

Underwriting and Selling of Life Insurance Products in Hong Kong

This legal update briefly summarises the recent guidelines issued by the OCI and HKMA: OCI Guidance Note 16 on Underwriting Long Term Insurance Business (“GN16”) and HKMA Circulars: (i) Selling of Life Insurance Products dated 4 August 2015 and (ii) Selling of Non-Linked Long Term Insurance Products dated 8 December 2014.

GN16 is issued by the Office of the Commissioner of Insurance in Hong Kong (“OCI”) to promote transparency and fair customer treatment. The Guidance Note applies to all long term insurance other than investment-linked insurance (Class C) and adopts various Insurance Core Principles, Standards,

Guidance and Assessment Methodology (“ICP”) promulgated by the International Association of Insurance Supervisors. GN16 applies to all new products from **1 April 2016** and current products from **1 January 2017**.

HKMA has issued two Circulars recently on the sale of life insurance products by authorized institutions (“AI”). These Circulars were issued after consulting OCI and seek to achieve the common objective of customer protection.

OCI GN16

The key requirements specified in GN16 are summarised below.

	REQUIREMENT	REFERENCE
<i>Management Supervision</i>	<ul style="list-style-type: none"> The management of an insurer is under the duty to oversee the implementation of measures in compliance with GN16 and is ultimately responsible for ensuring fair treatment of customers. 	4
<i>Product Design</i>	<ul style="list-style-type: none"> Insurers should develop market products with due regard to interest of customers and carry out a diligent review to ensure the product meets the “fair treatment to customer” principle, taking a holistic view of all relevant factors such as product features, insurance elements, added value/ services, fees/charges. Insurers need to monitor the product after launch. Fees and charges should be fair, proportionate to the benefit and reflect services/added value. 	5.1, 5.2 5.3 5.5

	REQUIREMENT	REFERENCE
<i>Provision of Adequate and Clear Information</i>	<ul style="list-style-type: none"> • Insurers should provide customers with clear information before, during and after the point of sale. • Product information should be bilingual, clear and succinct, use plain language and easily understandable by average customers. • Key product risks should be included in the product brochure and marketing materials, for example: key exclusions, premium adjustment, premium term, termination conditions. • Insurers need to ensure adequacy of the proposal vis-à-vis the policy provisions and should use warning statements and other tools (e.g., FAQs) where appropriate. 	6.1 6.5 6.6 6.9
<i>Suitability Assessment</i>	<ul style="list-style-type: none"> • Insurers should seek information from their customers appropriate for assessing their insurance needs, such as customer's knowledge and experience, needs, priorities and circumstances and whether they can afford the product. • Customers' needs should be properly assessed using Financial Needs Analysis (FNA). • Insurers must verify all available information and assess whether a product is suitable for customer's needs. • Insurers should reduce the risk of selling products that do not meet customer's needs by strengthening training to intermediaries and properly assessing affordability and suitability of products during underwriting process. 	7.1 7.2 7.6 7.7
<i>Advice to Customers</i>	<ul style="list-style-type: none"> • Insurers need to ensure employees and agents are adequately trained to act with due skill, care and diligence. • When the customer is considering an insurance policy, he/she should be properly informed of all the product features, including the fees and charges, surrender penalties and product risks, key exclusions and 21-day cooling-off period. 	8.1 8.3
<i>Appropriate Remuneration Structure</i>	<ul style="list-style-type: none"> • Remuneration structure should be appropriate and should not create misaligned incentives for intermediaries to engage in mis-selling, aggressive selling, fraudulent acts and money laundering. • It is strictly prohibited to provide commission in advance or on an indemnity basis. Commission must be on an earned basis. 	9.1 9.2

	REQUIREMENT	REFERENCE
<i>Ongoing Monitoring</i>	<ul style="list-style-type: none"> • Insurers and intermediaries must manage any potential conflicts appropriately, for example, through disclosure and informed consent. • Insurers must service a policy appropriately until all obligations have been met and disclose to policyholders any contractual changes as well as further relevant information. • On-going communications with policyholders should be maintained at least annually. 	10.1, 10.2 10.4 10.5
<i>Post-sale Control</i>	<ul style="list-style-type: none"> • To protect vulnerable customers (over 65, low education level or with no regular income source), insurers must audio-record post sale confirmation calls, which must be conducted within 5 working days of the policy issue date. • For vulnerable customers, insurers should have appropriate separate quality assurance team to make post-sale calls, use best endeavours to contact customers, and send confirmation letters together with email/SMS alert in the event of unsuccessful calls. 	11.2 11.2.1 to 11.2.4

Insurers should also pay attention to the specific requirements applicable to participating policies and universal life policies as set out in the appendices to GN16. For participating policies (insurance policies that pay dividends or bonuses), insurers will need to provide a benefit illustration and disclose non-guaranteed benefits. Insurers are also required to disclose investment policies, objectives and strategies so that customers can better understand risk and volatility of the non-guaranteed benefits.

HKMA Circulars

The HKMA Circulars put particular focus on sale of life insurance products by AIs. The requirements and principles set out in these Circulars are consistent with those set out in GN16. HKMA also requires the management of an AI to supervise and regularly review the sale of life insurance products by its business units, in particular, high risk areas and exceptions involving vulnerable customers, inadequate FNA, mismatch, affordability issues or policy replacement. Apart from reinforcing the requirements in GN16, the HKMA Circulars place particular emphasis on AI's FNA and customer suitability assessment, and the importance of AI working closely with the insurers to understand the products and ensure appropriate training of AI's frontline staff and sales representatives.

Remarks

Joining forces, OCI and HKMA seek to fundamentally change the way insurers and AIs sell long term insurance products. Evidently the focus is on treating customers fairly and managing their reasonable expectations, particularly for non-guaranteed benefits. GN16 forces insurers to look at the remuneration structure and to inform customers of investment strategies so that customers understand better the uncertain nature of non-guaranteed benefits. Echoing GN15, indemnity commissions are now a thing of the past. The requirement in GN16 for policies to be written in plain language is also a game changer and is consistent with the ongoing efforts of HKMA and Securities and Futures Commission in driving use of plain language in product documents and sales materials.

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