

Consultation Paper

on

**Draft Insurance (Maximum Number of
Authorized Insurers) Rules**

FOREWORD

- 1 This paper is published by the Insurance Authority (“IA”) to consult the public on the Insurance (Maximum Number of Authorized Insurers) Rules to be made under section 129 of the Insurance Ordinance (Cap. 41). The enclosed draft which is being consulted on has been prepared in anticipation of the IA taking over regulation of insurance intermediaries from the three existing self-regulatory organizations in mid-2019.
- 2 The IA welcomes written submissions on or before 31 December 2018 by any of the following means:

Mail: Insurance Authority
19/F, 41 Heung Yip Road
Wong Chuk Hang
Hong Kong
Fax: (852) 3899 9993
Email: comment_codeandguideline@ia.org.hk
- 3 Any person making a submission on behalf of an organization is requested to provide details of such organization.
- 4 Submissions will be received on the basis that the IA may freely reproduce and publish them, in whole or in part, in any form, and use, adapt or develop any proposal put forward without seeking permission or providing acknowledgement of the party making such proposal.
- 5 Please note that name(s) of respondent(s), their affiliation(s) and comment(s) may be referred to in any forms of documentation the IA may publish or release. If you do not wish your name or affiliation to be disclosed, please expressly state so when you make your submission.
- 6 Any personal data submitted will only be used for consultation and its related purposes in respect of this consultation paper. For access to or correction of any personal data contained in your submission, please contact –

Personal Data Privacy Officer
Insurance Authority
19/F, 41 Heung Yip Road
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EXECUTIVE SUMMARY

1. It is planned that in mid-2019, the IA will take over the regulation of insurance intermediaries and the corresponding legal provisions of the Insurance Companies (Amendment) Ordinance 2015 (Ord. No.12 of 2015) (“the Amendment Ordinance”) will commence. The new section 64I(1) of the Insurance Ordinance (Cap. 41) (“the Ordinance”) will read as follows: “*A person must not, at any time, be appointed as a licensed insurance agency or licensed individual insurance agent in carrying on a regulated activity for more than the maximum number of authorized insurers that are prescribed by rules made under section 129*”. Draft Insurance (Maximum Number of Authorized Insurers) Rules (“Rules”) to be made under section 129 of the Ordinance are accordingly published as **ANNEX 1** for the purpose of inviting representations on the proposed rules by the public.
2. Structurally, the Rules are intended, in broad terms, to follow the existing framework. As such, the draft Rules stipulate a cap on the number of authorized insurers by which an insurance agent or agency may be appointed. The Rules also provide corresponding counting instructions, specifying, for example, when an appointment by one insurer should be counted as one appointment or two appointments for the purposes of the cap (which depends on whether the scope of the agent’s appointment is limited to one line of business or extended to both general business and long term business). The existing framework is currently set out in paragraphs 21-22 of the Code of Practice for the Administration of Insurance Agents issued by The Hong Kong Federation of Insurers (“HKFI”), which was endorsed by the former Insurance Authority (“HKFI Code”) and has served the industry well for over a quarter of a century. However, the Rules have not simply been copied from the existing framework. Rather the Rules have been developed by the IA taking into account the new Ordinance, feedback provided by the industry and similar restrictions set by overseas regulatory authorities.
3. The IA proposes that, as under the existing framework, the Rules set out both (i) an overall cap on the number of authorized insurers and a (ii) sub-cap on the maximum number of long term insurers, by which a licensed individual insurance agent or a licensed insurance agency may be appointed. The IA proposes that the overall cap should be increased from four to five and the sub-cap should remain two. The IA further suggests that there should be no substantive change to the counting instructions.
4. For ease of reference, references to section numbers in this consultation paper are made to the Ordinance as if the Ordinance incorporates the entire Amendment Ordinance unless otherwise specified.
5. **CHAPTER 1** provides an introduction to the draft Rules; **CHAPTER 2** describes the existing framework and why the commencement of the relevant sections of the Amendment Ordinance requires the IA to issue the Rules; **CHAPTER 3** explains why the IA proposes to mirror the existing framework (of caps and counting instructions), sets out the IA’s proposals as regards the appropriate overall cap and sub-cap and solicits consultation responses. CHAPTER 3 is designed to be read together with the draft Rules.
6. The IA would like to express its gratitude to the industry, in particular, to members of the working and discussion groups for their valuable advice and feedback.

CHAPTER 1 INTRODUCTION

7. Upon commencement of the new regulatory regime for insurance intermediaries under the Ordinance, the IA will take over the regulatory functions of the three self-regulatory organizations (“SROs”) for insurance intermediaries (i.e. the Insurance Agents Registration Board (“IARB”), the Hong Kong Confederation of Insurance Brokers (“CIB”) and Professional Insurance Brokers Association (“PIBA”)) and become the sole regulator to regulate all insurance intermediaries in Hong Kong. The new regulatory regime is planned to commence in mid-2019.
8. The new section 64I(1) of the Ordinance (Restrictions in relation to number of authorized insurers of each licensed insurance agency, etc) will read as follows: “*A person must not, at any time, be appointed as a licensed insurance agency or licensed individual insurance agent in carrying on a regulated activity for more than the maximum number of authorized insurers that are prescribed by rules made under section 129*”. The same section also creates offences that may be committed by persons and authorized insurers who disregard the restriction.
9. The draft Rules are intended to be the rules referred to in section 64I of the Ordinance. Rules are subsidiary legislation.
10. **SCHEDULE 1** sets out the new section 64I of the Ordinance in full for ease of reference.

Consultation

11. This paper is published by the IA, in preparation for the takeover of regulation of insurance intermediaries, to consult the public on the draft Rules (see **ANNEX 1**). The draft Rules have been prepared by the IA on the basis of the following:
 - a. the Ordinance and the Amendment Ordinance;
 - b. the HKFI Code¹; and
 - c. similar restrictions set by overseas regulatory authorities.
12. In preparing the draft Rules the IA has engaged with the Working Group on Direct Licensing Regime for Insurance Intermediaries (comprising the SROs), and the Discussion Group (Insurance Agents) (comprising representative bodies for insurance agents).
13. The draft Rules will be finalized after taking into account the feedback collected during this public consultation. Moreover, as required by section 28(2) of the Interpretation and General Clauses Ordinance (Cap. 1), since they will constitute subsidiary legislation, the Rules will be published in the Gazette.

¹ https://www.hkfi.org.hk/pdf/en/download/e_CodePractice_2010.pdf

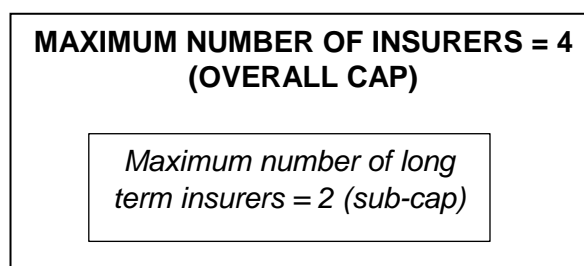
Effective Date

14. The Rules are intended to come into operation on the day on which the new section 74 of the Amendment Ordinance comes into operation. This day (which will be fixed by notice published in the Gazette to be given by the Secretary for Financial Services and the Treasury) will mark the commencement of regulation by the IA of insurance intermediaries and is planned to be in mid-2019.

CHAPTER 2 THE EXISTING FRAMEWORK

Existing Caps

15. Clauses 21-22 of the HKFI Code, which we have set out in **SCHEDULE 2** for ease of reference, currently set out and elaborate on the existing restriction of the number of principals (namely insurers) that an agent may represent.
16. The restriction itself, which is to be found in clause 21 of the HKFI Code, is that an insurance agent shall not act as or be registered as an insurance agent for more than four “Principals”, of which no more than two may be long term insurers. “Principal” is defined in the HKFI Code as: *“an insurer to whom Part X of the Ordinance applies. However, unless otherwise stated, persons collectively represented as a syndicate of Lloyd’s shall be treated as one Principal for the purposes of any insurance business relating to the syndicate”*.
17. The existing restriction therefore sets out an overall cap as well as a specific sub-cap. This can be illustrated as follows:



Existing Counting Instructions

18. Clause 22 of the HKFI Code further elaborates on the restriction dealing with how to count a Principal that is a composite insurer², insurer Principals in the same group and Lloyd’s. The general principle is that in all of these three cases whether one or two Principals are counted depends on the scope of the agent’s appointment. If the agent is only appointed to represent the insurer(s) in *either* (i) General or Restricted Scope Travel Business; or (ii) Long Term Business (but not both), then only one Principal is counted. If the appointment is for *both* classes of business, then two Principals are counted.
19. Finally, Clause 22(d) of the HKFI Code refers to a complete exemption from the restriction: *“to the extent a person is a bank for the purposes of the Banking Ordinance (Cap 155) and acts as or is registered as an insurance agent for HKMC Annuity Limited, an authorized insurer, solely for the purposes of an annuity product and provides guaranteed monthly payment until the death of the annuitant, such representation shall not be taken into account for the purposes of the limit on the*

² A composite insurer is an insurer that carries on both general business and long term business. As at 19 October 2018 there were 19 composite insurers in Hong Kong. They are listed in the IA’s Register of Insurers as having a “Business Type” “Composite”. Please see: https://www.ia.org.hk/en/supervision/reg_insurers_lloyd/register_of_authorized_insurers.html.

number of Principals for whom the person may act or be registered for under Clause 21". In other words, where such exemption currently applies, zero Principals are counted.

The Amendment Ordinance Changes the Regulatory Landscape for Insurance Intermediaries

20. The Amendment Ordinance was passed in 2015. The policy objectives behind its passing include to provide better protection for policyholders and to comply with the requirement of the International Association of Insurance Supervisors ("IAIS") that insurance regulators should be financially and operationally independent of the government and industry.³
21. When the IA commences regulation of insurance intermediaries (on the "commencement date"), the sections of the Amendment Ordinance relating to intermediary regulation will also be brought into effect by way of a Commencement Notice. As part of these fundamental amendments, the new section 64I will come into effect. Furthermore several sections of the Ordinance will be repealed. This is why the IA needs to issue the Rules to take effect on the commencement date.

³ Legislative Council Brief dated 16 April 2014, File Ref: C2/2/50C, http://www.legco.gov.hk/yr13-14/english/bills/brief/b201404251_brf.pdf.

CHAPTER 3 DISCUSSION OF THE DRAFT RULES

22. Having soft consulted the industry in respect of the maximum number of insurers that licensed individual insurance agents and licensed insurance agencies may represent, the IA suggests that it would be appropriate to retain the structure of the existing framework which defines both caps and counting instructions.
23. The IA is, however, open to an adjustment being made to the overall cap.

Proposal to mirror the existing framework (both the caps and counting instructions)

Existing Caps

24. The existing framework, which was first introduced in the 1990s, has withstood the test of time and is familiar to and well understood by the industry. It provides a balanced mechanism for demarcating the difference between agents (who act on behalf of appointing insurance compan(ies)) and brokers (who act on behalf of policyholders) whilst still allowing agents to offer a wider range of products to policyholders and potential policyholders than they could were they only allowed to represent one principal (as is the case in some jurisdictions).
25. The draft Rules, which are set out in **ANNEX 1** to this consultation paper are therefore based on the existing framework but drafted on a stand-alone basis that can be issued as rules under section 129 of the Ordinance. Moreover, for the sake of consistency with the definitions provided in the Ordinance, some of the terminology used in the draft Rules is different to the terminology used in the HKFI Code. Certain terms which were included in the HKFI Code for consistency with the remainder of the HKFI Code (which covers many additional topics) do not need to be included in the Rules since the Rules have a much more specific coverage. One example is that whilst there are references in the HKFI Code to “Restricted Scope Travel Business”, there is no need, in the IA’s view, to refer to “restricted scope travel business⁴” in the Rules since authorized insurers carrying on such business will be authorized to carry on general business.

Counting Instructions

26. The IA also proposes to effectively retain the same counting instructions (for composite insurers, groups and Lloyd’s) and the draft Rules have been prepared accordingly. Whilst the terminology used is slightly different, for the reasons given above, the intention is for the counting instructions to remain effectively the same as the existing counting instructions, with the below exception.
27. In respect of the exemption currently granted under the HKFI Code for the selling of HKMC Annuity Plan, the IA proposes to continue to grant such exemption under the new regulatory regime. Due to the nature of the Rules as subsidiary legislation, it will be more difficult for the IA to update Rules than it has been for the HKFI Code to be updated as the need arose. The IA therefore considers it appropriate to exercise its powers under the new section 79 of the Ordinance for such exemption purpose.

⁴ Defined in the new section 64ZZC(6) of the Ordinance.

Question 1

Do you agree that the existing framework in relation to the maximum number of authorized insurers (including Lloyd's) by which an individual insurance agent or an insurance agency can be appointed, should be retained?

Proposals on the appropriate caps

28. As it has been explained in paragraph 16 above, under the HKFI Code the overall cap on the number of insurers that can currently be represented by an appointed insurance agent is four and the sub-cap is two long term (i.e. life) insurers. The question is whether this cap, which was set over a quarter of a century ago remains appropriate or should be adjusted in view of the very significant advancements in technology and insurance products and market that have taken place in the interim.
29. The IA has canvassed the views of the industry on the appropriate caps. The soft consultation has revealed that the majority of insurer respondents expressed their preference for maintaining the status quo, whereas a minority suggested either a relaxation (i.e. increasing the caps) or tightening (i.e. decreasing the caps). Individual insurance agents also appeared in general to be happy with the status quo. On the other hand insurance agencies suggested that the cap should be increased so that policyholders and potential policyholders could be offered a wider range of products.
30. Having carefully considered the industry's valuable feedback and the practical realities, the IA proposes (as set out in draft Rule 4) that the overall cap should be increased modestly from four to five whereas the sub-cap should remain 2 long term insurers.

**MAXIMUM NUMBER OF INSURERS = 5
(OVERALL CAP)**

*Maximum number of long
term insurers = 2 (sub-cap)*

31. The IA puts forward this proposal, which it hopes strikes a good balance, for the following reasons:
- whilst the current system which has been in place for 25 years has worked well, technology, the market and products have dramatically developed in ways that may justify a modest increase in the overall cap so as to allow agents to offer policyholders a wider range of products which are available in the market;

- b. there are fewer long term (life) insurers operating in Hong Kong than general insurers⁵;
- c. there is a wider variety of general insurance products than long term insurance products and several general insurers authorized in Hong Kong offer only specialist general insurance products;
- d. there is an important legal distinction between insurance agents (appointed by insurers) and brokers (appointed by policyholders) and the cap was introduced in the 1990s in order to underpin this distinction which gives rise to different responsibilities and requirements (including the requirement for brokers to comply with minimum capital requirements, procure minimum levels of professional indemnity insurance and have client accounts), conduct requirements and liabilities;
- e. some jurisdictions allow insurance intermediaries to be appointed by a higher number of non-life insurers, for example in Macau where insurance agents are allowed to represent up to 5 non-life insurers;
- f. relaxing the caps too much could reduce the effectiveness of the control which insurers are able to exercise over their appointed insurance agents and insurance agencies and make it more difficult for insurers to fulfill their responsibilities under the Ordinance (especially bearing in mind that they are responsible for the acts of their agents). For example continuing professional development monitoring could become more difficult; and
- g. companies can choose to be licensed as licensed insurance broker companies (rather than as licensed insurance agencies) if they prefer to source and offer a wider product portfolio to policyholders and potential policyholders.

Question 2

Do you agree that the overall cap on the maximum number of authorized insurers (including Lloyd's) by which an individual insurance agent or an insurance agency can be appointed, should be increased from four to five?

Question 3

Do you agree that the sub-cap should remain two long term insurers?

⁵ As at 19 October 2018, there were 159 authorized insurers in Hong Kong, of which 92 were pure general insurers, 48 were pure long term insurers and the remaining 19 were composite insurers.

SCHEDULE 1

New section 64I (with emphasis added)

64I. Restrictions in relation to number of authorized insurers of each licensed insurance agency, etc.

(1) **A person must not, at any time, be appointed as a licensed insurance agency or licensed individual insurance agent in carrying on a regulated activity for more than the maximum number of authorized insurers that are prescribed by rules made under section 129.**

(2) **A person who contravenes subsection (1) commits an offence** and is liable to a fine at level 6⁶.

(3) If **an authorized insurer** knows that a person is appointed as a licensed insurance agency or licensed individual insurance agent in carrying on regulated activities for the prescribed maximum number or more of authorized insurers, that insurer **must not appoint that person to carry on a regulated activity as an agent of the insurer.**

(4) **An authorized insurer which contravenes subsection (3) commits an offence** and is liable—

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6¹.

⁶ A fine at level 6 is a maximum fine of \$100,000 according to Schedule 8 of the Criminal Procedure Ordinance (Cap. 221).

SCHEDULE 2

HKFI Code Restriction

Part A: Interpretation

Definitions

2. In this Code, the following words are defined as follows:

...

“*Principal*” means an insurer to whom Part X of the Ordinance applies. However, unless otherwise stated, persons collectively represented as a syndicate of Lloyd’s shall be treated as one Principal for the purposes of any insurance business relating to the syndicate;

...

Part C: Rules

Insurance Agents

...

Representation of Principals by Insurance Agents

21. A person shall not act as or be registered as an insurance agent for more than four Principals of whom no more than two shall be insurers who conduct Long Term Business.

22. For the purpose of the clause 21:

(a) representation by a person of a composite insurer shall be regarded as the representation of two Principals, one general and one long term, unless the insurance agent’s activities are restricted to either (i) General or Restricted Scope Travel Business or (ii) Long Term Business;

(b) representation by a person of a group of insurance companies shall be deemed to be one Principal if their activities are limited to either (i) General or Restricted Scope Travel Business or (ii) Long Term Business; or two Principals if their activities include both (i) General or Restricted Scope Travel Business and (ii) Long Term Business unless the insurance agent’s activities are restricted to either (i) General or Restricted Scope Travel Business or (ii) Long Term Business;

In this sub-clause:

"*group of insurance companies*" means that the relationship between the companies is that of "subsidiary" and "holding company" or they are the subsidiaries of another company; and

"*subsidiary*" shall have the meaning attributed to it by section 15 of the Companies Ordinance (Chapter 622 of the Laws of Hong Kong); and

"*holding company*" shall have the meaning attributed to it by section 13 of the Companies Ordinance (Chapter 622 of the Laws of Hong Kong); and

(c) representation by a person of a group of Lloyd's syndicates shall be deemed to be:

- (i) one Principal if the activities of the syndicates are limited to either (i) General or Restricted Scope Travel Business or (ii) Long Term Business;
- (ii) one Principal if the activities of the syndicates include both (i) General or Restricted Scope Travel Business and (ii) Long Term Business, but the insurance agent's activities are restricted to just one of those activities;
- (iii) two Principals if the activities of the syndicates include both (i) General or Restricted Scope Travel Business and (ii) Long Term Business, and the insurance agent's activities are not restricted to either (i) General or Restricted Scope Travel Business or (ii) Long Term Business.

(d) to the extent a person is a bank for the purposes of the Banking Ordinance (Cap 155) and acts as or is registered as an insurance agent for HKMC Annuity Limited, an authorized insurer, solely for the purposes of an annuity product and provides guaranteed monthly payment until the death of the annuitant, such representation shall not be taken into account for the purposes of the limit on the number of Principals for whom the person may act or be registered for under Clause 21.

DRAFT

Insurance (Maximum Number of Authorized Insurers) Rules

(Cap. 41, sections 64I(1) and 129(1))

1. Commencement

These Rules come into operation on the day on which section 74 of the Insurance Companies (Amendment) Ordinance 2015 (12 of 2015) comes into operation.

2. Interpretation

(1) In these Rules –

licensed person (持牌人士) means (a) a licensed insurance agency; or (b) a licensed individual insurance agent.

(2) A reference in rules 3, 4 and 5 to an insurer or authorized insurer includes a reference to a member of Lloyd's and for these purposes where the member of Lloyd's carries on long term or general business (as the case may be) in or from Hong Kong that member shall be deemed an insurer authorized to carry on that line of business.

3. Application

These Rules set out the determination of the maximum number of authorized insurers by whom a person may be appointed as a licensed person under section 64I(1) of the Ordinance.

4. Maximum Number of Authorized Insurers

The maximum number of authorized insurers referred to in section 64I(1) of the Ordinance is 5, of which no more than 2 can be insurers authorized to carry on long term business.

5. General Principles

- (1) Subject to rules 6 and 7, rule 5 applies to the counting of the number of authorized insurers for the purposes of rule 4.
- (2) A licensed person is deemed to be appointed by 1 insurer authorized to carry on general business if the licensed person is appointed by an authorized insurer as its agent to carry on regulated activities in general business only.
- (3) A licensed person is deemed to be appointed by 1 insurer authorized to carry on long term business if the licensed person is appointed by an authorized insurer as its agent to carry on regulated activities in long term business only.
- (4) A licensed person is deemed to be appointed by –
 - (a) 1 insurer authorized to carry on general business; and
 - (b) 1 insurer authorized to carry on long term business,

if the licensed person is appointed by an authorized insurer as its agent to carry on regulated activities in both general business and long term business.

6. Principles for Appointments by Authorized Insurers in a Group of Companies

- (1) When a licensed person is appointed as agent to carry on regulated activities by 2 or more authorized insurers which are in the same group of companies, this rule applies to the counting of the number of authorized insurers for the purposes of rule 4.
- (2) Where all the appointments of the licensed person as agent made by the insurers referred to in subrule (1) are limited to either general business or long term business, but not both, the licensed person is deemed to be appointed by 1 insurer authorized to carry on the line of business for which that licensed person is appointed .
- (3) Where the appointments of the licensed person as agent made by the insurers referred to in subrule (1) include one or more appointments for general business and one or more appointments for long term business, the licensed person is deemed to be appointed by –
 - (a) 1 insurer authorized to carry on general business; and
 - (b) 1 insurer authorized to carry on long term business

7. Principles for Appointments by Members of Lloyd's

- (1) When a licensed person is appointed as agent to carry on regulated activities by 2 or more members of Lloyd's, irrespective of whether those members are in the same group of companies, this rule applies to the counting of the number of authorized insurers for the purposes of rule 4.
- (2) Where the appointments made by all members of Lloyd's referred to in subrule (1) are limited to either general business or long term business, but not both, the licensed person is deemed to be appointed by 1 insurer authorized to carry on the line of business for which the licensed person is appointed.
- (3) Where the appointments made by all members of Lloyd's referred to in subrule (1) include an appointment by one or more members for general business and one or more members for long term business, the licensed person is deemed to be appointed by –
 - (a) 1 insurer authorized to carry on general business; and
 - (b) 1 insurer authorized to carry on long term business.