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Our Ref: IS1406135/el

20 June 2014

The Hon Mr. Wong Ting-kwong
Chairman of the Bills Committee on Insurance Companies (Amendment) Bill 2014
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear The Hon Mr Wong,

Re : Insurance Companies (Amendment) Bill 2014
Establishment of the Independent Insurance Authority

We write this submission on behalf of the Hong Kong Confederation of Insurance Brokers (CIB) which is a Self-Regulatory Organisation (SRO) authorized to regulate insurance brokers by the Office of the Commissioner of Insurance. As such, we have long experience in handling registration and disciplinary matters in relation to insurance brokers.

We request the Bills Committee to consider the following matters in relation to the Draft Bill:

Clause 84 – Disciplinary Actions. Division 2 – Powers of Authority. Section 80 – Disciplinary Action and Sections 81, 82 and 83.

Section 80 and subsequent Sections 81 to 83 set out the powers of the Authority to exercise disciplinary powers but we are concerned that there is no framework or constraints as to how that power is to be exercised.

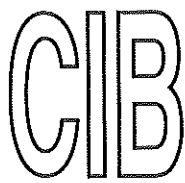
Section 95 provides for the establishment of an Appeals Tribunal and Section 110 provides for further appeal to the Court of Appeal but there is no provision for the establishment of a committee or board or other body to undertake the initial disciplinary action. By this omission it would appear that the Authority is to act as policeman, prosecutor and judge.

This runs contrary to established principles of fairness and transparency and may give rise to administrative bias or conflict of interest.

CIB urges that the Bill should provide for a Disciplinary Committee or Board to be established by the Authority and which should stipulate:

- An independent chairman with a judicial background.
- Inclusion on each hearing of a broker, agent or insurer representative (as appropriate to the case) to advise on technical issues.
- Defendants shall have the right to be legally represented at such hearings.

This is similar to the approach adopted by us in our disciplinary regime.



Clause 84. Section 80(4)(d)

This Section provides that the Authority may apply a reprimand “publicly or privately”.

The implication of a “reprimand” is that an offence has been found to have been committed in which case for the protection of industry parties and the general public such reprimand should be made publicly. For a reprimand to be made privately lacks transparency and raises the question of why the decision to conceal the reprimand is made. If the case is not absolutely proven, then it would be reasonable to issue a private warning.

CIB proposes that this Section 80(4)(d) should be reworded :

“(d) for a person who is or was a regulated person – to reprimand the person publicly or to issue the person with a warning privately”.

Clause 84. Section 80(4)(e)

This subsection provides for the imposition of a fine of up to HK\$10 million on an individual.

CIB considers this to be unreasonably excessive both as regards the financial status of an individual working in the insurance industry and substantially higher than equivalent fines under other professions and commercial activities.

CIB considers that the maximum fine for an individual should not exceed HK\$1 million.

Clause 84. Section 96

This Section provides for the establishment of an Appeals Tribunal to consist of a chairperson and two other persons.

CIB believes that for transparency and to ensure that the technical facts of the case are understood by the Tribunal that :

- The Chairperson should have a judicial background;
- One of the other two persons, or alternatively an extra advisor, should have a working knowledge of that aspect of the insurance industry whether broker, agent or insurer, to assist the Tribunal in assessing the technical issues relating to the appeal.

Clause 84. Section 110, 111 and 113

Section 110 and 113 provide that the only avenue for appeal against a ruling of the Tribunal is by Appeal to the Court of Appeal and that no other or further appeal is permitted.

Section 111(3) provides that the Court of Appeal may award costs as it sees fit.

CIB is concerned that escalation of the appeals procedure to the Court of Appeal with the legal and especially the cost implications is exclusionary insofar as individuals are concerned. Not only may they not have the means to institute appeals proceedings but may in the event that the appeal is denied be faced with the bulk of costs incurred by the Tribunal and/or the Authority.

CIB believes that it would be in the interests of the fair application of justice and for justice to be seen to be done in practice for appeals by individual brokers as person to be diverted from the judiciary to a "Final Appeals Board" chaired by and with two additional members with judicial backgrounds. This would enable these individual brokers to have access to a higher appeals process without the threat of bankruptcy which may prevent them from reasonably pursuing justice through the Court of Appeal.

Clause 11 Section 4AA(1) and (3)

The two sections deal with the composition of the Authority and appointments thereto.

Under Section 4AA(3)(a), there is provision for at least two of the six non-executive directors are to be appointed from among persons "... because of their knowledge and experience in the insurance industry ...".

CIB has concerns that if the two or three such persons selected all have insurance company or agency backgrounds that the different interests and professional practice of insurance brokers may not be adequately considered in regulatory strategy and decision making processes.

Brokers are an important component in the insurance industry structure in Hong Kong and elsewhere not only because of their significant contribution to Hong Kong's economy by the design and management of global insurance programmes for Hong Kong based multi-nationals in such fields as telecommunications, shipping, aviation, pharmaceuticals, energy etc, but also because of their developmental role in the formulation and introduction of new forms of specialized insurance coverage. The ability of brokers to continue this important role without unnecessary constraints is an important consideration in the framing and administration of future regulation.

CIB would like to propose that at least one of the non-executive directors should be appointed with knowledge and experience in the insurance broking profession.

Clause 71. Section 64Q(4)

This subsection 64Q(4) requires a licensed insurance broker company to notify The Authority in writing at least one month in advance of the appointment of a licensed technical representative.

CIB considers this period of one month to be unnecessarily long and disruptive to both the lives of bread-winning employees and to the ability of their employing broking company to provide service to their clients. In particular we see this unnecessarily long period to be prejudicial in that :

- It will delay the reasonable appointment or transfer of employees.
- It will cause economic hardship to transferring bread-winners.
- It may deter newly graduated young talent from schools or universities from joining the industry while they can get another job with immediate offer of employment.

- In the case of mergers and acquisitions this may delay the transfer of a business portfolio hence compromising the service quality to the consuming public.
- The service pledges of the existing three SROs provide for straight-forward applications for TRs to be completed in a range from 3 to 10 working days and it is unreasonable in setting up a new Authority for it to be less efficient than the organisations it is to replace.

CIB proposes that for applications for registration of licensed broker technical representatives the period of prior notification should be a maximum of 7 days.

Clause 84. Section 92(2)(c)

This subsection requires a licensed intermediary to ascertain certain identity and financial details of its clients "... that are relevant to the services to be provided ...".

It is recognised that such requirements are already required in practice in certain circumstances such as the placement of long term life and ILAS policies but CIB feels that this is too subjective and open to interpretation for inclusion as a generality into the Bill.

Examples where this would be inappropriate are commercial or industrial insurance programmes or individual private policies for households or motor cars.

CIB would like to see clarification of the subsection by deleting the words "... that are relevant to the services to be provided by the intermediary" and replace it by "... where relevant or with due regard to the type of insurance policy being advised upon".

Clause 84. Section 92(2)(k)

This subsection prohibits the receipt by a licensed insurance intermediary of any property or services from another licensed insurance intermediary in consideration of directing business to that other intermediary.

CIB has concerns that the application of this subsection could prevent certain legitimate scenarios where an intermediary may be required to work through another intermediary. This would include the following example situations:

- Where cover is not readily available in Hong Kong requiring the broker to access a specialist market, for example Lloyds Of London via a Lloyds Broker
- Accessing specialist schemes managed by agents or other intermediaries e.g. Binding Authorities
- Arranging and managing global insurance programmes which require the cooperation and coordination of a number of territories and intermediaries (either inter group or externally)
- Reinsurance Placements, many large international intermediaries will have separate registered companies dealing with direct insurance and reinsurance, there are legitimate reasons why business will be referred between companies e.g. to secure enough capacity for the risk

CIB believes that this subsection should detail specifically those scenarios which are prohibited so that there is clarity. There are legitimate reasons why Intermediary to Intermediary business is not only desirable but entirely necessary in order to act in the best interests of an insured/reinsured. Any potential prohibition should also be carefully considered so as not to impact on Hong Kong's ability to be a major global insurance hub. It is important that the local legislation in Hong Kong does not disrupt the ability of insurance practitioners and brokers, in particular from participating in the internationally accepted insurance industry practices which would be to the detriment of both the Hong Kong insurance industry and consumers.

General Support

We would reiterate that CIB is supportive of the introduction of the Independent Insurance Authority provided that the provisions are realistic and appropriate. However we have some concerns with the apparent focus on ILAS. Whilst it is accepted that ILAS products are responsible for the vast majority of complaints to the existing SRO's, the overall number of complaints received annually when compared to the number of broking companies and their TRs remain relatively small. The Bill should take into careful consideration the contribution that Insurance makes to the economy of Hong Kong and a significant amount of employment and should endeavour to enhance the industry in Hong Kong.

The following statistics representing complaints made by consumers to the CIB over the last 7 years will bear this out :

Year	2008	2009	2010	2011	2012	2013	2014*
Member Companies	252	249	248	256	257	264	268
Registrant (Chief Executives plus Technical Representatives)	3,884	3,903	3,748	4,052	4,083	4,051	4,284
Complaints	36	65	37	36	37	54	25

* as at 31 May 2014

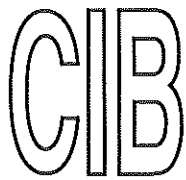
The surge of complaints in 2009 reflects disgruntled consumers dissatisfied with the performance of their ILAS policies due to the financial downturn.

We trust you will give due consideration to these submissions which are made in the interests of clarification of the Bill and its fair and transparent application in the future.

Yours sincerely,
 The Hong Kong Confederation of Insurance Brokers



Eric Lee
 Secretary-General and Registrar
 On behalf of the Chairman and the General Committee



(函件內文中譯本)

有關 2014 年保險公司(修訂)條例草案 -- 成立獨立保險業監管局

香港保險顧問聯會乃是獲保險業監理處授權規管保險經紀的自律組織，具備處理關於保險經紀註冊及紀律工作的充實經驗，現就上述草案提交意見書，懇請草案委員會審議該草案時，考慮以下事項：

第 84 條次—紀律行動。第二分部—保監局的權力。第 80 條-紀律行動及第 81,82 及 83 條。

第 80 條及其後的第 81 至 83 條訂定了保監局行使紀律行動的權力，但當中缺欠了是項權力在行使時的制度及制衡，我們對此表示關注。

第 95 條訂定了如何成立上訴審裁處，第 110 條訂定了如何向上訴法庭提出上訴，但草案並沒有就執行紀律行動本身而須設立的委員會或架構，作出任何規定。藉此遺漏，保監局將同時兼任警察、檢控官及法官的功能和角色。

這將會與固有的公平及公開原則相抵觸，亦有行政偏頗或利益衝突之虞。

聯會敦促條例中需規定由保監局成立紀律委員會，訂定組成方法如下：

- 由具司法背景的獨立人士出任主席。
- 在每次聆訊時，委員會成員按案件性質包括一位保險經紀、代理或保險公司的代表，就技術事項提供意見。
- 答辯人於聆訊上有權由律師代表。

這個建議跟我們現行的紀律機制相若。

第 84 條次—第 80(4)(d)條

這條文訂定保監局可公開地或非公開地行使譴責之權。

「譴責」的涵義在於違例事件已被確定，為保障業界及公眾，譴責必須要公開。非公開地譴責將有違透明度的要求，並會引發對因何作出有關決定的疑竇。如若違例指控未被證實，或有理據以非公開的警告了結該案。

聯會建議第 80(4)(d)條應修改為：

“(d) 就屬或曾屬受規管人士的人而言—公開地譴責或非公開地警告該人”。

第 84 條次—第 80(4)(e)條

這個部份訂定了可對個人頒令繳付可達一千萬港元的罰款的權力。聯會認為這是不合理地超越從事保險業人士的個人財務能力，亦遠遠高於其他專業及商務的罰則。

聯會認為罰款上限應訂為一百萬港元。

第 84 條次—第 96 條

這部份訂定了上訴審裁處的組成，包括一併主席及兩位成員。

聯會相信為確保聆訊具透明度，並使審裁處明瞭案件中的技術性事實：

- 主席須具司法背景；
- 其他兩位成員之一，或另加一位顧問，須具相關保險業的營運知識，即或經紀、代理或保險公司的營運，以協助審裁處審議當中的技術性事項。

第 84 條次—第 110,111 及 113 條

第 110 及 113 條訂定了上訴法庭為處理爭辯上訴審裁處裁決的唯一及最終途徑。

第 111(3)條訂定上訴法庭可作出它認為適當的支付訟費命令。

聯會關注到對一般市民而言，尋求行使上訴程序至上訴法庭，將因所涉及的法律事務和所需的費用而變得遙不可及。這不但止於他們未必具備條件展開上訴程序，更需顧慮到如果上訴被拒後可能要承擔法庭和保監局的鉅額訟費。

聯會相信為了實踐司法公義，並讓其得以彰顯，處理個經紀從業員的上訴時，應現有司法制度外，另設渠道，成立一個由三位具體司法背景的人士主持及組成的「最終上訴委員會」，處理該類上訴。這將容許個人經紀從業員獲得更高層次的上訴機會，而不用擔憂因向上訴法庭合理地尋求司法公義而可能承受破產的風險。

第 11 條次—第 4AA(1)及(3)條

這兩部份處理保監局的組成及委任方法。

第 4AA(3)(a)條訂定了在委任六位非執行董事時，當中最少有兩位須「具備保險業的知識及經驗」。

聯會憂慮到如果這兩至三位全由保險公司或代理背景的人士出任，則保險經紀的不同利益及專業操作，將可能在規管策劃及決策過程中，不獲充足的考量。

保險經紀乃香港以致全球保險業的一個重要組成環節，不但透過為以香港為基地的跨國企業，例如通訊、航運、空運、醫藥、能源等，因其對香港經濟作出重大貢獻，設計及管理全球性保險計劃，更因為他們在開發及引進新保險產品所扮演的驅動角色。讓保險經紀可持續發揮這個角色，免於不必要的局限，應是設置及執行新規例的重大考慮之一。

聯會因此提議最少要有一位非執行董事須具備保險經紀專業的知識及經驗。

第 71 條次—第 64Q(4)條

這第 64Q(4)條要求持牌保險經紀公司在最少一個月前以書面向保監局具報委任持牌業務代表。

聯會認為這項一個月的期限是超乎尋常的長，對尋找生計的僱員和其僱主向客戶提供服務的安排，均帶來困擾。我們須指出這個冗長的期限所帶來的不合理之處：

- 延誤僱員的合理委任及轉職；
- 轉職人士的生計蒙受損害；
- 畢業生在有另一份可獲即時聘任的工作時，將不考慮等待加入保險中介業；
- 收購合併操作中的業務轉移將被延遲，影響為消費大眾的服務質素；
- 現時自律組織處理業務代表的申請，服務承諾介乎三至十個工作天，新的監管局不可能以較差的工作效率接手有關工作。

聯會建議申請註冊持牌業務代表的通知期上限設為七天。

第 84 條次—第 92(2)(c)條

這部份要求持牌中介人須採取指明步驟，在「攸關該中介人所提供的服務」時，確定客戶的身份及財務狀況。

這項要求已在特定的業務類別中執行，即是壽險和投資相連產品。但聯會認為這項要求被主觀任意地及籠統的方式加入條文內。

舉例而言，這要求絕不適用於工商業的保險安排或一些關乎個人但屬於家居或汽車保險這類的業務。

聯會希望此部份可以作出釐清，刪除「攸關該中介人所提供的服務」，以「當有關中介人所提供的服務涉及長期壽險包括投資相連壽險」或「當攸關或考量所涉及的保險類別」取而代之。

第 84 條次—第 92(2)(k)條

這個部份禁止持牌保險中介人從另一個持牌保險中介人收取財產或獲取服務，作為轉介業務的代價。

聯會關注到在執行此條文時，一些需不同中介人間通力合作的合理業務安排，將被取締。這包括以下的一些處境例子：

- 當香港保險市場未能提供某類保險時，保險經紀需要尋求專營市場，例如經勞合社經紀投保予倫敦的勞合社市場。
- 投保予由獲具約束力授權的代理或其他中介人管理的專營保險計劃。
- 須不同地區及中介人（同一企業集團或屬不同集團）合作及聯繫方能組成及管理的全球性保險計劃。
- 再保險的投保工作：很多跨國中介企業集團成立不同公司，分別處理直接保險和再保險業務，在日常營運中，為確保有足夠財資能力承保風險，該等公司有充份的理據及原因互相轉介業務。

聯會相信這個分部應詳列將被禁止的特定業務安排，以達條文明晰的效果。中介人之間的業務往還，必有其合理理由，不只是合意的，更是為受保人或再受保人的最佳利益而必需採取的行動。任何潛在的禁制舉措，須經審慎考量，以免窒礙香港成為一個主要環球保險中心的發展進程。本地的法規演進，以不干擾保險從業員及經紀的才能為要，尤以在他們參與依據國際保險業慣例的工作上，否則香港的保險業及客戶將遭其害。

總體上支持草案

我們重申在有合適及可行的條文安排下，聯會支持引入獨立的保險業監管局。但是我們關切到草案條文的編寫，明顯地以焦點放在投資相連壽險業務上。雖則現時自律機構處理的投訴中，以投資相連壽險產品相關的投訴佔大宗，惟每年接獲的整體投訴宗數，比對保險經紀公司及其業務代表人數，只是一個相對微細的數字。審議草案時，須小心考慮保險對香港經濟的貢獻及其所提供的職位，亦應著眼於如何完善香港的保險業。

以下的統計列出過往七年聯會接到消費者投訴的數量，作為上文的一個註腳：

年份	2008	2009	2010	2011	2012	2013	2014*
會員公司	252	249	248	256	257	264	268
註冊人士 (行政總裁加業務代表)	3,884	3,903	3,748	4,052	4,083	4,051	4,284
投訴	36	65	37	36	37	54	25

* 截至 2014 年 5 月 31 日

2009 年的投訴數字急升，緣於憤怒的消費者因金融市場倒退而對投資相連壽險保單的表演有所不滿而起。

這份意見書所提的各點，致力於釐清草案內容，以致將來在其應用及執行時，達致公平及具透明度之效，我們深信委員會將適切地研究當中的論據及建議。