

立法會
Legislative Council

LC Paper No. LS96/19-20

**Paper for the House Committee Meeting
on 12 June 2020**

**Legal Service Division Report on
Insurance (Amendment) (No. 2) Bill 2020**

I. SUMMARY

- 1. The Bill**

The Bill mainly proposes to amend the Insurance Ordinance (Cap. 41) to provide for the regulation and supervision of insurance groups by the Insurance Authority ("IA") through exercising direct regulatory powers over their Hong Kong-incorporated holding companies.
- 2. Public Consultation**

IA consulted its Insurance Advisory Committee on Long Term Business, the Hong Kong Federation of Insurers and the affected insurance groups on the legislative proposal in 2019 and the parties consulted were supportive of the proposal.
- 3. Consultation with LegCo Panel**

The Panel on Financial Affairs was consulted on 3 June 2019 and members supported the introduction of the Bill into the Legislative Council.
- 4. Conclusion**

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to introduce a new regulatory framework under Cap. 41 for the regulation and supervision of insurance groups and to extend IA's functions to cover the proposed group-wide supervision, Members may consider setting up a Bills Committee to examine the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 10 June 2020. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: INS/2/3/2C) issued by the Financial Services and the Treasury Bureau on 18 March 2020 for further details.

Object of the Bill

2. The Bill proposes to amend the Insurance Ordinance (Cap. 41) to provide for the regulation and supervision of insurance groups by the Insurance Authority ("IA") through exercising direct regulatory powers over their Hong Kong-incorporated holding companies; and to provide for related matters.

Background

3. Under Cap. 41, IA is established with the principal function to regulate and supervise the insurance industry (section 4A). In respect of insurers which carry on insurance business in or from Hong Kong (i.e. authorized insurers), IA has various regulatory powers including powers to approve the appointment of a controller, a director and a key person, and powers to intervene, inspect and investigate (e.g. under Parts II, V and VA of Cap. 41). Currently, IA's powers may be exercised to regulate authorized insurers as single entities but not directly their holding company if the authorized insurer is a subsidiary company within a group of two or more insurance companies ("insurance group") even though the holding company is incorporated in Hong Kong.

4. According to paragraphs 6 and 7 of the LegCo Brief, other jurisdictions including the United Kingdom, Australia, Bermuda and Singapore have put in place group-wide supervisory regimes where the insurance regulators have direct regulatory powers over the holding companies of the insurers they regulate. The International Monetary Fund, in the 2013-2014 Financial Sector Assessment Program, recommended that Hong Kong should formulate and implement a clear and comprehensive regulatory regime for insurance groups under Cap. 41 to align with the international standards and practices of insurance regulation.

Provisions of the Bill

5. The Bill mainly proposes to add to Cap. 41 a new Part XIA (which comprises proposed new sections 95A to 95ZZW in 10 Divisions) to provide a new framework for the regulation and supervision of insurance groups. The Bill also makes certain consequential and related amendments. Main provisions of the Bill are summarized in the following paragraphs.

Regulation and supervision of insurance groups

IA's functions relating to insurance groups (proposed new section 95B)

6. The Bill seeks to confer on IA certain new functions in relation to the regulation and supervision of insurance groups. These new functions would include: (a) liaising and co-operating with other authorities outside Hong Kong performing the supervisory functions over insurance groups or their members ("involved supervisors") in the determination of the group supervisors of insurance groups, and (b) regulating and supervising insurance groups of which IA is appointed as the group supervisor (proposed section 95B). The group supervisor in an insurance group (as defined in the proposed section 95A(1)) would mean the body responsible for promoting effective and co-ordinated supervision of the group in accordance with principles adopted by the International Association of Insurance Supervisors ("IAIS").

Designation of insurance holding companies (proposed new sections 95C to 95E)

7. The Bill seeks to exercise direct regulatory powers on Hong Kong-incorporated insurance holding companies by introducing a framework for designation of insurance holding companies. Under the proposed section 95C, IA may, by notice published in the Gazette, designate a Hong Kong-incorporated insurance holding company of an authorized insurer that belongs to an insurance group as a "designated insurance holding company" ("DIHC") if (a) IA is appointed as the group supervisor of the insurance group in accordance with IAIS principles; and (b) IA considers it appropriate for the company to be so designated. In deciding whether to make a designation, IA may take into account matters including the number of jurisdictions outside Hong Kong in or from which the insurance business of the group is carried on, the size of the insurance and other businesses of the group, and any relevant criteria promulgated by IAIS and any other international standards setting body.

Determination of the scope of the insurance group subject to IA's supervision (proposed new sections 95C to 95E)

8. Upon a designation of DIHC, IA would determine which members of an insurance group would be subject to the supervision by IA ("supervised group") (proposed section 95D). The supervised group would by default consist of members including the DIHC, all its subsidiaries, and any other entities that are, according to applicable accounting standards, treated as members of the insurance group to which the DIHC belongs. IA might include in or exclude from the supervised group any entity by reason of the presence/absence of any close link (whether financial, contractual or operational) to the DIHC or other members of the supervised group.

General duties of DIHCs (proposed new sections 95F to 95H)

9. Under the Bill, general duties of DIHCs would include:

- (a) payment of a designation fee upon designation and fees payable at prescribed intervals (proposed section 95F); and

- (b) maintaining with its holding company (if any) any arrangements as specified by IA so as to ensure DIHC's compliance with the proposed new Part XIA, or any notice or requirement given or imposed under this Part (proposed section 95H).

Restrictions on shareholder controller and other key officers of DIHCs (proposed new sections 95I to 95ZD)

10. Under the Bill, prior approval must be obtained from IA before a person may become a shareholder controller of a DIHC (i.e. 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) or be appointed as the chief executive, director, and key person in control functions ("specified officers") of a DIHC. IA may impose conditions upon the approval and may revoke an approval if it appears to IA that the person is not or is no longer fit and proper to be a shareholder controller or specified officer.

Requirements on financial matters of supervised groups (proposed new sections 95ZE to 95ZM)

11. A DIHC would be required to report to IA on the financial position and performance of its supervised group through information consolidated by a financial reporting member for the group. For this purpose, DIHC must ensure that an auditor is appointed and notify IA of any changes in the auditor (proposed sections 95ZF and 95ZG); and must submit the financial statements of the financial reporting member and the auditor's reports on the statements (proposed section 95ZH).

12. In relation to the capital of its supervised group, a DIHC would be required to comply with the relevant requirements to be prescribed by IA and related reporting and disclosure requirements (proposed section 95ZI).

13. In addition, a DIHC must not make or allow any member of the supervised group to make any major acquisition that is material to the group unless with IA's prior approval or the acquisition has been assessed through an assessment framework (which would be established within the group and approved by IA) as being non-material to the group (proposed sections 95ZJ to 95ZM).

IA's intervention and investigation powers (proposed new sections 95ZN to 95ZZW)

14. The Bill proposes to empower IA to require DIHCs to:
- (a) provide information or produce documents about any matter that relates to a supervised group member (proposed section 95ZO);
 - (b) provide a report on any matter relating to a supervised group member, or assist in the preparation of such reports by persons appointed by IA (proposed section 95ZP);
 - (c) ensure the compliance by its supervised group members (including DIHC) with any restrictions on the transfer of assets (proposed section 95ZQ); and

- (d) take any action in relation to the affairs, business or property of its supervised group as IA considers appropriate (proposed section 95ZR).

15. Also, IA might give directions to appoint a supervisory manager to manage the affairs, business and property of a DIHC (proposed section 95ZT). IA might present a petition for the winding-up of a DIHC and be heard in such a petition presented by others (proposed section 95ZZB).

16. IA would be conferred with the powers to conduct inspection and investigations for ascertaining whether a DIHC complies with the requirements imposed under the proposed new Part XIA and to take disciplinary actions against a DIHC (proposed sections 95ZZE and 95ZZG).

Appeals against IA's regulatory and disciplinary decisions relating to DIHC

17. The existing Schedule 9 to Cap. 41 sets out certain regulatory and disciplinary decisions made by IA relating to authorized insurers and insurance intermediaries as "specified decisions" which are subject to review by the Insurance Appeals Tribunal ("the Tribunal") (Parts 1 and 2 of Schedule 9). The Bill proposes to add a new Part 3 to Schedule 9 setting out specified decisions made by IA in relation to DIHCs (clause 22) so that such regulatory and disciplinary decisions would be subject to review by the Tribunal which may confirm, vary or set aside any such decisions or remit the matter to IA with appropriate directions under the existing section 101(1) of Cap. 41.

Proposed criminal sanctions

18. The Bill also proposes to create various offences for failure to comply with the requirements imposed by IA under the proposed new Part XIA. The proposed maximum penalties would range from a fine at level 4 (i.e. \$25,000) to a fine of \$1,000,000 and imprisonment for six months to seven years.

Related amendments

19. The Bill proposes to make related amendments to Cap. 41 including:
- (a) adding new definitions (e.g. "supervised group" and "shareholder controller") and revising certain existing definitions (e.g. "director" and "key person in control functions") to extend their application to DIHCs (clause 3);
 - (b) amending the existing provisions in relation to secrecy, disclosure of information and communications by prescribed persons (i.e. auditors, accountants and actuaries) with IA so that such provisions would also apply to DIHCs and their supervised groups (clauses 8 to 10);
 - (c) adding the proposed new section 53G to require auditors/accountants to report to IA directly on any matter adversely affecting the financial condition of a supervised group or any evidence of any non-compliance with any requirement by the supervised group (clause 11); and

- (d) adding the proposed new Schedule 7A which specifies powers of the supervisory manager of a DIHC (clause 21).

Commencement

20. The Bill, if passed, would come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

Public Consultation

21. According to paragraph 28 of the LegCo Brief and further information provided by the Administration upon our enquiry, IA consulted its Insurance Advisory Committee on Long Term Business, the Hong Kong Federation of Insurers and the affected insurance groups (viz. AIA Group, FWD Group and Prudential plc Group) on the legislative proposals in 2019. The parties consulted were generally supportive of the major legislative proposals, the basis for determining group capital requirements as well as the requirement to pay prescribed fees.

Consultation with LegCo Panel

22. As advised by the Clerk to the Panel on Financial Affairs, on 3 June 2019, the Administration and IA briefed the Panel on the legislative proposals. Members discussed various issues including the criteria and procedures for considering the appointment of chief executives, directors, key persons in control functions and shareholder controllers of DIHCs, and capital requirements for such companies, as well as factors in determining the group supervisor for an international insurance group. Some members expressed the view that the proposed regulatory regime should not be more stringent than those in other jurisdictions so as to maintain the international competitiveness of the Hong Kong insurance sector.

Conclusion

23. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill proposes to introduce a new regulatory framework for the regulation and supervision of insurance groups under Cap. 41 and to extend IA's functions to cover the proposed group-wide supervision, Members may consider setting up a Bills Committee to examine the Bill in detail.

Prepared by

Clara TAM
Assistant Legal Adviser
Legislative Council Secretariat
11 June 2020