

5 January 2023

Our Ref: MC/CSUP/CIR

By Email Only

To: Chief Executives of all authorized insurers and Responsible Officers of all licensed insurance agencies and licensed insurance broker companies

Dear Sirs,

Conduct Supervision and the new year ahead

During the past few weeks, the Central People's Government has announced that the Mainland is moving to lift COVID-19 border restrictions starting from 8 January 2023. Coupled with this come positive indications from the Hong Kong Government regarding work being done to pave the way for an orderly resumption of normal travel between Hong Kong and the Mainland.

As we look forward with optimism at the beginning of 2023, we take this opportunity to reiterate certain regulatory conduct matters relevant to cross border insurance business with the Mainland. These include matters which have been the subject of previous (and recent) circulars and other communications, but which are now worth re-stating so that authorized insurers, licensed insurance agencies and licensed insurance broker companies (referred to hereafter as "principals") can take these into account in their preparations.

D) Standards of Conduct

As we enter the new year, we ask that every licensed individual insurance agent and licensed technical representative (collectively "individual licensees") reflect on and re-commit to the statutory conduct principles in section 90 of the Insurance Ordinance (Cap 41) ("IO") on which the insurance regulatory regime is founded, namely:

- 1) Honesty and integrity
- 2) Treating customers fairly and acting in their best interests
- 3) Exercising care, skill and diligence
- 4) Being competent to advise
- 5) Giving advice which is suitable to the customer's circumstances
- 6) Disclosing adequate information to the customer

- 7) Avoiding and managing conflicts of interest; and
- 8) Protecting client's assets

These conduct principles are not “tick-box” compliance requirements. They are ethical principles of behaviour that serve as minimum standards of professionalism. These principles provide a foundation for trust and confidence in the Hong Kong insurance market. It is imperative that all individual licensees display these conduct principles when carrying on regulated activities with all existing and potential policy holders, including visitors from the Mainland seeking to source insurance in Hong Kong to meet their needs.

II) Restrictions on cross border sales activities

Authorized insurers and licensed insurance intermediaries operating in and from Hong Kong must ensure they comply with all laws that apply to them, whether those laws apply in Hong Kong or elsewhere. As Hong Kong is a market where individuals from the Mainland can come and buy insurance, it is (as has long been) imperative for authorized insurers and licensed insurance intermediaries to be aware of, and not breach, the relevant laws and regulations in the Mainland which make solicitation of insurance in the Mainland without a relevant licence an offence. Accordingly, sales activities involving Mainland China visitors must be confined to Hong Kong. This requirement has been reinforced by the obligation to include the "Important Facts Statement for Mainland policy holders" as part of selling process for long term policies since September 2016.

Principals (particularly those carrying on long term business) have also long been required to establish controls and policies so that their appointed individual licensees do not breach the relevant laws and regulations regarding solicitation of insurance business in the Mainland without a licence.

With the indications being made about the orderly resumption of normal travel, it is imperative that principals reinforce to their appointed individual licensees and related sales staff the restrictions on carrying on insurance business in the Mainland and the importance of ensuring that sales activities involving Mainland China visitors take place in Hong Kong. Principals should also revisit the adequacy of their controls, policies and monitoring to ensure that these restrictions are complied with going forward.

The Insurance Authority (“IA”) has already taken several disciplinary actions against licensed individual insurance agents who have fallen foul of these restrictions in relation to long term business. These disciplinary actions so far range from banning an individual from re-applying for a license for 5 months (in a case involving the use of social media in cross border sales activities) to reprimanding individuals who were identified by their principal as failing to comply with the principal's controls and procedures relating to restrictions on cross border sales activities. The IA supports such controls and procedures as implemented by principals. Similarly, any principal with inadequate controls and procedures on this matter can expect to be the target of scrutiny from the IA's enforcement team.

III) Training and Continuing Professional Development

On 16 December 2022, we released statistics on compliance with the Continuing Professional Development (“CPD”) requirements for the 2021/2022 Assessment Period, listing out the principals with the highest ratio of non-compliances across their appointed individual licensees. (https://www.ia.org.hk/en/infocenter/files/Conduct_in_Focus_Dec_2022_issue_EN.pdf)

Compliance with the CPD requirements is a basic requirement for any profession. Any principal which is not ensuring that its individual licensees complete the requisite CPD hours is simply not getting the basics right. Similarly, individual licensees who are not completing their CPD hours are not meeting the basic requirements of their profession. Improvement on satisfying the CPD requirements for the 2022/2023 Assessment Period is demanded (particularly from those principals named in the non-compliance league table).

With the indication being made regarding the orderly resumption of normal travel, principals should consider including in their training the need to fully comply with the restrictions on cross border sales activities as indicated in the section II above.

IV) Collection of premium by licensed individual insurance agents

The first edition of “Conduct In Focus” published by the IA in October 2020 (https://www.ia.org.hk/en/infocenter/files/Conduct_In_Focus_English.pdf) was dedicated to the topic of collection of premium by licensed individual insurance agents and the problematic conduct issues which can arise from this. A number of the disciplinary cases with which the IA has been dealing have arisen from collection of premium by individual insurance agents from Mainland policy holders of long term insurance policies and therefore it is an opportune time for authorized insurers to revisit the adequacy of their controls and procedures on this issue.

Best practice is always for authorized insurers to require premium to be paid directly by policy holders to the insurer and not through the agent, to communicate this clearly to potential policy holders and to provide sufficient channels by which direct payment can be made. If an authorized insurer, however, does grant authority to collect premium to its individual insurance agents, the limits of that authority must be clearly set (and communicated to policy holders) and the insurer must have adequate controls and procedures in place to ensure that such payments are monitored and safeguarded.

Authorized insurers should make reference to section 68 of the IO to understand the full extent of their potential liability to pay compensation for the actions of their agents in carrying on insurance business (including collection of premium) irrespective of the authority granted. This aligns with the “policy holder first” approach underpinning the conduct principles in the IO.

V) Regulated activities

In our circular of 30 November 2022 to licensed insurance broker companies, we included at Annex 1 a comprehensive report sharing certain common issues we had identified in our on-site inspections and offsite monitoring of licensed insurance broker companies throughout 2022, so as to enable broker companies to consider making improvements to their governance and operations as necessary to address these issues.

(https://www.ia.org.hk/en/legislative_framework/circulars/reg_matters/files/Cir_dd_30_11_2022.pdf)

One of the issues discussed in this report concerned referral business and the need for a broker company which has an arrangement with a person who makes repeated referrals of business to the company, to have in place adequate controls, processes and monitoring to reduce the risk of the referrer carrying out regulated activities. It is, of course, only the technical representatives of the broker company (being licensed, qualified and trained insurance professionals representing the interests of the policy holder) who are permitted to carry out regulated activities in such arrangements (and who must do so to the standards required under the insurance regulatory framework). In our report we set out some “good practices” which an insurance broker company can consider implementing as part of its controls, processes and monitoring in this respect and we would, again, encourage broker companies who have arrangements for repeat referral business to give these due attention.

We reiterate (as we did in paragraph 12 of the report) that a business model which involves unlicensed referrers carrying on regulated activities to source (for example) long term business, with the technical representatives of the broker company doing little more than a tick-box cosmetic compliance exercise in the sales process (rather than providing substantive regulated advice and activities themselves), will not be tolerated by the IA.

Concluding remarks

The year 2022 saw the end of the 3-year transitional period for the insurance intermediary licensing regime which came into force back in September 2019. As we move into 2023, the IA’s focus will be increasingly placed on ensuring the maintenance and enforcement of the standards of conduct and ethical business practices which the regulatory regime demands of professional insurance practitioners and the governance, controls and culture which underpin this, all of which aim to put policy holders interests first and ensure that they are treated fairly.

As we await the opportunities and challenges that this new year may bring, the IA looks forward to working with the insurance industry to achieve the common goal of upholding high standards of conduct across the market and reinforcing the trust and confidence on which the Hong Kong insurance market is founded.

We wish you all a Happy New Year.

Should you have any queries on the above, please contact us by e-mail at conductsupervision@ia.org.hk.

Yours faithfully,

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Insurance Authority

c.c. The Hong Kong Federation of Insurers
The Hong Kong Confederation of Insurance Brokers
Professional Insurance Brokers Association