

**立法會**  
**Legislative Council**

LC Paper No. LS28/20-21

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 15 January 2021**

**Tabling in LegCo** : Council meeting of 20 January 2021

**Amendment to be made by** : Council meeting of 3 February 2021 (or that of 17 March 2021 if extended by resolution)

**Insurance (Authorization and Annual Fees) (Amendment)  
Regulation 2021**

**(L.N. 2)**

The Insurance (Amendment) Ordinance 2020 (Ord. No. 17 of 2020) ("Insurance Amendment Ordinance") was published in the Gazette on 24 July 2020 after the Insurance (Amendment) Bill 2020<sup>1</sup> was passed by the Legislative Council ("LegCo") on 17 July 2020. It provides for a new regulatory regime for insurance-linked securities ("ILS") business in Hong Kong. Under the new section 8A of the Insurance Ordinance (Cap. 41) as added by the Insurance Amendment Ordinance, the Insurance Authority ("IA") is empowered to authorize a company to carry on special purpose business (i.e. the insurance business of effecting and carrying out contracts of insurance that are fully funded through insurance securitization) if certain requirements are met. A company so authorized is referred to as a "special purpose insurer" under Cap. 41 as amended by the Insurance Amendment Ordinance.

2. Under section 128(1) of Cap. 41, the Chief Executive ("CE") in Council may, after consulting IA, by regulations provide for the payment to IA of, and prescribe fees for, anything done by IA in performing a function under Cap. 41. L.N. 2 is made by CE in Council under section 128(1) of Cap. 41 to amend the Insurance (Authorization and Annual Fees) Regulation (Cap. 41C). It provides in the new Schedule 2A to Cap. 41C that the prescribed fee for authorization and the prescribed annual fee payable by a special purpose insurer under section 13(1)(a) and (b) of Cap. 41 are fixed at \$15,000 respectively.

3. Under section 1(2) of the Insurance Amendment Ordinance, the Insurance Amendment Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury ("Secretary") by notice published in the Gazette. According to the LegCo Brief (File Ref: INS/2/3/2C)

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<sup>1</sup> No Bills Committee was formed to scrutinize the Insurance (Amendment) Bill 2020.

issued by the Financial Services and the Treasury Bureau ("FSTB") and IA on 15 January 2021, the Secretary will make the Insurance (Amendment) Ordinance 2020 (Commencement) Notice and IA will make the Insurance (Special Purpose Business) Rules to be gazetted on 22 January 2021 with a view to bringing the regulatory regime for ILS business into operation on 29 March 2021.

4. As stated in paragraph 22 of the LegCo Brief, IA consulted key industry stakeholders in the ILS market, including the Hong Kong Federation of Insurers ("HKFI"), on the fee proposals, and the stakeholders consulted were generally supportive of the proposals.

5. As advised by the Clerk to the Panel on Financial Affairs ("Panel"), at the Panel meeting on 2 November 2020, the Administration briefed members on the subsidiary legislation relating to the implementation of a new regulatory regime for ILS business in Hong Kong, including prescribing fees to be payable by special purpose insurers. Panel members did not raise objection to the making of the subsidiary legislation.

6. L.N. 2 comes into operation on 29 March 2021.

**Prevention of Bribery Ordinance (Amendment of  
Schedule 1) Order 2021 (L.N. 3)**

7. L.N. 3 is made by CE in Council under section 35 of the Prevention of Bribery Ordinance (Cap. 201) to add HKMC Annuity Limited ("HKMCA") and HKMC Insurance Limited ("HKMCI") to Schedule 1 to Cap. 201 so that HKMCA and HKMCI become public bodies for the purposes of Cap. 201. The effect is that employees and members of HKMCA and HKMCI become public servants and thus are subject to the provisions of Cap. 201.

8. According to paragraphs 4 and 5 of the LegCo Brief (File Ref: B&M/6/1C) issued by FSTB on 13 January 2021, HKMCA and HKMCI were established in 2017, following a business re-organization of the Hong Kong Mortgage Corporation Limited ("HKMC"), as HKMC's wholly-owned subsidiaries to carry on annuity business and mortgage insurance and loan guarantee business respectively. HKMC is already specified as a public body under the existing Schedule 1 to Cap. 201. Upon the advice of the Independent Commission Against Corruption, HKMCA and HKMCI are specified as public bodies so that they will be subject to the relevant control under Cap. 201 as well.

9. As advised by the Clerk to the Panel, at the meeting on 2 November 2020 when the Panel received briefing by the Hong Kong Monetary Authority on its work, members were informed of the relevant legislative proposal in L.N. 3. Members did not raise any objection to the proposal.

10. L.N. 3 comes into operation on 1 April 2021.

**Inland Revenue (Profits Tax Concessions for Insurance-related Businesses) (Threshold Requirements) Notice** (L.N. 4)

**Inland Revenue (Amendment) (Profits Tax Concessions for Insurance-related Businesses) Ordinance 2020 (Commencement) Notice** (L.N. 5)

11. The Inland Revenue (Amendment) (Profits Tax Concessions for Insurance-related Businesses) Ordinance 2020 (Ord. No. 15 of 2020) ("Inland Revenue Amendment Ordinance") was published in the Gazette on 24 July 2020 after the Inland Revenue (Amendment) (Profits Tax Concessions for Insurance-related Businesses) Bill 2019 ("Inland Revenue Amendment Bill")<sup>2</sup> was passed by LegCo on 15 July 2020. It amends the Inland Revenue Ordinance (Cap. 112) mainly to provide for profits tax concessions (i.e. 8.25% being one-half of the normal profits tax rate for corporations) for general reinsurance business and certain types of general insurance business of direct insurers<sup>3</sup> (referred to as "specified insurers" in the Inland Revenue Amendment Ordinance), and certain types of insurance brokerage business of licensed insurance broker companies.

L.N. 5

12. L.N. 5 is made by the Secretary under section 1(2) of the Inland Revenue Amendment Ordinance to appoint 19 March 2021 as the day on which the Inland Revenue Amendment Ordinance comes into operation.

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<sup>2</sup> No Bills Committee was formed to scrutinize the Inland Revenue Amendment Bill.

<sup>3</sup> As stated in our report on the Inland Revenue Amendment Bill (LC Paper No. LS32/19-20) issued on 10 January 2020, FSTB had clarified that "direct insurer" was a commonly used term in the insurance trade for an insurer who provides general insurance to the public as opposed to a professional reinsurer who is authorized to carry on reinsurance business only.

L.N. 4

13. Under section 14B(2)(a) of Cap. 112 as amended by the Inland Revenue Amendment Ordinance, a specified insurer or a licensed insurance broker company is entitled to profits tax concession for a year of assessment if the activities that produce its assessable profits are carried out in Hong Kong by it or are arranged by it to be carried out in Hong Kong ("Specified Condition"). The Commissioner of Inland Revenue ("Commissioner") is empowered under section 26AB of Cap. 112 as amended by the Inland Revenue Amendment Ordinance to prescribe, by notice published in the Gazette, a threshold requirement for determining whether the Specified Condition is met.

14. L.N. 4 is made by the Commissioner under section 26AB of Cap. 112 to prescribe the following threshold requirements for determining whether the Specified Condition is met:

- (a) the average number of full time employees in Hong Kong carrying out the activity and having the necessary qualifications ("Required Number of Employees"), and the amount of operating expenditure incurred by the specified insurer or licensed insurance broker company in Hong Kong for the activity ("Required Amount of Expenditure") must be, in the opinion of the Commissioner, adequate for the specified insurer or licensed insurance broker company for the year of assessment concerned; and
- (b) in any event, the Required Number of Employees and the Required Amount of Expenditure must be not less than the following minimum figures:

<b>Threshold requirements</b>	<b>Specified insurer</b>		<b>Licensed insurance broker company</b>
	<b>Being a mutual insurance corporation</b>	<b>Not being a mutual insurance corporation</b>	
Required Number of Employees	4	7	3
Required Amount of Expenditure	\$2,000,000	\$4,000,000	\$1,000,000

15. According to paragraphs 10 and 14 of the LegCo Brief (File Ref: INS/2/19C) issued by FSTB and the Inland Revenue Department on 13 January 2021, the above threshold requirements have been formulated having regard to the actual operating statistics of specified insurers and licensed insurance broker companies and after consulting the insurance industry (including HKFI, relevant

insurers carrying on general business, the Professional Insurance Brokers Association and the Hong Kong Confederation of Insurance Brokers). The stakeholders are generally supportive of the threshold requirements.

16. L.N. 4 comes into operation on 19 March 2021.

Consultation with LegCo Panel

17. As advised by the Clerk to the Panel, the Panel has not been consulted on L.N. 4 and L.N. 5.

**Concluding observations**

18. No difficulties have been identified in relation to the legal and drafting aspects of the above items of subsidiary legislation.

Prepared by

KAN Wan-ye, Wendy  
Assistant Legal Adviser  
Legislative Council Secretariat  
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