Bills Committee on Insurance Companies (Amendment) Bill 2014 ("the Bill")

The Administration's Response to Follow-up Actions Arising from the Discussion at the Meeting on 22 December 2014

Purpose

This paper sets out the Administration's response to issues arising from the discussion at the Bills Committee meeting on 22 December 2014.

Power of the independent Insurance Authority ("IIA") to accept gifts

2. New section 4B(2)(e) added by Clause 13 of the Bill provides that IIA may accept gifts, being one of the many powers of IIA prescribed under new section 4B(2). Such provision is not uncommon in the governing legislation of other statutory bodies, such as section 10 of the Financial Reporting Council Ordinance (Cap. 588), and section 8 of the Personal Data (Privacy) Ordinance (Cap. 486), etc.

3. As one of the checks and balances, we have proposed a consequential amendment to add IIA[1] to Schedule 1 to the Prevention of Bribery Ordinance ("PBO") (Cap. 201) (see Clause 104 of the Bill) to specify IIA as a "public body" for the purposes of the PBO. With this amendment, any member or employee of IIA will be regarded as a "public servant" for the purposes of the PBO which prohibits members and employees of IIA from soliciting or accepting any advantage relating to their work in IIA. Furthermore, persons doing business with IIA are subject to sections 4, 5, and 8 of the PBO, which make bribery and corrupt dealings in connection with IIA members and employees of IIA under various circumstances an offence.

4. In short, as a "public body" under the PBO, the acceptance of gifts by IIA is subject to the relevant provisions of the PBO. In addition, we will advise IIA to consult the Independent Commission Against Corruption in formulating its corruption prevention guidelines.

[1] And any wholly-owned subsidiary of IIA established under new section 4B(2)(g).

Process Review Panel ("PRP")

5. The proposed PRP will be an independent, non-statutory panel established by the Chief Executive to review IIA's internal process and procedures. We will consider the written submission from the industry when available and report to the Bills Committee in due course.

Engagement of consultants, agents and advisors

6. The purpose of new section 4E added by Clause 13 of the Bill is to empower IIA to employ staff and engage consultants, agents and advisors. To cope with regulatory challenges effectively and respond swiftly to market changes, IIA should be allowed operational flexibility to employ and engage suitable talents and determine the appropriate level of remuneration having regard to the actual circumstances and prevailing market situations. As checks and balances, new section 5B added by Clause 15 of the Bill requires that IIA's annual estimates, which include estimated staff costs and professional service fees, must be approved by the Financial Secretary ("FS") and the approved estimates must be tabled before the Legislative Council ("LegCo"). We thus do not consider it necessary to specify explicitly in the Bill that IIA must make decisions under new section 4E according to its "actual needs" and in a "reasonable manner", nor is it appropriate to specify the types of consultants, agents and advisors that IIA may engage.

7. Financial regulators engage consultants, agents and advisors from time to time to assist them in performing their regulatory functions. Professional services procured by financial regulators include legal services, consultancy studies on specific topics, translation and information technology support services, etc. For example, the Securities and Futures Commission's total expense on legal and professional fees for the financial year 2013-14 was $57.56 million. The Office of the Commissioner of Insurance has commissioned a consultancy study on Risk-based Capital Framework for insurance business in Hong Kong in mid-2012 at a fee of $5.6 million.

Drafting issues (Chinese text of the Bill)

8. The Assistant Legal Adviser has suggested that we –

(i) add the word "and" at the end of new section 4AA(1)(b) added by Clause 11 of the Bill;
(ii) review the phrase "如有不符合本條的情況出現" under new

section 4AA(5) added by Clause 11 of the Bill with a view to clarifying the purpose of the provision; and

(iii) review new section 4D(4) added by Clause 13 of the Bill with a view to clarifying the meaning of "將某項事宜交予委員會" therein.

We will consider the above suggestions. If necessary, we will propose amendments in relation to drafting issues through Committee Stage Amendments upon completion of clause-by-clause examination of the Bill.

Financial Services and the Treasury Bureau
January 2015