



Consultation Conclusions on the Draft Insurance (Group Capital) Rules

December 2020

Contents

Page

Introduction and Executive Summary.....2

Feedback Received and the IA’s Response.....5

Conclusion and Next Steps.....15

Annex A - Final Form of Insurance (Group Capital) Rules

**Annex B - Final Form of Insurance (Group Capital) Rules with Tracked
Changes**

Annex C - List of Respondents

Introduction and Executive Summary

1. On 19 August 2020, the Insurance Authority (“IA”) published for consultation a draft of the Insurance (Group Capital) Rules (“Rules”) proposed to be made under section 129 of the Insurance Ordinance (Cap. 41) (“IO”) in relation to the new sections 95A to 95ZZW. These new provisions have been added to the IO by the Insurance (Amendment) (No. 2) Ordinance 2020 (“Amendment Ordinance”), which was enacted in July 2020, and are expected to come into force in the first quarter of 2021.
2. The draft Rules are applicable to the holding company of an insurance group that is designated under the new section 95C where the IA serves as the group supervisor of the group.
3. The draft Rules set out the capital requirements applicable to a Designated Insurance Holding Company (“DIHC”) in relation to its insurance group. This includes the minimum amount of capital that the group must maintain and the types and amounts of capital resources of the group that are eligible to be counted towards satisfying the minimum amount of capital, the supervisory reporting requirements for a DIHC, and requirements for a DIHC to make public disclosures in relation to group capital adequacy.
4. The consultation ended on 30 September 2020. During the six-week consultation, the IA is pleased to have received 9 written submissions from different stakeholders including insurance industry bodies, professional bodies, insurers, regulators and individuals. A list of respondents is shown in Annex C.
5. Pursuant to section 132(3) of the IO, the IA publishes in this paper a summary of the material comments received in the consultation, the IA’s response to such feedback and explanation of the IA’s policy intention in modifying the Rules.

Key feedback

6. Respondents were generally supportive of the proposals set out in the draft Rules. Taking into account certain matters raised in the feedback, the IA is proposing to make certain modifications to the Rules (see paragraph 7 below). For other comments raised in the feedback but have not resulted in modifications to the Rules, we have sought to further explain the IA’s rationale in this paper.
7. Taking into account the feedback received, we will make modifications to the Rules as follows:
 - a) Interpretations: we have refined the definition of “regulated entity” to capture any supervised group member that is subject to laws relating to regulatory capital for carrying on certain types of financial sector activities.
 - b) Rule 4 has been modified to provide that the IA may apply a supervisory variation to the Group Minimum Capital Requirement (“GMCR”).
 - c) Rule 7 and Rule 8 have been reordered for drafting purposes.

- d) The re-numbered Rule 8, which relates to the removal of double-counting, has been modified to:
 - i. add a general principle that requires removal of double counting of eligible group capital resources;
 - ii. clarify the requirement relating to removal of double counting in respect of tiering of eligible group capital resources;
 - iii. clarify how to remove double counting for supervised group members which are in a parent/subsidiary relationship, for a supervised group member which is a regulated entity in more than one jurisdiction, or where a supervised group member is a regulated entity other than in the jurisdiction in which it is incorporated or formed; and
 - iv. strengthen the requirement to remove the value of investment of one supervised group member in another.
 - e) The re-numbered Rule 9, which relates to Transitional Arrangements for Group Capital, has been amended to require the IA to give notice to a DIHC if the IA intends to reject an application to include a non-qualifying financial instrument as eligible group capital resources. Further, Rule 9 is amended to allow a DIHC to make representations to the IA in such circumstances.
 - f) The re-numbered Rule 11, which relates to submission to the IA of reports on group capital adequacy, has been amended to:
 - i. require the group capital adequacy report to be submitted annually instead of semi-annually; and
 - ii. change the criteria for determining a material supervised group member.
 - g) The re-numbered Rule 13, which relates to public disclosure, has been amended to allow the IA to vary the information which the DIHC is required to publish, if the supervised group is not an internationally active insurance group.
 - h) Schedule 2, which defines the criteria for tier 2 group capital, has been amended to require the IA's approval of the arrangements for any proposal for structurally subordinated debt to be treated as eligible group capital resources.
8. The final form of the Rules is set out in Annex A. Changes from the draft Rules that were included in the consultation paper are shown in the marked up version in Annex B.

Conclusion and Next Steps

- 9. Following the issuance of this paper, the IA will submit the Rules to the Legislative Council for negative vetting. Subject to the legislative process, the IA expects the Rules to come into operation at the same time as the Amendment Ordinance, which is expected to be effective in the first quarter of 2021.

10. The IA would like to express its sincere gratitude to all respondents for their time and effort in providing their valuable feedback.

Feedback Received and the IA's Response

11. As part of the consultation, the IA posed five questions which focused on the main aspects of the draft Rules. This section summarizes the feedback received on those five questions and other aspects of the draft Rules, as well as the IA's response to these issues.

Definition of "regulated entity"

<p>Q1. Is the proposed definition of "regulated entity" sufficiently broad to cover all types of regulated entities in an insurance group?</p>
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Feedback received

12. The majority of respondents agreed that the proposed definition of "regulated entity" is sufficiently broad to cover all types of regulated entities in an insurance group.
13. A number of respondents raised concerns about whether the definition is unintentionally broad. They pointed out that the proposed definition of "regulated entity" may include entities that are authorized in their respective jurisdiction to conduct any of the activities stated in Rule 2, yet they are not required to hold a minimum amount of capital.
14. Other comments aimed to clarify the treatment of specific types of entities (e.g. non-insurance financial institutions, insurance brokers) and to suggest the inclusion of certain financial service providers (e.g. digital tokens, crypto-currency and stored-value facilities). We also received a suggestion to consider structures such as branches/representative offices that may be unincorporated or may not be legal entities in their own right.

IA's response

15. Considering the feedback received, the IA will modify the definition of regulated entity to include only certain financial sector entities that are subject to laws relating to regulatory capital. Any supervised group member that is not subject to laws relating to regulatory capital will be considered as a non-regulated entity. The amendment helps to ensure that the Rules are applied correctly and in line with our policy intention related to the group capital requirements.
16. We note the comment relating to the capital requirements of structures such as branches or representative offices that may be unincorporated in nature or otherwise not be legal entities in their own right. We have carefully considered this issue and will consider the impact of branch capital requirements as part of our assessment of the need for a supervisory variation, pursuant to the new section 95ZI(2) of the IO. The detailed criteria and considerations of such supervisory variation will be set out in forthcoming

supplementary guidance to the Rules (likely in the form of a guideline issued pursuant to section 133 of the IO).

Adjustments to goodwill and other intangible assets

Q2. Having regard to the intention in paragraphs 29 and 30 in the consultation paper, is there a need to specify the definitions and adjustments that are applicable to “IFRS shareholder equity less goodwill and any other intangible assets” in the Group Capital Rules or guidelines?

Feedback received

17. The majority of respondents agreed that the definitions and adjustments applicable to “IFRS shareholder equity less goodwill and any other intangible assets” are sufficiently clear, but some suggested that the IA can enhance the Rules to define goodwill and intangible assets, and give appropriate examples.

18. Suggestions included:

- tightening the linkage to international accounting standards when accounting terminologies are used. For example, the definition of “intangible assets” in Rule 6 could be linked to International Accounting Standard (“IAS”) 38 (Intangible Assets), and “other comprehensive income” in Schedule 1 of the Rules could be linked to the concept of comprehensive income in IAS 1 (Presentation of Financial Statements).
- making reference to the Banking (Capital) Rules (Cap. 155L) and explicitly requiring that items such as goodwill, intangible assets, defined benefit pension funds, deferred tax assets must be deducted from the group capital resources.

IA’s response

19. Given that the majority of respondents supported the proposed Rules, no amendments will be made to Rule (6)(3).

20. However, we note the suggestions to provide more guidance. Therefore, the IA will provide further interpretation of “IFRS shareholder equity less goodwill and other intangible assets”, and will make reference to the IAS and consider the requirements from the Banking (Capital) Rules in the guidelines.

Double-counting

Q3. Are there other arrangements of holding structures that may require adjustments to be made to eliminate double-counting?

Feedback received

21. We received a significant amount of feedback, including suggestions to provide examples of different scenarios of double counting.
22. Some respondents suggested that the Rules should also consider other structures such as affiliated reinsurance entities, intra-group risk transfer entities, joint ventures, associates, off-balance sheet arrangements, Letters of Credit and other modes of Bank Guarantee from one regulated entity to another.
23. One respondent expressed concerns that Rules 7(1), 7(2) and 7(3) may not properly capture the true capital requirement that ought to apply to a supervised group where either:
 - the capital requirement, on a consolidated basis, of a parent plus its subsidiaries was less onerous than the sum of the capital requirements of each separate entity; or
 - the capital requirement of an entity with multiple branches was less onerous than the sum of the capital requirements of each of the branches. The respondent pointed out that this scenario could apply to many insurers that operate in Hong Kong but are incorporated in Bermuda, if the Bermuda capital requirements are lower than those under the Hong Kong rules.
24. We also received a comment that Rule 7 may not adequately recognize investments in subsidiaries, which may discourage a long-term strategy of investment in regulated entities. The respondent suggested that removal of double counting should only be considered in situations where a supervised group member holds a significant share of ownership of an entity.

IA's response

25. As a matter of principle, a DIHC should 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. The IA's policy intention is to be consistent with Insurance Core Principle 17.11.46 to 17.11.51 relating to double-gearing, intra-group creation of capital, leverage, fungibility and transferability. As part of supervisory reporting the IA intends to collect information relating to branch capital requirements, other restrictions on fungibility and transferability, information on intra-group transactions and off-balance sheet items. The IA will regularly assess the capital adequacy of the group and will consider whether a supervisory variation is required to be applied to eligible group capital resources, GMCR and/or Group Prescribed Capital Requirement, pursuant to the new section 95ZI of the IO.

26. Having considered the feedback, we will modify Rule 7 (now re-numbered as Rule 8 with former Rule 8 re-numbered as Rule 7) to provide clarification on the elimination of double counting to better reflect our policy intention.
- Rule 8(1) is added to state a general principle that the DIHC 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;
 - Rule 8(1)(b) is added to clarify that the principle of “no double counting” also applies to the tiering of capital resources;
 - Rule 8(4) is added to clarify the treatment of tiering of capital resources in the scenario where the local capital requirements of a parent entity are based on a consolidation approach;
 - Rule 8(6) is added, for completeness, to cover the treatment of double counting in a less common group structure where a supervised group member is a regulated entity in a jurisdiction other than the jurisdiction in which it is incorporated or formed; and
 - Rule 8(7), 8(8) and 8(9) replace the former rule 7(4) to set out the removal of the value of any investments in shares of another supervised group member and the value of any financial instrument that is an eligible capital resource issued by one supervised group member to another. This requirement has been strengthened to cater for indirect and synthetic investments in other supervised group members with reference to the Banking (Capital) Rules.
27. Additional examples to illustrate the treatment of no double counting under the application of each sub-rule may be published by the IA from time to time.
28. It should be noted that the requirement to remove double counting is necessary to ensure that the capital resources of the group are not overstated. Equally, the removal of double counting does not understate the capital resources of the group. For example, a parent entity’s investment in a subsidiary contributes to the group’s capital resources where the investment is characterized as the capital resources of the subsidiary (as described in Rule 6). In this scenario the value of the parent’s holding in that subsidiary should not also be counted towards the parent entity’s capital resources otherwise this would be double-counting of the same capital at the group level. Therefore, the IA is of the view that Rule 8 simply ensures accurate characterization based on the true nature of such capital and would not discourage a long-term strategy of investment in regulated entities.

Tiering approach for non-regulated entities

Q4. Do you agree with the proposed tiering approach for non-regulated entities?

Feedback received

29. The majority of respondents supported the tiering approach for non-regulated entities.

30. The feedback included:

- a suggestion to benchmark against the Insurance Capital Standards specification, as promulgated by the International Association of Insurance Supervisors;
- a suggestion to remove the 10% restriction of tier 1 limited group capital for non-regulated entities. The respondent viewed that the capital resources of non-regulated entities are of the same quality as regulated entities and therefore should have equal status.

IA's response

31. With the majority of respondents supporting the proposed Rules, no modifications will be made.
32. Regarding the feedback to remove the 10% restriction for tier 1 limited group capital resources, we note that the methodology defined by the Rules is premised upon an aggregation basis, rather than a consolidation basis where all assets, liabilities and capital requirements are valued in a consistent manner. It is noted that capital resources of different regulated entities, which are similar in quality, may also be subject to different categorization because of the different rules applying within each jurisdiction. Given that the Rules apply an aggregation basis to the group capital requirements, and the IA does not intend to override the capital rules of other jurisdictions, the IA considers that the current proposal is appropriate.

Material supervised group member

<p>Q5. Do you agree with the criteria for defining a “material supervised group member” in Rule 10(6) of the Group Capital Rules?</p>

Feedback received

33. The respondents generally agreed with the IA's definition of “material supervised group member” in Rule 10(6) which has been re-numbered as Rule 11(6).
34. Key feedback was as follows:
- The requirement to assess materiality on a semi-annual basis was too onerous and the income criteria could result in frequent changes to material group members, creating operational difficulties. A suggestion was made to add a minimum dollar amount as a lower threshold for the determination of “material supervised group member” to ease the reporting burden on smaller insurance groups.

- It was suggested to allow the definition of “material supervised group member” to be overridden if agreed between the IA and the DIHC, which could allow a DIHC to make use of its own materiality framework.
- The requirements for the group capital adequacy report may force results to be publicly disclosed for material supervised group members even when such disclosure may not be required by the local regulator.

IA’s response

35. The purpose of defining a material supervised group member is to ensure that the IA collects sufficiently granular information to enable it to understand the capital requirements and risks of the supervised group. This applies irrespective of the size of the group. Therefore we do not propose to introduce a minimum dollar amount as a lower threshold for the materiality assessment simply to ease reporting burden for smaller insurance groups.
36. Having considered the feedback in relation to reporting burden and operational difficulties, the IA considers it appropriate to remove the income criteria from the definition of material supervised group member and require that the materiality assessment is performed on an annual basis. In addition, we have added a clause in the re-numbered Rule 11(7) that allows the DIHC to write to the IA to request a variation to the material supervised group members, which, subject to the IA’s satisfaction, may allow groups to use their own materiality framework.
37. Regarding the concerns about public disclosure of capital adequacy at material supervised group member, we would like to clarify that this definition of “material supervised group member” is only applicable to the group capital adequacy report, which is submitted to the IA and is not required to be publicly disclosed.

Other comments

38. In addition to the 5 questions we posed in the consultation paper, the IA also received feedback on other parts of the Rules. Those comments and our responses are set out below.

Rule 5(5) – Variation of GMCR

39. Rule 5(5) states that “where the Authority pursuant to section 95ZI of the IO 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 rules 5(1), 5(2), 5(3) and 5(4) and incorporate the variation made by the Authority.”

Feedback received

40. We received several comments querying why there is no equivalent clause under Rule 4 corresponding to the GMCR.

IA's response

41. After careful consideration of the feedback we agree that the ability to apply a variation to GMCR is appropriate to improve consistency of the Rules and have added a new Rule 4(5).

Rule 8(1)(a)(i) – Clarification of the “highest tier” of capital

42. Rule 8(1)(a)(i) (now re-numbered as Rule 7(1)(a)(i)) requires that, for a supervised group member that is a regulated entity in a jurisdiction where the laws relating to regulatory capital apply a tiering approach, the tier 1 group capital would include eligible capital resources included in the highest tier of regulatory capital in accordance with the those laws.

Feedback received

43. One respondent sought clarification about whether, in the case of an authorized institution in Hong Kong under the Banking Ordinance of Hong Kong, the “highest tier” of regulatory capital includes both the Common Equity Tier 1 Capital and Additional Tier 1 Capital.

IA's response

44. We will modify the re-numbered Rule 7(4) so that the definition of the highest tier of regulatory capital means “the category or sub-category of regulatory capital to which the highest quality of capital is allocated.”
45. Within the context of the Banking Ordinance in Hong Kong, the “highest tier” of regulatory capital should be interpreted as including Common Equity Tier 1 Capital, but not Additional Tier 1 Capital.

Rule 9 – Transitional arrangements in relation to group capital

46. Rule 9 provides the transitional arrangements in relation to group capital where a financial instrument issued by a DIHC or a supervised group member in the supervised group of the DIHC does not qualify for inclusion in the eligible group capital resources of the supervised group in accordance with Rule 6.

47. The DIHC may make an application in writing to the IA for approval for the financial instrument to be included as part of the eligible group capital resources of its supervised group.

Feedback received

48. We received a suggestion that the DIHC should have the right to appeal the decision of the IA should it reject any application.

IA's response

49. Having carefully considered the feedback, we have modified Rule 9 as follow. The IA will be required to serve a preliminary notice to the DIHC if the IA intends to reject the DIHC's application for a non-qualifying instrument to be accepted as eligible group capital resources under the transitional arrangement. The DIHC may, within the period specified in the preliminary notice, make written or oral representation to the IA, which the IA must take into account if it formally rejects the application.

Rule 10 – Submission of reports on group capital adequacy to the IA

50. Rule 10 (now re-numbered to Rule 11) specifies the requirements for reporting of group capital adequacy to the Authority.
51. Rule 10(3) (now re-numbered to Rule 11(3)) provides the IA with the power to modify or vary the requirements of the group capital adequacy report at the request in writing of a DIHC.
52. Rule 10(5) (now re-numbered to Rule 11(5)) allows the IA to extend the submission timeline of the group capital adequacy report, at the request in writing of a DIHC, by no longer than 3 months.

Feedback received

53. Key feedback included:

- The power to modify or vary the requirements of the group capital adequacy report under Rule 10(3) is too broad and open-ended which could result in a lack of transparency to the public. The respondent suggested that the IA should disclose to the public when this power is being exercised.
- A suggestion to not specify a time limit for the report submission extension under Rule 10(5), so as to allow more flexibility for the IA to take into account of unexpected events.

IA's response

54. In order to ensure the operational burden of supervisory reporting is not excessive to the DIHC, we have reduced the frequency of submission of the group capital adequacy report to once every year, with a reporting date of 31 December, rather than a semi-annual submission as per the previous proposal. The IA intends to require groups to submit supplementary capital adequacy information to the IA on a quarterly basis. Such requirements will be specified in guidelines.
55. In relation to the report submission timeline extension, we make reference to section 20(1) of the IO relating to the submission of accounts with the IA, which states that any submission extension should not exceed 3 months. Having considered the feedback, we believe it is appropriate to be consistent with the existing practice.
56. The IA would like to clarify that the re-numbered Rule 11, which refers to the IA's power to modify the group capital adequacy report, is applicable to supervisory reporting only, and the group capital adequacy report will not be made available to the public.

Rule 12 – Public disclosure of group capital

57. Rule 12 (now re-numbered Rule 13) requires a DIHC to publicly disclose certain capital related information on its website within 5 months of its financial year end date.

Feedback received

58. Stakeholder feedback received since the consultation has suggested that there should be a transitional period for compliance with the public disclosure requirements under Rule 12.

IA's response

59. On the one hand, the IA considers the public disclosure requirements proposed in the Rules to constitute a fundamental part of the group wide supervisory regime and as such, transitional periods delaying implementation of this Rule would not serve its underlying policy objectives. On the other hand, the IA recognizes that there may be circumstances where certain supervised groups (such as those without publicly listed members) have legitimate reasons warranting some level of transitional accommodation, since they, unlike listed entities, are not already subject to regulatory disclosure requirements.
60. To balance these two competing interests, the IA has decided to introduce a mechanism whereby any DIHC of a supervised group that is not an Internationally Active Insurance Group ("IAIG") may write to the IA and seek a variation from the disclosure requirements in re-numbered Rule 13. This mechanism allows the IA to limit the exception to groups which are not IAIGs. Changes have been made to the re-numbered Rules 13(5), (6) and

(7) to put in place the variation mechanism.

Schedule 2 – Structural subordination of tier 2 group capital

61. Schedule 2 sets out the qualifying criteria for tier 2 group capital for the purposes of Rule 6, which relates to eligible group capital resources and re-numbered Rule 7, which relates to tiering of eligible group capital.

Feedback received

62. We received several comments regarding the recognition of structural subordination. One respondent commented that it was important to differentiate between contractual and structural subordination as per the Insurance Capital Standard, and that it was important to explain in the Rules why structurally subordinated tier 2 group capital is only required to be subordinated to policyholders of the supervised group, as opposed to other non-subordinated creditors.

IA's response

63. Structural subordination is a complex issue. Whilst structurally subordinated instruments, are permitted to be included in tier 2 group capital in accordance with the Insurance Capital Standard (ICS) issued by the International Association of Insurance Supervisors (IAIS), this is an area where further developments are expected. Having given careful consideration to the complexities surrounding structural subordination, we will modify the Rules to ensure that, if a DIHC wishes to recognize structurally subordinated debt as eligible group capital resources, the proposed arrangements will be subject to approval by the IA. In considering whether to approve such arrangements, the IA will consider the prevailing principles of the IAIS in relation to structural subordination.
64. We will add further details in the guidelines regarding the considerations and criteria for approving structural subordination arrangements.

Other Feedback Received

65. The IA has also received other comments that are either related to the drafting aspects of the Rules or not within the scope of the consultation. The IA notes such comments and will keep them in view. In developing the supplementary guidelines to the Rules, the IA will continue to engage the relevant stakeholders as appropriate.

Conclusion and Next Steps

66. Having considered the comments received during the consultation, the IA has decided to adopt some of the proposals and the main modifications are set out below:
- a) Interpretations: we have refined the definition of “regulated entity” to capture any supervised group member that is subject to laws relating to regulatory capital for carrying on certain types of financial sector activities;
 - b) Rule 4 has been modified to allow the IA to apply a supervisory variation to the GMCR;
 - c) Rule 7 and Rule 8 have been reordered, for drafting purposes;
 - d) The re-numbered Rule 8, which relates to removal of double-counting, has been modified to:
 - i. add a general principle that requires removal of double counting of eligible group capital resources;
 - ii. clarify the requirement relating to removal of double counting in respect of tiering of eligible group capital resources;
 - iii. clarify the requirement relating to removal of double counting for certain structures of supervised group members; and
 - iv. strengthen the requirement to remove the value of investment of one supervised group member in another;
 - e) Rule 9, which relates to Transitional Arrangements for Group Capital, has been amended to require the IA to give notice to a DIHC if the IA intends to reject an application to include a non-qualifying financial instrument as eligible group capital resources and to allow a group to make representations to the IA in such circumstances;
 - f) The re-numbered Rule 11, which relates to submission to the IA of reports on group capital adequacy, has been amended to:
 - i. require the group capital adequacy report to be submitted annually instead of semi-annually;
 - ii. change the criteria for determining a material supervised group member; and
 - g) The re-numbered Rule 13, which relates to public disclosure, has been amended to allow the IA to vary the information which the DIHC is required to publish, if the supervised group is not an internationally active insurance group.
 - h) Schedule 2, which defines the criteria for tier 2 group capital instruments, has been amended to require the IA approval of the arrangements for any proposal for structurally subordinated debt to be treated as eligible group capital resources.

67. The final form of the Rules is set out in Annex A. Changes from the draft Rules included in the consultation paper are shown in the tracked changes version in Annex B for reference.
68. Following the issuance of this paper, the IA will submit the Rules to the Legislative Council for negative vetting. Subject to the legislative process, the IA expects the Rules to come into operation in tandem with the Amendment Ordinance, which is expected to be first quarter of 2021.
69. The IA would like to express its sincere gratitude to all respondents for their time and effort in providing their valuable feedback.

Annex A – Final Form of Insurance (Group Capital) Rules

Insurance (Group Capital) Rules

Contents

Rule		Page
Part 1		
Preliminary		
1.	Commencement.....	1
2.	Interpretation.....	1
Part 2		
Group Capital Adequacy		
3.	Group capital adequacy requirements	3
4.	Calculation of the group minimum capital requirement.....	3
5.	Calculation of the group prescribed capital requirement.....	4
6.	Eligible group capital resources	4
7.	Tiering of eligible group capital.....	5
8.	Treatment of double-counting.....	6
9.	Transitional arrangements in relation to group capital.....	8
10.	Determination by the Authority of resources and financial instruments to be eligible group capital resources	9
Part 3		
Supervisory Reporting and Public Disclosure in Relation to Group Capital Adequacy		
11.	Submission of reports on group capital adequacy to the Authority.....	11
12.	Report to the Authority of certain events	12
13.	Public disclosure in relation to group capital	13
Schedule 1	Tier 1 Group Capital.....	15
Schedule 2	Tier 2 Group Capital.....	18

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.
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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).
-

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

2020

Annex B – Final Form of Insurance (Group Capital) Rules with Tracked Changes

Insurance (Group Capital) Rules

Contents

Rule Page

Part 1

Preliminary

1.	Commencement.....	1
2.	Interpretation.....	1

Part 2

Group Capital Adequacy

3.	Group capital adequacy requirements.....	3
4.	Calculation of the group minimum capital requirement.....	3
5.	Calculation of the group prescribed capital requirement.....	4
6.	Eligible group capital resources.....	4
7.	Tiering of eligible group capital.....	5
8.	Treatment of double-counting.....	6
9.	Transitional arrangements in relation to group capital.....	9
10.	Determination by the Authority of resources and financial instruments to be eligible group capital resources.....	10

Part 3

Supervisory Reporting and Public Disclosure in Relation to Group Capital Adequacy

11.	Submission of reports on group capital adequacy to the Authority.....	12
12.	Report to the Authority of certain events.....	13
13.	Public disclosure in relation to group capital.....	14
Schedule 1	Tier 1 Group Capital.....	17
Schedule 2	Tier 2 Group Capital.....	20

Insurance (Group Capital) Rules

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

~~Part I~~

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 (~~“commencement date”~~). ~~The commencement date will be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.~~

2. Interpretation

~~(1)~~ 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 ~~rule 6 or as determined by the Authority under rule 8; 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) ~~—see~~means the amount determined in accordance with rule 4;

group prescribed capital requirement (集團訂明資本要求) ~~—see~~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 ~~set:~~

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

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) ~~or (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) ~~—see subrule (1) of~~ means the amount determined in accordance with rule 8:7(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) ~~—see subrule (3) of rule 8—~~ means the amount determined in accordance with rule 7(3).

[†]~~The definition of regulated entity is adapted from the definition for financial sector entity in section 35 of the Banking (Capital) Rules (Cap. 155L).~~

Part ~~H~~

2

Group Capital Adequacy

3. ~~Group Capital Adequacy Requirements~~ capital adequacy requirements

~~(1)~~—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~~ group minimum capital requirement

- (1) Subject to subrule (2) and rule ~~7~~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 ~~purpose~~purposes of subrule (1) and subject to rule ~~7~~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, ~~save~~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) ~~shall~~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~~ group prescribed capital requirement

- (1) Subject to subrule (2) and rule ~~78~~, 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 ~~purpose~~ purposes of subrule (1) and subject to rule ~~78~~, the prescribed capital requirement applicable to a supervised group member in ~~at~~ 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 ~~the imposition of 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 ~~which~~ 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) ~~shall~~ 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 ~~shall~~ must be calculated in accordance with subrules ~~(1) to (4)~~ (2), (3) and (4) and incorporate the variation made by the Authority.

6. Eligible ~~Group Capital Resources~~ group capital resources

- ~~(1)~~ For the purposes of rule 3, a designated insurance holding company ~~shall~~ 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)~~ (4) and (5) and rule ~~78~~, the eligible group capital resources of a supervised group ~~shall~~ 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 ~~the~~ recognized international accounting standards, less goodwill and any other intangible assets; and
 - (ii) the ~~resources and~~ 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, ~~shall~~ 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 ~~purpose~~ 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 ~~purpose~~ purposes of ~~that~~ rule ~~3~~.
- (6) In this rule ~~6~~, —

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.

87. Tiering of ~~Eligible Group Capital~~ 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) subject to subrule (2),~~ (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, ~~shall~~ 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 ~~8,~~

~~“*tiering approach to regulatory capital*”~~ ***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.

~~“*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 of regulatory capital to which the highest quality of capital is allocated in terms of:

the 8. Treatment of double-counting

(1) A designated insurance holding company—

(a) ~~must not include any~~ resource or financial instrument ~~being able to absorb losses on a going-concern basis and in winding-up~~ of a supervised group member in the eligible group capital resources of its supervised group more than once;

(a) ~~the~~ (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 ~~being perpetual and not having any terms or conditions which provide an incentive for the issuer to redeem the resource~~ of any supervised group member, or financial instrument;

~~the interests of the holders~~any part of the value of any resource or financial instrument ~~being subordinated to the policy holders and other non-subordinated creditors of the~~any supervised group member, more than once; and

~~(b) the resource or financial instrument being fully paid up; and~~

~~(c) the resource being free from mandatory payments or encumbrances~~

~~7. Treatment of double counting~~

~~(1) (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 (the “first supervised group member”)~~ is the holding company of another supervised group member (~~the “second supervised group member”~~) in its supervised group and the minimum capital requirement applicable to the first supervised group member as described in ~~subrule (2) of rule 4(2)~~ is determined by consolidating ~~together~~ 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 shall~~must be included in the group minimum capital requirement of its supervised group for the ~~purpose of subrule (1) purposes~~ of rule 4:(1);

~~(b) the minimum capital requirement of the second supervised group member shall~~must not be included in the group minimum capital requirement of its supervised group for the ~~purpose of subrule (1) purposes~~ of rule 4:(1); and

~~(c) the capital resources of the second supervised group member, shall~~ must only be included in the ~~group~~ eligible group capital resources of its supervised group for the ~~purpose of subrule (1) 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.

~~(2) (3) Where a supervised group member (the “first supervised group member”)~~ is the holding company of another supervised group member (~~the “second supervised group member”~~) in its supervised group and the prescribed capital requirement applicable to the first supervised group member as described in ~~subrule (2) of 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 shall~~must be included in the group prescribed capital requirement of its supervised group for the ~~purpose of subrule (1) purposes~~ of rule 5;and (1);

~~(b) the prescribed capital requirement of the second supervised group member shall~~must not be included in the group prescribed capital requirement of its supervised group for the ~~purpose of subrule (1) purposes~~ of rule 5:(1); and

~~(c) the capital resources of the second supervised group member, shall~~ must only be included in ~~group~~ eligible group capital resources of its supervised group for the purposes of ~~subrule (1) 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, ~~then~~ including the jurisdiction in which it is incorporated or formed, then—

- (a) for the ~~purpose of subrule (1)~~ 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 ~~shall~~ must be included in the group minimum capital requirement of its supervised group;
- (b) for the ~~purpose of subrule (1)~~ 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 ~~shall~~ must be included in the group prescribed capital requirement of its supervised group; ~~and~~
- (c) for the ~~purpose of subrule (1)~~ 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 ~~shall~~ must be included in the ~~group~~ 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 ~~purpose of subrule (1)~~ purposes of rule 6(1), to the extent the following ~~must be deducted~~ 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 ~~value~~ amount of any ~~investment in~~ direct, indirect or synthetic holding by a supervised group member in the shares of ~~a supervised group member or any financial instrument issued~~ by another supervised group member; and
- (b) the ~~value~~ amount of any direct, indirect or synthetic holding by a supervised group member in its ~~own shares or any~~ financial instrument ~~that is an eligible capital resource, which it has issued to a supervised group member by another.~~

(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~~ **group capital**

(1) This rule ~~9~~ applies to any financial instrument:—

- (a) issued by a designated insurance holding company or ~~its holding company which is~~ a supervised group member in the supervised group of the designated insurance holding company, before the ~~effective~~ 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~~ 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, ~~without limitation, 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 ~~unlimited~~ 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~~ (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 9A~~ 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~~ rule 6; and
 - ~~(b)~~ in the case of a financial instrument, is not a financial instrument to which ~~subrule rule 9(1) of rule 9~~ 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) ~~are~~ is satisfied, the Authority may, by written notice served on the relevant designated insurance holding company, determine—
- ~~(a)~~ that the resource or financial instrument ~~does not qualify~~ qualifies for inclusion in the eligible group capital resources of the supervised group to which the company belongs; ~~and~~
 - ~~(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) ~~above~~ are: as follows—
- ~~(a)~~ Condition 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 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 ~~member;~~
 - (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 ~~9A, the~~ “**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 III—

3

Supervisory ~~reporting~~ **Reporting** and ~~public disclosure~~ **Public Disclosure** in ~~relation~~ **Relation** to ~~group capital adequacy~~ **Group Capital Adequacy**

~~10~~**11.** Submission of reports on group capital adequacy to the Authority

- (1) A designated insurance holding company in relation to its supervised group ~~shall~~**must** prepare a report ~~(“group capital adequacy report”)~~ containing the following information as at ~~30 June and 31~~ December ~~(“reporting date”)~~ of each year during which it is a designated insurance holding company~~—~~
 - ~~(a)~~ **(a)** the group minimum capital requirement of the supervised group;
 - ~~(b)~~ **(b)** the group prescribed capital requirement of the supervised group;
 - ~~(c)~~ **(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)~~ **(d)** the eligible group capital resources of the supervised group;
 - ~~(e)~~ **(e)** the tier 1 group capital of the supervised group;
 - ~~(f)~~ **(f)** the tier 1 limited group capital of the supervised group;
 - ~~(g)~~ **(g)** the tier 2 group capital of the supervised group;
 - ~~(h)~~ **(h)** a breakdown of the information in paragraphs ~~(a) to (g) of this subrule (1), (b), (c), (d), (e), (f) and (g)~~ in relation to each material supervised group member in the supervised group; and
 - ~~(i)~~ **(i)** any material changes to the information specified in paragraphs ~~(a) to (g) of this subrule (1), (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 ~~shall~~**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 ~~(1) shall~~**must**, as respects that designated insurance holding company, be construed as a reference to ~~that~~ subrule ~~(1)~~ as so modified or varied.
- (4) Subject to subrule (5), a designated insurance holding company in relation to its supervised group~~, shall~~**must** submit to the Authority~~—~~
 - ~~(a)~~ **(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)~~ **(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) ~~In this rule 10-~~

~~“material supervised group member” (關鍵受監管集團成員), for~~ For the purpose of a designated insurance holding company purposes of preparing its group capital adequacy report in relation to its supervised group, means 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 determined of its supervised group to be material in accordance with (a)—

~~(a) A material supervised group member is material if—~~

~~(i) the income of supervised group member during the period to which the group capital adequacy report relates, is greater than or equal to 10% of the consolidated income of the supervised group during that period;~~

~~(ii) the annual income of the supervised group member averaged over a three year period including and immediately prior to the period to which the group capital adequacy report relates, is greater than or equal to 5% of the consolidated annual income of the supervised group averaged during that three year period;~~

~~(iii) (a) the eligible capital resources of the supervised group member during the period to which the group capital adequacy report relates, is~~ are greater than or equal to 5% of the group eligible group capital resources of the supervised group during that period; or as at—

~~(iv) (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 during the period to which the group capital adequacy report relates, is~~ are greater than or equal to 5% of the assets or liabilities, as the case may be, of the supervised group during that period; 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~~ function 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~~ paragraphs rule 3(a) or (b) under rule 3; or;

~~(b) knowing or having reason to believe, that a contravention by the designated insurance holding company of~~ paragraphs rule 3(a) or (b) under rule 3 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 ~~11~~ ~~—~~

~~“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 ~~thereunder~~ 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 ~~to~~ on the capital position, liquidity position, business, or risk exposure of the supervised group of a designated insurance holding company; ~~;~~

~~12~~13. Public disclosure in relation to group capital

~~(1)~~ ~~Within~~ (1) Subject to subrules (4) and (5), within 5 months after the financial year end date of a designated insurance holding company, the company ~~shall~~ 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, ~~including insurance risk, market risk and liquidity risk,~~ 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) ~~A~~ Subject to subrule (6), a designated insurance holding company ~~shall~~ 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 ~~shall~~must prepare and make such disclosure in accordance with such specified form.

~~(3)~~ ~~A designated insurance holding company in relation to its supervised group shall publish on its website the audited annual consolidated financial statements and the accompanying reports of directors and auditors which it is required to submit to the Authority pursuant to section 95ZH of the Ordinance, within 5 months after the year end date up to which the financial statements and reports are made.~~

~~(4)~~ The Authority may, at the request in writing of a designated insurance holding company, extend the ~~periods~~period in subrule (1) ~~or (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.

~~(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 ~~12~~ —

“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;

~~“insurance risk” (保險風險) in relation to a designated insurance holding company, means the risk of adverse change in the value of the eligible group capital resources of the group due to unexpected changes in the assumptions used for pricing or reserving by supervised group members that are regulated entities carrying on insurance business, including assumptions in relation to severity, frequency, trend, volatility or level of occurrence rates;~~

~~“market risk” (市場風險) in relation to a designated insurance holding company means the risk of adverse changes in the value of eligible group capital resources of its supervised group due to unexpected changes in the level of volatility of market prices of assets and liabilities; —~~

~~“liquidity risk” (流動資金風險) in relation to a designated insurance holding company, means the risk of supervised group members being unable to realize their investments and other assets in a timely manner in order to meet their financial obligations, including collateral needs, as they fall due;~~

“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~~ Group Capital

1. Tier 1 group capital for the purposes of ~~subrule 8~~ rule 7(1)-(b)

(+) For the purposes of ~~subrule 8~~ 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~~the supervised group member's retained earnings;
- (b) ~~The~~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) ~~Accumulated~~other accumulated comprehensive income of the supervised group member;
- (d) ~~The~~the supervised group member's unrestricted and restricted reserves;
- (e) ~~The~~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~~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~~financial instruments of the supervised group member that satisfy all of the following characteristics—

~~The~~ (i) the instrument is fully paid-up;

~~The~~ (ii) the instrument is in the form of issued capital such that it is the first instrument to absorb losses as they occur;

~~The~~ (iii) the instrument entitles the holder of the instrument to the most subordinated claim in a liquidation of the supervised group ~~member~~ where the holder of the instrument is entitled to a claim on the residual assets of the supervised group ~~member~~ 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);

~~The~~ (iv) the instrument is perpetual and does not have a maturity date;

~~The~~ (v) the principal amount of the instrument is not repaid outside winding-up, other than by means of discretionary repurchases permitted under applicable law;

~~The~~ (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;

~~There~~(vii) there are no circumstances under which a distribution is obligatory and non-payment of a distribution is, therefore, not an event of default;

~~Distributions~~ (viii) distributions are paid only out of distributable items, including retained earnings;

~~The~~ (ix) ~~the~~ instrument is neither undermined nor rendered ineffective by encumbrances—~~In 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;

~~No~~ (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;

~~The~~ (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 ~~subrule 8~~ rule 7(2)

~~(1)~~—For the purposes of ~~subrule 8~~ 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 ~~subparagraph~~ section 1(g) of this Schedule ~~4~~, but satisfies all of the following characteristics—

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

(b) ~~The~~ the instrument is subordinated to ~~policyholders~~ policy holders and other non-subordinated creditors and holders of financial instruments that are tier 2 group capital of the supervised group;

(c) ~~The~~ the instrument is perpetual and does not have a maturity date;

(d) ~~The~~ the instrument does not contain any incentive to redeem, such as a step-up;

(e) ~~The~~ the instrument—

(i) is only callable at the option of the issuer after at least ~~five~~ 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 ~~five~~ 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 ~~prior supervisory approval is required for any such redemption~~;

(ii) if called in any of the circumstances mentioned in subparagraph (i), may only be redeemed with prior supervisory approval;

~~(f)~~ (f) ~~The~~ the instrument may be repurchased by the issuer at any time with prior supervisory approval;

(g) ~~The~~ 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~~ the supervised group member has full discretion at all times to forego or cancel distributions and the dividends and coupon payments are non-cumulative.—~~The, 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~~ distributions are paid out of distributable items, including retained earnings;

(j) ~~The~~ 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~~ the instrument is neither undermined nor rendered ineffective by encumbrances—~~In, 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) ~~None~~ 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;

~~The~~ (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~~~~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 ~~subparagraphs (a) to~~ paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m) and (n).

Schedule 2

[rr. 6 & 7]

Tier 2 group capital**Group Capital**

1. Tier 2 group capital for the purposes of ~~subrule 8~~rule 7(3)(b) — eligible group capital resources that are financial instruments

~~(1) —~~ For the purposes of ~~subrule 8~~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 —

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

~~The~~ (b) the instrument is subordinated —

(i) to the policy holders and other non-subordinated creditors of the supervised group ~~or (in and the ease form of structural subordination) —~~ is contractual subordination; or

~~(a) —~~ (ii) 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. — The form of subordination can be either contractual or structural, with instruments that are subject to structural, the form of subordination being subject to conditions or other arrangements that are adequate to ensure is structural subordination of the instrument to the policy holders of and approval from the supervised group member which carries on insurance business, to which the proceeds of the instrument have been down-streamed.~~

~~The instrument~~ Authority has been obtained under section 3(4) of this Schedule;

(c) the instrument has an initial maturity of at least five5 years with its effective maturity date defined to be the earlier of the following (which may only occur after the initial five5 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;

~~The~~ (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 five5 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 ~~paragraph rule 3~~(a) or (b) ~~under rule 3~~ which apply to a designated insurance holding company;

~~Subject~~(e) subject to paragraph (f) below, the instrument is only callable at the option of the issuer after at least five5 years from the date of issue (such that the instrument is not retractable by the holder) and prior supervisory approval is required for ~~any redemption prior to contractual maturity; —~~

~~The~~ (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 five5 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;~~

- ~~The _____ (g) the instrument may be repurchased by the issuer at any time with prior supervisory approval;~~
- ~~The _____ (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;~~
- ~~The _____ (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;~~
- ~~The _____ (j) the instrument does not give holders rights to accelerate the repayment of future scheduled principal or coupon payments, except in winding-up;~~
- ~~The _____ (k) the instrument is neither undermined nor rendered ineffective by encumbrances. In, 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;~~
- ~~No _____ (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;~~
- ~~If _____ (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 subparagraphs (a) to (l).~~

2. Tier 2 group capital for the purposes of ~~subrule 8~~ rule 7(3)(b) — eligible group capital resources other than financial instruments

~~(1) — For the purposes of ~~subrule 8~~ 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: —~~

~~Share (a) share premium resulting from the issuance of financial instruments included in tier 2 group capital;~~

~~(b) — The (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 ~~paragraph~~ section 1(b)(ii) of this Schedule—

~~regulatory or supervisory controls (規管或監管控制)~~, 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 ~~or~~ under subsection (4).

(2) A designated insurance holding company may apply in accordance with subsection (3) for an ~~involved supervisor in relation to any distributions~~ 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 ~~by the~~ 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, ~~means that~~ to which the proceeds of the instrument have been down-streamed;

(a) ~~the supervisory review or prior supervisory approval of all distributions, including the ability for the Authority or the involved supervisor to limit, defer, or disallow the payment of any distributions should it find that that supervised group member is presently, or may potentially become, financially distressed; and~~

(b) ~~as part of its review or prior approval process of distributions, the Authority or the relevant involved supervisor considers the surplus adequacy, financial flexibility, the quality of earnings, and other factors deemed to be pertinent as they relate to the financial strength of the insurer and policyholder protection;~~

(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 ~~holding company where~~ 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 have been of the instrument by the member of the insurance group (*up-stream company*) being down-streamed into a supervised group member which is a subsidiary of the holding another company being a subsidiary which carries on in the same insurance business, means that group (*down-stream company*) resulting in any claims by the holder of up-stream company and the holders of the financial instrument will have no entitlement, in the event of a winding-up of the down-stream company, being subordinated to the assets claims of the supervised group member until after all policy holders of the supervised group member to which the proceeds have been down-streamed, have been paid. of the down-stream company.

Insurance Authority

2020

Annex C – List of Respondents

List of Respondents (in alphabetical order)

1. BE Reinsurance Limited
2. Dah Sing Insurance Co. (1976) Ltd.
3. Hong Kong Monetary Authority
4. The Actuarial Society of Hong Kong
5. The Hong Kong Confederation of Insurance Brokers
6. The Hong Kong Federation of Insurers (on behalf of the following authorized insurers)
 - AIA International Limited
 - AXA China Region Insurance Company Limited
 - AXA General Insurance Hong Kong Limited
 - Bowtie Life Insurance Company Limited
 - BEA Life Limited
 - BOC Group Life Assurance Company Limited
 - China Life Insurance (Overseas) Co. Ltd
 - China Taiping Insurance (HK) Company Ltd.
 - Chong Hing Insurance Company Ltd
 - Dah Sing Insurance Co. (1976) Ltd.
 - Manulife (International) Limited
 - Prudential Hong Kong Limited
 - Tahoe Life Insurance Company Limited
7. The Hong Kong Institute of Public Accountants
8. The Law Society of Hong Kong
9. Mr Peter WONG