

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 2 May 2014**

**Legal Service Division Report on
Insurance Companies (Amendment) Bill 2014**

I. SUMMARY

- 1. The Bill**

The Bill seeks to provide for, among other things, the establishment of a body corporate with the name "Insurance Authority" (IA) which is financially and operationally independent of the Government of the Hong Kong Special Administrative Region, the enforcement powers of IA, the establishment of the Insurance Appeals Tribunal and a statutory licensing regime for insurance intermediaries to replace the existing self-regulatory system.
- 2. Public Consultation**

The Financial Services and the Treasury Bureau (FSTB) conducted a public consultation on the framework of establishing IA in 2010 and published the consultation conclusions and detailed proposals in 2011 for further industry engagement. Further, FSTB consulted the public on key legislative proposals for the establishment of IA from October 2012 to January 2013 and announced the consultation conclusions in June 2013. The Insurance Advisory Committee was also consulted eight times between 2009 and 2013.
- 3. Consultation with LegCo Panel**

The Panel on Financial Affairs was consulted on 19 July 2010, 4 July 2011 and 5 July 2013 and members have raised various concerns on the proposal of establishing IA.
- 4. Conclusion**

In view of Members' concerns raised at the Panel meetings and the significance of the Bill's impact on the insurance sector in Hong Kong, Members may wish to set up a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 30 April 2014. Members may refer to the LegCo Brief (File Ref.: C2/2/50C) issued by the Financial Services and the Treasury Bureau (FSTB) on 16 April 2014 for further details.

Object of the Bill

2. To amend the Insurance Companies Ordinance (Cap. 41) (ICO) to -
 - (a) establish the Insurance Authority (IIA) (as a body corporate) and the Insurance Appeals Tribunal;
 - (b) provide for the enforcement powers of, and fees and levies payable to, IIA;
 - (c) provide for better corporate governance of authorized insurers and a licensing system and conduct requirements for insurance intermediaries; and
 - (d) provide for transitional and other related matters.

Background

3. According to paragraph 2 of the LegCo Brief, the policy objectives of setting up IIA are to modernize the insurance industry regulatory infrastructure to facilitate the stable development of the industry, provide better protection for policyholders, and comply with the requirement of the International Association of Insurance Supervisors that insurance regulators should be financially and operationally independent of the government and industry.

4. At present, the Commissioner of Insurance was appointed by the Chief Executive (CE) under section 4(1) of ICO as the "Insurance Authority" (the former Authority) to carry out the principal function of regulating and supervising the insurance industry for the promotion of the general stability of the insurance industry and for the protection of existing and potential policy holders as set out in section 4A(1) of ICO. According to the press release on 16 April 2014, IIA will take up the Office of the Commissioner of Insurance (OCI)'s regulatory responsibilities and OCI will be disbanded on the establishment of IIA.

Provisions of the Bill

5. Clause 4 of the Bill amends section 1 of ICO so that ICO is proposed to be cited as the Insurance Ordinance instead.

Establishment of IIA

6. The Bill proposes to set up IIA as a statutory body with perpetual succession whose functions are primarily the same as those of the former Authority as set out in section 4A of ICO with certain proposed new functions and powers such as regulating the conduct of insurance intermediaries through a licensing regime.

7. IIA is proposed to be comprised of a chairperson (as a non-executive director), a chief executive officer (as an executive director) and not less than six executive or non-executive directors, all to be appointed by CE. At least two of the non-executive directors should be persons with knowledge of or experience in the insurance industry.

8. Under the Bill, IIA is required to appoint industry advisory committees to advise it in relation to long term and general business. IIA is empowered to establish other committees and employ staff and consultants. IIA may delegate its functions to its members, committees and employees except those specified in the proposed new Schedule 1D including the making of subsidiary legislation. Subject to the approval of the CE in Council, IIA may delegate its powers of inspection and investigation to the Monetary Authority in relation to the regulation of authorized institution¹, for example, banks' insurance intermediary activities.

Regulatory powers of IIA

9. Under the Bill, IIA will be vested with powers to conduct investigations in respect of authorized insurers' contraventions (e.g. the power to conduct inspection and to enter premises and search for, seize and remove records and documents under a magistrate's warrant), and to impose disciplinary sanctions including reprimand, fines, suspension or revocation of licence of insurance intermediaries or authorization of insurers.

¹ It is defined in section 2(1) of the Banking Ordinance (Cap. 155) as a bank, a restricted licence bank or a deposit-taking company.

10. An Insurance Appeals Tribunal (IAT) is proposed to be established to review certain decisions made by IIA specified in the proposed new Schedule 9.

Licensing and regulation of Insurance Intermediaries

11. Under the proposed new regime, a person requires a licence granted by the IIA to carry on "regulated activities", including inviting or inducing, or attempting to invite or induce, a person to enter into a contract of insurance or to make a material decision (e.g. the making of an application or proposal for a contract of insurance). The application for licence by insurance agencies and insurance broker companies must be accompanied by an application for the appointment of a responsible officer (RO). The appointment of an RO is subject to the IIA's approval based on the fit and proper criteria such as professional competence, financial soundness and record of legal and regulatory compliance.

Public Consultation

12. According to paragraph 23 of the LegCo Brief, FSTB conducted a public consultation on the framework of establishing IIA in 2010 and published the consultation conclusions and detailed proposals in 2011 for further industry engagement. Further, FSTB consulted the public on key legislative proposals for the establishment of IIA from October 2012 to January 2013 and announced the consultation conclusions in June 2013. The Insurance Advisory Committee was also consulted eight times between 2009 and 2013.

Consultation with LegCo Panel

13. The Clerk to the Financial Affairs Panel has advised that the Panel on Financial Affairs was consulted on the framework and detailed proposals for establishing IIA on 19 July 2010 and 4 July 2011, and further consulted on the key legislative proposals on 5 July 2013. Panel members have raised various concerns at the above meetings, including IIA's functions, powers, and funding arrangements; composition of IIA's Governing Board and representation of the insurance industry and front-line practitioners in the Board; IIA's regulatory decisions and disciplinary sanctions and the related appeal mechanism; regulation of banks' insurance of intermediary activities and investment-linked insurance products; staff establishment of IIA and transitional arrangements for existing staff of OCI.

Conclusion

14. In view of Members' concerns raised at the Panel meetings and the significance of the Bill's impact on the insurance sector in Hong Kong, Members may wish to set up a Bills Committee to study the Bill in detail.

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