

**GUIDELINE ON EXERCISING POWER
TO IMPOSE PECUNIARY PENALTY
IN RESPECT OF
AUTHORIZED INSURERS UNDER THE
INSURANCE ORDINANCE
(CAP. 41)**

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1. Introduction

- 1.1 This Guideline is made pursuant to section 41R of the Insurance Ordinance (Cap. 41) (“the Ordinance”). Under section 41P of the Ordinance, the Insurance Authority (“the IA”) may exercise disciplinary powers in respect of an authorized insurer if the insurer is or was guilty of misconduct, or when a person is or was, in the opinion of the IA, not fit and proper to hold the position of a director or controller of the insurer.
- 1.2 Pursuant to section 41P of the Ordinance, the IA may exercise, amongst other powers, the power to order under section 41P(2)(e) for payment of pecuniary penalty by an authorized insurer.
- 1.3 Under section 41R, in exercising the power to impose pecuniary penalty under section 41P of the Ordinance, the IA shall have regard to this Guideline which indicates the way in which it proposes to exercise that power.

2. Scope of Application

- 2.1 This Guideline applies to the following:
- (a) an insurer authorized under the Ordinance;
 - (b) Lloyd’s;
 - (c) a member of Lloyd’s who carries on insurance business in Hong Kong; and
 - (d) the members of Lloyd’s taken together who carry on insurance business in Hong Kong.
- 2.2 In this Guideline, unless the context otherwise specifies, a reference to an authorized insurer is a reference to those under sub-paragraphs 2.1(a) to (d) and a reference to a controller includes a reference to the authorized representative appointed by Lloyd’s under section 50B of the Ordinance.

3. Considerations in Exercising IA's Power to Impose Pecuniary Penalty

3.1 The principal purposes of imposing a pecuniary penalty are:

- (a) to promote and encourage the adoption of proper standards of conduct and sound and prudent business practices by authorized insurers so as to protect policy holders, potential policy holders and the public interest by deterring authorized insurers which have engaged in misconduct from engaging in further misconduct, and to help deter other authorized insurers from engaging in similar misconduct;
- (b) to deter authorized insurers from engaging a person who is not fit and proper to hold the position of director or controller of authorized insurers;
- (c) to sanction authorized insurers which engaged a person who was not fit and proper to hold the position of director or controller of the authorized insurers; and
- (d) to ensure that an authorized insurer guilty of misconduct should not benefit from the misconduct.

3.2 The IA regards a pecuniary penalty as a more severe sanction than a reprimand. The IA will not impose a pecuniary penalty if the circumstances of a particular case only warrant a reprimand and the deterrence may be effectively achieved by issuing a reprimand.

3.3 A pecuniary penalty should be effective, proportionate and fair. The more serious the conduct, the greater the likelihood that the IA will impose a pecuniary penalty and that the amount of the penalty will be higher. When considering whether to impose a pecuniary penalty and the amount of the penalty, the IA will consider all the circumstances of the particular case, including relevant factors listed below. These factors are not exhaustive and not all of these factors may be applicable in a particular case, and there may be other factors, not listed, that are relevant.

- (a) *The nature, seriousness and impact of the conduct, including:*
 - (i) nature of the conduct (e.g. whether it was intentional, reckless,

- fraudulent, negligent or technical breach);
 - (ii) impact of the conduct on the interests of policy holders, potential policy holders or the public interest;
 - (iii) costs imposed on and loss or risk of loss caused to policy holders and/or potential policy holders;
 - (iv) duration and frequency of the conduct;
 - (v) the amount of profits gained or loss avoided;
 - (vi) whether the conduct is potentially damaging or detrimental to the integrity and stability of the insurance industry, and/or the reputation of Hong Kong as an international financial centre;
 - (vii) whether there are a number of smaller issues, which individually may not justify a disciplinary action, but which do so when taken collectively;
 - (viii) whether the conduct is or was part of a more serious misconduct;
 - (ix) whether the conduct was engaged in by the authorized insurer alone or as a group and in the latter case, the insurer's role in that group;
 - (x) the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the conduct;
 - (xi) the level of senior management involved and the extent of their involvement;
 - (xii) whether there is a breach of fiduciary duty; and
 - (xiii) revealing of serious / systemic weaknesses of management systems or internal control failures.
- (b) *The behaviour of the authorized insurer since the conduct was identified, including:*
- (i) manner of reporting the conduct by the authorized insurer (e.g. whether the insurer takes a proactive approach and has timely and comprehensively reported the conduct to the IA or another relevant regulatory authority);
 - (ii) whether the authorized insurer attempted to conceal the conduct;
 - (iii) the degree of co-operation with the IA and other authorities;
 - (iv) remedial steps taken since the identification of the conduct; and
 - (v) the likelihood that the authorized insurer will engage in the same type of conduct in the future.
- (c) *The previous disciplinary record and compliance history of the*

authorized insurer, including:

- (i) previous disciplinary record and compliance history of the authorized insurer; and
- (ii) whether the authorized insurer has previously undertaken not to engage in a particular conduct.

(d) Other relevant factors

- (i) guidelines issued by the IA – generally, the IA will not take disciplinary action against an authorized insurer for conduct that it considers to be in line with any guideline that was current at the time of the conduct in question;
- (ii) the IA’s action or decision in previous similar cases;
- (iii) financial jeopardy – generally, a pecuniary penalty should not have the likely effect of putting the authorized insurer concerned in financial jeopardy so that the interests of policy holders, potential policy holders or the public interest may be adversely affected;
- (iv) actions taken by other domestic or overseas regulatory authorities in respect of the conduct in question; and
- (v) result or likely result of any civil action taken or likely to be taken against the authorized insurer in respect of the conduct in question.

4. Commencement

4.1 This Guideline shall take effect from 26 June 2017.

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