

New insurance regulatory regime and tips for insurance business referral

➤ New Regulatory Regime

The Insurance Companies (Amendment) Ordinance 2015 (the “**Ordinance**”) had taken effect on 23 September 2019 and financial intermediaries (“**FIs**”) have been repeatedly looking for a simple answer for the following question:-

“Whether FIs, which refer clients to insurance brokers for taking out insurance policy and, in return, receive referral fees from insurance brokers, are subject to licensing requirements under the Ordinance?”



The simple answer is “No” provided that FIs refrain from undertaking any “regulated activity” as defined under the Ordinance throughout the entire business referral process.

➤ Regulated Activity

“Regulated activity” is defined in Section 1 of Part 1 of Schedule 1A to the Ordinance which includes:-

- (i) the act of negotiating or arranging a contract of insurance;
- (ii) the act of inviting or inducing, or attempting to invite or induce someone to enter into a contract of insurance/make a material decision; or
- (iii) the act of giving regulated advice.

By this definition, when FIs actively market or solicit insurance business or provide advice on insurance contract, such act would fall within the definition of “regulated activity” under the Ordinance. In contrast, if FIs merely refer a client to an insurance broker and receive a referral fee, this would not fall within the definition of “regulated activity” under the Ordinance. In a nutshell, bare referral would not fall within the meaning of “regulated activity” if FIs refrain from undertaking any regulated activity. Thus, FIs should be cautious to avoid any activity which constitutes a “regulated activity” without an insurance licence as such activity is an offence under the Ordinance.



To assist FIs in identifying the legal pitfalls, we suggest tips to FIs by compiling a list of “Dos and Don’ts” as below:-

List of “Dos and Don’ts”

	Dos	Don’ts
1.	FIs may understand the needs of a client to decide whether insurance is a practicable solution for client	No analysis of specific types of insurance products can be made to client
2.	Marketing material with no specific information of insurance product could be provided to client as per client’s request	No market material with specific information of insurance product or application form for insurance product could be provided to client
3.	General concept of insurance for the purposes of wealth/estate/liquidity management could be provided to client	No insurance product or specific feature of the insurance product is introduced or recommended to client
4.	FIs can introduce to client the risk management function by way of insurance to mitigate risks	FIs should not decide for the client which insurance product is suitable for client
5.	When a client approaches FI for the need of purchasing insurance products, FI should unequivocally mention to client about the role and responsibility of FI and must obtain client’s consent before referring client to an insurance broker	FIs should not refer client to insurance broker without client’s consent

The above is not an exhaustive list and further reference may be made to the definition of “regulated activity” under the Ordinance.



➤ The Insurance Authority's Concern

In the “Consultation Conclusions on the Draft Code of Conduct for Licensed Insurance Brokers”, the Insurance Authority agrees that the entire issue of referrals needs further consideration. It is anticipated that the issues of insurance business referrals will be revisited in due course and all stakeholders in the insurance industry should watch out the conclusion of the forthcoming revisit.

This explanatory summary is not, and should not be regarded as, a legal advice. Should you have any enquiries, please seek specific advice from legal advisers.

27th September 2019

