

Consultation Paper
on
Draft Insurance (Group Capital) Rules

FOREWORD

1. This paper is published by the Insurance Authority to consult the public on the draft rules to be made under section 129 of the Insurance Ordinance (Cap. 41), namely the Insurance (Group Capital) Rules. The enclosed draft Insurance (Group Capital) Rules which is being consulted on has been prepared in anticipation of the introduction of the new supervisory framework for insurance groups in relation to which the Insurance Authority performs the role of group supervisor in accordance with international standards for insurance supervision set by the International Association of Insurance Supervisors (IAIS).
2. The Insurance Authority welcomes written submissions on or before **30 September 2020** by the following means:

Mail: Insurance Authority
19/F, 41 Heung Yip Road
Wong Chuk Hang
Hong Kong
Fax: (852) 3899 9993
Email: comment_gwsgroupcapitalrules@ia.org.hk

3. A feedback template is enclosed.
4. Any person making a submission on behalf of an organization is requested to provide details of such organization.
5. Submissions will be received on the basis that the Insurance Authority may freely reproduce and publish them, in whole or in part, in any form, and use, adapt or develop any proposal put forward without seeking permission or providing acknowledgement of the party making such proposal.
6. Please note that name(s) of respondent(s), their affiliation(s) and the contents of their submissions may be referred to in any forms of documentation the Insurance Authority may publish or release. If you do not wish your name, affiliation and/or submission to be disclosed, please expressly state so when you make your submission.
7. Any personal data submitted will only be used for consultation and its related purposes. For access to or correction of any personal data contained in your submission, please contact –

Personal Data Privacy Officer
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19/F, 41 Heung Yip Road
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CHAPTER 1

EXECUTIVE SUMMARY

- 1 The Insurance Authority (“IA”) is a body corporate established under the Insurance Ordinance (Cap. 41) (“IO”) as an independent regulator for the insurance industry in Hong Kong. On regulation of insurers, the current functions and powers of the IA under the IO focus on “solo” regulation, meaning that the IA is assigned powers only on the regulation of companies as single entities carrying on insurance business in or from Hong Kong (referred to hereafter as “authorized insurers”).
- 2 Many authorized insurers, however, are subsidiary companies within a wider group of companies which also have subsidiaries in other jurisdictions carrying on insurance business in those jurisdictions. In these groups (referred to hereafter as “insurance groups”), the risk management and control functions as well as significant management and policy decisions are often carried out and made at the group level, i.e. by personnel in the holding company who have been assigned responsibility for overseeing the entire insurance group. Accordingly, the International Association of Insurance Supervisors (“IAIS”)¹ requires insurance regulators not just to regulate insurers on a “solo” basis but also to cooperate and coordinate with each other to ensure insurance groups are regulated on a “group-wide” basis by agreeing, where appropriate, on one of their members to serve as the group supervisor in relation to an insurance group.
- 3 At present, the IA is the group supervisor of several international insurance groups as agreed by insurance regulators of the relevant supervisory colleges². The IA performs this role by using an indirect approach based on its existing “solo” regulatory powers, i.e. using its regulatory powers in relation to the insurance subsidiaries which the IA directly regulates (i.e. authorized insurers) to influence the holding companies of the insurance groups. Currently, the IA does not have direct regulatory powers over the holding companies of the authorized insurers it regulates, even though such holding companies are incorporated in Hong Kong. An overview of the GWS Framework is at [Annex A](#).
- 4 Accordingly, the IA proposes to make legislative amendments to the IO and its regulations to enable the IA to carry out effective and direct group-wide supervision that is in line with international standards by extending certain powers which the IA currently has over an authorized insurer to a Hong Kong-incorporated holding company of an insurance group, extending the functions of the IA to cover the proposed group-wide supervision and providing the IA with new powers that are applicable at the holding company level.
- 5 The proposed Insurance (Group Capital) Rules (“Group Capital Rules”) forms part of the legislative amendments as described in paragraph 4 above. The IA

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

² A supervisory college refers to a forum for cooperation and coordination among the regulators of the subsidiary insurance companies, which are located in different jurisdictions, in an insurance group.

proposes to issue the draft Group Capital Rules pursuant to section 95ZI of the IO and the IA's principal function as a group supervisor to perform group supervision and regulation in relation to insurance groups.

- 6 The main objectives of the proposed Group Capital Rules is to set out the requirements in relation to the capital of the supervised group of a designated insurance holding company (including the minimum amount of capital that the group must maintain and the types and amounts of capital resources of the group that are eligible for being counted towards satisfying the minimum amount of capital), requirements for a designated insurance holding company to report to the IA (including how such a report is to be made), and requirements for a designated insurance holding company to disclose to the public (including how such a disclosure is to be made).
- 7 The draft Group Capital Rules takes into account of the relevant Insurance Core Principles ("ICPs") promulgated by the IAIS; the Common Framework for the Supervision of Internationally Active Supervised groups ("ComFrame")³ promulgated by the IAIS; and the Insurance Capital Standard ("ICS") being developed as part of ComFrame.
- 8 The draft Group Capital Rules is published for consultation as **Annex B** together with this explanatory consultation paper. Comments are invited, not only on the specific questions identified in this consultation paper but on other aspect of the proposed Group Capital Rules. A feedback template is included in **Annex C**.
- 9 The IA would like to express its gratitude to the industry, in particular, to members of the working and discussion groups for their valuable advice and feedback.

³ The Common Framework for the Supervision of Internationally Active Insurance Groups. ComFrame builds and expands upon the high-level standards and guidance currently set out in the IAIS ICPs.

CHAPTER 2

THE PROPOSED NEW GROUP-WIDE SUPERVISORY FRAMEWORK FOR INSURANCE GROUPS

Background

- 10 The Insurance Authority (“IA”) is a member of the International Association of Insurance Supervisors (“IAIS”) and adheres to the Insurance Core Principles (“ICPs”) promulgated by the IAIS, which provide an internationally accepted framework for insurance supervision.
- 11 In addition to the ICPs, the IAIS has recently published a Common Framework for the Supervision of Internationally Active Insurance Groups (“ComFrame”), which is a set of international supervisory requirements focusing on the effective group-wide supervision of Internationally Active Insurance Groups (“IAIGs”).
- 12 The IA already acts as the group supervisor in relation to certain insurance groups which have authorized insurers in Hong Kong (usually where the authorized insurer is a significant part of the insurance group). It does this principally utilizing an indirect approach, (which mainly involves assessing the continued fitness and properness of the holding company of the insurance group, in its position as a “controller” of the authorized insurer which the IA regulates and liaising and cooperating with other regulators of other members of the insurance group).
- 13 The IA is committed to ensuring that insurance groups, particularly those which are IAIGs in Hong Kong, remain competitive and strong. Accordingly, as the IAIS’s principles for supervision of IAIGs evolves (as it is doing with the promulgation of ComFrame), so Hong Kong’s group-wide insurance supervisory regime must evolve with it, to remain aligned with international standards. Pursuant to this, the IA is considering putting forward proposals which collectively will see the introduction of an enhanced new framework for group-wide supervision of insurance groups in Hong Kong (“GWS Framework”). This GWS Framework is intended (a) to be aligned with the IAIS’s standards of group-wide supervision (particularly ComFrame) and (b) to be principles-based and outcomes focused to allow the IA to have effective and robust supervisory mechanisms for insurance groups, whilst avoiding unnecessary compliance costs for the insurance groups it supervises.

The three pillars under the GWS framework

- 14 The proposed GWS framework will be founded on three pillars:
 - a) **Pillar 1:** Pillar 1 will establish capital requirements which a holding company of an insurance group (designated insurance holding company) would be expected to ensure its insurance group meets. The capital requirements will consist of two levels comprising a Group Minimum

Capital Requirement (“GMCR”) and a Group Prescribed Capital Requirement (“GPCR”). The GMCR and GPCR will respectively be calculated as the sum of the regulatory minimum capital requirements and prescribed capital requirements which apply to each of the legal entities in the insurance group in the jurisdictions in which they carry on business. The eligible group capital resources of an insurance group will be calculated as the sum of the eligible capital resources of each legal entity in the insurance group (such eligibility to be based on whether the legal entity can count the capital resource towards meeting its minimum or prescribed capital requirement in the jurisdiction where it carries on business). Adjustments will be made as appropriate to the GMCR, the GPCR or the eligible group capital resources to eliminate any double-counting of capital.

- b) **Pillar 2:** Pillar 2 will set out risk management and governance requirements that a designated insurance holding company is expected to apply across the group, which include a requirement to carry out a Group Internal Economic Capital Assessment (“GIECA”), and an Own Risk and Solvency Assessment (“ORSA”) to assess present and future financial and risk condition of its insurance group. The GIECA requirement will require insurance groups to undertake their own assessment of capital adequacy to a target criteria of 99.5% value-at-risk over a 1-year time horizon, or equivalent.
- c) **Pillar 3:** Pillar 3 will set out disclosure requirements for a designated insurance holding company that cover risk and governance disclosures in relation to its insurance group consistent with general financial reporting requirements and public reporting of GMCR, complemented by private reporting to the IA on GIECA and ORSA.

15 An overview of the GWS Framework is included at **Annex A**. The proposed GWS Framework is expected to evolve as the development of ComFrame evolves.

Implementation of the GWS Framework

- 16 The new GWS Framework is proposed to be implemented by means of:
- a) amendments to the Insurance Ordinance (Cap. 41), i.e. the Insurance (Amendment) (No. 2) Ordinance 2020 (“GWS Amendment Ordinance”), to empower the IA to directly supervise and regulate holding companies of insurance groups where the holding company is incorporated in Hong Kong and where the IA serves as the group supervisor of the group;
 - b) rules (to be made by the IA under section 129 of the Ordinance) and regulations (to be made by the Chief Executive in Council under section 128 of the Ordinance) as subordinate legislation on (i) in the case of the

rules, the capital requirements and related disclosure and reporting requirements applicable to holding companies in relation to their insurance groups where the IA is the group supervisor of the insurance group; and (ii) in the case of the regulation, the prescribed fees to be charged to recover the cost of conducting group-wide supervision (“GWS Fees Regulation”) that will be applicable to holding companies in relation to their insurance groups, where the IA is the group supervisor; and

- c) guidelines to be issued by the IA under section 133 of the Ordinance, which seek to set out principles and standards which the IA considers to be fundamental to the proper governance, risk management and other control aspects of insurance groups and which provide further principle-based guidance to insurance groups, of which the IA is the group supervisor.

- 17 The GWS Amendment Ordinance was enacted in July 2020. It is anticipated that the proposed subsidiary legislation will be introduced into the Legislative Council in the 2020-21 legislative session.

Consultation

- 18 The proposed Insurance (Group Capital) Rules (“Group Capital Rules”) (a draft of which is at **Annex B**) are intended to complement the relevant GWS Amendment Ordinance to expand the IA’s functions and to provide the IA with the necessary powers to carry out supervision of insurance groups whose holding company is incorporated in Hong Kong. The Group Capital Rules set out the group capital requirements and related reporting and disclosure requirements that designated insurance holding companies will be required to comply with in relation to their insurance groups, under the new GWS Framework.
- 19 The draft Group Capital Rules will be refined and finalized after taking into account the feedback collected during this public consultation. The intention is, upon their update resulting from the consultation feedback, for the rules, which are subsidiary legislation, to be published in the Gazette and submitted to the Legislative Council for negative vetting. The commencement date will be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.
- 20 The IA will consult the industry and key stakeholders during 2020 on the GWS Fees Regulation and other guidelines to be issued by the IA.

CHAPTER 3

OVERVIEW OF THE INSURANCE (GROUP CAPITAL) RULES

- 21 The Group Capital Rules will apply to designated insurance holding companies, being holding companies (incorporated in Hong Kong) of insurance groups, in relation to which the IA is performing the role of group supervisor in accordance with the relevant international standards including the ICP and ComFrame promulgated by the IAIS.
- 22 Pursuant to the Group Capital Rules, a designated insurance holding company will need to ensure that its insurance group satisfies certain capital requirements, as follows:
- a) Rule 1 sets out the commencement date on which the Group Capital Rules will come into operation;
 - b) Rule 2 sets out the interpretation of key terms used in Group Capital Rules;
 - c) Rule 3 introduces the “GMCR” and “GPCR” which are applicable to a designated insurance holding company in relation to its insurance group. Rule 3 requires the designated insurance holding company to ensure, in relation to its insurance group, that (a) tier 1 group capital must at all times not be lower than the GMCR and (b) the sum of tier 1 group capital and tier 2 group capital must at all times not be lower than the GPCR;
 - d) Rule 4 provides that the GMCR is formulated as the sum of the minimum capital requirements applicable to each of members in the insurance group (“supervised group members”). Where the shareholding in the supervised group member is less than 100%, only the corresponding proportion of the member’s minimum capital requirement is included in the summation to reach the GMCR;
 - e) Rule 5 provides that the GPCR is formulated as the sum of the prescribed capital requirements applicable to the supervised group members in the insurance group. Where the shareholding in the supervised group member is less than 100%, only the corresponding proportion of the member’s prescribed capital requirement is included in the summation to reach the GPCR;
 - f) Rule 6 provides that only eligible group capital resources may be part of the insurance group’s tier 1 group capital or tier 2 group capital. The eligible group capital resources are the eligible capital resources of each supervised group member in the insurance group. If the supervised group member is a regulated entity, its eligible capital resources are the resources and financial instruments that are eligible to be counted towards satisfying its minimum capital requirement or prescribed capital requirement in the jurisdiction in which it is authorized as a regulated entity. If a supervised group member is a non-regulated entity, its eligible capital resources (and their categorization into tier 1 (unlimited

or limited) or tier 2) is determined based on the criteria set out in Schedule 1 or 2 to the Group Capital Rules;

- g) Rule 7 sets out the adjustments that need to be made to the GMCR, GPCR or group eligible capital resources, to avoid double-counting (for example, if a supervised group member is the holding company of another supervised group member, or where a supervised group member is a regulated entity in several jurisdictions and thereby subject to several different minimum or prescribed capital requirements);
 - h) Rule 8 sets out the tiering of eligible group capital resources. In addition to Tier 1 and Tier 2, Tier 1 capital has a subset of Tier 1 limited capital, which cannot exceed 10% of the GMCR;
 - i) Rule 9 sets out the transitional arrangements in relation to the financial instruments that have been issued before the commencement date of the Group Capital Rules and which can be considered as eligible group capital resources. Relevant details on the transitional arrangements will be specified as part of a guideline to be issued by the IA under section 133 of the IO;
 - j) Rule 9A provides that the IA may determinate resources and financial instruments to be eligible capital resources;
 - k) Rule 10 specifies the reporting requirements on group capital adequacy to the IA;
 - l) Rule 11 specifies the reporting of significant events in relation to an insurance group to the IA;
 - m) Rule 12 specifies the minimum public disclosure requirement related to an insurance group that the designated insurance holding company must satisfy;
 - n) Schedules 1 and 2 set out the criteria for tier 1 group capital and tier 2 group capital for the purposes of Rules 6 and 8.
- 23 In addition to the Group Capital Rules, pursuant to one of the proposed amendments to be made to the IO that will implement the GWS Framework, the IA will be empowered to vary the group capital requirement and/or the group capital resources stated in Rule 5 and Rule 6 thereof as they apply to a designated insurance holding company in relation to its insurance groups.
- 24 A decision made by the IA to vary the group capital requirements and/or the group capital resources in this respect, will be a “specified decision”, giving the designated insurance holding company a right to apply to have the decision reviewed by the Insurance Appeals Tribunal (per Part XII of the IO).
- 25 The criteria and considerations that are relevant, together with the due process for exercising relevant powers to vary the group capital requirement and/or

group capital resources, will be specified in a guideline to be issued by the IA under section 133 of the IO.

CHAPTER 4

INPUT SOUGHT ON THE DRAFT GROUP CAPITAL RULES

- 26 There are certain aspects of the draft Group Capital Rules on which the IA would specifically welcome input.

Rule 2 – Definition of “regulated entity”

- 27 It is intended that the capital requirement and eligible capital resources for all regulated entities of an insurance group be included as part of the group capital requirements and eligible group capital resources under the GWS Framework, before any variation to group capital is considered. A “regulated entity”, in this respect, will include any entity which is overseen by a regulatory authority, and which is obliged to observe a minimum capital requirement as part of the regulatory regime to which it is subject as a regulated entity.
- 28 Noting that capital requirements are mainly applicable to financial sector entities, the definition for “financial sector entity” in section 35 of the Banking (Capital) Rules (Cap. 155L) has been adapted for the purposes of specifying “regulated entity” under the Group Capital Rules. Examples of the types of regulated entities to be included (e.g. asset management and pension business) will be specified in guidelines.

Question 1

Is the proposed definition of “regulated entity” sufficiently broad to cover all types of regulated entities in an insurance group?

Rule 6 – Eligible capital resources for regulated and non-regulated entities

- 29 Eligible group capital resources will be equal to the sum of eligible capital resources in each legal entity (i.e. supervised group member) in the insurance group. Eligible capital resources in each legal entity would be defined as follows:
- (a) for regulated insurance and non-insurance entities in the insurance group, the eligible capital resources would be those capital resources which are treated as eligible capital in accordance with the capital adequacy regulations applicable to the entity in the jurisdiction where it carries on business; and
 - (b) for non-regulated entities in the insurance group, eligible capital resources would include International Financial Reporting Standards (“IFRS”) shareholder equity less intangible assets, and at the same time,

satisfying the criteria in Schedule 1 or 2 to the Group Capital Rules for resources and financial instruments.

- 30 Whilst Rule 6(3)(b)(i) states that “intangible assets” are not to be included in the case of non-regulated entities in the insurance group (i.e..... “less goodwill and any other intangible assets”), it does not go into detail on what needs to be excluded, e.g. deferred tax assets and defined benefit pension funds etc..

Question 2

Having regard to the intention in paragraphs 29 and 30 above, 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?

Rule 7 – Elimination of double-counting in required group capital and/ or eligible group capital resources

- 31 As provided for in Rule 7, when formulating the GMCR, GPCR or identifying the eligible group capital resources of an insurance group, double-counting may arise where, for example, one supervised group member which is a regulated entity in the insurance group (member A) owns another supervised group member which is a regulated entity in the insurance group (member B). In this scenario, double-counting may arise where member A’s minimum capital requirement/prescribed capital requirement is determined on a consolidated basis (i.e. inclusive of assets and liabilities of member B). To avoid double counting in this scenario, only the minimum capital requirement and prescribed capital requirement of member A (and not member B) shall be included in the group minimum capital requirement and group prescribed capital requirement applicable in relation to the insurance group. Further, the only capital resources of member B that shall be included as part of the eligible group capital resources, are those which are eligible to count towards satisfying member A’s minimum capital requirement and prescribed capital requirement.
- 32 By contrast, if member A only recognizes the value of member B as an investment in a subsidiary (i.e. only on the asset side) on its balance sheet (rather than member B’s assets and liabilities being fully consolidated in member A’s assessment of its minimum capital requirement or prescribed capital requirement), then the eligible capital resources, minimum capital requirement and prescribed capital requirement of member B shall be included in the group capital resources, group minimum capital requirement and group prescribed capital requirement of the insurance group. Relevant adjustments will be made in accordance with paragraph 34 below.

- 33 In the case of a regulated entity which is incorporated and formed in a jurisdiction and has a branch in another jurisdiction, then the eligible capital resources, minimum capital requirement and prescribed capital requirement of the entity (which may be included in the eligible group capital resources, group minimum capital requirement and group prescribed capital requirement) shall be determined in accordance with the capital adequacy regulations applicable to the regulated entity in its place of incorporation or formation (i.e. its home jurisdiction).
- 34 To avoid double-counting of group eligible capital resources of the insurance group (e.g. where the same capital resources of one regulated entity in the group is also considered as capital resources of another regulated entity in the group), shares in a regulated entity (member B) which are held by another regulated entity (member A) in the insurance group should be eliminated from the eligible group capital resources of the insurance group. Similarly any debt instruments (to the extent these are considered capital resources) issued by a regulated entity to, or which is held by, another regulated entity, should be eliminated from eligible group capital resources of the insurance group.
- 35 Illustrative examples to explain relevant treatment above will be specified in guidelines.

Question 3

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

Rule 8 – Tiering approach for regulated and non-regulated entities

- 36 For the purposes of assessing the amount of eligible group capital of an insurance group against its GMCR and GPCR, a designated insurance holding company should categorize its eligible group capital into either tier 1 group capital or tier 2 group capital. A designated insurance holding company should subcategorize its tier 1 group capital, by identifying which of those capital resources are tier 1 limited capital. As a general principle:
- a) Tier 1 group capital are those eligible capital resources, which are permanent and fully available to cover losses at all times and on a going-concern and winding-up basis; and
 - b) Tier 2 group capital are those eligible capital resources which provide loss absorbency on a winding-up basis.
- 37 In relation to the eligible capital resources of a regulated entity, where the regulatory regime to which the entity is subject already categorizes eligible

capital resources into tiers based on the quality of their loss absorbency, the designated insurance holding company should classify such eligible capital resource to the equivalent tier of group eligible capital. For example, if an eligible capital resource of a regulated entity (being a supervised group member) is categorized as tier 2 under the regulatory regime to which the entity is subject (or to a tier which is not the tier considered to be the highest tier of regulatory capital under such regulatory regime), the designated insurance holding company should categorize the eligible capital resource as tier 2 group capital.

- 38 If the regulatory regime to which a regulated entity (being a supervised group member) is subject does not adopt a tiering approach for eligible capital resources, then the designated insurance holding company should categorize the eligible capital resource as tier 1 group capital.
- 39 In relation to the eligible capital resources of a non-regulated entity (being a supervised group member), the designated insurance holding company should categorize such eligible capital resources to either tier 1 group capital or tier 2 group capital, based on the criteria stated in Schedule 1 or 2 to the Group Capital Rules.

Question 4

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

Rule 10 – Submission of group capital adequacy report to the IA

- 40 The designated insurance holding company is required to prepare a group capital adequacy report as at 30 June and 31 December containing information specified in Rule 10(1) in relation to the insurance group, and submit the report to the IA within five months after the relevant date.
- 41 The report must include a breakdown for each material supervised group member in the insurance group. Whether or not a supervised group member is material, is to be determined by one of two methods (see Rule 10(6)). It shall be determined by reference to the following materiality thresholds-
- a) the income of the 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;
 - b) 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;

- c) the eligible capital resources of the supervised group member during the period to which the group capital adequacy report relates, is greater than or equal to 5% of the eligible group capital resources of the supervised group during that period; or
- d) the assets or liabilities of the supervised group member during the period to which the group capital adequacy report relates, is greater than or equal to 5% of the assets or liabilities, as the case may be, of the supervised group during that period.

Question 5

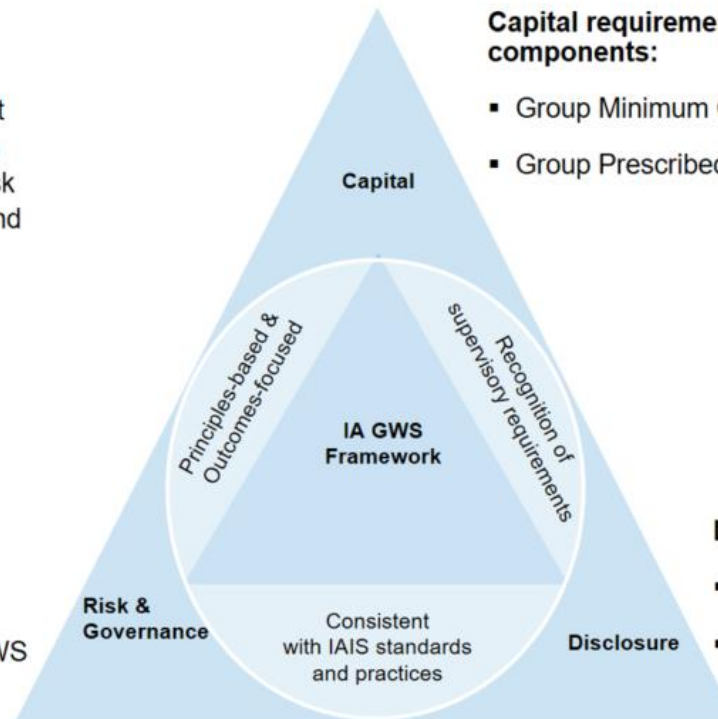
Do you agree with the criteria for defining a “material supervised group member” in Rule 10(6) of the Group Capital Rules?

ANNEX A

GWS FRAMEWORK OVERVIEW

Risk and Governance requirements comprising:

- A group-wide internal economic capital assessment (GIECA) – where the group would calculate its own view of the economic capital required to meet its risk profile calibrated to a consistent confidence level and time horizon across all entities (i.e. calibrated at a 99.5% VaR over a 1 year timeframe or equivalent);
- A group-wide ORSA – where the group would be required to assess its own view of its present and future financial and risk condition;
- Stress and scenario testing;
- Recovery analysis, which would include reverse stress testing analysis; and
- Supervisory review mechanisms – ensuring the GWS College functions effectively and efficiently.



Capital requirements comprising two components:

- Group Minimum Capital Requirement (GMCR).
- Group Prescribed Capital Requirement (GPCR).

Disclosure requirements comprising:

- Public reporting of the Group MCR
- Private reporting to the IA of the GIECA, ORSA and ICS

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ANNEX B

INSURANCE (GROUP CAPITAL) RULES

(Made by the Insurance Authority under section 129 of the Insurance Ordinance
(Cap. 41))

Part I

Preliminary

1. Commencement

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

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 rule 4;

group prescribed capital requirement (集團訂明資本要求) – see rule 5;

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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) 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;
- (b) the resources or financial instruments of the supervised group member which may be counted towards meeting the amount required in paragraph (a); and
- (c) the method for evaluating the 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 entity⁴ (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:

- (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);

⁴ The definition of regulated entity is adapted from the definition for financial sector entity in section 35 of the Banking (Capital) Rules (Cap. 155L).

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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 rule 8;

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.

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Part II

Group Capital Adequacy

3. Group 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

- (1) Subject to subrule (2) and rule 7, 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 of subrule (1) and subject to rule 7, 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 for the purpose of discharging its obligations in relation to such business carried on prior the date of such withdrawal; and
 - (b) in the case of a supervised group member that is a non-regulated entity, is zero.

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- (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 purposes of subrule (1) shall 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. Calculation of the Group Prescribed Capital Requirement

- (1) Subject to subrule (2) and rule 7, 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 of subrule (1) and subject to rule 7, the prescribed capital requirement applicable to a supervised group member in a 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 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 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 purposes of subrule (1) shall include the enhancement, increase or add-on, as the case may be.

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- (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 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 be calculated in accordance with subrules (1) to (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 shall 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 7, the eligible group capital resources of a supervised group shall 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 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

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relation of the eligible capital resources of that supervised group member, shall 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 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 of 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.

7. Treatment of double-counting

- (1) 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 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 be included in the group minimum capital requirement of its supervised group for the purpose of subrule (1) of rule 4;
 - (b) the minimum capital requirement of the second supervised group member shall not be included in the group minimum capital requirement of its supervised group for the purpose of subrule (1) of rule 4; and
 - (c) the capital resources of the second supervised group member, shall only be included in the group eligible capital resources of its supervised group for the purpose of subrule (1) of rule 6, 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) 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 is determined by consolidating the assets, liabilities and capital resources of both the first supervised group member and the second supervised group member, then

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- (a) the prescribed capital requirement of the first supervised group member shall be included in the group prescribed capital requirement of its supervised group for the purpose of subrule (1) of rule 5; and
 - (b) the prescribed capital requirement of the second supervised group member shall not be included in the group prescribed capital requirement of its supervised group for the purpose of subrule (1) of rule 5; and
 - (c) the capital resources of the second supervised group member, shall only be included in group eligible capital resources of its supervised group for the purposes of subrule (1) of rule 6, 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.
- (3) Where a supervised group member is a regulated entity in more than one jurisdiction, then-
- (a) for the purpose of subrule (1) of rule 4, only the minimum capital requirement applicable to the supervised group member in the jurisdiction where it is incorporated or formed shall be included in the group minimum capital requirement of its supervised group;
 - (b) for the purpose of subrule (1) of rule 5, only the prescribed capital requirement applicable to the supervised group member in the jurisdiction where it is incorporated or formed shall be included in the group prescribed capital requirement of its supervised group; and
 - (c) for the purpose of subrule (1) of rule 6, 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 be included in the group eligible capital resources of its supervised group.
- (4) For the purpose of subrule (1) of rule 6, the following must be deducted from the eligible group capital resources of a supervised group:
- (a) the value of any investment in shares of a supervised group member by another supervised group member; and
 - (b) the value of any financial instrument that is an eligible capital resource, issued to a supervised group member by another supervised group member.

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8. 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) subject to subrule (2), 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 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,

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“*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, 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:

- (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

9. Transitional arrangements in relation to 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

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of the designated insurance holding company, before the effective 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, without limitation, as to the amount of the financial instrument which may be included; and
 - (ii) direct that the financial instrument be tier 1 group unlimited or tier 1 limited group capital for the supervised group or tier 2 group capital for the supervised group; or
 - (b) may reject the application.
- (5) If the application is rejected, the notice must include a statement of the reasons for the rejection.

9A. Determination by the Authority of resources and financial instruments to be eligible group capital resources

- (1) This Rule 9A 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

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- (b) in the case of a financial instrument, is not a financial instrument to which subrule (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 satisfied, the Authority may by written notice served on the relevant designated insurance holding company, determine-
- (a) that the resource or financial instrument does qualify for inclusion in the eligible 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;
 - (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:
- (a) Condition 1 is that the Authority is satisfied that the resource or financial instrument should qualify for inclusion in the eligible 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 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;
 - (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

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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 Supervisory reporting and public disclosure in relation to group capital adequacy

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

- (1) A designated insurance holding company in relation to its supervised group shall 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) 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) to (g) of this subrule (1) in relation to each material supervised group member in the supervised group; and
 - (i) any material changes to the information specified in paragraphs (a) to (g) of this subrule (1) during the period commencing from the reporting date of the immediately preceding group capital report and ending on the reporting date of the current group capital 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 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 subrule (1) shall, as respects that designated insurance holding company, be construed as a reference to subrule (1) as so modified or varied.
- (4) Subject to subrule (5), a designated insurance holding company in relation to its supervised group, shall submit to the Authority:

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- (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) In this rule 10-

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

- (a) A 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) the eligible capital resources of the supervised group member during the period to which the group capital adequacy report relates, is greater than or equal to 5% of the group eligible capital resources of the supervised group during that period; or
 - (iv) the assets or liabilities of the supervised group member during the period to which the group capital adequacy report relates, is greater than or equal to 5% of the assets or liabilities, as the case may be, of the supervised group during that period.

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11. 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 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 (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 (a) or (b) under rule 3 has occurred;
 - (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, 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 the capital position, liquidity position, business, or risk exposure of the supervised group of a designated insurance holding company;

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12. Public disclosure in relation to group capital

- (1) Within 5 months after the financial year end date of a designated insurance holding company, the company shall 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 designated insurance holding company shall 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 prepare and make such disclosure in accordance with such specified form.
- (4) 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.

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- (5) The Authority may, at the request in writing of a designated insurance holding company, extend the periods 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.
- (6) 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;

“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 1⁵

Tier 1 group capital

1. Tier 1 group capital for the purposes of subrule 8(1) (b)

- (1) For the purposes of subrule 8(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) Accumulated other 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 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

⁵ Subject to refinement on relevant standards published by the International Association of Insurance Supervisors.

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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. 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 subrule 8(2)

- (1) For the purposes of subrule 8(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 1(g) of this Schedule 1, but satisfies all of the following characteristics-
 - (a) The instrument is fully paid-up;

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- (b) The instrument is subordinated to policyholders and other non-subordinated creditors and holders of financial instruments that are tier 2 group capital;
- (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 is only callable at the option of the issuer after at least five 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 years after issuance of the instrument in cases of regulatory or tax events, provided the instrument is replaced by another of similar or better quality and prior supervisory approval is required for any such redemption;
- (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. 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. 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

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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 subparagraphs (a) to (n).

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Schedule 2

Tier 2 group capital

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

- (1) For the purposes of subrule 8(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 the following characteristics –
 - (a) The instrument is fully paid-up;
 - (b) The instrument is subordinated to policy holders and other non-subordinated creditors of the supervised group or (in the case of structural subordination) 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 subordination being 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.
 - (c) The instrument has an initial maturity of at least five years with its effective maturity date defined to be the earlier of the following (which may only occur after the initial five 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 five 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 (a) or (b) under rule 3 which apply to a designated insurance holding company;

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- (e) Subject to paragraph (f) below, the instrument is only callable at the option of the issuer after at least five 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;
- (f) The instrument may be callable within the first five 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. 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

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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(3)(b) – eligible group capital resources other than financial instruments

- (1) For the purposes of subrule 8(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:
 - (i) the on-balance sheet liabilities secured by the encumbered assets; and
 - (ii) the incremental capital requirement under the laws relating to regulatory capital which are excluded from tier 1 group capital.

3. Meaning of regulatory or supervisory controls and structural subordination

- (1) For the purposes of paragraph 1 of this Schedule-

regulatory or supervisory controls (規管或監管控制) of the Authority or an involved supervisor in relation to any distributions made by the supervised group member which carries on insurance business, means that:

- (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

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deemed to be pertinent as they relate to the financial strength of the insurer and policyholder protection;

structural subordination (結構性後償債權), in relation to a financial instrument issued by a holding company where the proceeds from the issuance have been down-streamed into a supervised group member which is a subsidiary of the holding company being a subsidiary which carries on insurance business, means that the holder of the financial instrument will have no entitlement to the assets 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.

ANNEX C

FEEDBACK TO CONSULTATION PAPER ON THE DRAFT INSURANCE (GROUP CAPITAL) RULES

(Comments should be sent to the Insurance Authority on or before 30 September 2020.)

To: Insurance Authority

(email: comment_gwsgroupcapitalrules@ia.org.hk)

Name of Respondent:

Contact Person (if Respondent is an organization):

Contact Details:

Question 1

Is the proposed definition of “regulated entity” sufficiently broad to cover all types of regulated entities in an insurance group?

Question 2

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?

Question 3

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

Question 4

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

Question 5

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