

THE HONG KONG FEDERATION OF INSURERS

CODE OF PRACTICE FOR LIFE INSURANCE REPLACEMENT

The following Process is intended to prevent the activity of those insurance agents/brokers who misinform or mislead clients into changing **existing individual life insurances** in a way which at the time of the change creates disadvantage to the clients. The assessment of the disadvantage may at times be subjective and therefore the success of the Process in completely achieving its objective will depend on those involved acting in good faith and at all times in the best interests of the clients. For the purpose of this Code, any reference to insurance agent(s)/broker(s) shall include the responsible officer(s)/chief executive(s) and technical representative(s).

1. Policy Replacement

1.1 Any transaction involving the purchase of life insurance is construed as a replacement if within 12 months before or after a new life insurance policy[#] ("New Policy") is effected:

- (a) an existing life insurance policy[#] ("Existing Policy") or a substantial part* of the sum insured of its basic life coverage:
 - (i) has lapsed/will lapse; or
 - (ii) was/will be surrendered; or
 - (iii) was/will be converted to reduced paid-up or extended-term insurance under the non-forfeiture provision of the policy;

or

- (b) a substantial part* of the guaranteed cash value of the Existing Policy was reduced/will be reduced including where a policy loan was/will be taken out against a substantial part* of the guaranteed cash value.

([#] *Life insurance policy includes all types of traditional life, annuity and other non-traditional policies.*)

(* *"a substantial part" means "50% or above".*)

1.2 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 this Code. However, converting term life insurance to whole life insurance (or some forms of permanent life insurance) under policy provisions of the Existing Policy is **not** construed as a replacement.

2. Customer Protection Declaration Form

- 2.1 A Customer Protection Declaration (“CPD”) Form (Appendix) must be completed before the client agrees or makes a decision in relation to the purchase of a New Policy. It is designed to:
- (a) discover any replacement being recommended and if so,
 - (b) ensure that the agent/broker has explained the important consequences; and
 - (c) ensure that the client fully understands the important consequences.
- 2.2 The agent/broker **must** help the client to complete the CPD Form and (if there is any replacement) **must** explain and discuss with the client the full implications of replacing the Existing Policy in relation to financial implications, insurability implications and claims eligibility implications of the replacement and other consideration as stipulated in, but not limited to, the CPD Form. Unless otherwise indicated, the agent/broker must give the reason(s) and/or justification wherever required in the CPD Form in writing as fully as possible.
- 2.3 The completion of the CPD Form will ensure that the client has been informed of the consequences/disadvantages of the recommended replacement or has been given an explanation and/or justification by the agent/broker. The completed CPD Form creates a record of such advice.
- 2.4 The original of the CPD Form shall be kept by the Selling Office and copies must be issued to:
- (a) the client together with the New Policy; and
 - (b) the insurer(s) of the Existing Policy(ies) replaced/to be replaced (“the Non-Selling Office(s)”) within 7 business days of the issue date of the New Policy.

The above applies regardless of whether the policyholder of the New Policy is Hong Kong resident or not as long as the New Policy is reported as Hong Kong long term insurance business within the meaning of the Third Schedule to the Insurance Companies Ordinance (Chapter 41 of the Laws of Hong Kong) (“Ordinance”).

For the purpose of 2.4(b), “Non-Selling Office” refers to an insurer who is authorized under Section 8 of the Ordinance to carry on long term business in or from Hong Kong.

- 2.5 The copy(ies) of the CPD Form shall be sent to the Authorized Representative(s) and/or a designated addressee/addressees of the Non-Selling Office(s) and can be delivered by post, courier, facsimile and/or emails.
- 2.6 The Selling Office shall maintain complete records of the dispatch of the CPD Form copies, including the original copy, dispatch dates and modes of delivery. These records may be required by the Insurance Agents Registration Board (“the IARB”), the self-regulatory broker bodies (“the Broker Bodies”), the Insurance Authority (“the IA”) or the Life Insurance Council (“the LIC”) of the HKFI in the process of investigation of a complaint.

- 2.7 In the cases of internal replacement, the insurer concerned should devise internal controls and measures to ensure it discharges its obligations both as the Selling Office and the Non-Selling Office under this Code.

3. Identifying Twisting

- 3.1 Twisting is the making of inaccurate or misleading statements or comparisons to induce a policyholder to replace Existing Policy with other life insurance policy to the policyholder's disadvantage.

Client Initiated

- 3.2 The client may complain about suspected twisting. Any such complaint received by the HKFI or other party will be forwarded to the Selling Office which must investigate and follow the same process as if it had itself discovered a suspected or actual incident of twisting (see 3.3 – 3.5). The Selling Office must also write to the client to acknowledge receipt of the complaint and commit to notify the client, within 30 days of receipt, the findings and any suggested arrangements.

Selling Office Initiated

- 3.3 The Selling Office has a duty to control the activities of its sales force. The office must therefore review its internal controls and the CPD Forms to ensure that its agents/the brokers are complying with the Process.
- 3.4 If during the review the office discovers cases of suspected twisting, or has evidence to substantiate that existing policyholders may have suffered because of twisting by its agent(s)/the broker(s), the office must investigate those cases and take action. If twisting has occurred, actions listed in 3.7 and 3.8 below should be taken as appropriate.
- 3.5 The office must recognize that the CPD Form will form an important part of any investigation that may arise and should therefore insist upon and provide training to help its agents to get familiar with the contents of the CPD Form and give explanation and/or justification as fully as possible as required in the CPD Form.

Non-Selling Office Initiated

- 3.6 If an office has evidence to substantiate that existing or ex-policyholders have suffered because of twisting by agent(s) of other office(s)/broker(s), it must investigate. If twisting has occurred, actions listed in 3.7 and 3.8 below should be taken as appropriate.

Actions to be Taken

- 3.7 Once twisting is identified as likely to have occurred, the offices concerned should attempt to reach agreement. This imposes an obligation on the offices to keep the client's interest foremost. The client should be kept informed of any material facts or arrangement which may affect his/her interest. Agreement must be reached speedily within a period of 30 days after the identification of the twisting and any follow up actions or arrangement affecting the interest of the policyholder shall be completed within 45 days, i.e. the next 15 days.

3.8 If it is agreed that twisting has occurred:

- (a) The Selling Office must immediately:-
- (i) report the agent to the IARB or the broker to the Broker Bodies/the IA as appropriate;
 - (ii) suspend the agent from selling any further new life business or suspend accepting any further new life business sold by the broker's chief executive/technical representative who did the twisting;
 - (iii) claw back the commission paid on the case(s) in question; and
 - (iv) write to the client and inform him/her that:-
 - he/she may have been sold policy unprofessionally;
 - in view of this he/she may wish to end the arrangements and reinstate the Existing Policy(ies);
 - he/she has the right to request the return of all paid premium on the New Policy;
 - he/she should make a decision within 30 days; and
 - the selling agent has been suspended and has no further authority to represent the Selling Office to sell new life business, or the Selling Office has suspended accepting any further new life business sold by the broker's chief executive/technical representative who did the twisting.
- (b) The Non-Selling Office should arrange terms for reinstatement of the policies that have been twisted, if the client so wishes. These terms should, to the maximum extent possible, allow the client to return to the same position as if the policy(ies) had never been twisted. Nevertheless, the Non-Selling Office should not be responsible for any payment of claims that occurred during the period that the Existing Policy is surrendered or lapsed as a result of policy replacement. The Selling Office should be responsible for the claim subject to the terms and conditions of the New Policy.

3.9 If offices cannot agree that twisting has occurred, then the complaining client or office can refer the complaint to the IARB, the Broker Bodies or the IA as appropriate which will rule. If it is concluded that twisting has occurred, in addition to deciding on the appropriate disciplinary action against the agent/broker, the IARB, the Broker Bodies or the IA as appropriate would also advise the complainant accordingly of his/her right to reinstate his/her Existing Policy(ies) and request the return of all paid premium on the New Policy.

4. Role of the LIC

4.1 The LIC will review this Code from time to time having regard to experience of its operation and developments in the insurance market.

4.2 If the LIC finds that an insurer has not complied with the Process, it will:

- (a) seek cooperation from the office(s) concerned;
- (b) endeavour to mediate among all parties concerned; and/or
- (c) refer the case to the IA if there is concrete evidence showing non-compliance.

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