

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 a real or potential disadvantage to the client. The assessment of this 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 client. For the purpose of this Code, any reference to insurance agents/brokers shall include their responsible officers/chief executives and technical representatives.

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 policy is effected, an existing life insurance policy:
- (a) has lapsed;
 - (b) is surrendered; or
 - (c) is converted to paid-up or extended-term insurance.
- 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.

2. Customer Protection Declaration

- 2.1 A Customer Protection Declaration ("CPD") (Appendix I) must be completed before the client agrees or makes a decision in relation to the purchase of a new life insurance 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 In the event that the agent/broker explains that there is no disadvantage attached to the change, then the agent/broker must give the reason for this conclusion in writing as fully as possible.
- 2.3 In this way, there is a record that the client has been informed of the real or potential disadvantages of the recommended replacement or has been given an explanation, as to why there is no disadvantage. Further, the agent/broker may be protected in the event of a subsequent accusation of malpractice as there is evidence that the policyholder has been advised accordingly.
- 2.4 The original of the CPD shall be kept by the selling office and a copy must be issued to:
- (a) the client together with the policy; and
 - (b) the insurer of the life insurance policy(ies) replaced/to be replaced ("the non-selling office") within 7 business days of the issue date of the new policy.

- 2.5 The Cooling-off Period of the new policy will be extended to 14 days after the date on which the CPD has been delivered to the non-selling office or otherwise stipulated in the Cooling-off Initiative issued by The Hong Kong Federation of Insurers ("the HKFI"), whichever date is later.
- 2.6 The copy CPDs shall be sent to the Authorized Representative and/or a designated addressee of the non-selling office. The CPDs can be delivered by post, courier, facsimile and/or emails.
- 2.7 The selling office shall maintain complete records of the dispatch of the CPDs, including copies of the CPDs, dispatch date and mode 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.
- 2.8 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 life insurance 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 with 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 the CPDs 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/the broker, the office must investigate those cases and take action. If twisting has occurred, actions listed in 3.8 below should be taken as appropriate.
- 3.5 The office must recognize that the CPD will form an important part of any investigation that may arise and should therefore insist upon and provide training to help agents to give explanation as fully as possible in those cases where "no disadvantage" is claimed.

Non-Selling Office Initiated

- 3.6 If an office has evidence to substantiate that existing or ex-policyholders have suffered because of twisting by agents of other offices/brokers, it must investigate. If twisting has occurred, actions listed in 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. Clients should be kept informed of any material facts or arrangement which may affect their 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 policyholders 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 or the IA as appropriate;
 - (ii) suspend the agent from selling any further business or suspend dealing with the broker on any further new business;
 - (iii) claw back the commission paid on the case/cases in question; and
 - (iv) write to the client and inform him that:-
 - he may have been sold policies unprofessionally;
 - in view of this he may wish to end the arrangements and reinstate the original policies;
 - he has the right to request the return of all paid premium on the new policy;
 - he should make a decision within 30 days;
 - the selling agent has been suspended and has no further authority to represent the selling office to the client; and
 - the selling office has suspended dealing with the broker on any further new business.
 - (b) The non-selling office should arrange terms for reinstatement of the policies that have been twisted, if the client so wishes. These terms must, to the maximum extent possible, allow the client to return to the same position he would have been in had the policies not been twisted.
- 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 self-regulatory broker bodies or the IA as appropriate would also advise the complainant accordingly of his right to reinstate his old policy(ies) and request the return of all paid premium on the new policy.

4. Role of the Life Insurance Council

- 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.

香港保險業聯會

壽險轉保守則

以下程序旨在防止保險代理/經紀誤報資料或誤導客戶更改時弊，而對客戶來說，有關更改安排，在當時弊，有損客戶權益的實質或潛在弊端。評估轉保的弊，因此要達臻《轉保守則》的預期果效，有賴各方以誠信行事和時刻以客戶的最佳利益為首。《轉保守則》提及的代理/經紀，包括：負責人/行政總裁及業務代表。

1. 轉保

- 1.1 任何交易出現以下情況，均會被視為轉保：在新購壽險保單生效前後十二個月內，客戶原有的壽險保單：
 - (a) 失效；
 - (b) 被退保；或
 - (c) 轉為已繳清或展期保單。
- 1.2 上述情況，並未涵蓋所有轉保形式，有關資料不時會有增補，以便包括其他形式的轉保。謹此聲明《轉保守則》同樣適用於內部轉保，即現有及新購的壽險保單均由同一保險公司簽發。

2. 《客戶保障聲明書》

- 2.1 客戶同意或作出決定購買新壽險保單之前，必須填妥《客戶保障聲明書》(下稱《聲明書》)(見附件一)。制訂《聲明書》的目的是：
 - (a) 查證是否有人建議客戶轉保；如有者，
 - (b) 確保代理/經紀已經對客戶詳細解釋轉保的嚴重後果；以及
 - (c) 確保客戶完全明白有關嚴重後果。
- 2.2 假如代理/經紀向客戶解釋改動保單沒有弊端，代理/經紀必須在《聲明書》上盡量詳細書面交代得出有關結論的原因。
- 2.3 此舉證明代理/經紀已經向客戶清楚說明或者詳細解釋為什麼轉保建議對客戶並無實質或潛在弊端。又假如事後有人指控代理/經紀違規，《聲明書》可以為代理/經紀提供保障，證明他曾經向保單持有人解釋轉保的後果。

2.4 銷售保單的保險公司應保留《聲明書》正本，副本則必須：

- (a) 隨保單送交客戶；以及
- (b) 於新壽險保單簽發日起計七個工作天內，將副本送交所有已被取代或行將被取代保單的保險公司（下稱「非銷售保單的保險公司」）。

2.5 新保單的「冷靜期」將延至《聲明書》副本送交非銷售保單的保險公司後的十四天，或香港保險業聯會（下稱「保聯」）發出的「冷靜期權益」內訂明的時限，以日期較後者為準。

2.6 銷售保單的保險公司可用郵寄、速遞、傳真及/或電郵，將《聲明書》副本送交非銷售保單的保險公司的授權代表及/或其指定收件人。

2.7 銷售保單的保險公司必須保存發送《聲明書》副本的全套紀錄，包括：《聲明書》副本、發送日期、發送的形式的保險代理登記委員會（下稱「委員會」）、保險經紀的自律監管組織（下稱「經紀組織」）、保險業監督（下稱「保監」）或保聯屬下的壽險總會（下稱「總會」）調查投訴時，或會要求銷售保單的保險公司提供該等紀錄。

2.8 至於涉及內部轉保的保單，則有關保險公司必須制定內部監控機制及措施，確保全面履行《轉保守則》內訂明銷售保單及非銷售保單的保險公司需要承擔的責任。

3. 如何確定誘導轉保

3.1 誘導轉保指：代理/經紀作出不正確或有誤導成分的言論或比較，誘使保單持有人以其他壽險保單取代現有壽險保單，令保單持有人蒙受損失。

由客戶發現

3.2 保聯或其他相關機構接獲客戶懷疑被誘導轉保的投訴後，會將個案轉交銷售保單的保險公司，該保險公司必須按第3.3至3.5條的程序，進行調查，程序一如誘導轉保。銷售保單的保險公司必須同時書面通知客戶已接獲投訴，並承諾在接獲投訴的三十天內通知客戶調查結果和建議。

由銷售保單的保險公司發現

3.3 銷售保單的保險公司有責任監管其營銷隊伍的行為，故此必須審查所有《聲明書》，確保其代理/經紀遵守《轉保守則》訂明的程序。

3.4 如果保險公司審查《聲明書》時懷疑其代理/經紀誘導轉保，或有實質證據證明其代理/經紀誘導現有保單持有人轉保，令客戶蒙受損失，保險公司必須進行調查和採取行動。如果誘導轉保屬實，保險公司必須按下列第 3.8 條採取適當行動。

3.5 保險公司必須明白日後如有調查，《聲明書》是重要文件証供，所以必須堅持及提供培訓協助代理，遇上報戶稱轉保「對客戶沒有弊端」的交易時，盡可能向客戶詳盡填寫解釋部分。

由非銷售保單的保險公司發現

3.6 如果保險公司有實質證據證明現有或前保單持有人被其他保險公司的代理/經紀誘導轉保而蒙受損失，必須進行調查。如果誘導轉保屬實，保險公司必須按下列第 3.8 條採取適當行動。

必須採取的行動

3.7 一旦確認誘導轉保可能屬實，涉案保險公司應該嘗試達成協議，並且有責任確保客戶的權益是先決考慮，又必須通知客戶任何可能影響其權益的重要事實或安排。涉案的保險公司必須在確認誘導轉保後三十四天內完成所有跟進工作或影響客戶權益的安排。

3.8 如果涉案保險公司認為出現誘導轉保，則：

(a) 銷售保單的保險公司必須立即：-

(i) 視乎情況而定，向委員會舉報該名代理，或向經紀組織或保監舉報該名經紀；

(ii) 暫停該名代理繼續銷售壽險業務或暫停透過該名經紀銷售新壽險業務；

(iii) 收回涉及該等新保單的佣金；以及

(iv) 書面通知客戶：-

- 可能有人以不專業手法向他銷售保單；
- 因此，客戶可以要求終止新購買的壽險保單，恢復所有原有壽險保單的效力；
- 他有權要求全數取回已繳付的新保單保費；
- 他必須於三十天內作出決定；
- 涉案代理已被暫停職務，無權再代表銷售保單的保險公司接觸客戶；以及
- 銷售保單的保險公司已暫停透過涉案經紀銷售新壽險業務。

- (b) 非銷售保單的保險公司應該因應客戶的意願，擬盡保單恢復客戶的權益狀況回舊觀，如保險不曾轉保，則可能讓客戶的權益恢復。

3.9 如果涉案的保險公司未能就曾否出現誘導轉保達成共識，投訴的客戶或保險公司可視乎情。如果證明明或外，將成案轉除會及轉保了會對涉案的代理/經紀採取適當的紀律行動，並通知投訴人他有權要求恢復所有舊保單的效力，以及要求全數取回已繳付的新保單保費。

4. 壽險總會的角色

4.1 總會會因應壽險市場的運作及發展，不時修訂《轉保守則》。

4.2 如果總會發現保險公司違反上述程序，總會會：

- (a) 要求該（等）保險公司合作；
- (b) 盡力調停涉案各方；及/或
- (c) 如果有實質證據證明保險公司違反《轉保守則》，則將有關個案轉交保監處理。