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Practice Note 620.2

Communication between the Auditor and the Insurance Authority



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

PRACTICE NOTE

620.2

**COMMUNICATION BETWEEN THE AUDITOR AND
THE INSURANCE AUTHORITY**

*(Issued May 1998; revised September 2004 (name change); revised February 2013, January 2018)
Effective upon issue*

CONTENTS

	<i>Paragraphs</i>
Introduction	1 – 4
Scope of the Ordinance	5 - 11
Reporting under the Ordinance	12 - 22
Other ad hoc communications by the auditor	23 - 49
Communications by the Insurance Authority to the auditor under section 53A(3)(da) and(3)(f)	50 - 52

Practice Note (PN) 620.2, *Communication between the Auditor and the Insurance Authority* should be read in the context of the *Amended Preface to the Hong Kong Quality Control, Auditing, Review, Other Assurance, and Related Services Pronouncements* which sets out the application and authority of PNs.

PRACTICE NOTE

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

Practice Notes are persuasive rather than prescriptive. However they are indicative of good practice and have similar status to the explanatory material in Hong Kong Engagement Standards. This Practice Note provides guidance to assist the auditor to fulfill the objectives of the engagement. The auditor should be prepared to explain departures when called upon to do so.

Introduction

1. In this Practice Note all the sections mentioned below are in respect of the Hong Kong Insurance Ordinance ("the Ordinance") unless otherwise stated. The Insurance Companies Ordinance (Cap. 41) has been renamed as the "Insurance Ordinance" since section 4 of the Insurance Companies (Amendment) Ordinance 2015 came into operation on 26 June 2017.
2. Section 53D³ of the Ordinance provides statutory protection for the auditor from liability to the client for breach of confidentiality when the auditor communicates directly with the Insurance Authority. Sections 15A and 53E impose a statutory obligation on the auditor to report certain matters directly to the Insurance Authority.
3. This Practice Note refers to the auditor, audits, reports on the annual financial statements and reports on the accounts and statements ("financial information") an insurer is required to submit to the Insurance Authority.
4. This Practice Note is applicable to:
 - a. an auditor or former auditor of an insurer or a former insurer appointed under section 15 or section 4(1A) of Part 1 of Schedule 3 to the Ordinance ("Schedule 3");
 - b. an accountant or former accountant of an insurer or a former insurer appointed in compliance with a requirement under section 35(1); and
 - c. an auditor or former auditor of an insurance broker appointed under section 72.¹

Scope of the Ordinance

5. The Ordinance regulates the carrying on of insurance business in Hong Kong. One of the primary purposes of the Ordinance is the protection of policy holders and potential policy holders. The Insurance Authority is charged under section 4A with the functions set out below.
 - a. The principal function of the Insurance Authority shall be to regulate and supervise the insurance industry for the promotion of the general stability of the insurance industry and for the protection of existing and potential policy holders (section 4A(1)).

¹ The Insurance Companies (Amendment) Ordinance 2015 is being commenced in phases. The IA is expected to take over the regulation of insurance intermediaries from the three self-regulatory organizations (ie. the Insurance Agents Registration Board established under the Hong Kong Federation of Insurers, the Hong Kong Confederation of Insurance Brokers and the Professional Insurance Brokers Association) through a statutory licensing regime within two years from 26 June 2017. The self-regulatory system for insurance intermediaries will continue in the interim.

- b. Without limiting the generality of section 4A(1), the Insurance Authority shall:
- i. be responsible for supervising an insurer's and an insurance intermediary's compliance with the provisions of the Ordinance;
 - ii. consider and propose reforms of the law relating to insurance business;
 - iii. promote and encourage proper standards of conduct and sound and prudent business practices amongst insurers;
 - iv. promote and encourage proper standards of conduct of insurance intermediaries and, where necessary, review and revise the regulatory system for the same;
 - v. promote and develop self-regulation by market and professional bodies of the insurance industry;
 - vi. *(Addition not yet in operation—see 12 of 2015 s. 12)*²
 - vii. promote the understanding by policy holders and potential policy holders of insurance products and the insurance industry;
 - viii. formulate effective regulatory strategies and facilitate the sustainable market development of the insurance industry, and promote the competitiveness of the insurance industry in the global insurance market;
 - ix. conduct studies into matters affecting the insurance industry;
 - x. assist the Financial Secretary in maintaining the financial stability of Hong Kong by taking appropriate measures in relation to the insurance industry;
 - xi. co-operate with and assist financial services supervisory authorities of Hong Kong or of any place outside Hong Kong, whenever appropriate, to the extent permitted by the Ordinance; and
 - xii. perform functions imposed or conferred on the Insurance Authority by this or any other Ordinance (section 4A(2)).
6. Schedule 3 specifies the form and content of the financial information which an insurer is required to submit annually to the Insurance Authority. The auditor is required to report on the financial information and the report will in general terms cover such matters as:
- a. the maintenance of proper books and records by the insurer;
 - b. the proper preparation of the financial information;
 - c. the fairness of presentation of the financial information;
 - d. the valuation of assets and liabilities in accordance with applicable valuation regulations; and
 - e. the maintenance of assets in accordance with the Ordinance.

Detailed guidance is set out in PN 810.2 (Revised), *The Duties of the Auditor of an Insurer authorized under the Insurance Ordinance*.

² The Insurance Companies (Amendment) Ordinance 2015 is being commenced in phases and this additional section is not yet in operation as of the date of this Practice Note. For details of the addition, please refer to the Insurance Companies (Amendment) Ordinance 2015 at: <https://www.elegislation.gov.hk/hk/2015/12!en>

7. Section 73(1) specifies the form of financial statements which an authorized insurance broker, authorized by the Insurance Authority under section 69(2), is required to submit annually to the Insurance Authority. The auditor is required to report on the authorized insurance broker's financial statements and compliance with the minimum requirements regarding
- a. capital and net assets;
 - b. professional indemnity insurance;
 - c. keeping of separate client accounts; and
 - d. keeping proper books and accounts.

Under section 73(2) the auditor of an approved body of insurance brokers, approved by the Insurance Authority under section 70(2), is required to report:

- a. whether the body of insurance brokers has received from each of its members the audited financial statements and report by the auditor on the compliance with the minimum requirements specified by the Insurance Authority in accordance with its membership rules and regulations; and
- b. that the auditor has reviewed all reports by auditors of members in respect of the financial statements and the minimum requirements and none contained any adverse statement or qualification except those listed by the auditor in the auditor's report.

Detailed guidance is set out in PN 810.1 (Revised), *Insurance Brokers – Compliance with the Minimum Requirements Specified by the Insurance Authority Under Sections 69(2) and 70(2) of the Insurance Ordinance*¹.

8. In addition, insurers, authorized insurance brokers and approved bodies of insurance brokers who are incorporated in Hong Kong are required to prepare financial statements and to have them audited under the provisions of the Hong Kong Companies Ordinance.
9. In the course of performing the work necessary to discharge these routine audit reporting responsibilities, the auditor may become aware of matters which the auditor considers need to be brought to the Insurance Authority's attention through an "ad hoc report", other than through the medium of the routine formal audit report.
10. This Practice Note is concerned only with ad hoc communications between the auditor and the Insurance Authority:
- a. by the auditor to the Insurance Authority under the obligations established in sections 15A(2) and 53E;
 - b. by the auditor to the Insurance Authority under the protection of section 53D³; and
 - c. by the Insurance Authority to the auditor under section 53A(3)(da)³ and (3)(f).

It does not cover the auditor's approach to the audit of an insurer, an authorized insurance broker or an approved body of insurance brokers or the routine audit reporting responsibilities.

³ As stated in footnote 1, certain sections of the Insurance Companies (Amendment) Ordinance 2015 ("the Amendment") relating to the new statutory licensing regime for insurance intermediaries are not yet in operation. During the interim period, an auditor or former auditor of an insurance broker or a former insurance broker appointed under section 72 is temporarily excluded from the definition of a "prescribed person" in the Ordinance. Thus, sections 53A(3)(da) and 53D are not applicable to these auditors during the interim period. They shall be included to the definition after the relevant sections of the Amendment become effective. Accordingly, the guidance in paragraphs 23 to 50(a) of this practice note does not apply to auditors of insurance brokers in the interim.

11. Certain expressions used in the Ordinance may be matters for legal interpretation. There may, therefore, be circumstances in which, notwithstanding the guidance in this Practice Note, the auditor will wish to take legal advice.

Reporting under the Ordinance

12. The Insurance Authority expects that the management of an insurer or an insurance broker will continue to be its primary source of information and that the normal authorized reporting procedures, including returns, discussions, examinations and any tripartite meetings will normally provide the Insurance Authority with most of the information it needs to carry out its responsibilities under the Ordinance.
13. Nevertheless under the Ordinance the auditor has various statutory responsibilities to report to the Insurance Authority. The auditor is automatically protected in making a report in discharge of such a statutory responsibility. Certain provisions also provide the auditor with immunity from any liability the auditor might otherwise incur by reason of the auditor's making other reports to the Insurance Authority which the auditor may consider to be relevant to the functions of the Insurance Authority. These responsibilities and avenues available for reporting do not require the auditor to change the scope of the audit work, nor the frequency or timing of the visits.
14. When the circumstances where reporting may be appropriate are being considered, it should be noted that obtaining insurance services or products carries inherent risks. It is not the purpose of the Ordinance, nor the duty of the auditor, to protect the policy holder from the normal risks relating to such activities.
15. The auditor is advised to bear in mind that the auditor's decision may have to stand up to examination at a future date on the basis of the following considerations:
 - a. what the auditor knew at the time;
 - b. what the auditor should have known in the course of the audit;
 - c. what the auditor should have concluded; and
 - d. what the auditor should have done.

The auditor's notices to the Insurance Authority under section 15A(2)

16. The auditor has a statutory duty to give immediate written notice to the Insurance Authority in the circumstances set out below.
 - a. If the auditor resigns (section 15A(2)(a)).
 - b. If the auditor decides not to seek reappointment (section 15A(2)(b)).
 - c. If the auditor decides to add a qualification or adverse statement to the auditor's report annexed to the financial information of the insurer required to be submitted under Schedule 3 (section 15A(2)(c)).

The decision to give written notice would normally only be taken after extensive discussions with management and when a problem is either irremediable or when the circumstances indicate that the auditor intends to qualify.

Section 15A(2) applies to the auditor of an insurer appointed under section 15 or section 4(1A) of Part 1 of Schedule 3.

Ad hoc reports under section 53E

17. Section 53E provides that where an auditor, during the discharge of the duties in that capacity:
- a. becomes aware of any matter... which in the auditor's opinion adversely affects the financial condition of the insurer to a material extent, the auditor shall, as soon as practicable thereafter, send to the Insurance Authority a report in writing of the matter (section 53E(1)); and
 - b. becomes aware of evidence...
 - i. of a failure by the insurer to comply with any conditions imposed under section 8(1)(a);
 - ii. that there exists a ground on which the Insurance Authority would be prohibited by section 8(3)(a), (b), (d) or (f) from authorizing the insurer if the insurer were to make application in that behalf;
 - iii. of a failure by the insurer to comply with any of the provisions of section 22, 22A or 23; or
 - iv. of any default of the insurer in complying with any requirement under section 27, 28, 29, 30, 31, 32, 33, 34 or 35(1),

the auditor shall, as soon as practicable thereafter, send to the Insurance Authority a report in writing of the failure, ground or default (section 53E(3)).

Section 53E applies to:

- a. an auditor or former auditor of an insurer or a former insurer appointed under section 15 or section 4(1A) of Part 1 of Schedule 3; and
- b. an accountant or former accountant of an insurer or a former insurer appointed in compliance with a requirement under section 35(1).

These are statutory obligations and the following paragraphs of the Practice Note provide the auditor with procedures to follow when such circumstances arise.

Reporting criterion under section 53E

18. The auditor would take the initiative and ensure that an ad hoc report under section 53E is made to the Insurance Authority if the conditions specified in paragraph 17 exist. A distinction must be drawn here between an auditor's duty as stated in paragraph 17(a) and that stated in paragraph 17(b). The duty under paragraph 17(b) is clear and unequivocal; if the auditor becomes aware of a contravention of the provisions in the Ordinance which are specified, the auditor is not given any latitude for exercising judgement. The auditor is obliged to make a report. The duty under paragraph 17(a) is different. The auditor is given the right to form an opinion based on applying criteria as to the materiality of an adverse effect on the insurer's financial position in deciding whether reporting would be appropriate.

The HKICPA has developed a criterion for use by the auditor in deciding to take the initiative in making an ad hoc report under section 53E in addition to the regular audit reporting responsibilities. The criterion is that the auditor would make the report when the auditor considers it expedient to do so in order for the Insurance Authority to protect the interests of policy holders because there has been a material loss or there exists a significant risk of material loss.

19. This criterion can be more fully explained as follows:
- a. there must be a significant adverse occurrence or a change in the auditor's perception of an existing situation, that may include an adverse change in the circumstances of the business; and
 - b. the situation described in a. above has given rise to or has indicated that a reasonable probability exists that it may give rise to:
 - i. a material financial loss to the business, or
 - ii. loss of control over the assets or records.
20. Examples of the circumstances in which the situation set out in paragraphs 18 and 19 may be met include:
- a. the auditor discovers a failure by the insurer to comply with the relevant provisions of the Ordinance which may have material consequences; or
 - b. there is evidence of imminent financial loss of serious proportions which might cast doubt on the continuing viability of the insurer.

Reporting procedures under section 53E

21. In circumstances where the auditor concludes that an ad hoc report under section 53E to the Insurance Authority is necessary, the auditor would normally adopt the procedures set out below, bearing in mind that speed may be of the essence and that the statutory obligation to report under section 15A or 53E remains subject to the criterion discussed in paragraphs 18 - 20.
- a. The auditor would normally discuss the matter with the insurer and explain the statutory duty to make a report to the Insurance Authority under section 53E. In addition, the insurer may be advised to make its own report to the Insurance Authority immediately.
 - b. The auditor would normally then immediately inform the Insurance Authority of the circumstances in writing. It is suggested that a copy of both the written notification and the ad hoc report be made to the directors or management of the insurer.
22. The auditor is reminded that making an ad hoc report alone may not discharge all the responsibilities. For example, the auditor would consider the implications of the matter giving rise to the ad hoc report for the auditor's opinion on the financial statements.

Other ad hoc communications by the auditor

Statutory protection under section 53D³

23. Section 53D³ provides that:
- "(1) No duty which a prescribed person may be subject to shall be regarded as contravened by reason of his communicating in good faith to the Insurance Authority, whether or not in response to a request made by the Insurance Authority, any information or opinion on a matter:
- a. of which he becomes aware in his capacity as a prescribed person...; and
 - b. which is relevant to any function of the Insurance Authority under this Ordinance.

- (2) For the avoidance of doubt, it is hereby declared that a matter referred to in subsection (1) may be a matter which relates to a person other than -
- (a) an authorized insurer;
 - (b) a former insurer;
 - (c) *(Addition not yet in operation—see 12 of 2015 s. 70)*²
 - (d) *(Addition not yet in operation—see 12 of 2015 s. 70)*²
 - (e) *(Addition not yet in operation—see 12 of 2015 s. 70)*².
24. For the purposes of section 53D³, "prescribed person" in this context refers to:
- a. an auditor or former auditor of an authorized insurer or a former insurer appointed under section 15 or section 4(1A) of Part 1 of Schedule 3;
 - b. an accountant or former accountant of an authorized insurer or a former insurer appointed in compliance with a requirement under section 35(1); and
 - c. *(Addition not yet in operation—see 12 of 2015 s. 5)*^{2,3}.
25. Section 53D³ does not lay down any rules nor specify the circumstances in which the auditor is to communicate any matter to the Insurance Authority. It provides a statutory mechanism whereby the auditor may make matters known to the Insurance Authority without breaching the auditor's duty of confidentiality.
26. This section of the Practice Note contains guidance on the circumstances in which matters (which fall outside those which the auditor is obliged to report (see paragraphs 16 to 22 above)) may be brought to the attention of the Insurance Authority by way of a report with statutory protection. In interpreting this guidance, the auditor is advised to bear in mind the fundamental objectives of the legislation, which are to ensure that the Insurance Authority is able to fulfil its functions summarised in paragraph 5.
27. Confidentiality is an implied term of an auditor's contract with the client, but in certain circumstances and under conditions specified in section 53D³ it does not prevail, since the auditor is entitled to communicate information or opinions on a matter relating to the business or affairs of the client relevant to the Insurance Authority's functions without the duty of confidentiality owed to the client being regarded as having been contravened.
28. The matters which may be communicated under section 53D³ are any of those relevant to the Insurance Authority's functions under the Ordinance.
29. Matters which may be reported under the protection of section 53D³ will only arise in circumstances where the auditor is under no duty to report under section 15A or 53E. Considerable care needs to be taken in disclosing matters arising during any tripartite meeting with the Insurance Authority as the auditor's knowledge of these matters may have been obtained while assisting the Insurance Authority other than in the capacity as the auditor (see paragraph 32).

Examples of circumstances in which the auditor may communicate a matter to the Insurance Authority under section 53D³ include:

- a. the auditor considers policy holders have incurred, or are at significant risk of incurring, a material loss as a result of insurers carrying on business in a manner that is not fit and proper or that is in breach of the Ordinance;
- b. there is evidence of
 - i. fraud, dishonesty or serious incompetence; or
 - ii. serious failure to observe requirements of the Ordinance or conditions imposed on the insurer by the Insurance Authority;

- c. it has come to the attention of the auditor that the procedures, records or systems fail significantly to comply with, or to demonstrate compliance with, requirements set by the Insurance Authority to which the insurer is subject; and
 - d. the position is such that because of a significant risk which is material to the collective interests of policy holders, the policy holders' interests would be better safeguarded if the Insurance Authority were aware of the position, even if only to organise protective action.
30. Clearly the potential nature of matters which may be reported is very wide, but as explained in paragraph 33 this does not, of itself, require the auditor to extend the scope of the work in order to discover matters and it will only be in exceptional circumstances such as those described in paragraph 48 that the auditor may choose to seek statutory protection.
31. Any protected communication can be made either on the auditor's initiative or in response to a request from the Insurance Authority for information. The auditor would normally cooperate with the Insurance Authority and respond to any requests from the Insurance Authority for information, provided the auditor has no reason to doubt that the request is relevant to the Insurance Authority's functions. The auditor may communicate a matter to the Insurance Authority with the protection of section 53D³ regardless of the source of that information, provided the auditor became aware of the matter in the capacity as the auditor of the client and the auditor does so in good faith.
32. Matters of which the auditor becomes aware "in the capacity as the auditor" may not be restricted to those matters identified by the auditor during the course of the audit work. The auditor may become aware of a matter which is relevant to the functions of the Insurance Authority during the course of the work for the insurer other than audit work or through private discussions on social or other occasions, in which case the information will be known to the auditor as individual. In circumstances which suggest that a matter would be reported to the Insurance Authority if knowledge of it had been obtained in the capacity as the auditor, it would be prudent to make enquiries in the course of the audit work in order to establish whether this is the case from information obtained in this capacity. In addition, a matter which is relevant to the functions of the Insurance Authority and which is identified during the course of work for the client by another partner (or member of staff) such as a management consultant or tax partner may be deemed to be known to the auditor (see also paragraph 34). The auditor may follow the guidance set out in HKSA 250, *Consideration of Laws and Regulations in an Audit of Financial Statements*⁴.
33. The auditor cannot be expected to be aware of all circumstances which, had the auditor known of them, would have led the auditor to exercise the right to communicate under section 53D³. This section does not require the auditor to change the scope of the audit or other work for the client, nor the frequency or timing of the visits. The auditor has no obligation to seek out grounds for making a report under section 53D³. The section does not place an obligation on the auditor to conduct the work in such a way that there is reasonable certainty that the auditor will discover a matter upon which the Insurance Authority may need to act. It is only when the auditor does become aware in the ordinary course of the work of such a matter, or of circumstances which suggest the existence of such a matter, that the auditor would consider using the protection of section 53D³.
34. The auditor would, however, ensure that the auditor is made aware of any other relationships which may exist between any department of the firm and the client which could affect the work as the auditor. The Insurance Authority expects that the auditor will ensure that the auditor is informed of all potentially exceptional circumstances (paragraphs 48 and 49) by all other departments within the firm which have a relationship with the insurer. It would, therefore, be prudent for the audit firm to ensure any exceptional circumstances which may give rise to reports under section 53D³ are brought to the attention of the auditor of the client

⁴ HKSA 250 (Revised) issued in June 2017 is effective for audits of financial statements for periods beginning on or after 15 December 2017.

in order that the auditor can, if appropriate, make enquiries in the capacity as the auditor to ascertain whether such matters should be reported to the Insurance Authority.

35. The Insurance Authority recognises that it would not be appropriate for the auditor to report information which the auditor has obtained or matters which the auditor has identified through the professional relationship with another client, even though the information obtained or the matters identified may relate to an insurer. However, the Insurance Authority expects an insurer to advise its auditor when it appoints a third party (including another department of the same firm) to review, investigate or report on any aspects of its records and systems and to provide the auditor with copies of reports by such a third party promptly after their receipt. The auditor can, if appropriate, make enquiries in the capacity as the auditor to ascertain whether any findings of the reports should be reported to the Insurance Authority.
36. It should be noted that section 53D³ will not provide protection to the auditor where the auditor could be held to have acted maliciously or in bad faith or if the information reported is outside the scope of that section. The Ordinance does not, therefore, provide complete immunity from all types of legal action by all parties affected, or subsequently affected, by the auditor's action in reporting to the Insurance Authority. The auditor would consider taking legal or other professional advice before making the decision about whether, or in what manner, to report and in order, for example, to ensure that the form and content of the report are such as to secure the protection of section 53D³ and that it only includes relevant material.
37. The auditor is protected, however, even if the information which the auditor communicates falls short of proof, or the opinion which the auditor communicates cannot be verified. The auditor who can demonstrate that the auditor has acted reasonably and in good faith in informing the Insurance Authority of a reportable matter would not be held in breach of duty to the client even if, after an investigation, it were found there was not a matter which needed to be reported. These are areas where the auditor may wish to consider taking legal advice before making a report.
38. Whilst no breach of statutory duty might arise, it should be appreciated that there is no protection given by the Ordinance if the auditor, after becoming aware of an occurrence, fail to report, promptly, or at all, to the Insurance Authority. Furthermore, it should be recognised that speed of reporting is likely to be important in order to enable the Insurance Authority to protect the interests of policy holders.

Meetings with the Insurance Authority

39. As part of the Insurance Authority's system of supervision of insurers, meetings involving the Insurance Authority, the insurer and its auditor may be called. These meetings may be categorised as "routine meetings" called by the Insurance Authority or "special meetings" which may be called by either the Insurance Authority, or the insurer possibly at the auditor's suggestion.
40. The agenda for a tripartite meeting between the Insurance Authority, the insurer and the auditor will be prepared by the Insurance Authority and will include items requested by the insurer and auditor and be circulated in advance. The auditor is expected to participate fully in tripartite meetings and to have regard to the breadth of the Insurance Authority's functions. Normally, however, it is expected that the auditor will discuss with the client any matter which is to be raised at a meeting with the Insurance Authority, before the meeting is held.
41. The auditor would be expected to discuss with the Insurance Authority the affairs of the insurer including, if necessary, information about its policy holders or other companies within the group obtained in the course of that work. However, the Insurance Authority recognises that it would not be appropriate for the auditor to report to the Insurance Authority information about the insurer which the auditor has obtained through the professional relationship with another client.

42. Meetings may be called by the Insurance Authority to assist in its forming a judgement on an insurer. In particular discussions may cover:
- a. the presentation and content of the annual financial statements;
 - b. the scope, conduct and outcome of the annual audit;
 - c. the scope and outcome of any report made under section 53E;
 - d. explanations for, the reasons for and the nature of a qualified report or of a change in a previously reported intention to qualify a report;
 - e. any step or course of action which may be necessary in the light of the reports, for example, the commissioning of a more detailed report in a particular area; and
 - f. matters raised by the Insurance Authority or those which the insurer or auditor have drawn to its attention since any previous meeting, including how such matters have been resolved to the satisfaction of the auditor or have been reflected or treated in the financial statements.
43. Any party may seek to call a tripartite meeting at any other time if important matters affecting the insurer come to their attention as further discussed in paragraph 45. Normally, the auditor would raise the concerns with the insurer first and if the problem cannot be resolved to the auditor's satisfaction, suggest that the insurer asks the Insurance Authority to convene a meeting.
44. In exceptional circumstances, for example, those outlined in paragraphs 48 and 49, the auditor may consider it necessary to have a bipartite meeting with the Insurance Authority to discuss the affairs of the insurer or to draw the attention of the Insurance Authority to information about the insurer without its knowledge. Before doing so, however, the auditor would consider taking timely legal advice and whether a representative of the insurer at an appropriately senior level would be informed and invited to attend the meeting.

Reporting via the insurer

45. Where the auditor becomes aware of a matter which, in the auditor's professional judgement, the auditor considers is not required to be reported under section 15A or 53E but ought to be reported to the Insurance Authority, the auditor would consider the facts and, unless inappropriate in the circumstances (described in paragraph 48), discuss the matter with the management.
46. It is important for the auditor to act in a manner that will maintain the professional relationship with the client. Normally, therefore, the auditor would ask the insurer to draw matters about which the auditor is concerned to the attention of the Insurance Authority. An example of the circumstances under which the auditor is not required to report but about which the auditor might wish to persuade the client to inform the Insurance Authority are where the auditor forms the opinion that management has reported materially misleading financial information to the Insurance Authority or becomes aware that management has failed, or does not intend, to report something and the failure to report is, or would be, materially misleading.
47. Where the insurer will not himself inform the Insurance Authority of a matter, having been advised to do so by the auditor, or where it has not been done within the period of time specified, or where there is not adequate evidence that the client has properly reported the matter in question, the auditor would make such a report direct to the Insurance Authority.

Reporting direct to the Insurance Authority

48. In exceptional circumstances, where the auditor doubts whether management are fit and proper persons to carry on the business of insurance and it would be in the interest of protecting policy holders that the management of the insurer should not be informed in

advance, the auditor would report directly to the Insurance Authority after first considering the appropriateness of taking independent legal advice. Examples of such circumstances include:

- a. where there has been an occurrence which causes the auditor no longer to have confidence in the integrity of the directors or senior management, e.g. where the auditor believes that a fraud or other irregularity has been committed by the directors or senior management of the insurer, or the auditor has evidence of the intention of directors or senior management to commit such a fraud or other irregularity; or
 - b. where there has been an occurrence which causes the auditor no longer to have confidence that the directors or senior management will conduct the business of the insurer in a prudent manner so as to protect the interests of policy holders, e.g. where the auditor has discovered that the directors or senior management are acting in an irresponsible or reckless manner with respect to the affairs of the business or its policy holders, or the auditor has evidence of the inclination so to act.
49. The auditor would also report directly to the Insurance Authority when speed is of the essence. For example, when the auditor becomes aware that the insurer may be about to cease being authorized, the auditor would consider the need to disclose to the Insurance Authority any information in the auditor's possession relevant to its functions without delay. The fact of such impending cessation of authorization may bring forward the desirability of disclosing matters to the Insurance Authority, as it is easier for the Insurance Authority to take appropriate action while the insurer is still authorized, particularly where such matters have a bearing on the security of third party interests.

Communications by the Insurance Authority to the auditor under section 53A(3)(da)³ and (3)(f)

50. The Ordinance also deals with communications by the Insurance Authority to the auditor of an insurer, an authorized insurance broker or an approved body of insurance brokers.
- a. Section 53A(3)(da)³ permits the communication of restricted information to the auditor of an insurer for the purpose of enabling or assisting the Insurance Authority to discharge its functions under the Ordinance without the consent of the person from whom it is received or to whom it relates.
 - b. Section 53A(3)(f) permits the communication by the Insurance Authority to the auditor of an insurer or authorized insurance broker or an approved body of insurance brokers if, in the opinion of the Insurance Authority, such information is necessary for the auditor to discharge the duties under the Ordinance.
51. It should be noted that disclosure by the Insurance Authority of confidential information to the auditor is to the auditor only; the auditor is not free to pass that information to others, such as the client insurer or authorized insurance broker without the consent of the Insurance Authority under section 53A(3D) of the Ordinance.
52. The Insurance Authority has indicated that the auditor of an insurer or authorized insurance broker is required to send a written request to the Insurance Authority to confirm whether it has any matter to report to the auditor under the provisions of section 53A(3)(da)³ and (3)(f), where it believes that it is of such importance that the auditor's knowledge of it could significantly affect the form of the audit report or the way in which the auditor carries out the reporting responsibilities. The Insurance Authority has also indicated that it will inform the auditor whether the management of the insurer or authorized insurance broker has been informed of the matter and, if so, who has been advised.