

A Comparative Overview of the Hong Kong and Singapore Regulatory Frameworks for the Supervision of Insurance Groups

The Hong Kong government recently announced that the insurance group-wide supervision framework (**GWS framework**) will commence on 29 March 2021. The GWS framework will be implemented via the Insurance (Amendment) (No. 2) Ordinance 2020, which was passed by the Hong Kong legislature on 17 July 2020.

Currently, the Insurance Authority (**IA**) has no direct regulatory authority over insurance holding companies that are not themselves authorised insurers, nor any regulatory powers over their group companies that are not carrying on regulated business in Hong Kong. Under the GWS framework, the IA will be empowered to directly regulate Hong Kong-incorporated holding companies of authorised insurers, whether or not the holding company is itself an authorised insurer. Through the exercise of its regulatory powers over the holding company, the IA will also be expressly empowered to exercise supervisory powers over the group of insurance companies held by it, including those insurance companies that are incorporated outside Hong Kong. This will allow the IA to more effectively exercise group-wide supervision of the entire group.

The IAIS and the development of the GWS framework

The GWS framework was developed pursuant to principles promulgated by the International Association of Insurance Supervisors (**IAIS**). The IAIS is an international voluntary membership organisation of insurance supervisors and regulators from across the world, with a total of 216 members from over 130 countries. Hong Kong's IA is a member, as are the Australian Prudential Regulation Authority, the UK's Financial Conduct Authority and Prudential Regulation Authority, and the Monetary Authority of Singapore (**MAS**). Members also include insurance and financial institution regulators from right across the United States and the European Union.

Under the IAIS' Common Framework for Supervision of Internationally Active Insurance Groups, member regulators act as group-wide supervisors, together with the other member regulators, to identify Internationally Active Insurance Groups (**IAIGs**). An updated list of IAIGs is maintained on the IAIS' website, and the basic criteria applied to decide whether an insurance group is an IAIG are as follows:

- The insurance group must be internationally active:
 - it has premiums written in three or more jurisdictions; and
 - its gross written premiums outside its home jurisdiction are at least 10% of the group's total gross written premiums.
- It must meet either of the following minimum financial requirements based on a three-year rolling average:
 - its total assets are at least USD50 billion; or
 - its total gross written premiums are at least USD10bn.

Holding companies of IAIGs are regulated by the relevant regulatory authority of the jurisdiction where the holding company is incorporated under the regulatory framework set up in that country. In Hong Kong, the insurance holding companies in Hong Kong that have been identified as IAIGs will be regulated under Hong Kong's GWS framework. In the first instance, based on the IAIS' current list of IAIGs, two IAIGs will be supervised by the IA: Prudential plc and AIA Group Limited. As a comparison, the MAS currently acts as the group-wide supervisor for Great Eastern Holdings Group, which is regulated as a financial holding company under a regulatory framework similar, but not identical, to Hong Kong's GWS framework. A table comparing the group-wide supervision regulatory frameworks of Singapore and Hong Kong is set out at the end of this update.

Basis of designation as a designated insurance holding company

Under the amendments to the Insurance Ordinance (IO), the IA may designate an insurance holding company as a designated insurance holding company if:

- it is, in accordance with the principles of the IAIS, appointed as the group supervisor of that insurance holding company's insurance group; and
- the IA considers it appropriate for that company to be so designated.

In determining whether it is appropriate for that company to be so designated, the IA may take into account any of the following matters, among others:

- the number of jurisdictions outside Hong Kong in which the insurance business of the group is carried on;
- the size of the insurance and other businesses of the group; and
- any criteria promulgated by an international standards body (such as the IAIS) that the IA considers relevant.

Scope of the designated insurance group

The IA will also be empowered to determine the scope of the designated insurance group that is subject to group-wide supervision. The default group will comprise:

- the designated insurance holding company itself
- the subsidiaries of the designated insurance holding company and
- any other entities that are, according to the accounting standards applicable to the preparation of the specified financial statements, treated as members of the insurance group

The IA may also include a company that does not fall within the default group if it considers that the company is closely linked to a member of the default group through any financial, contractual or operational relationship. It may also exclude a company that is part of the default group if it considers that it should not be treated as a member of the group.

Key obligations under the GWS framework

Under the GWS framework, the designated insurance group holding company will be required to comply with the following key requirements (among others):

- The IA's prior approval must be obtained for any person to acquire significant shareholding control over it. A person will have significant shareholding control if entitled to exercise or control the exercise of 15% or more of the voting power at any general meeting of the company. This includes when the power is exercised with an associate or through a nominee.
- The IA's prior approval must be obtained for the appointment of any chief executive, director or key person in control functions. A "key person in control functions" means a person who is responsible for the performance of one or more of the control functions for the company in

respect of its supervised group. The control functions are: risk management, financial control, compliance, internal audit and actuarial.

- It must appoint an auditor to submit financial information and returns (eg, accounts, balance sheet, auditor's report etc) and comply with capital, investment, reporting and public disclosure requirements.
- The IA's prior approval must be obtained for any major acquisition. An acquisition is a major acquisition if any member of the supervised group (either alone or with other specified persons) acquires:
 - the control of 50% or more of the voting power at a general meeting of a body corporate or
 - 50% or more of the issued share capital of a body corporateAn acquisition does not require IA approval if it has been assessed as not material to the supervised group. This assessment is essentially an internal one to be made by the designated insurance holding company and not the IA. However, the assessment must be carried out according to an assessment framework that must first be submitted to and approved by the IA.

IA's regulatory powers under the GWS framework

The IA will have a broad range of regulatory powers over the designated insurance holding company, similar to those that it currently has over authorised insurers. These powers include the power to:

- obtain information and require production of documents
- obtain a skilled person report on the company
- restrict the transfer of assets among the group companies
- appoint a manager to manage the affairs, business and property of the designated insurance holding company including the exercise of its control and influence over the designated insurance group
- inspect and investigate a designated insurance holding company, or any of companies in the designated insurance group, for the purposes of ensuring or ascertaining due compliance with the requirements of the IO and
- take disciplinary action against the designated insurance holding company.

Impact on the insurance industry

As noted above, based on the IAIS' current list of IAIGs, the GWS framework will apply only to two insurance holding companies in Hong Kong, and their insurance groups are already required to comply with the IA's regulatory requirements, albeit through indirect supervision of the relevant authorised insurers.

Furthermore, as also noted above, insurance companies, particularly those with international reach, will already be familiar with the GWS framework as other countries have similar regulatory frameworks that allow for the relevant regulator to exercise group-wide supervision.

Comparative Table of the Group-Wide Supervision Frameworks of Hong Kong and Singapore

	Hong Kong	Singapore
Regulator	Insurance Authority (IA)	Monetary Authority of Singapore (MAS)
Law	Insurance Ordinance, as amended by the Insurance (Amendment) (No. 2) Ordinance 2020, which has been gazetted to come into force on 29 March 2021 (IO)	Monetary Authority of Singapore Act (MAS Act) and directives issued under section 28(3) of the MAS Act. The MAS' power to issue directives under section 28(3) is very wide and the specific requirements imposed on financial holding companies are set out in these directives, rather than in the MAS Act or its subsidiary legislation. The information set out here is based on our previous experience with entities regulated as financial holding companies.
Persons that may be designated	An insurance holding company incorporated in Hong Kong. Such a holding company need not be regulated directly as an insurer by the IA.	Any financial institution carrying on business in Singapore.
Basis of designation	The IA may designate an insurance holding company if: <ul style="list-style-type: none"> – the IA has been appointed by the International Association of Insurance Supervisors (IAIS) as the group supervisor of the group under IAIS principles and – the IA considers it appropriate for the company to be so designated, and in so considering may take into account any of the following matters: <ul style="list-style-type: none"> – the number of jurisdictions outside of Hong Kong in which the insurance business of the group is carried on – the size of the insurance and other businesses of the group and – any criteria promulgated by an international standards body (such as the IAIS) that the IA considers relevant 	The MAS may require any financial institution to be approved by the MAS under section 28(3) of the MAS Act as a financial holding company if its operations are considered by the MAS to affect: <ul style="list-style-type: none"> – monetary stability and credit and exchange conditions in Singapore – the development of Singapore as a financial centre or – the financial situation of Singapore generally The approval requirement is not confined to the insurance industry but applies across all financial industry sectors.
Fees payable	Fees payable on designation: 0.0026% of the group insurance liabilities subject to a minimum of HKD10 million and a maximum of HKD60m.	None.
Scope of group subject to supervision framework	<ul style="list-style-type: none"> – The designated insurance holding company – The subsidiaries of the designated insurance holding company – Any other entities that are, according to the accounting standards applicable to the preparation of the specified financial statements, treated as members of the insurance group – Any other companies included by the IA if it considers that the company is closely linked to any of the above entities through any financial, contractual or operational relationship 	<ul style="list-style-type: none"> – The financial institution approved by the MAS under section 28(3) of the MAS Act as a financial holding company – Its subsidiaries – Any other company treated by that financial institution as part of its group of companies according to the applicable accounting standards made or formulated under the Accounting Standards Act
Scope of business	No equivalent.	The MAS may specify the permitted scope of business for the approved financial holding company.
Approval of shareholding	Approval of the IA is required for a person to become a shareholder controller of a designated insurance holding company. A shareholder controller is a person who is entitled to exercise or control the exercise of 15% or more of the voting power at any general meeting of the company. This includes when the power is exercised with an associate or through a nominee. Basis of approval: Among other things, the IA must be satisfied that the person is a fit and proper person.	Approval of the Minister for Finance is likely to be required for a person to hold the following specified percentages (or more) of voting shares in the approved financial holding company either alone or together with associates in respect of each such percentage level: <ul style="list-style-type: none"> – 5% (a substantial shareholder) – 12% (a 12% controller) – 20% (a 20% controller) and – an indirect controller Basis of approval: Among other things, the MAS must be satisfied that the person is a fit and proper person.

	Hong Kong	Singapore
Approval of chief executive, directors and other officers	<p>Approval of the IA is required for a person to be appointed to any of the following positions:</p> <ul style="list-style-type: none"> – the chief executive – director or – key person in control functions of a designated insurance holding company <p>A key person in control functions means a person who is responsible for the performance of one or more of the control functions for the company in respect of its supervised group.</p> <p>The following are control functions: risk management, financial control, compliance, internal audit, actuarial and any other function that may be specified by the IA.</p> <p>Among other things, the IA must be satisfied that the person is a fit and proper person</p>	<p>Approval of the MAS will likely be required for a person to be appointed to any of the following positions:</p> <ul style="list-style-type: none"> – director – chair of the board of directors – member of the nominating committee – chief executive and deputy chief executive (if any) – chief financial officer (if any) and – chief risk officer (if any) <p>Among other things, the MAS must be satisfied that the person is a fit and proper person.</p>
Appointment of auditor	<p>The designated insurance holding company is required to appoint an auditor.</p> <p>The IA must be notified if the auditor is removed or replaced, or resigns.</p>	<p>The approved financial holding company is required to appoint an auditor.</p>
Financial statements	<p>The designated insurance holding company must submit the following to the IA:</p> <ul style="list-style-type: none"> – specified financial reports of the financial reporting member for its supervised group and – an auditor’s report of the financial reporting member for its supervised group <p>The financial reporting member may be any of the following:</p> <ul style="list-style-type: none"> – the designated insurance holding company – a holding company of the designated insurance holding company or – a company in the group that is the most appropriate to be assigned for reporting information that gives a true and fair view of the financial position and financial performance of the group 	<p>The approved financial holding company will likely be required to submit the following to the MAS:</p> <ul style="list-style-type: none"> – its audited consolidated financial statements – the audited financial statements of each of its foreign subsidiaries and – its quarterly balance sheets and profit and loss accounts and those of each of its foreign subsidiaries
Capital requirements	<p>The designated insurance holding company in relation to its supervised group must ensure that at all times:</p> <ul style="list-style-type: none"> – the tier 1 group capital of the supervised group is not less than the group minimum capital requirement of the supervised group and – the sum of the tier 1 group capital and the tier 2 group capital of the supervised group is not less than the group prescribed capital requirement of the supervised group <p>The designated insurance holding company must provide annual group capital adequacy reports to the IA.</p>	<p>The approved financial holding company must at all times maintain minimum paid up capitals and minimum amounts of group available capital which must not fall below a certain percentage of group required capital.</p> <p>The approved financial holding company must provide to the MAS quarterly statements on group available and required capital and available and required capital of each of its foreign subsidiaries.</p>
Other financial reports	<p>The designated insurance holding company must provide certain information to the public on its website annually. This includes:</p> <ul style="list-style-type: none"> – a description of the material intra-group transactions of the supervised group and – a description of the various risk exposures of the supervised group and how these risks are managed 	<p>The approved financial holding company will also be required to provide the following reports to the MAS each half year:</p> <ul style="list-style-type: none"> – information on significant risk concentration and – information on intra-group transactions and exposures.

Acquisitions

The designated insurance holding company must obtain the prior approval of the IA for any major acquisition. An acquisition is a major acquisition if any member of the supervised group (either alone or with other specified persons) acquires:

- the control of 50% or more of the voting power at a general meeting of a body corporate or
- 50% or more of the issued share capital of a body corporate

An acquisition may be assessed by the designated holding company as not material to the supervised group in accordance with an assessment framework that has first been submitted to and approved by the IA. If it has been so assessed, IA approval of the acquisition is not required.

The approved financial holding company will likely be required to obtain the prior approval of the MAS for the following:

- the establishment of any new operations (such as subsidiaries and overseas branches) and
- certain specified actions in relation to these new operations (eg, increased investment in the operations, guaranteeing of any of these operations)

Transfer of business/assets

The IA may require the designated insurance holding company or any member of the supervised group to refrain from transferring any assets of the company to any related entity and to comply with any other restrictions as may be specified as to the transfer.

An approved financial holding company that is incorporated in Singapore must obtain the consent of the MAS and the approval of the Singapore courts for the transfer of the whole or any part of its business that is its significant business.

Where it is incorporated outside Singapore, the consent of the MAS is not required but the approval of the Singapore courts is still required if the business to be transferred is reflected in its books in Singapore in relation to its operations there.

Intervention powers

The IA has the following powers to intervene in the business of the designated insurance company:

- power to require the company to take any action in relation to the affairs, business or property of its supervised group as the IA considers appropriate and
- power to direct that the affairs, business and property of the company be managed by a supervisory manager appointed by the IA

The MAS has the following powers to intervene in the business of the approved financial holding company:

- power to require the approved financial holding company immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the MAS may consider necessary
- power to appoint one or more persons as statutory adviser, on such terms and conditions as the MAS may specify, to advise the approved financial holding company on the proper management of such of its business as the MAS may determine and
- power to assume control of and manage such of the business of the approved financial holding company as the MAS may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the MAS may specify

The MAS may also exercise the various resolution powers with respect to an approved financial holding company if it so determines having regard to one or more of the following:

- whether its failure would have a widespread adverse effect on the financial system in Singapore or the economy of Singapore, or both, whether or not that widespread adverse effect occurs directly or indirectly as a result of the impact of the failure on the financial system in Singapore, on the financial markets in Singapore or on other financial institutions in Singapore
- whether it is in the public interest to do so and
- any other matter that the MAS considers relevant

The resolution powers include the power to require the following:

- the compulsory transfer of business of the approved financial holding company
- the compulsory transfer of shares held in the approved financial holding company and
- the compulsory restructuring of the share capital of the approved financial holding company

Hong Kong

Singapore

Insolvency proceedings

The IA may apply to court to wind up the designated insurance holding company on the basis that the company is unable to pay its debts or has failed to satisfy an obligation under Part XIA (Insurance Groups and Insurance Holding Companies) of the IO.

The MAS may apply to court to wind up the approved financial holding company on the following bases:

- any of grounds on which a creditor may apply for winding up under the Insolvency, Restructuring and Dissolution Act 2018
- the MAS has exercised any of its powers under the MAS Act in relation to the company or
- the company has contravened any provision of the MAS Act or any other specified written laws, including the Insurance Act, Securities and Futures Act or Banking Act

The MAS may apply to court for a scheme of arrangement against the approved financial holding company on the same basis as any creditor.

Inspections and investigations

The IA may carry out inspections of the designated insurance holding company to ascertain whether it is complying with its obligations under Part XIA of the IO. This power includes:

- entering the premises of the company
- inspecting its business records and
- making enquiries to the company

It may also require the company to provide information or produce documents about any matter that relates to any member of its supervised group, and to provide a report in respect of any member of its supervised group.

The MAS may carry out periodic inspections of the approved financial holding company, and it must provide such books, accounts and documents as may be required for the conduct of the inspection.

Corporate governance

Corporate governance requirements apply to authorised insurers pursuant to the Guideline on the Corporate Governance of Authorized Insurers. To the extent that a designated insurance holding company is an authorised insurer it will need to comply with the Guideline which sets out, among other things, the following:

- composition and responsibilities of the board
- establishment of an audit committee and risk committee (other committees such as an investment committee, remuneration committee, nomination committee, underwriting committee etc are to be considered but not required)
- risk management and internal control systems
- remuneration matters and
- servicing of customers

If so directed by the MAS, the approved financial holding company must comply with corporate governance requirements as to, among others:

- composition and size of board
- establishment of nominating committee, remuneration committee, audit committee and risk management committee and the composition, size and duties of each of these committees and
- appointment of independent directors

Key contacts



Charlotte Robins
Partner, Hong Kong
Tel +852 2974 6986
charlotte.robins@allenoverly.com



Shuhui Kwok
Counsel, Singapore
Tel +65 6671 6065
shuhui.kwok@allenoverly.com



Wee Teck Lim
Senior Professional Support
Lawyer, Singapore
Tel +65 6671 6142
weeteck.lim@allenoverly.com