

# Licensing Requirements for Bank as Insurance Intermediaries



Under section 64G of the Insurance Ordinance (Cap. 41) (the “**Ordinance**”), a person must not carry on a regulated activity (“**RA**”), or hold out that he is carrying on RA unless the person is a licensed insurance intermediary (“**LII**”) or is exempted under the Ordinance.

For the purpose of supervising the bank’s insurance business, the Hong Kong Monetary Authority (the “**HKMA**”) had on 25 June 2021 issued the Supervisory Policy Manual module IB-1: “Supervision of Insurance Intermediary Business of Authorized Institutions” and reference should be made to the above new policy insofar as necessary.

The essential licensing issues which the bank should bear in mind in the course of business are listed out below:-

## **1. Application for Insurance Licence**

The banks that intend to carry on a RA must apply to the Insurance Authority (the “**IA**”) for an insurance intermediary licence. In particular, the following should be noted: -

### Independent Assurance Report

If the bank is new to the Hong Kong insurance market or if the plan is complex, the HKMA may require the bank to provide an Independent Assurance Report<sup>1</sup> on the bank’s fitness, propriety and competency to carry on the RA under the statutory requirements and regulatory requirements.

<sup>1</sup> Requirement on the Independent Assurance Report is referred to in Chapter 8 of the Guide to Authorization issued by HKMA.

## Responsible Officer

The bank is required to appoint at least one individual as its responsible officer to supervise the carrying on of RAs businesses and to ensure that adequate and effective policies, controls and procedures are in place.

## **2. Banking Activities Constituted RA**

The IA had issued an explanatory note in October 2019 to illustrate examples of circumstances in which a bank's employee (the "Staff") may or may not be required to be licensed when interacting with a client of the bank who is a potential policyholder (the "Client"). Some of the illustrated examples are set out below for reference.

	<u>Staff and Client Interaction</u>	<u>RA or Non-RA?</u>
Q1	When opening a bank account for the Client, the Staff talks with him about an insurance product and provides a marketing leaflet.	
<u>Ans 1</u>	This amounts to "inviting" or "inducing" a person to enter into or make an application for a contract of insurance.	RA
Q2	The Staff introduces the concept of annuities <sup>2</sup> to a Client who approached him but does not refer to any specific annuity product or provider. When the Client indicates an interest, the Staff declines to provide any product-specific information and refer the Client to ILL.	



<sup>2</sup> The concept of annuities is that it is an insurance product and how does it work.

## Staff and Client Interaction

### RA or Non-RA?

Ans  
2 (a)

In relation to the introduction of annuities concept, the Staff is merely seeking to educate the Client and this is merely a provision of information, not providing, explaining or discussing with the Client information about a particular insurance product.

Non-RA

Ans  
2 (b)

With respect to referring the Client to a LII, it is considered to be an inducement to contact the LII regarding the service but not an inducement of insurance.

Non-RA

Q3

The Staff notifies the Client that property collateral provided to the bank must be covered by fire insurance, but the bank does not designate which particular fire insurance policy should be purchased. When the Client wishes to learn more, the Staff informs the Client to obtain the insurance from an insurer partnered with the bank. With the Client's consent, the Staff passes the details to a LII.

Ans 3

The Staff is merely explaining a term of the mortgage, and this is merely a provision of information.

Non-RA

Q4

Further to Q3 above, the Client selects the insured amount based on the replacement costs of the mortgaged property. Upon the anniversary of the insurance policy, the replacement cost of the mortgaged property increases. The Staff informs the Client that the insured amount needs to be adjusted in order that the legal obligations under the mortgage can be continued to be fulfilled.

## Staff and Client Interaction

### RA or Non-RA?

Ans 4

The act to inform the Client of the effect of the change is merely a provision of information in relation to the Client's obligations under the mortgage.

Non-RA

Q5

The Staff is aware of a key-man risk of the Client, reminding and asking the Client if he desires to receive information related to key-man life insurance from a LII. When the Client shows an interest in learning more, the Staff arranges a meeting for the Client and an LII.

Ans 5(a)

Identification of the risk to the Client is a mere provision of information.

Non-RA

Ans 5(b)

The act to ask if the Client desires to be placed in contact with a LII is considered to be an inducement to contact the LII regarding the service, rather than an inducement.

Non-RA

Ans 5(c)

If the Staff seeks to persuade, encourage or convince (e.g. through numerous reminders) the Client to buy insurance through the LII, this amounts to an inducement.

RA

Ans 5(d)

If the Staff discusses with the Client on any specific insurance product or provides an opinion on the features of any particular insurance product, this amounts to inviting or inducing to enter into a specific contract of insurance.

RA

## Staff and Client Interaction

### RA or Non-RA?

Q6

In return for each successful referral of a Client by the Staff to a LII, the bank receives a referral fee from the LII. The Staff remuneration policy takes into account such referral as an indirect component for consideration of the Staff's performance. When making a referral, the Staff does not provide, explain or discuss with the Client or give an opinion on any particular insurance product.

Ans  
6(a)

The mere fact of a referral fee being paid to the Staff would not be conclusive, it would form part of the factual context in considering the matter.

Non-RA

Ans  
6(b)

If the Bank's remuneration structure is set up to directly incentivize the Staff to encourage, persuade or convince Clients to enter into or apply for insurance contracts, this would be a key fact to consider in any dispute over whether or not RA has taken place.

The banks should review their remuneration structure for such activities, and put in place proper controls and monitoring to ensure the Staff do not carry on any RA.

RA

Q7

The Client has, or has decided to apply for, a life insurance policy and approaches the Staff to enquire about obtaining possible financing options from the bank using the policy as collateral for receiving a loan facility. The Staff informs the Client that the bank can offer to finance using insurance as collateral and explains the bank's credit underwriting criteria and the arrangement of the financing to the Client.

## Staff and Client Interaction

### RA or Non-RA?

Ans  
7(a)

Where the Client already has an in-force life insurance policy, or where the Client has already decided to apply for a particular life insurance policy, there is no inducement.

Non-RA

Ans  
7(b)

Merely providing the bank's underwriting criteria or its lending terms to the Client for consideration is likely to be a mere provision of factual information.

Non-RA

Ans  
7(c)

Where the Staff tries to persuade, encourage or convince the Client to apply for financing and assign the insurance policy to the bank as collateral, it may be regarded as an inducement.

RA

Ans  
7(d)

If the Staff, knowing that the Client has an insurance policy, still approaches the Client, this is likely to be considered as attempting to invite or induce the Client to make a material decision (e.g. a decision in relation to the assignment of a contract of insurance).

RA

Q8

The Staff on reviewing a Client's investment/banking portfolio takes the initiative to introduce premium financing to the Client as a means of enabling the Client to purchase a particular life insurance product.

Ans  
8(a)

The Staff's actions in taking the initiative to introduce premium financing with respect to a particular insurance product, from an objective viewpoint, can be seen as encouraging or persuading the Client to enter into or to apply for an insurance product.

RA

## Staff and Client Interaction

RA or  
Non-RA?

Ans  
8(b)

If during his discussion with the Client, the Staff offers an opinion on the product, which constitutes a value judgement on the favourability of the product, this amounts to inviting or inducing to enter into a specific contract of insurance.

RA

Q9

A corporate Client is engaged in the export trade business and has a number of account receivables. Together with the Staff, the Client explores the types of credit facilities available. The Staff explains that the bank's receivable services (also known as factoring) may be suitable for it, but there is a precondition that the Client has to purchase credit insurance with any authorized insurer in Hong Kong and assign its rights under the insurance policy in favour of the bank as collateral. However, the bank will not designate which particular credit insurance policy should be purchased by the Client, and only require that the policy is issued by an authorized insurer in Hong Kong.

Ans  
9(a)

The Staff is merely stating that the purchase of such insurance is a precondition for the bank providing factoring credit facilities to the Client.

Non-RA

Ans  
9(b)

The Staff neither requests the Client to purchase any particular insurance product nor discusses with the Client any specific insurance product.

Non-RA

Ans  
9(c)

If the Staff strays into recommending any particular trade credit insurance product or discussing the merits of particular products in the market, this amounts to inviting or inducing to enter into a specific contract of insurance.

RA

## Staff and Client Interaction

RA or  
Non-RA?

Q10

The bank decides to cancel certain credit facilities, where the Client has assigned its insurance policy to the bank as collateral. The bank demands the Client to repay all outstanding debts. Upon full repayment, the bank discharges the assignment of insurance or effects a re-assignment of the insurance policy to the Client.

Ans 10

The re-assignment of the policy (or discharge of the assignment) is an act consequential upon the repayment of the outstanding debt. No element of invitation or inducement.

Non-RA

Q11

A Client assigned his/her insurance policy to a bank as collateral for a credit facility. The Client defaults on its loan repayment. The bank as a lender and assignee of the insurance policy exercises its rights to surrender the policy for its cash value.

Ans 11

The act of cancellation, surrender or termination is consequential upon the Client's default of the loan repayment and the bank is thereby merely exercising its rights consequential upon the assignment. No element of invitation or inducement.

Non-RA

Q12

As the mortgagee, the bank requires a Client to make an insurance claim in order to preserve collateral value. For instance, the bank requests the Client to lodge a claim under fire insurance in order to restore damaged mortgaged property.

## Staff and Client Interaction

### RA or Non-RA?

Ans 12

If the bank, in requesting the Client to make an insurance claim in order to preserve the collateral, is exercising a right under the terms and conditions of the mortgage agreement, there is no element of invitation or inducement.

Non-RA

Q13

A Client asks the Staff about holding structure options for certain insurance policies. The Staff suggests the Client to consider holding the insurance policies on trust as an option but also recommends that the Client seek further advice from a LII.

Ans  
13(a)

If the Staff is only providing factual information about possible holding structure options (e.g. trust is one of the options) and recommends the Client to seek advice from the LII, this is a mere provision of information.

Non-RA

Ans  
13(b)

If the Staff gives an opinion (e.g. suggesting the policies should be held on trust) as an answer to the enquiry about the structure in which the policies should be held, this amounts to inviting or inducing to enter into a contract of insurance.

RA

Ans  
13(c)

If the opinion is provided at the Client's request and the Staff makes clear to the Client that he is not making a recommendation, but merely suggesting that the Client may wish to seek further advice from a LII for further consideration before making any decisions, the Staff does not initiate or involve in giving opinion about insurance matters.

Non-RA

Staff and Client Interaction

RA or  
Non-RA?

Q14

After discussion with a LII, a Client intends to purchase a particular insurance policy. The Client would like to put the insurance policy into his trust currently administrated by the bank, and he approaches the Staff. The Staff reminds the Client that he should check with the relevant LII if the policy can be held by a trust(since certain insurers may restrict policies they issue to be held on trust). After checking, the Client decides to purchase another insurance policy without such restriction.

Ans  
14(a)

Solely reminding the Client to check with his LII about the terms and conditions of the insurance policy does not involve giving an opinion about insurance matters.

Non-RA

Ans  
14(b)

If the Staff has informed the Client about a term or condition or restriction in a particular insurance policy, and make recommendations to Client on the purchase of any particular insurance policy, this amounts to inviting or inducing to enter into a contract of insurance.

RA

Should you have any questions, please contact our Mr Lawrence Yeung on (852) 2854 3070 or by email at [lawrence.yeung@ycylawyers.com.hk](mailto:lawrence.yeung@ycylawyers.com.hk).

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

15 September 2021

All rights reserved. Yu, Chan & Yeung Solicitors

