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A BILL
To
Amend the Insurance Ordinance to provide for the regulation of a new class of insurance business for which the liability of an insurer under a contract of insurance to the person insured is fully funded; to expand the scope of insurable risks of captive insurers; to remove a non-delegable function of the Insurance Authority specified in Schedule 1D to the Ordinance; to make minor textual amendments to the Ordinance; and to provide for related matters.

Enacted by the Legislative Council.

Part 1
Preliminary

1. Short title and commencement
(1) This Ordinance may be cited as the Insurance (Amendment) Ordinance 2020.
(2) This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

Part 1
Preliminary

1. 簡稱及生效日期
(1) 本條例可引稱為《2020年保險業(修訂)條例》。
(2) 本條例自財經事務及庫務局局長以憲報公告指定的日期起實施。
2. **Insurance Ordinance amended**

The Insurance Ordinance (Cap. 41) is amended as set out in Parts 2 to 5.
Part 2

Amendments Relating to Special Purpose Business

3. Section 2 amended (interpretation)
   (1) Section 2(1), definition of authorized, after “section 8”—
       Add
       “or 8A”.
   (2) Section 2(1), definition of general business, after “term”—
       Add
       “business or special purpose”.
   (3) Section 2(1), definition of prescribed, after “129”—
       Add
       “or 129A”.
   (4) Section 2(1)—
       Add in alphabetical order
       “fully funded (fully funded)—see subsection (8);
       insurance securitization (insurance securitization), in relation to an
       insurer, means any debt or other financing arrangement entered into by the insurer with an
       investor, under which repayment or return to the investor is linked to a contract of insurance effected
       and carried out by the insurer;
       special purpose business (special purpose business) means the
       insurance business of effecting and carrying out contracts of insurance that are fully funded through
       insurance securitization;
特定目的業務 (special purpose business) 指訂立和執行符合以下說明的保險合約的保險業務：該合約透過保險證券化而屬全期資可抵償的；”。

(5) 在第 2(7) 條之後——
加入
“(8) 就特定目的業務的定義而言，如符合下述條件，則保險人與某人 ( 該合約所指的受保人 ) 訂立的保險合約，即屬全期資可抵償：該保險人 ( 或另一人代該保險人 ) 為了該受保人的利益而根據該合約的條款所持有資產的價值，在任何時間及所有可合理預見的情況下，並在顧及下列項目後，均不少於於該保險人根據該合約所負的法律負擔 ( 不論是實際或潛在者 ) 的款額——
(a) 該保險人根據該合約對該受保人所負的義務；及
(b) 該保險人預期招致的開支。”。

4. 修訂第 3 條 ( 保險業務的類別 )
第 3 條——
廢除第 (2) 款
代以
“(2) 如下列合約若非有本款規定便不屬保險合約，則該合約就本條例而言，須當作保險合約——
(a) 附表 1 第 2 或 3 增所提述的合約 ( 包括聯合養老保險 )；或

special purpose insurer ( 特定目的保險人 ) 意味著一家於第 8A 條下認可經營特定目的業務的公司；”。

(5) 在第 2(7) 條之後——
加入
“(8) 在合約中，由保險人與另一方所訂立，則於合約存續期間，保險人的資產價值至少等於合約規定的全期資可抵償的價值，於任何時間及所有可合理預見的情況下，並在顧及下列項目後，均不少於於該保險人根據該合約所負的法律負擔 ( 不論是實際或潛在者 ) 的款額——
(a) 該保險人根據該合約對該受保人所負的義務；及
(b) 該保險人預期招致的開支。”。

4. Section 3 amended (classes of insurance business)
Section 3—
Repeal subsection (2)
Substitute
“(2) If—
(a) a contract (including a tontine) referred to in Part 2 or 3 of Schedule 1; or
(b) 屬於特定目的業務類別的合約。”。

5. 修訂第 5H 條 (獲授權保險人登記冊)
第 5H(1)(b) 條，在“8(1)(a)”之後——
加入
“或 8A(1)(a)”。

6. 修訂第 6 條 (經營保險業務的限制)
第 6(1)(a) 條，在“8”之後——
加入
“或 8A”。

7. 修訂第 8 條 (授權)
(1) 第 8 條，標題，在“授權”之後——
加入
“——長期業務及一般業務”。
(2) 第 8(1) 條——
廢除
“任何公司根據第 7 條提出申請後，保監局”
代以
“凡任何公司根據第 7 條提出申請，要求獲授權經營附
表 1 第 2 或 3 部所指明的某一或某些類別保險業務”。

5. Section 5H amended (register of authorized insurers)
Section 5H(1)(b), after “8(1)(a)”—
Add
“or 8A(1)(a)”.

6. Section 6 amended (restriction on carrying on of insurance business)
Section 6(1)(a), after “section 8”—
Add
“or 8A”.

7. Section 8 amended (authorization)
(1) Section 8, heading, after “Authorization”—
Add
“—long term business and general business”.
(2) Section 8(1)—
Repeal
“Upon application made by a company under section 7, the Authority”
Substitute
“On application made by a company under section 7 for authorization to carry on any class or classes of insurance business specified in Part 2 or 3 of Schedule 1”.

(b) a contract belonging to the class of special purpose business, is not (but for this subsection) a contract of insurance, the contract is, for the purposes of this Ordinance, deemed to be a contract of insurance.”.
(3) Section 8(1)(a)—
Repeal
“may authorize”
Substitute
“the Authority may authorize”.

(4) Section 8(1)(a)—
Repeal
“any class”
Substitute
“the class”.

(5) Section 8(1)—
Repeal paragraph (b)
Substitute
“(b) the Authority—
(i) must refuse the application if subsection (2) or (3) applies; and
(ii) may refuse the application on any other ground.”

8. Sections 8A, 8B and 8C added
After section 8—
Add

“8A. Authorization—special purpose business
(1) On application made by a company under section 7 for authorization to carry on special purpose business—
(a) subject to paragraph (b), the Authority may authorize the company in writing to carry on, subject to such conditions as the Authority may impose, special purpose business; or

(b) the Authority—
(i) must refuse the application if subsection (2) applies; and
(ii) may refuse the application on any other ground.

(2) The Authority must not authorize a company under this section unless the following conditions are satisfied—

(a) the company has appointed 2 or more directors all of whom appear to the Authority to be fit and proper persons to hold the positions;

(b) the company has appointed an administrator as a controller who appears to the Authority to be a fit and proper person to hold the position;

(c) the company complies with the relevant financial, solvency, investor’s sophistication and other requirements prescribed by rules made under section 129 or 129A;

(d) the company intends to carry on special purpose business only but not any other class of insurance business.

(3) For the purposes of subsection (2)(a) and (b), if the Authority considers that a person is not a fit and proper person to hold the relevant position, the Authority must notify the company in writing of the fact and the reason for that opinion.

(a) 除 (b) 段另有規定外，保監局可用書面方式，授權該公司在保監局所施加的條件規限下，經營特定目的業務；或

(b) 保監局——
(i) 在第 (2) 款適用的情況下，須拒絕該項申請；及
(ii) 可基於任何其他理由，拒絕該項申請。

(2) 除非符合下列條件，否則保監局不得根據本條向任何公司授權——

(a) 該公司已委任至少 2 名董事，而保監局覺得該等董事均屬擔任該職位的適當人選；

(b) 該公司已委任一名管理人作為控權人，而保監局覺得該人屬擔任該職位的適當人選；

(c) 該公司符合根據第 129 或 129A 條訂立的規則所訂明的相關財政、償付能力、投資者成熟程度及其他規定；

(d) 該公司擬只經營特定目的業務，而非任何其他類別的保險業務。

(3) 為施行第 (2)(a) 及 (b) 款，保監局如認為某人並未擔任有關職位的適當人選，便須將此事以及得出該意見的理由，以書面通知有關公司。
8B. Form of information submitted by special purpose insurers
The Authority may specify the form in which a special purpose insurer submits information to the Authority under this Ordinance.

8C. Requirements under section 17, 20 or 21 may be modified or varied for special purpose insurers
The Authority may modify or vary any requirement under section 17, 20 or 21 in relation to a special purpose insurer for the period and in the ways as the Authority considers appropriate.”.

9. Section 11 amended (notification of refusal of authorization under section 8(2))
(1) Section 11, heading—
Repeal
“8(2)”
Substitute
“8 or 8A”.
(2) Section 11(3)—
Repeal
“8(1)(b)(ii), the Authority shall”
Substitute
“8(1)(b)(ii) or 8A(1)(b)(ii), the Authority must”.

(4) In this section—
administrator (管理人), in relation to a company, means an individual who (alone or jointly with others) is responsible for the administration of the whole business of the company.

(4) 在本條中——
administrator (administrator) 就公司而言，指單獨或與其他人共同負責管理該公司的整體業務的個人。
Part 2

Clause 10

10. Section 12 amended (conditions for authorization under section 8)

(1) Section 12, heading, after “section 8”—
Add
“or 8A”.

(2) Section 12(1), after “section 8(1)(a)”—
Add
“or 8A(1)(a)”.

11. Section 13A amended (approval of certain controllers of authorized insurers)

(1) Section 13A(12), definition of controller, paragraph (a)(i), after “authorized insurer”—
Add
“(other than a special purpose insurer)”.

(2) Section 13A(12), definition of controller, paragraph (a)(i)—
Repeal
“; or”
Substitute a semicolon.

(3) Section 13A(12), definition of controller, paragraph (a)(ii), after “authorized insurer”—
Add
“(other than a special purpose insurer)”.

(4) Section 13A(12), definition of controller, paragraph (a)(ii)(B)(II)—
Repeal
12. Section 13AE amended (approval of key persons in control functions of certain authorized insurers)

Before section 13AE(1)—

Add

“(1A) This section does not apply to a special purpose insurer.”.
13. **Section 13B amended (approval of persons proposing to become certain controllers of authorized insurer)**

Before section 13B(1)—

Add

“(1A) This section does not apply to a special purpose insurer.”.

14. **Section 14A amended (determination of fit and proper)**

Section 14A(1), after “8,”—

Add

“8A,”.

15. **Section 26 amended (grounds on which powers are exercisable)**

Section 26(1)(e), after “(3)(b)”—

Add

“or 8A(2)”.

16. **Section 41B amended (power to conduct inspection)**

Section 41B(1)(c), after “section 8”—

Add

“or 8A”.

17. **Section 41P amended (disciplinary actions in respect of authorized insurers)**

Section 41P(5), definition of *misconduct*, paragraph (b), after “section 8”—

Add

“or 8A”.
18. **Section 53E amended (prescribed person to send report directly to Authority in certain cases relating to authorized insurers)**

Section 53E(3)(a), after “8(1)(a)”—

Add

“or 8A(1)(a)”.

19. **Section 129 heading amended (Authority may make rules)**

Section 129, heading, after “rules”—

Add

“—general provisions”.

20. **Section 129A added**

After section 129—

Add

“129A. Authority may make rules for special purpose business

(1) The Authority may by rules—

(a) prohibit any sale of, or the making of any offer to sell, insurance-linked securities to any person other than an investor falling within a type prescribed in the rules; and

(b) prohibit any sale of, or the making of any offer to sell, insurance-linked securities at an amount lower than that prescribed in the rules.

(2) Rules made under this section may prescribe offences for contravention of the rules, punishable by a fine or imprisonment, or both.
(3) The maximum penalty that may be prescribed under subsection (2) is—
(a) for an offence of which a person is convicted on indictment—a fine of $200,000 and imprisonment for 2 years; and
(b) for an offence of which a person is summarily convicted—a fine at level 6 and imprisonment for 6 months.

(4) In this section—
insurance-linked securities (保險相連證券) means securities issued through insurance securitization.”.

21. Schedule 1 amended (classes of insurance business)
Schedule 1, Part 1—
Repeal paragraph 1
Substitute

“1. The following constitute the classes of insurance business that are relevant for the purposes of this Ordinance—
(a) classes of long term business that are specified in Part 2 of this Schedule;
(b) classes of general business that are specified in Part 3 of this Schedule;
(c) the class of special purpose business.”.

22. Schedule 1D amended (non-delegable functions of Authority)
Schedule 1D, section 1(m), after “section 8”—
Add
“or 8A”.

(3) 可根據第 (2) 款訂明的最高罰則如下——
(a) 就經循公訴程序定罪的罪行而言——罰款 $200,000 及監禁 2 年；及
(b) 就經循簡易程序定罪的罪行而言——第 6 級罰款及監禁 6 個月。

(4) 在本條中——
insurance-linked securities (insurance-linked securities) 指透過保險證券化發行的證券。”。

21. 修訂附表 1 (保險業務的類別)
附表 1，第 1 部——
廢除第 1 段
代以

“1. 下列保險業務類別，是就施行本條例而言屬有關的保險業務類別——
(a) 本附表第 2 部所指明的長期業務的類別；
(b) 本附表第 3 部所指明的一般業務的類別；
(c) 特定目的業務類別。”。

22. 修訂附表 1D (不得轉授的保監局職能)
附表 1D，第 1(m) 條，在“8”之後——
加入
“或 8A”。“
23. **Schedule 9 amended (specified decisions)**

(1) Schedule 9, Part 1, item 1, after “or (3)”—
   Add
   “or 8A(2)”.

(2) Schedule 9, Part 1, item 1, after “8(1)(b)(i)”—
   Add
   “or 8A(1)(b)(i)”.

(3) Schedule 9, Part 1, item 2, after “8(1)(b)(ii)”—
   Add
   “or 8A(1)(b)(ii)”.

(4) Schedule 9, Part 1, item 3, after “8(1)(a)”—
   Add
   “, 8A(1)(a)”.  

__________________
Part 3

Amendments Relating to Captive Insurers

24. Section 2 amended (interpretation)

(1) Section 2(7)(a) —

Repeal subparagraph (ii)

Substitute

“(ii) is restricted to the insurance and reinsurance of—

(A) risks of the bodies corporate within the relevant company’s corporate group (within the meaning of paragraph (b)) to which the relevant company belongs;

(B) the proportional share of risks of another body corporate to which the relevant company, or a first tier member (within the meaning of paragraph (b)(i)) in the relevant company’s corporate group, is exposed directly through—

(I) controlling, or being entitled to control, the appointment or removal of a percentage of the directors on the board of directors of the other body corporate;

(II) controlling, or being entitled to control, a percentage of the voting rights at general meetings of the other body corporate; or

(III) holding a percentage of the issued share capital of the other body corporate, that is capped at the highest of those 3 percentages; and
(C) any other risks—

(I) of which the relevant company, or a first tier member in the relevant company’s corporate group, has control, oversight or management; or

(II) to which the relevant company, or a first tier member in the relevant company’s corporate group, is otherwise sufficiently connected, as determined in accordance with the criteria specified for the purposes of this subparagraph in guidelines published under section 133;”.

(2) Section 2(7)—

Repeal paragraph (b)

Substitute

“(b) relevant company’s corporate group (同一法人集團) means a corporate grouping made up of a relevant company (within the meaning of paragraph (a)) and one or more of the following members—

(i) a first tier member being a body corporate—

(A) that belongs to the group of companies of the relevant company; or

(B) that is a subsidiary of the holding company of the relevant company;

(ii) a second tier member being a body corporate in respect of which the relevant company or a first tier member (whether alone or jointly with the relevant company or another first tier member) —
(A) controls, or is entitled to control, the appointment or removal of not less than 20% and not more than 50% of the directors on the board of directors of the body corporate;

(B) controls, or is entitled to control, not less than 20% and not more than 50% of the voting rights at general meetings of the body corporate; or

(C) holds not less than 20% and not more than 50% of the issued share capital of the body corporate;

(iii) a third tier member being a body corporate that is a subsidiary of a second tier member;”.
Part 4

Amendment Relating to Non-delegable Functions of Insurance Authority

25. Schedule 1D amended (non-delegable functions of Authority)

Schedule 1D, section 1—

Repeal paragraph (c).
Part 5

Miscellaneous Amendments

26. Section 9 amended (meaning of controller (控權人))
(1) Section 9(3)(a)—
Repeal
“(1)(a)”
Substitute
“(1)(a)(i)”.
(2) Section 9(3)(b)—
Repeal
“(1)(b)”
Substitute
“(1)(a)(ii)”.

27. Section 26 amended (grounds on which powers are exercisable)
Section 26(4)(b)—
Repeal
“9(1)(c)”
Substitute
“9(1)(a)(iii)”.

28. Section 53A amended (secrecy)
(1) Section 53A(1AA)(e)—
Repeal
“or who is”
Substitute
29. **Section 76 amended (Authority may petition for winding up or bankruptcy of licensed insurance intermediary)**

Section 76(3), Chinese text—

Repeal

“who is”

Substitute

“who assists”.

30. **Section 123 amended (exceptions to sections 64G and 120)**

Section 123(5), definition of **actuary**—

Repeal

“Companies (Actuaries’ Qualifications) Regulations”

Substitute

“(Actuaries’ Qualifications) Regulation”.

31. **Section 128 amended (Chief Executive in Council may make regulations)**

Section 128(7), English text, after “subsection (6)”—

Add

“is”.

“正在或曾經協助”。

(2) 第 53A(1AAB)(c) 條——

廢除

所有 “屬或曾是協助”

代以

“正在或曾經協助”。

29. 修訂第 76 條 (保監局可提出將持牌保險中介人清盤或破產的呈請)

第 76(3) 條，中文文本——

廢除

“佈”

代以

“布”。

30. 修訂第 123 條 (第 64G 及 120 條的例外情況)

第 123(5) 條，**精算師**的定義——

廢除

“公司”

代以

“業”。

31. 修訂第 128 條 (行政長官會同行政會議可訂立規例)

第 128(7) 條，英文文本，在 “subsection (6)” 之後——

加入

“is”.

“or who assists”.

(2) Section 53A(1AAB)(c)—

Repeal

“who is”

Substitute

“who assists”.

29. **Section 76 amended (Authority may petition for winding up or bankruptcy of licensed insurance intermediary)**

Section 76(3), Chinese text—

Repeal

“佈”

Substitute

“布”.

30. **Section 123 amended (exceptions to sections 64G and 120)**

Section 123(5), definition of **actuary**—

Repeal

“Companies (Actuaries’ Qualifications) Regulations”

Substitute

“(Actuaries’ Qualifications) Regulation”.

31. **Section 128 amended (Chief Executive in Council may make regulations)**

Section 128(7), English text, after “subsection (6)”—

Add

“is”.

“or who assists”. 
32. Schedule 6 amended (person who has become controller of authorized insurer in contravention of section 13B(2))

Schedule 6, Chinese text, paragraph 1—

Repeal

“13B(1) 條適用”

Substitute

“13B(3) 條適用”.
The objects of this Bill are to amend the Insurance Ordinance (Cap. 41) (Ordinance) to—
(a) provide for the regulation of a new class of insurance business for which the liability of an insurer under a contract of insurance to the person insured is fully funded;
(b) expand the scope of insurable risks of captive insurers;
(c) remove a non-delegable function of the Insurance Authority (Authority) specified in Schedule 1D to the Ordinance;
(d) make minor textual amendments to the Ordinance; and
(e) provide for related matters.
Explanatory Memorandum

Paragraph 5

purpose business. A contract of insurance is regarded as fully funded if the value of the assets held by the insurer for the benefit of the insured under the terms of the contract is not less than the amount of the insurer's liabilities under the contract.

5. Clause 4 amends section 3(2) of the Ordinance to include a contract belonging to the class of special purpose business among the contracts deemed to be contracts of insurance for the purposes of the Ordinance.

6. Clause 7 amends section 8 of the Ordinance to provide that that section only applies to long term business and general business.

7. Clause 8 adds—

(a) a new section 8A to the Ordinance to empower the Authority to authorize a company to carry on special purpose business if certain conditions are satisfied; and

(b) a new section 8B to the Ordinance to specify the form in which a special purpose insurer submits information to the Authority under the Ordinance; and

(c) a new section 8C to the Ordinance to empower the Authority to modify or vary any requirement under section 17, 20 or 21 of the Ordinance in relation to a special purpose insurer.

8. Clause 11 amends the definition of controller in section 13A(12) of the Ordinance to expand its meaning to include an administrator of an authorized insurer that is a special purpose insurer.

目的業務。假如保險人持有的財產的價值，不少于該合約所負的法律責任的款額，則該合約須視為是全期資可抵償的。

5. 草案第 4 條修訂《條例》第 3(2) 條，以將屬於特定目的業務類別的合約，納入為就《條例》而言須當作保險合約的合約。

6. 草案第 7 條修訂《條例》第 8 條，以訂明後者只適用於長期業務及一般業務。

7. 草案第 8 條——

(a) 在《條例》中加入新訂第 8A 條，賦權保監局在某些條件獲符合的情況下，授權公司經營特定目的業務；

(b) 在《條例》中加入新訂第 8B 條，賦權保監局，使其可指明特定目的保險人根據《條例》向其呈交的資料須採用的格式；及

(c) 在《條例》中加入新訂第 8C 條，賦權保監局，使其可就某特定目的保險人，修改或更改《條例》第 17、20 或 21 條的任何規定。

8. 草案第 11 條修訂《條例》第 13A(12) 條中控制人的定義，以擴闊其涵義，使之包括獲授權保險人(屬特定目的保險人者)的管理人。
9. Clause 12 amends section 13AE of the Ordinance to exclude a special purpose insurer from the application of that section.

10. Clause 13 amends section 13B of the Ordinance to exclude a special purpose insurer from the application of that section.

11. Clause 15 amends section 26(1)(e) of the Ordinance to add a ground in relation to a special purpose insurer on which the Authority may exercise the powers under sections 27 to 35 of the Ordinance.

12. Clause 20 adds a new section 129A to the Ordinance to empower the Authority to make rules to prohibit any sale of, or the making of any offer to sell, insurance-linked securities to any person other than an investor falling within a type prescribed in the rules, and to prohibit any sale of, or the making of any offer to sell, insurance-linked securities at an amount lower than that prescribed in the rules. The meaning of insurance-linked securities is defined in the new section 129A.

13. Clause 21 amends Schedule 1 to the Ordinance to include the class of special purpose business as a class of insurance business for the purposes of the Ordinance.
Part 3—Amendments Relating to Captive Insurers

15. Clause 24 amends the meaning of *captive insurer* in section 2(7) of the Ordinance to widen the scope of insurable risks of a captive insurer. The clause also adds a new definition of *relevant company’s corporate group* for the purpose of interpreting the amended meaning of *captive insurer*.

Part 4—Amendment Relating to Non-delegable Functions of Insurance Authority

16. Clause 25 remove a non-delegable function of the Authority specified in Schedule 1D to the Ordinance to enable the function to be carried out more effectively.

Part 5—Miscellaneous Amendments

17. Clauses 26 to 32 make certain minor textual amendments to certain existing provisions of the Ordinance.