AIDA DISPUTE RESOLUTION WORKING PARTY QUESTIONAIRE

INSURANCE OMBUDSMAN SCHEMES

1) Name of Country

Hong Kong SAR, the People's Republic of China

2) Name and contact details of the author of the answer

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3) Do you have an Insurance Ombudsman's Scheme to handle insurance disputes in your country?

On 16 January 2018, the Insurance Complaints Bureau ("**ICB**") superseded the Insurance Claims Complaints Bureau which was first incorporated in February 1990 as a limited liability company. Section 8 of the ICB's Terms of Reference define its objective as to *"provide an independent and affordable alternative dispute resolution process which allows the insuring public to resolve and settle their complaints in respect of their Personal Insurance Contracts".*

As of today, the ICB handles both (i) Claims-related Complaints by way of adjudication before an independent Complaints Panel and (ii) Non-claims related Complaints by way of mediation before a mediator appointed from a List of Mediators maintained by ICB.

4) Is the scheme regulated by statute and subject to any independent review? (eg a review by a government statutory authority)

The ICB is a creation of the Hong Kong insurance industry with no statutory underpinning and is not subject to any independent review by the Insurance Authority. As a contractually-based body, the power of the ICB is derived from consent of its members (i.e. insurers) to be bound by its Terms of Reference, Memorandum of Association and Articles of Association. In providing a quick and cost-effective method of self-regulation as an alternative to the rigidities of traditional litigation, the ICB sought to promote the image of the insurance industry in the public eye.

5) Are all insurers mandated to participate in the scheme or is it voluntary? (eg is participation a condition of their license to operate?)

As at 30 April 2019, the ICB had 110 members, of whom 99 were full members while the remaining 11 were affiliated members.

As part of its supervisory function under the Insurance Ordinance (Cap. 41), the Insurance Authority is given the responsibility to promote and encourage the adoption of proper standards of conduct and sound and prudent business practices by authorized insurers. Since 1996, it is a compulsory requirement imposed by the Insurance Authority that authorization of an insurer to carry on insurance business in Hong Kong will be given subject to a condition that (i) the insurer shall apply to the Insurance Claims Complaints Bureau (the predecessor of ICB) for membership if it carries on personal insurance business and (ii) remains as a member for so long as it carries on such business.

However, there is no such condition imposed on insurers who were authorized before the introduction of the compulsory requirement by the Insurance Authority.

6) List the classes or types of insurance on which the Ombudsman is authorized to adjudicate or make recommendations (eg health, social pensions, liability, motor, domestic, travel ins etc)

The ICB is authorized to only handle complaints arising from Personal Insurance Contracts. Personal Insurance Contracts are defined as *"insurance contracts with any member of ICB effected in the name of an individual person/persons for his own benefit and/or the benefit of his dependents, and insured in a private capacity only"*.

In light of such, the ICB is not authorized to adjudicate or provide mediation services on complaints arising from industrial, commercial or third-party insurance including reinsurance.

7) Can the Ombudsman adjudicate on both claims and underwriting disputes?

The ICB can only adjudicate on Claims-related Complaints (ie. claims disputes) through the independent Complaints Panel. Claims-related Complaints are defined as *"complaints of a monetary nature against any insurer relating to a claim or claims made in connection with or arising out of any Personal Insurance Contract".*

For Non-claims related Complaints, the ICB provides a mediation service subject to the ICB Mediation Rules and appointment under its authorized List of Mediators. Non-claims related Complaints are defined as *"complaints against any insurer which is not claim related but of a monetary nature in connection with or arising out of any Personal Insurance Contract"*. Examples include fees and charges for policy administration, policy cancellation, premium deduction, refunds and etc.

Quality of service or an underwriting decision of an insurer do not fall under the scope of Non-claims related Complaints.

8) What is the maximum amount in dispute, upon which the Ombudsman can adjudicate?

Under section 19, the ICB can only handle complaints of a monetary nature if the claim amount (for Claim-related Complaints) or monetary value (for Non-claim related Complaints) do not exceed HK$1,000,000 (equivalent to approximately US$128,000).

If the complainant (i.e. claimant/insured) holds multiple policies, the aggregate amount of the individual claims involved should not exceed HK$1,000,000 should the causes of the claim rejection be identical or similar. With regard to long-tail and periodic claims, the total claim amount calculated up to a period of 5 years should not exceed HK$1,000,000.

9) Are the Ombudsman's decisions binding on one or both parties or does the Ombudsman merely issue Recommendations?

ICB's decisions on Claims-related Complaints are binding on the insurers but not on the complainants under the self-regulatory scheme.

For complainants, any decision of the Complaints Panel does not affect their rights to take legal action thereafter if unsatisfied with the decision and in which case the decision of the Complaints Panel shall be deemed to be withdrawn.

For insurers, they agreed to comply with and be bound by the ICB's Terms of References at all times. Sections 36 and 39 state that the Complaints Panel would deliver its decision which shall be final and binding on the insurer in the form of an award. Section 14 further states that the insurer shall promptly pay each and every award made against it by the Complaints Panel.

However, an insurer can seek to challenge an ICB's award by way of judicial review proceedings. In *Pacific Century Insurance Co Ltd v Insurance Claims Complaints Bureau* [1999] 3 HKLRD 720, the High Court held that the Insurance Claims Complaints Bureau (the predecessor to ICB), in carrying out a public function and since incorporated into the scheme of public regulation, is a body amenable to judicial review. Therefore, ICB's decision are subject to judicial scrutiny.

In light of such, if the ICB takes into account matters it ought not to have done and/or acted unreasonably under the *Wednesbury* standard, its decisions can be quashed as in *Pacific Century Insurance* and be ordered to reconsider the matter in accordance with the law.

10) Is the applicant (claimant /insured) required to make any payment to lodge a dispute with the Ombudsman?

The complainant is not required to make any payment to lodge a complaint (either Claims-related or Non-claims related) with the ICB.

10) Who pays the costs of the scheme?

Insurers pay for the costs of the ICB (administration and operation, adjudication of claims-related complaints, etc.) in the form of annual flat subscription fees.

As for Non-claim related Complaints by way of mediation, insurers are required to pay the relevant fees and charges set out in the ICB Schedule of Fees for Non-claimed Related Complaints. Prior to the commencement of the mediation, the fee payable by the insurer to the ICB is HK$12,000 – being (i) HK$4,000 flat rate for all preparation work and pre-mediation sessions and (ii) HK$8,000 for the substantive mediation session.

11) Are the Ombudsman's decision subject to any right of appeal and if so in what circumstances?

The decision made by the Complaints Panel is final and is not subject to any right of appeal within the self-regulatory scheme.

In processing a Claim-related Complaint, it will first undergo an initial screening and vetting by an ICB's case manager as to its merits. Professional opinions of three Honorary Secretaries are then sought in advisory reports before the case is referred to an independent Complaints Panel for deliberation. Therefore, there exists three separate layers of checks and balances within the ICB's structure.

12) What is the criteria that determines the Ombudsman's decisions? eg Applicable law, fairness and reasonableness in all the circumstances, prior decisions as precedent?

In the context of Claims-related Complaints, the Complaints Panel shall consider the following factors in making an award under section 38:

- Terms of the relevant policy;
- General principles of good insurance practice;
- Any applicable rule of law or judicial authority in respect of the substantive merits or determination of the complaint; and
- Any codes and guidelines issued from time to time by the Hong Kong Federation of Insurers and the ICB

The Complaints Panel shall make an award that is based on its assessment of what would be a fair and reasonable solution in all the circumstances to the Claim-related Complaint. As a result:

- Terms of the insurance contracts shall prevail unless they would produce a result that is unfair and unreasonable to the complaint;
- Where general principles of good insurance practice, codes or guidelines are inconsistent with any applicable rule of law or judicial authority, the relevant practice, codes and guidelines shall prevail; and
- It shall not be bound by its previous decisions

13) Do the parties have the option to litigate before, during or after the Ombudsman's involvement?

Before: Parties have the option to litigate before the ICB's involvement. However, given the ICB provides an independent, efficient and cost-effective alternative dispute resolution process, it might be prudent for parties to first employ the ICB's services before pursuing litigation.

During: Parties do not have the option to litigate during the ICB's involvement. Section 19 specifies that the ICB will only handle complaints that are not subject to legal proceedings or arbitration.

After: Please refer to answers to question 9.