STUDY AID

Hong Kong Practical Education Module

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GENERIC

- *Roles and responsibilities of main regulators supervising the financial service industry*
- *Roles and responsibilities of main industry bodies*
- *Statutory reserved roles for actuaries*
- *Risk management responsibilities for actuaries*

ACTUARIAL SOCIETY of HONG KONG
香港精算學會

3.1 Generic

3.1.1 Roles and responsibilities of main regulators supervising the financial service industry

Hong Kong offers a range of financial products and these are regulated by various government authorities. In addition to their regulatory duties, these government authorities are also typically responsible for educating, promoting and encouraging development of the industry for their respective financial products.

Before 26 June 2017, the Office of the Commissioner of Insurance (**OCI**) was the insurance regulator and oversaw the financial condition and operations of general insurance businesses and long term businesses operating in Hong Kong. The **OCI**'s responsibilities included processing applications for new insurers, supervising these insurers and publishing insurance statistics.

As part of a process to enhance regulation of the insurance industry, the Independent Insurance Authority (**IIA**) has been established to take over **OCI**'s responsibilities to come into full effect on 26 June 2017; OCI was disbanded on this date. In addition to **OCI**'s responsibilities, the IIA also regulates insurance intermediaries; these intermediaries are currently regulated by three self-regulatory organisations (SROs) (described further in "Roles and responsibilities of main industry bodies").

The Hong Kong Monetary Authority (**HKMA**) is responsible for maintaining stability of the overall economy, including: stability of the currency; regulating banking businesses in Hong Kong, and managing the Exchange Fund to achieve the objective of currency stability.

The Monetary Provident Fund Schemes Authority (**MPFA**) oversees regulation and supervision of mandatory provident fund (MPF) schemes and occupational retirement (ORSO) schemes. The **MPFA**'s responsibilities focus on overseeing the adequacy of various aspects of these operations, including: compliance with legislation; regulating sales, marketing activities and advice giving; approve qualified persons as trustees of registered schemes; registering MPF schemes, and making rules/guidelines for payment of mandatory contributions.

The Security & Futures Commission of Hong Kong (**SFC**) regulates Hong Kong's securities and futures markets. As part of this role, the **SFC** oversees intermediaries in investment-related fields (e.g. brokers, fund managers etc.), investment products, listed companies, Hong Kong Exchange and Clearing Limited (**HKEx**), automated trading service (ATS) providers, approved share registrars, Investor Compensation Company Limited (**ICC**) and market participants. (HKEx described further in "Roles and responsibilities of main industry bodies")

An actuary who works in one or multiple financial industries should become familiar with these regulators.

Useful links

- **OCI** (its responsibilities taken over by Independent Insurance Authority from 26 June 2017 onwards) - http://www.oci.gov.hk/about/index03.html *(the OCI's website replaced by the IIA's website below)*
- **IIA -** https://www.ia.org.hk/en/index.html
- **HKMA** - http://www.hkma.gov.hk/eng/about-the-hkma/hkma/about-hkma.shtml
- **MPFA**- http://www.mpfa.org.hk/eng/mpfa/scopes_of_work/mission_and_role/index.jsp
- **SFC** - http://www.sfc.hk/web/EN/about-the-sfc/our-role/regulatory-objectives.html

3.1.2 Roles and responsibilities of main industry bodies

The Actuarial Society of Hong Kong (**ASHK**) is the actuarial association in Hong Kong and is a full member of the International Actuarial Association. While **ASHK** does not currently have statutory powers, it issues code of conduct, professional standards and actuarial guidance notes that actuaries practicing in Hong Kong are expected to follow.

ASHK is a professional body whereby its members have an obligation in the public interest to provide the best possible service and advice. Therefore it is essential that the highest standards of conduct are maintained by all members. Professional conduct involves integrity in relationships with those to whom professional services are rendered, as well as with other members of the profession and the public. The Council of the ASHK has issued a Professional Conduct Code (PCC) as a statement of the principles to which it expects all members to conform in the spirit as well as the letter. When it is alleged that the conduct of a member is unprofessional or otherwise of such a nature (fraud, criminal offence etc.) as may be considered likely to bring discredit to the ASHK (whether in his relation to the Society or its members, or otherwise), the Council will take such steps as it thinks fit, and if necessary will set in motion disciplinary procedures. In addition, all non-retired Fellow and Associate members of the **ASHK** are also subject to the Continuing Professional Development (CPD) requirement on a calendar year basis. Non-compliance of the CPD requirement may result in counselling and disciplinary actions.

Actuaries practicing in long term business or in occupational retirement schemes in Hong Kong should adhere to **ASHK**'s Professional Standards (PS) 1 and 2 respectively as per requirements set in the Insurance Companies Ordinance Cap 41 Section 15 and Occupational Retirement Scheme Ordinance Cap 426 H. Furthermore, PS 1 is also applicable to actuaries serving in a position of authority (e.g. director) for an insurance company and those serving as an external advisor or assessor.

The Hong Kong Federation of Insurers (**HKFI**), Hong Kong Confederation of Insurance Brokers (**HKCIB**) and Professional Insurance Broker Association (**PIBA**) are SROs responsible for regulating insurance intermediaries in Hong Kong. The **IIA** will absorb these SRO's regulatory powers over a two to three year period from 2015-end (when the Provisional Insurance Authority [the IIA's previous name] was established).

Insurance intermediaries registered validly with the three SROs will be deemed as licensees when the new statutory licensing regime commences for a period of three years. As the IIA absorbs their regulatory powers, these SROs are expected to continue to function as trade bodies representing their member's interest.

HKEx is a private entity operating a securities market and a derivatives market in Hong Kong as well as the clearing house functions. It is also the frontline regulator for listed companies in Hong Kong and strictly enforces its listing, trading and clearing house rules to maintain open, fair, transparent and efficient markets.

Regulator	Regulation scope
OCI (up to 26 June 2017)	General insurance and long-term business
IIA (26 June 2017 onwards)	General insurance, long-term business and insurance intermediaries
HKFI, HKCIB, PIBA (up to 2017-2018)	Insurance intermediaries
HKMA	Banks
MPFA	Mandatory provident fund schemes and occupational retirement schemes
SFC	Investment-related entities
ASHK	Actuaries practicing in Hong Kong
HKEx	Listed companies

Useful links

- **ASHK** - http://www.actuaries.org.hk/aboutus.php#6
- **HKEx** - https://www.hkex.com.hk/eng/exchange/corpinfo/profile.htm

3.1.3 Statutory reserved roles for actuaries

- Appointed actuary of a company carrying out long term business
- Providing actuarial opinion on transfer of liabilities of a long term business
- Preparation of actuarial certificates for occupational retirement schemes
- Preparation of annual actuarial reports with respect to Employees' Compensation (EC) and motor insurance business in accordance to IIA GL9

3.1.4 Risk management responsibilities for actuaries

There are currently no official requirements set in statute or within ASHK professional standards or guidance notes with regard to risk management responsibilities for actuaries. Notwithstanding this, the importance of enterprise risk management is increasingly being emphasized by regulators around the world.

Many of the tasks performed by actuaries are intimately linked to the risks of our organisations. Besides financial risks that actuaries are generally very focused on, operational risks and reputational risks must not be underestimated as their long term financial impact could be very significant.

A few risk issues where actuaries in Hong Kong would often come across are included in this syllabus, namely

- Consumers complaints or disputes
- Anti-money laundering and counter-terrorist financing
- Data protection
- Outsourcing
- Anti-discrimination

3.1.4.1 Consumers complaints or disputes

In HK, the OCI plays a monitoring role in insurance complaints and ensures that the complaints are properly handled by the insurers or other self-regulatory bodies within the industry. The OCI itself, however, does not have the statutory power to intervene in such commercial disputes.

Actuaries should be aware of historic complaints and be vigilant of reputation risks when performing product design and pricing. Besides playing a risk management role with regard to possible future disputes throughout the product development process, quite often actuaries are invited to participate in the resolution of complaints by customers, for instance by explaining certain complicated features of a product that have given rise to complaints, or by estimating fair financial compensation where the product provider is deemed to have misled a customer.

Insurance policyholders in HK may lodge their complaints to various self-regulatory bodies. The Insurance Claims Complaints Bureau ("**ICCB**") has been set up and financed by the industry to handle complaints from all types of personal insurance policies. For disputes related to small claims (defined as claims involving no more than HK$50,000), the policyholder may also consider seeking help with any unresolved complaint at the Small Claims Tribunal ("**SCT**").

The self-regulatory system for insurance intermediaries, namely insurance agents and brokers, is supported by legislation which is contained in Part X of the Insurance Companies Ordinance (Cap. 41) ("**ICO**"). Under section 65 of the ICO, a person is prohibited from holding himself out as an insurance agent or an insurance broker unless he is properly appointed or authorised. For complaints related to agent misconduct, the policyholder can lodge their complaints to the Insurance Agents Registration Board ("**IARB**") of the Hong Kong Federation of Insurers ("**HKFI**"). If the insurance intermediary involved is a broker, complaints can be made to the Hong Kong Confederation of Insurance Brokers ("**HKCIB**") or Professional Insurance Brokers Association ("**PIBA**"), depending on the affiliation of the intermediary.

Motor Insurers' Bureau ("**MIB**") of HK would provide assistance to victims of traffic accidents if they have difficulty in claiming compensation due to lack of insurance, untraceable vehicle or insolvency of insurance company.

The Employees Compensation Insurer Insolvency Bureau ("**ECIIB**") administers the Insolvency Fund Scheme to assume the responsibility for the liabilities of insurers engaging in employees' compensation.

Furthermore, the Consumer Council, as a body responsible for mediating consumer disputes, is an alternative for lodging complaints against insurance services.

The Enforcement Division of MPFA is responsible for handling complaints against approved trustees. Consumers are encouraged to contact the trustees of their schemes in the first place to reflect their dissatisfaction and seek resolution, before filing a complaint with MPFA. The Enforcement Division is also responsible for handling complaints against MPF intermediaries for non-compliance with the performance requirements, and/or a person for carrying on regulated activities without MPF intermediary registration. Furthermore, complaints against MPF intermediaries can also be made to the OCI.

One of MPFA core functions is to ensure employers and administrators of ORSO schemes operate ORSO schemes in accordance with the Occupational Retirement Schemes Ordinance ("ORSO") (Cap 426), Mandatory Provident Fund Schemes (Exemption) Regulation (Cap 485 sub. leg. B) and in a prudent manner. The ORSO Schemes Section of MPFA is responsible for handling complaints against employers and administrators of ORSO schemes.

Useful links

- Insurance Claims Complaints Bureau - www.iccb.org.hk
- Insurance Agents Registration Board of HKFI - www.hkfi.org.hk/#!/insurance-agent/index
- Hong Kong Confederation of Insurance Brokers (HKCIB) - www.hkcib.org
- Professional Insurance Brokers Association (PIBA) - www.piba.org.hk
- Small Claims Tribunal - www.judiciary.gov.hk/en/crt_services/pphlt/html/sc.htm#1
- Motor Insurers' Bureau - www.mibhk.com.hk
- Employees Compensation Insurer Insolvency Bureau - www.eciib.com.hk
- Consumer Council - www.consumer.org.hk

- Enforcement Division of Mandatory Provident Fund Schemes Authority - www.mpfa.org.hk/eng/enforcement/index.jsp

3.1.4.2 Anti-money laundering (AML) & counter-terrorist financing (CTF)

In light of the heightened scrutiny of the risks of money laundering and terrorist financing at the international level, the Financial Services and the Treasury Bureau has taken over the overall coordinating role for anti-money laundering/counter terrorist financing policies with effect from October 2008. The Bureau is responsible for HK's overall compliance with the recommendations made by the Financial Action Task Force (FATF) – they are famously known as *40+9 recommendations*.

Obligations of insurers are governed by Section 7 of the Anti-Money Laundering and Counter Terrorist Financing (Financial Institutions) Ordinance, Cap 615 (**AMLO**) and Section 4A of the **ICO**.

The AMLO imposes requirements relating to customer due diligence and record keeping on financial institutions (including insurance companies) and provides relevant authorities (namely HKMA, SFC and OCI) with the powers to supervise compliance with these requirements and other requirements under the AMLO.

The insurance industry is vulnerable to ML and TF. The inherent characteristics of insurance products may give rise to ML risks unique to the insurance industry. When a life insurance policy matures or is surrendered, funds become available to the policyholder or other beneficiaries (e.g. an assignee, where the policy has been assigned, or a trustee, where the policy has been placed in trust). The beneficiary to the contract may be changed possibly against payment before maturity or surrender, in order that payments can be made by the insurer to a new beneficiary. A policy might be used as collateral to purchase other financial instruments. These investments in themselves may only be one part of a sophisticated web of complex transactions with their origins elsewhere in the financial systems.

Examples of the type of long term insurance contracts that are vulnerable as a vehicle for laundering money or financing terrorism are products such as:
- Unit linked or with profit single premium contracts
- Single premium life insurance policies that store cash value
- Fixed and variable annuities
- (second hand) endowment policies

It is therefore important for actuaries to bear in mind the risk of ML and TF when designing products. In addition, post sales, it is necessary to put in place early warning system to track suspicious customer behavior.

Useful links

- AML guidelines from **IIA** - https://www.ia.org.hk/en/legislative_framework/files/GL3.pdf
- **FATF** 40 recommendations - http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html
- Additional info from Joint Financial Intelligence Unit (**JFIU**) - http://www.jfiu.gov.hk/en/legislation.html
- Typical red flag indicators from JFIU - http://www.jfiu.gov.hk/en/ifi_insurance.html

3.1.4.3 Data protection

Data privacy of the policyholders is a concern of the regulators. During the course of providing insurance services, customer's personal data are collected extensively. Therefore, the regulators attach great importance to the proper handling of personal data.

The law in HK governing this is the Personal Data (Privacy) Ordinance, Cap 486. The objective of the Ordinance is to protect the privacy rights of a person in relation to personal data. A body has been established under the Ordinance to oversee its application, namely the Office of the Privacy Commissioner for Personal Data ("**PCPD**"). Everyone who is responsible for handling data is required to follow the Six Data Protection Principles ("DPPs") which represents the core of the Ordinance covering the life cycle of a piece of personal data:

- Data collection principle
- Accuracy & retention principle
- Data use principle
- Data security principle
- Openness principle
- Data access and correction principle

The PCPD has issued a guidance note on the proper handling of customers' personal data for the insurance industry. The guidance notes set out the Data Protection Principles ("DPPs") which underpin the proper treatment of personal data. The Guidance Note also discusses the use of personal data for direct marketing purposes.

The PCPD also prescribes the general principles in collecting customer's medical data for insurance application and claim processing. It is stipulated that only the relevant and necessary medical data should be collected and the collection should be made by lawful and fair means.

If third parties are entrusted with the handling of customers' personal data, insurance companies should ensure the safe handling and erasure of the data by the contractors and to prohibit further or other use of the data. Appropriate precautionary measures to protect the personal data must be adopted. Recommended practice is available on pages 21-22 of the

Guidance Note from PCPD. There is also an information leaflet on "outsourcing the processing of personal data to data processors" issued by the Privacy Commissioner.

Useful links

- Office of the Privacy Commissioner for Personal Data - www.pcpd.org.hk
- 6 key data protection principles promulgated by the PCPD - https://www.pcpd.org.hk/english/data_privacy_law/ordinance_at_a_Glance/ordinance.html#1
- Circular from IIA regarding personal data protection - https://www.ia.org.hk/en/legislative_framework/circulars/reg_matters/files/cir_20100818.pdf
- Guidance on the proper handling of customers' personal data for the insurance industry- https://www.pcpd.org.hk/english/resources_centre/publications/guidance/guidance.html

3.1.4.4 Outsourcing

With more and more insurance companies outsourcing their business activities, including customer-related services and back-office services to reduce costs, such arrangements bring increased risks to the companies in their dependence on third parties. GL14 has been issued to set out the framework within which insurers are expected to formulate and monitor their outsourcing arrangements for protecting the interests of its existing and potential policyholders. Importantly, outsourcing does not diminish the obligations of an insurer to comply with the relevant laws and regulations applicable in HK. Annex A of GL14 provides a useful list of examples of services when performed by a third party service provider may be considered as outsourcing, and those that would generally not be regarded as outsourcing.

MPFA deems an outsourcing arrangement to an overseas service provider as a material change in respect of the scheme. Trustees must ensure that MPFA is notified of any such arrangement, including information about the function, commencement date, name of the service provider, jurisdiction under which the outsourcing is taking place and a copy of the service agreement. All existing and future outsourcing arrangements must comply with the Personal Data (Privacy) Ordinance (Cap. 486).

Useful links

- GL14 - https://ia.org.hk/en/legislative_framework/files/GL14.pdf
- MPFA Circular regarding overseas outsourcing - www.mpfa.org.hk/eng/legislation_regulations/legulations_ordinance/circulars/mpf/files/tr_case.pdf

3.1.4.5 Anti-discrimination

As part of its 2014/2015 report, the Equal Opportunities Commission (**EOC**) in HK has conducted an analysis of the benefits, coverage and policies provided by Australia, Canada, New Zealand, the United Kingdom and the United States, countries with similar legislation to HK. The results show that the law in these countries permit discrimination on attributes such as sex, disability, age, etc., if actuarial data and other proven information support a risk differential due to these factors.

The study found that sex is a common discriminator in life insurance overseas, while in HK the differentiation between groups is mainly driven by commercial considerations. A major difference is the tendency in overseas countries towards greater coverage for pre-existing conditions in medical insurance while in HK, cover exclusion for pre-existing conditions is still common. In HK there is also less actuarial data for medical insurance than those for life insurance particularly as, in contrast to the other countries studied, HK does not share medical data among the different insurers.

In HK, insurers are generally permitted to have differential treatment (premium rates, policy acceptance and policy provisions) on policyholders based on risk factors such as age, sex and occupation. However, according to the Anti-Discrimination Ordinances (including Sex Discrimination Ordinance, Disability Discrimination Ordinance, Family Status Discrimination Ordinance and Race Discrimination Ordinance), these differential treatments have to be based on actuarial or reliable statistical data. Where no such data is available, any differential treatment must be based upon reputable medical advice or opinion.

Under the Sex Discrimination Ordinance, it is unlawful to discriminate, on the ground of sex, marital status or pregnancy, in the terms and conditions of employment or access to benefits, facilities or services. This applies to both existing contracts and new ones. Benefits may be in the form of fringe benefits, commissions, bonuses, allowances, pensions, health insurance plans, annual leave, merit and performance pay, or any other benefits available to employees generally. This is something actuaries working for companies that provide group insurance schemes must be aware of.

Under the Disability Discrimination Ordinance, it may constitute a direct discrimination if an insurance company provides a less favorable term to a person on the ground of his/her disability. The anti-discrimination law recognises that the insurance practice necessarily involves the classification of risks and that premiums and policies are tailored to reflect such risks. The EOC has developed a case study on discrimination in insurance to help public better understand the issue. The case involves a possible discrimination against an applicant when the insurance company increases the premium for the applicant's basic life plan and refuses

his application for additional cover, if the company cannot demonstrate that the decision was based on a reasonable and reliable source of data.
http://www.eoc.org.hk/eoc/graphicsfolder/inforcenter/newsletter/content.aspx?itemid=7886&mode=ce

Race Discrimination Ordinance section 22 applies to commission agents, who are people remunerated in whole or in part by commission for work done for their principal. For example, an insurance company as a principal may not discriminate on the ground of race against its insurance agents who are paid commission in whole or in part under this provision.

While advanced technology and underwriting techniques continue to allow for improved underwriting of risk, efforts to use these new methodologies (eg genetic testing) may be thwarted by those who cite legislation prohibiting an invasion of privacy and/or discrimination. The privacy issue is a regulatory issue and is one that is becoming more significant.

Useful links

- Equal Opportunities Commission (EOC) - www.eoc.org.hk