

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

**Enhancement of Existing Regulatory Powers in respect of Insurers
(Amendments to Parts II to VII)**

INTRODUCTION

This paper briefs Members on the policy objectives of the enhancement of existing regulatory powers in respect of insurers. The relevant provisions are in the amendments to Parts II to VII of the Insurance Companies Ordinance (Cap. 41) (“ICO”), as provided for in Clauses 16 to 54, 56 to 63, and 68 of the Insurance Companies (Amendment) Bill 2014 (“the Bill”).

BACKGROUND

2. An insurer may carry on insurance business in or from Hong Kong only with the authorization of the Insurance Authority (“IA”). The IA’s authorization and regulatory powers in respect of insurers are prescribed in the existing Parts II to VII of the ICO. The major amendments to these Parts of the ICO aim to enhance corporate governance of authorized insurers so that only fit and proper persons will be in charge of the business of authorized insurers. Better corporate governance of authorized insurers will also benefit policy holders.

POLICY OBJECTIVES AND MAJOR PROVISIONS

(a) Controllers, Directors and Key Persons in Control Functions of Authorized Insurers

3. At present, pursuant to the existing sections 13A and 13B of

the ICO, an authorized insurer cannot appoint a person as its controller¹ unless the IA has indicated no objection. An authorized insurer which contravenes this requirement commits an offence and is liable to a fine of \$200,000. A person who acts or continues to act as a controller despite the IA's objection commits an offence and is liable to a fine of \$200,000 and, in case of an individual, to imprisonment for 2 years and a fine of \$2,000 for each day on which the offence continues. The existing section 14 of the ICO also provides that the IA may object to the appointment of a director by an authorized insurer.

4. According to the Insurance Core Principle ("ICP") 5 promulgated by the International Association of Insurance Supervisors ("IAIS"), the insurance regulator should require that board members, senior management, key persons in control functions and significant owners of an insurer are and remain fit and proper to fulfill their respective roles. In the recent Financial System Stability Assessment report on Hong Kong, the International Monetary Fund commented that in light of IAIS' requirements, the suitability requirements under the existing ICO should be extended to cover senior persons and key persons in control functions of insurers.

5. Clause 23 of the Bill substitutes new section 13A for the existing section 13A. The new section 13A provides that, in addition to the requirement that an authorized insurer cannot appoint a controller unless the IA (or the IIA after its establishment) has approved the appointment, the IIA may revoke the approval of an appointment of controller if it considers that the appointee is not, or is no longer, fit and proper (new section 13A(7)). Sections 13AC added by Clause 25 empowers the IIA to approve the appointment of directors of an

¹ A controller in relation to an authorized insurer refers to –

- (a) a managing director or chief executive of the Hong Kong incorporated insurer or a managing director or chief executive of an overseas incorporated insurer responsible for the Hong Kong insurance business; or
- (b) a person who, alone or with an associate or through a nominee, is entitled to exercise, or control the exercise of, 15% or more of the voting power at any general meeting of the Hong Kong incorporated insurer.

authorized insurer incorporated in Hong Kong², and revoke the approval on fitness and propriety grounds. Factors which the IIA must have regard to in determining whether a person is fit and proper are set out in new section 14A added by Clause 30 (see **Annex**).

6. New section 13AE added by Clause 25 requires that an authorized insurer³ should only appoint an individual as a key person in control function of that insurer if the individual is a fit and proper person approved by the IIA. The IIA may also revoke the approval if it considers that the appointee is not, or is no longer, fit and proper (new section 13AE(7)). As prescribed in that section, “control functions” will include the intermediary management control function⁴. To provide flexibility to update the regulatory regime in light of future developments, the Financial Secretary (“FS”) can specify other control functions through subsidiary legislation. New section 134 added by Clause 84 provides that the FS must publish a draft of the subsidiary legislation for public consultation.

7. According to ICP 8, control functions should include at least risk management, compliance, actuarial matters and internal audit. We are consulting the insurance industry on other control functions which should be included in the legislation. Subject to progress and result of the consultation, we may propose to prescribe more control functions in the Bill through Committee Stage Amendments.

8. New section 13AF added by Clause 25 provides that in

² For authorized insurers incorporated outside Hong Kong, pursuant to section 14 of the ICO, they are required to notify the IA / IIA of any changes in appointment of directors and their particulars.

³ Not applicable to captive insurers.

⁴ The intermediary management control function include –

- (a) administering and monitoring the compliance with statutory requirements by licensed insurance agencies and licensed individual insurance agents appointed by an authorized insurer; and
- (b) ensuring the compliance with prescribed conduct requirements by the licensed insurance intermediaries that refer insurance business to that insurer (new section 13AE(12)(a)).

granting approval of appointment of an individual as a controller, director or key person in control functions of an authorized insurer, the IIA may impose conditions where appropriate. New section 13AG added by Clause 25 prescribe the procedural requirements in relation to the IIA's rejection of appointment, revocation of approval of appointment, imposition / amendment of approval conditions, including giving the concerned insurer or individual an opportunity to make representations. The procedure is to afford an affected insurer or individual a right of being heard so that its or his views will be considered by the IIA in making its final decision which is appealable to the Insurance Appeals Tribunal⁵.

9. Authorized insurers which contravene requirements under the amended section 13A, new sections 13AC and 13AE; and persons who contravene requirements under new sections 13AB and 13AD⁶ commit an offence. The penalty levels are the same as those under the existing sections 13A and 13B of the ICO (see paragraph 3 above). New section 13AH added by Clause 25 provides that a person commits an offence if the person, in connection with an application for approval of an appointment of controller, director or key person in control functions, makes a materially false or misleading statement. A person who commits this offence is liable to a fine at level 5 and to imprisonment for 6 months.

(b) Other updates on regulatory powers in respect of insurers

10. The existing section 15 of ICO requires that an insurer which

⁵ The existing section 37 of the ICO prescribes the procedural safeguards in relation to the IA's exercise of power of intervention under the existing Part V of the ICO on fitness and propriety grounds of an insurer's controllers or directors. In light of amendments to sections 13, 13A, 14 and the new section 13AC, we have updated the section by introducing amendments added by Clause 50 of the Bill so that the same procedural safeguard (see paragraph 8 above) will apply.

⁶ New section 13AB provides that a person must not act or continue to act as a controller without the IIA's approval of the appointment or the appointment is revoked by the IIA. New section 13AD provides for similar requirements in relation to a director of an authorized insurer.

carries on long term business must appoint an actuary with prescribed qualifications. Clause 31 amends section 15 to require that the appointment of an actuary by an authorized insurer incorporated in Hong Kong which carries on long term business is subject to prior approval of the IIA. The IIA would also have the authority to revoke the appointment if the appointed actuary is not, or is no longer, fit and proper. New section 15AA added by Clause 32 provides that the IIA may impose or amend approval conditions.

11. Amendments to sections 22 and 23 added by Clauses 40 and 42 of the Bill 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. These requirements are currently only applicable to Classes G and H (there are altogether 9 statutory classes from A to I) of long term business. We do not envisage that the amendments to sections 22 and 23 will have any substantial impact on the authorized long term insurers in Hong Kong as the majority of them are already keeping separate funds for individual classes of insurance business despite the current requirement under the existing section 22. Our proposal seeks to ensure proper segregation of assets and liabilities of individual classes, thereby avoiding inter-class subsidy in case of winding up of authorized long term insurers.

12. Amendments to section 41 added by Clause 54 of the Bill seek to raise the level of penalty in relation to an offence constituted by a person who recklessly furnishes materially false information to the IIA. The revised level of penalty will align with those in relation to the IIA's inspection and investigation powers (new sections added by Clause 55) which will be discussed in a separate paper.

Financial Services and the Treasury Bureau
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Determination of Fit and Proper
(New Section 14A added by Clause 30 of the Bill)

(1) In determining whether a person is a fit and proper person for the purposes of sections 8, 13A, 13AC, 13AE, 13B, 14 and 15 of the Bill, the independent Insurance Authority (“IIA”) must have regard to the following matters –

- (a) the education or other qualifications or experience of the person;
- (b) the person’s ability to act competently, honestly and fairly;
- (c) the reputation, character, reliability and integrity of the person;
- (d) the person’s financial status or solvency;
- (e) whether any disciplinary action has been taken against the person by –
 - (i) the Monetary Authority;
 - (ii) the Securities and Futures Commission;
 - (iii) the Mandatory Provident Fund Schemes Authority; or
 - (iv) any other authority or regulatory organization, whether in Hong Kong or elsewhere, which, in the IIA’s opinion, performs a function similar to those of the IIA;
- (f) if the person is a company in a group of companies, any information in the possession of the IIA, whether provided by the person or not, relating to –
 - (i) any other company in the group of companies; or
 - (ii) any substantial shareholder or officer of the person or of any company referred to in subparagraph (i);
- (g) the state of affairs of any other business which the person carries on or proposes to carry on.

(2) The obligations imposed on the Authority under subsection (1) are in addition to those of the IIA to have regard to any other matter that the IIA considers relevant in making the determination.