

Doing business in Hong Kong

Authorisation of insurers in Hong Kong

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Requirement for authorisation

In order to carry on any class of insurance business in or from Hong Kong, companies must be authorised under section 8 of the Insurance Companies Ordinance (the Ordinance)¹, by the Hong Kong insurance regulator, a public officer appointed as the Insurance Authority (IA).

Lloyd's is not required to be authorised to carry on insurance business in or from Hong Kong. In the case of an association of underwriters, an application should be made to the IA, for information on the terms on which he will approve the association to carry on insurance business in or from Hong Kong. Except where stated otherwise, the comments in this booklet apply to insurance companies and not to Lloyd's or an approved association of underwriters.

In order to be authorised, insurers must meet certain statutory conditions and satisfy certain guidelines issued by the IA². Insurers will be granted authorisation to carry on insurance business in or from Hong Kong by the IA if they:

- are incorporated in Hong Kong or registered as an overseas company³
- apply for authorisation and provide the IA with such information as he may require
- satisfy the authorisation requirements set out in sections 8(2) and 8(3) of the Ordinance. The authorisation requirements address minimum levels of capital and solvency margin, the fitness and properness of directors and controllers, the adequacy of reinsurance arrangements and other criteria. These requirements are described in more detail below.

1 Cap.41 of the laws of Hong Kong.

2 Authorization Guidelines set out as Annex 2 of GN5: Guidance Note on Application for Authorization to Carry on Insurance Business in or from Hong Kong (GN5).

3 Part XI, Companies Ordinance, Cap.32 of the laws of Hong Kong.

An offence will be committed where any person carries on a class of insurance business in or from Hong Kong without authorisation. If a person commits such an offence, the person may be liable to a fine of HK\$2 million plus HK\$2,000 for each day on which the offence continues and, in the case of an individual, imprisonment for two years⁴. If the offence is committed by a body corporate with the consent or connivance of, or because of neglect by, an individual who was at the time a controller, director, manager, secretary or similar officer of the body corporate, that individual will also commit the offence⁵.

In addition, if a contract of insurance is entered into by an insurer who is not authorised, the policy holder may elect either to treat the contract of insurance as enforceable against the insurer or to treat the contract of insurance as void, in which case if the contract is voided before its expiration the policy holder will be entitled to recover any consideration paid under the contract to the insurer⁶.

4 Section 6(3) of the Ordinance.

5 Section 57 of the Ordinance.

6 Section 6A of the Ordinance.

Who is required to seek authorisation?

Any person that intends to carry on a class of insurance business in or from Hong Kong must be authorised by the IA before it may do so. However, although an insurer may be a company, an individual or a partnership (as well as Lloyd's or an association of underwriters approved by the IA), only a company may apply to the IA for authorisation to carry on a class of insurance business⁷.

An applicant must provide the IA with such information as the IA may require, including specified particulars relating to every director or controller of the applicant⁸. The application with supporting documentation will be considered by the IA on its merits.

A person is considered to carry on a class of insurance business in or from Hong Kong if he:

- opens or maintains an office or agency in Hong Kong for the purpose of carrying on that class of insurance business in or from Hong Kong (except in the case of a person acting as the agent of an insurer solely for the purpose of settling claims under contracts of goods in transit insurance entered into wholly outside Hong Kong in respect of goods consigned to Hong Kong⁹)
- holds himself out as carrying on that class of insurance business in or from Hong Kong¹⁰.

It should be noted that if an insurer is formed or established in Hong Kong, it will be an insurer for the purposes of the Ordinance if it carries on insurance business outside Hong Kong, whether or not it also carries on insurance business in Hong Kong¹¹, and will be required to be authorised accordingly.

7 Section 7(1) of the Ordinance.

8 Section 7(2) of the Ordinance.

9 Section 2(4) of the Ordinance.

10 Section 2(3) of the Ordinance.

11 Section 2(2) of the Ordinance.

Who is eligible for authorisation?

Section 7(1) of the Ordinance provides that *“any company may make application in writing to the Insurance Authority for authorisation to carry on any class of insurance business”*.

A *“company”* for the purposes of the Ordinance is one formed and registered under the Companies Ordinance or 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 and other requirements. Any applicant falling within this definition of a *“company”* may apply for authorisation to carry on any class of insurance business in or from Hong Kong.

Types of insurers: general, long term, composite, captive and reinsurance

An insurer may be authorised to carry on all or some of the classes of general business and/or long term business, either in specified individual classes or in pre-determined groups. The classes of general business and long term business and certain pre-determined groups of classes are set out in the First Schedule to the Ordinance.

A general insurer is an insurer that carries on all or some of the classes of general business only.

A long term insurer is an insurer that carries on all or some of the classes of long term business only.

A composite insurer is an insurer that carries on classes of both general and long term business. Though there are a number of insurers authorised as composite insurers, as a matter of practice, the IA does not generally approve new composite insurers unless the insurer is a pure reinsurer. Instead, two separate companies are often established and authorised; one to carry on the relevant classes of general business and the other to carry on the relevant classes of long term business.

A captive insurer is a company that carries on classes of general business only (excluding statutory classes of business such as employees' compensation or motor), where such business is restricted to the insurance and reinsurance of risks of the companies within the same grouping of companies to which the captive insurer belongs¹².

A reinsurer is an insurer that underwrites risks written by other insurers. A pure reinsurer is a company that only assumes risks written by other insurers and does not itself provide insurance cover directly to the public.

12 See section 2(7)(b) of the Ordinance and Section 2 of the Companies Ordinance for the definition of “grouping of companies”.

Classes of insurance business

The various classes of insurance business are specified in Parts 2 and 3 of the First Schedule to the Ordinance. They are separated into two categories: long term business and general business. For convenience, certain of the classes of long term business and the classes of general business are categorised into groups in Part 4 of the First Schedule and an insurer may be authorised to carry on insurance business by reference to the appropriate class or group¹³.

It should be noted that, where an insurer authorised to carry on long term business effects and carries out a contract of insurance which combines long term business and accident or sickness cover described within class 1 or class 2 of general business, that general business shall be regarded as long term business and not as general business¹⁴.

Parts 2, 3 and 4 of the First Schedule to the Ordinance are set out in Table A (see page 35).

Several of the classes of insurance business, particularly of long term business, do not describe contracts in which there is necessarily an insurable risk. In consequence section 3(2) of the Ordinance provides that a contract referred to in Part 2 or Part 3 of the First Schedule to the Ordinance which is not a contract of insurance shall for the purposes of the Ordinance be deemed to be a contract of insurance.

¹³ Paragraph 2, Part 1, First Schedule of the Ordinance.

¹⁴ Paragraph 3, Part 1, First Schedule of the Ordinance.

Authorisation – capital and solvency margin requirements

For the purposes of authorisation, the aggregate of the amounts of paid-up share capital, subordinated loan stock and paid-up redeemable preference shares (if any) (in the case of a company having a share capital) and the amount of solvency margin (ie the excess of assets over liabilities) of a company must not be less than the amounts specified in section 8 of the Ordinance or an equivalent amount in another currency.

For the purposes of determining compliance with the solvency margin requirement:

- in the case of a general business insurer, the value of its assets will be determined in accordance with the Insurance Companies (General Business) (Valuation) Regulation¹⁵
- in the case of a long term business insurer, the amount of its long term business liabilities is subject to the Insurance Companies (Determination of Long Term Liabilities) Regulation¹⁶ and its margin of solvency will be determined in accordance with the Insurance Companies (Margin of Solvency) Regulation¹⁷.

Table B¹⁸ (see page 42) sets out the minimum amounts in Hong Kong dollars of paid-up share capital and solvency margin applicable to different classes of insurance business carried on by the different categories of insurer. Table B also describes the bases for determining the solvency margin if greater than the minimum amount specified in section 8 of the Ordinance.

15 Insurance Companies (General Business) (Valuation) Regulation 1995 made under section 59(1)(a) of the Ordinance.

16 Insurance Companies (Determination of Long Term Liabilities) Regulation 1995 made under section 59(1)(a) of the Ordinance.

17 Insurance Companies (Margin of Solvency) Regulation 1995 made under section 59(1)(aa) of the Ordinance.

18 Table B and the notes thereto are reproduced from Annex 3 of GN5.

Additional capital, the amount of which will depend on a number of factors, will also be required to allow for any unexpected call on the insurer's capital.

An insurer must have a minimum paid-up capital of:

- HK\$10 million if it will carry on either general insurance business or long term insurance business
- HK\$20 million if it will carry on both general and long term insurance business as a composite insurer or if it will carry on statutory classes of insurance business
- HK\$2 million if it will be a captive insurer.

The minimum solvency margin:

- for an insurer which carries on only classes of general insurance business is the greater of:
 - › 1/5 of the relevant premium income up to HK\$200 million, plus 1/10 of the amount by which the relevant premium income exceeds HK\$200 million or
 - › 1/5 of the relevant claims outstanding up to HK\$200 million, plus 1/10 of the amount by which the relevant claims outstanding exceeds HK\$200 million

subject to a minimum of HK\$10 million, or HK\$20 million in the case of insurers carrying on statutory classes of insurance business

- for an insurer which carries on only classes of long term insurance business (other than that specified in class G or H) is the greater of:
 - › HK\$2 million or
 - › an amount calculated in accordance with the Insurance Companies (Margin of Solvency) Regulation 1995
- for a captive insurer is the greater of:
 - › 5% of the net premium income or
 - › 5% of the net claims outstanding or
 - › HK\$2 million.

Authorisation: fitness and properness of directors and controllers

Directors and controllers

The IA must be satisfied that the directors and controllers of the applicant company are fit and proper persons to hold such positions in the applicant company. A director will include any person occupying the position of director by whatever name called, while a controller is defined in section 9 of the Ordinance and includes:

- a managing director of the applicant or of any ultimate or intermediate holding company
- a chief executive (being an employee who, alone or jointly with others, is responsible immediately under the authority of the directors for the whole of the insurance business) of the applicant or of any ultimate or intermediate holding company which is also an insurer
- any person who alone or jointly with an associate can exercise or control the exercise of 15% or more of the voting power at a general meeting of the applicant or any ultimate or intermediate holding company
- any person in accordance with whose directions or instructions the directors of the applicant or any ultimate or intermediate holding company are accustomed to act
- in the case of an applicant incorporated outside Hong Kong:
 - › a managing director responsible for the applicant’s insurance business carried on within Hong Kong
 - › a chief executive of the Hong Kong business, who is an employee who, alone or jointly with others, is responsible (whether or not immediately under the authority of the directors) for the whole of the applicant’s insurance business carried on within Hong Kong (provided that the employee is not also responsible for the applicant’s insurance business carried on elsewhere and he does not have a subordinate who is responsible for the whole of the applicant’s Hong Kong insurance business).

The Ordinance does not define “*fit and proper*” but the IA has issued a guidance note setting out his interpretation of this term¹⁹. The guidance note states that the term may be considered to cover “*competent*” and “*honest*” but that the IA will look for high standards of competence and honesty.

In considering whether a person is fit and proper, the IA will take into account all relevant factors, including:

- financial status
- character, reputation, integrity and reliability
- qualifications or experience having regard to the nature of the functions to be performed
- ability to perform such functions efficiently, honestly and fairly²⁰.

Without limiting the generality of the statements referred to above, the following paragraphs set out the events and matters that are likely to give rise to concerns about the fitness and properness of a person to be appointed or who has been appointed as a director or controller of an authorized insurer. However, failure to comply with all individual elements will not necessarily result in the IA not being satisfied that a person is fit and proper. The IA will look to the substance of the requirements and the materiality of any failure to meet them²¹.

19 GN4: Guidance Note on “*Fit and Proper*” Criteria under the Insurance Companies Ordinance (Cap.41) (GN4).

20 Paragraph 9 of GN4.

21 Paragraph 10 of GN4.

Individual person

The IA is not likely to be satisfied that the director or controller is a fit and proper person, if the person:

- (a) has been found by a court or other competent authority to have acted fraudulently or dishonestly
- (b) has been disqualified by a court of competent jurisdiction from being a director of a body corporate
- (c) has been convicted of a criminal offence by any court, including a military tribunal or is the subject of unresolved criminal charges, in Hong Kong or elsewhere
- (d) has, in Hong Kong or elsewhere, been censured, disciplined or publicly criticised by a professional body to which he belongs or belonged, or has been dismissed from any office or employment or refused entry to any profession or occupation
- (e) was a director or controller (within the meaning of section 9 of the Ordinance) of a body corporate or insurer, in Hong Kong or elsewhere, which has been compulsorily wound up or made any compromise or arrangement with its creditors or ceased trading in circumstances where its creditors did not receive or have not yet received full settlement of their claims, either whilst the person was a director or controller or within one year after the person ceased to be such a director or controller
- (f) has, in connection with the formation or management of a body corporate or insurer, been adjudged by a court in Hong Kong or elsewhere civilly liable for any fraud, misfeasance or other misconduct by the person towards such a body corporate or insurer or towards any members thereof
- (g) has been adjudicated bankrupt by a court, or is currently subject to bankruptcy proceedings, in Hong Kong or elsewhere
- (h) has failed to satisfy any judgement debt under an order of a court in Hong Kong or elsewhere

- (i) was or has been a director or controller (within the meaning of section 9 of the Ordinance) of a body corporate or insurer, in Hong Kong or elsewhere, which, with the consent or connivance of, or because of the neglect by, the person failed to comply with any legislative or other regulatory requirements or any guidelines made thereunder²².

In respect of the events listed in paragraphs (c) to (f) above, the IA, in considering whether the individual is fit and proper, will have regard to, inter alia, the relevance of the event, the lapse of time since the event, the seriousness of the event, and the degree of his involvement in the event. If necessary, the IA may require further information regarding the event from the individual, the insurer or the relevant party concerned²³.

A chief executive of an insurer means an employee of the insurer who is responsible under the immediate authority of the directors for the conduct of the insurance business of the insurer. It includes, in the case of an insurer incorporated outside Hong Kong, the chief executive of the Hong Kong operation. A chief executive is therefore expected to be professionally competent in addition to consideration of the matters referred to above²⁴.

Where an individual intends to become the chief executive of an insurer, the IA expects that person to possess the relevant qualification and/or experience which would enable him to discharge his functions properly (ie to be professionally competent). For example, an individual may be considered to be professionally competent:

- if he possesses any of the following qualifications:
 - › Associate or Fellow of the Chartered Insurance Institute of the UK
 - › Associate or Fellow of the Australian Insurance Institute
 - › Associate or Fellow of the Insurance Institute of New Zealand
 - › Fellow of the Institute of Actuaries of England

22 Paragraph 11 of GN4.

23 Paragraph 12 of GN4.

24 Paragraph 13 of GN4.

- › Fellow of the Faculty of Actuaries in Scotland
- › Fellow of the Institute of Actuaries in Australia
- › Fellow of the Society of Actuaries of the United States of America
- › A degree in Insurance, Risks Management or Actuarial Science from a university in Hong Kong, Australia, Canada, United Kingdom, United States of America, or other places acceptable to the Insurance Authority

and not less than five years' experience in an insurer or similar institution occupying a management position

OR

- if he does not possess the relevant qualification as set out above, he has not less than eight years' experience in an insurer or similar institution occupying a management position²⁵.

Body corporate

In the case of a body corporate, the IA is not likely to be satisfied that the body corporate is fit and proper to be a director or controller of an authorized insurer if the body corporate:

- (a) does not have financial integrity, eg the accounts of the body corporate do not display a financially sound and stable position
- (b) is subject to receivership, administration, liquidation or other similar proceedings
- (c) has failed to satisfy any judgement debt under an order of a court in Hong Kong or elsewhere
- (d) was a director or controller (within the meaning of section 9 of the Ordinance) of any body corporate or insurer, in Hong Kong or elsewhere, which has been compulsorily wound up or made any compromise or

²⁵ Paragraph 14 of GN4.

arrangement with its creditors or ceased trading in circumstances where its creditors did not receive or have not yet received full settlement of their claims, either whilst the body corporate was a director or controller or within one year after the body corporate ceased to be such a director or controller

- (e) was or has been a director or controller of any body corporate or insurer, in Hong Kong or elsewhere, which, with the consent or connivance of, or because of the neglect by, the body corporate failed to comply with any legislative or other regulatory requirements, or any guidelines made thereunder
- (f) has a director or controller that fails to meet the requirements set out above for individuals (other than those relating to qualifications and experience), or the requirements set out for a body corporate, as appropriate²⁶.

Where a body corporate intends to become or has become a shareholder controller (ie a shareholder holding or controlling 15% or more of the shareholdings) of an insurer, the IA will, in addition to the matters referred to above, take into account whether the body corporate has sufficient financial resources to acquire or support the operations of the insurer and whether the business plan for the insurer is realistic and viable²⁷.

In respect of event (d) listed above, the IA, in considering whether the body corporate is fit and proper, will have regard to, inter alia, the relevance of the event, the lapse of time since the event, the seriousness of the event and the degree of involvement of the body corporate in the event. If necessary, the IA may require further information regarding the event from the body corporate, the insurer or the relevant party concerned²⁸.

26 Paragraph 15 of GN4.

27 Paragraph 16 of GN4.

28 Paragraph 14 of GN4.

Authorisation: adequacy of reinsurance arrangements

An insurer is required under the Ordinance to have adequate reinsurance arrangements in force for the risks in each class of insurance business it carries on, unless it is justifiable not to make such arrangements for that purpose²⁹. In considering the adequacy of the reinsurance arrangements of an insurer, the IA will take into account the following factors:

- the type of treaties
- the maximum retention of the insurer
- the security of the reinsurers
- the spread of risks among participating reinsurers.

In addition, the IA has issued a Guidance Note on Reinsurance with Related Companies³⁰ (GN12) to assist in clarifying how reinsurance arrangements with related companies will be considered adequate in terms of financial security and how the IA will address any supervisory concern if he considers that the arrangements are not adequate. GN12 applies to reinsurance arrangements, including renewal of reinsurance arrangements, made in respect of the financial years of an insurer commencing on or after 1 January 2004.

GN12 applies to:

- (a) an authorised insurer incorporated in Hong Kong
- (b) an overseas insurer which derives 75% or more of its annual gross premium in respect of general business from its Hong Kong insurance business or in respect of long term business from its Hong Kong long term insurance business

²⁹ Section 8(3)(c) of the Ordinance.

³⁰ GN12: Guidance Note on Reinsurance with Related Companies.

- (c) an authorised insurer which is required to maintain assets in Hong Kong in respect of its Hong Kong insurance business liabilities under section 25A of the Ordinance.

If GN12 applies, the IA will only consider reinsurance arrangements with a related reinsurer (which is a company within the same grouping of companies³¹ to which the insurer belongs) to be adequate if the reinsurer is an authorised insurer in Hong Kong or the reinsurer or one of its holding companies has a minimum insurer financial strength rating from Standard & Poor's of AA- or from Moody's of Aa3 or from A.M. Best of A+ or if the IA otherwise considers the reinsurer or one of its holding companies to have a comparable status.

If the reinsurer or one of its holding companies does not meet one of the above criteria:

- in the case of an insurer described in paragraph (a) or (b) above the net reinsurance recoverable due from the related reinsurer or reinsurers will be restricted to 10% of the ceding insurer's Net Assets Amount (broadly its surplus of assets over its liabilities as reported in its (unconsolidated) financial statements)
- in the case of an insurer described in paragraph (c) above (and notwithstanding that the insurer may also be subject to a related company reinsurance restriction as an insurer described in paragraphs (a) or (b) above) the net reinsurance recoverable due from the related reinsurer or reinsurers arising from the ceding insurer's Hong Kong business will be restricted to 10% of its Hong Kong Net Assets Amount (being the amount specified under section 25A(3)(a)(i) of the Ordinance).

If the insurer wishes a higher amount of net reinsurance recoverable from such a related reinsurer to be permitted, it may produce collateral securities acceptable to the IA (such as a clean, irrevocable, unconditional and permanently renewable letter of credit from a Hong Kong licensed bank payable to the IA) for the additional amount.

31 See section 2(7)(b) and (c) of the Ordinance and Section 2 of the Companies Ordinance for a definition of "grouping of companies".

Authorisation: other criteria

In addition to the requirements set out under section 8 of the Ordinance, insurers must demonstrate to the IA that they are able to satisfy the criteria set out in the Authorization Guidelines³² issued by him. Paragraphs 11 to 13 of GN1 specify the following:

Requirements applicable to all applicants

Under section 8(1)(b)(ii) of the Ordinance, all applicants must satisfy the IA that:

- 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
- 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
- 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 had such knowledge and experience)
- 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)
- 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 IA that it will continue to

³² Paragraphs 11 to 13 of GN1: Authorization Guidelines (GN1).

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

- with the exception of captive insurers, 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
- the applicant’s proposed operations would not have a destabilising 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
- 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)
- with the exception of captive insurers, 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
- with the exception of captive insurers, the applicant would not engage in a “*fronting*” operation (under which the ceding company, ie 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)
- the purpose of the application is not to bypass the scope and provisions of other regulatory legislation in Hong Kong, eg the Banking Ordinance

- with the exception of professional reinsurers, the application is in respect of either general business or long term business only, not a combination of both (but interested parties may establish and seek authorisation for two separate applicant companies, one for general business and one for long term business)
- in the case of an insurance company already authorised in Hong Kong but wishing to extend into a class or classes of insurance business for which it is not authorised, there is a viable business plan for such expansion and it has the capacity to undertake such new class or classes of business.

Requirements applicable to applicants to carry on long term insurance business

A company applying for authorisation to carry on long term insurance business must satisfy the IA that:

- 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 IA, 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
- 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.

Requirements applicable to applicants incorporated outside Hong Kong

An applicant (for general or long term business authorisation) which is a company incorporated outside Hong Kong must satisfy the IA that it:

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

Application procedure for authorisation

The IA provides an outline of the application procedure for insurers who seek authorisation to carry on insurance business in or from Hong Kong. The procedure may be summarised as follows:

- the appropriate application forms should be obtained
- a preliminary meeting with the Insurance Authority should be held to discuss the applicant’s proposed insurance business
- a draft application should be prepared, submitted to the Insurance Authority and discussed
- the formal application should be submitted to the Insurance Authority
- the Insurance Authority’s approval in-principle to carry on insurance business in the relevant class should be obtained
- an on-site inspection of the insurers’ business premises should be conducted
- the relevant annual fees must be paid.

If this procedure is followed, the certificate of authorisation will then be issued. The stages described in this procedure are outlined in paragraphs 14 to 23 of GN5³³.

Application forms

Application for authorisation to carry on any class of insurance business in or from Hong Kong should be made in the following Forms, as appropriate. These Forms can be downloaded for use from the “*Public Forms*” section of the IA’s website (www.oci.gov.hk).

33 Paragraphs 14 - 23 of GN5.

Form index	Description
Form IA-6G	Application for Authorization to carry on General Business
Form IA-6L	Application for Authorization to carry on Long Term Business
Form IA-6R	Application for Authorization to carry on Reinsurance Business
Form IA-6C	Application for Authorization to carry on General Business (by captive insurers)

Preliminary meeting with the Insurance Authority

The IA strongly advises all applicants to contact him for a preliminary meeting to discuss briefly their proposals before they complete the Application Form. To facilitate the discussion, the IA requests the applicant to let him have, preferably one week before the meeting, any relevant documents currently available. Such documents may include:

- a feasibility study report (if a feasibility study has been carried out)
- background of the applicant and its group (if applicable), including a corporate structure chart
- the latest financial statements of the applicant and its group (if applicable)
- an overview of its business plan.

The meeting will enable both the applicant and the IA to understand each other better as well as enable the IA to give the applicant his initial views on the viability of the applicant's proposed operation.

Draft Application

The applicant may proceed to prepare its application after it has discussed with the IA its proposal, if the proposal is considered acceptable to the IA.

The IA recommends that an application should first be submitted to the IA in draft form. This means that the applicant should complete the Application Form with the relevant information and leave it unsigned.

The IA will consider the information in detail and revert to the applicant on outstanding issues or deficiencies if necessary. A draft application will also expedite the applicant's formal application by having any difficult issues resolved before the formal application is submitted.

Subject to the sufficiency of information, the IA will normally be able to advise the applicant of the outcome of his initial assessment on the its draft application within two months. If the IA's assessment is that it would reject the application if made, the applicant will be recommended not to proceed. As the results of an application are published in the Gazette, the IA prefers not to issue a formal rejection of an application if possible.

Formal Application

As soon as the applicant is advised positively of the outcome of the IA's initial assessment, it may proceed to make its formal application to the IA. The formal application, in the appropriate Form, should be duly signed and sealed as applicable. Any documents submitted in support of the application should be certified by a principal officer of the applicant as true copies of the originals.

Decision on the Application

Provided that the formal application has been properly prepared and contains all the relevant information and documents adequate for the IA to make a decision, the IA will advise the applicant, within six weeks of receipt of the formal application, of his decision on the application. If authorisation can be given, the IA will give his “*approval-in-principle*” to the applicant and at the same time advise it of the requirements which should be complied with by it before the formal authorisation will be given. These may include establishing a fully-fledged office and having the necessary capital or fund in place as proposed.

In the letter giving the IA’s approval-in-principle, the IA will also set out the conditions to which the authorisation will be subject. These will normally include requirements:

- to maintain a branch office as its place of business in Hong Kong with a locally-based chief executive and to keep and maintain at such branch office proper books of account and other records in respect of its Hong Kong operation (for insurers incorporated outside Hong Kong)
- to apply to and become a member of The Insurance Claims Complaints Bureau before writing any personal insurance business in Hong Kong (for insurers other than pure reinsurers or captive insurers)
- to apply to and become a member of the Motor Insurers’ Bureau of Hong Kong before writing any direct motor vehicle liability insurance business in Hong Kong (for insurers writing direct motor vehicle liability insurance)
- to apply to and become a member of the Employees Compensation Insurer Insolvency Bureau before writing any employees’ compensation insurance business in Hong Kong (for insurers writing direct employees’ compensation insurance business).

34 Section 13(1) of the Ordinance.

On-site inspection

The applicant may contact the IA to arrange a visit to its office when it has made all the preparations necessary to commence business as specified in the IA's letter of approval-in-principle. During the visit, the IA will need to be satisfied that all operational systems and staff are in place to enable the applicant to commence business immediately.

Certificate of Authorization

If the IA is satisfied that the applicant has fulfilled all the requirements set out in his letter of approval-in-principle, he will confirm to the applicant, within two weeks of his visit to the applicant's office, its formal authorisation by issuing a Certificate of Authorization. The Certificate will be sent through ordinary mail unless the applicant wishes to collect it in person from the IA.

It is estimated by the IA that the application process from the date the draft application is first submitted to the IA to the date that the IA's approval-in-principle letter is issued can take less than four months.

Payment of annual fee

Whilst there is no application fee, a fee must be paid by all authorised insurers³⁴ on authorisation and annually thereafter. Payment of the fee payable on authorisation is made with the formal application. If the application is rejected, the fee will be refunded. The amount of the fee is specified in the Insurance Companies (Authorisation and Annual Fees) Regulation and since 1997 is as follows:

General business	HK\$227,300
Long term business	HK\$227,300
Both general and long term business	HK\$454,600
General business carried on by a captive insurer	HK\$22,600

Information and documents required for the Application

The applicant is required to submit supporting information to the IA with the completed application form. This information is described more fully below and includes particulars of the applicant and its directors and controllers, financial standing, staff establishment, accounting policies, internal control and business plan.

Market feasibility report

Except for a captive insurer, the applicant will need to have undertaken a detailed market feasibility study in respect of its proposed operations to be carried on in or from Hong Kong and should be able to demonstrate the viability of its business plan based on the results of that report.

Particulars of directors and controllers

The applicant is required to provide the IA with particulars of its directors and controllers (as described above) in the prescribed Form A (for individuals) or Form B (for bodies corporate) of the Second Schedule to the Ordinance.

Organisational chart

Though not a requirement, it will assist the IA to assess the competence of the applicant's management team if an organisational chart is provided showing the proposed staffing of the applicant with particulars of the qualifications and experience of those at managerial level.

Business plan

Similarly, it is in practice expected that the applicant will prepare a business plan which should demonstrate that the applicant will have sufficient financial resources to pre-finance its proposed business, including inevitable new business strain, and to withstand losses that may be sustained in the early periods of its operation. Particulars of the business plan will vary depending on the nature of the insurance business for which authorisation is sought by the applicant.

- Except for a captive insurer, an applicant seeking authorisation to carry on general business is required to provide the IA with a three year business plan consisting of a budgeted revenue account, a budgeted profit and loss account and a budgeted balance sheet in respect of each of the three years.
- An applicant seeking authorisation to carry on long term business is required to prepare a business plan with financial projections covering more than three projected years up to a point where the operations can be demonstrated to be self-supporting. The business plan must also be accompanied by a certificate signed by the applicant's appointed actuary.
- Except for a pure reinsurer or a captive insurer, two sets of financial projections are required, one on a "*best/optimistic estimate*" basis and one on a "*pessimistic estimate*" basis. An applicant seeking authorisation as a pure reinsurer is required to give only one set of financial projections on a "*realistic estimate*" basis, while an applicant seeking authorisation as a captive insurer is only required to give projections of premium income and claims outstanding for the first three years of operation.
- Except for a pure reinsurer, an applicant seeking authorisation to carry on general business is also required to demonstrate in its business plan how it will be able to comply with the local asset requirement pursuant to section 25A of the Ordinance.

Financial statements

Copies of the financial statements for the latest three years preceding the application in respect of the applicant and its corporate controllers must be given to the IA. In the case of an application for authorisation to carry on long term business, a copy of the latest actuarial valuation report prepared in respect of the applicant is also required.

Table A

Part 2: Classes of long term business

Class	Description	Nature of business
A	Life and annuity	Effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life, but excluding (in each case) contracts within Class C below.
B	Marriage and birth	Effecting and carrying out contracts of insurance to provide a sum on marriage or on the birth of a child, being contracts expressed to be in effect for a period of more than 1 year.
C	Linked long term	Effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life where the benefits are wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contracts) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).
D	Permanent health	Effecting and carrying out contracts of insurance providing specified benefits against risks of persons becoming incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or of sickness or infirmity, being contracts that: <ul style="list-style-type: none"> — are expressed to be in effect for a period of not less than 5 years, or until the normal retirement age for the persons concerned, or without limit of time; and — either are not expressed to be terminable by the insurer, or are expressed to be so terminable only in special circumstances mentioned in the contract.

Class	Description	Nature of business
E	Tontines	Effecting and carrying out tontines.
F	Capital redemption	Effecting and carrying out capital redemption contracts.
G	Retirement scheme management category I	Effecting and carrying out contracts: <ul style="list-style-type: none"> – under which contributions (or premiums) are paid to, and become the property of, one party to the contract in return for the provision by that party of assets to be applied, whether directly or indirectly, towards the provision of benefits under a retirement scheme; and – which provide for a guaranteed capital or return.
H	Retirement scheme management category II	Effecting and carrying out contracts: <ul style="list-style-type: none"> – under which contributions (or premiums) are paid to, and become the property of, one party to the contract in return for the provision by that party of assets to be applied, whether directly or indirectly, towards the provision of benefits under a retirement scheme; and – which do not provide for a guaranteed capital or return.
I	Retirement scheme management category III	Effecting and carrying out contracts of insurance to provide, whether directly or indirectly, benefits under retirement schemes but excluding: <ul style="list-style-type: none"> – contracts within Class G or H above deemed under section 3(2) to be contracts of insurance; and – contracts within Class 1 or 2 below.

Part 3: Classes of general business

Class	Description	Nature of business
1	Accident	<p>Effecting and carrying out contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of both) against risks of the persons insured:</p> <ul style="list-style-type: none"> — sustaining injury as the result of an accident or of an accident of a specified class, or — dying as the result of an accident or of an accident of a specified class, or — becoming incapacitated in consequence of disease or of disease of a specified class, <p>inclusive of contracts relating to industrial injury and occupational disease but exclusive of contracts falling within Class 2 below or Class D above.</p>
2	Sickness	<p>Effecting and carrying out contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of the two) against risks of loss to the persons insured attributable to sickness or infirmity, but exclusive of contracts falling within Class D above.</p>
3	Land vehicles	<p>Effecting and carrying out contracts of insurance against loss of or damage to vehicles used on land, including motor vehicles but excluding railway rolling stock.</p>
4	Railway rolling stock	<p>Effecting and carrying out contracts of insurance against loss of or damage to railway rolling stock.</p>

Class	Description	Nature of business
5	Aircraft	Effecting and carrying out contracts of insurance upon aircraft or upon the machinery, tackle, furniture or equipment of aircraft.
6	Ships	Effecting and carrying out contracts of insurance upon vessels used on the sea or on inland water, or upon the machinery, tackle, furniture or equipment of such vessels ³⁵ .
7	Goods in transit	Effecting and carrying out contracts of insurance against loss of or damage to merchandise, baggage and all other goods in transit, irrespective of the form of transport.
8	Fire and natural forces	Effecting and carrying out contracts of insurance against loss of or damage to property (other than property to which Classes 3 to 7 above relate) due to fire, explosion, storm, natural forces other than storm, nuclear energy or land subsidence.
9	Damage to property	Effecting and carrying out contracts of insurance against loss of or damage to property (other than property to which Classes 3 to 7 above relate) due to hail or frost or to any event (such as theft) other than those mentioned in Class 8 above.
10	Motor vehicle liability	Effecting and carrying out contracts of insurance against damage arising out of or in connection with the use of motor vehicles on land, including third-party risks and carrier's liability.

35 “vessels” includes hovercraft. Paragraph 6, Part 1, First Schedule to the Ordinance.

Class	Description	Nature of business
11	Aircraft liability	Effecting and carrying out contracts of insurance against damage arising out of or in connection with the use of aircraft, including third-party risks and carrier's liability.
12	Liability for ships	Effecting and carrying out contracts of insurance against damage arising out of or in connection with the use of vessels on the sea or on inland water, including third-party risks and carrier's liability ³⁶ .
13	General liability	Effecting and carrying out contracts of insurance against risks of the persons insured incurring liabilities to third parties, the risks in question not being risks to which Class 10, 11 or 12 above relates.
14	Credit	Effecting and carrying out contracts of insurance against risks of loss to the persons insured arising from the insolvency of debtors of theirs or from the failure (otherwise than through insolvency) of debtors of theirs to pay their debts when due.
15	Suretyship	Effecting and carrying out: <ul style="list-style-type: none"> — contracts of insurance against risks of loss to the persons insured arising from their having to perform contracts of guarantee entered into by them; — contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee.

36 "vessels" includes hovercraft. Paragraph 6, Part 1, First Schedule to the Ordinance.

Class	Description	Nature of business
16	Miscellaneous financial loss	<p>Effecting and carrying out contracts of insurance against any of the following risks, namely:</p> <ul style="list-style-type: none"> (a) risks of loss to the persons insured attributable to interruptions of the carrying on of business carried on by them or to reduction of the scope of business so carried on; (b) risks of loss to the persons insured attributable to their incurring unforeseen expense; (c) risks neither falling within paragraph (a) or (b) above nor being of a kind such that the carrying on of the business of effecting and carrying out contracts of insurance against them constitutes the carrying on of insurance business of some other class.
17	Legal expenses	<p>Effecting and carrying out contracts of insurance against risks of loss to the persons insured attributable to their incurring legal expenses (including costs of litigation).</p>

Part 4: Groups

Class	Description	Composition
1	Accident and health	Classes 1 and 2.
2	Motor	Class 1 (to the extent that the relevant risks are risks of the person insured sustaining injury, or dying, as the result of travelling as a passenger) and Classes 3, 7 and 10.
3	Marine and transport	Class 1 (to the said extent) and Classes 4, 6, 7 and 12.
4	Aviation	Class 1 (to the said extent) and Classes 5, 7 and 11.
5	Fire and other damage to property	Classes 8 and 9.
6	Liability	Classes 10, 11, 12 and 13.
7	Credit and suretyship	Classes 14 and 15.
8	General	Classes 1 to 17 inclusive.
9	Long term	Classes A to I inclusive.
10	Long term risks	Classes A to F inclusive and Class I.
11	Retirement schemes	Classes G and H.

Table B

Paid-up share capital and solvency margin requirements (for global business)

	Minimum amount of paid-up share capital (HK\$ million)	Minimum amount of solvency margin (HK\$ million)	Bases for determining solvency margin
General business insurer with statutory business	20	20	(I) Assume 'X' represents the greater of the Relevant Premium Income and the Relevant Claims Outstanding. (a) If 'X' < HK\$200 million, the Relevant Amount is: 20% of 'X'
General business insurer without statutory business	10	10	(b) If 'X' > HK\$200 million, the Relevant Amount is: 20% x HK\$200m + 10% x ('X' – HK\$200m)
Long term business insurer	10	2	(II) Aggregation of two components, i.e. a percentage, generally 4%, of mathematical reserves (the first calculation) and a percentage, generally 0.3%, of capital at risk (the second calculation). (see Note 4)

	Minimum amount of paid-up share capital (HK\$ million)	Minimum amount of solvency margin (HK\$ million)	Bases for determining solvency margin
Pure reinsurer (General business only)	10	10	As (I) above
Pure reinsurer (Long Term business only)	10	2	As (II) above
Pure reinsurer (Composite business)	20	12	Aggregate of (I) and (II) as above
Captive insurer	2	2	5% of the greater of the net premium income and the net claims outstanding

Notes

1. Relevant Premium Income is the greater of Net Premium Income (i.e. Gross Premium Income after deduction of reinsurance premium payment) and 50% of Gross Premium Income.
2. Relevant Claims Outstanding is the aggregate of:
 - (a) the greater of (i) 50% of the amount of the claims outstanding before deduction of the amount recoverable from reinsurers; and (ii) the amount of the claims outstanding after deduction of the amount recoverable from reinsurers;
 - (b) the additional amount for unexpired risks; and
 - (c) the insurance fund for classes accounted for on a fund accounting basis, if any.

3. Statutory business refers to 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, including employees' compensation insurance and third party bodily injury insurance in respect of motor vehicles and local vessels.
4. The specific percentages to be applied in the first calculation and the second calculation in respect of each class of long term business are prescribed in the Insurance Companies (Margin of Solvency) Regulation. The respective amounts so computed for each class of business shall be aggregated to arrive at the required margin of solvency.
5. Pure reinsurer means an insurer whose insurance business is restricted to reinsurance.
6. Composite business insurer refers to an insurer who carries on or intends to carry on both general business and long term business of insurance.
7. Captive insurer refers to a company which carries on general business only (excluding statutory business) and such business is restricted to the insurance and reinsurance of risks of the companies within the same grouping of companies to which the company belongs.
8. Net claims outstanding in the case of captive insurer is the aggregate of (a) the amount of the claims outstanding after deduction of the amount recoverable from reinsurers; (b) the additional amount for unexpired risks; and (c) the insurance fund for classes accounted for on a fund accounting basis, if any.

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This publication is for general guidance only and is not intended to be a substitute for specific legal advice. If you would like any further information please contact:

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