

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

**New Regulatory Powers in respect of Insurers  
(New Part VA)**

**INTRODUCTION**

This paper briefs Members on the policy objectives and major provisions in the new Part VA of the Insurance Companies Ordinance (Cap. 41) (“ICO”), added by Clause 55 of the Insurance Companies (Amendment) Bill 2014 (“the Bill”) concerning proposed new regulatory powers in respect of insurers.

**BACKGROUND**

2. At present under the ICO, the Insurance Authority (“IA”) is vested with powers for prudential regulation of authorized insurers, including those in respect of capital adequacy, solvency margin, handling of assets and liabilities, proper preservation and submission of financial information, as well as fitness and propriety of controllers. Part V of the ICO also empowers the IA to intervene into the affairs of an insurer, e.g. requirements for maintaining assets in Hong Kong, for protecting the interests of policy holders.

3. For more effective regulation of authorized insurers and better protection of the interests of policy holders, we have added Part VA to provide the independent Insurance Authority (“IIA”) with express powers to conduct inspection, initiate investigation, and to impose a range of disciplinary sanctions on authorized insurers. These powers are similar to those vested with other financial services regulators under the Securities and Futures Ordinance (Cap. 571), the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615).

## **POLICY OBJECTIVES AND MAJOR PROVISIONS**

### **(a) Inspection and Investigation Powers**

4. New section 41B provides that, for ascertaining whether an authorized insurer has complied with requirements under the amended ICO, an inspector appointed by the IIA may enter the insurer's business premises, inspect and make copies of the insurer's business record, and make enquiries. An inspector may ask the insurer to produce a business record within a specific time and at a specific place, and to answer relevant questions.

5. New section 41D provides that the IIA may direct its employees or, with the consent of the Financial Secretary, appoint other persons to initiate investigation when the IIA –

- (a) has reasonable cause to believe that a provision of the ICO may have been contravened;
- (b) has reasonable cause to believe that a person may have been involved in defalcation, fraud, misfeasance or other misconduct in relation to the carrying on of insurance business;
- (c) has reasonable cause to believe that a person has carried on, or is carrying on, insurance business in a manner that is not in the interests of policy holders or potential policy holders or the public interest;
- (d) has reason to enquire if a person is, or was, guilty of misconduct or not fit and proper before considering if disciplinary sanctions should be imposed on the person.

In particular, section 41D(5) provides that an investigator may require a person<sup>1</sup> to produce a record or document, give an explanation in respect of the record or document, answer a question relating to the investigation, and give other assistance.

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<sup>1</sup> As defined in new section 41D(6), this refers to a person –

- (a) who is relevant to the matter being investigated; or
- (b) whom an investigator has reasonable cause to believe to be in possession of a record or document that contains information relevant to the investigation.

6. New sections 41C and 41E provide that an inspector or investigator may require a person to, by a statutory declaration, verify his/her answer or explanation to inquiries. In case a person does not comply with requirements by the inspector or investigator for the reason that the information concerned is not within the person's knowledge or possession, the inspector or investigator may require the person to verify, by a statutory declaration, that he/she does not comply with requirements for that reason.

7. New section 41F provides that an inspector or investigator may apply to the Court of First Instance for an inquiry into a person's failure to comply with a requirement imposed by the inspector or investigator. The Court of First Instance, on being satisfied that there being no reasonable excuse, may order the person to comply with the requirement within a specified time (new section 41F(2)(a)) or punish the person as if the person had been guilty of contempt of court (new section 41F(2)(b))<sup>2</sup>.

8. New section 41G(1) to (5) provides that a person commits an offence if the person –

- (a) fails to comply with a requirement imposed by an inspector or investigator without reasonable excuse;
- (b) fails to comply with a requirement imposed by an inspector or investigator with intent to defraud;
- (c) in purported compliance with a requirement imposed by an inspector or investigator, gives a materially false or misleading answer or explanation;
- (d) in purported compliance with a requirement imposed by an inspector or investigator, gives a materially false or misleading answer or explanation with intent to defraud; or
- (e) with intent to defraud, causes or allows another person to fail to comply with a requirement imposed by an inspector or investigator or give a materially false or misleading answer or explanation.

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<sup>2</sup> New section 41F(4) provides that no proceedings may be instituted against a person for new section 41F(2)(b) if criminal proceedings have been instituted against the person under new section 41G(1) to (5) (see paragraph 8) in respect of the same conduct.

The penalty levels in relation to the above offences are set out in the **Annex**. Section 41G(6) provides that a person is not excused from complying with an investigator's requirement under section 41D(5) (see paragraph 5 above) or verifying an answer or explanation given to an investigator only on the ground that doing so might tend to incriminate the person<sup>3</sup>. Section 41H(2) provides that if an investigator requires a person to give an answer or explanation and the person, before giving the answer or explanation, claims that it might tend to incriminate the person, the requirement and the answer or explanation are not admissible in evidence against the person in criminal proceedings in a court of law<sup>4</sup>.

9. New section 41I provides that a person commits an offence if the person destroys, falsifies, conceals or otherwise disposes of a record or document required by an inspector or investigator with an intent to conceal matters capable of being disclosed<sup>5</sup>.

10. New section 41K provides that a magistrate may issue a warrant authorizing a person to enter premises and to search for, seize and remove a record or document if there are reasonable grounds to suspect that on the premises there may be a record or document required by an inspector or investigator.

## **(b) Disciplinary Powers**

11. New section 41P provides that the IIA may exercise disciplinary powers on an authorized insurer if the insurer is or was guilty of misconduct<sup>6</sup>, or when a person is or was not fit and proper to hold the

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<sup>3</sup> New section 41G(7) provides that no criminal proceedings may be instituted against a person under (a) to (e) above if proceedings have been instituted against the person under new section 41F(2)(b) (see paragraph 7 above) in respect of the same conduct.

<sup>4</sup> Except for criminal proceedings in which the person is charged with an offence under new section 41G(1) to (5) or under Part V of the Crimes Ordinance (Cap. 200), or perjury.

<sup>5</sup> A person who commits this offence is liable to –

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

<sup>6</sup> New section 41P(5) defines “misconduct” as –

(a) a contravention of a provision of the ICO;

(b) a contravention of a term or condition of an authorization granted under

position of a director or controller of the insurer. New section 41P(2) provides that the IIA may exercise the following disciplinary powers<sup>7</sup> –

- (a) to revoke the authorization of the authorized insurer in relation to all or any of its authorized classes of insurance business;
- (b) to suspend the authorization of the authorized insurer in relation to all or any of its authorized classes of insurance business for a specified period;
- (c) to prohibit the authorized insurer from applying to be authorized to carry on a class of insurance business for a specified period;
- (d) to reprimand the authorized insurer publicly or privately; or
- (e) to order the authorized insurer to pay a pecuniary penalty<sup>8</sup>.

12. New section 41Q prescribes the procedural requirements in respect of the IIA's exercise of disciplinary powers on authorized insurers. These procedures include, among other things, the IIA must not exercise such powers before giving the authorized insurer concerned an opportunity of being heard. New section 41R provides that the IIA must not exercise the power to impose a pecuniary penalty (see paragraph 11(e) above) unless it has published a relevant guideline and the IIA has had regard to the guideline. New section 41P(3) provides that, if the IIA has exercised a disciplinary power on an authorized insurer, it may disclose to the public details of the decision.

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section 8 of the ICO;

- (c) a contravention of any other condition imposed on an authorized insurer under a provision of the ICO; or
- (d) an act or omission relating to the carrying on of a class of insurance business by an authorized insurer which, in the IIA's opinion, is or is likely to be prejudicial to the interests of policy holders or potential policy holders or the public interest.

<sup>7</sup> New section 41S further provides that when the IIA is contemplating exercising a disciplinary power, it may take an additional action by agreement with the authorized insurer concerned, if it considers appropriate to do so in the interests of policy holders or potential policy holders or the public interest.

<sup>8</sup> Not exceeding the amount which is the greater of –

- (a) \$10,000,000; or
- (b) three times the amount of the profit gained or loss avoided by the authorized insurer as a result of the misconduct.

13. New section 41U provides that, when an authorized insurer is suspended pursuant to new section 41P (i.e. paragraph 11(b) above), during the suspension period it needs to continue to comply with applicable provisions under the ICO. New section 41V provides that a revocation or suspension of the authorization of an insurer does not avoid or affect an agreement or arrangement entered into by the insurer. New section 41W provides that the IIA may require an insurer of which the authorization is revoked or suspended to transfer to its policy holder a copy of records relating to the policy holder's assets or affairs<sup>9</sup>.

### **(c) Others**

14. New section 50G added by Clause 62 of the Bill prescribes that the provisions of Part VA<sup>10</sup> are applicable to Lloyd's and/or its members, e.g. a reference in those provisions to a controller is a reference to Lloyd's authorized representative<sup>11</sup>.

## **CHECKS AND BALANCES**

15. The decisions of the IIA in exercising these regulatory powers are appealable to the independent Insurance Appeals Tribunal ("IAT"). Details about the operation of the IAT will be discussed at future Bills Committee meetings. In addition, an independent Process Review Panel will be set up to review the procedural fairness of the IIA in exercising these powers. Administratively, the IIA will consult an expert panel if expert advice is required for making disciplinary decisions.

## **Financial Services and the Treasury Bureau July 2014**

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<sup>9</sup> An insurer who fails to comply with this requirement without reasonable excuse commits an offence and is liable to a fine of \$200,000 and to imprisonment for 2 years.

<sup>10</sup> Except new sections 41P(2)(a), (b) and (c), 41U, 41V and 41W.

<sup>11</sup> Pursuant to the existing section 50B of the ICO, Lloyd's is required to appoint an authorized representative who shall reside in Hong Kong and be responsible for its overall operation in Hong Kong.

**Penalty levels for Offences  
under New Section 41G(1) to (5) of the amended ICO**

As provided in new section 41G(8) to (10) of the amended ICO –

- (a) A person who commits an offence under new section 41G(1) is liable –
  - (i) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
  - (ii) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
  
- (b) A person who commits an offence under new section 41G(3) is liable –
  - (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
  - (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
  
- (c) A person who commits an offence under new section 41G(2), (4) or (5) is liable –
  - (i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
  - (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months.