

LEGISLATIVE COUNCIL BRIEF

Insurance Ordinance
(Chapter 41)

INSURANCE (DESIGNATION AND ANNUAL FEES FOR DESIGNATED INSURANCE HOLDING COMPANIES) REGULATION

INSURANCE (PRESCRIBED FEES) (AMENDMENT) REGULATION 2020

INSURANCE (AMENDMENT) (NO. 2) ORDINANCE 2020 (COMMENCEMENT) NOTICE

INSURANCE (GROUP CAPITAL) RULES

INTRODUCTION

This paper briefs Members on four pieces of subsidiary legislation that are related to the commencement of the group-wide supervision (“GWS”) regime on 29 March 2021 for insurance groups where a holding company for the group is incorporated in Hong Kong.

2. At the meeting of the Executive Council on 8 December 2020, the Council **ADVISED** and the Chief Executive **ORDERED** that –

- (a) the Insurance (Designation and Annual Fees for Designated Insurance Holding Companies) Regulation (“Designation and Annual Fees Regulation”) (at **Annex A**); and
- (b) the Insurance (Prescribed Fees) (Amendment) Regulation 2020 (“Prescribed Fees (Amendment) Regulation”) (at **Annex B**)

should be made under section 128(1) of the Insurance Ordinance (Cap. 41) (“IO”).

3. On 24 December 2020, the Secretary for Financial Services and the Treasury (“SFST”) made the Insurance (Amendment) (No. 2) Ordinance 2020 (Commencement) Notice (“Commencement Notice”) (at **Annex C**) under section 1(2) of the Insurance (Amendment) (No. 2) Ordinance 2020 (“Amendment Ordinance”).

4. On 24 December 2020, the Insurance Authority (“IA”) made the Insurance (Group Capital) Rules (“Group Capital Rules”) (at **Annex D**) under the new section 95ZI and section 129 of the IO.

JUSTIFICATIONS

5. Enacted in July 2020, the Amendment Ordinance aims to amend the IO to enhance the regulatory framework for the regulation and supervision of insurance groups where a holding company for the group is incorporated in Hong Kong. The Amendment Ordinance introduces a GWS framework for the IA to exercise direct regulatory powers over Hong Kong-incorporated holding companies of insurance groups (“insurance holding companies”). This would help enhance Hong Kong’s capability in exercising GWS of insurance groups using a direct approach and align Hong Kong’s regulatory regime with the international standards, practices and guidance promulgated by the International Association of Insurance Supervisors (“IAIS”)¹.

6. Under the Amendment Ordinance passed by the Legislative Council (“LegCo”), the IA, as the group supervisor appointed to regulate and supervise an insurance group, will be empowered to designate an insurance holding company belonging to that insurance group as a designated insurance holding company (“DIHC”). The IA will have the following direct regulatory powers over the DIHC –

- (a) determination of a supervised group to which the DIHC belongs;
- (b) governance on shareholder controllers, chief executives, directors and key persons in control functions of the DIHC;
- (c) regulatory powers such as requiring the DIHC to submit financial information, to comply with requirements related to group capital, reporting and disclosure, and to seek regulatory approval for major acquisitions;
- (d) inspection and investigation powers over the DIHC; and
- (e) intervention and disciplinary actions against the DIHC.

¹ The IAIS is the international standard setting body for insurance regulators across the world.

7. Having regard to the progress of its preparatory work and the readiness of the affected insurance groups, the IA has decided to implement the GWS framework on 29 March 2021. It is necessary to make four pieces of subsidiary legislation to implement the GWS framework on the same day.

Proposals

8. The proposals contained in the various pieces of subsidiary legislation are set out in the ensuing paragraphs.

(A) Commencement Date

9. In accordance with section 1(2) of the Amendment Ordinance, SFST, via the Commencement Notice at Annex C, appoints 29 March 2021 as the day on which the Amendment Ordinance comes into operation such that the GWS framework referred to in paragraph 5 above will become effective starting from that date.

(B) Fees Regulations

10. DIHCs would be required to pay fees to the IA for recovering the additional costs involved in acting as the group supervisor under the new GWS framework by the IA, which is financially and operationally independent of the Government. The IA will recover the associated expenses and expenditure from the DIHCs it supervises on a cost recovery basis through the collection of designation, annual and prescribed fees.

11. Section 128(1) of the IO stipulates, among other things, that the Chief Executive in Council may, after consulting the IA, by regulations, provide for the payment to the IA of, and prescribe, fees for anything done by the IA in performing a function under the IO. The fee proposals for implementing the new GWS framework, with inputs from the IA incorporated, are set out in paragraphs 12 to 16 below.

Designation and Annual Fees

12. Under the new section 95F(1) of the IO, a DIHC must pay a designation fee payable on designation and fees payable at prescribed intervals (“annual fees”) no later than the payment due dates to be prescribed for such fees. The IA proposes to use the total insurance liabilities of the supervised group of a DIHC as at the end of certain financial year of the DIHC (“group insurance liabilities”) as the basis for calculating the designation fee and an annual fee payable by each DIHC.

This is because the size of the group insurance liabilities of a DIHC generally reflects the size and scale of the risk exposure of the supervised group of the DIHC and correlates with the level of supervision that the IA needs to carry out in respect of that supervised group.

13. The proposed structure for designation and annual fees is simple and easy to administer. It also aligns with the current calculation method for calculating fees payable by authorized insurers for supervision by the IA. The IA proposes to set the designation fee and an annual fee payable by a DIHC at a flat rate of 0.0026% of the group insurance liabilities of the DIHC, with a fee payable subject to a floor of HK\$10 million and a ceiling of HK\$60 million. Pro-rata calculation of the amount of the designation fee where the date of designation of the DIHC is not 1 April is also provided². This proposal has taken into account the total insurance liabilities of those insurance groups to be subject to GWS³ and the estimated costs incurred for conducting GWS.

14. The designation and annual fees are specified in the Designation and Annual Fees Regulation at **Annex A**.

Prescribed Fees

15. Similar to the existing prescribed fees for authorized insurers under the Insurance (Prescribed Fees) Regulation (Cap. 41B), the IA proposes to charge eight items of prescribed fees under the GWS regime to recover the costs of providing specific services, covering fees for various applications in relation to a DIHC. In determining the proposed 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.

16. The prescribed fees are specified in the Prescribed Fees (Amendment) Regulation at **Annex B**.

² To facilitate administration and on-going review, the coverage period of the designation and annual fee payments will tie in with the financial year of the IA, which begins on 1 April each year.

³ Currently, there are three insurance groups subject to GWS by the IA. They will be subject to the GWS framework upon designation under the IO after commencement of the Amendment Ordinance.

(C) Group Capital Rules

17. Pursuant to the new section 95ZI of the IO, the IA may, by rules made under the amended section 129, prescribe requirements in relation to the capital of the supervised group of a DIHC, requirements for a DIHC to report to the IA and requirements for a DIHC to disclose information relating to group capital adequacy to the public.

18. The Group Capital Rules are principle-based and outcome-focused to allow the IA to have effective and robust group capital regime for insurance groups. The new regime aims to maintain Hong Kong's competitiveness vis-à-vis those of other jurisdictions, and would reinforce Hong Kong's status as a preferred domicile in Asia-Pacific for international insurance groups. The Group Capital Rules (at **Annex D**) set out the following requirements –

(a) Group capital adequacy requirements

A DIHC must ensure that its insurance group would meet the group capital adequacy requirements at all times, which will consist of two levels, i.e. Group Minimum Capital Requirement (“GMCR”) and Group Prescribed Capital Requirement (“GPCR”). The GMCR and GPCR will respectively be calculated as the sum of the regulatory minimum capital requirements and prescribed capital requirements which apply to legal entities in the insurance group in the jurisdictions in which they carry on business. The IA has the power to apply a supervisory variation to the GMCR or GPCR as appropriate.

The eligible group capital resources of a DIHC will be calculated as the sum of the eligible capital resources of each legal entity in the insurance group (such eligibility to be based on whether the legal entity can count the capital resource towards meeting its minimum or prescribed capital requirement in the jurisdiction where it carries on business). The Group Capital Rules also set out the tiering of eligible group capital resources and enable the IA to apply a supervisory variation to the eligible group capital resources as appropriate.

For transitional arrangements, a DIHC may apply to the IA for pre-existing financial instruments to be counted as eligible capital resources. The IA can determine if certain capital resources and financial instruments can be considered eligible group capital resources, having regard to criteria that are

consistent with the Insurance Core Principles (“ICPs”) issued by the IAIS.

(b) Supervisory reporting to IA in relation to group capital adequacy

A DIHC in relation to its supervised group must submit a report to the IA each year containing, among other things, the GMCR and GPCR, the eligible group capital resources, the tier 1 and tier 2 group capital, as well as a breakdown of the above information.

(c) Public disclosure in relation to group capital adequacy

A DIHC must, within five months after its financial year end, publish certain information on its website in relation to its supervised group. Such information would include, among other things, the profile of the supervised group, a description of the corporate governance framework, a description of how the DIHC ensures that the assets of its supervised group are managed so that such assets are sufficient to meet the liabilities of the group as they fall due, as well as the adequacy of the eligible group capital resources of the supervised group in meeting the regulatory capital requirements applicable to the supervised group.

19. In preparing the Group Capital Rules, the IA has taken into account prevailing international standards, including the relevant ICPs, the Common Framework for the Supervision of Internationally Active Supervised Groups (“ComFrame”) promulgated by the IAIS, as well as the Insurance Capital Standard being developed as part of the ComFrame.

LEGISLATIVE TIMETABLE

20. The legislative timetable for the four pieces of subsidiary legislation is as follows –

Publication in the Gazette	31 December 2020
Tabling before LegCo	6 January 2021
Commencement	29 March 2021

IMPLICATIONS OF THE PROPOSALS

21. The subsidiary legislation referred to in paragraphs 2 to 4 above is in conformity with the Basic Law, including the provisions concerning human rights. The subsidiary legislation does not affect the current binding effect of the IO. The subsidiary legislation has no financial or civil service implications to the Government, and no environmental, productivity, family and gender implications. The subsidiary legislation has no sustainability implications other than economic implications set out in paragraph 22 below.

22. On economic implications, the fees and group capital requirements as proposed in the subsidiary legislation would impose additional costs and compliance burden on DIHCs. Nonetheless, the additional costs from the fees should be relatively small as compared to their gross premium income.

PUBLIC CONSULTATION

23. The IA has consulted the Hong Kong Federation of Insurers and the affected insurance groups on the proposed designation, annual and prescribed fees. The IA also conducted a six-week public consultation on the proposed Group Capital Rules. 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.

PUBLICITY

24. We will issue a press release upon the gazettal of the subsidiary legislation, and arrange for a spokesman to answer media enquiries.

ENQUIRIES

25. Enquiries may be directed to Ms Noel Tsang, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services), at 2810 2201.

Financial Services and the Treasury Bureau
Insurance Authority
29 December 2020

Insurance (Designation and Annual Fees for Designated Insurance Holding Companies) Regulation

(Made by the Chief Executive in Council under section 128(1) of the Insurance Ordinance (Cap. 41) after consultation with the Insurance Authority)

1. Commencement

This Regulation comes into operation on 29 March 2021.

2. Interpretation

In this Regulation—

annual fee (年費) means a fee payable under section 95F(1)(b) of the Ordinance;

date of designation (指定當日) has the meaning given by section 95A(1) of the Ordinance;

designation fee (指定費) means the designation fee payable under section 95F(1)(a) of the Ordinance.

3. Payment of designation and annual fees

- (1) The designation fee payable by a designated insurance holding company must be paid within 60 days beginning on the date of designation of the company.
- (2) An annual fee payable by a designated insurance holding company—
 - (a) becomes payable on each 1 April (*relevant date*) after the date of designation of the company; and
 - (b) must be paid by the 31 May that follows the relevant date.

4. Amounts of designation and annual fees

- (1) Subject to subsection (2), the amount of the designation fee or an annual fee payable by a designated insurance holding company is—
 - (a) subject to paragraph (b), the amount calculated by multiplying the group insurance liabilities of the company by 0.0026% (*calculated amount*); or
 - (b) if the calculated amount is—
 - (i) less than \$10,000,000—\$10,000,000; or
 - (ii) more than \$60,000,000—\$60,000,000.
- (2) If the date of designation of a designated insurance holding company does not fall on 1 April of a year, the amount of the designation fee payable by the company is to be calculated in accordance with the following formula—

$$A \times \frac{B}{C}$$

- where:
- | | |
|---|---|
| A | means the amount of the designation fee calculated in accordance with subsection (1); |
| B | means the number of days in the period that— <ol style="list-style-type: none"> (a) begins on the date of designation; and (b) ends at the beginning of the 1 April that follows the date of designation; and |
| C | means the number of days in the period that— <ol style="list-style-type: none"> (a) begins on the 1 April that precedes the date of designation; and (b) ends at the beginning of the 1 April that follows the date of designation. |

(3) In this section—

group insurance liabilities (集團保險負債), in relation to a designated insurance holding company, means an amount that—

- (a) is reported in a written return deposited by the company under section 95F(2) of the Ordinance; and
- (b) reflects the total insurance liabilities of the supervised group of the company as at the specified date;

specified date (指明日期), in relation to a designated insurance holding company, means—

- (a) for calculating the amount of the designation fee payable by the company—the end date of the last financial year of the company that ends before its date of designation; and
- (b) for calculating the amount of an annual fee payable by the company in a year—the end date of the last financial year of the company that ends before 1 April of that year.

Clerk to the Executive Council

COUNCIL CHAMBER

2020

Explanatory Note

This Regulation prescribes the following matters in relation to the fees payable under section 95F(1) of the Insurance Ordinance (Cap. 41) by a designated insurance holding company on designation and at prescribed intervals—

- (a) the payment due dates;
- (b) the prescribed intervals; and
- (c) the amounts of such fees.

Insurance (Prescribed Fees) (Amendment) Regulation 2020

(Made by the Chief Executive in Council under section 128(1) of the Insurance Ordinance (Cap. 41) after consultation with the Insurance Authority)

1. Commencement

This Regulation comes into operation on 29 March 2021.

2. Insurance (Prescribed Fees) Regulation amended

The Insurance (Prescribed Fees) Regulation (Cap. 41 sub. leg. B) is amended as set out in section 3.

3. Schedule amended (fees)

(1) The Schedule, English text, item 6, column 3—

Repeal

“exercise, of—”

Substitute

“exercise of—”.

(2) The Schedule, Chinese text, item 6, column 3—

Repeal

“而”

Substitute

“前提是”.

(3) The Schedule, after item 7B—

Add

“7C. Section 95I(4)(a)

For each application under section 95I(2) of the Ordinance for approval for a person to be a shareholder controller, if the person is to be entitled to exercise, or control the exercise of—

- (a) 50% or more of the voting power at any general meeting of the designated insurance holding company 100,000
- (b) less than 50% of the voting power at any general meeting of the designated insurance holding company 50,000

7D. Section 95K(4)(a)

For each application under section 95K(2) of the Ordinance for approval for a person to be a shareholder controller, if the person is entitled to exercise, or control the exercise of—

- (a) 50% or more of the voting power at any general meeting of the designated insurance holding company 100,000

		(b) less than 50% of the voting power at any general meeting of the designated insurance holding company	50,000
7E.	Section 95L(7)(a)	For each application under section 95L(5) of the Ordinance for approval for a person to be a shareholder controller, if the person is entitled to exercise, or control the exercise of—	
		(a) 50% or more of the voting power at any general meeting of the designated insurance holding company	100,000
		(b) less than 50% of the voting power at any general meeting of the designated insurance holding company	50,000
7F.	Section 95S(4)(a)	For each application for approval of the appointment of a chief executive	18,000
7G.	Section 95S(4)(a)	For each application for approval of the appointment of a director	18,000

7H.	Section 95S(4)(a)	For each application for approval of the appointment of a key person in control functions	18,000
7I.	Section 95ZJ(4)(a)	For each application for approval of a major acquisition	100,000
7J.	Section 95ZL(3)(a)	For each application for approval of an assessment framework for major acquisition	50,000”.
(4)	The Schedule, item 8, column 3, paragraph (c)— Repeal “applies)” Substitute “applies) of an authorized insurer”.		
(5)	The Schedule, item 9, column 3, paragraph (b)— Repeal “applies)” Substitute “applies) of an authorized insurer”.		
(6)	The Schedule, item 22, column 3— Repeal “56A(1)” Substitute “120(1) or (3)”.		

Clerk to the Executive Council

COUNCIL CHAMBER

2020

Explanatory Note

This Regulation amends the Insurance (Prescribed Fees) Regulation (Cap. 41 sub. leg. B) (*principal Regulation*) to—

- (a) introduce new fee items in relation to designated insurance holding companies to the Schedule to the principal Regulation;
- (b) update a cross-reference to a provision in an existing fee item in that Schedule; and
- (c) make minor textual amendments to that Schedule.

**Insurance (Amendment) (No. 2) Ordinance 2020
(Commencement) Notice**

Under section 1(2) of the Insurance (Amendment) (No. 2) Ordinance 2020 (18 of 2020), I appoint 29 March 2021 as the day on which the Ordinance comes into operation.

Secretary for Financial Services and
the Treasury

2020

Insurance (Group Capital) Rules

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Insurance (Group Capital) Rules

(Made by the Insurance Authority under sections 95ZI and 129 of the Insurance Ordinance (Cap. 41))

Part 1

Preliminary

1. Commencement

These Rules come into operation on the day on which section 95ZI of the Insurance (Amendment) (No. 2) Ordinance 2020 (18 of 2020) comes into operation.

2. Interpretation

In these Rules—

eligible group capital resources (合資格集團資本資源), in relation to a supervised group, means the resources and financial instruments of the supervised group which are eligible to be included in the tier 1 group capital or tier 2 group capital of the supervised group, in accordance with rules 6 and 7;

financial instrument (金融工具), in relation to a supervised group member, includes a financial instrument in the form of—

- (a) a written document;
- (b) information which is recorded in the form of any entry in a book of account;
- (c) information which is recorded (whether by means of a computer or otherwise) in a non-legible form but is capable of being reproduced in a legible form; and

(d) any combination of the document and information referred to in paragraphs (a), (b) and (c);

group minimum capital requirement (集團最低資本要求) means the amount determined in accordance with rule 4;

group prescribed capital requirement (集團訂明資本要求) means the amount determined in accordance with rule 5;

laws relating to regulatory capital (與規管資本有關的法律) applicable to a supervised group member that is a regulated entity, means the laws in the jurisdiction in which the supervised group member is authorized as a regulated entity that sets out the eligible capital resources the supervised group member is required to maintain as a regulated entity, whether such amount is set at one level or at more than one level, and which may also set out—

- (a) the resources or financial instruments of the supervised group member which may be counted towards meeting such amount; and
- (b) the method for evaluating such amount and the value of the resources or financial instruments in paragraph (a);

non-regulated entity (非受規管實體) means a supervised group member that is not a regulated entity;

regulated entity (受規管實體), in relation to a supervised group member, means a supervised group member that is authorized under the laws of a jurisdiction to carry on one or more of the following activities in or from that jurisdiction, and which by reason of such authorization is subject to laws relating to regulatory capital in that jurisdiction—

- (a) insurance business;
- (b) banking;
- (c) securities business;

- (d) financial leasing;
- (e) the issuing of credit cards;
- (f) portfolio management;
- (g) investment advisory services;
- (h) custodial and safekeeping services;
- (i) central clearing services;
- (j) activities ancillary to insurance business, banking, or securities business;
- (k) activities similar to any of the activities set out in any of paragraphs (a), (b), (c), (d), (e), (f), (g), (h) and (i),

and a reference to a regulated entity being authorized is a reference to an authorization of any kind including any license, approval, recognition or designation required under such laws to carry on such activities;

tier 1 group capital (一級集團資本) means the amount determined in accordance with rule 7(1);

tier 1 limited group capital (一級有限制集團資本) means the resources and financial instruments that are included in the eligible group capital resources of a supervised group and classified as tier 1 group capital, but which only satisfy the criteria for tier 1 limited group capital in Schedule 1;

tier 2 group capital (二級集團資本) means the amount determined in accordance with rule 7(3).

Part 2

Group Capital Adequacy

3. Group capital adequacy requirements

A designated insurance holding company in relation to its supervised group must ensure that at all times—

- (a) the tier 1 group capital of the supervised group is not less than the group minimum capital requirement of the supervised group; and
- (b) the sum of the tier 1 group capital and the tier 2 group capital of the supervised group is not less than the group prescribed capital requirement of the supervised group.

4. Calculation of the group minimum capital requirement

- (1) Subject to subrule (2) and rule 8, the group minimum capital requirement of a supervised group is the sum of the minimum capital requirements applicable to the supervised group members in the supervised group.
- (2) For the purposes of subrule (1) and subject to rule 8, the minimum capital requirement applicable to a supervised group member in the supervised group—
 - (a) in the case of a supervised group member that is a regulated entity, is the minimum eligible capital resources that the supervised group member is required to maintain in accordance with the laws relating to regulatory capital in the jurisdiction in which the supervised group member is authorized as a regulated entity and which, if not maintained by the supervised group member, may result in the following sanctions being imposed on or taken against the supervised group member under such laws—

- (i) the severest penalty that can be imposed under such laws;
 - (ii) the most extreme intervention measures that can be taken under such laws; or
 - (iii) the withdrawal of the supervised group member's authorization to carry on the whole or any part of its business as a regulated entity under such laws, except for the purpose of discharging its obligations in relation to such business carried on prior to the date of such withdrawal; and
 - (b) in the case of a supervised group member that is a non-regulated entity, is zero.
- (3) Where, in the case of a supervised group member that is a regulated entity, the involved supervisor of the supervised group member in the jurisdiction in which the supervised group member is authorized as a regulated entity has exercised its power under the laws relating to regulatory capital in that jurisdiction, to enhance, increase or apply an add-on to the minimum capital requirement applicable to the supervised group member, then the minimum capital requirement to be included in the group minimum capital requirement for the purposes of subrule (1) must include the enhancement, increase or add-on, as the case may be.
- (4) If the percentage shareholding in a supervised group member held directly or indirectly, by the designated insurance holding company or another supervised group member in the same supervised group, is less than 100%, the percentage of such shareholding multiplied by the minimum capital requirement applicable to the supervised group member is the amount that must be included in the group minimum capital requirement for the purposes of subrule (1).

- (5) Where the Authority pursuant to section 95ZI of the Ordinance varies the group minimum capital requirement applicable to a designated insurance holding company in relation to its supervised group, the group minimum capital requirement of the supervised group must be calculated in accordance with subrules (1), (2), (3) and (4) and incorporate the variation made by the Authority.

5. Calculation of the group prescribed capital requirement

- (1) Subject to subrule (2) and rule 8, the group prescribed capital requirement of a supervised group is the sum of the prescribed capital requirements applicable to the supervised group members in the supervised group.
- (2) For the purposes of subrule (1) and subject to rule 8, the prescribed capital requirement applicable to a supervised group member in the supervised group—
- (a) in the case of a supervised group member that is a regulated entity, is the eligible capital resources the supervised group member is required to maintain in accordance with the laws relating to regulatory capital in the jurisdiction in which the supervised group member is authorized as a regulated entity and which, if maintained by the supervised group member, would not give rise to a power to impose any penalty, sanction or intervention measures against, or withdrawal of authorization of, the supervised group member under the laws relating to regulatory capital in that jurisdiction; and
 - (b) in the case of a supervised group member that is a non-regulated entity, is zero.
- (3) Where, in the case of a supervised group member that is a regulated entity, the involved supervisor of the supervised group member in the jurisdiction in which the supervised group

member is authorized as a regulated entity has exercised its power under the laws relating to regulatory capital in that jurisdiction, to enhance, increase or apply an add-on to the prescribed capital requirement applicable to the supervised group member, then the prescribed capital requirement to be included in the group prescribed capital requirement for the purposes of subrule (1) must include the enhancement, increase or add-on, as the case may be.

- (4) If the percentage shareholding in a supervised group member held directly or indirectly, by the designated insurance holding company or another supervised group member in the same supervised group, is less than 100%, the percentage of such shareholding multiplied by the prescribed capital requirement applicable to the supervised group member is the amount that must be included in the group prescribed capital requirement for the purposes of subrule (1).
- (5) Where the Authority pursuant to section 95ZI of the Ordinance varies the group prescribed capital requirement applicable to a designated insurance holding company in relation to its supervised group, the group prescribed capital requirement of the supervised group must be calculated in accordance with subrules (1), (2), (3) and (4) and incorporate the variation made by the Authority.

6. Eligible group capital resources

- (1) For the purposes of rule 3, a designated insurance holding company must only include the eligible group capital resources of its supervised group in the tier 1 group capital or tier 2 group capital of its supervised group.
- (2) For the purposes of subrule (1) and subject to subrules (3), (4) and (5) and rule 8, the eligible group capital resources of a supervised group must consist of the eligible capital resources of all supervised group members of the supervised group.

- (3) For the purposes of subrule (2)—
 - (a) the eligible capital resources of a supervised group member that is a regulated entity are the resources and financial instruments of the supervised group member that are eligible to be counted towards satisfying the minimum capital requirement or prescribed capital requirement applicable to the supervised group member in accordance with the laws relating to regulatory capital in the jurisdiction in which the supervised group member is authorized as a regulated entity; and
 - (b) the eligible capital resources of a supervised group member that is a non-regulated entity are—
 - (i) the resources of the supervised group member that are classified as equity in accordance with recognized international accounting standards, less goodwill and any other intangible assets; and
 - (ii) the financial instruments of the supervised group member that are not included in subparagraph (i), but which satisfy the criteria in Schedule 1 or 2.
- (4) If the percentage shareholding in a supervised group member held directly or indirectly, by the designated insurance holding company or another supervised group member in the same supervised group (*relevant shareholding percentage*), is less than 100%, the designated insurance holding company, in relation to the eligible capital resources of that supervised group member, must only include in the eligible group capital resources of its supervised group the value of the eligible capital resources of that supervised group member multiplied by the relevant shareholding percentage.
- (5) The eligible group capital resources of a supervised group which a designated insurance holding company may include for the purposes of rule 3 is subject to any variation the Authority

may apply pursuant to section 95ZI of the Ordinance in relation to their eligibility or value to be included for the purposes of that rule.

(6) In this rule—

recognized international accounting standards (認可的國際會計準則) means the International Financial Reporting Standards set by the International Accounting Standards Board.

7. Tiering of eligible group capital

(1) Subject to subrule (2), tier 1 group capital of the supervised group of a designated insurance holding company comprises the sum of the following eligible group capital resources of the supervised group—

(a) in the case of a supervised group member that is a regulated entity—

(i) if the laws relating to regulatory capital in the jurisdiction in which the supervised group member is authorized as a regulated entity apply a tiering approach to regulatory capital, the eligible capital resources of the supervised group member included in the highest tier of regulatory capital in accordance with such laws;

(ii) if the laws relating to regulatory capital in the jurisdiction in which the supervised group member is authorized as a regulated entity do not apply a tiering approach to regulatory capital, the eligible capital resources of the supervised group member;

(b) in the case of a supervised group member that is a non-regulated entity, the eligible capital resources of the supervised group member that satisfy the criteria in Schedule 1.

(2) The amount of eligible capital resources that only satisfy the criteria for tier 1 limited group capital in Schedule 1 and that are eligible capital resources of supervised group members that are non-regulated entities must not exceed 10% of the group minimum capital requirement of the supervised group.

(3) Tier 2 group capital of the supervised group of a designated insurance holding company comprises the sum of the following eligible group capital resources of the supervised group—

(a) in the case of a supervised group member that is a regulated entity, if the laws relating to regulatory capital in the jurisdiction in which the supervised group member is authorized as a regulated entity apply a tiering approach to regulatory capital, the eligible capital resources of the supervised group member which are included in a tier of regulatory capital in accordance with such laws other than the highest tier of regulatory capital; and

(b) in the case of a supervised group member that is a non-regulated entity—

(i) the value of any tier 1 group capital that only satisfies the criteria for tier 1 limited group capital in Schedule 1 and which exceeds 10% of the group minimum capital requirement of the insurance group; and

(ii) the eligible capital resources of the supervised group member that satisfy the criteria in Schedule 2 but not Schedule 1.

(4) In this rule—

highest tier of regulatory capital (最高級別的規管資本), in relation to the laws relating to regulatory capital in a jurisdiction in which the supervised group member is authorized as a regulated entity, where such laws apply a tiering approach to regulatory capital, means the category or sub-

category of regulatory capital to which the highest quality of capital is allocated in terms of—

- (a) the resource or financial instrument being able to absorb losses on a going-concern basis and in winding-up;
- (b) the resource or financial instrument being perpetual and not having any terms or conditions which provide an incentive for the issuer to redeem the resource or financial instrument;
- (c) the interests of the holders of the resource or financial instrument being subordinated to the policy holders and other non-subordinated creditors of the supervised group member;
- (d) the resource or financial instrument being fully paid-up; and
- (e) the resource being free from mandatory payments or encumbrances;

tiering approach to regulatory capital (按分級方法釐定規管資本) means that the laws relating to regulatory capital in the jurisdiction in which the supervised group member is authorized as a regulated entity that categorize regulatory capital into different tiers, based on the following qualities of capital—

- (a) the extent to which the resource or financial instrument can absorb losses on a going-concern basis and in winding-up;
- (b) the extent to which the resource or financial instrument is perpetual or has any terms and conditions which provide an incentive for the issuer to redeem the resource or financial instrument;
- (c) the extent to which the interests of the holders of the resource or financial instrument are subordinated to the

policy holders and other non-subordinated creditors of the supervised group member;

- (d) the extent to which the resource or financial instrument is fully paid-up; and
- (e) the extent to which the capital element is free from mandatory payments or encumbrances.

8. Treatment of double-counting

- (1) A designated insurance holding company—
 - (a) must not include any resource or financial instrument of a supervised group member in the eligible group capital resources of its supervised group more than once;
 - (b) when allocating the eligible group capital resources of its supervised group to the tier 1 group capital, tier 1 limited group capital or tier 2 group capital in accordance with this rule, must not allocate any resource or financial instrument of any supervised group member, or any part of the value of any resource or financial instrument of any supervised group member, more than once; and
 - (c) without limiting paragraphs (a) and (b), must follow subrules (2), (3), (4), (5), (6) and (7) when calculating the group minimum capital requirement, group prescribed capital requirement and eligible group capital resources of its supervised group and when allocating the eligible group capital resources of its supervised group to tier 1 group capital, tier 1 limited group capital or tier 2 group capital.
- (2) Where a supervised group member (*first supervised group member*) is the holding company of another supervised group member (*second supervised group member*) in its supervised group and the minimum capital requirement applicable to the first supervised group member as described in rule 4(2) is

determined by consolidating the assets, liabilities and capital resources of both the first supervised group member and the second supervised group member, then—

- (a) the minimum capital requirement of the first supervised group member must be included in the group minimum capital requirement of its supervised group for the purposes of rule 4(1);
 - (b) the minimum capital requirement of the second supervised group member must not be included in the group minimum capital requirement of its supervised group for the purposes of rule 4(1); and
 - (c) the capital resources of the second supervised group member must only be included in the eligible group capital resources of its supervised group for the purposes of rule 6(1) if and only to the extent that such resources are eligible to be counted towards satisfying the minimum capital requirement applicable to the first supervised group member.
- (3) Where a supervised group member (*first supervised group member*) is the holding company of another supervised group member (*second supervised group member*) in its supervised group and the prescribed capital requirement applicable to the first supervised group member as described in rule 5(2) is determined by consolidating the assets, liabilities and capital resources of both the first supervised group member and the second supervised group member, then—
- (a) the prescribed capital requirement of the first supervised group member must be included in the group prescribed capital requirement of its supervised group for the purposes of rule 5(1);
 - (b) the prescribed capital requirement of the second supervised group member must not be included in the

group prescribed capital requirement of its supervised group for the purposes of rule 5(1); and

- (c) the capital resources of the second supervised group member must only be included in eligible group capital resources of its supervised group for the purposes of rule 6(1) if and only to the extent that such resources are eligible to be counted towards satisfying the prescribed capital requirement applicable to the first supervised group member.
- (4) The eligible capital resources of the first and second supervised group members as described in subrules (2) and (3), which are included in the eligible group capital resources of their supervised group, must be allocated to the tier 1 group capital, tier 1 limited group capital or tier 2 group capital of the supervised group in accordance with rule 7, on the basis that such resources are treated as the eligible capital resources of the first supervised group member.
- (5) Where a supervised group member is a regulated entity in more than one jurisdiction, including the jurisdiction in which it is incorporated or formed, then—
- (a) for the purposes of rule 4(1), only the minimum capital requirement applicable to the supervised group member in the jurisdiction where it is incorporated or formed must be included in the group minimum capital requirement of its supervised group;
 - (b) for the purposes of rule 5(1), only the prescribed capital requirement applicable to the supervised group member in the jurisdiction where it is incorporated or formed must be included in the group prescribed capital requirement of its supervised group;
 - (c) for the purposes of rule 6(1), only capital resources of the supervised group member which are eligible to be

- counted towards satisfying the minimum capital requirement or prescribed capital requirement, as the case may be, applicable to the supervised group member in the jurisdiction where it is incorporated or formed must be included in the eligible group capital resources of its supervised group; and
- (d) for the purposes of rule 7, the capital resources of the supervised group member which are part of the eligible group capital resources of its supervised group must be allocated to the tier 1 group capital, tier 1 limited group capital or tier 2 group capital of the supervised group, as the case may be, by applying the laws relating to regulatory capital, as described in that rule, in the jurisdiction in which the supervised group member is incorporated or formed.
- (6) Where a supervised group member is a regulated entity only in jurisdictions other than the jurisdiction in which it is incorporated or formed, then—
- (a) for the purposes of rule 4(1), only the minimum capital requirement applicable to the supervised group member in the jurisdiction where it is a regulated entity or, if it is a regulated entity in more than one jurisdiction, the sum of the minimum capital requirements in the jurisdictions where it is a regulated entity, must be included in the group minimum capital requirement of its supervised group;
- (b) for the purposes of rule 5(1), only the prescribed capital requirement applicable to the supervised group member in the jurisdiction where it is a regulated entity or, if it is a regulated entity in more than one jurisdiction, the sum of the prescribed capital requirements in the jurisdictions where it is a regulated entity, must be included in the

- group prescribed capital requirement of its supervised group;
- (c) for the purposes of rule 6(1)—
- (i) the resources and financial instruments of the supervised group member which are eligible to be counted towards satisfying the minimum capital requirements or prescribed capital requirements, as the case may be, applicable to the supervised group member in the jurisdictions where the supervised group member is a regulated entity; and
- (ii) the resources and financial instruments of the supervised group member, in addition to those referenced in subparagraph (i), which meet the requirements stated in rule 6(3)(b),
- must be included in the eligible group capital resources of its supervised group; and
- (d) for the purposes of rule 7—
- (i) the capital resources of the supervised group member which are included in the eligible group capital resources of its supervised group by reason of paragraph (c)(i) must be allocated to the tier 1 group capital, tier 1 limited group capital or tier 2 group capital of the supervised group, as the case may be, on the basis that the supervised group member is a regulated entity and the laws relating to regulatory capital are those applicable in the jurisdiction in which the supervised group member is a regulated entity; and
- (ii) the capital resources of the supervised group member which are included in the eligible group capital resources of its supervised group by reason of paragraph (c)(ii) must be allocated to the tier 1

- group capital, tier 1 limited group capital or tier 2 group capital of the supervised group, as the case may be, on the basis that the supervised group member is a non-regulated entity.
- (7) For the purposes of rule 6(1), to the extent the following amounts are included in the eligible group capital resources of a designated insurance holding company or its supervised group members, the designated insurance holding company must deduct such amounts from the eligible group capital resources of its supervised group—
- (a) the amount of any direct, indirect or synthetic holding by a supervised group member in the shares of or any financial instrument issued by another supervised group member; and
 - (b) the amount of any direct, indirect or synthetic holding by a supervised group member in its own shares or any financial instrument which it has issued.
- (8) For the purposes of subrule (7), the holding by a supervised group member in a share or financial instrument is indirect, where—
- (a) the share or instrument is not held directly; but
 - (b) the loss of value in the share or instrument will result in a loss to the supervised group member substantially equivalent to the loss in the value of a direct holding.
- (9) For the purposes of subrule (7), the holding by a supervised group member in a share or financial instrument (*first financial instrument*) is synthetic where the supervised group member holds another financial instrument the value of which is linked to the share or the first financial instrument.

9. Transitional arrangements in relation to group capital

- (1) This rule applies to any financial instrument—
 - (a) issued by a designated insurance holding company or a supervised group member in the supervised group of the designated insurance holding company, before the company's date of designation; and
 - (b) that does not qualify for inclusion in the eligible group capital resources of the supervised group in accordance with rule 6.
- (2) In the case of any financial instrument to which subrule (1) applies, the designated insurance holding company may make an application in writing to the Authority for—
 - (a) approval for the financial instrument to be included as part of the eligible group capital resources of its supervised group; and
 - (b) if such approval is granted, a direction as to whether the financial instrument should be tier 1 group capital of the supervised group or tier 2 group capital of the supervised group.
- (3) A designated insurance holding company which applies under subrule (2) must provide the Authority with any information that the Authority reasonably requires to enable it to consider the application.
- (4) On an application being made under subrule (2), the Authority—
 - (a) may—
 - (i) approve the application for the financial instrument to be included as part of the eligible group capital resources of the supervised group of the designated insurance holding company, subject to such conditions as the Authority may impose including,

- but not limited to, conditions as to the amount of the financial instrument which may be included; and
- (ii) direct that the financial instrument be tier 1 group capital or tier 1 limited group capital for the supervised group or tier 2 group capital for the supervised group; or
- (b) subject to subrules (5) and (6), may reject the application.
- (5) If the Authority intends to reject an application mentioned in subrule (2), the Authority must serve on the designated insurance holding company a preliminary notice stating—
- (a) that the Authority is considering rejecting the application;
 - (b) the reasons why the Authority is considering doing so; and
 - (c) that the designated insurance holding company may, within the period specified in the preliminary notice—
 - (i) make written representations to the Authority; and
 - (ii) if the designated insurance holding company so requests, make oral representations to a person appointed for that purpose by the Authority.
- (6) If representations are made under subrule (5), the Authority must take them into account before rejecting the application.
- (7) After deciding on the application, the Authority must give the designated insurance holding company a written notice of the result of the application.
- (8) If the application is rejected, the notice must include a statement of the reasons for the rejection.

10. Determination by the Authority of resources and financial instruments to be eligible group capital resources

- (1) This rule applies to any resource or financial instrument—

- (a) that does not qualify for inclusion in the eligible group capital resources of a supervised group to which a designated insurance holding company belongs in accordance with rule 6; and
 - (b) in the case of a financial instrument, is not a financial instrument to which rule 9(1) applies.
- (2) In the case of any resource or financial instrument to which subrule (1) applies, if either condition 1 or condition 2 in subrule (3) is satisfied, the Authority may, by written notice served on the relevant designated insurance holding company, determine—
- (a) that the resource or financial instrument qualifies for inclusion in the eligible group capital resources of the supervised group to which the company belongs;
 - (b) the amount of such resource or financial instrument which may be included; and
 - (c) that such resource or financial instrument be tier 1 group capital or tier 2 group capital of the supervised group and, if tier 1 group capital, the amount of such resource or instrument that is tier 1 limited group capital.
- (3) The conditions in subrule (2) are as follows—
- (a) condition 1 is that the Authority is satisfied that the resource or financial instrument should qualify for inclusion in the eligible group capital resources of the supervised group in accordance with the principles established by the International Association of Insurance Supervisors;
 - (b) condition 2 is that the Authority is satisfied that the resource or financial instrument should qualify for inclusion in the eligible group capital resources of the

supervised group, taking into account the following criteria—

- (i) the extent to which the resource or financial instrument can absorb losses on a going-concern basis and in winding-up;
 - (ii) the extent to which the resource or financial instrument is perpetual or has any terms and conditions which provide an incentive for the issuer to redeem the resource or financial instrument;
 - (iii) the extent to which the interests of the holders of the resource or financial instrument are subordinated to the policy holders and other non-subordinated creditors of the supervised group;
 - (iv) the extent to which the resource or financial instrument is fully paid-up; and
 - (v) the extent to which the capital element is free from mandatory payments or encumbrances.
- (4) For the purposes of this rule, ***relevant designated insurance holding company*** means any designated insurance holding company of a supervised group which has a supervised group member owning the resource or which is the issuer of the financial instrument that is the subject of a determination under subrule (2).
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Part 3

Supervisory Reporting and Public Disclosure in Relation to Group Capital Adequacy

- 11. Submission of reports on group capital adequacy to the Authority**
- (1) A designated insurance holding company in relation to its supervised group must prepare a report (***group capital adequacy report***) containing the following information as at 31 December (***reporting date***) of each year during which it is a designated insurance holding company—
 - (a) the group minimum capital requirement of the supervised group;
 - (b) the group prescribed capital requirement of the supervised group;
 - (c) the amount of any variation made by the Authority pursuant to section 95ZI of the Ordinance to the capital requirement applicable to a designated insurance holding company in relation to its supervised group;
 - (d) the eligible group capital resources of the supervised group;
 - (e) the tier 1 group capital of the supervised group;
 - (f) the tier 1 limited group capital of the supervised group;
 - (g) the tier 2 group capital of the supervised group;
 - (h) a breakdown of the information in paragraphs (a), (b), (c), (d), (e), (f) and (g) in relation to each material supervised group member in the supervised group; and
 - (i) any material changes to the information specified in paragraphs (a), (b), (c), (d), (e), (f) and (g) during the

period commencing from the reporting date of the immediately preceding group capital adequacy report and ending on the reporting date of the current group capital adequacy report, including an analysis of the reasons for such changes.

- (2) If the Authority specifies a form for the group capital adequacy report mentioned in subrule (1), a designated insurance holding company must prepare its group capital adequacy report in accordance with such specified form.
- (3) The Authority may, at the request in writing of a designated insurance holding company, modify or vary any of the requirements under subrule (1) in relation to that designated insurance holding company in such respects and for such period as the Authority and the designated insurance holding company may agree, and during any period when any such modification or variation is in force, the reference in that subrule must, as respects that designated insurance holding company, be construed as a reference to that subrule as so modified or varied.
- (4) Subject to subrule (5), a designated insurance holding company in relation to its supervised group must submit to the Authority—
 - (a) its group capital adequacy report signed by 2 directors and a chief executive of the designated insurance holding company, declaring that to the best of their knowledge and belief, the information in the group capital adequacy report is true and correct; and
 - (b) a copy of its group capital adequacy report in text-searchable electronic form, within 5 months after the reporting date to which the group capital adequacy report relates.
- (5) The Authority may, at the request in writing of a designated insurance holding company, extend the period in subrule (4) by

such period as the Authority thinks fit, not exceeding 3 months, if the Authority considers that the circumstances are such that a longer period than 5 months should be allowed.

- (6) For the purposes of preparing its group capital adequacy report in accordance with subrule (1) and subject to any variation made by the Authority under subrule (7), a designated insurance holding company must determine a supervised group member of its supervised group to be a material supervised group member if—
 - (a) the eligible capital resources of the supervised group member are greater than or equal to 5% of the eligible group capital resources of the supervised group as at—
 - (i) the reporting date of the immediately preceding group capital adequacy report in relation to the supervised group; or
 - (ii) 31 December immediately preceding the reporting date of the group capital adequacy report being prepared, if there is no immediately preceding group capital adequacy report in relation to the supervised group; or
 - (b) the assets or liabilities of the supervised group member are greater than or equal to 5% of the assets or liabilities, as the case may be, of the supervised group as at—
 - (i) the reporting date of the immediately preceding group capital adequacy report in relation to the supervised group; or
 - (ii) 31 December immediately preceding the reporting date of the group capital adequacy report being prepared, if there is no immediately preceding group capital adequacy report in relation to the supervised group.

- (7) The Authority may, at the request in writing of a designated insurance holding company, vary the supervised group members of its supervised group that are material supervised group members for the purposes of subrule (1).

12. Report to the Authority of certain events

- (1) A designated insurance holding company in relation to its insurance group must forthwith notify the Authority on the directors, chief executive or any key person in control functions of the designated insurance holding company—
- (a) reaching a view that it is likely that the designated insurance holding company in relation to its supervised group will contravene rule 3(a) or (b);
 - (b) knowing or having reason to believe that a contravention by the designated insurance holding company of rule 3(a) or (b) has occurred; or
 - (c) knowing or having reason to believe that a significant event has occurred in relation to the supervised group.
- (2) Within 14 days of a notification being provided to the Authority in accordance with subrule (1), the designated insurance holding company must furnish the Authority with a report in writing setting out all particulars of the notified case that are available to it.
- (3) For the purposes of this rule—
- significant event** (重大事件), in relation to a supervised group, means—
- (a) a failure by a designated insurance holding company to comply substantially with a requirement imposed upon it by or under the Ordinance, any rules or regulations made under the Ordinance, including requirements relating to

- its solvency position, governance and risk management, or supervisory reporting and disclosures;
- (b) conviction of a criminal offence by any supervised group member of the designated insurance holding company's supervised group whether in or outside Hong Kong;
 - (c) material breaches of any statutory requirements by any supervised group member of the supervised group located outside of Hong Kong that could lead to supervisory or enforcement action by an involved supervisor;
 - (d) a loss that is reasonably likely to cause any supervised group member of the supervised group to be unable to comply with the capital requirement applicable to it; or
 - (e) an incident that is reasonably likely to have a material adverse impact on the capital position, liquidity position, business, or risk exposure of the supervised group of a designated insurance holding company.

13. Public disclosure in relation to group capital

- (1) Subject to subrules (4) and (5), within 5 months after the financial year end date of a designated insurance holding company, the company must publish on its website the following information in relation to its supervised group—
- (a) the profile of the supervised group;
 - (b) a description of the corporate governance framework established and implemented by the designated insurance holding company in relation to its supervised group;
 - (c) the technical provisions of the supervised group as reflected in the consolidated financial statements for the financial year submitted to the Authority by the designated insurance holding company in respect of its supervised group;

- (d) a description of the various risk exposures of the supervised group and how these risks are managed;
 - (e) a description of the financial instruments and other investments of the supervised group;
 - (f) a description of how the designated insurance holding company ensures that the assets of its supervised group are managed so that such assets are sufficient to meet the liabilities of the group as they fall due;
 - (g) the adequacy of the eligible group capital resources of the supervised group to meet the regulatory capital requirements applicable to the supervised group;
 - (h) a description of the financial performance of the supervised group; and
 - (i) a description of the material intra-group transactions of the supervised group.
- (2) Subject to subrule (6), a designated insurance holding company must provide the information in subrule (1) to any member of the public who requests it in writing within 10 days of such written request being received.
- (3) If the Authority specifies a form for the disclosure which is required to be made in subrule (1), a designated insurance holding company must prepare and make such disclosure in accordance with such specified form.
- (4) The Authority may, at the request in writing of a designated insurance holding company, extend the period in subrule (1) by such period as the Authority thinks fit, not exceeding 3 months, if the Authority considers that the circumstances are such that a longer period than 5 months should be allowed.
- (5) If the supervised group to which the designated insurance holding company belongs is not an internationally active insurance group, the Authority may, by notice in writing to the

- company, vary the information which the company is required to publish under subrule (1), including, but not limited to, allowing the company not to publish any such information for such period as the Authority may specify in the notice.
- (6) If, pursuant to subrule (5), the Authority has varied the information which a designated insurance holding company is required to publish under subrule (1), the company's obligation to disclose the information under subrule (2) only applies to the information which the company is required to publish under subrule (1) as varied by the Authority.
- (7) In this rule—
- financial year end date** (財政年度終結日期), in relation to a designated insurance holding company, means the date up to which its most recent annual consolidated financial statements, as referred to in section 95ZH of the Ordinance, have been prepared;
- internationally active insurance group** (國際活躍保險集團), in relation to a supervised group, means an insurance group which has been identified by a group supervisor as an internationally active insurance group in accordance with the principles established by the International Association of Insurance Supervisors;
- material intra-group transaction** (重大集團內部交易), in relation to a designated insurance holding company, means—
- (a) a transaction between supervised group members where the total value of the transaction is greater than or equal to 5% of the eligible group capital resources of the supervised group; or
 - (b) a transaction between supervised group members which, in accordance with the governance framework established by the designated insurance holding company in relation to its supervised group which employs risk-based

methodologies to quantify the potential adverse impact of such transactions, is determined in accordance with that framework to be material.

Schedule 1

[rr. 2, 6 & 7 & Sch. 2]

Tier 1 Group Capital

1. Tier 1 group capital for the purposes of rule 7(1)(b)

For the purposes of rule 7(1)(b), the following eligible capital resources of a supervised group member that is a non-regulated entity, are tier 1 group capital of the supervised group to which the supervised group member belongs—

- (a) the supervised group member's retained earnings;
- (b) the amount standing to the credit of the supervised group member's share premium account (if any) resulting from the issuance of the supervised group member's instruments included in tier 1 group capital and other forms of contributed surplus earned from sources other than profits;
- (c) other accumulated comprehensive income of the supervised group member;
- (d) the supervised group member's unrestricted and restricted reserves;
- (e) the fair market value of the supervised group member's equity-settled employee stock options provided that a corresponding expense is recorded in the profit and loss account of the supervised group member in accordance with applicable accounting standards;
- (f) other eligible capital resources of the supervised group member allocated to equity, such as minority or non-controlling interests representing third party equity

- interests in consolidated subsidiaries and any interest generated by share issuance and subsequent changes in reserves of the issuing entities, if applicable;
- (g) financial instruments of the supervised group member that satisfy all of the following characteristics—
- (i) the instrument is fully paid-up;
 - (ii) the instrument is in the form of issued capital such that it is the first instrument to absorb losses as they occur;
 - (iii) the instrument entitles the holder of the instrument to the most subordinated claim in a liquidation of the supervised group where the holder of the instrument is entitled to a claim on the residual assets of the supervised group that, in the event of its liquidation, and after the payment of all senior claims, is proportional to the holder's share of issued share capital and is not subject to a cap (that is, the holder has an unlimited and variable claim);
 - (iv) the instrument is perpetual and does not have a maturity date;
 - (v) the principal amount of the instrument is not repaid outside winding-up, other than by means of discretionary repurchases permitted under applicable law;
 - (vi) the supervised group member has not created and not done anything to create an expectation at issuance that the financial instrument will be bought back, redeemed or cancelled, and there are no statutory or contractual terms that might reasonably give rise to such an expectation;

- (vii) there are no circumstances under which a distribution is obligatory and non-payment of a distribution is, therefore, not an event of default;
- (viii) distributions are paid only out of distributable items, including retained earnings;
- (ix) the instrument is neither undermined nor rendered ineffective by encumbrances and in particular, priority of claims should not be compromised by guarantees or security arrangements given by either the supervised group member or another related entity over which that supervised group member exercises control or significant influence, for the benefit of investors;
- (x) no supervised group member in the supervised group or a related party over which any supervised group member exercises control or significant influence has purchased the instrument, nor has a supervised group member directly or indirectly funded the purchase of the instrument;
- (xi) the paid-up amount of the instrument is recognized as equity capital and is not recognized as a liability where a determination that liabilities exceed assets constitutes a test of insolvency.

2. Tier 1 limited group capital for the purposes of rule 7(2)

For the purposes of rule 7(2), a financial instrument of a supervised group member that is a non-regulated entity is tier 1 limited group capital of the supervised group to which the supervised group member belongs if the instrument does not satisfy all the characteristics in section 1(g) of this Schedule, but satisfies all of the following characteristics—

- (a) the instrument is fully paid-up;

- (b) the instrument is subordinated to policy holders and other non-subordinated creditors and holders of financial instruments that are tier 2 group capital of the supervised group;
- (c) the instrument is perpetual and does not have a maturity date;
- (d) the instrument does not contain any incentive to redeem, such as a step-up;
- (e) the instrument—
 - (i) is only callable at the option of the issuer after at least 5 years from the date of issue (so that the instrument is not retractable by the holder), subject to a provision for extraordinary calls which allows for calls in the first 5 years after issuance of the instrument in cases of regulatory or tax events, provided that the instrument is replaced by another of similar or better quality; and
 - (ii) if called in any of the circumstances mentioned in subparagraph (i), may only be redeemed with prior supervisory approval;
- (f) the instrument may be repurchased by the issuer at any time with prior supervisory approval;
- (g) the supervised group member has not created and not done anything to create an expectation at issuance that the financial instrument will be bought back, redeemed or cancelled, or that the supervised group member will exercise any right to call the instrument, or that the repurchase or redemption will receive supervisory approval, and there are no statutory or contractual terms that might reasonably give rise to such an expectation;

- (h) the supervised group member has full discretion at all times to forego or cancel distributions and the dividends and coupon payments are non-cumulative, and the supervised group member's obligation to pay missed distributions is forever extinguished and non-payment is not an event of default;
- (i) distributions are paid out of distributable items, including retained earnings;
- (j) the instrument does not have distributions that are tied or linked to the credit standing or financial condition of the supervised group member or another related entity, such that those distributions may accelerate winding-up;
- (k) the instrument is neither undermined nor rendered ineffective by encumbrances, and in particular, priority of claims should not be compromised by guarantees or security arrangements given by either the supervised group member or a related entity over which the supervised group member exercises control or significant influence, for the benefit of investors;
- (l) no supervised group member in the supervised group or a related party over which any supervised group member exercises control or significant influence has purchased the instrument, nor has a supervised group member directly or indirectly funded the purchase of the instrument;
- (m) the paid-in amount is recognized as equity capital and is not recognized as a liability where a determination that liabilities exceed assets constitutes a test of insolvency;
- (n) the instrument cannot possess features that hinder recapitalization, such as provisions that require the issuer to compensate investors if a new instrument is issued at a lower price during a specified time frame;

- (o) if the instrument is not issued out of an operating entity (being an entity established to conduct business with clients with a view to making a profit in its own right) or the designated insurance holding company or the holding company of the designated insurance holding company, proceeds must be immediately available without limitation to an operating entity or the designated insurance holding company or the holding company of the designated insurance holding company in a form that meets or exceeds all of the other criteria for inclusion in tier 1 group capital for which there is a limit as stated in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m) and (n).
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Schedule 2

[rr. 6 & 7]

Tier 2 Group Capital

1. Tier 2 group capital for the purposes of rule 7(3)(b)—eligible group capital resources that are financial instruments

For the purposes of rule 7(3)(b), a financial instrument which is an eligible group capital resource of a supervised group member that is a non-regulated entity is tier 2 group capital of the supervised group to which the supervised group member belongs if it does not satisfy the characteristics in Schedule 1, but satisfies all of the following characteristics—

- (a) the instrument is fully paid-up;
- (b) the instrument is subordinated—
 - (i) to the policy holders and other non-subordinated creditors of the supervised group and the form of subordination is contractual subordination; or
 - (ii) to the policy holders of the supervised group, the form of subordination is structural subordination and approval from the Authority has been obtained under section 3(4) of this Schedule;
- (c) the instrument has an initial maturity of at least 5 years with its effective maturity date defined to be the earlier of the following (which may only occur after the initial 5 years)—
 - (i) the first occurrence of a call option together with a step-up or other incentive to redeem the instrument; and

- (ii) the contractual maturity date fixed in the instrument's terms and conditions;
- (d) the instrument's availability to absorb losses as it nears its effective maturity is reflected by either—
 - (i) decreasing the amount of the instrument qualifying as tier 2 group capital from 100% to 0% on a straight-line basis in the final 5 years prior to maturity; or
 - (ii) the existence of a lock-in clause, which is a requirement for the supervised group member to suspend repayment or redemption if it is in breach (or would be in breach in the event of repayment or redemption) of its applicable regulatory capital requirement, including the requirements in rule 3(a) or (b) which apply to a designated insurance holding company;
- (e) subject to paragraph (f) below, the instrument is only callable at the option of the issuer after at least 5 years from the date of issue (such that the instrument is not retractable by the holder) and prior supervisory approval is required for—
 - (i) any redemption prior to contractual maturity, in the case of an instrument with a contractual maturity date; or
 - (ii) any redemption, in the case of an instrument which does not have a contractual maturity date;
- (f) the instrument may be callable within the first 5 years from the date of issue, provided that—
 - (i) any such call is at the option of the issuer only (such that the instrument is not retractable by the holder);

- (ii) any such call is subject to supervisory approval by the Authority; and
- (iii) the called instruments must be replaced in full before or at redemption by a new issuance of instruments of the same or higher quality;
- (g) the instrument may be repurchased by the issuer at any time with prior supervisory approval;
- (h) the supervised group member has not created and not done anything to create an expectation at issuance that the financial instrument will be bought back, redeemed or cancelled, or that the supervised group member will exercise any right to call the instrument, or that the repurchase or redemption will receive supervisory approval, and there are no statutory or contractual terms that might reasonably give rise to such an expectation prior to contractual maturity;
- (i) the instrument does not have distributions that are tied or linked to the credit standing or financial condition of that supervised group member or another related entity, such that those distributions may accelerate the winding-up;
- (j) the instrument does not give holders rights to accelerate the repayment of future scheduled principal or coupon payments, except in winding-up;
- (k) the instrument is neither undermined nor rendered ineffective by encumbrances, and in particular, priority of claims should not be compromised by guarantees or security arrangements given by either the supervised group member or a related entity over which the supervised group member exercises control or significant influence, for the benefit of investors;
- (l) no supervised group member in the supervised group or a related party over which any supervised group member

exercises control or significant influence has purchased the instrument, nor has a supervised group member directly or indirectly funded the purchase of the instrument;

- (m) if the financial instrument is not issued out of an operating entity (being an entity established to conduct business with clients with a view to making a profit in its own right) or the designated insurance holding company or the holding company of the designated insurance holding company (for example, it is issued out of a special purpose vehicle controlled by the designated insurance holding company), proceeds must be immediately available without limitation to an operating entity or the designated insurance holding company or the holding company of the designated insurance holding company in a form that meets or exceeds all of the other criteria for inclusion in paid-up tier 2 group capital as stated in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k) and (l).

2. Tier 2 group capital for the purposes of rule 7(3)(b)—eligible group capital resources other than financial instruments

For the purposes of rule 7(3)(b), the following eligible group capital resources of a supervised group member that is a non-regulated entity are tier 2 group capital of the supervised group to which the supervised group member belongs—

- (a) share premium resulting from the issuance of financial instruments included in tier 2 group capital;
- (b) the value of encumbered assets in excess of the on-balance sheet liabilities secured by the encumbered assets; and
- (c) the value of the incremental capital requirement for encumbered assets and secured liabilities under the laws

relating to regulatory capital which are excluded from tier 1 group capital.

3. Approval of financial instruments subject to structural subordination

- (1) For the purposes of section 1(b)(ii) of this Schedule, a designated insurance holding company must not include in the tier 2 group capital of its supervised group, a financial instrument that is subordinated to the policy holders of the supervised group with the form of subordination being structural subordination, unless the inclusion has been approved by the Authority under subsection (4).
- (2) A designated insurance holding company may apply in accordance with subsection (3) for an approval from the Authority for the inclusion of the financial instrument mentioned in subsection (1) in the tier 2 group capital of its supervised group.
- (3) An application under subsection (2) must—
 - (a) be made in writing;
 - (b) be served on the Authority; and
 - (c) contain particulars relating to the financial instrument that is the subject of the application, demonstrating how it satisfies the requirements referenced in subsection (4)(a), (b) and (c).
- (4) The Authority may, on an application made under subsection (2) by a designated insurance holding company, approve the financial instrument specified in the application for inclusion in the tier 2 group capital of its supervised group if the Authority is satisfied that the financial instrument—
 - (a) is subject to conditions or other arrangements that are adequate to ensure subordination of the instrument to the

- policy holders of the supervised group member which carries on insurance business, to which the proceeds of the instrument have been down-streamed;
- (b) satisfies the principles established by the International Association of Insurance Supervisors relating to structural subordination of financial instruments prevailing at the time of the application; and
 - (c) satisfies the other characteristics in section 1 of this Schedule which apply to a financial instrument with structural subordination.
- (5) The Authority may grant the approval of an application mentioned in subsection (2) subject to such conditions as the Authority may impose including, but not limited to, conditions as to the amount of the financial instrument which may be included in the tier 2 group capital of the supervised group.
- (6) After deciding on the application, the Authority must give the designated insurance holding company a written notice of the result of the application.
- (7) If the application is rejected, the notice must include a statement of reasons for the rejection.

4. Meaning of structural subordination

For the purposes of this Schedule—

structural subordination (結構性後償債權), in relation to a financial instrument issued by a company which is a member of an insurance group, means that the financial instrument satisfies the principles for structural subordination established by the International Association of Insurance Supervisors and includes subordination which is achieved by the proceeds from the issuance of the instrument by the member of the insurance group (*up-stream company*) being down-streamed into another company in the same insurance group (*down-stream company*)

resulting in any claims by the up-stream company and the holders of the financial instrument, in the event of a winding-up of the down-stream company, being subordinated to the claims of the policy holders of the down-stream company.

Insurance Authority

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Explanatory Note

The main objective of these Rules is, for the purposes of section 95ZI(1) 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*); requirements for a DIHC to report to the Insurance Authority (*Authority*) on capital related information; and requirements for a DIHC to disclose to the public on capital related information. These Rules are made following public consultation and form part of the regime for the regulation and supervision of insurance groups by the Authority.

2. Rule 1 provides for commencement.
3. Rule 2 defines terms and expressions for the interpretation of these Rules.
4. Rule 3 introduces the Group Minimum Capital Requirement (*GMCR*) and Group Prescribed Capital Requirement (*GPCR*) which are applicable to a DIHC in relation to its insurance group. Rule 3 requires a DIHC to ensure, in relation to its insurance group, that—
 - (a) tier 1 group capital must at all times not be lower than the GMCR; and
 - (b) the sum of tier 1 group capital and tier 2 group capital must at all times not be lower than the GPCR.
5. Rule 4 provides that the GMCR is formulated as the sum of the minimum capital requirements applicable to each of the members in the insurance group (*supervised group members*).
6. Rule 5 provides that the GPCR is formulated as the sum of the prescribed capital requirements applicable to the supervised group members in the insurance group.
7. Rule 6 provides that only eligible group capital resources may be part of the insurance group's tier 1 group capital or tier 2 group capital.

The eligible group capital resources must consist of the eligible capital resources of all the supervised group members in the insurance group.

8. Rule 7 sets out the tiering of eligible group capital resources. In addition to tier 1 and tier 2, tier 1 group capital has a subset of tier 1 limited group capital, which cannot exceed 10% of the GMCR.
9. Rule 8 sets out the adjustments that need to be made to the GMCR, GPCR or eligible group capital resources, to avoid double-counting.
10. Rule 9 sets out the transitional arrangements in relation to the financial instruments that have been issued before the company's date of designation and which may be considered as eligible group capital resources subject to the approval by the Authority.
11. Rule 10 provides that the Authority may determine resources and financial instruments to be eligible group capital resources.
12. Rule 11 specifies the requirements of reporting of the group capital adequacy to the Authority.
13. Rule 12 specifies the reporting of significant events in relation to an insurance group to the Authority.
14. Rule 13 specifies the public disclosure requirement related to an insurance group that a DIHC must satisfy.
15. Schedules 1 and 2 set out the criteria for tier 1 group capital and tier 2 group capital for the purposes of rule 7.