



IBANZ CODE OF PROFESSIONAL CONDUCT

Effective: 15th March 2021

CONTENTS

	Page
OVERVIEW	3
INTRODUCTION	4
PART 1: ETHICAL BEHAVIOUR, CONDUCT AND CLIENT CARE	5
Standard 1 Treat CLIENTS fairly	5
Standard 2 Act with integrity	5
Standard 3 Give FINANCIAL ADVICE that is suitable	6
Standard 4 Ensure that the CLIENT understands the FINANCIAL ADVICE	7
Standard 5 Protect CLIENT information	8
Standard 6 Using the term “independent”	9
Standard 7 Borrowing from or lending to a CLIENT	10
Standard 8 Underwriter support for premium quotations	11
Standard 9 COMPLAINTS process	12
Standard 10 Complying with Acts of Parliament	12
PART 2 COMPETENCE, KNOWLEDGE AND SKILL	13
Standard 11 Have general competence, knowledge and skill	13
Standard 12 Have particular competence, knowledge and skill for product advice	14
Standard 13 Keep competence, knowledge and skill up to date	15
PROCEDURES FOR BREACHES OF THE <i>CODE</i> AND RULES	16
DEFINITIONS	20

OVERVIEW

This **CODE** is for **MEMBERS** of the Insurance Brokers Association of New Zealand Inc. (IBANZ). It is the intention of this **CODE**:

- (a) to mirror the **FMCA CODE** as updated from time to time to the extent it applies to insurance brokers and insurance advisers; and
- (b) that there are standards in addition to those in the **FMCA CODE**; and
- (c) to apply to all **CLIENTS**, including **WHOLESALE CLIENTS if** and to the extent that the **FMCA CODE** does not apply.

This section provides a brief overview of the scope and aims of the **CODE**. The remainder of this document contains the operative provisions which must be complied with by all **MEMBERS**, outlines the procedures for breaches of the **CODE** and sets out defined terms.

IBANZ is an association for **MEMBERS** that provide fire, general and/or liability insurance broking and/or risk management. IBANZ objectives include:

1. Encouraging and promoting high standards of service and professional practice by **MEMBERS**
2. Promoting a system of education, qualification and continuing education for **MEMBERS**
3. Promoting effective resolution of disputes between **MEMBERS**, **MEMBERS** and their **CLIENTS** and between **MEMBERS** and the public.

This **CODE** regulates the conduct of **MEMBERS** among themselves, with all **CLIENTS** and the public, to ensure there are clearly defined means of redress for any **PERSON(S)** who believe that a **MEMBER** has not acted in accordance with the **CODE**. This **CODE** applies to the **MEMBERS**, their employees, agents or anyone acting on their behalf.

It shall be an overriding obligation of all **MEMBERS** to conduct business with integrity, and to observe and comply with the laws of New Zealand.

This **CODE** shall be subject to regular review. The IBANZ Board may, as a consequence of any such review or at any other time, amend the **CODE** in accordance with the Constitution and Rules of IBANZ.

This **CODE** is administered by IBANZ in accordance with its Constitution and Rules.

Any breach of the **CODE** could result in disciplinary action.

INTRODUCTION

Each **STANDARD** in this **CODE** consists of an overarching principle identified as a **STANDARD** together with any additional provisions that contain further detail about the application of the **STANDARD**.

Unless otherwise stated, the additional provisions do not limit the application of the overarching principle under which they are stated, or the application of any **STANDARD**. **MEMBERS** must apply the **STANDARDS** in a way that encourage public confidence in the professionalism and integrity of **FINANCIAL ADVISERS**.

Terms used in this **CODE** that appear in bold, capitalised italics are defined in the definitions.

This **CODE** does not limit a **MEMBER'S** legal obligations, including those under the **FMC ACT**.

The regulatory regime requires **COMPLAINTS** to be handled in a specific manner as set out in the **FMC ACT**.

As a first step the **CLIENT** must go through the **MEMBER'S INTERNAL COMPLAINTS HANDLING PROCESS**.

If deadlock is reached then there are different ways for the **COMPLAINT** to be progressed:

1. **COMPLAINT** is on an issue not covered by the **FMCA CODE** and the complainant is seeking disciplinary action against the **MEMBER** for a breach under this **CODE** and is not seeking monetary compensation go to the IBANZ Complaints Committee at info@ibanz.co.nz
2. **COMPLAINT** is on an issue covered by the **FMCA CODE** and the complainant is seeking disciplinary action against the **MEMBER** and not monetary compensation, go to the Financial Markets Authority www.fma.govt.nz
3. Complainant is seeking monetary compensation or some other form of redress the dispute goes through the **MEMBERS EXTERNAL DISPUTE RESOLUTION SCHEME**.

PART 1: ETHICAL BEHAVIOUR, CONDUCT AND *CLIENT CARE*

STANDARD 1

Treat *CLIENTS* fairly

A *MEMBER* who gives *FINANCIAL ADVICE* must always treat *CLIENTS* fairly.

COMMENTARY

What is fair depends on the particular circumstances, including the nature and scope of the *FINANCIAL ADVICE*. Treating *CLIENTS* fairly should include:

- treating *CLIENTS* with respect
- listening to *CLIENTS*, considering their views and responding to their concerns and preferences
- communicating with *CLIENTS* in a timely, clear and effective manner
- not taking advantage of *CLIENTS'* lack of financial knowledge or other vulnerabilities
- not applying undue pressure on *CLIENTS*.

Treating *CLIENTS* fairly does not mean that *CLIENTS* are not responsible for their own decisions or that they are not exposed to risk.

STANDARD 2

Act with integrity

A *MEMBER* who gives *FINANCIAL ADVICE* must always act with integrity.

COMMENTARY

The *STANDARD* applies to giving *FINANCIAL ADVICE* and to the activities and business practices that surround and support the giving of *FINANCIAL ADVICE*. That includes how a *MEMBER* who gives *FINANCIAL ADVICE*:

- describes themselves and their business
- publishes and shares information with *CLIENTS*, prospective *CLIENTS* and the public
- interacts with *CLIENTS*, prospective *CLIENTS*, colleagues, regulators, media and the public.

Acting with integrity includes:

- avoiding or appropriately managing any conflict of interests
- not doing anything that would, or would be likely to, bring the financial advice industry into disrepute.

STANDARD 3

Give **FINANCIAL ADVICE** that is suitable

A **MEMBER** who gives **FINANCIAL ADVICE** must ensure that the **FINANCIAL ADVICE** is suitable for the **CLIENT**, having regard to the nature and scope of the **FINANCIAL ADVICE**.

COMMENTARY

Ensuring that the **FINANCIAL ADVICE** is suitable for the **CLIENT** should include having reasonable grounds for the **FINANCIAL ADVICE**. Reasonable grounds for the **FINANCIAL ADVICE** means those grounds that a prudent person engaged in the occupation of giving **FINANCIAL ADVICE** would consider to be appropriate in the same circumstances, such as those in relation to:

- any strategy supporting the **FINANCIAL ADVICE**
- any assumptions underlying the **FINANCIAL ADVICE**
- any **FINANCIAL ADVICE PRODUCT** covered by the **FINANCIAL ADVICE**
- the **CLIENT'S** circumstances that are relevant to the **FINANCIAL ADVICE**, such as their financial situation, needs, goals, and risk tolerance.

Depending on the nature and scope of the **FINANCIAL ADVICE**, a detailed analysis of the **CLIENT'S** circumstances may be required or it may be reasonable to make assumptions about the **CLIENT'S** circumstances based on particular characteristics of the **CLIENT**.

If the **FINANCIAL ADVICE** includes a comparison between two or more **FINANCIAL ADVICE PRODUCTS**, the **FINANCIAL ADVICE** should be based on an assessment of each product.

A **MEMBER** who gives **FINANCIAL ADVICE** may rely on another person's assessment of a **FINANCIAL ADVICE PRODUCT** or strategy. The **MEMBER** giving the **FINANCIAL ADVICE** should be able to demonstrate that it is reasonable to rely on the other person's assessment.

STANDARD 4

Ensure that the **CLIENT** understands the **FINANCIAL ADVICE**

A MEMBER who gives **FINANCIAL ADVICE** must take reasonable steps to ensure that the **CLIENT** understands the **FINANCIAL ADVICE**.

COMMENTARY

Section 431J of the **FMC ACT** provides that a **MEMBER** must not give **FINANCIAL ADVICE** unless the **MEMBER** has taken reasonable steps to ensure that the **CLIENT** understands the nature and scope of the advice being given, including any limitations on the nature and scope of the advice.

This standard relates to the **FINANCIAL ADVICE** itself.

Understanding the **FINANCIAL ADVICE** includes the **CLIENT** having sufficient comprehension of the content, risks and consequences of the **FINANCIAL ADVICE**, and of the nature of any ongoing and other services related to the **FINANCIAL ADVICE**, to be able to make timely and informed decisions about the **FINANCIAL ADVICE**, such as:

- whether the **FINANCIAL ADVICE** is based on valid assumptions about the **CLIENT'S** circumstances
- whether to follow the **FINANCIAL ADVICE**
- whether the fees and costs associated with following the **FINANCIAL ADVICE**, such as those of any **FINANCIAL ADVICE PRODUCT** or platform, are acceptable
- whether and when to seek additional **FINANCIAL ADVICE**.

What amounts to reasonable steps by the **MEMBER** who gives the **FINANCIAL ADVICE** will depend on the circumstances, such as the nature and scope of the **FINANCIAL ADVICE**, and the skills, experience and vulnerabilities of the **CLIENT**.

STANDARD 5

Protect *CLIENT* information

A *MEMBER* who gives *FINANCIAL ADVICE* must take reasonable steps to protect *CLIENT* information against loss and unauthorised access, use, modification, or disclosure.

COMMENTARY

CLIENT information includes all information about the *CLIENT* that is collected or held by a *MEMBER* who gives *FINANCIAL ADVICE*. That includes information in work papers and records, and the *FINANCIAL ADVICE* given to the *CLIENT*.

CLIENT information about a *CLIENT* should only be used, retained or disclosed:

- for the purpose of giving *FINANCIAL ADVICE* to the *CLIENT*
- for another purpose that is directly related to giving the *FINANCIAL ADVICE*
- if the use, retention or disclosure is required or permitted by law
- for another purpose if the *CLIENT* has agreed.

CLIENT information should be retained only for as long as it is required for one or more of those reasons. When it is no longer needed, the *CLIENT* information should be returned to the *CLIENT* or disposed of securely.

Physical and electronic security measures should be maintained so that only authorised personnel of the *FAP* have access to *CLIENT* information.

CLIENT information is broader than personal information under the Privacy Act. To the extent that it relates to personal information, however, the standard is intended to be applied consistently with obligations under the Privacy Act.

STANDARD 6

A *MEMBER* must not state or imply that the *MEMBER* is independent, or that any *FINANCIAL ADVICE* is independent if a reasonable *PERSON* in the position of a *CLIENT* would consider that the *MEMBER* or the services provided are not independent.

COMMENTARY

The following are examples of circumstances where neither the ***MEMBER*** nor the ***MEMBER'S*** provision of ***FINANCIAL ADVICE*** may be described as 'independent':

- (a) a ***RELATED PERSON*** of the ***MEMBER***, or a ***RELATED PERSON*** of the ***MEMBER'S*** employer, or ***PRINCIPAL***, is the ***PRODUCT PROVIDER*** of a ***FINANCIAL ADVICE PRODUCT*** relevant to the ***FINANCIAL ADVICE*** provided; or
- (b) the ***MEMBER*** is subject to a contractual obligation to:
 - recommend a particular ***FINANCIAL ADVICE PRODUCT***; or
 - limit the ***MEMBER'S*** recommendations to a particular ***FINANCIAL ADVICE PRODUCT***; or
 - attain or maintain a target in relation to a particular ***FINANCIAL ADVICE PRODUCT***
- (c) The ***MEMBER*** or a ***RELATED PERSON*** of the ***MEMBER*** will or may directly or indirectly receive a ***BENEFIT*** from a ***PERSON*** other than the ***CLIENT*** for providing the services or from the ***CLIENT'S*** acquisition of a ***FINANCIAL ADVICE PRODUCT***.

However, for the purposes of this paragraph (c) the following ***BENEFITS*** do not affect a ***MEMBER'S*** ability to describe the ***MEMBER*** or the ***MEMBER'S*** services as independent:

- receiving brokerage/commission from an insurer at rates which are within the range of what is usual in the market for the relevant class of business; and
- those that are paid, credited, or transferred to the ***CLIENT***; and
- those that are remote or insignificant; and
- those that are received by the ***MEMBER*** in the form of salary or wages as an employee, or in the form of fees as a contractor, that are not determined in whole or in part by reference to volume or other targets relating to a particular ***FINANCIAL ADVICE PRODUCT*** or ***PRODUCT PROVIDER***.

A **MEMBER** must not state or imply that a researcher or other third party service provider used by the **MEMBER** in relation to the **MEMBER'S FINANCIAL ADVICE** is independent unless the **MEMBER** has reasonable grounds to believe the third party would be able to describe themselves as independent under this **STANDARD**, if the third party were a **MEMBER**.

MEMBERS are reminded of their need to comply with section **431K (Duty to give priority to client's interests)** and section **431P (False or misleading statements or omissions)** of the **FMC ACT**.

STANDARD 7

A MEMBER must not borrow from or lend to a RETAIL CLIENT.

This **STANDARD** does not apply if the **CLIENT** is

- (a) a **RELATED PERSON** of the **MEMBER**; or
- (b) in the business of borrowing or lending money or valuable property and the **MEMBER'S** borrowing or lending is in the ordinary course of the **CLIENT'S** business on terms consistent with the **CLIENT'S** normal business terms.

This **STANDARD** does not prevent a **MEMBER** or a **MEMBER'S** employer or **PRINCIPAL** from entering into financial arrangements on behalf of a **CLIENT** as the **CLIENT'S** agent to meet settlement obligations in relation to any **FINANCIAL ADVICE PRODUCT**.

A **MEMBER** must not arrange for a **MEMBER'S** employer or **PRINCIPAL** to borrow from or lend to a **CLIENT**, other than in the ordinary course of the employer's or **PRINCIPAL'S** business.

MEMBERS are reminded of their need to comply with section **431K (Duty to give priority to client's interests)** of the **FMC ACT**.

STANDARD 8

A MEMBER must not provide premiums, pricing or terms for insurance to CLIENTS or potential CLIENTS without the written support of an underwriter for the premiums, pricing or terms.

MEMBERS shall not:

- (a) provide a **CLIENT** or potential **CLIENT** with a premium and/or pricing and/or terms for insurance without the written support of the underwriter; or
- (b) imply (except as set out in (e), (f) and (g) of this Standard 8) or promise or guarantee a **CLIENT** or potential **CLIENT**, can achieve a set reduction on their current premiums, without the written support of the underwriter; or
- (c) provide a **CLIENT** or potential **CLIENT** with a premium and/or pricing and/or terms for insurance specifying an underwriter before agreement has been reached with that underwriter as to the matters in question; or
- (d) provide a **CLIENT** or potential **CLIENT** with a premium and/or pricing and/or terms for insurance which are less than that agreed to by the underwriter other than where a "net" quote is to be provided.

MEMBERS are reminded of their need to comply with section **431P (False or misleading statements or omissions)** of the **FMC ACT**.

MEMBERS may, using the **MEMBER'S** professional experience and/or their company's database, provide a **CLIENT** or potential **CLIENT** with an "indicative" premium and/or pricing and/or terms for insurance, or a range thereof, that a **CLIENT** could expect in the current market place, to assist the **CLIENT'S** or potential **CLIENT'S** understanding of what may be available to them provided that:

- (e) The **CLIENT** or potential **CLIENT** has requested such professional advice and/or "indicative" premium and/or pricing and/or terms for insurance prior to these being provided; and
- (f) The **MEMBER** has a documented and appropriate risk profile and other relevant underwriting information about the **CLIENT** or potential **CLIENT**, including claims experience from the **CLIENT** and where possible the current and previous underwriters; and
- (g) The "indicative" premium and/or pricing and/or terms for insurance given to the **CLIENT** or potential **CLIENT** are qualified in writing to the effect that:
 - (i) the premium and/or pricing and/or terms for insurance given have not been agreed to by any underwriter; and
 - (ii) they are given based on experience of similar risk profiles and are an indication of insurance market conditions only and may change once the **CLIENT'S** or potential **CLIENT'S** specific risk profile and the recommended insurance programme is given to underwriters for their underwriting assessment.

STANDARD 9

A *MEMBER* must ensure there is an appropriate internal process in place for resolving *CLIENT COMPLAINTS* in relation to the *MEMBER'S FINANCIAL ADVICE*.

The complaint resolution process under this **STANDARD** must ensure that:

- (a) the **CLIENT** is, as soon as reasonably practicable after making a **COMPLAINT**, provided with acknowledgement of the **COMPLAINT**, information about the **MEMBER'S INTERNAL COMPLAINTS HANDLING PROCESS**, and to any applicable **EXTERNAL DISPUTE RESOLUTION SCHEME**; and
- (b) a register is kept recording all **COMPLAINTS**, and action taken towards resolving those **COMPLAINTS**.

The **COMPLAINT** resolution process required under this **STANDARD** is required in addition to the **MEMBER'S EXTERNAL DISPUTE RESOLUTION SCHEME**.

STANDARD 10

MEMBERS shall at all times comply with all Acts of Parliament, and Regulations under them, that regulate their business activities.

Without limiting the application of this **STANDARD**, this includes:

- Financial Markets Conduct Act 2013
- Financial Service Providers (Registration and Dispute Resolution) Act 2008
- Insurance Intermediaries Act 1994
- Commerce Act 1986
- Fair Trading Act 1986
- Privacy Act 2020

PART 2 COMPETENCE, KNOWLEDGE AND SKILL

STANDARD 11

Have general competence, knowledge, and skill

A **MEMBER** must not give **FINANCIAL ADVICE** unless the **MEMBER** meets the standard of general competence, knowledge, and skill.

The standard of general competence, knowledge, and skill is that the **MEMBER** has capabilities equivalent to the general qualification outcomes of the New Zealand Certificate in Financial Services (Level 5) approved by the New Zealand Qualifications Authority in January 2019 (NZQA reference 2315). The general qualification outcomes are qualification outcomes 1-4 of that certificate.

WAYS OF DEMONSTRATING THE STANDARD

A **MEMBER** may demonstrate their general competence, knowledge, and skill by any of the following ways:

- hold version 1 or 2 of the New Zealand Certificate in Financial Services (Level 5)
- hold the National Certificate in Financial Services (Financial Advice) (Level 5)
- was an **AUTHORISED FINANCIAL ADVISER** under the Financial Advisers Act 2008 immediately before the commencement of the **FMCA CODE**
- give **FINANCIAL ADVICE** only through an individual who satisfies any of the ways stated above.

COMMENTARY

A **MEMBER** may demonstrate competence, knowledge, and skill in a way that is different from those listed above, for example by reference to the **FAP's** procedures, systems and expertise.

If a **MEMBER** seeks to demonstrate competence, knowledge, and skill by reference to an alternative qualification or experience, they should do so in an objective, measurable and independently verifiable manner.

Code STANDARD 12

Have particular competence, knowledge, and skill for product advice

A **MEMBER** must not give **FINANCIAL ADVICE** that includes a recommendation or opinion about acquiring or disposing of (or not acquiring or disposing of) a **FINANCIAL ADVICE PRODUCT** unless the **MEMBER** meets the standard of particular competence, knowledge, and skill for product advice.

The standard of particular competence, knowledge, and skill for product advice is that the **MEMBER** has the capabilities equivalent to the qualification outcomes of the relevant strand of the New Zealand Certificate in Financial Services (Level 5) approved by the New Zealand Qualifications Authority in January 2019 (NZQA reference 2315).

The relevant strand means the specialist strand of the certificate that is most relevant to the type of **FINANCIAL ADVICE PRODUCT** to which the **FINANCIAL ADVICE** relates. If the **FINANCIAL ADVICE** relates to more than one type of **FINANCIAL ADVICE PRODUCT**, the relevant strand means the strands that are most relevant to all those products

WAYS OF DEMONSTRATING THE STANDARD

A **MEMBER** may demonstrate their particular competence, knowledge, and skill for product advice by any of the following ways:

- has achieved the qualification outcomes of the relevant strand of version 1 or 2 of the New Zealand Certificate in Financial Services (Level 5) or of the National Certificate in Financial Services (Financial Advice) (Level 5)
- was an **AUTHORISED FINANCIAL ADVISER**, under the Financial Advisers Act 2008 permitted to provide financial adviser services in relation to the **FINANCIAL ADVICE PRODUCT** to which the **FINANCIAL ADVICE** relates, immediately before the commencement of the **FMCA CODE**
- give **FINANCIAL ADVICE** only through an individual who satisfies either of the ways stated above.

COMMENTARY

The **STANDARD 11** commentary also applies to this **STANDARD**.

STANDARD 13

Keep competence, knowledge, and skill up-to-date

A **MEMBER** who gives **FINANCIAL ADVICE** must undertake **CPD** as follows:

MEMBERS must, at least annually, plan for and progressively complete learning activities designed to ensure that they maintain:

- the competence, knowledge, and skill for the **FINANCIAL ADVICE** they give
- to the extent relevant to the **FINANCIAL ADVICE** they give, an up-to-date understanding of the regulatory framework for financial advice in New Zealand.

FAPs must, at least annually, review their procedures, systems and expertise to ensure that they maintain the capabilities for the **FINANCIAL ADVICE** they give.

COMMENTARY

There are many ways in which a **MEMBER** might satisfy the requirements for **CPD**. For example, a **MEMBER** might maintain an up-to-date understanding of the regulatory framework for financial advice in New Zealand by completing, after any material changes to that regulatory framework, the requirements for qualification outcome 4 of the New Zealand Certificate in Financial Services (Level 5) version 2

In order to satisfy this **STANDARD**, a **MEMBER** must complete no less than 15 hours of **CPD** over the course of each **CPD PERIOD**.

A **MEMBER** must keep appropriate records of any **CPD** activity completed that is required by this **STANDARD** in a form suitable for demonstrating compliance with this **STANDARD**.

PROCEDURES FOR BREACHES OF THE *CODE* AND RULES

1. Introduction

- (a) Enquiries into the conduct of **MEMBERS** are carried out by the Disciplinary and Complaints Committee (“Committee”). The Committee is convened from time to time in accordance with the Constitution and Rules of IBANZ.
- (b) The Committee shall be made up of no more than five members.
- (c) The Chair, plus two other lay members of the Committee shall be independent and not IBANZ **MEMBERS**
- (d) The remaining two representatives shall be IBANZ Board Members or others as appointed by the Board. They should be **PERSONS** who have an interest in and are knowledgeable about consumer issues relevant to the business of IBANZ **MEMBERS**.
- (e) Two alternative IBANZ representatives shall also be appointed to fill in where required due to the unavailability of any IBANZ representative, or where conflict of interest arises.
- (f) A minimum of three Committee Members shall be a quorum. These must comprise of the chair, one independent and one broker representative. If the required numbers are not present within sixty (60) minutes of the called time, the meeting shall be adjourned for 7 days or a lesser time by mutual agreement of Committee Members present.
- (g) No business shall be transacted without a quorum.

2. **COMPLAINTS** Handling Procedure

- (a) The Committee may of its own motion or on the **COMPLAINT** in writing of any **PERSON** or entity enquire into the conduct of any **MEMBER**.
- (b) The Chief Executive or such other *person(s)* as delegated on receiving a written **COMPLAINT** from any *person* or entity in relation to the conduct of any **MEMBER** must forward it to the Committee for consideration.
- (c) In determining whether there has been a breach of the **CODE**, the Committee will have regard to what is fair and reasonable on all the circumstances as well as the principles of Insurance Law and Practice and the principles and objectives of the **CODE**.
- (d) The Committee may decline to consider an alleged breach of the **CODE**. The Committee is entitled in its sole discretion to refuse to consider, or to refuse to refer to mediation an alleged breach of this **CODE** if the Committee believes it would be inappropriate to do so. For example, depending on the circumstances, this may be because:
 - The Committee does not consider the conduct complained of is covered by the **CODE**.

- Insufficient information has been provided by the complainant within a reasonable period of time, to allow the Committee to properly consider the **COMPLAINT**.
 - The Committee considers that the facts giving rise to the **COMPLAINT** are disputed and for the Committee to make a decision will substantially involve the Committee in having to make findings of credibility.
 - The **COMPLAINT** is the subject of litigation between the complainant and the **MEMBER**.
 - The Committee considers the **COMPLAINT** concerning the alleged breach is frivolous or vexatious.
- (e) The Complainant will be asked to state whether the matter is to be referred to mediation or for it to be considered by the Committee. The complainant may decline mediation. Any enquiry by the Committee will function informally with a minimum of legal form and technicality.
- (f) The Committee may, of its own motion, suggest to the complainant that mediation may not be of assistance to the complainant in resolving the **COMPLAINT**.
- (g) If the complainant elects to have the matter mediated; the Committee is still entitled to consider the **COMPLAINT** and to take any necessary disciplinary action against the **MEMBER**.
- (h) If in the Committee's opinion it is not clear whether there has been a breach of the **CODE**, the **COMPLAINT** can be referred by the Committee, with the complainant's agreement, to mediation.

3. Decisions by the Committee

- (a) When investigating a **COMPLAINT** against any **MEMBER**, if the Committee is of the opinion, after affording the **MEMBER** a reasonable opportunity to be heard, the **MEMBER** is guilty of clearly and unequivocally breaching the **CODE**, the Committee in its discretion is entitled to impose one or more of the following:

Level 1: Censure the **MEMBER**

Level 2: Require the **MEMBER** to take certain action

Level 3: Fine the **MEMBER** up to a maximum of \$ 25,000 + GST but nevertheless no less than \$500 + GST. Order the **MEMBER** to pay to IBANZ such reasonable amounts as the Committee shall in its discretion determine for the costs and expenses of and incidental to the **COMPLAINT**. The **MEMBER** must pay any fine and costs to IBANZ within 14 days of such determination. Failure to pay may result in expulsion from IBANZ.

Level 4: Suspend the **MEMBER** from Membership for a period and fine the **MEMBER** up to a maximum of \$25,000 + GST.

Level 5: Expel the **MEMBER** from IBANZ.

- (b) If the Committee considers the breach of the **CODE** by the **MEMBER** is serious enough to warrant suspension or expulsion from IBANZ, then the Committee will refer the matter to the Board of IBANZ together with its recommendation. The Board is then entitled, by resolution passed at a meeting of the Board to impose one or more of the sanctions in accordance with the Constitution and Rules of IBANZ.

4. No Right of Appeal

The Complainant and the **MEMBER** do not have any right to appeal any decision, order or sanction imposed by the Committee or the Board of IBANZ

5. Mediation

If a **COMPLAINT** is to be mediated then the Committee will appoint a Mediator from the panel of Mediators maintained by IBANZ for this purpose. The following conditions apply to the mediation.

- (a) The mediation will be on the standard terms of mediation adopted by the Committee from time to time, unless the **MEMBER** and the parties to the **COMPLAINT** agree otherwise.
- (b) The mediation fees are to be paid by the **MEMBER**. If the dispute is between two or more **MEMBERS** then the fees will be split equally between the **MEMBERS**.
- (c) If a **MEMBER** refuses to attend mediation instigated by a complainant the **MEMBER** is required to provide a satisfactory explanation of their reasons to the Committee.
- (d) Both the Complainant and or the **MEMBER** may object to the nominated Mediator and their reasons will be considered by the Committee. If the mediation does not result in an agreed settlement then the **COMPLAINT** may be referred back to the Committee for determination. The Committee's decision is then final.

6. Litigation

If the **COMPLAINT** is the subject of litigation, the Committee is entitled to reserve its view on taking any disciplinary action until after the litigation is finally resolved. The Committee is entitled to require the **MEMBER** to provide full details of the resolution of the litigation subject to any contractual or legal restraint.

7. Committee Refuses to Consider Breaches

Where the Committee refuses to consider an alleged breach of the **CODE** the Committee will advise the complainant and **MEMBER** of this, giving the reason (s) for refusal.

8. No liability of the Committee

The Committee and the Board of IBANZ will not be liable to the **MEMBER**, complainant or any other *person* or entity for any loss or damage (including legal costs) arising directly or indirectly from performing their duties under the **CODE**.

9. Failure to pay fine

Following the determination by the committee that a fine is to be imposed the **MEMBER** must pay any fine and costs to IBANZ within 14 days of such determination.

If payment is not received within the 14 day period then the Chief Executive Officer should make personal representation to the **MEMBER** over the failure to pay.

If the fine and any costs remain unpaid for 30 days after the original determination then the **MEMBER** may be expelled from IBANZ following referral to the IBANZ Board.

10. Reporting

The Committee will report to the Board on:

- (a) Identified breaches of the **CODE** and remedial action taken
- (b) Publicity and staff training matters
- (c) **COMPLAINTS**, enquiry and disputes, and their resolution
- (d) Monitoring adherence to industry and the principles in the **CODE**
- (e) Costs and other details of administration

DEFINITIONS

In this **CODE**, unless the context otherwise requires, the following terms have the meanings set out below. To assist, those terms are shown in **bold** CAPTIAL *italics* wherever they appear in the body of the **CODE**.

BENEFIT	any money, property, or other valuable consideration
----------------	--

BUSINESS PARTNER	A PERSON in partnership under the Partnership Law Act 2019
-------------------------	---

CLIENT	<p>means, in relation to a MEMBER:</p> <p>(a) a PERSON who receives a risk or insurance related service from the MEMBER (whether or not on payment of a fee); but</p> <p>(b) does not include a PERSON who receives any risk or insurance related services from a MEMBER if the service is both provided and received in the course of, and for the purposes of:</p> <p>(i) the same business; or</p> <p>(ii) the businesses of related bodies corporate; or</p> <p>(iii) the businesses of a FAP,</p> <p>irrespective of whether the PERSON receiving the service is the PERSON carrying on the business, a controlling owner, a DIRECTOR, an agent, or any other PERSON</p>
---------------	---

CODE	Insurance Brokers Association of New Zealand Inc. (IBANZ) Code of Professional Conduct
-------------	--

COMPLAINT	<p>an expression of dissatisfaction (other than one that is trivial or vexatious):</p> <ul style="list-style-type: none">• relating to advice from a MEMBER to which a response or resolution is expected; or• from one MEMBER in respect of the conduct of another MEMBER,
------------------	---

CPD	<p>continuing professional development, learning or training undertaken which satisfies STANDARD 13 and has identifiable aims and with outcomes relevant to the learning needs identified in the MEMBER'S professional development plan, and:</p> <p>(a) is provided by a qualified educator or relevant subject matter expert; and</p> <p>(b) provides for interaction and feedback; and</p> <p>(c) participation is verifiable by documentation.</p> <p>CPD may include technical product training but excludes training provided for the principal purpose of promoting a particular FINANCIAL ADVICE PRODUCT</p>
CPD PERIOD	a calendar year commencing on the 1 st day of January
DIRECTOR	Has the meaning given for a director of a company by section 126 of the Companies Act 1993, but also includes, in relation to a body that is not a company, a PERSON who occupies a position comparable to that of a DIRECTOR (such as a trustee or a partner)
EXTERNAL DISPUTE RESOLUTION SCHEME	in respect of a MEMBER , the scheme under section 48 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 to which any COMPLAINT concerning the MEMBER must be referred
FAP	Financial Advice Provider as defined in section 6 of the FMC ACT
FINANCIAL ADVICE	<p>making a recommendation or giving an opinion about acquiring or disposing of (or not acquiring or disposing of) a FINANCIAL ADVICE PRODUCT. Merely doing 1 or more of the things set out in clause 7 of Schedule 5 of the FMC ACT is not FINANCIAL ADVICE</p> <p><i>The mere provision of information, or making a recommendation or giving an opinion relating to a class of financial products, or making a recommendation or giving an opinion about the procedure for acquiring or disposing of a financial product, or transmitting the financial advice of another or recommending that a person consult a financial adviser, does not amount to financial advice</i></p>
FINANCIAL ADVISER	a MEMBER who provides FINANCIAL ADVICE
FINANCIAL ADVICE PRODUCT	a contract of insurance

FMCA CODE	The Code of Professional Conduct for Financial Advice Services prepared in accordance with Part 4 of Schedule 5 of the FMC ACT
FMC ACT	Financial Markets Conduct Act 2013
INTERNAL COMPLAINTS HANDLING PROCESS	A MEMBER'S internal process for handling and resolving COMPLAINTS as described in STANDARD 9
MEMBER	Individual or body corporate admitted to membership as defined in the Constitution and Rules of the Insurance Brokers Association of New Zealand Incorporated
PERSON	includes an individual, a corporation sole, a body corporate, and an unincorporated body (including the trustees of a trust)
PRINCIPAL	a PERSON who is the principal in an agency relationship with a MEMBER
PRODUCT PROVIDER	the insurer of the FINANCIAL ADVICE PRODUCT
RELATED PERSON	<ul style="list-style-type: none"> (a) in relation to an individual, a parent, child, sibling, spouse, de facto spouse, civil union partner, employer or BUSINESS PARTNER of that individual, or a PRINCIPAL on whose behalf the individual provides FINANCIAL ADVICE by way of a contract for services; and (b) in relation to a body corporate A: <ul style="list-style-type: none"> (i) a person who <ul style="list-style-type: none"> (a) is also a body corporate; and (b) has substantially the same shareholders as A; or (c) is under the control of the same persons as A; or (ii) a person who is able, directly or indirectly, to – <ul style="list-style-type: none"> (d) exercise, or control the exercise, of 25% or more of the voting at a meeting of the shareholders of A; or (e) appoint or control 25% or more of a governing body of A (c) in any case , includes an associated person or a related body corporate, as those terms are defined under section 12 of the Financial markets Conduct Act 2013
RETAIL CLIENT	a CLIENT who is not a WHOLESALE CLIENT

STANDARD	a standard specified in the CODE
WHOLESALE CLIENT	a CLIENT classified as such under Clause 4 of Part 1 of Schedule 5 of the FMC ACT
WRITTEN OR IN WRITING	includes in electronic form
