he has been exempted under section (III)(A)(ii)(1) or (2) as appropriate.

- (5) whether the C.E. or Technical Representative has attended Continuing Professional Development Programme in such manner and form as specified by the IA.

In respect of the examination or exemption requirements mentioned in (4) above, the restrictions in section (III)(A)(a) and (b) shall be applicable to a Technical Representative as if he were an insurance broker or C.E. subject always that no Technical Representative shall be engaged in a Line of Insurance Business other than that the insurance broker appointing him is eligible to be engaged in.

Appointment and registration of C.E. and Technical Representatives shall be effected in the following manner:-

- (1) An insurance broker shall obtain the confirmation of the IA or relevant approved body of insurance brokers before confirming the appointment of any person as his C.E. or Technical Representative.
- (2) An insurance broker shall be responsible for submitting the application for confirmation of appointment and registration of his C.E. or Technical Representative in such manner and form as may be specified

by the IA or relevant approved body of insurance brokers from time to time.

- (3) An insurance broker and the prospective C.E. or Technical Representative shall provide to the IA or relevant approved body of insurance brokers such additional information relevant to the application as the IA or relevant approved body of insurance brokers may require. The IA or relevant approved body of insurance brokers shall not be required to consider an application unless it is made in the specified manner and form and is duly completed with the information requested being provided in full. If the insurance broker becomes aware of any change in the material circumstances of the prospective C.E. or Technical Representative who is the subject of a pending application, he shall notify the IA or relevant approved body of insurance brokers forthwith of such change.
- (4) A prospective C.E. or Technical Representative who is the subject of an application shall satisfy the IA or relevant approved body of insurance brokers that he is fit and proper to act as such and has complied with the specified qualifications and experience requirements. Unless the IA or relevant approved body of insurance brokers is so satisfied, it shall not confirm the appointment of that person as a C.E. or Technical Representative by the insurance broker and register that person as the C.E. or Technical Representative of the insurance broker.

- (5) The registration of a C.E. or Technical Representative shall continue only for such period as the IA or relevant approved body of insurance brokers may specify. The insurance broker may apply for re-registration of a C.E. or Technical Representative prior to the expiration of the current registration of the C.E. or Technical Representative concerned.
- (6) As a condition for re-registration, a C.E. or Technical Representative shall attend the Continuing Professional Development Programme in such manner and form as specified by the IA. Failure to comply with the requirement may lead to refusal of re-registration or de-registration of the C.E. or Technical Representative concerned.
- (7) The registration of a C.E. or Technical Representative shall be cancelled upon his cessation to be the C.E. or Technical Representative of the insurance broker. The insurance broker shall notify the IA or relevant approved body of insurance brokers within seven days of such cessation and provide such details as the IA or relevant approved body of insurance brokers may require. Upon such notification by the insurance broker, the IA or relevant approved body of insurance brokers shall immediately remove the name of the C.E. or Technical Representative concerned from that part of the sub-register relating to that insurance broker.

- (8) The approved bodies of insurance brokers shall give the IA details of the registration and cancellation of registration of C.E. or Technical Representative within seven days of such registration or cancellation of registration (as the case may be) and shall make the sub-register available to the IA for inspection.

(V) **SUBMISSION OF ANNUAL FINANCIAL STATEMENTS
AND AUDITOR'S REPORT**

(A) **Authorized Insurance Brokers**

Under section 73(1) of the Ordinance: -

- (i) An unincorporated insurance broker is required to submit to the IA audited financial statements in respect of the insurance broking business carried on by the insurance broker which show a true and fair view of the financial position of the broking business carried on by him as at the end of the financial year and of the profit or loss for the period then ended;
- (ii) An incorporated insurance broker is required to submit to the IA audited financial statements which show a true and fair view of the financial position of the insurance broker as at the end of the financial year and of its profit or loss for the period then ended;

- (iii) An insurance broker, whether incorporated or unincorporated, is required to submit a report from the auditor stating whether in the auditor's opinion, the insurance broker satisfied the minimum requirements for capital and net assets, professional indemnity insurance, keeping of separate client accounts and keeping of proper books and accounts as at the end of the financial year and 2 such other dates in the financial year as the auditor may elect, provided that the intervening period between those 2 dates shall not be shorter than 3 months.

For the purposes of reporting on the 2 such other dates as referred to above, the IA considers that it is sufficient for the auditor to perform such procedures as laid down in the guidelines to be issued by the Hong Kong Society of Accountants in consultation with the IA in this respect.

The auditor's report and audited financial statements shall be submitted to the IA within 6 months after the close of the period to which the statements relate.

(B) Approved Body of Insurance Brokers

A body of insurance brokers authorized under section 70 of the Ordinance shall include in its membership rules and regulations a requirement that each of its members shall submit to it annually, within six months following the end of the financial year of the member: -

- (i) for members who are unincorporated, audited financial statements in respect of the insurance broking business carried on by the member which show a true and fair view of the financial position of the broking business carried on by the member as at the end of the financial year and of its profit or loss for the period then ended;
- (ii) for members who are incorporated, audited financial statements which show a true and fair view of the financial position of the member as at the end of the financial year and of its profit or loss for the period then ended;
- (iii) an auditor's report expressing whether, in his opinion, the member satisfies the minimum requirements for capital and net assets, professional indemnity insurance, keeping of separate client accounts and keeping of proper books and accounts as at the end of the financial year and 2 such other dates in the financial year as the auditor may elect, provided that the intervening period between those 2 dates shall not be shorter than 3 months.

For the purposes of reporting on the 2 such other dates as referred to above, the IA considers that it is sufficient for the auditor to perform such procedures as laid down in the guidelines to be issued by the Hong Kong Society of Accountants in consultation with the IA in this respect.

A body of insurance brokers authorized under section 70 of the Ordinance shall in accordance with section 73(2) of the Ordinance, give the IA a report by its auditor stating: -

- (i) whether the body of insurance brokers has received from each of its members the financial statements and auditor's report in accordance with its membership rules and regulations;
- (ii) that he has reviewed all reports by auditors of members in respect of the financial statements and the minimum requirements and none contained any adverse statement or qualification except those listed by him in his report.

The above report, together with its audited financial statements, shall be submitted to the IA within 6 months after the close of the period to which the audited financial statements relate.

NOTICE TO CLIENT

Your insurance contract *may be/*has been arranged or effected wholly or partly with a foreign insurer that is not authorized by the Insurance Authority to conduct insurance business in Hong Kong. Such foreign insurers are not subject to the provisions of the Insurance Companies Ordinance (Cap. 41), which establishes a system of prudential supervision of authorized insurers in Hong Kong.

It is a matter for your consideration whether you should obtain further information from the insurance broker involved on matters such as: -

- (a) name and address of the unauthorized foreign insurer;
- (b) country of incorporation of the unauthorized foreign insurer and whether that country has a compatible system for supervision of insurers;
- (c) financial standing of the unauthorized foreign insurer;
- (d) which country's laws will determine disputes under the contract.

* Delete if not applicable

ACKNOWLEDGEMENT

I, _____ (full name) of _____
_____ (address) have read
the above notice and I acknowledge that the insurance contract *may be/*has been/arranged or
effected wholly or partly with an unauthorized foreign insurer that is not authorized under the
Insurance Companies Ordinance (Cap. 41) to conduct insurance business in or from Hong Kong.

Dated

* Delete if not applicable

(Signature of client)

NOTICE TO CORPORATE CLIENT

The underwriting security of this insurance includes participation by foreign insurers who are not authorized by the Insurance Authority to conduct insurance business in Hong Kong. You are reminded that such foreign insurers are not subject to the provisions of the Insurance Companies Ordinance (Cap. 41), which establishes a system of prudential supervision of authorized insurers in Hong Kong.

It is a matter for your consideration whether you should obtain additional information from the insurance brokers on matters such as: -

- (a) name and address of the unauthorized foreign insurer;
- (b) country of incorporation of the unauthorized foreign insurer;
- (c) financial standing of the unauthorized foreign insurer;
- (d) which country's laws will determine disputes under the contract.

IMPORTANT DOCUMENT! PLEASE READ AND COMPLETE CAREFULLY!

重要文件！請小心閱讀及填寫！

(1) —→ **CUSTOMER PROTECTION DECLARATION**

閣下可向保險代理/經紀索取中文版本，本聲明書之中英文版均具同等效力

This is an **IMPORTANT** part of the Code of Practice for Life Insurance Replacement issued by the Hong Kong Federation of Insurers and the Membership Regulations and Codes of Conduct of the self-regulatory broker bodies (i.e. The Hong Kong Confederation of Insurance Brokers and the Professional Insurance Brokers Association Limited), but does not form part of the application/proposal. *The Agent/Broker shall refer to the Explanatory Notes before completing this form.*

(2) Name of the Insurer : _____
 Name of Applicant/Proposer : _____
 Hong Kong Identity Card No. of Applicant/Proposer : _____
 Application/Proposal/Policy No. : _____

(3) **SECTION A**

1. Have you replaced or do you intend to replace any of your existing life insurance policies by the above mentioned application/ proposal in the past or the next 12 months? If yes, please write down the following information of the policy(ies) replaced/to be replaced. <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <u>Name of insurer(s)</u> _____ _____ </div> <div style="width: 45%;"> <u>Policy Number(s)</u> _____ _____ </div> </div>	<input type="checkbox"/> Yes (Please complete all sections)	<input type="checkbox"/> No (Please complete sections C & D only)
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(4) **SECTION B**

The Agent/Broker shall help you assess the relative merits of the existing policy(ies) and the suggested replacement. However, you are advised to cross-check the real or potential disadvantages with the insurer(s) of the existing policy(ies). You are also advised not to cancel your existing policy(ies) until the new policy(ies) is/are issued.

2. The financial implication of the replacement: There is financial impact on replacing your existing policy(ies). Generally speaking the replacement cost is approximately two times the annual premium of your existing policy(ies). <i>Please consult the insurer(s) of your existing policy(ies) for detailed financial implication.</i>	<input type="checkbox"/> Real or potential disadvantages Approximately HK\$ _____ [2 times the annual premium of the existing policy(ies)]	<input type="checkbox"/> No disadvantages (Agent/broker <u>must</u> give explanation below)
3. The insurability implication of the replacement: The new insurer may review your current state of health, occupation and recreational activities. If any significant change has occurred you may be denied some coverages or be charged a premium higher than the standard one.	<input type="checkbox"/> Real or potential disadvantages	<input type="checkbox"/> No disadvantages (Agent/broker <u>must</u> give explanation below)
4. The claims eligibility implication of the replacement: The new policy may have different policy provisions and also may result in a new start of the incontestability and suicide clause time periods. This could result in a claim being denied that would have been paid under the existing policy(ies).	<input type="checkbox"/> Real or potential disadvantages	<input type="checkbox"/> No disadvantages (Agent/broker <u>must</u> give explanation below)

(7) **SECTION C**

Declaration by the Applicant/Proposer

I declare that I have read and discussed the relevant section(s) of this Declaration with the Agent/Broker. If I tick "Real or potential disadvantages" in Section B, I declare that I understand and accept the financial and/or other implications of changing my existing insurance arrangement as explained by the Agent/Broker. I also declare that I have received a copy of the pamphlet titled "Life Insurance Policy Replacement – What you need to know" issued by the Insurance Authority.

I realize that, if I have not fully understood this Declaration, then in signing this Declaration I may be jeopardising my future rights of redress if I find later that I have been disadvantaged in taking out the new policy(ies).

I hereby authorize the Insurer to give the Insurance Agents Registration Board, the self-regulatory broker bodies, the Insurance Authority, the Life Insurance Council, the insurer of the policy that is being/has been replaced or other parties, as required for proper administration/implementation/execution of the Code of Practice for Life Insurance Replacement or the Membership Regulations and Codes of Conduct of the self-regulatory broker bodies, a copy of this Customer Protection Declaration and any related records or information.

(Warning: Please do not sign this Declaration blank or leave any space blank.)

Signature of the Applicant/Proposer _____
 Date (D/M/Y): _____

(effective 1/10/2002)

(8) **SECTION D**

Declaration by the Agent/Broker

I declare that I have explained fully the above listed points and related implications of the decision of the Applicant/Proposer in regard to the existing policy(ies), and have not made any inaccurate or misleading statements or comparisons nor withheld any information which may affect the decision of the Applicant/Proposer.

Signature of the Agent/Broker _____
 Agent/Broker's name in full _____
 Insurance Agent/Broker Reg. No. _____
 Date (D/M/Y) : _____

注意：閣下可向保險代理/經紀索取中文版本，本聲明書之中英文版本均具同等效力。

Explanatory Notes

Please refer to the numbers indicated on the form as attached for explanation:

- (1) The Customer Protection Declaration shall be completed, either in English or in Chinese, for each new individual life policy proposed/applied for by a customer. The agent/broker shall inform the applicant/proposer that a copy of the Customer Protection Declaration will be attached to the policy when it is issued. For the purpose of the Customer Protection Declaration, any reference to insurance agents/brokers shall include their responsible officers/chief executives and technical representatives.
- (2) For identification purpose the agent/broker must fill in the full name of the Insurer issuing the new policy (the Insurer may pre-print its name on the Declaration), the applicant/proposer of the new policy, the Hong Kong Identity Card number of Applicant/Proposer, and the relevant application/proposal/policy number.
- (3) If the applicant/proposer answers “No” to the question 1 of Section A, he/she shall simply sign Section C and the agent/broker shall countersign Section D. Alternatively, individual insurer may at its own discretion incorporate into its application/proposal the following “Replacement Warning”, with font size not less than 10, which must be prominently displayed and signed by the applicant/proposer:

Replacement Warning -

Have you replaced or do you intend to replace any of your existing life insurance policies by this application/proposal in the past or the next 12 months?

Yes (please complete a Customer Protection Declaration form)

No

I realize that, if I answer “No” to this question but indeed, this application/proposal has replaced or would replace any of my life insurance policies in the past or the next 12 months, I may jeopardize my future right of redress if I find later that I have been disadvantaged in taking out the new policy(ies).

Date (D/M/Y):

Signature of the Applicant/Proposer

The agent/broker shall read and explain the Replacement Warning before the applicant/proposer signs it.

- (4) If the applicant/proposer answers “Yes” to the question 1 of Section A, he/she shall complete Section B. The agent/broker must fully explain and discuss with the applicant/proposer any real or potential disadvantages of changing his/her existing insurance arrangement in relation to financial implication, insurability implication and claims eligibility implication of the replacement.
- (5) The agent/broker may use two times the annual premium of the existing policy(ies) to illustrate the financial implication. The applicant/proposer may request the insurer(s) of his/her existing policy(ies) for detailed replacement cost.
- (6) The agent/broker must give explanation whenever “no disadvantage” is ticked against those points listed. Additional papers may be used. However, both agent/broker and client must sign on all the papers that are used.
- (7) The agent/broker shall read and explain the Declaration in Section C before the applicant/proposer signs it.
- (8) The agent/broker shall countersign in Section D, declaring that he/she has explained fully the implication of the decision of the applicant/proposer in regard to the existing policy(ies).

(effective 1/10/2002)