

PROFESSIONAL INSURANCE BROKERS ASSOCIATION

MEMBERSHIP REGULATIONS

**(First made in October 2003 and
was amended on 15 April 2013 and re-amended on 1 February 2015)**

PROFESSIONAL INSURANCE BROKERS ASSOCIATION
(“the Association”)

MEMBERSHIP REGULATIONS

1. Membership

The Association shall consist of company memberships as defined in the Articles of Association of which include corporations.

Members of the Association, being "insurance brokers", professionally represent buyers of insurance contracts and owe primary fiduciary responsibility to them. It is also the duty of Members to assist, when appropriate, in the administration and performance of these insurance contracts, particularly when a claim arises.

1A. Client Account

For the purpose of these regulations, the term "Client Account" shall mean a current or deposit account maintained with a financial institution duly authorized under the Banking Ordinance in the name of Member in the title of which the word “client” appears.

2. Eligibility of Membership

A company is eligible for membership of the Association provided always that:-

- (a) its principal business activity is to carry 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. Other business which are, in the opinion of the Membership Sub-Committee of the Association, related to and consistent with the business of insurance broking, are permissible;
- (b) its management and operation (in so far as its insurance or insurance-related businesses are concerned) is under the direction and supervision of a chief executive (as defined hereunder);
- (c) its registered business address is situate in HKSAR;
- (d) its name is not likely to deceive;
- (e) it shall have a paid up share capital of not less than HK\$100,000 and a net asset value of not less than HK\$100,000;
- (f) it shall maintain adequate accounting records to reflect the transactions of its business;

- (g) it shall 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 equal to–
- (i) 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);
 - (ii) 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
 - (iii) 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 Member. If as a result of a claim(s), the indemnity available shall fall below the amount determined in (i) or (ii) above, it 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 (iii) 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.

- (h) it shall maintain Client Account in accordance with the following rules:-
- (i) funds deposited into Client Account shall only be used in making payments to the party to whom the funds are due;
 - (ii) it shall not use a Client Account to secure any facility with any bank or other financial institution;
 - (iii) interest receivable on Client Account shall belong to member, and may only be withdrawn from Client Account once funds have been credited to that Client Account by the bank;
 - (iv) Member will be responsible for all bank charges that may be payable on any Client Account, and not less than quarterly, shall transfer from Member's own funds sufficient money to reimburse such charges incurred on a Client Account;
 - (v) within six months of the close of the financial year of a member, its auditors shall provide certification that all monies due to third parties

- have been deposited in Client Account and that no monies have been paid out other than in accordance with this Regulation;
- (vi) funds held in Client Account may be denominated in any currency but may not be used for the purpose of currency speculation.

2A Chief Executive and Eligibility of a Person to be a Chief Executive

A chief executive is a person who, by application, has been listed in the Register of Chief Executive of the Association. Only persons whose names are on such a register for the time being shall be allowed to act as a member's representative to the Association. Any person shall be eligible to apply for registration as a chief executive provided that he/she has met the requirements for a chief executive as stipulated in the Articles of Association of the Association and the Minimum Requirements for Insurance Brokers issued by the Insurance Authority and also he/she has satisfied the Association that:-

- (a) if he/she holds an insurance qualification approved by the Association, he/she has a minimum of two years experience occupying a management position in the insurance industry;
- (b) if he/she holds no insurance qualification, he/she has a minimum of five years relevant experience in the insurance industry of which two years is at management position;
- (c) he/she has attained a minimum education level of Form 5 standard;
- (d) he/she is a fit and proper person and has always, in the opinion of the Association, complied with recognized ethical standard in his/her business dealings, and has not been convicted of any criminal offence, or has not been adjudicated bankrupt or wound-up by the Court, or found guilty of misconduct by a professional body to which he belongs or by the Association in breach of guidelines and regulations which may be from time to time determined by the Association concerning the conduct and integrity of the members;
- (e) he/she is a resident in HKSAR and is at least 21 years of age;
- (f) he/she is appointed or employed by a member company of the Association at the time of application to be registered as chief executive.

Each Member shall have one Chief Executive, and it may have not more than one Alternate Chief Executive.

3. Code of Conduct

- (a) Members of the Association shall at all times conduct their business with utmost good faith and integrity, and provide advice objectively and independently.
- (b) Members shall in all possibility satisfy the insurance requirements of their clients and shall place the interests of their clients above all other considerations.
- (c) Members shall ensure the use of a sufficient number of insurers to satisfy the requirements of their clients.
- (d) Members shall not disclose any information acquired from his client except in the normal course of negotiating, maintaining or renewing a contract of insurance for that client or unless the consent of the said client has been obtained or the information is required by a court of competent jurisdiction.
- (e) Members shall not make or cause to be made advertisements or statement, which in the opinion of the Association, are misleading or extravagant.
- (f) A member who engages in another business or occupation concurrently with the practice of insurance broking shall not allow such outside interest to jeopardize his integrity, independence or competence.
- (g) Members shall not charge or accept any fee that is disproportionate to the service rendered to a client.
- (h) Members shall uphold the institute of the insurance industry and shall not cause the public to lose confidence either in insurance brokers or the insurance industry as a whole.
- (i) In case a member refers its client to an overseas insurer not authorised in HKSAR, the member shall advise its client of the unauthorised status of the insurer and the reasons for recommending such insurer.
- (j) Members shall make it clear to their clients in completing the proposal form, claim form, or any other material document that the clients are solely responsible for the correctness of the answers or statements therein. The client shall always be asked to check the details and be advised that the inclusion of

incorrect information may result in a claim being repudiated.

- (k) Members shall keep the Association duly informed of any change in their particulars on registration by serving written notice thereof to the Association.
- (l) Members shall use every possible endeavour to ensure that their employees are fully aware of and comply and observe the Code of Conduct herein.

3A. Remuneration Disclosure

- (a) In respect of compliant client agreements

Where there exists a form of client agreement whether as a broker service agreement, brokers terms of business agreement or similar and where such agreement has been signed by the client and sets out clearly therein the express levels of fee or brokerage remuneration to be received by the Member then the provisions of 3A(b) and (c) below are deemed to have been complied with subject to the following:

- (i) related correspondence containing the remuneration terms is acceptable provided it is signed by the client;
 - (ii) this provision shall apply to insurance transactions which occur within a period of three years from the date of signing of the relevant client agreement and/or related correspondence; and
 - (iii) deemed compliance in respect of 3A(b) and (c) below will not apply where the client agreement and/or related correspondence does not clearly specify that any brokerage to be received under the terms of the client agreement and/or related correspondence will be paid to the Member by the Insurer.
- (b) In respect of General Insurance Business which is not deemed to have complied with 3A(a)

Members shall include the Form of Disclosure set out below

- (i) in client agreements whether as a broker service agreement, brokers terms of business or similar, and where the validity period does not exceed three years and the express levels of fee or brokerage remuneration to be received by the Member are not included; or

- (ii) for each and every other insurance transaction, in either the formal proposal or the quotation, cover note, the premium debit note or covering letter, whichever be issued earlier by the Member to the client.

The required Form of Disclosure shall be as follows:-

"[Broker Name] (the "Company") is remunerated for its services by the receipt of commission paid by insurers. Your agreement to proceed with this insurance transaction shall constitute your consent to the receipt of commission by the Company."

- (c) In respect of Long Term Insurance Business which is not deemed to have complied with 3A(a)

Members shall include the Form of Disclosure set out below

- (i) in client agreements whether as a broker service agreement, brokers terms of business or similar, and where the validity period does not exceed three years and the express levels of fee or brokerage remuneration to be received by the Member are not included; or
- (ii) in the questionnaire used by the Member for conducting the "needs analysis" of the client, which shall be copied to the client prior to any life insurance application form being filled in; or
- (iii) for each and every other Long Term Insurance transaction, in either the formal proposal, quotation, premium debit note or covering letter, whichever document is the first one issued and sent by the Member to the client.

The Form of Disclosure shall be as follows:-

"[Broker Name] (the "Company") is remunerated for its services by the receipt of commission paid by insurers. Your agreement to proceed with this insurance transaction shall constitute your consent to the receipt of commission by the Company."

- (d) In respect of Insurance Business transacted electronically
 - (i) In respect of web-based insurance transactions, Members shall build into their systems at the entrance webpage for online application, display of

the following Form of Disclosure and users are required to check a box as having read it before they are allowed to proceed with the application;

"[Broker Name] (the "Company") is remunerated for its services by the receipt of commission paid by insurers. Your agreement to proceed with this insurance transaction shall constitute your consent to the receipt of commission by the Company."

- (ii) In respect of telemarketing insurance transactions, inwards or outwards, Members shall include the following Form of Disclosure in the telemarketing script, record at a good quality all telemarketing calls, and make the telephone recordings available to relevant self-regulatory organization and/or relevant insurers for compliance audit when required.

"[Broker Name] (the "Company") is remunerated for its services by the receipt of commission paid by insurers. Your agreement to proceed with this insurance transaction shall constitute your consent to the receipt of commission by the Company."

Note 1: When a client asks the Member about the extent of remuneration, it is incumbent upon the Member to provide that information to the best of its knowledge, either in a maximum percentage of the premium paid (or to be paid) for the policy concerned or in a maximum dollar amount. A Member who declines to provide such details of remuneration following a request would be committing a breach of this requirement.

Note 2: Where the commission is higher than the range of brokerage commission customarily paid for the particular class of insurance or includes any other form of remuneration including but not limited to volume or profit commissions, service fees or marketing allowances paid by the insurers, then additional measures for disclosure and express consent may be required to comply with the provisions of the Prevention of Bribery Ordinance. See Note 4.

Note 3: In cases where the insurer sets a net premium and it is the Member who is charging the client a commission as remuneration for work done, as it is not received out of the premium charged by the insurer, the Prevention of Bribery Ordinance issues do not arise but disclosure is still required.

Note 4: Members may wish to seek their own legal guidance when addressing all or any of the issues above.

4. Monitoring Compliance

- (a) Members shall within 6 months after its financial year end submit documentary proof of continued compliance with the membership

requirements, for example, audited certificate as to net worth; evidences of maintaining proper professional indemnity insurance; maintenance of proper books and client accounts.

- (b) The Association shall have the right to request for specific information from Members and conduct investigation, where considered necessary.

5. Misconduct

The following practices shall be construed as "misconduct" for the purpose of these regulations:-

- (a) The use of methods of solicitation and advertising that are not compatible with the integrity and dignity of the profession of insurance broking.
- (b) The use of any illustration, circular or memorandum that misrepresents or is incomplete as regards the terms, benefits or advantages of any contract of insurance issued or to be issued to a prospective purchaser of insurance.
- (c) The use of any incomplete comparison of any policy or contract of insurance for the purpose of inducing an insured to forfeit or replace a policy or contract of insurance.
- (d) The offer of any payment, allowance or gift as an inducement to any prospective insured to insure through the offerer, but subject to the following which shall not be regarded as misconduct:
 - (i) Offering any discount on fees or charges or rebating brokerage or commission
 - (a) for non-long term products; and
 - (b) not for products of particular insurer(s);providing that such discount on fees or charges or rebating brokerage or commission shall be properly and accurately recorded in the book of account of the member.
 - (ii) Offering a gift for member's own brand promotion or relationship building, and not related to promotion of insurance product.
- (e) Holding out to the public or advertising by means of advertisements, cards, circulars, letters, signs or other methods in an irresponsible or untruthful manner.

(f) Failure to carry on business in a manner consistent with the Code of Conduct within these regulations.

6. Power of the Membership Sub-Committee

The Membership Sub-Committee of the Association shall have the responsibility to grant full membership of the Association in accordance with the regulations.

The Sub-Committee shall have the responsibility to add new provisions under these regulations and make amendments from time to time.

7. Disciplinary Matters

Every member, its Chief Executive and Technical Representative shall be subject to and bound by these regulations and the Disciplinary Code as more particularly described in the Articles of Association of the Association.

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