

Bills Committee on Insurance Companies (Amendment) Bill 2014**The Administration's Response to Follow-up Actions
Arising from the Discussion at the Meeting on
18 May 2015****Purpose**

This paper sets out the Administration's response to issues arising from the discussion at the Bills Committee meeting on 18 May 2015.

Insurance agents' relationship with insurers*New section 68*

2. The existing section 68 (**Annex A**) of the Insurance Companies Ordinance (Cap. 41) stipulates that an insurance company is not able to exclude or limit its liability for the actions of its appointed insurance agent in the dealings for the issue of a contract of insurance and insurance business relating to the contract. However, in determining whether a principal is liable for the actions of its agents or otherwise, the court will take into account the role of the client in the dealings concerned e.g. whether the client has actively participated in the act, or whether he/she has knowingly acquiesced to the agent's lack of authority.

3. The proposed Committee Stage Amendments ("CSAs") (**Annex B**) discussed at the Bills Committee meeting on 18 May 2015 seek to make it clear that an insurance company is not liable for the acts of an appointed insurance agent if, and only if, the insurance company can prove that (i) the act is not within the scope of the appointed insurance agent's authority; and (ii) that the insurance agent has disclosed that fact to the client before the client relied on the act. As enshrined in section 68(2), the general principle that an insurance company is liable for the actions of its agents will remain. The CSAs, which reflect developments in the law of agency, will only apply in exceptional circumstances. They will not in any way fetter the level of policyholder protection, nor will they reduce the insurance company's duties in respect of internal control and agent management.

Other Updates to the Insurance Regulatory Regime

4. Arising from the discussion regarding amendments to the existing section 68(2), a Member asked for a list of other amendments in the Bill that are related to updating of the regulatory regime of the insurance sector. The requested information is appended below.

5. The main purposes of the Bill are to provide for the establishment of the independent Insurance Authority (“IIA”) and a statutory licensing regime for insurance intermediaries to replace the existing-self regulatory system for enhanced policyholder protection.

6. As explained in paragraph 19 of the Legislative Council Brief on the Bill dated 16 April 2014 (file ref. C2/2/50C), taking the opportunity of this legislative amendment exercise, we have reviewed if there is any outdated regulatory requirement. We have also updated certain regulatory requirements to bring our regulatory regime in line with international practices including those set out in the updated Insurance Core Principles promulgated by the International Association of Insurance Supervisors. All these proposed legislative updating, as listed below, have been discussed in previous meetings of the Bills Committee.

Section No. (Clause No.)	Description	LC Paper No.
13A – 13AH, 14 (Clauses 23 – 25)	To provide that the appointment of directors ¹ and key persons in control functions by an authorized insurer is subject to IIA’s approval, and IIA may revoke such appointment on fitness and propriety grounds.	CB(1)1817/13-14(01)
15 (Clause 31)	To provide that the appointment of actuary by an authorized insurer	CB(1)1817/13-14(01)

¹ Applicable to authorized insurers incorporated in Hong Kong. For authorized insurers incorporated outside Hong Kong, pursuant to section 14 of ICO, they are required to notify IIA of any changes in appointment of directors and their particulars.

	incorporated in Hong Kong which carries on long term business is subject to IIA's approval, and IIA may revoke such appointment on fitness and propriety grounds.	
22 – 23 (Clauses 40, 42)	To require that an authorized insurer should maintain separate accounts for each class of its long term business, and that assets representing a fund maintained by the insurer in respect of its long term business should be applicable only for the purposes of that part of business to which the fund relates.	CB(1)1817/13-14(01)
41 (Clause 54)	To raise the level of penalty in relation to an offence constituted by a person who recklessly furnishes materially false information to IIA.	CB(1)1817/13-14(01)
68 (Clause 73)	To update and modernize the wording of the provision on the relationship between insurers and insurance agents.	CB(1)257/14-15(02)
94 – 115 (Part XII), Schedule 9, 10 (Clauses 84, 94)	To establish the Insurance Appeals Tribunal to replace the Financial Secretary as the appellate authority.	CB(1)257/14-15(04)

Section 68: Insurance agent's relationship with insurer

(1) An appointed insurance agent is the agent of the insurer in the agent's dealings with a person other than the insurer for the issue of a contract of insurance and insurance business relating to the contract.

(2) An insurer is not able to exclude or limit its liability for the actions of its appointed insurance agent in the dealings for the issue of a contract of insurance and insurance business relating to the contract.

(3) A provision in a contract of insurance or an agency contract that contravenes subsection (1) or (2) is void.

(4) Where, in an insurance transaction undertaken by an appointed insurance agent, a particular insurer is not able to be identified, the insurers which have appointed the insurance agent as an appointed insurance agent to conduct the class of business that relates to the claim by the proposed insured are jointly and severally liable for the damages arising as a result of the actions of the appointed insurance agent.

(5) The liability of an insurer under this section arises whether the appointed insurance agent purports to act as a principal or as an agent for an undisclosed or disclosed principal.

(6) In assessing liability for a claim under subsection (4), the court is required to be satisfied that the proposed insured has acted in the utmost good faith and without contributing to the failure on the part of the insurance agent to effect the proposed insurance contract.

Annex B

Amended Section 68: Authorized insurer's relationship with its agent [*with proposed CSAs marked in correction mode*]

- (1) This section applies if—
 - (a) an authorized insurer has appointed a person as an agent of the insurer; and
 - (b) the person has dealings with another person (*client*) for—
 - (i) the issue of a contract of insurance for ~~that other person~~ the client; or
 - (ii) insurance business relating to the contract.
- (2) If the person is appointed by 1 authorized insurer as an agent, the insurer is liable for any act of the person in relation to those dealings, whether or not the act is within the scope of the person's authority.
- (3) If—
 - (a) the person is appointed by more than one authorized insurer as an agent;
 - (b) those dealings relate to a particular line of business; and
 - (c) the person is appointed by only one of those insurers (*empowering insurer*) to engage in that line of business,the empowering insurer is liable for any act of the person in relation to those dealings, whether or not the act is within the scope of the person's authority.
- (4) If—
 - (a) the person is appointed by more than one authorized insurer as an agent to engage in a particular line of business;
 - (b) those dealings relate to that line of business; and
 - (c) an act of the person in relation to those dealings is within the scope of the person's authority in relation to only one of those insurers (*empowering insurer*),the empowering insurer is liable for the act of the person in relation to those dealings.
- (4A) If—
 - (a) the person is appointed by more than one authorized insurer as an agent to engage in a particular line of business;
 - (b) those dealings relate to that line of business; and
 - (c) an act of the person in relation to those dealings is within the scope of the person's authority in relation to 2 or more of those insurers (*empowering insurers*),the empowering insurers are jointly and severally liable for the act of the person in relation to those dealings.

(4B) If—

- (a) the person is appointed by more than one authorized insurer as an agent to engage in a particular line of business;
- (b) those dealings relate to that line of business; and
- (c) an act of the person in relation to those dealings is not within the scope of the person's authority in relation to any of those insurers, all of those insurers are jointly and severally liable for the act of the person in relation to those dealings.

(4BA) Despite subsections (2), (3), (4), (4A) and (4B), an authorized insurer is not liable for the act of the person if—

- (a) the act is not within the scope of the person's authority in relation to that insurer;
- (b) the person disclosed that fact to the client before the client relied on the act; and
- (c) the clarity and prominence of the disclosure was what a person would reasonably require for deciding whether to enter into any dealing referred to in subsection (1)(b).

(4C) If a contract of insurance or an agency agreement contains a provision that is inconsistent with this section, that provision is void.

(5) The liability of an authorized insurer under this section arises whether the person purports to act as a principal or as an agent for an undisclosed or disclosed principal.

(6) In assessing liability for a claim under this section, the court is required to be satisfied that the ~~proposed insured client~~ has acted in the utmost good faith and without contributing to the failure on the part of the person to effect the proposed insurance contract.

(7) Subsection (6) does not affect the operation of subsection (4BA).