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HANDBOOK

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Insurance Law Handbook

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related consultancy studies in 2007 and 2009. Following a public consultation on the framework of establishing IA in 2010, the Government published the detailed proposals in 2011 for further industry engagement. The Government also consulted the public on the key legislative proposals from October 2012 to January 2013 and announced the consultation conclusions in June 2013. The Administration published the Insurance Companies (Amendment) Bill 2014 in the Gazette on 25 April 2014 which received its First Reading at the Legislative Council ('LegCo') meeting of 30 April 2014.

Over the years, the industry Self-Regulatory Organizations ('SROs') (ie, the Insurance Agents Registration Board, the Hong Kong Confederation of Insurance Brokers and the Professional Insurance Brokers Associations) and insurance practitioners have contributed a lot to facilitating the stable development of the industry. With the growing importance of Hong Kong as an international financial centre, the insurance industry has become an essential element of the local financial sector and in protecting various sectors of the community.

The Insurance Companies (Amendment) Bill 2014 sought to provide the legal framework for the establishment of the independent Insurance Authority and a statutory licensing regime for insurance intermediaries. This is the most important regulatory reform in the insurance section since the enactment of the Insurance Companies Ordinance ('ICO') (now replaced) in the early 80s. The focus of the Bills Committee's discussion is how to strike a balance among protecting consumers, regulating insurance practitioners and insurers as well as facilitating the sustainable and healthy development of the industry.

On 10 July 2015, the Insurance Companies (Amendment) Ordinance 2015 (LN 198 of 2015) ('the Amendment Ordinance') was enacted to provide for, among others, establish an independent Insurance Authority which has to take over the duties of the then Office of the Commissioner of Insurance ('OCI') (a government department) for regulating insurance companies and the supervisory functions of the SROs (Pt IA); the regulation of authorised insurers to promote good corporate government (Pts II, III, IV and V); inspection, investigation, and disciplinary powers of IA in respect of authorised insurers (Pt VA); secrecy and disclosure of information by IA on matters relating to licensed insurance intermediaries to overseas regulatory authorities (Pt VIIIA); and exercise new statutory powers to license and regulate insurance intermediaries (Pt X). The 2015 Amendment Ordinance also renamed the 'Insurance Companies Ordinance' as the 'Insurance Ordinance'.

Schedules 2–6 in the then ICO prescribe the information and the manner of which to be furnished for the purpose of authorisation and regulation of insurance companies. To reflect new requirements under the Amendment Ordinance, the Schedules Notice (at requirements under the Amendment Ordinance, the Schedules Notice adds new prescribed forms for submitting applications or notifications to IA and introduces textual amendments to Sch 2 to Sch 6.

Transition from the Old Regulatory Regime

To ensure a smooth transition from the existing regulatory regime from OCI to

IA, the Insurance Companies (Amendment) Ordinance 2015 (LN 198 of 2015) is being implemented in three stages namely:

(1) establishing the Provisional Insurance Authority ('PIA') (without regulatory functions and co-exists with OCI) in December 2015 ('Stage 1');

(2) renaming PIA as IA to take over regulatory functions from OCI in June 2017 ('Stage 2'); and

(3) enabling IA to implement the statutory licensing regime and take over the regulation of insurance intermediaries from the three SROs tentatively in 2019 ('Stage 3'). The Amendment Ordinance was fully implemented on 23 September 2019.

At Stage 1, the PIA was vested with certain administrative powers to undertake essential preparatory work, such as recruiting key personnel, leasing office premises and procuring office and IT equipment, etc. However, the PIA did not have any regulatory powers. Prior to 26 June 2017, insurance companies were regulated by the OCI whereas insurance intermediaries were governed by the self-regulatory regime administered by the three SROs.

At Stage 2, the PIA renamed as 'Insurance Authority' in English and and '保險業監管局' in Chinese, has taken over the work of the OCI such as the prudential and conduct regulation of insurers, frontline regulation of Mandatory Provident Fund intermediaries and enforcement of the anti-money laundering regime since 26 June 2017. In the interim, the self-regulatory system for insurance intermediaries will continue, allowing time for IA to prepare the necessary tools for regulating insurance intermediaries in consultation with the industry and the general public. These may include preparing subsidiary legislation and code of conduct for insurance intermediaries, guidelines for imposing financial penalty, etc. Certain provisions of the Amendment Ordinance came into operation on 26 June 2017: see Insurance Companies (Amendment) Ordinance 2015 (Commencement) Notice 2017 (LN 71 of 2017).

Stage 3 commenced after these regulatory tools are in place for IA to take over the regulation of insurance intermediaries from the three existing SROs. All the remaining provisions of the Insurance Companies (Amendment) Ordinance 2015 (LN 198 of 2015) came into operation (Insurance Companies (Amendment) Ordinance 2015 (Commencement) Notice 2019 (LN 77 of 2019)) on 23 September 2019. On the same day, IA took over the supervision of insurance intermediaries from the three SROs and administered a statutory licensing regime.

To further allow smooth transfer, Pts 2 and 3 of Sch 11 provide for the savings provisions and transitional arrangements to ensure a smooth institutional migration from OCI to IA. The provisions in Pt 2 of Sch 11 are to ensure the continuity of OCI's regulatory activities and decisions (including legal actions, applications and appeals) after the establishment of IA. In particular, Pt 3 of Sch 11 provides for the proper transfer of records from the existing OCI to IA. The importance for OCI and IA to conduct the record transfer process in a prudent manner is to ensure protection of the relevant records in hardcopy or electronic form, and to put in place measures to protect secrecy of the personal data contained therein. Section 3(1) of Sch 11 requires that all relevant records in OCI's custody must be transferred to IA on or before the commencement date so that IA's legal obligations for the transferred records under the Personal Data (Privacy) Ordinance (Cap 486) would officially commence.

The Establishment of the Insurance Authority

The reform has several important and far-reaching meanings, which include ensuring that the insurance industry regulatory infrastructure is modernised to facilitate the stable development of the industry; providing better protection for policy holders and potential policy holders; and complying with the requirement of the International Association of Insurance Supervisors ('IAIS') that insurance regulators should be financially and operationally independent of the government and industry.

Regarding to the composition of the Insurance Authority, it has all along requested that no less than 25% of the members of the Authority should come from the industry, given that, while the public hopes that IA will not conduct regulation by peers, the industry is worried that without sufficient number of industry players in IA, the lay members may not fully understand the actual operation of the industry, thus regulation will impede the development of the industry. However, since there are no such relevant requirement in other jurisdictions such as the United Kingdom, Australia, and Singapore, the Amendment Ordinance only provided IA 'should have at least two non-executive directors with industry knowledge and experience' by appointing people with the relevant expertise to IA without prejudicing its impartiality, and at the same time maintained its flexibility by not giving any number or percentage, thereby enabling the Government to appoint fit and proper persons in the light of the actual situation.

Regulator

The regulatory functions under the Insurance Ordinance (Cap 41) are carried out by the Insurance Authority: ss 4AA–4H. The IA is a statutory body set up to administer the Insurance Ordinance. In accordance with s 4A(1) of the Ordinance, the principal functions of the IA are to regulate and supervise the insurance industry for the promotion of general stability of the insurance industry and for the protection of existing and potential policy holders. Without limiting the generality of s 4A(1), the IA has other specific functions. The Insurance Authority is given immunity for acts done in the performance of its activities: s 55A.

Insofar as IA's functions are concerned, IA is not only the regulator, but is also tasked to facilitate the sustainable development of the insurance industry, promote the competitiveness of the insurance industry in the global insurance market and assist the Financial Secretary ('FS') in maintaining the financial stability of Hong Kong.

With regard to IA's regulatory powers in insurances policies, it is advised that IA could not directly regulate individual insurance products but takes relevant measure (like rolling out public education programmes) to enhance consumers' awareness to protect their rights and interests in purchasing insurance products.

Moreover, the industry had established an independent mechanism to handle claim disputes, and IA would soon commence preparatory work on the establishment of the Policy Holders' Protection Scheme.

Authorisation

A company wishing to carry on insurance business in Hong Kong must be authorised to do so by the Insurance Authority: ss 5H–14A and Sch 4 to Sch 6. Insurance is divided into the broad headings of long term (life) and general (everything else), and each of those broad headings is subdivided into classes. There are nine classes of long-term business and seventeen classes of general business (Sch 1) and authorisation is granted on a class by class basis. A company may be authorised only if its directors and controllers are fit and proper persons, and only if the company's assets exceed its liabilities by the specified amount (the margin of solvency). Authorisation may be withdrawn if circumstances change in either regard. A person carrying on business must not use the word 'insurance' in the course of its activities without the permission of the Insurance Authority, nor must an unauthorised person falsely hold himself out as holding authorisation: s 6.

Accounts and Statements

Much of the detail of the Insurance Ordinance (Cap 41) is to be found in the accounting provisions: ss 15–21 and Sch 3. These sections lay down the requirements for the appointment of auditors and an actuary, and then set out exactly how accounts are to be structured and what they must contain.

Long Term and General Business

A feature of the Insurance Ordinance (Cap 41) is that more stringent control is exercised over long-term business than over general business. There is a strict separation of the two classes of business. The accounting rules are more demanding, and in particular companies are not permitted to subsidise general losses from the long-term account. General insurance business may be transferred with the permission of the Insurance Authority (ss 25D–25F) but the transfer of long-term business requires judicial sanction: s 24.

The section also addresses the effect of mortality on an arbitration agreement, ie, the personal representative of the deceased may enforce or have enforced against them a valid arbitration agreement.

Powers of Intervention

The Insurance Authority has a variety of powers of intervention open to it, most importantly in the events that the solvency of an insurer is at risk, the insurer has failed to comply with statutory requirements, false information has been given or the insurer's reinsurance arrangements are inadequate: s 26. Those powers include a restriction on writing new business, actuarial investigation and ultimately the transfer of the business of the insurer into the hands of a manager appointed for the purpose: ss 27–41.

Checks and Balances for the Disciplinary Powers of IA

While great importance has been attached to the accountability of Insurance Authority, the powers of IA is subject to appropriate checks and balances so as to ensure fairness, consistency and transparency, and a mechanism to ensure separation of the investigatory and disciplinary powers of IA. Hence, safeguards have been implemented in the Insurance Ordinance (Cap 41). For instance, the procedural requirements such as giving the party concerned the opportunity of being heard before IA exercises any disciplinary power, informing the party concerned of IA's disciplinary decision in writing (including the reasons concerned, the time when the decision is to take effect, and details of the decision): ss 41P and 82; public disclosure of IA's disciplinary decisions: ss 41P(5) and 81(5); IA must consult the industry before imposing new regulatory requirements; IA must not exercise the power to impose a pecuniary penalty unless it has published a relevant guideline and IA has had regard to the guideline: ss 41R and 83; IA's disciplinary decisions are appealable to Insurance Appeals Tribunal ('IAT'), to which will be chaired by a former judge of the High Court or Court of First Instance, or a person qualified for appointing as a High Court judge; and establishment of an independent Process Review Panel ('PRP') appointed by CE to review the internal operations and procedures of IA in exercising its regulatory powers.

To ensure the independence of IA's disciplinary process, IA has put in place arrangements to ensure that its investigative staff will not be involved in the disciplinary process and determination of disciplinary sanctions. The arrangement would be in line with international and local practices of establishing the 'Chinese wall' within a regulator. To clarify, when providing the persons with an opportunity of being heard during IA's disciplinary process, the persons concerned will be entitled to legal representation. While disciplinary hearings will not be open to the public, disciplinary decisions made by IA can be reviewed by IAT the sittings of which would be held in public.

Concerns were raised that a check against possible abuse by IA should be imposed by setting up a statutory disciplinary committee comprising members from the industry to review IA's disciplinary decisions before appeal to IAT or establishing a statutory expert panel comprising members from the industry. However, as IA is already an independent regulator, such measure would fetter the disciplinary power of IA and compromise the integrity of the regulatory regime, the proposed committee may unnecessarily prolong the whole disciplinary or appeal process, and may on the contrary, increase rather than save the legal cost. Hence, this end is achieved by appointing people with relevant expertise to the panel of ordinary members of IAT for reviewing appeal cases.

Regarding the proposed establishment of an expert panel for follow-up, IA may consult members of the panel when a disciplinary case involves a highly specialised stream of insurance business or a sophisticated product where IA considers that external expert advice is necessary to fill any knowledge gap to ensure that all relevant factors have been taken into consideration before making a fair and

reasonable disciplinary decision. Nonetheless, IA should remain the authority to make disciplinary decisions independently.

Financial Arrangements

As far as financial arrangement is concerned, IA has three major sources of income, namely:

(1) licence fees payable by insurers and insurance intermediaries;
(2) fees for providing specific services; and
(3) a levy on insurance premiums for all insurance policies.

Under the new regime, a person has to obtain a licence from IA in order to carry on insurance intermediary activities, but professionals (such as lawyers and accountants) giving insurance-related advice in their professional capacities can be exempted.

Insolvency and Winding Up

An insurance company can be wound up in much the same way as any other company, although there are special modifications in the case of an insurance company. In particular the definition of insolvency is tied to the failure of the insurer to maintain its margin of solvency, and the Insurance Authority is permitted to petition for winding up: ss 42–49B.

Insurable Interest

The most important substantive insurance rule found in the Insurance Ordinance (Cap 41) is that which requires the policyholder under a life policy to possess insurable interest in the life assured: ss 64A–64E. These provisions replicate, with minor modifications, the Life Assurance Act 1774 (UK) (which remains in force).

Insurance Intermediaries

The statutory functions of the Insurance Authority include the protection of policyholders. Insurance intermediaries must be honest and competent persons who have the ability to understand complex content of insurance policies and provide suitable advice to clients clearly. Allowing unqualified persons to engage in insurance intermediary activities will seriously undermine the interests of policyholders and public confidence in the insurance industry.

Under the self-regulatory system, an insurance intermediary is required to register with the relevant SRO and comply with the respective codes and guidelines issued by the SRO with which the intermediary is registered. Previously, SROs require insurance intermediaries to complete education to a level of Form 5 or equivalent. For insurance agents, the intermediary's appointing insurance companies and the Insurance Agents Registration Board ('IARB') have the obligation to verify the qualifications (including the academic proof) of their appointed insurance agents and insurance agent applicants, and to deregister unqualified agents.

The number of insurance intermediaries continued to increase in recent years from around 83,300 at end of 2014 to nearly 100,000 at end of 2016. To ensure smooth transition, the Bill provides that insurance intermediaries validly registered with the SROs before the new statutory licencing regime was put in place will be deemed to be licenced under the new regime for three years, and their licence fees will be waived for five years.

A fair and credible regulatory system of the conduct of insurance intermediaries will enhance public confidence in insurance, which will in turn help promoting the sustainable development of the insurance industry. The Bill provides for the basic principles of the conduct requirements in subsidiary legislation, codes and guidelines. The consequence of breaching the conduct requirements is disciplinary sanctions. Nevertheless, the Amendment Ordinance prescribed that a breach of the conduct requirements would not on its own render any person liable to any judicial proceedings, so as to reflect the original intent. Such amendment will not affect the existing legal rights of the policy holders.

Under the old regime, IA can issue five types of insurance intermediary licences, namely, Licensed insurance agency, Licensed insurance broker company, Licensed individual insurance agent, Licensed technical representative ('TR') (broker), and Licensed TR agent. This categorisation remained unchanged in the 2015 Amendment so as to ensure a smooth transition to the new regime by avoiding possible confusion caused by re-categorisation of licences. The IA may review the categorisation of licences after the three-year transitional period in the light of market developments. The licence fees for insurance intermediaries are waived in the first five years after the establishment of IA. Staff members of banks who engaged in insurance intermediary activities of the banks are required to be licensed.

The Insurance Ordinance (Cap 41) also contains various regulatory controls over insurance intermediaries. Insurance agents are the responsibility of insurers and have to be registered. Insurance brokers are independent and for the most part act for the assured, and they are subject to a separate authorisation requirement: ss 65–78.

The Insurance (Amendment) Ordinance 2023 (20 of 2023)

Under the existing regulatory regime, the capital adequacy of an insurer's long term business (eg, life insurance) and general business (eg, accident and health) is assessed on the basis of the insurer's solvency margin, which requires an insurer to maintain its assets and income in excess of its liability by a certain percentage/margin.

Nevertheless, this method of calculation is considered not to have taken into account risk factors pertinent to an individual insurer, such as the risks associated with the specific products or investments which the insurer offers.

As a result, it was proposed that a risk-based capital regime shall be introduced, which aligns with the guidelines issued by the International Association of Insurance Supervisors. The new assessment regime is intended to fully reflect the risk profile of a specific individual insurer, and therefore the capital and fund requirement levels would be calculated in a way more sensitive to each insurer's risk profile.

The intention of the changes is to ensure that the insurers with solid risk management measures as well as better asset and liability management could enjoy lower capital requirements. Given that each individual insurer has a different mix of products and maturity of liabilities, it is not appropriate to standardise the capital requirement of each insurer.

As set out in the Report of the Bills Committee on Insurance (Amendment) Bill 2023, there are three pillars to this new risk-based assessment regime ('RBC' regime):

(1) Pillar 1: Quantitative assessment, which involves the establishment of two new solvency control levels (ie, the Prescribed Capital Amount and Minimum Capital Amount) for insurers, and amendments to the valuation method for assets and liabilities of insurers;

(2) Pillar 2: Corporate governance and risk management involving the enhancement of enterprise risk management of insurers, which is the process of identifying, assessing, measuring, monitoring, controlling and mitigating risks for solvency purposes, and this would be implemented by way of guidelines to be issued by the Insurance Authority in due course; and

(3) Pillar 3: Disclosure, which involves periodic sumission of information to Insurance Authority and periodic disclosure of information to the public by insurers.

Part 2 of the Bill amends the Insurance Ordinance (Cap 41) by introducing the RBC regime:

(1) new capital requirements and valuation methods for assets and liabilities, and the establishment of a regulatory framework on the maintenance of funds for various classes of insurance business;

(2) adjusting the requirements on submission of information to the Insurance Authority ('IA') and disclosure of information to the public by insurers, which would be implemented by way of subsidiary legislation;

(3) adjusting the requirements relating to the appointment of actuary by insurers;

(4) adjusting the requirements in relation to shareholder controllers of insurers, including IA's regulatory powers to approve and object to shareholder controllers; and

(5) empowering the IA to designate insurers incorporated outside Hong Kong but carrying on all or a majority of business in Hong Kong, such that the same set of regulatory regime could be applied to these insurers.

Part 3 of the Bill makes corresponding amendments to the Inland Revenue Ordinance (Cap 112) to provide for tax issues arising from the implementation of the RBC regime, since the calculation of an insurer's liabilities will change. To alleviate any cash flow pressure on affected insurers insofar as the assessable profits of the particular insurers increase, it is proposed that the one-off increase in tax liability would be spread over a period of five years.

The intention of extending the RBC regime to cover also non-HK insurers which may conduct all or a majority of their business in or from Hong Kong is to ensure that consistent supervisory measures are imposed, such that a level playing field is maintained amongst insurers operating in Hong Kong.

The valuation method for assets and liabilities under the new RBC regime would also be prescribed by way of subsidiary legislation in due course.

It is the target of the IA to implement the proposed RBC regime by 2024.

Consequential amendments to the Insurance Ordinance (Cap 41) following the Companies (Amendment) (No 2) Ordinance 2025 (14 of 2025)

The Companies (Amendment) (No 2) Ordinance 2025 (14 of 2025), which took effect on 23 May 2025, amends the Companies Ordinance (Cap 622) to establish a company re-domiciliation regime. This allows companies incorporated outside Hong Kong to change their place of domicile to Hong Kong without undergoing costly and complicated court processes.

For authorised foreign insurers: after deregistering in their original jurisdiction and registering for re-domiciliation in Hong Kong, they become subject to Hong Kong supervision equivalent to locally incorporated insurers (per Insurance Ordinance (Cap 41), s 2(1)). Crucially, such insurers must secure a no-objection letter from the Insurance Authority (under the new s 3BA(3) of the Insurance Ordinance) before applying to the Companies Registry for registration.

In the Circular published by the Insurance Authority on 23 May 2025, it was explained that a non-HK insurer becomes a re-domiciled insurer after it becomes a re-domiciled company under s 820B of the Companies Ordinance (Cap 622), and is deregistered from its place of incorporation.

A list of corresponding changes are therefore introduced to the Insurance Ordinance to cater for this new regime, including the process in which a non-HK insurer becomes re-domiciled in Hong Kong. It also sets out the process in which a letter of no-objection shall be obtained before it could apply to the Companies Registry to register as a re-domiciled company under the Companies Ordinance. In reviewing such an application, the Insurance Authority would consider, inter alia, the viability of the applicant's re-domiciliation plan and proposed timetable, the applicant's ability and commitment to comply fully with all relevant Hong Kong legal and regulatory requirements, pre-conditions from overseas regulators, plans for communicating with policyholders, and any foreseeable significant adverse impacts on the insurer's operations or policyholders.

CHAPTER 41
INSURANCE ORDINANCE

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