

Doing business in Hong Kong

Regulation of insurance intermediaries

Contents

Regulation of insurance intermediaries	2
Registration of insurance agents	3
– Obligations of insurers in respect of their insurance agents	5
– Obligations of insurance agents in respect of their responsible officers and technical representatives	6
– Fit and proper criteria	7
– Minimum qualifications for insurance agents	9
– Register of insurance agents	10
– Complaints against and enquiries regarding insurance agents	10
Authorisation of insurance brokers	11
– Minimum requirements for compliance by insurance brokers and constituent members of bodies of insurance brokers	12
› Qualifications and experience	12
› Capital and net assets	14
› Professional indemnity insurance	14
› Keeping of separate client accounts	16
› Keeping proper books and accounts	16
– Fundamental principles relating to the test on fitness and propriety of an insurance broker	17
– Submission of annual financial statements and auditor’s report	18
› Authorised insurance brokers	18
› Approved body of insurance brokers	19
Additional requirements for insurance intermediaries	20



Regulation of insurance intermediaries

Insurance intermediaries in Hong Kong are largely self-regulated under a framework supported by legislative provisions contained in the Insurance Companies Ordinance (Ordinance)¹. The Ordinance prohibits a person from holding himself out as an insurance agent or insurance broker unless he is appointed or authorised respectively². A person is also prohibited from holding the positions of appointed insurance agent and authorised insurance broker at the same time³.

An insurer may not effect a contract of insurance through an insurance intermediary in Hong Kong or accept any insurance business referred to it by an insurance intermediary in Hong Kong, unless the intermediary is its appointed insurance agent or an authorised insurance broker⁴. Where an insurer enters into a contract of insurance with an insurance agent or insurance broker who has not been properly appointed or authorised, the policy holder has the option to enforce the contract against the insurer or elect for the contract to be void as a result of the contravention of the Ordinance⁵. Where, in these circumstances, a policy holder opts to void a contract of insurance before its expiry, he is entitled to recover any consideration paid by him under the contract⁶.

1 Cap. 41 of the laws of Hong Kong.

2 Section 65(1) of the Ordinance.

3 Section 65(3) of the Ordinance.

4 Section 65(13) of the Ordinance.

5 Section 65(14) of the Ordinance.

6 Section 65(15) of the Ordinance.

Registration of insurance agents

The Ordinance defines an insurance agent as a person who holds himself out to advise on or arrange contracts of insurance in or from Hong Kong as an agent or sub agent of one or more insurers⁷.

In order to be appointed as an individual insurance agent, a person (generally an individual or a company) must be appointed as such by an insurer under a written agency agreement and registered with the Insurance Agents Registration Board (IARB) on behalf of the insurer⁸. The IARB has been established by The Hong Kong Federation of Insurers (HKFI) for this purpose. Insurers and insurance agents must comply with the Code of Practice issued by the HKFI and approved by the Insurance Authority (IA)⁹.

The Code of Practice provides that an insurance agent must not represent more than four insurers of whom not more than two may be long term insurers¹⁰. If a person already acts as an insurance agent, the insurance agent must obtain the consent of his principal before he may accept an appointment to act as an insurance agent for another principal¹¹. In addition, an insurance agent must not engage in a class of insurance business that its principal, the insurer, is not authorised to carry on. If the insurance agent is a corporate body, it is limited to the line of insurance business that its responsible officers are eligible to be engaged in¹².

7 Section 2(1) of the Ordinance.

8 Clause 70 of the Code of Practice for the Administration of Insurance Agents (Code of Practice). See Part F of the Code of Practice for the minimum requirements for a model agency agreement; a model agency agreement can be downloaded from the HKFI's website (www.hkfi.org.hk).

9 Section 67(4) of the Ordinance.

10 Clause 19 of the Code of Practice.

11 Clause 21 of the Code of Practice.

12 Clause 54 of the Code of Practice.



Insurance agents are permitted to appoint responsible officers and technical representatives to perform their agent duties:

- a responsible officer is *“a person who is responsible for the conduct of the insurance agency business of such insurance agent”*
- a technical representative is *“a person (not being an insurance subagent) who provides advice to a policy holder or potential policy holder on insurance matters for such insurance agent, or arranges contracts of insurance in or from Hong Kong on behalf of that insurance agent”*¹³.

A responsible officer may also be an insurance agent of the insurer concerned in his own right. Responsible officers and technical representatives are prohibited from acting for more than one insurance agent¹⁴. Both the responsible officers and technical representatives must comply with the Code of Practice and be registered with the IARB.

A person may be registered with the IARB as an appointed insurance agent, a responsible officer or a technical representative if he is fit and proper and satisfies the requirements specified in the Code of Practice as set out below.

Insurers must ensure that their insurance agents comply with the Code of Practice and are registered with the IARB on their behalf. Similarly, insurance agents must ensure that their responsible officers and technical representatives also comply with the Code of Practice and are registered with the IARB. It is important to note that an insurer is responsible for the actions of its appointed insurance agents in connection with the issue of a contract of insurance and insurance business relating to the contract¹⁵ and insurance agents are responsible for the actions of their appointed

13 Clause 2 of the Code of Practice.

14 Clause 33 of the Code of Practice.

15 Section 68(2) of the Ordinance.

responsible officers and technical representatives. If insurance agents, their responsible officers or technical representatives violate the Code of Practice, the IARB has disciplinary powers to require an insurer or insurance agent to issue reprimands, suspend or terminate the appointment or take other actions as the IARB sees fit in respect of their insurance agents and responsible officers and technical representatives respectively.

Obligations of insurers in respect of their insurance agents

Insurers are responsible for ensuring that their insurance agents:

- do not, to the insurer's knowledge, act for more than the permitted maximum number of insurers
- are eligible to engage in the line of insurance business in which the insurer is authorised to carry on
- have been appointed as such by way of a written agency agreement
- satisfy the fit and proper criteria of the Code of Practice (see below)
- are confirmed and registered with the IARB
- disclose their registration number if requested and identify their registration number on their business cards
- comply with the Code of Practice
- register as mandatory provident fund (MPF) intermediaries with the Mandatory Provident Fund Schemes Authority (MPFA) where the insurance agents sell or advise on MPF schemes or their constituent or underlying funds
- have sufficient training to perform their duties in accordance with the Ordinance and with the Code of Practice¹⁶.

16 Clause 23 of the Code of Practice.



An insurer must terminate the appointment of an insurance agent if an insurance agent does not comply with the Code of Practice¹⁷. Such termination must be reported to the IARB.

Obligations of insurance agents in respect of their responsible officers and technical representatives

Insurance agents are responsible for ensuring that their responsible officers and technical representatives:

- do not, to the insurance agent's knowledge, act for more than one insurance agent at the same time
- satisfy the fit and proper criteria set out in the Code of Practice (see below)
- are eligible to engage in the line of insurance business which the insurance agent is eligible to be engaged in
- are confirmed by and registered with the IARB
- disclose their IARB registration number if requested and identify their registration number on their business cards
- comply with the Code of Practice¹⁸.

An insurance agent must terminate the appointment of its responsible officer or technical representative if it becomes aware that he is not complying with the Code of Practice. Such termination must be reported to the IARB within seven days of termination¹⁹.

17 Clause 24 of the Code of Practice.

18 Clause 34 of the Code of Practice.

19 Clause 31 of the Code of Practice.

Fit and proper criteria

In considering whether a person is fit and proper to act or continue acting as an insurance agent, the IARB will take into account the following factors²⁰:

- whether that person has ever been declared bankrupt or been a controller²¹, a director, an officer or a senior manager of a corporation that has become insolvent
- whether the person has acquired educational or other qualifications commensurate with his proposed responsibilities or responsibilities as an insurance agent
- whether the person has ever been convicted of any criminal offence which may affect his fitness, suitability or propriety to act as an insurance agent or been found guilty of misconduct by a professional body to which he belongs or has belonged
- whether the person has failed to conduct insurance agency business in a manner complying with the clauses of the Code of Practice that address the minimum requirements of the model agency agreement²² and/or the rules of the HKFI
- whether the person is found not to have complied with or is in breach of the Code of Practice and/or the rules of the HKFI
- whether the person possesses the requisite minimum qualifications for persons acting as insurance agents²³

20 Clause 49 of the Code of Practice.

21 See section 9 of the Ordinance for the definition of “controller”.

22 Clauses 71 to 79 (Part F: Minimum Requirements of Model Agency Agreement) of the Code of Practice.

23 Clauses 52 to 65 of the Code of Practice (Minimum Qualifications for Persons Acting as Insurance Agents).



- such other matters as the IARB considers relevant in the circumstances
- whether the person has registered as an MPF intermediary with the MPFA where the person is engaged in selling or advising on Mandatory Provident Fund schemes or their constituent or underlying funds
- if the person is also an MPF intermediary, whether the person is found not to have complied with or is in breach of the Code of Conduct for MPF Intermediaries issued by the MPFA, as amended from time to time (MPF Code)
- in the case where the person is a company, partnership or sole proprietorship, whether the person has taken adequate measures to ensure that each of its directors and employees, as appropriate:
 - › has registered as an MPF intermediary with the MPFA
 - › complies with the requirements as specified in the MPF Code
- where the director or employee is engaged in selling or advising on MPF schemes or their constituent or underlying funds²⁴.

In addition, the IARB may consider an individual not to be fit and proper to act or continue acting as an insurance agent if:

- his appointment as an insurance agent was terminated by a principal pursuant to a requirement imposed by the IARB or the IA
- in the opinion of the IARB, by his words or actions, he has manifested a material lack of understanding of the duties and ethical responsibilities of an insurance agent²⁵.

24 Clause 49 of the Code of Practice.

25 Clause 50 of the Code of Practice.

The IARB may consider a body corporate not to be fit and proper to act or continue acting as an insurance agent if:

- its appointed responsible officer or any of its technical representatives would not be considered to be fit and proper to act as an insurance agent if he applied as an individual
- any of its controllers or directors would not be considered to be fit and proper to act as an insurance agent if he applied as an individual. In this context, the minimum qualifications for insurance agents (see below) are not applicable to any controller or director not being an insurance agent, a responsible officer or technical representative²⁶.

Minimum qualifications for insurance agents

In order for a person to be appointed as an insurance agent, the person must satisfy certain minimum qualifications specified in the Code of Practice²⁷:

- have attained the age of 18
- be a Hong Kong permanent resident or Hong Kong resident whose employment visa conditions, if any, do not restrict him from acting as an insurance agent
- have completed education to a level of Form 5 or equivalent unless immediately prior to 1 January 2000, he was employed in the insurance intermediary business in Hong Kong and has not since ceased to work in the insurance industry in Hong Kong for two consecutive years
- have successfully passed the relevant papers of the Insurance Intermediaries Qualifying Examination unless exempted²⁸.

26 Clause 51 of the Code of Practice.

27 Clause 52 of the Code of Practice.

28 See Clauses 53 – 64 of the Code of Practice for information concerning the exemptions.



Register of insurance agents

The IARB maintains a register of appointed insurance agents and a sub-register of insurance agents' responsible officers and technical representatives. These registers are available for public inspection at the HKFI's registered office or at its homepage (www.hkfi.org.hk).

Complaints against and enquiries regarding insurance agents

The IARB is authorised to address complaints and/or enquiries that concern insurance agents and their responsible officers or technical representatives. The IARB may also investigate complaints and take such disciplinary action as it considers necessary against insurance agents and their responsible officers or technical representatives.

Authorisation of insurance brokers

A person who intends to hold himself out as an insurance broker needs to seek authorisation from the IA or apply to become a member of a body of insurance brokers approved by the IA²⁹. An insurance broker who becomes a member of an approved body of insurance brokers is also subject to the membership regulations of his own professional body, which is approved by the IA.

The Ordinance defines an insurance broker as a person who carries on the business of negotiating or arranging contracts of insurance in or from Hong Kong as the agent of the policy holder or potential policy holder or advising on matters related to insurance. In this context, a contract of insurance is a contract which contains an element of insurance, irrespective of the extent of such insurance element.

In order to be authorised by the IA, insurance brokers must meet the Minimum Requirements for Insurance Brokers specified by the IA under the Ordinance (Minimum Requirements)³⁰. Similarly, before the IA will approve a body of insurance brokers, the IA must be satisfied that the body has adequate provision in its regulations for members to comply with the Minimum Requirements.

The Minimum Requirements specified by the IA concern:

- qualifications and experience
- capital and net assets

29 Section 65(1) of the Ordinance.

30 The latest version of the Minimum Requirements has been effective since 1 January 2006 and can be downloaded from the “Publications and Press Releases” section of the website of the Office of the Commissioner of Insurance (www.oci.gov.hk).



- professional indemnity insurance
- keeping of separate client accounts
- keeping proper books and accounts

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

Failure to comply with the Minimum Requirements may result in a person or body of insurance brokers not being authorised or approved or having his/its authorisation/approval withdrawn.

Minimum requirements for compliance by insurance brokers and constituent members of bodies of insurance brokers

Qualifications and experience

An insurance broker or the chief executive³¹ nominated by the insurance broker is required to:

- have attained the age of 21
- be a Hong Kong permanent resident or a Hong Kong resident whose employment visa conditions, if any, do not restrict him from being engaged in insurance broking business
- have the minimum education standard of Form 5 or equivalent

31 See section I(a) of the Minimum Requirements for a definition of “*chief executive*”.

- have:
 - › either an acceptable insurance qualification, a minimum of two years' experience in the insurance industry occupying a management position and, if he intends to be engaged in the long term insurance broking business, passed the Investment-linked Long Term Insurance paper of the Insurance Intermediaries Qualifying Examination recognised by the IA (Qualifying Examination) unless exempted³²
 - › or in the event that he has no acceptable insurance qualification, a minimum of five years' experience in the insurance industry of which two years is at management position and passed the relevant papers of the Qualifying Examination unless exempted.

An acceptable insurance qualification (as referred to above) includes a/an:

- Associate or Fellow of the Chartered Insurance Institute
- Senior Associate or Fellow of the Australian and New Zealand Institute of Insurance and Finance
- Fellow of the Life Management Institute
- Chartered Life Underwriter
- Chartered Property Casualty Underwriter
- Hong Kong Diploma in Insurance Studies of the Insurance Institute of Hong Kong
- Fellow of the Institute of Actuaries of England
- Fellow of the Faculty of Actuaries in Scotland

32 See section III (A)(ii) of the Minimum Requirements for a description of the Qualifying Examination papers and a list of criteria that needs to be satisfied for an individual to be exempted from certain Qualifying Examination papers.



- Fellow of the Institute of Actuaries of Australia
- Fellow of the Society of Actuaries of the United States of America

or other qualifications considered acceptable to the IA³³.

An insurance broker which is not an individual is only eligible to be engaged in the line of insurance business which its chief executive is eligible to be engaged in.

Capital and net assets

An unincorporated insurance broker is obliged to maintain a minimum net assets value of HK\$100,000 at all times.

An incorporated insurance broker must 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 determined by excluding all intangible assets and in accordance with accounting principles generally accepted in Hong Kong³⁴.

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.

33 Section III (A)(i) of the Minimum Requirements.

34 Section III (B) of the Minimum Requirements.

The minimum limit of indemnity is:

(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 an 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 an insurance broker who has been in business for less than one year), or

(ii) a sum of HK\$3,000,000

whichever sum shall be greater, up to a maximum of HK\$75,000,000. Cover in excess of this prescribed amount may be arranged to meet the requirements of the individual broker. If as a result of a claim(s), the indemnity available shall fall below the amount determined in (i) above, the broker must effect a reinstatement of cover up to not less than the minimum determined amount. Where the limit of indemnity has been determined in accordance with (ii) above, the policy must include provision for one automatic reinstatement to a limit of indemnity of not less than HK\$3,000,000.

Insurance brokerage income means brokerage income derived from advising on or arranging any contract of insurance (as defined above)³⁵.

35 Section III (C) of the Minimum Requirements.



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 must be designated as such and held by the insurance broker for his client³⁶.

An insurance broker who receives or holds monies on behalf of his client in relation to insurance broking business is obliged to deposit such monies into the client account without delay.

The insurance broker must notify the financial institution with which the client account is maintained of his/its obligations under the Ordinance concerning client monies³⁷. The insurance broker must have evidence of the notification as well as an acknowledgment from the relevant financial institution of receiving such notification³⁸.

Keeping proper books and accounts

An insurance broker must keep accounting and other records that sufficiently explain the transactions and reflect the financial position of the insurance broking business carried on by him and enable financial statements of the 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. The insurance broker must retain the records referred to above for a period of not less than seven years³⁹.

36 Section III (D) of the Minimum Requirements.

37 See section 71 of the Ordinance.

38 See section III (D) of the Minimum Requirements for guidance on the circumstances under which monies shall be deposited into or withdrawn from a client account.

39 Section III (E) of the Minimum Requirements.



Fundamental principles relating to the test on fitness and propriety of an insurance broker

In addition to fulfilling the minimum requirements set out above, an insurance broker must satisfy the IA that he is and will continue to be fit and proper in order to be authorised as an insurance broker.

An insurance broker is deemed to be not fit and proper if:

- in the case of a sole proprietorship or partnership, the proprietor or any of the partners is not a fit and proper person to hold such position
- in the case of a limited company, any of its chief executive, directors or controllers is not fit and proper to hold the position held by him
- the chief executive or any of his/its Technical Representatives is not confirmed and registered pursuant to the guidelines.

The fundamental principles relating to the test on fitness and propriety of an insurance broker include the following:

- utmost good faith
- due care and diligence
- priority of client's interests
- that an insurance broker must not disclose any information acquired from his client except in limited circumstances⁴⁰
- that an insurance broker must make adequate and accurate disclosure of relevant material information in dealing with his client
- capability of the insurance broker to perform his functions efficiently⁴¹.

40 See section IV (D) of the Minimum Requirements.

41 Section IV of the Minimum Requirements.

The fundamental principles also apply to the sole proprietor in the case of an insurance broker being a sole proprietorship, any of the partners in the case of an insurance broker being a partnership and any of its directors or controllers in the case of an insurance broker being a limited company.

Submission of annual financial statements and auditor's report

Authorised insurance brokers

Authorised insurance brokers are required to submit to the IA:

- audited financial statements which show a true and fair view of the financial position of the broking business/insurance broker as at the end of the financial year and the profit or loss for the period then ended
- an auditor's report 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 two such other dates in the financial year as the auditor may elect, providing that the intervening period between those two dates shall not be shorter than three months

within six months after the close of the period to which the statements relate⁴².

42 Section V (A) of the Minimum Requirements.

Approved body of insurance brokers

An approved body of insurance brokers must 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:

- audited financial statements
- an auditor’s report.

In addition, an approved body of insurance brokers must give the IA a report by its auditor stating:

- whether the approved 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
- 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 report from the auditor of the approved body of insurance brokers must be submitted to the IA within six months after the close of the period to which the audited financial statements relate⁴³.

43 Section V (B) of the Minimum Requirements.



Additional requirements for insurance intermediaries

Insurance intermediaries should also be aware of other legislation that may affect their business activities; for example, the provisions of the Companies Ordinance⁴⁴, the Business Registration Ordinance⁴⁵ and the Inland Revenue Ordinance⁴⁶ may be applicable. In addition, careful consideration should be given to the requirements of the Securities and Futures Ordinance⁴⁷ where the insurance intermediary carries on any activities relating to securities and futures.

44 Cap. 32 of the laws of Hong Kong.

45 Cap. 310 of the laws of Hong Kong.

46 Cap. 112 of the laws of Hong Kong.

47 Cap. 571 of the laws of Hong Kong.

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