



**CONSULTATION PAPER ON
PROPOSED GROUP-WIDE SUPERVISION FRAMEWORK
FOR INSURANCE GROUPS IN HONG KONG**

SUBMISSIONS

1. The Insurance Authority (“IA”) released on 11 October 2019 a stakeholder discussion paper on “*Proposed Group-Wide Supervision Framework for Insurance Groups in Hong Kong*” (“Discussion Paper”) for views and comments.
2. The Law Society of Hong Kong makes the following submissions on the consultation questions posed, with some of the submissions on matters of principle being relevant to more than one of the questions.
3. As initial comment, we note that the Discussion Paper does not contemplate any transitional arrangements. Given that some of the new requirements to be introduced appear to be quite onerous, we would suggest that thought be given to providing transitional arrangements where appropriate when drafting the legislative amendments.

Question 1:

Do you agree that the proposed GWS framework should be broadly principles-based and outcome focused?

Law Society’s Response:

4. We agree in principle that the proposed GWS framework should be broadly principles-based and outcome focused.

5. However, we consider that the Discussion Paper does not adequately explain the mechanism of the proposed GWS framework. For example, though the proposals are limited to Hong Kong incorporated insurance group holding companies where the IA has been appointed as group-wide supervisor, once those requirements are satisfied further consideration needs to be given to the proposal that the IA be given discretionary power to designate whether the holding company should be subject to group wide supervision and, if so, how that discretion will be exercised. Similarly, we are concerned that the use of the proportionality principle may not ensure a “level playing-field” and fair and equal regulation of all insurance groups; and that applying all the proposed regulatory controls over a holding company, equivalent to those over an authorised insurer, may not be appropriate or necessary for a holding company of authorised and regulated insurance companies, particularly where the holding company carries on no other business and leaves all business decisions to the insurance companies themselves.
6. We suggest that greater clarity be provided to what constitutes an “insurance group” that will be subject to the framework (para. 12). We note that the IA is “committed to ensuring that insurance groups, including IAIGs, in Hong Kong remain competitive and strong” (para 3). It appears from this statement that the scope of “insurance groups” to be regulated by the IA under the framework will be broader than Internationally Active Insurance Groups (“IAIG’s”) as defined in the IAIS’s ComFrame (see ICP 23 (23.0.a)). We suggest that the IA clarifies what is to constitute an “insurance group” subject to the framework.
7. We note that many of the proposed new requirements for an “insurance holding company” are based on existing requirements for solo-entity authorised institutions in Hong Kong. Whilst certain proposals acknowledge the need to avoid duplication (e.g. double-counting of the minimum capital requirements and prescribed capital requirements in paras 15, 18, B1.3 and B1.10), we believe that, in drafting the amendment ordinance, rules/regulations and guidelines, particular attention should be given to avoiding unnecessary duplication and inconsistencies with rules already applicable to authorised insurers and their holding companies, to ensure that insurance holding companies and their subsidiary authorised insurers operating in Hong Kong are not put at a disadvantage to solo-entity authorised institutions operating in Hong Kong.
8. Given the inherent duplication of the proposed requirements over the regulations already imposed on authorised and regulated insurance companies in other jurisdictions, there is an implicit suggestion that those regulations may be inadequate or inadequately enforced. Notwithstanding the position taken by the IAIS in this matter, we are concerned that such a suggestion may be inappropriate for the IA.

Question 2:

Do you agree that the available capital resources for non-regulated legal entities in the insurance group should be defined as the IFRS shareholder equity less intangible assets?

Law Society's Response:

9. The term "non-regulated legal entities" needs to be clarified as it appears to mean all legal entities that are not subject to any regulation but may be more appropriately defined as legal entities that are not subject to any insurance regulation (though such a definition would then exclude for example insurance broking groups but not banks).
10. We are not in a position to comment on the appropriate level of capital for non-regulated legal entities in the insurance group, though we would assume that the available capital resources would take into account the nature and scale of the businesses of those entities.

Question 3:

For regulated entities that do not adopt a tiering approach, should there be exceptions to the proposed rule that all eligible capital resources of those regulated entities be classified to Tier 1?

Law Society's Response:

11. The terms "Tier 1 Unlimited" and "Tier 1 Limited" capital resources are not sufficiently described to enable us to comment on this question. In general, it is observed that exceptions to the proposed rule should be clearly set out.

Question 4:

Do you agree that for non-regulated entities, eligible capital resources of such entities should be allocated to the appropriate tier in accordance with criteria that are consistent with the ICS?

Law Society's Response:

12. We are not in a position to comment on the nature of capital resources of non-regulated entities to determine their eligibility for allocation.

Question 5:

Do you agree that the GMCR should be 100% supported by Tier 1 capital resources and Tier 1 Limited capital resources should be limited to 10% of the GMCR?

Law Society's Response:

13. We are not in a position to comment on the nature of capital resources to support GMCR, save that no economic justification is given for the absence of a limit proposed for Tier 1 capital resources while a 10% limit is proposed to be applied for Tier 1 Limited capital resources.

Question 6:

Do you agree with the proposed considerations the IA would take into account when deciding whether or not to apply a supervisory variation to GPCR?

Law Society's Response:

14. It is uncertain as to what criteria will be applied when assessing the proposed considerations; these criteria and how they will be applied should be clearly expressed.
15. In addition, we believe that there should be a clear process set out in the amendment ordinance as to the process to be adopted by the IA when seeking to impose a supervisory variation, including a reasonable period of notification to be given to the insurance group, opportunity for the insurance group to object with reasons to any such proposed variation, as well as an appeal mechanism.

Question 7:

Do you agree that the GIECA should be calibrated uniformly for all entities to a target criteria of 99.5% value-at-risk over a one-year time horizon, or equivalent?

Law Society's Response:

16. We are not in a position to comment on the formula to be adopted to determine the proposed target criteria but we would observe that the principles of

uniformity, consistency and transparency should always be adopted when applying discretionary criteria.

Question 8:

Do you agree with the approach to the group-wide ERM Framework and ORSA?

Law Society's Response:

17. We are concerned that the proposed approach will represent duplication of the ERM and ORSA work carried out by the regulated insurance companies within the relevant group but insofar as non-regulated legal entities form part of the group, we have no comment.

Question 9:

Do you have any comments on the responsibilities of the Group Board for Corporate Governance?

Law Society's Response:

18. It is proposed that the guideline on Group-wide Corporate Governance will include requirements for the holding company in relation to its insurance group to establish and implement a corporate governance framework that provides for sound and prudent management and oversight of the group's business and adequately recognizes and protects the interests of policy holders (para. 33 of the Discussion Paper).
19. We consider that the responsibility of "*adequately recognizes and protects the interests of policy holders*" should be on the insurers, not the holding company, particularly where the holding company holds interests in companies which are not insurers. The holding company should have a responsibility for ensuring that each insurer within its group complies with all regulations applicable to it to protect the interests of its policy holders.

Question 10:

Do you have any comments on the proposed Risk Management and Internal Controls guideline?

Law Society's Response:

20. Given that there is already GL 21 "Guideline on Enterprise Risk Management" in place, there may be considerable overlap and duplication of guidelines and requirements imposed on both regulated insurers and their holding companies. In particular, it should be noted that a holding company may have no business other than as holder of the shares in its group companies so that these proposed requirements may be inappropriate.

Question 11:

Do you have any comments on the proposed Investment Management guideline?

Law Society's Response:

21. Given that there is already GL 13 "Guideline on Asset Management by Authorized Insurers" in place, there may be considerable overlap and duplication of guidelines and requirements imposed on both regulated insurers and their holding companies. In particular, it should be noted that a holding company may have no assets other than the shares it holds in its group companies so that these proposed requirements may be inappropriate.

Question 12:

Do you have any comments on the proposed Disclosure guideline?

Law Society's Response:

22. We are concerned that the information proposed to be disclosed will be disclosed to the public and that some of that information will be commercially sensitive. Insofar as the proposed disclosure exceeds what is already required by the relevant regulated insurers within the group to be disclosed to the public, no such disclosure should be required; insofar as the proposed disclosure applies to other group companies which are not regulated insurers, no such disclosure should be required.

**The Law Society of Hong Kong
3 December 2019**