Consultation Paper
on
Draft Insurance (Exemption to Appointment of Actuary) Rules, Draft Insurance (Maintenance of Assets in Hong Kong) Rules, Draft Insurance (Marine Insurers and Captive Insurers) Rules and Draft Insurance (Lloyd’s) Rules

FOREWORD

1 This paper is published by the Insurance Authority ("IA") to consult the public on the draft rules to be made under section 129 of the Insurance Ordinance (Cap. 41), namely the Insurance (Exemption to Appointment of Actuary) Rules, Insurance (Maintenance of Assets in Hong Kong) Rules, Insurance (Marine Insurers and Captive Insurers) Rules and Insurance (Lloyd's) Rules. These draft Rules in the attached set out technical details for the implementation of the new capital regime upon the commencement of the Insurance (Amendment) Ordinance 2023.

2 The IA welcomes written submissions on or before **9 February 2024** by any of the following means:

Mail: Policy and Development Division
Insurance Authority
19/F, 41 Heung Yip Road
Wong Chuk Hang
Hong Kong
Email: rbc@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 If you wish to suggest alternative approaches, we encourage you to send proposed amendments to the consultation documents for our consideration.

6 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.

7 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. Please read the Personal Information Collection Statement attached to this consultation paper. If you do not wish your name, affiliation and/or submission to be disclosed, please expressly state so when you make your submission.

PERSONAL INFORMATION COLLECTION STATEMENT

1 This Personal Information Collection Statement ("PICS") is made by the Insurance Authority ("IA") to comply with the notification requirements of the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO"). The PICS sets out the purposes for which your personal data (as defined in section 2 of the PDPO) will be used following collection, what you are agreeing to with respect to the IA's use of your personal data, and your rights under the PDPO.

Purpose of Collection

2 The personal data submitted will only be used by the IA for one or more of the following purposes –

- consultation and its related purposes;
- to administer the provisions of the Insurance Ordinance (Cap. 41) and any regulations, rules, codes, guidelines, circulars and regulatory instruments made or promulgated pursuant to the powers vested in the IA;
- to perform statutory functions under the provisions of the Insurance Ordinance (Cap. 41);
- for research and statistical purposes; or
- for other purposes as permitted by the laws of Hong Kong.

3 It is voluntary for you to supply the relevant information or submission (including personal data) for this consultation.

Transfer of Personal Data

4 The personal data submitted may be disclosed by the IA to members of the public in Hong Kong and elsewhere as part of this consultation. The names of persons who submitted comments on this consultation paper, together with the whole or any part of their submissions, may be disclosed to members of the public. This will be done by publishing this information on the IA's website and/or in documents to be published by the IA during the consultation period or at its conclusion.

Access to Data

5 You have the right to request access to and correction of your personal data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your personal data provided in your submission on this consultation paper. The IA has the right to charge a reasonable fee for processing any data access request.

Retention

6 Personal data provided to the IA in response to this consultation paper will be retained for such period as may be necessary for the proper discharge of its functions.

Enquiries

7 Any enquiries regarding the personal data provided in your submission on this consultation paper, requests for access to personal data or correction of personal data should be addressed in writing to –

Personal Data Privacy Officer
Insurance Authority
19/F, 41 Heung Yip Road
Wong Chuk Hang
Hong Kong

A copy of the IA's Privacy Policy is made available at the IA's website.

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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.

2 On 5 December 2023, the IA launched the public consultation ("the Consultation") on two draft rules, namely, Insurance (Valuation and Capital) Rules and Insurance (Submission of Statements, Reports and Information) Rules, which respond to the quantitative assessment under Pillar 1 and the reporting requirements to the IA under Pillar 3 based on the three-pillar framework.

3 This consultation aims to cover the remaining draft Rules commensurate with the new regime, namely:

- Draft Insurance (Exemption to Appointment of Actuary) Rules;
- Draft Insurance (Maintenance of Assets in Hong Kong) Rules;
- Draft Insurance (Marine Insurers and Captive Insurers) Rules; and
- Draft Insurance (Lloyd's) Rules.

4 Draft Insurance (Exemption to Appointment of Actuary) Rules provide for the exemption of appointment of actuary, who is required to submit report and statement of the actuarial review in respect of general business pursuant to the new section 18A of the IO as added by the Insurance (Amendment) Ordinance 2023 ("Amendment Ordinance"). In consideration of the unique features of some categories of insurers and potential cost of compliance, marine insurers, captive insurers and certain small-sized insurers are proposed to be exempted from the requirement of appointing actuaries in respect of general business.

5 Section 25A of the IO, as revised by the Amendment Ordinance, stipulates the requirement of maintenance of assets in Hong Kong for all authorized insurers carries on general business in or from Hong Kong. Draft Insurance (Maintenance of Assets in Hong Kong) Rules provide for exempting certain insurers from this requirement, as well as determining the amount of required assets to be maintained in Hong Kong. Due to the business nature and the scope of solvency regulation, captive insurers, HK-incorporated insurers and designated insurers under new section 3B of the IO as added by the Amendment Ordinance are proposed to be exempted from the requirement. Relief in terms of the amount of required local assets maintained for onshore reinsurance business is given to insurers with relatively high financial strength rating from prescribed rating agencies. The IA may reduce the amount of local assets that is so determined having considered the financial status of the insurer.

6 Given the unique features of marine mutual insurers and captive insurers in terms of capital and policy holders' characteristics, the draft Insurance (Marine Insurers and Captive Insurers) Rules aim to provide a simplified capital regime for these insurers. Apart from capital requirements, the Rules also cover areas including the valuation basis, which is the same basis as applicable to all other insurers; and fund requirements (as applicable).

7 As for Lloyd's, unlike a conventional insurance company, it is a marketplace for members insuring risks. Given the uniqueness of capital structure and operating characteristics of Lloyd's, the draft Insurance (Lloyd's) Rules aim to provide a simplified capital regime and allow the use of letter of credit as a resource for meeting the capital requirements. Apart from capital requirements, the Rules also cover areas including the valuation basis, which is the same basis as applicable to all other insurers.

8 The four draft Rules are published for consultation. A feedback template is included in **Annex E**.

9 The four draft Rules will be refined and finalized after taking into account the feedback collected during this public consultation. After that, the finalized draft Rules will be published in the Gazette and submitted to the Legislative Council for negative vetting.

10 The Amendment Ordinance, together with the relevant subsidiary legislation, is expected to commence operation in full on a date to be appointed by the Secretary for Financial Services and the Treasury after these draft rules are to be passed by the Legislative Council in 2024.

CHAPTER 2 – THE PROPOSED CAPITAL REGIME FOR INSURERS AND RELATED MATTERS

Background

11 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.

12 The then Office of the Commissioner of Insurance conducted consultation and proposed a new risk-based capital ("RBC") regime for Hong Kong's insurance industry in 2014-2015 ("Framework Consultation")[1]. The Framework Consultation proposed adopting three-pillar framework for the RBC regime –

- Pillar 1 refers to the quantitative assessment, including the valuation, capital quality, and capital requirements;
- Pillar 2 refers to the qualitative assessment, including enterprise risk management; and
- Pillar 3 refers to the reporting requirements to the IA, as well as the public disclosure requirements.

13 After technical discussions with the industry and based on observations from the three rounds of quantitative impact studies, the IA has come to a broad consensus with the industry on the detailed requirements, and considers that the proposed RBC regime is appropriate for the insurance industry in Hong Kong.

14 To enable the implementation of the RBC regime, the Insurance (Amendment) Ordinance 2023 ("Amendment Ordinance") was enacted in July 2023, which, among others, empowers the IA to make rules to prescribe detailed requirements in subsidiary legislation.

15 On 5 December 2023, the IA launched the public consultation ("the Consultation") on two draft rules, namely, Insurance (Valuation and Capital) Rules and Insurance (Submission of Statements, Reports and Information) Rules[2], which respond to the quantitative assessment under Pillar 1 and the reporting requirements to the IA under Pillar 3 based on the three-pillar framework[3].

16 This consultation aims to cover the remaining draft rules commensurate with the new capital regime, namely:

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[1] The consultation paper and consultation conclusion on a risk-based capital framework can be found at:
consultation paper – https://www.ia.org.hk/en/infocenter/files/rbc_consultation_paper.pdf
consultation conclusion – https://www.ia.org.hk/en/infocenter/files/rbc_consultation_conclusions.pdf

[2] The consultation paper on the draft Insurance (Valuation and Capital) Rules and draft Insurance (Submission of Statements, Reports and Information) Rules can be found at:
https://www.ia.org.hk/en/infocenter/consultation_rbc_20231205.html

[3] The IA has implemented the Pillar 2 requirements by way of Guideline on Enterprise Risk Management (GL 21).

- Draft Insurance (Exemption to Appointment of Actuary) Rules;
- Draft Insurance (Maintenance of Assets in Hong Kong) Rules;
- Draft Insurance (Marine Insurers and Captive Insurers) Rules; and
- Draft Insurance (Lloyd's) Rules.

Draft Insurance (Exemption to Appointment of Actuary) Rules

17 In order to commensurate with the proposed RBC regime, the new section 15AAA of the Insurance Ordinance ("IO") as added by the Amendment Ordinance requires authorized insurers to appoint actuaries in respect of the general business. The actuaries so appointed are required to submit reports and statements of the actuarial review in respect of general business pursuant to the new section 18A of the IO as added by the Amendment Ordinance.

18 In consideration of potential cost in complying with sections 15AAA and 18A of the IO against the business size or business nature, as well as supervisory objectives, we consider marine insurers, captive insurers and certain small-sized insurers should be exempted from appointing actuaries in respect of general business.

19 Chapter 3 outlines the draft Insurance (Exemption to Appointment of Actuary) Rules (see **Annex A**), covering the detailed criteria on exemption to appointment of actuary.

Draft Insurance (Maintenance of Assets in Hong Kong) Rules

20 Section 25A of the IO, as revised by the Amendment Ordinance, stipulates the requirement of maintenance of assets in Hong Kong for all authorized insurers carrying on general business in or from Hong Kong. It also empowers the IA to exempt certain insurers from this requirement by rules made under section 129 of the IO. In addition, the amount of required assets maintained in Hong Kong is to be determined in accordance with rules prescribed by the IA.

21 Due to policy holders' characteristics of captive insurers, we propose to continue its exemption under the new regime. As for HK-incorporated insurers and designated insurers under new section 3B of the IO as added by the Amendment Ordinance, given their solvency requirement is applied to the entire legal entity[4], we consider that this requirement on restricting the location of its assets may not be necessary for these insurers.

22 The amount of required assets to be maintained in Hong Kong is proposed to be the sum of the amount of onshore insurance liabilities and prescribed capital amount ("PCA") calculated using only onshore insurance liabilities and eligible assets in Hong Kong. Relief of maintaining certain amount of assets in Hong Kong in respect of onshore reinsurance business is given to insurers with relatively high financial strength rating from prescribed rating agencies. The IA may reduce the amount of local assets that is so determined having considered the

[4] In contrast, authorized insurers operating as branches in Hong Kong will only need to adhere RBC requirement in respect of the operations in Hong Kong.

financial status of the insurer.

23 Chapter 4 outlines the draft Insurance (Maintenance of Assets in Hong Kong) Rules (see **Annex B**), covering the detailed criteria on exemption from maintenance of assets in Hong Kong and the amount of the required assets to be maintained in Hong Kong.

Draft Insurance (Marine Insurers and Captive Insurers) Rules

24 Considered the uniqueness of marine insurers, captive insurers and Lloyd's, these insurers are proposed to be subject to a capital regime that is different from other authorized insurers and fit for their operating circumstances. Therefore, the IA proposes to prescribe the following draft rules for these specific groups of insurers in respect of their valuation and capital requirements –

(a) Insurance (Marine Insurers and Captive Insurers) Rules (Cap. 41U) – applicable for marine insurers and captive insurers; and
(b) Insurance (Lloyd's) Rules (Cap. 41V) – applicable for Lloyd's.

25 Given the unique features of marine mutual insurers and captive insurers in terms of capital and policy holders' characteristics, the draft Insurance (Marine Insurers and Captive Insurers) Rules aim to provide a simplified capital regimes for these insurers.

26 With that, we propose to use the calculation method of the relevant amount as stipulated under the current section 10 of the IO for the purpose of determining the amount of PCA for marine insurers and captive insurers. In respect of the PCA and minimum capital amount ("MCA") as provided in the Amendment Ordinance, we also propose to have the MCA same as PCA, with a flooring of HK$2 million for the simplified capital regime. Apart from capital requirements, the Rules also cover the valuation basis applicable to them which is the same basis as applicable to all other insurers.

27 Apart from the capital requirements, pursuant to the new section 3C of the IO as added by the Amendment Ordinance, the IA may make rules to provide for the determination of the value of assets and the amount of liabilities for insurers. Also, pursuant to the new section 25AAB as added by the Amendment Ordinance, the IA may by rules prescribe the amount of assets that is required to be held in the funds maintained in accordance with the new section 25AA as added by the Amendment Ordinance in respect of general business respectively ("Fund Requirements").

28 Chapter 5 outlines the draft Insurance (Marine Insurers and Captive Insurers) Rules (see **Annex C**). Given that the valuation of assets and liabilities and Fund Requirements are closely related to the determination of capital requirements, the draft Rules are intended to complement the detailed requirements of the proposed simplified capital regime, and cover areas including the valuation basis, capital base, capital requirements and Fund Requirements.

Draft Insurance (Lloyd's) Rules

29 Lloyd's, unlike a conventional insurance company, is a marketplace for members insuring risks. Given the uniqueness of capital structure and operating characteristics of Lloyd's and in consideration of the protection of policy holders, the IA considers that the use of letter of credit is a practical resource for meeting the capital requirements for Lloyd's. Also, a simplified capital requirement is also proposed for Lloyd's based on the benchmarking with the capital regimes for Lloyd's in most of the jurisdictions.

30 With that, we propose to use the calculation method of the relevant amount as stipulated under the current section 10 of the IO for the purpose of determining the amount of PCA for Lloyd's. In respect of the PCA and MCA as provided by the Amendment Ordinance, we also propose to have the MCA same as PCA, with a flooring of HK$20 million for the simplified capital regime.

31 Chapter 6 outlines the draft Insurance (Lloyd's) Rules (see **Annex D**), covering the determination of the value of assets and the amount of liabilities, as well as the capital requirements for Lloyd's.

Consultation

32 The four draft Rules will be refined and finalized after taking into account the feedback collected during this public consultation. After that, the finalized draft Rules will be published in the Gazette and submitted to the Legislative Council for negative vetting.

33 The Amendment Ordinance, together with the relevant subsidiary legislation, is expected to commence operation in full on a date to be appointed by the Secretary for Financial Services and the Treasury after the passage of the four Rules by the Legislative Council in 2024.

CHAPTER 3 – OVERVIEW OF THE DRAFT INSURANCE (EXEMPTION TO APPOINTMENT OF ACTUARY) RULES

34 The draft Insurance (Exemption to Appointment of Actuary) Rules ("**Cap. 41Q**" as referred to in this chapter) aim to provide the criteria for exempting the appointment of actuary in respect of general business. Details for each rule are further elaborated in following paragraphs.

35 Rule 1 provides the commencement of Cap. 41Q.

36 Rule 2 sets out the defined expressions that are necessary for the interpretation of Cap. 41Q.

37 Rule 3 prescribes marine insurers and captive insurers are exempted from the requirement of appointing actuaries in respect of general business. Small-sized insurers with both annual gross premium and outstanding claims liabilities (gross of reinsurance) less than $20 million are also exempted from this requirement, unless it is a newly authorized insurer in the first 3 financial years since beginning of carrying on general business in or from Hong Kong. The $20 million threshold is based on the entire legal entity for HK-incorporated insurers and designated insurers under new section 3B of the IO as added by the Amendment Ordinance, or confined to the operations in Hong Kong for branch insurers in Hong Kong.

38 Rule 4 provides that where the exemption criteria in rule 3 becomes ceased to be satisfied in a financial year, the authorized insurer is required, within 3 months after the end of the financial year, to appoint the actuary in respect of general business as required by section 15AAA of the IO.

Consultation question 1 Do you agree with the criteria for exempting the appointment of actuary in respect of general business?

CHAPTER 4 – OVERVIEW OF THE DRAFT INSURANCE (MAINTENANCE OF ASSETS IN HONG KONG) RULES

39 The draft Insurance (Maintenance of Assets in Hong Kong) Rules ("**Cap. 41T**" as referred to in this chapter) aim to provide the criteria for exemption of maintenance of assets in Hong Kong and the amount of the required assets to be maintained in Hong Kong. Details for each rule are further elaborated in following paragraphs.

40 Rule 1 provides the commencement of Cap. 41T.

41 Rule 2 sets out the defined expressions that are necessary for the interpretation of Cap. 41T.

42 Rule 3 provides the scope of application of Cap. 41T on authorized insurers and Lloyd's which carry on general business in or from Hong Kong.

43 Rule 4 prescribes captive insurers, HK-incorporated insurer and designated insurer under new section 3B of the IO as added by the Amendment Ordinance are exempted from the requirement of maintenance of assets in Hong Kong.

44 Rules 5 to 7 prescribe the amount of assets required to be maintained in Hong Kong for authorized insurers (except marine insurers), marine insurers and Lloyd's respectively. The amount is the sum of insurance liabilities (net of reinsurance) and corresponding PCA in respect of the general business with onshore risk. Considered that the policy holders of reinsurance policies are insurers and the objectives for maintaining assets in Hong Kong, a relief of maintaining certain amount of assets in Hong Kong is proposed in respect of general reinsurance business with onshore risk for direct insurers and professional reinsurers. That is, for insurers with determining factor of 0% or 50% (to be elaborated in paragraph 45 below), the entire amount of or half of the amount of insurance liabilities and corresponding PCA in respect of general reinsurance business with onshore risk respectively is excluded from the determination of the amount of assets required to be maintained in Hong Kong.

45 Rule 8 sets out how the determining factor (either 0%, 50% or 100%) is determined. The determining factor depends on the financial strength ratings of the insurer. Where the IA satisfies with the financial status of the insurer, IA may reduce its determining factor. Based on the lowest available rating from the prescribed rating agencies[5], a determining factor of 0% is applicable to an insurer with rating A or above for all of its available ratings, and 50% is applicable to an insurer with rating A- being its lowest available rating. A determining factor of 100% is applicable to remaining cases which are an unrated insurer or an insurer with rating BBB+ or below from any prescribed rating agencies.

46 On the change of determining factor, rule 9 prescribes the notification and reporting requirement. Where the change of determining factor results in an increase of the required amount of assets maintained in Hong Kong, the insurer

[5] From S&P Global Ratings, Moody's Investors Service, Fitch Ratings or A.M. Best Company, Inc.

is also required to maintain the increased amount of assets within 3 months.

<u>Consultation question 2</u> Do you agree with the criteria for determining exemption of insurers in the maintenance of assets in Hong Kong and the basis of calculation of the amount of required assets in Hong Kong?

CHAPTER 5 – OVERVIEW OF THE DRAFT INSURANCE (MARINE INSURERS AND CAPTIVE INSURERS) RULES

47 The draft Insurance (Marine Insurers and Captive Insurers) Rules (“**Cap. 41U**” as referred to in this chapter) aim to define the scope to which Cap. 41U is applicable, as well as provide the valuation basis, capital requirements and Fund Requirements. Details for each rule are further elaborated in following paragraphs.

48 Rule 1 provides the commencement of Cap. 41U.

49 Rule 2 sets out the defined expressions that are necessary for the interpretation of Cap. 41U. Specifically, rule 2 also defines marine mutual insurers with reference to their business and capital characteristics.

50 Rule 3 provides the scope of application of Cap. 41U on marine insurers and captive insurers. It also provides that an authorized insurer which predominantly provides insurance relating to risks arising out of marine adventures may make application to the IA, enabling them to determine capital requirements under Cap. 41U, instead of under the Insurance (Valuation and Capital) Rules.

51 Rule 4 provides that a relevant insurer must ensure its capital base is not less than each of PCA, MCA or $2,000,000. For the purpose of Cap. 41U, MCA is same as PCA.

52 By virtue of the new section 13AA(2) of the IO as added by the Amendment Ordinance, rule 5 provides that if a relevant insurer is in the view that it is at risk in contravene with rule 4, or believes that a contravention with rule 4 has been occurred, it must immediately notify the IA.

53 Rule 6 provides that capital base composes of Unlimited Tier 1 capital, Limited Tier 1 capital and Tier 2 capital, each of which is based on rules 8, 9, and 10 of the Insurance (Valuation and Capital) Rules respectively. Rule 6 further provides the composition of capital base, where –

(a) Limited Tier 1 capital must not exceed 10% of the PCA; and
(b) Tier 2 capital must not exceed 50% of the PCA.

54 Rule 7 provides that a relevant insurer must adopt the valuation basis of assets and liabilities in accordance with Part 4 of the Insurance (Valuation and Capital) Rules. That is, a relevant insurer essentially follows the RBC basis in valuing the assets and liabilities.

55 Rule 8 prescribes the determination of the PCA, which makes reference to the calculation method of relevant amount as stipulated in the current section 10(1) and (1A) of the IO for marine insurers and captive insurers respectively. Also, rule 8 provides that the part of the reinsurance business with offshore risk and maintained in a designated fund under the new section 25AA(4)(a) of the IO as added by the Amendment Ordinance is excluded from the calculation of PCA.

Consultation question 3

Do you agree with the proposed simplified capital regime for marine insurers and captive insurers?

CHAPTER 6 – OVERVIEW OF THE DRAFT INSURANCE (LLOYD'S) RULES

56 The draft Insurance (Lloyd's) Rules ("**Cap. 41V**" as referred to in this chapter) aim to provide the valuation basis and capital requirements. Details for each rule are further elaborated in following paragraphs.

57 Rule 1 provides the commencement of Cap. 41V.

58 Rule 2 sets out the defined expressions that are necessary for the interpretation of Cap. 41V.

59 Rule 3 provides the scope of application of Cap. 41V on Lloyd's.

60 Rule 4 provides that Lloyd's must ensure its capital base is not less than each of PCA, MCA or $20,000,000. For the purpose of the draft Rules, MCA is same as PCA.

61 By virtue of the new section 13AA(2) of the IO as added by the Amendment Ordinance, rule 5 provides that if Lloyd's is of the view that it is at risk in contravene with rule 4, or believes that a contravention with rule 4 has been occurred, it must immediately notify the IA of this.

62 Rule 6 provides that capital base composes of Unlimited Tier 1 capital, Limited Tier 1 capital and Tier 2 capital. Given the uniqueness of capital structure and operating characteristics as mentioned in paragraph 29, rule 6 provides that Unlimited Tier 1 capital of Lloyd's is the amount of recognized letter of credit with necessary adjustments as to what requires under rule 8(3) and (4) of the Insurance (Valuation and Capital) Rules. Rules 9 and 10 of the Insurance (Valuation and Capital) Rules are applied in determining the Limited Tier 1 capital and Tier 2 capital of Lloyd's respectively. Rule 6 further provides the composition of capital base, where –

(a) Limited Tier 1 Capital must not exceed 10% of the PCA; and
(b) Tier 2 capital must not exceed 50% of the PCA.

63 Rule 7 provides that Lloyd's must adopt the valuation basis of assets and liabilities in accordance with Part 4 of the Insurance (Valuation and Capital) Rules. That is, Lloyd's essentially follows the RBC basis in valuing the assets and liabilities.

64 Rule 8 prescribes the determination of the PCA, which makes reference to the calculation method of relevant amount as stipulated in the current section 10(1) of the IO in respect of general business. In respect of any long term business carried on by Lloyd's, the respective PCA is determined in accordance with Part 5 of the Insurance (Valuation and Capital) Rules for that business. The total PCA would be the sum of the PCA of general business and that of long term business.

Consultation question 4

Do you agree with the proposed simplified capital regime for Lloyd’s and the use of letter of credit as the instrument for meeting capital requirements?

Insurance (Exemption to Appointment of Actuary) Rules (Cap. 41Q)
(Cap. 41, section 129(1))

1. Commencement

These Rules come into operation on the day on which section 44 of the Insurance (Amendment) Ordinance 2023 comes into operation.

2. Interpretation

In these Rules –

gross of reinsurance (未減除再保險前) has the meaning given by rule 2 of the Insurance (Valuation and Capital) Rules;

gross premium (毛保費), in relation to a period of time, means the premiums paid or payable to a relevant insurer in respect of contracts of insurance written or renewed in that period of time before deducting commissions of agents or brokers but after deducting any discounts specified in policies or refunds of premiums made in respect of any termination or reduction of risks;

marine insurer (海事保險人) has the meaning given by rule 2 of the Insurance (Marine Insurers and Captive Insurers) Rules;

outstanding claims liabilities (未決申索負債) –
(a) in relation to a date on or after the commencement of the Insurance (Valuation and Capital) Rules, has the meaning given by rule 30(2)(a) of the Insurance (Valuation and Capital) Rules; and
(b) in relation to a date before the commencement of the Insurance (Valuation and Capital) Rules, it means the obligation whether contractual or otherwise, to make future payments in relation to all claims that have been incurred as at the valuation date, and includes reserves for claims reported, incurred but not reported and incurred but not enough reported, as well as direct and indirect claims expenses.

3. Exemption criteria

(1) An authorized insurer is exempted from section 15AAA(1)(c) and (d) of the Ordinance, if the insurer is a –
  (a) marine insurer; or
  (b) captive insurer.

(2) Subject to subrule (3), an authorized insurer is also exempted from section 15AAA(1)(c) and (d) of the Ordinance in an insurer's financial year, if it satisfies both of the following criteria –
  (a) total gross premium relating to prescribed scope of the insurer during the financial year is less than $20,000,000; and
  (b) total outstanding claims liabilities (gross of reinsurance) relating to prescribed scope of the insurer as at end of the financial year is less than $20,000,000.

(3) Subrule (2) does not apply to an authorized insurer in the first 3 financial years on or after the date on which the insurer begins to carry on general insurance business in or from Hong Kong.

(4) In this rule –

prescribed scope (訂明範圍), in relation to an authorized insurer, means –
- (a) its general business, if the insurer is –
  - (i) an HK insurer; or
  - (ii) a designated insurer; or
- (b) its general business carried on in or from Hong Kong, if the insurer is a non-HK insurer but not a designated insurer.

4. Transition

When an authorized insurer ceased to be exempted in accordance with rules 3(1) or 3(2) in a financial year, the insurer must, within 3 months immediately after the end of that financial year, comply with section 15AAA(1)(c) or (d) of the Ordinance, as the case may be.

Insurance (Maintenance of Assets in Hong Kong) Rules (Cap. 41T)

(Cap. 41, section 129(1))

Part 1
Preliminary

1. Commencement

These Rules come into operation on the day on which section 45 of the Insurance (Amendment) Ordinance 2023 comes into operation.

2. Interpretation

In these Rules –

determining factor (釐定因子), in relation to an authorized insurer, means the factor applicable to the insurer as determined in accordance with rule 8;

insurance liabilities (保險負債) has the meaning given by rule 2 of the Insurance (Valuation and Capital) Rules;

marine insurer (海事保險人) has the meaning given by rule 2 of the Insurance (Marine Insurers and Captive Insurers) Rules;

net of reinsurance (已減除再保險) has the meaning given by rule 2 of the Insurance (Valuation and Capital) Rules;

prescribed rating agency (訂明評級機構) means –
(a) S&P Global Ratings;
(b) Moody's Investors Service;
(c) Fitch Ratings; or
(d) A.M. Best Company, Inc..

3. Application

(1) These Rules apply to –
  (a) authorized insurers which carry on general business in or from Hong Kong; and
  (b) Lloyd's in respect of general business it carries on in or from Hong Kong.

(2) All amounts and calculations in these Rules are based on Hong Kong dollars.

Part 2
Exemption

4. Exempted insurers

Pursuant to section 25A(2)(b) of the Ordinance, the following insurers are exempt from the requirements in section 25A of the Ordinance –
(a) HK insurers;
(b) designated insurers; and
(c) captive insurers.

Part 3
Amount of Assets in Hong Kong to be Maintained

5. Assets in Hong Kong for authorized insurers (except marine insurers)

(1) Pursuant to section 25A(3)(b) of the Ordinance –
  (a) subject to paragraph (b), the value of the assets an authorized insurer must maintain in Hong Kong in respect of its insurance liabilities (as referred to in section 25A(3A) of the Ordinance) in its current financial year, must not be less than the amount determined in accordance with subrule (2) as at the end of its last preceding financial year; and
  (b) this rule does not apply to marine insurers.

(2) The amount mentioned in subrule (1)(a) is the sum of –
  (a) the authorized insurer's insurance liabilities, net of reinsurance, for its general business with onshore risk carried on in or from Hong Kong in respect of direct business, valued in accordance with the Insurance (Valuation and Capital) Rules;
  (b) the amount determined by multiplying A by B, where –
    (i) A is the authorized insurer's insurance liabilities, net of reinsurance, for its general business with onshore risk carried on in or from Hong Kong in respect of reinsurance business, valued in accordance with the Insurance (Valuation and Capital) Rules; and
    (ii) B is the determining factor applicable to the authorized insurer; and
  (c) the amount determined by multiplying the onshore prescribed capital amount for the authorized insurer as determined in accordance with subrule (3), by the ratio of C to D, where –
    (i) C is the sum of –
      (A) the amount of net premium for the insurer's general business with onshore risk carried on in or from Hong Kong in respect of direct business in its last preceding financial year; and
      (B) the amount determined by multiplying the amount of net premium for the insurer's general business with onshore risk carried on in or from Hong Kong in respect of reinsurance business in its last preceding financial year, by the determining factor applicable to the insurer; and

(ii) D is the amount of net premium for the insurer's general business with onshore risk carried on in or from Hong Kong in its last preceding financial year.

(3) For the purposes of subrule (2)(c), an authorized insurer to which subrule (2) applies must determine its onshore prescribed capital amount –

(a) in the same manner as the insurer determines its prescribed capital amount in accordance with the Insurance (Valuation and Capital) Rules but with the modifications to those rules mentioned in subrule (4); and

(b) based only on the insurer's –

(i) insurance liabilities for its general business (subject to subrule (4)(c)) with onshore risk carried on in or from Hong Kong allocated to the fund the insurer is required to maintain under section 25AA(2), (4)(b) or (6) of the Ordinance, as the case may be; and

(ii) assets in Hong Kong allocated to the fund the insurer is required to maintain under section 25AA(2), (4)(b) or (6) of the Ordinance, as the case may be.

(4) For the purposes of subrule (3), the modifications to the Insurance (Valuation and Capital) Rules are –

(a) in determining its risk capital amount for counterparty default and other risk in accordance with rule 81 of the Insurance (Valuation and Capital) Rules, an authorized insurer must include any letter of credit or other commitment from a bank approved under section 25C of the Ordinance;

(b) in determining its risk capital amount for natural catastrophe risk –

(i) an insurer is only required to include Hong Kong windstorm in that determination; and

(ii) its adjustment in rule 68(9)(b) of the Insurance (Valuation and Capital) Rules is multiplied by the ratio of its insurance risk mitigation effect for Hong Kong windstorm to its total insurance risk mitigation effect for natural catastrophe risk; and

(c) in determining its risk capital amount for man-made non-systemic catastrophe risk and risk capital amount for man-made systemic catastrophe risk, the insurer must include all its business allocated to the funds mentioned in subrule (3), irrespective of any portion of such business being offshore risk.

(5) In this rule –

gross premium (毛保費), in relation to a period of time, means the premiums paid or payable to a relevant insurer in respect of contracts of insurance written or renewed in that period of time before deducting commissions of agents or brokers but after deducting any discounts specified in policies or refunds of premiums made in respect of any termination or reduction of risks;

net premium (淨保費), in relation to a period of time, means the amount determined by deducting from gross premium, the amount of any premiums payable by a relevant insurer in respect of reinsurance in that period of time covering insurance business other than long term business.

6. Assets in Hong Kong for marine insurers

(1) Pursuant to section 25A(3)(b) of the Ordinance, the value of the assets a marine insurer must maintain in Hong Kong in respect of its insurance liabilities (as referred to in section 25A(3A) of the Ordinance) in its current financial year, must not be less than the amount determined in accordance with subrule (2) as at the end of its last preceding financial year.

(2) The amount mentioned in subrule (1) is the sum of –
- (a) the marine insurer's insurance liabilities, net of reinsurance, for its general business with onshore risk carried on in or from Hong Kong in respect of direct business, valued in accordance with rule 7 of the Insurance (Marine Insurers and Captive Insurers) Rules;
- (b) the amount determined by multiplying E by F where –
  - (i) E is the marine insurer's insurance liabilities, net of reinsurance, for its general business with onshore risk carried on in or from Hong Kong in respect of reinsurance business, valued in accordance with rule 7 of the Insurance (Marine Insurers and Captive Insurers) Rules; and
  - (ii) F is the determining factor applicable to the marine insurer; and
- (c) the onshore prescribed capital amount for the marine insurer determined in accordance with subrule (3).

(3) For the purposes of subrule (2)(c), a marine insurer's onshore prescribed capital amount is the prescribed capital amount that would be determined in accordance with the Insurance (Marine Insurers and Captive Insurers) Rules, as being the applicable amount in column 2 of Table 1 in rule 8 of those rules, based on the applicable case in column 1 of that Table, but with the following modifications to column 1 of that Table –
- (a) the reference to "net premium" in column 1 of that Table refers to the sum of the marine insurer's –
  - (i) net premium in respect of its onshore business which is direct business; and
  - (ii) net premium in respect of its onshore business which is reinsurance business, multiplied by the determining factor applicable to the marine insurer; and
- (b) the reference to "relevant claims outstanding" in column 1 of that Table refers to the sum of the marine insurer's –
  - (i) relevant claims outstanding in respect of its onshore business which is direct business; and
  - (ii) relevant claims outstanding in respect of its onshore business which is reinsurance business, multiplied by the determining factor applicable to the marine insurer.

7. Assets in Hong Kong for Lloyd's

(1) Pursuant to section 25A(3)(b) of the Ordinance, the value of the assets Lloyd's must maintain in Hong Kong in respect of its insurance liabilities (as referred to in section 25A(3A) of the Ordinance) in its current financial year, must not be less than the amount determined in accordance with subrule (2) as at the end of its last preceding financial year.

(2) The amount mentioned in subrule (1) is the sum of –
- (a) Lloyd's insurance liabilities, net of reinsurance, for its general business with onshore risk carried on in or from Hong Kong, valued in accordance with rule 7 of the Insurance (Lloyd's) Rules; and
- (b) the onshore prescribed capital amount for Lloyd's determined in accordance with subrule (3).

(3) For the purposes of subrule (2)(b), the onshore prescribed capital amount for Lloyd's is the prescribed capital amount that would be determined in accordance with the Insurance (Lloyd's) Rules, as being the applicable amount in column 2 of the Table in rule 8 of those rules, based on the applicable case in column 1 of that Table, but with the following modifications to column 1 of that Table –
- (a) the reference to "net premium" in column 1 of that Table refers to Lloyd's net premium in respect of its onshore business; and
- (b) the reference to "relevant claims outstanding" in column 1 of that Table refers to Lloyd's relevant claims outstanding in respect of its onshore business.

8. Determining factor

(1) For the purposes of rules 5(2), 6(2) and 6(3), the determining factor applicable to an authorized insurer to which those rules apply is –
- (a) 100% if the insurer is –
  - (i) not assigned with any financial strength rating by a prescribed rating agency; or
  - (ii) assigned at least one financial strength rating by a prescribed rating agency that is a rating in category 3 of the Table;
- (b) 50% if the insurer is assigned at least one financial strength rating by a prescribed rating agency that is a rating in category 2 of the Table and none of the insurer's other assigned financial strength ratings is in category 3 of the Table;
- (c) 0% if the insurer is only assigned one financial strength rating by a prescribed rating agency and that is a rating in category 1 of the Table, or if the insurer is assigned more than one financial strength rating by a prescribed rating agency, all such ratings are in category 1 of the Table; or
- (d) if the Authority has served a notice on the insurer pursuant to subrule (2) and that notice remains valid, the percentage stated in that notice.

Table
Financial Strength Rating Category

Rating agency	S&P Global Ratings	Moody's Investors Service	Fitch Ratings	A.M. Best Company, Inc.
Financial Strength Rating - category 1	AAA AA+ AA AA- A+ A	Aaa Aa1 Aa2 Aa3 A1 A2	AAA AA+ AA AA- A+ A	A++ A+ A
Financial Strength Rating - category 2	A-	A3	A-	A-
Financial Strength Rating - category 3	BBB+ BBB BBB- BB+ BB BB- B+ B B- CCC and lower	Baa1 Baa2 Baa3 Ba1 Ba2 Ba3 B1 B2 B3 Caa and lower	BBB+ BBB BBB- BB+ BB BB- B+ B B- CCC and lower	B++ B+ B B- C++ C+ C and lower

(2) For the purposes of subrule (1)(d), if the Authority is of the opinion that, based on the financial status of the authorized insurer, a lower determining factor may be applied in place of that which would otherwise apply in accordance with subrule (1)(a) or (b), it may by written notice served on the insurer, assign the following determining factor to the insurer –
(a) 50%; or
(b) 0%.

(3) In assigning by written notice a lower determining factor to an authorized insurer under subrule (2), the Authority may limit the validity of the assignment in the notice to a specified period.

(4) In respect of any assignment of a determining factor under subrule (2), and irrespective of whether the assignment is subject to a specified period, the Authority may by notice in writing to an authorized insurer at any time –
(a) if the insurer is assigned a 50% determining factor under subrule (2)(a), revise the assignment to 0%;
(b) if the insurer is assigned a 0% determining factor under subrule (2)(b), revise the assignment to 50%;

(c) extend the specified period given under subrule (3); or
(d) if it appears to the Authority that it is no longer necessary for the assignment to remain in force, revoke the assignment.

9. Notification, filing and maintenance of assets in Hong Kong after change of determining factor

(1) If there is any change to a financial strength rating assigned to an authorized insurer by a prescribed rating agency and, by reason of such change the insurer is assigned a different determining factor in accordance with rule 8, the insurer must, within 1 month of such change, serve on the Authority a notice in writing stating the date of the change and its applicable determining factor resulting from the change.

(2) Within 3 months of any change to its determining factor, an authorized insurer must –
(a) report to the Authority, the amount of assets in Hong Kong it must maintain in accordance with rule 5 or 6, as the case may be; and
(b) where such change results in the insurer having to increase its assets in Hong Kong, increase the amount of assets maintained in Hong Kong to the amount reported in paragraph (a).

Insurance (Marine Insurers and Captive Insurers) Rules (Cap. 41U)
(Cap. 41, section 129(1))

1. Commencement

These Rules come into operation on the day on which section 11 of the Insurance (Amendment) Ordinance 2023 comes into operation.

2. Interpretation

(1) In these Rules –

earned premium (滿期保費) has the meaning given by rule 60(1) of the Insurance (Valuation and Capital) Rules;

gross premium (毛保費), in relation to a period of time, means the premiums paid or payable to a relevant insurer in respect of contracts of insurance written or renewed in that period of time before deducting commissions of agents or brokers but after deducting any discounts specified in policies or refunds of premiums made in respect of any termination or reduction of risks;

marine insurer (海事保險人) means an authorized insurer which is –
(a) a marine mutual insurer; or
(b) approved by the Authority under rule 3(4);

marine mutual insurer (海事相互保險人) means an authorized insurer which –
(a) is mutually owned by its members;
(b) predominantly provides to its members insurance relating to risks arising out of marine adventures; and
(c) is governed by articles of association, rules or bye laws that provide for the calling of additional contributions from, or the reduction of benefits to, the majority of its members, in either case without limit, in order to ensure that the insurer has sufficient financial resources to meet any valid claims as they fall due;

net premium (淨保費), in relation to a period of time, means the amount determined by deducting from gross premium, the amount of any premiums payable by a relevant insurer in respect of reinsurance in that period of time covering insurance business other than long term business;

net of reinsurance (已減除再保險) has the meaning given by rule 2(1) of the Insurance (Valuation and Capital) Rules;

net outstanding claims liabilities (淨未決申索負債) means outstanding claims liabilities net of reinsurance;

relevant insurer (有關保險人) means an authorized insurer or a company to which these Rules apply as provided in rule 3(1);

risks arising out of marine adventures (由海上冒險引起的風險) means
(a) risks upon goods, merchandise or property of any description transported on board vessels, including incidental transit before and after shipment;
(b) risks upon the freight of, or any other interest in or relating to vessels;
(c) risks upon vessels, or upon machinery, tackle, furniture or equipment of vessels;
(d) risks against damage arising out of or in connection with the use of vessels, including third-party risks; and
(e) risks incidental to the construction, repair or docking of vessels, including third-party risks;

unearned premium (未滿期保費) means the portion of the premium under a contract of insurance that is not earned premium as at valuation date.

3. Application

(1) These Rules apply to –
(a) marine insurers;
(b) captive insurers; and
(c) any company that makes an application under section 7 of the Ordinance for authorization to carry on business only as an insurer mentioned in paragraph (a) or (b).

(2) If an authorized insurer in carrying on insurance business in or from Hong Kong –
(a) predominantly provides insurance relating to risks arising out of marine adventures; and
(b) is not a marine mutual insurer,
it may make an application to the Authority for approval to determine its capital requirements under these Rules based on the relevant requirements of a marine insurer.

(3) An application made under subrule (2) must –
(a) be made in writing;
(b) contain particulars of the information that the Authority reasonably requires to enable it to consider the application; and
(c) be served on the Authority.

(4) On an application made by an authorized insurer under subrule (2), the Authority may by written notice to the insurer approve or reject the application, and if the Authority approves the application, it may impose such conditions as it considers appropriate. The Authority may at any time, by notice in writing served on the authorized insurer concerned, amend or revoke any such conditions or impose new conditions as may be reasonable in the circumstances.

(5) Where these Rules provide that a certain part or rule in the Insurance (Valuation and Capital) Rules applies to a relevant insurer, that part or rule applies to the insurer as if a reference to an applicable insurer in that part or rule were a reference to a relevant insurer.

(6) A relevant insurer must apply rule 4 of the Insurance (Valuation and Capital) Rules for the purposes of determining the scope of its assets and liabilities to be valued in accordance with these Rules, the capital resources that make up of its capital base under these Rules and calculating its capital requirements in accordance with these Rules.

(7) All amounts and calculations in these Rules are based on Hong Kong dollars, unless otherwise specified.

4. Capital requirements

(1) For the purposes of section 10 of the Ordinance, a relevant insurer must ensure at all times that its capital base as determined pursuant to rule 6 is not less than each of –
(a) the prescribed capital amount of the insurer as determined in accordance with rule 8;
(b) the minimum capital amount of the insurer as determined in accordance with subrule (3); and
(c) $2,000,000.

(2) If the Authority varies or relaxes any of the requirements in subrule (1) pursuant to section 10(3) or 130(1) of the Ordinance, a relevant insurer must determine the requirement in accordance with subrule (1), but as so varied or relaxed.

(3) For the purposes of subrule (1)(b), the minimum capital amount is the same as the prescribed capital amount, unless the Authority by way of variation or relaxation mentioned in subrule (2) determines it to be different.

5. Relevant insurer must notify the Authority in respect of any contravention of rule 4

A relevant insurer must immediately notify the Authority in writing on its directors, its controller(s) or any key person in control functions –
(a) reaching a view that the insurer is at risk of contravening rule 4; or
(b) knowing or having reason to believe that a contravention by the insurer of rule 4 has occurred;
and provide the Authority with particulars of the notified case as required by the Authority.

6. Determination of capital base

(1) For the purposes of rule 4 –
(a) the capital base of a relevant insurer is the sum of the insurer's –
(i) Unlimited Tier 1 capital;
(ii) Limited Tier 1 capital; and

(iii) Tier 2 capital;

(b) the Limited Tier 1 capital of a relevant insurer must not exceed 10% of the prescribed capital amount;

(c) the Tier 2 capital of a relevant insurer must not exceed 50% of the prescribed capital amount.

(2) For the purposes of subrule (1) –

(a) a relevant insurer must determine its Unlimited Tier 1 capital in accordance with rule 8 of the Insurance (Valuation and Capital) Rules, which applies to the insurer for these purposes;

(b) a relevant insurer must determine its Limited Tier 1 capital in accordance with rule 9 of the Insurance (Valuation and Capital) Rules, which applies to the insurer for these purposes; and

(c) a relevant insurer must determine its Tier 2 capital in accordance with rule 10 of the Insurance (Valuation and Capital) Rules, which applies to the insurer for these purposes.

7. Valuation of assets and liabilities

A relevant insurer must apply Part 4 of the Insurance (Valuation and Capital) Rules for the purposes of valuing its assets and liabilities.

8. Determination of prescribed capital amount

(1) Subject to subrule (2), a marine insurer must determine its prescribed capital amount for general business as the applicable amount in column 2 of the following Table 1 based on the applicable case in column 1 –

TABLE 1

Column 1 Case	Column 2 Amount Applicable
1. The net premium of the insurer for the period commencing 12 months immediately preceding the valuation date and ending on the valuation date, or the relevant claims outstanding of the insurer as at the valuation date, whichever is the greater, did not exceed $10 million or its equivalent.	$2 million or its equivalent.
2. The said net premium, or the said relevant claims outstanding, whichever is the greater, exceeded $10 million but did not exceed $200 million or its equivalent.	20% of the said net premium, or 20% of the said relevant claims outstanding, as the case may be.

3. The said net premium, or the said relevant claims outstanding, whichever is the greater, exceeded $200 million or its equivalent.	The sum of $40 million and – (a) 10% of the amount by which the said net premium exceeded $200 million; or (b) 10% of the amount by which the said relevant claims outstanding exceeded $200 million, as the case may be, or its equivalent.

(2) A marine insurer, for the purposes of subrule (1), may exclude from the calculation of its prescribed capital amount, its net premium or relevant claims outstanding (as the case may be) attributable to any separate fund it maintains for the part of its general business that is general reinsurance business with offshore risk, in accordance with section 25AA(4)(a) of the Ordinance.

(3) A captive insurer must determine its prescribed capital amount for general business as the applicable amount in column 2 of the following Table 2 based on applicable case in column 1 –

TABLE 2

Column 1 Case	Column 2 Amount Applicable
1. The net premium of the insurer for the period commencing 12 months immediately preceding the valuation date and ending on the valuation date, or the relevant claims outstanding of the insurer as at the valuation date, whichever is the greater, did not exceed $40 million or its equivalent.	$2 million or its equivalent.
2. The said net premium or the said relevant claims outstanding, whichever is the greater, exceeded $40 million or its equivalent.	5% of the said net premium, or 5% of the said relevant claims outstanding, as the case may be.

(4) For the purposes of this rule,
(a) the relevant claims outstanding of a relevant insurer for general business is determined as the sum of –
(i) the amount of net outstanding claims liabilities of the insurer for general business; and
(ii) the amount, floored at zero, determined by deducting the net unearned premiums of the insurer for general business from the net premium liabilities of the insurer for general business; and
(b) the relevant insurer must determine its outstanding claims liabilities for general business and premium liabilities for general business in accordance with rule 30 of the Insurance (Valuation and Capital) Rules.

9. Determination of amount of section 25AAB(3)(b) of the Ordinance

The aggregate value of assets that a relevant insurer is required to hold in accordance with section 25AAB(3)(b) of the Ordinance for each fund under section 25AA (other than section 25AA(4)(a)) of the Ordinance, in addition to the amount of liabilities mentioned in section 25AAB(3)(a) of the Ordinance, is the prescribed capital amount for the insurer determined in accordance with rule 8.

Insurance (Lloyd's) Rules (Cap. 41V)
(Cap. 41, section 129(1))

1. Commencement

These Rules come into operation on the day on which sections 11 and 64 of the Insurance (Amendment) Ordinance 2023 come into operation.

2. Interpretation

In these Rules –

earned premium (滿期保費) has the meaning given by rule 60(1) of the Insurance (Valuation and Capital) Rules;

general reinsurance business with offshore risk (具離岸風險的一般再保險業務) has the meaning given by section 25AA(8) of the Ordinance;

gross premium (毛保費), in relation to a period of time, means the premiums paid or payable to Lloyd's in respect of contracts of insurance written or renewed in that period of time before deducting commissions of agents or brokers but after deducting any discounts specified in policies or refunds of premiums made in respect of any termination or reduction of risks;

insurance liability (保險負債) has the meaning given by rule 2(1) of the Insurance (Valuation and Capital) Rules;

long term reinsurance business with offshore risk (具離岸風險的長期再保險業務) has the meaning given by section 21B(11) of the Ordinance;

net premium (淨保費), in relation to a period of time, means the amount determined by deducting from gross premium, the amount of any premiums payable by Lloyd's in respect of reinsurance in that period of time covering insurance business other than long term business;

net of reinsurance (已減除再保險) has the meaning given by rule 2(1) of the Insurance (Valuation and Capital) Rules;

recognized letter of credit (認可信用狀), in relation to Unlimited Tier 1 capital of Lloyd's, means a letter of credit which satisfies the following criteria –
(a) the letter of credit is from a bank, as defined in the Banking Ordinance (Cap. 155), in favour of the Authority; and
(b) the terms and conditions attached to such a letter of credit are approved by the Authority; and

unearned premium (未滿期保費) means the portion of the premium under a contract of insurance that is not earned premium as at valuation date.

3. Application

(1) These Rules apply to Lloyd's.

(2) Lloyd's is required to apply these Rules only in relation to the assets, liabilities and capital resources related to its business carried on in or from Hong Kong.

(3) Where these Rules provide that a certain part or rule in the Insurance (Valuation and Capital) Rules applies to Lloyd's, that part or rule applies to Lloyd's as if a reference to an applicable insurer in that part or rule were a reference to Lloyd's.

(4) All amounts and calculations in these Rules are based on Hong Kong dollars, unless otherwise specified.

4. Capital Requirements

(1) For the purposes of section 10 of the Ordinance, Lloyd's must ensure at all times that its capital base as determined pursuant to rule 6 is not less than each of –
- (a) the prescribed capital amount determined in accordance with rule 8;
- (b) the minimum capital amount determined in accordance with subrule (3); and
- (c) $20,000,000.

(2) If the Authority varies or relaxes any of the requirements in subrule (1) pursuant to section 10(3) or 130(1) of the Ordinance, Lloyd's must determine the requirement in accordance with subrule (1), but as so varied or relaxed.

(3) For the purposes of subrule (1)(b), the minimum capital amount is the same as the prescribed capital amount, unless the Authority by way of variation or relaxation mentioned in subrule (2) determines it to be different.

5. Lloyd's must notify the Authority in respect of any contravention of rule 4

Lloyd's must immediately notify the Authority in writing on its authorized representative(s) –
- (a) reaching a view that Lloyd's is at risk of contravening rule 4; or
- (b) knowing or having reason to believe that a contravention by Lloyd's of rule 4 has occurred;

and provide the Authority with particulars of the notified case as required by the Authority.

6. Determination of capital base

(1) For the purposes of rule 4 –
- (a) the capital base of Lloyd's is the sum of its –
  - (i) Unlimited Tier 1 capital;

(ii) Limited Tier 1 capital; and
(iii) Tier 2 capital.

(b) the Limited Tier 1 capital of Lloyd's must not exceed 10% of the prescribed capital amount;

(c) the Tier 2 capital of Lloyd's must not exceed 50% of the prescribed capital amount.

(2) For the purposes of subrule (1) –

(a) Lloyd's must determine its Unlimited Tier 1 capital as the amount of recognized letter of credit it maintains that –

(i) exceeds the amount its total insurance liabilities (net of reinsurance) that must also be covered by recognized letter of credit; and

(ii) is determined after deducting the amounts in rule 8(3) and (4) of the Insurance (Valuation and Capital) Rules, which apply to Lloyd's for these purposes; and

(b) Lloyd's must determine its Limited Tier 1 capital in accordance with rule 9 of the Insurance (Valuation and Capital) Rules, which applies to Lloyd's for these purposes.

(c) Lloyd's must determine its Tier 2 capital in accordance with rule 10 of the Insurance (Valuation and Capital) Rules, which applies to Lloyd's for these purposes.

7. Valuation of assets and liabilities

Lloyd's must apply Part 4 of the Insurance (Valuation and Capital) Rules for the purposes of valuing its assets and liabilities.

8. Determination of prescribed capital amount

(1) Subject to subrule (5), Lloyd's must determine its prescribed capital amount by –

(a) determining its prescribed capital amount for general business in accordance with subrule (2);

(b) determining its prescribed capital amount for long term business in accordance with subrule (4); and

(c) summing amounts mentioned in (a) and (b).

(2) For the purposes of subrule (1)(a), Lloyd's must determine its prescribed capital amount for general business as the applicable amount in column 2 of the following Table based on the applicable case in column 1 –

TABLE

Column 1 Case	Column 2 Amount Applicable
1. The net premium of Lloyd's for general business for the period commencing 12 months immediately preceding the valuation date and ending on the valuation date, or the relevant claims outstanding of Lloyd's for general business as at the valuation date, whichever is the greater, did not exceed $50 million or its equivalent.	$10 million or its equivalent.
2. The said net premium, or the said relevant claims outstanding, whichever is the greater, exceeded $50 million but did not exceed $200 million or its equivalent.	20% of the said net premium in, or 20% of the said relevant claims outstanding, as the case may be.
3. The said net premium, or the said relevant claims outstanding, whichever is the greater, exceeded $200 million or its equivalent.	The sum of $40 million and – (a) 10% of the amount by which the said net premium exceeded $200 million; or (b) 10% of the amount by which the said relevant claims outstanding exceeded $200 million, as the case may be, or its equivalent.

(3) For the purposes of subrule (2),

(a) the relevant claims outstanding of Lloyd's for general business is determined as the sum of –

(i) the amount of outstanding claims liabilities of Lloyd's for general business net of reinsurance; and

(ii) the amount, floored at zero, determined by deducting the net unearned premiums of Lloyd's for general business from the net premium liabilities of Lloyd's for general business; and

(b) Lloyd's must determine its outstanding claims liabilities for general business and premium liabilities for general business in accordance with rule 30 of the Insurance (Valuation and Capital) Rules.

(4) For the purposes of subrule (1)(b), Lloyd's must determine its prescribed capital amount for long term business in accordance with Part 5 of the Insurance (Valuation and Capital) Rules, which applies to Lloyd's in relation to its long term business for these purposes.

(5) Lloyd's, for the purposes of subrule (1), may exclude from the calculation of its prescribed capital amount, its risk exposure in respect of assets and liabilities attributable to general reinsurance business with offshore risk or long term reinsurance business with offshore risk.

Annex E

Feedback to Consultation Paper on
Draft Insurance (Exemption to Appointment of Actuary) Rules,
Draft Insurance (Maintenance of Assets in Hong Kong) Rules,
Draft Insurance (Marine Insurers and Captive Insurers) Rules and
Draft Insurance (Lloyd's) Rules

*(Comments should be sent to the Insurance Authority on or before **9 February 2024**.)*

To: Insurance Authority

(email: rbc@ia.org.hk)

Name of Respondent:

Contact Person (if Respondent is an organization):

Contact Details:

<u>Consultation question 1</u> Do you agree with the criteria for exempting the appointment of actuary in respect of general business?
<u>Consultation question 2</u> Do you agree with the criteria for determining exemption of insurers in the maintenance of assets in Hong Kong and the basis of calculation of the amount of required assets in Hong Kong?
<u>Consultation question 3</u> Do you agree with the proposed simplified capital regime for marine insurers and captive insurers?
<u>Consultation question 4</u> Do you agree with the proposed simplified capital regime for Lloyd's and the use of letter of credit as the instrument for meeting capital requirements?