Asia Pacific Insurance - Hong Kong

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# Guide for Directors and Senior Managers of Insurance Companies

## Does the CEO, director or senior executives of an insurance company need to be registered or licensed by the insurance regulatory authority?

Approval from the Insurance Authority (IA) is required for the appointment of chief executives and directors of Hong Kong incorporated insurers. For insurers incorporated outside of Hong Kong, approval from the IA is required for appointment of the local chief executive in Hong Kong.

## Is approval from the regulator required for the appointment of a director/senior management of an insurance company? Is there any distinction between persons acting in an executive capacity and persons in a non-executive capacity?

Yes. Approval from the IA is required for the appointment of controllers (who are chief executives or managing directors) and directors by a Hong Kong-incorporated insurer. There is no distinction between an executive director and non-executive director (to the extent that it relates to the approval requirement). The Insurance Ordinance also requires key persons to be appointed for "control functions," which include risk management, financial control, compliance, internal audit and actuarial functions. The appointment of such key persons to control functions requires the IA's approval.

For directors, there is only a notification requirement. However, in practice, a submission to the OCI prior to the appointment of a director is highly recommended to ensure that the OCI has no objection to the fitness and propriety of the proposed candidate.

## Is there generally any distinction between EDs and NEDs?

There is no major distinction in Hong Kong except that non-executive directors should be independent. At least one-third of the board should be composed of independent non-executive directors.

## Is approval from the regulator required for the resignation or removal of a director/senior management of an insurance company? Is there any distinction between EDs and NEDs?

No. However, the IA must be notified of the resignation or removal of directors or the controller (who is the chief executive or managing director).

## Is there any nationality requirement for directors/senior management of an insurance company? If so, do any exemptions exist?

No. However, the insurer is expected to demonstrate to the IA that there is a locally based chief executive to oversee its Hong Kong operations. In relation to insurers incorporated outside Hong Kong, the chief executive should not also be responsible for the conduct of insurance business carried on by the insurer elsewhere.

## Is there a minimum qualification or minimum number of years of relevant experience applicable to directors/senior management of an insurance company?

The controllers, directors and key persons in control functions of the insurer are subject to fitness and propriety requirements, which take into account past relevant experience and qualifications. Where applicable, actuaries are subject to statutorily prescribed requirements relating to professional qualifications or memberships. Also, one-third of the directors must have relevant insurance experience.

## Are there any other fitness and propriety requirements that apply to directors of an insurance company? What are they?

Yes. Besides the requirements on education, qualification and experience, candidates must satisfy the criteria of competence, honesty, financial status and character, among others.

## Are there any other negative factors which will disqualify a candidate from becoming a director of an insurance company?

Yes. The following factors may disqualify a candidate: a past conviction relating to fraud or dishonesty or other criminal offenses, being an undischarged bankrupt, having been subject to a disciplinary action by any regulator, or having been a director of a body corporate that failed to comply with any legal or regulatory requirements. All these will be taken into account in determining the fitness and propriety of a candidate.

## Is there a residency requirement for directors/senior management of an insurance company (e.g., primary residence must be in each local jurisdiction)?

No. However, the insurer is expected to demonstrate to the IA that there is a locally based chief executive to oversee its Hong Kong operations. In relation to insurers incorporated outside Hong Kong, the chief executive should not also be responsible for the conduct of insurance business carried on by the insurer elsewhere.

## Does the insurance company need to evaluate its directors/senior management before appointing such persons? What certifications, if any, must the insurance company provide to the insurance regulatory authority in respect of its directors/senior management?

Yes. An insurance company is generally expected to ensure that all its appointed directors and controllers are fit and proper persons. There are no express requirements for the insurer to provide certification to the IA regarding the fitness and propriety of its directors/senior management. However, if the insurer fails to effectively evaluate the fitness and propriety of its directors and controllers, it may reflect adversely on the insurer's ability to maintain effective corporate governance. The IA also has residual power to take regulatory actions against the insurer if it is found that the insurer has furnished misleading or inaccurate information to the IA.

## Generally, are there any distinctions in the duties and responsibilities or the regulatory treatment for EDs and NEDs?

There is no distinction in regulatory treatment of executive directors and non-executive directors, but the INEDs are expected to provide
independent advice to the company. Generally, the board is collectively responsible for the operations of the insurance company.

## Are there any overarching duties and responsibilities for directors/senior management of insurance companies arising from insurance regulations (in addition to general corporate laws)?

Directors are responsible for the operations of the insurer, including compliance with applicable regulatory requirements and setting the
business objectives, strategies and policies of the insurer. The board and (where applicable) committees of the insurers are subject to specific corporate governance roles and responsibilities.

## Will directors/senior management be personally liable for breach of insurance regulations by the insurance company? What penalties are there, if any?

Yes. If the relevant breach is an offense and such offense is committed with the consent or connivance of, or because of neglect by, the relevant individual, he or she may become personally liable. Statutory penalties include fines and/or imprisonment and the quantum/length depends on the offenses committed.

## Are directors/senior management of an insurance company subject to any periodic filing/notification requirements? What are they?

Generally, no periodic filings apply to directors specifically. However, ad hoc filings may apply to resignation or cessation of appointment and notification of changes to information previously furnished to the IA. These notifications are generally filed by the insurance company.

## Is there a requirement on minimum number of the board of directors of an insurance company?

Yes. Depending on the size of the insurer, an insurer is expected to have at least three to five directors.

## Are there any rules around composition of the board of directors or equivalent (e.g., independence requirement or the number of executive- or management-level directors)?

Yes. At least one-third of the board of the insurer must be independent non-executive directors. For small insurers with less than five directors, there should be at least one independent non-executive director. Further, one-third of the board is also expected to possess sufficient industry knowledge and experience.

## Are there any mandatory requirements for setting up of other committees (e.g., audit, remuneration committees)? If so, briefly describe the responsibilities of these committees.

Yes. Generally, depending on its size, an insurance company is expected to establish an audit committee and (if appropriate) other specialized committees. The functions of these committees are as follows:

Audit committee (mandatory) – responsible for providing an independent review of the effectiveness of the financial reporting process and internal control system of the insurer

Risk committee (mandatory) – responsible for establishing and operating the risk management system of the insurer

Nomination committee – responsible for identifying candidates and reviewing nominations of directors and senior executives

Remuneration committee – responsible for recommending remuneration of senior management and other key personnel

Investment committee – responsible for setting the investment strategies and policies overseeing the investment portfolio of the insurer

## Are directors of an insurance company permitted to hold other passive business interests (e.g., non-executive directorships and investments/shareholdings in other corporations)? What disclosures, if any, need to be made to the relevant regulatory authorities? Are there restrictions on the number of positions board members can hold?

Yes, provided that there is no conflict of interest and subject to an independence rule where the director concerned is an independent non-executive director. The directorship information must be provided to the IA at the time of the application for approval, and the IA must be notified of subsequent changes.

## Is there any requirement or prohibition for an insurance company to make a payment to its directors/senior management?

No specific requirement or prohibition on remuneration to directors/senior management.

However, corporate governance rules apply in respect of remuneration of directors, senior management and other key personnel.

# Guide to Insurtech Innovation and Utilization

## Who are the relevant regulators in the region?

The Insurance Authority (IA) is Hong Kong's insurance regulator overseeing the financial conditions and operations of authorized insurers. There are also three self-regulatory bodies overseeing the activities of insurance intermediaries, namely (in relation to insurance agents and agencies) the Hong Kong Federation of Insurers (HKFI); (in relation to insurance brokers) the Hong Kong Confederation of Insurance Brokers (HKCIB) and Professional Insurance Brokers Association (PIBA). However, the supervisory functions of the three self-regulatory
bodies will be taken up by the IA (expected to be in 2018 or 2019). If the fintech/insurtech activities involve moneylending, the regulator is the registry of moneylenders, whose function is performed by the Companies Registry.

The Hong Kong Monetary Authority (HKMA) is the banking regulator overseeing institutions such as banks and deposit-taking companies. The Securities and Futures Commission (SFC) is the regulator regulating securities intermediaries such as brokers, investment advisers and
fund managers in the securities and futures sectors. The SFC also regulates certain investment products and other listing matters.

The Office of the Privacy Commissioner for Personal Data (PCPD) is the regulator overseeing data privacy matters and enforcing the Personal Data (Privacy) Ordinance (Cap. 486).

The Communications Authority is the body regulating Hong Kong's broadcasting and telecommunications industries.

The Intellectual Property Department (IPD) is the government department that administers the intellectual property regime.

## What are the types of fintech/insurtech activities that are regulated?

Activities involving authorized insurers, insurance intermediaries and the insurance business may be regulated under the Insurance Ordinance (Cap. 41), Securities and Futures Ordinance (Cap. 571) and their regulations and the relevant guidelines and codes issued by the IA, the SFC, the HKFI, the CIB and PIBA (before the functions of HKFI, CIB and PIBA are taken over by the IA). Authorized insurers seeking to commence or develop insurtech activities must ensure that any new activities comply with the foregoing (as applicable) and do not breach any existing license conditions.

Payment and settlement systems (for example, digital payments) may be regulated under the Payment Systems and Stored Value Facilities Ordinance (Cap. 584), which is administered by the HKMA. Money-changing and remittance businesses will be subject to the requirements of the Money Changers Ordinance (Cap. 34) and the Anti-Money Laundering and Counter-Terrorist Financing (Financial
Institutions) Ordinance (Cap. 615).

Virtual currencies (for example, Bitcoin) are not specifically regulated under the Hong Kong regime; however, various financial regulators (for example, HKMA) have reminded financial institutions and intermediaries to maintain an escalated level of vigilance in relation to the
money-laundering and terrorist-financing risks associated with virtual commodities.

Any insurtech activities involving offer of investments or securities (for example, equity crowdfunding platforms), the dealing of securities, asset management, securities margin financing, leveraged foreign exchange trading, dealing in futures contracts and other similar activities will potentially be regulated under the Securities and Futures Ordinance (Cap. 571) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

Insurtech activities involving moneylending may also be regulated under the Money Lenders Ordinance (Cap. 163).

Separately, in relation to cryptography and data encryption products, they may be subject to strategic trade control under the Import and Export Ordinance (Cap. 60) and the Import and Export (Strategic Commodities) Regulations (Cap. 60G). It is possible that a license will need
to be obtained for the import/export of such goods. The strategic trade control system in Hong Kong is made up of a licensing system administered by the Trade and Industry Department and an enforcement system under the purview of the Customs and Excise Department.

## What is the attitude and what are the policy views of the regulator in relation to insurtech (if any)? Is innovation encouraged?

Hong Kong regulators have reacted positively and encourage fintech/insurtech innovation in the following ways:

Funding – The Hong Kong government has already made available an Enterprise Support Scheme under the Innovation and Technology Fund to encourage private sector investment in research and development activities. Funding up to HKD 10 million for each
approved project would be provided on a matching basis, with no requirement for recoupment of the approved grant. Together with other similar funding schemes by government, a pool of about HKD 5 billion is available for ventures and research projects in various technology areas, including fintech/insurtech.

Support – The IA, the HKMA and the SFC have set up dedicated fintech/insurtech platforms to help enhance communication between regulators and the fintech/insurtech community. Such platforms handle inquiries from the industry and provide information on related regulatory requirements to companies engaging in financial innovation. The platforms will also keep track of the latest development in the market through their exchange with the industry.

Policy views – The Hong Kong government has indicated that, in developing fintech/insurtech, it will uphold the "technology neutrality" principle and at the same time attach importance to investor protection. The government will help ensure that there is an appropriate balance between market innovation and investors' understanding and tolerance of risks. The government also indicated that the existing regulations
are adequate to handle the challenges from the growing fintech/insurtech sector in Hong Kong.

Developing expertise –The HKFI has recently set up a task force on Financial Technology Hub. It is exploring how to work with the government to promote innovation in the insurance industry, including attracting capital and talent.

## What are the licenses required and what are the criteria and process involved?

The licenses required will depend on the specific activities contemplated. We recommend seeking advice of local counsel. In brief overview:

Designated Retail Payment Systems. The HKMA does not operate a licensing system for RPS. However, for a RPS which is designated by the HKMA, the operator needs to ensure that (a) the operations of the system are conducted in a safe and efficient manner; (b) there are operating rules that comply with the prescribed requirements; (c) there are adequate arrangements to monitor and enforce compliance with the operating rules of the system; and (d) financial resources appropriate for the proper performance of the system's particular functions are available to the system.

Stored Value Facilities. The HKMA operates a licensing system for multi-purpose stored value facilities (SVF) (that is, an SVF which serves as a means of payment for goods and services provided by participating merchants, which is akin to an electronic surrogate
for coins and banknotes). Such licensing regime covers both "device-based" SVF (for example, the value is stored in an electronic chip on a card) and "non-device based" SVF (for example, a network based account where the value is stored). There are certain licensing exemptions (for example, a SVF that is used for certain cash reward or bonus point schemes). Also, a license is not required for the issuance of a single purpose SVF (for example, a SVF which can only be used as a means of prepayment for goods and services provided by a merchant, and such merchant is also the issuer of the SVF).

Remittance business. A money service operator license may be required for remittance business.

Equity Crowdfunding. Depending on the nature of the crowdfunding activity, crowdfunding platform operators may be required to be licensed under the Securities and Futures Ordinance (Cap. 571) for the following types of regulated activities: Type 1 (dealing in securities); Type 4 (advising on securities); Type 6 (advising on corporate finance); Type 7 (providing automated trading services); Type 9 (asset management). In addition, crowdfunding activity may trigger the restrictions under the offer of investment regime under the Securities and Futures Ordinance (Cap. 571) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

Moneylending. A moneylender's license may be required if the contemplated activity is not excluded or exempt under the Money Lenders Ordinance (Cap. 163).

Telecommunications License. Under the Telecommunications Ordinance (Cap. 106), there are prohibitions against establishing or maintaining any means of telecommunications or offering in the course of business a telecommunications service. Licenses will need to be obtained from the Communications Authority for such activities, unless the relevant exemptions under the ordinance apply.

Intellectual property registrations. For completeness, if the fintech/insurtech innovation involves a patentable invention or if there are plans to register a trademark, further information can be found at the following links:
(d) For patents: (http://www.ipd.gov.hk/eng/applicants/patents.htm)
(e) For trademarks: (http://www.ipd.gov.hk/eng/applicants/trademarks.htm)

Please note that the foregoing links may be updated from time to time and you are advised to check with local counsel for updates before relying on the above information.

## Is the use of telematics and/or biometrics regulated?

The PCPD has issued the "Guidance on Collection and Use of Biometric Data" and indicated that biometric data (for example, physiological data and behavioral data) can be considered as personal data under the Personal Data (Privacy) Ordinance (Cap. 486). Accordingly, insurers and insurance intermediaries collecting or using biometric data could be regarded as data users under the ordinance and such data should only be used where justified. Appropriate procedural and technological safeguards should also be put in place to prevent unauthorized access to and wrongful use of biometric data.

Insurers and insurance intermediaries should ensure that such use is compliant with any existing regulations or conduct of business requirements. Further, depending on how such technology is used, we may need to consider whether other areas of regulation are attracted.

## Does the regulator draw a distinction between institutions that are "too big to fail" versus "too small to care"?

There can be different standards of regulation for retail payment systems. Under the Payment Systems and Stored Value Facilities Ordinance (Cap. 584), the HKMA administers a designation system for retail payment systems (RPS), and may designate an RPS if it considers that the system is likely to become an RPS whose proper functioning is material to the monetary or financial stability of Hong Kong. A designated RPS is required to comply with the control and compliance requirements under the ordinance.

## What laws (if any) do insurance companies have to comply with in respect of technology risk management?

The IA has published the "Guideline on the Use of Internet for Insurance Activities" (GL 8), which applies to authorized insurers and insurance intermediaries in relation to their insurance activities or transactions conducted on the Internet. GL 8 requires all practicable steps to be taken to ensure that a comprehensive set of security policies and measures that keep up with the advancement in Internet security technologies shall be in place and that the electronic payment system (for example, credit card payment system) shall be secure. Also, based on the IA's "Guideline Note on the Corporate Governance of Authorized Insurers" (GL10), from a corporate governance perspective, the boards of certain authorized insurers shall ensure that there are in place a sound internal control system and a comprehensive risk management policy.

From a data privacy perspective, insurers and insurance intermediaries should take appropriate measures to protect the customer data against unauthorized or accidental access, processing or erasure. The PCPD has also issued the "Best Practice Guide for Mobile App Development," which provides guidance on how data privacy protection measures should be incorporated into the development process of a mobile app.

## Are there any laws governing big data, including the collection, use, storage, disclosure and transfer of personal data?

The Personal Data (Privacy) Ordinance (Cap. 486) (PDPO) applies to the private sector as well as the public sector. The PDPO regulates the collection, use, storage, disclosure and transfer of personal data in Hong Kong. In addition to the baseline requirements of the PDPO, the
PCPD has issued guidance and published commentaries related to collection of personal data through the internet and online behavioral tracking.

Insurance companies may also need to ensure that their dealing with personal data does not contravene any business conduct requirements. For example, under the proposed new regulatory regime for insurance intermediaries (which will be administered by the Insurance Authority), there are conduct requirements requiring an insurance intermediary to act honestly, fairly, in the best interests of the policyholders (or the potential policyholders), and with integrity, and to ensure that the assets of the policyholders (or the potential policyholders) are promptly and properly accounted for.

## Are there any restrictions that could hinder the growth and usage of insurtech by insurance companies under data privacy laws?

Yes, the PDPO provides that:

a data user needs to take practical steps to safeguard personal data from unauthorized or accidental access, processing, erasure, loss or use

personal data must be accurate and should not be kept for a period longer than is necessary to fulfill the purpose for which it is used

personal data must be used for the purpose for which the data is collected or for a directly related purpose, unless voluntary and explicit consent with a new purpose is obtained from the data subject

## Are there any laws governing cybersecurity or to mitigate cybersecurity concerns?

The Crimes Ordinance (Cap. 200) criminalizes certain activities, including access to computer with criminal or dishonest intent and destroying or damaging property. Under the Telecommunications Ordinance (Cap. 106), unauthorized access to computer by
telecommunications is also an offense. Regulated financial institutions (including insurance companies) may also be expected to have comprehensive risk management systems and policies and disaster recovery plans in relation to cybersecurity risk.

## What innovations are insurance companies and/or regulators looking at implementing?

Hong Kong is still a relatively nascent, emerging fintech/insurtech hub when compared to most established players such as London and New York. However, recent government initiatives and increased marketing are raising awareness. The Hong Kong government launched the Steering Group on Financial Technologies in 2015 to examine the city's potential as a key fintech/insurtech hub, and in the 2016/2017 Budget, the government confirmed it would adopt most of the recommendations made by the Steering Committee in its recent report.

In Hong Kong, some insurers have introduced wearable devices and mobile apps, which are used to track fitness activities of policyholders of life and health insurance products. Using such analytics, the insurers will offer premium discounts to the policyholders based on their level of physical activities, so as to encourage them to exercise regularly. The underwriting risks of such insurers are expected to improve
as a result.

## Have there been fintech/insurtech-related cases (including competition and/or data privacy) in Asia Pacific

There are no specific cases by the financial regulators so far.

## What are the most immediate challenges to insurtech innovation?

Complexity of the sector-specific regulatory regime in Hong Kong and the different types of licenses and/or authorization needed

The high costs of development and innovation

Cybersecurity – As the sophistication of cyber criminals have evolved, it is crucial to ensure that there are robust policies and systems in place to address cybersecurity. Failure to do so may also affect customer confidence.

## What has been, or could be, the impact of fintech/insurtech on the financial services industry?

Fintech/insurtech will likely be a key enabler in designing better and more efficient work processes and creating new business models that will deliver higher growth, cost savings and better services for industry participants.

## What insurtech trends or disruptions may impact insurance companies?

We expect to see insurance companies seek to acquire or team up with non-insurance tech players such as new digital insurance start-ups or telematics-related companies in order to deliver new offerings and better price risk, extend the value chain and have greater overall
efficiency. With big data, we also expect to see more insurers better adopt end-to-end analytics solutions that cross the entire insurance value chain. In doing so, they hope to gain an enriched, single client view and the ability to execute a targeted pipeline.

Another area may be "just-in-time" insurance. It has also been suggested that the traditional concept of insuring an asset over many periods is outdated, and that instead, the business should move to a more transactional consumption model where just-in-time insurance is delivered on mobile and underwritten in seconds.

Use of telematics, which is becoming more prevalent for insurers in Hong Kong, will enable insurers to accumulate customers' voluminous behavioral information. This will allow insurers to have a deeper insight of their customers, which in turn will assist them in formulating
new directions for products and pricing their risks more accurately. Insurers will need to be mindful of the need to ensure the accuracy and reliability of these information. Insurers will also need to devise controls and systems for these analytics to be appropriately integrated into the offering to the customers (for example, offering premium discount, determining future premiums, etc.). As the use of such analytics may directly affect the customers, any incidents of misuse, leakage or improper application of such analytics will pose a reputation risk for the insurer.

# Guide for Insurance Sales, Advisory and Distribution

## What are the different types of insurance intermediaries in the market and do they need to hold any licenses and minimum qualification to conduct business?

Insurance intermediaries in Hong Kong can be classified into insurance agents and insurance brokers. Currently, the insurance intermediary regime is self-regulated. Insurance agents need to be registered with the Insurance Agents Registration Board, and insurance brokers need to be registered with the Hong Kong Confederation of Insurance Brokers or the Professional Insurance Brokers Association. A new statutory regime on intermediary is expected to be in force by 2019, under which the Insurance Authority will take over the regulation of insurance intermediaries from the three self-regulatory bodies.

## Is it mandatory for insurers to offer customers the option of purchasing insurance products directly from them without going through financial advisers or intermediaries?

Insurance products must be sold through licensed intermediaries.

## Do agreements between insurers and their agents need to take a certain form?

An insurer is required to appoint an insurance agent under a written agency agreement. Such agreement must meet the minimum requirements of the model agency agreement adopted by the Hong Kong Federation of Insurers.

## Can insurers pay volume-based commission to their appointed agents?

The commissions offered by an insurer should not provide any incentive or opportunity for the agent to engage in fraudulent or deceptive activities, and the remuneration structure should not create misaligned incentives for agents to engage in mis-selling,
aggressive selling, fraudulent acts or money-laundering activities. Hence, volume-based commissions should not be offered.

## Are insurers liable for any mis-selling of its agents or appointed distributors?

Yes. In principle, an insurance company will be liable for damages that an agent causes while acting on its behalf.

## Are there rules on the number of insurers that insurance brokers need to present to their customers?

Under the Minimum Requirements for Insurance Brokers, an insurance broker should not prejudice a customer's selection of insurers by unreasonably limiting the choices of insurers, and shall not be unreasonably dependent on any particular insurer in conducting their insurance broking business.

## Can insurance brokers receive commission from both insurers and their customers? If so, can they be volume-based commission?

Yes. Insurance brokers may receive commission from the insurer, provided that certain disclosure requirements are satisfied. Insurance brokers may also receive a service fee from the customer as they are engaged by the customer.

## Can agents or appointed distributors offer rebates on insurance premiums or other special concessions to the customers?

Insurance agents are prohibited from paying or offering to pay any rebate on commission not specified in the policy as an inducement to potential customers, unless specifically authorized by the insurer.

## Can insurers appoint offshore agents or accept business from offshore brokers?

While there is no specific prohibition on insurers appointing offshore agents or accepting business from offshore brokers, it is likely that the insurer will attract licensing or regulatory issues in the offshore jurisdiction. Therefore, insurers should consider the laws of the offshore jurisdiction before accepting business from offshore brokers or appointing offshore agents.

## Are there specific requirements on selling products through call centers, telemarketing or other distribution channels?

If an insurer wishes to sell products through call centers, telemarketing or other distribution channels, the call center staff will need to be licensed. Particular attention will need to be paid to the requirements under the Personal Data (Privacy) Ordinance.

## Are there specific requirements on selling products through online channels?

When selling products through online channels, an insurer should comply with the Guideline on the Use of the Internet for Insurance Activities, which requires, inter alia, that insurers have appropriate security policies in place, that the customer's personal information is protected, and that customers are provided with all the necessary information regarding the insurer and the insurance policy.

## Can insurers share client information with insurance agents and brokers and vice versa? What data privacy or confidentiality laws apply?

Insurers, agents and brokers owe a general common law duty to their clients and third parties to ensure that confidential client information is not subject to unauthorized disclosure. In addition, the handling of personal data is subject to the Personal Data (Privacy) Ordinance. Insurers, agents and brokers must notify clients of the purpose for which their personal data is collected and obtain consent from clients to use and disclose their personal data.

# Investing in Insurtech Start-ups

## Are there any limitations or criteria on the type of start-up that an insurer can invest in? Does the start-up need to be registered with any authority?

Generally speaking, there are no specific statutory limitations or criteria on the type of start-ups that an insurer can invest in. Insurers should, however, observe the Guideline on Asset Management by Authorised Insurers ("**GL13**") in making its investments.

## What are the available options in terms of investments that an insurer can make in an insurtech start-up?

The insurer can invest in an insurtech start-up either as equity instruments or by granting of loans.

## What are the restrictions on investing in an onshore insurtech start-up?

There are no specific statutory restrictions on investing in an onshore start-up. Insurers should, however, observe the Guideline on Asset Management by Authorised Insurers in making its investments.

## What are the restrictions on investing in an offshore insurtech start-up? Is approval required from the regulators?

There are no specific statutory restrictions on investing in an offshore start-up. Insurers should, however, observe the Guideline on Asset Management by Authorised Insurers in making its investments.

## Is an insurer permitted to grant loans to an insurtech start-up? Under what conditions?

There are no specific statutory restrictions on granting loans to start-ups. Insurers should, however, observe the Guideline on Asset Management by Authorised Insurers.

## What type of corporate approvals is required for an insurer to invest in an insurtech start-up?

There are no specific statutory requirements. Insurers should follow their internal investment process and usually, approval from the investment committee and board would be required.

## Are there any general minority shareholder protection mechanisms in your jurisdiction?

The law provides for various avenues for the protection of minority shareholders, such as application to court for inspection of records of the company, petition to the court for relief for unfair prejudice or bringing a derivative action.

## Are there any restrictions on the insurer in terms of appointing its own staff or management to join the insurtech start-up's board of directors or management team?

Generally, there are no statutory restrictions, subject to any consideration on potential conflict of interest, and provided that it will not affect the fitness and propriety of the relevant management staff.

## Are there any restrictions on entering into a service contract with the insurtech start-up upon completion of the investment? (a) Any connected party transaction restrictions? (b) Any prerequisite approvals required from the regulators or from internal committees?

There is none, assuming that the insurer is not a listed company and is not subject to listing rules.

Depending on the type of services provided, the contract may be subject to the relevant regulatory requirements under the outsourcing regime and may need clearance from the Insurance Authority.

## Are there any regulatory requirements on the disclosure of the transactions and connected transactions thereafter between the insurer and the insurtech start-up?

There are none from the insurance regulatory perspective, except for notification or approval requirements under the outsourcing regime.

## To what extent can the insurer provide operational support to the insurtech start-up?

There are no specific statutory restriction. General principles will apply, such as it should be at arm's length, it should not affect policyholders' interest, fitness and propriety and the financial position of the insurer, or give rise to a potential conflict of interest situation.

## What type of remuneration is permitted for the insurer to offer to the insurtech start-up?

There are no specific statutory restriction. General principles will apply, such as it should be at arm's length; it should not affect policyholders' interest, fitness and propriety and the financial position of the insurer; or give rise to a potential conflict of interest situation.

## How can the insurtech start-up transfer the intellectual property rights for its

Intellectual property rights are generally transferred through an assignment agreement.

## Are there any laws governing the collection, usage, storage, disclosure and transfer of personal data between the insurer and the insurtech start-up?

The Personal Data (Privacy) Ordinance and the relevant codes issued by the Privacy Commissioner regulates the collection, use, retention, disclosure and transfer of personal data in Hong Kong.

# Insurance Regulatory Landscape and Key Considerations for M&A Transactions

## Who is the main regulator with oversight of insurance companies?

Insurance Authority (**IA**)

## Are there foreign ownership limitations for insurance companies? Are there shareholding caps on individuals and/or corporate bodies for insurance companies? If in the affirmative, is this encapsulated within statute or a matter of policy?

No.

## Can an insurance company carry on a composite business (i.e., life and non-life)? Is this encapsulated in statute or a matter of policy?

No (a matter of policy).

## Are there other conditions imposed by the regulator in doing an M&A transaction?

Conditions are on a case-by-case basis. For example, the IA may:

Require the parent to give an undertaking on continuous financial support

Require the insurance company to comply with the guidelines issued by the IA

Require the insurance company to maintain a solvency margin as may be requested by the IA

## Is dispensation given for fulfillment of these conditions and in what circumstances?

Generally no.

## Is there a single presence policy and is it imposed under statute or policy? Is dispensation given and what criteria will the regulator consider?

No, although the regulator encourages consolidation of life businesses (and non-life businesses).

## What approvals are required for a foreign entity to take a stake in an insurer? Is there a distinction between a share deal or an asset deal?

**Share deal**

IA approval is required for the acquisition of 15% or more of a Hong Kong insurance company.

In other case, there is only a notification requirement. However, in practice, a submission to the IA for pre-vetting is highly recommended to ensure that the IA is satisfied with the new shareholder.

**Asset deal**

IA approval is required. For a life business, there is an additional requirement of court approval. Court approval is not required for the transfer of a non-life business.

## How long will regulatory approvals typically take for a share deal versus an asset deal?

**Share deal**

These take around six to eight months or one year if the buyer is not already a controller of an unauthorized insurer in Hong Kong, from signing to IA's approval (aasuming no complicated issues arise).

**Asset deal**

For a life business, approval could take nine to 10 months or more. For a non-life business, it could take up to six to eight months. This is based on the assumptions that the buyer is already an authorized insurer in Hong Kong.

## How open is the regulator to private equity participation in an insurer?

There is no statutory prohibition, but private equity investors will be subject to more extensive review and additional conditions may be imposed.

## Is there a financial holding company concept (FHC) or other equivalent status? What are the implications?

There is no FHC concept for insurance companies.

The holding company must satisfy the "controller" requirements – being fit and proper, and being able to provide continuous financial support to the insurance company. Preferably, it should have insurance experience, and if not, it has to justify why the lack of experience would not affect the insurance company. If the holding company is simply an interposing holding company, the regulator will look at the ultimate parent.

## What are the typical modes of distribution for insurance companies?

Bancassurance, agency force, brokers, telemarketing, direct marketing and direct sales through the Internet

## Is bancassurance a popular mode of distribution? What approvals are required? What are the main parameters in negotiating a bancassurance agreement?

Yes, bancassurance is a popular mode of distribution

The bank should be registered as an insurance agency.

The salient terms are:

Exclusivity

Products

Co-branding/white label products

Remuneration and risk allocation

Mining of the bank's customer data

## What are the top challenges in closing an insurance M&A transaction (share deal versus asset deal)?

**Share and asset deals**

Regulatory approval

Price

MAC clause

 **Asset deal**

Transfer of all other business undertakings

Transfer of employees

# Data Protection and Cybersecurity

## Who is the main regulator with oversight of data privacy matters?

The Office of the Privacy Commissioner for Personal Data (PCPD)

## What is the main legislation on the protection of personal data privacy?

Personal Data (Privacy) Ordinance (Cap. 486) (PDPO)

# Regulatory Landscape and Issues in Bancassurance

## Who is the main regulator with oversight of bancassurance matters?

The Hong Kong Federation of Insurers (**HKFI**), Insurance Authority (**IA**), and Hong Kong Monetary Authority (**HKMA**).

## Is bancassurance a popular mode of distribution? What types of bancassurance partnership arrangements are available?

Yes.

Bancassurance partnerships are generally divided into the exclusive and non-exclusive arrangements.

## What are the main parameters in negotiating a distribution agreement?

The salient terms are:

a) exclusivity;
b) term and renewal;
c) product development arrangements;
d) remuneration; and
e) the ownership and use of the bank's customer data.

## Are insurance companies and banks required to hold any specific license (whether to be obtained on an ad hoc or ongoing basis) in order to enter into the distribution agreements to provide bancassurance services and products?

Yes, banks must be registered with the HKFI and the bank staff who are responsible for selling insurance must be registered as technical representatives.

## Are there any legal or regulatory restrictions on the insurance company or the bank providing exclusivity to the other party?

There is no regulatory restriction for an insurer to appoint a bank as its exclusive distributor or the term/duration of the appointment.

## Assuming full exclusivity is not possible for legal or regulatory reasons, would the bank be able to grant the insurance company preferential treatment? If yes, under what conditions?

Yes, and the form of the preferential treatment is a matter of negotiation.

## What type of engagement (if any) with the regulators would be legally required in connection with the negotiation/entering into of the distribution agreements?

No regulatory approval is necessary. In practice, the insurer will notify the IA and the bank will notify the HKMA.

## Would the insurance company and/or the bank be required to submit the distribution agreements (and any ancillary documents) to the regulators as part of any notification/approval process? If yes, do the regulators require any specific terms to be included in the distribution agreements?

In practice, the insurer and the bank will notify their respective regulators.

## If the distribution agreements are submitted, would the regulators review/provide comments and require that the agreements be modified?

In practice, it is uncommon that regulator will comment on the terms, although the regulators have an extensive regulatory power to do so.

## Would any antitrust/competition analysis have to be conducted with respect to the insurance company and/or the bank prior to entering into the distribution agreements?

The Competition Ordinance applies to all agreements, not just agreements between competing businesses. It may be prudent to undertake a competition analysis given that the broad application of, and significant penalties for breach under, the Competition Ordinance in Hong Kong.

## What are the competition law considerations that might impact the term (e.g., duration) of a distribution agreement?

The Competition Ordinance prohibits agreements that have the object or effect of preventing, restricting or distorting competition in Hong Kong. Certain provisions of a bancassurance agreement may raise issues under the Competition Ordinance and therefore should be reviewed on an agreement-by-agreement basis (for example, exclusivity, territorial or customer restrictions, non-competes).

Factors relevant to this analysis will be: (i) the market positions of the parties; (ii) whether similar restrictions exist in other agreements in the market; and (iii) the extent to which the
agreements are efficiency enhancing (e.g., because they guarantee or encourage investments by one or more parties to the agreement).

## Under applicable laws and regulations, would the insurance company be allowed to use customer information (consisting of certain personal and demographic data) possessed by the bank to: (a) develop new products and refine marketing strategies, among others; (b) conduct its own telemarketing or direct mail activities; and (c) cross-sell products?

Yes, provided that the requisite notification is given at the time of data collection and (in case of use of data for direct marketing) consent be obtained.

## Are there any laws or regulations limiting or prohibiting the dissemination of customer information without the customers’ consent? Are customers allowed to waive any of these limitations or prohibitions?

Yes, the Personal Data (Privacy) Ordinance requires that customers' notification be given at the time of data collection and (in case of use of data for direct marketing) consent be obtained.

## Are there any other prohibitions or limitations resulting from applicable privacy laws relating to the sharing of customer information for purposes of marketing and distribution of insurance products?

Consent must be obtained from the customers.

## Are there any prohibitions or limitations in respect of compensation arrangements for bancassurance transactions (up-front/staggered payments, commission payments, bonus payment schemes)?

No statutory limitations.

## What are the sanctions for non-compliance with the prohibitions or limitations in respect of compensation arrangements?

Not applicable.

## Would the regulators request information on compensation arrangements (for specific jurisdictions or globally)?

The regulators have wide power but it is not a common practice that they will request for the information.

## Are there any restrictions in relation to the classes of insurance products which may be offered pursuant to a bancassurance arrangement?

Yes, the bank must be registered for the relevant line of business before it can sell the relevant products.

## Are there any products or product lines that the insurance company would be unable to offer to and distribute through the bank?

None.

## Would the policy forms used by the insurance company have to be approved by any regulator? Would the insurance company own the intellectual property rights relating to such policy forms?

For investment-linked policies, product documentation has to be authorized by the Securities and Futures Commission.

Yes, insurance companies own the IP rights to such policy forms.

## Are there any prohibitions or limitations in respect of co-branding between the bank and the insurance company?

No, there is no specific regulatory prohibitions or limitations, but the regulators always have the power to raise requisitions or concerns if co-branding creates market confusion.

## Would the bank personnel be required to hold any specific license in order to distribute the insurance products? Are there any reasons why bank personnel may be prohibited from distributing insurance products?

Clearance would need to be obtained from the HKMA, but in practice it would be difficult.

## If the sales person is employed by the bank: (a) is the insurance company required to have oversight or provide special training; and (b) are there applicable laws and regulations allowing the insurance company to compensate the bank for the service provided by its sales personnel?

a) There is no statutory requirement for training or oversight responsibility by the insurer. However, it is common for the insurer to provide training to the bank personnel.
b) There is no statutory requirement as to how insurers should compensate the bank.

## If the sales person is employed by the insurance company, are there any restrictions on their access to the bank’s branches?

Clearance would need to be obtained from the HKMA, but in practice it would be difficult.

## Are banks allowed to lease space to insurance companies to market its products in the bank’s branches?

Not a common practice in Hong Kong.

## Are there any investment requirements (e.g., minimum stake to be held by the insurance company in its distribution partner) or any other similar legal or regulatory obligations that may affect the insurance company’s ability to enter into the distribution agreements?

None.

## Are there any recent (or pending) developments in laws and regulations that may be relevant to the negotiation and/or the entering into of the distribution agreements (or the provision of services by the insurance company and/or the bank pursuant thereto)?

The Insurance Authority will implement a new licensing and regulatory regime for insurance intermediaries, which is expected to come into force in 2019. Bank intermediaries will be subject to such new regime.

## Are there any other issues that may affect the insurance company’s ability to enter into the distribution agreements and provide bancassurance services on an ongoing basis to the bank?

None.

# Top 10 Issues to Consider in a Regional Bancassurance Deal

## What are the issues to consider in respect of exclusivity rights in a bancassurance agreement?

Banks will usually request for termination of exclusivity for certain products in certain circumstances, such as when the relevant insurance products cease to become competitive, or the insurer fails to develop the new product within a specific time frame.

## What are generally the obligations of an insurer in terms of providing manpower support?

Insurers will generally provide training support and a dedicated team to support the sales and marketing of the bancassurance products. Under some bancassurance arrangements, the insurer may also provide insurance personnel to assist the sale and marketing of the products in the bank’s branches, but this will require HKMA approval which is difficult in practice.

## What are the typical rights and provisions in relation to insurer’s right to access the bank’s customer database and also the obligations of an insurer that is in receipt of such information?

The insurer will usually have right to access and use customer data for the purpose of policy administration. The bank will usually remain as the owner of the customer data. The insurer will be required to maintain confidentiality of the data and cannot use it for upselling and cross-selling other insurance products unless with the permission of the bank.

## What are the issues to consider in respect of compensation payable by the insurer to the bank and cost of distribution of bancassurance products?

Insurer should decide whether commissions will continue after the expiry or termination of the agreement, and whether other compensation such as marketing allowance or IT allowance should be provided to the bank. Further, for any up-front payment made to the bank, insurer may consider whether there should be any clawback in case the sales targets are missed or early termination of the bancassurance agreement.

## What can parties do if the insurer is unable to develop or refuses to develop a bancassurance product or cease offering a bancassurance product?

The insurer will lose exclusivity in respect of such bancassurance product.

## What are the possible terms and issues relating to intellectual property that has been jointly developed (JDIP) pursuant to a bancassurance agreement?

This is more a commercial issue. Possible terms are the party proposing the product will have the IP rights and the other party will be restricted from developing similar products for other channels.

## What happens to the facilitation fee for the promotional and marketing activities paid by the insurer to the bank in the event of an early termination?

If the fee is paid upfront in a lump sum, insurer may consider clawback provisions so that part of the fees may be refunded in case of early termination or other events.

If the fees are paid by installments, the insurer may not be able to claw back those installments that have been paid. However, this is subject to negotiation between the parties.

## A pro-rata refund of the facilitation fee in the event of an early termination may not be fair to the banks as the banks would typically invest and incur more costs and expenses during the initial years of a bancassurance agreement to promote and market and put in place a business structure to supports the objectives of the bancassurance agreement. How can the parties address this issue?

The fees may be paid by installments agreed between the parties.

## Can a party ask for an indemnity for any losses, expenses and damages suffered as a result of an act by a bank staff and conversely can a bank to ask for an indemnity or any losses, expenses and damages suffered which is attributed to the other party?

Yes. Indemnity provisions are common in bancassurance agreements. However, there is always a cap to such indemnity and the default party will usually not be responsible for indirect or consequential damages.

## What are the issues to consider when forming a bancassurance steering committee?

The issues include: representation from each party, quorum and frequency of meetings, the matters that should be discussed in the steering committee meetings (which should be management matters such as business plan, sales targets, new products, etc.). A mechanism has to be in place for resolution of deadlock situations. Usually, the matters will be escalated to the CEOs, failing which, to arbitration. In addition, a working committee may also be established to deal with the more daily routine matters.

# Digitalization in Insurance Guide

## Is there any specific regulation governing the sale of insurance through online platforms?

No. There is no specific regulation governing the sale of insurance through online platforms. Note however the following related to online sale of insurance products: (i) the Insurance Authority ("**IA**") launched a pilot scheme, Fast Track, on 29 September 2017 to expedite applications for new authorization to carry on insurance business in or from Hong Kong using solely digital distribution channels; and (ii) the IA issued the Guideline on The Use of Internet for Insurance Activities ("**GL8**") which came into effect on 26 June 2017 to draw the attention of insurers, insurance intermediaries and other groups regulated by the IA to the special points they need to be aware of when conducting any kind of insurance-related activities, whether wholly or partially, over the Internet.

## Is the sale of insurance through mobile applications subject to the same requirements as the online sale?

Yes. The Fast Track regime and GL8 are relevant to the sale of insurance, whether through mobile applications or other online platforms.

## Set out three key regulatory requirements for the distributions of products online or through mobile applications.

Three key regulatory requirements relevant to the distributions of products online under GL8 are: (i) the products must be sold by the insurers, insurance intermediaries or other groups authorized under the Insurance Ordinance to carry on insurance business in or from Hong Kong; (ii) the collection, processing and storing clients’ personal information over the Internet must comply with the Personal Data (Privacy) Ordinance (Cap. 486 of the Laws of Hong Kong); and (iii) the sale of insurance products online must comply with the Electronic Transactions Ordinance (Cap. 553 of the Laws of Hong Kong).

## Do the current insurance regulations in your jurisdiction allow the KYC process be done online or electronically? If so, what are the key requirements?

There is no specific insurance regulation governing e-KYC. However, GL8 provides that insurers must have a prudent underwriting policy to process insurance applications submitted via the Internet. In particular, they must take practicable measures to ascertain the true identity of their clients.

## Do the insurance regulations permit insurance policies/contracts to be concluded through digital means? For example, through a “click-through” or “e-signature”, without any wet signature.

Yes, but the conclusion of the insurance policies/contracts must comply with the relevant provisions of the Electronic Transactions Ordinance (Cap. 553 of the Laws of Hong Kong) in matters concerning, inter alia, digital signatures, presentation or retention of information in its original form and retention of information in electronic records.

## Is there any specific regulation governing the advertising of insurance products through online platforms or the use of aggregators?

No. There is no specific regulation governing the advertising of insurance products through online platforms or the use of aggregators. However, if the advertising of insurance products is conducted through a third party online platform and the third party is considered to be carrying out insurance regulated activities, the third party may be required to obtain the requisite insurance license.

## Are there any customer service requirements if the insurers sell their products online?

There are no specific requirements governing customer service if the insurers sell their products online. There are only general requirements under GL8 relating to customer service, including but not limited to the following: (i) the sales materials or illustrations displayed on the Internet must contain accurate and up-to-date information which is written in plain language; (ii) the potential policy holders must be provided with all the necessary information; (iii) the potential policyholders must be given an opportunity to access the full wording of the relevant insurance policy before the sale is completed; (iv) any electronic insurance policies or documents must be received in a readable and retainable form by the policy holder; and (v) information on the appropriate channels for complaints must be provided.

## If an obligation is imposed on insurers to allow customers to amend or update their policies online, are there any specific regulatory requirements governing that process?

There is no such obligation imposed yet.

## Are insurers required to apply for specific insurance licenses in order to conduct online sales?

For new insurers to conduct online sales using solely digital distribution channels, they are required to apply for authorizations from the IA through the Fast Track regime. For existing insurers to conduct online sales, they may do so with their existing insurance licenses.

## In order to conduct online sales, are insurance intermediaries required to apply for any specific insurance licenses?

No. Insurance intermediaries may conduct online sales with their existing insurance intermediary licenses.

## Are there specific requirements on the commission rates paid to insurance intermediaries for online sales? Please specify if these rates are different from the rates applicable in the case of insurance sale through other means.

No. There is no difference on the commission rates paid between online sales and other means.

## Where the insurers do not engage in online insurance sales themselves, but engage intermediaries to do so, would the insurers be deemed as offering or selling insurance products online?

No. Insurers are generally not subject to any limitations under their insurance licenses to engage in online insurance sales. Therefore, whether or not the insurers would be deemed as offering or selling insurance products online by engaging intermediaries to do so should not be a regulatory concern.

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