HKFI/HILA Forum
Insurance Companies (Amendment) Bill 2014

Tuesday 13 May 2014

Key Discussion Group Points

This note summarises the main points arising out of the HKFI/HILA Forum on the Insurance Companies (Amendment) Bill 2014. It does so by reference to the document produced by the Hong Kong Federation of Insurers dated May 2014 on its views on the "Independence of the Insurance Authority" and by reference to the relevant section headings of that document.

1. Representation on the IIA Board

Should a minimum proportion of the IIA board have industry experience?

- HKFI proposes an appropriate proportion (say 25%) of the directors of the IIA should have sufficient knowledge of and experience in the insurance industry. This proposal has not been accepted by the Government.

- Participants were concerned about the lack of industry representation on the IIA and urged the Government to adopt the HKFI's proposal for the following main reasons:

    - Two 'insurance industry' non-executives might not provide sufficient knowledge of the industry – say one might have knowledge of general insurance and the other knowledge of long term (life) insurance (very different businesses) but what about reinsurance, insurance brokers etc?

    - The other four non-executive directors of the IIA appointed under s.4AA(3)(b) (with knowledge of actuarial science, accountancy, law or consumer affairs) would not necessarily have knowledge and experience of different sectors of the insurance industry.

    - One of the IIA's statutory functions is to "*formulate effective regulatory strategies and facilitate the sustainable market development of the insurance industry, and promote the competitiveness of the insurance industry in the global insurance market*" and also to "*formulate best practice*". In order for the IIA to do so, it is critical that it has access to sufficient industry knowledge and experience of the different sectors of the insurance industry in Hong Kong.

    - At a minimum, the four core sectors of the industry (i.e. long term (life) insurance, general insurance, intermediary and reinsurance) should each be separately represented on the IIA as the nature of their businesses, their position in the market and their regulation by the IIA are very different.

- Participants suggested that the Government should consider the board composition of other regulators. For example, in the UK and France approximately 20-25% of the insurance regulators' boards of directors comprise industry representatives.

- S. 7(3) of the Financial Reporting Council Ordinance (Cap. 588) ("**FRCO**") provides a minimum number and a maximum number of members that may be appointed by the Chief Executive from persons who have the relevant industry experience and knowledge. Reference was also made to the board composition of the Travel and Development Council

("**TDC**") where the industry has 30% representation on the TDC board.

- Participants raised a number of questions regarding the appointment of directors of the IIA Board:

    - How does the Chief Executive appoint members of the IIA under s.4AA?

    - Who will nominate candidates for appointment by the Chief Executive?

These questions do not appear to have been addressed in the draft Bill.

Proposed amendments to the Bill:

Section 4AA should be amended to:

- prescribe that four directors, each with the knowledge and experience of one of the four sectors of the insurance industry (i.e. life insurance, general insurance, intermediary and reinsurance), shall be appointed to the IIA Board; and

- provide a maximum number of IIA Board members, i.e. 15 or 17 persons (including the chairperson and the chief executive officer).

2. Industry Advisory Committees (IACs)

Are there sufficient safeguards to ensure that the industry advisory committees ("IACs") for long term and general business under s.4C and schedule 1C are adequately consulted by the IIA?

- The HKFI proposes that the IACs be required to meet at least once a month and be consulted on all policies and decisions which may affect the industry as a whole. This proposal has been rejected by the Government as being impractical and undermining investor protection measures, and as already being covered under s.130 which requires the IIA to publish draft rules for public consultation.

- Participants considered the measures under s.4C, s.130 and schedule 1C were not sufficient to ensure that the IACs would be adequately consulted by the IIA. The main reasons are as follows:

    - It is difficult to understand why it would be "impractical" to convene an IAC meeting once a month at a minimum and why more frequent IAC meetings would "undermine investor protection measures";

    - Contrary to the Government's response, it is anticipated that frequent IAC meetings would help the IIA to facilitate effective preparation and discussions of any new policies and developments in the industry, as well as implementation of its rules and regulations. This would improve (rather than undermine) investor and consumer protection;

    - IAC meetings would be held not only for the purpose of updating new rules and regulations but also for facilitating discussions on industry and policy developments. Section 130 only applies to where the IIA is proposing to make new rules;

- It should be emphasised again that the IIA has a statutory function under s.4A(ee) to "*formulate effective regulatory strategies and facilitate the sustainable market development of the insurance industry, and promote the competitiveness of the insurance industry in the global insurance market*". The IIA and the IACs must work **proactively** to achieve that purpose;

- Section 4C should impose an obligation on the IIA to consult the IACs on matters relating to the industry; and

- Section 4C does not provide the establishment of an IAC to advise the IIA on matters relating to the reinsurance industry. Reinsurance is a crucial sector within the insurance industry and often drives the development of the insurance industry (rather than direct insurance).

Proposed amendments to the draft Bill:

Section 4C should be amended to:

- provide the set-up of an IAC to advise the IIA on matters relating to reinsurance; and

- specify that the IIA **must consult** the relevant IACs on **all** matters relating to long term business, general business and/or reinsurance business.

3. Conduct Requirements

Are the Conduct Requirements in sections 89, 90 and 91 including the option for insurance intermediaries to act in the best interests of policy holders appropriate?

- Requiring all intermediaries to act in the *"best interests of the policy holder*" **contradicts** common law agency law and will create many practical problems including exposing insurance agents and insurers to claims. Why has the Government seen fit to include this obligation?

- One reason may be that the government feels it is required to do so by the IAIS Insurance Core Principles (ICPs). However, there is no express requirement to this effect in ICP18. In fact, ICP 18.0.4 specifically recognises that: "*Intermediation systems and practices are closely linked with jurisdictions' tradition, culture, legal regime and the degree of the development of insurance markets. For this reason, regulatory approaches to intermediation also tend to vary. Such diversity should be taken into consideration in implementing this ICP and related standards and guidance material in order to achieve the outcome of fair treatment of customers.*" S. 18.3.13 states the standards required of insurance practitioners might include acting in the best interests of each client, but this refers to insurance practitioners generally which would include brokers. S. 18.3.13 also refers to another possible standard being to treat customers fairly ("TCF"). The concept of TCF is enshrined in insurance legislation/regulation in many jurisdictions. However, there does not seem to be any other example of a duty to act in the best interests of policyholders being imposed on insurance agents, and certainly not in any common law jurisdiction where this would conflict with the duties of an agent to act in the best interests of its principal. The Government might like to seek the view of the IAIS in this regard or, alternatively, conduct its own review of how this ICP has been translated into the legislation of other common law jurisdictions.

- The requirement for insurance intermediaries to use their "*best endeavours*" to avoid a conflict of interest between their interests and those of the policyholder appears to have

been copied from the Mandatory Provident Fund Schemes Ordinance ("**MPFSO**"). Why? "*Best endeavors*" in the context of the MPF relates to compulsory products, but there are very few classes of compulsory insurance product. MPF is a very different product to insurance, and MPF schemes are trust based. This may explain the high duty of the MPF trustee to act in best interests of the members and to use their best endeavours to avoid a conflict of interest. However, such a provision may not be relevant in the context of insurance agents.

- The government has said the IIA will issue guidelines to clarify what is meant by acting in the "*best interests*" of policy holders. However, there is a concern that these guidelines are expressly stated not to override the Ordinance. The risk is that policy holders will be able to sue intermediaries relying on the general conduct requirements set out in the legislation, and that the courts will have to interpret those requirements literally as codes of conduct/guidelines do not have the same force as legislation.

- Agents act for an insurance company and have a common law duty (and often a contractual duty as well) to act in the best interests of their principal (the insurer). Consequently, there is a conflict between acting for an insurance company and acting in the "*best interests*" of a policyholder at the same time. There is no such conflict for brokers who are the agents of the policyholders.

- Insurers are responsible for the acts of their insurance agents. Therefore, if their agents are required to act in the best interests of a policy holder then that may equate to the insurer being required to act in the best interests of the policy holder. This leads to an inevitable conflict between the interests of the insurer and the insured as the parties to the insurance contract, and it is difficult if not impossible to resolve that conflict.

- The Government has dealt with the loyalty conflict (between an insurance agent's obligations to the insurer and to the insured) by stating (Para 74 of Bill and new s.68A(1) of ICO) that any term in an agency agreement that is contrary to the best endeavors provision is void. This is not a good solution for insurance agents. Insurance agents still owe a fiduciary duty to the insurer under the common law. The Government's solution is an intervention into a private agreement between an insurer and its agent. For example, a standard clause in an agency agreement is for commission to be kept confidential (a trade secret). However, the new clause introduced by the Bill would render such a confidentiality clause void.

- The phrase "best endeavours" comes from commercial law. There is conflicting English authority on what is actually required by a 'best endeavours' provision and confusion over the distinction, if any, between 'best endeavours' and 'reasonable endeavours' (see the recent English Court of Appeal decision ***Jet2.com v Blackpool Airport Ltd*** [2012] 2 All E.R. (Comm) 1053 (CA (CivDiv)), but the general concept is that "best endeavours" represents a fairly onerous burden. Placing such a high duty on insurance intermediaries is unfair. Other professionals are only under a duty to use reasonable endeavours.

Proposals:

- The best interests provision should not apply to insurance agents since this contradicts the existing common law position and will create considerable confusion and lead to perverse effects.

- The Bar Association, Law Society and Dennis Kwok should be contacted and asked to

consider the "*best interest*"/"*best endeavors*" requirement further on the basis that this requirement represents a significant departure from the current agency/common law position.

- If the Government persists in requiring that the best interests and best endeavours provisions apply to insurance agents, then the legislation should spell out exactly what is meant by these terms and limit the scope (i.e. there should be an objective standard).

- The legislation should contain a link (i.e. incorporate by reference) to guidance and codes of conduct, and make it absolutely clear that intermediaries who comply with the guidance and codes of conduct will not be considered as having fallen short of the conduct requirements.

What will be the effect of any rules and codes of conduct issued by IIA in relation to the conduct requirements under s.92 and s.93? Will these assist to clarify the conduct requirements?

- It is impossible to say because the rules and codes of conduct have not yet been produced. It would be good to know whether the rules and codes of conduct will be similar to the existing codes issued by the SROs.

- It has been reported that there will be a consultation exercise for the first 3- 5 years after the introduction of the IIA. Therefore, in the first 3-5 years the rules and codes of conduct will not 'raise the bar' and introduce anything completely new in terms of professional standards. It is hoped that the new rules and codes of conduct would essentially be the same as the existing codes.

Proposals:

- The legislation should contain a link to guidance and codes of conduct and make it absolutely clear that intermediaries who comply with the guidance and codes of conduct will not be considered as having fallen short of the conduct requirements.

- There should be due notice and full consultation in advance of new rules and codes of conduct being prepared.

Is there any potential for the new conduct requirements to give rise to civil claims against intermediaries and insurers?

- As currently drafted, the legislation could be used as the basis of claims for breach of statutory duty and once this becomes known, many litigants in person might take this approach in order to avoid 'bad bargain' insurance policies. The industry and Government would then be faced with pointless 'floodgates' litigation.

Proposals:

- The legislation should specifically exclude the right to bring such claims for a breach of statutory duty. The legislation should make it clear that a failure on the part of an insurance intermediary to comply with the conduct requirements set out in the legislation will not, of itself, render the insurance intermediary or their insurer liable to any civil or criminal proceedings or affect the validity of any policy.

Definition of misconduct

- The definition of "*misconduct*" is very wide and very subjective. See sub-paragraph (d) of the definition in s.55(5) of the Bill which covers any act or omission which is, **in the**

Authority's opinion, likely to be prejudicial to the interests of policyholders.

- While the Bill allows the IIA to produce conduct codes (e.g. s.92 which provides for a code of conduct for insurance intermediaries), at present it is expressly stated (s.93(9)) that any such code is not subsidiary legislation (so compliance with the code would not be a defence to a misconduct charge – although it would be a factor that the court would have to take into consideration).

- Decisions being made by a single person or department (the enforcement department/officer of the IIA in this case), where he/they effectively determine there has been a breach, make the decision to prosecute and also determine the appropriate penalty, would not be considered good corporate governance for an insurer. So why does the same principle not apply to the regulator?

Proposals:

- There should be clear guidelines and standards in the Bill setting out how the misconduct concept would be interpreted and implemented, or at least what would be considered to meet standards of good conduct.

- The Bill should contain a clear statement that compliance with the codes of conduct would be a defence to a claim for misconduct.

- There should be some sort of separation of powers within the IIA – e.g. an independent internal committee or ORC of the IIA (see below).

Is the inclusion of s.117, creating an offence of providing false or misleading information inducing a person to enter into a contract of insurance appropriate?

- S. 117 is very subjective. For example, if an agent uses an interest rate in an illustration that is not the actual interest rate applied then is that misleading information? The provision would benefit from further clarification or guidance as to what is considered misleading.

- S. 117 replicates s.56 of ICO but the penalty has increased 5 fold (from HK$200,000 and 2 years on indictment in the existing legislation, to HK$1 million and 2 years in the bill) so this is more in line with the penalties under the SFO. It was felt that it might be difficult to tryto decrease the level of the penalty —the section appears to impose fixed penalties (on indictment HK$1 million or 2 months prison, as a summary offence a level 6 fine (HK$100,000) or 6 months prison). It is unclear whether the court has any discretion in this regard.

- It was noted that the provision already contains a mental element: "intent" and "dishonesty". The controversial part of the provision is "reckless".

4. Role of the CEO

Not specifically discussed due to time constraints.

5. Pecuniary penalties

Sentencing Guidelines

- The penalties available to the IIA include: revocation or suspension of licence, public or private reprimand and fines. The immediate revocation of a licence, before the appeal process has been exhausted would be very disruptive and should only be imposed in extreme cases.

- Agreed that the major issue with fines as currently proposed is that they apply to a range of regulated entities, from an intermediary that could potentially be made bankrupt upon receiving a fine up to a large international insurance company who would be far more able to shoulder such a fine. Fines would affect small operations much more than large insurers.

- There is no certainty or indication as to the type of penalty to be awarded for any given infringement or misconduct. The IIA currently has discretion to award any penalty it deems appropriate.

Proposals:

- It would be appropriate to have a tariff system or sentencing guidelines or a requirement to issue fines proportionate to the asset level of the infringing regulated entity.

- Regulations or subsidiary legislation should be introduced, before the IIA is formed but following public consultation, to set out clear guidelines clarifying the award of penalties, including specifically outlining what situations or circumstances would attract which penalties.

Making a Disciplinary Decision Public

- The IIA will have the power to publicise a decision while it is still subject to appeal. This power is to enable the IIA to protect the public interest, for example, preventing the public from dealing with an insolvent insurer.

- The concern is the balance that must be struck between protecting regulated entities from abuse of power by the IIA, and giving the IIA the power to protect the public interest.

Proposals:

- There should be very clear guidelines as to when this power can be used by the IIA, for example where the regulated entity is insolvent or if client money has been stolen.

Settlement

- The IIA will have the power to settle proceedings brought against a regulated entity by agreement on a without prejudice basis.

- There are concerns that this power, when used in conjunction with the IIA's currently unfettered power to issue penalties, could be abused to force regulated entities to enter into onerous settlement agreements under the threat of excessive penalties.

Proposals:

- An independent internal committee should be required to review any settlement agreements proposed by the IIA. While the committee would not necessarily have to include members of the insurance industry, it should include members who are able to provide an objective view (former judges for example).

6. Appellate mechanism

- The current proposal is for the costs of an appeal to follow Order 62 of the Rules of the High Court. This means regulated entities who unsuccessfully appeal a decision by the IIA would be liable to pay a substantial proportion of the IIA's legal costs. This is an area of concern for intermediaries who may not have the means to risk paying significant legal costs if their challenge is unsuccessful. This would discourage certain regulated entities from appealing decisions, effectively excluding them from access to the appeals mechanism.

Proposals:

- Include a costs cap for appellants. In addition, the Tribunal could be given the power to waive costs if these would cause financial hardship to the appellant.

- Another solution would be to have separate appeals processes for intermediaries and insurers. For example, intermediaries could appeal through a simplified process similar to the Small Claims Tribunal. It could be a summary process without a formal court procedure. This would simplify the appeals process and address concerns that a formal court appeals procedure would discourage intermediaries from appealing.

7. Establishment of a committee to confirm proposed disciplinary decisions

- There are issues with the IIA being the investigator, prosecutor and judge.

Are there sufficient checks and balances on the IIA's powers?

- There was a general consensus that including checks and balances in the Bill would be very important.

- It is understood and agreed that the Government needs to protect policyholders, but it is important not to go too far and end up driving insurance businesses out of Hong Kong, rather than promoting Hong Kong (one of the aims of IIA). It would be useful to publish a comparison of Singapore and Hong Kong's insurance regulatory regime (particularly with regard to the matters discussed during the Forum).

Is the HKFI's proposal for an independent internal committee within the IIA to review and confirm disciplinary decisions of the IIA under sd.41P and 80 (similar to the Operations Review Committee of the ICAC) appropriate?

- Noted that the SFO disciplinary regime already exists. However, insurance is a different industry – thus the same regime may not work for insurance. Further, the current SFO model has been in place for some time and problems have since been identified. There is no need for the insurance industry to inherit these problems. Instead, we have an opportunity to avoid these from the outset.

Proposals:

- Support for the HKFI's proposal for an internal IIA committee (similar to the Operations Review Committee of the ICAC) to 'gate keep' the disciplinary actions of the IIA.

- The industry should also press for an independent disciplinary regime outside the IIA

with, for example, a panel of 7 or so members perhaps chaired by a solicitor, with 2 members from industry and others from say the Consumer Council. Further, the majority of members should be independent with no conflict of interest and with a good industry knowledge etc. (in fact mirroring the current disciplinary regime under the IARB, CIB etc).

- In the alternative, an Operations Review Committee (ORC) type structure including, industry representation on that committee. The ORC suggestion is the <u>minimum</u> acceptable to the industry and the request for at the least an ORC needs to be made forcefully.

Industry Advisory Committee (IAC)

Proposals:

- The IIA should be required to refer "important issues" to the IAC for discussion.

- The IAC should have agreed terms of reference – this would help the IIA determine which matters it needs to refer to the IAC.

8. Other Issues

1. Is it appropriate for the IIA to have power to delegate certain of its functions to the HKMA per s.4G and will this create problems of coordination between regulators?

- This issue concerns the regulation of bancassurance distribution. As banks are regulated by the HKMA for their core banking business, the question of the HKMA's role in regulating banks'bancassurance function (and whether this would create different standards for banks acting as insurance agents versus other insurance agents) has raised controversy during the consultation process.

- Under the Bill, the IIA will remain the single authority to set regulatory requirements, granting licenses and imposing disciplinary sanctions (including for banks acting as insurance agents). The only functions the IIA can delegate to the HKMA to perform in relation to banks are its powers of "*inspection*" and "*investigation*".

- There remained a concern that the IIA and the HKMA may apply different standards with regards to inspections and investigations carried out as between banks and other agents. There was also a consensus in the group of the importance of all licensed agents (whether bancassurance or otherwise) being held to the same standards.

- The Legislative Council Brief proposes that the IIA would enter into a Memorandum of Understanding (MOU) with the HKMA to flesh out coordination between the two regulators when functions under s.4G had been delegated.

- There was also discussion as to how the delegation from the IIA would work. Would it work on a case-by-case basis (i.e. bank by bank) or would it be more broad (i.e. a single delegation on inspection and investigation functions for all banks).

Proposals

- The legislation includes a provision requiring the IIA to consult with the Insurance Advisory Committees on any proposed Memorandum of Understanding or arrangement it proposes to enter into with the HKMA.

- A commitment be obtained (and included within the MOU proposals), setting out how the delegations are to be made (i.e. bank by bank or more broadly).

2. Are the transitional provisions in schedule 11 for the purposes of establishing the IIA appropriate?

- The principle should be that any complaints against any licensed agents or brokers made or arising from events occurring before the commencement date of the legislation should be judged only in accordance with the rules of the SROs prior to the commencement date.

- Further, the disciplinary action which the IIA could take in relation to such complaints needed to be limited to the actions which the SROs could have taken. The language in the legislation needed to be tightened up to reflect this.

- The group noted that the "*rules*" referenced in ss.123 and 124 only referred to rules that applied to the insurance agents and brokers. Consideration should be given to whether rules applicable to insurers (e.g. Code of Conduct for Insurers) should also referenced, so as to delimit the standards by which Insurers should be judged with reference to any complaints occurring prior to the commencement date.

Proposals

- In particular, with regards to s. 110, it was suggested that should include the following changes (as highlighted):

> *110. Determination of complaints under sections 108 and 109 of this Schedule*
>
> *(1) A complaint in relation to a specified person mentioned in section 108 or 109 of this Schedule must be handled by the Authority ~~by reference to~~ in accordance with the applicable rule that would have applied to the specified person and the matter in question had the complaint been lodged with the self-regulatory body concerned.*
>
> *(2) In relation to any complaints referred to in (1) above, t~~T~~he Authority may only –*
>
> *a. direct that an investigation under section 64ZZH be conducted;*
> *b. dismiss the complaint; or*
> *c. take any other action that is permitted under the applicable rule.*
>
> *(3) In the event ~~T~~the Authority intends to ~~may~~ take a disciplinary action, or impose a penalty or sanction, in relation to a complaint referred to in (1) above, it may only take such disciplinary action, or impose such penalty or sanction that could have been made by the self-regulatory body concerned had the complaint been dealt with by the body.*

- Similar changes need to be made to s. 113 to make it clear that the IIA's disciplinary powers in relation to investigations not completed before the commencement date are limited to the actions which the SROs could have taken or imposed.

- For Part 7, in relation to appeals, exclusionary language is needed in s. 117(1) to make clear that the Tribunal can only deal with such appeals *"in accordance with"* (not just *"by reference to"*) the applicable rules that would have applied had the appeal been made to the SRO. Given that the Tribunal has the power to make costs awards, but certain SROs do not, it is also suggested a **new s.** 117(4) be included to state:

> *"The Tribunal may not make any costs award in any appeal to which this section applies, unless the SRO could have, in accordance with the relevant applicable rule, have made such cost award".*

- There appears to be a complete absence in the transitional provisions regarding the manner in which complaints against authorized insurers to the current IA arising out of circumstances prior to the commencement date, could be dealt with by the new IIA. It is suggested that a provision be included to state that the IIA may only decide such complaints in accordance with the applicable rules in force at the time of such complaints and it may not impose any disciplinary sanctions or penalties unless the same could have been imposed by the IA, that any appeals in relation to such matters must be dealt with in accordance with the applicable rules in force at the time, and no costs award may be made in relation to such appeals.

3. The definition of "regulated activities" has widened the activities for which a person/entity needs to be licensed. Whilst a list of exhaustive exceptions is provided, this is may not be sufficient. Accordingly, activities that are not intended to be regulated will have to be regulated given the breadth of what "regulated activities" covers (and the limitation of the exceptions).

- The new definition of "*regulated activities*" in Schedule 1 (see also s.64G) which denotes when a person must be licensed, is very broad and goes beyond the "*advising*" and "*arranging*" activities currently caught. There are exceptions listed in s.121, but the exceptions are exhaustive and still result in a situation where activities that are not intended to be regulated will be regulated because they do not fall within an exception.

- An example is the customer services function currently performed in an insurance company (i.e. not the telemarketing function, but the call centre set up to deal with in-bound questions from customers). There is an exception for activities that only involve *"the discharge of clerical or administrative duties" (s.121(2))*, but it is questionable whether the customer services function would fall within that exception. It is considered that it is not the intention for such call centres to have to be manned by licensed insurance agents, but this may be an unintended consequence of the new legislation.

Proposals

- Include a new s.121(2)(ii):

> *"Section 64G or 118 does not prohibit a person acting on behalf of an authorized insurer or a licensed insurance intermediary from carrying on a regulated activity if*
>
> *(i) carrying on that activity only involves the discharge of clerical or administrative duties for the insurer or intermediary, or*
>
> *(ii) <u>the Authority, on application by an authorised insurer or licensed intermediary, is of the opinion that the performance of</u>*

such activities by such person does not prejudice policyholders or potential policyholders and thereby exempts such activities from the prohibition in section 64G or 118".

- The inclusion of a new s.121(2)(ii) would enable the IIA to address cases like customer services on a case-by-case basis. It would also enable regulation to adapt as the insurance market evolves.

4. S. 13AE

- The new s.13AE is the section appointing the person in the insurer who is responsible for the "*Intermediary management function*".

- This function should only relate to the management of agents appointed by the insurer (and compliance by those agents with the conduct requirements).

- It should not relate to the management of brokers by the insurer (the fact is insurers cannot manage brokers). From the consultation document issued by the FSTB, it is clear that this role was only supposed to focus on agents.

Proposal

- S.13AE(12)(a)(i)C needs to be tweaked to delete the words "*the licensed insurance intermediaries*", and replaced with *"the licensed insurance agencies and licensed individual insurance agents appointed by the insurer…"*