

立法會
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LC Paper No. LS27/20-21

**Paper for the House Committee Meeting
on 8 January 2021**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 31 December 2020**

Tabling in LegCo	: Council meeting of 6 January 2021
Amendment to be made by	: Council meeting of 3 February 2021 (or that of 24 February 2021 if extended by resolution)
Insurance (Designation and Annual Fees for Designated Insurance Holding Companies) Regulation	(L.N. 262)
Insurance (Prescribed Fees) (Amendment) Regulation 2020	(L.N. 263)
Insurance (Amendment) (No. 2) Ordinance 2020 (Commencement) Notice	(L.N. 264)
Insurance (Group Capital) Rules	(L.N. 265)

The Insurance (Amendment) (No. 2) Ordinance 2020 (Ord. No. 18 of 2020) ("IAO") was published in the Gazette on 24 July 2020 after the Insurance (Amendment) (No. 2) Bill 2020 was passed by the Legislative Council ("LegCo") on 17 July 2020. IAO amends the Insurance Ordinance (Cap. 41) to provide for the regulation and supervision of insurance companies by the Insurance Authority ("IA") through exercising direct regulatory powers over their Hong Kong-incorporated holding companies. Under IAO, IA, as the group supervisor appointed to regulate and supervise an insurance group, will be empowered to designate a Hong Kong-incorporated insurance holding company of an authorized insurer belonging to that insurance group as a designated insurance holding company ("DIHC"). Upon designation of a DIHC, IA may exercise its direct regulatory powers over a DIHC and thus carry out group-wide supervision ("GWS") over the supervised group¹ of a DIHC. L.N. 262 to L.N. 265 are made to implement the GWS framework under IAO.

¹ Under the new section 95D of Cap. 41, as added by section 12 of IAO, the supervised group of a DIHC consists of the DIHC, all its subsidiaries, 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 DIHC belongs. IA may also include in the supervised group any entity considered by IA to be closely linked to a default member of the supervised group through financial, contractual or operational relationship.

L.N. 264

2. L.N. 264 is made by the Secretary for Financial Services and the Treasury under section 1(2) of IAO to appoint 29 March 2021 as the day on which IAO comes into operation.

L.N. 262

3. The new section 95F(1) of Cap. 41, as added by section 12 of IAO, provides that a DIHC must pay to IA (a) a designation fee payable on designation; and (b) fees payable at prescribed intervals no later than the payment due date prescribed for the fee.

4. L.N. 262 is made by the Chief Executive in Council ("CE in Council") under section 128(1) of Cap. 41 after consultation with IA to prescribe the payment due dates, the prescribed intervals (i.e. annual fee) and the amount of the designation fee and the annual fee payable by a DIHC under section 95(1) of IAO as follows:

- (a) the designation fee must be paid within 60 days beginning on the date of designation of a DIHC and an annual fee becomes payable on each 1 April ("relevant date") after the date of designation and must be paid by the 31 May that follows the relevant date;
- (b) the amount of the designation fee or an annual fee will be set at the flat rate of 0.0026% of the group insurance liabilities of a DIHC as at the specified date (i.e. the end date of the last financial year of the company that ends before the date of designation (for designation fee); and the end date of the last financial year of the company that ends before 1 April of that year (for annual fee)), and the amount of the designation fee or an annual fee payable is subject to a floor of \$10 million and a ceiling of \$60 million; and
- (c) where the date of designation of a DIHC does not fall on 1 April of a year, the amount of the designation fee is to be calculated on a pro-rata basis.

5. According to paragraphs 10 and 13 of the LegCo Brief (without file reference number) issued by the Financial Services and the Treasury Bureau and IA on 29 December 2020, IA will recover from DIHCs the additional costs involved in acting as the group supervisor under the new GWS framework on a cost recovery basis. The structure for designation and annual fees, which aligns with the current method for calculating the fees payable by authorized insurers, has taken into account the total insurance liabilities of those insurance groups to be subject to GWS and the estimated costs incurred for conducting GWS.

6. L.N. 262 comes into operation on 29 March 2021.

L.N. 263

7. Under the new sections 95I, 95K, 95L and 95S of Cap. 41 (added by section 12 of IAO), prior approval must be obtained from IA before a person may become a shareholder controller of a DIHC or be appointed as the chief executive, director and key person in control functions of a DIHC. The new sections 95ZJ and 95ZL (added by section 12 of IAO) provide that 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 as being non-material to the group.

8. L.N. 263 is made by CE in Council under section 128(1) of Cap. 41 after consultation with IA to add eight items of prescribed fees in relation to DIHCs to the Schedule to the Insurance (Prescribed Fees) Regulation (Cap. 41B). The new fees items relate to:

- (a) applications for approval for a person to be a shareholder controller (fee payable is \$100,000 if the shareholder controller is entitled to exercise or control the exercise of 50% or more of the voting power at any general meeting ("GM") of a DIHC and \$50,000 if the shareholder controller is entitled to exercise or control the exercise of less than 50% of the voting power at any GM of a DIHC) under the new sections 95I(2), 95K(2) and 95L(5);
- (b) applications for approval for a person to be appointed as the chief executive, director or key person in control functions of a DIHC under the new section 95S (fee payable is \$18,000); and
- (c) applications for approval of a major acquisition under the new section 95ZJ (fee payable is \$100,000) and applications for approval of an assessment framework for major acquisition under the new section 95ZL (fee payable is \$50,000).

9. L.N. 263 also updates a cross-reference to a provision in the existing item 22 and makes certain textual amendments to the Schedule to Cap. 41B.

10. According to paragraph 15 of the LegCo Brief, in determining the fee levels, the same computation methodology as that for the existing prescribed fees relating to authorized insurers is used, and such methodology is largely in line with the approach used by the Government.

11. L.N. 263 comes into operation on 29 March 2021.

L.N. 265

12. L.N. 265 is made by IA under the new section 95ZI (added by section 12 of IAO) and section 129 (as amended by section 17 of IAO)² of Cap. 41 to prescribe requirements in relation to (a) the capital of the supervised group of a DIHC; (b) requirements for a DIHC to report to IA the capital position of its supervised group; and (c) requirements for a DIHC to disclose to the public certain information on the group capital requirements and the capital position of its supervised group.

13. Main features of the requirements prescribed under L.N. 265 are set out below:

- (a) a DIHC must ensure that its supervised group meets the group capital adequacy requirements which consist of two levels i.e. group minimum capital requirement ("GMCR") and group prescribed capital requirement ("GPCR"). In the calculation of GMCR and GPCR, the eligible group capital resources (with categorization as tier 1 and tier 2 group capital)³ of the supervised group of a DIHC are counted towards satisfying GMCR and GPCR. IA may apply a supervisory variation to GMCR, GPCR or the eligible group capital resources;
- (b) a DIHC must report to IA the capital adequacy position of its supervised group (by submitting an annual report containing information such as GMCR, GPCR, the eligible group capital resources, tier 1 and tier 2 group capital etc.); and report the occurrence of events relating to the contravention of group capital adequacy requirements and significant events (such as conviction of criminal offences and material breaches of any statutory requirements by any supervised group member) in relation to the supervised group of a DIHC; and
- (c) under the public disclosure requirement in relation to group capital adequacy, a DIHC must, within five months after its financial year ends, publish certain information on its website in relation to its supervised group including the profile of the supervised group, description of the corporate governance framework, the adequacy of the eligible group capital resources of the supervised group in meeting the regulatory capital requirements applicable to the supervised group.

14. According to paragraph 19 of the LegCo Brief, IA has taken into account prevailing international standards including the relevant Insurance Core Principles, the Common Framework for the Supervision of Internationally Active Supervised

² Under the amended section 129 of Cap. 41, the power of IA to make rules on specified matters in relation to an authorized insurer and other matters that are necessary for the performance of any of IA's functions has been extended to DIHC regime.

³ The criteria for tier 1 group capital and tier 2 group capital are set out in Schedules 1 and 2 to L.N. 265.

Groups promulgated by the International Association of Insurance Supervisors ("ComFrame"), as well as the Insurance Capital Standard being developed as part of the ComFrame.

15. L.N. 265 comes into operation on the day on which section 95ZI of IAO comes into operation, i.e. 29 March 2021 (the same day on which IAO comes into operation by virtue of L.N. 264 reported in paragraph 2 above).

Public Consultation

16. According to paragraph 23 of the LegCo Brief, IA has consulted the Hong Kong Federation of Insurers and the affected insurance groups on the proposed designation, annual and prescribed fees. IA also conducted a six-week public consultation on the proposed Group Capital Rules (i.e. L.N. 265). The stakeholders concerned generally find the proposals acceptable. The Group Capital Rules have been refined to take into account suggestions and to clarify technical details regarding the group capital requirement.

Consultation with LegCo Panel

17. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 262 to L.N. 265.

Dangerous Drugs Ordinance (Amendment of Second Schedule) (No. 2) Order 2020

(L.N. 266)

18. L.N. 266 is made by the Secretary for Security under section 50(2) of the Dangerous Drugs Ordinance (Cap. 134) to amend the list of hospitals and institutions ("prescribed hospitals") in the Second Schedule to Cap. 134 by:

- (a) updating the names of one hospital and one institution;⁴ and
- (b) adding one hospital (i.e. CUHK Medical Centre) and three institutions (i.e. Aura Nursing Home cum Day Care Centre, Pok Oi Hospital Centenary Chan See Memorial Nursing Home cum Day Care Centre, and Tung Chung Silverjoy).

19. Under section 22(1)(e) and (f) of Cap. 134, a registered pharmacist or an approved person employed or engaged at a prescribed hospital and whose duties in

⁴ The name of Gleneagles Hong Kong Hospital (港怡醫院) is updated as Gleneagles Hospital Hong Kong (港怡醫院); and the name of Lions Kidney Educational Centre and Research Foundation—Chinachem Group Renal Dialysis Centre (國際獅子會腎病教育中心及研究基金——華懋集團洗腎中心) is updated as Lions Kidney Educational Centre and Research Foundation Day Dialysis Centre (國際獅子會腎病教育中心及研究基金日間洗腎中心).

that employment or engagement include the dispensing or supply of medicines for that hospital, and a sister for the time being in charge of a ward, theatre or other department in a prescribed hospital may, subject to other provisions of Cap. 134, possess and supply a dangerous drug, so far as may be necessary for the practice or exercise of his/her profession, function or employment. Under section 22(2), the matron of a prescribed hospital may possess and supply a dangerous drug so far as may be necessary for the purposes of the hospital and in his/her capacity as matron.

20. Members may refer to the LegCo Brief (without file reference number) issued by the Narcotics Division of the Security Bureau on 29 December 2020 for further information.

21. As advised by the Clerk to the Panel on Health Services and the Panel on Security, the Administration has not consulted the Panels on L.N. 266.

22. L.N. 266 comes into operation on 26 February 2021.

Public Health and Municipal Services Ordinance (Gardens of Remembrance) (Amendment of Fifth Schedule) Order 2020 (L.N. 267)

23. L.N. 267 is made by the Director of Food and Environmental Hygiene ("DFEH") under section 124A(4) of the Public Health and Municipal Services Ordinance (Cap. 132) to amend the Fifth Schedule to Cap. 132 by adding "Tsang Tsui" to the list of gardens of remembrance ("GoRs"). The effect of L.N. 267 is that the management and control of the new GoR shall be vested in DFEH as the Authority.

24. According to paragraph 3 of the LegCo Brief (File Ref: FH CR 1/3751/15) issued by the Food and Health Bureau on 30 December 2020, the construction work of a new columbarium and GoR at Tsang Tsui, Tuen Mun (which includes a GoR of about 4 800 m² with greenery and designated walls for the mounting of about 20 000 plaques in memory of the deceased) was completed and the GoR is expected to be commissioned on 1 March 2021.

25. According to paragraph 6 of the LegCo Brief, the Government consulted the Tuen Mun District Council ("TMDC") several times during 2012-2015 on the project of a columbarium and GoR at Tsang Tsui. TMDC was briefed on the project updates on 5 March 2019.

26. As advised by the Clerk to the Panel on Food Safety and Environmental Hygiene, the Panel was consulted on the project to construct a columbarium and a GoR at Tsang Tsui, Tuen Mun at its meeting on 14 April 2015 and members supported the project though the Panel has not been specifically consulted on the related subsidiary legislation made under L.N. 267.

27. L.N. 267 comes into operation on 1 March 2021.

**Freight Containers (Safety) (Amendment) Ordinance 2020
(Commencement) Notice (L.N. 268)**

28. L.N. 268 is made by the Secretary for Transport and Housing under section 1(2) of the Freight Containers (Safety) (Amendment) Ordinance 2020 (Ord. No. 24 of 2020) to appoint 1 March 2021 as the day on which the Ordinance comes into operation.

29. Ord. No. 24 of 2020 was published in the Gazette on 13 November 2020 after the Freight Containers (Safety) (Amendment) Bill 2019 was passed by LegCo on 5 November 2020. It amends the Freight Containers (Safety) Ordinance (Cap. 506) primarily to implement the latest requirements of the International Convention for Safe Containers adopted by the International Maritime Organization relating to manufacture, use and examination of freight containers and the marking and fixing of safety approval plates; and enable the adoption of a direct reference approach in making regulations to give effect to an international agreement relating to the safety of freight containers as amended from time to time.

30. Members may refer to LegCo Brief (File ref: THB(T)PML CR 8/10/130/2) issued by the Transport and Housing Bureau and the Marine Department in December 2020 for further information on L.N. 268.

31. As advised by the Clerk to the Panel on Economic Development, the Panel has not been consulted on L.N. 268.

Concluding observations

32. The Legal Service Division is scrutinizing the legal and drafting aspects of L.N. 265, and a further report will be made if necessary. No difficulties have been identified in relation to the legal and drafting aspects of the other six items of subsidiary legislation reported above.

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