

# Terms of Reference

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## **SECTION A: PRELIMINARY**

### **Purpose, interpretation and amendment**

1. To assist Complainants and Members to achieve a just and expeditious disposal of Claim-related Complaints and Non-claim related Complaints before the Insurance Complaints Bureau (ICB), these Terms of Reference set out the powers of the ICB, persons who are eligible to lodge a Complaint with the ICB, the types of Complaints that can be brought before the ICB, the procedures for making and handling Complaints and other related matters. To this end:
  - (a) the ICB shall have the power to interpret these Terms of Reference and any such interpretation shall be final and conclusive; and
  - (b) the terms herein are flexible and may be amended and varied by the ICB at any time to suit the circumstances of the Complaint.

### **Definitions**

2. In these Terms of Reference, unless the context otherwise requires, the following expressions have the following meanings:

"**Affiliate Member**" means any person referred to as an Affiliate Member of the ICB in "*PART II: MEMBERSHIP*" of the Articles;

"**Agreement to Mediate**" means the agreement between the Mediator, the Complainant and the Member in the form set out in Annex VI whereby the Parties and the Mediator agree to enter into mediation to resolve the Parties' Non-claim related Complaint applying the ICB Mediation Rules;

"**Articles**" means the articles of association of the ICB;

"**Authorised Insurer**" means:

- (a) any person, body of persons, company or corporation, wheresoever incorporated, carrying on insurance business and has been authorised under the Insurance Ordinance (Chapter 41 of the Laws of Hong Kong) to carry on insurance business in Hong Kong;
- (b) the society of underwriters known in the United Kingdom as Lloyd's; and
- (c) an association of underwriters approved by the then Governor-in-Council of Hong Kong on or before 30 June 1997;

"**Award**" means an award made by the Complaints Panel against any Member against whom any Claim-related Complaint is made so as to facilitate the settlement or withdrawal of the Claim-related Complaint;

"**Case Manager**" means any person appointed by the ICB to screen, assess and/or process any Complaint;

"**Claim-related Complaint**" means a complaint of a monetary nature against any Member relating to a claim or claims made in connection with or arising out of any Personal Insurance Contract;

"**Complainant**" means a policyholder, a policy beneficiary, an insured person or a rightful claimant of a Personal Insurance Contract and who has made a Complaint to the ICB;

"**Complaint**" means a Claim-related Complaint and a Non-claim related Complaint;

"**Complaint Documents**" means the Complaint Form, supporting documents, written submissions or representations and other relevant materials submitted by the Complainant and/or the Member in respect of the Complaint;

"**Complaint Form**" means the complaint form set out in Annex I;

"**Complaints Panel**" means the Complaints Panel for the time being of the ICB referred to in the Articles;

"**Confidentiality Agreement**" means the confidentiality agreement of persons attending the mediation other than the Parties and the Mediator and in the form set out in Annex VII;

"**days**" means calendar days;

"**Federation**" means The Hong Kong Federation of Insurers 香港保險業聯會, a company registered under the Ordinance;

"**Full Member**" means any person referred to as a Full Member of the ICB in "*PART II: MEMBERSHIP*" of the Articles;

"**General Committee**" means the General Committee for the time being of the ICB as referred to in the Articles;

"**General Committee Members**" means members of the General Committee and every such member elected under the Articles shall be deemed to be the 'director' of the ICB for the purpose of the Ordinance;

"**Honorary Secretary**" means the Honorary Secretary of the ICB appointed under the Articles;

"**Hong Kong**" means the Hong Kong Special Administrative Region;

"**ICB**" means the Insurance Complaints Bureau 保險投訴局;

"**ICB Mediation Rules**" means the mediation rules of the ICB set out in Annex V;

"**ICB Schedule of Fees for Non-claim related Complaints**" means the schedule of fees for Non-claim related Complaints payable by the Member concerned in the event of mediation as set out in Annex IV;

"**List of Mediators**" means the ICB's list of Mediators for mediation under these Terms of Reference and the ICB Mediation Rules;

"**Mediation Certificate**" means the mediation certificate set out in Annex IX which reports the outcome of the mediation to the ICB;

"**Mediation Settlement Agreement**" means a written agreement setting out the terms the Parties have agreed in mediation to resolve a Non-claim related Complaint in the form set out in Annex VIII;

"**Mediator**" means a person who is suitably qualified and experienced in mediation and is appointed by the ICB to act as a mediator;

"**Member**" means a member of the ICB who shall either be a Full Member or an Affiliate Member;

"**month**" means calendar month;

"**Non-claim related Complaint**" means a complaint against any Member which is not claim related but of a monetary nature in connection with or arising out of any Personal Insurance Contract (for example fees and charges for policy administration, policy cancellation, premium deduction, refunds, etc.);

"**Non-industry Committee Member**" means a non-insurance industry member of the General Committee appointed under the Articles, who shall be individuals who are not currently employed or carrying on business in the insurance industry, but who have knowledge or expertise in insurance-related matters and/or consumer protection issues;

"**Ordinance**" means the Companies Ordinance (Chapter 622 of the Laws of Hong Kong) including the related subsidiary legislation and any statutory modification or re-enactment thereof for the time being in force;

"**Party**" means the Complainant or the relevant Member;

"**Personal Insurance Contract**" means an insurance contract with any Member effected in the name of an individual person or persons for his own benefit and/or the benefit of his dependents, and insured in a private capacity only;

**"Processing of Claim-related Complaints Flow Chart"** means the flow chart for Claim-related Complaints set out in Annex II;

**"Processing of Non-claim related Complaints Flow Chart"** means the flow chart for Non-claim related Complaints set out in Annex III;

**"Terms of Reference"** means these terms of reference of the ICB.

3. In these Terms of Reference, where the context allows:
  - (a) words and expressions importing the masculine gender shall include the feminine and neuter genders and vice versa;
  - (b) words and expressions importing singular shall include the plural and vice versa;
  - (c) references to paragraphs, sub-paragraphs and sections are to be construed as references to paragraphs, sub-paragraphs and sections of these Terms of Reference; and
  - (d) the headings in these Terms of Reference are inserted for convenience only and shall be ignored in the interpretation of these Terms of Reference.

### **Guidelines**

4. The ICB may issue guidelines from time to time to address points relating to the operation of these Terms of Reference in order to take into account industry product and policy developments and any other changes. Such guidelines and any updates to these Terms of Reference will take effect on the date they are published by the ICB on its website.

## **SECTION B: THE ICB, MEMBERS AND COMPLAINANTS**

### **Governance of the ICB**

5. The ICB is a non-profit making company limited by guarantee under the Ordinance.
6. The ICB is governed by the General Committee. The General Committee is responsible for formulating the overall policy of the ICB, overseeing its operations and ensuring the independence and impartiality of its dispute resolution procedures. The General Committee shall not interfere with the conduct and outcome of the adjudication of Claim-related Complaints and mediation of Non-claim related Complaints.
7. Under the Articles, the General Committee shall consist of not less than 7 and not more than 12 General Committee Members (including the chairman who shall be a Non-industry Committee Member) with the majority being Non-industry Committee Members, who shall be responsible for managing the day-to-day business and affairs of the ICB. The General Committee Members shall include (a) the Chairman and the

Deputy Chairman for the time being of the Federation; (b) insurance industry members, who shall be chief executives of the Full Members; and (c) Non-industry Committee Members.

### **Objectives and Powers of the ICB**

8. The objective of the ICB is to provide an independent and affordable alternate dispute resolution process which allows the insuring public to resolve and settle their Complaints in respect of their Personal Insurance Contracts. For the avoidance of doubt, the ICB and these Terms of Reference do not deal with reinsurance.
9. The ICB shall at all times be independent and impartial and shall not act as an advocate for any Party in any Complaints.
10. The ICB shall have the power to:
  - (a) process or reject any Complaints;
  - (b) request information that is necessary for and relevant to the handling of the Complaints except where the Party satisfies the ICB that:
    - (i) to provide the information would breach a court order;
    - (ii) to provide the information would breach a duty of confidentiality to a third party and, despite all reasonable endeavours, the third party's consent to disclose the information has not been obtained;
    - (iii) to provide the information would prejudice an ongoing investigation by the police, the regulators or other law enforcement agencies, and, despite all reasonable endeavours, the consent to disclose the information has not been obtained;
    - (iv) the information is subject to legal professional privilege;
    - (v) to provide the information would prejudice the Party's right against self-incrimination;
    - (vi) the information does not exist or no longer exists or is not within the Party's reasonable possession or control; or
    - (vii) the information is irrelevant to the Complaint;
  - (c) collect subscription fees from Members and other relevant fees for resolving Non-claim related Complaints by way of mediation in accordance with the ICB Schedule of Fees for Non-claim related Complaints;



- (d) from time to time, make such rules, guidelines, codes, practices and procedures regarding the handling, adjudication and mediation of Complaints as it may deem appropriate;
- (e) publicize reports on an annual basis and from time to time as thought fit on all Complaints made to the ICB. The nature and format of publication may include a summary of statistics by products or nature of cases without revealing, or being likely to reveal, directly or indirectly, the identity of the Parties;
- (f) maintain the List of Mediators for provision of mediation services for Non-claim related Complaints;
- (g) add and remove any Mediator to/from the List of Mediators;
- (h) arrange a suitable Mediator acceptable to both the Complainant and the Member for mediation in case the Parties could not reach an amicable resolution of the Non-claim related Complaint;
- (i) give any Party an extension of time to comply with its obligations (even if the original period, or the period as extended, has expired) should the ICB considers it appropriate; and
- (j) take such other actions as appropriate to put into effect the objectives of the ICB.

## **Members**

11. For the purposes of any Complaint, Members agree to comply with and be bound by these Terms of Reference at all times, including any and all such amendments, modifications and/or updates that may be made from time to time by the ICB, and to follow the procedures and processes prescribed by the ICB for handling the Claim-related Complaints and the Non-claim related Complaints.
12. Members shall enter into adjudication of Claim-related Complaints and mediation of Non-claim related Complaints with an aim to resolve the Complaint if:
  - (a) the Complainant so wishes;
  - (b) the Complaint is not resolved directly between the Parties; and
  - (c) the Case Manager processes the Complaint after initial screening and vetting.
13. Members shall follow the procedures prescribed by the ICB including but not limited to the following in respect of Claim-related Complaints:
  - (a) respond to requests for relevant information or documents relating to the complaint from the ICB within the timeframe specified;

- (b) attend before the Complaints Panel for any hearing of the complaint if so required by the Complaints Panel;
  - (c) produce any documents or information relating to the complaint required by the Complaints Panel; and
  - (d) promptly pay each and every Award made against it by the Complaints Panel.
14. Members shall follow the procedures prescribed by the ICB including but not limited to the following in respect of Non-claim related Complaints:
- (a) respond to requests for relevant information or documents relating to the complaint from the ICB within the timeframe specified;
  - (b) appoint a representative with the requisite authority to settle up to HK\$1,200,000 for any individual complaint to attend and participate in the mediation;
  - (c) enter into and participate in the mediation in good faith in the event the complaint is referred to mediation;
  - (d) agree to, comply with and keep confidential any agreement reached between the Complainant and the Member, including promptly paying any sum payable by it under the agreement; and
  - (e) promptly pay the ICB any fees required under the ICB Schedule of Fees for Non-claim related Complaints, including paying the prescribed mediation fees before commencement of mediation (i.e. within 14 days of the written notice from the ICB confirming the appointment of the Mediator).

### **Complainants**

15. By lodging a Complaint with the ICB, Complainants acknowledge and agree that:
- (a) for the purposes of their Complaint, they will comply with and be bound by these Terms of Reference at all times, including any and all such amendments, modifications and/or updates that may be made from time to time by the ICB, and will follow the procedures and processes prescribed by the ICB for handling the Claim-related Complaints and the Non-claim related Complaints;
  - (b) they will only be afforded with rights as set out in these Terms of Reference in respect of the Complaint;
  - (c) any Award of the Complaints Panel made in Claim-related Complaints does not affect their right to take legal action thereafter if they are not satisfied with the decision of the Complaints Panel (see paragraph 40 below); and

- (d) if the mediation fails in respect of Non-claim related Complaints, they may pursue their complaint through other means (see paragraph 59 below).

### **Fee structure**

16. No fees or charges are payable to the ICB in respect of Claim-related Complaints.
17. As for Non-claim related Complaints, Members are required to pay the ICB the fees and charges set out in the ICB Schedule of Fees for Non-claim related Complaints.
18. The ICB shall review the fee structure from time to time and any changes will be subject to approval by the General Committee.

### **SECTION C: JURISDICTION OF THE ICB**

#### **Complaints that can be brought before the ICB**

19. The ICB will only handle Complaints that fulfil all of the following conditions:
- (a) The Complaint is of a monetary nature.
  - (b) The claim amount<sup>1</sup> /monetary value<sup>2</sup> of the Complaint does not exceed HK\$1,200,000. For Claim-related Complaints, if the Complainant holds multiple policies, the aggregate amount of the individual claims involved should not exceed HK\$1,200,000 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 five years, should not exceed HK\$1,200,000.
  - (c) The insurer concerned is a Member.
  - (d) The policy concerned is a Personal Insurance Contract.
  - (e) The Complaint is filed by a Complainant who is a policyholder, a policy beneficiary, an insured person or a rightful claimant.
  - (f) The Member concerned has made its final decision on the claim/dispute.
  - (g) The Complaint is filed with the ICB within 6 months from the day of notification by the Member of its final decision.
  - (h) The Complaint in question does not arise from industrial, commercial or third party insurance.

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<sup>1</sup> The "claim amount of the Complaint" means the sum payable by the Member to the Complainant under the terms and conditions of the Personal Insurance Contract in respect of a claim lodged thereunder and concerns a Claim-related Complaint.

<sup>2</sup> The "monetary value of the Complaint" means the monetary amount in dispute between the Member and the Complainant in respect of a Personal Insurance Contract and concerns a Non-claim related Complaint.

- (i) The Complaint is not subject to legal proceedings or arbitration.
- (j) The Complainant acknowledges and agrees in the Complaint Form the matters stated in paragraph 15 above.

## **SECTION D: ADJUDICATION PROCESS OF CLAIM-RELATED COMPLAINTS**

### **Submission of Claim-related Complaints**

- 20. A Complainant must submit his Claim-related Complaint to the ICB in writing with full details of the subject complaint using the Complaint Form, together with a full set of the supporting documents.
- 21. Upon receipt of the Complainant's documents in paragraph 20 above for Claim-related Complaints, the Case Manager shall issue an acknowledgement of receipt with a case reference number to the Complainant.

### **Initial screening and vetting by the Case Manager**

- 22. Any Claim-related Complaint received by the ICB shall be screened and assessed by the Case Manager. In order for the Case Manager to process the complaint, he must be satisfied that:
  - (a) the conditions in paragraph 19 above have been satisfied;
  - (b) all information and documents stated in paragraph 20 above have been submitted to the ICB;
  - (c) there are grounds and substance in the Claim-related Complaint;
  - (d) the Claim-related Complaint is not frivolous or vexatious;
  - (e) the Claim-related Complaint may be remedied by some form of redress in the form of an Award made by the Complaints Panel; and
  - (f) the Claim-related Complaint falls within these Terms of Reference.
- 23. For the purposes of the initial screening, the Case Manager may investigate the complaint and require the Complainant, the Member and/or any persons concerned to provide further information or documents relating to the complaint that the Case Manager may require to assess the complaint. The Complainant and/or the Member must comply with the request within a specified timeframe.
- 24. After the above initial screening:
  - (a) if the Case Manager considers that the conditions in paragraph 22 are satisfied, he shall process the complaint;

- (b) if the Case Manager considers that the conditions in paragraph 22 are not satisfied, he shall reject the complaint and advise the Complainant and where appropriate, the Member and/or any other parties that are involved and have been informed about the complaint. Such rejection does not affect the right of the Complainant to take legal action thereafter if he is not satisfied with the rejection.

### **Processing Claim-related Complaints**

- 25. A flow chart summary for processing Claim-related Complaints is set out in Annex II.
- 26. If the Case Manager processes the complaint, he shall inform the Member concerned of the complaint made and request the Member to make submissions or representations in writing in respect of the complaint within a specified timeframe. The Case Manager may request the Member and/or the Complainant for further information.
- 27. Unless the Member settles or resolves the complaint, or the Case Manager, having considered the Member's written submissions or representations (if any), is of the view that the complaint is groundless and rejects the complaint, the Case Manager shall pass the complaint to three Honorary Secretaries for their opinion. The duty of the Honorary Secretaries is to assist the Complaints Panel in the handling of Claim-related Complaints in accordance with the rules, guidelines, codes, practices and procedures regarding the handling of Claim-related Complaints as determined from time to time by the Complaints Panel.

### **Advisory reports by the Honorary Secretaries**

- 28. Having considered the Complaint Documents, the three Honorary Secretaries shall provide their comments and/or make recommendations for settlement in their respective advisory report. The Case Manager may request the Member and/or the Complainant for further information.
- 29. If all three Honorary Secretaries are in favour of the Member's decision, the Case Manager shall pass the complaint to the Complaints Panel for deliberation.
- 30. If one or more Honorary Secretaries are in favour of the Complainant:
  - (a) The Case Manager shall pass the advisory reports to the Member for consideration and request further written submissions or representations from the Member on the advisory reports within a specified timeframe.
  - (b) Unless the Member settles or resolves the claim, or changes its decision on the claim, the Case Manager shall pass the Complaint Documents together with the advisory reports and any further written submissions or representations to the Complaints Panel for determination.

## **Adjudication by the Complaints Panel**

31. The Complaints Panel shall be constituted in accordance with the Articles with 5 members as follows:
  - (a) a chairman, who (i) shall be a person who has attained legal training and is qualified for admission as a barrister or a solicitor in Hong Kong or in other jurisdiction; (ii) shall not be an Authorised Insurer or an officer or a shareholder of or have any management control over the conduct of the business of an Authorised Insurer; and (iii) shall be appointed by the General Committee with the prior approval of the Secretary for Financial Services and the Treasury;
  - (b) two members comprising (i) a member of the Hong Kong Institute of Certified Public Accountants who shall be appointed by the General Committee to act as a member of the Complaints Panel; and/or (ii) a member of the Law Society of Hong Kong who shall be appointed by the General Committee to act as a member of the Complaints Panel; and/or (iii) a person who in the opinion of the General Committee represents the consumer interest, whether he is a member of the Consumer Council or not, provided that none of them shall be an Authorised Insurer or an officer or a shareholder of or have any management control over the conduct of the business of an Authorised Insurer;
  - (c) one member representing the General Insurance Council of the Federation nominated by the Federation and approved by the General Committee; and
  - (d) one member representing the Life Insurance Council of the Federation nominated by the Federation and approved by the General Committee.
32. The Complaints Panel shall have the power from time to time to make such rules, guidelines, codes, practices and procedures regarding the handling of the Claim-related Complaints as the Complaints Panel may deem appropriate.
33. The Complaints Panel may investigate any Claim-related Complaints received (including requiring any persons concerned to produce any documents or information relating to the complaint) and/or hear and/or determine Claim-related Complaints, and may make an Award.
34. The Complaints Panel may determine any Claim-related Complaint by way of an oral hearing or on paper by way of a meeting of the Complaints Panel without an oral hearing. In their absolute discretion, the Complaints Panel may require the Member and/or the Complainant either to make written submissions and representations, or to appear before the Complaints Panel at an oral hearing. Matters arising at any meeting of the Complaints Panel shall be decided by a majority of votes. In the case of an equality of votes, the chairman presiding the meeting shall have a second or casting vote.

35. For the avoidance of doubt, the Complaints Panel will not be obliged to provide to the Complainant any documents or representations it has received in respect of the complaint or invite the Complainant to make representations to the Complaints Panel.
36. The Complaints Panel shall deliberate on the case without the presence of the Complainant or the Member concerned and then deliver its decision which shall be final and binding on the Member in the form of an Award.
37. The Complaints Panel may make an Award as follows:
  - (a) the Claim-related Complaint is valid and the Member is required to pay the claim;
  - (b) the Claim-related Complaint is invalid but recommends the Member to consider *ex-gratia* payment to the Complainant; or
  - (c) the Claim-related Complaint is invalid and affirms the Member's decision to decline the claim.
38. In making the Award:
  - (a) subject to sub-paragraph (c) below and paragraph 35 above, the Complaints Panel shall have regard to the 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 Federation or the ICB;
  - (b) in respect of the terms of the Personal Insurance Contracts, these shall prevail unless they would, in the view of the Complaints Panel, produce a result that is unfair and unreasonable to the Complainant. Where such 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;
  - (c) the Complaints Panel shall not be bound by its previous decisions and its Award shall be the Complaints Panel's assessment of what would be a fair and reasonable solution in all the circumstances to the Claim-related Complaint, dispute or claim comprised in a reference.
39. The Award made by the Complaints Panel shall be final and binding upon the Member against which it is made.
40. Any Award of the Complaints Panel does not affect the right of the Complainant to take legal action thereafter if he is not satisfied with the decision of the Complaints Panel and in which case the decision of the Complaints Panel shall be deemed to be

withdrawn. The Parties shall not call the ICB (or any of its employees, officers or representatives, or any other persons who act on behalf of the ICB) as a witness, consultant, mediator or expert in any legal or any subsequent proceedings relating to the complaint.

### **No liability**

41. The ICB (or any of its employees, officers or representatives, or any other persons who act on behalf of the ICB) and members of the Complaints Panel shall not, under any circumstances:
- (a) incur any civil liability, whether arising in contract, tort, defamation, equity or otherwise, in respect of anything done or omitted to be done in good faith in the discharge or purported discharge of the duties, or performance or purported performance of its functions, under these Terms of Reference; and/or
  - (b) be liable under any circumstances to any party to a Claim-related Complaint, including non-payment of any Award made against a Member or any money due from any party which relates to the Claim-related Complaint.

## **SECTION E: MEDIATION PROCESS OF NON-CLAIM RELATED COMPLAINTS**

### **Submission of Non-claim related Complaints**

42. A Complainant must submit his Non-claim related Complaint to the ICB in writing with full details of the subject complaint using the Complaint Form, together with a full set of the supporting documents.
43. Upon receipt of the Complainant's documents in paragraph 42 above for Non-claim related Complaints, the Case Manager shall issue an acknowledgement of receipt with a case reference number to the Complainant.

### **Initial screening and vetting by the Case Manager**

44. Any Non-claim related Complaint received by the ICB shall be screened and assessed by the Case Manager. In order for the Case Manager to process the complaint, he must be satisfied that:
- (a) the conditions in paragraph 19 above have been satisfied;
  - (b) all information and documents stated in paragraph 42 above have been submitted to the ICB;
  - (c) there are grounds and substance in the Non-claim related Complaint;
  - (d) the Non-claim related Complaint is not frivolous or vexatious;



- (e) the Non-claim related Complaint is not about quality of service or an underwriting decision of an insurer;
  - (f) the Non-claim related Complaint is not related to investment performance, level of a fee, premium, charge or interest rate unless the dispute concerns an alleged non-disclosure, misrepresentation, incorrect application, negligence, breach of any legal obligation or duty or maladministration on the part of the Member; and
  - (g) the Non-claim related Complaint may be resolved by mediation.
45. For the purposes of the initial screening, the Case Manager may investigate the complaint and require the Complainant, the Member and/or any persons concerned to provide further information or documents relating to the complaint that the Case Manager may require to assess the Complaint. The Complainant and/or the Member must comply with the request within a specified timeframe,
46. After the above initial screening:
- (a) if the Case Manager considers that the conditions in paragraph 44 are satisfied, he shall process the complaint.
  - (b) if the Case Manager considers that the conditions in paragraph 44 are not satisfied, he shall reject the complaint and advise the Complainant and where appropriate, the Member, and/or any other parties that are involved and have been informed about the complaint. Such rejection does not affect the right of the Complainant to take legal action thereafter if he is not satisfied with the rejection.

### **Processing Non-claim related Complaints**

47. A flow chart summary for processing Non-claim related Complaint is set out in Annex III.
48. If the Case Manager processes the complaint, he shall inform the Member concerned of the complaint made and request the Member to make submissions or representations in writing in respect of the complaint within a specified timeframe. The Case Manager may request the Member and/or the Complainant for further information.
49. Unless the Member settles or resolves the complaint, or the Case Manager, having considered the Member's written submissions or representations (if any), is of the view that the complaint is groundless and rejects the complaint, the Case Manager shall encourage the Parties to reach an amicable resolution within a specified timeframe. Unless a compromise is reached between the Parties for the Non-claim related Complaint within the specified timeframe, the Case Manager shall pass the complaint

to mediation and notify the Parties of the same. The Member must enter into and participate in the mediation in accordance with paragraph 12 above.

50. The ICB (and the Case Manager) may require the Parties to do anything else that it considers may assist the conduct of the mediation within a specified timeframe and the Parties must comply within the timeframe specified. This may include requiring the Parties to:
- (a) attend a pre-mediation session;
  - (b) provide the Parties' respective written position papers and documentary evidence; or
  - (c) provide further information except where the Party satisfies the ICB that paragraphs 10(b)(i) to 10(b)(vii) above apply.

### **Appointment of Mediator**

51. The ICB shall set up and maintain a List of Mediators for the provision of mediation services for Non-claim related Complaints and shall have the power to remove any Mediator from the list who fails to adhere to these Terms of Reference and/or the ICB Mediation Rules.
52. After the Case Manager has referred the Non-claim related Complaints to mediation and notified the Parties of the same, the Parties may agree on the appointment of a Mediator from the List of Mediators. If the Parties fail to agree, the Case Manager shall recommend two or three Mediators from the List of Mediators for the General Committee to appoint a Mediator for the Parties in accordance with the provisions set out in the ICB Mediation Rules.
53. The Mediator shall be impartial and have the necessary knowledge to enable him to mediate the Non-claim related Complaint and related disputes in accordance with the ICB Mediation Rules and any practice notes issued by the ICB from time to time.
54. The duty of the Mediator is to facilitate confidential, without prejudice discussions between the Parties in order to assist the Parties to resolve the Non-claim related Complaint by:
- (a) identifying the issues in dispute;
  - (b) exploring the Parties' needs and interests;
  - (c) exploring and generating options;
  - (d) communicating with one another;

- (e) reaching an agreement regarding the resolution of the whole, or part, of the Non-claim related Complaint; and
- (f) drawing up an agreement in the form of the Mediation Settlement Agreement setting out what the Parties have agreed to resolve the Non-claim related Complaint.

### **The mediation process**

- 55. The mediation shall be conducted on a confidential and without prejudice basis, and in accordance with the ICB Mediation Rules.
- 56. All preparation work and pre-mediation sessions for the Parties shall be concluded within 4 hours while the substantive mediation session shall be concluded within 4 hours, unless the complexity of the matter justifies additional time and the Mediator has the Complainant's and Member's consent. In the event the Mediator spends additional time on the matter, the Mediator shall charge the Mediator's hourly rate set out in the ICB Schedule of Fees for Non-claim related Complaints and the Member shall be liable for such additional charges (rounded up to the nearest hour).
- 57. The Parties shall participate in the mediation in good faith and give full assistance to the Mediator to enable the mediation to proceed and be concluded within the time stipulated.

### **Termination of the mediation**

- 58. The mediation shall come to an end in one of the following circumstances:
  - (a) upon the signing of a Mediation Settlement Agreement by the Parties;
  - (b) if the Mediator determines that:
    - (i) continuing the mediation is unlikely to result in a settlement;
    - (ii) a Party is unable or unwilling to participate effectively in the mediation process;
    - (iii) continuing the mediation will raise ethical concerns (save for any conflict of interest which is dealt with in subparagraph (iv) below);
    - (iv) a conflict of interest has arisen or may arise and the Parties have decided not to retain him;
    - (v) there is insufficient information for the mediation to proceed constructively;
    - (vi) the time allowed for the mediation under paragraph 56 has concluded;

(c) upon written notification by the Complainant, at any time, to the Mediator and the Member that the mediation is terminated.

59. If the mediation fails, the Complainant may pursue his complaint through other means. However, the Parties shall not call the Mediator or the ICB (or any of its employees, officers or representatives, or any other persons who act on behalf of the ICB) as a witness, consultant, mediator or expert in any legal or any subsequent proceedings relating to the complaint.

### **Exclusion of liability**

60. The ICB (or any of its employees, officers or representatives, or any other persons who act on behalf of the ICB) and the Mediator shall not, under any circumstances:

(a) incur any civil liability, whether arising in contract, tort, defamation, equity or otherwise, in respect of anything done or omitted to be done in good faith in the discharge or purported discharge of the duties, or performance or purported performance of its functions, under these Terms of Reference and/or the ICB Mediation Rules; and/or

(b) be liable to any party to a Non-claim related Complaint, including non-payment of any agreement reached at mediation or any money due from any party which relates to the Non-claim related Complaint.

## **SECTION F: MISCELLANEOUS**

### **Indemnity**

61. The Member concerned in any Complaint shall indemnify the ICB (or any of its employee, officer or representative, or any other person who acts on behalf of the ICB), the Mediator and/or the Complaints Panel in full against all claims (including all legal fees incurred), except in the case of fraud, arising out of or in any way referable to any act or omission by the ICB (or any of its employee, officer or representative, or any other person who acts on behalf of the ICB), the Mediator and/or the Complaints Panel in the discharge or purported discharge of the duties under these Terms of Reference and/or the ICB Mediation Rules or in the performance or purported performance of its functions under these Terms of Reference and/or the ICB Mediation Rules.

**ANNEX I: Complaint Form**  
**附件 I：投訴表格**

檔案號碼 Case Ref:  
(只供內部使用 For official use)

**A. 投訴人須知 Notice to Complainants**

1. 保險投訴局（「投訴局」）乃保險業界設立的獨立機構，以提供一站式服務平台，協助解決因個人保單合約（\*不包括團體保單、商業保單、公司醫療保單等）而產生的保險相關糾紛，涉及的索償／爭議金額以不超過 120 萬港元為限。詳情請參閱投訴局的《職權範圍》。

The Insurance Complaints Bureau ("ICB") is an independent organization set up by the insurance industry to provide a one-stop service in helping resolve insurance-related disputes arising from **Personal Insurance Contracts** (\*excluding group policies, commercial policies, medical policies provided by employers, etc.) with a claim amount/monetary value not exceeding HK\$1,200,000. For details, please refer to the Terms of Reference of ICB.

2. 投訴局並非執法機關。投訴局的調查結果或許未能達到投訴人的期望，投訴人若不同意投訴局的決定，可就投訴向其他執法機構求助，或透過民事訴訟處理。除非有具體的新資料／證據，否則投訴局一般不會受理覆檢要求。

ICB is not a law enforcement body. The decision of ICB may not be the same as your expectation. If you are dissatisfied with the decision of ICB, you may wish to seek assistance from other law enforcement bodies in respect of your complaint, or deal with it by means of civil action. ICB will generally not re-examine your case unless you are able to provide ICB with concrete new information/evidence.

3. 建議投訴人向投訴局作出投訴之前，先向相關保險公司投訴，嘗試透過保險公司的內部投訴機制，以快速有效的方式解決投訴。

Before lodging a complaint to ICB, you are advised to lodge your complaint with the insurer(s) concerned first in an attempt to resolve the complaint in a quick and effective way through their internal complaint-handling procedures.

4. 投訴局只接受由保單持有人、受保人、保單受益人或合法索償人提出涉及金錢性質的投訴。

ICB accepts complaints of a monetary nature filed by a policyholder, an insured person, a policy beneficiary or a rightful claimant only.

5. 投訴局只接受書面投訴。投訴人必須以書面詳述投訴事宜，連同有關證明文件一併交回投訴局。若投訴人未能提供客觀證明，則投訴局可能無法處理個案。投訴人可以透過下列方式作出投訴：

ICB accepts written complaints only. You are required to provide ICB with details of your complaint in writing together with the relevant supporting documents. If no objective proof can be provided, ICB may be unable to process the case. You may submit your complaint by one of the following methods:

- 郵寄／親身遞交 : 保險投訴局 The Insurance Complaints Bureau  
In Person/Post 香港灣仔駱克道 353 號三湘大廈 29 樓  
29/F, Sunshine Plaza, 353 Lockhart Road, Wanchai, Hong Kong
- 電郵 By Email : icb.enquiry@icb.org.hk  
傳真 By Fax : (852) 2520 1967

**B. 投訴人資料 Complainant Details**

姓 Last name	(先生／太太／女士／小姐*) (Mr / Mrs / Ms / Miss*)	名 First name	
通訊地址 Correspondence address			
日間聯絡電話號碼 Day time telephone No.		電郵地址 Email address	

\* 請刪去不適用之項目 Please delete as appropriate

**C. 涉案保單資料 Details of Policy(ies) Involved in the Complaint**

保險公司名稱 Name of insurer			
保單號碼 Policy number		保險類別 Type of insurance	
閣下與涉案保單的關係 Your relationship with the policy concerned	<input type="checkbox"/> 保單持有人 Policyholder <input type="checkbox"/> 受益人 Policy beneficiary <input type="checkbox"/> 受保人 Insured person <input type="checkbox"/> 合法索償人 Rightful claimant		
保單生效日 Policy effective date	/ / (日日／月月／年年年年) (dd / mm / yyyy)		
保單現狀 Status of the policy(ies)	生效／已失效／已退保* (失效／退保日期：_____) In force / Lapsed / Surrendered* (Lapsed / Surrendered Date : _____)		

\* 請刪去不適用之項目 Please delete as appropriate

**D. 投訴內容 Complaint Details**

請具體說明投訴個案的內容，並按時序詳述引起投訴的有關事件經過、日期、時間、涉案公司／人物及其身份。  
 Please describe your complaint in details and give full particulars of the relevant events/incidents giving rise to your complaint with dates, times and identities of companies/persons involved in chronological order.

爭議金額 Disputed amount	
涉案的保險公司作出最後決定通知書的日期 Date of notification by the insurer concerned of its final decision	

如上欄空位不足，請另頁填寫，並把附頁夾附本表格一併遞交。  
 If you need more space, please continue on a separate sheet and attach it to this Form.

**E. 支持投訴個案的證明文件 Documents in Support of your Complaint**

請閣下提供下列文件副本\*。如文件已附上，請於適當的方格內加上「✓」：  
 Please provide copies\* of the following documents. If the documents are attached, please tick the appropriate boxes:

<input type="checkbox"/>	1	整份保單文件 Whole set of policy document
<input type="checkbox"/>	2	投保申請表格 Policy application form
<input type="checkbox"/>	3	涉案保險公司作出最後決定的書面通知書 Written notification by the insurer concerned of its final decision
<input type="checkbox"/>	4	索償表格 Claim form
<input type="checkbox"/>	5	醫療報告 Medical report
<input type="checkbox"/>	6	檢驗報告、維修報價表或維修收據 Surveyor report, quotation for repair or repair receipt
<input type="checkbox"/>	7	警方報告 Police Report
<input type="checkbox"/>	8	
<input type="checkbox"/>	9	

\* 所有提交的文件副本均不獲退回。  
 All copies of documents submitted will not be returned.

## F. 同意書、授權書及收集個人資料聲明

### **Agreement, Authorization and Personal Information Collection Statement**

本人謹向投訴局作出投訴。本人在此確認、同意、明白及／或授權如下：

I would like to lodge a complaint with ICB. I hereby acknowledge, agree, understand and/or authorize as follows:

1. 透過向投訴局作出投訴，本人確認及同意：

by lodging a complaint with ICB, I acknowledge and agree that:

(a) 就有關投訴個案，本人同意在任何時候均遵守投訴局《職權範圍》的規定，並受之所約束，包括任何及所有投訴局不時作出的相關修訂、修改及／或更新，並將遵循投訴局就處理索償相關的投訴個案和非索償相關的投訴個案的既定步驟及程序；

for the purposes of the complaint, I will comply with and be bound by the Terms of Reference at all times, including any and all such amendments, modifications and/or updates that may be made from time to time by ICB, and will follow the procedures and processes prescribed by ICB for handling the Claim-related Complaints and the Non-claim related Complaints;

(b) 就有關投訴，本人只會享有《職權範圍》所述的權利；

I will only be afforded with rights as set out in the Terms of Reference in respect of the Complaint;

(c) 投訴委員會就索償相關的投訴個案作出的任何裁決，均不會影響本人其後因不滿有關決定而採取法律行動的權利；  
any Award of the Complaints Panel made in Claim-related Complaints does not affect my right to take legal action thereafter if I am not satisfied with the decision of the Complaints Panel; and

(d) 如非索償相關的投訴個案最終未能透過調解解決，本人可以尋求其他投訴途徑；

if the mediation fails in respect of Non-claim related Complaints, I may pursue my complaint through other means;

*(All capitalized terms in this paragraph shall have the same meaning ascribed to them in the Terms of Reference of ICB)*

2. 本人自願向投訴局提供個人資料及投訴資料。如提供的資料或個人資料不真確或不完整，可能會影響投訴局處理本人的投訴。如沒有提供聯絡資料，投訴局則無法向本人就投訴個案作出任何回覆；

it is voluntary for me to supply my personal data and the information relating to the complaint to ICB. If the information or personal data provided is not accurate or complete, the processing of the complaint by ICB may be affected. If no contact information is provided, ICB will not be able to provide any reply to the complaint;

3. 投訴局會把有關投訴個案的資料及本人的個人資料轉交涉案保險公司、調解員及／或其他與投訴相關機構／人士；

ICB will transfer all information relating to the complaint and all my personal data to the insurer(s) concerned, mediators and/or other organizations or parties related to the complaint;

4. 任何知悉或持有本人任何記錄／資料之僱主、註冊醫生、醫院、診所、保險公司或其他組織或人士向投訴局提供該等資料。此授權書之影印本與正本具有同等效力；

any employer, registered doctor, hospital, clinic, insurance company or other institution or person who has knowledge or holds any record/information of me to furnish such information to ICB. A photocopy of this authorization shall have the same effect as the original;

5. 所有本人向投訴局提供的資料及個人資料將用於調查或處理相關投訴的目的或直接相關的目的；

all information and personal data provided by me to ICB will be used for the purposes of investigating or handling the complaint concerned or a directly related purpose;

6. 本人有權根據《個人資料（私隱）條例》要求查閱及更正本人向投訴局提供的個人資料。任何要求必須以書面形式向投訴局秘書處提出。

I have the right under the *Personal Data (Privacy) Ordinance* to request access to and correction of my personal data submitted to ICB. Any request must be made in writing and addressed to the ICB Secretariat.

投訴人簽署

Signature of the Complainant

姓名（正楷）

Name in block letters

日期

Date

\* 如投訴人非受保人，請說明與受保人的關係 \_\_\_\_\_。

If the Complainant is not the insured person, please state the relationship \_\_\_\_\_.

如受保人已年滿 18 歲，則必須在下列簽署：

If the insured person has reached the age of 18, he/she must sign below:

受保人簽署

Signature of the insured person

姓名（正楷）

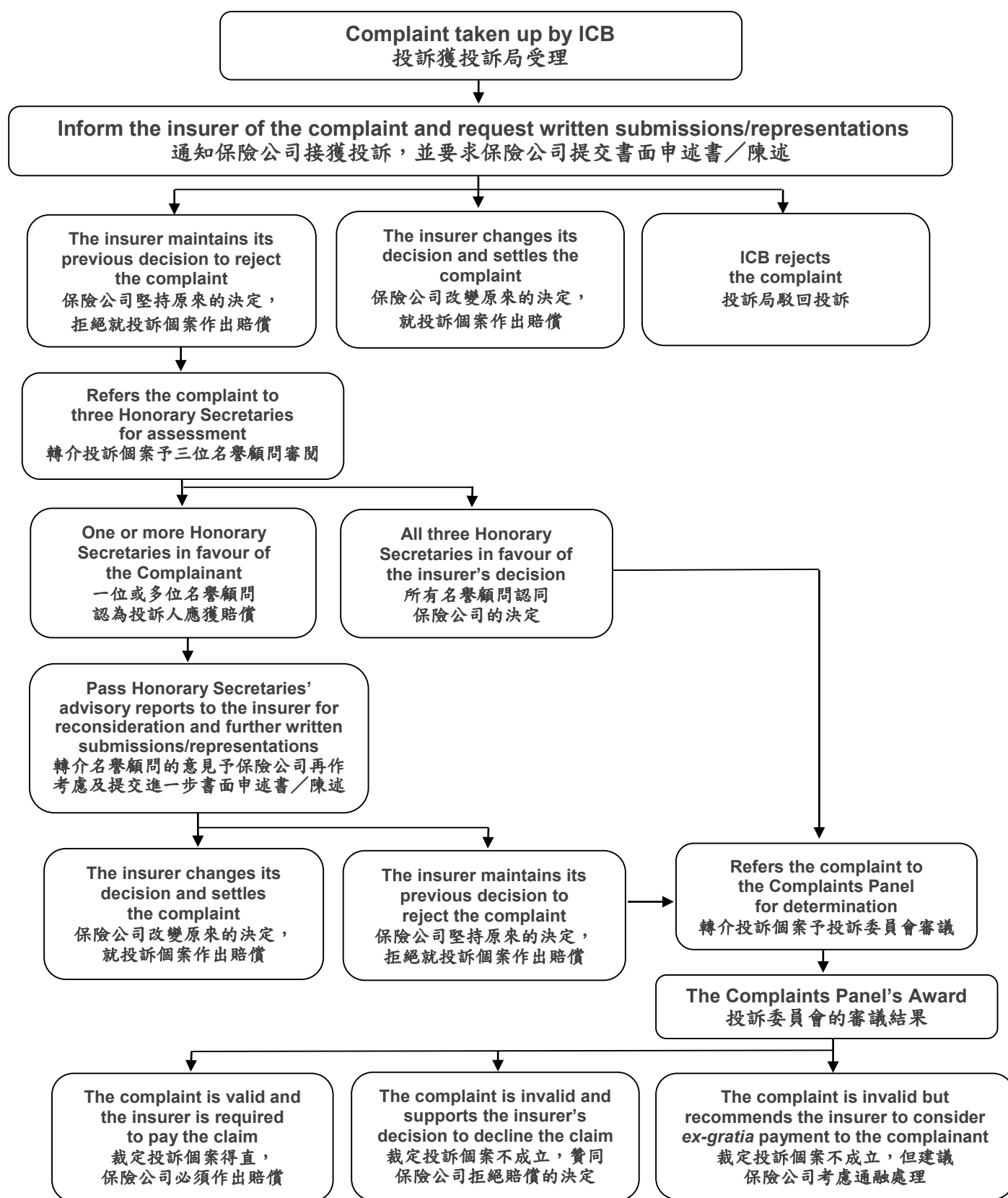
Name in block letters

日期

Date

## ANNEX II: Processing of Claim-related Complaints Flow Chart

### 附件 II：處理索償相關的投訴個案之流程圖



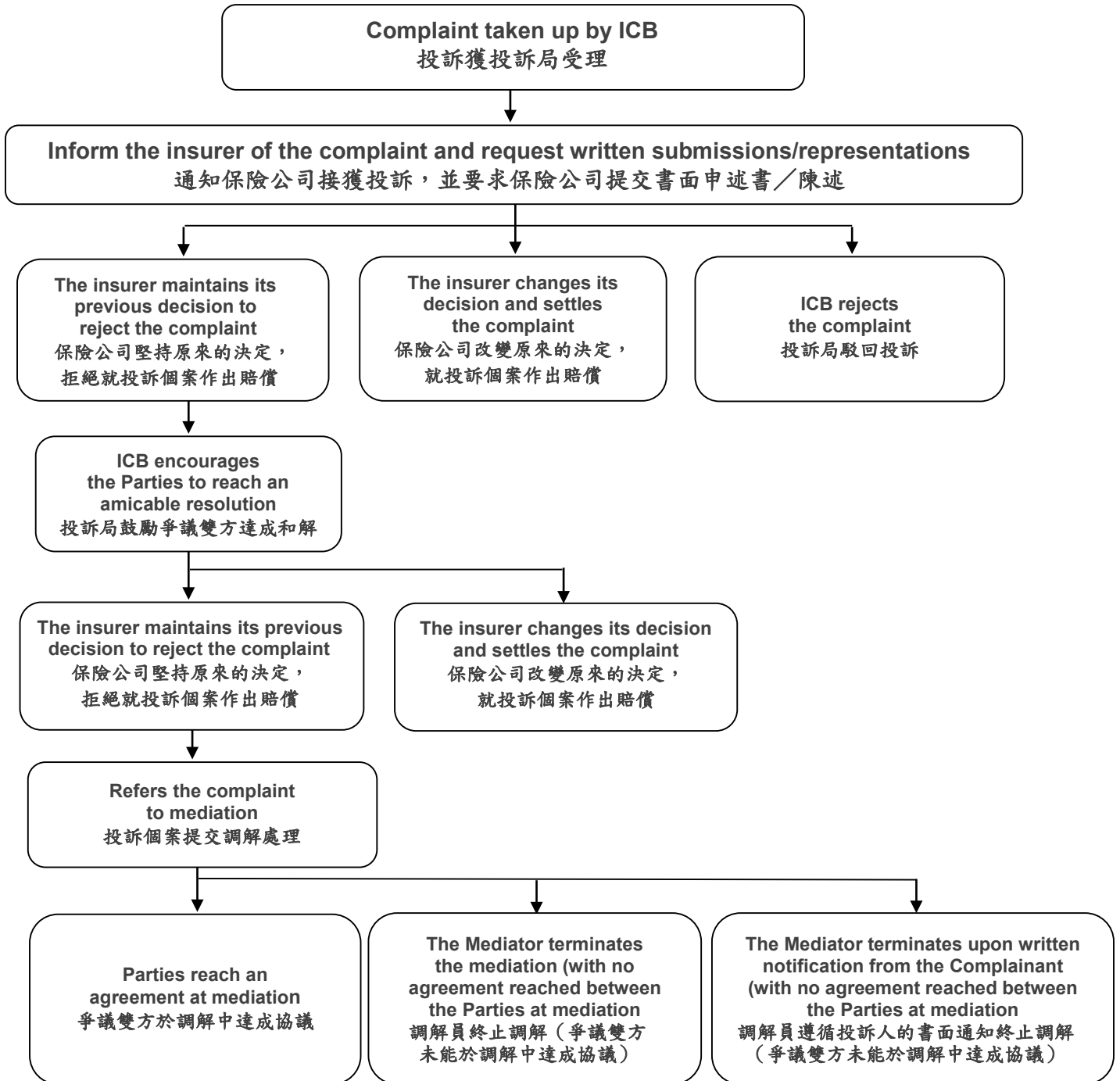
Remarks: This flow chart is a summary of the Claim-related Complaints handling procedures and is for reference only. For details, please refer to the Terms of Reference of ICB.

備註：有關流程圖簡述處理索償相關的投訴個案的步驟，僅作參考。詳情請參閱投訴局的《職權範圍》。



### ANNEX III: Processing of Non-claim related Complaints Flow Chart

#### 附件 III：處理非索償相關的投訴個案之流程圖



Remarks: This flow chart is a summary of the Non-claim related Complaints handling procedures and is for reference only. For details, please refer to the Terms of Reference of ICB.

備註：有關流程圖簡述處理非索償相關的投訴個案的步驟，僅作參考。詳情請參閱投訴局的《職權範圍》。

**ANNEX IV**  
**ICB Schedule of Fees for Non-claim related Complaints**

<b>For Non-claim related Complaints with a monetary value of up to HK\$1,200,000</b>	<b>Fees payable by Member (insurer)</b>	
	<b>Preparation work<sup>1</sup> and pre-mediation session(s)<sup>2</sup> (up to 4 hours)</b>	<b>Substantive mediation session (up to 4 hours)</b>
	HK\$4,000 (flat rate)	HK\$2,000 per hour (rounded up to the nearest hour)
	<p>(a) The fees payable by the Member to the ICB prior to the commencement of the mediation (i.e. within 14 days of the written notice from the ICB confirming the appointment of the Mediator) 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).</p> <p>(b) If the substantive mediation session is less than 4 hours, any extra fees paid will be refunded to Members after the mediation has concluded. Any part of an hour used will be treated as a full hour.</p> <p>(c) All preparation work and pre-mediation sessions for the Parties shall be concluded within 4 hours while the substantive mediation session shall be concluded within 4 hours, unless the complexity of the matter justifies additional time and the Mediator has the Complainant's and Member's consent. In the event the Mediator spends additional time on the matter, the Mediator shall charge the Mediator's hourly rate of HK\$2,000 per hour and the Member shall be liable for such additional charges (rounded up to the nearest hour).</p>	

<sup>1</sup> Preparation work includes dealing with administrative matters, processing relevant documents, travelling time and all correspondence.

<sup>2</sup> Pre-mediation sessions (i.e. meetings with each of the Parties before the mediation) are normally 1-2 hours per session for each Party.

**ANNEX V**  
**ICB Mediation Rules**

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**ICB MEDIATION RULES**

**Introduction**

1. These ICB Mediation Rules (Rules) are published by the Insurance Complaints Bureau (ICB) and apply to mediations of Non-claim related Complaints conducted by a Mediator appointed under the ICB's List of Mediators.

**Definitions**

2. In these Rules, unless the context otherwise requires, the following expressions have the following meanings:

"**Affiliate Member**" means any person referred to as an Affiliate Member of the ICB in "*PART II: MEMBERSHIP*" of the Articles;

"**Agreement to Mediate**" means the agreement between the Mediator, the Complainant and the Member in the form set out in Annex VI of the Terms of Reference whereby the Parties and the Mediator agree to enter into mediation to resolve the Parties' Non-claim related Complaint applying these Rules;

"**Articles**" means the articles of association of the ICB;

"**Case Manager**" means any person appointed by the ICB to screen, assess and/or process any Non-claim related Complaint in accordance with the Terms of Reference;

"**Complainant**" means a policyholder, a policy beneficiary, an insured person or a rightful claimant of a Personal Insurance Contract and who has made a Non-claim related Complaint to the ICB;

"**Confidentiality Agreement**" means the confidentiality agreement of persons attending the mediation other than the Parties and the Mediator and in the form set out in Annex VII of the Terms of Reference;

"**days**" means calendar days;

"**Full Member**" means any person referred to as a Full Member of the ICB in "*PART II: MEMBERSHIP*" of the Articles;

**"General Committee"** means the General Committee for the time being of the ICB as referred to in the Articles;

**"ICB"** means the Insurance Complaints Bureau 保險投訴局;

**"ICB Schedule of Fees for Non-claim related Complaints"** means the schedule of fees for Non-claim related Complaints payable by the Member concerned in the event of mediation as set out in Annex IV of the Terms of Reference;

**"List of Mediators"** means the ICB's list of mediators for mediation under the Terms of Reference and these Rules;

**"Mediation Certificate"** means the mediation certificate set out in Annex IX of the Terms of Reference which reports the outcome of the mediation to the ICB;

**"Mediation Settlement Agreement"** means a written agreement setting out the terms the Parties have agreed in mediation to resolve a Non-claim related Complaint in the form set out in Annex VIII of the Terms of Reference;

**"Mediator"** means a person who is suitably qualified and experienced in mediation and is appointed by the ICB to act as a mediator;

**"Member"** means a member of the ICB who shall either be a Full Member or an Affiliate Member;

**"Non-claim related Complaint"** means a complaint against any Member which is not claim related but of a monetary nature in connection with or arising out of any Personal Insurance Contract (for example fees and charges for policy administration, policy cancellation, premium deduction, refunds, etc.);

**"Party"** means the Complainant or the relevant Member;

**"Personal Insurance Contract"** means an insurance contract with any Member effected in the name of an individual person or persons for his own benefit and/or the benefit of his dependents, and insured in a private capacity only;

**"Rules"** means these ICB Mediation Rules;

**"Terms of Reference"** means the terms of reference of the ICB.

3. In these Rules, where the context allows:
  - (a) words and expressions importing the masculine gender shall include the feminine and neuter genders and vice versa;

- (b) words and expressions importing singular shall include the plural and vice versa; and
- (c) the headings in these Rules are inserted for convenience only and shall be ignored in the interpretation of these Rules.

### **Mediation**

- 4. Mediation under these Rules is a confidential and without prejudice dispute resolution process in which an impartial third party (the Mediator) helps the Parties resolve their dispute to reach a negotiated settlement.

### **Appointment of the Mediator**

- 5. After the Case Manager has referred the Non-claim related Complaint to mediation and notified the Parties of the same, the Parties may agree on the appointment of a Mediator from the List of Mediators. If the Parties fail to agree, the Case Manager shall recommend two or three Mediators from the List of Mediators for the General Committee to appoint a Mediator for the Parties who is impartial and has the necessary knowledge to enable him to deal with the Non-claim related Complaint and related disputes.
- 6. The Mediator shall confirm in writing that he has no conflict of interest or any financial or personal interest in the result of the mediation within 7 days of the initial letter from the ICB. Any affiliation or interest which the Mediator may have or had with any Party or in relation to the mediation shall be disclosed to the Parties, and in such situation, the Case Manager shall obtain the prior written consent of all the Parties before proceeding with the appointment of the Mediator.

### **Role of the Mediator**

- 7. The Mediator shall be impartial and have the necessary knowledge to enable him to mediate the Non-claim related Complaint and related disputes in accordance with these Rules and any practice notes issued by the ICB from time to time.
- 8. The Mediator may conduct the mediation in such manner and at such place as he considers appropriate, taking into account the circumstances of the case, the wishes of the Parties and the need for a speedy settlement of the Non-claim related Complaint.
- 9. The duty of the Mediator is to facilitate confidential, without prejudice discussions between the Parties in order to assist the Parties to resolve the Non-claim related Complaint by:
  - (a) identifying the issues in dispute;
  - (b) exploring the Parties' needs and interests;
  - (c) exploring and generating options;

- (d) communicating with one another;
  - (e) reaching an agreement regarding the resolution of the whole, or part, of the Non-claim related Complaint; and
  - (f) drawing up an agreement in the form of the Mediation Settlement Agreement setting out what the Parties have agreed to resolve the Non-claim related Complaint.
10. The Mediator has no power to make any monetary awards or impose any penalties on the Parties or adjudicate or make any binding decisions on the substance of the dispute or give legal or other professional advice to any Party. Any settlement reached will be a voluntary agreement between the Parties.

### **Role of the Parties**

11. The Parties shall participate in the mediation in good faith and give full assistance to enable the mediation to proceed and be concluded within the time stipulated.
12. The Member must enter into and participate in the mediation and do so in good faith.

### **Representation**

13. At the substantive mediation session, the Parties may be accompanied by persons of their choice, including any legal representative and in-house lawyer. However, no legal representative (including any in-house lawyer) is allowed to speak or make representations on behalf of any Party to the other Party during any joint session at which both Parties are present, save with the consent of all Parties and the Mediator. Such persons shall sign a separate Confidentiality Agreement and comply with these Rules as if they were a party to the mediation. Each Party shall notify the Mediator and the other Party in advance of the names and the role of such persons.
14. The ICB shall have the right to appoint a person to attend any mediation conducted under the Terms of Reference and these Rules. Any such appointed person shall sign a separate Confidentiality Agreement and comply with these Rules as if he was a party to the mediation.

### **Authority to settle**

15. Each Party shall have full authority to settle or be accompanied by a person with such authority at the time they attend the mediation.
16. The Member concerned shall appoint a representative with the requisite authority to settle up to HK\$1,200,000 for any individual complaint to attend and participate in the mediation.

### **The mediation process**

17. Within 30 days after the Mediator has been appointed, he shall commence the preparation work, pre-mediation sessions and substantive mediation session, unless the Mediator considers it reasonable in the circumstances to extend such time or the Mediator is otherwise directed by the ICB in writing.
18. Within 14 days of the written notice from the ICB confirming the appointment of the Mediator, the Member shall pay the fees prescribed below (see Rule 34 below) to the ICB.
19. Within 14 days of the written notice from the ICB confirming the appointment of the Mediator, the Member, the Complainant and the Mediator shall sign an Agreement to Mediate and the Mediator shall send a copy of the agreement to the ICB. The ICB shall keep the terms of the Agreement to Mediate confidential. Should the Complainant fail to sign the Agreement to Mediate, the mediation shall not proceed.
20. All preparation work and pre-mediation sessions for the Parties shall be concluded within 4 hours while the substantive mediation session shall be concluded within 4 hours, unless the complexity of the matter justifies additional time and the Mediator has the Complainant's and Member's consent. In the event the Mediator spends additional time on the matter, the Mediator shall charge the Mediator's hourly rate set out in the ICB Schedule of Fees for Non-claim related Complaints and the Member shall be liable for such additional charges (rounded up to the nearest hour).
21. During the mediation, the Mediator may request the Parties to provide all relevant data, information and materials relating to the mediation, except where the Party satisfies the ICB that:
  - (a) to provide the information would breach a court order;
  - (b) to provide the information would breach a duty of confidentiality to a third party and, despite all reasonable endeavours, the third party's consent to disclose the information has not been obtained;
  - (c) to provide the information would prejudice an ongoing investigation by the police, the regulators or other law enforcement agencies, and, despite all reasonable endeavours, the consent to disclose the information has not been obtained;

- (d) the information is subject to legal professional privilege;
  - (e) to provide the information would prejudice the Party's right against self-incrimination;
  - (f) the information does not exist or no longer exists or is not within the Party's reasonable possession or control; or
  - (g) the information is irrelevant to the Non-claim related Complaint.
22. The Mediator may communicate with the Parties together or with any Party separately, including private meetings and pre-mediation sessions, and each party shall co-operate with the Mediator.
23. Where an actual conflict of interest or a potential conflict of interest reasonably known to the Mediator arises, the Mediator shall disclose such conflict to all Parties as soon as possible. After disclosure, the Mediator shall decline to mediate unless all Parties choose to retain the Mediator. If the Parties decide not to retain the Mediator, the mediation terminates and the Mediator shall notify the ICB of the termination of the mediation by way of the Mediation Certificate.

#### **Termination of the mediation**

24. The mediation process shall come to an end:
- (a) upon the signing of a Mediation Settlement Agreement by the Parties;
  - (b) if the Mediator determines that:
    - (i) continuing the mediation is unlikely to result in a settlement;
    - (ii) a Party is unable or unwilling to participate effectively in the mediation process;
    - (iii) continuing the mediation will raise ethical concerns (save for any conflict of interest which is dealt with in subparagraph (iv) below);
    - (iv) a conflict of interest has arisen or may arise and the Parties have decided not to retain him;
    - (v) there is insufficient information for the mediation to proceed constructively;
    - (vi) the time allowed for the mediation under Rule 20 above has concluded;



- (c) upon written notification by the Complainant, at any time, to the Mediator and the Member that the mediation is terminated.
- 25. Any agreement reached at the mediation shall be binding upon all Parties to the agreement upon execution and shall be kept confidential.
- 26. If a Mediation Settlement Agreement is executed by the Parties, the Mediator shall send a copy to the ICB. The ICB shall keep the terms of the Mediation Settlement Agreement confidential.
- 27. Upon conclusion of the mediation, with or without a Mediation Settlement Agreement, the Mediator shall report the termination to the ICB by way of the Mediation Certificate.
- 28. If the mediation fails, the Complainant may pursue his complaint through other means. However, the Parties shall not call the Mediator or the ICB (or any of its employees, officers or representatives, or any other persons who act on behalf of the ICB) as a witness, consultant, mediator or expert in any legal or any subsequent proceedings relating to the complaint.

**Confidentiality**

- 29. The mediation shall be conducted on a confidential and without prejudice basis.
- 30. The fact that mediation has occurred, is continuing or has concluded shall not be considered as confidential.
- 31. All documents, communications and information disclosed by any Party for the purpose of or related to the mediation process shall be disclosed on a without prejudice basis and no privilege or confidentiality shall be waived by such disclosure. Confidentiality extends to the Mediation Settlement Agreement except where its disclosure is necessary for implementation or enforcement.
- 32. Where a Party discloses to the Mediator any document, communication or information in confidence before, during or after the mediation, the Mediator shall not disclose such information to any other Party or person without the consent of the Party disclosing it, unless and to the extent compelled by law, regulations or an order of court.
- 33. The Parties' obligation of confidentiality is not affected by, and continues with full force and effect after, the conclusion of the mediation.

**Fees**

- 34. Members are required to pay the ICB a prescribed fee (inclusive of all preparation work and pre-mediation sessions and the substantive mediation session) prior to the commencement of the mediation (i.e. within 14 days of the written notice from the ICB

confirming the appointment of the Mediator) in accordance with the Terms of Reference and the ICB Schedule of Fees for Non-claim related Complaints.

35. If the length of the substantive mediation session is less than the time prescribed under Rule 20 above, any extra fees paid will be refunded to the Member after the mediation has concluded. Any part of an hour used will be treated as a full hour. In the event the Mediator spends additional time on the matter, the Mediator shall charge the Mediator's hourly rate set out in the ICB Schedule of Fees for Non-claim related Complaints and the Member shall be liable for such additional charges (rounded up to the nearest hour).
36. The ICB shall review the fee structure from time to time and any changes will be subject to approval by the General Committee.

### **Exclusion of liability**

37. The ICB (or any of its employees, officers or representatives, or any other persons who act on behalf of the ICB) and the Mediator shall not, under any circumstances:
  - (a) incur any civil liability, whether arising in contract, tort, defamation, equity or otherwise, in respect of anything done or omitted to be done in good faith in the discharge or purported discharge of the duties, or performance or purported performance of its functions, under these Rules and/or the Terms of Reference; and/or
  - (b) be liable to any party to a Non-claim related Complaint, including non-payment of any agreement reached at mediation or any money due from any party which relates to the Non-claim related Complaint.

### **Indemnity**

38. The Member concerned in any Non-claim related Complaint shall indemnify the ICB (or any of its employee, officer or representative, or any other person who acts on behalf of the ICB) and the Mediator in full against all claims (including all legal fees incurred), except in the case of fraud, arising out of or in any way referable to any act or omission by the ICB (or any of its employee, officer or representative, or any other person who acts on behalf of the ICB) and the Mediator in the discharge or purported discharge of the duties under these Rules and/or the Terms of Reference or in the performance or purported performance of its functions under these Rules and/or the Terms of Reference.

**ANNEX VI**  
**Agreement to Mediate**

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**AGREEMENT TO MEDIATE**

**THIS AGREEMENT** is made on the \_\_\_\_\_ day of \_\_\_\_\_

**BETWEEN:**

(A) \_\_\_\_\_, of \_\_\_\_\_ (the "**Complainant**")  
(name of party) (address)

**AND**

(B) \_\_\_\_\_, of \_\_\_\_\_ (the "**Member**")  
(name of party) (address)

(each a "**Party**", together the "**Parties**")

**AND**

(C) \_\_\_\_\_, of \_\_\_\_\_ (the "**Mediator**")  
(name of mediator) (address)

**Background**

1. The Parties have a dispute in relation to \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(the "**Dispute**") which they cannot resolve.
2. With the intent of resolving the Dispute, the Parties agree to enter into mediation in accordance with the terms of this Agreement.

**Appointment of the Mediator**

3. The Parties agree to accept the appointment of the Mediator by the Insurance Complaints Bureau (the "**ICB**") to mediate the Dispute and the Mediator agrees to mediate the Dispute with the intent of resolving the Dispute to reach a negotiated settlement.

**Conduct of the mediation**

- 4. The mediation shall be conducted in accordance with the terms and conditions of this Agreement and the ICB Mediation Rules set out in Annex V of the Terms of Reference of the ICB (a copy of which is *enclosed* to this Agreement). The Parties and the Mediator agree to be bound by the rules set out in the ICB Mediation Rules.
- 5. The mediation shall be conducted on a confidential and without prejudice basis. The Parties' obligation of confidentiality is not affected by, and continues with full force and effect after, the conclusion of the mediation.
- 6. The language of mediation shall be decided by the Mediator, taking into consideration the Parties' preferences as far as practicable. If translation or interpretation service is required by any Party, the Party requiring such service shall bear its costs. If such service is jointly required, the Parties agree to share the costs on an equal basis. Such translator or interpreter shall sign a separate confidentiality agreement in the form set out in Annex VIII of the Terms of Reference of the ICB and comply with the ICB Mediation Rules as if he was a party to the mediation.

**Governing law and jurisdiction**

- 7. This Agreement is governed by and construed in accordance with the laws of the Hong Kong Special Administrative Region and the courts of the Hong Kong Special Administrative Region shall have exclusive jurisdiction to decide any matters arising out of or in connection with this Agreement.

Signature: \_\_\_\_\_

Name:

Capacity:

Signature: \_\_\_\_\_

Name:

Capacity:

Signature: \_\_\_\_\_

Name:

Capacity:

**ANNEX VII**  
**Confidentiality Agreement**

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**CONFIDENTIALITY AGREEMENT**

*To be completed by persons attending the mediation other than the Complainant(s), the Member(s) and the Mediator prior to the mediation.*

To:    The Complainant(s)  
          The Member(s)  
          The Mediator

In consideration of my being permitted to attend the mediation between \_\_\_\_\_ (the Complainant(s)), \_\_\_\_\_ (the Member(s)) and \_\_\_\_\_ (the Mediator):

1.     I agree to be personally bound by the confidentiality provisions of the ICB Mediation Rules (i.e. Clauses 29-33 as set out in the Schedule attached) enclosed to the Agreement to Mediate signed by the Complainant(s), the Member(s) and the Mediator on \_\_\_\_\_ as if I was a party to the mediation.
  
2.     I shall not disclose or use any information relating to the mediation nor act as a witness in any subsequent proceedings, save as required by any law, regulation or order of court.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Capacity: \_\_\_\_\_

Date: \_\_\_\_\_

## **Schedule**

Clauses 29-33 of the ICB Mediation Rules provide as follows:

29. The mediation shall be conducted on a confidential and without prejudice basis.
30. The fact that mediation has occurred, is continuing or has concluded shall not be considered as confidential.
31. All documents, communications and information disclosed by any Party for the purpose of or related to the mediation process shall be disclosed on a without prejudice basis and no privilege or confidentiality shall be waived by such disclosure. Confidentiality extends to the Mediation Settlement Agreement except where its disclosure is necessary for implementation or enforcement.
32. Where a Party discloses to the Mediator any document, communication or information in confidence before, during or after the mediation, the Mediator shall not disclose such information to any other Party or person without the consent of the Party disclosing it, unless and to the extent compelled by law, regulations or an order of court.
33. The Parties' obligation of confidentiality is not affected by, and continues with full force and effect after, the conclusion of the mediation.

**ANNEX VIII**  
**Mediation Settlement Agreement**

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**MEDIATION SETTLEMENT AGREEMENT**

**THIS AGREEMENT** is made on the \_\_\_\_\_ day of \_\_\_\_\_

**BETWEEN:**

(A) \_\_\_\_\_, of \_\_\_\_\_  
(name of party) (address)

**AND**

(B) \_\_\_\_\_, of \_\_\_\_\_  
(name of party) (address)

(each a "**Party**", together the "**Parties**")

**BACKGROUND**

- (i) The Parties agreed to enter into mediation with the intent of resolving issues in relation to \_\_\_\_\_  
\_\_\_\_\_  
(the "**Dispute**") pursuant to the Agreement to Mediate made on the \_\_\_\_\_ day of \_\_\_\_\_ pursuant to the ICB Mediation Rules in Annex V of the Terms of Reference of the Insurance Complaints Bureau (the "**ICB**").
- (ii) The Parties have reached an agreement in the mediation on the terms set out herein to settle the Dispute.

**TERMS OF THE SETTLEMENT**

The Parties hereby agree as follows:

1. *[Insert agreed terms here.]*
2. This Agreement shall be binding upon the Parties upon execution.
3. The Parties agree that a copy of this Agreement shall be sent to the ICB by the Mediator pursuant to the Terms of Reference of the ICB.

4. This Agreement is governed by and construed in accordance with the laws of the Hong Kong Special Administrative Region and the courts of the Hong Kong Special Administrative Region shall have the exclusive jurisdiction to decide any matters arising out of or in connection with this Agreement.

Signature: \_\_\_\_\_

Name:

Capacity:

Signature: \_\_\_\_\_

Name:

Capacity:



**ANNEX IX**  
**Mediation Certificate**

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**MEDIATION CERTIFICATE**

To: The Insurance Complaints Bureau

Case Ref.: \_\_\_\_\_

This is to certify that the mediation took place on \_\_\_\_\_ (date) from \_\_\_\_\_ am/pm to \_\_\_\_\_ am/pm (time) between \_\_\_\_\_ (the Complainant(s)), \_\_\_\_\_ (the Member(s)) and \_\_\_\_\_ (the Mediator) has been:

concluded with the following outcome:

full and final settlement reached, with a Mediation Settlement Agreement signed.

no settlement reached.

terminated:

by the Complainant.

by the Mediator, pursuant to paragraph 24(b)(i) of the ICB Mediation Rules.

by the Mediator, pursuant to paragraph 24(b)(ii) of the ICB Mediation Rules.

by the Mediator, pursuant to paragraph 24(b)(iii) of the ICB Mediation Rules.

by the Mediator, pursuant to paragraph 24(b)(iv) of the ICB Mediation Rules.

by the Mediator, pursuant to paragraph 24(b)(v) of the ICB Mediation Rules.

by the Mediator, pursuant to paragraph 24(b)(vi) of the ICB Mediation Rules.

Signature:

Name of Mediator: \_\_\_\_\_

Date: \_\_\_\_\_