MAY 2024

M&A and Restructuring of Hong Kong Insurers - Upcoming Changes

This briefing focuses on the upcoming amendments to the change of control regime under the Insurance Ordinance – those considering an acquisition or restructuring of a Hong Kong insurer should be aware of the implications. In short, the changes will introduce an additional approval threshold for any person becoming a "majority shareholder controller" of certain Hong Kong insurers, with an enhanced fit and proper assessment criteria.

The changes form part of a broader set of amendments being made to the Insurance Ordinance to (amongst other things) implement a risk-based capital regime for the Hong Kong insurance market.

The relevant amendments are expected to come into effect on 1 July 2024.

Key takeaways

1. When does an acquisition require prior HKIA approval?

Currently, prior approval from the Hong Kong Insurance Authority (**HKIA**) is required for any person to acquire 15% or more voting power in Hong Kong-incorporated authorized insurers[1] and designated holding insurance companies (**DIHCs**).[2] The new rules will impose an additional approval threshold at 50% or more voting power. Accordingly, "shareholder controllers" requiring HKIA approval will be divided into two categories - those entitled to exercise, or control the exercise of: (i) 15% or more but less than 50% of the voting power (**minority shareholder controllers**); and (ii) 50% or more of the voting power (**majority shareholder controllers**).

With the dual approval thresholds, the change of control regime for the Hong Kong insurance sector will become more aligned with the Hong Kong banking sector.

Investors who wish to become a majority shareholder controller must obtain prior HKIA approval even if they had obtained approval to become a minority shareholder controller. Majority shareholder controllers who wish to decrease their stake to become minority shareholder controllers do not require prior approval but must file a post-event notification.

2. Designated insurers

Under the revamped rules, authorized insurers incorporated outside Hong Kong which, in the opinion of the HKIA, carries on a majority of its insurance business in or from Hong Kong may be designated by the HKIA as a "**designated insurer**". Designated insurers will essentially be required to comply with the same requirements as Hong Kong incorporated insurers, including in relation to prior approval for minority and majority shareholder controllers (see above).[3] A non-HK incorporated insurer which has not been so designated will continue to be subject to notification obligations in relation to changes in shareholder controllers.

3. Fit and proper assessment criteria

The HKIA must be satisfied that a person becoming a shareholder controller is fit and proper and remains so. The HKIA's *Guideline on Fit and Proper Criteria in relation to Authorized Insurers (GL4)* sets out the minimum standard of fitness and propriety that are applicable to shareholder controllers (as well as certain other key persons) of

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[1] Except special purpose insurers.

[2] The HKIA has statutory power to regulate insurance groups under the group-supervisory framework by designating a Hong Kong incorporated company within the insurance group as a DIHC – to date, three entities have been designated as DIHCs.

[3] Where applicable, deemed approval applies to any majority and minority shareholder controllers of a non-HK insurer at the time of its designation as a designated insurer.

authorized insurers.[4] The HKIA issued a revised version of the guideline in April 2024, which is expected to come into effect on 1 July 2024.

The revised guideline clarifies / expands upon the HKIA's expectations regarding:

A. **majority shareholder controllers** - the greater the influence on the insurer, the higher the level of standard will be applied by the HKIA in assessing the shareholder controller's fitness and propriety. The HKIA will consider the likely or actual level of influence and control that a shareholder controller will have over the insurer.

A prospective majority (and, if appropriate, minority) shareholder controller should submit clear and detailed strategic objectives and business plans of the authorized insurer and demonstrate such objectives and plans are realistic, viable, and conducive to the long-term stability and healthy and sustainable development of the insurer.

In particular, the HKIA expects a majority shareholder controller to demonstrate its long-term commitment to the insurer and its capacity to maintain the financial soundness of the insurer (including by contributing additional capital to support the operations of the insurer when required);

B. **the internal controls and corporate governance of a shareholder controller that is a body corporate** - the HKIA expects to see it has established a sound corporate governance structure (including considering the proportion of independent non-executive directors), as well as adequate internal controls on financial reporting and internal control systems that reasonably ensure relevant staff conducting regulated activities meet applicable fit and proper criteria.

In addition, the HKIA will expect a body corporate to maintain an effective system of risk management and internal controls such that risks are properly monitored and managed at the entity level or at a group-wide basis (where relevant).

With regard to a majority shareholder controller, the HKIA will take into account whether the body corporate is subject to any prudential supervision by any regulatory authority in Hong Kong or elsewhere in considering its corporate governance / internal controls; and

C. **shareholder controllers who are individuals** – the criteria will be expanded to include whether they have been dismissed or requested to resign from any office for misconduct, negligence or mismanagement, or been the subject of any substantiated complaint in relation to regulated activities.

It will remain the case that when assessing fitness and propriety, the HKIA can have regard to any information in its possession relating to any substantial shareholder or officer of a prospective shareholder controller or a body corporate in its group, as well as any other matter that the HKIA considers relevant.

Conclusion

Existing insurers in the Hong Kong market, their shareholder controllers and financial advisers should consider the impact of the above amendments on their M&A or restructuring activities. Subject to the final stages of a legislative process, the amendments are expected to come into effect on 1 July 2024.

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[4] DIHCs should continue to refer to Module B of the Guideline on Group Supervision (GL32).