



HONG KONG INSURANCE BRIEFING - SEPTEMBER 2019

In this briefing we look at;

1. New Regime for Hong Kong Insurance Intermediaries
2. Regulated activities
3. Fit & proper criteria
4. Intermediary management control function

New Regime for Hong Kong Insurance Intermediaries

As from 23 September 2019, the Insurance Authority of Hong Kong (“IA”) takes over the regulation and supervision of all insurance intermediaries (insurance agents and brokers) from the three selfregulatory organisations (SROs). There are currently over 100,000 licensed intermediaries in Hong Kong. All pre-existing licensed intermediaries as at that date will be deemed to be licensed for 3 years. CEOs and responsible officers are deemed to be responsible officers under the new regime. In addition, the requirements concerning intermediary management function (one of the control functions of a licensed insurer) simultaneously comes into effect.

The IA’s vested powers include:

- Issuing rules, codes and guidelines
- Processing and approving insurance intermediary licence applications
- The enforcement of and compliance with legislative requirements imposed on insurance intermediaries
- Exercising powers of inspection and investigation
- Imposing disciplinary sanctions

“Regulated activities”

The new statutory regime is an “activity based” one:

A person who carries on or holds himself/itself out as carrying on a regulated activity in the course of business or employment or for reward must be licensed by the IA.

“Regulated activity” includes

- Negotiating or arranging insurance policies
- Inviting or inducing or attempting to invite or induce, a person to enter into an insurance policy
- Inviting or inducing or attempting to invite or induce a person to make a material decision
- Giving regulated advice

A “material decision” is a decision made in relation to:

- The making of an application or proposal for an insurance policy
- The issuance, continuance or renewal of an insurance policy
- The cancellation, termination, surrender or assignment of an insurance policy
- The exercise of a right under an insurance policy
- The change in any term or condition of an insurance policy
- The making or settlement of an insurance claim

Categories of insurance intermediaries

There are five types of licensees:

- Licensed insurance agency
- Licensed individual agent
- Licensed technical representative (agent)
- Licensed insurance broker company
- Licensed technical representative (broker)

Responsible officers

All Responsible Officers of insurance agencies and Chief Executives of insurance brokers under the previous regime become Responsible Officers.

Responsible Officers are under a strict duty to ensure that internal systems are in place and must promote compliance with conduct requirements.

Exempted classes

Exempted persons who might otherwise be deemed to be carrying on “regulated activities” are as follows:

- Loss adjusters
- Claims settlement agents
- Those providing clerical/ administrative services for a licensed insurer (that is, ‘back office’ staff)

- Registered trust companies, lawyers, accountants or actuaries who give regulated advice which is wholly incidental to their professional practice.

New rules, Codes of Conduct and guidelines

The two Codes of Conduct applicable to licensed insurance agents and licensed brokers revolve around the following eight General Principles:

- Honesty and integrity
- Acting fairly and in the client’s best interests
- Exercising care, skill and diligence
- Competence to advise
- Disclosure of information
- Suitability of Advice
- Conflicts of interest
- Client assets

The 8 General Principles reflect the minimum standard to be expected from intermediaries.

“Fit and Proper” criteria

The introduction of the “fit and proper” criteria is aimed at improving standards of competence, to maintain professional integrity and to ensure solvency of the relevant individuals/ entity. The IA takes into account the following factors in respect of such person:

- Education, qualifications and experience
- Ability to carry out such regulated activities competently, honestly and fairly,
- Reputation, character, reliability and integrity
- Financial status and solvency
- Past disciplinary records
- State of affairs of any business which that person carries on or proposes to carry on
- If the person is a company within a group, information regarding any other group company or the substantial shareholder or directors/officers of such company



- Past history as a director or controller of a company

In terms of the “Guideline on Continuing Professional Development for Licensed Insurance Intermediaries”, these provisions will only come into effect in two years time (from 1 August 2021).

Complaints handling

All disciplinary cases or complaints which remain unresolved by the SROs by 23 September will thereafter be transferred to and dealt with by the IA. Such cases will be handled by reference to the relevant SRO codes and guidelines. In doing so, the IA has power under the Insurance Ordinance to conduct a statutory investigation, commence disciplinary proceedings, impose disciplinary sanctions or dismiss the case, as is appropriate.

A dedicated complaints handling team has been set up by the Market Conduct Division with enhanced complaints handling procedures.

The intermediary management control function

A new provision under the Insurance Ordinance comes into effect on 23 September 2019. This relates to the intermediary management control function of a licensed insurer if they enter into contracts of insurance via

insurance intermediaries or accept referrals from them. Such licensed insurers are required to establish and maintain internal control measures with regard to such business arrangements by way of a key person.

The key person in the intermediary management control function must be approved by the IA and deemed to be fit and proper for the role. It is a measure which is aimed at strengthening an insurer’s corporate governance framework. The IA issued a circular on 20 August 2019 which provides guidance to insurers in respect of such appointment.

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