

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.

~ End ~

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現有個人壽險，而在更改當時會有損客戶權益。評估轉保的弊端有時或會主觀，因此要達臻《壽險轉保守則》(下稱「《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本。本《守則》提及的保險代理/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[#](下稱「新保單」)生效前後的十二個月內：

- (a) 客戶現有的壽險保單[#](下稱「現有保單」)或其基本壽險保障的大部分^{*}保額：
 - (i) 已失效/將失效；或
 - (ii) 已被退保/將被退保；或
 - (iii) 根據保單的不能作廢條款，已轉為/將轉為減額繳清或展期保單；

或

- (b) 現有保單內大部分^{*}的保證現金價值已被減少/將被減少，包括：大部分^{*}的保證現金價值已被提取/將被提取作為保單借貸。

([#] 壽險保單包括所有類型的傳統壽險、年金及其他非傳統壽險保單。)

(^{*} 「大部分」指「50%或以上」。)

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。謹此聲明本《守則》同樣適用於內部轉保，即現有及新保單均由同一保險公司簽發。但根據現有保單的條款將定期壽險轉為終身壽險(或某些形式的長期壽險)，則不會被視為轉保。

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2. 《客戶保障聲明書》

2.1 客戶同意或決定購買新保單之前，必須填妥《客戶保障聲明書》(下稱《聲明書》)。制訂《聲明書》的目的是：

- (a) 查證是否有人建議客戶轉保及如有者，
- (b) 確保保險代理/經紀已經向客戶詳細解釋轉保的重要影響；以及
- (c) 確保客戶完全明白有關重要影響。

2.2 保險代理/經紀必須協助客戶填寫《聲明書》，並(如果產是轉保)必須向客戶解釋和商討取代現有保單對客戶產生的所有影響，包括(但不只限於)《聲明書》訂明的：財務、對受保資格和索償資格構成的影響，以及其他考慮因素。除非另有指示，否則保險代理/經紀必須按《聲明書》要求，在所有指定的地方，以書面詳盡交代原因及/或理據。

2.3 填寫《聲明書》可確保保險代理/經紀已經向客戶詳細解釋建議轉保對客戶造成的影響/損失，或可確保保險代理/經紀已經向客戶交代原因及/或理據。填妥的《聲明書》可作為保險代理/經紀曾經向客戶提供該等意見的紀錄。

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) 隨新保單送交客戶；以及
- (b) 於新保單簽發日起計七個工作天內，送交所有已被取代或將被取代的現有保單的保險公司(下稱「非銷售保單的保險公司」)。

只要新保單是按《香港法例》第41章保險公司條例(下稱「該條例」)的附表三就香港長期保險業務的定義來申報為該等業務，則無論其持有人是否香港居民，以上都適用。就2.4(b)而言，「非銷售保單的保險公司」是指根據該條例的第8條獲授權在香港或從香港經營長期業務之保險公司。

2.5 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。

2.6 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》正本、所有發送日期及發送形式的紀錄。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」)調查查投訴時，或會要求銷售保單的保險公司提供該等紀錄。

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- 2.7 至於涉及內部轉保的保單，則有關保險公司必須制定內銷部監管機制及措施，確保全面履行本《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：保險代理/經紀作出不正確或有誤導成分現的言論或比較，誘使保單持有人以其他壽險有保單取代現有的保單，令保單持有人蒙受損失。

- 3.2 由客戶發現
如客戶懷疑被誘導轉保，可作出投訴。保險公司應採取適當措施，如機構接獲有關投訴，應按程序一調查。如客戶調查結果顯示，該保險公司確實發客戶通知客戶調查結果，並按程序一調查。如客戶調查結果顯示，該保險公司確實發客戶通知客戶調查結果，並按程序一調查。

- 3.3 由銷售保單的保險公司發現
銷售保單的保險公司有責任監管其營銷隊伍的行為，故此必須審查其內部監管措施及所有《聲明書》，確保其保險代理/經紀遵守本《守則》訂明的程序。

- 3.4 如果保險公司於審查時懷疑其保險代理/經紀誘導轉保，或有實質證據證明其保險代理/經紀誘導轉保，保險公司必須採取行動。如果誘導轉保屬實，保險公司必須按第3.7及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，供證供，所以必須堅持及提供培訓協助其保險代理/經紀理解《聲明書》的內容，及按《聲明書》要求，詳盡交代原因及/或理據。

- 3.6 由非銷售保單的保險公司發現
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保險代理/經紀誘導轉保而蒙受損失，保險公司必須按第3.7及3.8條採取適當行動。

- 3.7 必須採取的行動
一旦確認誘導轉保可能屬實，有關保險公司應該嘗試達成協議，並且有責任確保客戶的權益。如果誘導轉保屬實，保險公司必須在達成協議後三十天內（即前後共三十天）內完成所有跟進工作，或影響客戶權益的安排。

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3.8 如果有關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，向委員會舉報該名保險代理，或向經紀組織或保監舉報該名保險經紀；
- (ii) 暫停該名保險代理繼續銷售新壽險業務或暫停接受該家保險經紀涉及誘導轉保的行政總裁/業務代表銷售的新壽險業務；
- (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/她銷售保單；
 - 因此，客戶可以要求終止新保單，及恢復所有現有保單的效力；
 - 他/她有權要求全數取回已繳付的新保單保費；
 - 他/她必須於三十天內作出決定；以及
 - 有關的保險代理已被暫停職務，無權再代表銷售保單的保險公司銷售新壽險業務；或者銷售保單的保險公司已暫停接受該家保險經紀涉及誘導轉保的行政總裁/業務代表銷售的新壽險業務。

(b) 非銷售保單的保險公司應該因應客戶的意願，擬定條件恢復客戶被誘導轉保的所有壽險保單，盡可能讓客戶的權益狀況回復舊觀，如同不曾轉保一樣。雖然，非銷售保單的保險公司毋須負責因轉保而引致現有的保單失效或被退保期間之任何索償。銷售保單的保險公司應按照新保單之條款負責有關賠償。

3.9 如果有關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況而定，將個案轉交委員會、經紀組織或保監裁決。如果證明誘導轉保屬實，視乎情況而定，委員會、經紀組織或保監除了會對有關的保險代理/經紀採取適當的紀律處分外，並會通知投訴人他/她有權要求恢復所有現有保單的效力，以及要求全數取回已繳付的新保單保費。

4. 總會的角色

4.1 總會會因應壽險市場的運作及發展經驗，不時修訂本《守則》。

4.2 如果總會發現有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) 盡力調停有關各方；及/或
- (c) 如果有實質證據證明保險公司違反本《守則》，將有關個案轉交保監處理。