

Bills Committee on Insurance Companies (Amendment) Bill 2014

**The Administration's Response to Follow-up Actions
Arising from the Discussion at the Meetings on
3 March and 9 March 2015**

Purpose

This paper sets out the Administration's response to issues arising from the discussion at the Bills Committee meetings on 3 March 2015 and 9 March 2015.

Exempted persons

2. We note a Member's views that the independent Insurance Authority ("IIA") should keep in view the need to review the list of exempted persons under section 51 amended by Clause 63 of the Insurance Companies (Amendment) Bill 2014 ("the Bill"), in order to maintain the integrity of the regulatory regime.

Secrecy provision

3. Section 53A(1AA) amended by Clause 64 of the Bill stipulates that the secrecy provision (i.e. section 53A(1)) is applicable to, inter alia, a person who is a member, employee, agent, consultant, or advisor of IIA. New section 53A(1AAB) added by Clause 64 of the Bill further provides that the secrecy provision is also applicable to, inter alia, a person who is appointed under the amended Insurance Companies Ordinance ("ICO")¹ (Cap. 41) or is performing a function under the amended ICO (e.g. an investigator).

4. Members of the Insurance Advisory Committees and other committees established by IIA will be covered by the above provisions and we do not see a need to explicitly mention them in the provisions. In formulating amendments to section 53A(1AA) and (1AAB), we have made reference to the definition of "specified person" under section 378(15) of the Securities and Futures Ordinance ("SFO") (Cap. 571).

¹ The short title of the Ordinance is to be renamed as the Insurance Ordinance (please see Clause 4 of the Bill).

Disclosure of information

5. Section 53B(1) of the ICO gives the Insurance Authority ("IA") a discretionary power to disclose information to its counterparts of other jurisdictions under specified conditions. It is not an obligation that IA must disclose information to its overseas counterparts upon request. We thus do not consider it necessary to set out in the law that IIA should only disclose information to foreign counterparts which have entered into bilateral or multilateral agreements with IIA.

6. The established international practice is that insurance regulators share or exchange information with foreign counterparts under bilateral Memorandum of Understanding ("MoU") or the Multilateral MoU under the International Association of Insurance Supervisors which set out the procedural and confidentiality requirements, etc. on the contracting parties. IA has entered into such bilateral or multilateral MoUs with 45 parties.

Licensing regime for insurance intermediaries

Definition of "controller"

7. We have adopted a threshold of 15% under the definition of "controller" in relation to licensed insurance intermediary which is a partnership or a company (section 64F added by Clause 71 of the Bill). The 15% threshold is also adopted under the existing self-regulatory regime for insurance intermediaries. We consider that adopting the same threshold in the Bill can help ensure a smooth transition from the self-regulatory regime to the new statutory licensing regime. Based on past experience, the 15% threshold is an appropriate indicator for controlling or influential partners or shareholders of an insurance intermediary.

8. The 15% threshold is also adopted in the definition of "controller" in relation to an authorized insurer under section 9 of the existing ICO, the definition of "controller" under the Mandatory Provident Fund Schemes Ordinance ("MPFSO") (Cap. 485) and that of "voting controller" under the Broadcasting Ordinance (Cap. 562). However, the thresholds for the definition of "controller" under other legislation such as the SFO, the Banking Ordinance (Cap. 155) and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) vary from 10% to 50% in different contexts.

Restrictions under new sections 64J and 64K

9. New sections 64J and 64K replace the existing section 65(4) to (11) of the ICO. The policy intent is to prevent conflict of interests arising from a person (i) being an insurance agent and an insurance broker at the same time; or (ii) representing two or more insurance agencies at the same time. Specifically, a person is prohibited from involving in insurance intermediary activities concurrently (i) in an insurance agency and an insurance broker company; or (ii) in two or more insurance agencies. These principles are in line with the existing requirements under the ICO.

10. As far as enforceability is concerned, IIA can examine the relevant internal control procedures and board minutes of licensed insurance agencies and licensed insurance broker companies with common directors. To facilitate compliance by licensees, we envisage that IIA will elaborate the requirements under new sections 64J and 64K in codes and guidelines with illustrative examples.

11. There are regulatory requirements in the United Kingdom and Singapore that common directorships in insurance intermediaries should not give rise to conflict of interests.

12. On the one hand, we note the concern of some Members that conflict of interests may arise when new sections 64J and 64K do not prohibit a person outright from being a shareholder of more than one licensed insurance agency and/or licensed insurance broker company. On the other hand, we acknowledge the views of other Members and the industry that the provision should not be too restrictive in light of existing industry practice. We are discussing with the industry to ascertain if the wording of these provisions need to be refined. We will introduce Committee Stage Amendments (“CSAs”) if such are necessary.

Duty to notify IIA of appointments

13. Upon receipt of a notification of proposed appointment under new section 64Q(1) to (4), IIA will ascertain whether the proposed appointee has complied with, or will be able to comply with, the relevant provisions in the amended ICO. We envisage that IIA will set out performance pledges on the processing time for each type of appointments in its guidelines.

14. Currently, the relevant performance pledges for the three self-regulatory organizations range from 3 to 10 business days as the amount of work involved is different. The timeframe for processing appointment changes are not stipulated in the SFO or MPFSO but the response time (i.e. 7 and 20 business days respectively) is set out as performance pledges in the relevant guidelines by the Securities and Futures Commission (“SFC”) and the Mandatory Provident Fund Schemes Authority.

Validity period of licences granted by IIA

15. Under the self-regulatory regime, insurance agents are required to renew their registration every three years, while there is no specified validity period for insurance brokers². During the public consultation on the key legislative proposals, a number of respondents suggested that both insurance agents and insurance brokers should be subject to the same renewal interval under the new regime administered by IIA. We agreed with this suggestion and hence provided that the validity period of intermediary licences should, normally, be three years, or in any particular case, another period as determined by IIA. There is no validity period specified under the SFO for intermediary licences granted by SFC.

Suspension of licences of licensed insurance agencies and licensed insurance broker companies without responsible officers (“ROs”)

16. The Bill has included a requirement that a licensed insurance agency or a licensed insurance broker company must have an RO. The policy intent of new sections 64ZN(1) and 64ZO(1) is to empower IIA to suspend the licence of a licensed insurance agency or a licensed insurance broker company if the licensee ceases to have an RO. The suspension can hinge on the occurrence of an event or be a period specified by IIA. An actual example of “occurrence of an event” is as follows – an international broker group has obtained IA’s approval to its newly appointed RO who is an overseas resident. As it will take some time for the RO to relocate to Hong Kong, the relevant licence will be suspended until the new RO arrives at Hong Kong.

17. The wording “until the occurrence of the event specified by [a regulator]” is commonly found in many legislation, including section

² The registration of insurance brokers is subject to on-going compliance with relevant requirements.

195(1) of the SFO. The suggested wording which combines the two alternatives (i.e. a “specified period” or a “specified event”) together cannot cover the scenario as explained in paragraph 16 above.

Drafting issue

18. In the light of comments from the Legal Adviser to the Bills Committee, we will introduce a CSA to replace the phrase “1(b), (1A) and (1B)” with “1(b), (1A)(b) and (1B)(b)” under section 53C(2) amended by Clause 66 of the Bill.

Financial Services and the Treasury Bureau
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