

BY EMAIL ONLY

Members' Undertaking No. 82  
28 March 2022

To: Ordinary and Associate Members

MU 82/22 - LIA DISCIPLINARY FRAMEWORK FOR TIED REPRESENTATIVES

**ACTION:**

- 1. FOR THE COMPLIANCE OF MEMBERS WITH TIED REPRESENTATIVES, EFFECTIVE 1 OCTOBER 2022**
- 2. FOR OTHER MEMBERS' INFORMATION**

Two files belonging to this circular are:

1. MU 8222.docx
2. MU 8222\_Appendix A - Market Conduct Breaches.xlsx

As required in MAS Notice 306 (Market Conduct Standards for Life Insurers providing Financial Advisory Services as defined under the Financial Advisers Act), life insurers are responsible for the conduct of their representatives and should take disciplinary action against representatives for misconduct. Further, the MAS Information Paper on "Good Practices Relating to Disciplinary Action Framework in the Financial Advisory Industry" (issued in March 2021) recommends having a robust disciplinary action framework to shape the right behaviors of representatives, and also consider the accountability of the representatives' supervisors.

LIA will monitor and continue to refine the Framework in line with regulatory changes and other related developments.

**LIA SECRETARIAT**

## MU 82/22 - LIA DISCIPLINARY FRAMEWORK FOR TIED REPRESENTATIVES

### 1. Background

As required in MAS Notice 306 (Market Conduct Standards for Life Insurers providing Financial Advisory Services as defined under the Financial Advisers Act), life insurers are responsible for the conduct of their representatives and should take disciplinary action against representatives for misconduct. Further, the MAS Information Paper on “Good Practices Relating to Disciplinary Action Framework in the Financial Advisory Industry” (issued in March 2021) recommends having a robust disciplinary action framework to shape the right behaviors of representatives, and also consider the accountability of the representatives’ supervisors.

### 2. Scope & Application

This framework establishes the minimum standards for disciplinary action against representatives for misconduct.

Each insurer shall administer its own investigation and disciplinary process, including the issuance of the appropriate standard disciplinary actions that commensurate with the type and severity of misconduct substantiated.

### 3. Disciplinary Action

The types of disciplinary actions are set out below and would generally depend on the severity and type of misconduct, and may not be administered in sequence.

- (a) **Warning** – generally issued for minor misconduct breaches that relate to insurer’s internal guidelines, or on breaches of regulatory requirements that do not have significant adverse impact to the customers or insurer.
- (b) **Suspension<sup>1</sup>** – generally issued for serious misconduct breaches, or repeated misconduct breaches, or on breaches that have a significant adverse impact to the customers or insurer.
- (c) **Contract termination** – generally issued for misconduct breaches that result in criminal offences, regulatory breaches that have a significant adverse impact to the customers or insurer, or repeated serious misconduct breaches.

Please refer to Appendix A – Market Conduct Breaches for the list of misconduct and standard disciplinary actions. Where a range of disciplinary actions is stated, insurers are to assess depending on the facts and circumstances of each case.

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<sup>1</sup> This refers to suspension from carrying out any sales and advisory activities. The period of suspension shall be determined by each insurer, taking into consideration the facts and circumstances of each case.

Insurers may adopt a higher standard, such as having suspension or demotion as standard disciplinary action for certain misconduct, or include additional misconduct not in the list. Any variation, including instances where any offence is not applicable, is to be documented.

#### **4. Guiding Principles**

In determining the appropriate disciplinary action, specific circumstances of each case would be considered, including any aggravating or mitigating factors. This could lead to:

- A harsher disciplinary action;
- A more lenient disciplinary action;
- Additional remedial actions such as re-training, close supervision, joint field work, suspension from promotion or receiving awards and incentives, claw-back of commission<sup>2</sup>, reminders or recruitment embargo.

If any aggravating factor was noted, the standard disciplinary action shall minimally apply, and insurers cannot allow for a more lenient disciplinary action. The same principle shall apply in the event of any appeal by the representative.

In assessing the mitigating or aggravating factors, the following principles would be applied in the investigation assessment:

- Culpability of the representative;
- Harm caused by the offence;
- The issue of remorse;
- If the admission was forthcoming from the onset of investigations.

#### Examples of Aggravating and Mitigating Factors

The aggravating and mitigating factors are meant to be guiding principles. Any of factors met does not equate to a higher or lower sanction vis-à-vis the prescribed sanction as it should be taken into consideration the nature and severity of the misconduct.

a) Examples to consider as aggravating factors are as follows:

- The representative committed the act intentionally for his own interest (e.g. to preserve the representative's persistency rate or to qualify for an incentive);
- The representative committed multiple breaches in a short span of time (e.g. over a 3-month period);
- The representative had a history of misconduct issues and showed no sign of improvement in his conduct or sales practices after prior reminders or disciplinary action;
- The representative has committed similar offence previously;

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<sup>2</sup> This shall not apply in instances where the representative's misconduct was/would be assessed under the MAS BSC framework.

- The representative's act resulted in a material impact on the interests of the client;
- The representative's act involved or affected multiple clients;
- The representative's act impinges on the fitness and propriety of the representative;
- The representative is not forthcoming in providing his account, and the evidence found is contrary to the account provided such as when the representative is found to be lying;
- The misconduct relates to a statutory breach;
- The impacted client is a selected client.

b) Examples to consider as mitigating factors are as follows:

- The act was committed due to contributory negligence or under instruction by the client such as where the policy documents were not delivered to the client because the latter had informed the representative to hold on to the documents;
- The act did not cause disadvantage to the complainant or compromise the validity of the policy sale such as when the point-of-sales documents were not furnished before the proposal form was signed but within the free-look period or failing to issue an interim cash receipt to the client, but adhered to the SOP on Use of Interim Cash Receipt by handing the premium to the Company within 2 business days;
- The representative has no prior disciplinary record;
- There is no detrimental impact to the client;
- The representative was co-operative and showed genuine remorse;
- The representative did not derive any monetary benefits;
- The representative's conduct arose from inadequate training and/or guidance provided which the representative applied in the provision of financial advisory services leading to the misconduct.

## 5. **Supervisor Accountability**

Given the role of the representative's supervisor (or manager), each insurer will also consider his/her accountability as part of the insurer's disciplinary framework. In particular, each insurer is to consider the accountability of the supervisor in the following circumstances:

- When a representative is found to have committed misconduct; or
- When multiple complaints have been received against the supervisor's agency unit; or
- When the supervisor has failed to properly discharge his/her supervisory duties that led to the representative committing the misconduct.

In situations where the supervisor is to be held accountable, the insurer should assess whether the supervisor was involved or had contributed, directly or indirectly, to the misconduct of the representative, and whether the supervisor could have reasonably detected the misconduct. The insurer could issue a disciplinary action that is similar to that for representatives, or any

disciplinary action as it deems appropriate. This could include an assessment whether the supervisor is still suitable to be in a supervisory position.

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