

立法會
Legislative Council

LC Paper No. LS29/20-21

**Further Report by Legal Service Division on
Insurance (Group Capital) Rules
Gazetted on 31 December 2020**

Members may recall that the Legal Service Division ("LSD") reported on the Insurance (Group Capital) Rules (L.N. 265 of 2020) ("the Rules") at the House Committee meeting on 8 January 2021 (LC Paper No. LS27/20-21). It was stated in our report that LSD was scrutinizing the Rules and would make a further report if necessary.

2. To recap, the Rules are made by the Insurance Authority ("IA") under the new section 95ZI (added by section 12 of the Insurance (Amendment) (No. 2) Ordinance 2020 (Ord. No. 18 of 2020) ("IAO")) and section 129 (as amended by section 17 of IAO) of the Insurance Ordinance (Cap. 41) to prescribe requirements in relation to the capital of the supervised group of a designated insurance holding company ("DIHC") and other related reporting requirements. LSD has sought clarifications from the Administration on certain legal and drafting aspects of the Rules. LSD's enquiries and the Administration's response are summarized below.

Chinese rendition for "involved supervisor" in rules 4(3), 5(3) and 12(3)(c) of the Rules

3. It is noted that the Chinese rendition for the term "involved supervisor" in rules 4(3), 5(3) and 12(3)(c) of the Rules is "涉及的監管機構" whereas "法定監管者" is used as the Chinese rendition for the same term used in various new sections under IAO relating to IA's functions over the regulation and supervision of insurance groups, and IA's intervention powers in relation to a DIHC (i.e. sections 53B(1D)(a)(i), 95A, 95B(1)(a), (2)(a), (2)(b) and (2)(d), 95ZR(3), 95ZT(4) and 95ZX(4) (as added by IAO) of Cap. 41). In response to LSD's enquiry on the reasons for adopting different Chinese renditions for "involved supervisor" used in IAO and the Rules, IA has responded that an "involved supervisor" in rules 4(3), 5(3) and 12(3)(c) of the Rules refers to an authority which has exercised its powers in relation to capital requirements vis-à-vis a member of the group. IA has considered that the Chinese rendition for "involved supervisor" (i.e. "涉及的監管機構") in the said rules is appropriate under the context of the Rules, and hence it is not necessary to amend the said Chinese rendition.

Meanings of "other accumulated comprehensive income" and "unrestricted and restricted reserves" in section 1 of Schedule 1 to the Rules

4. Under section 1(c) and (d) of Schedule 1 to the Rules, certain types of eligible capital resources of a supervised group member that is a non-regulated entity, which include other accumulated comprehensive income of the supervised group member and the supervised group member's unrestricted and restricted reserves, are tier 1 group capital of the supervised group to which the supervised group member belongs. In response to LSD's enquiry, IA has explained that "other accumulated comprehensive income" is the Accumulated Other Comprehensive Income ("AOCI") determined in accordance with the recognized international accounting standards. AOCI includes unrealized gains and losses reported in the equity section of the balance sheet that are netted below retained earnings. The term "unrestricted and restricted reserves" refers to the accumulated profits that are appropriated or set aside and available to absorb losses. IA has considered that it is not necessary to spell out the meanings of the said terms in the Rules. IA would provide further guidance, in the form of guidelines published by IA, for the said terms together with other technical terms in Schedules 1 and 2 to the Rules, to facilitate DIHCs to comply with the relevant requirements.

5. Subject to Members' views on the matters set out in paragraphs 3 to 4 above, no legal and drafting difficulties have been identified in relation to the Rules.

Prepared by

CHENG Kiu-fung, Vanessa
Assistant Legal Adviser
Legislative Council Secretariat
20 January 2021