

L.N. 65 of 2024

Insurance (Marine Insurers and Captive Insurers) Rules

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Insurance (Marine Insurers and Captive Insurers) Rules

(Made by the Insurance Authority under section 129(1) of the Insurance Ordinance (Cap. 41))

1. Commencement

These Rules come into operation on the day on which section 11 of the Insurance (Amendment) Ordinance 2023 (20 of 2023) comes 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;

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 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;

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;

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 serving a notice in writing on the authorized insurer concerned, amend or revoke any such conditions or impose new conditions as may be reasonable in the circumstances.

- (5) The Authority may, by serving a notice in writing on an authorized insurer, revoke the approval given under subrule (4) if it appears to the Authority that the grounds for approval no longer exist.
- (6) 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.
- (7) 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.
- (8) 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 under subrule (1) 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 controllers 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; and
 - (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 3 of the following Table 1 based on the applicable case in column 2.

Table 1

Column 1	Column 2	Column 3
Case	Particulars of the Case	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 \$10,000,000 or its equivalent	\$2,000,000 or its equivalent
2.	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, exceeded \$10,000,000 but did not exceed \$200,000,000 or its equivalent	20% of the net premium, or 20% of the relevant claims outstanding, as the case may be

Column 1	Column 2	Column 3
Case	Particulars of the Case	Amount Applicable
3.	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, exceeded \$200,000,000 or its equivalent	<p>The sum of \$40,000,000 and—</p> <p>(a) 10% of the amount by which the net premium exceeded \$200,000,000; or</p> <p>(b) 10% of the amount by which the relevant claims outstanding exceeded \$200,000,000,</p> <p>as the case may be, or its equivalent</p>
(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 3 of the following Table 2 based on applicable case in column 2.	

Table 2

Column 1	Column 2	Column 3
Case	Particulars of the Case	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 \$40,000,000 or its equivalent	\$2,000,000 or its equivalent
2.	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, exceeded \$40,000,000 or its equivalent	5% of the net premium, or 5% of the 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.

Stephen YIU Kin-wah
Insurance Authority

29 April 2024

Explanatory Note

These Rules are made under section 129 of the Insurance Ordinance (Cap. 41) (*Ordinance*) to set out the scope to which these Rules are applicable, as well as to provide for the valuation basis, capital requirements and fund requirements of marine insurers and captive insurers.

2. Rule 1 sets out the date of commencement of these Rules.
3. Rule 2 defines the terms and expressions used in the Rules.
4. Rule 3 provides that these Rules apply to marine insurers and captive insurers. Where an authorized insurer (which is not a marine mutual insurer) predominantly provides insurance relating to risks arising out of marine adventures, it may make an application to the Insurance Authority for approval to determine its capital requirements under these Rules, instead of under the Insurance (Valuation and Capital) Rules.
5. Rule 4 requires a relevant insurer to maintain a capital base that is not less than each of its prescribed capital amount, minimum capital amount and \$2,000,000.
6. Rule 5 requires a relevant insurer to notify the Insurance Authority immediately if it is at risk of breaching, or has breached, the capital requirements set out in rule 4.
7. Rule 6 classifies the capital base into three tiers: Unlimited Tier 1 capital, Limited Tier 1 capital and Tier 2 capital, based on their quality and loss absorbency, and imposes limits on the amount of Limited Tier 1 capital and Tier 2 capital that can be included in the capital base.

Insurance (Marine Insurers and Captive Insurers) Rules

Explanatory Note
Paragraph 8

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8. Rule 7 prescribes that a relevant insurer must adopt the valuation basis of assets and liabilities in accordance with the Insurance (Valuation and Capital) Rules.
9. Rule 8 prescribes the determination of the prescribed capital amount of a relevant insurer, which makes reference to the premium and insurance liabilities level of the insurer. It also sets out that the part of the reinsurance business with offshore risk and maintained in a separate fund under section 25AA(4)(a) of the Ordinance is excluded from the calculation of the prescribed capital amount of a marine insurer.