

Authorization Guidelines

(a) Introduction

Hong Kong adopts a free market economy and provides equal opportunities to participants in all sectors of the market. The insurance industry is no exception. Government's policy is to promote development of the insurance industry in Hong Kong whilst ensuring, through prudential supervision, the best and most up to date industry standards. Any company interested in carrying on insurance business in or from Hong Kong may apply to the Insurance Authority for authorization to do so under the Insurance Companies Ordinance.

2. The purpose of these guidelines is to give general guidance to companies applying for authorization to carry on insurance business in or from Hong Kong.

(b) Application for authorization to carry on insurance business

3. Section 6(1) of the Insurance Companies Ordinance (Chapter 41) ("the Ordinance") provides that -

"No person shall carry on any class of insurance business in or from Hong Kong except -

- (a) a company authorized under section 8 to carry on that class of insurance business;
- (b) Lloyd's;
- (c) an association of underwriters approved by the Insurance Authority."

4. Section 7(1) of the Ordinance provides that -

"Any company may make application in writing to the Insurance Authority for authorization to carry on any class of insurance business."

5. A "company" for the purposes of the Ordinance is one formed and registered under the Companies Ordinance (Chapter 32) and includes a company incorporated outside Hong Kong to which Part XI of the Companies Ordinance applies. Part XI of the Companies Ordinance lays down provisions as to the

establishment of a place of business in Hong Kong by a company incorporated outside Hong Kong.

6. Any applicant falling within the above definition of a “company” may apply for authorization to carry on any class of insurance business in or from Hong Kong.

(c) Authorization

7. Section 8(1) of the Ordinance provides that -

“Upon application made by a company under section 7, the Insurance Authority -

(a) subject to paragraph (b), may authorize the company in writing to carry on, subject to such conditions as he may impose, any class or classes of insurance business; or

(b) (i) shall refuse the application if subsection (2) or (3) applies; or

(ii) may refuse the application on any other ground whether or not the application has been refused on a ground under subparagraph (i).”

8. Section 8(2) provides that -

“The Insurance Authority shall not authorize a company under this section if it appears to the Insurance Authority that any person who is a director or controller of the company is not a fit and proper person to hold the position held by him.”

In applying the fit and proper test, the Insurance Authority will take into account, among other things, the character, qualifications and experience of the directors or controllers of the applicant.

9. Section 8(3) further provides that the Insurance Authority shall not authorize a company unless certain conditions, specified in that subsection, are satisfied. These conditions, which relate to the applicant’s financial status, reinsurance arrangements and ability to comply with the Ordinance, are reproduced in the Annex.

10. Paragraphs 11, 12 and 13 below give general guidance to applicants as to the other grounds determining whether the Insurance Authority will refuse an application under section 8(1)(b)(ii) of the Ordinance. The requirements set forth in paragraph 11 apply to all applicants, whether incorporated locally or outside Hong Kong. A company applying for authorization to carry on long term insurance business in or from Hong Kong must also meet the requirements set forth in paragraph 12. An applicant which is a company incorporated outside Hong Kong must further meet the requirements set forth in paragraph 13. However, an applicant incorporated outside Hong Kong may, if it so chooses, incorporate a subsidiary company in Hong Kong for the purpose of application, in which event the additional requirements set forth in paragraph 13 will not apply.

11. Under section 8(1)(b)(ii) of the Ordinance, **all applicants** must satisfy the Insurance Authority that -

- (a) the applicant would maintain an office as its place of business in Hong Kong with a professional management and staff establishment appropriate to the nature and scale of its operations and a locally-based chief executive who would be a controller of the applicant;
- (b) the applicant would at any of its offices in Hong Kong, or at any of its accountant's offices in Hong Kong keep and maintain proper books of account and other records in respect of its Hong Kong operations, so as to enable an audit, actuarial valuation or both to be made, as the case may be;
- (c) the applicant's board of directors has sufficient knowledge and relevant experience of insurance business to guide the company and oversee its activities effectively (- sufficiency would normally mean that at least one-third of the applicant's board has such knowledge and experience);
- (d) the applicant has, and will continue to have, sufficient financial resources to pre-finance its proposed operations as set out in its three-year business plan (as referred to in the application form);
- (e) if applicable, the applicant has, and would continue to have, the financial backing of its parent/controller, who should be a reputable person or reputable persons of good financial standing. In that regard, the parent/controller should satisfy the Insurance Authority that it will continue to provide financial support to the applicant and undertake to maintain its solvency at all times (including the required relevant amount as defined in the Ordinance) so as to enable it to meet promptly its obligations and liabilities as they fall due;

- (f) with the exception of captive insurer, the applicant has undertaken a detailed market feasibility study in respect of its proposed operations in or from Hong Kong and, based on the result of such feasibility study, is able to demonstrate the viability of its business plan;
- (g) the applicant's proposed operations would not have a destabilizing effect on the insurance market in Hong Kong, for instance in terms of both the servicing of the insuring public and the employment of insurance staff;
- (h) the international business that the applicant proposes to carry on in or from Hong Kong would not be detrimental to Hong Kong as an insurance centre (for instance, it would not conflict with international agreements or protocol);
- (i) with the exception of captive insurer, the applicant demonstrates that there would not be any conflict between the sound management of its insurance operations and the business (including insurance business) interests of its principals or shareholders and, in the case of an applicant which is a member of a group, that it would be managed and operated independently of the group with all transactions between itself and related parties being made at arm's length;
- (j) with the exception of captive insurer, the applicant would not engage in a "fronting" operation (under which the ceding company, i.e. the primary or fronting company, cedes the risk it has underwritten to its reinsurer with the ceding company retaining none or a small part of that risk for its own account);
- (k) the purpose of the application is not to bypass the scope and provisions of other regulatory legislation in Hong Kong, e.g. the Banking Ordinance;
- (l) with the exception of professional reinsurer, the applicant must be either a general business insurer with an application for general business only, or a long term business insurer with an application for long term business only. A composite insurer wishing to carry on either general or long term business in Hong Kong will need to form a separate company for this purpose; and
- (m) in the case of an insurance company already authorized in Hong Kong but wishing to extend into a class or classes of insurance business for which it is not authorized, there is a viable business plan for such expansion and it has the capacity to undertake such a new class or such new classes of business.

12. A company applying for authorization to carry on **long term insurance business** must satisfy the Insurance Authority that -

- (a) it has sufficient actuarial expertise, including a qualified staff actuary, to advise it on premium rates and structure, policy terms and benefits, accounting requirements, long term business fund liability valuations, and matching of the terms and nature of the assets and liabilities relating to its long term business. The application shall be accompanied by a report and certificate from a qualified actuary, acceptable to the Insurance Authority, affirming the appropriateness or otherwise of the business plan according to prudent actuarial principles and stating whether in his opinion prudent and satisfactory arrangements governing actuarial matters have been made; and
- (b) where the applicant proposes to carry on any investment-linked type of long term business, there are adequate accounting procedures to enable assets and liabilities to be identified and properly valued and timely reports to be furnished to the policy holders and that the applicant has available sufficient investment management expertise to manage the invested funds.

13. An applicant (for either general or long term business authorization) which is a **company incorporated outside Hong Kong** must satisfy the Insurance Authority that it -

- (a) is a company incorporated in a country where there is a comprehensive company law and insurance law;
- (b) is an insurer under effective supervision by the authority or authorities of its home country responsible for the proper conduct of insurance business; and
- (c) is a well established insurer with international experience and of undoubted financial standing.

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Section 8(3) of the Insurance Companies Ordinance

8. Authorization

- (3) The Insurance Authority shall not authorize a company under this section unless the following conditions are satisfied -
- (a) that, at the date of the application, the value of the assets of the company is not less than -
 - (i) in the case of a company carrying on or intending to carry on general business only, the aggregate of the amount of its liabilities and the relevant amount within the meaning of section 10;
 - (ii) in the case of a company carrying on or intending to carry on long term business only, the greater of the following -
 - (A) the aggregate of the amount of its liabilities and the relevant amount within the meaning of section 10; or
 - (B) the aggregate of the amount of its liabilities and such amount as may be prescribed by or determined in accordance with regulations made under section 59(1)(aa); (Amended 29 of 1997 s.3)
 - (iii) in the case of a company carrying on or intending to carry on both general business and long term business, the aggregate of the amount which, if section 10(1) applied, would be the relevant amount in the case of the company having regard only to its general business and the greater of the following -
 - (A) the aggregate of -
 - (I) the amount of its liabilities; and
 - (II) if any part of the long term business carried on or intended to be carried on is of a nature other than that specified in class G or H in Part 2 of the First Schedule, \$2,000,000 or its equivalent; or
 - (B) the aggregate of the amount of its liabilities and such amount as may be prescribed by or determined in accordance with regulations made under section 59(1)(aa); and (Replaced 25 of 1994 s. 4, Amended 29 of 1997 s.3)
 - (b) that in the case of a company having a share capital, the aggregate of the amount paid up thereof and the amount of any subordinated loan stock of the company and the amount paid up in respect of any redeemable preference shares of the company is not less than -
 - (i) except if subparagraph (ii), (iii) or (iv) applies to the company, \$10,000,000 or its equivalent; (Amended 29 of 1997 s.3)
 - (ii) if the company intends to carry on both general business and long term business, or carries on both general business and long term business outside Hong Kong, \$20,000,000 or its equivalent;
 - (iii) if the company intends to carry on any class of insurance business (not being reinsurance business) relating to liabilities or risks in respect of which persons are required by any Ordinance to be insured, \$20,000,000 or its equivalent; (Amended 35 of 1996 s. 4, 29 of 1997 s.3)
 - (iv) if the company intends to carry on business as a captive insurer, \$2,000,000 or its equivalent; and (Added 29 of 1997 s.3)
 - (c) that as regards each class of risks against which, in the course of carrying on business, the company proposes to insure persons -
 - (i) adequate arrangements are in force, or will be made, for the reinsurance of risks of that class against which persons are, or are to be, insured by the company in the course of carrying on business; or
 - (ii) it is justifiable not to make arrangements for that purpose; and
 - (d) that the company is, and will continue to be, able to meet its obligations including obligations in respect of business other than the class of insurance business in respect of which the application is made; and
 - (e) in the case of a company to which Part XI of the Companies Ordinance (Cap. 32) applies, that it has complied with the provisions of that Part; and
 - (f) that the company will be able to comply with such of the provisions of this Ordinance as would be applicable to it; and
 - (g) that in the case of a company which carries on, or proposes to carry on, some other form of business in addition to insurance business, the carrying on of that other form of business in addition to insurance business is not contrary to the interest of existing and potential policy holders; and
 - (h) that the name of the company is not likely to deceive.