

THE NEW REGULATORY REGIME FOR INSURANCE INTERMEDIARIES IN HONG KONG - ARE YOU READY FOR 23 SEPTEMBER 2019?

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Legal Briefings - By **William Hallatt, Gareth Thomas, Hannah Cassidy, Dominic Geiser, Valerie Tao and Jackie Lam**

On 23 September 2019, the new statutory regime for the regulation of insurance intermediaries will take effect.

This represents the final stage of implementation of the insurance reforms which established the Insurance Authority (**IA**) as Hong Kong's independent insurance regulator. The IA assumed the regulatory responsibilities of the Office of the Commissioner of Insurance in June 2017 and will take over the regulation of insurance intermediaries ([agents](#) and [brokers](#)) from the three self-regulatory organisations (**SROs**) on 23 September 2019. On the same day, the requirements relating to the intermediary management function, one of the control functions of an authorised insurer, will also come into effect.

The IA will be responsible for all aspects of regulation of insurance intermediaries, including issuing rules, codes and guidelines, approving licences, monitoring compliance, conducting inspections and investigations, and imposing disciplinary sanctions where breaches have occurred.

In the lead-up to 23 September 2019, authorised insurers and insurance intermediaries should conduct a final review (if they have not already done so) to ensure that they are ready to comply with all relevant requirements under the new regime.

In this e-bulletin, we provide an overview of the new rules, codes and guidelines which will apply under the new regime, as well as the transitional arrangements relating to licensing, approval of key persons in the intermediary management control function, and ongoing complaint and disciplinary cases.

NEW RULES, CODES AND GUIDELINES

In preparation for the launch of the new regime, the IA consulted on and finalised a set of new rules, codes and guidelines applicable to insurance intermediaries.

The amendments to the *Insurance Ordinance* which relate to the new regime, together with the new rules, codes and guidelines, will come into effect on **23 September 2019**, except for the requirements relating to the new minimum continuing professional development (**CPD**) hours under the *Guideline on Continuing Professional Development for Licensed Insurance Intermediaries*, which will take effect at the start of the CPD assessment period beginning on **1 August 2021**.

Please see the final section below for an overview of the new rules, codes and guidelines.

LICENSING STATUS POST 23 SEPTEMBER 2019

All insurance intermediaries (including brokers, agents, their chief executives / responsible officers and their technical representatives) who are validly registered with the SROs immediately before 23 September 2019 will be deemed as licensees under the new regime for a three-year transitional period.

Individuals who are validly registered as responsible officers of insurance agencies or chief executives of broker companies will also be deemed as responsible officers under the new regime over the transitional period.

The categories of licences under the new regime, as mirrored against the categories of registrations under the current regime, are set out in our [earlier bulletin](#).

There is no need for deemed licensees to lodge applications for formal licences under the new regime at this stage. The IA will advise the deemed licensees to make such applications during the transitional period.

All deemed licensees will be assigned a licence number for the new regime. The IA will add a search function to its website to enable deemed licensees to search for their licence numbers based on their SRO registration numbers.

Separately, the Hong Kong Monetary Authority (**HKMA**) has issued a [circular](#) to authorised institutions who are (or intend to apply to be) licensed insurance intermediaries to provide guidance regarding the sufficiency of authority of responsible officers.

INSURANCE INTERMEDIARIES CONNECT PORTAL

The IA will set up a new online portal, the Insurance Intermediaries Connect, to facilitate electronic licence applications, the reporting of CPD hours and updating of personal particulars. Intermediaries should open a supervisor's account with the IA for the use of the portal. The application form for opening the account can be found on [this IA webpage](#).

ONGOING COMPLAINT AND DISCIPLINARY CASES

Complaint and disciplinary cases that are not yet resolved by the SROs as at 23 September 2019 will be handled by the IA but with reference to the relevant SROs' codes and guidelines. A list of the SROs' codes and guidelines (including current and past versions) can be found on [this IA webpage](#).

The new regime will therefore not have any retrospective effect.

KEY PERSONS IN "INTERMEDIARY MANAGEMENT" FUNCTION OF AUTHORISED INSURERS

One of the new provisions under the *Insurance Ordinance* which will come into effect on 23 September 2019 is section 13AE(2)(f) relating to the "intermediary management" function of an authorised insurer.

The intermediary management function is one of the control functions of an authorised insurer designated under the *Insurance Ordinance*, involving establishing and maintaining internal control measures for administering licensed insurance agents in relation to the regulated activities carried on by them, and their compliance with the ordinance, codes and guidelines.

An authorised insurer must not appoint an individual as a key person for its intermediary management function unless the IA considers that the individual is a fit and proper person to be appointed, and grants approval for such appointment.

In a [circular](#) issued on 30 August 2019, the IA provided guidance on:

- who a key person in the intermediary management function is, and his/her role;
- whether every authorised insurer needs to appoint such key person;
- board oversight; and
- applications for approval to appoint such key person, together with transitional arrangements.

In order to provide authorised insurers with additional time to prepare and submit their applications for approval to appoint such key persons, the IA has adopted a transitional arrangement whereby authorised insurers are required to confirm by 20 September 2019 whether they intend to appoint such key person. They will then be required to submit the full application by 20 December 2019. Further details are set out in the [circular](#).

New memorandum of understanding between IA and HKMA on regulation and supervision of dual-regulated entities

The HKMA and the IA have recently signed a [memorandum of understanding \(MOU\)](#) on collaborative arrangements for the regulation and supervision of entities or financial groups in which both parties have regulatory interest, including financial groups with authorised institutions, authorised insurers and/or licensed insurance intermediaries.

The MOU will take effect on 23 September 2019 and sets out collaborative arrangements on insurance regulated activities relating to authorised institutions, including arrangements regarding:

- licensing;
- making of rules, regulations, codes and guidelines;
- complaint handling;
- delegation of inspection and investigation powers under the Insurance Ordinance (the IA will delegate its inspection and investigation powers to the HKMA in relation to insurance regulated activities of authorised institutions, although this will not prevent the IA from concurrently performing the functions delegated);
- disciplinary actions and reviews.

Overview of the rules (subsidiary legislation), codes and guidelines

Subsidiary legislation

The [Insurance \(Maximum Number of Authorised Insurers\) Rules](#) stipulate (among others) a cap on the number of insurers which a licensed individual insurance agent or insurance agency may represent. See our [earlier bulletin](#) for brief details of the proposed rules.

There were diverse views during the consultation regarding the proposal to raise such cap from four to five. The IA took the view that it would be appropriate to maintain the cap at four, after considering the potential adverse impact of the increase in the cap on insurers' oversight of their appointed insurance agents and whether there was a need to increase the cap to enable agents to offer a wider range of insurance products.

The [Insurance \(Financial and Other Requirements for Licensed Insurance Broker Companies\) Rules](#) set out the requirements on licensed insurance broker companies regarding financial and other aspects. See our [earlier bulletin](#) for brief details of the proposed rules.

The IA made some modifications to the proposals following consultation, including (among others):

- extending the transitional period for implementing the increase in paid-up share capital and net assets from slightly more than three years to slightly more than four years;
- maintaining the minimum limit of indemnity under the professional indemnity insurance policy at HK\$3 million;
- setting aside the proposed requirements for disclosure of insurance premiums receivable, referral income and referral expenses in the audited financial statements (the IA will give further consideration as to whether to require such disclosure in business returns instead).

Codes of conduct

In recognition of the different capacities served by licensed insurance agents (as representatives of insurers) and licensed insurance brokers (as representatives of policy holders or potential policy holders), the IA has issued two separate codes of conduct, namely:

- [*Code of Conduct for Licensed Insurance Agents*](#); and
- [*Code of Conduct for Licensed Insurance Brokers*](#).

Each of the codes sets out eight “General principles”, together with accompanying “Standards and Practices”, which licensed insurance agents and brokers should adopt when carrying on regulated activities. There is also a section at the end (section IX) which discusses the requirements relating to corporate governance, controls and procedures. The statutory conduct requirements under the *Insurance Ordinance* which relate to each General Principle and to section IX are also set out.

In general, the draft codes were well received and have been refined in light of the feedback received. Feedback on one of the codes which was also relevant to the other code has been taken into account in both codes.

Guidelines on fit and proper criteria and continuing professional development

The IA has issued:

- [Guideline on Fit and Proper Criteria for Licensed Insurance Intermediaries](#) (GL23), with a [List of Acceptable Insurance Qualifications](#);
- [Guideline on Continuing Professional Development for Licensed Insurance Intermediaries](#) (GL24), with [Requirements applicable to E-learning Activities](#).

See our [earlier bulletin](#) for brief details of the proposed guidelines.

The enhancement of the minimum education requirements for individual licensees and responsible officers, the inclusion of experience requirements for responsible officers and the CPD requirements will be implemented as proposed. The IA has made appropriate amendments on various matters, such as clarifying whether, and if so, how GL23 applies to controllers, directors, partners and persons concerned in the management of regulated activities of licensed insurance agencies and broker companies.

The CPD year under the new regime will be from 1 August to 31 July of the following year.

Guideline on pecuniary penalty

The new [Guideline on Exercising Power to Impose Pecuniary Penalty in respect of Regulated Persons under the Insurance Ordinance](#) (GL22) sets out the considerations the IA will take into account in imposing a pecuniary penalty on licensed insurance intermediaries, responsible officers and persons concerned in the management of the regulated activities carried on by licensed insurance agencies or broker companies. See our [earlier bulletin](#) for brief details of the proposed guideline.

The respondents generally welcomed the introduction of unified penalty standards. A few refinements have been made to the guideline for clarity.

Revised anti-money laundering and counter-terrorist financing guidelines and new product-related guidelines

The IA has updated the [Guideline on Anti-Money Laundering and Counter-Terrorist Financing](#) (GL3) and the [Guideline on Exercising Power to Impose Pecuniary Penalty in respect of Anti-Money Laundering and Counter-Terrorist Financing](#) (GL3A) in light of the new regime. A new set of [frequently asked questions](#) has also been published.

In addition, the IA has issued a number of guidelines for the sale of long term insurance policies:

- [Guideline on Offering of Gifts](#) (GL25);
- [Guideline on Sale of Investment-Linked Assurance Scheme Products](#) (GL26);
- [Guideline on Long Term Insurance Policy Replacement](#) (GL27);
- [Guideline on Benefit Illustrations for Long Term Insurance Policies](#) (GL28);
- [Guideline on Cooling-off Period](#) (GL29); and
- [Guideline on Financial Needs Analysis](#) (GL30).

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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