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By fax: 2869 6794

27 April 2006

Miss Salumi Chan
Clerk to the Legislative Council
Panel on Financial Affairs
Legislative Council
8 Jackson Road
Hong Kong

Dear Miss Chan,

Panel on Financial Affairs
Enhancing the protection for insurance policyholders

Thank you for your letter of 7 April 2006.

The Insurance Companies Ordinance (Chapter 41) (“ICO”) sets out the regulatory framework for the insurance industry including regulations and requirements on the solvency, prudential management and market practices of insurance companies. We understand that the question of the Hon Bernard Chan, Chairman of the Panel on Financial Affairs, on whether the scope of the current regulatory regime should be expanded to strengthen the regulation of insurance companies arises from a complaint by Mr Ricky Yip about insurance companies misleading prospective policyholders by exaggerating the projected return of insurance policies in their illustration documents. As we have explained in our last letter of 28 March 2006, the Hong Kong Federation of Insurers issued a new set of “The Standard Illustration for Non Unit-linked Life Policies” in 1998 which requires that “The projected dividend values included in the illustration are based on the Company’s current dividend scales”. In addition to being affected by the mortality risk and other claims, similar to other investment products, the return of a life insurance policy is determined by the investment strategy of the insurance company and the external environment, namely the

overall performance of the investment markets. From a prudent regulatory point of view, we believe that given the many variables and uncertain factors affecting its investment performance it is neither feasible nor realistic to require insurance companies to accurately predict the rate of return of an insurance policy. Instead, we believe that by requiring insurance companies to use the current (that is, actual) rate of return in their sale brochure and illustration document, it would help to provide prospective policyholders with more reliable information to make an informed judgement on the potential return of a policy. Nevertheless, we will continue to keep in view market development and work with the Consumer Council to see what improvements, particularly in respect of transparency and disclosure, are necessary to further enhance protection of policyholders.

Regarding the question on whether the current regulatory regime should be expanded to cover the approved bodies of insurance brokers, it is necessary to point out that although they are “self-regulatory” bodies, the law provides that the Insurance Authority (“IA”) in approving a body of insurance brokers has to satisfy himself that, among other things, the body is managed and supervised by persons who are fit and proper and has an appropriate system of disciplinary procedures in place to deal with breaches of proper conduct by members of the body. The IA has also to be satisfied that the approved body has adequate provisions in its regulation to ensure the compliance of its members with the minimum requirements specified by the IA in respect of qualification and experience, capital and net assets, professional indemnity insurance, keeping of separate client accounts and keeping of proper books and accounts. To safeguard the interests of policyholders, the IA maintains close liaison with the two approved bodies of insurance brokers, namely the Hong Kong Confederation of Insurance Brokers and Professional Insurance Brokers Association, and regularly monitor their supervision of their members to ensure they discharge their functions and responsibility effectively and uphold the professional conduct and standard of their members.

Arising from the suspected misconduct and fraud involving two insurance agents mentioned in your letter, the IA is also concerned about some insurance agents adopting names which may cause confusion to the public that they are insurance companies when in fact they are not. The IA has asked the Insurance Agents Registration Board (“IARB”) which is responsible for the registration and supervision of insurance agents to review the names of all registered insurance agents and to remove any such confusion as soon as possible. The IARB has also been asked to put in place a mechanism to ensure the names registered by insurance agents would not give any suggestion or cause any confusion to the public that they are insurance companies.

Regarding the protection of the interests of policyholders against fraud or misconduct committed by insurance agents, section 68(2) of the ICO provides that “An insurer is not able to exclude or limit its liability for the actions of its appointed insurance agent in the dealings for the issue of a contract of insurance.....”. By way of the operation of this provision, insurance companies are made responsible for the acts of their appointed insurance agents as if those acts were committed by the insurance companies themselves. It follows that as long as a policyholder can show that he/she has paid the premium to the insurance agent (such as the presentation of a receipt), the insurance company is obliged to honour the policy / insurance cover irrespective of whether it has received the premium from its appointed agent or issued a policy. The IA will ensure that insurance companies will fulfil their legal obligation and in fact, so far we have not received any complaint from policyholders affected by the ceasing of operation of the two insurance agents.

Yours sincerely,

(Ms Cora Ho)
for Secretary for Financial Services
and the Treasury

c.c. Commissioner of Insurance
(Attn: Mr. Richard Yuen)
AA/SFST