

## HONG KONG INSURANCE GROUP-WIDE SUPERVISION FRAMEWORK TO COMMENCE ON 29 MARCH 2021

The Insurance (Amendment) (No. 2) Ordinance 2020 ("**Amendment Ordinance**")<sup>1</sup> amends the Insurance Ordinance to provide for the regulation and supervision of insurance groups by the Insurance Authority ("**IA**") through exercising direct regulatory powers over their Hong Kong-incorporated holding companies. The new group-wide supervision framework in Hong Kong will come into effect on 29 March 2021.

### Background

The existing powers and functions of the IA are limited to the regulation of companies as "single entities" carrying on insurance business in or from Hong Kong ("**authorized insurers**"). In many cases, authorized insurers are subsidiary companies within a wider group of companies, where decisions relating to risk management, control functions, and other significant management and policy decisions, are often carried out at the group level. Currently, the IA is unable to effectively conduct group-wide supervision as it does not have direct regulatory powers over the holding companies of the authorized insurers it regulates.

The International Association of Insurance Supervisors ("**IAIS**") considers it critical for regulators to collaborate at an international level in ensuring consistency and efficiency in the supervision of insurance groups. The Hong Kong government notes that other comparable jurisdictions including the United Kingdom, Australia and Singapore have already put in place group-wide supervisory regimes. In the 2013-2014 Financial Sector Assessment Program, the International Monetary Fund also recommended that Hong Kong should formulate and implement a clear and comprehensive regulatory regime for insurance groups. For reasons above, the government proposed to amend the Insurance Ordinance in order to strengthen Hong Kong's insurance regulatory regime and align with international standards.

To enable the IA to carry out effective and direct group-wide supervision, certain existing powers which the IA has over an authorized insurer will be extended to a Hong Kong-incorporated holding company of an insurance

### Key issues

- The new group-wide supervision regime enables the IA to exercise direct regulatory powers over Hong Kong-incorporated holding companies of insurance groups. The provisions are mainly set out in a new Part XIA of the Insurance Ordinance.
- New shareholder controllers and appointment of the chief executive/specified officers in a designated insurance holding company requires the prior consent of the IA.
- The IA has the powers to conduct inspection and investigation for ascertaining whether a designated insurance holding company and any within scope company comply with the Insurance Ordinance.

<sup>1</sup> A copy of the Amendment Ordinance can be found at <https://www.gld.gov.hk/egazette/pdf/20202430/es12020243018.pdf>. As a result of the introduction of the Amendment Ordinance, the Insurance (Designation and Annual Fees for Designated Insurance Holding Companies) Regulation, Insurance (Prescribed Fees) (Amendment) Regulation 2020 and the Insurance (Group Capital) Rules have also been gazetted on 31 December 2020 and will take effect on 29 March 2021.

group. The IA will also be provided with new powers that are applicable at the holding company level.

## **Designated insurance holding companies**

The government has introduced a framework for the designation of insurance holding companies under which the IA will be able to exercise direct regulatory powers over Hong Kong-incorporated insurance holding companies.

The IA may, by notice published in the Gazette, designate a Hong Kong-incorporated insurance holding company of an authorized insurer that belongs to an insurance group as a designated insurance holding company ("**DIHC**"), provided the IA is the appointed group-wide supervisor<sup>2</sup> of the insurance group, and that the IA considers it appropriate to do so. In its determination for appropriateness the IA may take into account, amongst other things, the number of jurisdictions outside Hong Kong in which the subsidiaries within the insurance group carry on insurance business, the size of the insurance group business and any relevant criteria promulgated by international insurance standard setting bodies. The holding company, which may not have any insurance business, does not itself need to be an authorized insurance company to be a DIHC.

Upon a designation of DIHC, the IA will determine which members of an insurance group will be subject to supervision by the IA ("**supervised group**"). The supervised group is primarily made up of the DIHC, all its subsidiaries, and any other entities that are treated as members of the insurance group to which the DIHC belongs. The IA can include or exclude entities depending on the presence/absence of any close link to the DIHC or other members of the supervised group.

General duties of a DIHC - these include payment of prescribed fees in relation to its designation and, if it has any holding company, maintenance arrangements with its holding company for ensuring its ability to comply with the group-wide supervision regime.

Financial matters of supervised groups - the DIHC will be required to appoint an auditor, submit financial information and returns, and the auditor's reports on the statements. The DIHC will also need to comply with reporting and disclosure, capital and acquisition requirements (see below).

Capital requirements - these include the minimum amount of capital that the supervised group must maintain, the types, tiering and amounts of capital resources of the group that are eligible to be counted and supervisory reporting and public disclosure requirements for a DIHC.

Restriction on major acquisitions - a DIHC must not make or allow a major acquisition without obtaining prior approval of the IA, unless the major acquisition is made solely for investment purposes as part of the insurance business carried on by the supervised group. An exception is where a major acquisition has been assessed through an assessment framework (that is established within the supervised group and approved by the IA) as being non-material to the supervised group.

Winding up of a DIHC - certain matters concerning the winding up of a DIHC are provided under the Companies (Winding Up and Miscellaneous

---

<sup>2</sup> The group-wide supervisor is appointed through cooperation and coordination among the regulators of subsidiary insurance companies located in different jurisdictions, in an insurance group.

Provisions) Ordinance. The IA is entitled to present a petition for the winding up of a DIHC and to be heard in such a petition presented by others.

### **Governance of shareholder controllers and key officers**

Similar to the IA's existing powers over an authorized insurer, the IA's prior consent must be obtained before a person may become a shareholder controller<sup>3</sup> of a DIHC, or to be appointed as the chief executive, director, and key person in control functions ("**specified officers**") of a DIHC. Pre-existing appointments are generally taken to be approved under the relevant sections on the date of designation of the DIHC.

The IA may impose conditions on the approval or revoke an approval if the person is not or is no longer fit and proper to be a shareholder controller or specified officer.

### **Intervention and investigation powers of the IA**

Like the IA's existing powers over an authorized insurer, the IA may exercise intervention measures directly in relation to a DIHC. These include the power to obtain information, require production of documents and give direction to appoint a supervisory manager to manage the affairs, business and property of the DIHC.

In situations where the supervised group is under financial stress, the IA may impose requirements on the DIHC to restrict the transfer of assets of any member of its supervised group to another group member or a related entity of the DIHC.

The IA has the power to conduct inspection and investigation for ascertaining whether a DIHC complies with the requirements imposed under the Insurance Ordinance. The IA may also require the DIHC to ensure that a supervised group member concerned in an inspection carries out certain acts as required.

### **Civil and criminal sanctions against a DIHC**

The disciplinary actions against a DIHC largely follow the existing disciplinary actions against authorized insurers. The IA may take actions against a DIHC if it is guilty of misconduct or the IA considers that a shareholder controller or specified officer of a DIHC is not fit and proper. The DIHC may be reprimanded publicly or privately or ordered to pay a penalty.

The nature of criminal sanctions is also similar to the prevailing arrangements for authorized insurers. A failure to comply with a requirement imposed under the IA's intervention, inspection or investigation powers is an offence. It is also an offence if a person, in purported compliance with a requirement imposed, provides any information, or produces any document, that the person knows to be false or misleading in a material particular.

To ensure checks and balances and accountability of the IA, specified regulatory and disciplinary decisions made by the IA in respect of DIHCs are subject to review by the Insurance Appeals Tribunal.

---

<sup>3</sup> The definition of "shareholder controller" is similar to the definition of "controller" in the Insurance Ordinance - it refers to a person who, alone or with an associate or through a nominee, is entitled to exercise, or control the exercise of, 15% or more of the voting power at any general meeting of the company, but does not include a supervisory manager of the company.

## Implications

In addition to the group-wide supervision framework, the Hong Kong government is also in the process of developing a new regulatory regime for the insurance-linked securities business and to expand the scope of insurable risks of captive insurers set up in Hong Kong<sup>4</sup>, which will further facilitate the development of the Hong Kong insurance industry.

### Authorized insurers

The expansion of the IA's supervisory powers in the Insurance Ordinance will require insurance groups to strengthen their corporate governance, risk management and control mechanisms at a group level (particularly for insurance groups with Hong Kong-incorporated holding companies). Insurance groups should consider the likelihood of its holding and/or group companies being designated by the IA as DIHCs and/or member(s) of a supervised group of DIHC, as well as the implications of such designation (including the shareholder controllers and specified officers requirements as well as capital requirements of DIHCs/ the group).

Whilst the designation of DIHCs are confined to Hong Kong-incorporated holding companies, authorized insurers with non-Hong Kong incorporated holding companies may be impacted by restructuring plans. Authorized insurers should assess the scope of their business that is likely to be subject to the IA's designation and supervision and conduct preparation work required for compliance. Insurance groups may need to consider enhancing their policies and procedures in light of the upcoming changes.

### Financial Investors

Financial investors that are currently controllers of existing authorized insurers and financial investors intending to acquire authorized insurers / insurance groups may be impacted by the group-wide supervision regime. For example, consideration should be given to whether any of the acquiring entity, holding companies and group companies of the financial investor(s) may be designated by the IA for supervision purposes and accordingly, this may have an impact on the transaction/ group holding structure. In addition, major acquisitions by a DIHC would also trigger the requirement to obtain prior approval from the IA – this is relevant if a financial investor intends to acquire any business from a DIHC / supervised group.

### Enforcement

Special attention should be paid to the wide investigative powers granted to the IA over all members of the supervised group of the DIHC. Information or records of any member of the supervised group will be subject to production to the IA (via the DIHC), no matter whether that particular member entity carries out insurance business, or even if the information or records in question might be self-incriminating (the abrogation of the right to silence follows the position of an authorized insurer under an IA investigation). Integrated financial groups may no longer be able to fully ringfence their insurance business, and the associated regulatory exposure, to a specific authorized insurer entity in their group structure.

---

<sup>4</sup> The [relevant bill](#) was passed by the Legislative Council in July 2020. The [consultation conclusions](#) on the draft Insurance (Special Purpose Business) Rules in respect of restrictions on the sale of insurance-linked securities issued in Hong Kong were published on 19 January 2021.

## CONTACTS

### Financial Services Regulatory / Corporate



**Vivian Kwong**  
Senior Associate

**T** +852 2825 8099  
**E** vivian.kwong  
@cliffordchance.com



**Mark Shipman**  
Partner

**T** +852 2825 8992  
**E** mark.shipman  
@cliffordchance.com



**Amy Ho**  
Partner

**T** +852 2825 8993  
**E** amy.ho  
@cliffordchance.com

### Litigation



**William Wong**  
Consultant

**T** +852 2826 3588  
**E** william.wong  
@cliffordchance.com



**Donna Wacker**  
Partner

**T** +852 2826 3478  
**E** donna.wacker  
@cliffordchance.com



**Edward Johnson**  
Counsel

**T** +852 2826 3427  
**E** edward.johnson  
@cliffordchance.com

### Global Financial Markets



**Mark Chan**  
Partner

**T** +852 2826 3424  
**E** mark.chan  
@cliffordchance.com



**Matt Fairclough**  
Partner

**T** +44 207006 1717  
**E** matt.fairclough  
@cliffordchance.com



**Jeffery Hung**  
Senior Associate

**T** +852 2826 2442  
**E** jeffrey.hung  
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

[www.cliffordchance.com](http://www.cliffordchance.com)

Clifford Chance, 27th Floor, Jardine House,  
One Connaught Place, Hong Kong

© Clifford Chance 2021

Clifford Chance

Abu Dhabi • Amsterdam • Barcelona • Beijing •  
Brussels • Bucharest • Casablanca • Delhi •  
Dubai • Düsseldorf • Frankfurt • Hong Kong •  
Istanbul • London • Luxembourg • Madrid •  
Milan • Moscow • Munich • Newcastle • New  
York • Paris • Perth • Prague • Rome • São  
Paulo • Seoul • Shanghai • Singapore •  
Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement  
with Abuhimed Alsheikh Alhagbani Law Firm  
in Riyadh.

Clifford Chance has a best friends relationship  
with Redcliffe Partners in Ukraine.