



# **Consultation Conclusions on Draft Insurance (Maximum Number of Authorized Insurers) Rules**

**April 2019**

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## Introduction

1. On 31 October 2018, the Insurance Authority (“IA”) published for consultation a draft of the Insurance (Maximum Number of Authorized Insurers) Rules (“Rules”) proposed to be made under section 129 of the Insurance Ordinance (Cap. 41) (“IO”) in relation to the new section 64I(1) of the IO<sup>1</sup>. The draft Rules prescribe the maximum number of authorized insurers by which a licensed individual insurance agent or a licensed insurance agency may be appointed under the new section 64I(1) of the IO and the related rules for counting the number of insurers.
2. The draft Rules, for the most part, reflect the existing requirements as set out in the Code of Practice for the Administration of Insurance Agents (“Code of Practice”) issued by The Hong Kong Federation of Insurers (“HKFI”). Under the existing Code of Practice, an insurance agent is allowed to represent a maximum of four insurers of which no more than two can be long term insurers. Under the draft Rules, the IA has proposed to raise the maximum number of insurers from four to five.
3. The consultation ended on 31 December 2018 and the IA is pleased to have received 13 written submissions from different stakeholders including insurance industry bodies, professional bodies, insurers, insurance intermediaries and individuals. A list of respondents is shown in Annex C.
4. Pursuant to section 132(3) of the IO, the IA publishes in this paper a summary of the major issues covered in the feedback received in the consultation, the IA’s response to such feedback and the conclusions drawn.
5. Respondents generally supported the proposed framework set out in the draft Rules. Diverse views, however, were expressed on the proposed increase in the cap on number of insurers from four to five. A majority of respondents connected with insurance agents strongly supported the proposed increase in the cap. They were of the view that the existing cap limits the range of products that can be offered to clients. On the other hand, a majority of insurers which gave feedback to the consultation requested to keep the existing cap of four insurers unchanged due to their concerns over insurers’ liability for the acts of their appointed insurance agents.

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<sup>1</sup> The new section 64I is to be introduced into the IO by the Insurance Companies (Amendment) Ordinance 2015. Under this provision, 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.

## Feedback Received and IA's Response

6. As part of the consultation, the IA posed three questions which focused on the main aspects of the draft Rules. This section summarizes the major issues covered in the feedback received on these questions and on other aspects of the draft Rules as well as the IA's response to these issues.

Q1. Do you agree that the existing framework<sup>2</sup> 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?

### *Feedback received*

7. A majority of respondents supported the IA's proposal to maintain the existing framework which has been adopted by the insurance industry for more than two decades. A minority of respondents expressed disagreement but no reasons were given. It was also suggested that a definition for "group of companies" be included in the draft Rules.

### *IA's response*

8. The IA considers it appropriate to maintain the existing framework, which reflects the role of insurance agents as representatives of insurers and insurers' responsibilities for their appointed insurance agents. The responsibilities, which insurers bear in this respect, make it necessary for them to have in place effective controls and procedures for the oversight of their appointed insurance agents. The effectiveness of an insurer's controls and procedures, however, may be impacted when its insurance agents also represent other insurers to sell or promote insurance products. Hence, it is necessary to impose a cap on the number of appointing insurers. Accordingly, the IA considers it appropriate to maintain the existing framework, which underpins the effectiveness of insurers' oversight of their appointed insurance agents. Maintaining the existing framework will also facilitate a smooth transition to the new regulatory regime for insurance intermediaries to be introduced under the IO.
9. The definition of "group of companies" used in the Rules can be found in section 2 of the IO which follows that under the Companies Ordinance (Cap.622), i.e. any 2 or more bodies corporate one of which is the holding company of the other or others.

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<sup>2</sup> The existing framework provides for a cap on the number of insurers by which insurance agents can be represented and, within this, a cap on the number of long term insurers by which insurance agents can be appointed, as well as special rules for counting the appointments made by composite insurers, insurers within the same group of companies and members of Lloyd's.

As such, two insurers are in the same group of companies where one insurer is the other's subsidiary or both are subsidiaries of the same holding company<sup>3</sup>.

Q2. 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?

*Feedback received*

10. A majority of respondents connected with insurance agents opined that the existing cap of four insurers was outdated. They supported the proposed increase in the cap to enable insurance agents to better serve their clients by offering a wider range of insurance products. Some even suggested the cap be increased to a larger number.
11. A majority of respondents connected with insurers expressed disagreement with the proposed increase in the cap primarily due to insurers' concerns about the adverse impact the increase could have on their oversight of their appointed insurance agents. In essence, this view suggested that increasing the cap even by only one would weaken the practical effectiveness of insurer's compliance and corporate governance for the oversight of its agents, increase insurers' exposure to liability and ultimately be detrimental to policy holder protection. Separately, these respondents also raised concerns about the absence in the draft Rules of the requirement for insurance agents to have to obtain consent from their appointing insurers before accepting a new appointment by another insurer.
12. One respondent representing insurance brokers also disagreed to the proposed increase in the cap. It was of the view that increasing the number of insurers that an insurance agent could represent could result in an insurance agent de facto acting as an insurance broker.

*IA's response*

13. The Hong Kong insurance market is now characterized by a large number of insurers offering a wide range of personal and commercial lines of general insurance products. The products offered by different insurers may vary significantly. Furthermore, with the growth in specialization, certain cover may only be underwritten by few insurers which may not offer a wide range of common insurance products. Hence, we recognize for the need for insurance agents (especially insurance agencies focusing on general insurance) to be able to present a reasonable

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<sup>3</sup> The definitions of "subsidiary" and "holding company" are in the Companies Ordinance.

range of general insurance products to clients. The question is: can this need be satisfied by the current 4 insurer cap, or should it be increased to 5?

14. The statistics on Hong Kong general business compiled by the IA indicate that over 40 insurers currently offer insurance products for major lines of business (including medical, motor vehicle, property damage and employees' compensation insurance) to individual and corporate clients. This suggests that insurance agents appointed by any of these insurers should reasonably be able to present a sufficiently wide range of common insurance products to clients. Indeed insurance agents representing two or more of these insurers, would be able to offer a choice of products in the same business line for a client's consideration. This indicates that there may not be a need to increase the cap in order for insurance agents to be able to offer a sufficient range of general insurance products.
15. An analysis of information on insurance agents provided by HKFI would broadly support this. Currently, approximately 85% of individual agents and 70% of insurance agencies (including banks) sell or promote insurance products on behalf of less than four insurers. This suggests that the majority of insurance agents are able to perform their functions without the need for having to represent 4 insurers (letting alone 5) and hence there is no broad impetus across the agency market as a whole to have to increase the cap to 5.
16. To the extent the need does exist, the analysis referenced in paragraph 15 above, suggests that this would lie with the 30% of insurance agencies which are already appointed by four insurers. These agencies, however, are only approximately 700 in number, a minority when viewed in the context of the overall agency market (about 70,000 individual agents, 2,300 insurance agencies and 23,000 technical representatives at present). Further, of these 700 insurance agencies, the vast majority (i.e. excluding those which are banks) are relatively small outfits in terms of the number of appointed technical representatives.
17. The conclusion which emerges, therefore, is that whilst for a minority of insurance agencies, an additional appointing insurer may be useful, for the vast majority of insurance agents increasing the cap would make little difference.
18. The main countervailing factor for not increasing the cap to 5 is so as not to weaken the effectiveness of the controls and procedures which insurers must have in place over their appointed agents. These controls and procedures have always been important for the purposes of policy holder protection. However, they take on more significance under the new regulatory regime, as the controls and procedures which an insurer is required to establish need to secure compliance by their appointed insurance agents with the new conduct requirements under the IO when carrying on insurance intermediary activities, e.g. proper disclosure of the identity of appointing

insurers, proper disclosure of key features of insurance products recommended and carrying out adequate suitability assessment.

19. On balance, therefore, we would conclude that there is insufficient justification for increasing the cap to 5 and far greater justification (particularly from a policy holder protection perspective) for maintaining the cap at 4.
20. Under the existing Code of Practice, insurance agents are required to obtain written consent of their existing appointing insurers before accepting a new appointment by another insurer to conduct insurance related business. This “consent” obligation is commonly found in the agency agreements entered into between insurers and insurance agents. We take the view that the “consent” obligation is a contractual issue subject to mutual agreement of both the insurers and their appointed insurance agents. The decision to grant consent by an insurer, after all, will take into account commercial considerations. Hence, it is not considered appropriate to address this issue by way of regulation.

Q3. Do you agree that the sub-cap should remain two long term insurers?
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*Feedback received*

21. A majority of respondents were of the view that an insurance agent should represent no more than two long term insurers and the sub-cap should therefore remain unchanged. Only a minority of respondents suggested an increase in this sub-cap.

*The IA’s response*

22. Currently, most insurance agents selling life insurance products generally represent one long term insurer only, and the number of long term insurers in Hong Kong is far less than the number of general insurers. Hence, the current sub-cap of two long term insurers is considered appropriate.

*Other feedback received*

23. Some of the feedback received was outside the scope of this consultation. The IA will consider this feedback when formulating other regulatory proposals to which such feedback may be more relevant. For instance, one respondent suggested an insurance agent representing more than one insurer should make disclosures about his appointing insurers before making any recommendation to a client. The IA recognizes the importance of such disclosure requirements and is considering setting out appropriate disclosure requirements in a code of conduct applicable to insurance agents.

## Conclusions and Next Steps

24. Having considered the feedback provided, the IA has decided to adopt the proposals set out in the draft Rules except for dropping the proposal to raise the maximum number of insurers from four to five. The final form of the Rules is set out in Annex A. Changes from the draft Rules included in the consultation paper are shown in the marked up version in Annex B for reference. These changes are mainly drafting refinements for clarity's sake.
25. Following the issuance of this paper, the IA will submit the Rules to the Legislative Council for negative vetting. Subject to the legislative process, the IA expects the Rules to come into operation immediately upon the commencement of the new regulatory regime for insurance intermediaries, i.e. the day on which the new section 74 of the Insurance Companies (Amendment) Ordinance 2015 comes into operation. The Rules are subject to further changes depending on comments received during the legislative process.
26. The IA would like to express its sincere gratitude to all respondents for their valuable feedback.

## Final Form of Insurance (Maximum Number of Authorized Insurers) Rules

## Insurance (Maximum Number of Authorized Insurers) Rules

Rule 1

1

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

(Made by the Insurance Authority under sections 64I(1) and 129(1) of the Insurance Ordinance (Cap. 41))

**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 and 4 to an insurer or authorized insurer includes a member of Lloyd's.

(3) For the purposes of subrule (2), where a member of Lloyd's carries on long term or general business (as the case may be) in or from Hong Kong, that member is taken to be an insurer authorized to carry on that line of business.

**3. Maximum Number of Authorized Insurers**

A person may be appointed as a licensed person in carrying on a regulated activity for a maximum of 4 authorized insurers, of which no more than 2 can be insurers authorized to carry on long term business.

**4. General Principles**

(1) Subject to rules 5 and 6, this rule applies to the counting of the number of authorized insurers for the purposes of rule 3.

(2) A licensed person is taken 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 taken 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 taken 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

**5. Principles for Appointments by Authorized Insurers in 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 3.
- (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 taken 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) are not limited to only general business or only long term business, the licensed person is taken to be appointed by 1 insurer authorized to carry on general business and 1 insurer authorized to carry on long term business.

**6. 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 3.
- (2) Where all the appointments of the licensed person as agent made by the 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 taken 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 members of Lloyd's referred to in subrule (1) are not limited to only general business or only long term business, the licensed person is taken to be appointed by 1 insurer authorized to carry on general business and 1 insurer authorized to carry on long term business.

Insurance Authority

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## Insurance (Maximum Number of Authorized Insurers) Rules

Rule 1

1

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

(~~Cap. 41, Made by the Insurance Authority under~~ sections 64I(1) and 129(1) ~~of the Insurance Ordinance (Cap. 41)~~)

**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, ~~and 4 and 5~~ to an insurer or authorized insurer includes ~~a reference to~~ a member of Lloyd's.

~~(3) and for these purposes~~ For the purposes of subrule (2), 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 ~~is taken to be~~ 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.~~

~~**43. Maximum Number of Authorized Insurers**~~

~~A person may be appointed as a licensed person in carrying on a regulated activity for a maximum of 4 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.

~~**54. General Principles**~~

(1) Subject to rules ~~65 and 76,~~ this rule ~~5~~ applies to the counting of the number of authorized insurers for the purposes of rule ~~43~~.

(2) A licensed person is ~~taken~~ 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 ~~taken~~ 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 ~~taken~~ 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.

**65. 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 43.
- (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 ~~takendeemed~~ 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.~~
- (3) Where the appointments of the licensed person as agent made by the insurers referred to in subrule (1) are not limited to only general business or only long term business, the licensed person is taken to be appointed by 1 insurer authorized to carry on general business and 1 insurer authorized to carry on long term business.

**76. 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 43.
- (2) Where all the appointments of the licensed person as agent made by ~~allthe~~ 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 ~~takendeemed~~ to be appointed by 1 insurer authorized to carry on the line of business for which ~~thatthe~~ 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.~~
- (3) Where the appointments of the licensed person as agent made by the members of Lloyd's referred to in subrule (1) are not limited to only general business or only long term business, the licensed person is taken to be appointed by 1 insurer authorized to carry on general business and 1 insurer authorized to carry on long term business.

**Final Form of Insurance (Maximum Number of Authorized Insurers) Rules with Track Changes**

Insurance (Maximum Number of Authorized Insurers) Rules

Rule 5

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**List of Respondents** (in alphabetical order)

1. AIA International Limited
2. Consumer Council
3. HKMC Annuity Limited
4. Hong Kong General Insurance Affairs Association Limited
5. JF Pioneer Insurance Advisors Limited
6. Taiping Reinsurance Company Limited
7. The DTC Association (The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies)
8. The Hong Kong Association of Banks
9. The Hong Kong Confederation of Insurance Brokers
10. The Hong Kong Federation of Insurers
11. The Institution of Financial Planners of Hong Kong
12. 陳維嘉先生
13. 馬鎮基先生