

LEGISLATIVE COUNCIL BRIEF

Insurance Ordinance
(Chapter 41)

INSURANCE (AMENDMENT) (NO. 2) BILL 2020

INTRODUCTION

A At the meeting of the Executive Council on 17 March 2020, the Council **ADVISED** and the Chief Executive **ORDERED** that the Insurance (Amendment) (No. 2) Bill 2020 (“the Bill”), at **Annex A**, should be introduced into the Legislative Council (“LegCo”). The Bill will enhance the regulatory framework for the regulation and supervision of insurance groups where a holding company for the group is incorporated in Hong Kong.

JUSTIFICATIONS

2. The Insurance Authority (“IA”) is a body corporate established under the Insurance Ordinance (Cap. 41) (“IO”) as an independent regulator for the insurance industry in Hong Kong. On regulation of insurers, the current functions and powers of the IA under the IO focus on “solo” regulation, meaning that the IA is assigned powers only on the regulation of companies as single entities carrying on insurance business in or from Hong Kong (referred to hereafter as “authorized insurers”).

3. Many authorized insurers, however, are subsidiary companies within a wider group of companies which also have subsidiaries in other jurisdictions carrying on insurance business in those jurisdictions. In these groups (referred to hereafter as “insurance groups”), the risk management and control functions as well as significant management and policy decisions are often carried out at the group level, i.e. by personnel in the holding company who have been assigned responsibility for overseeing the entire insurance

group. Accordingly, the International Association of Insurance Supervisors (“IAIS”)¹ requires insurance regulators not just to regulate insurers on a “solo” basis but also to cooperate and coordinate with each other to ensure insurance groups are regulated on a “group-wide” basis by agreeing, where appropriate, on one of their members to serve as group supervisor in relation to an insurance group.

4. At present, the IA is the group supervisor of three international insurance groups² as agreed by insurance regulators of the relevant supervisory colleges³. The IA performs this role as the group supervisor by using an indirect approach based on its existing “solo” regulatory powers, i.e. using its regulatory powers in relation to the insurance subsidiaries which the IA directly regulates (i.e. authorized insurers) to influence the holding companies of the insurance groups. Currently, the IA does not have direct regulatory powers over the holding companies of the authorized insurers it regulates, even though such holding companies are incorporated in Hong Kong.

5. The indirect approach described in paragraph 4 above has certain limitations when it comes to conducting effective group-wide supervision. Firstly, if the holding company of an authorized insurer is not fit and proper, the IA’s only recourse is against the authorized insurer and no direct action could be taken against the holding company. Secondly, a key regulatory focus of the IA under the IO is on the holding company’s ability to provide financial support to the authorized insurer, but there are challenges to the IA as group supervisor in conducting group-wide capital adequacy assessments of an insurance group.

¹ The IAIS is the international standard setting body for insurance regulators across the world.

² The three international groups which the IA currently assumes the role of group supervisor are AIA, FWD and Prudential.

³ A supervisory college refers to a forum for cooperation and coordination among the regulators of the subsidiary insurance companies, which are located in different jurisdictions, in an insurance group.

6. Other jurisdictions including the United Kingdom, Australia, Bermuda and Singapore⁴ have already addressed the above limitations by putting in place group-wide supervisory regimes where the insurance regulators have direct regulatory powers over the holding companies of the insurers they regulate. Furthermore, in the 2013-2014 Financial Sector Assessment Program (“FSAP”), the International Monetary Fund (“IMF”) recommended that Hong Kong should formulate and implement a clear and comprehensive regulatory regime for insurance groups under the IO⁵.

7. For the reasons above, we consider it necessary to amend the IO to enable the IA to exercise direct regulatory powers over Hong Kong-incorporated holding companies of insurance groups, so as to uphold the international standards, reinforce Hong Kong’s status as an international financial centre and establish Hong Kong as a preferred base for large insurance groups in Asia Pacific. This would help build on Hong Kong’s experience of exercising group-wide supervision of insurance groups using the indirect approach and align Hong Kong’s regulatory regime with the international standards and practices of insurance regulation.

LEGISLATIVE PROPOSALS

8. To enable the IA to carry out effective and direct group-wide supervision that is in line with international standards, we **propose** to amend the IO to extend certain powers which the IA currently has over an authorized insurer to a Hong Kong-incorporated holding company of an insurance group, extend the functions of the IA to cover the proposed group-wide supervision and provide the IA with new powers that are applicable at the holding company level. The major legislative proposals are set out in the ensuing paragraphs.

⁴ Singapore’s Financial Holding Companies Act has been enacted but has not yet commenced.

⁵ According to the 2013-14 FSAP, key elements of a clear and comprehensive regime for insurance groups under the IO should cover the scope of the group to be subject to group-wide supervision, prudential supervision and market conduct requirements at the group level, and should empower the IA to take necessary remedial and enforcement measures at the level of the holding company, in line with emerging international best practices.

(A) *Designation of insurance holding company and determination of the scope of insurance group subject to the IA's supervision*

Designation of insurance holding company

9. We **propose** to empower the IA to designate, by notice published in the Gazette, a Hong Kong-incorporated insurance holding company (hereafter called “designated insurance holding company” (“DIHC”)) within an insurance group to be subject to group-wide supervision by the IA. Once designated, the IA will have direct regulatory power over the DIHC, and via the control and influence that the DIHC may exercise over its insurance group, the IA can carry out effective group-wide supervision over the insurance group.

10. The power to designate would only apply if the IA has been appointed as the group supervisor of the DIHC's insurance group in accordance with the IAIS principles (i.e. by agreement between the insurance regulators of entities in the group). In deciding whether to designate an insurance holding company, the IA may take into account the following matters –

- (a) the number of jurisdictions outside of Hong Kong in which the insurance business of the company's insurance group is carried on;
- (b) the size of the insurance and other businesses of the insurance group; and
- (c) any criteria promulgated by international standards setting bodies (including the IAIS) that the IA considers relevant.

11. We also **propose** to empower the IA to withdraw the designation of a DIHC by notice published in the Gazette. The withdrawal may be triggered where the circumstances on which the original designation was based have fundamentally changed, taking account of the criteria set out in paragraph 10 above, e.g. if there is a restructuring of the designated insurance group. The IA is also required to withdraw the designation if its appointment as the group supervisor is no longer in effect.

Determination of the scope of insurance group subject to the IA's supervision

12. We **propose** to empower the IA to determine the scope of the insurance group that is subject to group-wide supervision by the IA (hereafter called “supervised group”). Default members of the supervised group consist of the DIHC, all subsidiaries of the DIHC and any other entities that are, according to applicable accounting standards, treated as a member of the insurance group to which the DIHC belongs. The IA may also include or exclude an entity in or from the supervised group as necessary, by reason of the proximity of the connections or links such entity has with DIHC or other default members.

Payment of prescribed fees

13. We **propose** to require a DIHC to pay prescribed fees to the IA for recovering the cost of the IA in acting as the group supervisor of the supervised group. The fees will be prescribed in a regulation to be made by the Chief Executive in Council in accordance with section 128 of the IO. It is our intention that the annual fee payable by a DIHC will be prescribed by applying a specified percentage to the group's insurance liabilities as reported in the last return submitted to the IA.

(B) *Governance on Shareholder Controllers, Chief Executives, Directors, and Key Persons in Control Functions of DIHC*

14. The shareholder controllers of a DIHC, as well as the chief executives, directors and key persons in control functions⁶ (“specified officers”) of a DIHC, can impact the strategic direction, quality of governance, controls and risk management, financial position and funding support available to the entire designated insurance group. Similar to the IA's existing powers over an authorized insurer under

⁶ The term “key person in control functions” is defined in the Bill. In relation to a designated insurance holding company, it means an individual who is responsible for the performance of one or more of the control functions for the company in respect of its supervised group. The term “control functions” is also defined. It includes risk management function, financial control function, compliance function, internal audit function, actuarial function and any other function specified by the Financial Secretary by notice published in the Gazette.

sections 13A, 13AC, 13AE and 13B of the IO, we **propose** that the IA’s prior approval must be obtained before a person may become a shareholder controller or be appointed as a specified officer. The IA may impose conditions on the approval. The IA may also revoke an approval if it appears to the IA that the person is not or is no longer fit and proper to be a shareholder controller or specified officer. Factors to be taken into consideration in ascertaining the fitness and propriety of a person are largely similar to the ones applicable to an authorized insurer as set out in section 14A of the IO, in relation to which the Guideline on “Fit and Proper” Criteria under the IO published in November 2017 may also be made applicable.

(C) *Regulatory and Intervention Powers*

Regulatory powers

15. To exercise effective group-wide supervision, we **propose** to empower the IA to apply regulatory measures similar to those currently under the IO for an authorized insurer directly to a DIHC. These measures include the requirements to appoint an auditor, to submit financial statements and auditor’s report, to comply with group capital, reporting and disclosure requirements⁷. In addition, as major acquisitions may have a significant impact on the solvency position of a DIHC, a DIHC must not make or allow a major acquisition without obtaining the prior approval of the IA, unless the major acquisition is made solely for investment purposes as part of the insurance business carried on by the supervised group. An exception is where a major acquisition has been assessed through an assessment framework (that is established within the supervised group and approved by the IA) as being non-material to the supervised group.

Intervention powers

16. We **propose** to empower the IA to deploy intervention measures directly in relation to a DIHC, i.e. power to obtain information, require production of documents and give direction to appoint a supervisory manager to manage the affairs, business and property of the DIHC (including the exercise of the DIHC’s control and influence over supervised group members). These are similar to IA’s existing powers over an authorized insurer under sections 34 and

⁷ The requirements will be further provided in rules to be made by the IA and supplemented by guidelines where appropriate.

35 of the IO.

17. Given the multi-jurisdictional nature of insurance groups and the potential complexities of their business, in order to understand the risks to which a supervised group is exposed (which is vital to understanding its financial soundness), the IA may need input from subject matter experts in different countries and from different disciplines. We therefore **propose** to empower the IA to require a DIHC to provide reports on its financial and other matters. Furthermore, in situations where the supervised group may be under financial stress, in order to protect the solvency of the insurance entities in the supervised group (and thereby protect policyholders), it may be necessary to place restrictions on intra-group transfers of assets. We therefore **propose** that the IA be able to impose requirements on the DIHC to restrict the transfer of the assets of any member of its supervised group to another member of the group or a related entity of the DIHC.

Inspection and investigation powers

18. We **propose** to empower the IA to exercise the powers to conduct inspection and investigation for ascertaining, among other matters, whether a DIHC is complying with, has complied with, or is likely to be able to comply with the provisions of, or a requirement imposed under the IO. The matters covered by an inspection or investigation may relate to any member of the supervised group of the DIHC. Where an inspection involves matters that relate to a supervised group member, the IA may also require the DIHC to ensure that the supervised group member concerned does certain acts as required.

Civil and criminal sanctions against the DIHC

19. We **propose** to provide for disciplinary actions against DIHC that are similar to the existing disciplinary actions against authorized insurers under section 41P of the IO. These would include reprimanding a DIHC publicly or privately and imposing a pecuniary penalty. Similar to the arrangements for authorized insurers, the IA is entitled to present a petition for the winding up of a DIHC and to be heard in such a petition presented by others.

20. On criminal sanctions, we **propose** that a failure to comply with a requirement imposed under the IA's intervention, inspection or investigation powers in paragraphs 16 to 18 above is an offence. It is also an offence if a person, in purported compliance with a requirement imposed, provides any information, or produces any document, that the person knows to be false or misleading in a material particular. The nature of offence, penalty level and defence available are similar to the existing arrangements for authorized insurers.

(D) Group capital requirements

21. We **propose** to require a DIHC to ensure compliance with group capital requirements for the supervised group that are in line with the risk-based capital standards and guidance issued by the IAIS for Internationally Active Insurance Groups. We **propose** that the detailed group capital requirements be specified in subsidiary legislation subject to negative vetting by LegCo. We also intend to provide a transitional period to alleviate the financial impact of complying with the group capital requirements to be imposed on a DIHC.

(E) Checks and balances

22. We attach great importance to the accountability of the IA. Similar to the prevailing arrangements for authorized insurers under the IO, we **propose** that the IA's regulatory and disciplinary decisions for DIHC be subject to review by the Insurance Appeals Tribunal ("IAT"), and the IAT may confirm, vary or set aside any such decisions of the IA.

OTHER OPTIONS

23. Amending the IO is the only way to enable the IA to exercise direct regulatory powers over Hong Kong-incorporated holding companies of insurance groups. There is no alternative.

THE BILL

24. The main provisions of the Bill involve the adding by **clause 12** of a new Part XIA, which mainly mirrors the existing provisions for authorized insurers with suitable adaptations for the regulation and supervision of insurance groups, to the IO. The new Part XIA consists of the following ten Divisions –

- (a) **Division 1** provides for the interpretation of the new Part XIA and the functions of the IA in relation to insurance groups;
- (b) **Division 2** provides for the framework under which the IA may designate an insurance holding company within an insurance group as a DIHC;
- (c) **Division 3** provides for the general duties of a DIHC to pay the prescribed fees in relation to its designation and, if it has any holding company, maintain arrangements with its holding company for ensuring its ability to comply with the DIHC regime;
- (d) **Division 4** imposes certain restrictions in relation to the shareholder controllers of a DIHC;
- (e) **Division 5** imposes certain restrictions in relation to specified officers of a DIHC;
- (f) **Division 6** contains supplementary provisions regarding shareholder controllers and specified officers of a DIHC;
- (g) **Division 7** provides for requirements on a DIHC in relation to certain financial matters of its supervised group;
- (h) **Division 8** provides for IA's intervention powers in relation to the affairs, business, property, etc. of a DIHC and its supervised group;
- (i) **Division 9** provides for certain matters concerning the winding up of a DIHC under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); and

- (j) **Division 10** provides for the IA's powers to conduct inspections and investigations on matters concerning a DIHC and its supervised group and to take disciplinary actions against a DIHC.

25. Other clauses (**clauses 3 to 11 and 13 to 22**) of the Bill make consequential and other related amendments to the IO.

LEGISLATIVE TIMETABLE

26. The legislative timetable is as follows –

Publication in the Gazette	20 March 2020
First Reading and commencement of Second Reading debate	25 March 2020
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSALS

27. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal will not affect the binding effect of the existing provisions of the IO and its subsidiary legislation. The proposal has no financial or civil service implications to the Government, no environmental, productivity, family or gender implications, and no sustainability implications other than economic implications. The economic implications of the proposal are set out at **Annex B**.

B

PUBLIC CONSULTATION

28. The IA has consulted its Insurance Advisory Committee on Long Term Business, the Hong Kong Federation of Insurers and the affected insurance groups on the major legislative proposals and the basis for determining the group capital requirements and the requirement to pay prescribed fees by the insurance groups. The parties consulted were generally supportive. The Financial Services

and the Treasury Bureau and the IA also consulted the LegCo Panel on Financial Affairs in June 2019 and Members were generally supportive.

PUBLICITY

29. We will issue a press release upon the gazettal of the Bill, and arrange for a spokesman to answer media enquiries.

ENQUIRIES

30. Enquiries may be directed to Ms Noel Tsang, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services), at 2810 2201.

**Financial Services Branch
Financial Services and the Treasury Bureau
18 March 2020**

Insurance (Amendment) (No. 2) Bill 2020

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A BILL

To

Amend the Insurance Ordinance to provide for the regulation and supervision of insurance groups by the Insurance Authority; and to provide for related matters.

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Insurance (Amendment) (No. 2) Ordinance 2020.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

2. Insurance Ordinance amended

The Insurance Ordinance (Cap. 41) is amended as set out in sections 3 to 22.

3. Section 2 amended (interpretation)

- (1) Section 2(1), definition of *chief executive*—

Repeal

“assigned to it by section 9(2)”

Substitute

“given by section 9(2) or 95A(1) (as the case requires)”.

- (2) Section 2(1)—

Repeal the definition of *director*

Substitute

“*director* (董事)—

- (a) includes any person occupying the position of director (by whatever name called); and
- (b) in relation to a designated insurance holding company—also has the meaning given by section 95A(1);”.

(3) Section 2(1)—

Repeal the definition of *former accountant***Substitute**

“*former accountant* (前任會計師) means a person who was formerly the accountant of—

- (a) an authorized insurer or a former insurer; or
- (b) a designated insurance holding company or former designated insurance holding company;”.

(4) Section 2(1)—

Repeal the definition of *former actuary***Substitute**

“*former actuary* (前任精算師) means a person who was formerly the actuary of—

- (a) an authorized insurer or a former insurer; or
- (b) a designated insurance holding company or former designated insurance holding company;”.

(5) Section 2(1)—

Repeal the definition of *former auditor***Substitute**

“*former auditor* (前任核數師)—

- (a) in relation to—

- (i) an authorized insurer;
- (ii) a former insurer;
- (iii) a licensed insurance broker company;
- (iv) a former licensed insurance broker company; or
- (v) a person who was formerly an authorized insurance broker within the meaning of the pre-amended Ordinance,

means a person who was formerly the auditor of the insurer, company or person; and

(b) in relation to—

- (i) the supervised group of a designated insurance holding company; or
- (ii) the supervised group of a former designated insurance holding company,

means a person who was formerly the auditor appointed under section 95ZF(1) for the group;”.

(6) Section 2(1)—

Repeal the definition of *key person in control functions***Substitute**

“*key person in control functions* (管控要員) has the meaning given by section 13AE(12) or 95A(1) (as the case requires);”.

(7) Section 2(1), definition of *policy holder*, before “means”—

Add

“, except for the purposes of Part XIA,”.

(8) Section 2(1), definition of *prescribed person*—

- (a) paragraph (b)(ii)—

Repeal

“; or”

Substitute a semicolon;

- (b) after paragraph (c)—

Add

“(d) an auditor appointed under section 95ZF(1) for, or a former auditor of—

- (i) the supervised group of a designated insurance holding company; or
- (ii) the supervised group of a former designated insurance holding company; or

(e) an accountant, former accountant, actuary or former actuary appointed in compliance with a requirement under section 95ZR by—

- (i) a designated insurance holding company; or
- (ii) a former designated insurance holding company;”.

- (9) Section 2(1), definition of
- public*
- , before “means”—

Add

“, except for the purposes of Part XIA,”.

- (10) Section 2(1)—

Add in alphabetical order

“*designated insurance holding company* (指定保險控權公司) has the meaning given by section 95A(1);

group of companies (公司集團) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622);

shareholder controller (股東控權人) has the meaning given by section 95A(1);

supervised group (受監管集團)—

- (a) in relation to a designated insurance holding company—see section 95D; and
- (b) in relation to a former designated insurance holding company—means the supervised group of the company when it was a designated insurance holding company;”.

- (11) Section 2(7)(b)(iii)—

Repeal the semicolon**Substitute a full stop.**

- (12) Section 2(7)—

Repeal paragraph (c).

- (13) After section 2(7)—

Add

“(8) A note located in the text of this Ordinance is provided for information only and has no legislative effect.”.

4. **Section 13A amended (approval of certain controllers of authorized insurers)**

At the end of section 13A(1)—

Add

“**Note**—

See also section 95ZD if the authorized insurer is also a designated insurance holding company.”.

5. **Section 13AC amended (approval of directors of certain authorized insurers)**

At the end of section 13AC(1)—

Add

“Note—

See also section 95ZD if the authorized insurer is also a designated insurance holding company.”.

6. Section 13AE amended (approval of key persons in control functions of certain authorized insurers)

At the end of section 13AE(1)—

Add**“Note—**

See also section 95ZD if the authorized insurer is also a designated insurance holding company.”.

7. Section 13B amended (approval of persons proposing to become certain controllers of authorized insurer)

(1) At the end of section 13B(2)—

Add**“Note—**

See also section 95ZB if the authorized insurer is also a designated insurance holding company or a member of the supervised group of such a company.”.

(2) At the end of section 13B(3)—

Add**“Note—**

See also section 95ZC if the authorized insurer is also a designated insurance holding company or a member of the supervised group of such a company.”.

8. Section 53A amended (secrecy)

(1) Section 53A(1AA)(d)—

Repeal

“and”.

(2) After section 53A(1AA)(d)—

Add

“(da) a person who is or has been a supervisory manager appointed under section 95ZT(1)(b); and”.

(3) Section 53A(1AA)(e)—

Repeal

“or (d)”

Substitute

“, (d) or (da)”.

(4) Section 53A(1A), after “authorized insurer”—

Add

“, or the supervisory manager of a designated insurance holding company,”.

(5) Section 53A(2)—

Repeal

“or 53E”

Substitute

“, 53E, 53G, 95I, 95J, 95K, 95L, 95O, 95S, 95X, 95ZF, 95ZG, 95ZH, 95ZI, 95ZJ, 95ZL, 95ZO or 95ZP”.

(6) Section 53A(2)(c), after “Part VI”—

Add

“or XIA”.

(7) Section 53A(3)(a)—

Repeal

“or licensed insurance intermediaries if the summary is so compiled as to prevent particulars relating to the business of those insurers or intermediaries”

Substitute

“, licensed insurance intermediaries or designated insurance holding companies if the summary is so compiled as to prevent particulars relating to the business of those insurers, intermediaries or the supervised groups of those companies”.

- (8) Section 53A(3)(ea)—

Repeal

“and 64ZZH”

Substitute

“, 64ZZH and 95ZZG”.

- (9) Section 53A(3)(f), after “licensed insurance broker company”—

Add

“, or an auditor appointed under section 95ZF(1) for the supervised group of a designated insurance holding company,”.

- (10) Section 53A(3)(i)(i)(B)—

Repeal

“or”.

- (11) Section 53A(3)(i)(i)(C)—

Repeal

“; and”

Substitute

“; or”.

- (12) After section 53A(3)(i)(i)(C)—

Add

“(D) statements and reports submitted by a designated insurance holding company to the Authority under section 95ZH(1); and”.

9. Section 53B amended (disclosure of information)

After section 53B(1C)—

Add

“(1D) Subject to subsection (2) and despite section 53A, the Authority may disclose information to an authority in a place outside Hong Kong if—

(a) that authority—

- (i) is an involved supervisor as defined by section 95A(1); or
- (ii) performs functions in that place broadly comparable to those of a resolution authority in Hong Kong; and

(b) in the opinion of the Authority—

- (i) that authority is subject to adequate secrecy provisions in that place; and
- (ii) the disclosure of the information is necessary to enable or assist the Authority to perform its functions under Part XIA.”.

10. Section 53D amended (communication by prescribed person with Authority)

(1) Section 53D(2)(d)—

Repeal

“or”.

(2) Section 53D(2)(e)—

Repeal the full stop

Substitute a semicolon.

(3) After section 53D(2)(e)—

Add

- “(f) a designated insurance holding company (or any other member of its supervised group); or
 (g) a former designated insurance holding company (or any other member of its supervised group).”.

11. Section 53G added

Part VIIIA, after section 53F—

Add

“53G. Prescribed person to send report directly to Authority in certain cases relating to designated insurance holding companies

- (1) This section applies if a prescribed person, when discharging the person’s duties in that capacity in relation to the supervised group of a specified company, becomes aware of—
- (a) a matter that, in the person’s opinion, adversely affects the financial condition of the group to a material extent; or
 - (b) evidence of a failure by the company to comply with a specified requirement.
- (2) The prescribed person must, as soon as practicable after becoming aware of the matter or evidence, send to the Authority a written report of the matter or failure.
- (3) In subsection (1), a reference to a matter or evidence includes a matter or evidence of which the prescribed person became aware when the person was a prescribed person in relation to the supervised group of the specified company.
- (4) In this section—

prescribed person (訂明人士) means a person who falls within paragraph (d) or (e) of the definition of **prescribed person** in section 2(1);

specified company (指明公司) means—

- (a) a designated insurance holding company; or
- (b) a former designated insurance holding company;

specified requirement (指明規定), in relation to a specified company, means—

- (a) section 95H(1);
- (b) section 95ZI(3) or (5);
- (c) section 95ZJ(1); or
- (d) a requirement imposed by the Authority under section 95ZO, 95ZP, 95ZQ or 95ZR on the company.”.

12. Part XIA added

After Part XI—

Add

“Part XIA

Insurance Groups and Insurance Holding Companies

Division 1—Preliminary

95A. Interpretation of Part XIA

- (1) In this Part—
associate (相聯者), in relation to a person—

- (a) means any of the following persons—
 - (i) the wife or husband, or a child or stepchild who is a minor, of the person;
 - (ii) a body corporate of which that person is a director;
 - (iii) a person who is an employee or partner of the person; and
- (b) if the person is a body corporate, includes—
 - (i) a director of the body corporate;
 - (ii) a subsidiary of the body corporate; and
 - (iii) a director or employee of such a subsidiary;

chief executive (行政總裁), in relation to a designated insurance holding company, means a person (by whatever name called) who—

- (a) is in direct employment of, or is acting for or by arrangement with, the company; and
- (b) is, whether alone or jointly with another person, responsible for the management, and the conduct of the business, of the company and its supervised group;

control function (管控職能), in relation to the supervised group of a designated insurance holding company, means any of the following functions that is likely to enable the individual responsible for the performance of the function to exercise a significant influence on the business of the group—

- (a) risk management function, which is a function to establish the strategies, policies and procedures to manage different types of key risks of the group;

- (b) financial control function, which is a function to oversee all financial matters (including investments, accounting and financial reporting) of the group;
- (c) compliance function, which is a function to establish and formulate the standards, policies and procedures to ensure the compliance with legal and regulatory requirements that are applicable to the group;
- (d) internal audit function, which is a function to establish and implement an audit plan to examine and evaluate the adequacy and effectiveness of the controls to manage risks of the group;
- (e) actuarial function, which is a function to evaluate and monitor—
 - (i) the technical provisions, premium and pricing strategies of any member of the group that carries on insurance business (*insurer group member*);
 - (ii) the reserving and investment policies and reinsurance arrangements of any insurer group member; and
 - (iii) the policies and controls in respect of any insurer group member's vulnerability to fluctuations in risk exposures and distribution policies;
- (f) any other function specified in a notice under subsection (4);

date of designation (指定當日), in relation to a designated insurance holding company, means the date on which the designation of the company takes effect under section 95C(6)(a);

designated insurance holding company (指定保險控權公司) means an insurance holding company that is the subject of a designation;

designation (指定) means a designation made under section 95C(1);

director (董事), in relation to a designated insurance holding company, includes a person in accordance with whose directions or instructions a director of the company is accustomed to act;

entity (實體) means a body of persons (corporate or unincorporated) or a legal arrangement, and includes—

- (a) a corporation;
- (b) a partnership; and
- (c) a trust;

group supervisor (集團監管者), in relation to an insurance group, means the body responsible for promoting effective and co-ordinated supervision of the group in accordance with IAIS principles;

Hong Kong company (香港公司) means a company as defined by section 2(1) of the Companies Ordinance (Cap. 622);

IAIS principles (國際保險監管者協會原則) means principles adopted by the International Association of Insurance Supervisors;

inspector (查察員) means a person appointed as an inspector under section 95ZZE(6);

insurance group (保險集團) means any grouping of 2 or more entities the primary business of which is insurance business;

insurance holding company (保險控權公司) means a company incorporated in Hong Kong—

(a) that is a holding company of an authorized insurer, whether or not it is also an authorized insurer; or

(b) that is both—

- (i) an authorized insurer; and
- (ii) a holding company of a body corporate that carries on insurance business in or from a place outside Hong Kong;

International Association of Insurance Supervisors (國際保險監管者協會) means the body, whose general secretariat is based in Basel, Switzerland, that sets international standards for insurance supervision and includes any successor body of that body;

investigator (調查員) means a person directed or appointed under section 95ZZG(2) to investigate a matter;

involved supervisor (法定監管者), in relation to an insurance group or a supervised group, means an authority that performs a function under the laws of any place to supervise a member of the group in relation to matters concerning insurance or any other financial service;

key person in control functions (管控要員), in relation to a designated insurance holding company, means an individual who is responsible for the performance of one or more of the control functions for the company in respect of its supervised group;

member (成員), in relation to a supervised group, means an entity that is a member of the group as determined in accordance with section 95D;

policy holder (保單持有人), in relation to a supervised group, means—

- (a) a person who for the time being is the legal holder of a policy for securing a contract with any member of the group that carries on insurance business; and
- (b) a person to whom, under such a policy, a benefit is due or a payment is payable;

shareholder controller (股東控權人), in relation to a designated insurance holding company—

- (a) means a person, who alone or with an associate or through a nominee, is entitled to exercise, or control the exercise of, 15% or more of the voting power at any general meeting of the company; but
- (b) does not include a supervisory manager of the company;

supervised group (受監管集團)—see section 95D;

supervisory manager (監管經理), in relation to a designated insurance holding company, means the person appointed under section 95ZT(1)(b) to be the supervisory manager of the company.

- (2) For the purposes of the definition of **insurance group** in subsection (1), it does not matter—
 - (a) whether the grouping of the entities exists as a distinct legal person;
 - (b) whether the entities are incorporated, established or formed in or outside Hong Kong; and
 - (c) whether the insurance business is carried on, whether wholly or partly, in or from Hong Kong or a place outside Hong Kong.
- (3) For the purposes of the definition of **key person in control functions** in subsection (1), it does not matter whether the individual is solely responsible, or is jointly responsible

with other key persons in control functions of the designated insurance holding company, for the performance of the relevant functions.

- (4) Subject to subsection (5), the Financial Secretary may, by notice published in the Gazette, specify a function to be a control function for the purposes of paragraph (f) of the definition of **control function** in subsection (1).
- (5) The Financial Secretary must not specify a function under subsection (4) unless the Financial Secretary is satisfied that the function is likely to enable the individual responsible for the performance of the function to exercise a significant influence on the business of the supervised group of a designated insurance holding company.
- (6) In this Part—
 - (a) a reference to this Part includes any other provision of this Ordinance that is relevant for the purposes of this Part; and
 - (b) a reference to the public, or the public interest, is not limited to the public, or the public interest, of Hong Kong.
- (7) In relation to a designated insurance holding company—
 - (a) a reference in this Part to the carrying on of insurance business by a member of its supervised group includes the carrying on of such business by the member whether in or from Hong Kong or a place outside Hong Kong; and
 - (b) a reference in this Part to any matter in relation to its supervised group, or any member of the group, is not limited to such a matter insofar as Hong Kong is concerned.

95B. Functions of Authority in relation to insurance groups

- (1) For the purposes of this Part, the Authority has the following functions—
 - (a) to liaise and co-operate with any involved supervisor in any place outside Hong Kong in the determination of the group supervisors of insurance groups; and
 - (b) to regulate and supervise insurance groups of which the Authority is appointed as the group supervisor.
- (2) Without limiting subsection (1)(b), for an insurance group to be regulated and supervised under that subsection, the Authority is to—
 - (a) lead and plan, and co-ordinate with other involved supervisors, the supervisory activities and measures in respect of the group;
 - (b) gather, and disseminate among other involved supervisors, information related to the supervision of the group;
 - (c) supervise the recovery and resolution planning of the group;
 - (d) establish arrangements with other involved supervisors for effective co-ordination and co-operation in emergency situations concerning the group;
 - (e) assess the financial situation, and the soundness of the business practices, of the group; and
 - (f) consider the appropriate measures to be taken by the Authority in relation to the group, including—

- (i) designating an insurance holding company within the group to be regulated under this Part; and
- (ii) supervising the designated insurance holding company's compliance with this Part.

Division 2—Designation of Insurance Holding Company**95C. Designation by Authority**

- (1) The Authority may, by notice published in the Gazette, designate an insurance holding company within an insurance group as a designated insurance holding company if—
 - (a) the Authority is, in accordance with IAIS principles, appointed as the group supervisor of the group; and
 - (b) the Authority considers it appropriate for the company to be so designated.
- (2) In determining whether it is appropriate for an insurance holding company within an insurance group to be designated, the Authority may, among other matters, take into account any of the following matters—
 - (a) the number of jurisdictions outside Hong Kong in or from which the insurance business of the group is carried on;
 - (b) the size of the insurance and other businesses of the group;
 - (c) any criteria promulgated by an international standards setting body (including the International Association of Insurance Supervisors) that the Authority considers relevant.

- (3) Before designating an insurance holding company, the Authority must serve on the company a preliminary written notice stating—
 - (a) that the Authority is considering designating the company;
 - (b) the reasons why the Authority is considering doing so; and
 - (c) that the company may, within the period specified in the preliminary notice—
 - (i) make written representations to the Authority; and
 - (ii) if the company so requests, make oral representations to a person appointed for that purpose by the Authority.
- (4) If representations are made under subsection (3), the Authority must take them into account before making the designation.
- (5) If the Authority decides to designate an insurance holding company, the Authority must inform the company of the decision by a written notice.
- (6) A designation—
 - (a) takes effect on the date specified in the notice under subsection (1); and
 - (b) has effect until it is withdrawn under section 95E(1) or (3).
- (7) A notice under subsection (1) is not subsidiary legislation.

95D. Supervised group of designated insurance holding company

- (1) Subject to subsection (2), the supervised group of a designated insurance holding company consists of the following entities (*default members*)—
 - (a) the company;
 - (b) all subsidiaries of the company; and
 - (c) any other entities that are, according to the accounting standards applicable to the preparation of the specified financial statements, treated as members of the insurance group to which the company belongs.
- (2) The supervised group of a designated insurance holding company—
 - (a) includes any entity included as a member of the group under subsection (3); and
 - (b) excludes any entity excluded from being a member of the group under subsection (4).
- (3) The Authority may include an entity as a member of the supervised group of a designated insurance holding company if the Authority considers that the entity is closely linked to a default member of the group through any financial, contractual or operational relationship.
- (4) The Authority may exclude an entity from being a member of the supervised group of a designated insurance holding company if—
 - (a) for an entity that is a default member of the group—the Authority considers that the entity should not be treated as a member of the group; or
 - (b) for an entity that has been included as a member of the group under subsection (3)—the Authority

- considers that the entity is no longer closely linked to a default member as described in that subsection.
- (5) For the purposes of subsections (1), (2), (3) and (4), it does not matter whether the subsidiary or entity is incorporated, established or formed in or outside Hong Kong.
- (6) Before deciding to include an entity under subsection (3), or to exclude an entity under subsection (4), in relation to the supervised group of a designated insurance holding company, the Authority must serve on the company a preliminary written notice stating—
- (a) that the Authority is considering including the entity as a member, or excluding the entity from being a member, of the group;
 - (b) the reasons why the Authority is considering doing so; and
 - (c) that the company may, within the period specified in the preliminary notice—
 - (i) make written representations to the Authority; and
 - (ii) if the company so requests, make oral representations to a person appointed for that purpose by the Authority.
- (7) If representations are made under subsection (6), the Authority must take them into account before making the inclusion or exclusion.
- (8) If the Authority decides to include an entity under subsection (3), or to exclude an entity under subsection (4), in relation to a designated insurance holding company, the Authority must inform the company of the

- decision and, for a decision to include, the reasons, by a written notice.
- (9) An inclusion under subsection (3), or an exclusion under subsection (4), takes effect on the date specified in the notice under subsection (8).
- (10) In this section—
- accounting standards** (會計準則), in relation to the specified financial statements of a reference company, means—
- (a) if the company is a Hong Kong company—the accounting standards generally accepted in Hong Kong; or
 - (b) in any other case—any accounting standards that the Authority considers to be comparable to the accounting standards mentioned in paragraph (a);
- reference company** (參照公司), in relation to a designated insurance holding company, means the company that satisfies the following conditions—
- (a) it is either—
 - (i) the designated insurance holding company; or
 - (ii) a holding company of the designated insurance holding company; and
 - (b) it is, in the opinion of the Authority, the most appropriate company to make reference to for ascertaining information that gives a true and fair view of the structure and composition of the insurance group to which the designated insurance holding company belongs for the purposes of this Part;

specified financial statements (指明財務報表), in relation to a designated insurance holding company, means the following financial statements of its reference company—

- (a) if the reference company is a Hong Kong company—its annual consolidated financial statements as defined by section 357(1) of the Companies Ordinance (Cap. 622); or
- (b) in any other case—the financial statements of the reference company that—
 - (i) the reference company is required under the laws of its place of incorporation, establishment or formation to prepare; and
 - (ii) contain information that the Authority considers to be comparable to the information contained in the annual consolidated financial statements mentioned in paragraph (a).

95E. Withdrawal of designation

- (1) The Authority may, by notice published in the Gazette, withdraw the designation of a designated insurance holding company if the Authority considers it is no longer appropriate for the company to be designated.
- (2) In determining whether it is no longer appropriate for a designated insurance holding company to be designated, the Authority may, among other matters, take into account any of the matters specified in section 95C(2).
- (3) The Authority must, by notice published in the Gazette, withdraw the designation of a designated insurance holding company if the appointment of the Authority as the group supervisor of the insurance group to which the company belongs (as mentioned in section 95C(1)(a)) is no longer in effect.

- (4) If the Authority decides to withdraw the designation of a designated insurance holding company under subsection (1) or (3), the Authority must inform the company of the decision by a written notice.
- (5) A withdrawal under subsection (1) or (3) takes effect on the date specified in the notice under that subsection.
- (6) A notice under subsection (1) or (3) is not subsidiary legislation.

Division 3—General Duties of Designated Insurance Holding Company

95F. Payment of prescribed fees

- (1) A designated insurance holding company must pay to the Authority each of the following prescribed fees no later than the payment due date prescribed for the fee—
 - (a) a designation fee payable on designation;
 - (b) fees payable at prescribed intervals.
- (2) A designated insurance holding company must, within the period specified in a written notice served by the Authority on the company, deposit with the Authority a written return in the specified form for enabling the Authority to ascertain the amount of a fee payable under subsection (1) by the company.
- (3) A designated insurance holding company that contravenes subsection (2) commits an offence and is liable on conviction—
 - (a) to a fine at level 4; and
 - (b) in the case of a continuing offence—to a further fine of \$1,000 for every day during which the offence continues.

- (4) In this section—
prescribed (訂明) means prescribed by a regulation made under section 128.

95G. Waiver or reduction of prescribed fees

- (1) The Authority may, by a written notice served on a designated insurance holding company, waive or reduce a fee that is or will be payable under section 95F(1)(b) by the company if it appears to the Authority that—
- (a) the designation of the company is likely to be withdrawn under section 95E(1) or (3); and
 - (b) the withdrawal is likely to take effect after the fee becomes payable, and before the next fee becomes payable under section 95F(1)(b), by the company.
- (2) If it no longer appears to the Authority that a withdrawal is likely to be made and take effect as mentioned in subsection (1), the Authority may, by a written notice served on the designated insurance holding company—
- (a) revoke a waiver or reduction under subsection (1) that applies to a fee payable by the company; and
 - (b) if the Authority considers it appropriate—specify a date by which the fee must be paid by the company in place of the payment due date prescribed for the fee.

95H. Maintaining arrangements with holding company

- (1) A designated insurance holding company that has a holding company must maintain with its holding company any arrangements specified by the Authority under subsection (2).

- (2) The Authority may specify the arrangements that a designated insurance holding company must maintain with any of its holding companies for ensuring that the designated insurance holding company is able to, through procuring the taking of any necessary steps by its holding company, comply with—
- (a) this Part;
 - (b) a notice or requirement given or imposed under this Part; or
 - (c) a condition imposed under this Part.
- (3) The Authority may—
- (a) amend an arrangement specified under subsection (2); or
 - (b) revoke a specification made under subsection (2).
- (4) The power under subsection (2) or (3) is only exercisable by a written notice served on the designated insurance holding company.
- (5) Before specifying or amending an arrangement under subsection (2) or (3)(a), the Authority must give the designated insurance holding company an opportunity to make written or oral representations as to why the arrangement should not be specified or amended.
- (6) If representations are made under subsection (5), the Authority must take them into account before specifying or amending the arrangement.
- (7) If an arrangement is specified or amended under subsection (2) or (3)(a), the notice under subsection (4) must include a statement of the reasons for specifying or amending the arrangement.

- (8) A specification, amendment or revocation made under subsection (2) or (3) takes effect at the later of the following—
- (a) the time when the notice under subsection (4) is served on the designated insurance holding company;
 - (b) the time specified in the notice.

Division 4—Shareholder Controller of Designated Insurance Holding Company

95I. Prohibition against becoming shareholder controller without approval

- (1) A person must not become a shareholder controller of a designated insurance holding company unless the person is approved under section 95M to be a shareholder controller of the company.
- (2) A person who intends to become a shareholder controller of a designated insurance holding company may apply in accordance with subsection (3) for an approval under section 95M for the person to be a shareholder controller of the company.
- (3) An application under subsection (2) must—
 - (a) be made in writing;
 - (b) be in the specified form;
 - (c) be served on the Authority; and
 - (d) contain—
 - (i) the particulars of the designated insurance holding company to which the application relates;

- (ii) the particulars of the person who seeks to be approved to be a shareholder controller of the company (*applicant*); and
 - (iii) any other information specified in the specified form.
- (4) The applicant must—
 - (a) pay a prescribed fee for the application; and
 - (b) provide to the Authority any information that the Authority reasonably requires to enable it to consider the application.
- (5) A person who contravenes subsection (1) commits an offence and is liable—
 - (a) on conviction on indictment—to a fine of \$200,000 and to imprisonment for 2 years; or
 - (b) on summary conviction—to a fine at level 5 and to imprisonment for 6 months.
- (6) It is a defence for a person charged with an offence under subsection (5) to prove that the person did not know that the acts or circumstances as a result of which the person became a shareholder controller of the designated insurance holding company were such as to have that effect.

95J. Person becoming shareholder controller with approval

- (1) This section applies if a person becomes a shareholder controller of a designated insurance holding company with an approval under section 95M.
- (2) The person must, within 14 days after becoming a shareholder controller of the designated insurance holding company, notify the Authority of that fact in accordance with subsection (3).

- (3) A notice under subsection (2) must—
- (a) be given in writing;
 - (b) be in the specified form;
 - (c) be served on the Authority; and
 - (d) contain—
 - (i) the particulars of the designated insurance holding company to which the notice relates;
 - (ii) the particulars of the person who is approved to be, and has become, a shareholder controller of the company; and
 - (iii) any other information specified in the specified form.
- (4) A person who contravenes subsection (2) commits an offence and is liable—
- (a) on conviction on indictment—to a fine of \$200,000 and to imprisonment for 2 years; or
 - (b) on summary conviction—to a fine at level 5 and to imprisonment for 6 months,
- and in the case of a continuing offence—to a further fine of \$2,000 for every day during which the offence continues.

95K. Person becoming unapproved shareholder controller without notice

- (1) This section applies if—
- (a) a person becomes a shareholder controller of a designated insurance holding company in contravention of section 95I(1);
 - (b) the person did not know that the acts or circumstances as a result of which the person

- became such a shareholder controller were such as to have that effect; and
- (c) the person subsequently becomes aware of the fact that the person has become such a shareholder controller.
- (2) The person must, within 14 days after becoming aware of the fact that the person has become a shareholder controller of the designated insurance holding company, apply in accordance with subsection (3) for an approval under section 95M for the person to be a shareholder controller of the company.
- (3) An application under subsection (2) must—
- (a) be made in writing;
 - (b) be in the specified form;
 - (c) be served on the Authority; and
 - (d) contain—
 - (i) the particulars of the designated insurance holding company to which the application relates;
 - (ii) the particulars of the person who seeks to be approved to be a shareholder controller of the company (*applicant*); and
 - (iii) any other information specified in the specified form.
- (4) The applicant must—
- (a) pay a prescribed fee for the application; and
 - (b) provide to the Authority any information that the Authority reasonably requires to enable it to consider the application.

- (5) A person who contravenes subsection (2) commits an offence and is liable—
- (a) on conviction on indictment—to a fine of \$200,000 and to imprisonment for 2 years; or
 - (b) on summary conviction—to a fine at level 5 and to imprisonment for 6 months,
- and in the case of a continuing offence—to a further fine of \$2,000 for every day during which the offence continues.

95L. Pre-existing shareholder controller

- (1) This section applies if a person is a shareholder controller of a designated insurance holding company as at the beginning of the date of designation (*pre-existing shareholder controller*).
- (2) Subject to subsection (3), a pre-existing shareholder controller is taken to be approved under section 95M on the date of designation to be a shareholder controller of the designated insurance holding company.
- (3) Subsection (2) does not apply to a pre-existing shareholder controller if the Authority has, before the date of designation—
 - (a) served a notice of objection under section 13B(4) objecting to the pre-existing shareholder controller becoming or being a controller (as defined by section 13B(1)) of an authorized insurer; or
 - (b) served a notice under section 14(4) objecting to the appointment of the pre-existing shareholder controller as a controller (within the meaning of section 9(1)(a)(iii)(B)) of an authorized insurer.

- (4) For subsection (3), it does not matter whether the authorized insurer is the designated insurance holding company or not.
- (5) A pre-existing shareholder controller who falls within subsection (3) must, within 14 days after becoming aware of the designation of the company, apply in accordance with subsection (6) for an approval under section 95M for the person to be a shareholder controller of the company.
- (6) An application under subsection (5) must—
 - (a) be made in writing;
 - (b) be in the specified form;
 - (c) be served on the Authority; and
 - (d) contain—
 - (i) the particulars of the designated insurance holding company to which the application relates;
 - (ii) the particulars of the person who seeks to be approved to be a shareholder controller of the company (*applicant*); and
 - (iii) any other information specified in the specified form.
- (7) The applicant must—
 - (a) pay a prescribed fee for the application; and
 - (b) provide to the Authority any information that the Authority reasonably requires to enable it to consider the application.
- (8) A person who contravenes subsection (5) commits an offence and is liable—
 - (a) on conviction on indictment—to a fine of \$200,000 and to imprisonment for 2 years; or

- (b) on summary conviction—to a fine at level 5 and to imprisonment for 6 months,
and in the case of a continuing offence—to a further fine of \$2,000 for every day during which the offence continues.

95M. Approval of shareholder controller

- (1) The Authority may, on an application made under section 95I(2), 95K(2) or 95L(5) by a person (*applicant*), approve the applicant to be a shareholder controller of the designated insurance holding company specified in the application if—
- (a) section 95I(3) and (4), 95K(3) and (4) or 95L(6) and (7) (as the case may be) is complied with; and
 - (b) the Authority is satisfied that the applicant is a fit and proper person to be a shareholder controller of the company.
- (2) If the Authority intends to reject an application mentioned in subsection (1), the Authority must serve on the applicant a preliminary written notice stating—
- (a) that the Authority is considering rejecting the application;
 - (b) the reasons why the Authority is considering doing so; and
 - (c) that the applicant may, within the period specified in the preliminary notice—
 - (i) make written representations to the Authority; and
 - (ii) if the applicant so requests, make oral representations to a person appointed for that purpose by the Authority.

- (3) If representations are made under subsection (2), the Authority must take them into account before rejecting the application.
- (4) After deciding on the application, the Authority must give the applicant a written notice of the result of the application.
- (5) If the application is rejected, the notice must include a statement of the reasons for the rejection.

95N. Objection to being shareholder controller

- (1) This section applies in relation to a person approved under section 95M to be a shareholder controller of a designated insurance holding company.
- (2) For subsection (1), it does not matter whether the approval is—
 - (a) given on an application made under section 95I(2), 95K(2) or 95L(5); or
 - (b) taken to be given by virtue of section 95L(2).
- (3) The Authority may, by a written notice served on a person, object to the person being a shareholder controller of a designated insurance holding company if it appears to the Authority that—
 - (a) the person is not, or is no longer, a fit and proper person to be a shareholder controller of the company; or
 - (b) the person has contravened a condition imposed under section 95Z on the approval.
- (4) A notice under subsection (3) (*notice of objection*) must include a statement of the grounds for the objection.

- (5) Before serving a notice of objection on a person, the Authority must serve on the person a preliminary written notice stating—
- (a) that the Authority is considering serving the notice of objection;
 - (b) the reasons why the Authority is considering doing so; and
 - (c) that the person may, within the period specified in the preliminary notice—
 - (i) make written representations to the Authority; and
 - (ii) if the person so requests, make oral representations to a person appointed for that purpose by the Authority.
- (6) If representations are made under subsection (5), the Authority must take them into account before serving a notice of objection.
- (7) The Authority may, by a written notice served on a person, revoke a notice of objection served on the person if it appears to the Authority that the grounds for the objection no longer exist.

95O. Person ceasing to be shareholder controller

- (1) If a person ceases to be a shareholder controller of a designated insurance holding company—
- (a) any approval under section 95M for the person to be such a shareholder controller ceases to have effect; and
 - (b) the person must, within 14 days after ceasing to be such a shareholder controller, notify the Authority of that fact in accordance with subsection (2).

- (2) A notice under subsection (1)(b) must—
- (a) be given in writing;
 - (b) be in the specified form;
 - (c) be served on the Authority; and
 - (d) contain—
 - (i) the particulars of the designated insurance holding company to which the notice relates;
 - (ii) the particulars of the person who has ceased to be a shareholder controller of the company; and
 - (iii) any other information specified in the specified form.
- (3) A person who contravenes subsection (1)(b) commits an offence and is liable—
- (a) on conviction on indictment—to a fine of \$200,000 and to imprisonment for 2 years; or
 - (b) on summary conviction—to a fine at level 5 and to imprisonment for 6 months,
- and in the case of a continuing offence—to a further fine of \$2,000 for every day during which the offence continues.
- (4) It is a defence for a person charged with an offence under subsection (3) to prove that the person did not know that the acts or circumstances as a result of which the person ceased to be a shareholder controller of the designated insurance holding company were such as to have that effect.

95P. Restrictions on shares if shareholder controller unapproved or objected to

- (1) This section applies to the specified shares in relation to a person who is—
 - (a) an unapproved shareholder controller within the meaning of subsection (2) of a designated insurance holding company; or
 - (b) a shareholder controller objected to within the meaning of subsection (3) of a designated insurance holding company.
- (2) A person is an unapproved shareholder controller of a designated insurance holding company if—
 - (a) the person is a shareholder controller of the company; and
 - (b) the person is not approved under section 95M to be a shareholder controller of the company.
- (3) A person is a shareholder controller objected to of a designated insurance holding company if—
 - (a) the person is a shareholder controller of the company;
 - (b) the Authority has served a notice under section 95N(3) (*notice of objection*) on the person objecting to the person being a shareholder controller of the company; and
 - (c) the objection has taken effect under section 116.
- (4) The Authority may, by a written notice served on the person, direct that any specified shares in relation to the person are, until further notice, subject to one or more of the following restrictions—

- (a) any transfer of those shares or, in the case of unissued shares, any transfer of the right to be issued with them, and any issue of such shares, is void;
 - (b) no voting rights are exercisable in respect of the shares;
 - (c) no further shares are to be issued in right of them or in pursuance of any offer made to their holder;
 - (d) except in a liquidation, no payment is to be made of any sums due from the designated insurance holding company on the shares, whether in respect of capital or otherwise.
- (5) If shares are subject to a restriction under subsection (4)(a), an agreement to transfer the shares or, in the case of unissued shares, the right to be issued with them, and any issue of such shares, is void.
 - (6) If shares are subject to a restriction under subsection (4)(c) or (d), an agreement to transfer any right to be issued with other shares in right of those shares, or to receive any payment on them (otherwise than in a liquidation) is void.
 - (7) The Authority must, by a written notice served on a person, revoke a notice served under subsection (4) on the person if—
 - (a) for a person who is an unapproved shareholder controller of a designated insurance holding company—the person is approved under section 95M to be a shareholder controller of the company; or
 - (b) for a person who is a shareholder controller objected to of a designated insurance holding company—the notice of objection is revoked under section 95N(7).

- (8) If a notice is served under subsection (4) or (7) on a person, the Authority must also serve a copy of the notice on—
- (a) the designated insurance holding company to which the notice relates; and
 - (b) if the notice relates to shares held by an associate or nominee of the person—the associate or nominee.
- (9) In this section—
- specified shares** (指明股份), in relation to a person—
- (a) means the shares by virtue of which the person is, whether alone or with an associate or through a nominee, entitled to exercise, or control the exercise of, the voting power at any general meeting of the designated insurance holding company of which the person is an unapproved shareholder controller or shareholder controller objected to; but
 - (b) does not include any such shares held by the person, or any such associate or nominee, before the person became a shareholder controller of the company.

95Q. Sale of shares if shareholder controller unapproved

- (1) This section applies to the specified shares in relation to a person who is an unapproved shareholder controller within the meaning of section 95P(2) of a designated insurance holding company.
- (2) The Authority may apply to the Court of First Instance for an order under subsection (3) in respect of any specified shares in relation to the person if—
 - (a) the Authority has rejected an application made under section 95I(2), 95K(2) or 95L(5) by the person for the person to be approved under section

- 95M to be a shareholder controller of the company, and the rejection has taken effect under section 116; or
- (b) the Authority has served a notice under section 95P(4) in respect of the shares, and the notice has not been revoked under section 95P(7).
- (3) The Court of First Instance may, on an application made under subsection (2) in respect of any specified shares—
- (a) order the sale of the shares; and
 - (b) if the shares are subject to any restrictions under section 95P(4), order that the shares cease to be subject to those restrictions.
- (4) If an order is made under subsection (3) in respect of any shares, the Court of First Instance may, on the application of the Authority, make any further order relating to the sale or transfer of the shares as it thinks fit.
- (5) If any shares are sold pursuant to an order under this section—
- (a) the proceeds of the sale, less the costs of the sale, are to be paid into court for the benefit of the persons beneficially interested in them; and
 - (b) any such person may apply to the Court of First Instance for an order that the whole or part of the proceeds to be paid to the person.
- (6) In this section—
- specified shares** (指明股份) has the meaning given by section 95P(9).

95R. Punishment for attempted evasion of restrictions on shares

- (1) A person commits an offence if the person, knowing that any shares are subject to a restriction under section 95P(4)—
 - (a) exercises, or purports to exercise, any right to dispose of those shares or of any right to be issued with those shares;
 - (b) votes in respect of those shares (whether as holder or proxy), or appoint a proxy to vote in respect of those shares;
 - (c) while being the holder of those shares, fails to notify of their being subject to that restriction any other person whom—
 - (i) the person does not know to be aware of that fact; but
 - (ii) the person does know to be entitled (apart from the restrictions) to vote in respect of those shares (whether as holder or as proxy); or
 - (d) enters into an agreement in relation to those shares that is void under section 95P(5) or (6) as—
 - (i) the holder of those shares; or
 - (ii) a person being entitled to—
 - (A) any right to be issued with other shares in right of those shares; or
 - (B) receive any payment on those shares (otherwise than in a liquidation).
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 4 and to imprisonment for 6 months.

- (3) A designated insurance holding company commits an offence if the company—
 - (a) issues any shares in contravention of any restrictions under section 95P(4); or
 - (b) makes any payment in contravention of such restrictions.
- (4) A designated insurance holding company that commits an offence under subsection (3) is liable on conviction to a fine at level 4.
- (5) If an individual commits an offence under subsection (4) by virtue of section 124, the individual is, on conviction, also liable to imprisonment for 6 months.

**Division 5—Chief Executive, Director and Key
Person in Control Functions of Designated Insurance
Holding Company**

95S. Prohibition against appointment without approval

- (1) A designated insurance holding company must not appoint a person as a chief executive, director or key person in control functions of the company unless the appointment has been approved under section 95U.
- (2) A designated insurance holding company may apply in accordance with subsection (3) for an approval under section 95U of an appointment mentioned in subsection (1).
- (3) An application under subsection (2) must—
 - (a) be made in writing;
 - (b) be in the specified form;
 - (c) be served on the Authority; and

- (d) contain—
 - (i) the particulars of the designated insurance holding company to which the application relates (*applicant*);
 - (ii) the particulars of the person proposed to be appointed as a chief executive, director or key person in control functions (as the case may be) of the company (*proposed person*); and
 - (iii) any other information specified in the specified form.
- (4) The applicant must—
 - (a) pay a prescribed fee for the application; and
 - (b) provide to the Authority—
 - (i) a statement signed by the proposed person that the application is made with the person's knowledge and consent; and
 - (ii) any information that the Authority reasonably requires to enable it to consider the application.
- (5) A designated insurance holding company that contravenes subsection (1) commits an offence and is liable on conviction—
 - (a) to a fine of \$200,000; and
 - (b) in the case of a continuing offence—to a further fine of \$2,000 for every day during which the offence continues.

95T. Pre-existing chief executive, director or key person in control functions

- (1) This section applies if a person is a chief executive, director or key person in control functions of a designated insurance holding company as at the beginning of the date of designation.
- (2) In relation to a person mentioned in subsection (1)—
 - (a) the person is taken to be appointed as a chief executive, director or key person in control functions (as the case may be) of the designated insurance holding company on the date of designation; and
 - (b) subject to subsections (3), (4) and (5), the appointment (*pre-existing appointment*) is taken to be approved under section 95U on the date of designation.
- (3) Subsection (2) does not apply to a pre-existing appointment if—
 - (a) it is an appointment of a person as a chief executive of a designated insurance holding company; and
 - (b) the Authority has, before the date of designation, objected to an appointment of the person as a controller of an authorized insurer to which section 13A applies by—
 - (i) rejecting an application for an approval under section 13A(2) of the appointment; or
 - (ii) serving a notice under section 13A(7) to revoke such an approval.
- (4) Subsection (2) also does not apply to a pre-existing appointment if—

- (a) it is an appointment of a person as a director of a designated insurance holding company; and
 - (b) the Authority has, before the date of designation—
 - (i) objected to an appointment of the person as a director of an authorized insurer to which section 13AC applies by—
 - (A) rejecting an application for an approval under section 13AC(2) of the appointment; or
 - (B) serving a notice under section 13AC(7) to revoke such an approval; or
 - (ii) objected to an appointment of the person as a director of an authorized insurer to which section 14(4) applies by serving a notice under that section.
- (5) Subsection (2) also does not apply to a pre-existing appointment if—
- (a) it is an appointment of a person as a key person in control functions of a designated insurance holding company; and
 - (b) the Authority has, before the date of designation, objected to an appointment of the person as a key person in control functions of an authorized insurer to which section 13AE applies by—
 - (i) rejecting an application for an approval under section 13AE(2) of the appointment; or
 - (ii) serving a notice under section 13AE(7) to revoke such an approval.

- (6) For subsections (3), (4) and (5), it does not matter whether the authorized insurer is the designated insurance holding company or not.
- (7) If a pre-existing appointment of a person in relation to a designated insurance holding company falls within subsection (3), (4) or (5), the Authority—
 - (a) may serve on the company a written notice requiring the company to terminate the appointment by the date specified in the notice; and
 - (b) if a notice is served under paragraph (a)—must serve on the person a copy of the notice.
- (8) A designated insurance holding company on which a notice is served under subsection (7)(a) must comply with the notice.
- (9) A designated insurance holding company that contravenes subsection (8) commits an offence and is liable on conviction—
 - (a) to a fine of \$200,000; and
 - (b) in the case of a continuing offence—to a further fine of \$2,000 for every day during which the offence continues.

95U. Approval of appointment

- (1) The Authority may, on an application made under section 95S(2) by a designated insurance holding company, approve the appointment of the person specified in the application (*proposed person*) as a chief executive, director or key person in control functions of the company if—
 - (a) section 95S(3) and (4) is complied with; and

- (b) the Authority is satisfied that the proposed person is a fit and proper person to be a chief executive, director or key person in control functions (as the case may be) of the company.
- (2) After deciding on the application, the Authority must give the designated insurance holding company and the proposed person a written notice of the result of the application.
- (3) If the application is rejected, the notice must include a statement of the reasons for the rejection.

95V. Objection to appointment

- (1) This section applies in relation to an appointment approved under section 95U of a person as a chief executive, director or key person in control functions of a designated insurance holding company.
- (2) For subsection (1), it does not matter whether the approval is—
 - (a) given on an application made under section 95S(2); or
 - (b) taken to be given by virtue of section 95T(2).
- (3) The Authority may, by a written notice served on the person and the designated insurance holding company, object to the appointment if it appears to the Authority that—
 - (a) the person is not, or is no longer, a fit and proper person to be a chief executive, director or key person in control functions (as the case may be) of the company; or

- (b) the person or the company has contravened a condition imposed under section 95Z on the approval.
- (4) A notice under subsection (3) (*notice of objection*) must include a statement of the grounds for the objection.
- (5) Before serving a notice of objection on a person and a designated insurance holding company, the Authority must serve on the person and the company a preliminary written notice stating—
 - (a) that the Authority is considering serving the notice of objection;
 - (b) the reasons why the Authority is considering doing so; and
 - (c) that the person and the company may, either jointly or separately, within the period specified in the preliminary notice—
 - (i) make written representations to the Authority; and
 - (ii) if the person or company so requests, make oral representations to a person appointed for that purpose by the Authority.
- (6) If representations are made under subsection (5), the Authority must take them into account before serving a notice of objection.
- (7) The Authority may, by a written notice served on a person and a designated insurance holding company, revoke a notice of objection served on the person and the company if it appears to the Authority that the grounds for the objection no longer exist.
- (8) If a notice of objection is served in relation to an appointment, the designated insurance holding company

must terminate the appointment by the date specified in the notice.

- (9) A designated insurance holding company that contravenes subsection (8) commits an offence and is liable on conviction—
- (a) to a fine of \$200,000; and
 - (b) in the case of a continuing offence—to a further fine of \$2,000 for every day during which the offence continues.

95W. Restrictions on acting if appointment unapproved or objected to

- (1) A person appointed as a specified officer of a designated insurance holding company in contravention of section 95S(1) must not act, or continue to act, as such a specified officer.
- (2) Subsection (3) applies if the appointment of a person as a specified officer of a designated insurance holding company—
 - (a) falls within section 95T(3), (4) or (5); or
 - (b) is objected to under section 95V(3).
- (3) A person mentioned in subsection (2) must not continue to act as the specified officer mentioned in that subsection after—
 - (a) in the case of subsection (2)(a)—the date specified in the notice a copy of which is served under section 95T(7)(b) on the person; or
 - (b) in the case of subsection (2)(b)—the date specified in the notice served under section 95V(3) on the person.

- (4) A person who contravenes subsection (1) or (3) commits an offence and is liable on conviction—
 - (a) to a fine of \$200,000 and to imprisonment for 2 years; and
 - (b) in the case of a continuing offence—to a further fine of \$2,000 for every day during which the offence continues.
- (5) In this section—

specified officer (指明人員) means a chief executive, director or key person in control functions.

Division 6—Supplementary Provisions Regarding Shareholder Controller, Chief Executive, Director and Key Person in Control Functions

95X. Return of pre-existing shareholder controllers, chief executives, directors and key persons in control functions

- (1) Subject to subsection (2), a designated insurance holding company must, within 3 months after the date of designation, deposit with the Authority a written return in the specified form for informing the Authority of the particulars of every person who is a shareholder controller, chief executive, director or key person in control functions of the company as at the beginning of the date of designation.
- (2) The Authority may extend the 3-month period mentioned in subsection (1) by a period not exceeding 3 months if it appears to the Authority that the circumstances are such that a period longer than 3 months should be allowed.

- (3) A designated insurance holding company that contravenes subsection (1) commits an offence and is liable on conviction—
- (a) to a fine of \$200,000; and
 - (b) in the case of a continuing offence—to a further fine of \$1,000 for every day during which the offence continues.

95Y. Determination of fit and proper

- (1) In determining whether a person is a fit and proper person for the purposes of sections 95M, 95N, 95U and 95V, the Authority must have regard to the following matters—
- (a) the education or other qualifications or experience of the person;
 - (b) the person's ability to act competently, honestly and fairly;
 - (c) the reputation, character, reliability and integrity of the person;
 - (d) the person's financial status or solvency;
 - (e) whether any disciplinary action has been taken against the person by—
 - (i) the Monetary Authority;
 - (ii) the Securities and Futures Commission;
 - (iii) the Mandatory Provident Fund Schemes Authority; or
 - (iv) any other authority or regulatory organization, whether in Hong Kong or elsewhere, which, in the Authority's opinion, performs a function similar to those of the Authority;

- (f) if the person is a company in a group of companies, any information in the possession of the Authority, whether provided by the person or not, relating to—
 - (i) any other company in the group of companies; or
 - (ii) any substantial shareholder or officer of the person or of a company referred to in subparagraph (i); and
 - (g) the state of affairs of any other business that the person carries on or proposes to carry on.
- (2) The obligations imposed on the Authority under subsection (1) are in addition to those of the Authority to have regard to any other matter that the Authority considers relevant in making the determination.

95Z. Conditions on approval

- (1) This section applies in relation to—
- (a) an approval under section 95M for a person to be a shareholder controller of a designated insurance holding company; and
 - (b) an approval under section 95U of an appointment of a person as a chief executive, director or key person in control functions of a designated insurance holding company.
- (2) For subsection (1)(a), it does not matter whether the approval is—
- (a) given on an application made under section 95I(2), 95K(2) or 95L(5); or
 - (b) taken to be given by virtue of section 95L(2).
- (3) For subsection (1)(b), it does not matter whether the approval is—

- (a) given on an application made under section 95S(2); or
 - (b) taken to be given by virtue of section 95T(2).
- (4) The Authority may impose any condition that it considers appropriate on an approval mentioned in subsection (1) when—
- (a) the approval is given; and
 - (b) at any time after approval is given or taken to be given.
- (5) The Authority may amend or revoke any condition imposed under subsection (4).
- (6) The power under subsection (4) or (5) is only exercisable by a written notice served on the affected person.
- (7) Before imposing or amending a condition under subsection (4) or (5), the Authority must give the affected person an opportunity to make written or oral representations as to why the condition should not be imposed or amended.
- (8) If representations are made under subsection (7), the Authority must take them into account before imposing or amending the condition.
- (9) If a condition is imposed or amended under subsection (4) or (5), the notice under subsection (6) must include a statement of the reasons for imposing or amending the condition.
- (10) The imposition, amendment or revocation of a condition under subsection (4) or (5) takes effect at the later of the following—
- (a) the time when the notice under subsection (6) is served on the affected person;

- (b) the time specified in the notice.
- (11) In this section—
- affected person** (當事人) means—
- (a) for a condition on an approval under section 95M— the person mentioned in subsection (1)(a); or
 - (b) for a condition on an approval under section 95U— the person and the designated insurance holding company mentioned in subsection (1)(b).

95ZA. Offences in relation to application for approval

- (1) A person commits an offence if the person, in connection with an application for an approval under section 95M or 95U—
- (a) makes a statement that is false or misleading in a material particular; and
 - (b) knows that, or is reckless as to whether, the statement is false or misleading in the material particular.
- (2) A person commits an offence if the person, in connection with an application for an approval under section 95M or 95U—
- (a) omits a material particular from a statement with the result that the statement is rendered false or misleading; and
 - (b) knows that, or is reckless as to whether, the material particular is omitted from the statement.
- (3) A person who commits an offence under subsection (1) or (2) is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

95ZB. Effect of application under section 95I in relation to section 13B

- (1) This section applies if—
- (a) on the one hand—
- (i) a person will, as a result of certain acts or circumstances, become a shareholder controller of a designated insurance holding company; and
 - (ii) the person has made an application under section 95I(2) for an approval under section 95M for the person to be such a shareholder controller; and
- (b) on the other hand—
- (i) the person will also, as a result of the same acts or circumstances, become a controller (as defined by section 13B(1)) of an authorized insurer that is either the company itself or another member of its supervised group; and
 - (ii) the person is prohibited under section 13B(2) from becoming such a controller unless the conditions under that section are satisfied.
- (2) If the application under section 95I(2) is approved, the conditions under section 13B(2) are taken as satisfied as follows—
- (a) the person is taken to have served on the Authority a notice in accordance with section 13B(2)(a);
 - (b) the prescribed fee under section 13B(2)(ab) is taken to have been paid; and
 - (c) the Authority is taken to have, as described in section 13B(2)(b)(i), notified the person that there is

no objection to the person's becoming a controller of the authorized insurer.

- (3) If the application under section 95I(2) is rejected, the Authority is taken to have served on the person a notice of objection under section 13B(4) objecting to the person's becoming a controller of the authorized insurer when the written notice of the result of the application is given under section 95M(4).

95ZC. Effect of application under section 95K in relation to section 13B

- (1) This section applies if—
- (a) on the one hand—
- (i) a person has, as a result of certain acts or circumstances, become a shareholder controller of a designated insurance holding company in contravention of section 95I(1); and
 - (ii) the person falls within section 95K(1) so that the person is required to comply with section 95K(2); and
- (b) on the other hand—
- (i) the person has also, as a result of the same acts or circumstances, become a controller (as defined by section 13B(1)) of an authorized insurer that is either the company itself or another member of its supervised group in contravention of section 13B(2); and
 - (ii) the person falls within section 13B(3) so that person is required to comply with that section.

- (2) The person is taken to have complied with section 13B(3) if the person complies with section 95K(2).
- (3) If an application made under section 95K(2) is approved, the Authority is not entitled to serve a notice of objection under section 13B(4) on the person in respect of the contravention mentioned in subsection (1)(b)(i).
- (4) If an application made under section 95K(2) is rejected, the Authority is taken to have served on the person a notice of objection under section 13B(4) objecting to the person's being a controller of the authorized insurer when the written notice of the result of the application is given under section 95M(4).

95ZD. Effect of approval under section 95U in relation to sections 13A, 13AC and 13AE

- (1) This section applies if a designated insurance holding company is also an authorized insurer.
- (2) If the Authority gives an approval under section 95U of the appointment of a person as a chief executive, director or key person in control functions (*specified officer*) of the designated insurance holding company, the Authority is taken to have at the same time given an approval under section 13A, 13AC or 13AE (as the case may be) of the appointment of the person as an equivalent officer of the authorized insurer.
- (3) For subsection (2), an equivalent officer is—
 - (a) if the specified officer is a chief executive of the designated insurance holding company—a controller (as defined by section 13A(12)) of the authorized insurer;

- (b) if the specified officer is a director of the designated insurance holding company—a director of the authorized insurer; or
- (c) if the specified officer is a key person in control functions of the designated insurance holding company—a key person in control functions (as defined by section 13AE(12)) of the authorized insurer who is responsible for the same control functions for the company and the insurer.

Division 7—Financial Matters

95ZE. Interpretation of Part XIA, Division 7

In this Division—

assessment framework (評估架構) means a process—

- (a) that is established within the supervised group of a designated insurance holding company for assessing whether a major acquisition is material to the group; and
- (b) that involves, for that purpose—
 - (i) the quantification of the overall adverse impact that the acquisition may have on the group, taking into account any adverse impact on—
 - (A) the capital resources of the group;
 - (B) the risk profile of the group;
 - (C) the ongoing ability of the group to maintain compliance with the group capital requirements for the group; and
 - (D) any other matter that the Authority considers to be relevant; and

- (ii) the setting of an amount that the quantified adverse impact on the group must not exceed in order for the acquisition to be assessed as not material;

financial reporting member (財務匯報成員), in relation to the supervised group of a designated insurance holding company, means the member of the group that satisfies the following conditions—

- (a) it is either—
 - (i) the designated insurance holding company; or
 - (ii) a holding company of the designated insurance holding company; and
- (b) it is, in the opinion of the Authority, the most appropriate member to be assigned for reporting information that gives a true and fair view of the financial position and financial performance of the group for the purposes of this Part;

major acquisition (重大收購), in relation to a designated insurance holding company, means the acquisition by any member of its supervised group alone, or with an associate or another member of the group, or through a nominee, of—

- (a) the control of 50% or more of the voting power at a general meeting of a body corporate; or
- (b) 50% or more of the issued share capital of a body corporate;

specified financial statements (指明財務報表), in relation to a financial reporting member, means—

- (a) if the member is a Hong Kong company—its annual consolidated financial statements as defined by

section 357(1) of the Companies Ordinance (Cap. 622); or

- (b) in any other case—the financial statements of the member that—
 - (i) the member is required under the laws of its place of incorporation, establishment or formation to prepare; and
 - (ii) contain information that the Authority considers to be comparable to the information contained in the annual consolidated financial statements mentioned in paragraph (a).

95ZF. Auditor must be appointed

- (1) A designated insurance holding company must ensure that a person who satisfies the requirements under subsection (2) or (3) is appointed as the auditor of the financial reporting member for its supervised group—
 - (a) within 1 month beginning on the date of designation; and
 - (b) as soon as practicable after the office of the auditor becomes vacant.
- (2) If the financial reporting member is a Hong Kong company, the auditor must be a person—
 - (a) who is qualified for appointment as an auditor of a company under the Professional Accountants Ordinance (Cap. 50); and
 - (b) who is not disqualified under section 393 of the Companies Ordinance (Cap. 622) for appointment as an auditor of the member.
- (3) If the financial reporting member is not a Hong Kong company, the auditor must be a person—

- (a) who may lawfully practise as an auditor in the place of incorporation, establishment or formation of the member; and
 - (b) without prejudice to paragraph (a), who holds a qualification that the Authority accepts as being of a standard comparable to that of a person mentioned in subsection (2).
- (4) A designated insurance holding company must, within 1 month beginning on the date on which an auditor is appointed under subsection (1), serve on the Authority a written notice stating that fact and the name and qualifications of the person appointed.
- (5) A designated insurance holding company that contravenes subsection (1) or (4) commits an offence and is liable on conviction—
- (a) to a fine at level 4; and
 - (b) in the case of a continuing offence—to a further fine of \$1,000 for every day during which the offence continues.

95ZG. Notification in respect of auditor

- (1) A designated insurance holding company must immediately notify the Authority in writing if—
- (a) the financial reporting member for its supervised group decides to remove or replace an auditor appointed under section 95ZF;
 - (b) a person appointed under section 95ZF to be the auditor of the financial reporting member for its supervised group ceases to be such an auditor otherwise than in consequence of a decision referred to in paragraph (a); or

- (c) where the financial reporting member for its supervised group is a Hong Kong company—
 - (i) a person appointed under section 95ZF to be the auditor of the member is also an auditor appointed under section 395, 396, 397 or 398 of the Companies Ordinance (Cap. 622), or deemed to be reappointed under section 403 of that Ordinance, of the member (*CO auditor*); and
 - (ii) the member either—
 - (A) proposes to give special notice to its shareholders of a resolution removing such a CO auditor before the end of the auditor's term of office; or
 - (B) gives notice to its shareholders of a resolution replacing such a CO auditor at the end of the auditor's term of office.
- (2) An auditor appointed under section 95ZF must immediately notify the Authority in writing if the auditor—
- (a) resigns;
 - (b) where the auditor has been appointed for a fixed term—decides not to seek reappointment; or
 - (c) decides to add a qualification or adverse statement to the auditor's report on the financial statements required to be submitted under section 95ZH.
- (3) A designated insurance holding company that contravenes subsection (1) commits an offence and is liable on conviction—
- (a) to a fine at level 4; and

- (b) in the case of a continuing offence—to a further fine of \$1,000 for every day during which the offence continues.
- (4) It is a defence for a designated insurance holding company charged with an offence under subsection (3) to prove that the company took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

95ZH. Submission of financial statements and auditor's reports

- (1) A designated insurance holding company must submit to the Authority the following documents in accordance with this section—
 - (a) the specified financial statements of the financial reporting member for its supervised group; and
 - (b) a report of the auditor of the member appointed under section 95ZF on those statements.
- (2) A document required to be submitted under subsection (1) must comply with any requirements specified by the Authority in a written notice served on the designated insurance holding company.
- (3) A designated insurance holding company must submit a document under subsection (1) by depositing it with the Authority—
 - (a) within 4 months after the end of the period to which the document relates; or
 - (b) if the 4-month period is extended by the Authority under subsection (4)—within the extended period.
- (4) The Authority may extend the 4-month period mentioned in subsection (3)(a) by a period not exceeding 3 months if

- it appears to the Authority that the circumstances are such that a period longer than 4 months should be allowed.
- (5) A designated insurance holding company that contravenes subsection (1) commits an offence and is liable on conviction—
 - (a) to a fine of \$200,000; and
 - (b) in the case of a continuing offence—to a further fine of \$1,000 for every day during which the offence continues.

95ZI. Requirements in relation to group capital

- (1) The Authority may, by rules made under section 129, prescribe—
 - (a) requirements in relation to the capital of the supervised group of a designated insurance holding company, including among others—
 - (i) the minimum amount of capital that the group must maintain (including how such an amount is to be determined); and
 - (ii) the types and amounts of capital resources of the group that are eligible for being counted towards satisfying the minimum amount of capital;
 - (b) requirements for a designated insurance holding company to report to the Authority (including how such a report is to be made)—
 - (i) the capital position of its supervised group; and
 - (ii) any information relevant to the compliance with the group capital requirements for its supervised group; and

- (c) requirements for a designated insurance holding company to disclose to the public (including how such a disclosure is to be made)—
- (i) the group capital requirements for its supervised group;
 - (ii) the capital position of its supervised group; and
 - (iii) any information relevant to a matter mentioned in subparagraph (i) or (ii).
- (2) The Authority may, by a written notice served on a designated insurance holding company, vary a requirement prescribed by virtue of subsection (1)(a) that applies to the supervised group of the company if the Authority is satisfied, on reasonable grounds, that it is prudent to make the variation so that the group capital requirements for the group are commensurate with the risks associated with the group.
- (3) A designated insurance holding company must ensure that the group capital requirements for its supervised group are at all times complied with.
- (4) If the Authority is of the opinion that a designated insurance holding company has failed to comply with subsection (3), the Authority may, by a written notice served on the company, require the company to do any of the following acts within the period specified in the notice—
- (a) submit to the Authority the company's plan for—
 - (i) restoring the supervised group of the company to a sound financial position; and
 - (ii) bringing the group back into a position as soon as reasonably practicable where the group

- capital requirements for the group are complied with;
- (b) if the Authority considers a plan submitted inadequate—propose modifications to the plan to the satisfaction of the Authority;
 - (c) give effect to the plan accepted by the Authority.
- (5) A designated insurance holding company must comply with—
- (a) any requirements imposed under subsection (4);
 - (b) its reporting requirements; and
 - (c) its disclosure requirements.
- (6) A designated insurance holding company that contravenes subsection (5)(a) commits an offence and is liable on conviction on indictment—
- (a) to a fine of \$200,000; and
 - (b) in the case of a continuing offence—to a further fine of \$10,000 for every day during which the offence continues.
- (7) A designated insurance holding company that contravenes subsection (5)(b) or (c) commits an offence and is liable on conviction on indictment—
- (a) to a fine of \$200,000; and
 - (b) in the case of a continuing offence—to a further fine of \$5,000 for every day during which the offence continues.
- (8) It is a defence for a designated insurance holding company charged with an offence under subsection (6) or (7) to prove that, at the time of the alleged offence, the company had a reasonable excuse for failing to comply with the requirement concerned.

(9) In this section—

disclosure requirement (披露規定), in relation to a designated insurance holding company, means a requirement prescribed by virtue of subsection (1)(c) that applies to the company;

group capital requirement (集團資本規定), in relation to the supervised group of a designated insurance holding company, means—

- (a) a requirement prescribed by virtue of subsection (1)(a) that applies to the group; or
- (b) if the requirement is varied under subsection (2)—the requirement so varied;

reporting requirement (報告規定), in relation to a designated insurance holding company, means a requirement prescribed by virtue of subsection (1)(b) that applies to the company.

95ZJ. Requirements in relation to major acquisition

- (1) Subject to subsection (6), a designated insurance holding company must not make a major acquisition, or allow the making of a major acquisition by another member of the supervised group of the company, unless—
 - (a) the acquisition has been approved by the Authority under section 95ZK; or
 - (b) the acquisition has been assessed, through an assessment framework approved by the Authority under section 95ZM, as not material to the supervised group of the company.
- (2) A designated insurance holding company may apply in accordance with subsection (3) for an approval under section 95ZK of a major acquisition.

(3) An application under subsection (2) must—

- (a) be made in writing;
- (b) be served on the Authority; and
- (c) contain—
 - (i) the particulars of the major acquisition proposed to be made (**proposed acquisition**); and
 - (ii) the particulars of the entity proposing to make the acquisition.

(4) A designated insurance holding company that makes an application under subsection (2) must—

- (a) pay a prescribed fee for the application; and
- (b) provide to the Authority—
 - (i) any information that the Authority reasonably requires to enable it to consider the application; and
 - (ii) if the proposed acquisition has been assessed through the assessment framework mentioned in subsection (1)(b) as material to the supervised group of the company—a record of the assessment.

(5) A designated insurance holding company that contravenes subsection (1) commits an offence and is liable—

- (a) on conviction on indictment—to a fine at \$200,000; or
- (b) on summary conviction—to a fine at level 6, and in the case of a continuing offence—to a further fine of \$2,000 for every day during which the offence continues.

- (6) Subsection (1) does not apply to a major acquisition made or allowed by a designated insurance holding company if the acquisition is—
- (a) made pursuant to a written agreement that is—
 - (i) entered into before the date of designation of the company; and
 - (ii) binding on the entity within the supervised group of the company that makes the acquisition; or
 - (b) made solely for investment purposes as part of the insurance business carried on by any member of the supervised group of the company.

95ZK. Approval of major acquisition

- (1) The Authority may, on an application made under section 95ZJ(2) by a designated insurance holding company, approve the major acquisition specified in the application (*proposed acquisition*) if—
 - (a) section 95ZJ(3) and (4) is complied with; and
 - (b) the Authority is satisfied that the proposed acquisition will not be prejudicial, or is unlikely to be prejudicial, to the interests of the policy holders of the supervised group of the company.
- (2) If the Authority intends to reject an application mentioned in subsection (1), the Authority must serve on the designated insurance holding company a preliminary written notice stating—
 - (a) that the Authority is considering rejecting the application;
 - (b) the reasons why the Authority is considering doing so; and

- (c) that the company may, within the period specified in the preliminary notice—
 - (i) make written representations to the Authority; and
 - (ii) if the company so requests, make oral representations to a person appointed for that purpose by the Authority.
- (3) If representations are made under subsection (2), the Authority must take them into account before rejecting the application.
- (4) After deciding on the application, the Authority must give the designated insurance holding company a written notice of the result of the application.
- (5) If the application is rejected, the notice must include a statement of the reasons for the rejection.

95ZL. Assessment framework for major acquisition

- (1) A designated insurance holding company may apply in accordance with subsection (2) for an approval under section 95ZM of an assessment framework.
- (2) An application under subsection (1) must—
 - (a) be made in writing;
 - (b) be served on the Authority; and
 - (c) contain the particulars of the assessment framework.
- (3) A designated insurance holding company that makes an application under subsection (1) must—
 - (a) pay a prescribed fee for the application; and
 - (b) provide to the Authority any information that the Authority reasonably requires to enable it to consider the application.

95ZM. Approval of assessment framework for major acquisition

- (1) The Authority may, on an application made under section 95ZL(1) by a designated insurance holding company, approve the assessment framework specified in the application (*proposed assessment framework*) if—
 - (a) section 95ZL(2) and (3) is complied with; and
 - (b) the Authority is satisfied that the proposed assessment framework is appropriate for assessing whether a major acquisition is material to the supervised group of the company.
- (2) If the Authority intends to reject an application mentioned in subsection (1), the Authority must serve on the designated insurance holding company a preliminary written notice stating—
 - (a) that the Authority is considering rejecting the application;
 - (b) the reasons why the Authority is considering doing so; and
 - (c) that the company may, within the period specified in the preliminary notice—
 - (i) make written representations to the Authority; and
 - (ii) if the company so requests, make oral representations to a person appointed for that purpose by the Authority.
- (3) If representations are made under subsection (2), the Authority must take them into account before rejecting the application.

- (4) After deciding on the application, the Authority must give the designated insurance holding company a written notice of the result of the application.
- (5) If the application is rejected, the notice must include a statement of the reasons for the rejection.

Division 8—Intervention Powers**95ZN. Conditions for exercising intervention powers**

- (1) A power under section 95ZO, 95ZP or 95ZQ is exercisable in relation to a designated insurance holding company only if the Authority is of the opinion that—
 - (a) the exercise of the power is desirable for the Authority's carrying out any of its functions under this Part in relation to the company;
 - (b) the exercise of the power is desirable for mitigating or controlling the risks posed to, by or across the business of the supervised group of the company;
 - (c) the company has failed to comply with this Part; or
 - (d) the company has provided inaccurate information to the Authority for the purposes of this Part.
- (2) A power under section 95ZR is exercisable in relation to a designated insurance holding company only if the Authority is of the opinion that—
 - (a) the exercise of the power is desirable for the Authority's carrying out any of its functions under this Part in relation to the company; and
 - (b) the exercise of the powers under sections 95ZO, 95ZP and 95ZQ, or the exercise of those powers alone, would not be appropriate for the Authority's carrying out that function.

- (3) A power under section 95ZT is exercisable in relation to a designated insurance holding company only if—
- (a) any of the following happens—
- (i) the Authority is of the opinion, or is informed by the company, that the group capital requirements (as defined by section 95ZI(9)) for the supervised group of the company is not being, or is likely to be not, complied with;
 - (ii) an auditor's report submitted under section 95ZH(1)(b) states that there is a significant doubt as to the ability of the company or its supervised group to continue as a going concern;
 - (iii) the Authority is of the opinion that the company or its supervised group is unable to meet the liabilities of the company or group; and
- (b) the Authority is of the opinion that —
- (i) there is no reasonable prospect of the company or its supervised group recovering from the situation concerning the company or group as mentioned in paragraph (a);
 - (ii) the measures taken by the company or its supervised group for the company or group to recover from such a situation have failed; or
 - (iii) any attempt to take the measures mentioned in subparagraph (ii) for the company or group to recover from such a situation is likely to fail or cannot be implemented within a reasonable time.

95ZO. Power to require information and documents

- (1) Subject to section 95ZN(1), the Authority may, by a written notice served on a designated insurance holding company, require the company to provide information or produce documents about any matter that relates to any member of its supervised group.
- (2) The Authority may, in a notice under subsection (1), specify—
 - (a) the times or intervals at which the information or documents are to be provided or produced;
 - (b) the form in which the information or documents are to be prepared (including any verification or certification as may be required); and
 - (c) the way by which the information or documents are to be provided or produced.

95ZP. Power to require report

- (1) Subject to section 95ZN(1), the Authority may—
 - (a) by a written notice served on a designated insurance holding company, require the company to, within the time specified in the notice, provide to the Authority a report in respect of any matter that relates to any member of its supervised group; or
 - (b) appoint a person to provide to the Authority a report in respect of any matter that relates to any member of the supervised group of a designated insurance holding company.
- (2) The Authority may, in a notice under subsection (1)(a), specify—

- (a) the form in which the report is to be prepared (including any verification or certification as may be required); and
- (b) the way by which the report is to be provided.
- (3) The Authority may appoint under subsection (1)(b) any person who appears to the Authority to possess the skills necessary for providing a report in respect of the matter concerned.
- (4) If a person is appointed under subsection (1)(b) to provide a report in respect of a matter that relates to a member of the supervised group of a designated insurance holding company, the Authority—
 - (a) must, by a written notice served on the company, notify the company of the appointment; and
 - (b) may, in the notice, require the company to—
 - (i) if the matter relates to the company—provide to the person any assistance as reasonably required by the person; or
 - (ii) if the matter relates to another member—procure the provision by the member to the person any assistance as reasonably required by the person.
- (5) A designated insurance holding company must—
 - (a) pay to a person appointed under subsection (1)(b) any fees reasonably charged by the person for providing a report in respect of a matter that relates to a member of its supervised group; and
 - (b) reimburse the Authority for—
 - (i) any such fees paid by the Authority; and

- (ii) any incidental expenses incurred by the Authority in procuring the provision of such a report by the person.
- (6) Any fees and expenses required to be paid or reimbursed under subsection (5) are recoverable as a civil debt.

95ZQ. Power to require compliance with restrictions on transfer of assets

- (1) Subject to section 95ZN(1), the Authority may, by a written notice served on a designated insurance holding company, require the company to—
 - (a) refrain from transferring any assets of the company to any related entity; and
 - (b) comply with any other restrictions specified in the notice on the transfer of any assets of the company to a related entity.
- (2) The Authority may, by a written notice served on a designated insurance holding company, require the company to ensure that other members of its supervised group, or any one or more of them—
 - (a) refrain from transferring any assets of the members to any related entity; and
 - (b) comply with any other restrictions specified in the notice on the transfer of any assets of the members to a related entity.
- (3) In this section—

related entity (有關連實體), in relation to a designated insurance holding company, means—

 - (a) any member of its supervised group; or
 - (b) a holding company of the company that is not a member of the group.

95ZR. Power to require action in relation to supervised group

- (1) Subject to section 95ZN(2), the Authority may, by a written notice served on a designated insurance holding company, require the company to, within the time specified in the notice, take any action in relation to the affairs, business or property of its supervised group as the Authority considers appropriate.
- (2) Without limiting subsection (1), the Authority may require under that subsection a designated insurance holding company to—
 - (a) do or refrain from doing anything; and
 - (b) ensure that other members of its supervised group, or any one or more of them, do or refrain from doing anything.
- (3) The Authority may provide a copy of a requirement imposed under subsection (1) to any involved supervisor of the supervised group of the designated insurance holding company.
- (4) To avoid doubt, the exercise of a power under this section does not prejudice the exercise of any other power under this Division.

95ZS. Variation and rescission of requirements

The Authority may, by a written notice served on a designated insurance holding company—

- (a) vary a requirement imposed under section 95ZO, 95ZP, 95ZQ or 95ZR on the company; and
- (b) if the Authority is of the opinion that it is no longer necessary for such a requirement to continue in force—rescind the requirement.

95ZT. Direction for company to be managed by supervisory manager

- (1) Subject to section 95ZN(3), the Authority may—
 - (a) give a direction that, during the period for which the direction is in force, the affairs, business and property of the designated insurance holding company specified in the direction (including the exercise of the company's control or influence over any other member of its supervised group) is to be managed by a supervisory manager appointed by the Authority; and
 - (b) for the purposes of paragraph (a), appoint any person as the supervisory manager of the company.
- (2) A direction under this section—
 - (a) must be given in writing;
 - (b) must be served on the designated insurance holding company specified in the direction;
 - (c) takes effect immediately when it is so served; and
 - (d) must state the name and address of the supervisory manager appointed.
- (3) The Authority must cause notice of the direction to be published—
 - (a) in the Gazette; and
 - (b) in another way as the Authority considers expedient for notifying the public.
- (4) The Authority may give notice of the direction to any involved supervisor of the supervised group of the designated insurance holding company.

95ZU. Restriction on meetings when direction given under section 95ZT in force

- (1) During the period for which a direction given under section 95ZT in relation to a designated insurance holding company is in force—
 - (a) no meeting of the company may be held except with the consent, and in the presence, of the supervisory manager of the company; and
 - (b) no resolution may be passed at a meeting of the company except with the consent of the manager.
- (2) For the purposes of subsection (1)(b)—
 - (a) any resolution passed, or purporting to have been passed, in contravention of that subsection is invalid; and
 - (b) anything done in reliance on any such resolution is also invalid.
- (3) If a member or director of a designated insurance holding company requests the supervisory manager of the company to give a consent mentioned in subsection (1)(a), the manager must not unreasonably refuse to give that consent.
- (4) In this section—

meeting (會議), in relation to a designated insurance holding company, means—

 - (a) a general meeting of the members of the company; or
 - (b) a meeting of the directors of the company.

95ZV. Powers of supervisory manager

- (1) The supervisory manager of a designated insurance holding company—
 - (a) may do anything that is necessary for the management of the affairs, business and property of the company (including the exercise of the company's control or influence over any other member of its supervised group); and
 - (b) without limiting paragraph (a), may exercise any power specified in Schedule 7A in relation to the company.
- (2) The supervisory manager of a designated insurance holding company may require any of the persons specified in subsection (3) to—
 - (a) submit any information in relation to the affairs, business and property of the company that the manager reasonably requires for performing the manager's functions or exercising the manager's powers in relation to the company; and
 - (b) submit such information within the period and in the way specified by the manager.
- (3) The persons specified for subsection (2) are—
 - (a) a person who has ceased to be a chief executive, director or key person in control functions of the designated insurance holding company during the period for which a direction given under section 95ZT is in force; and
 - (b) a shareholder controller of the designated insurance holding company.

- (4) The supervisory manager of a designated insurance holding company may, with the approval of the Authority—
- (a) remove any chief executive or key person in control functions of the company (whether appointed by the company or the manager); and
 - (b) appoint any person to be a chief executive, director or key person in control functions of the company.
- (5) In relation to an appointment under subsection (4)(b)—
- (a) sections 95S and 95U do not apply;
 - (b) section 95V applies as if the appointment were an appointment approved under section 95U; and
 - (c) the approval of the Authority mentioned in subsection (4) is not otherwise to be regarded as an approval under section 95U.
- (6) The supervisory manager of a designated insurance holding company may call any meeting of the members, directors or creditors of the company.
- (7) Subsection (8) applies if—
- (a) a designated insurance holding company has a holding company (*parent company*); and
 - (b) a person who is a chief executive or director of the designated insurance holding company also occupies an equivalent position in the parent company.
- (8) The supervisory manager of a designated insurance holding company may require a person mentioned in subsection (7)(b) to—
- (a) take all necessary steps within the powers of the person's position in the parent company to call any

- meeting of the members, directors or creditors of the parent company; and
- (b) allow the manager to attend the meeting.
- (9) During the period for which a direction given under section 95ZT in relation to a designated insurance holding company is in force—
- (a) any power conferred on the company, or its officers or members, that could interfere with the exercise of any power of the supervisory manager of the company is not exercisable except with the consent of the manager; and
 - (b) the manager may give a consent for the purposes of paragraph (a) either generally or in a particular case.
- (10) For subsection (9)(a), it does not matter whether the power is conferred on the designated insurance holding company, or its officers or members, by—
- (a) this Ordinance;
 - (b) the Companies Ordinance (Cap. 622);
 - (c) the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); or
 - (d) the articles of association of the company.
- (11) Where a power of the supervisory manager of a designated insurance holding company is exercised—
- (a) the manager is taken to be acting as an agent of the company in exercising the power; and
 - (b) insofar as the exercise of the power is concerned, section 9 of the Prevention of Bribery Ordinance (Cap. 201) applies to the following persons as if subsections (4) and (5) of that section were omitted—

- (i) the manager acting as such an agent; and
 - (ii) any person who offers an advantage within the meaning of that Ordinance to the manager acting as such an agent.
- (12) A person dealing with the supervisory manager of a designated insurance holding company in good faith and for value is not concerned to inquire whether the manager is acting within the manager's powers in relation to the company.

95ZW. Remuneration and expenses of supervisory manager

- (1) The Authority may determine the remuneration and expenses to be paid by a designated insurance holding company to the supervisory manager of the company.
- (2) If the Authority has made a determination under subsection (1), the Authority must—
 - (a) publish a notice in the Gazette stating—
 - (i) that the determination has been made; and
 - (ii) the name of the designated insurance holding company to which the determination relates; and
 - (b) provide a copy of the determination to any member of the company who requests it.
- (3) Any remuneration and expenses required by a determination under subsection (1) to be paid by a designated insurance holding company to a supervisory manager—
 - (a) are recoverable by the manager as a civil debt; and
 - (b) have the following priority in a winding up of the company under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)—

- (i) for a voluntary winding up—the same priority as the priority given under section 256 of that Ordinance to the remuneration of a liquidator; or
- (ii) for a winding up by the Court of First Instance—the same priority as the priority given under rule 179(1) of the Companies (Winding-up) Rules (Cap. 32 sub. leg. H) to any costs, charges and expenses incurred by the Official Receiver.

- (4) In this section—

supervisory manager (監管經理) includes a former supervisory manager.

95ZX. Revocation of direction given under section 95ZT

- (1) The Authority must revoke a direction given under section 95ZT in relation to a designated insurance holding company if—
 - (a) the Authority is satisfied that the situation concerning the company or its supervised group (as mentioned in section 95ZN(3)(a)) that was the basis on which the direction was given has ceased to exist; or
 - (b) it is necessary to do so to give effect to a determination of the Tribunal in a review of the Authority's direction.
- (2) The revocation under subsection (1) of a direction—
 - (a) must be made in writing;
 - (b) must be served on—
 - (i) the designated insurance holding company specified in the direction; and

- (ii) the supervisory manager of the company; and
- (c) takes effect immediately when it is so served.
- (3) The Authority must cause notice of the revocation to be published—
 - (a) in the Gazette; and
 - (b) in another way as the Authority considers expedient for notifying the public.
- (4) The Authority may give notice of the revocation to any involved supervisor of the supervised group of the designated insurance holding company.

95ZY. Offences in relation to Part XIA, Division 8

- (1) A person commits an offence if the person—
 - (a) fails to comply with a requirement imposed by the Authority under section 95ZO, 95ZP, 95ZQ or 95ZR;
 - (b) acts, or continues to act, as a chief executive or key person in control functions of a designated insurance holding company despite the person having been removed by the supervisory manager of the company from that position under section 95ZV(4)(a);
 - (c) fails to comply with a requirement imposed by the supervisory manager of a designated insurance holding company under section 95ZV(2) or (8); or
 - (d) wilfully obstructs, resists or delays—
 - (i) the supervisory manager of a designated insurance holding company in lawfully performing the manager's functions or lawfully exercising the manager's powers in relation to the company; or

- (ii) any other person lawfully assisting the manager in such performance of functions or exercise of powers.
- (2) A person who commits an offence under subsection (1) is liable on conviction on indictment—
 - (a) to a fine of \$200,000 and to imprisonment for 2 years; and
 - (b) in the case of a continuing offence under subsection (1)(a)—to a further fine of \$1,000 for every day during which the offence continues.
- (3) A person commits an offence if the person, in purported compliance with a requirement imposed under section 95ZO—
 - (a) provides any information, or produces any document, that the person knows to be false or misleading in a material particular; or
 - (b) recklessly provides any information, or produces any document, that is false or misleading in a material particular.
- (4) A person who commits an offence under subsection (3) is liable—
 - (a) on conviction on indictment—to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction—to a fine at level 6 and to imprisonment for 6 months.

95ZZ. Defences in relation to offences under section 95ZY

- (1) Subsection (2) applies if an individual is charged by virtue of section 124 with an offence under section 95ZY(1)(a) for the failure by a designated insurance holding company to comply with a requirement imposed under section

- 95ZO(1) to provide any information, or produce any document, that relates to a member of the supervised group of the company.
- (2) It is a defence for an individual mentioned in subsection (1) to prove that, at the time of the alleged offence—
- (a) the information or document was not in the possession or control of the designated insurance holding company; and
- (b) the individual had taken all reasonable steps within the powers of the person's position in the company to procure—
- (i) the provision of the information or document by the person who possesses or controls the information or document to the company; and
- (ii) the compliance by the company with the requirement imposed under section 95ZO(1).
- (3) Subsection (4) applies if a designated insurance holding company is charged with an offence under section 95ZY(1)(a) for failing to comply with a requirement imposed under section 95ZO(1) to provide any information, or produce any document, that relates to another member of its supervised group.
- (4) It is a defence for a designated insurance holding company mentioned in subsection (3) to prove that, at the time of the alleged offence—
- (a) the information or document was not in the possession or control of the company; and
- (b) the company had taken all reasonable steps to exercise the company's control or influence in relation to the member to procure the provision of

the information or document by the member to the company.

- (5) Subsection (6) applies if a designated insurance holding company is charged with an offence under section 95ZY(1)(a) for failing to comply with a requirement imposed under section 95ZQ(2) or 95ZR(1) to ensure a matter in relation to another member of its supervised group.
- (6) It is a defence for a designated insurance holding company mentioned in subsection (5) to prove that, at the time of the alleged offence, the company had taken all reasonable steps to exercise the company's control or influence in relation to the member to procure the matter.
- (7) It is a defence for a person charged with an offence under section 95ZY(1)(c) to prove that, at the time of the alleged offence, the person had a reasonable excuse for failing to comply with the requirement concerned.

Division 9—Winding Up of Designated Insurance Holding Company

95ZZA. Interpretation of Part XIA, Division 9

In this Division—

Cap. 32 (《第 32 章》) means the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

winding up (清盤) means winding up in accordance with Cap. 32.

95ZZB. Winding up on petition by Authority or others

- (1) This section applies if a designated insurance holding company is a company that may be wound up by the Court of First Instance under Cap. 32.

- (2) The Authority may present a petition for the winding up of a designated insurance holding company on the ground that—
- (a) the company is unable to pay its debts within the meaning of sections 177 and 178 or section 327 of Cap. 32; or
 - (b) the company has failed to satisfy an obligation to which it is or was subject by virtue of this Part.
- (3) In any proceedings on a petition presented under subsection (2) for the winding up of a designated insurance holding company, evidence that the company was insolvent—
- (a) at the end of the period to which the specified financial statements of the financial reporting member for its supervised group that were last deposited under section 95ZH(3) relate; or
 - (b) on any date or at any time specified in a requirement imposed under section 95ZO,
- is, unless the contrary is proved, evidence that the company continues to be unable to pay its debts.
- (4) The Authority may also present a petition for the winding up of a designated insurance holding company if—
- (a) it appears to the Authority that it is expedient to the interests of the policy holders of the supervised group of the company that the company should be wound up; and
 - (b) the company is not already being wound up by the Court of First Instance.
- (5) On a petition presented under subsection (4) for the winding up of a designated insurance holding company, the Court of First Instance may wind up the company if

the Court thinks it just and equitable for the company to be wound up by the Court.

- (6) If a petition for the winding up of a designated insurance holding company is presented by a person other than the Authority—
- (a) a copy of the petition must be served on the Authority; and
 - (b) the Authority is entitled—
 - (i) to be heard on the petition;
 - (ii) to call, examine and cross-examine any witness; and
 - (iii) if the Authority considers it appropriate, to support or oppose the making of a winding-up order.

95ZZC. Voluntary winding up

- (1) A designated insurance holding company may be wound up voluntarily only if permitted by an order of the Court of First Instance.
- (2) An order may be made under this section only if notice of the application for the order has been served on the Authority.
- (3) In relation to an application for an order under this section, the Authority is entitled—
 - (a) to be heard on the application;
 - (b) to call, examine and cross-examine any witness; and
 - (c) if the Authority considers it appropriate, to support or oppose the making of the order.

95ZZD. Winding up where direction given under section 95ZT in force

- (1) Subsection (2) applies if—
 - (a) a petition for the winding up of a designated insurance holding company is presented, whether by the Authority or another person;
 - (b) the Authority has given a direction under section 95ZT in relation to the company before the petition is presented;
 - (c) the direction has continued in force at all times until the petition is presented; and
 - (d) a winding-up order is made as a result of the petition.
- (2) For the purposes of the following provisions of Cap. 32, the winding up of a designated insurance holding company mentioned in subsection (1) is, despite section 184(2) of Cap. 32, taken to have commenced at the time when the direction was given under section 95ZT—
 - (a) sections 170, 179, 182, 183, 266B, 267A, 269 and 274; and
 - (b) section 271(1)(d), (e), (h), (i), (j), (k), (l) and (o).
- (3) Subsection (4) applies if—
 - (a) an application is made for an order under section 95ZZC to permit the voluntary winding up of a designated insurance holding company;
 - (b) the Authority has given a direction under section 95ZT in relation to the company before the application is made;
 - (c) the direction has continued in force at all times until the application is made; and

- (d) an order under section 95ZZC is made as a result of the application.
- (4) For the purposes of the following provisions of Cap. 32, the voluntary winding up of a designated insurance holding company mentioned in subsection (3) is, despite section 230 of Cap. 32, taken to have commenced at the time when the direction was given under section 95ZT—
 - (a) sections 170, 232, 266B, 267A, 269 and 274; and
 - (b) section 271(1)(d), (e), (h), (i), (j), (k), (l) and (o).
- (5) For the purposes of anything done or suffered to be done by a designated insurance holding company mentioned in subsection (1) or (3) before the commencement date of the 2016 Amendment Ordinance, subsection (2) or (4) (as the case may be) applies as if the reference to section 266B of Cap. 32 in that subsection were a reference to section 266 of the pre-amended Cap. 32.
- (6) For the purposes of a charge created on the undertaking or property of a designated insurance holding company mentioned in subsection (1) or (3) before the commencement date of the 2016 Amendment Ordinance, subsection (2) or (4) (as the case may be) applies as if the reference to section 267A of Cap. 32 in that subsection were a reference to section 267 of the pre-amended Cap. 32.
- (7) Sections 182 and 232 of Cap. 32 do not invalidate any disposition of the property of a designated insurance holding company made by, or under the direction of, the supervisory manager of the company acting in good faith in the course of managing the affairs, business and property of the company.
- (8) In this section—

2016 Amendment Ordinance (《2016年修訂條例》) means the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2016 (14 of 2016);

pre-amended Cap. 32 (《原有第32章》) means Cap. 32 as in force immediately before the commencement date of the 2016 Amendment Ordinance.

Division 10—Inspection, Investigation and Disciplinary Action

Subdivision 1—Inspection and Investigation Without Warrant

95ZZE. Power to conduct inspection

- (1) An inspector may exercise the powers under subsections (2) and (3) for ascertaining whether a designated insurance holding company is complying with, has complied with, or is likely to be able to comply with—
 - (a) this Part;
 - (b) a notice or requirement given or imposed under this Part; or
 - (c) a condition imposed under this Part.
- (2) At any reasonable time, an inspector—
 - (a) may enter any premises used by the designated insurance holding company, or any other member of its supervised group, in connection with the business of any member of the group;
 - (b) may inspect, and may make copies or otherwise record details of, a business record of any member of the group; and

- (c) may make inquiries to the company (or a specified person for the company)—
 - (i) concerning a business record of any member of the group; or
 - (ii) concerning a transaction or activity that was undertaken in the course of, or may affect, the business conducted by any member of the group.
- (3) In exercising a power under subsection (2)(b) or (c), an inspector may require the designated insurance holding company (or a specified person for the company)—
 - (a) to give the inspector access to a business record of any member of the supervised group of the company;
 - (b) to produce to the inspector, within the time and at the place specified in the requirement, a business record of any member of the group; and
 - (c) to answer a question concerning—
 - (i) a business record of any member of the group; or
 - (ii) a transaction or activity that was undertaken in the course of, or may affect, the business conducted by any member of the group.
- (4) A requirement imposed under subsection (3) on a designated insurance holding company may also include a requirement for the company to ensure the doing of an act mentioned in paragraph (a), (b) or (c) of that subsection by another member of its supervised group.
- (5) The power under subsection (2)(c) or (3) is not exercisable in relation to a specified person for a designated insurance holding company unless the

inspector has reasonable cause to believe that the information or record being sought cannot be obtained by exercising the power in relation to the company.

- (6) The Authority may in writing appoint a person, or a person belonging to a class of persons, as an inspector for the purposes of this section.
- (7) The Authority must provide an inspector with a copy of its appointment.
- (8) When imposing a requirement on a person under subsection (3), an inspector must, if so requested, produce a copy of the Authority's appointment to that person for inspection as soon as practicable.
- (9) In this section—

business record (業務紀錄), in relation to a member of the supervised group of a designated insurance holding company, means a record or document relating to—

- (a) the business conducted by the member; or
- (b) a transaction or activity that was undertaken in the course of, or may affect, the business conducted by the member;

specified person (指明人士), in relation to a designated insurance holding company, means a person whom an inspector has reasonable cause to believe has information relating to, or is in possession of, a business record of any member of the supervised group of the company.

95ZZF. Inspector may require answer to be verified by statutory declaration

- (1) If a person gives an answer to an inquiry made under section 95ZZE(2)(c), or gives an answer in compliance with a requirement imposed under section 95ZZE(3), the

inspector may, in writing, require the person to verify, within the time specified in the requirement, the answer by a statutory declaration.

- (2) If a person does not give an answer to an inquiry made under section 95ZZE(2)(c), or does not give an answer in compliance with a requirement imposed under section 95ZZE(3), for the reason that the information concerned was not within the person's knowledge or possession, the inspector may, in writing, require the person to verify, within the time specified in the requirement, by a statutory declaration, that the person did not comply with the requirement for that reason.
- (3) A statutory declaration under subsection (1) or (2) may be made before the inspector and, for that purpose, the inspector is to have full power to administer the statutory declaration.

95ZZG. Power to conduct investigation

- (1) This section applies if the Authority has reasonable cause to believe that—
 - (a) this Part may have been contravened;
 - (b) a designated insurance holding company may have been involved in defalcation, fraud, misfeasance or other misconduct in relation to the carrying on of insurance business by any member of its supervised group;
 - (c) any member of the supervised group of a designated insurance holding company has carried on, or is carrying on, insurance business in a manner that is not in the interests of policy holders or potential policy holders of the group or the public interest, and

- the governance framework of the group has failed to prevent this; or
- (d) a person is, or was, not a fit and proper person as described in section 95ZZS(1)(c).
- (2) The Authority may, in writing, direct one or more of its employees, or, with the consent of the Financial Secretary, appoint one or more other persons, to investigate the matter described in subsection (1)(a), (b), (c) or (d).
- (3) The costs and expenses incurred by an investigator, other than an employee of the Authority, may be paid out of moneys provided by the Legislative Council.
- (4) The Authority must provide an investigator with a copy of its direction or appointment.
- (5) Before first imposing a requirement on a person under subsection (6), an investigator must produce a copy of the Authority's direction or appointment to that person for inspection.
- (6) An investigator may require a specified person—
- to produce, within the time and at the place the investigator requires in writing, a specified record or document;
 - to give an explanation or further particulars in respect of a record or document produced;
 - to attend before the investigator at the time and place the investigator requires in writing, and answer a question relating to any matter under investigation that may be raised by the investigator;
 - to answer in writing, within the time the investigator requires in writing, a written question relating to any

matter under investigation that may be raised by the investigator; and

- (e) to give the investigator all other assistance in connection with the investigation that the person is able to give.
- (7) In this section—
- specified person** (指明人士) means—
- a designated insurance holding company;
 - a person who is relevant to the matter that an investigator is directed or appointed to investigate; or
 - a person whom an investigator has reasonable cause to believe—
 - to be in possession of a record or document that contains, or is likely to contain, information relevant to the investigation; or
 - to be otherwise in possession of such information;

specified record or document (指明紀錄或文件), in relation to a specified person, means a record or document specified by the investigator that is or may be relevant to the investigation and is—

- if the person is a designated insurance holding company—in the possession, control or custody of any member of its supervised group; or
- in any other case—in the person's possession.

95ZZH. Investigator may require explanation etc. to be verified by statutory declaration

- (1) If a person gives any explanation, particulars or answer in compliance with a requirement imposed under section 95ZZG(6), the investigator may, in writing, require the person to verify, within the time specified in the requirement, the explanation, particulars or answer by a statutory declaration.
- (2) If a person does not give any explanation, particulars or answer in compliance with a requirement imposed under section 95ZZG(6) for the reason that the information concerned was not within the person's knowledge or possession, the investigator may, in writing, require the person to verify, within the time specified in the requirement, by a statutory declaration, that the person did not comply with the requirement for that reason.
- (3) A statutory declaration under subsection (1) or (2) may be made before the investigator and, for that purpose, the investigator is to have full power to administer the statutory declaration.

95ZZI. Application to Court of First Instance for inquiry into failure

- (1) If a person fails to comply with a requirement imposed by an inspector under section 95ZZE or 95ZZF or an investigator under section 95ZZG or 95ZZH, the inspector or investigator may apply by originating summons to the Court of First Instance for an inquiry into the failure.
- (2) On an application under subsection (1), the Court of First Instance—

- (a) on being satisfied that there is no reasonable excuse for the person not to comply with the requirement, may order the person to comply with the requirement within the time specified by the Court; and
 - (b) on being satisfied that the failure was without reasonable excuse, may punish the person, and any other person knowingly involved in the failure, in the same manner as if the person and that other person had been guilty of contempt of court.
- (3) An originating summons under subsection (1) is to be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).
 - (4) Despite anything in this Ordinance, no proceedings may be instituted against a person for subsection (2)(b) in respect of a conduct if—
 - (a) criminal proceedings have previously been instituted against the person under section 95ZZJ(1), (2), (3), (4) or (5) in respect of the same conduct; and
 - (b) those proceedings remain pending, or because of the previous institution of those proceedings, no criminal proceedings may again be lawfully instituted against that person under section 95ZZJ(1), (2), (3), (4) or (5) in respect of the same conduct.

95ZZJ. Offences in relation to inspections and investigations

- (1) A person commits an offence if the person, without reasonable excuse, fails to comply with a specified requirement imposed on the person.

- (2) A person commits an offence if the person, with intent to defraud, fails to comply with a specified requirement imposed on the person.
- (3) A person commits an offence if—
 - (a) in purported compliance with a specified requirement imposed on the person, the person produces a record or document, gives an answer, or gives any explanation or particulars, that are false or misleading in a material particular; and
 - (b) the person knows that, or is reckless as to whether, the record or document, the answer, or the explanation or particulars, are false or misleading in the material particular.
- (4) A person commits an offence if, in purported compliance with a specified requirement imposed on the person, the person, with intent to defraud, produces a record or document, gives an answer, or gives any explanation or particulars, that are false or misleading in a material particular.
- (5) A person commits an offence if the person, with intent to defraud—
 - (a) causes or allows another person to fail to comply with a specified requirement imposed on that other person; or
 - (b) causes or allows that other person, in purported compliance with a specified requirement imposed on that other person, to produce a record or document, to give an answer, or to give any explanation or particulars, that are false or misleading in a material particular.

- (6) A person is not excused from complying with a requirement imposed on the person under section 95ZZG(6) or 95ZZH(1) only on the ground that to do so might tend to incriminate the person.
- (7) Despite anything in this Ordinance, no criminal proceedings may be instituted against a person under subsection (1), (2), (3), (4) or (5) in respect of a conduct if—
 - (a) proceedings have previously been instituted against the person under section 95ZZI(2)(b) in respect of the same conduct; and
 - (b) those proceedings remain pending, or because of the previous institution of those proceedings, no proceedings may again be lawfully instituted against that person under section 95ZZI(2)(b) in respect of the same conduct.
- (8) A person who commits an offence under subsection (1) is liable—
 - (a) on conviction on indictment—to a fine of \$200,000 and to imprisonment for 1 year; or
 - (b) on summary conviction—to a fine at level 5 and to imprisonment for 6 months.
- (9) A person who commits an offence under subsection (3) is liable—
 - (a) on conviction on indictment—to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction—to a fine at level 6 and to imprisonment for 6 months.
- (10) A person who commits an offence under subsection (2), (4) or (5) is liable—

- (a) on conviction on indictment—to a fine of \$1,000,000 and to imprisonment for 7 years; or
- (b) on summary conviction—to a fine at level 6 and to imprisonment for 6 months.

(11) In this section—

specified requirement (指明要求) means a requirement imposed under section 95ZZE(3), 95ZZF(1) or (2), 95ZZG(6) or 95ZZH(1) or (2).

95ZZK. Use of incriminating evidence in proceedings

- (1) If an investigator requires a person to give an answer to a question or to give an explanation or further particulars under this Division, the investigator must ensure that the person has first been informed of the effect of subsection (2).
- (2) Despite anything in this Ordinance and subject to subsection (3)—
 - (a) if an investigator requires a person to give an answer to a question or to give an explanation or further particulars under this Division; and
 - (b) the answer, or the explanation or further particulars, might tend to incriminate the person and the person so claims before giving the answer or giving the explanation or further particulars,

the requirement and the question and answer, or the explanation or further particulars, are not admissible in evidence against the person in criminal proceedings in a court of law.
- (3) Subsection (2) does not apply to criminal proceedings in which the person is, in relation to the answer, or the explanation or further particulars, charged with—

- (a) an offence under section 95ZZJ(1), (2), (3), (4) or (5), or under Part V of the Crimes Ordinance (Cap. 200); or
- (b) perjury.

95ZZL. Offences in relation to destruction of records and documents

- (1) A person commits an offence if—
 - (a) the person destroys, falsifies, conceals or otherwise disposes of, or causes or permits the destruction, falsification, concealment or disposal of, a record or document that the person is required by an inspector or investigator to produce under section 95ZZE or 95ZZG; and
 - (b) the person does so with intent to conceal, from the inspector or investigator, facts or matters capable of being disclosed by the record or document.
- (2) A person who commits an offence under subsection (1) is liable—
 - (a) on conviction on indictment—to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction—to a fine at level 6 and to imprisonment for 6 months.

95ZZM. Order to pay costs of investigation

- (1) If a person is convicted by a court on a prosecution instituted as a result of the findings of an investigation under section 95ZZG—
 - (a) the court may order the person to pay to the Authority the whole or a part of the costs and expenses of the investigation; and

- (b) the Authority may recover the whole or that part of the costs and expenses as a civil debt due to it.
- (2) Subsection (3) applies if—
 - (a) the Authority receives an amount under an order made under subsection (1) in respect of any of the costs and expenses of an investigation; and
 - (b) all or any of the costs and expenses have already been paid out of moneys provided by the Legislative Council.
- (3) The Authority must pay to the Financial Secretary the amount received under the order to the extent to which it has already been paid out of moneys provided by the Legislative Council.

Subdivision 2—Magistrate’s Warrants

95ZZN. Magistrate’s warrants to enter premises etc.

- (1) Subsection (2) applies if a magistrate is satisfied on information on oath laid by a person specified in subsection (3) that there are reasonable grounds to suspect that there is, or is likely to be, on premises specified in the information a record or document that may be required to be produced under section 95ZZE or 95ZZG.
- (2) The magistrate may issue a warrant authorizing a person mentioned in the warrant, and other persons who may be necessary to assist in the execution of the warrant—
 - (a) to enter the premises, if necessary by force, at any time within the period of 7 days beginning on the date of the warrant; and
 - (b) to search for, seize and remove a record or document that the person mentioned in the warrant has

- reasonable cause to believe may be required to be produced under section 95ZZE or 95ZZG.
- (3) The person specified for subsection (1) is—
 - (a) in relation to a record or document that may be required to be produced under section 95ZZE—an inspector; or
 - (b) in relation to a record or document that may be required to be produced under section 95ZZG—an investigator.
- (4) If an authorized person has reasonable cause to believe that a person found on the premises is employed, or engaged to provide a service, in connection with a business that is or has been conducted on the premises, the authorized person may require that person to produce for examination a record or document that—
 - (a) is in the possession of that person; and
 - (b) the authorized person has reasonable cause to believe may be required to be produced under section 95ZZE or 95ZZG.
- (5) An authorized person may, in relation to a record or document required to be produced under subsection (4)—
 - (a) prohibit a person found on the premises from—
 - (i) removing the record or document from the premises;
 - (ii) erasing anything from, adding anything to, or otherwise altering anything in, the record or document; or
 - (iii) otherwise interfering in any way with, or causing or permitting any other person to interfere with, the record or document; or

- (b) take any other step that appears to the authorized person to be necessary for—
 - (i) preserving the record or document; or
 - (ii) preventing interference with the record or document.
- (6) An authorized person who enters any premises under this section must, if required, produce the warrant for inspection.
- (7) Section 102 of the Criminal Procedure Ordinance (Cap. 221) applies to any property that has, because of this section, come into the possession of the Authority, as it applies to property that has come into the possession of the police.
- (8) A person commits an offence if the person—
 - (a) without reasonable excuse, fails to comply with a requirement or prohibition imposed on the person under subsection (4) or (5); or
 - (b) obstructs an authorized person exercising a power conferred by subsection (4) or (5).
- (9) A person who commits an offence under subsection (8) is liable—
 - (a) on conviction on indictment—to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction—to a fine at level 6 and to imprisonment for 6 months.
- (10) In this section—

authorized person (獲授權人) means a person mentioned in, and authorized by, a warrant issued under subsection (2) to carry out the acts set out in paragraphs (a) and (b) of that subsection.

- 95ZZO. Removal of records and documents under section 95ZZN**
- (1) A record or document removed under section 95ZZN(2) may be retained—
 - (a) for a period not exceeding 6 months beginning on the date of its removal; or
 - (b) for a longer period that may be required because of any criminal proceedings, or any proceedings under this Ordinance.
 - (2) If an authorized person removes a record or document under section 95ZZN(2), the authorized person must, as soon as practicable after the removal, give a receipt for the record or document.

Subdivision 3—Miscellaneous Provisions for Inspection and Investigation

95ZZP. Lien claimed on records or documents

If the person in possession of a record or document required to be produced under section 95ZZE or 95ZZG claims a lien on the record or document—

- (a) the requirement to produce the record or document is not affected by the lien;
- (b) no fee is payable for the production; and
- (c) the production is without prejudice to the lien.

95ZZQ. Production of information in information systems etc.

If any information or matter contained in a record or document required to be produced under section 95ZZE or 95ZZG is recorded otherwise than in a legible form, a power to require the production of the record or document includes the power to

require the production of a reproduction of the recording of the information or matter or of the relevant part of it—

- (a) if the recording enables the information or matter to be reproduced in a legible form—in a legible form; and
- (b) if the information or matter is recorded in an information system—in a form which enables the information or matter to be reproduced in a legible form.

95ZZR. Inspection of records or documents seized etc.

- (1) If a specified person has taken possession of a record or document under this Division, the specified person must permit a person who would be entitled to inspect the record or document had the specified person not taken possession of it, to inspect it and to make copies or otherwise record details of it at all reasonable times.
- (2) The permission is subject to any reasonable conditions the specified person imposes.
- (3) In this section—

specified person (指明人士) means—

- (a) an authorized person within the meaning of section 95ZZN; or
- (b) an investigator.

Subdivision 4—Disciplinary Action

95ZZS. Disciplinary action in respect of designated insurance holding companies

- (1) The Authority may exercise any of the powers specified in subsection (2) in respect of a designated insurance holding company if—
 - (a) the company is guilty of misconduct;
 - (b) the company was guilty of misconduct; or
 - (c) the Authority is of the opinion that—
 - (i) a person who is a shareholder controller of the company, or who holds the position of a chief executive, director or key person in control functions of the company, is not a fit and proper person to be such a controller or hold that position; or
 - (ii) a person who was a shareholder controller of the company, or who held the position of a chief executive, director or key person in control functions of the company, was not a fit and proper person to be such a controller or hold that position.
- (2) The following powers are specified for subsection (1)—
 - (a) to reprimand the designated insurance holding company publicly or privately;
 - (b) to order the designated insurance holding company to pay a pecuniary penalty not exceeding the amount which is the greater of—
 - (i) \$10,000,000; or

- (ii) 3 times the amount of the profit gained or loss avoided by the company as a result of—
 - (A) the misconduct of the company; or
 - (B) the conduct of the shareholder controller, chief executive, director or key person in control functions of the company that leads the Authority to form the opinion referred to in subsection (1)(c) in relation to that shareholder controller, chief executive, director or key person in control functions.
- (3) If the Authority has exercised its power under subsection (1), it may disclose to the public details of its decision, the reasons for which the decision was made, and any material facts relating to the case.
- (4) The Authority, in forming an opinion for subsection (1)(c), may, among other matters (including those specified in section 95Y), take into account the present or past conduct of the person.
- (5) In this section—

misconduct (不當行為) means—

 - (a) a contravention of this Part; or
 - (b) a contravention of a condition imposed under this Part,

and *guilty of misconduct* (犯不當行為) is to be construed accordingly.

95ZZT. Procedural requirements in respect of exercise of powers under section 95ZZS

- (1) The Authority must not exercise a power under section 95ZZS without first giving the designated insurance

- holding company in respect of which the power is to be exercised a reasonable opportunity to—
- (a) make written representations to the Authority; and
 - (b) if the company so requests, make oral representations to a person appointed for that purpose by the Authority.
- (2) If the Authority decides to exercise a power under section 95ZZS in respect of a designated insurance holding company, the Authority must inform the company of the decision by a written notice.
 - (3) The notice must include—
 - (a) a statement of the reasons for the decision;
 - (b) the time when the decision is to take effect;
 - (c) if applicable, the terms in which the designated insurance holding company is to be reprimanded under the decision; and
 - (d) if applicable, the amount of the pecuniary penalty to be imposed under the decision and the period within which it is required to be paid.

95ZZU. Guidelines for exercise of power to impose pecuniary penalty under section 95ZZS

- (1) The Authority must not exercise a power under section 95ZZS to impose a pecuniary penalty unless—
 - (a) it has published, in the Gazette and in any other manner it considers appropriate, guidelines to indicate the way in which it proposes to exercise that power; and
 - (b) in exercising that power, it has had regard to the guidelines so published.

- (2) The guidelines are not subsidiary legislation.

95ZZV. General provisions relating to exercise of disciplinary powers

- (1) At any time when the Authority is contemplating exercising a power under section 95ZZS in respect of a designated insurance holding company, the Authority may, if it considers it appropriate to do so in the interests of policy holders or potential policy holders of the supervised group or the public interest, by agreement with the company—
- (a) exercise a power that the Authority may exercise in respect of the company under section 95ZZS; and
 - (b) take an additional action that the Authority considers appropriate in the circumstances of the case.
- (2) If the Authority exercises a power or takes an additional action under subsection (1), it must comply with section 95ZZT as if that section applied to the power or action, unless the company agrees otherwise.
- (3) In reaching a decision under this Subdivision, the Authority may have regard to any information or material in its possession that is relevant to the decision, regardless of how the information or material has come into its possession.

95ZZW. Order for payment of pecuniary penalty

- (1) A designated insurance holding company ordered to pay a pecuniary penalty under section 95ZZS must pay the penalty to the Authority within 30 days, or a longer period that the Authority specifies by notice under section 95ZZT(3)(d), after the order has taken effect.

- (2) The Court of First Instance may, on an application of the Authority, register an order to pay a pecuniary penalty made under section 95ZZS in the Court.
- (3) On registration, the order is to be regarded as an order of the Court of First Instance made within the civil jurisdiction of the Court for the payment of money.
- (4) For making an application under subsection (2), the Authority must produce to the Registrar of the High Court a written notice requesting that the order be registered, together with the original and a copy of the order.
- (5) A pecuniary penalty paid to or recovered by the Authority under an order made under section 95ZZS must be paid by the Authority into the general revenue.”.

13. Section 96 amended (interpretation)

- (1) Section 96, definition of *affected person*, paragraph (b), after “Part 2”—
- Add**
- “or 3”.
- (2) Section 96, definition of *specified decision*—
- Repeal**
- “or 2”
- Substitute**
- “, 2 or 3”.

14. Section 118 amended (immunity)

- Section 118(2)(a)—
- Repeal**
- “or 72”

Substitute

“, 72 or 95ZF”.

15. Section 121 amended (person not to disclose information obtained in the course of inspection, investigation or disciplinary action)

(1) Section 121(1)(b)—

Repeal

“; or”

Substitute a semicolon.

(2) After section 121(1)(b)—

Add

“(ba) a person on whom a requirement under section 95ZZE, 95ZZF, 95ZZG or 95ZZH has been imposed by an inspector or investigator; or”.

(3) Section 121(1)(c)—

Repeal

“or 82(2)”

Substitute

“, 82(2) or 95ZZT(2)”.

(4) Section 121(2)—

Repeal

“or (b)”

Substitute

“, (b) or (ba)”.

(5) Section 121(7), definition of *inspector*—

(a) paragraph (b), after “64F;”—

Add

“and”;

(b) after paragraph (b)—

Add

“(c) in relation to subsection (1)(ba), has the meaning given by section 95A(1);”.

(6) Section 121(7), definition of *investigator*—

(a) paragraph (b)—

Repeal the full stop**Substitute**

“; and”;

(b) after paragraph (b)—

Add

“(c) in relation to subsection (1)(ba), has the meaning given by section 95A(1).”.

16. Section 124 amended (offences by bodies corporate and partners)

(1) Section 124(1)—

Repeal

“an individual specified in subsection (3)” (wherever appearing)

Substitute

“a specified individual”.

(2) Section 124—

Repeal subsection (3).

(3) Section 124(4)—

Repeal

everything after “on the part of,”

Substitute

“a specified individual if it is proved that, at the time the offence was committed, the individual was concerned in the management of the body corporate.”.

- (4) After section 124(6)—

Add

“(7) In this section—

specified individual (指明個人), in relation to a body corporate, means an individual who is—

- (a) a controller, director, key person in control functions or responsible officer of the body corporate;
- (b) a shareholder controller or chief executive of the body corporate (only if the body corporate is a designated insurance holding company); or
- (c) a member of the body corporate (only if the body corporate is managed by its members).”.

17. Section 129 amended (Authority may make rules)

- (1) Section 129(1)(a), after “authorized insurer”—

Add

“or a designated insurance holding company”.

- (2) Section 129(1)(m)—

Repeal

“and licensed insurance intermediaries”

Substitute

“, licensed insurance intermediaries and designated insurance holding companies”.

18. Section 136 amended (procedural requirements for publishing notices under sections 13AE(14) and 123(7))

- (1) Section 136, heading, after “13AE(14)—

Add

“, 95A(4)”.

- (2) Section 136(1), after “13AE(14)—

Add

“, 95A(4)”.

19. Section 138 amended (amendment of Schedules)

- (1) Section 138(2)(g), Chinese text—

Repeal

“或”.

- (2) After section 138(2)(g)—

Add

“(ga) Schedule 7A;”.

20. Schedule 1D amended (non-delegable functions of Authority)

- (1) Schedule 1D, section 1(n)—

Repeal

“and 64ZZH(1)”

Substitute

“, 64ZZH(1) and 95ZZG(2)”.

- (2) Schedule 1D, section 1(o), after “95”—

Add

“, 95ZZU”.

(3) Schedule 1D, after section 1(o)—

Add

“(oa) to designate an insurance holding company as a designated insurance holding company under section 95C(1);”.

21. Schedule 7A added

After Schedule 7—

Add

“Schedule 7A

[ss. 95ZV & 138]

Powers of Supervisory Manager of Designated Insurance Holding Company

1. Power to exercise control or influence in relation to any member of the supervised group of the designated insurance holding company.
2. Power to enforce any arrangements that—
 - (a) the designated insurance holding company maintains with its holding company; and
 - (b) enables the designated insurance holding company to, through procuring the taking of any necessary steps by the holding company, comply with Part XIA, a notice or requirement given or imposed under Part XIA or a condition imposed under Part XIA.

3. Power to take possession of, collect and get in the property of the designated insurance holding company and, for that purpose, to take such proceedings as may seem to the supervisory manager expedient.
4. Power to sell or otherwise dispose of the property of the designated insurance holding company by public auction or private contract.
5. Power to raise or borrow money and grant security for it over the property of the designated insurance holding company.
6. Power to appoint a solicitor or accountant or other professionally qualified person to assist the supervisory manager in performing the manager’s functions.
7. Power to bring or defend any action or other legal proceedings in the name and on behalf of the designated insurance holding company.
8. Power to refer to arbitration any question affecting the designated insurance holding company.
9. Power to effect and maintain insurances in respect of the business and property of the designated insurance holding company.
10. Power to use the designated insurance holding company’s seal.
11. Power to do all acts and to execute in the name and on behalf of the designated insurance holding company any deed, receipt or other document.
12. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the designated insurance holding company.
13. Power to appoint any agent to do any business that the supervisory manager is unable to do or that can more conveniently be done by an agent and power to employ and dismiss employees.

14. Power to do all things (including the carrying out of works) that are necessary for realizing the property of the designated insurance holding company.
15. Power to make any payment that is necessary or incidental to performing the supervisory manager's functions.
16. Power to carry on the business of the designated insurance holding company.
17. Power to grant or accept a surrender of a lease or tenancy of any of the property of the designated insurance holding company, and to take a lease or tenancy of any property required or convenient for the business of the designated insurance holding company.
18. Power to make any arrangement or compromise on behalf of the designated insurance holding company.
19. Power to call up any uncalled capital of the designated insurance holding company.
20. Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the designated insurance holding company and to receive dividends, and to accede to trust deeds for the creditors of any such person.
21. Power to present or defend a petition for the winding up of the designated insurance holding company.
22. Power to make or oppose an application referred to in section 95ZZC.
23. Power to change the situation of the designated insurance holding company's registered office.
24. Power to do all other things incidental to the exercise of the powers specified in this Schedule."

22. Schedule 9 amended (specified decisions)

Schedule 9, after Part 2—

Add

“Part 3

**Specified Decisions Made in relation to
Designated Insurance Holding Companies**

Column 1 Item	Column 2 Description of decision	Column 3 Provision
1.	Inclusion of an entity as a member of the supervised group of a designated insurance holding company	Section 95D(3)
2.	Refusal to approve a person to be a shareholder controller of a designated insurance holding company	Section 95M(4)
3.	Objection to a person being a shareholder controller of a designated insurance holding company	Section 95N(3)
4.	Refusal to approve the appointment of a person as a chief executive, director or key person in control functions of a designated insurance holding company	Section 95U(2)
5.	Objection to the appointment of a person as a	Section 95V(3)

Column 1 Item	Column 2 Description of decision	Column 3 Provision
6.	chief executive, director or key person in control functions of a designated insurance holding company Imposition, amendment or revocation of a condition in relation to the approval of a person as a shareholder controller, or of an appointment of a person as a chief executive, director or key person in control functions, of a designated insurance holding company	Section 95Z
7.	Variation of the prescribed group capital requirements that applies to the supervised group of a designated insurance holding company	Section 95ZI(2)
8.	Refusal to approve a major acquisition	Section 95ZK(4)
9.	Refusal to approve an assessment framework	Section 95ZM(4)
10.	Imposition of a requirement in relation to restrictions on transfer of assets	Section 95ZQ
11.	Imposition of a requirement to take action in relation to its supervised group	Section 95ZR

Column 1 Item	Column 2 Description of decision	Column 3 Provision
12.	Variation or rescission of a requirement imposed under section 95ZQ or 95ZR	Section 95ZS
13.	Direction for the affairs, business and property of a designated insurance holding company to be managed by a supervisory manager	Section 95ZT
14.	Determination of remuneration and expenses to be paid by a designated insurance holding company to a supervisory manager	Section 95ZW(1)
15.	Exercise of power to take disciplinary action in respect of a designated insurance holding company	Section 95ZZS".

Explanatory Memorandum

The main object of this Bill is to amend the Insurance Ordinance (Cap. 41) (**Ordinance**) to provide for the regulation and supervision of insurance groups by the Insurance Authority (**Authority**).

2. The regulation and supervision are mainly provided under a new Part XIA, which consists of 10 Divisions comprising sections 95A to 95ZZW, to be added to the Ordinance (clause 12).

Division 1 of new Part XIA (preliminary)

3. Division 1 of the new Part XIA provides for—
- (a) the interpretation of Part XIA (new section 95A); and
 - (b) the functions of the Authority in relation to insurance groups (new section 95B).

Division 2 of new Part XIA (designation of insurance holding company)

4. Division 2 of the new Part XIA provides for the framework under which the Authority may designate an insurance holding company that belongs to an insurance group as a designated insurance holding company (**DIHC**).
5. In particular, the Authority will make a designation only if, among other matters, it is appointed as the group supervisor of the insurance group (new section 95C).
6. The Authority will then carry out its functions to regulate and supervise the insurance group through, among other measures, administering the regulatory regime under Part XIA in respect of DIHCs (**DIHC regime**).
7. The scope of matters covered by the DIHC regime is determined by reference to the “supervised group” of the DIHC, the composition of which is primarily based on the composition of the insurance group

but is subject to the Authority’s powers to include or exclude entities (new section 95D).

8. A designation will be withdrawn if, among other reasons, the appointment of the Authority as the group supervisor of the insurance group is no longer in effect (new section 95E).

Division 3 of new Part XIA (general duties of designated insurance holding company)

9. Division 3 of the new Part XIA provides for the general duties of a DIHC to—
- (a) pay the prescribed fees in relation to its designation (new section 95F), which, except for the designation fee payable on designation, may be waived or reduced by the Authority in particular circumstances (new section 95G); and
 - (b) if it has any holding company, maintain arrangements with its holding company for ensuring its ability to comply with the DIHC regime (new section 95H).

Division 4 of new Part XIA (shareholder controller of designated insurance holding company)

10. Division 4 of the new Part XIA imposes certain restrictions in relation to the shareholder controllers of a DIHC (basically persons who possess certain degrees of control or influence over the DIHC).
11. In particular, a person is prohibited from becoming or being a shareholder controller without the Authority’s approval, and a person becoming or ceasing to be a shareholder controller is required to notify the Authority (new sections 95I to 95M and 95O). The Authority may also object to a person being a shareholder controller (new section 95N).

12. Shares held for an unapproved shareholder controller or a shareholder controller objected to may be subject to restrictions (regarding transfer, exercise of voting rights, etc.). Shares held for an unapproved shareholder controller may also, on the Authority's application, be ordered by the court to be sold. (See new sections 95P to 95R.)

Division 5 of new Part XIA (chief executive, director and key person in control functions of designated insurance holding company)

13. Division 5 of the new Part XIA imposes certain restrictions in relation to the chief executives, directors and key persons in control functions (*specified officers*) of a DIHC (basically persons who are responsible for the management, conduct of business, etc. of the DIHC and its supervised group).
14. In particular, a DIHC is prohibited from appointing a person as a specified officer without the Authority's approval (new sections 95S to 95U). The Authority may also object to the appointment of a person as a specified officer (new section 95V).
15. A person whose appointment as a specified officer is unapproved or objected to is also prohibited from acting as such an officer (new section 95W).

Division 6 of new Part XIA (supplementary provisions regarding shareholder controller, chief executive, director and key person in control functions)

16. Division 6 of the new Part XIA contains supplementary provisions regarding shareholder controllers and specified officers of a DIHC, including—
- (a) a requirement for a DIHC to submit returns of its pre-existing shareholder controllers and specified officers on designation (new section 95X);

- (b) provisions about the determination of whether a shareholder controller or specified officer is fit and proper (new section 95Y);
- (c) offences in relation to applications for approval (new section 95ZA); and
- (d) provisions dealing with the effect of applications or approvals regarding shareholder controllers and specified officers under the DIHC regime where the DIHC (or another member of its supervised group) is also an authorized insurer (new sections 95ZB to 95ZD).

Division 7 of new Part XIA (financial matters)

17. Division 7 of the new Part XIA provides for requirements on DIHC in relation to certain financial matters of its supervised group.
18. For instance, a DIHC is required to report to the Authority on the financial position and performance of its supervised group through information consolidated by a financial reporting member for the group. For this purpose, the DIHC must—
- (a) ensure that an auditor is appointed for the financial reporting member (new section 95ZF);
- (b) notify the Authority about changes in the auditor (new section 95ZG); and
- (c) submit the financial statements of the financial reporting member and the auditor's reports on the statements (new section 95ZH).
19. A DIHC is also required to observe requirements in relation to the group capital of its supervised group and the related requirements for reporting and disclosure. These requirements will be prescribed by rules to be made by the Authority. (See new section 95ZI.)
20. Moreover, a DIHC is required to ensure that members of its supervised group (including itself) (*supervised group members*)

would not make any major acquisition that is material to the group (in terms of adverse impact) without the Authority's approval. For this purpose, the DIHC must not make, or allow the making of, a major acquisition unless the acquisition has either been approved by the Authority or been assessed to be not material to the group through an assessment framework established within the group as approved by the Authority. (See new sections 95ZJ to 95ZM.)

Division 8 of new Part XIA (intervention powers)

21. Division 8 of the new Part XIA provides for the Authority's intervention powers in relation to the affairs, business, property, etc. of a DIHC and its supervised group, which are partly modelled on the existing powers of intervention in relation to authorized insurers under Part V of the Ordinance.
22. The intervention powers may be exercised only if certain conditions are met (new section 95ZN). The powers, which will be directed at the DIHC, include the powers to require the DIHC to—
 - (a) provide information and documents that relate to a supervised group member (new section 95ZO);
 - (b) provide reports that relate to a supervised group member, or assist in the preparation of such reports by persons appointed by the Authority (new section 95ZP);
 - (c) ensure compliance by its supervised group members with any restrictions on the transfer of assets (new section 95ZQ); or
 - (d) take action in relation to its supervised group (new section 95ZR).
23. The Authority also has a power to direct that the DIHC is to be managed by a supervisory manager. The supervisory manager has various powers to manage the affairs, business, property, etc. of the DIHC (including those specified in a new Schedule 7A to be added

to the Ordinance by clause 21). There will also be restrictions on directors' and members' meetings of the DIHC when the direction is in force. (See new sections 95ZT to 95ZW.)

24. A failure to comply with a requirement imposed by the Authority or supervisory manager is an offence (new section 95ZY), but certain defences will be available (new section 95ZZ).

Division 9 of new Part XIA (winding up of designated insurance holding company)

25. Division 9 of the new Part XIA provides for certain matters concerning the winding up of a DIHC under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32). For instance—
 - (a) the Authority is entitled to present a petition for the winding up of a DIHC and to be heard in such a petition presented by others (new section 95ZZB);
 - (b) a DIHC may be wound up voluntarily only if permitted by a court order (new section 95ZZC); and
 - (c) certain provisions apply if a direction for management by supervisory manager is in force during the winding up of a DIHC (new section 95ZZD).

Division 10 of new Part XIA (inspection, investigation and disciplinary action)

26. Division 10 of the new Part XIA provides for the Authority's powers to conduct inspections and investigations on matters concerning a DIHC and its supervised group and to take disciplinary actions against a DIHC, which are largely modelled on the existing regime in relation to authorized insurers under Part VA of the Ordinance.
27. For inspections (new sections 95ZZE and 95ZZF)—

- (a) an inspection may be conducted for ascertaining whether a DIHC is complying with the DIHC regime;
 - (b) an inspector may enter premises, inspect business records, make inquiries concerning business records, transactions and activities and impose requirements arising from the inspection or inquiries; and
 - (c) the matters covered by an inspection may relate to any supervised group member, i.e. not limited to the DIHC, but a requirement will only be imposed on the DIHC (or a specified person for the DIHC).
28. Similarly, for investigations (new sections 95ZZG and 95ZZH)—
- (a) an investigation may be conducted if the Authority considers there is non-compliance with the new Part XIA or other prescribed circumstances that warrant investigation;
 - (b) an investigator may require a DIHC, or any person who may be relevant to the investigation, to produce records or documents, give explanations or further particulars on a record or document produced, answer questions in person or in writing, and provide all other assistance that the DIHC or person is able to give; and
 - (c) The records or documents that a DIHC may be required to produce include those that are in the possession, control or custody of any supervised group member, i.e. not limited to the DIHC.
29. The Authority may also seek the court's assistance in an inspection or investigation, which includes inquiring into a failure to comply with a requirement imposed by an inspector or investigator and issuing a warrant authorizing entry to premises and search, seizure and removal of records or documents (new sections 95ZZI to 95ZZO).

30. For disciplinary actions (new sections 95ZZS to 95ZZW)—
- (a) a disciplinary action may be taken if a DIHC is guilty of misconduct or the Authority considers that a shareholder controller or specified officer of a DIHC is not fit and proper;
 - (b) the DIHC may be reprimanded publicly or privately, or ordered to pay a pecuniary penalty; and
 - (c) the Authority must comply with procedural and other requirements in taking disciplinary actions.

Consequential and other related amendments

31. Clauses 3 to 11 and 13 to 22 make consequential and other related amendments to the Ordinance, so as to extend existing provisions in the Ordinance to the DIHC regime, or add new provisions to the Ordinance for the DIHC regime, as appropriate.

Economic Implications of the Proposal

Through enabling the Insurance Authority (“IA”) to have direct regulatory powers over Hong Kong-incorporated holding companies of insurance groups, the proposal would help strengthen Hong Kong’s insurance regulatory regime, and bring the regime in line with international standards. This is conducive to the development of the insurance sector and Hong Kong’s status as an international financial centre. Meanwhile, the new requirements would entail compliance costs to the supervised groups and the IA might also incur costs for acting as the group supervisor, which would be recouped through the payment of prescribed fees by the designated insurance holding companies for the supervised groups. It is difficult to determine the exact magnitude of the total compliance costs at this stage, but the IA would continue to keep close liaison with the stakeholders in the period ahead to determine the appropriate fee levels through established mechanism.