

REGULATORY NEWSLETTER

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“A great many people think they are thinking when they are merely rearranging their prejudices.”

William James

Actual thinking is based on an examination of the facts, and coming to a logical or informed decision based on those facts. Absent the facts, one cannot actually have an intelligent discussion, much less perform logical thinking.

Welcome back to our monthly newsletter highlighting the best coverage of IA’s latest regulatory updates and enforcement news. ComplianceDirect, as being your Compliance Consultant, will always be at your service, devotedly, diligently and duly providing our professional consultation and be your strongest support to help you think based on facts and leave preconceived notions behind.

REGULATORY UPDATES

Explanatory Note on “Regulated Activity” under the Insurance Ordinance 12 October 2021

The IA has issued a new explanatory note on “Regulated Activities” (“RA”) on 12 October 2021 to set the view on whether or no persons are carrying on “regulated activity” in certain sector – specific situations and, hence, whether to get licenced under the IA. Since 2019, the IA has received many enquires on the issue of RA, IA then consolidated the enquires and decided to issue this note to refine and further develop its view on the application of the scope of RA in the context of different business practices.

The Note has explained the general approach in considering the issue of whether or not a person is required to obtain a licence under the Ordinance and the factors which the IA takes into account when considering the scope of different type of “regulated activity”.

In general, IA will look at whether the person has performed the following activities in the course of the person's business or employment or acting for reward:

- a) negotiating or arranging a contract of insurance
- b) inviting or inducing, or attempting to invite or induce, a person to enter into a contract of insurance;
- c) inviting or inducing, or attempting to invite or induce, a person to make a material decision;
- d) giving regulated advice.

It is well noted that the IA has mentioned that for the employees whose duties are clerical or administrative or responsible for claims handling may subject to exemptions and discharge of duties under Section 123 of Insurance Ordinance.

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Note on the Treatment of "Closely Linked" Entities that are Members of the Supervised Groups under the Group-wide Supervision Regime 6 October 2021

The purpose of this Note is to set out general guidance on the Insurance Authority's expectations regarding the steps that a designated insurance holding company ("DIHC") should take pursuant to particular provisions of the Insurance Ordinance (Cap. 41) and the Guideline on Group Supervision (GL32), in respect of "closely linked" entities that are members of the supervised group. It should be noted, however, that the manner in which a DIHC would be expected to exercise its control and influence on a closely linked member would depend on the nature, scale and complexity of risks associated with the closely linked member.

The general principle is that a DIHC is required to exercise its control or influence in respect of a closely linked member, but the legal rights of the DIHC in relation to the entity do not give the DIHC power to compel the entity to take such acts as may be necessary to ensure such compliance is achieved, then the DIHC should at a minimum take the following steps:

- a) The DIHC should take reasonable steps which are within its control or influence in relation to the entity to achieve compliance
- b) The DIHC should notify the entity in writing of the DIHC's obligation to achieve compliance with the requirement under the Ordinance; and
- c) The DIHC should raise the matter with the IA as early as practicable, by informing the IA of the reasons why its control and influence are insufficient to be able to procure compliance with the requirement imposed and what steps it has taken (or proposes to take) within the scope of its control and influence to try to secure compliance.

The DIHC should also keep proper documentation on all the reasonable steps it takes and may be required to provide these to the IA for reference upon IA's request.

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