
Insurance (Amendment) Bill 2020

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A BILL

To

Amend the Insurance Ordinance to provide for the regulation of a new class of insurance business for which the liability of an insurer under a contract of insurance to the person insured is fully funded; to expand the scope of insurable risks of captive insurers; to remove a non-delegable function of the Insurance Authority specified in Schedule 1D to the Ordinance; to make minor textual amendments to the Ordinance; and to provide for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Insurance (Amendment) 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 Parts 2 to 5.

Part 2

Amendments Relating to Special Purpose Business

3. Section 2 amended (interpretation)

- (1) Section 2(1), definition of *authorized*, after “section 8”—

Add

“or 8A”.

- (2) Section 2(1), definition of *general business*, after “term”—

Add

“business or special purpose”.

- (3) Section 2(1), definition of *prescribed*, after “129”—

Add

“or 129A”.

- (4) Section 2(1)—

Add in alphabetical order

“*fully funded* (全期資可抵債)—see subsection (8);

insurance securitization (保險證券化), in relation to an insurer, means any debt or other financing arrangement entered into by the insurer with an investor, under which repayment or return to the investor is linked to a contract of insurance effected and carried out by the insurer;

special purpose business (特定目的業務) means the insurance business of effecting and carrying out contracts of insurance that are fully funded through insurance securitization;

special purpose insurer (特定目的保險人) means a company authorized under section 8A to carry on special purpose business only;”.

(5) After section 2(7)—

Add

“(8) For the purposes of the definition of *special purpose business*, a contract of insurance entered into between an insurer and a person as the insured under the contract is fully funded if the value of the assets held under the terms of the contract by, or on behalf of, the insurer for the benefit of the insured is not less than the amount of the insurer’s liabilities (whether actual or potential) under the contract at any time and under all reasonably foreseeable circumstances, taking into account—

- (a) the obligations of the insurer towards the insured under the contract; and
- (b) the expenses the insurer expects to incur.”.

4. Section 3 amended (classes of insurance business)

Section 3—

Repeal subsection (2)

Substitute

“(2) If—

- (a) a contract (including a tontine) referred to in Part 2 or 3 of Schedule 1; or

(b) a contract belonging to the class of special purpose business,
is not (but for this subsection) a contract of insurance, the contract is, for the purposes of this Ordinance, deemed to be a contract of insurance.”.

5. Section 5H amended (register of authorized insurers)

Section 5H(1)(b), after “8(1)(a)”—

Add

“or 8A(1)(a)”.

6. Section 6 amended (restriction on carrying on of insurance business)

Section 6(1)(a), after “section 8”—

Add

“or 8A”.

7. Section 8 amended (authorization)

(1) Section 8, heading, after “**Authorization**”—

Add

“—**long term business and general business**”.

(2) Section 8(1)—

Repeal

“Upon application made by a company under section 7, the Authority”

Substitute

“On application made by a company under section 7 for authorization to carry on any class or classes of insurance business specified in Part 2 or 3 of Schedule 1”.

- (3) Section 8(1)(a)—

Repeal

“may authorize”

Substitute

“the Authority may authorize”.

- (4) Section 8(1)(a)—

Repeal

“any class”

Substitute

“the class”.

- (5) Section 8(1)—

Repeal paragraph (b)

Substitute

“(b) the Authority—

(i) must refuse the application if subsection (2) or (3) applies; and

(ii) may refuse the application on any other ground.”.

8. Sections 8A, 8B and 8C added

After section 8—

Add

“8A. Authorization—special purpose business

- (1) On application made by a company under section 7 for authorization to carry on special purpose business—

-
- (a) subject to paragraph (b), the Authority may authorize the company in writing to carry on, subject to such conditions as the Authority may impose, special purpose business; or
 - (b) the Authority—
 - (i) must refuse the application if subsection (2) applies; and
 - (ii) may refuse the application on any other ground.
- (2) The Authority must not authorize a company under this section unless the following conditions are satisfied—
- (a) the company has appointed 2 or more directors all of whom appear to the Authority to be fit and proper persons to hold the positions;
 - (b) the company has appointed an administrator as a controller who appears to the Authority to be a fit and proper person to hold the position;
 - (c) the company complies with the relevant financial, solvency, investor's sophistication and other requirements prescribed by rules made under section 129 or 129A;
 - (d) the company intends to carry on special purpose business only but not any other class of insurance business.
- (3) For the purposes of subsection (2)(a) and (b), if the Authority considers that a person is not a fit and proper person to hold the relevant position, the Authority must notify the company in writing of the fact and the reason for that opinion.

(4) In this section—

administrator (管理人), in relation to a company, means an individual who (alone or jointly with others) is responsible for the administration of the whole business of the company.

8B. Form of information submitted by special purpose insurers

The Authority may specify the form in which a special purpose insurer submits information to the Authority under this Ordinance.

8C. Requirements under section 17, 20 or 21 may be modified or varied for special purpose insurers

The Authority may modify or vary any requirement under section 17, 20 or 21 in relation to a special purpose insurer for the period and in the ways as the Authority considers appropriate.”.

9. Section 11 amended (notification of refusal of authorization under section 8(2))

(1) Section 11, heading—

Repeal

“8(2)”

Substitute

“8 or 8A”.

(2) Section 11(3)—

Repeal

“8(1)(b)(ii), the Authority shall”

Substitute

“8(1)(b)(ii) or 8A(1)(b)(ii), the Authority must”.

10. Section 12 amended (conditions for authorization under section 8)

(1) Section 12, heading, after “section 8”—

Add

“or 8A”.

(2) Section 12(1), after “section 8(1)(a)—

Add

“or 8A(1)(a)”.

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

(1) Section 13A(12), definition of *controller*, paragraph (a)(i), after “authorized insurer”—

Add

“(other than a special purpose insurer)”.

(2) Section 13A(12), definition of *controller*, paragraph (a)(i)—

Repeal

“; or”

Substitute a semicolon.

(3) Section 13A(12), definition of *controller*, paragraph (a)(ii), after “authorized insurer”—

Add

“(other than a special purpose insurer)”.

(4) Section 13A(12), definition of *controller*, paragraph (a)(ii)(B)(II)—

Repeal

“but”

Substitute

“or”.

- (5) Section 13A(12), definition of *controller*, after paragraph (a)(ii)—

Add

“(iii) in relation to an authorized insurer that is a special purpose insurer (whether incorporated in Hong Kong or outside Hong Kong)—an administrator of the authorized insurer; but”.

- (6) Section 13A(12), Chinese text, definition of 控權人, paragraph (b)—

Repeal the full stop

Substitute a semicolon.

- (7) Section 13A(12)—

Add in alphabetical order

“*administrator* (管理人), in relation to a special purpose insurer, means an individual who (alone or jointly with others) is responsible for the administration of the whole business of the special purpose insurer;”.

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

Before section 13AE(1)—

Add

“(1A) This section does not apply to a special purpose insurer.”.

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

Before section 13B(1)—

Add

“(1A) This section does not apply to a special purpose insurer.”.

14. Section 14A amended (determination of fit and proper)

Section 14A(1), after “8,”—

Add

“8A,”.

15. Section 26 amended (grounds on which powers are exercisable)

Section 26(1)(e), after “(3)(b)”—

Add

“or 8A(2)”.

16. Section 41B amended (power to conduct inspection)

Section 41B(1)(c), after “section 8”—

Add

“or 8A”.

17. Section 41P amended (disciplinary actions in respect of authorized insurers)

Section 41P(5), definition of *misconduct*, paragraph (b), after “section 8”—

Add

“or 8A”.

18. Section 53E amended (prescribed person to send report directly to Authority in certain cases relating to authorized insurers)

Section 53E(3)(a), after “8(1)(a)”—

Add

“or 8A(1)(a)”.

19. Section 129 heading amended (Authority may make rules)

Section 129, heading, after “rules”—

Add

“—general provisions”.

20. Section 129A added

After section 129—

Add

“129A. Authority may make rules for special purpose business

(1) The Authority may by rules—

(a) prohibit any sale of, or the making of any offer to sell, insurance-linked securities to any person other than an investor falling within a type prescribed in the rules; and

(b) prohibit any sale of, or the making of any offer to sell, insurance-linked securities at an amount lower than that prescribed in the rules.

(2) Rules made under this section may prescribe offences for contravention of the rules, punishable by a fine or imprisonment, or both.

- (3) The maximum penalty that may be prescribed under subsection (2) is—
- (a) for an offence of which a person is convicted on indictment—a fine of \$200,000 and imprisonment for 2 years; and
 - (b) for an offence of which a person is summarily convicted—a fine at level 6 and imprisonment for 6 months.
- (4) In this section—
- insurance-linked securities* (保險相連證券) means securities issued through insurance securitization.”.

21. Schedule 1 amended (classes of insurance business)

Schedule 1, Part 1—

Repeal paragraph 1

Substitute

- “1. The following constitute the classes of insurance business that are relevant for the purposes of this Ordinance—
- (a) classes of long term business that are specified in Part 2 of this Schedule;
 - (b) classes of general business that are specified in Part 3 of this Schedule;
 - (c) the class of special purpose business.”.

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

Schedule 1D, section 1(m), after “section 8”—

Add

“or 8A”.

23. Schedule 9 amended (specified decisions)

(1) Schedule 9, Part 1, item 1, after “or (3)”—

Add

“or 8A(2)”.

(2) Schedule 9, Part 1, item 1, after “8(1)(b)(i)”—

Add

“or 8A(1)(b)(i)”.

(3) Schedule 9, Part 1, item 2, after “8(1)(b)(ii)”—

Add

“or 8A(1)(b)(ii)”.

(4) Schedule 9, Part 1, item 3, after “8(1)(a)”—

Add

“, 8A(1)(a)”.

Part 3

Amendments Relating to Captive Insurers

24. Section 2 amended (interpretation)

(1) Section 2(7)(a)—

Repeal subparagraph (ii)

Substitute

“(ii) is restricted to the insurance and reinsurance of—

- (A) risks of the bodies corporate within the relevant company’s corporate group (within the meaning of paragraph (b)) to which the relevant company belongs;
- (B) the proportional share of risks of another body corporate to which the relevant company, or a first tier member (within the meaning of paragraph (b)(i)) in the relevant company’s corporate group, is exposed directly through—
 - (I) controlling, or being entitled to control, the appointment or removal of a percentage of the directors on the board of directors of the other body corporate;
 - (II) controlling, or being entitled to control, a percentage of the voting rights at general meetings of the other body corporate; or
 - (III) holding a percentage of the issued share capital of the other body corporate, that is capped at the highest of those 3 percentages; and

- (C) any other risks—
- (I) of which the relevant company, or a first tier member in the relevant company's corporate group, has control, oversight or management; or
 - (II) to which the relevant company, or a first tier member in the relevant company's corporate group, is otherwise sufficiently connected,
- as determined in accordance with the criteria specified for the purposes of this sub-subparagraph in guidelines published under section 133;”.

(2) Section 2(7)—

Repeal paragraph (b)

Substitute

- “(b) *relevant company's corporate group* (同一法人集團) means a corporate grouping made up of a relevant company (within the meaning of paragraph (a)) and one or more of the following members—
- (i) a first tier member being a body corporate—
 - (A) that belongs to the group of companies of the relevant company; or
 - (B) that is a subsidiary of the holding company of the relevant company;
 - (ii) a second tier member being a body corporate in respect of which the relevant company or a first tier member (whether alone or jointly with the relevant company or another first tier member)—

-
- (A) controls, or is entitled to control, the appointment or removal of not less than 20% and not more than 50% of the directors on the board of directors of the body corporate;
 - (B) controls, or is entitled to control, not less than 20% and not more than 50% of the voting rights at general meetings of the body corporate; or
 - (C) holds not less than 20% and not more than 50% of the issued share capital of the body corporate;
- (iii) a third tier member being a body corporate that is a subsidiary of a second tier member;”.
-

Part 4

Amendment Relating to Non-delegable Functions of Insurance Authority

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

Schedule 1D, section 1—

Repeal paragraph (c).

Part 5

Miscellaneous Amendments

26. Section 9 amended (meaning of *controller* (控權人))

(1) Section 9(3)(a)—

Repeal

“(1)(a)”

Substitute

“(1)(a)(i)”.

(2) Section 9(3)(b)—

Repeal

“(1)(b)”

Substitute

“(1)(a)(ii)”.

27. Section 26 amended (grounds on which powers are exercisable)

Section 26(4)(b)—

Repeal

“9(1)(c)”

Substitute

“9(1)(a)(iii)”.

28. Section 53A amended (secrecy)

(1) Section 53A(1AA)(e)—

Repeal

“or who is”

Substitute

“or who assists”.

(2) Section 53A(1AAB)(c)—

Repeal

“who is”

Substitute

“who assists”.

29. Section 76 amended (Authority may petition for winding up or bankruptcy of licensed insurance intermediary)

Section 76(3), Chinese text—

Repeal

“佈”

Substitute

“布”.

30. Section 123 amended (exceptions to sections 64G and 120)

Section 123(5), definition of *actuary*—

Repeal

“Companies (Actuaries’ Qualifications) Regulations”

Substitute

“(Actuaries’ Qualifications) Regulation”.

31. Section 128 amended (Chief Executive in Council may make regulations)

Section 128(7), English text, after “subsection (6)”—

Add

“is”.

32. Schedule 6 amended (person who has become controller of authorized insurer in contravention of section 13B(2))

Schedule 6, Chinese text, paragraph 1—

Repeal

“13B(1) 條適用”

Substitute

“13B(3) 條適用”.

Explanatory Memorandum

The objects of this Bill are to amend the Insurance Ordinance (Cap. 41) (*Ordinance*) to—

- (a) provide for the regulation of a new class of insurance business for which the liability of an insurer under a contract of insurance to the person insured is fully funded;
- (b) expand the scope of insurable risks of captive insurers;
- (c) remove a non-delegable function of the Insurance Authority (*Authority*) specified in Schedule 1D to the Ordinance;
- (d) make minor textual amendments to the Ordinance; and
- (e) provide for related matters.

2. The Bill is divided into 5 Parts.

Part 1—Preliminary

3. Clause 1 sets out the short title and provides for commencement.

Part 2—Amendments Relating to Special Purpose Business

4. Clause 3 amends section 2(1) of the Ordinance to include defined expressions (e.g. *insurance securitization*, *special purpose business* and *special purpose insurer*) that are necessary for the interpretation of the Bill. The clause also adds a new section 2(8) to the Ordinance. The new section 2(8) gives the meaning of *fully funded* for the purposes of the definition of *special*

purpose business. A contract of insurance is regarded as fully funded if the value of the assets held by the insurer for the benefit of the insured under the terms of the contract is not less than the amount of the insurer's liabilities under the contract.

5. Clause 4 amends section 3(2) of the Ordinance to include a contract belonging to the class of special purpose business among the contracts deemed to be contracts of insurance for the purposes of the Ordinance.
6. Clause 7 amends section 8 of the Ordinance to provide that that section only applies to long term business and general business.
7. Clause 8 adds—
 - (a) a new section 8A to the Ordinance to empower the Authority to authorize a company to carry on special purpose business if certain conditions are satisfied;
 - (b) a new section 8B to the Ordinance to empower the Authority to specify the form in which a special purpose insurer submits information to the Authority under the Ordinance; and
 - (c) a new section 8C to the Ordinance to empower the Authority to modify or vary any requirement under section 17, 20 or 21 of the Ordinance in relation to a special purpose insurer.
8. Clause 11 amends the definition of *controller* in section 13A(12) of the Ordinance to expand its meaning to include an administrator of an authorized insurer that is a special purpose insurer.

9. Clause 12 amends section 13AE of the Ordinance to exclude a special purpose insurer from the application of that section.
10. Clause 13 amends section 13B of the Ordinance to exclude a special purpose insurer from the application of that section.
11. Clause 15 amends section 26(1)(e) of the Ordinance to add a ground in relation to a special purpose insurer on which the Authority may exercise the powers under sections 27 to 35 of the Ordinance.
12. Clause 20 adds a new section 129A to the Ordinance to empower the Authority to make rules to prohibit any sale of, or the making of any offer to sell, insurance-linked securities to any person other than an investor falling within a type prescribed in the rules, and to prohibit any sale of, or the making of any offer to sell, insurance-linked securities at an amount lower than that prescribed in the rules. The meaning of *insurance-linked securities* is defined in the new section 129A. Clause 19 amends the heading of section 129 of the Ordinance in view of the addition of the new section 129A.
13. Clause 21 amends Schedule 1 to the Ordinance to include the class of special purpose business as a class of insurance business for the purposes of the Ordinance.
14. Clauses 5, 6, 9, 10, 14, 16, 17, 18, 22 and 23 amend the references in certain existing provisions of the Ordinance as a consequence of the authorization of special purpose insurers to carry on special purpose business under the Ordinance.

Part 3—Amendments Relating to Captive Insurers

15. Clause 24 amends the meaning of *captive insurer* in section 2(7) of the Ordinance to widen the scope of insurable risks of a captive insurer. The clause also adds a new definition of *relevant company's corporate group* for the purpose of interpreting the amended meaning of *captive insurer*.

Part 4—Amendment Relating to Non-delegable Functions of Insurance Authority

16. Clause 25 remove a non-delegable function of the Authority specified in Schedule 1D to the Ordinance to enable the function to be carried out more effectively.

Part 5—Miscellaneous Amendments

17. Clauses 26 to 32 make certain minor textual amendments to certain existing provisions of the Ordinance.