PRACTICE NOTE
810.2
THE DUTIES OF AUDITORS UNDER
THE INSURANCE COMPANIES ORDINANCE

(Issued April 1999; revised September 2004 (name change))

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The purpose of Practice Notes issued by the Hong Kong Institute of Certified Public Accountants (HKICPA) is to assist auditors in applying Auditing Standards of general application to particular circumstances and industries.

They are persuasive rather than prescriptive. However they are indicative of good practice and have similar status to the explanatory material in Statements of Auditing Standards (SASs), even though they may be developed without the full process of consultation and exposure used for SASs. Auditors should be prepared to explain departures when called upon to do so.

This Practice Note replaces the Industry Auditing Guideline 3.402 "Insurance companies".

Introduction

1. In this Practice Note ("PN") all the sections mentioned below are in respect of the Insurance Companies Ordinance ("the Ordinance") unless otherwise stated.

2. This PN is intended to give guidance to members on the duties of auditors of insurers appointed under section 15 (see paragraphs 21 and 22) or paragraph 4(1A) of Part 1 of the Third Schedule to the Ordinance ("the Third Schedule"). In addition, guidance on the duties of auditors of insurance brokers appointed under section 72 is also included (see paragraphs 55 to 57).

   It is not intended to provide detailed guidance on the general audit procedures to be adopted in respect of insurance companies and brokers.

3. The PN has been prepared following discussions with the Insurance Authority ("IA").

4. This is a guide to the provisions in the Ordinance which were effective as at 2 May 1997 (i.e. including the amendments introduced by the Insurance Companies (Amendment) Ordinance 1997), prepared for reference only. Every care has been taken in its preparation. However, the legislation itself is the sole authority of the law and the PN should be used in conjunction with the legislation.

Scope of the Ordinance

5. The Ordinance is applicable to all persons (companies or individuals) carrying on insurance business in Hong Kong (including insurance brokers) other than those persons noted in paragraph 7 and those specifically exempted by section 51 (see paragraph 8). Insurers which are deemed to carry on insurance business in or from Hong Kong will also fall within the scope of the Ordinance. Section 2(3) provides that a person shall be deemed to carry on insurance business in or from Hong Kong if he opens or maintains an office or agency in Hong Kong for the purpose of carrying on insurance business, or he holds himself out as carrying on insurance business, in or from Hong Kong. Insurers will fall within this scope if they are incorporated in Hong Kong, have a place of business here, are represented here by an agent or are holding themselves out as carrying on insurance business in or from Hong Kong. The following would therefore be included within the scope of and required to be authorized under the Ordinance:

   a. a Hong Kong incorporated company carrying on insurance business in Hong Kong;

   b. a Hong Kong incorporated company carrying on insurance business through an overseas branch or agency, whether or not it is operating as an insurer in Hong Kong;

   c. an overseas incorporated company carrying on insurance business through a Hong Kong branch;

   d. an overseas company carrying on insurance business in Hong Kong by means of an agency;

e. a captive insurer, as defined in section 2(7);

f. reinsurance companies carrying on reinsurance business in or from Hong Kong (but see paragraph 8(b)); and

g. any other person holding himself out as carrying on insurance business in or from Hong Kong.

6. The location of the risks is not relevant in determining whether a particular entity falls within the scope of the Ordinance. Thus, for example, an insurer or a reinsurer who is incorporated overseas and who has not established a place of business in Hong Kong, is not represented by an agent in Hong Kong, and does not hold himself out as carrying on insurance business in or from Hong Kong, can accept insurance or reinsurance premiums relating to Hong Kong risks, without having to be authorized under the Ordinance.

7. Under section 6(1), Lloyd's and an association of underwriters approved by the IA are allowed to carry on insurance business in or from Hong Kong without having to be authorized under the Ordinance. Also, the following persons, although involved in insurance business, do not have to be authorized under the Ordinance:

a. a Hong Kong incorporated company with an overseas incorporated subsidiary that carries on insurance business outside Hong Kong, provided that the Hong Kong holding company is not itself an insurer;

b. an insurance agent (being a person who holds himself out to advise on or arrange contracts of insurance in or from Hong Kong as an agent or subagent of one or more insurers). However, an insurer is required to register its appointed insurance agents in accordance with section 66 and the IA has the power, also under section 66, to direct the insurer to de-register its appointed insurance agents under certain conditions.

8. Section 51 specifically exempts the following persons from the provisions of the Ordinance:

a. any body of persons carrying on insurance business in Hong Kong whose gross premiums do not exceed HK$500,000 in any financial year and who are bound together for certain specified purposes but not for the purpose of gain;

b. persons carrying on only reinsurance business in Hong Kong (unless incorporated in Hong Kong or, if incorporated elsewhere, who have a place of business in Hong Kong or are represented in Hong Kong by an agent or any other person or partnership having a place of business in Hong Kong);

c. registered trade unions (subject to certain limitations);

d. registered co-operative societies;

e. the Hong Kong Export Credit Insurance Corporation;

f. banks, restricted licence banks and deposit-taking companies carrying on insurance business, limited to certain long term or general insurance business carried on solely for the purposes of their banking or deposit-taking business;

g. the Credit Union League of Hong Kong;

h. a recognized clearing house (as defined in section 51(h)).

9. Under section 53 the Chief Executive in Council has power to exempt any insurer from any of the provisions of the Ordinance or to modify or vary any of its provisions in respect of any insurer.

Financial information to be submitted by insurers

10. Section 20 requires two copies of the audited financial information required by the Third Schedule (as detailed in paragraph 11 and summarised in Appendix 1) to be submitted to the IA within six months of the end of the financial period to which they relate. At the same time, where an insurer is a company, section 21 requires that a copy of each document, except those required by Parts 8 and 9 of the Third Schedule (i.e. the general business return and statement of assets and liabilities), should be deposited with the Registrar of Companies.

11. Requirements for submitting financial information to the IA include:

    a. Statutory requirements

       The Third Schedule requires, amongst other things, the following to be submitted annually to the IA:

       i. a report by the directors with respect to the profit or loss of the insurer for the financial year and the state of the insurer's affairs as at the end thereof (the detailed disclosure requirements of which are set out in Part 2 of the Third Schedule);

       ii. a balance sheet;

       iii. a revenue account;

       iv. a profit and loss account.

       Where an insurer carrying on long term business only, or a captive insurer, is a holding company, whether or not it is itself a subsidiary of another body corporate, the statements in (ii) to (iv) above must in addition contain the equivalent consolidated information relating to the insurer and its subsidiaries.

       Where an insurer is authorized to carry on general business:

       v. a general business return;

       vi. a statement of assets and liabilities (not applicable to reinsurers or captive insurers).

       The detailed disclosure requirements for the statements in (ii) to (iv) above are outlined in Parts 3 to 5 of the Third Schedule while those relating to the return referred to in (v) above and the statement referred to in (vi) above are covered in Parts 8 and 9 of the Third Schedule respectively.

       Auditors' reports are required in respect of each of the statements referred to in (ii) to (iv) above (see paragraph 27), the return referred to in (v) above (see paragraph 28) and the statement referred to (vi) above (see paragraph 29).

    b. Other requirements

       Although it is not a statutory requirement, the IA requires an insurer to submit annually an audited cash flow statement in addition to the statutory requirements in (i) to (iv) above. The IA is, however, prepared to consider waiving the submission of a cash flow statement in respect of long term business on an individual case basis if the IA is satisfied that the cash flows relate mainly to the life funds which are already under the scrutiny of the appointed actuary.

12. The requirements for the submission of these statements to the IA do not override the requirements of the Companies Ordinance. Insurance companies which are incorporated in Hong Kong are also required to produce financial statements to lay before the shareholders in general meeting and these financial statements have to comply with those provisions of the Companies Ordinance which are applicable to insurance companies.

Holding company

13. It should be noted that the additional provisions relating to an insurer which is a holding company (Part 3 (paragraphs 10 to 13) of the Third Schedule) may result in consolidated financial statements being prepared where none are required under the Companies Ordinance. Paragraph 10 of the Third Schedule provides that Part 3 of the Third Schedule shall apply to an insurer carrying on long term business only, or a captive insurer that is a holding company, whether or not it is itself a subsidiary of another body corporate. This means that such an insurer authorized in Hong Kong must prepare its own consolidated accounts even if it is the wholly-owned subsidiary of a parent company, whether or not that parent company is an insurer. Where a group is structured vertically with each subsidiary or sub-subsidiary being an insurer in its own right, each holding company in the group will have to submit group accounts in respect of its own subgroup. Where this becomes too onerous it may be possible for the insurer to obtain a modification of the Third Schedule requirements by making an application under section 17(2).

14. Apart from the requirements under Parts 8 and 9, which are in respect of Hong Kong Insurance Business (as defined in paragraph 1(1) of the Third Schedule) only, the information to be submitted under the Third Schedule shall be in respect of the total business of the insurer.

Hong Kong branch

15. Where an overseas company carries on insurance business in Hong Kong through a branch, the information required by the IA apart from the requirements under Parts 8 and 9 must relate to the company's worldwide position. In this respect it should be noted that section 17(2) permits the IA to modify or vary any of the requirements of the Third Schedule in relation to an insurer, provided that the insurer requests such a modification in writing. The IA has indicated that it may be prepared to modify or vary the requirements of the Third Schedule in respect of an overseas company incorporated in a country where the insurer is subject to an acceptable standard of prudential supervision, provided that the complete information submitted to that supervisory body is also submitted to the IA. Auditors who audit Hong Kong branches of such companies are therefore recommended to suggest to their clients that they adopt this procedure.

16. According to the IA, submission of audited branch accounts is one of the standard requirement for the giving or renewal of an accounting concession under section 17(2).

    a. The audited branch accounts need not comply with the requirements of the Third Schedule and the Insurance Companies (General Business) (Valuation) Regulation.

    b. The audited branch accounts would normally include a revenue account, and/or a profit and loss account, a balance sheet, a cash flow statement and notes thereto.

    c. The audit opinion on these accounts would be a true and fair opinion taking into account the inherent limitations applicable to branch operations.

Requirement for assets in Hong Kong

17. General and composite insurers, other than captive insurers or persons authorized to carry on reinsurance business only, are required by section 25A to maintain assets in Hong Kong at all times in respect of their liabilities as of the end of the last preceding year, arising from Hong Kong Insurance Business, and to file a statement of assets and liabilities with the IA annually to ensure compliance. The Eighth Schedule to the Ordinance sets out a list of assets which qualify as assets in Hong Kong. The auditors' requirements to report on this statement are set out in paragraph 29. Where the insurer has entered into contracts of reinsurance for which the premiums payable exceeded 50% of the gross premiums received, such assets shall be at least equal to the greater of:

    a. the aggregate of:

        i. 80% of its liabilities after deducting the amount in respect of which contracts of reinsurance have been entered into; and

        ii. the relevant amount (see paragraph 18); and

    b. the aggregate of:

        i. 40% of its liabilities before deducting the amount in respect of which contracts of reinsurance have been entered into; and

        ii. the relevant amount (see paragraph 18).

    Where the insurer has not entered into contracts of reinsurance for which the premiums payable exceeded 50% of the gross premiums received, then such assets shall be at least equal to the amount determined in (a) above.

18. "Relevant amount" means the relevant amount determined in accordance with section 10 (see paragraph 38) except that:

    a. the reference to gross premium income in that section shall, for the purposes of section 25A, be deemed to be the gross premium income arising from the insurer's Hong Kong Insurance Business only; and

b. the references to claims outstanding, additional amount for unexpired risks and fund in section 10 shall, for the purposes of section 25A, be deemed to be the claims outstanding, additional amount for unexpired risks and fund respectively arising from the insurer's Hong Kong Insurance Business only.

19. The value of assets and the amounts of liabilities shall be determined in accordance with any applicable valuation regulations made under section 59(1)(a). Existing valuation regulations at the time of issue of this PN are covered in paragraphs 41 to 51.

20. Pursuant to section 25A(8), if an insurer is required by law to, and does, maintain assets in a place outside Hong Kong for the sole purpose of making preferential payments to policyholders in respect of claims payable relating to Hong Kong insurance business where the insurer is in liquidation, then the assets to be maintained in Hong Kong by section 25A shall be reduced by the amount of these assets.

Appointment of auditors

21. Under section 15, the insurer must appoint auditors ("the Appointed auditors") who are:

    a. qualified under the Professional Accountants Ordinance (and not disqualified under section 140 of the Companies Ordinance); or

    b. qualified as auditors in the country of incorporation, if the insurer is incorporated outside Hong Kong and who holds such qualification as the IA accepts as being of a comparable standard to that of a person referred to in (a) above.

    Accounts and statements to be submitted by an insurer under Parts 3, 4 and 5 of the Third Schedule, as appropriate, must be audited by the Appointed auditors.

22. The forms and statements to be submitted by an insurer under Parts 8 and 9 of the Third Schedule must be audited by an auditor who is qualified under the Professional Accountants Ordinance (and not disqualified under section 140 of the Companies Ordinance). This auditor may or may not be the Appointed auditor of the insurer referred to in paragraph 21.

23. The insurer must notify the IA in writing of any appointment of, or change in, its Appointed auditors within one month. The first auditors must be appointed within one month of the insurer beginning to carry on insurance business. It is recommended that before beginning the audit the auditors ensure that they have been formally appointed under the Ordinance and that the IA has been notified of the appointment. The IA keeps a record of all the Appointed auditors of insurers for its own use.

24. Section 15A(1) requires that the insurer immediately notifies the IA in writing if for any reason a person appointed under section 15 ceases to be the Appointed auditor or a Hong Kong incorporated insurer proposes to give notice to its shareholders of a resolution removing/replacing the Appointed auditors.

25. Section 15A(2) requires the Appointed auditors to notify the IA in writing immediately if they resign, decide not to seek reappointment, or decide to qualify any of their reports required in respect of the information to be submitted under the Third Schedule. Further guidance on this obligation may be found in PN 620.2 "Communications between auditors and the Insurance Authority" issued by the HKICPA.

The auditors' reports

26. Separate requirements apply in respect of auditors' reports on the financial information, forms and statements required by the Third Schedule for different categories of insurers. These are set out below. Suggested forms of wording for each report are included in Auditing Bulletin 2, "Insurance Companies Ordinance - Auditors' reports issued pursuant to the Third Schedule" issued by the HKICPA.

27. Paragraph 4 of Part 1 of the Third Schedule requires the auditors to audit the financial information prepared in accordance with Parts 3, 4 and 5 of that Schedule (being a balance sheet, revenue account, profit and loss account and, where applicable, consolidated accounts) and to state in their report the items set out below. Definitions of "relevant premium income" and "relevant claims outstanding" are contained in paragraphs 31 to 37. Solvency requirements are set out in paragraph 38.

The auditors are required to state:

In the case of a general insurer other than a captive insurer,

a. the relevant premium income and relevant claims outstanding of, and the relevant amount as defined in section 10 (see paragraph 38) in the case of, the insurer;

b. whether in their opinion the value of the assets of the insurer exceeds its liabilities by that relevant amount;

c. whether in their opinion proper records have been maintained in accordance with section 16; and

d. whether in their opinion the balance sheet, revenue account and profit and loss account have been properly prepared in accordance with the provisions of the Ordinance.

In the case of an insurer carrying on long term business only,

a. the greater of:

    i. the relevant amount as defined in section 10 (see paragraph 38) in the case of the insurer, and

    ii. the required margin of solvency, as determined by the insurer's appointed actuary in accordance with the Insurance Companies (Margin of Solvency) Regulation;

b. whether in their opinion the value of the assets of the insurer exceeds its liabilities by the amount under (a) above;

c. whether in their opinion proper records have been maintained in accordance with section 16;

d. whether in their opinion the balance sheet, revenue account, profit and loss account and (if it is a holding company submitting group accounts) the group accounts have been properly prepared in accordance with the provisions of the Ordinance; and

e. whether in their opinion the financial statements give a true and fair view of:

    i. the state of the insurer's affairs;

    ii. the insurer's profit or loss for the financial year (if the accounts are unconsolidated); and

    iii. the state of the group's affairs and of its profit or loss for the financial year (in the case of group accounts).

In the case of a captive insurer,

a. the net premium income and net claims outstanding of, and the relevant amount as defined in section 10 (see paragraph 38) in the case of, the insurer;

b. whether in their opinion the value of the assets of the insurer exceeds its liabilities by that relevant amount;

c. whether in their opinion proper records have been maintained in accordance with section 16;

d. whether in their opinion the balance sheet, revenue account, profit and loss account and (if it is a holding company submitting group accounts) the group accounts have been properly prepared in accordance with the provisions of the Ordinance; and

e. whether in their opinion the financial statements give a true and fair view of :

    i. the state of the insurer's affairs;

    ii. the insurer's profit or loss for the financial year (if the accounts are unconsolidated); and

    iii. the state of the group's affairs and of its profit or loss for the financial year (in the case of group accounts).

In the case of a composite insurer,

a. the relevant premium income and relevant claims outstanding of, and the relevant amount as defined in section 10 (see paragraph 38) in the case of, the insurer's general business;

b. the greater of:

   i. the relevant amount as defined in section 10 (see paragraph 38), and

   ii. the required margin of solvency, as determined by the insurer's appointed actuary in accordance with the Insurance Companies (Margin of Solvency) Regulation in the case of the insurer's long term business;

c. whether in their opinion the value of the assets of the insurer exceeds its liabilities by the aggregate of the relevant amount under (a) and the amount under (b) above;

d. whether in their opinion proper records have been maintained in accordance with section 16;

e. whether in their opinion the balance sheet, revenue account and profit and loss account have been properly prepared in accordance with the provisions of the Ordinance; and

f. whether in their opinion the financial statements give a true and fair view of the financial position of the insurer's long term business.

28. Paragraph 4(1A)(a) of Part 1 of the Third Schedule requires the auditors to audit the forms prepared in accordance with Part 8 of the Third Schedule (often referred to as the general business returns), and to state:

a. whether in their opinion proper records have been maintained in accordance with section 16 for the purposes of preparing the forms;

b. whether the forms have been properly prepared in accordance with those records; and

c. whether the information supplied in the forms presents fairly in all material respects the underwriting results pertaining to the Hong Kong Insurance Business.

29. Paragraph 4(1A)(b) of Part 1 of the Third Schedule requires the auditors to audit the statement of assets and liabilities ("the statement") prepared in accordance with Part 9 of the Third Schedule, and to state:

a. whether in their opinion proper records have been maintained in accordance with section 16 for the purposes of preparing the statement;

b. whether the statement has been properly prepared in accordance with those records;

c. whether the values of the assets and liabilities have been determined in accordance with any applicable valuation regulations;

d. whether the relevant amount as defined in section 10 has been determined in accordance with section 25A(1) (see paragraph 18); and

e. where the statement is submitted pursuant to:

   i. section 25A(9), the assets held by the insurer, as shown in the statement, enable it to comply with the requirement stipulated in section 25A as at the last day of the financial year and two such other dates in the financial year as the auditors may elect, provided that the intervening period between those two dates shall not be shorter than three months; or

   ii. section 25B(3)(b), the assets held by the insurer, as shown in the statement, enable it to comply with the requirement stipulated in section 25B as at the date specified in the notice issued under that section.

Notwithstanding section 25A(3) which states that an insurer shall, at all times, maintain assets in Hong Kong in respect of its liabilities, as of the end of the last *preceding* financial year, it has been agreed with the IA that for the purposes of checking compliance with section 25A, the auditors compare the assets with liabilities on the last day of the *current* financial year as well as the assets at two dates during the year, as elected by them, with the liabilities at the *preceding* financial year end date.

The auditors may add qualifications, amplifications or explanations to their reports as necessary.

30. The auditors' report required in respect of the financial information prepared in accordance with Parts 3, 4 and 5 of the Third Schedule relates to the financial information, which has to be submitted to the IA and the Registrar of Companies. Where the insurer is incorporated in Hong Kong, financial statements will also have to be prepared for the members in accordance with the applicable requirements of the Companies Ordinance. The auditors will be required to issue two separate audit reports, one for the members on the Companies Ordinance financial statements, and one addressed to the directors who will have the responsibility for submitting the financial information required by the Third Schedule to the IA. The report addressed to the directors will refer to the financial information prepared in accordance with the provisions of the Ordinance (see Auditing Bulletin AudB 2 for report format). The audit report addressed to members and relating only to the Companies Ordinance financial statements will also have to be submitted to the IA under section 20(5) (see Appendix to PN 600.1 for report format).

Definitions of "relevant premium income" and "relevant claims outstanding"

31. "Relevant premium income" is defined as the greater of:

    a. 50% of the annual gross premium income of the company; and

    b. gross premium income less premiums payable by the company in respect of reinsurance.

    Gross premium income is defined in section 10(4)(c) as the premiums receivable in that financial year in respect of all insurance business other than long term business. Premiums receivable are defined as the premiums paid or payable to an insurer in respect of contracts written or renewed in that financial year before deducting commissions of agents or brokers but after deducting any discounts specified in policies or refunds of premiums made in respect of any termination or reduction of risks. Discounts specified in policies are generally discounts that relate to the reduction of risks which are being underwritten and should not contain an element of rebate as regards the premiums paid by the insured. Gross premium income as defined above will normally be the amount disclosed in the revenue account under the requirements of paragraph 24(1)(a) of the Third Schedule, provided that the amounts recorded are consistent with the amounts written in the year. It should be noted however that this will not be the same as the earned premiums accounted for on an accruals basis since the former is based on all contracts written in the financial year.

32. Problems may be encountered in ascertaining premium income where companies carry on treaty reinsurance, since the premiums in respect of policies written during the year may not be quantifiable until after publication of the financial statements. In such circumstances premium income is usually booked on the basis of the information available and neither a cash basis nor a full accruals basis can be adopted. If the amounts involved are material, auditors may recommend to their clients that they apply to the IA under section 17(2) for a modification in the requirements of the Third Schedule to accommodate this accounting policy. In such a case, the fact that premium income has been booked based on the IA's consent to modify the requirements of the Third Schedule would normally need to be stated in the notes to the accounts under the heading of accounting policies.

33. "Relevant claims outstanding" is defined as:

    a. where no class of the general business of the insurer is accounted for on a fund accounting basis, the aggregate of the following:

        i. an amount equal to 50% of the claims outstanding (see paragraph 35) before deducting any amount recoverable from reinsurers thereon, or the amount of claims outstanding after deducting any amount recoverable from reinsurers thereon, whichever is the greater; and

        ii. the additional amount for unexpired risks (see paragraph 36);

    b. where all classes of the general business are accounted for on a fund accounting basis, the fund (see paragraph 37);

    c. where part of the general business is accounted for on a fund accounting basis, the aggregate of the following:

i. in respect of *that* part, the fund (see paragraph 37); and

ii. in respect of *the other* part of that business:

-an amount equal to 50% of the claims outstanding (see paragraph 35) before deducting any amount recoverable from reinsurers thereon, or the amount of claims outstanding after deducting any amount recoverable from reinsurers thereon, whichever is the greater; and

-the additional amount for unexpired risks (see paragraph 36).

34. "Claims outstanding", "additional amount for unexpired risks" and "fund" are defined in paragraph 1(1) of Part 1 of the Third Schedule.

35. "Claims outstanding" is defined as, the amount set aside by an insurer as at the beginning or end of its financial year as being an amount likely to be sufficient to meet:

a. claims in respect of incidents occurring:

i. in the case of an amount set aside as at the beginning of the financial year, before the beginning of that year; and

ii. in the case of an amount set aside at the end of the financial year, before the end of that year,

being claims which have not been treated as claims paid and including claims relating to business accounted for over a longer period than a financial year, claims the amount of which have not been determined and claims arising out of incidents that have not been notified to the insurer; and

b. expenses (such as legal, medical, surveying and engineering costs) which have been incurred but not yet recorded as paid or which are likely to be incurred by the insurer, whether through the employment of its own staff or otherwise, and are directly attributable to the settlement of individual claims which relate to incidents occurring before the beginning or the end of the financial year (as the case may be), whether or not the individual claims in question are those mentioned above.

36. "Additional amount for unexpired risks" (otherwise known as premium deficiency) means the amount set aside by an insurer at the end of its financial year, in addition to any unearned premiums, which is considered necessary to meet the cost of claims and expenses of settlement arising from risks to be borne by the insurer after the end of the financial year under contracts of insurance entered into before the end of that year.

37. "Fund", in relation to general business recorded as commencing in any financial year of an insurer but accounted for over a period longer than that financial year, means, during such period, an amount not less than the aggregate amount of the premiums receivable during that period (net of reinsurance premiums payable) reduced by the aggregate amount of the claims paid (net of reinsurance recoveries), expenses for settling claims, commission (net of reinsurance commission receivable) and premium taxes in respect of that business and any management expenses attributable to the management of the fund, and after the end of such period, means such amount as is considered necessary to discharge the remaining obligations (net of reinsurance) in respect of that business.

Solvency requirements

38. a. Each company authorized to conduct general insurance in or from Hong Kong (except a captive insurer) must maintain an excess of assets over liabilities by a relevant amount (often referred to as solvency margin) equivalent to 20% of relevant premium income or relevant claims outstanding, whichever is higher, up to HK$200 million plus 10% of relevant premium income or relevant claims outstanding in excess of HK$200 million. The minimum relevant amount required is HK$10 million (HK$20 million if authorized for statutory business).

b. Each company authorized to conduct long term business in or from Hong Kong must maintain an excess of assets over liabilities by an amount equivalent to the greater of the relevant amount of HK$2 million and the margin of solvency calculated in accordance with the Insurance Companies (Margin of Solvency) Regulation. At least the greater of HK$2 million and one-sixth of the margin of solvency must be held in funds maintained in respect of its long term business (other than class G or H business specified in Part 2 of the First Schedule to the Ordinance).

c. Each company authorized to conduct composite business in or from Hong Kong must maintain an excess of assets over liabilities by an amount equivalent to the aggregate of the amounts determined in accordance with (a) and (b) above.

d. Each company authorized to conduct business as a captive insurer in or from Hong Kong must maintain an excess of assets over liabilities by a relevant amount equivalent to 5% of net premium income or net claims outstanding, whichever is higher. The minimum relevant amount is HK$2 million.

A summary of solvency requirements is set out in Appendix 2 for easy reference.

Value of assets and liabilities

39. The calculation of relevant premium income, relevant claims outstanding and the relevant amount applicable (see paragraph 38), and the required margin of solvency as determined by the insurer's appointed actuary are required in order to enable the auditors to state in their report, whether in their opinion the value of the assets of the insurer exceed its liabilities by the required amount applicable according to the Ordinance. The required amount is determined as being the relevant amount applicable in relation to an insurer's general and captive insurance business and the greater of the relevant amount and the required margin of solvency in relation to an insurer's long term business. An insurer is under an obligation to ensure that the value of the assets exceed its liabilities by the required amount at all times but it is recommended that the auditors only verify the position at the balance sheet date and two such other dates in the financial year as the auditors may elect, provided that the intervening period between those two dates shall not be shorter than three months. If the value of the assets does not exceed its liabilities by the relevant amount applicable, the insurer is deemed to be unable to pay its debts under section 42 and can be wound up.

40. Subject to any relevant valuation regulations issued under section 59(1)(a) (see paragraphs 41 to 51), it is necessary to base the calculation on the provisions laid down in section 8. This section requires assets to be valued having regard to their market value and the cost of realising such assets. In computing the amount of liabilities, all contingent and prospective liabilities shall be taken into account but not liabilities in respect of the insurer's share capital. In determining the amount of these liabilities, regard shall be made to cost of settlement of such liabilities and, where the amount of any such liabilities is assessed or estimated, to the experience of the insurer in carrying on any relevant insurance business or of other persons carrying on the same or similar insurance business.

Valuation Regulation for companies carrying on general business

41. In accordance with section 8(4)(b), the valuation of assets and liabilities of an insurer whose business includes or will include general business, other than a captive insurer, should be determined in accordance with the Insurance Companies (General Business) (Valuation) Regulation ("Valuation Regulation") issued in December 1995.

42. Different requirements are made in the Valuation Regulation in respect of different categories of assets. The major categories of assets in respect of which more detailed provisions are made, and the relevant sections in the Valuation Regulation, include:

a. land and buildings (section 3);

b. listed shares or securities, unit trusts or mutual funds (section 4);

c. shares in subsidiaries with investment as their principal activity (section 5);

d. shares in other insurers (section 6);

e. other unlisted shares (section 7);

f. unlisted securities (section 8); and

g. premiums receivable (section 9).

Some provisions are also made in respect of:

a. intangible assets and deferred acquisition costs (section 10);

b. discounting of claims (section 11); and

c. additional amount for unexpired risks (section 12).

43. Section 14 of the Valuation Regulation stipulates admissibility limits for the different categories of assets to ensure a prudent spread of investments. The admissibility limits are applicable to the financial information prepared in accordance with Parts 4 and 5 of the Third Schedule only. This section of the Valuation Regulation does not apply to the assets of an insurer required to be maintained in Hong Kong under section 25A or 25B and therefore does not apply to the statement of assets and liabilities prepared under Part 9 of the Third Schedule.

44. Notwithstanding that the value given to an asset of an insurer is permissible under the Valuation Regulation, if, in all circumstances of the case, it appears that the asset is of a lesser value than that given, such lesser value is to be the value of the asset (section 15 of the Valuation Regulation).

45. The Valuation Regulation reaffirms that where no provision for valuation is made under the Valuation Regulation in respect of any asset or liability, section 8(4)(c) continues to apply (section 13 of the Valuation Regulation).

46. In the case of a company carrying on or intending to carry on business as a captive insurer, the values of assets and liabilities may be determined in accordance with section 8.

47. Liabilities are defined in section 8(4) as including all contingent and prospective liabilities but excluding liabilities in respect of the insurer's share capital. Where specific valuation rules are not applicable, regard should be had to the cost of settlement of the liabilities and, where estimates are necessary, to the experience of the insurer in carrying on any relevant insurance business or of other persons carrying on the same or similar insurance business.

48. For the purpose of valuing the amount of liabilities, contingent liabilities will be assessed on the probability of their crystallisation. Generally it will be the auditors' responsibility to have regard to the nature of the contingency, the uncertainties which are expected to affect the ultimate outcome and a prudent estimate of the financial effect.

Liabilities Regulation for companies carrying on long term business

49. Where the liabilities of an insurer are in respect of long term business, they must be determined in accordance with the Insurance Companies (Determination of Long Term Liabilities) Regulation ("Liabilities Regulation").

50. The general principles and certain specific factors underlying the determination of long term liabilities are laid down in section 4 of the Liabilities Regulation. Generally, they shall be determined on actuarial principles, having due regard to the reasonable expectations of policyholders. Proper provisions shall be made for liabilities on a prudent basis including an allowance for adverse variations of relevant assumptions, and provisions shall be made for all prospective liabilities as determined by the policy conditions for each contract, taking account of future premiums.

51. Specific requirements of the Liabilities Regulation, and the sections of that Regulation in which they are covered, are made in respect of options and guarantees (section 10), expenses (section 12), valuation of future premiums (section 14) and acquisition expenses (section 15). Section 5 of the Liabilities Regulation requires prospective calculations to be used in preference to retrospective calculations where possible.

Proper records

52. The Ordinance requires auditors to state specifically in their report whether proper records have been maintained in accordance with section 16.

53. Without prejudice to the Companies Ordinance, section 16 requires the insurer to keep proper books of account which sufficiently exhibit and explain all transactions entered into by the insurer in the course of any business carried on by him. These books can be kept either in a legible form or in a non-legible form capable of being reproduced in a legible form. The Ordinance also requires adequate precautions to be taken to guard against falsification of these records and to facilitate the discovery of any such falsification. In the case of an overseas insurer carrying on insurance business through a branch or an agency, the IA would normally require books to be kept in respect of all its branch or agency business carried on in or from Hong Kong.

54. These books of account must be kept for seven years from the end of the financial year to which the last entry made or matter recorded therein relates.

Insurance brokers

55. Section 65 states that an insurer may not accept any business from an insurance broker in Hong Kong unless that broker is authorized. An authorized insurance broker may be an insurance broker directly authorized by the IA or a member of a body of insurance brokers approved by the IA. Sections 69 and 70 set out the requirements to be complied with by insurance brokers and bodies of insurance brokers in order to obtain the relevant authorization and approval.

56. Under section 72, the insurance broker must appoint auditors who are:

   a. qualified under the Professional Accountants Ordinance (and not disqualified under section 140 of the Companies Ordinance); or

   b. qualified as auditors in the country of incorporation, if the insurance broker is incorporated outside Hong Kong and who holds such qualification as the IA accepts as being of comparable to that of a person referred to in (a) above.

57. The auditors of an insurance broker are required to report on the broker's financial statements to its proprietor (in the case of an unincorporated broker) or its shareholders (in the case of an incorporated broker). They are also required to report on an insurance broker's compliance with the minimum requirements. For further guidance on this area, members may refer to PN 810.1 "Insurance brokers - compliance with the minimum requirements specified by the Insurance Authority under sections 69(2) and 70(2) of the Insurance Companies Ordinance" issued by the HKICPA.

Communications between auditors and the IA

58. Section 53D introduces statutory protection for auditors from liability to their client for breach of confidentiality when they communicate directly with the IA in good faith on matters relevant to any functions of the IA under the Ordinance. Sections 15A(2) (see paragraph 25) and 53E impose a statutory obligation on auditors to report certain matters directly to the IA. Members may refer to PN 620.2 "Communications between auditors and the Insurance Authority" issued by the HKICPA for further guidance in this area.

Appendix 1

What does your client need to submit to the IA?

	Financial Information under Parts 3#, 4 and 5	Part 8 Return*	Part 9 Statement*
General Insurer	✓	✓	✓
Long Term Insurer	✓	✗	✗
Composite Insurer	✓	✓	✓
Captive Insurer	✓	✓	✗
Reinsurer	✓	✓	✗

Part 3 of the Third Schedule deals with additional provisions relating to an insurer which is a holding company. It applies to an insurer carrying on long term business only or a captive insurer, which is a holding company preparing consolidated accounts.

* Part 8 return and Part 9 statement should be prepared in respect of the insurer's Hong Kong Insurance Business only.

Appendix 2

Solvency requirements

Business	Solvency requirements	Relevant amount	Maximum relevant amount	Minimum relevant amount
General	An excess of assets over liabilities by the relevant amount	20% of relevant premium income or relevant claims outstanding, whichever is higher	HK$40 million plus 10% of relevant premium income or relevant claims outstanding in excess of HK$200 million	HK$10 million (HK$20 million if authorized for statutory business)
Long term	An excess of assets over liabilities by the greater of the relevant amount and the required margin of solvency calculated in accordance with the Insurance Companies (Margin of Solvency) Regulation*	Other than classes G & H: HK$2 million Classes G & H: HK$ nil	-	-
Composite	An excess of assets over liabilities by the aggregate of the amounts for general and long term business	-	-	-
Captive	An excess of assets over liabilities by the relevant amount	5% of net premium income or net claims outstanding, whichever is higher	-	HK$2 million

* At least the greater of HK$2 million and one-sixth of the margin of solvency must be held in funds maintained in respect of its long term business (other than classes G & H business specified in Part 2 of the First Schedule to the Ordinance).