

# MARKET BULLETIN

REF: Y4656

<b>Title</b>	Commission disclosure for intermediaries in Hong Kong
<b>Purpose</b>	To advise the market of required broker commission disclosure wordings for Hong Kong business
<b>Type</b>	Event
<b>From</b>	Cameron Murray, Senior Manager, International Regulatory Affairs
<b>Date</b>	19 December 2012
<b>Deadline</b>	15 April 2013
<b>Related links</b>	

## Purpose

To advise the market of new commission disclosure requirements which apply to Hong Kong brokers and insurers. Wordings have been issued by the Hong Kong Federation of Insurers ("HKFI") which must be provided and consented to by insureds. Full details are attached as Annex 1.

The disclosure requirements will come into effect on the 15 April 2013.

This bulletin should be read by managing agents, coverholders, service companies and brokers writing or handling Hong Kong business.

## Background

Following consultation by the HKFI on the rules set out in the Prevention of Bribery Ordinance ("PBO"), as advised in Market Bulletin Y4546, minimum practice commission disclosure requirements have now been issued.

Adoption of these requirements and confirmation that a customer has consented to broker remuneration by the insurer will ensure that, under the PBO, neither the broker nor the insurer will be guilty of an offence in respect of their premium transactions. Commission disclosure requirements therefore apply to Hong Kong coverholders, service companies and brokers, all of whom fall under the scope of the PBO.

## Impact

### *1 - Local Hong Kong coverholder / service company*

- a. with a Hong Kong broker and Hong Kong insured
- b. with a Hong Kong broker and non-Hong Kong insured
- c. with a non-Hong Kong broker and non-Hong Kong insured

In instances a and b above, disclosure requirements will apply.

The commission disclosure requirements have been drafted to cover business which is transacted in Hong Kong. Therefore, when dealing with a Hong Kong based broker, Lloyd's coverholders and service companies based in Hong Kong, must incorporate the commission disclosure wordings as directed, regardless of the location of the insured.

In the instance of c above, commission disclosure requirements do not strictly apply.

Where there is a Hong Kong coverholder or service company and a non-Hong Kong broker, the premium transaction takes place outside Hong Kong and does not fall under the jurisdiction of the PBO. As such, in these circumstances the use of the commission disclosure language within the proposal form or debit note cannot be enforced. However, it is Lloyd's view that adoption of the commission disclosure requirements is good business practice and should be used by Hong Kong coverholders and service companies where possible.

### *2 - Cross-border business*

- a. with a Hong Kong broker and Hong Kong insured
- b. with a Hong Kong broker and non-Hong Kong insured
- c. with a non-Hong Kong broker and Hong Kong insured

In the instances of a) and b) above, disclosure requirements will apply.

As per explanations for 1 - a) and b) above. Lloyd's underwriters, regardless of where they are based, are required to ensure that the commission disclosure requirements have been met when dealing with a Hong Kong broker.

In the instance of c) disclosure requirements do not apply.

Where neither the insurer nor the broker are based in Hong Kong commission disclosure requirements will not apply as neither the non-Hong Kong insurer or the non-Hong Kong broker fall under the scope of the PBO.

### *3 – Broker drafted proposal forms/debit notes*

In all circumstances where the commission disclosure requirements apply and the proposal form or debit note issued to the insured is drafted by the broker, underwriters should satisfy themselves that the broker has obtained the insured's consent in relation to broker remuneration by the insurer.



## **POSITION PAPER OF THE HKFI ON COMMISSION DISCLOSURE FOR BROKERS UNDER THE PREVENTION OF BRIBERY ORDINANCE**

### **Background**

In his Judgment on HCCL 15/2010, The Honourable Mr Justice Reyes stated that it would be regarded as a minimum good practice for insurance brokers to disclose the fact that they would be remunerated by way of commissions and other fees received from insurers.

The Hong Kong Confederation of Insurance Brokers and the Professional Insurance Brokers Association have prepared a Joint Position Paper as a self-regulatory move in response to the Judgment on HCCL 15/2010 in relation to the Prevention of Bribery Ordinance (PBO).

As far as HKFI is concerned, we acknowledge that commission disclosure is a matter of legal compliance under the PBO.

### **Consideration**

We have taken the following into consideration:

1. The letter from the Office of the Commissioner of Insurance dated 29 March 2012 stating that *"...the ICAC considers that insurance brokers should seek consent from their clients (i.e. policyholders) regarding their receiving commission from insurers."*
2. Our legal advice from Baker & McKenzie (B&M) that *"it is in the interest of insurance companies to disclose the fact that brokers will receive a remuneration in relation to a successful insurance policy"; and that "the insurance company is not a party to the communications and dealings between the broker and the customer and may not be aware if the permission from the customer was conditional or restricted or that the customer might have expressly informed the broker that he should not receive any commission."*

### **Legal and Compliance**

For legal and compliance purposes and based on existing law and legal advice obtained, member companies are required to follow the minimum practice set out below for brokers:

#### **A. General Insurance**

- (i) Policies with formal proposals or application forms

For placement of policies with formal insurance proposals or application forms, the following clauses should be added to the formal proposals or application forms to obtain the clients' informed consent:

*"The applicant understands, acknowledges and agrees that, as a result of the applicant purchasing and taking up the policy to be issued by [the general insurer], [the general insurer] will pay the authorized insurance broker commission during the continuance of the policy including renewals, for arranging the said policy. Where the applicant is a body corporate, the authorized person who signs on behalf of the applicant further confirms to [the general insurer] that he or she is authorized to do so."*



*The applicant further understands that the above agreement is necessary for [the general insurer] to proceed with the application."*

「申請人明白、確知及同意，[一般保險公司]會就申請人購買及接受其簽發的保單，於保單有效期內（包括續保期）向負責安排有關保單的獲授權保險經紀支付佣金。假如申請人為法人團體，代表申請人簽署的獲授權人員須向[一般保險公司]確認他／她已獲該法人團體授權。」

申請人亦明白[一般保險公司]必須取得申請人以上的同意，才可以處理其保險申請。」

The above wordings should be in English and Chinese, in bold fonts and should appear prominently, ideally on a page of the application form where such wordings are the only bold words on that page. The position of the wordings should be as close as practicable to the signature block of the applicant and also ideally on the same page.

The general insurer should also ask the broker to disclose the rate or amount of commission to the client if the client requests for such specific information.

(ii) Policies with no formal proposal or quotation

For placement of policies verbally without formal insurance proposals or quotations, the following clauses should be added to the insurers' Premium Debit Notes:

*"PLEASE READ THIS AT ONCE -The insured acknowledges and agrees that, as a result of the insured purchasing and taking up the policy issued by [the general insurer], commission will be paid, during the continuance of the policy including renewals, by [the general insurer] and received by the authorized insurance broker arranging the said policy.*

*The insured further understands that the above agreement is necessary for [the general insurer] to continue the policy.*

*If the insured pays the premium, the insured is deemed to have given permission to [the general insurer] to pay the commission to the authorized insurance broker in relation to the policy issued by [the general insurer]."*

「請閣下立刻閱讀下文：受保人確知及同意，[一般保險公司]會就受保人購買及接受保險公司簽發的保單，於保單有效期內（包括續保期），向負責安排有關保單的獲授權保險經紀支付佣金。」

受保人亦明白[一般保險公司]必須取得受保人以上的同意，方可以維持保單的有效性。」

受保人繳付保費，即視作允許[一般保險公司]就所簽發的保單支付佣金予有關的獲授權保險經紀。」



The above wordings, in English and Chinese, should be in bold fonts and should appear prominently, on the insurers' Premium Debit Note.

## **B. Life Insurance**

Life insurers are required to obtain clients' informed consent in life insurance application forms by adopting the consent clauses as follows:

*"The applicant understands, acknowledges and agrees that, as a result of the applicant purchasing and taking up the policy to be issued by [the life insurer], [the life insurer] will pay the authorized insurance broker commission during the continuance of the policy including renewals, for arranging the said policy. Where the applicant is a body corporate, the authorized person who signs on behalf of the applicant further confirms to [the life insurer] that he or she is authorized to do so.*

*The applicant further understands that the above agreement is necessary for [the life insurer] to proceed with the application."*

「申請人明白、確知及同意，[人壽保險公司]會就申請人購買及接受保險公司簽發的保單，於保單有效期內（包括續保期），向負責安排有關保單的獲授權保險經紀支付佣金。假如申請人為法人團體，代表申請人簽署的獲授權人員須向[人壽保險公司]確認他／她已獲法人團體授權簽署。

申請人亦明白[人壽保險公司]必須取得申請人以上的同意，才可以處理有關申請。」

The above wordings should be in English and Chinese, in bold fonts and should appear prominently, ideally on a page of the application form where such wordings are the only bold words on that page. The position of the wordings should be as close as practicable to the signature block of the applicant and also ideally on the same page.

The life insurer should also ask the broker to disclose the rate or amount of commission to the client if the client requests for such specific information.

## **C. Telemarketing Sales by Brokers (applicable to General and Life Insurance)**

Disclosure should be made verbally in the telemarketing calls, whether the policies are life or general insurance policies. The telemarketers must make the disclosures to the clients before submitting the insurance policy applications to the insurer; all telemarketing calls should be recorded and sample checks on the telephone recordings should be carried out to verify compliance. The following wordings should be inserted in the telemarketing script:

*"[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."*

「[保險經紀公司名稱]（該公司）藉向保險公司收取的佣金，作為其所提供服務的酬金。閣下同意進行是項保險交易，即構成閣下同意該公司收取





佣金。」

#### **D. Internet Sales by Brokers (applicable to General and Life Insurance)**

For sales of life and general insurance policies conducted through brokers' website, brokers should build into their systems at the entrance webpage for online applications, display the disclosure wordings below in bold fonts in English and Chinese, which should appear prominently on the webpage.

*"[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."*

「[保險經紀公司名稱](該公司)藉向保險公司收取的佣金，作為其所提供服務的酬金。閣下同意進行是項保險交易，即構成閣下同意該公司收取佣金。」

Users are required to check a box as having read and agreed to it before they are allowed to proceed with the application.

#### **Remarks:**

- 1) The foregoing is the minimum practice on commission disclosures, and member companies may adopt additional measures or provide additional disclosures as they see fit. Member companies should note that further disclosures on the amount/level of commission will be necessary if it falls outside the market rates or if the applicants/insureds so request.
- 2) Member companies are also advised to seek their own legal advice for addressing all the issues on commission disclosure.
- 3) On and after implementation of the minimum practice, in respect of each new application, commission disclosure should be made to the relevant applicant(s)/insured(s) before such application is made by them.

#### **Implementation**

This Position Paper will replace circular Mv013/11 issued on 13 October 2011.

By mutual agreement with CIB and PIBA, a 6-month implementation period will be provided to allow members sufficient time to modify their system/ procedures/application forms accordingly, i.e. this Position Paper will come into effect on **Monday, 15 April 2013 (Implementation Date)**.

Member companies who wish to adopt the above minimum practice prior to the Implementation Date may separately discuss and agree with their brokers to implement the minimum practice prior to the Implementation Date.

HKFI will organize briefing sessions for member companies on the minimum practice for a better preparation of the implementation.

17 October 2012

The Hong Kong Federation of Insurers