

The Hong Kong Federation of Insurers (“HKFI”)

Reference Checking Scheme for Insurance Intermediaries

1. Introduction and objective

- 1.1 The reference checking scheme (“**reference checking scheme**”) is an HKFI-led measure endorsed by the Insurance Authority (“**IA**”) to assist in reducing the risks associated with “rolling bad apples” in the insurance sector.
- 1.2 A “rolling bad apple” refers to an individual insurance agent whose conduct and fitness and properness is called into question by findings made by his/her appointing principal, who then resigns in order to avoid any adverse consequences, and then takes up an appointment with a new principal without disclosing the problematic conduct arising during the previous appointment. If these “bad apples” are able to avoid accountability for their misconduct by simply “rolling on” to another principal, not only does this undermine the trust and integrity on which the insurance market must be founded, it also increases conduct risk (and hence risk to policy holder interests) across the insurance sector.
- 1.3 The HKFI believes that authorized insurers have both an individual and collective responsibility for protecting policy holder interests, maintaining public confidence in the market, and stopping “the few bad apples spoiling the whole barrel”. To achieve this, the HKFI is introducing this reference checking scheme.

2. Interpretation

- 2.1 In this document, unless the context otherwise specifies:

“**long term insurer**” means an authorized insurer carrying on long term business under the Insurance Ordinance (Cap. 41) (“**IO**”);

“**prospective agent**” means a prospective licensed individual insurance agent who was previously appointed by a responding insurer to carry on regulated activities in long term insurance business and who is seeking to be appointed by a recruiting insurer to carry on regulated activities in long term insurance business. This does not include individuals who are to be employed as internal staff members of the recruiting insurer but need to be licensed as individual insurance agents because of their job duties (“**staff member agents**”);

“**recruiting insurer**” means a long term insurer which is considering to appoint a prospective agent; and

“**responding insurer**” means a long term insurer which previously appointed (or currently appoints) the prospective agent as an individual insurance agent and which is expected to provide a reference to the recruiting insurer under the reference checking scheme in respect of the prospective agent.

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3. Scope and application

- 3.1 The reference checking scheme covers the recruitment of every prospective agent by a long term insurer, as licensed individual insurance agents carrying on long term business make up the largest portion of licensed insurance intermediaries in the Hong Kong insurance market. The reference checking scheme does not (for the time being) cover licensed individual insurance agents who are solely carrying on regulated activities in general insurance business, licensed individual insurance agents who are staff member agents, technical representatives (agent) or technical representatives (broker).¹
- 3.2 In broad terms, the reference checking scheme operates as follows:
- (a) If a recruiting insurer is seeking to appoint a prospective agent and is aware that the prospective agent has previously been appointed by (or is currently appointed by) any other long term insurer(s) (i.e. responding insurer(s)) in the last 7 years, the recruiting insurer must seek references from (i) each responding insurer by whom the prospective agent was appointed in the last 7 years or (ii) if the prospective agent was appointed by more than three long term insurers in the last 7 years, at least from the previous three responding insurers by whom the prospective agent was most recently appointed, before making a decision on the appointment of the prospective agent (as detailed in section 4).
 - (b) The responding insurer(s) must provide such information as requested by recruiting insurer for the purpose of providing such reference (as detailed in section 5).
 - (c) On receipt of the reference(s) from the responding insurer(s), the recruiting insurer must consider and take account of the information in those reference(s) before deciding whether or not the prospective agent is a fit and proper person to be appointed as its licensed individual insurance agent to carry on regulated activities in long term insurance business by the recruiting insurer (as detailed in section 6).
- 3.3 As stated in the circular dated 5 July 2024 issued by the IA, the reference checking scheme has the support and endorsement of the IA.

4. Making a reference checking request

- 4.1 Before appointing a prospective agent to carry on regulated activities in long term insurance business, a recruiting insurer should carry out reference checking on the prospective agent for the purpose of assessing his/her (continued) fitness and properness.
- 4.2 The reference checking should cover every previous appointment of the prospective agent by any long term insurer(s) in Hong Kong in the past 7 years, or if the prospective agent was appointed by more than three long term insurers in the last 7 years, at least from the previous three responding insurers by whom the prospective agent was most recently appointed ("**checking period**"). This means that before onboarding a prospective agent, the recruiting insurer should conduct reference checking with all the relevant long term insurer(s) which

¹ Consideration may be given to extending the scope of the scheme after the accumulation of experience in implementing it.
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formerly appointed or currently still appoint the prospective agent to carry on regulated activities in long term insurance during the checking period.

- 4.3 To carry out the required reference check, the recruiting insurer should send a reference checking request to every responding insurer in relation to the prospective agent using the reference checking information template (see Annex 1), requesting the responding insurer(s) to provide a reference in relation to the prospective agent.
- 4.4 Before sending a reference checking request to any responding insurer(s), the recruiting insurer must obtain written consent from the prospective agent:
 - (a) authorizing the recruiting insurer to conduct reference checking with the prospective agent's current and former appointing responding insurers within the checking period;
 - (b) authorizing the responding insurer(s) to disclose the information being requested in the reference checking request to the recruiting insurer; and
 - (c) exempting the responding insurer(s) from any contractual obligations which may otherwise limit their abilities to disclose the information being requested in the reference checking request.

A template consent form (see Annex 2) has been developed which recruiting insurers should use for obtaining and recording the consent of the prospective agent for the collection and use of their personal data for the purpose of the reference checking scheme.

- 4.5 In case a prospective agent refuses to provide consent for the reference checking, the recruiting insurer should not appoint the prospective agent as its licensed insurance intermediary. For the avoidance of doubt, if the prospective agent provides consent but then subsequently withdraws that consent for the reference checking, the recruiting insurer should not appoint the prospective agent as its licensed insurance intermediary.
- 4.6 Where a prospective agent is to be appointed by two long term insurers (i.e. there are two recruiting insurers), both recruiting insurers are required to conduct reference checking on the prospective agent as part of their onboarding measures. If, however, both recruiting insurers are in the same group of companies, it is acceptable for the recruiting insurers to enter into an arrangement, whereby one of the recruiting insurers (the primary recruiting insurer) conducts the reference checking which both recruiting insurers then rely on. For the avoidance of doubt, such arrangement does not diminish the other recruiting insurer's ultimate accountability for its obligation to ensure it has in place adequate internal control measures for onboarding of prospective agents. It is also crucial that the other recruiting insurer has access and control to the prospective agent's reference checking results performed by the primary recruiting insurer.

5. Responding to a reference checking request

- 5.1 On receipt of a reference checking request from a recruiting insurer, a responding insurer should complete and return the reference information requested to the recruiting insurer in accordance with the following timeframes:

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- (a) within **15 calendar days** starting from the date of reference checking request; or
- (b) if the responding insurer considers it will not be able to respond within 15 calendar days, it must send an interim reply within the above prescribed timeframe, stating the reason for the expected delay and the expected time for the final reply. Such final reply, however, must be provided within 2 months from the date of reference request.

To ensure the effectiveness of this scheme, the responding insurer should endeavour to adhere to the 15-calendar days timeframe in (a); and the alternative in (b) should only be used on an exceptional basis with justification which is approved by its key person in control function for intermediary management (“**KPIM**”)².

5.2 When providing a reference, the responding insurer should adhere to the following guiding principles:

- (a) The reference provided should be true, accurate, fair, complete and capable of substantiation (e.g. based on the compliance records maintained by the responding insurer rather than the comments from the upline managers or agency leaders);
- (b) subject to the legal or regulatory disclosure restriction, the responding insurer should not withhold any information which may render the reference unfair, incomplete or inaccurate; and
- (c) the responding insurer is not obliged to provide information which is beyond the scope of the reference checking request (based on the template in Annex 1).³

Accordingly, the responding insurer should establish and maintain appropriate controls and procedures for ensuring its adherence to the above guiding principles. To avoid conflict of interest and ensure fairness, the reference to be provided by the responding insurer should not be prepared by a person who has economic relationship with the perspective agent (e.g. upline managers or agency leaders).

5.3 In respect of any internal investigation being carried out by the responding insurer in relation to the prospective agent which is ongoing at the time the reference checking request is received, the responding insurer should use its own judgement on whether or not to share any information in relation to (or even the existence of) the investigation with the recruiting insurer based on the following factors:

- (a) applicable legal and regulatory requirements;
- (b) the status of investigation (e.g. preliminary assessment where fact-finding has not yet been completed, or the prospective agent has yet to be offered an opportunity to explain etc.); and

² The approval or endorsement can also be performed by an authorized person delegated by KPIM. However, such arrangement does not diminish the ultimate responsibility and accountability of KPIM in the relevant approval and endorsement process. To avoid conflict of interest and ensure fairness, the authorized person should not have any economic relationship with the prospective agent (e.g. upline managers or agency leaders).

³ If, however, the responding insurer believes that additional information is of material relevance to the assessment of the fitness and properness of the prospective agent, it may disclose further facts to the recruiting insurer on a voluntary basis if it wishes to do so.

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- (c) the risk of jeopardizing an investigation (for example, do the circumstances suggest any risk of the prospective agent tipping off others under investigation if the investigation is not kept confidential; or would disclosure risk the information gathering exercise).
- 5.4 For the avoidance of doubt and without prejudice to section 6, a recruiting insurer has full discretion to consider whether or not to seek further information/clarification from/with the responding insurer based on the information provided by the responding insurer. The responding insurer also has full discretion as to whether to respond to such a request. Any response from the responding insurer should be made within 15 calendar days from the date of the request. If no response is received within 15 calendar days, the recruiting insurer may presume no further information/clarification is to be provided by the responding insurer.
- 6. Assessment by the recruiting insurer**
- 6.1 A recruiting insurer has full discretion in deciding whether or not to proceed with the appointment of a prospective agent after making its internal assessment and based on all relevant information available to it including information received in response to the reference checking requests it has made. Where adverse information in relation to a prospective agent has been disclosed by a responding insurer, the recruiting insurer should still exercise its discretion on whether or not to appoint the prospective agent after taking into consideration of all relevant matters such as the nature and timing of the conduct giving rise to the adverse information, any explanation obtained from the prospective agent (see 6.2 below) and the likelihood of the prospective agent repeating the same or similar conduct.
- 6.2 To ensure transparent and fair treatment to the prospective agent, if the recruiting insurer is considering not to appoint the prospective agent (based on any adverse information disclosed by a responding insurer in relation to the prospective agent), the recruiting insurer should generally provide the prospective agent with an opportunity to be heard (i.e. giving the prospective agent the opportunity to make written or oral representations). Under such circumstances, the recruiting insurer should, upon the prospective agent's request, provide him/her with a copy of reference result it obtained from the responding insurer for representation. Nonetheless, an opportunity to be heard does not, however, mean that the responding insurer has to re-open any previous investigation. Furthermore, the recruiting insurer is not obliged to seek further information/clarification from the responding insurer(s).
- 6.3 If a recruiting insurer decides to proceed with the appointment of a prospective agent despite the prospective agent having any adverse records disclosed in the reference checking process, the recruiting insurer should document its assessment and justification for proceeding with the appointment. Such assessment and justification must be endorsed by the KPIM² of the recruiting insurer.
- 6.4 In general, the recruiting insurer should complete the reference checking process before appointing a prospective agent. However, in case where the recruiting insurer would like to advance the appointment decision before the completion of the reference checking, it may exercise flexibility to make the appointment if:

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- (a) all the reference checking requests have been sent out and have been outstanding for at least 15 calendar days;
 - (b) the prospective agent has made a self-declaration that there is no adverse record known to him/her; and
 - (c) the recruiting insurer, at the time of making appointment, is not aware of any other information that casts serious doubt on the fitness and properness of the prospective agent to be a licensed individual insurance agent.
- 6.5 Where the recruiting insurer, in response to a reference checking request, receives information about an ongoing investigation in respect of the prospective agent, the reference checking process is deemed to be completed at the time the recruiting insurer finishes its internal assessment and makes a decision on whether or not to proceed with the appointment based on the information available to it at that time. In such case, the recruiting insurer would have full discretion as to whether to make its own appointment decision before obtaining any further update/clarification from the responding insurer concerned. The justification of the appointing decision should be documented with endorsement by the KPIM² of the recruiting insurer.
- 6.6 If the recruiting insurer receives any further information from the responding insurer subsequent to the appointment of the prospective agent, it is up to the recruiting insurer to decide how to make use of such information to evaluate the prospective agent (now appointed) and whether any further actions should be taken (e.g. to terminate the appointment subsequently).

7. Records

- 7.1 A long term insurer should maintain sufficient records of the licensed individual insurance agents who have ceased to be appointed by it, for the purpose of adhering to the standards expected in this reference check scheme (i.e. at least 7 years). As for the exact (or maximum) retention period of agents' records, the insurer should follow its internal data retention policy after taking into account its own circumstances with a general principle that personal data is not kept longer than is necessary for the fulfilment of the purpose for which the data is used.
- 7.2 A recruiting insurer should keep proper records of its arrangement (e.g. section 4.6), assessment and justification for the appointment (e.g. section 6.3 and 6.5) for audit trail purpose. Similarly, a responding insurer should also maintain proper records of the relevant documents justifying the information provided in the reference checking though it is not obliged to provide the supporting documents to the recruiting insurer. All the aforesaid records and documents should be made available to the IA upon request.
- 7.3 If a recruiting insurer decides not to appoint the prospective agent after going through the reference checking process ("unsuccessful application"), it should follow its internal data retention policy to discard the relevant records. However, the recruiting insurer, in general, should not retain the data relating to an unsuccessful application for a period longer than 2 years from the date of the decision not to recruit unless there is a subsisting reason that

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obliges the recruiting insurer to retain the data for a longer period or the prospective agent have given his/her express consent.

- 7.4 To facilitate exchange of information and ensure proper record keeping, long term insurers should set up a designated centralized email for sending and receiving the reference checking request in a secured manner, and such email address should be provided to the HKFI's for record purpose and the HKFI can share the email address(es) to authorised insurers upon request.
- 7.5 Long term insurers should uphold the principles of accountability and data ethics when collecting and using personal data obtained under the reference checking scheme. They should explain the purposes and the processes involved to the relevant stakeholders and ensure they are treated in a fair and respectful manner. In addition, insurers should put in place adequate controls and procedures to safeguard the integrity and confidentiality of information obtained and to comply with the requirements of Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO"). For example, particular attention should be given to the following aspects:
- (a) long term insurers should take all practicable steps to ensure that prospective agents are informed of matters relating to the collection of their personal data, such as the purpose for which the data is to be used and the classes of persons to whom the data may be transferred. Hence, appointing principals should inform their appointed agents of the type of data that will be collected, how they will use the data and how they will transfer the data to recruiting insurers (and any designated third parties) for reference checking under the Scheme. When requesting for a reference checking, a recruiting insurer should ensure its Personal Information Collection Statement provided to the prospective agents complies with the data protection principles set out in the PDPO.
 - (b) since the personal information relating to the reference checking is relatively sensitive, it is important for the long term insurers to put in place adequate security measures to ensure that the data is securely kept and transmitted (e.g. with encryption), and to prevent unauthorised accessed by any other third parties.
 - (c) if long term insurers outsource the relevant reference checking process to external service providers, then such designated third parties would be processing the prospective agents' personal data as data processors. In this context, the long term insurers should adopt contractual or other means to prevent any personal data transferred to the data processor from being kept longer than is necessary for processing of the data, as well as to prevent unauthorised or accidental access, processing, erasure, loss or use of the data transferred to the data processor for processing. For the avoidance of doubt, the long term insurers bear the ultimate responsibility for the outsourced activity to the service provider.

8. Commencement

8.1 This reference checking scheme shall take effect from 1 September 2024.

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