

Client Alert

Corporate Commercial

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New development in insurance regime: Insurance Amendment Bill and Insurance Amendment (No. 2) Bill

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Two new bills, the Insurance Amendment Bill and the Insurance Amendment (No. 2) Bill have recently been gazetted making significant changes to the regulatory regime for insurance companies.

Insurance Amendment Bill

Special purpose insurer

An amendment is made to allow registration of an insurance company which engages in special purpose business only. The salient provisions are as follows:

- (a) Special purpose business relates to the issue by insurers of policies to investors under which the return to the investor is linked to the insurance contract on a **fully funded basis**. These insurance contracts are referred to in the Bill as insurance-linked securities.
- (b) A contract is fully funded if the value of the assets held under the terms of the insurance contract is not less than the amount of the insurer's liabilities under the contract at any time and under all foreseeable circumstances taking into account the obligations of the insurer under the contract and the expenses which the insurer has to incur.
- (c) The assets and capital requirements applicable to insurers carrying on general and long term business do not apply to special purpose insurers.
- (d) The requirements for authorisation include:
 - the company having 2 or more directors each of whom satisfies the fit and proper criteria;
 - the company having an administrator as a controller who satisfies the fit and proper criteria;
 - the company intends to carry on special purpose business only.
- (e) The company is also required to comply with special rules to be made by the Insurance Authority relating to the investor's financial solvency and sophistication as well as other requirements. These rules will prohibit the sale or offering for sale of insurance-linked securities to persons other than those described in the rules, or the sale or making of an offer to sell insurance-linked securities lower than a prescribed limit.
- (f) The restrictions referred to in paragraph (e) above will apply to insurers and insurance intermediaries, and the penalties for breach will be severe including imprisonment for up to 2 years.

Revised definition of 'captive insurers'

The definition of 'captive insurer' is to be amended and will be widened in scope thereby increasing the types of business which may be conducted by a captive insurer that under the Insurance Ordinance is subject to lesser capital and asset requirements and other less onerous regulatory requirements.

The salient provisions are as follows:

- (a) They allow the insurance or reinsurance of a **proportional share of risks** of another company to which the insurer or certain of its group companies is exposed, where the proportional share of risks insured is capped by reference to the highest of:
 - (i) the proportion of the directors of the other company whose appointment or removal the insurer or reinsurer or certain of its group companies may control;
 - (ii) the percentage of voting rights in the other company that the insurer or reinsurer or certain of its group companies may control; and
 - (iii) the percentage of shareholding in the other company that the insurer or reinsurer or certain of its group companies may hold.
- (b) They also include insurance of **other risks** the insurer or reinsurer or certain of its group companies has control, oversight or management of or to which the insurer or reinsurer or certain of its group companies is sufficiently connected.
- (c) The other risks referred to in paragraph (b) above will be elaborated in guidelines published by the Insurance Authority.
- (d) Certain technical changes are also made to the definition of a corporate group.

Insurance Amendment (No. 2) Bill

Regulation of insurance groups

An amendment is to be made to the Insurance Ordinance to provide for the Insurance Authority to regulate a designated insurance holding company and thereby bring its corporate group within the scope of its regulation.

The salient provisions are as follows:

- (a) The Insurance Authority may designate:
 - (i) a Hong Kong company;
 - (ii) that is either the holding company of an authorised insurer or is both an authorised insurer and a holding company of a body corporate that carries on insurance business from outside Hong Kong;
 - (iii) if the Insurance Authority is in accordance with the principles of the International Association of Insurance Supervisors appointed as the group supervisor; and
 - (iv) the Insurance Authority considers it appropriate for the company to be designated.
- (b) After designation of a designated insurance holding company, its group companies and certain related companies will form part of the supervised group of the designated insurance holding company.
- (c) The designation may be withdrawn by the Insurance Authority if it considers that designation is no longer appropriate.
- (d) The principal effects of designation as a designated insurance holding company are:
 - (i) Approval of the Insurance Authority is required for a person to become a shareholder controller i.e. a person who alone or with others may exercise 15% or more of the voting power at a general meeting of the designated insurance holding company.
 - (ii) Approval of a shareholder controller may be revoked by the Insurance Authority if the shareholder controller is no longer a fit and proper person or it breaches conditions of approval.
 - (iii) Persons ceasing to be shareholder controllers are required to notify the Insurance Authority.
 - (iv) Approval of the Insurance Authority is also required for the appointment of a person as a director, chief executive or key person in control functions of a designated insurance holding company.

- (v) An auditor must be appointed of certain members of the supervised group and the auditor must submit financial statements and an auditor's report to the Insurance Authority within 4 months of the end of the financial year.
 - (vi) The Insurance Authority may make rules in respect of capital of a designated insurance holding company and the supervised group.
 - (vii) Approval is required from the Insurance Authority for the making of a major acquisition by a designated insurance holding company or a member of the supervised group.
- (e) Extensive powers of intervention are given to the Insurance Authority in relation to a designated insurance holding company and its supervised group:
- (i) to obtain information and documents;
 - (ii) to require preparation of a report;
 - (iii) to require the supervised group to refrain from transferring assets or to impose restrictions on the transfer of assets;
 - (iv) to require the supervised group to take any action in relation to its affairs which the Insurance Authority considers appropriate;
 - (v) to require that its affairs be managed by a supervisory manager; and
 - (vi) to petition for the winding up of the designated insurance holding company.
- (f) The Insurance Authority also has powers of inspection, investigation and disciplinary action in relation to a designated insurance holding company and the supervised group.

Want to know more?

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