

24 November 2017

Our Ref: INS/LEG/4/1

By e-mail

To: Chief Executives of all authorized insurers

Dear Sirs,

Guideline on “Fit and Proper” Criteria under the Insurance Ordinance (Cap. 41) (“GL4”)

Pursuant to section 133(1) of the Insurance Ordinance (“the Ordinance”), the revised GL4 is gazetted by the Insurance Authority (“IA”) on 24 November 2017. The revised Guideline comes into operation immediately.

Some insurers have recently sought the IA’s clarification on a couple of areas in relation to change of controllers. We have therefore made some revisions to GL4 to clarify a few issues. A copy of the revised GL4 (showing marked-up changes against the previous version) is enclosed for your information. The key revisions to GL4 are set out below for your easy reference:

1. For the purposes of GL4, we have added a new paragraph 2.3 to define “shareholder controllers” to mean a controller defined under section 9(1)(a)(iii)(B) or 13B(1) of the Ordinance as the case may be.
2. In determining whether a person constitutes a “controller” under section 9 or 13B of the Ordinance, one should take into account the meaning of “associate” as defined under section 9(4) of the Ordinance.

The existing Annex to GL4 contains a summary of prior approval requirements for appointments for certain positions under the Ordinance, which indicates that a change of immediate shareholder controller of an authorized insurer which is incorporated in Hong Kong is subject to the IA’s prior no-objection under section 13B. We note that there may be some misunderstanding about that statement that section 13B applies only to change of the immediate shareholder controller and does not apply to change of intermediate and/or ultimate shareholder of the insurer.

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We have therefore revised the Annex and made other consequential changes in the body of GL4 to clarify that the IA adopts a “look-through” approach in determining whether a person constitutes a “controller” under section 9 or 13B of the Ordinance.

3. Shareholder controllers of authorized insurers may include body corporates as well as individuals. To ensure a level playing field and prevent possible circumvention, we have added a new paragraph 4.4 in GL4 to set out the matters that the IA will consider when determining the fitness and properness of individual shareholder controllers. These matters include a proposed individual shareholder controller’s integrity and commitment to the development of the authorized insurer concerned in which he has control. In particular, the IA will take into account whether he has financial integrity and sufficient financial resources to acquire or support the operations of the insurer, and whether the business plan for the insurer is realistic and viable.
4. A new category of “Other controllers” is added to GL4. This is to remind insurers that controllers (other than “shareholder controllers” and “section 13A controllers” as referred to in the revised GL4) are subject to notification requirements under section 14 of the Ordinance.

We trust that the revised GL4 will assist insurers to better understand the requirements under the Ordinance and the IA’s expectation.

If you have any enquiries on the revised GL4, please feel free to contact your case officers concerned or our Miss Lily Chan at 2867 4631.

Yours faithfully,

Raymond Tam
Executive Director
Policy and Development Division
Insurance Authority

Encl.

c.c. Chairman, The Hong Kong Federation of Insurers