



Republic of the Philippines
Department of Finance
INSURANCE COMMISSION
1071 United Nations Avenue
Manila



ADVISORY No. 12-2017

TO : ALL INSURANCE COMPANIES, INSURANCE BROKERS, REINSURANCE BROKERS, BOTH INSURANCE AND REINSURANCE BROKERS, AND OTHER STAKEHOLDERS

SUBJECT : CIRCULAR LETTER: STANDARD BROKERS AGREEMENT

DATE : 24 May 2017

Pursuant to the requirements of paragraph three (3) of Section 315 of Republic Act No. 10607 (Amended Insurance Code), in order to ensure faithful performance by the insurance brokers, reinsurance brokers, and both insurance and reinsurance brokers of their fiduciary responsibilities, the Insurance Commissioner shall prescribe the minimum terms and conditions in the Standard Brokers Agreement. You are hereby directed to provide your comments on the attached draft Circular on **“STANDARD BROKERS AGREEMENT.”**

All comments shall be submitted to the Insurance Commission on or before the 30th of June 2017. Comments shall follow the standard format as follows:

- Section/Provision Being Covered
- Comments and Recommendation
- Proposed revised provisions, if applicable

The comments shall be submitted to Mr. Alex T. Dela Cruz (at.delacruz@insurance.gov.ph) and Mr. Nino Jerald M. Cruz (njm.cruz@insurance.gov.ph). For inquiries and questions, please call Brokers Examination Division at +63(2) – 523-8462 to 70 local 132.

For your strict compliance.


DENNIS B. FUNA
Insurance Commissioner

Attachments:
Draft Circular Letter
Draft Template of Standard Brokers Agreement

DRAFT FOR COMMENT

Circular Letter No.	
Date	
Supersedes	None

CIRCULAR LETTER

TO : All Insurance Companies, Insurance Brokers, Reinsurance Brokers and Both Insurance and Reinsurance Brokers

SUBJECT : Template of Standard Brokers Agreement

In compliance with Section 315 of the Amended Insurance Code and in order to ensure faithful performance of the insurance brokers and both insurance and reinsurance brokers of their fiduciary responsibilities and to protect the insuring public against misappropriation of funds held by those in trust and to complement the enforcement of the Amended Insurance Code, the Insurance Commission hereby issues the attached Template of Standard Brokers Agreement.

All existing brokers agreement shall be replaced using this new template. All insurance companies are directed to submit lists of their authorized insurance brokers and reinsurance brokers. All insurance brokers and both insurance and reinsurance brokers are required to submit copy of the Standard Brokers Agreement duly signed by the Broker and the Insurer and notarized to the Brokers Examination Division within thirty (30) days after its effectivity.

The Brokers Examination Division shall have the authority to conduct an examination on the Brokers Agreement to determine whether the terms and conditions in the Standard Brokers Agreement are complied with.

This Circular shall take effect immediately.

DENNIS B. FUNA
Insurance Commissioner

DRAFT FOR COMMENT

Consolidated version template submitted by PIRA/AIBP and TWG- PIRA/AIBP

STANDARD BROKERS AGREEMENT

This Agreement made and entered into this ___ day of _____, 20__ at _____ by and between:

_____ (Name of Broker), a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at _____, represented herein by its President and duly authorized representative, _____ and hereinafter referred to as "**BROKER**";

and

_____ (Name of Insurance Company), a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at _____, represented herein by its President and duly authorized representative, _____ and hereinafter referred to as "**INSURER**";

The **INSURER** and the **BROKER** are hereinafter collectively referred to as the "**PARTIES**".

WITNESSETH: THAT

For and in consideration of the premises, covenants and agreements contained herein, the **PARTIES** hereby agree as follows:

ARTICLE I - SCOPE OF AUTHORITY

1. The **BROKER** is authorized to solicit, transact and service life, non-life and/or reinsurance business that the **INSURER** is authorized to write:
2. Except as otherwise provided by this Agreement, the **BROKER** has no authority to represent the **INSURER** in any and all matters affecting the insurance business.
3. The **BROKER** shall be an independent business partner of the **INSURER**. None of the terms and conditions of this Agreement shall be construed as creating an employer-employee or principal-agent relationship between the **PARTIES**, except in respect of Section 315 of the Amended Insurance Code.

ARTICLE II - TERMS OF AGREEMENT

This Agreement shall be effective for a period of three (3) years, from _____ until _____, and shall be in full force and effect unless either **PARTY** signifies its intent to terminate by giving thirty (30) days prior written notice and accepted by the other **PARTY**.

This Agreement should be automatically terminated upon the suspension/revocation of License/Certificate of Authority of the **PARTIES**.

BROKER License No. : _____
Date Issued : _____
Expiration Date : _____

INSURER License No. : _____
Date Issued : _____
Expiration Date : _____

ARTICLE III – PERFORMANCE

DUTIES, RESPONSIBILITIES AND OBLIGATIONS

The PARTIES agree to observe their respective obligation, duties and responsibilities as set forth in the amended Insurance Code and issuances of the Insurance Commission (IC).

A. BROKER'S RESPONSIBILITIES

1. MAINTAIN A SEPARATE BANK ACCOUNT (CLIENT MONIES) – FOR THE ACCOUNT OF INSURANCE COMPANIES

The BROKER shall maintain a separate bank account for the account of the INSURER for the premium collection except for direct payments.

All monies and/or negotiable instruments received by the BROKER as payment of any premium, gross of taxes and other charges, shall be held by the BROKER in a fiduciary capacity separate from its own and other funds, in an account called "Client Monies"

1.1 The BROKER must deposit in **full** the gross premium it directly collected from the assured to the Client Monies account.

1.2 Guidance on the circumstances under which monies shall be deposited into or withdrawn from a client account:

a. Deposit into Client Monies account

The following shall be deposited into the Client Monies account:

- i. Monies received from client for the purpose of purchasing contract of insurance;
- ii. Monies received for the purposes of the client which are incidental to the ordinary transactions of insurance broking business; and
- iii. Monies required to be deposited for settlement of bank charges incurred on a client account;

b. Withdrawal from Client Monies account

The following withdrawal shall be restricted into the Client Monies account:

- i. Premium monies required to be paid on behalf of client to insurers, reinsurers or other insurance intermediaries for the purchase of contract of insurance;
- ii. Payments made for the purposes of the client which are incidental to the ordinary transactions of insurance broking business;
- iii. Interest received from deposits;
- iv. Monies required to be withdrawn for settlement of bank charges incurred on a client account; and
- v. Monies which by mistake or accident have been paid into the account.

c. For avoidance of doubt, monies incidental to ordinary insurance broking business are the following:

- i. Premiums, renewal premiums, additional premiums and returns premiums of all kinds;
- ii. Other monies due under contracts of insurance;
- iii. Refunds to clients (i.e. policy cancellation);
- iv. Fees, charges, levies relating to contracts of insurance; and
- v. Discounts, commissions and/or brokerage fee.

2.2 The BROKER undertakes to deliver the policies to his clients, and collect the corresponding premiums in accordance with Section 77 of the Amended Insurance Code except for direct payments wherein broker should be copy furnish of the policies issued to the assured.

2.3 It is understood that the BROKER shall not be entitled to the delivery of the insurance policy, certificate of cover, cover note or appropriate endorsements, unless the corresponding premiums due and taxes thereon are fully paid.

2. SUBMISSION OF PRODUCTION REPORT, STATEMENT OF ACCOUNT RECONCILIATION STATEMENT

2.1 PRODUCTION REPORT – The INSURER shall submit to the BROKER a Monthly Production Summary Report

2.2 SUBMISSION OF STATEMENT OF ACCOUNT – The INSURER shall submit to the BROKER a Monthly Statement of Account

2.3 Quarterly reconciliation statement of accounts due and payable to each PARTY

2.4 BIR FORM 2307 – The INSURER shall submit to the BROKER BIR Form 2307 – Creditable Withholding Tax and Monthly/Quarterly Summary Schedule.

B. INSURANCE COMPANIES' RESPONSIBILITIES:

The INSURER shall have the following duties and responsibilities

1. The INSURER has the absolute unqualified right to accept or decline the BROKER'S insurance business. In the event that the INSURER decides to accept the business of the BROKER, the former shall deliver to the latter all the policies procured by the BROKER who shall then sign the endorsement/transmittal letters and undertakes to deliver the same to, and collect premium from his clients in accordance with the provisions of the Amended Insurance Code.
2. The INSURER shall revert to the BROKER regarding its position within reasonable time from receipt of the BROKER'S Placement Slip. For Placement Slips submitted by the BROKER that would require substantial facultative reinsurance placement &/or support from local/foreign reinsurers, the INSURER shall revert to the BROKER regarding its position within reasonable time from receipt of such placement slip.
3. The INSURER shall deliver the policy/endorsement copies to the BROKER within reasonable time upon receipt of the BROKER'S Placement Slip. For Placement Slips submitted by the BROKER that would require substantial facultative reinsurance

placement &/or support from local/foreign reinsurers and the issuance of a complex-worded policy, the INSURER shall deliver the policy/endorsement copies to the BROKER within a reasonable period of time consistent with Section 6 of the Bill of Rights of Policyholder (IC Circular Letter No. 2016-30 dated 26 May 2016).

ARTICLE IV – REMUNERATION

- 1. BASIC COMMISSION RATES.** Compensation or Commission Rates, including the process by which these are to be paid to the BROKER from the Client Monies account, should be based on the mutual agreement between the INSURER and the BROKER and should be attached as “Annex” and form part of this agreement.

The BROKER shall have the right to commissions on premiums actually remitted to the INSURER by either the BROKER, or by the Policyholder/Insured. Nothing in this Agreement shall be construed as authorizing the INSURER to apply any commissions due the BROKER to the payment of any unremitted premiums (including DST and other taxes), outstanding receivables or any other amounts due the INSURER as reflected in the statement of account of the BROKER, as mutually agreed upon.

- 2. CANCELLATION OF RISKS.** BROKER shall not be entitled for unearned commission on cancelled policies or risks.

ARTICLE V – TAXES

The PARTIES agree to observe existing laws on taxes, Bureau of Internal Revenue (BIR) rulings, issuances, and Bill of Rights of Policyholders issued by the Insurance Commission (IC Circular Letter No. 2016-30). Likewise, the PARTIES agree to render mutual assistance and exert all efforts and due diligence in the collection of taxes from the insured.

ARTICLE VI - AMLA AND GOOD CORPORATE GOVERNANCE COMPLIANCE

The PARTIES are required to comply with the AMLA and Good Corporate Governance compliance requirements provided for under the Anti-Money Laundering Act of 2001, as amended, and the Terrorism Financing Prevention and Suppression Act of 2012, its revised implementing rules and regulation and IC Circulars related therein to the extent that such laws and regulations, may apply to them.

ARTICLE VII – DATA PRIVACY ACT

The PARTIES agree to follow the requirements under Republic Act No. 10173 (Data Privacy Act of 2012), including its implementing Rules and Regulation.

ARTICLE VIII – CHANGE OF OWNERSHIP AND ADDRESS

In case of any change in ownership and/or address by either of the PARTIES, the PARTY changing its ownership and/or address shall comply with all circulars and instructions issued/ to be issued by the IC (such as CL No. 2014-37 – Documentary Requirements for the acquisition of Control of a Domestic Insurance Company, CL No. 2017-09 - Guidelines Fixing the Documentary Requirements for Acquiring Ownership of a Domestic Insurance Broker and Reinsurance Broker and CL No. 2016-39 – Guidelines in the Establishment, Transfer, Change of Address and Closure of a Branch, Extension, Satellite and/or Service Office and Penalties in Case of Non Compliance) and shall notify the other PARTY and the IC in writing, within thirty (30) days before its actual transfer. Failure to inform IC of the change of its official business address would mean automatic suspension of the license.

ARTICLE IX – TERMINATION

Upon termination of this Agreement, for proper accounting of premiums that should be remitted to the INSURER and for the commission to be paid to the BROKER, all accountabilities of the PARTIES shall become due and demandable, and the BROKER shall surrender any and all records, invoices, forms, properties, and the like which belongs to the INSURER. Thereafter, the PARTIES shall cease and desist from further performing any act or acts for which it was empowered under this Contract.

ARTICLE X – ACCEPTANCE

The attached Annex/es, is/are hereto incorporated and made an integral part hereof by reference. All circulars and instructions issued/to be issued by the IC shall automatically form part of this AGREEMENT; provided nothing herein shall be construed as impairing existing contractual obligations. No supplement to or change or modification in this AGREEMENT shall be made, except in writing and signed by the PARTIES and approved by the IC.

ARTICLE XI – GENERAL PROVISIONS

1. No waiver, permit, consent or approval of any kind or character or any breach of any provision or condition of this Agreement shall be effective unless in writing and signed by the PARTIES duly authorized representatives.
2. This Agreement supersedes all prior agreements, contracts and memoranda entered into by the PARTIES.
3. **FORCE MAJEURE.** Either PARTY shall be excused from performance and shall not be liable for any delay in the delivery or non-delivery, in whole or in part, caused by Force Majeure. Force Majeure means the occurrence of any contingency beyond the control of the parties including, but not limited to, work stoppages, fires, civil disobedience, riots, rebellions, accident, explosion, flood, storm, and similar occurrence.

ARTICLE XII – UNETHICAL PRACTICES

The PARTIES are prohibited from committing any unethical act such as misrepresentation, business twisting, connivance with any personnel in the solicitation of business, and the like or in general, which violates any provision of the Amended Insurance Code, or any of the existing rules and regulations of the IC.

ARTICLE XIII – CUMMULATIVE RIGHTS

The rights and remedies of the PARTY under this Agreement do not exclude any other right or remedy provided by law.

ARTICLE XIV - SEPARABILITY AND CHANGES TO LAW CLAUSE

If any provisions of this Agreement and its annexes are declared invalid or unenforceable by a competent court, the other provisions shall not be affected and shall continue in full force and effect.

If any law or regulation relevant to the construction of this Agreement is amended or replaced, this Agreement shall be read as though the amended or new law or regulation was incorporated in it. If this produces any ambiguity, this Agreement shall be construed as to most nearly give effect to the intentions of the PARTIES at the time it was executed.

IN WITNESS WHEREOF, the PARTIES have hereunto set their hands on the date and place above written.

By: _____

(INSURER) _____
(BROKER)

SIGNED IN THE PRESENCE OF:

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
) S.S.

BEFORE ME, a Notary Public for and in the City of _____,
this _____ day of _____, 20__ personally appeared;

	<u>NAME</u>	<u>COMPETENT EVIDENCE OF IDENTITY</u>	<u>DATE/PLACE OF ISSUE</u>
1.			
2.			

known to me to be the same persons who executed the foregoing instrument and they acknowledged to me that the same is their free and voluntary act and deed and that of the parties herein represented.

This Agreement consisting of _____ (____) pages, including the page whereon this acknowledgment is written has been signed by the PARTIES and their instrumental witnesses.

WITNESS MY HAND AND SEAL this ____ day of _____, 20__ at _____.

NOTARY PUBLIC

Doc. No. _____;
Page No. _____;
Book No. _____;
Series of _____.