

Hong Kong's Insurance Amendment Bill – Important changes on the horizon

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The Insurance (Amendment) Bill 2023 (the “Amendment Bill”) was gazetted on 6 April 2023 and introduced into the Legislative Council for first reading on 19 April. While primarily conceived as a framework for the new risk-based capital (“RBC”) rules that are expected to come into effect in 2024 and are still being drafted, the Amendment Bill makes a number of broader changes to the Insurance Ordinance (“IO”), not all of which are directly related to the RBC regime. Key changes contained in the Amendment Bill are summarized below.

RBC Regime. The Amendment Bill replaces the current solvency-related provisions in the IO with references to the new capital requirements under the RBC regime. The new regime will introduce a prescribed capital amount and a minimum capital amount, detailed rules on eligible capital resources and other related matters, which is similar in approach to Solvency II and other risk-based capital regimes. Detailed consultations with the industry, including through several rounds of quantitative impact studies, have been conducted in the last few years, and the RBC rules are expected to be finalized later this year. A number of life insurers have obtained permission for early adoption of the new RBC regime.

Under the Amendment Bill, the Insurance Authority (“IA”) will have powers to vary or relax capital requirements applicable to insurers.

The introduction of the new RBC regime will bring Hong Kong into line with other insurance hubs, most of which have adopted RBC regimes at an earlier stage.

New Concept of “Designated Insurer”. Certain provisions under the current IO distinguish between insurers that are incorporated in Hong Kong and those that are incorporated in other jurisdictions and hence operate in Hong Kong through a branch. The Amendment Bill introduces a new concept of “designated insurer” that allows the IA to designate insurers that carry on the majority of their business in or from Hong Kong. Once designated, those insurers are subject to the same regime that applies to Hong Kong-incorporated insurers in relation to a number of matters including approvals of controllers and directors. It is likely that the distinction between

designated insurers and other overseas-incorporated insurers will also be reflected in the RBC rules.

The new regime is the logical extension of existing guidelines that apply key regulatory obligations to insurers that carry on a large proportion of their business in Hong Kong. In particular, many life insurers in Hong Kong are incorporated in Bermuda but carry on substantially all of their business in Hong Kong, and it is therefore appropriate to regulate them in the same way as Hong Kong-incorporated insurers. It should be noted in this context that the Hong Kong government is working on legislation permitting insurers and other companies to redomicile to Hong Kong, which may result in fewer overseas-incorporated insurers in the future. The new concept of “designated insurer” therefore provides an important foundation for the implementation of the new RBC and redomiciliation regimes with regard to such insurers but also discourages insurers from being incorporated overseas while writing most of their business in Hong Kong.

Distinction between Majority Controllers and Minority Controllers. The Amendment Bill introduces a distinction between minority shareholder controllers (15% to less than 50%) and majority shareholder controllers (50% or more). Under the current IO, subject to undertakings given by, or specific requirements imposed on, the insurer, once a shareholder controller is approved as such by the IA, no further approval is required, whether or not the controller subsequently becomes a majority controller.

Under the Amendment Bill, where a minority controller is proposed to become a majority controller, whether of a Hong Kong-incorporated insurer, a designated insurer or the designated holding company of an insurance group, IA approval will be required. This new requirement will align the Hong Kong regulatory regime with other jurisdictions where an additional approval is required for shareholders crossing a specific control threshold. The new requirement will have to be considered, for instance, in relation to restructurings and sales of shares or exercise of step-up rights in insurance joint ventures.

Notifications of Changes in Particulars. There is significant uncertainty under the current IO as regards the legal requirement to notify the IA of changes in particulars referred to in an application for authorization or changes in particulars in relation to directors, controllers and other key persons.

The Amendment Bill tidies up this area and provides that a specified set of changes in particulars will have to be notified to the IA. The IA can amend those particulars from time to time. This is a welcome change given the previous uncertainty and the IA’s focus on compliance with related notification obligations.

New Requirements Regarding Actuaries and Actuarial Reports of General Insurers.

Under the current IO, only life insurers are required to appoint qualified actuaries (to be approved by the IA) and submit periodic actuarial reports to the IA. Under the Amendment Bill, this requirement will be extended to general insurers. The forms for actuarial reports will no longer be set out in the IO but will be specified by the IA from time to time. This is a sensible approach given the need to amend such forms from time to time.

The IA will also have intervention powers to require general insurers to carry out an actuarial investigation, which previously only applied to life insurers.

Public Disclosure in Relation to Solvency/Financial Position. The Amendment Bill provides that insurers will be required to make certain public disclosures in relation to their solvency and financial position, subject to rules to be made by the IA. The detail of these disclosure requirements is yet to be published. These provisions replace the current law requiring the filing of certain financial statements and other documents with the Companies Registry.

The changes in this area are consistent with the approach in many other jurisdictions that require certain solvency and financial information to be disclosed in relation to insurers.

Separate Funds and Accounts. The Amendment Bill significantly revamps the law in relation to the separate funds and accounts that insurers must maintain.

While life insurers are currently required to maintain separate funds and accounts for each class of life insurance business, this will be reduced to separate funds and accounts for classes C, G and H (i.e. linked business and certain pensions business) and all other business. Separate sub-funds and accounts for participating (i.e. with profits) business will also be required. These changes somewhat revert to the historic position before recent amendments to the IO, when separate funds and accounts were only required for class G and H business.

Special rules apply to life insurers that are not Hong Kong incorporated (other than designated insurers and subject to certain exemptions and elections). The detail is complex, but the base position is that they must also maintain (in addition to the separate accounts mentioned above) a separate account and fund in relation to reinsurance business with offshore risk. For these life insurers, the separation requirement normally only applies to their Hong Kong business.

Certain composite insurers (those carrying on life and general business) will also be required to maintain a separate account and fund for general business, and certain

general insurers that are not Hong Kong incorporated will also need to segregate assets and liabilities as between reinsurance business with onshore and offshore risks.

The rules in relation to assets that general insurers must maintain in Hong Kong have also been amended.

New Intervention Powers. Under the Amendment Bill, certain key regulatory powers of the IA (such as the power to order an actuarial investigation or to impose a general requirement on the insurer) may now also be exercised if the IA is of the view that doing so is “desirable for mitigating or controlling the risks posed to or by the business of the insurer”.

Significantly, the Amendment Bill grants the IA power to require insurers to provide the IA with a report or appoint a person to produce such report. While this is currently possible under the general powers granted to the IA, the specific power brings the IA in line with other key regulators who are making extensive use of such powers. For instance, the UK regulators’ powers to require insurers and other financial services providers to commission third-party reports (often on noncompliance matters), known as “section 166 reports”, is an important instrument of regulatory investigation and intervention there.

Conclusion. The Amendment Bill lays the groundwork for the new RBC regime and also takes the opportunity to make changes to other parts of the IO. Most of the changes are likely to be welcomed by practitioners, although as key substantive parts of the new regime (such as the new RBC rules and the amended forms for reports and submissions to the IA) are still outstanding, the overall impact of the changes can only be meaningfully assessed once those details are available.

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Please do not hesitate to contact us with any questions.

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