

INSURANCE LAW IN HONG KONG

Introduction

Regulation of Insurance Business and Insurance Intermediaries

The enactment of the Insurance Companies (Amendment) Ordinance 2015 (the 'Amendment Ordinance') on 10 July 2015 and the implementation of all parts of the Amendment Ordinance on 23 September 2019 substantially transformed the insurance industry regulatory infrastructure in Hong Kong. The newly established independent Insurance Authority ('IAA') is vested with, among others, licensing, supervision and disciplinary powers over insurers and insurance intermediaries.

The establishment of the IAA is the most significant reform initiative for the insurance industry since the passage of the Insurance Companies Ordinance (Cap 41) ('ICO') in 1983. (By virtue of Insurance Companies (Amendment) Ordinance 2015 (Commencement) Notice 2015 (LN 198 of 2015), the ICO was renamed as the Insurance Ordinance (Cap 41) effective from 7 December 2015. See also Legislative Council Brief (File Ref: C2/2/50C) on Insurance Companies Ordinance (Cap 41) and Insurance Companies (Amendment) Bill 2014 for historical background). The model aligns with international practice that insurance regulators are financially and operationally independent of the Government and the industry. In the coming years, it would be interesting to observe how the IAA may effectively apply its teeth in stepping up the regulatory initiatives to facilitate the stable development of the insurance industry and provide better protection for policy holders.

A. Historical Background

(1) Public consultation on proposed establishment of an independent Insurance Authority

The proposal to set up an IAA was first announced in the former Financial Secretary Budget Speech 2003 to 2004. The paper entitled 'Background brief on proposed establishment of an independent Insurance Authority' tabled to the Legislative Council Panel on Financial Affairs meeting on 5 July 2013 explained the background and the discussion leading to the setting up of the IAA, as highlighted below:

(a) Initial consultation

In light of international regulatory trends and development of the insurance industry, the proposal of the former Financial Secretary as announced in the 2003–2004 Budget Speech was to turn the Office of the Commissioner of Insurance ('OCI') into an agency independent of the Government.

A stakeholder consultation on the proposal was conducted in 2003, it was concluded that there was no intention to expand the Insurance Authority's regulatory powers or effect any other framework changes to insurance regulation. During the consultation process, while non-market participants generally supported the proposal, market participants were cautious about the powers and governance of the future Insurance Authority as well as its funding and any cost implications for the insurance industry.

Subsequently, a consultant was engaged to formulate proposals covering the governance structure of IIA based on the assumption that there would be no change to the statutory functions and powers of OCI.

(b) Post-financial crisis consultation

In light of the global financial crisis in 2008, an extended study was conducted to examine whether the present insurance regulatory regime, particularly regarding the regulation of insurers and insurance intermediaries, should be strengthened. Based on the extended study, the Government drew up a set of proposals on the broad framework for the proposed establishment of an IIA and launched a public consultation exercise in July 2010. Key proposals are set out as follows:

- (i) The OCI would be replaced by a proposed IIA empowered to conduct inspections on regulated entities, initiate and pursue investigations, make enquiries, have access to records and documents, apply to the Court of First Instance for court orders to compel compliance with the requirements, impose supervisory sanctions such as reprimands and fines, and prosecute offences summarily.
- (ii) To change the existing regime of self-regulation by self regulatory organisations ('SRO(s)') to direct licensing and supervision by the proposed IIA.
- (iii) To change the existing arrangement of fixed annual licence fee for insurers to recover full cost of the proposed IIA from the insurance industry and the market over time. The proposed fee structure comprised a fixed licence fee payable by all insurers and insurance intermediaries, a variable licence fee payable by insurers, user fees for specific services, and a levy of 0.1% on insurance premiums for all insurance policies.

In concluding the public consultation, the Government put forward the detailed proposals of the proposed establishment of IIA in June 2011. Major amendments to the original proposals are highlighted as follows:

- (i) The principal function of IIA is to perform the role of prudential regulator of the insurance industry. It has additional functions, including performing direct regulation on the conduct of insurance intermediaries, and assisting the Financial Secretary in maintaining the financial stability of Hong Kong by taking appropriate steps in relation to the insurance industry.
- (ii) To minimise the impact on pre-existing insurance intermediaries, the pre-existing insurance intermediaries validly registered with SROs would be deemed to be licensed with IIA for three years upon its establishment before the IIA granted new licences.

[8.08] General Business

As to meaning, see s 2 above.

[8.09] Insurance Authority

As to meaning, see s 2 above.

[8.10] Policy

As to meaning, see s 2 above.

[8.11] Captive Insurer

As to meaning, see s 2 above.

[8.12] Fit and Proper person

In applying the fit and proper person test, the IA will take into account, among other things, the character, qualifications and experience of the directors or controllers of the applicant. (GN 4091 of 2017)

9. Meaning of controller (控權人)

(Amended 12 of 2015 s. 19)

- (1) Except as otherwise defined by section 13A(12), 13B(1), 64F or 80(1), **controller** (控權人), in relation to an applicable company—
- (a) means—
- (i) a managing director of the applicable company or of a body corporate of which the applicable company is a subsidiary;
 - (ii) a chief executive of the applicable company or of a body corporate, being an insurer, of which the applicable company is a subsidiary; or
 - (iii) a person—
 - (A) in accordance with whose directions or instructions the directors of the applicable company or of a body corporate of which the applicable company is a subsidiary (or any of them) are accustomed to act; or

- (B) who, alone or with an associate or through a nominee, is entitled to exercise, or control the exercise of, 15% or more of the voting power at a general meeting of the applicable company or of a body corporate of which the applicable company is a subsidiary; but
- (b) does not include a Manager. (*Replaced 12 of 2015 s. 19*)
- (2) Subject to subsection (3), in this section **chief executive** (行政總裁), in relation to the applicable company or a body corporate of which the applicable company is a subsidiary, means an employee of the applicable company or that body corporate, who, alone or jointly with others, is responsible under the immediate authority of the directors for the conduct of the whole of the insurance business of the applicable company or that body corporate. (*Amended 12 of 2015 s. 19*)
- (3) In relation to an applicable company incorporated outside Hong Kong— (*Amended 12 of 2015 s. 19*)
- (a) the reference in subsection (1)(a) to a managing director of the applicable company includes a reference to a person who is a managing director of the applicable company in respect of so much of its insurance business as is carried on within Hong Kong; and
- (b) the reference in subsection (1)(b) to a chief executive of the applicable company includes a reference to a person employed by the applicable company who, alone or jointly with others, is responsible (whether or not under the immediate authority of the directors) for the conduct of the whole of the insurance business carried on by the applicable company within Hong Kong, not being a person who— (*Amended 12 of 2015 s. 19*)
- (i) is also responsible for the conduct of insurance business carried on by the applicable company elsewhere; and
- (ii) has a subordinate who is responsible for the whole of the insurance business carried on by the applicable company within Hong Kong. (*Amended 12 of 2015 s. 19*)

- (4) In this section **associate** (相聯者), in relation to any person, means—
- (a) the wife or husband or minor child of that person;
 - (b) any body corporate of which that person is a director;
 - (c) any person who is an employee or partner of that person;
 - (d) if that person is a body corporate—
 - (i) any director of that body corporate;
 - (ii) any subsidiary of that body corporate;
 - (iii) any director or employee of any such subsidiary,
 and for the purposes of this subsection “child” includes a step-child.
- (5) In this section—
- applicable company** (適用公司) means—
- (a) a company making an application under section 7; or
 - (b) an authorized insurer. (*Added 12 of 2015 s. 19*)

[9.01] Enactment history

Amended by 8 of 1989 s 2; and 12 of 2015, s 19.

[9.02] General comment

This definition is relevant to s 8 of the Ordinance, which requires any controller to be a fit and proper person. See also ss 13A and 13B, which require the consent of the Insurance Authority for the appointment of controllers and for any change of change of controller. Section 9 of the Ordinance defines a controller of an insurance company to mean its managing director, a chief executive or a person in accordance with whose instructions the directors of the company are accustomed to act: *Anglo Starlite Insurance Co Ltd (in liq) v Triple Investments Ltd* (unreported, HCA 394, 395 & 397/2010, 7 December 2010) (CFI).

The appointment of the controller of an insurance company must be approved by IA. In considering whether a person is fit and proper for the position, the IA will take into account all relevant factors as set out in s 14A of the Ordinance, including qualifications, experience, ability to act competently, honestly and fairly, reliability and integrity, as well as financial status (GN 4091 of 2017).

[9.03] Body Corporate

As to meaning, see [2.02].