

30 August 2019

Our Ref : MC/INT/5

To: Chief Executives of all authorized insurers

By Email

Dear Sirs,

Prior Approval of Key Person in Intermediary Management Function

Pursuant to the Insurance Companies (Amendment) Ordinance 2015 (Commencement) Notice 2019, the provisions of the Insurance Companies (Amendment) Ordinance 2015 primarily related to the new regulatory regime for licensed insurance intermediaries, will come into operation on 23 September 2019 (“Commencement Date”). These provisions include the new section 13AE(12)(f) of the Insurance Ordinance (Cap. 41) (“IO”) relating to the intermediary management function, being one of the control functions of an authorized insurer referenced in section 13AE(12) of the IO.

With effect from the Commencement Date, an authorized insurer (which is not a captive insurer) must not appoint an individual as a key person in control function for its intermediary management function (“key person in intermediary management function”), unless the IA has approved the appointment under section 13AE(2) of the IO. The IA must not approve such appointment unless it is satisfied that the individual is a fit and proper person to be so appointed. Similar to key persons in other control functions, the IA will have regard to the matters set out in section 14A of the IO and the Guideline on “Fit and Proper” Criteria under the Insurance Ordinance (GL4) in determining whether a (proposed) key person in intermediary management function is a fit and proper person.

I. What is the Intermediary Management Function?

The new section 13AE(12)(f) of the IO provides that, in relation to an authorized insurer that enters into contracts of insurance through licensed insurance intermediaries or accepts referral of insurance business from licensed insurance intermediaries, the intermediary management function is a function to establish and maintain internal control measures for:

- (i) administering the licensed insurance agencies and licensed individual insurance agents appointed by the insurer in relation to the regulated activities carried on by them;
- (ii) monitoring the compliance with the IO by the licensed insurance agencies and licensed individual insurance agents appointed by the insurer; and

- (iii) ensuring that the arrangements by the licensed insurance intermediaries for the insurance business referred to the insurer comply with:
- A. the requirements of the IO; and
 - B. the requirements imposed by the IA in any code or guideline published under section 95 or 133 of the IO¹.

II. Who is a Key Person in Intermediary Management Function?

A key person in intermediary management function of an authorized insurer, is an individual who is responsible for the performance of the insurer's intermediary management function², where such function is likely to enable the individual to exercise a significant influence on the business carried on by the insurer.

A key person in intermediary management function of an authorized insurer is expected to be solely responsible or jointly responsible with other key persons in control functions for establishing and maintaining the internal control measures referenced in (i) to (iii) in Section I above. An authorized insurer can appoint more than one key person in intermediary management function for discharging the relevant function depending on its operational needs and business strategies.

III. What is the Role of a Key Person in Intermediary Management Function?

As indicated above, the role of a key person in intermediary management function of an authorized insurer is to establish and maintain the internal control measures referenced in (i) to (iii) in Section I above. Key persons in intermediary management function would therefore need to be familiar with the relevant provisions of the IO and rules, codes and guidelines³ issued by the IA in relation to licensed insurance intermediaries. The internal control measures, for which

¹ For administration and compliance issues relating to licensed individual insurance agents and licensed insurance agencies appointed by an authorized insurer, the relevant internal control measures are expected to cover the relevant regulatory requirements prescribed by the IA in the relevant regulatory instruments (where practicable) including but not limited to:

- (i) Insurance (Maximum Number of Authorized Insurers) Rules;
- (ii) Guideline on "Fit and Proper" Criteria for Licensed Insurance Intermediaries under the Insurance Ordinance (Cap. 41);
- (iii) Code of Conduct for Licensed Insurance Agents;
- (iv) Guideline on Continuing Professional Development for Licensed Insurance Intermediaries; and
- (v) any guidelines relating to marketing and distribution of insurance products applicable to licensed insurance agents.

For compliance issues relating to licensed insurance brokers, the relevant internal control measures are expected to reveal non-compliance with the relevant regulatory requirements relating to marketing and distribution of insurance products applicable to licensed insurance brokers issued by the IA which can reasonably be reflected from the insurance application forms and documents submitted by the insurance broker companies concerned or complaints against the insurance brokers concerned.

² For an authorized insurer which is incorporated outside Hong Kong, a key person in intermediary management function means an individual responsible for the performance of the intermediary management function for the insurer in respect of so much of its insurance business as is carried or within Hong Kong.

³ See footnote 1.

the key person in intermediary management function is responsible for establishing and maintaining, should ensure that the insurer adheres to the principle of treating clients fairly in its dealings with clients through licensed insurance intermediaries (i.e. in relation to contracts of insurance entered into by the insurer through licensed insurance intermediaries or referrals of business accepted by the insurer from licensed insurance intermediaries).

The nature and extent of the internal control measures to be established and maintained by the key person in intermediary management function will depend on a number of factors including:

- (i) the nature of the distribution channel concerned (licensed individual insurance agents⁴/ licensed insurance agencies (bank or non-bank channel)/licensed insurance broker companies); and
- (ii) the volume, nature and complexity of insurance business referred by licensed insurance intermediaries to the insurer, and the degree of risk associated with such business.

Such internal control measures should aim to address the risk of mis-selling and broadly cover: all relevant distribution models (for product marketing through licensed insurance intermediaries) utilized by an authorized insurer; the selection, onboarding and ongoing administration of licensed insurance intermediaries by the insurer; provision of information and advice to clients by licensed insurance intermediaries; protecting confidentiality of clients' information (in respect of clients with whom the insurer has dealings through licensed insurance intermediaries); and the handling of complaints concerning licensed insurance intermediaries. The internal control measures to be established and maintained should therefore include measures:

- (i) to ensure an adequate level of protection for policy holders and potential policy holders irrespective of the (licensed insurance intermediary) distribution models utilized by the insurer and to ensure the distribution models adopted are appropriate for the insurance products of the insurer;
- (ii) to conduct due diligence on licensed insurance agents⁵ and licensed insurance brokers (as appropriate), to have written agreements⁶ in place in respect of business dealings with

⁴ This would include any employees of an authorized insurer who are licensed individual insurance agents of the insurer. Please refer to the Explanatory Note on Licensing Requirements for Employees of Authorized Insurers issued by the IA for details.

⁵ For example, there should be effective internal controls to ensure that individuals to be appointed by an authorized insurer as licensed individual insurance agents comply with the minimum education and qualification requirements specified in the Guideline on "Fit and Proper" Criteria for Licensed Insurance Intermediaries under the Insurance Ordinance (Cap. 41). For an individual who does not possess the specified education/qualification and is not exempted from such education requirements, adequate steps should be taken to justify the education/qualification presented by the individual is comparable to or of a higher quality to that specified in that Guideline.

⁶ Written agreements between the authorized insurer and its licensed insurance agents would be a necessity. With regards to licensed insurance broker companies, authorized insurers should have in place written agreements or such other control measures as are necessary to ensure clarity of the respective roles and obligations of the insurer and broker companies.

licensed insurance intermediaries to clarify their respective roles and obligations, and to ensure that selected licensed insurance intermediaries continue to remain suitable to promote the insurance products of the insurer;

- (iii) to ensure proper administration of licensed insurance agents and their compliance with the continuing professional development requirements prescribed by the IA;
- (iv) to provide adequate product training for licensed insurance intermediaries;
- (v) to provide adequate, accurate and updated information to licensed insurance intermediaries about insurance products of the insurer, including the key features and target market for the products;
- (vi) to ensure complaints concerning licensed insurance intermediaries are handled effectively and that the complaints handling procedures are properly supervised and appropriately resourced, to identify any issues that need to be addressed by analyzing such complaints, and to communicate with the IA on matters concerning any serious or frequent complaints against a licensed insurance intermediary.

IV. Does every authorized insurer need to appoint a Key Person in Intermediary Management Function?

The question of whether or not to appoint a key person in intermediary management function is a decision for the board of directors (“Board”) of an authorized insurer and its controller to make, after giving due consideration to whether such role is required as part of the insurer’s corporate governance structure⁷ (see also Section V on “Board Oversight” below). In this regard, it is incumbent on the Board and controller of the insurer to assess the need to appoint an individual to serve as a key person in intermediary management function, as part of the insurer’s corporate governance structure. If, based on such assessment, an insurer decides not to appoint such position, it should be able (when asked) to explain to the IA the reasons for not making such appointment and to demonstrate how its corporate governance structure and internal controls remain adequate.

There are certain exceptions where an authorized insurer does not need to appoint a key person in intermediary management function (or may do so without the IA’s prior approval). These are as follows:

- (i) Captive insurers are exempt from the requirements in relation to key persons in control functions under section 13AE of the IO.

⁷ It is recognized that a number of authorized insurers (in particular those with agency forces) already have persons appointed to perform the equivalent of the key person in intermediary management function’s role, as part of their current corporate governance structures, and would be positioned to nominate these persons to be appointed as key persons in intermediary management function.

- (ii) If an authorized insurer does not enter into contracts of insurance through licensed insurance intermediaries or accept referral of insurance business from licensed insurance intermediaries, it does not need to appoint a key person in intermediary management function.
- (iii) Section 13AE(12) of the IO defines a control function as a function “*that is likely to enable the individual responsible for the performance of the function to exercise a significant influence on the business carried on by the insurer.*” Whether the intermediary management function of an authorized insurer would enable the person responsible for its performance to significantly influence the insurer’s business would be a question of fact and would depend on factors such as (and without limitation): whether the insurer has appointed any licensed insurance agents (which would suggest a key person in intermediary management function is likely required), the premiums pertaining to insurance business referred by licensed insurance intermediaries and the number of insurance policies involved in such business. If, based on these and other relevant factors, the intermediary management function is such that a person responsible for its performance would not be able to exercise significant influence on the business carried on by an insurer, then the insurer would not need to appoint a key person in intermediary management function.

V. Board Oversight

In considering whether to appoint a key person in intermediary management function, an authorized insurer should also have regard to “The Guideline on the Corporate Governance of Authorized Insurers” (GL 10) which sets out high-level responsibilities of the Board of an authorized insurer concerning the roles and responsibilities of key persons in various control functions. For an insurer having significant business dealings with licensed insurance agents and/or licensed insurance brokers, a proper governance structure is expected to be established, denoted by clear lines of reporting and division of responsibilities in respect of its appointed key persons in intermediary management function within the insurer’s organizational structure. The Board should maintain effective oversight of the performance of appointed key persons in intermediary management function.

VI. Applications for Approval to Appoint Key Persons in Intermediary Management Function and Transitional Arrangements

In view of the proximity of the Commencement Date of the new regulatory regime, the IA adopts the following **transitional arrangements** to allow authorized insurers additional time to fulfil all the requisite formalities for submitting applications for approval to appoint their key persons in intermediary management function:

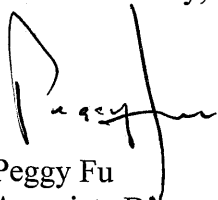
- (i) If an authorized insurer has already designated an individual to be responsible for its intermediary management function and intends to appoint that individual to be its key person in intermediary management function with effect from the Commencement Date,

the insurer should notify the IA of its intention and the name, position and department of the individual using the attached Reply Slip (with the checkbox Option 1 selected) and return it to the IA on or before **20 September 2019**. The insurer should then submit to the IA the full application⁸ for the individual to be the key person in intermediary management function (i.e. submission of the Form A1 in Schedule 4 and information required for the application under section 13AE(3) of the IO and payment of the prescribed fee) on or before **20 December 2019**.

- (ii) If an authorized insurer intends to appoint its controller (as defined in section 13A(12)) to be the key person in intermediary management function, it will still be necessary for the insurer to go through the formalities of obtaining the IA's approval for the appointment. Accordingly, the insurer should indicate to the IA its intention to appoint its controller as the key person in intermediary management function using the attached Reply Slip (with the checkbox Option 2 selected) and return it to the IA on or before **20 September 2019**. The insurer should then submit to the IA the full application⁹ for the controller to be the key person in intermediary management function (i.e. submission of the Form A1 in Schedule 4 and information required for the application under section 13AE(3) of the IO and payment of the prescribed fee) on or before **20 December 2019**.
- (iii) If an authorized insurer does not intend to appoint a key person in intermediary management function (for example, for any of the reasons given in Section IV above), we would be obliged if the insurer would notify the IA of its intention using the attached Reply Slip (with appropriate checkbox under Option 3 selected) and return it to the IA on or before **20 September 2019**.

Should you have any enquiries regarding the transitional arrangements or application procedures/requirements set out in this letter, please contact your case officer. For clarification on the intermediary management function, please contact the undersigned at 3899 9789.

Yours faithfully,



Peggy Fu
Associate Director
Market Conduct Division
Insurance Authority

c.c. The Hong Kong Federation of Insurers

Encl.

⁸ The information required and procedures for the application are the same as that for key persons in other control functions.

⁹ See footnote 8.

Reply Slip

Prior Approval of Key Person in Intermediary Management Function

File No.: _____

Name of Insurer: _____ (“Insurer”)

Please tick the appropriate box.

Option 1

- ☐ The Insurer proposes to appoint the following individuals as its Key Persons in Intermediary Management Function (within meaning of section 13AE(12) of the Insurance Ordinance).

Name of Individual	Position	Department

Option 2

- ☐ The Insurer proposes to appoint its controller as its Key Person in Intermediary Management Function.

Option 3

The Insurer does not propose to appoint any Key Person in Intermediary Management Function because:

- ☐ The Insurer does not enter into contracts of insurance through licensed insurance intermediaries and does not accept referral of insurance business from licensed insurance intermediaries.
- ☐ The intermediary management function of the Insurer is unlikely to provide the person responsible for the performance of the function with significant influence on the business carried on by it.
- ☐ The Insurer considers its corporate governance structure and internal controls adequate without a key person in intermediary management being appointed and is in a position to demonstrate this to the Insurance Authority if required.
- ☐ Other reasons (please specify)
- _____

Contact Person: _____ Tel: _____

Signature: _____

Name of Director/
Controller: _____

Date: _____