

**Bills Committee on
Anti-money Laundering and Counter-terrorist Financing
(Financial Institutions) Bill**

**Definition of Long Term Business and
Rationale of its inclusion in the Bill**

Purpose

This note sets out the definition of “long term business” under the Insurance Companies Ordinance (Cap 41) (“ICO”) and explains why various classes of long term business specified in ICO are covered under the Anti-Money Laundering and Counter-terrorist Financing (Financial Institutions) Bill (“the Bill”).

Requirement of the Financial Action Task Force

2. Financial Action Task Force (“FATF”) requires insurance institutions to comply with the customer due diligence (“CDD”) and record-keeping requirements in conducting their business of underwriting and placement of life insurance, investment related insurance and insurance that provides retirement benefits. Pursuant to the FATF requirement, section 1.1 of the Guidance Note on Prevention of Money Laundering and Terrorist Financing issued by the Office of the Commissioner of Insurance specifies that the Guidance Note applies to “authorized insurers, reinsurers, insurance agents and insurance brokers carrying on or advising on long term business”.

Coverage for the Insurance Sector under the Bill

3. In line with the existing provision under the Guidance Note, clause 5(2) and (3) of the Bill specifies that the CDD and record-keeping requirements of the Bill on insurers, insurance brokers and insurance agents only applies to their long term business, which is defined under section 2 of the ICO as “any of the classes of insurance business specified in Part 2 of the First Schedule”. Schedule 1 to ICO is enclosed at **Annex** for Members’ reference.

Rationale for including various classes of Long Term Business in the Bill

4. As set out in paragraph 2 above, FATF requires that CDD and record-keeping requirements should be applicable to the underwriting and placement of life insurance, investment related insurance and insurance that provides retirement benefits. These correspond to class A (Life and annuity), class C (Linked long term) and class G – I (Retirement scheme management category I, II and III) of long term business as provided under Schedule 1 to ICO respectively.

5. Class D (Permanent health) is an insurance policy which provides benefits to policyholders who have declared not being able to work due to illness or accident and should be effective for a period of not less than five years. Customers purchasing this class of products usually attach the policies to Class A (Life and annuity) contracts as riders. Class D is thus covered by the Bill in view of its close linkage with life insurance.

6. For the remaining classes, i.e. Class B (Marriage and birth)¹, Class E (Tontines)² and Class F (Capital redemption)³, they are long term contracts where policyholders may surrender the policy during the life of the contract and redeem certain value of the policy. They are covered by the Bill given the inherent money laundering risks arising from the possibility of early redemption.

7. The proposed coverage of long term business in the Bill is the same as the existing coverage of the Guidance Note issued by OCI. It is also in line with that provided under the United Kingdom (“UK”)’s Money Laundering Regulations 2007 in respect of the insurance sector.

1 This is a kind of long term contract between the customer and the insurer, which accumulates cash value during the policy in-force period. Policy holders can receive payments from the insurer upon the happening of a marriage or a birth event.

2 This refers to a scheme where each of the investors pays a sum, potentially with dividends to be received on a regular basis. As one of the investors dies, his or her share is reallocated among the surviving ones. The process continues until only a predetermined number of investors (e.g. 1 or 2) are still alive.

3 Under capital redemption policies, one or more fixed sums is paid to an insurer under a contract pursuant to which one or more specified amounts is paid out at some later time or times, on the basis of an actuarial calculation.

The UK Regulations cover contracts of long-term insurance, which is defined under UK's Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 to cover all the classes of long term business set out in Schedule 1 to ICO.

Office of the Commissioner of Insurance
21 December 2010

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| Chapter: | 41  | Title: | INSURANCE COMPANIES ORDINANCE | Gazette Number: | |
| Schedule: | 1 | Heading: | CLASSES OF INSURANCE BUSINESS | Version Date: | 30/06/1997 |

[sections 3, 51& 61]

PART I

PRELIMINARY

1. The classes of insurance business specified in Parts 2 and 3 of this Schedule shall constitute the classes of insurance business that are relevant for the purposes of this Ordinance.
2. An authorization under section 8, in describing the classes or parts of classes to which it relates, may do so by reference to the appropriate groups specified in Part 4 of this Schedule.
3. If an insurer authorized to carry on long term business effects and carries out a contract of insurance which combines long term business and additional business of the nature specified in Part 3 of this Schedule in relation to class 1 or 2, the additional business shall as respects that contract be regarded as long term business and not as general business.
- 3A. There shall not be combined in the one contract long term business of the nature specified in class G or H in Part 2 of this Schedule and business of any other nature specified in this Schedule unless that contract is a contract (or belongs to a class or description of contract) specified by the Insurance Authority by notice in the Gazette under paragraph 3B as being a contract to which this paragraph shall not apply. (Added 59 of 1993 s. 17)
- 3AA. (a) Paragraph 3A shall not apply to any annuity contract on a human life under which a single premium is paid in return for an annuity which becomes payable periodically immediately upon the date of the execution of the contract.
 - (b) Subparagraph (a) shall be deemed to have come into operation on the commencement of the Insurance Companies (Amendment) Ordinance 1993 (59 of 1993). (Added 75 of 1995 s. 11)
- 3B. The Insurance Authority may specify, by notice in the Gazette, any contract (including any lass or description of contract) to which paragraph 3A shall not apply. (Added 59 of 1993 s. 17)
- 3C. Subject to paragraph 3D, where a contract effected and carried out on or after the date of commencement of the Insurance Companies (Amendment) Ordinance 1993 (59 of 1993) can be both a contract of the nature specified in class I in Part 2 of this Schedule and a contract of the nature specified in another class (or classes) of long term business, the contract shall, for the purposes of this Ordinance, be treated as being only a contract

of the nature specified in class I, and the provisions of this Ordinance shall have effect accordingly. (Added 59 of 1993 s. 17)

3D. Immediately upon the expiration of section 19 of the Insurance Companies (Amendment) Ordinance 1993 (59 of 1993), paragraph 3C shall operate in relation to a contract effected and carried out before the date referred to in that paragraph as it operates in relation to a contract effected and carried out on or after that date. (Added 59 of 1993 s. 17)

3E. In Parts 1 and 2 of this Schedule, "retirement scheme" (退休計劃) means any scheme, whether in writing or oral, express or implied, under which benefits, in the form of pensions, allowances, gratuities or other payments, are payable to or in respect of a member of the scheme on the cessation of his-

- (a) employment (including any self-employment) by termination of service (including termination for disability), death or retirement;
- (b) service under a contract for services; or
- (c) membership of an association or partnership,

but does not include any scheme (including any class or description of scheme) specified by the Insurance Authority by notice in the Gazette under paragraph 3F or 3FB as not being a retirement scheme for the purposes of this Ordinance. (Added 59 of 1993 s. 17. Amended L.N. 398 of 1994)

3F. Subject to paragraph 3FB, the Insurance Authority may, except in relation to a scheme which is an occupational retirement scheme within the meaning of the Occupational Retirement Schemes Ordinance (Cap 426), specify, by notice in the Gazette, any scheme (including any class or description of scheme) as not being a retirement scheme for the purposes of this Ordinance. (Added 59 of 1993 s. 17. Amended L.N. 398 of 1994)

3FA. In long term business of the nature specified in class G or H in Part 2 of this Schedule, "party" (一方), in relation to a contract referred to in that class of long term business-

- (a) means-
 - (i) a company authorized, or deemed to be authorized, under section 8 to carry on that class of long term business;
 - (ii) Lloyd's; or
 - (iii) an association of underwriters approved under section 6; and
- (b) includes, on and after the day on which section 3 of the Occupational Retirement Schemes Ordinance (Cap 426) comes into operation, any other person except a person who-
 - (i) holds on trust the contributions (or premiums) which become his property under that contract; and
 - (ii) is not a person referred to in subparagraph (a). (Added L.N. 398 of 1994)

3FB. Where-

- (a) an occupational retirement scheme within the meaning of the Occupational Retirement Schemes Ordinance (Cap 426) is neither-

(i) governed by a trust; nor

(ii) the subject of or regulated by an insurance arrangement within the meaning of that Ordinance; and

(b) the administrator, within the meaning of that Ordinance, of such scheme is not a person referred to in paragraph 3FA(a),

then the Insurance Authority may specify, by notice in the Gazette, such scheme (including any class or description of such scheme) as not being a retirement scheme for the purposes of this Ordinance. (Added L.N. 398 of 1994)

3G. It is hereby declared that a notice under paragraph 3B, 3F or 3FB is subsidiary legislation. (Added 59 of 1993 s. 17. Amended L.N. 398 of 1994)

4. Subject to paragraph 5, an insurer authorized to carry on a class of general business may, in effecting and carrying out a contract of insurance against a risk ("the principal risk") within that class, include in the contract provision whereby the insurer incidentally assumes liability against a risk ("the ancillary risk") that is not within that class.

5. Paragraph 4 shall apply only if-

(a) the assumption of liability against the ancillary risk is included in the same contract as that providing for the assumption of liability against the principal risk; and

(b) the ancillary risk is related to the principal risk and to the object, state, condition or person that is insured against the principal risk; and

(c) the ancillary risk is not of the kind to which class 14 or 15 relates and is otherwise such that insurance against it constitutes general business.

6. In classes 6 and 12 "vessels" (船隻) includes hovercraft.

7. The Insurance Companies Ordinance (Amendment of First Schedule) Regulation 1994 (L.N. 398 of 1994) shall be deemed to have come into operation on the commencement of the Insurance Companies (Amendment) Ordinance 1993 (59 of 1993). (Added 75 of 1995 s. 11)

PART 2

CLASSES OF LONG TERM BUSINESS

| Class | Description | Nature of Business |
|-------|--------------------|--|
| A | Life and annuity | Effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life, but excluding (in each case) contracts within class C below. |
| B | Marriage and birth | Effecting and carrying out contracts of insurance to provide a sum on marriage or on the birth of a child, being contracts expressed to be in effect for a period of more than 1 year. |
| C | Linked long term | Effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life where the benefits are |

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| | | wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contracts) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified). |
| D | Permanent health | Effecting and carrying out contracts of insurance providing specified benefits against risks of persons becoming incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or of sickness or infirmity, being contracts that- (a) are expressed to be in effect for a period of not less than 5 years, or until the normal retirement age for the persons concerned, or without limit of time, and (b) either are not expressed to be terminable by the insurer, or are expressed to be so terminable only in special circumstances mentioned in the contract. |
| E | Tontines | Effecting and carrying out tontines. |
| F | Capital redemption | Effecting and carrying out capital redemption contracts. |
| G | Retirement scheme management category I | Effecting and carrying out contracts- (a) under which contributions (or premiums) are paid to, and become the property of, one party to the contract in return for the provision by that party of assets to be applied, whether directly or indirectly, towards the provision of benefits under a retirement scheme; and (b) which provide for a guaranteed capital or return. (Added 59 of 1993 s. 17) |
| H | Retirement scheme management category II | Effecting and carrying out contracts- (a) under which contributions (or premiums) are paid to, and become the property of, one party to the contract in return for the provision by that party of assets to be applied, whether directly or indirectly, towards the provision of benefits under a retirement scheme; and (b) which do not provide for a guaranteed capital or return. (Added 59 of 1993 s. 17) |
| I | Retirement scheme management category III | Effecting and carrying out contracts of insurance to provide, whether directly or indirectly, benefits under retirement schemes but excluding- (a) contracts within class G or H above deemed under section 3(2) to be contracts of insurance; (b) contracts within class 1 or 2 below. (Added 59 of 1993 s. 17. Amended L.N. 398 of 1994) |

PART 3

CLASSES OF GENERAL BUSINESS

| Class | Description | Nature of Business |
|-------|-------------------------|---|
| 1 | Accident | Effecting and carrying out contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of both) against risks of the persons insured- (a) sustaining injury as the result of an accident or of an accident of a specified class, or (b) dying as the result of an accident or of an accident of a specified class, or (c) becoming incapacitated in consequence of disease or of disease of a specified class, inclusive of contracts relating to industrial injury and occupational disease but exclusive of contracts falling within class 2 below or class D above. |
| 2 | Sickness | Effecting and carrying out contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of the two) against risks of loss to the persons insured attributable to sickness or infirmity, but exclusive of contracts falling within class D above. |
| 3 | Land vehicles | Effecting and carrying out contracts of insurance against loss of or damage to vehicles used on land, including motor vehicles but excluding railway rolling stock. |
| 4 | Railway rolling stock | Effecting and carrying out contracts of insurance against loss of or damage to railway rolling stock. |
| 5 | Aircraft | Effecting and carrying out contracts of insurance upon aircraft or upon the machinery, tackle, furniture or equipment of aircraft. |
| 6 | Ships | Effecting and carrying out contracts of insurance upon vessels used on the sea or on inland water, or upon the machinery, tackle, furniture or equipment of such vessels. |
| 7 | Goods in transit | Effecting and carrying out contracts of insurance against loss of or damage to merchandise, baggage and all other goods in transit, irrespective of the form of transport. |
| 8 | Fire and natural forces | Effecting and carrying out contracts of insurance against loss of or damage to property (other than property to which classes 3 to 7 above relate) due to fire, explosion, storm, natural forces other than storm, nuclear energy or land subsidence. |
| 9 | Damage to property | Effecting and carrying out contracts of insurance against loss of or damage to property other than property to which classes 3 to 7 above relate) due to hail or frost or to any event (such as theft) other than those mentioned in class 8 above. |

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| 10 | Motor vehicle liability | Effecting and carrying out contracts of insurance against damage arising out of or in connection with the use of motor vehicles on land, including third-party risks and carrier's liability. |
| 11 | Aircraft liability | Effecting and carrying out contracts of insurance against damage arising out of or in connection with the use of aircraft, including third-party risks and carrier's liability. |
| 12 | Liability for ships | Effecting and carrying out contracts of insurance against damage arising out of or in connection with the use of vessels on the sea or on inland water, including third-party risks and carrier's liability. |
| 13 | General liability | Effecting and carrying out contracts of insurance against risks of the persons insured incurring liabilities to third parties, the risks in question not being risks to which class 10, 11 or 12 above relates. |
| 14 | Credit | Effecting and carrying out contracts of insurance against risks of loss to the persons insured arising from the insolvency of debtors of theirs or from the failure (otherwise than through insolvency) of debtors of theirs to pay their debts when due. |
| 15 | Suretyship | Effecting and carrying out- (a) contracts of insurance against risks of loss to the person insured arising from their having to perform contracts of guarantee entered into by them; (b) contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee. |
| 16 | Miscellaneous financial loss | Effecting and carrying out contracts of insurance against any of the following risks, namely- (a) risks of loss to the persons insured attributable to interruptions of the carrying on of business carried on by them or to reduction of the scope of business so carried on; (b) risks of loss to the persons insured attributable to their incurring unforeseen expense; (c) risks neither falling within paragraph (a) or (b) above nor being of a kind such that the carrying on of the business of effecting and carrying out contracts of insurance against them constitutes the carrying on of insurance business of some other class. |
| 17 | Legal expenses | Effecting and carrying out contracts of insurance against risks of loss to the persons insured attributable to their incurring legal expenses (including costs of litigation). |

PART 4
GROUPS

| Number | Designation | Composition |
|--------|---------------------|------------------|
| 1 | Accident and health | Classes 1 and 2. |

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| 2 | Motor | Class 1 (to the extent that the relevant risks are risks of the person insured sustaining injury, or dying, as the result of travelling as a passenger) and classes 3, 7 and 10. |
| 3 | Marine and transport | Class 1 (to the said extent) and classes 4, 6, 7 and 12 |
| 4 | Aviation | Class 1 (to the said extent) and classes 5, 7 and 11. |
| 5 | Fire and other damage to property | Classes 8 and 9. |
| 6 | Liability | Classes 10, 11, 12 and 13. |
| 7 | Credit and suretyship | Classes 14 and 15. |
| 8 | General | Classes 1 to 17 inclusive. |
| 9 | Long term | Classes A to I inclusive. (Replaced 59 of 1993 s. 17) |
| 10 | Long term risks | Classes A to F inclusive and class I. (Added 59 of 1993 s. 17) |
| 11 | Retirement schemes | Classes G and H. (Added 59 of 1993 s. 17) |

PART 5
TRANSITIONAL PROVISIONS

Where immediately before the commencement of this Ordinance an insurer was authorized under an Ordinance repealed or amended by this Ordinance to carry on any of the former classes shown in column 1 of the table below, the appropriate corresponding business as respects that insurer shall, for the purposes of this Ordinance be corresponding business shown in column 2 of the table.

TABLE

| Former Classes | Corresponding Business |
|----------------------------------|------------------------|
| Fire insurance business | Group 5 |
| Life insurance business | Group 9 |
| Marine insurance business | Group 3 |
| Motor vehicle insurance business | Group 2 |