

Questions and Answers on 'Initiative on Financial Needs Analysis' ("FNA")

Disclaimer: The list of questions and answers are for reference only. Members are advised to consult their own legal counsel as necessary.

I. REQUIREMENTS

Q 1. Except certain types of policies mentioned in 1(a), every application for new life insurance policy (including rider and top-up) must be accompanied by a financial needs analysis ("FNA") form ("the FNA requirement"). What criteria would be used to determine if a rider application (including top-up or rider added after policy issuance) needs to be accompanied by an FNA form?

A 1. Treatment for riders should follow the requirement as if it is a basic plan.

Q 2. Please provide a definition of 'top-ups', in particular whether inflation protector option would be considered a top-up.

A 2. Top-ups include any addition in sum assured / protection level / additional investment but exclude any prepayment, increase of account value due to policy bonuses, dividends or coupons. Indexation option, which usually takes the form as policy endorsement, is not considered as a top-up.

Q 3. For refundable insurance policies under 1(a)(ii), does it have to be 100% or more "refundable" in order for the FNA requirement be exempted?

A 3. Yes. For those refundable insurance policies which are not 100% refundable (e.g. the amount refunded would be less than 100% if claims have been made under the policies), insurers should approach the Insurance Authority ("IA") accordingly.

However, even for those refundable policies which are 100% or more refundable, insurers are reminded that in determining whether the products concerned are exempted from the FNA requirement, they should consider the substance and nature of the products (rather than name or form). In this regard, when the amounts refundable in substance represent substantial savings component taking into account relevant factors (e.g. for policies which are more than 100% refundable: size of the refundable portions in excess of 100%, period of time when the amounts will be refundable, etc.), the products (despite being called "refundable") may in substance be of nature as policies which are subject to the FNA requirement (such as endowment policies).

Insurers using the bank distribution channel are further reminded of the requirements of the HKMA in its circular letter of 4 August 2015 regarding refundable policies with "substantial savings component". For such products, the exemption arrangement should not be applied.

II. SUITABILITY ASSESSMENT

Q 4. For insurance products with investment element (e.g. participating policy, universal life insurance policy), is it necessary for customers to indicate that they have both insurance and investment needs (i.e. by ticking both (a) and (e) in Q1 of the FNA form) before such products can be recommended to customers?

A 4. Answers provided by customers in both Q1 and Q2 of the FNA form, among other relevant circumstances of the customers, should be taken into account.

7.1 of GN15 issued by the IA specifies that ILAS products should only be sold to clients with both investment and insurance needs. For non-ILAS product, such as participating policy, which has certain investment element (i.e. in the form of non-guaranteed benefits determined mainly by the performance of the participating pool etc), whether customers need to indicate investment needs or savings needs, in addition to insurance needs, before such products can be recommended to customers depends on the specific feature of the products concerned.

For instance, for a participating policy which has high level of non-guaranteed surrender benefits and the investment element is a predominant feature of the product, it may be suitable only for customers with both investment needs and insurance needs. On the other hand, for a participating policy where substantial portion of surrender benefits is derived from guaranteed benefits, there exists a savings element and may be suitable for customers with both savings needs and insurance needs.

Insurers, when performing the diligent review required under GN16 issued by the IA during the product design stage, should properly identify the target customers (i.e. among other circumstances of the customers, whether the product concerned is suitable for customers with savings or investment needs, in addition to insurance needs; and what types of insurance products the customers are looking for to meet such objectives) and provide appropriate product training to their intermediaries accordingly.

Q 5. Where there is a mismatch (e.g. needs, affordability), are insurers allowed to issue the policies anyway if customer declaration is made?

A 5. The overarching principle is that insurers and intermediaries should ensure that the recommended policy is suitable for the circumstances (e.g. needs, affordability, etc) of the customer.

In case of affordability mismatch (e.g. the customer has indicated a target premium term of 10 years but is recommended a product with whole-of-life payment term), insurers should not accept the application even with customer declaration (including ILAS and non-ILAS).

For suitability mismatch other than affordability mismatch mentioned above, the intermediary concerned must document in writing why the product is still suitable for the customer despite the mismatch, and the insurer should, during the underwriting process, review and assess the reasonableness of such recommendation before accepting the application. The insurer should further clarify and confirm with the customer through post-sale confirmation call (highlighting the exact area(s) with mismatch). In case of unsuccessful call (within the existing timeframe of post-sale confirmation call) or the customer is reluctant to perform the call, the insurer should send a confirmation letter (highlighting the exact area(s) with mismatch) to the customer, alongside an email/SMS alert that draws the attention of the clients to the importance of the confirmation letter. Insurers are required to put in place an effective mechanism to identify potential mis-selling activities of intermediaries, such as high frequency of suitability mismatch, or having high rate of unsuccessful post-sale confirmation calls etc.

Q 5a Can further clarification be provided for what would be considered as a “suitability mismatch” (other than affordability mismatch)?

A 5a A suitability mismatch other than affordability mismatch exists when the intermediary concerned has recommended a product portfolio (including one or more than one product depending on the circumstances applicable) which does not meet all the needs of the customer based on information collected during the FNA process (including customer’s responses to Q1, Q2 and Q3 of the FNA Form). For the avoidance of doubt, whether the requirement has been met is determined at the time of the recommendation by the intermediaries (and not at the time of selection by the customers) on a portfolio basis. Intermediaries are required to explain to the customer the area(s) with suitability mismatch and properly document the factors considered, evaluation, and reason(s) for the recommendation (including area(s) with suitability mismatch and why the product is still suitable for the customer despite the suitability mismatch) in accordance with Requirement 5 of the HKFI’s FNA Circular and A5 of FAQs on FNA.

For instance, if a customer has indicated the objectives of “Financial protection against adversities”, “Preparation for health care needs” and “Saving up for the future” in Q1. The intermediary has explored and recommended an endowment policy with a critical illness rider, or an endowment policy and a critical illness policy, both would be considered as acceptable product portfolio (assuming the recommended product portfolio matches with customer’s responses to all other questions of the FNA Form including Q2 and Q3). If the customer has decided to take up just the endowment policy only (and not the critical illness rider/policy), it is not considered to be a suitability mismatch for the purpose of the FNA requirements. However, if the intermediary has explored and recommended only an endowment policy, it is considered to be a suitability mismatch for the purpose of the FNA requirements and proper documentation by the intermediaries is required.

For the avoidance of doubt, the post-sale confirmation call requirement mentioned in Q5 of the FAQs applies only for suitability mismatch involving mismatch of the recommended product portfolio with customer's responses to "objectives" in Q1 and/or "type(s) of insurance products" in Q2 of the FNA Form, and not "target benefit/protection period" in Q3 due to the diversity and different nature of insurance products available on the market.

The above are constructed as illustration of certain possible mismatch cases and are meant to be used as reference to facilitate understanding of the relevant requirements. Given the diverse nature of different types of insurance products available, insurers and intermediaries are required to comply with the requirements in substance (rather than form or name) with due regard to the circumstances of individual cases.

Q 5b Would difference in the recommended level of insurance protection and the level of insurance protection evaluated during the FNA process be considered as a "suitability mismatch" (other than affordability mismatch)?

A 5b Following the suitability mismatch clarification mentioned above, when the recommended level of insurance protection deviates (plus or minus) from the level of insurance protection evaluated during the FNA process, it is considered as suitability mismatch. The intermediaries are reminded to explain to the customer this area with suitability mismatch, where possible, and properly document the factors considered, evaluation, and reason(s) for the recommendation (including area(s) with suitability mismatch and why the product is still suitable for the customer despite the suitability mismatch) in accordance with Requirement 5 of the HKFI's FNA Circular and A5 of FAQs on FNA. That said, insurers may develop internal guidelines and/or threshold relating to deviation for the recommended level of insurance protection, within which, while Requirement 5 of the HKFI's FNA Circular still applies, "documentation of this area with suitability mismatch and why the product is still suitable for the customer despite this area with suitability mismatch" is not required in order to facilitate compliance by the intermediaries. Such practice is considered to be acceptable provided that such guidelines and/or threshold are developed based on sound insurance underwriting principles and practices; are consistently applied; and will not result in the recommended level of insurance protection being materially higher or lower than the level of insurance protection evaluated during the FNA process. For the avoidance of doubt, insurers and intermediaries are required to comply with the requirements in substance (rather than form or name) with due regard to the circumstances of individual cases.

Q 5c For Q3 of the FNA template, customers can choose only one option. If a customer decides to purchase a basic plan together with a rider under one application at the same time, but the basic plan and the rider have different benefit/protection periods, should the chosen option in Q3 be applied to the basic plan only? Would that be considered as a “suitability mismatch” if the benefit/protection period of the rider is different from that of the basic plan?

A 5c Under normal circumstances, a rider will cease to be in force upon termination of the basic plan. The target benefit/protection period indicated in Q3 should therefore apply to the basic plan. Nonetheless, insurers and intermediaries should have due regard to the circumstances of individual cases before deciding whether it is appropriate to do so, and comply with the requirements in substance (rather than form or name). To facilitate understanding by the customers, the intermediary should add remark(s) in the FNA Form as appropriate to specify the protection period of the chosen rider benefits.

Q 6. Intermediaries are required to take into account the customers’ total protection needs, total disposable assets, financial outgoings and liabilities etc before making recommendation. How detailed such information need to be collected to be considered as sufficient for the purpose?

A 6. The level of detail required depends on a number of factors such as product mix, distribution channel, target customers etc of the insurer concerned. For instance, it is reasonable to expect that more detailed information are collected if the products concerned are complex by nature and may not be suitable for an average customer. Insurers, when designing their FNA forms, should have due regard to the relevant requirements.

Q 7. It is stated that the FNA must include all the questions and multiple choice options in the suggested FNA form as set out in the Appendix. Are Insurers allowed to have certain degree of flexibility on the presentation of the questions and the choice of options as suggested in FNA Form?

A 7. As a matter of principle, insurers are required to include all the questions and multiple choice options in the suggested FNA form as set out in the Appendix, and strictly follow the wording. In cases where the insurers have compelling reasons not to do so, they should approach the IA accordingly.

III. ADVICE TO CUSTOMERS

Q 8. “Insurance advice provided by intermediaries” needs to be based upon customers’ needs and that FNA should be carried out “during the sales advisory process”. Do the FNA requirements apply to Direct-to-Customer channel such as internet sale?

A 8. Yes. The FNA requirements apply to all channels of distribution.

- Q** 9. If the customer indicates a need to use ILAS for investment and insurance protection (i.e. by ticking 1(a), 1(e) and 2(d) of the FNA form) but the intermediary concerned is not allowed to sell ILAS (or the insurer concerned does not carry ILAS product), is the intermediary required to explore the ILAS option in Q5?
- A** 9. Yes. The intermediary is still required to briefly explain what ILAS is as a product type in general, without exploring any ILAS product options to the customer.

IV. IMPLEMENTATION

- Q** 10. Is there any transitional arrangement for FNA performed before the implementation date of 1 January 2016 but the policy concerned is not issued before that date?
- A** 10. For new business (including new application and top-up) using “Needs Analysis Form” prior to 1 January 2016, the policy must be issued no later than 31 January 2016. Nonetheless, if the policy cannot be issued due to outstanding medical attendant’s report, medical examination, blood test, laboratory test, provision of financial evidence, and client's check up reports, the policy must be issued no later than 31 March 2016. In such cases, proper records must be kept to allow inspection by the IA if required.
- Q** 10a In case of “suitability mismatch” (other than affordability mismatch), insurers are required to clarify and confirm with the customer through post-sale confirmation call. Would this requirement take effect on 1 January 2016 or the implementation date of GN16?
- A** 10a Requirement 1 of the FNA Circular specifies that every application for new life insurance policy (including rider and top-up) falling under Class A (unless exception applies) and Class C must be accompanied by an FNA form. In case where an insurer has genuine and practical difficulties in complying with the requirements (e.g. the post-sale confirmation call for cases involving suitability mismatch), it should immediately contact its case officer accordingly.