REGULATORY NEWSLETTER

2024 Vol.2

February – It's the time to share love in all its forms!

Whether it's the love we have for our partners, families, friends, or even for ourselves, February serves as a reminder to cherish and nurture these important relationships. So let us take this opportunity to spread love, kindness, and compassion to those around us, and make this month a truly memorable one filled with warmth and heartfelt connections.

ComplianceDirect wishes you all a happy Valentines' Day!

REGULATORY UPDATES

Insurance Authority launches public consultation on the second batch of draft rules for the new capital regime

11 Jan 2024

The Insurance Authority (IA) launched a public consultation on four draft rules to tie in with the implementation of the new capital regime, covering exemption criteria for the appointment of general insurance actuary, requirements for maintenance of assets in Hong Kong in respect of general business, and the valuation basis and capital requirements for marine insurers, captive insurers and Lloyd's.

The four draft rules covered in this round of consultation are:

- Draft Insurance (Exemption to Appointment of Actuary) Rules (Cap. 41Q);
- Draft Insurance (Maintenance of Assets in Hong Kong) Rules (Cap. 41T);

- Draft Insurance (Marine Insurers and Captive Insurers) Rules (Cap. 41U); and
- Draft Insurance (Lloyd's) Rules (Cap. 41V).

The consultation paper is now available on the IA website. Members of the public are welcome to submit their comments to the IA on or before 9 February 2024 by email to rbc@ia.org.hk or by post to the IA office on 19/F, 41 Heung Yip Road, Wong Chuk Hang, Hong Kong.

The public consultation on two draft Rules, namely the draft Insurance (Valuation and Capital) Rules (Cap. 41R) and draft Insurance (Submission of Statements, Reports and Information) Rules (Cap. 41S), which was launched on 5 December 2023, ended on 16 January 2024. The IA will consider the feedback collected from the two rounds of consultation and publish relevant consultation conclusions in due course.

View News

Experts shed light on building resilience and sustainability through insurance and the capital market in Asia

24 Jan 2024

Asia is one of the most vulnerable regions to climate risks than the rest of the world given its significant natural catastrophe (NatCat) protection gap, rapid economic growth and high degree of urbanisation. To examine how effective insurance and capital market solutions can help address climate risks in Asia, the Insurance Authority (IA) hosted a panel discussion titled "Harnessing Insurance and Capital Markets for a Resilient and Sustainable Future" at the Asian Financial Forum (AFF), where industry leaders and experts shared valuable insights and experiences as how to unleash the social value of insurance by leveraging the capital market to strengthen financial and social resilience in the region.

"There is a growing protection gap in Asia, with only 16% of the economic losses caused by NatCat events being insured in 2022," said Tony Chan, Associate Director, Policy and Legislation of the IA. "With our mature insurance and capital markets, Hong Kong can play a role in providing alternative risk transfer tools such as insurance-linked securities (ILS) to help enhance capacity for taking on increasing NatCat risks and deepening financial inclusion."

The panel, composed of experts from the insurance industry and academia, dived into the problems arising from the widening NatCat protection gap in Asia and emphasised the urgent need for climate adaptation and mitigation measures to address the region's vulnerability to climate change. They explored the role of ILS including catastrophe bonds and parametric insurance in bridging the protection gap and providing financing for post-disaster recovery.

The panelists also discussed how closer collaborations among stakeholders including governments, the insurance industry and academia can bring better protection to people and businesses against climate change risks.

View News

ENFORCEMENT NEWS

Enforcement collaboration between IA and HKMA – Insurance Authority suspends Cheung Tak On for two months and orders a fine of $2,900 for misappropriating gift vouchers

10 Jan 2024

The Insurance Authority (IA) has taken disciplinary action against Mr Cheung Tak On (Mr Cheung), a current technical representative (agent) appointed by an Authorized Institution at the material times, by suspending his licence for two months and ordering him to pay a pecuniary fine of HK$2,900, on the grounds of him not being fit and proper. The disciplinary action is decided on the basis of all relevant information, including the information gathered by the HKMA in its investigation into Mr Cheung's conduct.

The HKMA's investigation found that, between January to February 2021, Mr Cheung took a total of 20 gift vouchers with a total value of HK$2,900 from an Authorized Institution by which he was employed at the material time without its knowledge or authorization. The gift vouchers were intended to be given by the Authorized Institution to its clients as gifts. Certain clients did not however claim their gift vouchers and Mr Cheung decided to keep these for himself without letting his employer know.

On being discovered, Mr Cheung admitted his wrongdoing. At the time he had only used one of the coupons with a value of HK$50 for his personal use and he returned the remaining coupons he had taken.

The IA is of the opinion that Mr Cheung's conduct crossed the ethical line between right and wrong and, in this respect, he demonstrated a lack of fitness and properness to be a technical representative (agent) during the period in which he was serving in that capacity. Disciplinary action at an appropriate level is therefore merited. In deciding the disciplinary sanction to be imposed under Section 84 of the Insurance Ordinance, the IA weighed all relevant circumstances in balance, including that:

1. Mr Cheung admitted to his wrongdoing;
2. Mr Cheung used one of the gift vouchers with a value of HK$50;
3. Mr Cheung returned the unused gift vouchers to the Authorized Institution, including the coupons that the Authorized Institution had yet to discover to be missing at the material time;
4. Mr Cheung's personal circumstances;
5. Mr Cheung's otherwise clear disciplinary record; and

6. the need to send a message to deter similar conduct.

Mr Peter Gregoire, Head of Market Conduct of the IA, said, "Once you cross the line between right and wrong in your professional life, that line can begin to blur until one day, if you are not careful, it is eroded altogether. The consequences of this type of ethical fading can be devastating. That's why it is vital to call it out right at the start and hold individuals accountable for their actions when they let their ethics slip. Disciplinary action calibrated and deployed at the appropriate level not only penalises wrongdoing, but can help force a course correction at the right moment. That's what we are aiming for in this case. In doing so, we also seek to reinforce the necessity of underpinning the insurance industry with a strong ethical culture."

Ms Carmen Chu, Executive Director (Enforcement and AML) of the HKMA, said, "This enforcement outcome illustrates the result of close collaboration between the HKMA and the IA, with the key objective of sending a strong deterrent message to the industry and practitioners that dishonest conduct will not be tolerated. Banking and insurance professionals are reminded to ensure good understanding of conduct standards and internalise the learning from this and other relevant cases and thus contributing collectively to market integrity and consumer protection."

The IA acknowledges Mr Cheung's cooperation in accepting the disciplinary actions which has resulted in prompt resolution of this matter.

View News

Insurance Authority bans Ma Chun Kei for 4.5 years for fabricating a certificate of insurance
11 Jan 2024

The Insurance Authority (IA) has taken disciplinary action against Mr Ma Chun Kei (Mr Ma), a former technical representative of a broker company, by prohibiting him from applying for a licence for 4.5 years on the grounds that he is guilty of misconduct and not a fit and proper person after having fabricated a certificate of insurance for a professional liability and employees' compensation insurance policy.

On 12 January 2022, Mr Ma assisted a client to purchase professional liability and employees' compensation insurance covering the client's role as a contractor on an interior renovation project for a period of 4 months commencing 13 January 2022. Mr Ma obtained a quotation from an insurer for the insurance. He claimed the client accepted the quotation on 12 January 2022 and that the insurer was informed about it. However, the insurer confirmed that it had not received any response to its quotation. On 13 January 2022, when the client asked about the insurance policy, Mr Ma said he would "give it to him later".

Mr Ma was under the mistaken impression that the insurer was in the process of issuing the certificate of insurance, but that this was taking additional time due to the pandemic. Mr Ma, therefore, took matters into his own hands by altering an existing certificate of insurance issued by the same insurer, to fabricate a certificate of insurance for the client's professional liability and employees' compensation insurance. The fabricated certificate was sent to the client in the early hours of 14 January 2022. The incident came to light in March 2022 when a staff member of the broker company requested a copy of the relevant insurance policy from the insurer. Mr Ma subsequently admitted that he had no authority to create the certificate and his conduct amounted to a breach of the Code of Conduct for Licensed Insurance Brokers issued by the IA.

The fabricated certificate of insurance gave the client a false impression that it had a valid insurance policy, when this was not the case. Mr Ma's conduct, therefore, exposed the client to the risk of incurring financial liability without insurance in place to cover such liability and also potential criminal prosecution for not having a valid employee compensation insurance policy. Thankfully, neither of these risks became manifest, with the client completing the project without sustaining any loss or and no criminal prosecution was commenced.

In considering this case, the IA notes Mr Ma had not only failed to pass on his client's acceptance of the quotation to the insurer, but also he failed to rectify the matter by completing the insurance application process in March 2022 (after the incident had come to light) to ensure the client had valid insurance in place for the remaining period of the interior renovation project.

Members of the public rely on insurance brokers (including technical representatives) to carry on regulated activities in the interest of policy holders or potential policy holders to ensure their insurance needs are identified, evaluated and suitable insurance is arranged for their protection. It is vital, therefore, for members of the public to be able to trust in the integrity of the insurance brokers with whom they have dealings. For this reason, it is a baseline pre-requisite of the regulatory regime for insurance brokers to act competently, honestly, fairly, and to act in the best interest of the policy holder or potential policy holder concerned and with integrity when carrying on regulated activities.

Fabrication of an insurance document is a serious misconduct that carries with it potential criminal implications. The IA has zero tolerance for this and will not hesitate to impose severe disciplinary action to penalize and deter the occurrence (or recurrence) of such misconduct. Mr Ma, by his conduct, clearly violated the trust and integrity expected of an insurance broker. Certainly disciplinary action in the form of a lengthy ban, in the IA's view, is justified.

In deciding the disciplinary sanction to be imposed under section 81 of the Insurance Ordinance, the IA has weighed all relevant circumstances including the following factors:

1. The broker admitted his misconduct at the first available opportunity and expressed remorse over his conduct;
2. He self-reported the incident to the IA voluntarily and co-operated with the IA's investigation;
3. He obtained no financial benefit and the client has not suffered any loss;
4. He signed a Deed of Undertaking, inter alia, admitting his misconduct and undertook to indemnify the insurer against all losses in relation to the incident;
5. He has misled the client and exposed it to potential financial loss and criminal prosecution;

6. He failed to rectify the situation after the incident came to light in March 2022;
7. He has been a licensed insurance intermediary for 26 years and has a clean disciplinary record; and
8. There is a need to send a message to deter similar conduct.

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