

18 December 2020

Our Ref: MC/INT/5
By Email

To: Responsible Officers of all Licensed Insurance Broker Companies

Dear Sirs,

Common compliance issues arising in the first year of the direct regulatory regime for licensed insurance broker companies

As you will be aware, the direct regulatory regime for licensed insurance intermediaries, as set out in the Insurance Ordinance (Cap. 41) (“Ordinance”), has been in effect for just over one year now, having commenced on 23 September 2019.

Based on our experience in the past 12 months, we thought it helpful to draw your attention to certain requirements of the new regime applicable to licensed insurance broker companies, which may benefit from improved awareness and observance. A number of these requirements, if contravened give rise to offences under the Ordinance. It is important, therefore, that licensed insurance broker companies are aware of these potential consequences so non-compliances can be avoided.

The approach of the Insurance Authority (“IA”) to addressing suspected contraventions of these requirements thus far, has been mainly through the issuance of letters of concern and compliance advice letters in order to raise awareness of the requirements and warn against such contraventions. As we move into our second year, however, and as our enforcement process gains maturity, a gradual stepping up of enforcement in relation to these requirements may be expected (although every situation will be assessed according its own facts and context). To assist you with verifying the adequacy of your controls and procedures in relation to these requirements, in addition to highlighting the relevant requirements below, in the Appendices to this circular we attach more detailed tables that includes certain compliance advice for you to consider.

This circular is not intended to be a comprehensive guide (nor does it constitute a waiver of any rights and powers of the IA under the Ordinance) and if you are unsure about any of the requirements outlined, you may contact us (or seek your own advice).

I. RESTRICTIONS IN RELATION TO PERSONNEL OF LICENSED INSURANCE BROKER COMPANIES

Section 64K of the Ordinance imposes a restriction on any person (a) who is a director or an employee of a licensed insurance broker company; and (b) who manages or controls any matter relating to a regulated activity of the broker company. The restriction means that such a person cannot also be:

- (a) a proprietor or a partner of a licensed insurance agency;
- (b) a licensed individual insurance agent;
- (c) a licensed technical representative (agent); or
- (d) a director or an employee of a licensed insurance agency who manages or controls any matter relating to a regulated activity of the agency.

During the past 12 months, we have received a number of enquiries on this restriction, particularly regarding the extent to which a person can serve as a board director of both an agency company and a broker company. We provide guidance on this issue in Appendix I. It is imperative that any person who is currently serving as a director on a board (or who is an employee) of both a licensed insurance broker company and a licensed insurance agency, take note of this guidance and take remedial action as necessary as a contravention of section 64K of the Ordinance is an offence.

II. REQUIREMENTS RELATING TO THE NOTIFICATION OF CERTAIN INFORMATION TO THE IA REGARDING LICENSED INSURANCE BROKERS

The Ordinance includes the following 6 administrative reporting requirements:

- i) A licensed insurance broker company, its licensed technical representatives (broker) ("TRs") and its responsible officer ("RO") must notify the IA of any change of name, business or residential address, telephone number or electronic mail address, within 14 days of the date of the change.
- ii) At least 14 days before a licensed insurance broker company appoints a TR to carry on regulated activities in one or more lines of business, the broker company must notify the IA in writing of the intended appointment.
- iii) Within 14 days after the date on which a licensed insurance broker company terminates the appointment of a TR, the broker company must notify the IA in writing of the termination.
- iv) A licensed insurance broker company must notify the IA within 14 days of terminating the appointment of its RO.
- v) A licensed insurance broker company must notify the IA of changes to its directors or controllers within 1 month of the change.
- vi) A licensed insurance broker company must notify the IA of its intention to cease to carry on regulated activities 3 months in advance of the cessation, and provide an auditor's report to the IA within 6 months after cessation.

Although these reporting requirements are administrative in nature, contravention (per the Ordinance) may constitute an offence. Our preference would be not to have to divert resources to enforcing such contraventions, but for that to happen it will be important to see compliance with the requirements going forward. Please see Appendix II for further details.

III. THE NEED FOR A LICENSED INSURANCE BROKER COMPANY TO APPOINT A RO

Pursuant to section 64ZO of the Ordinance, the IA may suspend the licence of a licensed insurance broker company if it ceases to have an RO (subject to giving the company prior written notice of its intention to suspend and the opportunity to make representations) and revoke the licence after the suspension has taken effect for 90 days. If a licensed insurance broker company ceases to have an RO, therefore, not only should it report the termination of the appointment within 14 days (see the reporting requirements in II. above), but it should also seek to effect an appointment of a new RO as soon as reasonably practicable.

IV. CLIENT MONIES, AUDITOR'S APPOINTMENT, AUDITED FINANCIAL STATEMENTS, AND NET ASSETS

The following requirements, which have been carried through from the self-regulatory regime into the new regulatory regime will be familiar to licensed insurance broker companies:

- i) **Client Monies Requirement** - A broker company must hold client monies separate from the company's monies and maintain the client account in accordance to section 71 of the Ordinance.
- ii) **Auditor Requirement** - If the appointment of an auditor by a broker company comes to an end, the broker company must (in accordance with section 72 of the Ordinance) within 1 month (a) appoint a new auditor and (b) give notice to the IA of the new appointment and the ending of the old appointment.
- iii) **Audited Financial Statements Requirement** - A broker company must submit to the IA within 6 months of its financial year end, audited financial statements with the auditor's report stating whether the auditor is of the opinion that the broker company has continued to comply with the requirements in the Insurance (Financial and Other Requirements for Licensed Insurance Broker Companies) Rules (Cap. 41L) (the "Broker Rules"), relating to capital and net assets, professional indemnity insurance, keeping of separate client accounts and keeping of proper books and accounts (section 73 of the Ordinance).

Again, contravention of these requirements are offences under the Ordinance, so compliance is imperative. Furthermore, a broker company must continuously monitor its compliance with the requirements in the Broker Rules relating to capital and net assets, professional indemnity insurance (including the limit of indemnity, deductible amount and automatic reinstatement clauses), maintenance of separate client accounts and the keeping of proper books and accounts. Compliance with these requirements is an essential part of the trust which members of the public are entitled to have in the broker companies with whom they have dealings to source their insurance.

CONCLUDING REMARKS

The requirements highlighted in this circular are, of course, not the only requirements applicable to licensed insurance broker companies. Broker companies should also be aware of the other requirements in the Broker Rules, the Code of Conduct for Licensed Insurance Brokers and in individual Guidelines issued by the IA which are applicable to them, and the potential of disciplinary action to which a breach of such requirements may expose the broker company. Given the consequences of contravening the particular requirements highlighted in this circular, however, broker companies should take the opportunity of this reminder to verify the adequacy of their procedures and controls to ensure these requirements are met going forward.

If you have any questions concerning this circular please send an e-mail to brokers@ia.org.hk.

Yours faithfully,

Peter Gregoire
Head of Market Conduct Division (Acting) and
General Counsel
Insurance Authority

c.c. The Hong Kong Federation of Insurers
 Professional Insurance Brokers Association
 The Hong Kong Confederation of Insurance Brokers

APPENDIX I

Section 64K of the Insurance Ordinance, (Cap. 41) (“Ordinance”) – Restrictions in relation to personnel of licensed insurance broker companies

Requirement – Section 64K of the Ordinance imposes a restriction on any person (a) who is a director or an employee of a licensed insurance broker company; and (b) who manages or controls any matter relating to a regulated activity of the broker company.

The restriction in section 64K(2) means that such a person cannot also be:

- (a) a proprietor or a partner of a licensed insurance agency;
- (b) a licensed individual insurance agent;
- (c) a licensed technical representative (agent); or
- (d) a director or an employee of a licensed insurance agency who manages or controls any matter relating to a regulated activity of the agency.

Contravention – A person who contravenes this restriction commits an offence and is liable to a fine of up to level 6 (i.e. HK\$100,000 at present) and 6 months' imprisonment.

Commentary and Guidance – During the past 12 months, we have received a number of enquiries on this restriction, particularly regarding the extent to which a person can serve as a board director of both an agency company and a broker company.

To ascertain whether a director in this position would be regarded as contravening the requirement, one has to examine whether the director's role in both the agency company and broker company would involve him or her in managing or controlling a matter relating to the regulated activity of both the agency and the broker company. Given that the role of the board of directors is, in broad terms, to be in charge of the management of a company, the situations where a person is a director of an agency or broker company without being involved in the management or control of the regulated activities of the agency or broker company will be rare and exceptional. As such, as the contravention of this restriction would expose the person to criminal liability, it is suggested that a person should avoid being a director of an agency as well as a broker company.

The only alternative would be to ensure that there are clear safeguards in place so that the person is only involved in the management or control of the regulated activities of one of the companies of which he or she is a director, and is prohibited from being involved in the management or control of the regulated activities of the other company of which he or she is a director.

In considering whether or not a director is involved in the management or control of the regulated activities of an agency or a broker company, the IA will take a “substance over form” approach to seek to understand the actual role played by the director in the agency or broker company. The type of factors and questions the IA will consider in this respect are set out below:

- i) Whether there are a sufficient number of other directors on the board of the agency or broker company, such that those other directors have responsibility for managing or controlling the regulated activity of the agency or broker company. For example, a sole director of an agency or a broker company cannot possibly avoid being involved in the management or control of the agency's or broker company's regulated activities. The situation might be different, however, where there are five directors on the board and their roles are clearly defined. As a general rule the fewer the number of directors on the board of the agency or broker company, the less likely it will be the case that any one director can avoid being involved in the management or control of the regulated activities of the agency or broker company.
- ii) Whether the limited role of the director (in not being involved in the management or control of regulated activities) is clearly documented by way of a board resolution or in the director's contract.
- iii) Whether the limited role of the director is reflected in the books and records of the agency or broker company (for example, the board minutes should reflect the director not being involved in discussions involving the management of regulated activities, the employment contracts of the technical representatives should not be signed by the director, and the director should not be involved in communications with insurers or policyholders on behalf of the agency or broker company).
- iv) Whether any discussions which the IA may have with the Responsible Officer, technical representatives or other staff members of the agency or broker company, reflect the limited role of the director in the agency or broker company.
- v) Any other relevant circumstances. For example:
 - if the agency or broker company has business other than insurance regulated activities, the director may be involved in managing or controlling only those other activities.
 - if both the agency and broker company of which the person is a director are subsidiaries in a multinational group or financial conglomerate and the director is also a member of the board (or an employee) of the ultimate holding company, and his/her position as director in the agency or broker company subsidiaries is to enable him or her to provide supervision from the group perspective, this may be suggestive of the director (or the employee) not being involved in the management or control of regulated activities of the agency or broker company.

APPENDIX II

Common compliance issues in the first year of the direct regulatory regime for licensed insurance brokers

1) Notifying Insurance Authority ("IA") of change in particulars (section 64P of the Insurance Ordinance, (Cap. 41) ("Ordinance"))	
Requirement – A licensed insurance broker company, its licensed technical representatives (broker) ("TRs") or its Responsible Officer ("RO") must notify the IA in writing of any change of the following particulars within 14 days of the date of the change: (a) name; (b) business or residential address; (c) telephone number; and (d) electronic mail address.	Penalty – A contravention of this requirement without reasonable excuse is an offence and may attract a fine of up to level 5 (i.e. \$50,000 at present).
Commentary – A broker company should have (and the RO should ensure the broker company has) a system in place to make their appointed TRs and RO aware of this requirement and should remind them of it periodically (e.g. periodic e-mail reminders), so that changes can be notified to the IA within the 14-day period required.	
Relevant forms for reporting to the IA – N3, N4	
2) A licensed insurance broker company must notify the IA of an intended appointment of a new TR, at least 14 days before making the appointment (section 64Q of the Ordinance)	
Requirement – At least 14 days before a licensed insurance broker company appoints a TR to carry on regulated activities in one or more lines of business as a TR of the company, the company must notify the IA in writing of the intended appointment.	Penalty – A contravention of this requirement is an offence and attracts a fine of up to level 5 (i.e. \$50,000 at present).
Commentary – It is suggested for a broker company to include the need to notify the IA of the intended appointment of a TR in its documented internal compliance and on-boarding procedures, so that there is full awareness of this requirement and notification to the IA can be made at least 14 days before the intended appointment.	
Relevant form for reporting to the IA – N2	

<u>3) A licensed insurance broker company must notify the IA within 14 days of terminating the appointment of a TR (section 64R of the Ordinance)</u>	
Requirement – Within 14 days after the date on which a licensed insurance broker company terminates the appointment of a TR, the company must notify the IA in writing of the termination.	Penalty – A contravention of this requirement is an offence and attracts a fine of up to level 5 (i.e. \$50,000 at present).
Commentary – It is suggested for a broker company, as part of its documented human resources procedures, to include the step of notifying the IA within the 14-day period following the termination of any TR's appointment.	
Relevant forms for reporting to the IA – N1, S7	
<u>4) A licensed insurance broker company must notify the IA within 14 days of terminating the appointment of RO (section 64R of the Ordinance)</u>	
Requirement – Within 14 days after the date on which the appointment of an RO of a licensed insurance broker company is terminated, the company must notify the IA in writing of the termination.	Penalty – A contravention of this requirement is an offence and attracts a fine of up to level 5 (i.e. \$50,000 at present).
<p>Commentary – The board of directors and controllers of a broker company must be mindful of this requirement and take responsibility for seeing that it is complied with on the termination of the RO of the company. Best practice would be to have a checklist of matters that need to be addressed on the termination of the RO and include this notification requirement in the checklist.</p> <p>It should also be noted that pursuant to section 64ZO of the Ordinance, the IA may suspend the licence of a licensed insurance broker company if it ceases to have an RO (subject to giving the company prior written notice of its intention to suspend and the opportunity to make representations) and revoke the licence after the suspension has taken effect for 90 days.</p>	
Relevant forms for reporting to the IA – N1, S7	

5) <u>A licensed insurance broker company must notify the IA of changes to its directors or controllers within 1 month of the change (section 64ZZD of the Ordinance)</u>	
<p>Requirement –</p> <ul style="list-style-type: none"> • Within 1 month after the date on which a person becomes a director or controller of a licensed insurance broker company, the company must notify the IA. • Within 1 month after the date on which a person ceases to be a director or controller of a licensed insurance broker company, the company must notify the IA. 	<p>Penalty – A contravention of this requirement without reasonable excuse is an offence and may attract a fine of up to level 5 (i.e. \$50,000 at present).</p>
<p>Commentary – A broker company should include procedures for notifying the IA, as part of its documented procedures for handling changes of directors or controllers. If the broker company is within a group of companies, it should implement procedures with its holding company(ies) so that its holding company(ies) can provide information of any changes of control which amount to the broker company having a new controller or ceasing to have a controller.</p>	
<p>Relevant forms for reporting the IA – S5, S6</p>	
6) <u>A licensed insurance broker company must notify the IA of its intention to cease to carry on regulated activities 3 months in advance of the cessation, and provide an auditor's report to the IA within 6 months after cessation (section 64T of the Ordinance)</u>	
<p>Requirement –</p> <ul style="list-style-type: none"> • At least 3 months before a licensed insurance broker company ceases to carry on regulated activities, the company must notify the IA in writing of its intention to do so and the intended date of cessation. • No later than 6 months after the date of cessation, the licensed insurance broker company must prepare and submit to the IA, an auditor's report on its financial statements up to the date of cessation, which also states the auditor's opinion on the company's continued compliance up to the date of cessation with the requirements in the Insurance (Financial and Other Requirements for Licensed Insurance Broker Companies) Rules (Cap. 41L) ("Broker Rules") relating to capital and net assets, professional indemnity insurance, keeping of separate client accounts and keeping of proper books and accounts. 	<p>Penalty – A contravention of this requirement without reasonable excuse is an offence and may attract a fine of up to level 5 (i.e. \$50,000 at present).</p>
<p>Commentary – A broker company which is considering ceasing to carry on regulated activities should contact the IA to discuss the steps it is required to take.</p>	

7. Client monies, auditor's appointment and Audited financial statements

<p>Requirement –</p> <ul style="list-style-type: none">• holding client monies separate from the company's monies (section 71 of the Ordinance) ("Client Monies Requirement");• appointing an auditor and serve on the IA a notice within 1 month from the previous auditor's appointment ending (section 72 of the Ordinance) ("Auditor Requirement"); and• submitting to the IA within 6 months after its financial year end, audited financial statements with the auditor's report stating whether the auditor is of the opinion that the broker company has continued to comply with the Broker Rules (relating to capital and net assets, professional indemnity insurance, keeping of separate client accounts and keeping of proper books and accounts) (section 73 of the Ordinance) ("Audited Financial Statements Requirement").	<p>Penalty – It should be noted, however, that the provisions of the Ordinance containing these requirements also provide that a contravention of these requirements is an offence and may attract criminal liability as follows:</p> <ul style="list-style-type: none">• Client Monies Requirement – liable on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 5 years or liable on summary conviction to a fine of up to level 6 (i.e. \$100,000 at present) and to imprisonment for 6 months.• Auditor Requirement – fine of up to level 3 (i.e. \$10,000 at present) and if the offence continues, a further fine of \$500 for each day during which the offence continues.• Audited Financial Statements Requirement – fine of up to level 6 (i.e. \$100,000 at present) and if the offence continues, a further fine of \$500 for each day during which the offence continues.• If a broker company fails to maintain a minimum level of net assets, its financial status or solvency may be called into question in determining whether the insurance broker company is still a fit and proper person under section 64ZZA of the Ordinance.• Pursuant to section 81 of the Ordinance, if the IA is of the opinion that a licensed insurance intermediary is not a fit and proper person, the IA may exercise, without limitation, the following powers:<ol style="list-style-type: none">a) to revoke the licence of the licensed insurance intermediary; orb) to suspend the licence of the licensed insurance intermediary, for a period or until the occurrence of an event that the IA specifies.
<p>Commentary – Compliance with these requirements is an imperative part of the trust which members of the public are entitled to have in the broker companies with whom they have dealings to source their insurance. As such, management of a broker company should put in place regular monitoring as part of the company's internal controls to ensure compliance with these requirements.</p>	

檔案編號：MC/INT/5
經電郵方式發送

致：所有持牌保險經紀公司的負責人

敬啟者：

於實施直接規管制度首年內持牌保險經紀公司常見的合規事宜

如大眾所知悉，在《保險業條例》（第 41 章）（「條例」）下有關持牌保險中介人的直接規管制度自 2019 年 9 月 23 日起至今，已生效逾一年。

基於過去 12 個月的經驗，保險業監管局（「保監局」）希望透過發出本通函提醒閣下關注於新的規管制度下在條例內適用於持牌保險經紀公司的若干規定，從而提高對該等規定的遵從及合規意識。就違反當中某些規定而言，該等行為會被視為干犯條例所訂明的罪行。因此，持牌保險經紀公司知悉這些潛在後果實為重要，以免違規。

迄今為止，保監局主要透過發出關注函及合規意見函去處理一些涉嫌違反該等規定的行為，從而提高保險中介人對該等規定的意識及就此向違規的中介人作出警告。然而，隨著新制度的實施已踏入第二年，本局的執法程序亦漸趨成熟，本局會逐步加強對該等違規行為的執法工作(惟每種情況都會根據其自身的事實和情境進行評估)。為協助閣下檢驗與這些規定相關的管控和程序是否足夠，保監局除了在下文概列有關規定之外，亦在本通函的附錄中以表格的方式列載相關詳情，並提供一些合規意見以供閣下參考。

本通函並非旨在提供全面的指引（亦不構成保監局豁免行使條例下的任何權利及權力）。若閣下對本函所述的規定有任何疑問，請與保監局聯絡（或自行尋求法律意見）。

I. 對持牌保險經紀公司的人員的限制

條例第 64K 條對任何符合以下條件的人士施加限制：(a)屬持牌保險經紀公司的董事或僱員；並(b)管理或控制關乎該經紀公司的受規管活動的任何事宜的人。當中的限制指出有關人士不得兼任：

- (a) 持牌保險代理機構的經營人或合夥人；
- (b) 持牌個人保險代理；
- (c) 持牌業務代表（代理人）；或
- (d) 持牌保險代理機構的董事或僱員，而該董事或僱員管理或控制關乎該機構的受規管活動的任何事宜。

在過去 12 個月內，保監局接獲不少關於該限制的查詢，尤其是於何等情況下一名人士可兼任一間保險代理公司及一間保險經紀公司的董事會董事。就此，保監局於附錄一就該事宜提供指引。任何人士若現時兼任一間持牌保險經紀公司及一間持牌保險代理機構的董事會董事（或僱員），請務必留意本指引並採取必要的補救措施，因違反條例第 64K 條的規定即屬犯罪。

II. 關於持牌保險經紀就若干事項通知保監局的規定

條例包括以下六項行政匯報規定：

- i) 如持牌保險經紀公司、其持牌業務代表(經紀)及負責人就其姓名或名稱、業務地址或住址、電話號碼或電子郵件地址有任何改變，須在改變的日期後 14 日內，向保監局具報該項改變。
- ii) 如持牌保險經紀公司擬委任業務代表(經紀)進行一個或多於一個業務系列的受規管活動，該公司須在作出擬委任最少 14 日前，以書面向保監局具報作出委任的意向。
- iii) 如持牌保險經紀公司終止任何業務代表(經紀)的委任，須在委任終止日期後 14 日內，以書面向保監局具報該項終止委任。
- iv) 如持牌保險經紀公司終止負責人的委任，須在委任終止後 14 日內向保監局具報該項終止委任。
- v) 如持牌保險經紀公司的董事或控權人有任何改變，須在改變後 1 個月內向保監局具報該項改變。
- vi) 持牌保險經紀公司在停止進行受規管活動 3 個月前，須向保監局具報其停止活動的意向，並在停止活動日期後 6 個月內向保監局提交其核數師報告。

雖然該等匯報規定屬行政性質，惟根據條例，任何人若違反該等規定即屬犯罪。保監局希望無需投入大量資源對上述違規行為進行執法工作，惟只有在該等規定得到遵循的情況下，方能達致此目標。有關上述規定的進一步資料，請參見附錄二。

III. 持牌保險經紀公司委任負責人的需要

根據條例第 64ZO 條，如持牌保險經紀公司不再有負責人，保監局可將該公司的牌照暫時吊銷(保監局會向該公司事先發出書面通知，告知本局擬暫時吊銷該公司的牌照，並給予該公司作陳述的機會)，並在暫時吊銷生效 90 日後撤銷牌照。如持牌保險經紀公司不再有負責人，則不僅應在終止委任該負責人後 14 日內向保監局具報該終止委任（見上文 II 節中的匯報規定），亦應在合理切實可行範圍內盡快委任新的負責人。

IV. 客戶款項、核數師的委任、經審計財務報表及淨資產

以下規定是由自律規管理制度承傳至新的規管理制度，持牌保險經紀公司理應熟悉該等規定：

- i) **客戶款項的規定** – 經紀公司須將客戶款項與該公司的款項分開持有，並根據條例第 71 條維持客戶帳戶。

- ii) **核數師的規定** – 如核數師的委任終結，經紀公司須根據條例第 72 條在自該項委任終結起計 1 個月內(a)委任一名新核數師；及(b)將該項終結及新委任的通知書送達保監局。
- iii) **經審計財務報表的規定** – 經紀公司須在其財政年度終結後的 6 個月內，向保監局提交經審計財務報表，當中的核數師報告須述明該核數師是否認為該經紀公司有繼續遵守《保險業（持牌保險經紀公司的財務及其他要求）規則》（第 41L 章）（「《經紀規則》」）有關資本及淨資產、專業彌償保險、備存獨立客戶帳目以及備存妥善簿冊及帳目的規則（條例第 73 條）。

同樣地，任何人若違反該等規定，即被視為觸犯條例所訂明的罪行，故遵守該等規定實為至關重要。此外，經紀公司須持續監控其有否遵守《經紀規則》關於資本及淨資產、專業彌償保險（包括彌償限額、自付額、保額自動復效條款）、備存獨立客戶帳目以及備存妥善簿冊及帳目的規定。作為與公眾就購買保險具業務往來的經紀公司，遵守該等規定實為公眾對其信任必不可少的一環。

結語

誠然，本通函載列的規定並未詳列適用於持牌保險經紀公司的全部規定。經紀公司亦應知悉《經紀規則》、《持牌保險經紀操守守則》及其他由保監局發出對其適用的個別指引中的規定，以及了解經紀公司如違反有關規定所可能需承受紀律處分的後果。基於經紀公司若違反本通函載列的規定或會帶來法律後果，經紀公司應藉此機會核實其程序及管控措施是否充足，以確保日後可持續遵守該等規定。

如對本通函的內容有任何疑問，請電郵至 brokers@ia.org.hk。

郭家華
市場行為部主管（署任）及法律總監
保險業監管局

副本抄送：
香港保險業聯會
香港專業保險經紀協會
香港保險顧問聯會

2020 年 12 月 18 日

附錄一

《保險業條例》(第 41 章) (「條例」) 第 64K 條 – 對持牌保險經紀公司的人員的限制

規定 – 條例第 64K 條對任何符合以下條件的人士施加限制：(a)屬持牌保險經紀公司的董事或僱員；並(b)管理或控制關乎該經紀公司的受規管活動的任何事宜的人。

條例第 64K(2)條的限制指有關人士不得兼任：

- (a) 持牌保險代理機構的經營人或合夥人；
- (b) 持牌個人保險代理；
- (c) 持牌業務代表（代理人）；或
- (d) 持牌保險代理機構的董事或僱員，而該董事或僱員管理或控制關乎該機構的受規管活動的任何事宜。

違規罰則 – 任何人違反該限制，即屬犯罪，可處最高第 6 級罰款（目前為港幣 \$100,000）及監禁 6 個月。

意見及指引 – 在過去 12 個月內，保監局接獲不少關於該限制的查詢，尤其是於何等情況下一名人士可兼任一間保險代理公司及一間保險經紀公司的董事會董事。

在釐清同時兼任該等職位的董事是否會被視為違反該規定時，需考慮該董事在相關代理公司及相關經紀公司所擔任的角色，是否參與管理或控制與該代理公司及該經紀公司受規管活動有關的事宜。鑑於董事會的角色在普遍的情況下是要負責一間公司的管理，因此出現擔任代理公司或經紀公司董事的人士而並不參與管理或控制與該代理公司或該經紀公司的受規管活動的情況屬罕見及特殊。故此，保監局建議該等人士應避免同時兼任保險代理公司及保險經紀公司的董事，因違反該限制的人士須承擔刑事責任。

解決此問題的唯一替代方案是確保有關公司已實施明確的預防措施，使該人士在同時兼任兩間公司董事時，僅可參與管理或控制其中一間公司的受規管活動，而該人士亦應被禁止其作為董事參與管理或控制另一公司的受規管活動。

在考慮一名董事有否參與管理或控制一間代理公司或一間經紀公司的受規管活動時，保監局將採取「實質重於形式」的方法，以理解董事在該代理公司或該經紀公司中扮演的實際角色。就此，保監局將考慮以下因素及問題：

- i) 該代理公司或該經紀公司的董事會是否有足夠數量的董事，使其他董事負責管理或控制該代理公司或該經紀公司的受規管活動。舉例而言，如某人是一間代理公司或經紀公司的唯一董事，他將無可避免地會參與管理或控制該代理公司或經紀公司的受規管活動。然而，若該代理公司或經紀公司的董事會有五名董事，而該等董事的角色有明確界定，則情況或會有所不同。一般而言，若該代理公司或該經紀公司董事會董事的人數愈少，任何一名董事未有參與管理或控制該代理公司或經紀公司的受規管活動的機會將會愈低。
- ii) 該董事的受限制職能（即不參與管理或控制受規管活動）有否透過董事會決議案或在董事合約內明確記錄。
- iii) 該董事的受限制職能能否在該代理公司或該經紀公司的文件查冊及記錄內反映（例如董事會會議記錄應反映該董事並沒有參與討論涉及受規管活動的管理、

業務代表的僱傭合約不應由該董事簽署、以及該董事不應代表該代理公司或經紀公司與保險公司或保單持有人溝通）。

iv) 保監局與該代理公司或該經紀公司的負責人、業務代表或其他員工進行的討論，能否反映該董事在該代理公司或經紀公司擔任的職能是受到限制。

v) 任何其他有關情況，例如：

- 如該代理公司或經紀公司擁有受規管活動以外的其他業務，則該董事可能參與管理或控制僅與該等有關的其他業務。
- 如該人士擔任董事的代理公司及經紀公司為一間跨國集團或金融集團的附屬公司，而該董事亦為最終控股公司的董事會成員（或僱員），而其在該附屬的代理公司或經紀公司的董事職位是為了能使該人士從集團的角度提供監督，則可能表明該董事（或僱員）並未參與管理或控制該代理公司或經紀公司的受規管活動。

附錄二

實施直接規管制度首年內持牌保險經紀常見的合規事宜

<p>1) 向保險業監管局（「保監局」）具報詳情改變（《保險業條例》（第 41 章）（「條例」）第 64P 條）</p>	
<p>規定 – 如持牌保險經紀公司、其持牌業務代表（經紀）或其負責人就以下任何詳情有任何改變，須在改變的日期後 14 日內，以書面方式向保監局具報該項改變：</p> <p>(a) 姓名或名稱； (b) 業務地址或住址； (c) 電話號碼；及 (d) 電子郵件地址。</p>	<p>處罰 – 如無合理辯解而違反該規定，即屬犯罪，可處最高第 5 級罰款（目前為港幣 \$50,000）。</p>
<p>意見 – 經紀公司應有（而其負責人應確保經紀公司有）制度確保獲其委任的業務代表（經紀）及負責人知悉該規定，並應定期（例如透過定期的電郵通知）提醒他們注意，以便在規定的 14 日期間內向保監局具報有關改變。</p>	
<p>向保監局報告的相關表格 – N3、N4</p>	
<p>2) 持牌保險經紀公司須在擬委任新的業務代表(經紀)最少 14 日前，向保監局具報作出委任的意向（條例第 64Q 條）</p>	
<p>規定 – 如持牌保險經紀公司擬委任任何業務代表(經紀)，以該公司業務代表(經紀)的身分進行一個或多於一個業務系列的受規管活動，該公司須在作出委任最少 14 日前，以書面向保監局具報作出委任的意向。</p>	<p>處罰 – 違反該規定即屬犯罪，可處最高第 5 級罰款（目前為港幣 \$50,000）。</p>
<p>意見 – 保監局建議經紀公司在其內部合規及入職程序中訂明須向保監局具報委任業務代表(經紀)的意向，以確保其充分知悉該規定，並能夠在作出委任最少 14 日前，向保監局具報作出委任的意向。</p>	
<p>向保監局報告的相關表格 – N2</p>	

3) 持牌保險經紀公司須在終止任何業務代表(經紀)的委任後 14 日內向保監局具報(條例第 64R 條)

規定 – 如持牌保險經紀公司終止任何業務代表(經紀)的委任，須在委任終止的日期後 14 日內，以書面向保監局具報該項終止委任。

處罰 – 違反該規定即屬犯罪，可處最高第 5 級罰款（目前為港幣\$50,000）。

意見 – 保監局建議經紀公司在其人力資源程序中，訂明在終止任何業務代表(經紀)的委任後 14 日期間內須向保監局具報的步驟。

向保監局報告的相關表格 – N1、S7

4) 持牌保險經紀公司須在終止負責人的委任後 14 日內向保監局具報(條例第 64R 條)

規定 – 如持牌保險經紀公司終止負責人的委任，須在委任終止的日期後 14 日內，以書面向保監局具報該項終止委任。

處罰 – 違反該規定即屬犯罪，可處最高第 5 級罰款（目前為港幣\$50,000）。

意見 – 經紀公司的董事會及控權人須注意該規定，並負責確保公司在終止負責人的委任時遵守該規定。最佳的業務常規是編製一份有關在終止負責人委任時需處理的事項清單，並將該具報規定列入清單中。

經紀公司亦應留意，根據條例第 64ZO 條，如持牌保險經紀公司不再有負責人，則保監局可暫時吊銷該公司的牌照(保監局會向該公司事先發出書面通知，告知保監局擬暫時吊銷該公司的牌照，並給予該公司作陳述的機會)，並在暫時吊銷生效 90 日後撤銷該牌照。

向保監局報告的相關表格 – N1、S7

5) 持牌保險經紀公司須在其董事或控權人改變後 1 個月內向保監局具報(條例第 64ZZD 條)

規定 –

- 如某人在某日期成為某持牌保險經紀公司的董事或控權人，該公司須在該日期後 1 個月內向保監局具報該事宜。
- 如某人在某日期不再是某持牌保險經紀公司的董事或控權人，該公司須在該日期後 1 個月內向保監局具報該事宜。

處罰 – 如無合理辯解而違反該規定，即屬犯罪，可處最高第 5 級罰款（目前為港幣\$50,000）。

意見 – 經紀公司應在其處理董事或控權人委任或改變的書面程序中訂明向保監局具報的程序。如該經紀公司屬於一個集團公司以內，則應與其控股公司訂定程序，確保其控股公司在發生控制權改變以致經紀公司有新的控權人或原有的控權人不再為該經紀公司的控權人時，提供有關改變的資料。

向保監局報告的相關表格 – S5、S6

6) 持牌保險經紀公司在停止進行受規管活動 3 個月前，須向保監局具報停止活動的意向，並在停止活動日期後 6 個月內向保監局提交其核數師報告（條例第 64T 條）

規定 –

- 持牌保險經紀公司在停止進行受規管活動最少 3 個月前，須以書面向保監局具報停止活動的意向，以及擬停止活動的日期。
- 持牌保險經紀公司須在停止活動日期後 6 個月內，向保監局擬備及提交有關其截至停止活動日期為止的財務報表的核數師報告，並於當中述明核數師認為該公司於截至停止活動日期為止有繼續遵守《保險業（持牌保險經紀公司的財務及其他要求）規則》（第 41L 章）（「《經紀規則》」）有關資本及淨資產、專業彌償保險、備存獨立客戶帳目以及備存妥善簿冊及帳目的規定的意見。

處罰 –如無合理辯解而違反該規定，即屬犯罪，可處最高第 5 級罰款（目前為港幣\$50,000）。

意見 –如持牌保險經紀公司考慮停止進行受規管活動，應聯絡保監局討論其須採取的步驟。

7) 客戶款項、核數師的委任及經審計財務報表

規定 –持牌保險經紀公司須

- 將客戶款項與該公司的款項分開持有（條例第 71 條）（「客戶款項的規定」）；
- 委任核數師，及自上一任核數師的委任終結起 1 個月內將通知書送達保監局（條例第 72 條）（「核數師的規定」）；及
- 在其財政年度終結後的 6 個月內，向保監局提交經審計財務報表，當中的核數師報告須述明該核數師是否認為該經紀公司有繼續遵守《經紀規則》（有關資本及淨資產、專業彌償保險、備存獨立客戶帳目以及備存妥善簿冊及帳目的規定）（條例第 73 條）（「經審計財務報表的規定」）。

處罰 –持牌保險經紀公司應注意，如違反上述規定，即屬犯罪，可能須承擔以下刑事責任：

- **客戶款項的規定 –**一經循公訴程序定罪，可處罰款港幣\$1,000,000 及監禁 5 年，或一經循簡易程序定罪，可處第 6 級罰款（目前為港幣\$100,000）及監禁 6 個月。
- **核數師的規定 –**可處第 3 級罰款（目前為港幣\$10,000），如屬持續罪行，則可就該罪行持續期間的每一日，另處罰款港幣\$500。
- **經審計財務報表的規定 –**可處第 6 級罰款（目前為港幣\$100,000），如屬持續罪行，則可就該罪行持續期間的每一日，另處罰款港幣\$500。
- 如經紀公司未能將淨資產維持於最低限度水平，保監局在根據條例第 64ZZA 條決定該保險經紀公司是否仍為適當人選時，將就其財務狀況或償債能力有疑問。

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| | <ul style="list-style-type: none">● 根據條例第 81 條，如保監局認為某持牌保險中介人不是適當人選，則保監局可行使（但不限於）以下權力：<ul style="list-style-type: none">a) 撤銷該持牌保險中介人的牌照；或b) 暫時吊銷該持牌保險中介人的牌照，直至保監局指明的期間結束或保監局指明的事件發生為止。 |
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 | **意見一**作為與公眾就購買保險具業務往來的經紀公司，遵守該等規定實為公眾對其信任至關重要的一環。因此，經紀公司的管理層應將定期監察納入公司的內部管控措施中，以確保遵守該等規定。 |