

Press release

LCQ9: Regulation of banking institutes engaging in the sale of endowment insurance products Wednesday, January 11, 2012

Following is a question by the Hon Leung Kwok-hung and a written reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (January 11):

Question:

Recently, I have received complaints from members of the public that the sale of endowment insurance by some banking staff to elderly clients has involved practices of unauthorised transfer of personal data and frauds, etc. In this connection, will the Government inform this Council:

(a) whether the authorities have assessed if the misuse of the clients' personal data by banking staff in the sale of endowment insurance constitutes a breach of the privacy legislation; if they have, of the findings of the assessment;

(b) given that under the existing legislation, clients are required to fill out investment profile questionnaires prior to the purchase of investment products from banks, whether this requirement covers endowment insurance;

(c) given that the family members of an elderly person complained that although the banking staff clearly knew that the elderly person concerned had already taken out a number of endowment insurance policies, the banking staff still persuaded the elderly person to take out a new endowment insurance policy, and both the Securities and Futures Commission and the Office of the Commissioner of Insurance refused to handle the complaint, how the Government prevents occurrence of similar incidents; and

(d) given that some complainants have pointed out that while the commissions on the sale of endowment insurance products are very high, some of such products also carry high risks, of the Government's regulation of this kind of products at present?

Reply:

President,

My reply to the question is as follows:

(a) The Hong Kong Monetary Authority (HKMA) expects that authorised institutions (AIs) should at all times comply with the Personal Data (Privacy) Ordinance (the Ordinance) in the collection, use and holding of customer information. They should also comply with any relevant codes of practices issued or approved by the Privacy Commissioner for Personal Data giving practical guidance on compliance with the Ordinance. Generally speaking, whether it is an abuse of the use of customers' personal data if a bank uses such data for marketing endowment insurance products to customers depends on whether the bank has followed the Ordinance and notified the customer the purpose for which the data are to be used, including marketing of insurance products.

(b) According to the requirements of the Code of Practice for the Administration of Insurance Agents issued by the Hong Kong Federation of Insurers (HKFI), insurance agents and their technical representatives (including bank employees), in the course of marketing life insurance products, are required to conduct needs analysis for their customers and assist them in the completion of "Needs Analysis Form". They should make every reasonable effort to ensure that the policy proposed is suitable for the needs and resources of the potential policy holder as disclosed in the "Needs Analysis Form". They should also explain the cover afforded by each policy recommended to ensure that the potential policy holder understands what he/she is buying.

In addition to the above requirements, potential policy holders are required to complete "Risk Profile Questionnaire" when procuring investment-linked insurance products to ensure that the products they purchase will match their risk-bearing level.

In its circular "Enhanced Regulatory Requirements on Selling of Investment-Linked Assurance Scheme (ILAS) Products" issued on March 14, 2011, the HKMA also reiterated that AIs should perform needs analysis and risk profiling for their customers prior to making any solicitation or recommendation in respect of any ILAS products.

(c) All life insurance products (including endowment insurance) provide a cooling-off period of 21 days. If policy holders consider the policy purchased not suitable, they have the right to cancel it within the cooling-off period and obtain a full refund of the insurance premium (less a market value adjustment where applicable). In this connection, the HKMA requires that when selling ILAS products, AIs should draw to the attention of their customers their right to cancel the policy in accordance with the cooling-off period arrangement, how they may exercise the right and how the refund will be calculated.

Meanwhile, with a view to enhancing protection for customers who purchase investment-linked insurance products, the Office of the Commissioner of Insurance (OCI) and HKFI have introduced a series of control measures for the sale of these products, including:

- (i) strengthen information disclosure;
- (ii) conduct product suitability assessment for customers;
- (iii) enhance training and examination requirements for insurance intermediaries;
- (iv) require post-sale follow-up (including follow-up call to customers to confirm their understanding of the products and associated risks, as well as audio recording of the telephone call) for vulnerable customers (i.e. the elderly, persons with primary education level or below, or those with unstable income);
- (v) restrict gifts for sale promotion; and
- (vi) strengthen consumer education on investment-linked insurance products.

Under the current self-regulatory regime of insurance agents, the Insurance Agents Registration Board (IARB) is responsible for handling complaints against insurance agents. Where an insurance agent is in breach of the requirements under the Code of Practice for the Administration of Insurance Agents, the IARB will take appropriate disciplinary action

against the insurance agent. This may include issuance of written reprimand, suspension or termination of the appointment of an insurance agent.

The HKMA has provided additional guidance to AIs on the control measures which should be adopted when selling ILAS products. AIs should take all reasonable steps to ensure that the recommended ILAS product is suitable for a customer having regard to the customer's circumstances, such as investment objectives and horizon, investment experience, risk tolerance level, affordability, asset concentration, etc. AIs should not recommend ILAS products where a customer indicates that he/she does not need/want insurance/investment products. The HKMA has also required AIs to implement the following additional safeguards when selling ILAS products to elderly customers:

(i) AIs should alert elderly customers of the relatively long lock-in period and ensure that the product is suitable for the customers. AIs should allow sufficient time for these customers to consider the product or seek advice from their relatives or friends where necessary; and

(ii) AIs should exercise extra care in selling ILAS products to elderly customers. More than one front-line staff member should handle the sale to such a customer (unless the customer opts out of this arrangement whilst proper audit trail is maintained on this opt-out decision).

The HKMA requires AIs to monitor and put in place stringent control procedures to handle high-risk areas and special circumstances related to the sale of ILAS products, such as transactions with the elderly or other vulnerable customers, tenor and/or risk mismatch transactions, affordability issues or high asset concentration. AIs should also use "mystery shopper" programme to test the ILAS product selling process.

(d) Insurance agents have to comply with all the relevant requirements of the IARB when they sell life insurance products (including endowment insurance). These requirements include conducting needs analysis for their customers, following the relevant illustration standard on policy benefits, complying with the Code of Practice for Life Insurance Replacement, and following the requirement for cooling-off period. Where an insurance agent is in breach of the requirements under the Code of

Practice for the Administration of Insurance Agents, the IARB will take appropriate disciplinary action against the insurance agent.

The OCI has all along been taking a close interest in the sales behaviour of insurance agents (including bank employees). Whenever the OCI receives a complaint in this regard, it will not only refer the case to the IARB, but will also follow up the matter with the insurance company concerned.

Ends