

Insurance Companies Ordinance (Chapter 41)

Minimum Requirements
specified under section 69(2) and section 70(2)

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(I) **INTRODUCTION**

The Insurance Companies Amendment (No.3) Ordinance 1994 ("Amendment Ordinance") was enacted on 7 July 1994. It brings into the regulatory regime a framework for the supervision of the self regulation by the insurance industry of insurance agents and brokers.

Apart from the provisions dealing with the self regulatory system of insurance agents, the Amendment Ordinance empowers, under sections 69 and 70, the Insurance Authority ("IA") to authorize/approve an insurance broker/a body of insurance brokers.

Under the Amendment Ordinance, an insurance broker means a person who carries on the business of negotiating or arranging contracts of insurance in or from Hong Kong as the agent of the policyholder or potential policyholder or advising on matters related to insurance.

In the above context, a contract of insurance is a contract which contains an element of insurance. Henceforth, any person acting as the agent of the policyholder or potential policyholder in advising on or arranging any contract which contains an element of insurance, irrespective of the extent of such insurance element, is deemed to carry on insurance broking business and is required either to obtain authorization from the IA under section 69 of the Amendment Ordinance or become a member of a body of insurance brokers approved by the IA under section 70 of the Amendment Ordinance.

The IA, before authorizing an insurance broker under section 69, is required to satisfy himself that the applicant insurance broker complies at least with the specified minimum requirements. Similarly, the IA, before approving a body of insurance brokers under section 70, is required to satisfy himself that the applicant body has adequate provisions in its regulation for members of the body to comply with the specified minimum requirements. The minimum requirements specified by the IA are for : -

- (a) qualifications and experience;
- (b) capital and net assets;
- (c) professional indemnity insurance;
- (d) keeping of separate client accounts;
- (e) keeping proper books and accounts;

and that the applicant insurance broker is fit and proper to be an insurance broker and that, in the case of the applicant body of insurance brokers, the applicant body has adequate rules and regulations to ensure that its constituent members are fit and proper to be insurance brokers.

Pursuant to the above, the following guidelines are drawn up to give guidance to insurance brokers or bodies of insurance brokers for compliance with the Amendment Ordinance and, in particular, the minimum requirements as specified by the IA. Failure to comply with these guidelines may result in a person or body of insurance brokers not being authorized or approved or having his/its authorization/approval withdrawn, as the case may be.

The guidelines will be kept under regular review in the light of market developments to ensure that the interests of policy holders and potential policy holders are adequately protected.

Insurance brokers should also be aware that other legislation may affect their business activities, in particular the Protection of Investors Ordinance ("PIO"). In certain cases an insurance product will constitute an investment arrangement under the PIO, and must therefore be authorized by the Securities and Futures Commission before it can be offered to the public in Hong Kong.

Words and expressions used in the guidelines shall have the same meaning as are ascribed to them in the Amendment Ordinance.

(II) **AUTHORIZATION/APPROVAL OF INSURANCE
BROKERS/BODIES OF INSURANCE BROKERS**

(A) **Insurance Brokers authorized under section 69**

A person, whether a sole proprietorship, partnership or limited company, can apply to the IA to become an authorized insurance broker. An insurance broker, at the time of his application for authorization and any subsequent renewal of authorization, is required to satisfy the IA that he has complied and has continued to comply with all relevant statutory provisions and, amongst others, the minimum requirements as specified by the IA and contained herein.

(a) Nomination of Chief Executive

An insurance broker is required to nominate a Chief Executive ("the C.E."). The C.E. shall be a fit and proper person and shall meet the minimum requirements of qualifications and experience as specified by the IA.

- (i) In respect of a sole proprietorship, the sole proprietor shall be deemed to be the C.E. and shall assume full responsibilities over the conduct of the brokerage business of that proprietorship.
- (ii) In respect of a partnership, the C.E. shall be one of the partners under whom the business of the partnership is supervised or conducted and shall assume full responsibilities over the conduct of brokerage business of that partnership.
- (iii) In respect of a limited company, the C.E. shall either be a full time director or full time employee under whom the business of the company in Hong Kong is supervised or conducted.

(B) Bodies of Insurance Brokers approved under section 70

A body of insurance brokers can apply under section 70 for approval to become an approved body of insurance brokers. A body of

insurance brokers, at the time of its application for approval or any subsequent renewal of approval, is required to satisfy the IA that it has complied and has continued to comply with all relevant statutory provisions and, amongst others, that it has maintained an appropriate set of rules and regulations for its members to comply with the minimum requirements as specified by the IA and contained herein.

An appropriate set of rules and regulations shall, amongst other things, include the eligibility of membership, membership rules, code of conduct for members and disciplinary procedures.

(III) MINIMUM REQUIREMENTS FOR COMPLIANCE BY INSURANCE BROKERS AND CONSTITUENT MEMBERS OF BODIES OF INSURANCE BROKERS

(A) Qualifications and Experience

An insurance broker or the C.E. nominated by him is required to have minimum education standard of Form 5 or equivalent and be aged 21 or above. He is required to have: -

either (i) an acceptable insurance qualification and a minimum of two years' experience in the insurance industry occupying a management position; or

- (ii) in the event he has no acceptable insurance qualification, a minimum of five years' experience in the insurance industry of which 2 years is at management position.

In respect of (i), an acceptable insurance qualification may either be an associate or fellow of The Chartered Insurance Institute (ACII) (FCII) or The Australian Insurance Institute (AII) (FAII), or the Insurance Institute of New Zealand (AIINZ) (FIINZ) or equivalent qualifications acceptable to the IA.

(B) Capital and Net Assets

An unincorporated insurance broker shall maintain in his insurance brokerage business a minimum net assets value of HK\$100,000 at all times.

An incorporated insurance broker shall maintain a minimum net assets value and a minimum paid up share capital of HK\$100,000 at all times.

The minimum net assets value is to be determined by excluding all intangible assets and in accordance with accounting principles generally accepted in Hong Kong.

(C) Professional Indemnity Insurance

An insurance broker is required to maintain a professional indemnity insurance policy with a minimum limit of indemnity for any one claim and in any one insurance period of 12 months. The minimum limit of indemnity shall be -

(i) a sum equal to -

- two times the aggregate insurance brokerage income relating to 12 months immediately preceding the date of commencement of the professional indemnity insurance cover (applicable to insurance broker who has been in business for more than one year);
- two times the projected insurance brokerage income for 12 months for the period of the professional indemnity insurance cover (applicable to insurance broker who has been in business for less than one year); or

(ii) a sum of HK\$2,000,000 (HK\$3,000,000 with effect from 1 January 1997).

whichever sum shall be greater, up to a maximum of HK\$75,000,000. Cover in excess of this prescribed amount may, of course, be arranged to meet the

requirements of individual broker. If as a result of a claim(s), the indemnity available shall fall below the amount determined in (i) above, the broker shall effect a reinstatement of cover up to not less than such minimum determined amount. Where the limit of indemnity has been determined in accordance with (ii) above, the policy shall include provision for one automatic reinstatement to a limit of indemnity of not less than HK\$2,000,000 (HK\$3,000,000 with effect from 1 January 1997).

Insurance brokerage income, in this context, means brokerage income derived from advising on or arranging any contract which contains an element of insurance, irrespective of the extent of such insurance element.

(D) *Keeping of Separate Client Accounts*

An insurance broker is required to keep client monies in a client account separate from his own monies. He is not allowed to use client monies for any purpose other than for the purposes of the client. The "client account" shall be designated as such and held by the insurance broker for his client. There shall also be evidence that the provisions of section 71 of the Amendment Ordinance have been notified to and acknowledged by the financial institution with which the "client account" is maintained: -

- (i) A "client account" means a current or deposit account maintained with a financial institution duly authorized under the Banking Ordinance in the name of the insurance broker in the

title of which the word "client" appears.

- (ii) An insurance broker shall keep at least one client account and may keep as many such accounts as he thinks fit.
- (iii) An insurance broker who receives or holds monies on behalf of his client in relation to insurance broking business shall, without delay, deposit such monies into the client account.

Without limiting the generality of the above requirements, the following are to give brief guidance on the circumstances under which monies shall be deposited into or withdrawn from a client account.

(a) Deposit into client account

There shall be paid into a client account: -

- (i) monies received from client for the purpose of purchasing contracts of insurance;
- (ii) monies received on behalf of client from insurers, reinsurers, insurance intermediaries and any other third parties relating to the settlement of insurance claims;
- (iii) monies received for the purposes of the client which are

incidental to the ordinary transactions of insurance broking business; and

- (iv) monies required to be deposited for settlement of bank charges incurred on a client account.

(b) Withdrawal from client account

Withdrawals from a client account shall be restricted to:-

- (i) premium monies required to be paid on behalf of client to insurers, reinsurers or other insurance intermediaries for the purchase of contracts of insurance;
- (ii) claim monies received on behalf of client and required to be paid to the claimant or the person entitled to receive them;
- (iii) payments made for the purposes of the client which are incidental to the ordinary transactions of insurance broking business;
- (iv) monies drawn on client's written authority;
- (v) interests received from deposits placed with client

account;

- (vi) monies required to be withdrawn for settlement of bank charges incurred on a client account; and
- (vii) monies which may by mistake or accident have been paid into the account in contravention of paragraph (D)(a).

For the avoidance of doubt, monies incidental to ordinary insurance broking business , as referred to in para. (D)(a)(iii) and para. (D)(b)(iii) above, are -

- (i) premiums, renewal premiums, additional premiums and return premiums of all kinds;
 - (ii) claims and other monies due under contracts of insurance;
 - (iii) refunds to clients;
 - (iv) policy loans and associated interests;
 - (v) fees, charges, levies relating to contracts of insurance;
- and

(vi) discounts, commission and brokerage.

(E) *Keeping Proper Books and Accounts*

- (a) (i) An unincorporated insurance broker shall cause to be kept such accounting and other records as will sufficiently explain the transactions, and reflect the financial position of the insurance broking business carried on by him, and will enable financial statements of such insurance broking business to be prepared from time to time which give a true and fair view of the financial position and results of the insurance broker;
 - (ii) An incorporated insurance broker shall cause to be kept such accounting and other records as will sufficiently explain the transactions, and reflect the financial position of the insurance broker, and will enable financial statements to be prepared from time to time which give a true and fair view of the financial position, and results of the insurance broker; and
 - (iii) An insurance broker, whether incorporated or unincorporated, shall cause those records to be kept in such a manner as will enable them to be conveniently and properly audited.
- (b) The records referred to in (a) above shall be kept -

- (i) in writing or in such a manner as to enable them to be readily accessible and readily converted into written form; and
- (ii) in sufficient detail to show separately particulars of -
 - (1) all transactions by the broker with, or for the account of -
 - insurance and reinsurance companies
 - clients of the insurance broker and
 - the insurance broker himself;
 - (2) all income received from brokerage, commissions, interest and other sources, and all expenses, commissions and interest paid by the insurance broker;
 - (3) all the assets and liabilities (including contingent liabilities) of the insurance broker.
- (c) An insurance broker shall retain for a period of not less than 7 years the records referred to in (a) above.

(IV) FUNDAMENTAL PRINCIPLES RELATING TO THE TEST ON FITNESS AND PROPRIETY OF AN INSURANCE BROKER

An insurance broker, apart from compliance with the above minimum

requirements, is required to satisfy the IA that he is and will continue to be fit and proper to be authorized as an insurance broker. For this purpose, an insurance broker is deemed to be fit and proper if, in the case of a sole proprietorship or partnership, the proprietor or all the partners are fit and proper persons to hold such positions and in the case of a limited company, the C.E., all the directors and controllers (within the same meaning as defined in section 9 of the Insurance Companies Ordinance) are fit and proper to hold the positions held by them.

In this connection, the fundamental principles relating to the test on fitness and propriety of an insurance broker include the following: -

(A) Utmost Good Faith

- (a) An insurance broker shall be of good character and reputation.
- (b) He shall, at all times, conduct his business with utmost good faith and integrity.
- (c) He shall be independent and impartial in providing advice to his clients.
- (d) He shall not give any misleading information or make any false statements.
- (e) He shall not describe himself as an insurer or agent of an insurer.

- (f) He shall use his best endeavour to avoid conflict of interest and shall not allow his other business interests, if any, to jeopardise his integrity, independence or competence.

(B) Due Care and Diligence

- (a) An insurance broker shall exercise due care and diligence in understanding and satisfying the insurance needs and requirements of his client.
- (b) He shall take all reasonable steps to ensure that his employees, who are dealing with the policyholder or potential policyholder, are competent as well as fit and proper persons. He shall not employ any insurance broker whose authorization has been withdrawn by the IA, or any person whose membership as appointed insurance agent or insurance broker is currently suspended or deregistered by the Insurance Agents Registration Board or by any approved body of insurance brokers.
- (c) He shall explain the principle of utmost good faith to his client and make it clear that all answers and statements given in completing the proposal form, claim form, or any other material document are the client's own responsibility.

- (d) He shall advise his client that incorrect answers or information given in completing the proposal form, claim form or any other material document may result in the contract of insurance being invalidated or void or claims being repudiated.
- (e) He shall explain the terms of the insurance contracts to his client and shall advise his client of any exclusion clauses provided in the contract.
- (f) He shall comply with all guidelines, codes of practice or similar guidance materials to which he is subject.

(C) Priority of Client's Interests

- (a) An insurance broker shall place the interests of his client above all other considerations in providing advice to, or arranging contracts of insurance for his client.
- (b) He shall not prejudice his client's selection of insurers by unreasonably limiting the choices of insurers.
- (c) He shall not be unreasonably dependent on any particular insurer in transacting insurance broking business.

(D) Information from Client

An insurance broker shall not disclose any information acquired from his client except: -

- (a) in the normal course of negotiating, maintaining or renewing a contract of insurance for that client to the extent that the information disclosed is required for such purposes;
- (b) to other professional or commercial organizations in connection with the contract of insurance for that client including but not limited to loss adjusters and surveyors, security consultants and installation companies, property and engineering surveyors consultants and vendors, consulting engineers and architects.
- (c) with the written consent of that client; or
- (d) with court order or to comply with obligations imposed upon him by law.

(E) Information for Client

- (a) An insurance broker shall make adequate and accurate disclosure of relevant material information in dealing with his client.

- (b) If he, at the request of his client or as a result of the absence of suitable products available locally, refers or arranges a contract of insurance with an unauthorized foreign insurer, he shall advise his client of the unauthorized status of the insurer and obtain a written acknowledgement of the fact from the client. Where the client is a corporate entity, he may, in lieu of obtaining a written acknowledgement of the fact, include a notice to the corporate client in the cover note or placement confirmation. The notice and acknowledgement shall follow the Specimen Notice to client and Acknowledgement from client at Annexure A and Annexure B respectively. The notice to corporate client shall follow the Specimen Notice at Annexure C.
- (c) He shall disclose his association, if any, he may have with any insurer to whom he is recommending his client and which may result in a potential conflict of interests. Without limiting the generality of the statement, an insurance broker must disclose his association with the insurer arising from common shareholder/director/controller.
- (d) If he is the director/employee of more than one broker, he shall disclose the capacity in which he is acting in dealing with his clients.

(F) Capabilities

- (a) An insurance broker shall be capable to perform his functions

efficiently.

- (b) He shall be mentally sound.
- (c) He has not been convicted of any criminal offence which may affect his fitness, suitability or propriety to act as an insurance broker or found guilty of misconduct by a professional body to which he belongs or has belonged.
- (d) He shall comply with all statutory obligations.

(V) **SUBMISSION OF ANNUAL FINANCIAL STATEMENTS
AND AUDITOR'S REPORT**

(A) **Authorized Insurance Brokers**

Under section 73(1) of the Amendment Ordinance: -

- (i) An unincorporated insurance broker is required to submit to the IA audited financial statements in respect of the insurance broking business carried on by the insurance broker which show a true and fair view of the financial position of the broking business carried on by him as at the end of the financial year and of the profit or loss for the period then ended;

- (ii) An incorporated insurance broker is required to submit to the IA audited financial statements which show a true and fair view of the financial position of the insurance broker as at the end of the financial year and of its profit or loss for the period then ended;
- (iii) An insurance broker, whether incorporated or unincorporated, is required to submit a report from the auditor stating whether in the auditor's opinion, the insurance broker satisfied the minimum requirements for capital and net assets, professional indemnity insurance, keeping of separate client accounts and keeping of proper books and accounts as at the end of the financial year and 2 such other dates in the financial year as the auditor may elect, provided that the intervening period between those 2 dates shall not be shorter than 3 months.

For the purposes of reporting on the 2 such other dates as referred to above, the IA considers that it is sufficient for the auditor to perform such procedures as laid down in the guidelines to be issued by the Hong Kong Society of Accountants in consultation with the IA in this respect.

The auditor's report and audited financial statements shall be submitted to the IA within 6 months after the close of the period to which the statements relate.

(B) Approved Body of Insurance Brokers

A body of insurance brokers authorized under section 70 of the Amendment Ordinance shall include in its membership rules and regulations a requirement that each of its members shall submit to it annually, within six months following the end of the financial year of the member: -

- (i) for members who are unincorporated, audited financial statements in respect of the insurance broking business carried on by the member which show a true and fair view of the financial position of the broking business carried on by the member as at the end of the financial year and of its profit or loss for the period then ended;
- (ii) for members who are incorporated, audited financial statements which show a true and fair view of the financial position of the member as at the end of the financial year and of its profit or loss for the period then ended;
- (iii) an auditor's report expressing whether, in his opinion, the member satisfies the minimum requirements for capital and net assets, professional indemnity insurance, keeping of separate client accounts and keeping of proper books and accounts as at the end of the financial year and 2 such other dates in the financial year as the auditor may elect, provided that the intervening period between those 2 dates shall not be shorter

than 3 months.

For the purposes of reporting on the 2 such other dates as referred to above, the IA considers that it is sufficient for the auditor to perform such procedures as laid down in the guidelines to be issued by the Hong Kong Society of Accountants in consultation with the IA in this respect.

A body of insurance brokers authorized under section 70 of the Amendment Ordinance shall in accordance with section 73(2) of the Amendment Ordinance, give the IA a report by its auditor stating: -

- (i) whether the body of insurance brokers has received from each of its members the financial statements and auditor's report in accordance with its membership rules and regulations;
- (ii) that he has reviewed all reports by auditors of members in respect of the financial statements and the minimum requirements and none contained any adverse statement or qualification except those listed by him in his report.

The above report, together with its audited financial statements, shall be submitted to the IA within six months after the close of the period to which the audited financial statements relate.

NOTICE TO CLIENT

Your insurance contract *may be/*has been arranged or effected wholly or partly with a foreign insurer that is not authorized by the Insurance Authority to conduct insurance business in Hong Kong. Such foreign insurers are not subject to the provisions of the Insurance Companies ~~(Amendment)~~ Ordinance (Cap. 41), which establishes a system of prudential supervision of authorized insurers in Hong Kong.

It is a matter for your consideration whether you should obtain further information from the insurance broker involved on matters such as: -

- (a) name and address of the unauthorized foreign insurer;
- (b) country of incorporation of the unauthorized foreign insurer and whether that country has a compatible system for supervision of insurers;
- (c) financial standing of the unauthorized foreign insurer;
- (d) which country's laws will determine disputes under the contract.

* Delete if not applicable

向客戶發出的通知

閣下的保險合約，整份或部分 *可能/*已經被安排與一名未經保險業監督認可在香港經營業務的海外承保人簽訂。保險公司條例（第 41 章）確立一套審慎監管香港獲認可承保人的制度，而上述海外承保人則不受該條例的條文規管。

請你考慮應否就下列事向有關的保險經紀索取更多資料：－

- (a) 非認可海外承保人的名稱及地址；
- (b) 非認可海外承保人註冊成立的國家，及該國家是否有一套相稱的監管承保人制度；
- (c) 非認可海外承保人的財政狀況；
- (d) 合約下的糾紛會以哪個國家的法律裁決。

* 請刪去不適用者

ACKNOWLEDGEMENT

I, _____ (full name) of _____
_____ (address)

have read the above notice and I acknowledge that the insurance contract *may be/*has been/arranged or effected wholly or partly with an unauthorized foreign insurer that is not authorized under the Insurance Companies Ordinance (Cap. 41) to conduct insurance business in or from Hong Kong.

Dated 19

* Delete if not applicable

(Signature of client)

確認書

本人 _____ (全名)，地址為 _____

，
已閱讀以上通知，現確認有關的保險合約，整份或部分*可能/*已經被
安排與一名未經保險業監督認可在香港經營保險業務的海外承保人簽訂。

日期：一九 年 月 日

* 請刪去不適用者

(客戶簽署)

NOTICE TO CORPORATE CLIENT

The underwriting security of this insurance includes participation by foreign insurers who are not authorised by the Insurance Authority to conduct insurance business in Hong Kong. You are reminded that such foreign insurers are not subject to the provisions of the Insurance Companies Ordinance (Cap 41), which establishes a system of prudential supervision of authorised insurers in Hong Kong.

It is a matter for your consideration whether you should obtain additional information from the insurance brokers on matters such as: -

- (a) name and address of the unauthorized foreign insurer;
- (b) country of incorporation of the unauthorized foreign insurer;
- (c) financial standing of the unauthorized foreign insurer;
- (d) which country's laws will determine disputes under the contract.

向公司客戶發出的通知

參與此保險合約的承保人包括未經保險業監督認可在香港經營業務的海外承保人。現提醒閣下，保險公司條例（第 41 章）確立一套審慎監管香港獲認可承保人的制度，而上述海外承保人則不受該條例的條文規管。

請你考慮應否就下列事向有關的保險經紀索取更多資料：－

- (a) 非認可海外承保人的名稱及地址；
- (b) 非認可海外承保人註冊成立的國家；
- (c) 非認可海外承保人的財政狀況；
- (d) 合約下的糾紛會以哪個國家的法律裁決。