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Bills Committee on Insurance Companies (Amendment) Bill 2014
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Sirs

Insurance Companies (Amendment) Bill 2014

1. Background

- 1.1 Since the first public consultation on the proposed establishment of an independent Insurance Authority ("IA") in 2010 (the "**2010 Consultation Paper**"), the Financial Services and the Treasury Bureau (the "**Bureau**") took the following further steps:
- (a) published the Proposed Establishment of an Independent Insurance Authority Consultation Conclusions and Detailed Proposals in June 2011;
 - (b) published a Consultation Paper on Key Legislative Proposals on Establishment of an IA in October 2012 (the "**2012 Consultation Paper**");
 - (c) published the Consultation on Key Legislative Proposals on Establishment of an IA Consultation Conclusions in June 2013 (the "**2013 Consultation Conclusions**"); and
 - (d) introduced the Insurance Companies (Amendment) Bill 2014 (the "**Bill**") into the Legislative Council in April 2014.
- 1.2 The provisions in the Bill are largely based on the key legislative amendments proposed in the 2012 Consultation Paper while reflecting the 2013 Consultation Conclusions.

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Vice Chairmen The Hongkong and Shanghai Banking Corporation Ltd
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2. Executive Summary

We are generally supportive of the Bill's objective (among other objectives) in enhancing the existing supervisory regime for insurance intermediaries to improve market efficiency and competitiveness as that should ultimately benefit the insuring public and reinforce Hong Kong's position as an international financial centre.

We appreciate the Bureau's taking on board some of our views and addressing some of our concerns in the Bill. These include, in particular, the delegation of powers of inspection and investigation by the IIA to HKMA for the frontline regulation of banks' insurance intermediary activities, and not incorporating the power to suspend business pending completion of investigation and the appeal procedure.

In considering the provisions in the Bill, we continue to apply these guiding principles:

- (a) a level playing field should be maintained between bank and non-bank insurance intermediaries, including:
 - (i) both types of intermediaries should offer the same level of customer protection to the insuring public;
 - (ii) both types of intermediaries should be subject to the same regulatory standards;
 - (iii) the regulatory requirements should be applied in a consistent manner on both types of intermediaries; and
- (b) a fair balance should be struck between providing enhanced protection to policy holders and promoting the development of the insurance industry by minimizing undue regulatory burden on the industry and facilitating its competitiveness in the global insurance market.

We are pleased to note that the Bureau:

- (c) has, in preparing the Bill, taken into account (among others) the need of
 - (i) avoiding unnecessary regulatory burden that would hinder business growth and innovation; and
 - (ii) maintaining fairness, effectiveness and transparency of the regulatory process;
- (d) has included as a new function of the IIA (among others) facilitating sustainable market development of the insurance industry; and
- (e) targets to minimise any regulatory overlap or gaps so as to ensure a level playing field for bank and non-bank insurance intermediaries and afford reasonable protection for policy holders.

Further to the Association's submissions to the Bureau on the 2010 Consultation Paper and the 2012 Consultation Paper, we would take this opportunity to submit a collective response on behalf of our members to the Bills Committee on Insurance Companies (Amendment) Bill 2014 (the "**Bills Committee**") regarding certain provisions in the Bill. We have confined the remaining comments to only those aspects of the regulatory regime which raise significant concerns amongst our members. We set out below our comments to the relevant provisions, largely in the order in which they appear in the Bill.

3. Provisions of key concern and the Association's response

(i) Composition of the IIA (Proposed new section 4AA)

Proposal:

Of the non-executive directors of the IIA, at least 2 are to be appointed from among persons who, because of their knowledge of and experience in the insurance industry, appear to the Chief Executive ("CE") to be suitable for appointment.

Response:

1. In our view, allocating the director seats proportionately to the industry and the other stakeholders will facilitate attaining the optimal balance of interest for a successful and sustainable regulatory regime. Other arguments in support of this approach include the following:
 - (a) it is in line with the new function of the IIA in facilitating sustainable market development of the insurance industry;
 - (b) it gives the comfort that the industry reasonably expects, namely, that the industry representative directors will not be out-numbered by an increase in the total number of directors without a proportionate increase of the industry seats; and
 - (c) it provides a fair, transparent and objective basis on which the CE may perform its function of appointing directors of the IIA.
2. We note that, with respect to authorized insurers, the Guidance Note on the Corporate Governance of Authorized Insurers issued by the OCI adopts a one-third minimum ratio on the number of directors of an insurer who should possess sufficient knowledge and relevant experience of insurance business. We would urge the Bills Committee to adopt a similar concept.
3. Further, given the banking sector's involvement in insurance business and the significance of bancassurance in the local and overseas markets, we strongly believe that a representative director from the banking sector would facilitate the IIA in performing its functions. We therefore urge the

Bills Committee to revise section 4AA(3)(a) or 4AA(3)(b) to enable the appointment of a non-executive director from the banking sector.

(ii) Memorandum of Understanding ("MoU") to be signed by the IIA and HKMA

Response:

We understand that the IIA and HKMA will sign a MoU to allocate supervisory functions, facilitate coherent supervision and minimise regulatory overlaps and gaps. We would reiterate the principles and arrangements in our previous submissions to the Bureau that should be addressed in the MoU (please see HKAB's response to the Bureau dated 25 January 2013). These comments, based on our members' market knowledge and experience, were intended to provide useful input to facilitate the drafting of the MoU. We urge the IIA to give them due consideration and address them in the MoU.

(iii) Regulatory powers of the IIA (Various new sections referred to below)

Proposal:

The IIA would be vested with regulatory powers including inspection, entry into business premises of regulated entities, investigation, making enquiries and having access to records and documents, making an application to the Court of First Instance for court orders to compel compliance with requirements, applying for a Magistrate's warrant to enter business premises to search for, seize or remove records or documents on reasonable grounds, imposing disciplinary sanctions and prosecuting offences summarily. The IIA would, subject to the approval of the CE in Council, delegate its powers to inspect and investigate to HKMA for the purpose of regulating banks' insurance intermediary activities. Despite the proposed delegation, the IIA would be able to exercise its powers to inspect and investigate concurrently with HKMA.

Response:

1. We have the following comments on the proposed provisions on the regulatory powers of the IIA:

- (a) *Power to conduct inspection (Proposed new section 64ZZF).* We previously submitted to the Bureau that the legislation should clearly specify that the IIA will consult with HKMA before it exercises the regulatory powers against bank insurance intermediaries. Whilst this is recognised by the Bureau in the 2013 Consultation Conclusions, it is not expressly specified in section 64ZZF. We would urge the Bills Committee to include express wording in section 64ZZF for the IIA to consult with HKMA, along the lines of the corresponding provisions in the SFO.
- (b) *Power to enter business premises (Proposed new sections 64ZZF and 64ZZP).* We accept the arrangement in the proposed new section 64ZZF(2)(a) enabling entry on business premises of bank

insurance intermediaries at reasonable time for on-site inspection conducted jointly by the IIA and HKMA. We believe joint inspection is the appropriate and efficient approach with respect to bank insurance intermediaries and their insurance intermediary activities. That approach will facilitate the IIA's supervision of bank insurance intermediary activities and the IIA would rarely need to conduct on-site inspection on its own without HKMA. Having regard to the above and with a view to minimising disruption in business, we would urge the Bills Committee to confine the application of section 64ZZF(2)(a) on bank insurance intermediaries to joint on-site inspection by the IIA and HKMA. In the rare case where the IIA sees the need to conduct on-site inspection on its own, the IIA may exercise its power under section 64ZZP.

(iv) Conduct requirements for licensed insurance intermediaries and their responsible officers (Proposed new sections 89, 90, 91)

Proposal:

- (a) a licensed insurance intermediary (whether agent or broker) must act in the best interests of the policy holder concerned or the potential policy holder concerned; and*
- (b) a licensed insurance agency or licensed insurance broker company must use its best endeavours to secure observance of internal controls and procedures for conduct compliance by its tied agents, and to avoid conflict of interest, etc. Similarly, a responsible officer of a licensed insurance agency or licensed insurance broker company must use its best endeavours to secure observance of internal controls and procedures for conduct compliance by the corporate and its tied agents.*

Response:

- (a) We understand that the proposed requirement in new section 89(a) on insurance intermediaries to act in the best interests of policy holders will be qualified to a reasonable scope with respect to insurance agents in order to reconcile it with the agent's duty in law to act in the best interests of its principal. We further understand that such qualification will be made in the code of conduct to be issued by the IIA. We urge the IIA to provide clear guidance in the code of conduct on how it will implement that requirement having regard to an insurance agent's duty in law to its insurer principal. We also appreciate the opportunity to review and provide comments and input on the code of conduct before it is issued.

Given that the code of conduct does not have the force of law and will not override the statutory requirements, insurance intermediaries are potentially exposed to civil claims from policy holders. We would urge the Bills Committee to include a provision in the legislation to the effect that failure to comply with the conduct requirements specified in the

legislation on the part of intermediaries will not in itself give rise to any civil liability.

- (b) We previously submitted to the Bureau that the proposed standard (i.e. best endeavours) in complying or procuring compliance with the various requirements on licensed insurance agencies, licensed insurance broker companies and their ROs is unduly onerous. We note the Bureau's stance on this point as expressed in the 2013 Consultation Conclusions. The MPF regime may be distinguished on the ground that the MPF arrangement applies to all applicable employees on a mandatory basis. We consider it more appropriate to benchmark the standard on insurance intermediaries to the usual regulatory standard of taking reasonably practicable steps. The "reasonable" standard is adopted by regulators in Hong Kong and overseas. In Hong Kong, the Securities and Futures Commission and the Privacy Commissioner of Personal Data require licensed corporations and data users respectively to take reasonable steps to comply with the regulatory requirements. In the United Kingdom, the UK Financial Conduct Authority's Handbook requires authorised persons (including insurance intermediaries) to "take reasonable care to establish and maintain such systems and controls as are appropriate to its business" and "take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system". In Singapore, the Monetary Authority of Singapore's Guidelines on Standards of Conduct for Insurance Brokers require insurance brokers to "take all reasonable steps, including the establishment of internal procedures, to ensure that its broking staff are conversant and comply with all applicable laws, rules and regulations relevant to their business activity". In order to strike a fair balance between policy holders protection and minimising undue regulatory burden on the industry, we urge the Bills Committee to revise the standard to a reasonable standard in line with the usual regulatory standard.

(v) *Re-submission of outstanding applications and notifications directly to the IIA*

Response:

We note the Bureau's stance on requiring re-submission to the IIA of (i) pre-IIA applications for registration as an insurance intermediary or RO or Chief Executive not yet approved by an SRO; and (ii) pre-IIA notifications on changes of particulars and appointments of registrants and ROs not yet completed by an SRO.

We reiterate our concern that if re-submission would require an applicant to prepare the application and supporting documents afresh or substantially revise the documents submitted to an SRO, that would give rise to duplication of efforts and resources. We would urge the Bills Committee to adopt the same transitional arrangements as with the unresolved pre-IIA complaint and disciplinary cases. If the Bureau's stance on re-submission is adopted, please

include suitable waiver or streamlining arrangements regarding the documentation and administrative requirements in the detailed transitional arrangement between the Bureau and SROs to minimize duplication of efforts and resources. For example, an applicant may provide a written confirmation that the information contained in the documentation submitted previously remains up-to-date instead of having to re-submit the full set of documentation, in particular, where the application for registration has reached an advance stage or where the notification and necessary details have been provided by the applicant.

(vi) Drafting changes to facilitate practical implementation of regulatory requirements

Proposals:

In the 2012 Consultation Paper, the proposed wording referred to the IIA imposing conditions or requiring information from applicants on a reasonable basis. The provisions in the Bill do not make reference to reasonableness:

- (a) the IIA may impose any conditions that it considers appropriate on the granting or renewal of a licence; and*
- (b) a person who applies for a licence or its renewal or the approval of the variation of a line of business specified in a licence or the approval of an individual as a responsible officer must provide the IIA with information that it requires to enable it to consider the application.*

Further, the Bureau has not addressed the Association's previous submission that in exercising its regulatory powers, the IIA or HKMA should prescribe a reasonable time period within which a person is required to respond or provide information.

Response:

With a view to facilitating practical implementation of the regulatory requirements, we would urge the Bills Committee to make reference to reasonableness in the relevant provisions as follows:

- (a) Grant and renewal of licence – licensing conditions (Proposed new sections 64ZG and 64ZW). Please adopt the proposed wording in the 2012 Consultation Paper (i.e. "any reasonable conditions as the IIA may impose").*
- (b) Applicant to furnish information (Proposed new section 64ZZ). Please adopt the proposed wording in the 2012 Consultation Paper (i.e. "such information that the IIA may reasonably require").*
- (c) Time period prescribed by IIA or HKMA (Proposed new sections 64ZZF, 64ZZG, 64ZZH and 64ZZI). We previously submitted to the Bureau that where the IIA or HKMA is empowered to prescribe a time period within*

which a person is required to respond or provide information, the legislation should provide for the IIA or HKMA to specify a reasonable period.

Should you have any questions about this submission, please do not hesitate to contact Ivy Wong of the Secretariat at 2521-1169.

Yours faithfully



Eva Wong
Secretary

c.c. Hon NG Leung-sing, SBS, JP
The Hong Kong Monetary Authority (Attn: Mr Arthur Yuen)