

**Bills Committee on Insurance Companies (Amendment) Bill 2014**

**List of follow-up actions arising from the discussion  
at the meeting on 20 April 2015**

Offences relating to misleading statements, etc and false information (under clause 84)

- (a) The proposed new section 117 of the Insurance Companies Ordinance (Cap. 41) ("ICO") provides for offences relating to provision of misleading statements and false information inducing other persons to enter into insurance contracts, or in documents required under ICO. As there are similar offence provisions in the Trade Descriptions Ordinance (Cap. 362) ("TDO"), the Administration is requested to clarify in respect of an offence relating to provision of misleading statements and false information in the insurance sector:
- (i) whether the relevant offence provisions under TDO or the new section 117 of ICO will apply; and
  - (ii) the respective parties responsible for enforcing the relevant offence provisions under ICO and TDO.

Restriction on the use of certain terms and representations associated with insurance business (under clause 84)

- (b) The proposed new section 118 of ICO restricts the use of the terms "insurance" and "assurance" and expressions or characters of the terms in the description or name when a person is carrying on business in or from Hong Kong, unless with written consent of the independent Insurance Authority ("IAA"). Contravention of the provision will be an offence with maximum penalty of \$200,000 and imprisonment for two years. Members have expressed concern about the stringent restriction in the new section 118 which may cover various businesses and sectors. The Administration is requested to:
- (i) explain the policy objective of the new section 118 and clarify the scope of application, i.e. whether it includes business activities of all sectors and not limited to the regulated activities under ICO; and
  - (ii) provide information on relevant cases handled by the Office of Commissioner of Insurance involving misuse of the above terms and associated expressions or characters.

Offences by bodies corporate and partners (under clause 84)

- (c) The proposed new section 122(4) and (5) of ICO provides that an offence under ICO committed by a body corporate or a partner of a partnership "is presumed to have been committed with the consent or connivance of, or to be attributable to neglect or omission on the part of" any other person, if it has been proved that, at the time the offence was committed, the other person was concerned in the management of the body corporate or the management of the partnership. Some members are concerned about the excessive scope of the provision creating an enormous burden on the management of insurers and insurance intermediaries and increasing the compliance costs of the insurance industry given that the Bill has already included specific offence provisions on the key personnel (e.g. controllers and responsible officers) of insurers and insurance intermediaries. On the other hand, some members have stressed the need for the Bill to provide sufficient sanctions for breaches of requirements under ICO and misconduct of insurers and insurance intermediaries. The Administration is requested to:
- (i) explain the policy objectives and considerations in drafting the relevant offence provisions in ICO; and
  - (ii) examine the need of amending the provisions having regard to members' views.

Use of "lay prosecutors" by IIA (under clause 84)

- (d) The proposed new section 124(3) of ICO allows an employee of IIA, who is not qualified to practice as a barrister or to act as a solicitor under the Legal Practitioners Ordinance (Cap. 159), to act as the prosecutor (i.e. "lay prosecutors") when IIA prosecutes an offence in its own name. Some members are concerned that this arrangement is not in line with the Government policy to phase out lay prosecutors, and may undermine the professional standard of IIA's prosecution work. The Administration is requested to:
- (i) explain the considerations for providing the new section 124(3);
  - (ii) consider measures (e.g. requiring IIA to assign in-house lawyers to take up its prosecution work) to address members' concerns; and
  - (iii) consider deleting the new section 124(3).

Status of IIA's codes and guidelines in court proceedings (under clause 84)

- (e) Under the proposed new section 131(4) and (5) of ICO, if a person fails to comply with the provisions set out in IIA's codes or guidelines, it does not render the person liable to any judicial or other proceedings. However, such codes or guidelines are admissible in evidence. Some members consider that the purposes and operation of the new section 131(4) and (5) unclear, and the new section 131(5) may have the effect of shifting the burden of proof from the prosecution to the defendant. The Administration is requested to:
- (i) elaborate the purposes of the new section 131(4) and (5), and explain the operation of the provisions, including how the court is expected to take into account the compliance or non-compliance of the relevant codes and guidelines if it is of the opinion that the codes and guidelines are relevant to a question arising in the proceedings; and
  - (ii) clarify whether the new section 131(5) would have the effect of shifting the burden of proof from the prosecution to the defendant. In other words, non-compliance with IIA's codes and guidelines will become an evidence for the court in considering the conviction of an offence under ICO, thus it is necessary for the defendant to prove he/she has not breached the codes and guidelines.

Drafting issue

- (f) A member has observed that the expression "大律師" is used in the Chinese text of the proposed new sections 121(1)(a) and 124(3) of ICO, whereas the expressions "counsel" and "barrister" are used in the English text of the two provisions respectively. The member suggests that the expression "barrister" should be adopted for the English text of the Bill as it is the official term used by the Hong Kong Bar Association. The Administration is requested to consider the member's suggestion and review the relevant provisions in the Bill to maintain consistency in the use of the expression.