

L.N. 79 of 2019

Insurance (Financial and Other Requirements for Licensed Insurance Broker Companies) Rules

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Insurance (Financial and Other Requirements for Licensed Insurance Broker Companies) Rules

(Made by the Insurance Authority under sections 53F(4), 64T(2),
64ZA(4)(d), 64ZV(8)(e), 73(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—

applicable accounting standards (適用的會計準則), in relation to a licensed insurance broker company, means—

- (a) if the company is incorporated in Hong Kong, the accounting standards generally accepted in Hong Kong; and
- (b) if the company is a non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap. 622), the accounting standards generally accepted in Hong Kong or in the jurisdiction of the place of incorporation of the company, as the company may elect;

contract of insurance (保險合約) includes a contract of reinsurance or retrocession;

deductible amount (自付額), in relation to a professional indemnity insurance policy maintained by a licensed insurance broker company under rule 5, means the amount of any loss or claim covered under the policy that

the company as the insured must itself bear in accordance with the policy's terms and conditions;

insurance brokerage income (保險經紀收入), in relation to a licensed insurance broker company, means the gross income derived from the business of carrying on regulated activities by the company;

insurance premiums payable (須付的保費), in relation to a licensed insurance broker company, means insurance premiums payable to insurers and reinsurers for contracts of insurance arranged by the company;

net assets (淨資產), in relation to a licensed insurance broker company, means the amount by which the aggregate of the company's assets exceeds the aggregate of its liabilities calculated in accordance with rule 4.

(2) In these Rules, a reference to an insurer includes a member of Lloyd's.

3. Share capital

A licensed insurance broker company must at all times maintain a paid-up share capital of not less than \$500,000.

4. Net assets

(1) A licensed insurance broker company must at all times maintain net assets of not less than \$500,000.

(2) The amount of net assets referred to in subrule (1) must be calculated in accordance with applicable accounting standards, and must—

(a) exclude intangible assets from the aggregate of the company's assets; and

- (b) exclude from the aggregate of the company's liabilities, on-balance sheet liabilities arising from a lease agreement entered into by the licensed insurance broker company in respect of any premises, up to an amount capped by the maximum value of its intangible assets arising from the same lease agreement.

5. Professional indemnity insurance

- (1) A licensed insurance broker company must maintain a professional indemnity insurance policy that provides coverage for claims made against the company for liabilities arising from breaches of duty in the course of carrying on its regulated activities. The professional indemnity insurance policy must have a limit of indemnity not less than the amount determined in accordance with subrule (2) or (3) (as the case may be) for any one claim and in any one policy period of 12 months.
- (2) Subject to subrule (3), the limit of indemnity referred to in subrule (1) must not be less than the greater of the following—
 - (a) 2 times the aggregate amount of the licensed insurance broker company's insurance brokerage income in the 12 consecutive months immediately before the commencement date of the policy period under its professional indemnity insurance policy, up to a maximum of \$75,000,000; or
 - (b) \$3,000,000.
- (3) In relation to a licensed insurance broker company which is in its first 12 months of operation as a licensed insurance broker company, the limit of indemnity referred to in subrule (1) must not be less than \$3,000,000.

- (4) The professional indemnity insurance policy referred to in subrule (1) must include a provision for at least one automatic reinstatement which, in the event of the limit of indemnity under the policy being reduced by losses or claims, operates to reinstate the limit of indemnity to an amount not less than the amount determined in accordance with subrule (2) or (3) (as the case may be).
- (5) Subject to subrule (6), the deductible amount under the professional indemnity insurance policy referred to in subrule (1) must not be more than 50% of the company's net assets as at the end of its financial year immediately before the commencement date of the policy period under the policy.
- (6) In relation to a licensed insurance broker company referred to in subrule (3), the deductible amount under the professional indemnity insurance policy referred to in subrule (1) must not be more than 50% of the company's paid-up share capital as at the commencement date of the policy period under the policy.

6. Client account

- (1) A licensed insurance broker company that receives or holds client monies must maintain at least one client account in accordance with subrule (2).
- (2) The client account referred to in subrule (1) must be an account maintained with an authorized institution in the name of the licensed insurance broker company in the title of which the word "client" appears.
- (3) A licensed insurance broker company must give written notice to the authorized institution with which the client account is maintained as referred to in subrule (1), stating that the client account is maintained by the company pursuant to section 71 of the Ordinance.

- (4) A licensed insurance broker company must keep proper records of the notice referred to in subrule (3).
- (5) The monies specified in section 71(2) of the Ordinance, which a licensed insurance broker company is required to pay into a client account as soon as practicable after receiving them include—
 - (a) monies received by the company from or on behalf of a policy holder or potential policy holder as premium payable to an insurer under a contract of insurance arranged by the company;
 - (b) monies received by the company from an insurer, a reinsurer, an insurance intermediary or any other party for the purpose of or relating to the settlement of a claim under a contract of insurance;
 - (c) monies received by the company from or on behalf of a policy holder or potential policy holder for any purposes which are incidental to the carrying on of regulated activities by the company in relation to the policy holder or potential policy holder; and
 - (d) other monies arising from the ordinary transactions of its business of carrying on regulated activities as specified in subrule (9).
- (6) A licensed insurance broker company may, for the purpose of complying with subrule (1), pay into a client account such monies as may be necessary for the opening or maintenance of the account and such monies are taken to be client monies for this purpose.
- (7) No monies other than monies described under subrules (5) and (6) may be paid into a client account maintained by a licensed insurance broker company.
- (8) A licensed insurance broker company may only make the following withdrawals from a client account—

- (a) monies required to be paid to an insurer, a reinsurer or an insurance intermediary as premium under a contract of insurance arranged by the company;
 - (b) monies required to be paid to a policy holder, potential policy holder, a claimant or any other party who is entitled to receive the monies for the purpose of or relating to the settlement of a claim under a contract of insurance;
 - (c) monies drawn in accordance with written authority of a policy holder or potential policy holder;
 - (d) monies required to be paid by or on behalf of a policy holder or potential policy holder for any purposes which are incidental to the carrying on of regulated activities by the company in relation to the policy holder or potential policy holder;
 - (e) interest earned on monies in the client account in accordance with section 71(5) of the Ordinance;
 - (f) monies which are paid into the client account by mistake or accident and any interest earned on those monies; and
 - (g) other monies arising from the ordinary transactions of its business of carrying on regulated activities specified in subrule (9).
- (9) The other monies arising from the ordinary transactions of the licensed insurance broker company's business of carrying on regulated activities referred to in subrules (5)(d) and (8)(g) are—
- (a) premiums, renewal premiums, additional premiums and return premiums of all kinds;

- (b) claims and other monies due under contracts of insurance;
 - (c) refunds to policy holders;
 - (d) policy loans and associated interests;
 - (e) fees, charges and levies relating to contracts of insurance; and
 - (f) premium discounts, commissions and brokerage.
- (10) Subrule (7) does not apply to monies which are paid by mistake or accident into a client account provided that the licensed insurance broker company takes remedial action promptly on discovery of the payment which was made by mistake or accident.
- (11) A licensed insurance broker company which holds or receives client monies must—
- (a) at least once a calendar month compare the total of the ledger balances of client monies with the total of—
 - (i) the balances shown on the bank statements and passbooks (after allowing for all unrepresented items) of all client accounts; and
 - (ii) any client monies held by the company that have not been deposited into a client account; and
 - (b) as at the same date when a comparison is made pursuant to paragraph (a), prepare a reconciliation statement, which must show the cause of the difference, if any.

7. Keeping of proper books and accounts

- (1) A licensed insurance broker company must, in relation to its business which constitutes the carrying on of regulated activities—
 - (a) keep, where applicable, such accounting and other records (including records relating to the assets or affairs of the company's clients) as are sufficient to—
 - (i) explain, and reflect the financial position and operation of, such business;
 - (ii) enable financial statements that give a true and fair view of its financial position and financial performance to be prepared from time to time;
 - (iii) account for all client monies that it receives or holds; and
 - (iv) demonstrate—
 - (A) compliance by it with these Rules; and
 - (B) that there is no contravention of section 71(1), (3), (4), (5) and (6) of the Ordinance;
 - (b) keep those records in such manner as will enable an audit to be conveniently and properly carried out; and
 - (c) make entries in those records in accordance with applicable accounting standards.
- (2) A licensed insurance broker company must keep all records in writing in the Chinese or English language or in such a manner as to enable them to be readily accessible and readily converted into written form in the Chinese or English language.

- (3) A licensed insurance broker company must retain the records that are required to be kept under these Rules for at least 7 years.

8. Audited financial statements

- (1) A licensed insurance broker company must prepare the financial statements to be provided to the Authority under section 73(1) of the Ordinance in accordance with applicable accounting standards.
- (2) The financial statements provided by a licensed insurance broker company under section 73(1) of the Ordinance in relation to a financial year must include the company's—
- (a) insurance brokerage income for the financial year distinguishing between general business and long term business;
 - (b) aggregate balances of cash held in its client accounts as at the end of the financial year; and
 - (c) insurance premiums payable as at the end of the financial year.
- (3) Any document (except an auditor's report) provided by a licensed insurance broker company under section 73(1) of the Ordinance must be—
- (a) approved by the directors of the company; and
 - (b) signed—
 - (i) by 2 directors of the company on its directors' behalf; or
 - (ii) in the case of the company having only one director, by the director.

9. Auditor's report

- (1) The auditor's report on the financial statements provided by a licensed insurance broker company under section 73(1)(d) of the Ordinance in relation to a financial year must contain statements stating whether the financial statements, in the auditor's opinion, give a true and fair view of—
 - (a) the financial position of the company as at the end of the financial year; and
 - (b) the financial performance of the company for the financial year.
- (2) The auditor's report provided by a licensed insurance broker company under section 73(1)(e) of the Ordinance in relation to a financial year must contain statements stating whether, in the auditor's opinion, the company has continued to comply with the requirements under these Rules and the relevant provisions of the Ordinance in relation to—
 - (a) the capital and net assets of the company;
 - (b) the professional indemnity insurance taken out by the company;
 - (c) the keeping of separate client accounts by the company; and
 - (d) the keeping of proper books and accounts by the company,as at the end of the financial year and 2 such other dates in the financial year as the auditor may elect, provided that the intervening period between those 2 dates must not be shorter than 3 months.

10. Savings and transitional arrangements

The Schedule provides for the savings and transitional arrangements that relate to these Rules.

Schedule

[r. 10]

Savings and Transitional Arrangements

1. Interpretation

In this Schedule—

approved broker body (認可經紀團體) has the meaning given by Schedule 11 to the Ordinance;

commencement date (生效日期) has the meaning given by section 64O(7) of the Ordinance;

specified insurance broker company (指明保險經紀公司) means a company which was immediately before the commencement date registered with an approved broker body as a member, and regarded as having been granted an insurance broker company licence under section 66 of Schedule 11 to the Ordinance on the commencement date.

2. Share capital and net assets

For the period from the commencement date to 31 December 2023, the amount of paid-up share capital and net assets which a specified insurance broker company must maintain at all times pursuant to rules 3 and 4(1) respectively are—

- (a) for the period that begins on the commencement date and ends on 31 December 2021, not less than \$100,000; and
- (b) for the period that begins on 1 January 2022 and ends on 31 December 2023, not less than \$300,000.

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Schedule
Section 3

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3. Professional indemnity insurance

Rule 5(5) does not apply to a specified insurance broker company for the period that begins on the commencement date and ends on 31 December 2023.

4. Client monies reconciliation

Rule 6(11) does not apply to a specified insurance broker company for 6 months beginning on the commencement date.

5. Audited financial statements

Rule 8(2) does not apply to the audited financial statements of a specified insurance broker company for a financial year beginning before 1 January 2021.

Dr. Moses CHENG Mo-chi
Insurance Authority

7 May 2019

Explanatory Note

The main object of these Rules is, for the purposes of sections 53F(4), 64T(2), 64ZA(4)(d), 64ZV(8)(e), 73(1) and 129(1) of the Insurance Ordinance (Cap. 41), to prescribe the financial and other requirements for licensed insurance broker companies in relation to (a) capital and net assets; (b) professional indemnity insurance; (c) keeping of separate client accounts; (d) keeping of proper books and accounts; and (e) submission of audit and related information. These Rules are made following public consultation and form part of the new statutory licensing regime for insurance intermediaries. These Rules modify the relevant requirements in the Guideline on Minimum Requirements for Insurance Brokers issued by the Insurance Authority and the membership requirements issued by the 2 approved bodies of insurance brokers (i.e. The Hong Kong Confederation of Insurance Brokers and Professional Insurance Brokers Association), which were applicable immediately prior to the commencement of these Rules.

2. Rule 1 provides for commencement.
3. Rule 2 defines terms and expressions for the interpretation of these Rules.
4. Rule 3 prescribes the minimum amount of paid-up share capital required of a licensed insurance broker company.
5. Rule 4 prescribes the minimum amount of net assets required of a licensed insurance broker company.

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Explanatory Note
Paragraph 6

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6. Rule 5 prescribes the requirements for a licensed insurance broker company to maintain professional indemnity insurance policy and related matters, such as minimum limit of indemnity, maximum deductible amount and automatic reinstatement.
7. Rule 6 prescribes requirements relating to the handling of client monies and the maintenance of client accounts. Such requirements include restrictions governing the payment and withdrawal of monies into and out of a client account, the requirement to give written notice to the authorized institution where the client account is maintained stating that the client account is maintained pursuant to section 71 of the Insurance Ordinance (Cap. 41), and a requirement for the licensed insurance broker company to conduct monthly accounting reconciliation.
8. Rule 7 prescribes the records that a licensed insurance broker company is required to keep, the manner in which they are to be kept and the retention period of the records.
9. Rule 8 prescribes additional information that a licensed insurance broker company must provide in the audited financial statements under section 73 of the Insurance Ordinance (Cap. 41).
10. Rule 9 requires that auditors' reports submitted by a licensed insurance broker company under section 73(1)(d) and (e) of the Insurance Ordinance (Cap. 41) must contain statements stating the auditor's opinion on specified matters.
11. Rule 10 and the Schedule provide for the savings and transitional arrangements to these Rules.