

Bills Committee on Insurance Companies (Amendment) Bill 2014

**The Administration's Response to Follow-up Actions
Arising from the Discussion at the Meeting on
7 May 2015**

Purpose

This paper sets out the Administration's response to issues arising from the discussion at the Bills Committee meeting on 7 May 2015.

Disclosure of interests by members of the independent Insurance Authority ("IIA")

2. New section 5 of Schedule 1B added by Clause 86 of the Bill requires a member of IIA to make a disclosure if he has any pecuniary interest in a matter that is considered or is to be considered at a meeting of IIA and that the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter. A Member asked at the meeting on 7 May 2015 whether the disclosure requirement should be limited to pecuniary interests only.

3. We note that the disclosure requirement is not confined to pecuniary interests in the legislation of other statutory bodies such as the Airport Authority, Financial Reporting Council and West Kowloon Cultural District Authority. We will move Committee Stage Amendments ("CSAs") to require disclosure of non-pecuniary interests that appear to raise a conflict with the proper performance of the member's duties.

Transfer of records from the existing Insurance Authority ("IA") to IIA

4. Section 3(1) of new Schedule 11 requires that all relevant records in IA's custody must be transferred to IIA on the commencement date (i.e. the repeal of section 4(1) (on the appointment of IA) under the existing Insurance Companies Ordinance (Cap. 41)) or as soon as practicable after that date. The term "record" under Schedule 11 covers information stored in hardcopy or electronic form. Section 3(6) of new Schedule 11 further provides that the Privacy Commissioner for Personal Data may, on and after "the date on which the transfer is completed",

exercise in relation to IIA any power under the Personal Data (Privacy) Ordinance (“PDPO”) (Cap. 486) which would have been applicable to IA before. After further deliberation on the data transfer process, we will propose CSAs to amend section 3(1) of new Schedule 11 to provide that the transfer of records must be completed on or before the commencement date, and amend section 3(6) of new Schedule 11 to provide that the Privacy Commissioner for Personal Data may, on and after “the date on which the data is transferred”, exercise in relation to IIA any power under the PDPO.

Orders and regulations for levies of IIA

5. New section 132(1) added by Clause 84 provides that a levy specified by the Chief Executive (“CE”) in Council by order published in the Gazette is payable to IIA by “the person so specified in the order for every contract of insurance”. As explained at the meeting, our policy intent is that the levy should be payable by policy holders. We will propose CSAs to clarify this matter.

Reduction of levies by IIA

6. New section 133(1) and (2) added by Clause 84 provides for the mechanism for reduction of IIA’s levies. Section 133(2)(a) provides that when the reserves of IIA, after deducting depreciations and all provisions, are more than twice its estimated operating expenses for the financial year, IIA has to consult the Financial Secretary (“FS”) with a view to recommending to the CE in Council that the rate or amount of a levy be reduced. We consider that the current wording can clearly reflect that the concept of “net reserves of IIA”. At the meeting, a Member asked whether the second condition as set out under section 133(2)(b)¹ should be amended from “outstanding debt” to “net outstanding debt” to prevent the situation where IIA raises debt unnecessarily in order to avoid triggering the mechanism for reduction of levies. Under new section 4B (added by Clause 13), IIA can only borrow money with the approval of FS. Section 5B (added by Clause 15) further requires IIA to submit its estimates to FS for approval and the approved estimates will be tabled at the Legislative Council. With the above safeguards, we do not consider that IIA could make unnecessary borrowings simply to avoid triggering the mechanism for the reduction of levies.

¹ The provisions are modelled on section 396 of the Securities and Futures Ordinance (Cap. 571) (“SFO”).

Drafting issues

Regulated Activities

7. In Part 1 of the proposed new Schedule 1A (added by Clause 86), regulated activities under the new regulatory regime cover “the act of inviting or inducing, or attempting to invite or induce a person to enter into a contract of insurance”. The Chinese rendition of “induce”, “誘使”, is a very commonly used Chinese equivalent of “induce” in local legislation. It has been used not only when “induce” is used to denote an act that has negative connotations, e.g. “induce a person to do any act that contravenes ...” in section 45(1) of Disability Discrimination Ordinance (Cap. 487), but also in contexts where “induce” denotes an act which is more neutral, e.g. “inducing a person to buy [a medicine]” in regulation 38(1)(b) of Pharmacy and Poisons Regulations (Cap. 138A), “induced to make the agreement” in section 16(7) of Sale of Goods Ordinance (Cap. 26). In particular, there are precedents in the Mandatory Provident Fund Schemes Ordinance (Cap. 485)(section 34F(1)(a)), SFO (paragraphs (b) and (c) in the definition of dealing in futures contracts in Part 2, Schedule 5) and Financial Reporting Council Ordinance (Cap. 588) (definition of dealing in section 3(5), Cap. 588). The contexts of the 3 examples are very similar to that in new Schedule 1A, which are all about making a decision about a financial scheme or entering into an agreement for financial products.

Constitution and proceedings of Industry Advisory Committee

8. We will take the advice of the Assistant Legal Adviser to add the word “and” after paragraph (c) of section 1 of the proposed new Schedule 1C (added by Clause 86).

Financial Services and the Treasury Bureau
May 2015