

18 December 2020

Our Ref: MC/INT/5  
**By Email**

To: Chief Executives of all Authorized Insurers

Dear Sirs,

**Common compliance issues arising in the first year of the direct regulatory regime for licensed insurance agents and issues relating to authorized insurers**

As you will be aware, the new direct regulatory regime for licensed insurance intermediaries, as set out in the Insurance Ordinance (Cap. 41) (the “Ordinance”), has been in effect for just over one year now, having commenced on 23 September 2019.

Based on our experience in the past 12 months, we thought it helpful to draw your attention to certain requirements of the new regime which may benefit from improved awareness and observance. A number of these requirements, if contravened give rise to offences under the Ordinance. It is important, therefore, that authorized insurers and licensed insurance agents are aware of these potential consequences so non-compliances can be avoided.

We also take this opportunity to remind authorized insurers of the notification requirements under the Ordinance in relation to changes in their controllers, directors or key persons in control functions, and of the imperative of complying with any intervention requirements imposed by the Insurance Authority (the “IA”) under the Ordinance (and the potential consequences of not doing so).

The approach of the IA to addressing suspected contraventions particularly under the new regulatory regime thus far, has been mainly through the issuance of letters of concern and compliance advice letters in order to raise awareness of the requirements and warn against such contraventions. As the IA’s enforcement process gains maturity, however, a gradual stepping up of enforcement in relation to these requirements may be expected (although every situation will be assessed according its own facts and context). To assist you with verifying the adequacy of your controls and procedures in relation to these requirements, in addition to highlighting the relevant requirements below, in the Appendices to this circular we attach more detailed tables that includes certain compliance advice for you to consider.

This circular is not intended to be a comprehensive guide (nor does it constitute a waiver of any rights and powers of the IA under the Ordinance). If you are unsure about any of the requirements outlined, you may contact us (or seek your own advice).

**I. REQUIREMENTS RELATING TO THE NOTIFICATION OF CERTAIN INFORMATION TO THE IA REGARDING LICENSED INSURANCE AGENTS**

The Ordinance includes the following three administrative reporting requirements:

- i) A licensed insurance agent must notify the IA of any change of name, business or residential address, telephone number or electronic mail address, within 14 days of the date of the change.
- ii) At least 14 days before an authorized insurer appoints an agent to carry on regulated activities in one or more lines of business, the insurer must notify the IA in writing of the intended appointment.
- iii) Within 14 days after the date on which an authorized insurer terminates the appointment of an agent, the insurer must notify the IA in writing of the termination.

Although these reporting requirements are administrative in nature, contravention (per the Ordinance) may constitute an offence. Our preference would be not to have to divert resources to enforcing such contraventions, but for that to happen it will be important to see compliance with these requirements going forward. Please see Appendix I for further details.

**II. REQUIREMENTS RELATING TO THE NOTIFICATION OF CHANGE OF CONTROLLERS, DIRECTORS OR KEY PERSONS IN CONTROL FUNCTIONS OF AN AUTHORIZED INSURER**

An authorized insurer is required under sections 13A, 13AC, 13AE and 13B of the Ordinance to seek the IA's prior approval for any appointment of certain controllers (as defined in sections 13A and 13B of the Ordinance), directors and key persons in control functions. In addition, section 14 of the Ordinance requires an authorized insurer to notify the IA of any appointment of, or change in, certain controllers (as defined in section 9 of the Ordinance), directors and key persons in control functions by the specified deadline.

Again, a contravention of these requirements constitutes an offence. Authorized insurers should keep their internal controls and processes under review to ensure adequate and effective measures are maintained to comply with these prior approval and notification requirements. Please see Appendix II for further details relating to section 14 of the Ordinance.

**III. INTERVENTION REQUIREMENTS IMPOSED ON AN AUTHORIZED INSURER BY THE IA**

Part V (sections 26 to 41) of the Ordinance provides the IA with certain "powers of intervention" i.e. the power to impose certain restrictions or requirements on an authorized insurer on grounds safeguarding policy holder interests, as stated in section 26 of the Ordinance. A summary of certain types of restrictions and requirements which the IA may impose on an authorized insurer by way of intervention are set out in Appendix III.

Where a power of intervention has been exercised against an authorized insurer, it is imperative that the insurer comply with the restrictions or requirements imposed by that intervention. Contravention not only constitutes an offence under the Ordinance, but may also impugn the fitness and properness of those tasked to ensure compliance (e.g. the controllers, directors and the relevant key persons in control functions of the insurer). Authorized insurers must, therefore, ensure heightened awareness throughout their operations of any restrictions and requirements imposed by way of intervention, and implement controls and procedures to ensure continued compliance.

**CONCLUDING REMARKS**

The requirements highlighted in this circular are, of course, not the only requirements applicable to authorized insurers and licensed insurance agents. Given the consequences of contravening the particular requirements highlighted in this letter, however, authorized insurers should take the opportunity of this reminder to verify the adequacy and effectiveness of their procedures and controls to ensure these requirements are met and complied with going forward.

If you have any questions concerning this circular, please contact your case officers.

Yours faithfully,

Peter Gregoire  
Head of Market Conduct Division (Acting) and  
General Counsel  
Insurance Authority

c.c. The Hong Kong Federation of Insurers

## APPENDIX I

### Common compliance issues in the first year of the direct regulatory regime for licensed insurance agents

<b>1) <u>Notifying the Insurance Authority (“IA”) of change in particulars (section 64P of the Insurance Ordinance, (Cap. 41) (“Ordinance”))</u></b>	
<b>Requirement</b> – A licensed insurance agent must notify the IA in writing of any change of the following particulars within 14 days of the date of the change: (a) name; (b) business or residential address; (c) telephone number; and (d) electronic mail address.	<b>Penalty</b> – A contravention of this requirement without reasonable excuse is an offence and may attract a fine of up to level 5 (i.e. \$50,000 at present).
<b>Commentary</b> – An authorized insurer should have a system in place to make its appointed agents aware of this requirement and should remind them of it periodically (e.g. periodic e-mail reminders), so that changes can be notified to the IA within the 14-day period required.	
<b>Relevant forms for reporting to the IA – N3, N4</b>	

<b>2) <u>An authorized insurer must notify the IA of an intended appointment of a new agent, at least 14 days before making the appointment (section 64Q of the Ordinance)</u></b>	
<b>Requirement</b> – At least 14 days before an authorized insurer appoints a licensed insurance agency or licensed individual insurance agent to carry on regulated activities in one or more lines of business as an agent of the insurer, the insurer must notify the IA in writing of the intended appointment.	<b>Penalty</b> – A contravention of this requirement is an offence and attracts a fine of up to level 5 (i.e. \$50,000 at present).
<b>Commentary</b> – It is suggested that an authorized insurer include the need to notify the IA of the intended appointment of an agent in its documented internal compliance and onboarding procedures. An authorized insurer should also maintain adequate and effective internal systems to ensure notification to the IA can be made at least 14 days before the intended appointment.	
<b>Relevant form for reporting to the IA – N2</b>	

**3) An authorized insurer must notify the IA within 14 days of terminating the appointment of an agent (section 64R of the Ordinance)**

**Requirement** – Within 14 days after the date on which an authorized insurer terminates the appointment of a licensed insurance agency or licensed individual insurance agent, the insurer must notify the IA in writing of the termination.

**Penalty** – A contravention of this requirement is an offence and attracts a fine of up to level 5 (i.e. \$50,000 at present).

**Commentary** – It is suggested that an authorized insurer include in its documented internal compliance and/or human resources procedures the step of notifying the IA within the 14-day period following the termination of any agent’s appointment, and maintains adequate and effective internal systems to ensure compliance with the notification requirement.

**Relevant forms for reporting to the IA – N1, S7**

## APPENDIX II

### Common compliance issues in relation to notification of change of controllers, directors or key person in control functions of an authorized insurer

<b>1) <u>An authorized insurer must notify the IA of any change of its directors, controllers or key person in control functions within 1 month of the change takes place (section 14(2) of the Ordinance)</u></b>	
<b>Requirement</b> – Where there is any change in the directors, controllers (as defined in section 9 of the Ordinance) or key persons in control functions (save except for where section 14(2A) applies) of an authorized insurer, the insurer must within 1 month after the date on which the change takes place notify the IA in writing of the change.	<b>Penalty</b> – Any person who fails to comply with this notification requirement is liable to a fine of HK\$200,000 (plus HK\$2,000 for each day on which the offence continues) and, in the case of an individual, to imprisonment for two years.
<b>Commentary</b> – Authorized insurers should revisit their present compliance and internal control systems and enhance awareness of this requirement, maintain an up-to-date list of its directors, controllers (as defined in section 9 of the Ordinance) and key persons in control functions and ensure that notification of any change in those individuals are made to the IA within the required timeline. Where the authorized insurer is incorporated outside Hong Kong, the management team in Hong Kong should draw their home office’s attention to these notification requirements and maintain close communication with their home office regarding any change in the insurer’s directors and controllers (as defined in section 9 of the Ordinance) so that prompt notification can be made to the IA within the required timeline. You may also refer to GL4 (Guideline on “Fit and Proper” Criteria under the Insurance Ordinance (Cap. 41)) issued by the IA for more guidance on the notification requirement.	

### APPENDIX III

#### **Common compliance issues in relation to intervention requirements imposed by the IA on an authorized insurer**

The following are some of the types of restrictions and requirements the IA may impose by way of intervention under Part V (sections 26 to 41) of the Ordinance:

- (i) Restrictions on new business – The IA may require an authorized insurer not to effect any new contracts of insurance;
- (ii) Restrictions on investments – The IA may require an authorized insurer not to make investments of a specified class or description. The IA may require the insurer to realize, before the expiration of a specified period the whole or a specified proportion of investments of a specified class or description held by the insurer when the requirement is imposed;
- (iii) Maintenance of assets in Hong Kong – The IA may require that assets of an authorized insurer of a value equal to the whole or a specified proportion of the amount of its domestic liabilities shall be maintained in Hong Kong (taking account of its reinsurance arrangements);
- (iv) Custody of assets – Where the IA has imposed a requirement on an authorized insurer to maintain assets in Hong Kong, the IA may impose an additional requirement that the assets be held by a person approved by the IA as a trustee for the insurer;
- (v) Limitation of premium income – The IA may require an authorized insurer to take all such steps as are requisite to secure that the aggregate of the premiums to be received by the insurer in consideration of the undertaking by it during a specified period of liabilities in the course of carrying on general business or long term business, shall not exceed a specified amount;
- (vi) Actuarial investigations – The IA may cause an authorized insurer carrying on long term business to cause an actuary to make an investigation into its financial condition;
- (vii) Acceleration of information required by accounting provisions – The IA may require any documents which under section 20 of the Ordinance are required to be deposited with the IA by an authorized insurer within the period specified in that section, to be deposited with the IA on or before a specified date before the end of that period, being a date not earlier than three months before the end of that period and not earlier than one month after the date on which the requirement is imposed;
- (viii) Power to obtain information and require production of documents – The IA may require an authorized insurer to furnish it at specified times or intervals, with information about specified matters. The IA may require the insurer to produce books and papers and take copies of the same;

- (ix) Residual power to impose other requirements – The IA may require an authorized insurer to take such action in respect of its affairs, business or property as the IA considers appropriate. These actions may include requiring the insurer not to engage in related party transactions or the transfer assets out of Hong Kong; requiring an insurer to appoint an Advisor or a Manager (as described in section 35 of the Ordinance); or requiring the insurer to make a deposit of an amount of money with a bank in the name of the IA as trustee.

### Examples of interventions imposed

The following are three examples of intervention requirements imposed, the penalty resulting from contravention of the requirements and supplementary commentary.

<p><b>1) <u>An authorized insurer may be subject to certain intervention requirements imposed by the IA restricting it from conducting business with related parties</u></b></p>	
<p><b>Requirement</b> – The IA (or its predecessor, the Office of the Commissioner of Insurance) may have imposed an intervention requirement (under section 35(1) of the Ordinance) on an authorized insurer prohibiting it from conducting any business (except for normal insurance transactions) with certain specified person(s) related to the insurer, unless it obtains the IA’s prior written consent.</p>	<p><b>Penalty</b> – Any person who makes default in complying with any requirement imposed by the IA under section 35(1) of the Ordinance commits an offence under section 41 and is liable to a fine of HK\$200,000 (plus HK\$1,000 for each day on which the offence continues) and, in the case of an individual, to imprisonment for two years.</p>
<p><b>Commentary</b> – Authorized insurers (who are subject to such requirements) should revisit their present compliance and internal control systems to reinforce their awareness of this requirement. They should maintain an up-to-date list of “specified persons” (as defined in the relevant intervention notice) and implement adequate measures to identify any prospective transactions with “specified persons” so that the IA’s prior written consent can be obtained before engaging in those transactions. The exception of “normal insurance transactions” refers to the entering into of contracts of insurance (including contracts of reinsurance) on normal commercial terms and any payment of premium, claims or charges made under the terms and conditions of such contracts of insurance.</p>	

<p><b>2) <u>An authorized insurer may be subject to an intervention requirement imposed by the IA which limits its premium income</u></b></p>	
<p><b>Requirement</b> – The IA (or its predecessor, the Office of the Commissioner of Insurance) may have imposed an intervention requirement (under section 31 of the Ordinance) on an authorized insurer requiring it to ensure that the aggregate of its annual premium income</p>	<p><b>Penalty</b> – Any person who makes default in complying with any requirement imposed by the IA under section 31 of the Ordinance commits an offence under section 41 and is liable to a fine of HK\$200,000 (plus HK\$1,000 for each day on which the offence continues) and, in</p>



not exceed a specified amount, unless it obtains the IA's prior written consent.	the case of an individual, to imprisonment for two years.
<p><b>Commentary</b> – Authorized insurers (who are subject to such requirement) should have compliance and internal control systems in place to monitor their premium income so as to ensure they stay within the limit imposed, and (if needed) to allow sufficient time to obtain prior consent from the IA prior to the limit being exceeded. The monitoring process should be documented.</p>	

<p>3) <b><u>An authorized insurer may be subject to certain intervention requirements imposed by the IA which requiring it to submit certain information at specified times or intervals</u></b></p>	
<p><b>Requirement</b> – The IA (or its predecessor, the Office of the Commissioner of Insurance) may have imposed an intervention requirement (under section 34 of the Ordinance) on an authorized insurer that requires it to submit certain information to the IA at specified times or intervals.</p>	<p><b>Penalty</b> – Any person who makes default in complying with any requirement imposed by the IA under section 34 of the Ordinance commits an offence under section 41 and is liable to a fine of HK\$200,000 (plus HK\$1,000 for each day on which the offence continues) and, in the case of an individual, to imprisonment for two years.</p>
<p><b>Commentary</b> – Authorized insurers (who are subject to such requirement) should ensure that their systems and controls document the information required by the IA and the specified times when it is required. They should also have internal procedures for generating, checking and verifying the information and obtaining all necessary sign-offs before submission to the IA within the required time-frame.</p>	